

Addressing Human Rights in Global Supply Chains

Kevin Hyland OBE

Catholic University, Washington DC

7th April 2022

Can I start by thanking Professor Sarah Duggin and the team here at Catholic University for planning this most important event.

Human trafficking has been a global priority for over 20 years. The first international drive at the UN was the Palermo Protocol in 2000.

At the same time United States legislation, the Trafficked Victims Protection Act, introduced many measures in the US and global awareness and influence through the annual Trafficking in Persons report with 4 tier gradings and potential sanctions for defaulters on tier 3.

Since that time, we have seen the outcomes of efforts rise and fall.

In recent years prosecutions have fallen and impunity for perpetrators appears to have become greater, and what is the cost to victims and what can be done to change these trends and improve responses and importantly implement prevention.

The Council of Europe Convention on Action against Trafficking in Human Beings entered into force on 1 February 2008. While building on the existing international

instruments, the Convention goes beyond the minimum standards agreed upon, and strengthens the protection afforded to victims.

The EU introduced a similar directive echoing the Council of Europe.

The Council of Europe Convention has a comprehensive scope of application, encompassing all forms of trafficking both national or transnational, linked or not linked to organised crime and taking in all persons who are victims of trafficking women, men or children.

The Convention provides for a series of rights for victims of trafficking,

in particular the right to be identified as a victim,

to be protected and assisted,

to be given a recovery and reflection period,

to be granted a renewable residence permit,

to receive compensation for the damages suffered,

business responsibilities in demand and introducing a non-punishment principle.

I am sure you will agree this sounds like an excellent template and surely nations who have ratified the Convention and EU members must have excellent policies and practices.

Well despite many international instruments and national commitments action plans and policies that are intended to

address human trafficking, these are all too often reframed, diluted or even ignore recognised best practice developed from years of experience and importantly the voices of those who have been exploited.

Trafficking sees perpetrators 'gifted' impunity, while suffering is endured by millions of people and the ill-gotten gains believed to exceed over \$150 billion per year continue to increase.

Understanding where and how someone might become a victim is crucial,

as is how it happens,

and importantly what can be done to prevent it.

But this requires a proactive systemic model of approach, not merely tokenistic projects or activities with no substance or sustainability.

But sadly, and frustratingly measures still elude this challenge of proactivity, the need for national plans to be designed to eliminate the potential for exploitation are crucial.

There is a much-needed focus on supply chains and efforts should continue to look at the root causes but included in these efforts should be more emphasis on reparation, provision of support for victims funded entirely by those who profit and bringing proper accountability.

Currently transparency legislation and business responses consist of the preparation of statements of intent, without monitoring or providing real transparency.

Moving from self-referential thinking is difficult for anyone, including businesses, but this is crucial if we want to stop labour exploitation and human trafficking.

The OSCE annual human trafficking conference in Vienna this week examined the role of the state in the identification and support of victims of trafficking.

The new OSCE ODHIR guidance launched earlier this year has been commended by US Congress Representative Chris Smith, the lead for the Trafficked Victims Protection Act and a special representative to the Helsinki Committee, as 'the best so far.'

This OSCE guidance provides clarity of what a government led National Referral Mechanism should provide and importantly the need for a trauma informed systemic response.

An effective NRM requires commitment from State actors including from health, children's services, police, prosecutors, judiciary, local authorities, places of detention, border protection, immigration services and businesses built on the foundations of policies and practices that proactively identifying risks to a potential victim and intervening on environments where victims may be exploited, harboured, recruited or transported.

Crucial to these policies is that safety and support is not conditional to assisting the State or tied to a business agreement, including one of non-disclosure.

There are 5 main pieces of legislation that exist placing transparency requirements on businesses:

1. Customs and Border Protection, brought by the Tariff Act 1908. This allows US CBP to ban imports of items or the trading in those items in the US. This has been an effective tool, some see it as a sledgehammer approach, but it is a clear way of objecting to forced labour or child being exploited in work. This legislation has limitations as in the case of PPE gloves banned from Malaysia under a CBP petition, with Canada also halting imports due to labour abuse concerns. Yet the UK agreed a multi-million contract for the National Health Service from the same suppliers.
2. Next is section 54 of the UK's Modern Slavery Act 2015, requiring companies with a turnover of more than £36 million per year to complete a statement on their measures to combat modern slavery. The statement can even be one word 'nothing' and this would be compliant if it was agreed by the board and placed on their website. Whilst it is unlikely a company would do that, instead many actually do 'nothing' and despite the Secretary of State being empowered to issue an injunction, this has never occurred. Furthermore, when I was Commissioner, I identified companies who failed to meet the mere basics of the act, yet they were still awarded lucrative government contracts. There is a plan to add new measures to this act, but it is in reality a voluntary requirement and not seen as a critical requirement of business conduct.

3. The Australian Modern Slavery Act 2018 is an advanced version of the UK legislation. It also provides a central repository which the Federal and State Government consult before awarding procurement contracts. New South Wales has additional elements in their state legislation including the appointment of a commissioner to oversee businesses compliance.
4. France has their Due Diligence legislation requiring business to prevent human rights abuses.
5. And the EU has Conflict Minerals legislation introduced in January 2021 aimed to prevent mining of selected minerals where child labour is used or where it is used to fund child soldiers. The minerals are tin, tantalum, tungsten and gold.

In the pipeline is new legislation from Germany due to come online in January 2023, this will have a sanction available of up to 4 per cent of turnover.

Entry into this requirement is set at 466 million euro, so covers larger companies. There is criticism of the high entry point, but it will be the first-time penalties are available.

In other areas of compliance, data protection, health and safety, food standards, financial regulations and emissions there are well established penalties for breaches.

Yet when it comes to exploitation of children, women and men, in some of the most lucrative business in the world there is little accountability, and fear of reputational damage is not working as we have seen on so many occasions.

Serious flaws exist in human trafficking responses, gaps that would not be accepted if we, the privileged were the victims.

I have personally seen a case where a child was imprisoned as an adult for document offences, yet it was obviously they were a minor and the entire system actively looked the other way to her trafficking and multiple rape.

Or where a woman was imprisoned for cultivation of over €1million of drugs, despite discussions in the court that she was trafficked and forced into watering and minding the contraband at great risk to her health and in fear.

The failures in these cases not only led to miscarriages of justice but allowed organised trafficking criminals the impunity I mentioned earlier.

On occasions I have met victims who do not want any support but want to see their exploiter prosecuted, so an NRM should be flexible to respond to different needs and situations.

Accountability must be introduced to make this a crime not worth allowing and where looking the other way is not permissible.

If we truly want equality and to end this serious abuse of our fellow human beings, this crime must not pay and any profits that emanate from this abhorrent human rights violation should be confiscated and used for reparation and to prevent this crime.

Technology companies, multi-nationals and governments in their procurement have a duty to prevent exploitation, indeed in the case of governments it is our taxes they spend.

Unless all the incentives are removed and the consequences are real, then unfortunately history shows that nothing will change.

When President Lincoln was trying to restore the union, he believed abolishing slavery in the southern states of America was crucial. It was the people in Manchester, England where cotton was processed who provided the means to end the abuse when they refused to buy cotton harvested in the fields of slavery.

Despite being some of the poorest, the people of Manchester through their co-operative wrote to President Lincoln to provide their support.

Lincoln wrote of their 'sublime Christian heroism, which has not been surpassed in any age or country.'

Some of the poorest brought an end to the civil war and slavery.

It's well overdue for us the privileged and the wealthy to follow that example and for nations to end this abuse of modern slavery through effective regulations and accountability.

The world has committed to 17 global targets, the SDG's including the eradication of human trafficking and child labour.

As part of a States, delivery to achieving the SDG's effective measures of accountability are crucial.

There is a great deal of speculation, research, consternation and prevarication on how to address human trafficking.

The time has come for action, as if we do not act in our generation, the fragility of this world which we have so poorly stewarded, will only worsen.

As policy makers, leaders, and people of good will the choice is with us.

Sadly, those who are exploited do not have a choice, so the responsibility lays with us alone.