

Written evidence submitted by Arise (FL0004)

Arise

Arise is an anti-slavery organisation headquartered in London and New York. We believe frontline organisations and their networks are a critical tool in the modern fight for abolition. We exist to provide frontline organisations and their networks with the help they need through strategic funding, training, network building and amplifying their voices.

Co-founded by John Studzinski CBE, Arise has been involved in the discussion around supply chains and transparency since we were founded. John Studzinski was co-chair of the Home Office's Business Against Slavery Forum, and, together with Baroness Young of Hornsey, led the part of the Independent Review of the Modern Slavery Act 2019 which focussed on supply chain transparency. Arise has striven to bring the voice and experience of frontline organisations to this critical area of policy.

A note on our submission

Supply chain transparency is a challenging and complex area of policy. This submission does not claim to be comprehensive in its treatment of the issue, but seeks to set out a summary of recent developments and policy trends as useful "pieces of the jigsaw" for the Committee's consideration.

XUAR alleged atrocities

There is a growing body of evidence detailing labour abuse, mass incarceration, forced sterilisation and child separation - among other egregious rights violations - inflicted upon the Uyghur people and other predominantly Turkic minorities in the Xinjiang Uyghur Autonomous Region (XUAR) of China. This submission focuses on alleged exploitation connected to modern day slavery.

XUAR Supply Chains

Within XUAR there are estimated to be well over one million¹ Turkic minority Muslims currently held in what the People's Republic of China calls 're-education camps'. The Australian Strategic Policy Institute estimates that at least 83,000 of these are living in conditions of forced labour.²

The XUAR region is central to the global supply and value chains of many companies.³ For example, China is the largest global producer of cotton, and 84% of this cotton comes from XUAR.⁴ Yet alleged forced labour in XUAR does not begin and end with the cotton industry. Giants such as Apple, BMW, Nike, Sony and others have been accused of profiting from Uyghur forced labour. As entities trading in the UK, this raises the prospect that these companies may be exposing UK consumers to complicity in systems of severe exploitation

¹ For a discussion on the difficulties estimated the numbers of those extrajudicially detained, see: *More than 1 million Muslims are detained in China—but how did we get that number?* Quartz July 2019 <https://qz.com/1599393/how-researchers-estimate-1-million-uyghurs-are-detained-in-xinjiang/>

² Xu, et al., *Uyghurs for Sale*, Australian Strategic Policy Institute, February, 2020 <https://www.aspi.org.au/report/uyghurs-sale>

³ *Virtually entire' fashion industry complicit in Uighur forced labour, say rights groups* Guardian, July 2020 <https://www.theguardian.com/global-development/2020/jul/23/virtually-entire-fashion-industry-complicit-in-uighur-forced-labour-say-rights-groups-china>

⁴ Lehr, et al., *Connecting the Dots in Xinjiang: Forced Labor, Forced Assimilation, and Western Supply Chains* Centre for Strategic and International Studies, October, 2019 <https://www.csis.org/analysis/connecting-dots-xinjiang-forced-labor-forced-assimilation-and-western-supply-chains>

in Western China. This submission addresses general value chain issues across industries, rather than focusing on the textile and fashion industries. The Coalition to End Uyghur Forced Labour has submitted comprehensive evidence on this, which Arise has also signed.

The relationship between supply chains and the alleged atrocities

The severity of the situation faced by Uyghurs and others in XUAR has led experts to speculate that they may be subject to genocidal atrocities.⁵ Allegations of forced prevention of births,⁶ and family separation⁷ in XUAR may be grounds for determinations of genocide if undertaken with the intent to destroy “in whole or in part” a racial, ethnic or religious group. In addition, the use of modern slavery as a tool to ‘deliberately inflict[ing] on the group conditions of life calculated to bring about its physical destruction in whole or in part’ (Article II (c) of the UN Convention on the Prevention and Punishment of the Crime of Genocide) is relevant. The allegation here is that the persecuted ethno-religious minority group - Uyghurs and others - are forcibly transferred and used for forced labour, often in dangerous conditions, and, more recently, without adequate protection during the COVID 19 crisis,⁸ in a manner which is calculated to bring about their physical destruction in whole or part.

As a result, if these allegations are true, companies which source from XUAR are exposed to the dual risk of driving both modern slavery, and through it, the “crime above all crimes” - genocide. Therefore, in addition to the need to address modern day slavery, a full treatment of this subject cannot avoid mounting evidence of mass atrocities, and the need to respond proportionately and appropriately.

UK Value Chain Guidance

Currently, the core legislative requirement for companies surrounding modern slavery and supply chains is set out in Section 54 of the Modern Slavery Act, 2015. This requires companies with a turnover of more than £36m to publish an annual Modern Slavery Statement. Recently, the UK Government announced that a central repository for statements would be created together with “tough new measures” which have yet to be published in detail.⁹ Many businesses have sought to engage sincerely with these statutory obligations, but there is no punitive legislation to address those which do not, even where the Modern Slavery Statement in question may be knowingly misleading.

Leaders in the supply chain transparency movement often argue that eradicating exploitation should be core to business governance. One criticism of framing corporate regulation surrounding modern slavery within Home Office legislation is that this places modern slavery requirements outside of the usual regulatory framework. Some in the anti-slavery movement have criticised this as encouraging peripheral treatment of the issue within business structures. For example, we have seen a tendency for companies to locate responsibility for producing Modern Slavery Statements within Corporate Social Responsibility - or similar - departments.

⁵ Activists want UN to probe ‘genocide’ of China’s Uighur minority, Al Jazeera, September 2020 <https://www.aljazeera.com/amp/news/2020/9/15/activists-want-un-to-probe-genocide-of-chinas-uighur-minority>

⁶ China forcing birth control on Uighurs to suppress population, report says, BBC, June 2020 <https://www.bbc.co.uk/news/world-asia-china-53220713>

⁷ How Xinjiang’s Gulags Tear Families Apart, Economist October 2020 <https://www.economist.com/china/2020/10/17/how-xinjiangs-gulag-tears-families-apart>

⁸ Chaudry, *The Impact of COVID-19 on Uighur Muslims: An Ignored Crisis* April 2020 <https://blogs.lse.ac.uk/humanrights/2020/04/23/the-impact-of-covid-19-on-uighur-muslims-an-ignored-crisis/>

⁹ New tough measures to tackle modern slavery in supply chains, UK Government, September, 2020 <https://www.gov.uk/government/news/new-tough-measures-to-tackle-modern-slavery-in-supply-chains>

Partly as a result, exploitation within the supply chain is rarely something about which shareholders are given an account.

Many in the sector have consequently argued for a cross-departmental approach within government, with corresponding efforts to harmonise statutory guidance surrounding modern slavery with the wider regulatory environment. A cross-departmental approach was pursued for some time under Theresa May's premiership, but it is now unclear who, if anyone, within government has responsibility for ensuring that this issue cuts across departments.

For this reason, existing opportunities to tighten up regulation within the current regulatory environment are often missed; for example, the *UK Corporate Governance Code* does not incorporate human rights considerations into its definition of business risk. Neither does it set out principles regarding board responsibilities regarding human rights abuses. There is still no single consolidated document setting out corporate regulation in these fields, and navigating requirements upon businesses is therefore fragmented and confusing.

Another example is the new *Financial Reporting Council* reporting consultation,¹⁰ which seeks to include Modern Slavery Statements as a reporting requirement. This could be a powerful document, but there is little evidence of cross-departmental engagement or consultation with the anti-slavery sector. This review presents an opportunity to go beyond Modern Slavery Statements, possibly requiring information on modern slavery to be included in shareholder reports - specifically what the company in question is doing to confront exploitation in the value chain.

Director disqualification

There are currently no statutory penalties for companies which fail to comply with Section 54 of the Modern Slavery Act, 2015.

Despite recommendations from Baroness Butler-Sloss and others that the 2015 Act should be strengthened to make non-compliant companies subject to disqualification penalties during the Independent Review into the Modern Slavery Act 2019, this approach was not adopted by the government. The relevant legislation, the Company Directors Disqualification Act, 1986 requires that company directors "Ensure they/ the company complies with the law and all relevant regulations".¹¹ The legislation could be amended to make company directors subject to disqualification where they fail to comply with modern slavery reporting requirements, or where they have failed to act on real suspicions or evidence of modern slavery abuses in their supply chains.

France's Duty of Vigilance laws

In 2017 the Corporate Duty of Vigilance Law was passed by the French Assembly. The law requires large French companies to take steps to identify and prevent exploitation within their supply and value chains. This includes a requirement for businesses to publish a "vigilance plan" setting out where they believe their

¹⁰ A Matter of Principles: The Future of Corporate Reporting, Financial Reporting Council, October 2020, page 27: <https://www.frc.org.uk/getattachment/cf85af97-4bd2-4780-a1ec-dc03b6b91fbf/Future-of-Corporate-Reporting-FINAL.pdf>

¹¹ Company Directors Disqualification Act Guidance, UK Government July 2020: <https://www.gov.uk/government/publications/company-directors-disqualification-act-1986-and-failed-companies/company-directors-disqualification-act-1986-and-failed-companies#what-is-unfit-conduct>

business to be at risk, enabling both civil society and shareholders to scrutinise the company in question. It is noteworthy that the vigilance plan must be both “adequate” and “effectively implemented”, which commentators within the anti-slavery community have noted goes beyond the requirements of the UK Modern Slavery Act. The law also includes enforcement mechanisms, including providing for any interested party to petition a judge to ask for a compliance order to be issued. The law stops short of placing the burden of proving compliance upon the company in question, but is a huge leap forward towards human rights due diligence requirements placed upon French businesses.

Civil society engagement with value chains

During a Commons debate on the Modern Slavery Bill in 2014, the then Home Office Minister, Karen Bradley MP, stated that “The Government believe it is for civil society to put pressure on businesses that are not doing enough to eliminate modern slavery from their supply chains.”¹² The government has maintained this position since 2015, and has argued that its new repository will allow civil society to hold companies to account.¹³ The lack of clarity around modern slavery reporting requirements and lack of enforcement provisions mean that civil society has an uphill battle in trying to hold companies to account.

Public funding to promote business links in China

In 2019/2020 £55m was provided to China in Overseas Development Assistance (ODA), 62% (£36.4m) of which was administered by the Department for Business Energy and Industrial Strategy (BEIS).¹⁴ Most BEIS related ODA focuses on scientific innovation, but also includes the Newton Fund and various digital, cultural, and business focused programmes.

Through the Foreign Office, the UK provided over £500,000¹⁵ in human rights funding to China in 2019. In addition the Great Britain China Centre (GBCC) receives hundreds of thousands in public funding¹⁶ as an “arm’s length” body of the Foreign Commonwealth and Development Office. Their overarching activity is to “support UK China relations” which includes, among other activities, developing business links between the two nations.¹⁷ GBCC say that they conduct their affairs in line with Foreign Commonwealth and Development Office policy. Among other activities, the GBCC has played a part in administering the cross-departmental Prosperity Fund which seeks to “enable[ing] fairer market access and advancing economic reform to support China’s prosperity”. It is unclear what, if any, due diligence is performed on the companies which participate in these programmes.

Recommendations

¹² Hansard source: <https://hansard.parliament.uk/Commons/2014-11-04/debates/1411044400002/ModernSlaveryBill>

¹³ Baroness Williams of Trafford, answer to written question : <https://www.theyworkforyou.com/wrans/?id=2020-06-24.HL6105.h>

¹⁴ Department for International Development Annual Report and Accounts 2019/2020, Page 180: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902370/annual-accounts19-20.pdf

¹⁵ Contribution by the Chair of the International Development Select Committee, Sarah Champion, MP, on a debate into Hong Kong National Security Legislation, July 2020: <https://www.theyworkforyou.com/debates/?id=2020-07-01d.338.1>

¹⁶ Great Britain China Centre, annual report and accounts 2019-2020: <https://www.gbcc.org.uk/assets/files/Reports-and-Accounts-2019-20.pdf>

¹⁷ See for example the news report Senior Executives Roundtable for Chinese Businesses in the UK: communication, transparency and trust: <https://www.gbcc.org.uk/news-events/2018/senior-executives-roundtable-for-chinese-businesses-in-the-uk-communication-transparency-and-trust>

Arise therefore recommends that the BEIS Committee consider the following proposals to protect UK consumers from complicity in Uyghur forced labour:

1. Amending the Company Directors Disqualification Act to enable the disqualification of businesses which are knowingly facilitating atrocity crimes, forced labour, or which fail to disclose egregious human rights abuses in their Modern Slavery Statements. *This would help to give existing legislation (for example section 54 of the Modern Slavery Act) much needed enforcement provisions, but is narrow in scope and proportionate.*
2. Publishing clear and comprehensive guidelines (in conjunction with other government departments) for companies on their statutory obligations under the Modern Slavery Act 2015, the Foreign Prison Made Goods Act, 1897, and any other legislation relevant to human rights abuses in their supply chains. This should also set out minimum audit standards together with a RAG risk assessment tool designed to help companies source safely. *This addresses the need to consolidate existing guidance, and make clear government expectations surrounding risk assessment and compliance surrounding human rights considerations in supply and value chains. It also offers an opportunity to highlight some of the transparency issues encountered when sourcing through China, not least the security implications of the National Intelligence Law 2017, and prohibition of external audit.*
3. Calling for an appeal process to be created by which interested parties can apply for a judge to serve compliance notices on companies which are failing to meet their obligations under relevant UK human rights legislation. *Modelled after the French Duty of Vigilance Laws, this enables civil society to hold businesses to account, which is in line with the current Government position.*
4. Publish regulations governing the minimum standards companies must meet in reporting to shareholders on the efforts they are making to avoid forced labour and other human rights abuses in their supply and value chains. *This is intended to make the issue of human rights due diligence more central to corporate governance, and to improve transparency to shareholders.*
5. Publish guidance setting out company sourcing standards, making clear expectations upon businesses regarding their ability to map and trace the origin of their products and services. *This would help to improve transparency and raise sourcing standards across industries, and mitigate risks associated with 'blind sourcing'.*
6. In light of the rapidly deteriorating human rights situation, and the mounting body of evidence of mass human rights abuses in XUAR, BEIS should conduct a review of its ODA projects in China. This should include an audit of project partners to ensure that taxpayer money is not unwittingly being used to support systems perpetrating mass human rights abuses. This review should also make clear the identities of project partners which are receiving ODA funding and their risk assessments in light of potential labour abuses in XUAR. This information is not currently disclosed. *By doing this the government will be modelling the culture it is hoping to see reflected in UK corporate culture, improve transparency, and confidence that the UK tax payer is getting value for money in ODA investments.*

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