

# Possible avenues for legislation on modern slavery in Asia

Focus on corporate action

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Workers on an irrigation construction site, Myanmar, 2013. © ILO, Photographer: Crozet M.

A new wave of regulatory developments to combat slavery-like practices began in the early 2010s, eighty years after the adoption of the 1930 Forced Labour Convention of the International Labour Organization. This momentum is now also gaining traction in Asia, for example with the ongoing debates on the adoption of new legislation on modern slavery in Hong Kong. As with other new regulatory developments, a key feature of the discussions surrounding a possible Hong Kong Modern Slavery Act<sup>5</sup> is placing corporate action at the centre of the regulatory stage. Since the 1970s, the international community has recognised that enterprises have a role to play when it comes to preventing human rights abuses, including efforts to combat child and forced labour.<sup>6</sup> In recent years, expectations of corporate involvement with human rights have become clearer, particularly with the adoption of the UN Guiding Principles on Business and Human Rights in 2011 and the Sustainable Development Goals in 2015.

This contribution presents an overview of the major characteristics of the regulatory landscape in which business enterprises are compelled to take proactive measures to support the fight against modern slavery practices. By understanding characteristics of the current regulatory landscape, we can single out lessons that might be replicated or avoided in legislative efforts currently taking place in Asia.

## Two main regulatory approaches

When looking across the globe for key examples of this new wave of regulation, it is possible to divide them along two main approaches. The first approach is characterised by non-specific regulatory action, i.e., action based on the use of generic regulatory frameworks in the area of business and human rights in order to regulate corporate responsibility related to child labour, forced labour, human trafficking and modern slavery. These frameworks commonly encompass a broad range of corporate responsibility issues under the umbrella of mandatory environmental and human rights due diligence. An example of this approach can be found in the notable French Law Regarding the Duty of Vigilance of Parent and Subcontracting Companies.<sup>7</sup> It requires large companies to establish, publish and effectively implement a duty of vigilance plan to prevent human rights

abuses and environmental damages, which must cover subsidiaries directly or indirectly controlled by the company, as well as the activities of long-standing sub-contractors and suppliers. It is in the context of their duty of vigilance plans that companies are expected to demonstrate the actions they are taking to avoid and/or mitigate their involvement in modern slavery practices. The same approach can also be found in the draft German Act on Mandatory Human Rights and Environmental Due Diligence,<sup>8</sup> as well as in the proposed Swiss Responsible Business Initiative.<sup>9</sup>

The second approach focuses on the adoption of slavery-specific regulatory frameworks targeting modern slavery practices. Within this stream, it is possible to find two different ways in which regulators tackle modern slavery. Regulators opting for the first type of slavery-specific regulatory frameworks focus on due diligence processes targeting the provision of products and services. According to the OECD Due Diligence Guidance for Responsible Business Conduct, due diligence processes include transparency-related information, such as disclosures. In this context, two key examples are worth mentioning. First, the Dutch Child Labour Due Diligence Law<sup>10</sup> adopted in 2019 is applicable to entities selling goods and services to Dutch end-users. These companies are required to determine whether child labour is present in their supply chains and, if so, design and implement action plans to remedy these practices and prevent future occurrences. As a consequence, the reach of the Dutch law extends beyond Dutch borders and has the potential to impact business operations elsewhere, such as in Asian countries, which are at the crossroads of global supply chains. The second example, focusing on due diligence, is the 2010 Brazilian Central Bank Resolution on Slave Labour,<sup>11</sup> which is the first regulatory framework targeting financial institutions integrating the National Rural Credit System and prohibiting them to have business relationships with entities benefiting from modern slavery practices. The operationalisation of the Brazilian Resolution relies on the publication of a list by the Ministry of Economy, naming (Brazilian) employers who have engaged in slave-like working conditions (commonly referred as the 'Dirty List'). However, this approach has been presented with a series of challenges since 2010, including the questioning of the legality of the Dirty List by productive sectors and the lack of governmental efforts to publish or update the Dirty List. Nevertheless, examples showing

According to some international estimates, there are currently 152 million victims of child labour<sup>1</sup> and 40.3 million victims of modern slavery in the world.<sup>2</sup> According to the Global Slavery Index, approximately 62% of the world's victims of modern slavery live in Asia.<sup>3</sup> Efforts to eradicate child labour, forced labour, human trafficking, and modern slavery are among the top priorities of the UN Sustainable Development Agenda (SDG number 8). In economic terms, it is estimated that earnings derived from modern slavery practices amount to 150 billion US Dollars every year.<sup>4</sup>

the success of this approach can be found, for instance, in the conviction of a bank in August 2019 to pay compensation for collective moral damages for violating the prohibition of having relationships with entities benefiting from modern slavery practices.<sup>12</sup>

It is also important to highlight that, at the international level, a comprehensive framework and initiative were launched in 2019 focusing on financial institutions' role in fighting modern slavery in the context of their operations as providers of financial products and services. The Finance Against Slavery and Trafficking (FAST) Initiative derives from the work done by the Liechtenstein Initiative for a Financial Sector Commission on Modern Slavery and Human Trafficking, which sets out how financial sector actors can work towards eradicating modern slavery and human trafficking through individual and collective action set out in its roadmap, *Unlocking Potential: A Blueprint for Mobilizing Finance Against Slavery and Trafficking*.<sup>13</sup>

Countries opting for the second type of slavery-specific regulatory frameworks have shown a stronger reliance on a specific element of due diligence processes, namely transparency-related measures such as mandatory corporate disclosure obligations. The main representative of this regulatory approach is the 2015 UK Modern Slavery Act,<sup>14</sup> which requires companies to publish an annual slavery and human trafficking statement describing the steps they have taken in the previous financial year to ensure that their business and supply chains (also outside the UK) are free from modern slavery and human trafficking. This approach has been followed in several jurisdictions across the globe, such as in Australia, Canada, Norway, and in the United States. Also, most regulatory-oriented debates in Asia today follow this approach.

## Developments in Asia

Thus, the debates surrounding a proposed Hong Kong Modern Slavery Bill clearly follow in the footsteps of the 2015 UK Modern Slavery Act. However, the road ahead seems far from easy in Hong Kong. Commentators highlight the small likelihood of the current draft of the Bill being adopted, since it falls outside the government sponsored legislative agenda. In addition, in a recent decision the Hong Kong Court of Final Appeal affirmed that Hong Kong's current legislative framework is sufficient to combat human trafficking and therefore, there is no positive obligation on the government to enact a specific anti-trafficking law (see also, article by Dennis Kwok in this issue).<sup>15</sup>

In addition, it can be expected that initiatives drawing on the lessons learnt from the Australian Modern Slavery Act start appearing in ASEAN countries in the near future. A major trigger for such a movement is the multi-million-dollar initiative, ASEAN-Australia Counter-Trafficking Initiative,<sup>16</sup> set to tackle modern slavery and human trafficking in the region and to support the implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children.<sup>17</sup>

Asian regulators can build upon a variety of regulatory models when seeking to combat modern slavery practices and do not have to limit themselves to the British/Australian example. Applying regulatory models developed for different contexts without further thought often brings (un)expected downsides, since context sensitive characteristics, which are key for the achievement of compliance and legal effectiveness, are not taken into account. Moreover, transplanted considerably diminishes the regulation's legitimacy and levels of engagement, leaving potential space for impunity and non-compliance to flourish.

To identify the best way forward, there is only one solution: get to know the situation from different perspectives by engaging in constructive dialogues with a large pool of stakeholders, who together can formulate the most suitable way forward for specific contexts. For modern slavery legislation in Asia, the choice is whether to place the efforts to combat modern slavery within a broader movement addressing a variety of corporate responsibility issues, as in the regulatory approach taken in France, or to prioritise efforts to combat modern slavery with a specific legislation, as in the UK and Australia, leaving aside other relevant topics in the context of corporate responsibility for other legislative initiatives in the future. As awareness for business responsibility to respect human rights grows across the globe, one thing is definite: jurisdictions across Asia will need to address human rights due diligence, especially concerning the challenge of combatting egregious labour exploitation, with ever increasing urgency.

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## Notes

- [www.ilo.org/global/topics/child-labour](http://www.ilo.org/global/topics/child-labour)
- [www.fastinitiative.org](http://www.fastinitiative.org)
- <https://tinyurl.com/WalkFree-AP2018>
- [www.fastinitiative.org/the-blueprint](http://www.fastinitiative.org/the-blueprint)
- <https://tinyurl.com/legco-HKMSA>
- <https://tinyurl.com/ILO-tridec>
- <https://tinyurl.com/legfr-2017>
- <https://tinyurl.com/bhrrc-german>
- <https://tinyurl.com/SRBI-parla>
- <https://tinyurl.com/NL-KA-2019>
- <https://tinyurl.com/BR-NO3876>
- Judgement issued by the 5<sup>o</sup> Vara do Trabalho de São Luís: Ministério Público do Trabalho vs. Banco da Amazônia S/A, [0018256-81.2017.5.16.0015] <https://tinyurl.com/just-trab-BR-16may2017>
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