

Implications of the COVID-19 pandemic for human rights and modern slavery vulnerabilities in global value chains

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The COVID-19 pandemic has revealed vulnerabilities and fragilities in global value chains. The worldwide economic lockdowns to contain COVID-19 have led in some industries to unilateral cancellations and suspensions of orders from overseas suppliers by transnational corporations (TNCs). These decisions are argued to be in conflict with the UN Guiding Principles on Business and Human Rights, the Sustainable Development Goals, and related national laws because they have contributed to the risk that the human rights of workers will be violated and that they will become victims of modern slavery. In response, international business policies that target the conduct of TNCs and global value chains need to be reconsidered to achieve global value chain integration while strengthening local bargaining, affording sustainable growth, and protecting human rights.

Keywords: COVID-19, human rights, modern slavery, SDGs, UNGP

1. Introduction

Participation in global value chains (GVCs) has long been considered an important and effective policy tool to support the industrialization of the local economy, creation of employment, upgrading of the technological and managerial competencies of local businesses, and achievement of the Sustainable Development Goals (SDGs) (Blažek, 2016; Gereffi, 2019; Kaplinsky, 2016). Integration into GVCs has become increasingly possible over the last three decades as transnational corporations (TNCs) have narrowly defined and fine-sliced business activities to subsequently outsource them (Buckley, 2009a; Gereffi, 1989). Through fine-slicing, TNCs have articulated business activities so that they can be outsourced to take advantage of particular location-bound advantages with the overall goal of benefitting the orchestrating TNC. Labour-intensive, low-skill and low-value adding activities are thus outsourced to countries with extensive and cheap labour markets. These developments have been supported by international business policies that encourage the proliferation of GVC participation (Kaplinsky, 2016; UNCTAD, 2013).

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In parallel to the internationalization of businesses, regulatory frameworks have evolved to minimize potential detrimental effects on host economies from receiving foreign direct investment and participating in GVCs (Buhmann, 2015) through the exploitation of weak institutions and institutional voids (Clarke and Boersma, 2017; Kolk, Kourula and Pisani, 2017) by clarifying the human rights obligations of TNCs (Arnold, 2016). The UN Guiding Principles on Business and Human Rights is the overarching framework that has influenced global standard setting, laws and TNC behaviour concerning business conduct (Arnold, 2016; Buhmann, 2015; Feasley, 2016).

The COVID-19 pandemic is putting to question a policy drive for greater proliferation and integration of local businesses in GVCs and an economic development strategy that is built around the participation of local businesses in GVCs. It is providing a stress test for the regulatory frameworks on business conduct. Worldwide economic lockdowns in 2020 to control the spread of the pandemic have had ripple effects along value chains and shown that the structures and relationships of GVCs can be vulnerable and fragile. With variations by sector, some businesses found it more difficult to source products globally, encountered challenges in exporting goods, or pre-emptively closed down their supply chains. While some TNCs have responded to these challenges by supporting businesses and workers in their supply chains (Tripathi, 2020), others – international fashion TNCs in particular – have unilaterally cancelled or postponed the delivery of orders from overseas suppliers worth billions of US dollars, leaving factories and their workers out of income. With economies in lockdown and few alternative employment possibilities, workers at these suppliers are at risk of becoming exploited and victims of modern slavery (Crane, 2013). Modern slavery is an umbrella term that refers to various forms of labour exploitation including forced labour, bonded labour, child labour and human trafficking (Kara, 2017). Common to these forms of labour exploitation is, according to (Kara 2017: 8) “dishonouring and degrading people through violent coercion of their labour activity in conditions that dehumanize them” and violate their human rights.

This article contributes to discourse on the impact of the pandemic on the global economy and its international business policies by discussing its repercussions along GVCs. Using the fashion and textile industry as an example, it argues that the pandemic has made tangible the need to revisit international business policies related to the governance of TNCs, the global supply chains they orchestrate, and how human rights can be protected within them.

Section 2 provides a snapshot of how the pandemic has affected the GVCs of the fashion and textile industries. Section 3 relates recent developments in these industries to frameworks that have been established to regulate business conduct. The results from that assessment inform the discussion on GVC policies in section 4. Section 5 summarizes the argument.

2. Impact of the pandemic on the fashion and textile supply chain

The pandemic has affected supply chains across all industries globally. This impact has been felt in the first instance economically but will have consequences for the upholding of human rights and trust in the corporate social responsibility proclamations and efforts of TNCs. We will consider here the global fashion and textile industries as an exemplary case of how a sector has been affected by the pandemic and its potential consequences because of the long-standing human rights issues this sector is grappling with (Aizawa and Tripathi, 2016; Kara, 2019).

The pandemic has hit businesses in the industry's value chains as consumers cut back on their non-essential shopping during the government-enforced lockdowns. Although the majority of businesses have been affected, in particular those businesses in developing and emerging economies and those in the belly of the supply chain have felt the impact. They have been hit by shifts in supply and demand and by local government restrictions.

When China closed its economy in the beginning of 2020 to prevent the spread of COVID-19 during and after the Chinese New Year, manufacturers around the globe were cut off from Chinese supplies. As the world's largest manufacturer and exporter, China is tightly linked into GVCs at various stages. Businesses dependent on inputs from Chinese suppliers had to slow or stop production and lay off workers. As a consequence, suppliers reported that they faced penalties from international brands for delayed deliveries. The International Labour Organization (ILO) (2020) reports that Viet Nam is likely to incur losses in the order of US\$2 billion because of material shortages.

In response to the economic lockdown of the European and American markets, some international fashion brands and retailers have established support mechanisms for their global suppliers to jointly find a way through the crisis (Tripathi, 2020). Others have revisited their contracts with overseas suppliers. Claiming force majeure, they requested that contracts be cancelled, and delivery and payments be delayed, and/or significantly discounted (Worker Rights Consortium, 2020). The result is that worldwide, on average, orders are down by an estimated 42 per cent and expected revenues for 2020 are down by 32 per cent, according to an industry survey by the International Textile Manufacturers Federation (2020). There is likely to be strong variation by country as, by one estimate, orders in Myanmar were down by 70 per cent and in Bangladesh by 80 per cent, while Sri Lanka was estimated to have lost US\$5 billion worth of orders by the end of June 2020 (ILO, 2020; Kelly and Ahmed, 2020). These estimates are reflected in the claims by the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) that 1,150 factories

reported that orders for ready-made garments worth US\$3.2 billion had been either cancelled or suspended by the end of April 2020, affecting 2.3 million workers (BGMEA, 2020).

The global suppliers in the fashion industry are facing a third pressure. Although revenues have dropped sharply and produced goods cannot be sold, they have to pay loans and local taxes which they struggle to serve. Making factories and operations compliant with new physical distancing measures and hygiene standards has been estimated to increase production costs by 25 per cent. Offsetting this increase with higher sales is likely to be challenging because factories cannot operate at full capacity and the market currently has an oversupply of produced goods which suppresses prices. The price effect of oversupply is felt across the whole value chain through to raw materials.

The consequences of being squeezed from the supply and demand side as well as the domestic lockdown are evident across economies that have significant fashion and textile production, from Mexico to Honduras, to Eastern Europe and Turkey, to Bangladesh and India (Freeman, 2020). But they are of particular significance for economies that are highly dependent on the fashion and textile sector for their economic development and employment. In Bangladesh, for example, the ready-made garment industry exported goods worth US\$40.5 billion in 2019, which was about 84 per cent of Bangladesh's total exports (ILO, 2020). In Cambodia, the textile industry provides employment for about 850,000 people, accounts for 78 per cent of the country's merchandise exports and contributes US\$7 billion to the economy. Here, the textile industry is the second largest employer after agriculture, as in India, where the pandemic has been estimated to have led to the loss of 10-15 percent of jobs in the industry (ILO, 2020).

The economic pressures that suppliers face are likely to lead to company closures and redundancies. This can put downward pressure on workers. Recent reports suggest that female workers in Cambodia already find it difficult to get back into employment or retain their jobs as there is an oversupply of workers and they may not be paid regularly (Blomberg and Dara, 2020). The shortage of jobs increases the possibility of exploitation of both job seekers and those who have been fortunate in securing employment. This may become particularly acute for those domestic and overseas migrants who rely on recruitment agencies and brokers (Dickson and Warren, 2020). The deterioration of working conditions may increase the likelihood of migrants becoming vulnerable to modern slavery and having to work under poorer health and safety standards. This development would make working conditions even more precarious than they already are, which are among the most vulnerable to modern slavery (Walk Free Foundation, 2018). The extent to which the pandemic may spur a race to the bottom and roll back improvements in workers'

rights and conditions that have been achieved over the last years will depend on the effectiveness of international business policies in regulating and encouraging responsible business conduct and policies that govern GVCs.

3. Frameworks to regulate business conduct

The global frameworks to guide and regulate TNCs have evolved significantly over the last two decades through the provision of supranational agreements, the creation of national legislation with a global reach, and voluntary actions by industries. The COVID-19 pandemic is an unprecedented stress test for frameworks and legislations at the supranational and national levels that regulate and encourage responsible business conduct. The frameworks will prove their worth to the degree that TNCs follow their letter and spirit in times of crisis.

An overarching framework for business conduct is provided by the SDGs and the UN Guiding Principles on Business and Human Rights. The SDGs set out 17 goals and 169 targets to achieve economic and social prosperity while protecting the environment. The wide range of SDG targets means that the targets do not always reinforce each other and that it is challenging to define and agree on a rank order of SDGs that should be prioritized (Nilsson et al., 2018; UNCTAD, 2018; van Zanten and van Tulder, 2020). TNCs can play a significant role in achieving SDGs through a (re)calibration of their own business conduct and by reinforcing positive linkages between SDGs and mitigating the effects of negative linkages (Kolk et al., 2017; Schönherr et al., 2017; Zagelmeyer and Sinkovics, 2019). Within the current context, of particular interest are those SDGs that are directly affected by the pandemic and, building on the industry example introduced earlier, relate to fashion and textile GVCs. Participation in fashion and textile GVCs can support economic productivity (SDG 8) and gender equality (SDG 5), and can provide opportunities to achieve income and social equalities (SDG 10). GVC participation is, however, no panacea for achieving the SDGs. One particular long-standing human rights concern for TNCs in this sector is SDG 8.7, which aims to eradicate modern slavery, forced labour and child labour (Walk Free Foundation, 2018). It has been argued that the current global economic structure and the way GVCs are governed by TNCs have contributed to the challenges of modern slavery in the first place (Phillips, 2013; Phillips and Mieres, 2015). TNCs have fine-sliced and outsourced operations to developing economies for operational flexibility and economics gains (Buckley, 2009b). Yet that takes advantage of an abundance of low-skilled, low-cost labour and governments that may have limited and/or poorly enforced labour regulations. It also puts pressure on suppliers to use informal and unregulated sub-suppliers (Narula, 2020). The current developments in the fashion and textile industries outlined here suggest that vulnerabilities to modern slavery

will increase. Workers have been laid off and migrant workers have returned to their home villages. They are likely to re-engage with recruitment agencies to find employment with the threat of debt bondage (Kara, 2017). Remaining workers are competing for fewer jobs, which makes them more vulnerable to be exploited. As these developments unfold, not only will it become harder to achieve the SDGs, it will also become more difficult for TNCs to operate within the boundaries of the UN Guiding Principles on Business and Human Rights.

The UN Guiding Principles on Business and Human Rights (UNGPs) (UN, 2011) established principles for how states and businesses should individually and jointly ensure that internationally recognized human rights are protected. The agreement of the UNGPs and their endorsement by states, businesses and non-governmental organizations alike was hailed as a milestone for having established a foundation to collaboratively respect human rights and for having clarified how businesses must engage with and contribute to the human rights agenda (Feasley, 2016; Ruggie, 2014). To achieve this and establish where the boundaries between state and corporate responsibilities are, the UNGPs include a set of non-binding principles that encompass how businesses of any size should operate to respect human rights obligations. The first business-focused foundational principle, Principle 11, states that “Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.” (UN, 2011: 13). It follows from here in Principle 13 that “The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” (UN, 2011: 14). The provisions in Principle 13 clarify that the responsibilities extend across a firm’s global supply chain. TNCs that have unilaterally cancelled or postponed contracts with global suppliers and thereby contributed to the closure of these manufacturers and the subsequent increase in vulnerability to modern slavery of workers have therefore contributed to adverse human rights impacts that are directly linked to their operations. Their pandemic responses are in conflict with the UNGPs.

Implementation and operationalization of the UNGPs for businesses have taken place at the supranational, national and firm levels. At the supranational level, the Organisation for Economic Cooperation and Development (OECD) has adopted and incorporated them into its “OECD Guidelines for Multinational Enterprises” (OECD, 2011) and in sector-specific human rights due diligence guidance such as those for the garment and footwear sector (e.g., OECD, 2013). Both reemphasize the importance of respecting human rights across all business operations (OECD, 2020).

Interlinked with the UNGPs and SDGs is recent national legislation that targets human rights abuses and responsible business conduct. Building on the objectives embedded in the UNGPs and the SDGs, legislation such as the United Kingdom Modern Slavery Act 2015 and the Australian Modern Slavery Act 2018 oblige businesses with turnover of more than £36 million or AUS\$100 million, respectively, to investigate their supply chains for any modern slavery incidences, address cases of modern slavery and mitigate their likely future occurrence. The progress that businesses make in reducing cases and vulnerabilities to modern slavery are to be published annually. Underpinning these Acts is the assumption that it is the responsibility of the TNC to ensure that along its value chain it has the responsibility and oversight authority to address human rights abuses (Enderwick, 2018). In principle, these Acts should therefore support safeguarding workers of suppliers and provide them with mechanisms to voice and share mistreatment. And in best-case scenarios it can lead to a trickling down of good working standards (Malesky and Mosley, 2018; Narula, 2019). Acts like the United Kingdom Modern Slavery Act are of particular importance now that the pandemic is seriously disrupting GVCs.

Although some businesses have embraced modern slavery legislation and consider it as part of their responsible business conduct, research into the reach and effectiveness of the United Kingdom Modern Slavery Act before the pandemic has found the Act to be underdeveloped along various dimensions and thus stifling its potential now, when it is needed most. The Act has been found to be too vague in its definition of what constitutes a value chain for businesses. Referring to “what is normally understood” as the supply chain allows individual sectors and businesses to define the scope of the supply chain they consider relevant for their operations (Voss et al., 2019), leading to approaches by businesses that are difficult to compare within and between sectors. In current times, the weak definition of the United Kingdom Modern Slavery Act allows TNCs to neglect the human rights impact their business conduct has on suppliers beyond those with whom they enjoy a contractual relationship. They can claim that because of the contractual relationship these are their ultimate suppliers and work with them to cushion the impact of the pandemic. Lower-tier suppliers, however, are also part of a TNC’s GVC and thus also affected by the cancellation and suspension of contracts. Yet how this translates into greater vulnerabilities to modern slavery is not a concern to the TNC if it defines its supply chain very narrowly. The implication is that the well-intended United Kingdom legislation to improve global business conduct and address modern slavery falls short because of insufficiently specified terminology.

The definitional challenges raise a related challenge. It has highlighted that TNCs lack transparency about their supply chains. TNCs therefore struggle to generate the positive trickle-down effect of standards and oversight beyond direct suppliers (Narula, 2019). According to Fashion Revolution (2020), less than half of surveyed fashion companies are publishing their first-tier suppliers, less than a quarter report

on suppliers farther down the chain and less than a tenth reveal the origins of their raw materials. Any informal and unregulated sub-suppliers are not captured (Narula, 2020). The consequence is a lack of transparency about how GVCs are organized and where modern slavery and human rights violations might occur. The fine-slicing of operations and the flexible reallocation of tasks to suppliers is contributing to the fluidity of the value chain, making it difficult to report on a full supply chain. Yet, to understand if and how the TNC's operations are aligned with the UNGPs, support the achievement of the SDGs and comply with national legislation requires a public understanding of how the network is structured and how TNC operations affect it.

A further shortcoming of current legislation on modern slavery is its lack of reporting standards. A large share of businesses that operate in the United Kingdom and are legally obliged to report do not do so. Those reports that have been made available often lack specific steps taken to identify and address modern slavery and they hardly quantify incidences of modern slavery in the supply chain (Voss et al., 2019). The economic consequences of the pandemic and the TNCs' responses to it will probably increase the likelihood of modern slavery. Companies that comply with the letter and spirit of the law should therefore reflect in forthcoming reporting periods on the extent to which modern slavery has increased in their supply chain and disclose the degree to which their own actions may have contributed to it. This should also include a discussion of the positive actions they may have taken to support global suppliers and their workers in difficult times and a reflection on the effectiveness or lack thereof of these actions. Such reports would contribute greatly to the much-needed transparency about modern slavery and corporate actions and shed some light on activities that are not effective in preventing modern slavery. Considering, however, both the brief history of modern slavery reports and the dilemma that firms may face when reporting bluntly about the increased vulnerabilities to modern slavery in their supply chains, suggests that the forthcoming modern slavery reports will mainly remain generic, lacking detail and specifics about modern slavery and the particular impact the pandemic has had. Such a lack of engagement with the impact in future reporting should indicate to policymakers in the United Kingdom, and legislators who follow the United Kingdom model, that the legislation requires clearer and more transparent reporting instructions and enforcement mechanisms for these requirements.

The multi-level regulatory framework to guide and manage the business conduct of TNCs is being thoroughly tested by the COVID-19 pandemic. Responses by TNCs, as illustrated here for the fashion and textile industry, that have been argued to be too self-centred and ignore the plight of and socioeconomic impact on businesses and workers in their supply chains may illustrate that the UNGPs and related guidelines and laws are neither strong nor enforceable enough. This may hasten the conclusion of the legally binding treaty on TNCs and human rights that has

been under development since 2014. If a binding treaty were to materialize, then it would have been prompted by the magnitude of the impact caused by the contract cancellations and suspensions by TNCs.

4. GVC policies

The current policy environment is dominated by short-term adaptation to the pandemic and its socioeconomic implications. In the longer term, international business policies concerned with GVCs should be revisited to consider mitigating strategies that reduce the impact of future disruptions, including potential future pandemics (Fan, Jamison and Summers, 2018), and embrace human rights and modern slavery concerns. Participation in GVCs will continue to play an important role for the socioeconomic development of countries (Enderwick and Buckley, 2020) as greater nationalism and attempts to become more self-reliant will not bring the same economic benefits for a wide range of the populace (Baldwin and Evenett, 2020). Yet, this participation should not come at the expense of human rights.

UNCTAD (2013) summarizes the contributions that participating in GVCs brings to the socioeconomic development of a country by emphasizing the potential for generating domestic jobs and thus income, improving social and environmental standards, and upgrading technological and managerial skills through the transfer of technology. These potential gains are achievable if and when the country aligns its industrial policy to the GVCs it seeks to participate in, establishes an environment that allows domestic businesses to participate in and benefit from GVCs, and reduces risk from GVC participation. The risks of GVC participation have become very visible during the COVID-19 pandemic at both country and firm level. At the firm level, the unbalanced power relationship between TNCs and suppliers illustrated by unilateral cancellations and suspension of contracts has exposed the latter, with limited opportunity to engage in a negotiated process that could be mutually beneficial. With limited options to continue operations, suppliers are closing down and leave their workers vulnerable to exploitation. At the country level, it has exposed industry policies that are too aligned with a narrow band of GVCs. Countries such as Bangladesh and Cambodia are highly dependent on fashion and textile GVCs. Shifts in demand and/or supply leave these economies vulnerable, as few other means of employment and economic development are readily available.

GVC targeting policies should therefore aim to allow a broader base of domestic businesses to evolve and participate in diversified GVCs. At the same time, the economic development imperative that underpins GVC participants should be complemented by a stronger integration of the UNGPs and SDGs. Their integration

would require TNCs to seek an engagement and collaboration with domestic businesses that aims to achieve broader socioeconomic objectives, mitigates adverse human rights impacts and can thus achieve inclusive development that is supportive of the policy recommendations by UNCTAD (2020).

Policy adjustments have to be considered in light of possible post-pandemic “new normal” scenarios. Although COVID-19 has not been contained, future disruptions to global supply chains are likely through local and regional lockdowns and the closure of businesses. TNCs will assess whether their current GVC configuration has provided them with the desired flexibility and resilience. Possible TNC responses include a greater push for automatization to ensure that production can continue with physical distancing. Consumption may continue to be suppressed by economic outlooks that forecast strong increases in unemployment for the foreseeable future. Policies are being considered that reflect on the extended period of reduced consumption of “non-essential” goods and how endorsing this consumption pattern could contribute to addressing climate change. A new normal under this scenario would mean that not all businesses in the fashion and textile industry will return to the levels of operation and employment seen in the pre-pandemic era. Preventing or mitigating adverse human rights impacts will be challenging when workers are compelled to accept any available job regardless of how well it protects them. The outline of this possible scenario suggests that a diversification of the domestic economy, a participation in a broader range of GVCs and consideration of human rights implications are pertinent. It also highlights the challenges ahead for achieving the SDGs.

5. Conclusion

The COVID-19 pandemic has economic implications. Beyond short-term adaptation to contain and reverse the most negative impacts on economies, TNCs and their global value chains, the current crisis is an opportunity to reflect on international business policies and business models. At the policy level, the frameworks and policies at the disposal of governments to enable their economies to successfully participate in the global economy should aim to reduce dependencies on a narrow set of GVC activities. They should seek to steer the global economy and economic interactions towards greater incorporation of the SDGs and the recognition of the human rights implications of international business’s operations. Policy innovations and changes emerging from the pandemic should be seen as part of an overall effort to prepare for expected future pandemics (Fan et al., 2018).

For TNCs, reflecting on their conduct with businesses in their GVC should be in their self-interest. Working with and supporting first-tier suppliers and their respective networks enable TNCs to develop relationships that are built on trust

and mutual respect and are seen as sincere engagements in human rights and working conditions, among both suppliers and consumers. When markets rebound and demand picks up again, suppliers that have been financially and operationally supported during the pandemic will be ready to supply the TNC. Abandonment of suppliers through the cancellation or suspension of contracts, in contrast, is likely to have negative short- and long-term effects. Suppliers that have closed operations or reduced capacity may face labour shortages if (migrant) workers do not return as is customary. Business owners themselves may consider leaving the sector or reconsider their relationship with the overseas buyer. These positive and negative reinforcements of buyer-supplier relationships will be amplified as long as the COVID-19 pandemic is felt economically and will leave their imprint on modern slavery and human rights trends in GVCs. International business policies can play an important role to support the positive reinforcements and mitigate adverse human rights implications.

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