Reporting and benchmarking of human and labour rights reporting

This brief provides background on why there is a demand for corporate social reporting and how it can be done. The various types of reporting are outlined, including the specific reporting requirements that are starting to emerge around the issue of 'modern slavery'. The quality of human and labour rights reporting is described as well as benchmarks that evaluate and rank this reporting, including those that focus specifically on seafood companies. Taken together, this brief demonstrates that there is a demand for human rights reporting and that there is scope for SeaBOS companies to provide leadership in this area.

1. Introduction

Providing information is necessary for corporate accountability because it allows external parties to know if responsibilities have been discharged. To be effective, accountability requires a number of conditions to be met:[1]

1. Some agreement about what the company is to be responsible for (this may include a requirement not to do something viewed as harmful as well as a duty to achieve certain outcomes);
2. Before a company can produce an account of their actions, effective operational control of the aspects that are to be reported on is necessary;
3. An account must be produced and made available in a format that can be used by other parties (this is transparency). 'Accounts' include financial accounts as well as corporate social responsibility reports which are non-financial accounts of action and outcomes; and
4. There must be some way in which a reader who is unhappy with the outcomes achieved can interact with the company (this could involve initiating a conversation or even imposing sanctions for poor performance in the case of regulators).

These principles underlie a great deal of the information that companies provide to their shareholders as well as to their stakeholders (defined as those who can affect an organisation and who are affected by it).[2] Reporting most frequently includes 'financial statements and accounts' and also increasingly includes reporting of corporate social responsibility (where social and environmental commitments and performance are communicated). There is a belief that if an organisation is asked to provide information, this will affect how they behave (a process called 'information inductance ' and it is this belief that often underpins calls for transparency) and is referred to as 'reflexive law' (see box 1).

Evidence as to whether information inductance and reflexive law 'work' is mixed. It is known that reporting requirements work 'best' when organisations have made strong commitments to the areas being addressed, where they undertake action to meet those commitments and where these are reported on in a transparent manner. In addition, where individual corporate actions are supported by others who have some ability to affect the actions being reported on, reporting is more likely to affect change.[6] Likewise, an active stakeholder group and/or benchmarking processes that evaluate reporting (see section 3 below) will make the links in the chain between providing information and changing behaviour stronger.[7] Where investors use information provided in reports and ask companies about their activities reporting is also more likely to achieve the outcomes sought.

Many of the elements for effective reporting are present in the SeaBOS initiative in terms of clear commitments as to what goals are being sought, actions being taken by SeaBOS members to address issues of concern, and reporting practices undertaken across the group. In this respect, it is more likely that the SeaBOS approach will yield the benefits sought from good reporting practice as well as stimulate others to follow the leadership shown in reporting terms.

Box 1: Some terms explained

Information inductance: describes the process by which the provision of information creates behaviour change in those providing the information.[3] The exact way in which this process happens is complex and changes according to the issue being addressed and the context in which demand for information arises. The relationship between information and actions also changes over time, between different places and topics. Additionally, the provision of information by an organisation about its impacts (even those not directly under its control) can be interpreted as implying that it accepts some responsibility for those actions. This explains why reporting can feel risky to those undertaking it and why information provision often has to be mandated.

Reflexive law: this form of law emerged as it became harder for a single nation state to regulate corporations as a result of the globalisation of business activity. The aim of reflexive law is to provide a less direct way of regulating by "encouraging internal critical reflection"[4] within organisations. This type of law is "no maker of miracles in the realm of justice"[5] but relies on corporations taking action on the basis of what they learn from the process of creating a report. Making reporting a legal requirement, therefore, has this hope at its core: that the process of reporting will create organisational learning as well as better performance.

2. Reporting requirements

Corporate reporting requirements arise from diverse sources with different degrees of authority to regulate (see Box 2). Reporting on human and labour rights performance usually arises from demands for non-financial disclosure, but core financial reporting requirements are also generally applicable and should inform disclosure choices.

Some additional points on corporate reporting should be made:

- The main criteria used for information to be included in Annual Report and Accounts is the criteria of materiality. For example, in financial reporting a piece of information is deemed to be 'material' if its disclosure is likely to affect a user's perception. This is a principles-based test with some quantitative guides as to when materiality is likely to be triggered. For example, if a financial item is more than 10% of any base (eg: revenue, assets or liabilities) it is likely to be material; at less than 5% it is unlikely to be material (so not disclosing this information would be acceptable); and between these two figures, judgement is required.

  Making a similar judgement for when to disclose human and labour rights issues is more complicated. Given the severity of forced labour effects on those experiencing them, it can be

Box 2: Corporate reporting requirements linked to human and labour rights reporting

Reporting in Annual Reports and Accounts is mandated by company law and includes a general requirement to make disclosures (including non-financial disclosures) that are necessary for users. Beyond the financial statements, for example, the UK's Financial Reporting Council (the body that regulates corporate governance) requires companies to produce a 'strategic report' in order to address how directors have performed their duty to promote the success of the company. This includes a specific duty to disclose information on (among other aspects) respect for human rights to the extent that this information is necessary to understand the organisation's performance.

Regulated non-financial disclosures have often been found in company law and reflect the priorities of the country with which they are associated. These disclosures often include information about gender and race equity of employees. As the salience of corporate social responsibility has increased, specific requirements for non-financial reporting have started to emerge. A good example of this is the EU's Non-Financial Reporting Directive (agreed in 2013) which has driven the passage of legislation across EU countries. This process was driven in part by the EU's recognition that the United Nations Guiding Principles (the Ruggie framework – see Background Brief 2) should be underpinned by a legal obligation for companies to demonstrate how they are respecting human rights and undertaking due diligence assessments. Indeed, the UN Guiding Principles and the OECD Guidelines for Multinational Enterprises indicate that corporate transparency is important and highlight reporting resources that can be used, such as the Global Reporting Initiative.

Regulated disclosures from other sources also exist. The UK's Modern Slavery Act contains provision for corporate reporting. This is an example of reporting requirements coming from an Act whose purpose is mainly focused on aspects other than corporate reporting. See also Box 3 for other recent requirements to disclose information on forced labour across the globe.

Stock exchange listing requirements are specific disclosure requirements that are relevant to a particular stock exchange. We are not aware of any specific additional requirements related to human rights from stock exchanges' rules.

Voluntary frameworks for non-financial disclosure exist across the globe, the most mature and internationally relevant of these is the Global Reporting Initiative (GRI). The GRI suite of standards[i] contains specific guidance on human rights (number 412) and child labour (number 408): a consultation on these standards is due to close in September 2020. The GRI universal standards also include disclosure on human rights issues.

i https://www.globalreporting.org/standards/

argued that a measure of relative incidence (that is, a materiality judgement) is not the sole criteria and with human and labour rights the notion of salience is an important test as well. Salience refers to the quality of something being such that it becomes important in evaluation. In human rights contexts, salience is judged from the perspective of the individual who is suffering the harm and hence an incidence of forced labour may not be material in a quantitative sense but would be salient in terms of disclosure and in how this information would inform stakeholders' views.

- Non-compliance with reporting requirements (including those found within company law) is common, especially in the case of disclosures that could be considered less central to assessing the financial performance of a company. If auditors do not highlight failures to disclose data, reporters might be discouraged from reporting. Likewise, if the reporting requirement is poorly designed, it may fail to induce compliance with it.[6] A key aspect of poor design is a lack of oversight of compliance with reporting requirements by some regulatory authority.

Where reporting is viewed as not being sufficient (despite it being generally prescribed) it is common for more both detailed guidance on how to report or additional reporting requirements to emerge. This has been the case in some countries with respect to modern slavery. Box 3 provides a summary of the main specific disclosure mechanisms that currently exist in this area.

Academic and policy literature is starting to emerge that addresses the effectiveness of reporting requirements from the EU Non-Financial Reporting Directive as well as the UK Modern Slavery Act (and some work related to the other similar Acts). Research suggests that these reporting requirements have had limited success in creating good quality reporting across the board (of course, some reporting under these Acts is excellent).

Research that compares the earlier acts (the Californian 2012 Transparency in Supply Chains Act; the EU's 2013 Non-Financial Reporting Directive; and the UK's 2015 Modern Slavery Act) highlights some common design problems.[8] In particular, limitations arise because:

- Who is subject to these acts is not clearly defined (the EU Directive is better in this respect). For example, the California Act does not define who are direct suppliers so the scope of any reporting may well differ making comparison of performance impossible. Likewise, it does not specify which labour laws companies should be reporting compliance with (USA laws or the laws of the country where activities are undertaken). Some of these same problems exist in the UK Act where reporters can choose for themselves how

Box 3: Reporting requirements for human rights, forced labour and child labour

California's 2012 ***Transparency in Supply Chains Act*** requires retailers and manufacturers to provide information to consumers about efforts undertaken to eliminate slavery and human trafficking in their supply chains. This information is to be supplied in the form of a Slavery and Human Trafficking Statement. Behind this requirement is the goal that this reporting will educate consumers to buy only goods from suppliers who responsibly manage their supply chains.

The ***UK's Modern Slavery Act***, passed in 2015, is primarily focused on modern slavery abuses taking place in the UK, and has led to a rise in awareness of the issue, prosecutions and convictions. The Act includes a requirement (section 54) for UK-based companies (and those with a presence in the UK) to provide a 'modern slavery' report on their websites. There is no government site where these statements are registered but a voluntary organisation provides a summary (https://www.modernslaveryregistry.org/). This site also includes reports made by companies covered by the Californian and Australian Acts.

France's 2017 ***Duty of Vigilance Law*** requires companies covered by it to map, identify, analyse and rank risks (including human rights risks) to evaluate companies, subsidiaries, sub-contractors and suppliers against these risks. In addition, reporters should take action to mitigate risks and evaluate how effective they have been in doing this. This due diligence plan should be published in the company Annual Report.

Australia's 2018 ***Modern Slavery Act*** (in a similar way to the UK's Act) requires companies covered by the Act to publicly report on actions undertaken to identify and prevent modern slavery (there is no requirement to say if you found incidences of modern slavery). In contrast to the UK Modern Slavery Act, company reports are maintained on a central database by the Government.

In 2019, ***The Netherlands*** passed a law on ***corporate due diligence and child labour***. This law requires a declaration to be submitted to the Dutch competition and market authority about how they have sought to ensure due diligence (including along supply chains) and what actions have been taken if child labour has been found.

to treat subsidiaries in terms of if they are part of their business (and hence subject to reporting requirements) or not.

- The form and nature of reporting required by the California Act (creating a Slavery and Human Trafficking Statement) does not inform consumers because Statements are not readily available to them, and the links between a purchase decision and the company behind the product are not easily visible. Likewise, neither the California Act nor the UK Act requires performance to be disclosed. As a result, a company could formally comply with these Acts, but still have high levels of labour abuse.
- The California and UK Acts also have weak compliance mechanisms surrounding them. Non-compliant companies (under the Californian Act), by law, are supposed to be publicly identified by the State, but this part of the Act has never been followed. Similar weaknesses are present in the UK Act where there is no oversight of compliance with the law or the standards of reporting, and the Government does not maintain any public or private repository of reports (see Box 3 for the voluntary organisation that has created a repository). While the EU Directive is better designed, it shares this weakness of lack of regulatory consequence for non-compliance.

The more recent acts (in France, Australia and the Netherlands) have clearly learned from these earlier Acts in that definitions are clearer, disclosure is more strongly regulated and overseen, and the requirement for saying what labour rights breaches have been found is present, although, concerns also exist around these acts.[9] It is also the case that the reporting requirement in the UK Act was inserted late in the legislative process and the entire Act had to be passed the week before Parliament broke for a general election (any Acts not passed in one Parliamentary term are 'lost' as they are terminated at the time of a general election).[10] While the notion of requiring human rights/labour rights/modern slavery corporate disclosures is sound, the UK Act is not an ideal example of how to do this.

The evidence of the effectiveness of these Acts in terms of inducing good quality reporting is also disappointing. In the case of the California Act, "47% of those subject to the law did not disclose information in all the mandated categories"[8, page 329] and this, along with other weaknesses highlighted above has led to the conclusion that this Act is "not an effective disclosure regime" given the level of non-compliance.[8, page 329] Levels of compliance and standards of reporting under the UK Act are harder to summarise because studies are only now emerging, the majority of which examine reporting in particular sectors. That being said, there is evidence that reporting is not universally good.[11,12,13] There are insights developing, however, as to how some organisations are changing in response to pressures to report and to address underlying problems in this area.[14] Finally, improvements in reporting may be driven by benchmarking processes.

3. Benchmarking corporate reporting

An important characteristic of stock markets is the presence of 'information intermediaries': that is institutions who sift through information about listed companies and who then sell their views (drawn from this information) to current and potential shareholders. It is the presence of these intermediaries that helps ensure share prices accurately reflect the underlying value of companies (to the extent that this is possible) and it is believed that intermediaries also have a disciplining effect that ensures that companies operate to achieve the best outcomes they can.

In the context of corporate social and environmental performance there are similar (but less well developed) mechanisms. For example, being within the Dow Jones Sustainability Index or the FTSE 4 Good index is seen as an indication of 'best in class' performance. Benchmarks of corporate social reporting practice operate in a similar way and are starting to emerge in the context of human and labour rights issues (see Box 4).

In addition to reporting databases and benchmarking, there are also information centres that provide information on the shortcomings in corporate human

Box 4: Human and labour rights corporate reporting benchmarks

The Seafood Stewardship Index (https://seafood.worldbenchmarkingalliance.org/) includes elements related to workers' rights and status; gender equality; health and safety; and local communities engagement. These are areas where human and labour rights issues and performance might be disclosed by companies and where the SSI noted improvements were possible.

The Corporate Human Rights Benchmark (https://www.corporatebenchmark.org/) has provided benchmarking for agriculture, apparel, extractives and ICT manufactures in 2017, 2018 and 2019 (this benchmark also involves the World Benchmarking Alliance who produces the Seafood Stewardship index). This body uses adherence to the United Nations Guiding Principles (the Ruggie framework) when they evaluate companies. This benchmark covers the areas of: governance & policy; respect & due diligence; remedy & grievance; performance (including practices & responses); and transparency. This reporting benchmark is unusual in that, under performance, they evaluate responses to serious allegations (this data has to be released into the public domain by the company itself). Performance on the benchmark is not high across the board. Presently, no SeaBOS companies are covered by this benchmark.

rights performance. For example, the Business and Human Rights Resource Centre (https://www.business-humanrights.org/en) contains a database (searchable by company name) of human rights concerns. Likewise, Human Rights Watch (https://www.hrw.org/), while being concerned with country level activities, also has some information on corporate actions.

These alternative information sources and the benchmarking of reporting performance are ways in which accountability for performance can be brought to the fore. The key insight from these activities, to date, is that over time companies are going to be expected to improve in both human/labour rights performance as well as how their reporting in this area is improving. A central way in which performance is likely to be assessed is according to the quality of reporting undertaken.

4. Closing observations

Corporate accountability for human and labour rights performance (as outlined at the outset of the brief), arises when:

1. **There is agreement on what corporations are responsible for:** the SeaBOS commitments have captured the ambition in this area, namely: to "engage in concerted efforts to eliminate any form of modern slavery including forced, bonded and child labour in our supply chains".
2. **Effective operational control is achieved:** this work is taking place across SeaBOS member companies, building on and further developing existing due diligence processes and providing evidence of performance in this area.
3. **Accounts of performance have been produced:** expectations about what these accounts might entail, and SeaBOS companies are developing reporting in this area.
4. **Engagement with a company is possible on the basis of observable poor performance:** again, this possibility exists across the SeaBOS member companies.

Taken together, there is a base from which SeaBOS companies could discharge their accountability for labour conditions in their own operations and along their supply chains. To do so would be in line with expectations (codified in the United Nations Guiding Principles on Human Rights – see also Background Brief 2) about corporate practices. While it might be dispiriting to realise that reporting in this area is currently of poor quality across the globe, this does not have to be the case. In particular, the experience of SeaBOS companies in tackling labour rights abuse, the formal commitments to eradicating forced labour and experience with reporting in general (as highlighted by performance in the Seafood Stewardship Index) suggest that there is an opportunity for SeaBOS companies to provide leadership in reporting as well as in performance terms.

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