



Seeing through transparency: making corporate accountability work for workers  
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# Glossary of terms

**The Alliance** – the Alliance for Bangladesh Worker Safety

**The Accord** – Bangladesh Accord on Fire and Building Safety

**2018 Accord** – the second binding Bangladesh Accord on Fire and Building Safety signed by brands, trade unions and manufacturers in 2018

**BLA** – Bangladesh Labour Act 2006

**CORE** – Corporate Responsibility Coalition

**Corporate accountability** – the ability of workers to hold companies to account for their actions and to access remedy when their rights have been breached

**CTSCA** – California Transparency in Supply Chains Act 2010

**DIFE** – Bangladesh Department of Inspection for Factories and Establishments

**EAS** – The UK Employment Agency Standards Inspectorate

**EPZ** – Export Processing Zones

**ETI** – Ethical Trading Initiative

**Forced labour** – ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’<sup>1</sup>

**FTSE 100** – the 100 companies listed on the UK London Stock Exchange with the highest market value of outstanding shares

**GDP** – Gross domestic product

**GLAA** – The UK Gangmasters and Labour Abuse Authority

**HMRC** – Her Majesty’s Revenue and Customs

**HSE** – UK Health and Safety Executive

**Human trafficking:** ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’<sup>2</sup>

**ILO** – International Labour Organisation

**Labour abuse** – breach of national or international labour law (e.g. failure to pay minimum wage, unpaid overtime, unfair dismissal)

**Labour exploitation** - for the purpose of this report defined as forced labour, slavery or servitude

**NLW** – National Living Wage

**NMW** – National Minimum Wage

**NTPA** – Bangladesh National Tripartite Plan of Action on Fire Safety and Structural Integrity in the garment sector

**Servitude** – ‘An obligation, imposed by the use of coercion, to provide one’s services’<sup>3</sup>

**Slavery** – ‘The status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’<sup>4</sup>

**Sustainability Compact** - Agreement between the Government of Bangladesh, the EU, US, Canada, the ILO, employers, trade unions and other stakeholders to improve the respect for labour rights and factory safety in the Bangladesh garment sector following the Rana Plaza tragedy in 2013.

**TISC provision** – ‘Transparency in supply chains etc.’ provision under section 54 of the UK Modern Slavery Act 2015

**UK MSA** – UK Modern Slavery Act 2015



## Executive summary

How can we prevent human trafficking for labour exploitation in global supply chains? Mandatory transparency legislation, such as the UK Modern Slavery Act and the California Transparency in Supply Chains Act, has increased the focus on transparency in supply chains through company reporting.

This report asks two crucial questions at a time when increasing numbers of governments are adopting transparency legislation as a tool to prevent human trafficking and forced labour. Firstly, it explores how to ensure that the steps companies are taking to meet transparency aims have a meaningful impact on the rights of workers. Secondly, it considers what steps should complement transparency in supply chains legislation in order to ensure the pursuit of corporate accountability has workers' and migrants' rights at its core. This report questions whether transparency is enough if global efforts to end human trafficking and forced labour are to be successful. It contends that whilst transparency is important it is just one piece of the puzzle needed to tackle human trafficking and forced labour.

This research finds that company compliance with the reporting requirement under section 54 of the UK MSA is low and that even when companies comply, expert stakeholders do not consider the transparency requirement in its current form to drive action that prevents the exploitation of workers in global supply chains. It builds on detailed analysis of legal frameworks for the prevention of forced labour and human trafficking and the enforcement of labour rights in two case study countries: the United Kingdom, which is seeking to become a world leader<sup>5</sup> in the fight against 'modern slavery', and Bangladesh, a site of intense scrutiny, in particular since the 2013 Rana Plaza tragedy. By considering national legislation and its implementation, the report develops a framework for corporate accountability which links transparency in supply chains legislation with domestic frameworks for the protection of workers' and migrants' rights.

The blueprint which accompanies this report captures the voices of workers' organisations, business, academics and civil society, in calling for a comprehensive approach to strengthen workers' rights to prevent human trafficking for labour exploitation. It sets out the steps required for governments to develop a corporate

accountability framework which levels the playing field for business and protects workers' rights. Essential elements of a state's accountability framework include: the protection of workers' rights through legislation, enforcement and the right to collective bargaining; migrant status that permits remedy and redress for harms to workers; and a truly leading role for governments in which their buying power is used to incentivize meaningful initiatives that increase workers' access to justice and improve their working conditions.

## **10 Government actions for corporate accountability that works for workers**

1. Place the protection of workers' rights and their access to justice at the core of responses to human trafficking and forced labour.
2. Ensure transparency in supply chains legislation sits alongside a range of legislation relevant to the prevention of exploitation, including labour laws that apply to all workers.
3. Require public agencies, as well as companies, to carry out risk assessments and report on the impact of their operations on workers in global supply chains.
4. Develop specific transparency reporting criteria for companies and public agencies and enforce reporting.
5. Introduce ethical requirements for public contracts and penalties for non-compliance to protect the human rights of people in global supply chains.
6. Introduce 'joint and several liability', enabling workers to claim compensation or take legal action against lead companies and subcontractors.
7. Establish labour market-wide labour inspectorates and resource them to proactively enforce labour laws.
8. Establish legal and practical barriers to the diversion of labour inspectorates' duties to immigration control activities and joint operations with immigration enforcement.
9. Protect the rights of migrant workers, regardless of status, by ensuring their access to justice and by reviewing all immigration schemes for their impact on workers' risk of abuse and exploitation.
10. Remove legal and practical barriers to unionisation.

# Methodology

This report is based on detailed analysis of the UK Modern Slavery Act (UK MSA) and its implementation, comparative research of the national legal framework and its enforcement in the United Kingdom (UK) and Bangladesh, and discussions with stakeholders.

Bangladesh and the UK have been selected as case study countries for this research with the aim of better understanding the relationship between transparency in supply chains legislation and national legal and enforcement contexts. The UK is seeking to position itself as a world leader in the fight against ‘modern slavery’<sup>6</sup> and its approach to the prevention of human trafficking and forced labour<sup>7</sup> is being exported as new states adopt legislation modelled on the UK MSA.<sup>8</sup> Bangladesh has been the site of intense scrutiny since the Rana Plaza tragedy in 2013. Since the tragedy, the level of company activity aimed at improving working conditions has been unprecedented. As a case study Bangladesh therefore offers a key opportunity to observe what intense action by companies serves to achieve, what barriers remain and why and which actions require state leadership. The garment sector has been selected as a case study within each of the two case study countries – by analysing the interlinkages between the sectors and the treatment of workers in the garment sector, we have been able to gain a better understanding of the impact of business practices on the labour rights of workers and propensity to exploitation.

The research has included a detailed literature review and a wide range of interviews with stakeholders from industry, academia, trade unions and civil society operating in the UK and Bangladesh. Primary data was gathered from the following participant group: six academics, five company representatives, six representatives from four trade unions and trade union federations, one industry body, one corporate foundation and six representatives from civil society and related organisations. The companies represented in this research have reported under the UK MSA and are members of the Ethical Trading Initiative (ETI). While most interviews have followed a semi-structured interview guide, others have been unstructured interviews following prompts for information about key issues relevant to the research. Some stakeholders have wished to remain anonymous and we have therefore chosen to anonymise references to interviews. We considered it to be in the interest of the research to offer anonymity to those participants who requested this.

Throughout the research process, we have analysed a small sample of slavery and human trafficking statements to inform our understanding of specific companies' responses to section 54 of the UK MSA, 'Transparency in supply chains etc'. This analysis has been complemented by existing larger scale analysis of statements.<sup>9</sup> When exploring stakeholders' views on transparency legislation, our focus is on the UK MSA. However, throughout the report we discuss the UK MSA in relation to comparable legislation.

During the course of the research leading up to the publication of this report, relevant reports and analyses have been published. A recent report by Genevieve LeBaron at the University of Sheffield and Sheffield Political Economy Research Institute entitled 'The Global Business of Forced Labour'<sup>10</sup> based on primary research in the cocoa industry in Ghana and the tea industry in India, has been of particular relevance. The policy recommendations on measures to strengthen the UK MSA emerging from LeBaron's research are broadly aligned with the recommendations emerging from this report related to transparency in supply chains legislation.<sup>11</sup>

Whilst this research is based on the two case study countries, Bangladesh and the UK, and has a particular focus on the garment sector, we consider the recommendations to be applicable across the labour market and in other country contexts.



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# 1 Introduction

Since the UK MSA entered into force in 2015, international governments have increasingly considered the adoption of similar legislation.<sup>12</sup> The transparency requirement included in section 54 ‘Transparency in supply chains etc’ provision (herein after referred to as ‘TISC provision’) has been described by UK Prime Minister Theresa May as ‘world-leading’<sup>13</sup> and is at the core of the similar models considered by other governments. In the UK, the TISC provision is considered a key part of the framework for prevention of human trafficking and forced labour in global supply chains. However, companies’ compliance with the TISC provision has been poor: a recent study of the FTSE 100 companies found that nearly half of them failed to ‘meet the minimum requirements set out by the Act’.<sup>14</sup>

While the failure of many companies to comply with the UK MSA has been followed by calls for improved enforcement<sup>15</sup>, the impact of transparency reporting on workers in global supply chains has received little attention. As international governments are debating whether and how to incorporate transparency legislation into their existing frameworks for the prevention of human trafficking for labour exploitation, there is an urgent need to assess the value of mandatory transparency modelled on the UK MSA TISC provision. At the same time, we should consider what steps should complement transparency in supply chains legislation in order to ensure the pursuit of corporate accountability has workers’ and migrants’ rights at its core.

Through FLEX’s role as an active participant in the UK MSA passage through parliament into law and our expertise in developing NGO guidance on company reporting under section 54 of the UK MSA, we have established a need to move beyond compliance and towards a focus on impact on workers in global supply chains. This report is the culmination of many years of discussions and analysis by FLEX in which we have come to understand, that only when governments take a holistic approach to corporate accountability will they make progress in tackling human trafficking and forced labour.

As founders of the Labour Exploitation Accountability Hub<sup>16</sup>, a leading database of law and policy that aims to ensure individual and corporate accountability for human trafficking and forced labour, FLEX has unique expertise in national labour law and

accountability frameworks and their enforcement. While the increasingly global movement towards transparency in supply chains legislation so far appears to have devoted limited attention to national legal and enforcement context, this report brings national context to the fore through two case studies from the UK and Bangladesh (see appendix i). These analyses of legal and enforcement contexts serve to highlight the existing framework for the protection of workers' rights and prevention of human trafficking and forced labour in each country. By considering national legislation and its implementation, we are better equipped to understand the potential relationship between transparency in supply chains legislation and domestic frameworks and can move towards a holistic approach to corporate accountability to prevent human trafficking and forced labour.

The UK and Bangladesh are particularly relevant as case studies when analysing the relationship between national legal and enforcement frameworks and transparency in supply chains legislation. While the UK has been keen to show leadership in the fight against human trafficking and forced labour by adopting the 'world's first modern slavery act'<sup>17</sup>, Bangladesh has seen unprecedented levels of company activity to address poor working conditions in the aftermath of the Rana Plaza tragedy in 2013. This offers a key opportunity to observe what such action by companies serves to achieve, what barriers remain and why, and which actions require state leadership, as they are simply a step too far for companies to proceed alone.

The garment sector has emerged as a particularly interesting focus within these country contexts, as the interlinkages between the sectors in each country illustrate the global nature of production and the implications of national policies on workers in international supply chains. The examples offered by these case studies should be considered against a backdrop of strong commitments made at the international level to end human trafficking and forced labour<sup>18</sup> and many years of efforts focussing on addressing exploitation in the sex industry with limited activity elsewhere. Now that exploitation across the labour market is being tackled by growing numbers of governments worldwide, it is critical that they do not seek to shift the burden of responsibility on to the shoulders of companies. Instead, governments should see state action, including the steps set out in this report, as a fundamental part of their own response.

## 2 A global movement towards transparency – without teeth?

An increasing number of governments worldwide are considering the adoption of transparency in supply chains legislation; Australia and Hong Kong<sup>19</sup> have recently introduced a draft Modern Slavery Bill to their respective parliaments and other governments are thought to be following their example. The draft legislation in both Australia and Hong Kong have been modelled on the UK MSA, what the UK government describes as ‘the world’s first modern slavery act’.<sup>20</sup>

In 2013 the UK Home Secretary set out her intention for the UK to become a world leader<sup>21</sup> in the fight against what she termed ‘modern slavery’.<sup>22</sup> In order to achieve this aim she published a draft ‘Modern Slavery Bill’ which was welcomed by politicians from all sides of the debate. Whilst the draft bill omitted corporate accountability measures, growing calls from inside and outside parliament led to the later addition of section 54 ‘Transparency in supply chains etc’. A range of businesses argued that mandatory transparency would level the playing field and improve standards across the board and civil society emphasized the importance of accountability.<sup>23</sup>

The UK Modern Slavery Act entered into law in 2015. The Act included the TISC provision which requires companies with an annual global turnover of £36 million or more to report annually on what, if any, steps they have taken to prevent ‘slavery and human trafficking’ in their supply chains or business. To this end, companies must produce a ‘slavery and human trafficking statement’ for each financial year, with senior level sign-off, published on their website. The UK transparency requirement was modelled on the California Transparency in Supply Chains Act of 2010 (SB 657 – herein after referred to as CTSCA) which requires companies with annual worldwide gross receipts of US\$100 million or more to report on their ‘efforts to eradicate slavery and human trafficking from their supply chains’.<sup>24</sup> The UK MSA and the CTSCA both require mandatory disclosure, however in order to comply with both pieces of legislation it is acceptable to report that no action has been taken. Neither of the Acts require specific action to be taken to address risks of forced labour and human trafficking, beyond reporting and government guidance on compliance is minimal. In both cases there is no official registry on which transparency statements might be collated and neither Government has provided a list of companies that meet the reporting threshold.



The UK MSA and the CTSCA are both based on the position that transparency will drive awareness amongst consumers and other stakeholders of human trafficking, forced labour, slavery and servitude in companies' supply chains and that this will lead to pressure on companies to prevent and address human rights breaches.<sup>25</sup> As such, the Acts do not require companies to take specific measures to prevent and address human trafficking and forced labour. The recent French Duty of Vigilance Act<sup>26</sup> and the Dutch Child Labour Due Diligence Law<sup>27</sup>, in comparison, go further by introducing mandatory due diligence.<sup>28</sup> In Australia, the Government has recently introduced a draft Modern Slavery Bill to Parliament, which is entirely focussed on mandatory corporate transparency and borrows key elements from the UK and Californian legislation. The draft Bill introduces a mandatory transparency requirement and, unlike the UK MSA or CTSCA is prescriptive about the content of reports. The Bill does however not introduce mandatory due diligence.<sup>29</sup>

In the UK, companies' compliance with the TISC requirement has been poor: a recent study of the FTSE 100 companies found that nearly half of these failed to 'meet the minimum requirements set out by the Act'.<sup>30</sup> Amongst the statements that have been published, recent research found that two thirds of sampled statements in high risk sectors failed to set out the relevant risks of slavery and human trafficking.<sup>31</sup> At the same time, the enactment of the UK MSA has provided the impetus for considerable moves towards corporate transparency in the UK and worldwide. Several large UK retailers, including Primark, M&S, ASOS and Tesco, have published lists of their suppliers in the UK and abroad. Such moves have been particularly marked in the retail sector.

### 3 Garments, from Leicester to Dhaka and back

The UK garment industry has undergone considerable change in recent decades and this has had implications for employment structures and working conditions. Until the 1970-80s, the UK had a relatively profitable garment sector.<sup>32</sup> From this point on, however, manufacturing was increasingly outsourced to Asia. The market was initially dominated by Hong Kong, Taiwan, South Korea and later mainland China.<sup>33</sup> However, from the 1990s, increasing numbers of seasonal collections and higher volumes of orders made it attractive to outsource manufacturing to lower income countries including Bangladesh, Vietnam and Cambodia, where labour costs were low.<sup>34</sup> Ultimately, UK garment manufacturing was no longer considered viable as global garment prices declined. At the end of 2004, the 'phasing out of the multi-fibre arrangement (MFA)' [...] ended the quotas on textile imports from developing countries' and reinforced this trend in outsourcing.<sup>35</sup>

Between 1995-2012, UK garment manufacturing declined by almost 70 percent and employment dropped by 84 percent.<sup>36</sup> However, since the mid-2000s, the decline in UK manufacturing has been partly reversed moving from a negative turnover of -10.1 percent between 1998-2007 to a positive turnover of 11.7 percent between 2008-2012.<sup>37</sup> In the past eight years, the turnover of apparel manufacturers in the UK reached over £3bn in 2016, increasing more than 20 percent.<sup>38</sup> This relates partly to the 'fast fashion' trend, where stores 'keep smaller inventories and change orders more frequently', an approach which relies on quick turnaround times.<sup>39</sup> Despite the growth in turnover, however, employment in the sector has declined.<sup>40</sup>

The UK was the third largest importer of textiles and clothing in 2016. In the same year, Bangladesh was the second-largest apparel exporter to the UK, after China, with a value of £2,8bn.<sup>41</sup> While in the UK national garment manufacturing contributes a fraction of the gross domestic product (GDP), in Bangladesh the garment industry contributes as much as 11.3 percent.<sup>42</sup> Indeed, in Bangladesh, garment manufacturing accounts for 80.6 percent of exports, 64 percent of which go to European Union (EU) countries. While for Bangladesh the value of garment exports and employment in the sector has grown significantly over the past 20 years, export prices have declined considerably and by as much as 28,7 percent since 2012 in some categories of garment. The cost of labour in the Bangladesh garment sector has continuously been 'the lowest among the

world's garment exporting countries'.<sup>43</sup>

Garment production has been important to Bangladesh's development since the 1990s and the growth of the garment industry has been accompanied by a significant drop in the proportion of the population living below the poverty line.<sup>44</sup> However, as noted by researchers at the New York University Leonard N. Stern School of Business (NYU Stern): 'what made Bangladesh successful as a supplier of casual fashion [...] has also historically made its garment business dangerous'.<sup>45</sup>

The extremely low garment prices have been driving a race to the bottom on labour standards as small profit margins have increased the incentives for factory owners to squeeze labour costs.<sup>46</sup>

In the years leading up to the Bangladesh Rana Plaza tragedy in 2013, there was a particular growth in garment exports and the industry received Government support. Then, following a series of fatal factory accidents, on the 24<sup>th</sup> of April 2013, the export factory Rana Plaza collapsed, killing 1134 people and injuring approximately 2500 others.<sup>47</sup> The disaster received considerable international attention and the Bangladesh Government and international brands were put under pressure to take responsibility for workers in their supply chain, by providing remedies and taking action to ensure that a Rana Plaza type tragedy is never repeated.

With support from the International Labour Organisation (ILO), the Government of Bangladesh adopted a National Tripartite Plan of Action on Fire Safety and Structural Integrity in the garment sector (NTPA) in 2013. The Plan brought together government actors, workers and employers and provided a framework for improving working conditions in the garment industry. Linked to this was the five year Bangladesh Accord on Fire and Building Safety, established in 2013 with signatories from clothing brands and representation from international unions UNI Global and IndustriALL and two local union federations.<sup>48</sup> At the same time, 'The Alliance for Bangladesh Worker Safety', a US based alternative to the Accord, was established and led by companies linked to the Rana Plaza tragedy. The Alliance has been criticised for its lack of union representation.<sup>49</sup>

**The main components of the Bangladesh Accord on Fire and Building Safety are as follows<sup>50</sup>:**

1. 'A five year legally binding agreement between brands and trade unions to ensure a safe working environment in the Bangladeshi RMG [readymade garment] industry
2. An independent inspection program supported by brands in which workers and trade unions are involved
3. Public disclosure of all factories, inspection reports and corrective action plans [...]
4. A commitment by signatory brands to ensure sufficient funds are available for remediation and to maintain sourcing relationships
5. Democratically elected health and safety committees in all factories to identify and act on health and safety risks
6. Worker empowerment through an extensive training program, complaints mechanism and right to refuse unsafe work.'

By signing the Bangladesh Accord on Fire and Building Safety, companies agreed to be held collectively accountable for health and safety issues in garment export factories. Importantly, through its legally binding nature companies that fail to comply with their responsibility under the Accord can be held liable.<sup>51</sup> In 2018, at the end of the Accord's five year commitment, a follow up 2018 Accord was negotiated and signed by a range of companies. Despite some hesitation by UK brands, most of the original signatories have reaffirmed their commitment.<sup>52</sup> The 2018 Accord ensures the continuation of the joint health and safety efforts until 2021. At the end of this time period, it has been agreed that the work will be handed over to a Bangladesh agency, supported by the ILO.

There has been a significant decrease in the number of severe accidents since the introduction of the original Bangladesh Accord on Fire and Building Safety.<sup>53</sup> However, despite considerable improvements, worker organisations report that there has been little significant change in other areas in the five years that have passed since the Rana



Plaza tragedy.<sup>54</sup> While minimum wages in the garment sector have increased since 2013, so have living costs, leaving many workers still on poverty wages and at risk of labour exploitation.<sup>55</sup> The Bangladesh Accord on Fire and Building Safety, while largely limited to health and safety, does however provide a promising model for multi-stakeholder collaboration and legal responsibility and may pave the way for similar agreements that tackle drivers of human trafficking and forced labour, such as poor purchasing practices and poverty wages.<sup>56</sup> The 2018 Accord includes the development of a complaints mechanism for breaches of workers' freedom of association, recognising the importance of worker representation and participation in ensuring safe workplaces.<sup>57</sup>

While in Bangladesh, factories are consolidating to reduce in number and grow in size, the UK has seen the opposite trend with a considerable decline in the 'average size of a garment manufacturer'.<sup>58</sup> The resurgent UK garment industry has been characterized as 'dominated by small firms, fragmented supply chains, a largely vulnerable workforce, and the absence of enterprise-level industrial relations and worker representation'.<sup>59</sup> Wage theft has been found to be endemic in parts of the UK garment industry; a study of garment manufacturing in Leicester, UK, reported an average wage of £3 per hour, less than half of the UK National Living Wage.<sup>60</sup> Factory owners operating within the law are reportedly being undercut by those who are flouting labour law.<sup>61</sup>

The poor working conditions in the UK garment industry have received considerable attention, including through a UK documentary series on Channel Four entitled 'Dispatches' where undercover journalists found workers being paid as little as £2 an hour<sup>62</sup>. Similar serious breaches of labour rights were documented by the UK Houses of Parliament Joint Committee on Human Rights during their visit to Leicester in 2017.<sup>63</sup> This has led UK companies to speak out about the scant enforcement of labour standards in the UK garment sector. In 2017, the CEOs of clothing brands ASOS and New Look publicly described the 'unsafe working conditions' in the UK garment industry as a 'ticking time bomb' and said that the poor working conditions and lack of enforcement in the sector forced UK companies to outsource production.<sup>64</sup> A handful of companies have engaged in initiatives to improve the working conditions in Leicester, in particular. However, so far these efforts do not appear to have resulted in improvements for garment workers.

The proximity and relative visibility of UK garment supply chains as compared to those situated in Bangladesh permits a more detailed analysis of supply chains relationships

and the impact of regulation and enforcement measures on corporate accountability. Labour abuses such as wage theft place workers in the UK and Bangladesh alike at risk of forced labour and human trafficking. As the UK Prime Minister brands the country a world leader<sup>65</sup> in tackling modern slavery, the question of whether the TISC provision has the potential to contribute to effective prevention of human trafficking and forced labour remains to be answered.

While the stakeholders interviewed for this research agree that transparency plays an important role in a worker-centred corporate accountability framework, there is a need to explore how to make such transparency meaningful. At the same time, stakeholders are clear that transparency is only one piece of the corporate accountability puzzle. In the UK, companies have publicly stated their intention to leave the country due to poor working conditions<sup>66</sup> and in Bangladesh poverty wages and serious barriers to freedom of association are issues that must be tackled if governments are serious about preventing human trafficking. In the following chapters, we ask how transparency legislation can be made a force for good and at the same time consider what other government action is required as part of a framework to prevent human trafficking and forced labour that places workers' rights at its core.

## 4 Effectiveness of UK MSA TISC provision and compliance with the Act

This section considers the effectiveness of the TISC provision of the UK MSA. It looks at the practical implications of the way in which the provision has been drafted and then considers responses by companies.

Section 54 of the UK MSA includes a TISC provision, which requires companies with an annual turnover of £36 million or more to report annually on what, if any, steps they have taken to prevent slavery and human trafficking in their supply chains. The Act guides those who fall within the threshold for reporting on the contents of a report as follows:

- 'S54 (4) A slavery and human trafficking statement for a financial year is—*
- (a) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place—*
- (i) in any of its supply chains, and*
- (ii) in any part of its own business, or*
- (b) a statement that the organisation has taken no such steps.'*<sup>67</sup>

The statement must be approved and signed at the most senior level of a company and made publicly accessible on its website.<sup>68</sup>

Despite the fact that companies may comply with the TISC provision simply by saying they have taken no steps to address slavery and human trafficking in their supply chains, compliance has been weak. A recent study of the FTSE 100 companies found that nearly half of these failed to 'meet the minimum requirements set out by the Act'.<sup>69</sup> Of the top 100 suppliers to the UK Government, 40 percent have been found to be non-compliant with the requirements of the Act.<sup>70</sup>

One possible reason for the limited compliance by companies is the absence of a definitive list of those companies that are required to report. It is estimated that between 10-12,000 companies are covered by Section 54<sup>71</sup> and yet that 60 percent of these fail to produce a report.<sup>72</sup> In addition some of those companies that have reported have failed to meet the minimum requirements of the Act, including sign-off at senior level and visibility on the company website.<sup>73</sup> Like the UK MSA, the California Transparency in Supply Chains Act (CTSCA) leaves it up to companies to determine the exact content of statements. However, unlike the UK MSA, the Californian Franchise Tax Board produces an annual list of companies covered by CTSCA based on information from tax returns.<sup>74</sup> However, CTSCA does not require companies to report on an annual basis, which means that a company may comply with the law by reporting just once.

Unlike the UK and California legislation, Australia's draft Modern Slavery Bill makes provision for a government funded central repository for slavery and human trafficking statements once produced.<sup>75</sup> In the UK, statements are currently collected by two independent, non-government funded registries and many in the anti-trafficking sector have called for a central, state run registry.<sup>76</sup> The need for a centralized register was highlighted by the UK Houses of Parliament Joint Committee on Human Rights in 2017, describing the failure of the Government to provide this as a 'shortcoming' of the MSA.<sup>77</sup> In its evaluation of the UK Government's progress on reducing modern slavery, the UK Houses of Parliament Public Accounts Committee criticised the Home Office for its failure to monitor compliance with Section 54 saying it:

*'relies on NGOs, investors and consumers to monitor compliance, including two NGO managed registries of statements. This approach is clearly not working, as compliance with the legislation is low, with only an estimated 30 percent of businesses required to publish a statement having done so.'*<sup>78</sup>

Company stakeholders interviewed by FLEX in the course of this research highlighted the Government's unwillingness to publish a list of companies required to report and the lack of a centralized registry as serious shortcomings of the Act. They reported that without these two measures and in the absence of enforcement, some companies, in particular those that are not public facing, do not see a reason to comply. As the legislation is not enforced, it creates an uncompetitive market and places some of the companies that do comply at a disadvantage. One company representative suggested the idea that consumers are going to challenge companies for failure to comply with the



Act or for publishing statements of poor quality is flawed, saying ‘we’re so far away from this being the reality’.<sup>79</sup> Another interviewee suggested that consumer awareness of the Act is ‘extremely low’ and while they suggested that some members of the public do care about how their clothes are produced, ‘in the end, consumers want it to be affordable.’<sup>80</sup>

A recent submission to the Houses of Parliament Public Accounts Committee by the Ethical Trading Initiative (ETI) highlighted issues with the UK Government’s reliance on ‘brand reputation, civil society organisations, investors and members of the public to monitor compliance’ with section 54:

- i) the number of civil society organisations monitoring this legislation is small and those with expertise on modern slavery in global supply chains and corporate operations is limited;*
- ii) the public, investors, civil society and the media cannot monitor companies they are not aware of – most companies are SMEs or are suppliers to businesses, and most industries operate outside the public domain, yet are as likely, if not more so, to have modern slavery risks in their own operations and supply chains.’<sup>81</sup>*

Amongst the companies interviewed, all of which comply with the UK MSA, there was a strong sense that penalties should be introduced for companies that fail to meet the requirements. In a recent survey carried out by the ETI, informing their evidence to the UK Houses of Parliament Public Accounts Committee, a large majority of companies stated that: ‘it is important for the Government to monitor compliance with section 54 of the Act and [...]the Act could not be effective without this’.<sup>82</sup>

In addition, FLEX interviewees raised concerns about the lack of enforcement of the TISC provision, one describing the current approach as ‘very soft touch, there’s a complete lack of enforcement’.<sup>83</sup>

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**Another FLEX interviewee flagged her concern that while a relatively small group of companies has taken a lead on compliance and are challenging each other to improve their practices and to produce high quality statements, these companies might be approaching a state of ‘fatigue’.**

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This, she said, is due to a lack of monitoring and enforcement and a sense that the TISC provision will not be effective unless properly implemented across all companies that meet the £36m threshold: ‘Progress on this issue will only be made if all partners step up and play their part. We have stepped up.’<sup>84</sup> In summary, it appears some front-running companies are starting to question the value of their work in this area.

When pressed on the detail of what enforcement should look like, one FLEX interview participant who is in favour of stronger enforcement of the Act, said that he was concerned that penalties in isolation could result in transparency reporting being a tick-box exercise for many companies. He suggested that a penalty for non-compliance should only be introduced in combination with expectations or requirements on the content of statements as many statements otherwise are unlikely to provide meaningful information.<sup>85</sup> The low compliance with the TISC provision of the UK MSA and the serious concerns raised by compliant companies with regards to its implementation, point to the need for considerably stronger monitoring, guidance and enforcement if it is to be effective.

# 5 Beyond compliance: responding to the UK MSA

The previous section highlighted some serious failings in terms of monitoring and enforcement of the TISC provision of the UK MSA and worrying trends in terms of compliance. However, for mandatory transparency to play a role in preventing human trafficking and forced labour, mere company compliance with the UK MSA or equivalent is not sufficient. As discussed, companies currently comply with the Act by reporting that have taken no steps to address risks of slavery and human trafficking in their supply chain.

Whilst the TISC provision of the UK MSA sets out a range of areas on which companies might choose to report, including their structure, policies and risks in their supply chain, many do not cover all the suggested areas. A recent study by the Corporate Responsibility Coalition (CORE) found that nearly two-thirds of the analysed slavery and human trafficking statements did not ‘make reference to specific risks of slavery and human trafficking in the relevant raw material supply chain or specific sector.’<sup>86</sup>

Similarly, an analysis of 150 statements in 2017 found that while companies reporting on ‘their structure, operations, supply chain and modern slavery policies’ had improved since 2016, there had been ‘little improvement in most companies’ reporting of due diligence processes and outcomes’.<sup>87</sup> The same study found 58 percent of companies failing to ‘identify priorities for actions based on the assessments’.<sup>88</sup> The absence of detailed analysis of risks in company supply chains in slavery and human trafficking statements acts as a real barrier to progress on corporate accountability as the purpose and impact of company action to improve working conditions remain unclear.

While a recent assessment of the statements produced by FTSE 100 companies found an improvement in companies’ due diligence reporting, many companies focus on the risks posed by their direct suppliers, without considering suppliers’ ability to manage the risks to workers in their supply chain.<sup>89</sup> The large majority of FTSE 100 companies do not report on the impact of their actions, nor on how they plan to assess the success of recently implemented measures. Where performance measures have been established by reporting companies, they were found to generally measure outputs as opposed to impact (e.g. number of training courses as opposed to the effect of the training).<sup>90</sup> This

level of reporting presents obvious challenge to achieving systemic change in this area.

The issue of reporting quality was highlighted by the Equality and Human Rights Commission in their evidence to the UK Houses of Parliament Joint Committee on Human Rights in 2017, stating:

*'Home Office guidance is not prescriptive about the content of the annual slavery and human trafficking statement ... companies are disclosing information about their policies and processes rather than detailed explanations of their human rights risks and the steps taken to manage those risks'.<sup>91</sup>*

These findings are in line with in-depth analysis of a limited number of statements carried out by FLEX. While some companies identify risks, several statements provide little to no information about action resulting from the risk assessment to prevent cases of human trafficking and forced labour. This raises questions about the extent to which reporting under the TISC provision of the UK MSA is driving change in companies' approaches to preventing and addressing human trafficking and forced labour in their supply chains.

Some argue that the TISC provision of the UK MSA has had a wider impact beyond that which is obvious through analysis of slavery and human trafficking statements. Giving evidence to the UK Houses of Parliament Joint Committee on Human Rights in 2017, companies Marks and Spencer and Next reported that the TISC provision has 'driven consistency in the marketplace' and 'given business clarity and leverage'.<sup>92</sup> Representatives of companies interviewed by FLEX for this report had varying views on the impact of the reporting requirement on their efforts to prevent and address slavery and human trafficking in their supply chains. Some said that the introduction of the UK MSA had improved senior-level buy in and enabled discussions about the issue internally. For three companies, the UK MSA had provided direction to existing initiatives. One such area cited was awareness-raising with suppliers. One company reported that their awareness of and response to modern slavery risks had been limited prior the introduction of the MSA and described the Act as 'a big driver'.<sup>93</sup>

## 6 What is the meaning of true ‘transparency in supply chains’?

To date there has been limited assessment of the impact of the Section 54 reporting requirements under the UK MSA on workers in global supply chains though some studies including in-depth research with workers are currently in progress.

While the UK MSA certainly appears to have raised the awareness of modern slavery risks within some companies and to a certain extent appears to have changed company responses, the interviewed expert stakeholders generally did not consider the UK MSA in its current form to have the potential to drive improvement for workers in the long run.

Worker representatives and civil society organisations working on Bangladesh, told FLEX that they either had not heard of the UK MSA or that they did not think it had any impact on workers in the Bangladesh garment sector.<sup>94</sup> An expert stakeholder working closely with garment workers in the UK, reported that she had not seen any improvement in working conditions, despite companies having devoted more attention to the issue.<sup>95</sup> An academic also working on this issue suggested that the TISC provision has led to a concentration of companies’ supply chains in the UK, but that little had changed for workers, saying ‘whereas previously a brand would work with 20 factories across the UK, now they try to reduce risk and focus on 10 or 5 factories’<sup>96</sup>.

Whilst this makes brands more dependent on the selected factories they work with, it has not necessarily improved working conditions. The chances of unauthorised subcontracting also remain high, as inconsistent orders, inherent to the ‘Fast Fashion’ model, place manufacturers under pressure to subcontract parts of production.<sup>97</sup>

The challenge of monitoring labour rights compliance and addressing issues further down the supply chain is highlighted in the slavery and human trafficking statements of several companies. Primark, for example:

*'recognise that modern slavery is equally or more likely to occur in the lower tiers of our supply chain, and that our leverage to address such issues decreases at this level due to the indirect nature of the relationship between Primark and these suppliers.'*<sup>98</sup>

The UK MSA has changed companies' approaches to monitoring their UK supply chains. Where previously auditors would enter factories and look for irregularities once a contract had been entered into, it is now up to the manufacturer to prove that they comply in advance of entering into an agreement with a lead company. However, as suggested by one academic, while this form of auditing may improve firms' awareness of working conditions in their supply chain, it does not address the drivers of labour abuses and exploitation. The answer to substandard working conditions, he said, has been to 'tighten the onus on manufacturers'. He suggested that underlying economic asymmetries between brands and manufacturers are at the core of such practices and must be addressed if conditions are to improve for workers.<sup>99</sup>

Several stakeholders interviewed suggested that the UK MSA transparency reporting requirements drive short-term solutions and a top-down approach to workers' rights where solutions are imposed by companies as opposed to being developed through true worker engagement.<sup>100</sup> One academic mentioned awareness raising as a typical response to the UK MSA, which is based on the idea that 'a good employer wouldn't do it', while failing to recognise the structural drivers of exploitation.<sup>101</sup> While awareness raising is a positive measure if suppliers further down brands' supply chains have the capacity and incentive to implement brands' policies, when this is not the case it may serve to offload responsibility from principal contractors without tackling root causes.

Since the UK MSA came into force, some companies have introduced public supplier list. These lists are highlighted by companies in their slavery and human trafficking statements and have been flagged as examples of best practice responses to the UK MSA.<sup>102</sup> However, those companies interviewed by FLEX that have published lists of their factories stated that the move towards transparent supplier lists has not been taken in direct response to the introduction of the UK MSA. Rather, it is the result of an ongoing campaign by civil society groups, coordinated by the Clean Clothes Campaign, that seeks to gain company support for a 'transparency pledge'.<sup>103</sup> For instance, ASOS, Tesco, M&S, Primark and Next all provide lists or 'maps' of their suppliers.



Those companies with public supplier lists agreed that transparency must be at the core of companies' responses and they viewed transparency to be essential to corporate accountability efforts. Supplier lists are typically published on an annual or quarterly basis, and thus provide a snapshot of a brand's supply chain as their supplier base is in constant flux. While all stakeholders interviewed for this research were clear that transparent supplier lists must be complemented by other action to be effective, interviewees raised interesting points about the benefits of the approach. One stakeholder who works closely with garment workers in the UK, suggested that public factory lists 'give workers confidence' as it helps them to know who they work for.<sup>104</sup> One of the academics interviewed for this research suggested that public lists benefit workers if the relevant labour inspectorates use the information and carry out proactive inspections.<sup>105</sup> Transparent supplier lists is a central component of the Bangladesh Accord on Fire and Building Safety, which publishes information about non-compliance and remediation in each factory.<sup>106</sup>

While transparent supplier lists were generally considered useful by academics, trade unions and civil society representatives, the stakeholders interviewed by FLEX suggested that the impact of transparency under the TISC provision remains limited as it leaves companies with the power to set the terms of their transparency. There is for example little transparency about what brands do with the information they gather through social auditing. One interviewee said:

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***'There's as much undisclosed as disclosed. Companies are still in a position where they can report on whatever they are comfortable with. If the legislation isn't prescriptive enough, what are we transparent about?'***<sup>107</sup>

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Similarly, one academic suggested that the UK MSA leaves companies with too much power to define both issues and solutions. She suggested that it serves as a distraction, as companies are engaging on the topic without tackling the structural issues that could make a difference to workers.<sup>108</sup> The different priorities and solutions of companies and worker representatives were illustrated in conversation with a Bangladesh trade union

federation, which asked not to be named due to fear of repercussions. While they gave examples of positive brand engagement in the Bangladesh garment sector, including global framework agreements signed with IndustriALL, they were unsure about the impact this could have due to Government crack-downs on trade unions. They reported constantly having to defend innocent trade union leaders in court and trade unionists being exposed to serious forms of harassment and threats. They suggested that international initiatives must engage with the issue of freedom of association to have any notable effect on working conditions and the prevention of human trafficking and forced labour in Bangladesh.<sup>109</sup>

### **Case study: Freedom of association under threat in Bangladesh**

Only five per cent of Bangladesh's four million garment workers are represented by trade unions, with 90 percent of the country's 4482 garment factories operating without any worker representation.<sup>110</sup>

Trade unionists report that while unionisation was facilitated shortly after the Rana Plaza tragedy, five years later workers again face harassment, discrimination, suspension, blacklisting, false criminal charges, or even arrest if they join or lead a trade union at their workplace.<sup>111</sup>

In December 2016, the latest repression of trade union action in Bangladesh took place in Ashulia, a hub for garment production outside Dhaka, after the staging of unofficial industrial action provoked by the death of a co-worker and general demands for higher wages. This action resulted in the arrest of approximately 40 trade union leaders and workers, the suspension of more than 1,500 workers, legal action against 600 workers, and serious damage to trade union offices. Local police have not investigated workers' complaints in relation to these and other attacks.<sup>112</sup>

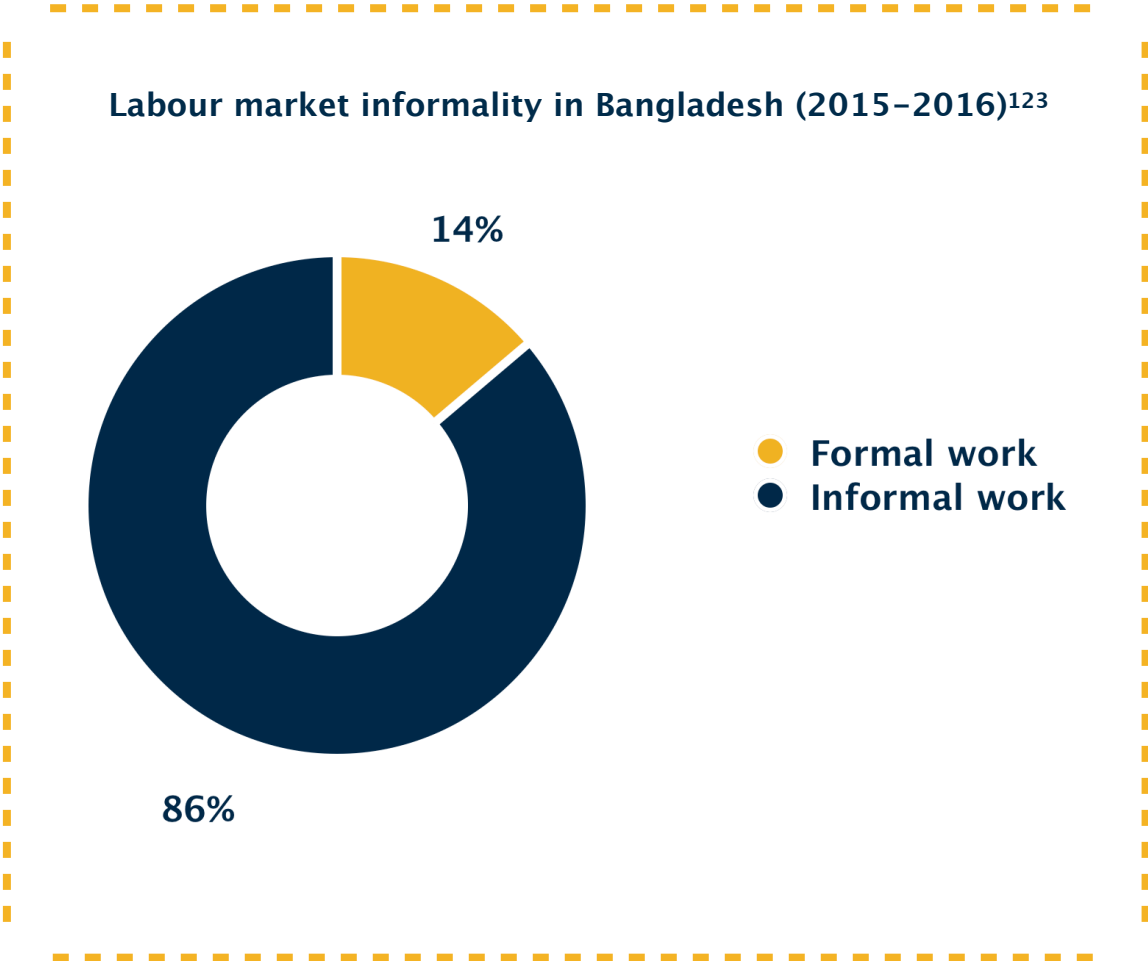
The Bangladesh Labour Act of 2006 (BLA) won workers the right to unionise and protection from being suspended or transferred to other factories because of union membership. After its revisions in 2013 and 2015, the law still fell short on international standards as it required an unreasonable high membership threshold of 30 percent for registering unions – a provision that has been criticised widely and repeatedly.<sup>113</sup> According to trade unions, the Bangladesh Government has denied half of all legitimate trade union applications since 2013. In 2015, the ITUC lodged a freedom of association case at the International Labour Organisation (ILO) to investigate the rejection of union registrations, union dissolutions, and anti-union discrimination in Bangladesh.<sup>114</sup> In May 2018, bowing to international pressure – before the ILO’s International Labour Conference and after the EU underlined the urgency of investigating acts of violence and harassment against trade unionists<sup>115</sup> – the Bangladesh Government changed the membership threshold for registering unions to 20 per cent and is now seeking to introduce online registration to increase transparency.<sup>116</sup>

Export Processing Zones (EPZs), economic zones created by governments to attract foreign investment through for example tax exemptions and reduced regulations, present another challenge for freedom of association in the garment industry. The current law denies the over 360,000 workers in Bangladesh’s eight EPZs the right to unionise, and has sparked criticism and concern from the ILO, the European Parliament, trade unions, and NGOs.<sup>117</sup>

Companies' power to define transparency in current initiatives also makes some workers invisible in the public-facing images of supply chains. The workers who are not included in transparency initiatives are likely to be those at the highest risk of exploitation. These include workers in the informal economy, agency workers, workers

with insecure immigration status and workers in lower tiers of global supply chains. These workers are also less likely to be covered by national labour laws.

In Bangladesh, about 85 percent of the country’s workforce is employed in the informal economy.<sup>118</sup> Homeworkers, who often carry out labour intensive tasks, such as embroidery and beadwork for factories, typically are not covered by the Bangladesh Labour Act (BLA) as they work in the informal economy and are not granted worker status, nor are they included in public supplier lists, as subcontracting is usually informal.<sup>119</sup> In parts of the UK garment manufacturing industry, unauthorised subcontracting has been found to be ‘standard practice’.<sup>120</sup> Workers at unauthorised sites are more likely to be at risk of exploitation due, for example, to insecure immigration status.<sup>121</sup> These workers are invisible in current transparency initiatives due to brands’ lack of formal relationship with the work sites and do not have any real access to employment rights under UK law.<sup>122</sup>



At the same time as some brands strive towards transparency and make genuine efforts towards providing a fuller picture of their supply chain, it is important to recognise that their purchasing practices drive a need for flexibility which places many workers at risk. The rise of agency work and short-term contracts is prevalent in the Bangladesh and UK garment sectors alike and unauthorised subcontracting is common due to irregular orders, short timelines and small profit margins.<sup>124</sup> While recognising the benefits of transparency initiatives, it is clear that voluntary transparency reporting allows companies to create an image of their supply chain which does not necessarily reflect the range of workers contributing to their goods or services. Indeed, many of those workers most obscured by reports are likely to be at the highest risk of human trafficking and forced labour.

# 7 Making corporate accountability work for workers

Having considered reasons why the mandatory transparency requirement of the UK MSA falls short of protecting workers at risk of exploitation, this section proposes a comprehensive framework to corporate accountability, which includes effective transparency in supply chains legislation as well as other measures required to effectively prevent human trafficking and forced labour.

## Effective transparency in supply chains legislation

Mandatory transparency legislation can be an important part of an effective framework for the prevention of human trafficking and forced labour. The effectiveness of mandatory transparency, however, depends on the following four elements:

- i. the legislation's **coverage**;
- ii. the prescribed **content** of transparency statements;
- iii. **monitoring and enforcement** of reporting; and
- iv. the form of **criminal liability and defence** introduced for non-compliance.

### i. Coverage

The UK MSA's failure to cover public bodies has been found to be a serious shortcoming of the legislation.<sup>125</sup> Mandatory reporting requirements should cover companies and public bodies alike. Companies' own operations and their wider supply chain should be included and the legislation should have extraterritorial effect.

### ii. Content

To address the issue of poor reporting quality, mandatory transparency requirements should prescribe disclosure on specific areas. Sector-specific reporting requirements are likely to contribute to more meaningful information, as companies would be required to report on risks specific to certain industries. At a minimum, reports should:

- define the company's workforce;
- set out what due diligence procedures are in place to *identify* risks of human trafficking and forced labour;
- explain what is being done to *monitor* such risks;



- describe what is done to *address* human trafficking and forced labour;
- state what has been the outcome of these activities for workers or how, and at what point, this will be measured;
- state explicitly where there have been cases of labour exploitation, forced labour or human trafficking in the company’s supply chain and the outcomes for affected workers; and
- describe what is being done to reduce the risk of recurrence.

Recognising that purchasing practices are at the root of working conditions in global supply chains, governments should also introduce a requirement for companies to report on such practices. An evaluation of the impact of a company’s purchasing practices on working conditions in the supply chain could form part of a ‘due diligence’ requirement. Requirements for due diligence are set out in the United Nations Guiding Principles on Business and Human Rights as follows:



### **Human rights due diligence**

‘In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognising that the human rights risks may

change over time as the business enterprise's operations and operating context evolve.'<sup>126</sup>

Such information would provide trade unions, civil society and consumers with valuable information on which to base further action. It would also represent a move towards action, as information about activities would be accompanied by information about their impact on workers. Crucially, compliance with these reporting requirements could be introduced as part of a due diligence defence for criminal liability for human trafficking and forced labour offences – see below.<sup>127</sup>

### **iii. Monitoring and enforcement**

To ensure compliance and encourage best practice responses, the mandatory transparency requirement must be monitored and a penalty introduced and enforced for non-compliance. Governments should publish a list of companies and public bodies required to report on an annual basis and statements should be collected in a central, government-run registry. An independent oversight mechanism should be established, with responsibility for reviewing reports and providing feedback to a sample of companies on an annual basis. The oversight body should analyse trends in reporting, company practice and cases of forced labour and human trafficking, including their drivers and outcomes. Based on this analysis the independent oversight mechanism should commission new research as required and recommend new measures to tackle forced labour and human trafficking. Non-compliance with the reporting requirement should be penalised. In addition to a financial penalty, a list of companies that have failed to apply could be made available on the registry's website to increase the reputational risk of non-compliance for organisations. Companies that fail to comply should automatically be excluded from tendering for public contracts.

### **iv. Criminal liability and defence**

To ensure that companies and public bodies are held responsible for serious violations of workers' rights, mandatory transparency legislation should introduce criminal liability. This could be modelled on section 7 of the UK Bribery Act 2010, which introduces liability but includes a defence if 'adequate procedures' are in place to prevent the offence from taking place.<sup>128</sup> As suggested by academics Genevieve LeBaron and

Andreas Rühmkorf, a company should be made criminally liable for human trafficking and forced labour offences committed by themselves or their suppliers/agents. The company would be exempt but provided a defence where they have a) produced a transparency report and b) have in place adequate measures to address human trafficking and forced labour in their supply chains, the meaning of 'adequate, to be determined by prosecutors.<sup>129</sup> Guidance and best practice due diligence should be provided in this instance by governments to assist companies. The introduction of a due diligence defence for human trafficking and forced labour offences would 'indirectly impose(...)' a requirement to carry out due diligence.<sup>130</sup>

## Effective transparency in supply chains legislation: main components<sup>131</sup>

### Four key steps for effective transparency in supply chains legislation

#### Coverage

- Companies
- Public bodies
- Own operations and supply chain
- Extraterritoriality: all companies operating in the set territory

#### Content

Sector-specific reporting requirements could be beneficial. Reports should as a minimum cover:

- Definition of workforce
- What is done to identify risk of human trafficking and forced labour?
- What is done to monitor risk?
- What is done to address human trafficking and forced labour?
- What has been the outcome of these activities for workers/how & when will impact be measured?
- Instances of labour abuses and the outcomes for workers

#### Monitoring and enforcement

- Annual publication of list of companies/public bodies required to report
- Single central registry for statements
- Independent oversight mechanism to review reports, report on compliance, commission research and recommend new measures

#### Criminal liability and defence

- Companies criminally liable for human trafficking and forced labour offences
- Compliant transparency report and 'adequate' due diligence as defence
- 'Adequate' due diligence determined by prosecutors, but guidance and best practice developed by Government
- The introduction of a due diligence defence for human trafficking and forced labour offences would 'indirectly impose(..)' a requirement on to carry out due diligence

## **8 Beyond transparency: towards a comprehensive prevention framework**

Mandatory transparency legislation, when designed to drive meaningful disclosure, acts as an important piece of the corporate accountability puzzle. However, as flagged by all stakeholders interviewed by FLEX and a wide range of experts working in this area, a government's response cannot stop at this.

### **Public Procurement**

Governments have considerable buying power and should therefore take responsibility for protecting the human rights of the people producing goods and offering services for public agencies. In the UK, for example, more than £200 billion (about a third of the Government budget) is spent on purchasing goods and services. This gives the Government leverage and represents an opportunity to show leadership in progressing workers' rights in supply chains.

Currently, the extent to which labour standards are considered in the UK government's procurement is a matter of policy only, rather than legislation. Contracting authorities have the power under Regulation 57(8)(a) of the Public Contracts Regulations 2015 to exclude a bidder if the contracting authority can 'demonstrate' a violation by the bidder of environmental, social or labour obligations. Individuals who have been convicted of a slavery or human trafficking offence under the UK MSA will also be excluded from participation in public procurement procedures. However, there is no legislative requirement that the UK government exclude companies from contracting who have a history of labour rights abuses, or who have failed to report under the TISC provision of the UK MSA, and no requirement that labour standards be considered as part of procurement decision-making. In 2017, the UK Houses of Parliament Joint Committee on Human Rights recommended that all companies found to be responsible for human rights abuses, or companies that have not undertaken appropriate and effective human rights due diligence, should be excluded from public contracts.<sup>132</sup>

All UK stakeholders interviewed by FLEX for this research flagged the exclusion of public agencies from the UK MSA as a serious shortcoming of the Act. Several

companies have engaged with Baroness Young of Hornsey OBE on her 'Private Members' Bill', 'Modern Slavery (Transparency in Supply Chains) Bill 2017-19', which seeks to bring public authorities under the scope of section 54 of the UK MSA and requires companies that have not prepared a slavery and human trafficking statement to be excluded from public tenders.<sup>133</sup> The Bill also calls for the publication of a list of all those companies that fall within the reporting threshold for the TISC provision of the UK MSA. As is common with legislation introduced by private Members of Parliament rather than the UK Government, progress on the Modern Slavery (Transparency in Supply Chains) Bill has been slow and it is currently awaiting a date for 'second reading' in the House of Lords. As the Bill has a considerable number of stages through which it must proceed and a tight deadline of the end of the Parliamentary Session in spring 2019, its chance of entering into law is slim.

The lack of strong ethical public procurement standards can in some cases undermine companies' due diligence efforts. A company representative interviewed by FLEX described a situation where they requested information about manufacturers and working conditions from a supplier that also had a contract with a government agency. The supplier was willing to provide the information requested, but pointed out that the government agency did not request any labour rights due diligence to be carried out.<sup>134</sup>

In other countries, including Wales, governments have taken a more proactive approach to addressing exploitation in public procurement.

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**Welsh Government's Code of Practice on Ethical Employment in Supply Chains, 2016<sup>135</sup>**

The Welsh public sector spends around £6 billion every year on goods, services and work involving international supply chains. All Welsh public sector organisations, businesses involved in Welsh public sector supply chains, and third sector organisations in receipt of public funds are expected to sign up to the code, which covers a set of 12 commitments designed to eliminate modern slavery and support ethical employment practices in public sector supply chains. These include having written policies on ethical employment,



processes for whistleblowing in the supply chain, training staff responsible for procurement on modern slavery and ethical employment practices, and carrying out assessments to identify high-risk spending areas.

Signatories will have to publish annual reports on their implementation of the code, including plans for future actions and statistics on the number of staff trained and the number of suppliers who have signed up to the code.

The code is accompanied by implementation guides on:

- Modern Slavery and human rights abuses
- Blacklisting of unionised workers
- False self-employment
- Unfair use of umbrella schemes and zero hours contracts
- Paying the living wage

As part of an effective corporate accountability framework, public agencies should be subject to transparency reporting requirements. They should have a legal obligation to consider labour standards in purchasing decisions and to exclude contractors that cannot adequately protect labour rights in their supply chain. Government agencies should have a duty to exclude a supplier where there is evidence of labour rights abuses, failure to submit a transparency report or where an individual or company has been convicted of a human trafficking or forced labour offence.

Following the example set by the United States of America (US), governments should have a legal duty to exclude contractors engaging in practices that relate to or may lead to human trafficking or forced labour, such as the confiscation of immigration documents or charging of recruitment fees.<sup>136</sup> Companies that act in breach of their contract should be penalised. Under the relevant US law, companies that breach their contract are subject to serious penalties, including termination of contract, fines and imprisonment.

In high-risk sectors, public authorities should have a legal duty to assess whether a cap on the number of actors in a supply chain, including labour providers and suppliers, is required to reduce the risk of human trafficking and forced labour. In response to serious concerns about health and safety issues and risk of labour exploitation, such limits have been introduced in public contracts in some states.<sup>137</sup>

The Bangladesh stakeholders interviewed for this research all highlighted the Bangladesh Accord on Fire and Building Safety as a largely successful initiative. A trade union federation reported ‘significant improvements’ and said the Accord had been ‘very good for our workers’.<sup>138</sup> To encourage company participation with the 2018 Accord and other global framework agreements that impose binding obligations, governments should explore the possibility of incentivising participation in relevant binding agreements through public procurement policies.

### **National labour rights framework**

The existence and enforcement of national labour rights frameworks should be central to governments’ efforts to ensure corporate accountability. When labour rights protections are strong, labour abuses can be prevented or identified before they risk developing into severe exploitation of the type found in human trafficking and forced labour. The ILO Forced Labour Protocol in particular requires governments to address ‘factors that heighten the risks of forced or compulsory labour’, including by undertaking efforts to ensure that labour laws designed to prevent exploitation apply to all workers and all sectors of the economy.<sup>139</sup>

In Bangladesh, most workers are employed in the informal economy and therefore not covered under the country’s labour law. In addition, workers in Export Processing Zones (EPZ) enjoy fewer rights than workers outside these zones, as national labour law does not apply. Workers also face different levels of labour rights protections depending on the market for which they are working – internal, external or EPZ – something which has been found to offer unscrupulous employers ‘an opportunity to exploit workers’.<sup>140</sup> In the UK, a similar stratification of labour rights applies, where ‘employees’ are entitled to a full range of employment rights, ‘workers’ have their rights limited to the minimum standards, and the ‘self-employed’ for whom employment protections do not apply. The lack of clarity regarding these categories opens up opportunities for abuse,<sup>141</sup> as does the criminalisation of undocumented work.

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**Despite the lack of legal protections for many workers, however, most stakeholders in the UK and Bangladesh alike reported a lack of enforcement of rights as the main barrier to effective prevention of labour exploitation.<sup>142</sup>**

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In order to ensure that the rights of all workers are protected, labour laws should apply to all industries and zones, including in designated export zones, and should cover all workers, regardless of immigration status. Governments should adopt labour laws designed to prevent exploitation, regulating working hours, pay, self-employment, limiting and strictly monitoring the use of so called ‘flexible’ employment statuses, including zero-hour contracts and other factors that may put workers at risk. Where there are specific limitations to national labour legislation, as is the case in EPZs in Bangladesh, international governments should issue specific guidance to companies operating in their territory about the relevant labour rights risks and suggested due diligence.<sup>143</sup> Measures taken by companies and public bodies to address any such specific risks relating to national labour legislation should be included in annual mandatory transparency reports.

## **Joint and several liability**

### ***Statutory joint liability***

Joint and several liability has been highlighted by trade unions and academic experts in particular as an important tool to ensure that all workers in complex, global supply chains have access to remedy.<sup>144</sup> The ‘transfer [of] accountability to other parties’ has become a common business strategy.<sup>145</sup> By introducing joint and several liability, governments can ensure that companies and public agencies have a legal responsibility to protect the rights of all workers in their supply chain.

At the national level, governments should introduce statutory joint liability for breaches of labour law, such as wage theft. Statutory joint liability establishes a worker’s right to remedies in situations where a lead contractor has outsourced work to an employer acting in breach of labour rights. The joint liability provision should allow all workers, regardless of their location in the supply chain to claim compensation or take legal action against the lead contractor and its agents.

Some countries have introduced legislation to facilitate joint liability in certain sectors by requiring that subcontractors are approved by clients before finalisation of contracts. This is the case for example in France's construction sector, where the client and the principal contractor are 'jointly liable for payment to the subcontractors'.<sup>146</sup>

Joint liability for payment of wages, in the view of Jill Wells, who has conducted research on best practice in the protection of construction workers in the Middle East, is also likely to make clients:

*'more diligent when screening subcontractors, while at the same time providing them with the legitimacy they need to intervene by paying subcontractors' workers directly when it is brought to their attention that they have not been paid.'*<sup>147</sup>

Joint liability establishes workers' rights to compensation regardless of their location in the supply chain and at the same time places a larger responsibility on lead companies to monitor and intervene in cases where workers' rights are being breached by subcontractors.

### ***Contractual liability***

While the possibility of extraterritorial applicability of joint liability laws remains under debate, contractual joint liability currently appears to be a promising way forward. Binding global framework agreements effectively impose joint liability on brands and suppliers through contractual agreement.<sup>148</sup> Binding global framework agreements, of which the Bangladesh Accord on Fire and Building Safety is an example, regulate brands' purchasing practices and impose binding, enforceable obligations, which can be enforced in the jurisdiction chosen by the signatories. The Accord, for example, can be enforced in firms' home states.<sup>149</sup>

To encourage company participation in binding global framework agreements, governments should explore the possibility of incentivising participation through public procurement policies. The important role of unions in binding framework agreements must also be recognised and governments must work to ensure that unions are able to freely operate.

Joint and several liability through legislation and binding contracts is an important tool to ensure that the transfer of accountability in global supply chains does not allow exploitation to flourish.

## Labour market enforcement

The enforcement of labour laws prevents labour abuses from developing into forced labour and human trafficking. Trade union, civil society and company stakeholders interviewed by FLEX all agreed that better enforcement of labour standards is key to the corporate accountability framework, and many urged governments to do more to ensure workers' rights are enforced.

According to a Bangladesh trade union federation, the Bangladesh Government's failure to implement labour laws presents the main barrier to protecting workers' rights in the country's garment sector. The low number of labour inspectors as well as the poor quality of inspections prevent effective enforcement of workers' rights in Bangladesh. The union in question described labour inspections as 'politicised' and raised the issue of corruption as 'the main obstacle for implementation'.<sup>150</sup> This points to the need to tackle barriers to independent inspection, while ensuring that the labour inspectorates are adequately resourced. An expert interviewee working in Bangladesh, highlighted how the national labour inspectorates currently lack both the expertise and the numbers to effectively take on the responsibility for health and safety inspections currently carried out by Accord. In an attempt to build local expertise in enforcement of health and safety, the Accord has brought in staff to carry out inspections that were previously carried out by international firms.<sup>151</sup>

Several stakeholders described a sense of complete lack of enforcement of labour standards in the UK garment sector. One company raised concerns about current enforcement practices, saying that due to lack of guarantees for the safety of migrant workers with insecure status in their supply chain, they were unable to share information with labour inspectorates. Currently, victims of forced labour and human trafficking with insecure immigration status risk detention and deportation due to a lack of safeguarding procedures and inadequate identification procedures.<sup>152</sup> These barriers to protecting the rights of workers with insecure immigration status have also been reflected in academic research in the Leicester garment sector:

*'Particularly in the case of undocumented migrants, the existing regulatory framework makes it virtually impossible to find an aspect that aids the enforcement of employment standards while protecting workers: detection normally leads to deportation and the question to what extent undocumented workers have a right to work at NMW levels is de facto left aside.'*<sup>153</sup>

The ILO Forced Labour Protocol<sup>154</sup>, in particular, requires governments to strengthen labour inspection systems to prevent trafficking in persons for the purpose of forced or compulsory labour. Workplace inspections create a level playing field for companies and hold unscrupulous employers to account. A proactive approach, such as through licensing of labour providers and companies, is essential to ensure that the most at-risk workers, including those with insecure immigration status, have access to justice. Self-identification amongst victims of labour exploitation is low and labour market enforcement is essential in order to ensure that there is a realistic opportunity to access remedy.

To strengthen the enforcement of labour rights governments should establish and resource labour-market wide labour inspectorates. Inspectorates must be adequately resourced, at least meeting the ILO target of one inspector for every 10,000 workers. They should prioritise proactive labour market enforcement, such as licensing of companies or labour providers. Governments should introduce a legal duty for labour inspectorates to inform lead contractors of subcontractors who have been identified as breaching labour rights in their supply chain. Such a system could be facilitated by greater transparency in supplier lists. Following a model from Belgium, joint liability for payment of wages could arise when companies have been informed by labour inspectorates of the failure of subcontractors to pay workers on time, and remedial action has not been taken.<sup>155</sup>

To ensure that labour inspections identify gendered forms of labour exploitation, labour inspectors should be trained in gender-sensitive enforcement.<sup>156</sup> To protect the rights of migrant workers and ensure that companies may share intelligence without fears of reprisals to workers due their immigration status, governments should establish legal barriers to the diversion of labour inspection's duties to immigration control activities and joint operations with immigration enforcement.

## **Rights of migrant workers**

Protections for migrant workers, regardless of immigration status, are at the core of effective corporate accountability that works for all workers. Migrant workers are placed at particular risk of exploitation where there are legal or practical barriers to them accessing labour rights. If migrant workers are unable to access justice, because of barriers such as fear of deportation due to immigration status or restricted rights to remedy, companies are not effectively held accountable for their actions.



The lack of protections for migrant workers, and in particular the limited right to remain provided under the UK MSA, are serious barriers to victim identification and act as a barrier for victims to access remedy. Several companies interviewed by FLEX raised the lack of support for victims in the UK as an area which required urgent government action. Migrant workers are often excluded from national labour rights frameworks. As part of a worker-centred corporate accountability framework to prevent human trafficking and forced labour, governments should ensure that all migrant workers, regardless of status are covered by labour laws. This must include the removal of any existing legal and practical barriers to migrant workers accessing remedy.

Recognising the potential of immigration schemes, control measures and penalties to create vulnerability to forced labour or human trafficking, governments should assess the potential for such vulnerability when developing and revising immigration laws. Immigration measures that place workers at risk due to restricted access to work or public funds, or by creating stigma towards migrant workers, should be avoided.

### **Trade unions and community organisations**

Freedom of association and collective bargaining must be at the heart of any effective framework that aims to hold companies accountable for their actions. As highlighted by stakeholders working on Bangladesh, international initiatives should engage with the issue of freedom of association to have any notable effect on working conditions and prevention of forced labour in a context where there is a severe lack of genuine worker representation.<sup>157</sup> In relation to mandatory transparency legislation, one union representative suggested that governments should aim to involve trade unions more than is currently the case, for example by discussing what constitutes best practice on trade union engagement in various local contexts.<sup>158</sup>

Governments should remove legal and practical barriers to unionisation and protect trade union organisers and civil society representatives from repercussions in order to facilitate unionisation and collective bargaining for all workers. Trade unions should be funded to ensure their representation and protection of workers. Governments should also introduce a duty to consult trade unions and civil society on matters that affect the people they represent and support, in order to ensure that workers' voices are represented in decisions on prevention of human trafficking and forced labour.

At the international level, governments should incentivise companies' participation in binding global framework agreements with workers' organisations. Binding agreements, when applied to wages and related issues, would ensure collective bargaining at the international level. To encourage company participation with global framework agreements that impose binding obligations, governments should explore incentives through public procurement. In the US, government agencies have, for example, encouraged suppliers to participate in the Fair Food Program, a partnership between farmers, farmworkers and food companies that promotes decent wages and conditions for workers.<sup>159</sup>

Governments should also recognise the unique access of migrant and community organisations to migrant workers and provide funding that allows them to support workers with the necessary legal advice, provide general support and in order to facilitate migrant workers' access to justice.

### **Access to remedy**

To ensure that all workers may access justice, regardless of their immigration status or location in the supply chain, governments should ensure that national legislation covers all workers, that statutory joint liability is introduced for cases of wage theft, which is known to place workers at risk of severe forms of labour exploitation, as well as for forced labour and human trafficking. Pro-active inspections should form a core part of any labour market enforcement strategy. The enforcement of labour rights is key to ensuring access to remedy, as many victims of human trafficking and forced labour do not self-identify as such and may face numerous obstacles to coming forward.

Access to justice 'relies on access to legal assistance and support'<sup>160</sup> and as part of their corporate accountability frameworks governments must ensure that this is available to all workers. Many survivors of human trafficking and forced labour face considerable barriers to accessing justice. To ensure that all workers, regardless of immigration status, are able to access justice, governments should ensure that migrant victims of human trafficking and forced labour receive sufficient leave to remain to effectively access remedy, and to fully recover. Victims should have access to legal assistance and support, including housing, protection and subsistence pay to ensure that they may effectively access the state's legal justice system. Any financial or other barriers to access the legal justice system, such as costs of criminal proceedings, should be removed and survivors decriminalised for work carried out without legal documents, in cases of human trafficking or forced labour.

## 9 Conclusion

As mandatory transparency legislation such as the UK Modern Slavery Act (UK MSA) is increasingly considered and adopted by new states as a tool to prevent human trafficking, there is an urgent need to ensure that transparency drives meaningful change for workers.

While the UK MSA appears to have raised the awareness of modern slavery risks within some companies, worker representatives and experts say that its impact remains to be seen and importantly do not consider it to have the potential to drive long-term improvement for workers in its current form.<sup>161</sup> The case studies drawn upon in this research set out the legal and enforcement frameworks in the Bangladesh and UK garment sectors and in so doing identify fundamental limitations to workers' ability to effectively hold companies to account. The issues identified, including severe limitations to the right and ability of workers to unionise in Bangladesh and the access to remedy for migrant workers with insecure immigration status in both contexts, while crucial to accountability, are not addressed by mandatory transparency under the UK MSA or comparable legislation.

There is, however, potential to make mandatory transparency a key component of a worker-centred corporate accountability framework with the aim of preventing human trafficking and forced labour. Broader coverage, more prescriptive reporting requirements, stronger monitoring and enforcement and the introduction of criminal liability (and a defence) for non-compliance, would give the UK MSA legislation the potential to drive change for workers in global supply chains.

Mandatory transparency legislation, when well-designed, monitored and enforced, is an important piece of the corporate accountability puzzle. However, workers' organisations, businesses, academics and civil society agree that a comprehensive corporate accountability framework is needed to strengthen workers' rights to prevent human trafficking and forced labour. The protection of workers' rights through effective labour law and its enforcement along with the right to collective bargaining must be viewed as an essential part of a state's accountability framework. Migrant status too often acts as a barrier to accessing remedy and insecure status places workers at risk of exploitation. Therefore, to ensure accountability and prevent human trafficking and forced labour, national frameworks must incorporate and prioritise protections for migrant workers.

Finally, governments' buying power should be used to incentivize meaningful initiatives that increase workers' access to justice and improve their working conditions.

In recent years many governments have made strong commitments and shown public support at the international level for efforts to end human trafficking and forced labour<sup>162</sup> with a new found interest in tackling exploitation right across the labour market and up and down supply chains. This interest is to be welcomed and initiatives such as the Protocol of 2014 to the Forced Labour Convention in particular show progress in developing the range of responsibilities that come with such commitments. Through examples from Bangladesh and the UK, this report illustrates the key role of governments in the prevention of human trafficking and forced labour. To meet the commitments made to prevent human trafficking and forced labour governments should review their legal frameworks and the coverage and enforcement of workers' rights to identify gaps and areas for development to meet the challenges posed by ever complex global labour markets. Progress on ending human trafficking and forced labour takes more than simply limited corporate transparency, it requires a full root and branch review of company activities and state laws, policies and actions that leave workers around the world at risk of exploitation.

# Appendix

## UK legal and enforcement context

### Legal context

Labour legislation in the UK includes numerous employment rights and protections (see box 1). However, while minimum labour standards are available to all workers, access to other protections is dependent on a person's employment status. UK labour law differentiates between 'employees' who are entitled to a full range of employment rights, 'workers' whose rights are limited to the minimum standards, and the 'self-employed' to whom employment protections do not apply. There is lack of clarity regarding these categories and the way in which they are applied varies widely<sup>163</sup>, opening up opportunity for abuse. The line between worker status and self-employment is particularly blurred, with some businesses using the confusion to minimise their employer obligations.<sup>164</sup>

#### **Box 1. Key UK legislation governing rights and protections at work**

##### **Health and Safety at Work Act 1974**

Sets out employers' duties to protecting the 'health, safety and welfare' at work of all their employees, as well as others on their premises, including temporary/casual workers, the self-employed, clients, visitors and the general public. It also contains powers for the Health and Safety Executive (HSE) to enforce the act.<sup>165</sup>

##### **Employment Rights Act, 1996**

Sets out a number of rights for employees (and in some cases, workers), including protection from unlawful deduction from wages; the right to a minimum notice period in case of termination; protection against unfair dismissal; and a right not to be dismissed as

a result of absence from the workplace due to family leave, job-related education and training, maternity/paternity/adoption and public duties such as jury appearance.<sup>166</sup>

### **National Minimum Wage Act, 1998**

Creates a National Minimum Wage and National Living Wage across the UK, currently £7.83 per hour for workers aged over 25, £7.05 for workers aged 21 to 24, and £5.60 per hour for workers aged 18 to 20.<sup>167</sup> The National Minimum Wage for over 25s is referred to as the National Living Wage. The Act does not prevent the use of zero-hours contracts, where workers have no guaranteed hours.<sup>168</sup>

### **Working Time Regulations, 1998**

Emanating from the EU Working Time Directive, the regulations set a maximum 48-hour working week, a right to rest breaks at work and between shifts, and paid holiday. Workers can agree to opt out of maximum weekly working hours as long as it is done voluntarily and in writing.<sup>169</sup>

### **Part-time workers (Prevention of Less Favourable Treatment) Regulations, 2000**

Sets parity for part-time workers with a relevant full-time comparator.<sup>170</sup>

### **Gangmasters (Licensing) Act, 2004**

Established the Gangmasters Licensing Authority (now Gangmasters and Labour Abuse Authority) to protect workers in the agriculture, food processing, horticulture, forestry and shellfish gathering sectors from exploitation.<sup>171</sup> Importantly the legislation defines 'worker' to include individuals without the 'right to be, or to work in the UK'.<sup>172</sup>

### **Agency Workers Regulations, 2010**

Emanating from the EU Agency Workers Directive, the regulations give agency workers the right to the same or no less favourable treatment

for basic employment and working conditions (pay, duration of working time, night work, rest periods and breaks, and annual leave) as directly employed staff once a qualifying period of 12 weeks has been completed.<sup>173</sup>

### **Equality Act, 2010**

Establishes protection from discrimination on the grounds of race, sex, disability, marriage or civil partnership, religion, sexual orientation, gender reassignment, age, pregnancy and maternity. Sets out the right to equal pay.<sup>174</sup>

### **Immigration Act, 2016**

Establishes institutional enforcement of certain employment rights, backed by criminal sanctions. These include the right not to be subject to slavery, servitude or forced labour; the right to a national minimum wage for all workers; the right not to be engaged by an unlicensed recruitment agent, or by an agent that is subject to a prohibition order.<sup>175</sup> The Act also establishes the role of Director of Labour Market Enforcement (DLME) to oversee three of the UK's four main labour market enforcement authorities, and extends the remit of the Gangmasters and Labour Abuse Authority (GLAA) to include 'police style powers' including the capacity to search and seize evidence and investigate modern slavery in relation to labour abuses across the labour market; and labour market undertakings and enforcement orders to address repeat abuses of labour market law.<sup>176</sup>

In addition to the differentiation between 'employees' and 'workers' in terms of labour rights and protections, the UK also places severe restrictions on the protections offered to individuals without the right to work in the UK. Undocumented migrant workers do not have the same access to employment tribunals as those with the right to work; they are only able to make claims based on discrimination or health and safety<sup>177</sup>, leaving them few options for recourse when their pay is withheld or unfairly deducted. The 'offence of



illegal working', created under the Immigration Act 2016, compounds the vulnerability of undocumented migrants by making working without documents a crime punishable with up to 51 weeks imprisonment and unlimited fine in England or Wales and six months and a limited fine in Scotland or Northern Ireland, and the confiscation of a workers' earnings. Rather than preventing undocumented migrants from working, these measures risk forcing people into informal jobs with limited protections from abusive employment practices.<sup>178</sup> It also increases employers' power over workers: fear of denunciation to immigration authorities is one of the primary tools used by traffickers to control exploited workers.<sup>179</sup>

### **Modern Slavery Act, 2015**

In 2015, the UK Parliament passed the Modern Slavery Act (UK MSA) aimed at the prevention and prosecution of modern slavery and trafficking in human beings in England and Wales. The UK MSA consolidated the 'modern slavery' offences of human trafficking and slavery, servitude and forced or compulsory labour and increased the penalties for such offences; created the role of Independent Anti-Slavery Commissioner to coordinate the response to modern slavery; established a new statutory defence for slavery or trafficking victims forced to commit crimes (with a number of exceptions); and required businesses with an annual turnover above £36 million to report on what they are doing to address slavery in their supply chains.

Importantly, the definition of human trafficking under the UK MSA requires that for an individual to be considered to have been trafficked, travel must be part of their exploitation, and that travel must have been arranged or facilitated by the perpetrator. This is unlike the international definition of human trafficking<sup>180</sup>, as set out in the Human Trafficking Protocol, which includes a range of 'acts' by which an individual can enter into exploitation, not limited to transportation or transfer. This means that the offence of human trafficking in England and Wales is narrower than in many other countries worldwide, including Scotland.

The UK Director of Labour Market Enforcement views labour market non-compliance as a spectrum with 'severe labour abuse' or 'modern slavery' at the extreme end, more serious and deliberate labour market violations in the middle and then compliance or negligence at the lowest level of seriousness.<sup>181</sup> FLEX evidence backs up this analysis and shows that there is a strong causal link between deliberate labour abuses and labour exploitation; left unchecked, low level abuses such as non-payment of minimum

wage can develop into severe exploitation.<sup>182</sup> While the UK MSA represents a step forward in addressing the more severe end of the spectrum, it does not sufficiently address more everyday experiences of workplace exploitation that may not fall under the definition of ‘modern slavery’. Moreover, it has been implemented simultaneously with measures, including labour market deregulation and hostile immigration approaches, that reduce worker protections and increase risk of exploitation. Efforts to deregulate the labour market have resulted in fewer protections for workers and have helped to create conditions in which modern slavery might flourish. Similarly, hostile policies towards undocumented migrants, such as the ‘offence of illegal working’ detailed above and the controversial ‘go home’ vans seeking to persuade undocumented migrants to leave Britain<sup>183</sup>, have had a chilling effect on all migrant workers. Research by FLEX and others has repeatedly shown that the UK Government’s ‘hostile environment’<sup>184</sup> has made migrant workers feel that they have no rights, and that they will be penalized for speaking up with dangerous implications for the risk of exploitation in the UK.<sup>185</sup>

### ***Enforcement of labour rights***

The partial and uneven enforcement of labour laws and regulations leaves many workers, documented or not, vulnerable to abuse. This is in part due to the fact that the UK does not have a comprehensive labour inspection system across the labour market. Instead, the key role of the labour inspectorate is largely divided between four different entities: the Health and Safety Executive (HSE), the Employment Agency Standards Inspectorate (EAS), the HMRC National Minimum Wage/National Living Wage (HMRC NMW/NLW) inspection teams, and the GLAA. In the interests of meeting deregulation and budgetary aims, the remit and resources of the GLAA, EAS and HSE have all been reduced to varying degrees since 2010, leaving concerning gaps in protections across the UK labour market.

The Protocol to the International Labour Organisation (ILO) Forced Labour Convention 2014, which the UK ratified in 2016, is clear that States Parties should ensure the “coverage and enforcement” of legislation related to forced labour, including labour law, and that labour inspection services should be strengthened. Yet, FLEX research shows UK labour inspection capacity does not come close to ILO recommended standards of 1 inspector per 10,000 workers, and falls short when compared to other European countries.<sup>186</sup>

The EAS, which enforces the Employment Agencies Act of 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003, only has 12 full time staff, covering 18,000 agencies and 1.1 million workers.<sup>187</sup> Despite a 30 percent growth in the number of agency workers between 2011 and 2016<sup>188</sup>, the EAS's budget has been cut in half from 932,000 (actual spend) in 2010/11 to 725,000 in 2018/19<sup>189</sup>.

Health and safety violations provide an early indicator of risk of worker exploitation, yet there have been on-going cuts to HSE inspections since 2010, as well as a 40 percent reduction in the organisations' government funding.<sup>190</sup> Local authorities, which are joint regulators of health and safety along with the HSE, also had their budgets cut by 40 percent and their workplace inspections reduced by 93 percent between 2010 and 2014.<sup>191</sup> The number of inspections by local authorities have continued to fall in subsequent years.<sup>192</sup>

The two agencies that have seen their budgets increase, along side an increase to their remit and scope of work, in recent years are the GLAA and the HMRC NMW/NLW inspection teams. The GLAA labour provider licensing scheme was established to regulate companies and individuals supplying workers to labour users in the agriculture, horticulture, and shellfish gathering sectors – and any associated processing and packaging. It has just over 100 staff, with the aim of employing 127 in 2018/19<sup>193</sup>. The Immigration Act 2016 significantly expanded the GLAA's remit and scope, enabling it to investigate modern slavery across the UK labour market. The GLAA's budget for 2018-19 is £7.2m<sup>194</sup> – representing an increase in funding of £2.8 million from its last Gangmasters Licensing Authority budget 2014-15.<sup>195</sup> However, this funding was allocated to the GLAA's new police-style powers rather than to its general regulatory activity, and represents a fraction of what would be required for the GLAA to operate pro-active monitoring and enforcement across the labour sectors that fall within its new remit.

In 2014, the Migration Advisory Committee warned that 'on average, a firm can expect a visit from HMRC inspectors once in every 250 years and expect to be prosecuted once in a million years.'<sup>196</sup> Since then, the HMRC NMW/NLW inspection team's budget has increased several times, growing from £8 million between 2009/10 and 2013/14, to £25 million in 2017/18. According to HMRC, these extra resources are being used to increase the number of investigating officers and take a more proactive approach to enforcement. The UK Low Pay Commission says it is yet to see whether these changes are sufficient to tackle non-compliance with NMW/NLW, especially as the number of

workers covered by these rates is projected to increase from 2.3 million now, to 3.3 million in 2020.<sup>197</sup> Indeed the UK Director of Labour Market Enforcement put forward a similar analysis to that of the Migration Advisory Committee in his recent Strategy, saying, ‘the average employer can expect an inspection around once every 500 years’.<sup>198</sup> Despite the depressing figures, the shift towards more proactive enforcement by the HMRC is an important step in the right direction.

## **Bangladesh legal and enforcement context**

Bangladesh has experienced rapid economic growth since the 1980s. While currently classified as a lower middle-income country according to the World Bank, by 2021, it expects to achieve middle-income status.<sup>199</sup> By 2021, the Bangladesh garment export industry has also set itself a goal to increase exports considerably, from today’s \$28 billion to \$50 billion.<sup>200</sup> Garment production has been important to Bangladesh’s development since the 1990s and the growth of the garment industry has been accompanied by a significant drop in the proportion of the population living below the poverty line.<sup>201</sup> However, economic development has not been accompanied by similar improvements in labour rights protections and the vast majority of workers are employed in the informal sector where wages are low and working conditions harsh and dangerous.<sup>202</sup>

### ***Legal context***

The Bangladesh Labour Act 2006 (BLA) is the country’s main source of labour legislation, drafted in response to growing international concerns about poor working conditions and child labour in particular.<sup>203</sup> The Act provides a number of protections related to minimum age of employment, minimum wages, working hours, health and safety and freedom of association.

The BLA has, however, been criticised for failing to meet international labour standards, in particular with regards to freedom of association, and has been amended multiple times in response to local and international pressure. While it provides relatively strong protections for workers in some areas, including pay and working hours, due to the lack of enforcement the legislation has had little impact on actual working conditions in the Bangladesh garment sector.<sup>204</sup> Importantly, while the Act applies to permanent workers and workers employed through a contractor alike, an estimated 86,2 percent of the Bangladesh labour force are employed in the informal sector and not covered.<sup>205</sup> While most workers in the first “tiers” of the garment export industry are likely to be in formal employment, it is common practice in many factories to subcontract parts of

manufacturing to homeworkers, who are unlikely to be covered.<sup>206</sup>

Another serious shortcoming of the BLA is its exclusion of Export Processing Zones (EPZs). An estimated 400,000 workers in Bangladesh work inside EPZs, defined by the ILO as 'industrial zones with special incentives set up to attract foreign investors, in which imported materials undergo some degree of processing before being exported again'.<sup>207</sup> Workers in these zones are covered under law specific to EPZs. This law is currently under revision and has faced considerable criticism due to its failure to sufficiently protect fundamental workers' rights. While an 'outright ban on strike action' was removed in 2014, the current legislation still upholds de facto bans on freedom of association and collective bargaining in the EPZs.<sup>208</sup>

A recent legal study by the German foundation, Friedrich Ebert Stiftung, found that the Bangladesh Labour Act only partially complies with international labour law in the areas of elimination of child labour; freedom of association and collective bargaining; night duty restrictions and social security. With regards to wages, while the BLA sets out wages and processes for their determination, it only requires wages to be reassessed every five years and minimum wages are not determined with the needs of family members in mind, as set out as one of several criteria for minimum wage fixing under ILO Convention 131, art. 3(a).<sup>209</sup> While Bangladesh is not a signatory to Convention 131, the legal basis for fixing minimum wages is important given that many workers in the garment sector are left with poverty wages, placing them at increased risk of forced labour and human trafficking.

The BLA most significantly deviates from international labour standards on the issues of freedom of association and collective bargaining. While the latest amendments to the Act in the aftermath of the Rana Plaza tragedy in 2013 brought some important changes in this area, trade unions and civil society are still highlighting serious shortcomings as aspects of the legislation translate into practical barriers to unionisation. While the BLA grants workers the right to 'form and join trade unions by their choice' and imposes obligations on employers 'against victimisation and discrimination' against workers involved in trade union activities, the requirements for registering trade unions mean that these rights are not effective. One such barrier is a threshold of 30 percent of workers in a workplace being members of a trade union in order for it to be registered. This level of unionisation has proved particularly challenging as employers and Government are actively suppressing trade union activities, which makes workers hesitate to join unions due to fear of retaliation.<sup>210</sup> The ILO's Committee of Experts highlighted the barrier to unionisation posed by this requirement in a recent report and

urged the Bangladesh government to review the BLA in order to tackle this ‘minimum membership requirement’.<sup>211</sup>

Global union federations report Government crackdowns on legitimate strike activity, unfounded raids of union premises, arrests and threats.<sup>212</sup> Such deliberate attempts to suppress freedom of association differ from the Government response to other areas of labour law, where a lack of enforcement is the main challenge. A considerable number of Bangladesh politicians have potential interests in suppressing attempts at collective bargaining; an estimated 50 percent of decision-makers have close links to garment export, either through ownership or other ties.<sup>213</sup>

The BLA limits working time to 8h/day and 48h/week. Overtime is voluntary and must be paid. The enforcement of working time, however, appears to be close to non-existent. A 2017 survey conducted by the Bangladesh Institute of Labour Studies (BILS) found that 80 percent of workers work more than 8 hours a day with the average workday as long as 12 hours.<sup>214</sup> Garment workers speaking to Friedrich Ebert Stiftung reported that compulsory overtime is common and that ‘if night duty is scheduled, all workers are required to be present, and generally, there is no scope for refusal’.<sup>215</sup> According to social audit results from the Fair Wear Foundation in Bangladesh, ‘97 percent of overtime work is not done voluntarily, and is not announced in advance’. In 6 percent of the audited factories, original identity papers were retained in the workers’ files’.<sup>216</sup> Retention of identity documents is a common indicator of forced labour. Compulsory overtime above the limits set by national legislation amounts to forced labour ‘in cases in which work or service is imposed by exploiting the worker’s vulnerability, under the menace of a penalty, dismissal or payment of wages below the minimum level’.<sup>217</sup> Given the lack of protections for workers in cases of dismissal, the fear of loss of employment is likely to force many workers to accept compulsory overtime.<sup>218</sup>

The BLA holds every employer, including contractors and indirect employers, liable for the payment of workers’ wages. The Act introduces strong legal protections for those workers who are covered by the legislation; if a labour offence is committed by a company, every agent of that company is held liable unless they can prove that they have exercised due diligence or that the offence was committed without their knowledge or consent. However, the law does not have extraterritorial applicability and a slow and expensive response to labour rights complaints means that the law in reality is unlikely to have much impact on workers’ ability to access compensation.<sup>219</sup>

Forced labour is prohibited under the Bangladesh constitution and the Human



Trafficking Deterrence and Suppression Act (2012) criminalises all forms of human trafficking, including forced labour and debt bondage, and punishes the offence of trafficking with imprisonment and a fine.<sup>220</sup> However, enforcement of the law is limited. In 2016, the Bangladesh Government investigated 168 cases of trafficking for labour exploitation, a decrease from 2015. Only three traffickers were convicted in 2016.<sup>221</sup>

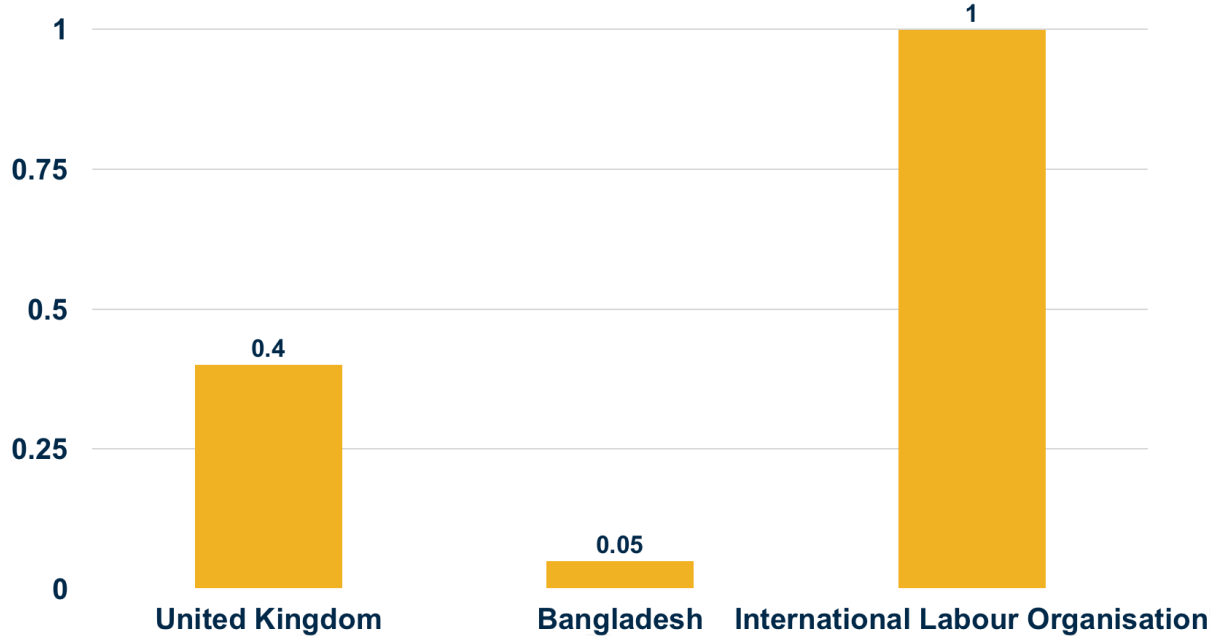
### ***Enforcement context***

In 2013, following the Rana Plaza tragedy, the Government of Bangladesh, the EU, US, Canada, the ILO, employers, trade unions and other stakeholders agreed a 'Sustainability Compact'<sup>222</sup> with the aim of improving the respect for labour rights and factory safety in the Bangladesh garment sector. The Bangladesh Government committed to reforming and upgrading the country's labour inspectorate, the Department of Inspection for Factories and Establishments (DIFE).<sup>223</sup>

Since the introduction of the Sustainability Compact in 2013, the DIFE has seen a considerable increase in budget, from US\$ 970,000 in the financial year 2013-2014 to US\$4.1 million for 2015-2016. In the same time period, DIFE has increased the number of labour inspectors from 92 in June 2013 to approximately 310 in June 2017.<sup>224</sup> According to data from 2015, the percentage of women inspectors had increased to 20, a symbolic step towards more gender-sensitive labour market enforcement.<sup>225</sup> In 2017, DIFE was recruiting for 169 additional inspectors, which when implemented will bring the total number of inspectors to 479.<sup>226</sup> However, despite the significant increase, this is far from the target of 800 inspectors as set out in the Sustainability Compact, and leaves Bangladesh way below the ILO target of 1 inspector per 10 000 workers.<sup>227</sup>



**Number of labour inspectors per 10,000 workers<sup>228</sup>**



While the number of labour inspectors is increasing, global unions have raised serious concerns about the lack of training and professionalism in the inspectorate, which undermines the effectiveness of factory inspections. This reflects reports that labour inspectors have ‘been known to accept bribes and deliver strictly positive reviews of labour conditions at the sites’.<sup>229</sup> According to the global union federations ‘ILO Dhaka has indicated that the government [is] still several years away from having a factory inspection service that could ensure building safety as well as enforce fundamental labour rights.’<sup>230</sup>

In 2015, a Bangladesh labour inspection strategy was developed, including priority sectors and criteria for factory selection, and plans for inspections in each district. DIFE introduced a factory checklist, which includes issues not explicitly covered by the law, but which it considers to increase the risk of labour exploitation, including violence against women in the workplace and gender-based discrimination. By June 2017, 239 inspectors had undertaken a 40-day training course developed in collaboration with the ILO and other stakeholders. This training will now be provided to all new inspectors.

There have also been positive developments with regards to transparency of inspections, as inspection reports are made publicly available and labour inspectors file reports directly in a database of factories.<sup>231</sup>

In March 2015, the Department of Labour and DIFE established a hotline to receive grievances from workers and management in garment export and other sectors. A year after its introduction, 7,121 calls had been received, 146 out of 1,020 complaints had been resolved and a further 361 were being processed.<sup>232</sup>

Despite positive developments within DIFE, the severe lack of resources and staff considering the size of Bangladesh's workforce, means that workers cannot rely on their workplaces to be inspected. While all export-oriented garment factories have been inspected either by the Bangladesh Accord on Fire and Building Safety, the Alliance for Bangladesh Worker Safety or the Government's National Initiative supported by the ILO, these inspections have focussed on structural fire and electrical safety only.<sup>233</sup> While this initiative is undoubtedly an improvement from the pre-Rana Plaza period, factories have not been inspected for compliance with fundamental labour rights, the breach of which can place workers at serious risk of forced labour or human trafficking. Furthermore, despite inspections, many factories are still 'behind schedule' with regards to the agreed health and safety improvements.<sup>234</sup> The lack of focus on non-export factories and subcontractors is also important and demonstrates a concerning hierarchy of compliance with labour rights. This hierarchy is perhaps even more obvious in the case of the country's Export Processing Zones, where DIFE lacks the power to inspect the factories employing a total of about 400,000 workers. The European Union, ILO and other stakeholders have called for DIFE to be given authority and responsibility to inspect factories in EPZ's but the Bangladesh Government has yet to implement the required changes.<sup>235</sup>

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