

Sliding Scales of Health and Harm: Lessons from PPE procurement in a crisis

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7th Conference of the Regulatory
Decent Work Network. July 2021

Introduction

COVID-19

- Unprecedented global demand for PPE
- Governments and private sector competing
- Normal procurement processes waived

Our paper

- Focus on the USA, Sweden and UK
- How their existing procedures to address human rights risks in supply chains held during the pandemic
- Insights for a more effective and resilient approach to sourcing goods during a crisis and in the longer term

Outline

- Methodology and limitations of the data
- Labour exploitation in health supply chains and the impact of COVID-19
- Addressing human rights in public supply chains- three models
- Procuring PPE in the mist of a pandemic
- Some lessons and reflections

Methodology and limitations of the data

- Desk-based research
- Limited information on labour standards in PPE production (mostly journalistic and civil society accounts)
- Informal, off-the-record interviews with key professionals in procurement and public bodies, and others at the front line of PPE procurement during COVID-19

Labour exploitation in health supply chains and the impact of COVID-19

- Labour exploitation and abuse in health sector not new
- COVID-19 amplified existing dynamics in the global economy, including the human rights risks to workers in global supply chains

Two high risk issues received considerable attention:

- rubber gloves manufacture in Malaysia using vulnerable migrant workers
- a high dependence on procurement of PPE equipment from China, and related use of forced labour in Xinjiang province

It should not be implied that these are the only countries where workers in PPE supply chains are subjected to human and labour rights abuses.

Addressing human rights risks in public supply chains

Our focus:

- Three countries: the USA, Sweden and UK
- Three regulatory tools the public sector can use to address human rights risks in its supply chains:
 - Import bans: blocking the entry of products suspected to being produced with forced labour;
 - Public procurement: providing tools to public buyers to scrutinise their supply chains and respond to human rights risks;
 - Transparency in supply chains (and modern slavery) regulation: demanding corporate disclosures on their efforts to prevent modern slavery.

Addressing human rights risks in public supply chains

These forms of leverage are not directly comparable:

- different scope of influence;
- different objectives;
- different public bodies responsible for achieving them, with different constraints in terms of function, resources and expertise, as well as the capacity to work directly with suppliers.

The USA model – Comply or Die

Goods from suppliers that are found to use forced labour, child labour or human trafficking cannot be sold to the federal government or enter the country.

- Federal Acquisition Regulation (FAR), not used during the pandemic
 - Subpart 22.15 (1999): prohibiting the acquisition of products produced by forced or indentured child labour
 - Subpart 22.17 (2006): provision on combatting trafficking in human persons
- Trade Act, Section 307
 - Enforced by the Custom and Border Protection (CBP), which can detain goods at the border
 - Withhold Release Order (WRO) if incidence of forced labour can be proved ‘reasonably but not conclusively’, pending further investigation
 - Formal finding if conclusive evidence is available

Criticised for disengaging suppliers and not necessarily addressing the human rights violations.

Sweden – Incentivise and Engage

Collaboration among contracting authorities (21 county councils and regions) to provide suppliers with incentives and tools to drive incremental change where there are known human and labour rights risks.

- Standardised human rights requirements (Code of Conduct and contract conditions);
- Division of responsibility to exercise human rights due diligence (auditing, monitoring and follow up measures);
- Sharing of costs and non-financial resources (staff time and capacity building).

Applies to eight spend categories, including disposable surgical products and gloves.

Praised for engaging with suppliers and having a more direct impact on the working conditions and supplier practices, but quite limited in its reach

The UK model - Nudge

A light-touch approach to business as well as public procurement regulation. To 'lead by example', limiting the use of penalties.

- UK Modern Slavery Act, Section 54, Transparency in supply chains: no requirement to take any substantive action
- Only partially applicable to the public sector, but this will change in the future
- Mandatory exclusions from public contracts of suppliers convicted of modern slavery offences

Also analysed an incentivise and engage model through the NHS Labour Standards Assurance System (LSAS), which proved ineffective during the pandemic.

Increased awareness of supply chain risks, but does not a significant impact on purchasing practices and does not bring about systemic changes regarding abusive working conditions.

Procuring PPE during COVID-19

- Unprecedented procurement crisis, with suspension of procurement regulations and safeguards to prioritise timely supply
- Potential harm to the workers producing health protective equipment often overlooked.
- High level of dependence on a limited number of countries (China and Malaysia)

USA

- Competition to secure PPE among federal government, states, local governments and hospitals
- 2019 WRO against disposable rubber glove manufacturer WRP (Malaysia)
 - Revoked in March 2020 without clarity on the process;
 - Regarded suspicious as it coincided with the beginning of the pandemic.
- July 2020 WRO imposed against two subsidiaries of glove manufacturer Top Glove
 - Remained in place despite PPE demand during the pandemic;
 - Quick response from Top Glove – positive impact in the short term;
 - BUT formal finding issued in 2021 on conclusive evidence of forced labour.

Sweden

- Auditing and factory visits suspended, but monitoring continued through engagement with local partners.
 - Auditing and follow ups in Malaysian rubber gloves factories in 2019 and 2019;
 - Suppliers working to resolve issues, but some still outstanding (e.g. recruitment fees repayment).
- Reports on links with Uyghur labour and forced transfer outside Xinjiang province.
 - Solved, but took longer than required.
- Renewed focus on cooperation and supply chain transparency.

UK

- £18 billion contracts using emergency procurement regulation
- Faster due diligence checks on suppliers
- Reporting under the MSA relaxed
- Limited means to verify supplier compliance with modern slavery requirements
- Risk of unidentified labour abuse in PPE supply chain considerably increased and confirmed by media reports
- UK Government response mostly limited to 'nudge' approach, including new guidance and training

Lessons and Reflections

- COVID-19 response: inadequate, inefficient and disregarded known and predictable human rights risks in the supply chain.
- Limited impact of models when deployed in isolation, proven by continued human rights risks in PPE supply chains.
- PPE procurement will continue to be a priority.

A combination of all three models should be considered.

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THANK YOU

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