



FACULTY OF LAW
Lund University

Kenneth William Munro Cameron

Protecting Labour Rights Within the Global
Supply Chain Through Trade Agreements
While Avoiding Protectionism

JAMM07 Master Thesis

International Human Rights Law
30 higher education credits

Supervisor: Lee Swepston

Term: Spring 2017

Abstract

Severe human rights abuses have been associated with globalisation. This paper explores the link between the aforementioned with a focus on some of the most severe impacts on workers within global supply chains – predominantly focusing on child labour and forced labour – and how trade agreements could help to lessen the blow, while at the same time avoiding protectionism. There will be a focus on impacted workers in supply chains, particularly within the extractive industry.

The introduction will provide context, describe the problem and its significance, and suggest what can potentially be done about it, before background is given in order to set the scene. Next, severe labour rights abuses within the global supply chain – in areas such as mining, agriculture, and fishery – will be analysed. Labour provisions currently within trade agreements will then be presented before the existing relevant legal framework (both international and domestic) as well as initiatives and their potential inclusion within trade agreements – in order to protect some of the most fundamental labour rights – is examined. This will be followed by a conclusion.

Keywords: Labour Rights; Child Labour; Forced Labour; Trade Agreements; Protectionism; Initiatives; Labour Provisions.

Acknowledgements

I would first like to thank my supervisor, Lee Swepston. His guidance, experience, and knowledge have been invaluable not just during the writing of this thesis, but throughout the Master's programme. Lee always replied swiftly and comprehensively to any queries I had, and I could not be happier with my choice of supervisor.

I am also extremely thankful to Constance Thomas whose contributions to my education have been instrumental. Lee and Constance's enjoyable and informative lectures were definitely a factor in my choice to focus on international labour rights in this paper. Their experiences during their time with the ILO added a pragmatic element to lectures that did not go unnoticed.

I must also acknowledge all of the lecturers on the International Human Rights Master's Programme – a number of whom I was fortunate enough to call colleagues during my time as an intern at the Raoul Wallenberg Institute – especially professors Karol Nowak, Alejandro Fuentes, Radu Mares, and Mark Gibney.

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Table of Abbreviations

AGOA	African Growth and Opportunity Act
ASM	Artisanal and Small-scale Mining
ATPA	Andean Trade Preferences Act
BCI	Better Cotton Initiative
C029	Forced Labour Convention
C087	Freedom of Association and Protection of the Right to Organise Convention
C098	Right to Organise and Collective Bargaining Convention
C100	Equal Remuneration Convention
C105	Abolition of Forced Labour Convention
C111	Discrimination (Employment and Occupation) Convention
C138	Minimum Age Convention
C155	Occupational Safety and Health Convention
C161	Occupational Health Services Convention
C182	Worst Forms of Child Labour Convention
C187	Promotional Framework for Occupational Safety and

	Health Convention
CAFTA-DR	Dominican Republic-Central America Free Trade Agreement
CAR	Central African Republic
CARICOM	Caribbean Community
CBI	Caribbean Basin Initiative
CCCMC	Chinese Chamber of Commerce of Metals, Minerals and Chemicals Imports and Exporters
CDTA	Clean Diamond Trade Act
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFA	Committee on Freedom of Association
CFSI	Conflict-Free Sourcing Initiative
CFSP	Conflict-Free Smelter Program;
CFTI	Conflict-Free Tin Program;
CMW	Committee on Migrant Workers
CoC	Responsible Jewellery Council's Chain of Custody

Certification

CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
DMCC	Dubai Multi/Commodities Center's Responsible Sourcing of Precious Metals
DRC	Democratic Republic of the Congo
EBA	Everything But Arms
EITI	Extractive Industry Transparency Initiative
EPFIs	Equator Principles Financial Institutions
EU	European Union
EU-ACP	European Union-African Caribbean and Pacific Trade Agreement
EU-Cariforum	European Union-Caribbean Forum Trade Agreement
FiTI	Fisheries Transparency Initiative
FLA	Fair Labour Association
GATT	General Agreement on Tariffs and Trade 1986
GSP	Generalized System of Preferences (GSP)

GSP+	Generalized System of Preferences Plus
HOPE	Haitian Hemispheric Opportunity through Partnership Encouragement
HRCA	Human Rights Compliance Assessment
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICGLR	International Conference on the Great Lakes Region
IFC	International Finance Corporation
IGO	Intergovernmental Organization
IAs	International Investment Arrangements
ILO	International Labour Organization
ILO-IPEC	International Labour Organization - International Programme on the Elimination of Child Labour
ISDS	Investor-State Dispute Settlements
ITRI	The International Tin Research Industry

iTSCi	ITRI Supply Chain Initiative
KP	Kimberly Process
KPCS	Kimberley Process Certification Scheme
LBMA	London Bullion Market Association's Responsible Gold Program
LDCs	Least Developed Countries
MNEs	Multinational Enterprises
MNE Declaration	Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
NAALC	North American Agreement on Labour Cooperation
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
NIOSH	National Institute for Occupational Safety and Health
OECD	The Organisation for Economic Co-operation and Development
OSH	Occupational Safety and Health
OTLA	Office of Trade and Labour Affairs
P029	Protocol of 2014 to the Forced Labour Convention

R190	Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
R203	Forced Labour (Supplementary Measures) Recommendation
R204	Recommendation Concerning the Transition from the Informal to the Formal Economy
RINR	Regional Initiative against the Illegal Exploitation of Natural Resources
RJC	Responsible Jewellery Council
RSPO	Roundtable of Sustainable Palm Oil
SEC	Securities and Exchange Commission
SfH	Solutions for Hope
TAATC	Trade Agreement Administration and Technical Cooperation
TPP	Trans-Pacific Partnership Agreement
TSIAs	Trade Sustainable Impact Assessments
TTIP	Transatlantic Trade and Investor Partnership
UK	United Kingdom
UN	United Nations

UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNGP	United Nations Guiding Principles on Business and Human Rights
US/USA	United States/United States of America
USTR	Office of the United States Trade Representatives
WTO	World Trade Organization
WWI	World War One

I) Introduction

a) The Context: Globalisation, Trade, Workers' Rights, and Severe Human Rights Abuses within Supply Chains

The world is becoming smaller, with globalisation and trade opening the door to the global economy for an abundance of goods and services, and – as a result of this – millions of workers. In recent times, globalisation and trade have been heavily influential. Moving resources can increase business efficiency and lead to gains from trade. It allows for expansion so that goods and services can reach the global market. Many supply chain workers are in industries that have expanded due to globalisation, with a large number of industries now heavily reliant on trade with other countries. As demand has increased so has pressure to supply and, with it, the number of workers needed. This means that there are now more potential victims within supply chains than ever before.

Both the World Trade Organization (WTO) and the International Labour Organization (ILO) have stated that trade can improve global welfare and increase employment.¹ The 2030 Agenda for Sustainable Development has also held international trade to be a global benefit, pushing economic growth and reducing poverty.² Some of the positive impacts include increased employment opportunities (globalisation has been linked to both job destruction and job creation, however it is expected to create more jobs overall), decreased overall poverty, imported goods costing less,³ and lower-cost goods in general. There is also the advantage of consumers having a greater choice. However, there are negative impacts linked to globalisation, which include job losses in certain sectors of the economy, an increase in work within the informal sector and atypical

¹ Marion Jansen and Eddy Lee (n 1).

² The International Labour Office, 'Labour-Related Provisions in Trade Agreements: Recent Trends and Relevance to the ILO' (International Labour Organization, 2016) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_530526.pdf> accessed 15 March.

³ Ibid.

forms of employment, income inequality,⁴ and – as will be discussed – links to severe human rights abuses occurring within the supply chains of industries synonymous with trade, such as agriculture and mining.

Abuses within supply chains that have a link to trade and globalisation have impacted upon workers' rights as well as other related human rights. It can be strongly argued that these two categories of labour and human rights are interrelated. For example, looking at the fundamental labour rights as per the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up,⁵ it would be difficult to argue that the rights listed are not an important part of the human rights picture.

This paper does not argue that trade and globalisation are the root causes of human rights abuses, but seeks to substantiate the claim that within the supply chains through which goods and services are traded globally, human rights abuses are occurring, and more can be done to tackle these abuses. The paper will show more of a focus on child and forced labour, particularly at the early stages of the supply chain. However, other rights contained within the international labour rights framework (including those within aforementioned declaration) will also be covered.

b) The Problem and Significance

There is estimated to be over 450 million people working within the global supply chain.⁶ Many workers within the supply chain are without a voice and have no way of seeking remedy or resolving having their rights violated. NGO, Human Rights Watch has reported that these groups include child labourers as well as migrant workers,

⁴ Ibid.

⁵ The International Labour Organization, 'ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up' (1998) (annex revised 2010) <http://www.ilo.org/declaration/info/publications/WCMS_467653/lang--en/index.htm> accessed 15 March 2017.

⁶ International Labour Organization, 'World Employment and Social Outlook: The Changing Nature of Jobs' (2015) <http://www.ilo.org/global/research/global-reports/weso/2015-changing-nature-of-jobs/WCMS_368626/lang--en/index.htm> accessed 15 March 2017.

women workers, and those who live in poor urban areas and rural areas.⁷ The ILO estimates that around 21 million people – adults and children – are in forced labour.⁸ The majority of the aforementioned occurs within Asia, but the statistic is without prejudice. Forced labour is found across the globe, with the goods produced and services provided being linked to the global supply chain on many occasions.

Natural resources in resource rich countries make their way into the global market and are used to produce a number of everyday products, with consumers likely to be unaware of whether the products they use have a tainted history behind them. There are luxurious benefits being received by some, while others are left to suffer: While a child miner is working in slavery in the Congo to source cobalt, a phone containing the same natural resource – potentially from the same mine and acquired through the same means – is being purchased in Stockholm. This is a failure of law and society, and there have been arguments that trade regulation as well as international and domestic law in their current forms have been inefficient, insufficient, and at times misdirected. While the benefits of globalisation are evident, many workers are being left behind in certain industries, and better protection must be offered to those most severely impacted. The severity of the circumstances that will be discussed should indicate that these are issues the international community cannot turn its back on.

Taking the example of the trade in minerals, it can be seen that there have been occasions where trade has been linked to encouraging and funding conflict within conflict regions, and the financing of militias. NGO, Global Witness reported that – in the eastern section of the Democratic Republic of Congo – both militias and the national army have been involved in the trade of gold, tin, tungsten, and tantalum, which has allegedly assisted 15 years of war through its financial gain.⁹ Global Witness further held that around 2.4 million people in the region have been displaced due to this on-

⁷ Human Rights Watch, 'Human Rights in Supply Chains' (30 May 2016) <<https://www.hrw.org/report/2016/05/30/human-rights-supply-chains/call-binding-global-standard-due-diligence>> accessed 16 March 2017.

⁸ International Labour Organization, 'New ILO Global Estimate of Forced Labour: 20.9 Million Victims' <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang--en/index.htm> accessed 22 March 2017.

⁹ Global Witness, 'Conflict Minerals in East Congo' (2 March 2015) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-eastern-congo/>> accessed 18 March 2017.

going conflict that is, in large part, funded by the trade of the aforementioned minerals.¹⁰

A recent civil society paper further suggested that that similar events have occurred in Colombia, with between 4.7 and 5.7 million people being internally displaced, and armed groups being involved in the trade of tantalum, wolframite, coal, and gold.¹¹ Although natural resources are not the foundation of the violence within these regions, many believe that their worth and trade has become something of an incentive for the parties to continue their activities.¹² Of course, this problem is not exclusive to the Congo and Colombia, with other countries experiencing similar issues.

i) Child Labour

Although it has been reported that as little as 5% of child labour is linked to global markets, it has also been held that this figure is greatly understated, especially when agriculture is taken into consideration.¹³ However, if this figure is correct, it can be argued that this is not a cause for celebration, and that 5% should – if possible – be reduced to zero. If it can be cut further, it should be, and target 8.7 of the UN Sustainable Development Goals supports this position, aiming to “eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms”.¹⁴

Child labour is defined by the ILO as “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental

¹⁰ Ibid.

¹¹ Global Witness, ‘Breaking the Links between Natural Resources and Conflict: The Case for EU Regulation’ (2013) <https://www.globalwitness.org/documents/18059/Breaking_the_Links_-_Joint_NGO_Position_Paper_ENG.pdf> accessed 3 March.

¹² ‘Conflict Minerals in East Congo’ (n 9).

¹³ The International Labour Organization and Ministry of Social Affairs and Employment of the Netherlands, ‘The Hague Global Child Labour Conference: Towards a World without Child Labour Mapping the Road to 2016’ (2010) <<http://ilo.org/ipecc/campaignandadvocacy/globalchildlabourconference/lang--en/index.htm>> accessed 3 March 2017.

¹⁴ United Nations General Assembly, ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (2015) <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 3 March 2017.

development”.¹⁵ The ILO further states work that does not impact a child’s schooling, health, or development such as helping parents for pocket money can be positive. Child labour is work that: “is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work”.¹⁶ Whether or not a particular type of work can be classed as child labour depends on a range of factors including age, type of work, hours of work, conditions, objectives, and also country. Different countries and sectors have different standards regarding child labour.¹⁷ ILO Convention 138 (C138)¹⁸ on the minimum age for admission to employment and work sets the age at which children can work in each of the ratifying states.¹⁹

The extreme manifestations of child labour include slavery, separation from family, exposure to serious hazards, illness and being left on the streets of cities without support. The worst forms of child labour are covered under the ILO’s Convention 182 (C182).²⁰ They are defined as harming the health, safety and morals of children. It is held to be work that occurs within hazardous environments and/or that impacts schooling. The hazardous aspect relates to work performed in dangerous and unhealthy conditions that could potentially lead to a child’s death, injury or illness as a result of insufficient employment conditions or health and safety standards. The worst forms of child labour are predominantly – but not exclusively – found within the category of hazardous child labour, with around 115 million children between 5 and 17 estimated to be working in dangerous conditions²¹ across a number of sectors including mining,

¹⁵ International Labour Organization, ‘What Is Child Labour (IPEC)’ <<http://ilo.org/ipec/facts/lang-en/index.htm>> accessed 3 March 2017.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ The International Labour Organization, Minimum Age Convention, 1973 (No. 138) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138> accessed 1 May 2017.

¹⁹ The International Labour Organization, ‘Ratifications of ILO Conventions: Ratifications by Convention’ <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO> accessed 1 May 2017.

²⁰ International Labour Organization, Worst Forms of Child Labour Convention, 1999 (No. 182) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182> accessed 21 March 2017.

²¹ International Labour Organization, ‘Occupational Safety and Health (OSH)’ <http://www.ilo.org/asia/WCMS_224121/lang--en/index.htm> accessed 21 March 2017.

agriculture, manufacturing, fisheries, construction, hospitality, domestic services and also service industries.²² It is within Article 3 of C182 that the worst forms of child labour are defined:

“Whilst child labour takes many different forms, a priority is to eliminate without delay the worst forms of child labour as defined by Article 3 of ILO Convention No. 182:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children”.²³

Article 4 of the abovementioned convention requires governments themselves to make a positive contribution to the identification of hazardous forms of child labour that exist in their country, redoubling the commitment sought by the Convention. Furthermore, Recommendation No.190 (R190) gives guidance to governments on activities that should be prohibited in relation to article 3(d) of C182.²⁴

ii) Forced Labour

The ILO defines forced labour in Convention 29 (C029), Article 2(1) as “All work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.²⁵ This could occur as a result of violence, intimidation, manipulated debt or debt bondage, retaining of passports, or

²² International Labour Organization, ‘Hazardous Child Labour’ <http://www.ilo.org/asia/WCMS_224118/lang--en/index.htm> accessed 21 March 2017.

²³ ‘What Is Child Labour (IPEC)’ (n 15).

²⁴ International Labour Organization, Worst Forms of Child Labour Recommendation, 1999 <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:SUP,en,R190,/Document> accessed 21 March.

²⁵ International Labour Organization, Forced Labour Convention, 1930 (No. 29) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029> accessed 21 March 2017.

threatening to inform immigration authorities in the case of non-nationals.²⁶ Child labour and forced labour inevitably cross over, which is alluded to by the article's use of the term "any person". The Convention also includes exceptions within Article 2(2), namely compulsory military service, prison labour, normal civic obligations, work in emergency situations, and minor communal services within the community.²⁷

Almost 30 years after C029, the ILO adopted Convention 105 (C105) on the Abolition of Forced Labour.²⁸ This Convention – inter alia – seeks to tackle forced labour that has been inflicted by state authorities in particular. Both C029 and C105 have received almost universal ratification, and were further supported through the Protocol of 2014 to the Forced Labour Convention (P029);²⁹ and the Forced Labour (Supplementary Measures) Recommendation, 2014 (R203)³⁰, which supplement, complement, and offer guidance on prevention, protection and remedy in regard to C029 and C105.³¹ Sectors most at risk of experiencing forced labour include agriculture, forestry and logging, garments and textiles, and construction, all of which are heavily linked to trade and globalisation.³² It should also be noted that forced labour is heavily linked to trafficking, which is not covered in detail within this paper, but should nonetheless be considered, as if forced labour can be tackled effectively a potential fall in trafficking should not be ruled out.

²⁶ Beate Andrees and Aurélie Hauchère Vuong, 'Eradicating Forced Labour from Supply Chains', (October 2011) <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/meetingdocument/wcms_322422.pdf> accessed 21 March.

²⁷ Forced Labour Convention (n 25).

²⁸ International Labour Organization, Abolition of Forced Labour Convention, 1957 (No. 105) <http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105> accessed 1 May 2017.

²⁹ International Labour Organization, Protocol of 2014 to the Forced Labour Convention, 1930 (P029) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029> accessed 1 May 2017.

³⁰ International Labour Organization, Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3174688> accessed 1 May 2017.

³¹ International Labour Organization, 'What Is Forced Labour, Modern Slavery and Human Trafficking (Forced Labour, Modern Slavery and Human Trafficking)' <<http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>> accessed 1 May 2017.

³² Andrees and Vuong (n 26).

c) The Response: Are Trade Agreements the Answer?

Whether in shape of minerals, seafood, timber, leather, or any other form, products that have been produced through immoral means should not be traded on the global market without question. If there is increased pressure on the trading of tainted goods, then it is likely that the supply of goods produced in this manner will fall, which could potentially lead to improvements in conditions. This is basic supply and demand. If the demand is for products produced without severe labour rights abuses within supply chains, then the supply will seek to meet that.

In any event, human rights abuses are likely to continue occurring in today's society, and unfortunately it would be unrealistic to believe that there is an easy solution to eradicate all abuses. However, it would be similarly naïve to assume that improvements cannot be made, that the stakeholders cannot do better, and that the current climate already does enough. Compared to the majority of issues within society, there is much less debate as to whether or not eradicating the most severe human rights abuses within supply chains is purely political tug-of-war, and existing consensus that these abuses must be addressed should be capitalised on. There is a structure in place – which includes hard law, soft law, initiatives, activism, and CSR – that can be built upon. This paper will explore some of the real-life situations in which severe abuses are occurring within supply chains, before analysing current labour provisions within trade agreements as well as key laws and initiatives within the aforementioned structure. It will suggest laws and initiatives that can – arguably – be reasonably entered into trade agreements. The goal of this thesis is to find potential improvements in order to benefit the most impacted global supply chain workers: To raise the floor, so to speak.

II) Background

a) Labour Rights

There is a strong argument that labour rights are where the human rights movement began, with there being a clear link between the earliest human rights movements and labour rights. Examples include the anti-slavery movement and the organising into guilds, and – subsequently – the establishing of trade unions in the 1700s.³³ Another example is the emergence of child labour laws that were adopted in some countries after the rise of industrialisation.³⁴

Initially, labour rights were largely a European development, with there being very little movement on the matter elsewhere until the end of the First World War (WWI). It has been reported that a third of the European population died of the plague in the fourteenth century, freeing workers who were previously bound to their feudal lords.³⁵ Their work became limited and they were able to sell their skills. Gradually releasing themselves from their feudal areas where they had been working, they became a part of commerce, forming associations to protect themselves. As previously mentioned, trade unions were being established by the 1700s, and this played a key role in the early part of the labour rights movement. They were often classed as criminal organisations with, for example, the United Kingdom's Combination Act 1799 holding that it was illegal to form trade unions and also outlawing collective bargaining.³⁶ However, as can be seen today, what started as criminalisation gradually led to acceptance.

³³ The National Archives, 'The Struggle for Democracy, Trade Unionism' <http://www.nationalarchives.gov.uk/pathways/citizenship/struggle_democracy/trade_unionism.htm> accessed 24 May 2017.

³⁴ Economic History Association 'Child Labor during the British Industrial Revolution' <<https://eh.net/encyclopedia/child-labor-during-the-british-industrial-revolution/>> accessed 24 May 2017.

³⁵ Britannica, 'Black Death: Causes, Facts, and Consequences' <<https://www.britannica.com/event/Black-Death>> accessed 24 May 2017.

³⁶ The Combination Act 1799 <<http://statutes.org.uk/site/the-statutes/nineteenth-century/1800-39-40-geo-iii-c-106-the-combination-act/>> accessed 24 May 2017.

Important labour rights developments took place in Scotland around 1799, when industrialist Robert Owen limited the hours of work for his employees. He believed that allowing workers to rest and spend time with their families would lead to an increase in productivity. His “eight hours labour, eight hours recreation, eight hours rest”³⁷ model proved to be more efficient than the norm at the time, with his productivity and profits increasing in comparison to his counterparts.³⁸ This was the beginning of a movement, as it showed that according labour rights is not only the morally correct position to hold from a rights perspective, but it is also economically efficient.

Labour rights were also interweaving with other social developments. Later in the 1800s, the UK started to introduce laws³⁹ on child labour and compulsory education as industrialisation continued.⁴⁰ Regulating labour within the national legal structure was rarely framed as protecting rights, but nevertheless amounted to the protection of rights. For example, the first child labour laws were implemented in 1839.⁴¹ Fredrik the Great of Prussia wanted to produce taller soldiers, and children who worked were more akin to growing up stunted and small. He therefore prohibited and regulated child labour, while also implementing compulsory education in Prussia.⁴² This was done from a purely utilitarian point of view.

It can be strongly contended that slavery was the first major human rights subject, and this is – self-evidently – a subject within the labour field. The Congress of Vienna was called in 1815 in order to settle the Napoleonic Wars.⁴³ The congress declared a prohibition of the slave trade, and the British Navy carried out the process of abolishing

³⁷ Leonhard Widrich, ‘The Origin of the 8 Hour Work Day and Why We Should Rethink It’, (Huffington Post, 22 Nov 2016) <http://www.huffingtonpost.com/leonhard-widrich/the-origin-of-the-8-hour-b_4524488.html> accessed 24 May 2017.

³⁸ Marjie Bloy, ‘Robert Owen and New Lanark’

<<http://www.historyhome.co.uk/peel/factmine/owennewl.htm>> accessed 24 May 2017.

³⁹ See the Factory Act (1833), the Mines Act (1842), the Factory Act (1878), and the Education Act (1880).

⁴⁰ The National Archives, ‘Citizenship, Struggle for democracy’

<http://www.nationalarchives.gov.uk/pathways/citizenship/struggle_democracy/childlabour.htm> accessed 24 May 2017.

⁴¹ Sandy Hobbs, Jim McKechnie, Michael Lavalette, ‘Child Labor: A World History Companion’ (1999) (ISBN: 0-87436-956-8).

⁴² Dieter Kastner, ‘Kinderarbeit im Rheinland: Entstehung und Wirkung des ersten preußischen Gesetzes gegen die Arbeit von Kindern in Fabriken von 1839’ (2004) (ISBN: 978-3-89498-129-7).

⁴³ Final Act of the Congress of Vienna/General Treaty (1815) <<http://www.dipublico.org/100513/final-act-of-the-congress-of-viennageneral-treaty-1815/>> accessed 24 May 2017.

it. By the 1830s, the slave trade had been abolished almost everywhere, but its abolition did not amount to slavery ending,⁴⁴ and the practice is still an issue today. In Mauritania, for example, the slave trade was rife up until its formal abolition in 1981, and the country still receives supervisory comments from the ILO and other international supervisory mechanisms.⁴⁵ It has been reported that up to 20% of the population of Mauritania are currently in slavery, with a similar percentage of the population being former slaves.⁴⁶ Universally, slavery has made its way into the present day with insidious forms such as debt bondage and trafficking of human beings now a great cause for concern.

Before the First World War, there were early attempts to establish international labour law. In Switzerland, conferences were convened in 1855 that led to the adoption of two international conventions on labour law in relation to night work for women in industry and match workers' use of white phosphorous.⁴⁷ The two conventions were adopted in 1906 by the International Association for the Legal Protection of Workers, a European phenomenon at the time.⁴⁸ The association negotiated a number of conventions for women and children, however many of the movements were obstructed with the break out of WWI.⁴⁹ Nevertheless, the British and German trade unions met together across warring lines with the shared notion that the Great War was a capitalist war, and that workers were paying the price for it.⁵⁰ This helped in forming an international consciousness among workers.

⁴⁴ The National Archives, 'Slavery' <<http://www.nationalarchives.gov.uk/education/resources/slavery/>> accessed 24 May 2017.

⁴⁵ The International Labour Organization, 'All Comments, Forced Labour Convention, 1930 (No. 29)' <http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:3241912> accessed 24 May 2017.

⁴⁶ John D. Sutter, 'Slavery's last stronghold' (CNN), <<http://edition.cnn.com/interactive/2012/03/world/mauritania.slaverys.last.stronghold/index.html>> accessed 24 May 2017; World Population Review, 'Mauritania Population (2017)' <<http://worldpopulationreview.com/countries/mauritania-population/>> accessed 24 May 2017.

⁴⁷ Lee Swepston, 'The Development in International Law of Articles 23 and 24 of the Universal Declaration of Human Rights: The Labor Rights Articles' (2014) (ISBN: 90-04-24455-7 978-90-04-24455-9).

⁴⁸ Charles Howard Ellis, 'The Origin, Structure & Working of the League of Nations' (2003) (ISBN: 1-58477-320-0).

⁴⁹ Swepston (n 47).

⁵⁰ Ibid.

There were trade union conferences in 1916 in both Leeds and Bern, which were followed by Russian Revolution in 1917.⁵¹ This impacted and intimidated western leaders, who came to the opinion that international labour legislation was to be a part of the peace talks.⁵² It was followed by the Paris Peace Conference, which resulted in the Treaty of Versailles.⁵³ In 1919, 31 states gathered, including the leaders of the war's victors: Wilson, George, and Clement. Germany was not invited, but was to sign the treaty without any options or negotiations.⁵⁴

Developing countries had not fully emerged, however the likes of Japan, Liberia (the only independent African country at the time), and some of the British colonies that were attaining independence such as India, South Africa and Australia were present, as were a number of Latin American countries.⁵⁵ The idea was that this conglomerate of nations would establish an order for world peace that had never been achieved before.⁵⁶ The result of this was the establishment of the League of Nations and the International Labour Organisation. The League of Nations had failed by 1939, but the ILO remained.⁵⁷ Today, the ILO – as a specialised agency of the United Nations (UN) system – is the predominant source of international labour law.⁵⁸

b) Trade and Globalisation

There are differing views⁵⁹ regarding the origins of globalisation, with the starting point of the process being a contentious subject. This is in large part due to the differing definitions of the term. A broad definition holds globalisation to be the “process of transformation of local phenomena into global ones... a process by which the people of the world are unified into a single society and function together”.⁶⁰ The potential

⁵¹ Bob Reinalda, 'Routledge History of International Organizations: From 1815 to the Present Day' (2009) (ISBN: 978-1-134-02405-6).

⁵² Swebston (n 47).

⁵³ Treaty of Versailles (1919) <<https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf>> accessed 14 April 2017.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Jean-Michel Servais, 'International Labour Law' (2011) (ISBN: 978-90-411-3805-7).

⁵⁷ Swebston (n 47).

⁵⁸ The International Labour Organization, 'About the ILO' <<http://www.ilo.org/global/about-the-ilo/lang-en/index.htm>> accessed 17 May 2017.

⁵⁹ Not all of which will be addressed in this paper.

⁶⁰ Peter N. Stearns, 'Globalization in World History' (2016) (ISBN: 978-1-317-20116-8).

starting point can be split into three overarching areas: much earlier than 1492; between 1492-1498; and the 19th century.⁶¹

If globalisation is to mean the first routes of migration, then it can be dated as far back as suggested. Trade began to take place across regions through goods such as spices, pepper, sugar, silk, gold, and horses. It has been recognised that trade networks were in place between most of Eurasia and sub-Saharan Africa before 1500, and that trade was occurring before 1350 through the pax Mongolica, where the Mongolian Empire's conquering of Europe and Asia stabilised the region.⁶² The Silk Road trade routes, for example – that connected trade between Asia and Europe – were formed under Mongolian rule.⁶³

Some, such as economic historian Andre Gunder Frank, argue that the single global world economy occurred “from 1500 onward”,⁶⁴ with globalisation also being attached to Christopher Columbus' search for spices and subsequent arrival in America, as well as the 1498 events surrounding Vasco de Gama's spice trading in Africa.⁶⁵ It is important to note that the 15th century saw trade not only in goods but also in people through the transatlantic slave trade. Other writers, such as James D. Tracy, claim that trade during the aforementioned periods has been overemphasised, and that global integration was poor before 1800.⁶⁶

c) Trade Agreements and Labour Standards

The time between 1947 and 1986 saw trade agreements become the foundation of international trade relations. In 1947, incorporating sections of the Havana Charter,⁶⁷

⁶¹ Kevin H O'Rourke and Jeffrey G Williamson, 'When Did Globalisation Begin?' (2002), 6 *European Review of Economic History* 23 <<https://academic.oup.com/ereh/article-abstract/6/1/23/540507/When-did-globalisation-begin?redirectedFrom=fulltext>> accessed 14 April 2017.

⁶² Janet L Abu-Lughod, 'Before European Hegemony: The World System A.D' (1991) (ISBN: 9780195067743).

⁶³ O'Rourke and Williamson (n 61).

⁶⁴ Andre Gunder Frank, 'ReORIENT: Global Economy in the Asian Age' (1998) (ISBN: 978-0-520-92131-3) <<http://www.jstor.org/stable/10.1525/j.ctt1ppvvd>> accessed 14 April 2017.

⁶⁵ Ibid.

⁶⁶ O'Rourke and Williamson (n 61).

⁶⁷ Havana Charter for an International Trade Organization (1948) <https://www.wto.org/english/docs_e/legal_e/havana_e.pdf> accessed 14 April 2017.

the General Agreement on Tariffs and Trade (GATT)⁶⁸ was negotiated, and came into force in 1948. The Havana Charter was the result of the United Nations Conference on Trade and Employment. It sought to establish a multilateral trade organisation, but was unsuccessful in its attempt. The GATT took the Chapter on Commercial Policy from the Havana Charter (when the Charter was pending) and translated it – with alternations – into the GATT.⁶⁹ Eight negotiating rounds followed under the GATT before the Uruguay Round took place in 1986, leading to the establishment of the WTO in 1995.⁷⁰

Even prior to the establishment of the WTO, part of the negotiations involved the discussion as to whether the organisation should form a committee to examine the relationship between trade and labour. This dialogue led to a split predominantly between developed and developing countries, with the latter arguing that support from the former for WTO enforcement regarding labour rights was a façade for protectionism: The shielding domestic industries from foreign competition through regulation. This was the prevailing argument, and it led to the Singapore Ministerial Declaration,⁷¹ which held that the ILO – and not the WTO – would oversee issues related to labour standards.⁷² WTO members agreed that they should be committed to labour standards, but that these standards should not be used for the purposes of protectionism. This was the less strict of the two potential approaches, as the ILO does not have an enforcement mechanism and works based on consensus, promotion of rights, and technical assistance.⁷³

The ILO and WTO secretariats collaborate on technical issues, however the subject of enforcement of labour standards is not an area where there is much room for agreement between organisations. WTO members are to adhere to narrower core standards, namely, no forced labour, no child labour, freedom of association, and no

⁶⁸ The General Agreement on Tariffs and Trade (1986)
<https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf> accessed 14 April 2017.

⁶⁹ World Trade Organization, ‘Pre-WTO Legal Texts’
<https://www.wto.org/english/docs_e/legal_e/prewto_legal_e.htm> accessed 14 April 2017.

⁷⁰ Ibid.

⁷¹ The World Trade Organization, ‘Singapore Ministerial Declaration’ (1996)
<https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm> accessed 14 April 2017.

⁷² Ibid.

⁷³ Ibid.

discrimination at work.⁷⁴ As the aforementioned Singapore Declaration held labour standards to be an issue for the ILO and not the WTO to oversee, the WTO plays no part in negotiating labour standards, and it is not a subject discussed by its Councils or Committees.⁷⁵ The subject of trade and labour standards has, however, been raised on a number of occasions within the WTO. This can be seen through both the 1999 Seattle Ministerial Conference,⁷⁶ which saw no consensus between members, and the 2001 Doha Ministerial Conference,⁷⁷ which reinforced the Singapore Declaration of 1996. Additionally, the issue was further acknowledged during the WTO Appellate Body Report concerning India and the European Communities in relation to developing countries and tariff preferences.⁷⁸

⁷⁴ World Trade Organization, 'Understanding the WTO - Labour Standards: Consensus, Coherence and Controversy' <https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm> accessed 13 April 2017.

⁷⁵ Ibid.

⁷⁶ World Trade Organization, Seattle Ministerial Conference (1999) <https://www.wto.org/english/thewto_e/minist_e/min99_e/min99_e.htm> accessed 14 April 2017.

⁷⁷ World Trade Organization, Doha Ministerial Conference (2001) <https://www.wto.org/english/thewto_e/minist_e/min01_e/min01_e.htm> accessed 14 April 2017.

⁷⁸ World Trade Organization, 'Conditions for the Granting of Tariff Preferences to Developing Countries' (European Communities, Report of the Appellant Body, Para. 182, 2004) <[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20wt/ds246/ab/r*%20not%20rw*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds246/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)> accessed 14 April 2017.

III) Labour Rights within the Supply Chain: An Unsolved Problem

The following chapter focuses on examples in which labour rights abuses are occurring within the global supply chain. The goal of this chapter is to convey the severity of the situation at hand regarding workers' rights within supply chains in order to give further context to the issue and show why it is an area that needs to be addressed. To achieve this, the chapter includes sections on the industries of agriculture (and the cotton trade in India); fisheries (exploring fishery exports in Thailand); forestry (and, more specifically, the trading in illegal logging and timber in CAR); and mining (with the infamous issue of minerals in the Congo being a focal point). There is then a section that homes in on hazardous industries linked to the global supply chain more specifically, where the mining industry is further discussed to reemphasise the dangers it entails. The aforementioned section also includes a discussion on the environment in relation to mining in Indonesia and tanneries in Bangladesh, as supply chain work has played a role in polluting inhabited land, where – in some cases – supply chain workers both work and live.

a) Agriculture

i) **Cotton**

The exploitation of children has been rife within India's cotton sector. India has had – within a number of sectors involving children – a lack health and safety procedures, and reports suggest that children are paid below the minimum wage.⁷⁹ It has also been claimed that some children have been kidnapped and put into forced labour,⁸⁰ and there have been cases of children being raped by their kidnappers.⁸¹ The government body overseeing children's rights within India has admitted to the country having out-of-date child labour laws in relation to prohibition and regulation regarding different sectors

⁷⁹ Humphrey Hawksley, 'India's Exploited Child Cotton Workers' (BBC News) <<http://www.bbc.co.uk/news/world-asia-16639391>> accessed 20 March 2017.

⁸⁰ Shilpa Kannan, 'Child Labour: India's Hidden Shame' (BBC News) <<http://www.bbc.co.uk/news/business-25947984>> accessed 20 March 2017.

⁸¹ Ibid.

and types of work. The law currently states that children below the age of fourteen should not partake in hazardous work, but there is no comment on children and non-hazardous work.⁸²

In India's cotton factories, girls as young as ten feed raw cotton into machines in a potentially dangerous process known as ginning. Many companies that use cotton within their products are unable to state where their cotton has been sourced, or whether child labour has been used.⁸³ In addition to India, cotton and child labour issues have occurred in many countries including Pakistan, Brazil, China, Turkey, and Uzbekistan.⁸⁴ Accusations of Uzbekistan using children to harvest cotton led to over 60 clothing labels boycotting the country's cotton market, which is one of Uzbekistan's largest export markets. It has been reported that the state sponsors this systematic abuse, where children from thirteen years old pick cotton all day in order to meet quotas. Estimates have suggested that this market impacts around two million children in Uzbekistan every harvest season.⁸⁵

b) Fisheries

Thailand is one of the biggest exporters of fish and fishery products in the world, with over two million Thai and migrant workers being employed within the country's fisheries industry.⁸⁶ Work in this industry includes fishing, aquamarine farming, primary processing, and packing and processing for both local and export markets, and abuses reported within the industry come in the shape of – inter alia – child labour, forced labour, people trafficking, and health and safety issues.⁸⁷

⁸² Ibid.

⁸³ 'India's Exploited Child Cotton Workers' (n 45).

⁸⁴ Ibid.

⁸⁵ James Kilner, 'Global Clothing Brands Boycott Uzbek Cotton' (18 September 2011) <<http://www.telegraph.co.uk/news/worldnews/asia/uzbekistan/8771473/Global-clothing-brands-boycott-Uzbek-cotton.html>> accessed 4 April 2017.

⁸⁶ International Labour Organization, 'Child Labour: Combating the Worst Forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand' (2016) <http://www.ilo.org/asia/whatwedo/projects/WCMS_161095/lang--en/index.htm?ssSourceSiteId=washington> accessed 20 March 2017.

⁸⁷ Ibid.

Thailand has laws, regulations, and policies fighting to eliminate both child and forced labour, and the Royal Thai Government has stated that working conditions within the shrimp and seafood processing industry need to be improved.⁸⁸ Regarding forced labour, there have been reports of men undergoing 20-hour shifts on fishing boats, with some of them being forced to live on the boats for years. It has also been claimed that they are beaten, tortured, and that some are killed.⁸⁹ Many of the workers in these situations are migrants from nearby countries such as Cambodia and Burma.⁹⁰

Almost 50% of children between fifteen and seventeen in Thailand work in the seafood sector, or a sector related to seafood.⁹¹ Children of legal working age and below experience hazardous working conditions within the supply chains of the fisheries industry. Child labour in the shrimp and seafood industry has been known to occur within the informal small processing businesses and large packing and processing factories as well as in the fish docks and markets, and the aquamarine farms.⁹² The practice is found predominantly within the informal market, and particularly in the primary processing stage (sorting, peeling, and deveining shrimp) within small-scale enterprises.⁹³ It should be acknowledged that the issue of child labour in Thailand is not exclusive to the country's fisheries industries, with it also being found within the Thailand's agriculture (e.g. farming and rubber plantations), services, domestic work, sex work, manufacturing, and small informal family processing.

The ILO conducted a four-year technical cooperation project through ILO-IPEC (International Programme on the Elimination of Child Labour) in order to offer assistance in fighting the aforementioned issues within the seafood industry.⁹⁴ The 2012 ILO-IPEC study found, through the four seafood producing provinces it examined, that the average child prevalence rate of children between five and seventeen was 9.9%, and that 36.3% of those between the ages of fifteen and seventeen were found to be in

⁸⁸ Ibid.

⁸⁹ The Guardian, 'Revealed: Asian Slave Labour Producing Prawns for Supermarkets in US, UK' <<https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>> accessed 22 March 2017.

⁹⁰ Ibid.

⁹¹ The International Labour Organization, 'Hazardous Child Labour' <http://www.ilo.org/asia/WCMS_224118/lang--en/index.htm> accessed 21 March 2017.

⁹² International Labour Organization (n 86).

⁹³ Ibid.

⁹⁴ Ibid.

hazardous child labour. The ILO report held that only 25% of children between the ages of fifteen and seventeen were aware of laws regarding child labour, and around 65% of them did not have a contract (and therefore no legal protection).⁹⁵ It is important to consider that when protected by legislation, efficiently implemented measures regarding occupational safety and health, and knowledge and awareness of safe work practices, young workers are less likely to experience hazardous work.⁹⁶

c) Logging/Forestry

According to Global Witness, logging companies have paid millions of euros to militias who have committed crimes in the Central African Republic including mass murder, rape, and forced recruitment of child soldiers.⁹⁷ The NGO also claim that this has further fuelled violence already present in the region. The EU and some of its member states have been linked to these atrocities through alleged donor aid as well as trade and illegal imports. Global Witness hold that EU based companies have paid millions of euros to rebels so that they can continue illegally logging and trading timber, and that these illegal imports have made their way into the EU market – in part – due to the failure of EU companies to prevent the presence of illegal timber.

They further state that countries such as France have paid millions of euros in donor aid under the false premise that the finances produced would lead to improvements in local development. It should also be noted that the EU is currently discussing a timber trade agreement that – if not approached correctly – would support militias throughout the logging industry, and further exacerbate human rights abuses in the region.⁹⁸ This is not just a EU-Africa issue. The three companies that together reportedly control 99% of the CAR timber exports are from France, China, and Lebanon. According to Global Witness, all three of the companies have made payments to rebels.⁹⁹

⁹⁵ The International Labour Organization, ‘New Study of Migrant and Child Labour in the Thai Seafood Industry’ <http://www.ilo.org/asia/info/public/pr/WCMS_402371/lang--en/index.htm> accessed 21 March 2017.

⁹⁶ ‘Occupational Safety and Health (OSH)’ (n 21).

⁹⁷ Global Witness, ‘Blood Timber’ (15 July 2015)

<<https://www.globalwitness.org/en/campaigns/forests/bloodtimber/>> accessed 10 March 2017.

⁹⁸ Ibid.

⁹⁹ Ibid.

d) Mining

There have been human rights abuses linked to the extraction and subsequent trade of minerals in states including Mexico, Colombia, the Central African Republic, and the Democratic Republic of the Congo.¹⁰⁰ Trading in minerals has been linked to abuses that include infringing on the rights of indigenous peoples, unfounded criminal proceedings, extrajudicial killings of defenders of human rights, and dispossession and displacement.¹⁰¹

i) **The Democratic Republic of the Congo**

Minerals found across central Africa include the likes of gold, tin, tungsten and tantalum. The DRC currently produces somewhere between 20 and 50 percent of the global supply of tantalum, which is commonly used in smartphones and other pieces of technological equipment.¹⁰² In the east of the DRC, there are over two million artisanal miners “who extract small amounts of metals from ores” before “the smelters provide materials to various industries”.¹⁰³ After the smelters process the metals, it is impossible to find their origins. This allows for the potential development of “gray or black markets”¹⁰⁴.

The Congo has a history of corruption and civil war, and in regard to what has been labelled “Africa’s World War”, the state is considered to be at the core of it.¹⁰⁵ Similar to other regions discussed, fighting by rebel groups over mineral wealth and the lands in which these minerals are found has led to great civil unrest. In addition, Global Witness

¹⁰⁰ Global Witness, ‘Conflict Minerals in the EU’ (3 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-europe-brief/>> accessed 7 March 2017.

¹⁰¹ ReliefWeb, ‘Large-Scale Mining in Colombia: Human Rights Violations Past, Present and Future - Colombia’ (9 May 2013) <<http://reliefweb.int/report/colombia/large-scale-mining-colombia-human-rights-violations-past-present-and-future>> accessed 20 March 2017.

¹⁰² Jeffery Gettleman, ‘The Price of Precious’ (National Geographic) <<http://ngm.nationalgeographic.com/2013/10/conflict-minerals/gettleman-text>> accessed 14 March 2017.

¹⁰³ Morgan Winsor, ‘Congo’s Conflict Minerals: US Companies Struggle To Trace Tantalum, Tungsten, Tin, Gold In Their Products’ (International Business Times, 18 September 2015) <<http://www.ibtimes.com/congos-conflict-minerals-us-companies-struggle-trace-tantalum-tungsten-tin-gold-their-2102323>> accessed 14 March 2017.

¹⁰⁴ Ibid.

¹⁰⁵ BBC News, ‘DR Congo Country Profile’ (15 November 2016) <<http://www.bbc.co.uk/news/world-africa-13283212>> accessed 6 March 2017.

has reported that legitimate miners have had their land plundered by soldiers.¹⁰⁶ There have been around six million deaths in the Congo due to fighting, malnutrition, and disease.¹⁰⁷ Since the 1990s, a number of armed groups – including the Congolese army – have taken control over mines in the region. In 2003, the Second Congo War was officially over, however, crimes of the most serious nature – including rape¹⁰⁸ and murder on a great scale – have been reported as being carried out by both rebel and government forces after 2003. This has occurred predominantly in the east of the country.¹⁰⁹

As previously mentioned, there has also been large-scale displacement of persons, with the United Nations recently reporting that there are approximately 1.5 million internally displaced persons within the Congo, and around 384,000 Congolese nationals within refugee camps elsewhere.¹¹⁰ Corruption and below market value selling of mines has pushed the Congo to a position near the very bottom of the UN Human Development Index (176 out of 187),¹¹¹ even though its natural resource wealth – when considered in a vacuum – would suggest that the state should be in a much stronger position.¹¹²

e) Mining and Other Especially Hazardous Industries

Work can be dangerous, and it is important to discuss the dangers of the workplace as well as the importance of safety and health. This is in order to give an overall picture of the problem at hand, and more understanding as to how these areas are interrelated.

¹⁰⁶ Global Witness and Amnesty International, ‘Digging For Transparency’ (22 April 2015) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/digging-transparency/>> accessed 7 March 2017.

¹⁰⁷ Pranshu Rathi, ‘Trump Executive Order On Conflict Minerals? Leaked Memo Suggests White House May Remove Ban On US Companies’ (International Business Times, 9 February 2017) <<http://www.ibtimes.com/trump-executive-order-conflict-minerals-leaked-memo-suggests-white-house-may-remove-2488994>> accessed 6 March 2017.

¹⁰⁸ Morgan Winsor, ‘Inside Congo’s Rape Crisis’ (International Business Times, 15 September 2015) <<http://www.ibtimes.com/inside-congos-rape-crisis-2095817>> accessed 14 March 2017.

¹⁰⁹ Winsor (n 103).

¹¹⁰ The Office of the United Nations High Commissioner for Refugees (UNHCR), ‘Democratic Republic of the Congo Regional Office - Global Focus’ <<http://reporting.unhcr.org/node/4874?y=2017#year>> accessed 9 May 2017.

¹¹¹ World Bank, ‘Democratic Republic of Congo Overview’ <<http://www.worldbank.org/en/country/drc/overview>> accessed 14 March 2017.

¹¹² Global Witness, ‘Glencore Redirected \$75m to Scandal-Hit Friend of Congolese President’ (3 March 2017) <<https://www.globalwitness.org/en/press-releases/glencore-redirected-over-75-million-mining-payments-scandal-hit-friend-president-global-witness-reveals/>> accessed 10 March 2017.

Occupational safety and health (OSH) relates heavily to the supply chain. It is a subject that has repeatedly gained prominence in the media spotlight through events such as the infamous factory collapse in Bangladesh and environmental disasters including the Bhopal gas tragedy. Issues of safety and health are a real cause for concern for those in forced and child labour within the supply chain.

Over 2.2 million people die every year (around 5000 a day) from work related diseases and accidents, 22,000 of whom are children.¹¹³ A further 270 million workers are injured.¹¹⁴ This can be costly, both financially and emotionally. In 2003, a global strategy to improve occupational safety and health was adopted by the ILO. Governments, employers and workers have used the ILO standards on the issue to improve conditions and prevent incidences.¹¹⁵

Although this section focuses predominantly on mining, it should be kept in mind that the material is also relevant to other industries (including those discussed above). For example, agriculture and construction are also industries synonymous with occupational safety and health hazards, with exposure to radiation and a number of hazardous chemicals amongst key issues in these areas. This means that there are jobs where simply breathing is dangerous due to the respiratory diseases caused by working in certain industries. An example of this would be working around asbestos in construction. With increased urbanisation, population numbers, and demand for what is produced in these industries, it is unlikely that this issue will simply disappear, and action must be taken to combat this.

i) OSH References in International Legal Instruments

OSH is a subject that can be located in many foundational international legal documents. Within the preamble of the ILO Constitution,¹¹⁶ the importance of “protection of the worker against sickness, disease and injury arising out of his employment”¹¹⁷ is highlighted. Although this statement occurred before the phrase

¹¹³ ‘Occupational Safety and Health (OSH)’ (n 21).

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ The International Labour Organization, ILO Constitution (1919)

<http://blue.lim.ilo.org/cariblex/pdfs/ILO_Constitution.pdf> accessed 3 March 2017.

¹¹⁷ Ibid.

“safety and health” was coined, it evidently refers to OSH. Furthermore, the Universal Declaration of Human Rights (UDHR) Article 25(1) holds that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family”.¹¹⁸ Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹⁹ also highlights the importance of members recognising “the right of everyone to the enjoyment of just and favourable conditions of work” including “(b) safe and healthy working conditions”.¹²⁰

ILO Convention 155 (C155)¹²¹ covers occupational safety and health, setting out rights and duties for employers (prevent, control, protect, and provide information and training) and workers (cooperation, right to representation, and safety and health at work at no extra cost to workers). Basic requirements are held in articles 4, 6 and 9, with the workers right to withdraw covered in Article 13, and the responsibilities of employers in Article 16.¹²² Other relevant ILO conventions to safety and health are C161 Occupational Health Services Convention,¹²³ which seeks to prevent occupational safety and health issues, and C187 Promotional Framework for Occupational Safety and Health Convention, that – inter alia – has objectives set out, a time frame for these objectives to be reached, and assesses progress in relation to safety and health.¹²⁴

¹¹⁸ The United Nations, Universal Declaration of Human Rights (1948)

<http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed 3 March 2017.

¹¹⁹ United Nations, International Covenant on Economic, Social and Cultural Rights, UN General Assembly (1966) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 3 March 2017.

¹²⁰ Ibid.

¹²¹ The International Labour Organization, Occupational Safety and Health (no. 155)

<http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:31230> accessed 3 March 2017.

¹²² Ibid.

¹²³ The International Labour Organization, Occupational Health Services Convention, 1985 (No. 161)

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C161> accessed 3 March 2017.

¹²⁴ The International Labour Organization, Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187> accessed 3 March 2017.

ii) Hazardous Conditions: Examples of Occurrences

In Ghana, as well as in other countries, children are working with the dangers of mercury exposure when mining gold.¹²⁵ It is a country many choose to source gold from because of its stability in comparison to many other nations rich in natural resources.¹²⁶ The aforementioned practices are out of line with Ghana's obligations under the Worst Forms of Child Labour Convention – particularly in regard to Article 3(d)¹²⁷ which relates to the health, safety and morals of children – as well as Ghana's Children's Act,¹²⁸ which holds that children working in these conditions is illegal activity, as the act prohibits under-18s from working in mines.¹²⁹ In addition to potential mercury poisoning, it has been reported that children between nine and eleven have been injured in mine collapses, with at least one fatality occurring as a consequence.¹³⁰ After an examination of the due diligence policies of six different refiners sourcing from the Ghana gold market,¹³¹ Human Rights Watch claimed that a number of companies were failing to regulate efficiently, and that checks on the use of child labour were not systematic. The NGO believes that a greater effort could be made regarding public reporting.¹³²

Similarly, in the Philippines children have been working in conditions where both physical and chemical hazards are present. For example, it has been reported that children have been mining gold ore in unstable pits and working with mercury to process it.¹³³ With the Philippine Statistics Authority – based on a survey in 2011 – suggesting that out of the 3.3 million children working within the country, two million

¹²⁵ Human Rights Watch, 'Ghana: Child Labor Taints Gold Supply Chain' (10 June 2015) <<https://www.hrw.org/news/2015/06/10/ghana-child-labor-taints-gold-supply-chain>> accessed 3 March 2017.

¹²⁶ Human Rights Watch, 'Precious Metal, Cheap Labour: Child Labour and Corporate Responsibility in Ghana's Artisanal Gold Mines' (10 June 2015) <<https://www.hrw.org/report/2015/06/10/precious-metal-cheap-labor/child-labor-and-corporate-responsibility-ghanas>> accessed 3 March 2017.

¹²⁷ 'Worst Forms of Child Labour Convention' (n 20).

¹²⁸ The Children's Act (1998) <<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/56216/65194/E98GHA01.htm>> accessed 3 March 2017.

¹²⁹ Ibid at section 91(3)(b).

¹³⁰ Ibid.

¹³¹ Metalor (Switzerland), Produits Artistiques Métaux Précieux (PAMP) (Switzerland), Kaloti Jewellery International (UAE), Emirates Gold (UAE), Kundan (India), and Rand Refinery (South Africa)

¹³² Human Rights Watch (n 6).

¹³³ Juliane Kippenberg, 'Regulate Small Gold Mines, Too' (Human Rights Watch, 25 November 2016) <<https://www.hrw.org/news/2016/11/25/regulate-small-gold-mines-too>> accessed 6 March 2017.

are working in hazardous conditions,¹³⁴ this is clearly a monumental issue for the country. Former Filipino environment secretary, Gina Lopez carried out an audit of the larger mining firms in the country, suspending ten of them and recommending that a further 20 be suspended.¹³⁵ Although this is a good response to activities of some of the larger operations, little has been done to take into account small-scale mining.¹³⁶ It is important to act upon this because hazardous conditions are without prejudice to the scale of the gold mining operation.

Many of the smaller scale mines have been accused of operating without a government licence. The Filipino government has been criticised for allegedly doing little to correct this, with claims being made that the government has failed to enforce child labour laws and bring mines from the informal market into formality.¹³⁷ Furthermore, it has also been alleged that the central bank in the Philippines (and the official artisan gold buyer) – the Bangko Sentral ng Philipinas – has not been pressured by the government to implement safeguards in order to ensure that child labour does not occur through its transactions.¹³⁸ It is important to have laws in place, but it is equally important to ensure that these laws are enforced, otherwise the law may simply be a façade and will likely become redundant.

Bangladesh is infamous for having problems with safety and health, and its tanneries are no exception.¹³⁹ In the tanneries, such as those found within the Hazaribagh neighbourhood of Dhaka (which makes up to 90% of the country's tanneries and employs around 15,000 workers) there have been safety and health impacts to both adults and children.¹⁴⁰ These include skin diseases and respiratory illnesses due to chemicals, and limb amputations as a result of employees working with dangerous machinery. Workers – a term that includes children from eleven-years-old in this case –

¹³⁴ Philippine Statistics Authority, 'Estimated Number of Working Children 5 to 17 Years Old Who Worked During The Past Week Was 3.3 Million (Final Results of the 2011 Survey on Children)' (2015) <<https://psa.gov.ph/content/estimated-number-working-children-5-17-years-old-who-worked-during-past-week-was-33-million>> accessed 9 May 2017.

¹³⁵ Juliane Kippenberg (n 133).

¹³⁶ Ibid.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Human Rights Watch, 'Bangladesh: Tanneries Harm Workers, Poison Communities' (8 October 2012) <<https://www.hrw.org/news/2012/10/08/bangladesh-tanneries-harm-workers-poison-communities>> accessed 3 March 2017.

¹⁴⁰ Ibid.

have been poisoned by working with hazardous chemicals and injured due to accidents in the workplace. The globalised aspect of the operation is clear, with it being reported that the goods produced in the tanneries are exported to 70 countries around the world.¹⁴¹ Between 2002 and 2012, Bangladesh's leather exports increased by \$41 million per year, and from 2011 to 2012 leather exports reached \$663.¹⁴²

iii) The Environment

The aforementioned tanneries are impacting not only the workers, but also local residents as a result of the pollution to the air, land, and water. Although there have been orders (and a subsequent extension) from the High Court Division of the Bangladeshi Supreme Court to change this, reports suggest that they have largely gone ignored.¹⁴³ Human Rights Watch claim that employers have denied sick leave and remediation to workers who have fallen ill or have been injured as a result of working. The right to health is enshrined in international law,¹⁴⁴ and governments should therefore take reasonable steps in order to protect that right. There have been plans by the Bangladeshi government to relocate the tanneries, but these plans have seen numerous bureaucratic delays.¹⁴⁵ The government argues that the ongoing relocation has made it difficult to comply with the high court orders (and also the extension).¹⁴⁶

In Indonesia, American company, Freeport-McMoRan has dumped waste near their mining operation in a river that was untouched before their arrival. The company is reportedly expected to generate six billion tons of waste before ending its work in the region.¹⁴⁷ Much of this waste is being dumped in close proximity to Lorentz National Park, which has been given special protection by the United Nations.¹⁴⁸ Furthermore, a 2002 study by American consulting company, Parametrix¹⁴⁹ held that – due to the waste

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ See, for example, the Universal Declaration of Human Rights (article 25), ICESCR (article 12), and the Convention on the Rights of the Child (article 24).

¹⁴⁵ Human Rights Watch (n 139).

¹⁴⁶ Ibid.

¹⁴⁷ Jane Perlez and Raymond Bonner, 'Below a Mountain of Wealth, a River of Waste (The New York Times) <http://www.nytimes.com/2005/12/27/world/asia/below-a-mountain-of-wealth-a-river-of-waste.html?_r=3> accessed 17 March 2017.

¹⁴⁸ United Nations Educational, Scientific and Cultural Organization (UNESCO), 'Lorentz National Park' <<http://whc.unesco.org/en/list/955>> accessed 17 March 2017.

¹⁴⁹ Parametrix, <<http://www.parametrix.com>> accessed 17 March 2017.

– the rivers were now “unsuitable for aquatic life”.¹⁵⁰ It has been claimed that Freeport has not been held to the same standards as other companies due to undisclosed payments made to the Indonesian military, leading to allegations of bribery.¹⁵¹ It has further been alleged that finances produced by this operation are so high and regulation so weak that Freeport have impunity, with one ministry scientist comparing persuading Freeport to comply with legislation to “painting on clouds”.¹⁵² Freeport claims to have directly and indirectly financially benefitted the Indonesian government by \$33 billion between 1992 and 2004.¹⁵³

¹⁵⁰ Perlez and Bonner (n 147).

¹⁵¹ The New York Times (n 146).

¹⁵² Ibid.

¹⁵³ Freeport-McMoRan Copper & Gold Inc., ‘Making The Commitment’ (2004) <http://www.socialfunds.com/csr/reports/Freeport-McMoran_2004_Sustainable_Development_Report.pdf> accessed 17 March.

IV) Developed Countries

This chapter focuses on developed countries in order to show that the issues being discussed are not exclusively a developing world problem, with trade and globalisation also impacting developed countries. The severity and regularity of the issue is greater within the developing world, and the position of this paper would most likely lead to potential improvements within these countries. However, its relevance to developed countries should not be overlooked, as the suggested labour provisions in trade agreements could also lead to developed countries holding each other accountable. Furthermore, when developed countries agree to include the suggested laws or initiatives within trade agreements, they could also reaffirm their own commitment to improving standards within their own systems.

Although there are arguments of protectionism when asking developing countries to reach the standards of developed countries, the stance is significantly weaker when the opposite scenario is considered. No country has a perfect system protecting labour rights, and developed countries should be able to show that they are also pushing themselves to make improvements. Not to do so could be considered as hypocritical. Labour clauses in trade agreements could also prove to be beneficial to those left behind in certain industries if developing countries are pressured to include protection and recognition of workers who have suffered job loss as a result of a trade deal, so that they are justly compensated and protected. Of course, it could prove challenging to incentivise developing countries to agree to the aforementioned, particularly when the discussion concerns North-South trade agreements.¹⁵⁴

a) Jobs Moving Abroad and New Jobs with Less Rights?

Many workers in developed countries have been impacted by jobs moving abroad, with states such as the US, UK, Japan, Italy and France openly showing negativity towards

¹⁵⁴ Between Developed and Developing Countries.

globalisation and trade.¹⁵⁵ Events such as factories in the US being closed and jobs moving to Mexico and China are believed to have influenced the current political landscape, with manifestos pledging to bring jobs back to developed countries garnering increased support. The recent United States election and the decision by the United Kingdom to leave the European Union are two examples of this.

The effects of globalisation in developed countries include job loss in certain industries¹⁵⁶ and changes in types of work with the introduction of the gig economy, which is characterised by short-term contracts and self-employment. Through the vacuum left by jobs going abroad, it has been claimed that globalisation (as well as improvements in technology) has played a role in the increase in new forms of employment and the reduction in the amount of blue collar jobs within developing countries.¹⁵⁷ Another factor is the fact that many countries (developing and developed) are experiencing weak growth due to the worst financial crisis since the great depression.¹⁵⁸ In any event, with new types of work within the gig economy, there have been a number of issues with classification of workers and workers benefits, including entitlement to sick leave.¹⁵⁹

b) The Expansion of Trade and the Impact on Developing Countries

The amount of trade among WTO members has increased, which was not an issue for workers in developed countries initially, as developed countries were trading between themselves – in North-North agreements – and therefore with countries where workers were earning a comparable wage while complying with similar labour standards. This, however, changed when developing and developed countries started trading together. In

¹⁵⁵ Pew Research Center, 'Faith and Skepticism about Trade, Foreign Investment' <<http://www.pewglobal.org/2014/09/16/faith-and-skepticism-about-trade-foreign-investment/>> accessed 19 April 2017.

¹⁵⁶ Peter S Goodman, 'More Wealth, More Jobs, but Not for Everyone: What Fuels the Backlash on Trade' (The New York Times, 28 September 2016) <<https://www.nytimes.com/2016/09/29/business/economy/more-wealth-more-jobs-but-not-for-everyone-what-fuels-the-backlash-on-trade.html>> accessed 19 April 2017.

¹⁵⁷ Elizabeth Matsangou, 'The Gig Economy and Its Long-Term Effects' (World Finance, 13 January 2016) <<https://www.worldfinance.com/strategy/the-long-term-effects-of-the-gig-economy>> accessed 21 May 2017.

¹⁵⁸ The New York Times (n 156).

¹⁵⁹ World Finance (n 157).

the US, the North American Free Trade Agreement (NAFTA)¹⁶⁰ led US workers into competition with Mexican workers, negatively impacting US labourers. China's entry into the WTO in 2001 had an even greater impact on US workers because of the sheer number of labourers at China's disposal (it should be noted that the construction boom that followed did help employ many workers in the US for a time).¹⁶¹ China has been building factories and employing more workers – creating more jobs – which has led to industries such as US steelworks suffering. The World Bank reported that between 2001 (when China joined the WTO) and 2014, China's exports increased from \$266 billion to \$2.3 trillion.¹⁶²

It has been held that Chinese imports led to around one million manufacturing jobs being lost in the United States between 1999 and 2011, with job loss reaching 2.4 million when other related industries are included.¹⁶³ In different countries within the developed world, unemployment affects workers to varying degrees. In the US, for example, social welfare is weaker than in many of its European counterparts including Sweden, Denmark, Germany, and the Netherlands.¹⁶⁴ Furthermore, in relation to EU member states, the EU negotiates trade deals at EU level for all member states as a whole, and opponents to EU membership may argue that countries are left to deal with any negative impacts domestically.

i) Remembering that Globalisation is an Overall Benefit

Research carried out by Pew Research Center¹⁶⁵ showed that 55% of respondents (out of the 44 countries included in the study) believed that trade has increased wages, and that only 26% thought that trade has led to lower prices.¹⁶⁶ It should be noted that earnings are greater on average for those in major import industries compared to more

¹⁶⁰ North American Free Trade Agreement

<<https://www.italaw.com/sites/default/files/laws/ITA%20LAW%207029.pdf>> accessed 7 April 2017.

¹⁶¹ Goodman (n 156).

¹⁶² Ibid; Yuan, 'Looking Back 14 Years after Accession: Case of China (World Trade Organization, 2015)

<https://www.wto.org/english/thewto_e/acc_e/Session2YuanYuanPostAccessionLookingback14yearafter.pdf> accessed 19 April 2017.

¹⁶³ David H Autor, David Dorn and Gordon H Hanson, 'The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade' (2016) 8 Annual Review of Economics 205 <<http://www.ddorn.net/papers/Autor-Dorn-Hanson-ChinaShock.pdf>> accessed 19 April 2017.

¹⁶⁴ Goodman (n 156).

¹⁶⁵ Pew Research Center <<http://www.pewresearch.org>> accessed 19 April 2017.

¹⁶⁶ 'Faith and Skepticism about Trade, Foreign Investment' (n 155).

domestically centred industries.¹⁶⁷ Furthermore, the Reserve Bank of Dallas suggested that choice of product increased in the United States by around a third between 1989 and 2007 (but only 23% between 1989 and 2009 in large part due to the financial crisis).¹⁶⁸ In addition, it has also been held that households at the bottom end of the financial spectrum have benefited from cheaper prices of basic goods, with – for example – it being reported by Pietra Rivoli, a trade expert at Georgetown University, that children’s clothing had dropped in price by 10% between 1999 and 2003.¹⁶⁹

c) Child labour in the Supply Chains of Developing Countries

In the aforementioned industries – such as agriculture and fisheries – many abuses occurring within developing countries also take place in developed countries, with goods being traded both externally and internally. It is a common misconception that abuses such as child and forced labour are exclusive to developing countries. This is not the case. For instance, Human Rights Watch has reported on the issue of child labour in agriculture in the United States of America.

i) **Agriculture**

US legislation¹⁷⁰ allows for children to partake in agricultural work that is considered to be hazardous when they are over the age of 16,¹⁷¹ and the ILO Committee of Experts has acknowledged the additional measures in place in order to protect workers over 16-years-old in the US agricultural sector, stating its acceptance of the legislation.¹⁷² However, in 2010 Human Rights Watch indicated that children from 12-years-old were found working on farms for more than 10-hours a day, with children as young as six

¹⁶⁷ David Riker, ‘Export-Intensive Industries Pay More on Average: An Update’ (6 Journal of International Commerce and Economics, 2015) <<http://www.usitc.gov/publications/332/ec201504a.pdf>> accessed 19 April 2017.

¹⁶⁸ Shalah M Mostashari, ‘Economic Letter, Expanding Variety of Goods Underscores Battle for Competitive Advantage’ (15 December 2010) <<https://pdfs.semanticscholar.org/da9f/c25436de26f50cb249d81a473938255de326.pdf>> accessed 19 April 2017.

¹⁶⁹ Goodman (n 156).

¹⁷⁰ The Fair Labor Standards Act (1938) § 213 <<https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>> accessed 19 April.

¹⁷¹ by the US Secretary of Labor.

¹⁷² The International Labour Organization, ‘ILO Comments, Observation (CEACR), 106th ILC Session (2017)’ (2016) <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3298576:NO> accessed 9 May 2017.

working part time.¹⁷³ The report further stated that due to these hours, many leave school, with children working in agriculture being four times more likely to drop out of school than the national rate. It was also reported that they are often paid less than minimum wage – as are many adults in the industry – and may earn less due to their employer underreporting their hours of work. In addition, when supplied tools, gloves, and drinking water, Human Rights Watch claims that these expenses are often docked from the child labourer’s wages, despite the law stating that the aforementioned is to be supplied by employers.¹⁷⁴ As noted by the ILO,¹⁷⁵ there has been an increase in supervision since Human Rights Watch reported on this problem. However, with the current US government seeking to repeal a number of regulations, the issue must be kept in consideration and the situation monitored.

With children risking heat illness, serious injury, and pesticide poisoning, the National Institute for Occupational Safety and Health (NIOSH) held that agriculture is America’s most dangerous work involving children, with children here suffering fatalities four times more frequently than in other jobs in the US.¹⁷⁶ There is also the danger – particularly for females – of sexual abuse. Furthermore, many of the child workers are believed to be without basic protective equipment and are not supplied with toilets or hand washing facilities.¹⁷⁷

As tends to be a common theme throughout this topic, there is a strong argument that the domestic law is failing, with the Fair Labour Standards Act – drafted in the 1930s – permitting children to work in agriculture from the age of 12. Also, there is currently no age restriction in regard to children working on small farms, and the only constraint on hours of work is that children should not work during school hours. This stands in stark

¹⁷³ Human Rights Watch, ‘US: Child Farmworkers’ Dangerous Lives’ (5 May 2010) <<https://www.hrw.org/news/2010/05/05/us-child-farmworkers-dangerous-lives>> accessed 16 March 2017.

¹⁷⁴ Ibid.

¹⁷⁵ Ibid.

¹⁷⁶ National Institute for Occupational Safety and Health (NIOSH), ‘Preventing Deaths, Injuries, and Illnesses of Young Workers’ (National Institute for Occupational Safety and Health (NIOSH)) <<https://www.cdc.gov/niosh/docs/2003-128/pdfs/2003128.pdf>> accessed 9 May 2017.

¹⁷⁷ Human Rights Watch (n 173).

contrast to the law in other sectors within the United States, where children are prohibited from working when under the age of fourteen.¹⁷⁸

In addition, the law makes further exceptions in relation to agriculture, allowing – as mentioned above – 16 and 17-year-olds to carry out hazardous work, when the minimum age for hazardous work in other sectors is 18.¹⁷⁹ A bill has been presented to change this, with the Children’s Act for Responsible Employment bill being introduced by Congresswomen Lucille Roybal-Allard in 2009.¹⁸⁰ The bill has had significant support, but it has thus far not been acted upon. With only 4% of child labour allegations reportedly being acted upon between 2001 and 2009, there is an argument that the US’s apparent acceptance of the situation shows that the state is failing in its obligations under – inter alia – the ILO’s Worst Forms of Child Labour Convention, which it ratified in 1999.¹⁸¹

¹⁷⁸ United States Department of Labor, ‘Age Requirements’
<<https://www.dol.gov/general/topic/youthlabor/agerequirements>> accessed 9 May 2017.

¹⁷⁹ Human Rights Watch (n 173).

¹⁸⁰ Children’s Act for Responsible Employment, (text of H.R. 3564 (111th), 2009)
<<https://www.govtrack.us/congress/bills/111/hr3564/text>> accessed 9 May 2017.

¹⁸¹ The International Labour Organization, ‘Ratifications of ILO Conventions: Ratifications by Convention’
<http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:31232>
accessed 9 May 2017.

V) Current Labour Provisions Already within Trade Agreements

This chapter will focus on current labour provisions already present within trade agreements. It will show how trade agreements have included labour provisions and how these provisions work in order to form a picture of what can be built upon. The chapter will discuss, inter alia, the ILO and its role in this area, including references to its instruments. Conditional and promotional elements of trade agreements – particularly in regard to agreements made with the United States and the European Union – will also be covered, as will disputes within agreements.

The Fourteenth UN Conference on Trade and Development (UNCTAD) took place in Nairobi in 2016, and stated the importance of integrating trade and development in order to support the goals of the 2030 Agenda for Sustainable Development.¹⁸² “Trade is a means to support the implementation of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda. With appropriate supporting policies, adequate infrastructure and an educated and trained workforce, it can also help to promote productive employment, youth and women’s empowerment, food security and reduced inequality”.¹⁸³ It was also held at the conference that UNCTAD should cooperate with relevant organisations in order to assess the “impact of labour and employment policies on economic growth including the interrelation between macroeconomic and labour policies”.¹⁸⁴

There are a number of issues that looking at labour standards and trade through the same lens raises. These include the argument of protectionism, the analytical question of the race to the bottom: Whether or not countries with lower labour standards are at an advantage when it comes to trade, and does/would this encourage other countries to

¹⁸² United Nations Conference on Trade and Development, ‘Fourteenth Session of the United Nations Conference on Trade and Development (UNCTAD 14)’ <<http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=808>> accessed 21 April 2017.

¹⁸³ United Nations Conference on Trade and Development, ‘Maafikiano UNCTAD Work Programme’ (Paragraph 41, 2016) <http://unctad.org/meetings/en/SessionalDocuments/td519add2_en.pdf> accessed 21 April 2017.

¹⁸⁴ The International Labour Office (n 2).

lower labour standards in order to compete?¹⁸⁵ If this is the case, it raises the question as to whether or not countries should continue to trade with those who have lesser labour standards than their own, or whether they should do so only with those that make a serious effort to eradicate abuses. In addition, there are two major tendencies in agreements on international trade. One is the WTO, and the other is bi/multilateral agreements directly among trading states. In regard to the WTO, the organisation has openly questioned whether it is the correct body to be enforcing labour laws, and has also deliberated as to whether its rules should explicitly allow for member states to use trade as leverage so that other states comply with labour laws.¹⁸⁶

a) Trade Agreements, Labour Provisions, and the ILO

i) The Increase in Trade Agreements with Labour Provisions

Trade agreements were expected to lead to a decrease in labour intensive jobs and an increase in skill intensive work within developed countries, while having the opposite impact within developing countries.¹⁸⁷ However, factors such as industrialised countries trading with each other, skill premium increases in developing countries, and the reshuffling of jobs within sectors instead of across sectors led to this traditional trade theory being questioned.¹⁸⁸

In recent times, the number of trade agreements – both bilateral and plurilateral – has increased drastically. Between 1995 and 2016, there was an increase from 41 to 267 trade agreements, with the majority (55%) of goods exported falling under trade agreements. By December 2015, there were 76 trade agreements – involving 135 economies – with labour provisions included that held conditional and promotional elements.¹⁸⁹ Labour provisions are: “(i) any standard which addresses labour relations (for example, with reference to international labour standards) or minimum working conditions and terms of employment (for example, occupational safety and health

¹⁸⁵ World Trade Organization, ‘Understanding the WTO - Labour Standards: Consensus, Coherence and Controversy’ (n 74) accessed 13 April 2017.

¹⁸⁶ Ibid.

¹⁸⁷ Marion Jansen and Eddy Lee (n 1).

¹⁸⁸ Ibid.

¹⁸⁹ The International Labour Organization, ‘Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements’ (2016), <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_498944.pdf> accessed 18 April 2017.

(OSH), minimum wages and hours of work); (ii) any mechanism to ensure compliance with the standards set under national law or in the trade agreement; and (iii) any framework for cooperative activities, dialogue and/or monitoring of labour issues (for example, development cooperation, established bodies for facilitating consultation between the parties or regular dialogue)”.¹⁹⁰

It has been suggested that labour provisions have played an important role in highlighting the issues of globalisation as they relate to employment and social dimensions, the inclusion of social partners during trade negotiations and implementation, improvements in cooperation, and capacity building with domestic institutions and improving their promotion of labour standards.¹⁹¹ Irrespective of the failure to integrate labour standards into the WTO, the number of trade agreements with labour provisions went from being non-existent before 1990, to reaching 47 in 2011.¹⁹² By 2002, 25% of trade agreements referred to ILO instruments, and in 2009 it was reported that 60% of trade agreements included references to ILO Conventions or the 1998 Declaration, with references reaching 70% in 2013.¹⁹³

Around half of trade deals with labour provisions involve the US, EU and Canada. However, South-South partners, the European Free Trade Association, and New Zealand are increasingly including provisions of this nature, with South-South trade deals now responsible for 25% of all trade agreements with labour provisions.¹⁹⁴ In some cases, special incentives are offered for labour provisions within trade deals being met, with, for example, the US Generalized Scheme of Preference and the EU GSP+ programme seeing over 90 countries benefiting from this approach. Labour standards are also increasingly referenced within international investment arrangements (IIAs), with over a third of IIAs concluded in 2014 referring to them. Furthermore, 80% of bilateral investment agreements in 2014 included labour provisions.¹⁹⁵ In addition,

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Jordi Agustí-Panareda, Franz Christian Ebert and Desirée LeClercq, ‘Labour Provisions in Free Trade Agreements: Fostering Their Consistency with the ILO Standards System’ (International Labour Office 2014) <http://natlex.ilo.ch/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_237940.pdf> accessed 19 April 2017.

¹⁹³ Ibid.

¹⁹⁴ The International Labour Organization (n 327).

¹⁹⁵ Ibid.

labour unions and other authorities have turned to comments made by ILO supervisory bodies in relation to sanction mechanisms of labour provisions.¹⁹⁶ The US started the trend, but it has continued with the likes of the EU, Canada, and New Zealand. ILO standards have also been included within South-South agreements, regarding Chile in particular.¹⁹⁷

Trade agreements both with and without labour provisions have proven to increase trade value to a similar extent (26% with and 29% without) highlighting that they do not have a heavy negative impact from an economic standpoint, while having the potential to drastically improve labour conditions. Furthermore, trade agreements with labour provisions have been held to support access to the labour market by 1.6% compared to trade agreements without such provisions, as they bring a large part of the working-age population into the labour force, increasing the female workforce in particular.¹⁹⁸

ii) References to the ILO and its Instruments in Trade Agreements

The adoption of labour provisions in trade agreements coincides with the adoption of the ILO Declaration in 1998,¹⁹⁹ with the Declaration first included in the 2000 EU-South Africa Trade Agreement.²⁰⁰ Before hand, it was debated as to whether the WTO would cover labour provisions. Subsequently, the ILO Declaration has been used in bilateral and regional trade agreements as a standard of reference regarding labour provisions, with 80% of the trade agreements that refer to ILO instruments referring to it.²⁰¹ In stark contrast to this, other ILO instruments are rarely mentioned, with only 20% of free trade agreements referring to them specifically. As of December 2015, ILO instruments referenced in trade agreements included the 1998 Declaration (in 65.8% of trade agreements), Decent Work Agenda (13.2%),²⁰² and the ILO Declaration on Social

¹⁹⁶ ‘Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ <<http://hrlibrary.umn.edu/business/commentary-Aug2003.html>> accessed 4 April 2017.

¹⁹⁷ Agustí-Panareda, Ebert and LeClercq (n 192).

¹⁹⁸ The International Labour Organization (n 2).

¹⁹⁹ ILO Declaration (n 5)

²⁰⁰ Agustí-Panareda, Ebert and LeClercq (n 192).

²⁰¹ Ibid.

²⁰² The International Labour Organization, Decent Work Agenda <<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> accessed 4 April 2017.

Justice for a Fair Globalization (11.8%).²⁰³ ILO fundamental conventions were referred to broadly in 9.2% of trade agreements and Convention No. 182 was referred to in 18.4% of trade agreements.²⁰⁴ ILO conventions contain obligations that state parties are to implement into domestic law and through practice. The conventions tend to clearly set out scope and applicable definitions, and when they are more general, the supervisory mechanisms of the ILO give guidance, also supplying extremely detailed comments.²⁰⁵

Within the four free trade agreements culminating in the May 10th Agreement, the ILO Declaration is to be adopted through the laws and regulations of the parties.²⁰⁶ States are to make a commitment that the free trade agreement will not negatively impact labour standards. Under this commitment, countries are not to defend the failure to enforce laws related to the basic core standards: They must not use lack of resources or a hierarchy system in which labour standards are not prioritised as an excuse for non-compliance.²⁰⁷ With this agreement, dispute settlement mechanisms and penalties mirror each other regardless of whether the issue at hand relates to labour obligations or commercial interests. There are no monetary limitations, and suspension of benefits is to be the last resort. However, there are limitations in regard to the similar labour provisions in each of these trade agreements (due to information included in two footnotes),²⁰⁸ which hold that parties are to be in adherence with the ILO Declaration (but with no mention of the Declaration's Follow-Up). They also hold that in order for there to be a dispute settlement procedure, any alleged breach of the ILO's core principles must impact trade or investment, and that this must be demonstrated by the accusing party.²⁰⁹

The EU makes reference to all fundamental ILO conventions in trade agreements where relevant, with – for example – the EU-Korea Trade Agreement pushing for further

²⁰³ The International Labour Organization, Declaration on Social Justice for a Fair Globalization (2008) <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf> accessed 4 April 2017.

²⁰⁴ Agustí-Panareda, Ebert and LeClercq (n 192).

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

progress, holding that parties are to ratify (and keep up to date with) fundamental ILO conventions if they have not already done so.²¹⁰ The trade agreement covers the four principles and rights at work as per the 1998 ILO Declaration. Similar commitments are made in the EU's trade agreement with Montenegro,²¹¹ and the union's draft trade agreement with Colombia and Peru.²¹² Many trade agreements with labour provisions reaffirm commitments of states in regard to the ILO, with no further legal implications being entailed. Examples of this can be seen in through CAFTA-DR (Dominican Republic-Central America Free Trade Agreement)²¹³ and the MoU between New Zealand and Hong Kong.²¹⁴ The CARICOM Declaration of Labour and Industrial Relations Principles attached to the Treaty Establishing the Caribbean Community also refers to international labour conventions more generally.²¹⁵

Some agreements simply make reference to ILO obligations, such as the Thailand-New Zealand labour side agreement,²¹⁶ and trade agreements between China and New Zealand,²¹⁷ Hong Kong and New Zealand,²¹⁸ and early European agreements such as the EU-ACP²¹⁹ Trade Agreement and the EC-South Africa Trade Agreement. It should be noted that other trade agreements have labour provisions that make no reference to the ILO or ILO instruments, such as the agreement between Taiwan and Nicaragua,²²⁰ as well as New Zealand's agreements with the Philippines²²¹ and Malaysia.²²² References to ILO Instruments may also be made in trade agreements to define the scope of labour provisions. Canada has used ILO instruments in this way, as can be seen through its labour side agreement with Costa Rica, where domestic labour law – to the extent to which it relates to the ILO Declaration – must be enforced, or it can be subject to dispute settlement. Further examples include the labour side agreements that Canada holds with Peru and Colombia.

²¹⁰ EU-Republic of Korea Trade Agreement, Article 13.4(3).

²¹¹ EU-Montenegro Trade Agreement, Article 101.

²¹² Draft EU-Colombia and Peru Trade Agreement, Article 269.

²¹³ CAFTA-DR, Chapter 16, Article 16.1.

²¹⁴ Memorandum of Understanding on Labour cooperation between New Zealand and Hong Kong, China, Article 2(2).

²¹⁵ Agustí-Panareda, Ebert and LeClercq (n 192).

²¹⁶ Thailand-New Zealand Free Trade Agreement 2005.

²¹⁷ China-New Zealand Trade Agreement 2008.

²¹⁸ Hong Kong (China)-New Zealand 2011.

²¹⁹ European Union-African Caribbean and Pacific Trade Agreement.

²²⁰ Taiwan, China-Nicaragua Trade Agreement.

²²¹ New Zealand-Philippines Memorandum of Agreement on Labour Cooperation, Article 2(2).

²²² New Zealand-Malaysia Agreement on Labour Cooperation, Article 2(3).

iii) Obligations Through ILO References

The actual importance of ILO instruments within trade agreements depends on how they are referred to, as well as what has been ratified by parties. If parties have already ratified said ILO conventions, then including them within trade agreements does not create any further legal obligations, but could be an additional enforcement mechanism. However, it should be noted that a state could agree to implement provisions of a multilateral instrument that it has not ratified within a separate agreement, such as a bilateral trade agreement. If the country has not ratified the convention in question, the trade agreement creates new obligations for the party.

By 2012, around ten free trade agreements and side agreements expressly incorporated ILO instruments, committing parties to ILO obligations. Some agreements ask parties to strive to ensure that they are fulfilling requirements in relation to their ILO obligations through incorporation into their domestic law (such as many early US agreements,²²³ Chile's South-South agreements, including those with Peru,²²⁴ Panama,²²⁵ and Colombia,²²⁶ and New Zealand's agreements). Within other agreements, such as many of the more recent US free trade agreements, it is a requirement that certain ILO standards – as they are set out in ILO instruments – are complied with, and that parties implement rights held within the ILO Declaration. This approach is taken within America's agreements with Peru,²²⁷ South Korea,²²⁸ and Colombia,²²⁹ as well as Canada's agreement with Costa Rica.²³⁰ The EU-Cariforum²³¹ Trade Agreement goes a step further, holding that parties must have labour laws that are in compliance with the fundamental conventions of the ILO,²³² and ensure that foreign investors working within their territory respect the ILO Declaration and its principles.²³³

²²³ US-Jordan Trade Agreement, Article 6.1; US-Chile Trade Agreement, Article 18.1(1); US-Bahrain Trade Agreement, Article 15.1(1); US-Oman Trade Agreement, Article 16.1(1).

²²⁴ Peru-Chile Agreement on Labour Cooperation.

²²⁵ Panama-Chile Agreement on Labour Cooperation.

²²⁶ Chile-Colombia Trade Agreement.

²²⁷ US-Peru Trade Agreement, Article 17.2(1).

²²⁸ US-Republic of Korea Trade Agreement, Article 19.2(1).

²²⁹ US-Colombia Trade Agreement, Article 17.2(1) (n 358).

²³⁰ Canada-Costa Rica Agreement on Labour Cooperation, Article 2.

²³¹ European Union-Caribbean Forum.

²³² EU-Cariforum Trade Agreement, Article 192 in conjunction with Article 191.

²³³ EU-Cariforum Trade Agreement, Article 72(b).

iv) Trade Agreement Disputes and the ILO

The ILO's involvement, in many cases, is limited to technical assistance and capacity building.²³⁴ A number of recent EU (e.g. Cariforum²³⁵) and US (e.g. CAFTA-DR²³⁶, Peru²³⁷, and Colombia²³⁸) trade agreements have included the possibility for parties to request assistance from the ILO, with Canadian agreements such as those with Colombia²³⁹ and Peru²⁴⁰ also holding that parties are authorised to “establish cooperative arrangements” with the ILO and other organisations. The EU has gone a step further than this in some cases – such as in its agreements with Cariforum²⁴¹, and Peru and Colombia²⁴² – stating that parties may seek advice from the ILO. Its agreement with South Korea²⁴³ also implies similar ILO involvement. However, as stated above, ILO involvement tends to stop before dispute settlement, and is usually limited to consultation. Very few trade agreements with labour provisions refer to specific ILO instruments in regard to dispute settlement. The US agreements with Jordan and Singapore do, but other references are scarce.

There have been calls for the ILO to be more involved in the settlement of disputes, with some trade agreements already implying such a role for the ILO.²⁴⁴ It should be duly noted that in the International Labour Conference of June 2012, during the discussion on the Strategic Objective of Fundamental Principles and Rights at Work, the ILO was “encouraged to strengthen its analytical and research work and, upon request, provide assistance to Members who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations”.²⁴⁵

²³⁴ Ibid.

²³⁵ EU-Cariforum Trade Agreement, Article 195(3).

²³⁶ CAFTA-DR, Annex 16.5(2)(d).

²³⁷ US-Peru Trade Agreement, Article 17.5(5)(b)(iv).

²³⁸ US-Colombia Trade Agreement, Article 17.5(5)(b)(iv).

²³⁹ Canada-Colombia Agreement on Labour Cooperation, Article 25.

²⁴⁰ Canada-Peru Agreement on Labour Cooperation, Article 25.

²⁴¹ EU-Cariforum Trade Agreement, Article 195(4).

²⁴² Draft EU-Peru and Colombia Trade Agreement, Article 283(2).

²⁴³ EU-Republic of South Korea Trade Agreement, Article 13.14(2).

²⁴⁴ Eric Gravel and Quentin Delpech, ‘The Comments of the ILO’s Supervisory Bodies’ <http://ilo.ch/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_207860.pdf> accessed 14 April 2017.

²⁴⁵ International Labour Organization, ‘Fundamental Principles and Rights at Work: From Commitment to Action, Recurrent Discussion under the ILO Declaration on Social Justice for a Fair Globalization and the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILC, 101st Session’

The ILO has mechanisms that could assist trade agreement disputes regarding labour provisions such as supervisory system procedures, the (more rarely used) complaints procedures of representation before a tripartite committee, and also the examining of complaints by commissions of inquiry, research studies, current training mechanisms, direct contacts, ILO fact finding missions, and conciliation missions.²⁴⁶ Additionally, the ILO can set up ad hoc mechanisms, creating specific bodies or procedures through its tripartite set-up in order to address trade and labour related issues.²⁴⁷

By 2013, eight trade agreements had dispute settlement procedures for failure to comply with ILO standards. They are, namely, The US-Jordan Trade Agreement; the US-Peru Trade Agreement; the US-Colombia Trade Agreement; the US-Republic of Korea Trade Agreement; the Canada-Peru Labour Cooperation Agreement; the Canada-Colombia Labour Cooperation Agreement; the EU-Cariforum Trade Agreement; and the Chile-Turkey Trade Agreement.²⁴⁸ Both the US and Canada, in their more recent agreements – such as the aforementioned US agreements (with Peru²⁴⁹, South Korea²⁵⁰, and Colombia²⁵¹) – have provisions for dispute settlement and, as a last resort, sanctions. Canada’s more recent trade agreements hold that dispute settlement is an option insofar as the ILO Declaration is not complied with. This is included within, for example, the Canada-Peru²⁵² and Canada-Colombia²⁵³ agreements.

Some disputes that the US holds with other countries – such as those relating to Bahrain, Guatemala, and Peru – which could refer to sources including court decisions at national and regional levels and NGO reports, have referred to and relied more heavily on assessments made by ILO supervisory bodies and work through CEACR²⁵⁴,

(2012) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_176149.pdf> accessed 14 April 2017.

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Agustí-Panareda, Ebert and LeClercq (n 192).

²⁴⁹ US-Peru Trade Agreement, Article 17.7(7).

²⁵⁰ US-Republic of Korea Trade Agreement, Article 19.7(5).

²⁵¹ US-Colombia Trade Agreement, Article 17.7(7).

²⁵² Canada-Peru Agreement on Labour Cooperation, Article 13(b)(ii).

²⁵³ Canada-Colombia Agreement on Labour Cooperation, Article 13 (b)(ii).

²⁵⁴ Committee of Experts on the Application of Conventions and Recommendations.

CFA²⁵⁵ and the Conference Committee on the Application of Standards.²⁵⁶ Assessments made by ILO supervisory bodies in relation to labour rights within a country can be of use to petitioners and their complaints. This can be seen with, for example, the findings by ILO supervisory bodies being consistent with the reviews of complaints by the competent authorities within the US.²⁵⁷

v) Broad International Instruments: ILO Declaration and Inclusion in Trade Agreements

The ILO Declaration is broad in context, unlike many of the organisation's conventions. As is the case with broader international instruments – including some of those discussed in this paper – it can be problematic when the Declaration is attached to promotional or conditional aspects, as conduct is not defined with the Declaration, and so assessing whether compliance has been achieved regarding legal obligations in cases can prove to be difficult. A further issue is that the Declaration does not receive monitoring from ILO supervisory mechanisms like the ILO conventions do, nor is guidance as accessible.²⁵⁸ Although it is the point of the Declaration to allow different countries to meet different standards regarding the same instrument, this could prove to be problematic for dispute resolution mechanisms attached to the Declaration. This is because the standards (based on the Declaration) being disputed may be different for each party, leading to a lack of coherence. For example, in certain US agreements – such as in the US free trade agreement with Colombia – the inclusion of the phrasing that the obligations within the trade agreement in question refer only to the ILO Declaration can make dispute resolution difficult.²⁵⁹

vi) The ILO's Role in Trade Agreements

The most frequent use of the ILO in relation to labour standards and trade is to help the poorer countries improve their performance. The ILO Constitution includes for the organisation's promotion of the ratification and compliance with international labour standards. It also holds that the organisation can provide technical assistance, and a

²⁵⁵ Committee on Freedom of Association.

²⁵⁶ Gravel and Delpech (n 244).

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ US-Colombia Trade Agreement, Article 17.2(1).

broad basis on which to offer states assistance, either voluntarily or when requested, allowing for the supporting of trade agreements' labour provisions involving ILO members to ensure their compliance with ILO obligations.²⁶⁰ Furthermore, the Declaration holds that when requested by member states, the ILO can support the member in promoting strategic objectives within bilateral and multilateral agreements to ensure ILO compatibility.²⁶¹ It is held within the Social Justice Declaration 2008 that the ILO will adapt its practices when requested upon in order to assist members in bilateral or multilateral agreements when the objectives are compatible with ILO obligations.²⁶²

vii) The Importance of ILO Involvement

It is important that the standards are set ILO standards, and that the organization oversees them. As touched upon above, a key issue that the ILO faces is that including their standards in trade deals could lead to a situation where trade partners are determining and defining the standards, which could impact their consistent application and the international protection they provide as a result of their uniformity.²⁶³ This is why it is vital for the ILO to be involved in the process of the inclusion of labour provisions, offering capacity building and guidance to relevant trade bodies.²⁶⁴

Due to the potential problem of decentralised labour standards and ILO labour standards being unsynchronised or incompatible, the potential fragmentation of international labour law, with trade and investment law possibly being left to interpret labour standards, could prove to be a serious issue. This would lead to a weakening of labour standards on the international platform.²⁶⁵ Trade agreements must therefore continue to include mechanisms promoting compatibility with the ILO in regard to their standards, using the ILO's supervisory bodies (the Committee of Experts on the Application of Conventions and Recommendations, and the Committee of Freedom of Association) for interpretations in order to ensure there is no deviation.²⁶⁶

²⁶⁰ ILO Declaration on Social Justice for a Fair Globalization, Part I(C) (n 203).

²⁶¹ ILO Declaration on Social Justice for a Fair Globalization, Section II.A(iv) (n 203).

²⁶² ILO Declaration on Social Justice for a Fair Globalization (n 203).

²⁶³ Agustí-Panareda, Ebert and LeClercq (n 192).

²⁶⁴ Ibid.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

b) Conditional and Promotional Components

A large number of labour provisions have conditional and promotional components, as well as dispute resolution mechanisms, with many including sanctions for when the aforementioned approaches are unsuccessful.²⁶⁷ Sanctions are very rarely used in relation to labour provisions. Two instances where they have been used concern the EU GSP (discussed below) and its trade relationships with Myanmar and Belarus. Myanmar systematically used forced labour and Belarus violated freedom of association and collective bargaining rights.²⁶⁸ In addition to an ILO Commission of Inquiry report, Belarus's failure to apply recommendations played a large part in the 2007 removal of the tariff preferences.²⁶⁹

Different agreements take different approaches. The US labour provision model in regard to trade agreements includes conditional elements, dialogue and cooperation arrangements as well as dispute settlements and potential sanctions for failure to comply. An example of this can be seen through the US-Peru Trade Agreement.²⁷⁰ Canada is similar to the US in this respect.²⁷¹ On the other hand, others such as the EU and New Zealand have labour provisions with promotional elements. This type of approach can also be seen regarding many South-South trade agreements.²⁷² A number of trade agreements conducted by Chile are examples of this, such as the Memorandum of Understanding with the 2008 Panama-Chile Trade Agreement and the Chile-Turkey Trade Agreement.²⁷³

i) The United States

Regarding US trade agreements, labour provisions tend to be conditional – based as an incentive or sanction mechanism – with the NAALC²⁷⁴ being the first to correlate

²⁶⁷ Gravel and Delpech (n 244).

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Articles 17.2 to 17.7; Article 21.2; Article 21.16.

²⁷¹ Gravel and Delpech (n 244).

²⁷² Ibid.

²⁷³ Chile-Panama Trade Agreement, (2008) Memorandum of Understanding on Labour and Social Security Cooperation.

²⁷⁴ North American Agreement on Labour Cooperation.

labour provisions and economic sanctions. The TAATC²⁷⁵ is the body that oversees labour provisions in regard to the US. It is a part of the Office of Trade and Labour Affairs (OTLA) which, within 60 days, determines whether cases will be heard, with a public report – containing information on proceedings, findings, alleged violations and recommendations – usually being issued within 180 days of a case being accepted.²⁷⁶

Through its trade preference laws, the US has supported labour rights in developing countries. The United States has held similar principles to the ILO in regard to preference laws covering five programs, namely the Generalized System of Preferences (GSP) 1975; the Caribbean Basin Initiative (CBI) 1983;²⁷⁷ the Andean Trade Preferences Act (ATPA) 1991;²⁷⁸ the African Growth and Opportunity Act (AGOA) 2000;²⁷⁹ and the Haitian Hemispheric Opportunity through Partnership Encouragement Act (HOPE) 2006.²⁸⁰ The US GSP holds that benefits will be received by those who follow a number of provisions, which include recognised worker rights, the prohibition of any form of forced or compulsory labour, and minimum age for child employment.²⁸¹

The aforementioned acts require trade partners to follow America's internationally recognised worker rights. These rights can be found within the Trade Act 1974 (section 507)²⁸² and almost mirror the ILO core labour principles (without the inclusion of discrimination) with the section also including some matters that fall outside the core fundamental labour standards: “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health”.²⁸³ The trade agreements negotiated by the US that include labour provisions are: NAFTA; CAFTA-DR; bilateral

²⁷⁵ Division of Trade Agreement Administration and Technical Cooperation.

²⁷⁶ Gravel and Delpech (n 244).

²⁷⁷ Caribbean Basin Initiative, (1983)

<http://www.belizeinvest.org.bz/uploads/6/4/9/6/64967361/caribbean_basin_initiative_v2.pdf> accessed 10 April 2017.

²⁷⁸ Andean Trade Preferences Act, (1991) <https://www.usitc.gov/publications/332/pub4486_0.pdf> accessed 10 April 2017.

²⁷⁹ African Growth and Opportunity Act (2000) <<http://trade.gov/agoa/>> accessed 10 April 2017.

²⁸⁰ Haitian Hemispheric Opportunity through Partnership Encouragement Act, (2006) <<https://www.gpo.gov/fdsys/pkg/CFR-2016-title19-vol1/pdf/CFR-2016-title19-vol1-part10-subpartO.pdf>> accessed 10 April 2017.

²⁸¹ Office of the United States Trade Representative Executive Office of the President, ‘U.S Generalized System of Preferences Guidebook’ (1999) <<http://studylib.net/doc/10591576/u.s.-generalized-system-of-preferences-guidebook-executiv...>> accessed 10 April 2017.

²⁸² Trade Act 1974, section 507(4)(E) <<http://legcounsel.house.gov/Comps/TRADE74.PDF>> accessed 10 April 2017.

²⁸³ Ibid.

agreements with Jordan, Chile, Singapore, Australia, Morocco, Bahrain and Oman; and four agreements which fall under the May 10th Agreement.²⁸⁴

ii) The US: Labour Provisions v Commercial Trade Provisions

The Department of Labour (DOL) and the Department of Commerce (DOC) consider their respective disputes. Unlike the DOC, the DOL does not have a hotline to which it receives complaints regarding failure of compliance, but does have its own procedures regarding complaints. Additionally, the DOL's focus is workers within America, and not those within the states of other parties where the majority of complaints tend to occur. It seeks to ensure compliance with labour provisions within trade agreements and trade preference programs.²⁸⁵ The DOL has received complaints of violations regarding free trade agreements involving parties such as Peru, Mexico, Honduras, the Dominican Republic, Guatemala, and Bahrain, but none of the aforementioned led to consultation with the parties, and therefore failed to also reach dispute resolution.

The North American Agreement on Labour Cooperation (NAALC)²⁸⁶ holds the labour provisions regarding NAFTA, stating that the parties are to enforce their own laws and standards regarding labour.²⁸⁷ Unlike commercial operations, where all sanctions are enforceable, sanctions relating to labour are only enforceable if there is a consistent failure to enforce standards relating to occupational safety and health, child labour, or minimum wage, and when the failure is trade related and the standard is mutually recognised by the parties, as per Article 29 NAALC.²⁸⁸ Furthermore, there are limits on monetary enforcement assessments with the side agreement, which incorporates suspension of benefits.²⁸⁹

Not all agreements differentiate between trade and labour provisions. Unlike NAFTA, there is no distinction made regarding dispute resolution between labour and trade provisions within US-Jordan Free Trade Agreement. Article 6.4 holds that parties are to

²⁸⁴ Mary Jane Bolle, 'Overview of Labor Enforcement Issues in Free Trade Agreements' (2016) <http://digitalcommons.ilr.cornell.edu/key_workplace/1492/> accessed 10 April 2017.

²⁸⁵ Ibid.

²⁸⁶ The North American Agreement on Labour Cooperation, 1993 <<https://www.dol.gov/ilab/reports/pdf/naalc.htm>> accessed 10 April 2017.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

assure labour laws – defined as U.S internationally recognised worker rights – are enforced, and ensure that trade does not impact labour rights. Parties can take “any appropriate and commensurate measure” if a dispute goes unresolved, as per Article 17.2(b).²⁹⁰ It should be noted, however, that the respective governments have reportedly agreed to remedy disputes without turning to trade sanctions.²⁹¹ This means that although complaint provisions are present, more pacific – and favourable – means towards enforcement are also at hand.

iii) Enforcement and the United States

Although their first two free trade agreements with Israel (1985) and Canada (1988) did not have labour provisions, the United States of America has entered into thirteen free trade agreements that have labour provisions since 1993,²⁹² when it had become more accepted that there was a link between trade and labour standards, and that there were both pros and cons to globalisation.²⁹³ Within these agreements, labour enforcement issues can be split into two sections: issues that relate to free trade agreement provisions (including definitions and enforceability), and those relating to executive branch responsibilities (including resource availability and determining dispute settlement case priorities).²⁹⁴

With the six states involved in CAFTA-DR and also the trade deals regarding Chile, Singapore, Australia, Morocco, Bahrain and Oman, there is a sole enforceable labour provision, holding that states should not fail “to effectively enforce labour laws... in a manner affecting trade between the parties”.²⁹⁵ Labour laws are once again defined as the statutes or regulations of each state that directly relate to the workers’ rights recognized by the US in its legislation and trade agreements.²⁹⁶ All provisions relating to commercial operations in these agreements are enforceable, with the agreements mentioned within this paragraph having very similar procedures regardless of whether

²⁹⁰ Bolle (n 284).

²⁹¹ Bolle (n 284; Inside U.S. Trade: US-Jordan Free Trade Agreement: Governments... "would Not Expect or Intend to Apply the Agreement’s Dispute Settlement Enforcement Procedures ... in a Manner That Results in Blocking Trade." (27 July 2001).

²⁹² With nineteen countries.

²⁹³ Bolle (n 284).

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

the dispute at hand relates to labour or commercial issues. However, there are limits placed on monetary penalties for labour disputes, but not commercial ones. Regarding the US-Bahrain and CAFTA-DR agreements – who both have official processes by which they receive complaints – a member failing to enforce its own labour laws can lead to a fine which is capped at \$15 million per year per violation.²⁹⁷ The aforementioned fines are put towards capacity building.²⁹⁸ In relation to both labour and commercial disputes, suspending benefits is to be a last resort.²⁹⁹

All labour standards are enforceable under the US-Jordan Free Trade Agreement and the May 10th Agreement, however not all of labour provisions are enforceable in regard to NAFTA and the NAALC, which includes one enforceable provision.³⁰⁰ As this enforceable provision covers specifically child labour, occupational safety and health, and minimum wages, it neglects the right to collective bargaining and freedom of association.³⁰¹ The bilateral agreements with Jordan, Chile, Singapore, Australia, Morocco, Bahrain and Oman also only include one enforceable provision, but it is greater in scope than that of the NAALC, with states having to enforce all of their own laws relating to internationally recognised worker rights “in a manner affecting trade between the Parties”.³⁰²

Complaints have been made recently regarding the US trade agreements CAFTA-DR, US-Bahrain, and US-Peru. Cases involving Bahrain and Guatemala are currently pending. CAFTA-DR saw a complaint in 2008 through Guatemala, inter alia, allegedly failing to effectively enforce labour standards in relation to trade unions, which led to formal consultations in 2012 and a requested arbitration panel the following year. The US-Bahrain complaint was based on Bahrain allegedly violating the chapter³⁰³ of the agreement relating to labour through anti-union actions in retaliation to demonstrations.³⁰⁴ In 2010, CAFTA-CR saw another complaint regarding trade unions, this time within Costa Rica, however, the complaint was withdrawn as improvements

²⁹⁷ Gravel and Delpech (n 244).

²⁹⁸ This could help to finance expenses of initiatives being used.

²⁹⁹ Bolle (n 284).

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ US-Bahrain Free Trade Agreement, Chapter 15.

³⁰⁴ Gravel and Delpech (n 244).

started to occur.³⁰⁵ In addition, the US-Peru free trade agreement had a complaint in 2010 due to a state authority failing to enforce national labour law in relation to collective bargaining.³⁰⁶

CAFTA-DR reaffirms parties' obligations regarding the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up. It also touches on enforcement, holding that parties "shall not fail to effectively enforce its labor laws, through recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement".³⁰⁷ Procedural guarantees and public awareness are also covered under the agreement.³⁰⁸ The USTR,³⁰⁹ which decides what cases will be pursued, is a small body. Due to the complexities of dispute resolution processes and issues such as time and expenses, the USTR must be selective in its approach, and it prioritises cases based on considerations such as clear violations, clarifications, and cases it sees a favourable chance in winning.³¹⁰

iv) The EU: GSP and GSP+

The EU's Generalized System of Preference (GSP) allows 176 developing countries and territories to obtain preferential access to the EU market. It allows goods to enter the EU market on reduced tariffs on over 6,200 tariff lines. There is no obligation or prerequisite for benefiting states to reciprocate this ease of access to EU members. The trade agreement – implemented by a council regulation – has a shelf life of three years at a time. In addition to this standard GSP, there is also the GSP+ programme, which helps vulnerable developing countries in their ratification and implementation of international conventions, supplying the incentive of further tariff reductions, and supporting sustainable development and good governance.³¹¹

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ CAFTA-DR, Chapter 16, Article 16.2.

³⁰⁸ CAFTA-DR, Chapter 16, Article 16.3.

³⁰⁹ Office of the United States Trade Representatives.

³¹⁰ Bolle (n 284).

³¹¹ European Union, 'List of Conventions to Qualify for "GSP Plus"'

<http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm> accessed 10 April 2017.

To qualify for GSP+, states must ratify and implement a number of the following UN and ILO conventions: International Covenant on Civil and Political Rights;³¹² International Covenant on Economic, Social and Cultural Rights;³¹³ International Convention on the Elimination of All Forms of Racial Discrimination;³¹⁴ Convention on the Elimination of All Forms of Discrimination Against Women;³¹⁵ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;³¹⁶ Convention on the Rights of the Child;³¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide;³¹⁸ International Convention on the Suppression and Punishment of the Crime of Apartheid;³¹⁹ Minimum Age for Admission to Employment (C138);³²⁰ Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182);³²¹ Abolition of Forced Labour Convention (C105);³²² Forced Labour Convention (C029);³²³ Equal Remuneration of Men and Women Workers for Work of Equal Value Convention (C100);³²⁴ Discrimination in Respect of Employment and Occupation Convention (C111);³²⁵ Freedom of Association and Protection of the Right to Organise Convention (C087);³²⁶ and the Application of the Principles of the Right to Organise and to Bargain Collectively Convention (C098).³²⁷ As well as GSP and GSP+, there is another preference regime called the

³¹² The United Nations, International Covenant on Civil and Political Rights (1966) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 3 March 2017.

³¹³ International Covenant on Economic, Social and Cultural Rights (n 119).

³¹⁴ The United Nations, International Convention on the Elimination of All Forms of Racial Discrimination (1965) <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>> accessed 10 May 2017.

³¹⁵ The United Nations, Convention on the Elimination of all Forms of Discrimination Against Women (1979) <<http://www.un.org/womenwatch/daw/cedaw/>> accessed 10 May.

³¹⁶ United Nations, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>> accessed 11 May 2017.

³¹⁷ United Nations, Convention on the Rights of the Child, 1989 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>> accessed 3 March 2017.

³¹⁸ United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, 1948 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx>> accessed 11 May 2017.

³¹⁹ The United Nations, International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973 <<https://treaties.un.org/doc/publication/unts/volume%201015/volume-1015-i-14861-english.pdf>> accessed 11 May 2017.

³²⁰ Minimum Age for Admission to Employment (n 18).

³²¹ Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (n 20).

³²² Abolition of Forced Labour Convention (n 28).

³²³ Forced Labour Convention (n 24).

³²⁴ Equal Remuneration of Men and Women Workers for Work of Equal Value Convention (n 197).

³²⁵ Discrimination in Respect of Employment and Occupation Convention (n 199).

³²⁶ Freedom of Association and Protection of the Right to Organise Convention (n 195).

³²⁷ Application of the Principles of the Right to Organise and to Bargain Collectively Convention (n 196).

Everything But Arms (EBA) arrangement.³²⁸ This arrangement supports the 50 Least Developed Countries (LDCs) by giving duty free, quota free access to the market for all products besides – as the name suggests – arms.³²⁹

v) Future Endeavours

The EU will need to decide on an approach to use regarding future trade agreements. In relation to the trade agreements with Colombia, Peru and Central America, the EU Parliament held a debate focused on the potential negative impacts these trade deals could have regarding issues such as human rights and the environment.³³⁰ In addition to Colombia's human rights record, EU parliamentarians discussed the link between natural resources and human rights such as access to water, sharing in the profits, and making a living from the land.³³¹ There are Trade Sustainable Impact Assessments, or TSIA's, which seek to inform negotiators of potential impacts. These assessments were carried out regarding the trade agreement that the EU has with Colombia and Peru, as well as the Central American agreement. However, it should be noted that TSIA's have been criticised for lack of civil society incorporation – despite claiming to involve civil society – and the level of human rights protection they offer.³³² If implemented correctly, trade deals – as argued within this paper – could bolster human rights protection greatly.

Other future endeavours include the Transatlantic Trade and Investor Partnership (TTIP) between the EU and USA. The European Union has stated that the rights of workers are not up for negotiation regarding the proposed TTIP, claiming that it wants a chapter purely dedicated to sustainable development, and will not allow for a race to the bottom on workers' rights and the environment to ensue.³³³ The EU claims that the TTIP would have commitments within it, guaranteeing the ILO's core labour standards,

³²⁸ European Commission, Everything But Arms (EBA) Arrangement
<http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150983.pdf> accessed 11 May 2017.

³²⁹ Ibid.

³³⁰ CIDSE, 'No Free Trade at the Expense of the People of Latin America' (20 March 2012)
<<http://www.cidse.org/articles/business-and-human-rights/extractive-industries-in-latin-america/no-free-trade-at-the-expense-of-the-people-of-latin-america.html>> accessed 21 March 2017.

³³¹ Ibid.

³³² Ibid.

³³³ European Commission and Directorate-General for Trade, The Top 10 Myths about TTIP: Separating Fact from Fiction. (Publications Office, 2015) <<http://dx.publications.europa.eu/10.2781/83337>> accessed 4 April 2017.

and that the parties would work together to combat abuses within logging and fishing, as well as the illegal trade of wildlife.³³⁴

According to the EU, with the TTIP, the demand for goods that start and pass through developing countries' supply chains would increase.³³⁵ There is therefore a strong argument that protection of workers in supply chains would have to increase in order to stop further abuses occurring. In addition, other issues with this trade agreement include fear over the inclusion of investor-state dispute settlements, or ISDS, which have been abused in the past.³³⁶ For example, there have been cases where governments have enacted policies to protect human rights and related concerns – such as health and the environment – and companies have sued them for undermining their expected profits.³³⁷ Cigarette company, Philip Morris, has demanded compensation from countries including Australia (through its subsidiary in Hong-Kong, and using a trade agreement between Australia and Hong-Kong) over the countries' introduction of health warnings on cigarette packs.³³⁸ The European Commission has claimed that the fears relating to the inclusion of ISDS within the TTIP are unfounded.³³⁹

³³⁴ Ibid.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Ibid.

³³⁸ Philip Morris Asia Limited (Hong Kong) v. The Commonwealth of Australia (2015)

<<https://www.italaw.com/sites/default/files/case-documents/ita0664.pdf>> accessed 13 May 2017.

³³⁹ The European Commission, 'Questions and Answers (TTIP)' <http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/questions-and-answers/index_en.htm> accessed 13 May 2017.

VI) The Current Legal Picture, with a Focus on the Global Supply Chain of Extractive Industries

The following chapter discusses a number of key international legal instruments that could be included within trade agreements in order provide reinforcement, giving states the opportunity to affirm positions on particular legal instruments, and reaffirm their commitments where they already exist. Also covered in this chapter are domestic laws that could be adopted by parties in trade agreements, offering the laws an element of extraterritoriality. In regard to all aspects of the current legal picture (as well as initiatives), incentives for succeeding and repercussions for failing to comply after agreeing to do so could be also included through trade agreements. Both relevant broader laws and laws more specifically geared towards supply chains are discussed below.

a) International Law and Current Discussions

There is a strong argument that the introduction of a business and human rights treaty, and a binding global standard on supply chains would be ideal. However, ideal is rarely a reality. A recent report by Human Rights Watch, “Human Rights in Supply Chains: A Call for a Binding Global Standard” explores a number of violations found within supply chains, impacting – inter alia – fundamental labour rights.³⁴⁰ The study focuses on the abuse of migrant workers in construction, as well as hazardous child labour that occurs through growing tobacco and mining for gold. These are all areas where products make their way into the global market.³⁴¹ Human Rights Watch has also called for the ILO to “initiate a process to develop a binding, international convention to protect human rights in global supply chains”,³⁴² holding that legally binding laws are the only way to ensure that labour rights are not abused.³⁴³ Thus far, the international

³⁴⁰ Human Rights Watch, ‘Human Rights in Supply Chains’ (30 May 2016) <<https://www.hrw.org/report/2016/05/30/human-rights-supply-chains/call-binding-global-standard-due-diligence>> accessed 15 March 2016.

³⁴¹ Human Rights Watch, ‘Make Rules on Rights Binding for Businesses’ (30 May 2016) <<https://www.hrw.org/news/2016/05/30/make-rules-rights-binding-businesses>> accessed 15 March 2017.

³⁴² Ibid.

³⁴³ Ibid.

focus has largely been on due diligence in relation to child and forced labour within the supply chain.

b) The International Labour Organization

The ILO is the arm of the United Nations responsible for setting international standards regarding labour rights, which it does through adopting conventions and recommendations at annual International Labour Conferences.³⁴⁴ In addition to the International Labour Conference, the Governing Body (the executive council, meeting three times annually)³⁴⁵ and the International Labour Office (the permanent secretariat)³⁴⁶ make up the main bodies of the ILO. Broader international human rights conventions adopted by the UN, and regional instruments have provisions touching on labour, however – as stated above – the ILO is the main source of international labour law. It differs from other Intergovernmental Organisations (IGOs): It is older and holds a coherence of vision with distinguishing features, namely its tripartite structure with governments, employers and workers, and its adoption, supervision and promotion of standards.

The ILO has eight core conventions that embody what are considered to be the four core labour principles. These core principles were decided upon during the 1995 Copenhagen Social Summit,³⁴⁷ and are: freedom of association and collective bargaining, the elimination of forced labour, the elimination of child labour, and the elimination of discrimination in respect of employment and occupation.³⁴⁸ Subsequently, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up adopted these subjects.³⁴⁹ The ILO's fundamental conventions are:

³⁴⁴ The International Labour Organization, 'International Labour Conference' <<http://ilo.org/global/about-the-ilo/how-the-ilo-works/international-labour-conference/lang--en/index.htm>> accessed 15 March 2017.

³⁴⁵ The International Labour Organization, 'Governing Body' <<http://www.ilo.org/gb/lang--en/index.htm>> accessed 15 March 2017.

³⁴⁶ International Labour Organization, 'International Labour Office' <<http://ilo.org/global/about-the-ilo/who-we-are/international-labour-office/lang--en/index.htm>> accessed 15 March 2017.

³⁴⁷ United Nations, 'World Summit for Social Development, Copenhagen' (1995) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/116/51/IMG/N9511651.pdf?OpenElement>> accessed 15 March 2017.

³⁴⁸ Ibid.

³⁴⁹ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (n 5).

Forced Labour Convention, 1930;³⁵⁰ the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C087);³⁵¹ the Right to Organise and Collective Bargaining Convention, 1949 (C098);³⁵² the Equal Remuneration Convention, 1951 (C100);³⁵³ the Abolition of Forced Labour Convention, 1957 (C105);³⁵⁴ the Discrimination (Employment and Occupation) Convention, 1958 (C111);³⁵⁵ the Minimum Age Convention, 1973 (C138);³⁵⁶ and the Worst Forms of Child Labour Convention.³⁵⁷ Regardless of what conventions ILO member states have ratified, they must all adhere to the principles of the fundamental rights mentioned above: “Members, even if they have not ratified the conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions”.³⁵⁸ Members who have not yet ratified all of these core conventions are asked – inter alia – for progress reports in regard to steps towards ratification.³⁵⁹

Also of relevance to this topic is the ILO’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as revised in 2017, which addresses the important role that companies play in social and economic globalisation

³⁵⁰ Forced Labour Convention, 1930 (No. 29) (n 23).

³⁵¹ International Labour Organization, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232> accessed 10 May 2017.

³⁵² International Labour Organization, Right to Organise and Collective Bargaining Convention, 1949 (No. 98),
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098> accessed 10 May 2017.

³⁵³ International Labour Organization, Equal Remuneration of Men and Women Workers for Work of Equal Value Convention, 1951 (No. 100)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100> accessed 10 May 2017.

³⁵⁴ Abolition of Forced Labour Convention (n 28).

³⁵⁵ International Labour Organization, Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111> accessed 10 May 2017.

³⁵⁶ Minimum Age Convention (n 18).

³⁵⁷ ‘Worst Forms of Child Labour Convention’ (n 20).

³⁵⁸ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (n 5).

³⁵⁹ Ibid.

through the likes of global supply chains and foreign direct investment and trade.³⁶⁰ It is the only instrument of its kind within the ILO system, as it offers guidance on “social policy and inclusive, responsible and sustainable workplace practices”.³⁶¹ The Declaration holds that MNEs (Multinational Enterprises) and national enterprises are to “contribute to the realization” of the ILO Declaration and its follow-up.³⁶²

c) The United Nations

The United Nations addresses child and forced labour in supply chains through many of its instruments. Regarding the UN system, the UN Security Council has similar guidelines to the OECD Guidance (addressed below).³⁶³ Furthermore, Article 55 of the UN Charter states that the UN will promote higher standards of living, full employment, conditions of economic and social progress, and solutions to problems related to economic, social and health issues while supporting equality and respecting human rights and fundamental freedoms.³⁶⁴ This is followed by Article 56 which holds that members are to take joint and separate action to achieve what is stated in Article 55.³⁶⁵

Labour rights are also intertwined with the Universal Declaration of Human Rights,³⁶⁶ and are arguably relevant throughout. Articles significant to child and forced labour include Article 3 (ban on slavery),³⁶⁷ Article 23 (the right to work in dignity),³⁶⁸ Article 24 (the right to rest),³⁶⁹ Article 25 (the right to an adequate standard of living),³⁷⁰ and

³⁶⁰ The International Labour Organization, ‘Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy’ (MNE Declaration) (5th Edition, March 2017) <http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm> accessed 10 May 2017.

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ The United Nations Security Council, ‘Due Diligence Guidelines for the Responsible Supply Chain of Minerals from Red Flag Locations to Mitigate the Risk of Providing Direct or Indirect Support for Conflict in the Eastern Part of the Democratic Republic of the Congo’ <https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/du_e_diligence_guidelines.pdf> accessed 10 May 2017.

³⁶⁴ The United Nations, Charter of the United Nations, 1945 (Article 55) <<http://www.un.org/en/charter-united-nations/>> accessed 10 May 2017.

³⁶⁵ Ibid at Article 56.

³⁶⁶ The Universal Declaration of Human Rights (n 118).

³⁶⁷ Ibid at Article 3.

³⁶⁸ Ibid at Article 23.

³⁶⁹ Ibid at Article 24.

³⁷⁰ Ibid at Article 25.

Article 26 (the right to an education).³⁷¹ Other UN instruments that relate heavily to labour rights include the ICESCR (e.g. Article 6 on the right to work, Article 7 on wages, Article 8 on freedom of association, Article 9 on social security, and articles 10 and 13 which relate to child labour and compulsory education)³⁷² and the ICCPR (e.g. Article 8 on slavery, Article 22 on freedom of association, and Article 24 on the rights of children).³⁷³ Labour rights are also of extreme relevance to group specific UN conventions such as CRC,³⁷⁴ ICERD,³⁷⁵ CEDAW,³⁷⁶ CRPD,³⁷⁷ and CMW.³⁷⁸ It should be noted that the above is not an exhaustive list of the crossover between labour rights and UN instruments. Furthermore, there are issue specific conventions that should be taken into consideration. For example, the Minamata Convention³⁷⁹ – which was adopted under the UNEP³⁸⁰ (and not by the UN itself, nor as a human rights convention) – seeks to reduce mercury exposure by setting out steps for members to take. It has not been ratified by all countries experiencing issues within this area, such as the DRC and the Philippines, but Ghana recently ratified the Convention, implying a willingness to improve.³⁸¹

i) The UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights: A Failed Attempt

Although popular with civil society, nations and businesses were not in support of the UN draft Norms on Business and Human Rights of 2003,³⁸² and they were not endorsed by the United Nations. Although the Norms were unsuccessful, they are still important

³⁷¹ Ibid at Article 26.

³⁷² International Covenant on Economic, Social and Cultural Rights (n 118).

³⁷³ International Covenant on Civil and Political Rights (n 312).

³⁷⁴ United Nations, Convention on the Rights of the Child (n 317).

³⁷⁵ International Convention on the Elimination of All Forms of Racial Discrimination (n 314).

³⁷⁶ The Convention on the Elimination of all Forms of Discrimination Against Women (n 315).

³⁷⁷ The United Nations, Convention on the Rights of Persons with Disabilities, 2006 <<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>> accessed 10 May 2017.

³⁷⁸ The United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>> accessed 10 May 2017.

³⁷⁹ The United Nations, Minamata Convention on Mercury (2013) <<http://www.mercuryconvention.org/Convention>> accessed 10 May 2017.

³⁸⁰ The United Nations Environment Programme <<http://www.unep.org>> accessed 10 May 2017.

³⁸¹ The Minamata Convention on Mercury (n 379).

³⁸² The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights 2003 (E/CN4/Sub2/2003/12/Rev2) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/160/08/PDF/G0316008.pdf?OpenElement>> accessed 4 April.

to consider for contextual reasons. The Norms were held by states and businesses to be attempting to assign obligations to companies that were solely for states to comply with. Similarly, states felt that companies were being raised to their level within the international sphere, which they did not support. This would have constituted a major change in international human rights law.

The Norms related to the topic of discussion in this paper, with section C3 of the draft Norms holding that “Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law”.³⁸³ This posits that businesses should not benefit from – inter alia – forced or compulsory labour, or other abuses relating to human rights or humanitarian rights,³⁸⁴ and implies that trading with countries where these abuses are occurring would not have been in compliance with the draft Norms.

As desirable as this may seem, the practicality of implementation and acceptance by all stakeholders, and the radical change it would have presented in terms of international law, proved to be too heavy a burden for the draft Norms. It should be noted that although this was a failed attempt to make improvements within business and human rights, much of what was introduced in the draft Norms did make its way into the UN endorsed Ruggie Principles, with the attempt providing impetus for that discussion to take place.

ii) The United Nations Guiding Principles

The United Nations Guiding Principles on Business and Human Rights (also known as the UN Guiding Principles, UNGPs, or the Ruggie Principles after their creator, John Ruggie) is a global standard based on the framework of “protect, respect, and

³⁸³ Ibid.

³⁸⁴ ‘Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ (n 196).

remedy”³⁸⁵ that is split into three pillars relating to governments, companies, and civil society, respectively.³⁸⁶ The UNGPs use a mix of voluntarism and regulation, asserting that states have a duty to protect human rights, corporations have a responsibility to respect human rights,³⁸⁷ and that – where abuses occur – states and companies should ensure that accessible remedy is available. The Principles acknowledge the traditional rule that international obligations can only be undertaken by states, while laying the groundwork for current discussions on a possible change of this maxim.

According to the UNGPs, companies are to be pragmatic in their approach to fulfil their duty to respect to human rights. They are to make sure they do not cause or contribute to abuses, use their influence to rectify abuses when they are linked to them, and remove their operations from actors causing abuses where this will not lead to further degradation of the victims.³⁸⁸ The UN Guiding Principles are accompanied by the Reporting Framework,³⁸⁹ which gives companies guidance on how to follow up their responsibility to respect human rights through their reporting of human rights issues. Companies including Unilever, H&M, and Nestle have adopted the Reporting Framework.³⁹⁰

³⁸⁵ John Ruggie, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011) <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf> accessed 9 March 2017.

³⁸⁶ John Ruggie, ‘Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises’ (29 Neth. Q. Hum. Rts. 224, 2011) <http://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nethqur44§ion=14> accessed 18 March.

³⁸⁷ The United Nations, ‘An Interpretive Guide: The Corporate Responsibility to Respect Human Rights’ (2011) <<http://acomintl.net/pdf/Un%20Guiding%20Principles%20Guide%20for%20Business%20Nov%202011.pdf>> accessed 5 April 2017.

³⁸⁸ Ruggie (n 385).

³⁸⁹ John Ruggie, ‘UN Guiding Principles Reporting Framework’ (2011) <http://www.ungpreporting.org/wp-content/uploads/2015/03/UNGPREportingFramework_2017.pdf> accessed 18 March 2017.

³⁹⁰ Ibid.

d) OECD

i) **OECD Guidelines**

Guidelines could also be included in trade agreements: The 2011 revision of the OECD Guidelines for Multinational Enterprises,³⁹¹ an international corporate accountability mechanism,³⁹² is a perfect example. They are recommendations for companies – implemented through ratifying states – that cover a number of areas including human rights. One of its key features is its implementation mechanism: National Contact Points.³⁹³ Although the OECD Guidelines are recommendations for companies, they include an annex that relates to states, requiring them to set up National Contact Points. This implementation mechanism is a rarity within soft law instruments (although it should be noted that the recent revision of the aforementioned ILO MNE Declaration has adopted a similar approach. However, it is too early to judge whether or not this has been a success).³⁹⁴

As well as helping raise awareness and advising companies, National Contact Points are a means for mediation and conciliation between parties. They cannot hold companies liable for not respecting the Guidelines, but seek assist parties, resolving issues between them.³⁹⁵ An interested person or party can submit claims, and the OECD will ask companies to respond to what are deemed to be credible claims.³⁹⁶ It should be noted that companies cannot be forced to take part in the proceedings or agree with the outcome, and the main power the Guidelines have is that of naming and shaming through the publication of reports. As their action is state specific, the quality of the NCPs differs from state to state, with some being of a higher standard than others.

³⁹¹ The Organisation for Economic Co-operation and Development (OECD), ‘Guidelines for MNEs’ <<http://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm>> accessed 18 March 2017.

³⁹² OECD Watch, ‘Calling for Corporate Accountability: A Guide to the 2011 OECD Guidelines for Multinational Enterprises’ (2013) <http://www.oecdwatch.org/publications-en/Publication_3962> accessed 18 March 2017.

³⁹³ The Organisation for Economic Co-operation and Development (OECD), ‘National Contact Points for the OECD Guidelines for Multinational Enterprises’ <<http://www.oecd.org/investment/mne/ncps.htm>> accessed 18 March 2017.

³⁹⁴ Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration) (n 360).

³⁹⁵ ‘National Contact Points for the OECD Guidelines for Multinational Enterprises’ (n 393).

³⁹⁶ Ibid.

ii) OECD Due Diligence Guidance

The current international standard on supply chain due diligence in the mineral sector is the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.³⁹⁷ This guidance translated the second pillar of the UNGPs – on the corporate responsibility to respect human rights – into an “operational guide for the minerals sector”.³⁹⁸ The pragmatic guidance given by the OECD recommends steps for companies to take in order to “identify, prevent and address” issues within the supply chain, including human rights abuses.³⁹⁹ The 34 OECD countries,⁴⁰⁰ nine non-OECD countries, and the International Conference on the Great Lakes Region (ICGLR)⁴⁰¹ have all endorsed the Guidance.⁴⁰²

The OECD Guidance holds that companies are to: “i) have a clear conflict minerals policy (ii) carry out supply chain risk assessments based on on-the-ground checks (iii) take action to deal with any problems identified (iv) commission independent third party audits of their due diligence measures (v) report publicly on their findings”.⁴⁰³ The Guidance states that checks in supply chains are to be flexible, iterative – constantly looking to improve – and company specific.⁴⁰⁴

There are a number of other industry initiatives within the extractive sector based on the OECD Due Diligence Guidance that should also be considered for potential insertion into trade agreements:⁴⁰⁵ Conflict-Free Tin Program (CFTI);⁴⁰⁶ Solutions for Hope

³⁹⁷ The Organisation for Economic Co-operation and Development (OECD), ‘Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’ <<http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>> accessed 18 March 2017.

³⁹⁸ Global Witness, ‘Civil Society Statement at the 10th Forum on Responsible Mineral Supply Chains’ (10-12 May 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/civil-society-statement-10th-forum-responsible-mineral-supply-chains-paris-10-12-may-2016/>> accessed 18 March 2017.

³⁹⁹ Ibid.

⁴⁰⁰ The Organisation for Economic Co-operation and Development (OECD), ‘List of OECD Member countries - Ratification of the Convention on the OECD’, <<http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>> accessed 18 March 2017.

⁴⁰¹ International Conference of the Great Lakes Region <<https://www.icglr.org/index.php/en/>> accessed 18 March 2017.

⁴⁰² ‘Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’ (n 241).

⁴⁰³ Ibid.

⁴⁰⁴ Ibid.

⁴⁰⁵ The Organisation for Economic Co-operation and Development (OECD) (n 21).

⁴⁰⁶ Conflict-Free Tin Initiative <<http://solutions-network.org/site-cfti/process/>> accessed 18 March 2017.

(SfH);⁴⁰⁷ Conflict-Free Sourcing Initiative (CFSI)⁴⁰⁸ and Conflict-Free Smelter Program (CFSP);⁴⁰⁹ Dubai Multi/Commodities Center’s Responsible Sourcing of Precious Metals (DMCC);⁴¹⁰ ICGLR Regional Initiative against the Illegal Exploitation of Natural Resources (RINI);⁴¹¹ ITRI Supply Chain Initiative (iTSCi);⁴¹² London Bullion Market Association’s Responsible Gold Program (LBMA);⁴¹³ Responsible Jewellery Council’s (RJC) Chain of Custody Certification (CoC),⁴¹⁴ and the World Gold Council’s Conflict-Free Gold Standard.⁴¹⁵

A key concern of the OECD Guidance relates to “practical implementation” by both states and companies.⁴¹⁶ It has been argued that states need to increase their efforts to comply with the Guidance and take steps to assure its implementation by companies operating within a member’s jurisdiction.⁴¹⁷ Although many states have endorsed the Guidance, it has been claimed that countries – both developed and developing – are failing to back up this endorsement. Some companies have made clear that they will not carry out due diligence unless it becomes a legal requirement.⁴¹⁸ As this paper is trying to suggest improvements in the protection of labour rights, it is important to note that the Guidance could be strengthened through inclusion in trade agreements.

⁴⁰⁷ Solutions for Hope <<http://solutions-network.org/site-solutionsforhope/>> accessed 18 March 2017.

⁴⁰⁸ Conflict-Free Sourcing Initiative <<http://www.conflictreesourcing.org>> accessed 18 March 2017.

⁴⁰⁹ Conflict-Free Smelter Program <<http://www.conflictreesourcing.org/conflict-free-smelter-program/>> accessed 18 March 2017.

⁴¹⁰ Dubai Multi/Commodities Center’s Responsible Sourcing of Precious Metals <<https://www.dmcc.ae/gateway-to-trade/commodities/gold/responsible-sourcing>> accessed 18 March 2017.

⁴¹¹ ICGLR, Regional Initiative against the Illegal Exploitation of Natural Resources <<https://www.oecd.org/investment/investmentfordevelopment/50473614.pdf>> accessed 18 March 2017.

⁴¹² ITRI Supply Chain Initiative <<https://www.itri.co.uk/itsci/itsci-project-overview/itsci-project-overview>> accessed 18 March 2017.

⁴¹³ London Bullion Market Association’s Responsible Gold Program <<http://www.lbma.org.uk/responsible-sourcing>> accessed 18 March 2017.

⁴¹⁴ Responsible Jewellery Council’s Chain of Custody Certification <<http://www.responsiblejewellery.com/chain-of-custody-certification/>> accessed 18 March 2017.

⁴¹⁵ World Gold Council’s Conflict-Free Gold Standard <https://www.gold.org/sites/default/files/documents/Conflict_Free_Gold_Standard_English.pdf> accessed 18 March 2017.

⁴¹⁶ ‘Civil Society Statement at the 10th Forum on Responsible Mineral Supply Chains’ (n 398).

⁴¹⁷ Ibid.

⁴¹⁸ Amnesty International and Afreewatch, ‘This Is What We Die For’ (2016)

<<https://www.amnesty.org/en/documents/afr62/3183/2016/en/>> accessed 14 March 2017.

iii) China and OECD Guidance Equivalent

Parties could subscribe to follow regional guidance, and show more commitment to that goal through including it in trade agreements. China is a hub for assembling goods after receiving raw materials from other countries, and there are abuses linked to the manufacturing industry there. Holding the OECD Guidance to be the international standard in relation to due diligence, the Chinese Chamber of Commerce of Metals, Minerals and Chemicals Imports and Exporters (CCCMC) – an industry body overseen by the Ministry of Commerce – introduced similar guidance within its own supply chain due diligence standards.⁴¹⁹ The Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains was drafted with both international and Chinese partners, and the Guidelines give direction and advice to companies in order to tackle human rights abuses.⁴²⁰

The Chinese Guidelines mirror the 5 steps set out by the OECD Guidance, including companies carrying out their own supply chain due diligence, conducting third party audits, and publishing policies and practices.⁴²¹ Once again mirroring the OECD Guidance, companies are to check for potential risks of conflict or serious human rights abuses within their supply chains, and must also look for risks related to other serious misconduct. The Chinese Guidelines are applicable to all Chinese companies that extract or use minerals and mineral products, and are without prejudice to country or region.⁴²² Furthermore, the Guidelines are applicable to all mineral resources, but put emphasis on gold, tin, tungsten and tantalum.⁴²³ Giving these Guidelines more conviction through implementation within trade deals could prove to be beneficial.

⁴¹⁹ The China Chamber of Commerce of Metals, Minerals, and Chemicals Importers & Exporters (CCCMC), ‘Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains’ <<http://www.cccmc.org.cn/docs/2016-05/20160503161408153738.pdf>> accessed 14 March 2017.

⁴²⁰ ‘Civil Society Statement at the 10th Forum on Responsible Mineral Supply Chains’ (n 398).

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ The China Chamber of Commerce of Metals, Minerals, and Chemicals Importers & Exporters (CCCMC) (n 419).

e) Domestic Law

It has been the case that the domestic law of partner countries can influence the implementation of trade agreements,⁴²⁴ and there is a strong argument that the impact domestic law can have should be utilised. Reaffirming and building upon commitments and laws within trade agreements could prove to be beneficial to the labour rights picture, as members could be influenced by trade incentives and/or sanctions to make more of an effort to enforce their domestic laws where they are failing (potentially with the help of initiatives, as will be discussed). There is also the added element of extraterritoriality, where the domestic law of one country could be included in trade deals so that partners also abide by it. This inclusion of domestic law would allow domestic courts to rule on internal law, and also allow parties to the trade deal to view precedent – where it exists – when disputes occur.

Although there is likely to be resistance from businesses, who may wish to preserve commercial secrets, there is a strong argument that domestic laws must require more transparency from companies and that contracts should be openly published for public access, with companies being monitored and audited, and seeing real consequences when blatantly disregarding the law. As stated in the above paragraph – although there is the argument of protectionism in this regard – there may be benefits in pushing these domestic laws further afield, which could be achieved through their inclusion in trade agreements. Since 2013, around 30 countries – including the UK, France, Norway, and Canada – have introduced laws compelling companies within extractive industries to disclose payments made at project level.⁴²⁵ This reinforces the international stance, which has been strongly leaning towards transparency and accountability.

i) Transparency in Supply Chain Acts

There are a number of domestic laws relating to supply chains that could be reaffirmed within trade agreements in order to reinforce them and/or give them an extraterritorial

⁴²⁴ World Trade Organization, ‘Standards for Reformulated and Conventional Gasoline’ (United States, Appellate Body Report WT/DS2/AB/R, adopted on 20 May 1996) <https://www.wto.org/english/tratop_e/dispu_e/2-9.pdf> accessed 14 March 2017.

⁴²⁵ Global Witness, ‘New Investigation Shows Why EITI Must Enforce Project-Level Reporting by Oil and Mining Companies’ <<https://www.globalwitness.org/en/blog/glencores-75-million-payments-show-why-eiti-must-enforce-project-level-reporting-oil-and-mining-companies/>> accessed 10 March 2017.

presence: Trading countries could be required to comply with these laws in return for trade benefits. The UK Modern Slavery Act seeks to improve transparency within supply chains.⁴²⁶ The act requires companies operating in the UK to publicly post on their websites whether or not they have abuses relating to trafficking and slavery occurring within their supply chains, and – if so – what they are doing to combat this. However, the act can be criticised due to its lack of legal remedy and enforcement when companies do not comply, as well as the fact that compliance itself can be achieved by a company simply stating that they have taken no steps whatsoever to ensure transparency within their supply chain. It is simply a disclosure regulation that works on a name and shame basis, and its effectiveness relies on public disapproval.

A similar act came into effect in the state of California in the shape of the California Transparency in Supply Chains Act 2010.⁴²⁷ Although around 400 companies had reportedly complied with the act in 2014, it has also seen questionable success, with 85 (out of 129) companies failing to respond to a recent inquiry on compliance.⁴²⁸ France has recently passed a “duty of vigilance” law that is stronger than the previous two mentioned in the UK and US.⁴²⁹ The French law promotes accountability within global supply chains, with potential monetary sanctions reaching €30 million. The law holds that multinational companies operating wholly or partly within France are required to have safeguards in place in order to combat both human rights abuses and environmental abuses within their supply chains.⁴³⁰

⁴²⁶ Modern Slavery Act (2015) <<http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>> accessed 21 March 2017.

⁴²⁷ The California Transparency in Supply Chains Act (2010) <http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf> accessed 21 March 2017.

⁴²⁸ CSR Wire, ‘85 Firms Still “silent” on California Transparency in Supply Chains Act’ (12 February 2014) <http://www.csrwire.com/press_releases/36712-85-firms-still-silent-on-California-Transparency-in-Supply-Chains-Act> accessed 10 May 2017.

⁴²⁹ Relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (Relating to the duty of vigilance of the parent companies and the ordering companies) (2017) <<http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf>> accessed 6 March 2017; Juliane Kippenberg, ‘France Takes Historic Step Toward Reducing Supply Chain Abuses’ (Human Rights Watch, 27 February 2017) <<https://www.hrw.org/news/2017/02/27/france-takes-historic-step-toward-reducing-supply-chain-abuses>> accessed 6 March 2017.

⁴³⁰ Foley Hoag LLP, ‘French National Assembly Adopts Corporate Duty of Vigilance Law’ <<http://www.csrandthelaw.com/2017/02/28/french-national-assembly-adopts-corporate-duty-of-vigilance-law/>> accessed 10 May 2017.

In addition, the Netherlands is currently discussing the adoption of a law⁴³¹ – that may become effective in 2020 – that would make it obligatory for companies who operate within the country to assess their supply chains (further than direct suppliers) in order to ensure that there is no occurrence of child labour, and to invoke a plan of action where there is reasonable suspicion of the aforementioned abuse.⁴³² Although many of the above acts could lead to improvements, the more comprehensive the act that is included in a trade agreement, the more beneficial it can be for labour rights. It can be argued that domestic laws with stronger enforcement and potential sanctions, focusing on a broader spectrum of materials traded, would be a step in the right direction in regard to what could be included in trade agreements.

ii) The Extractive Sector: The Dodd-Frank Wall Street Reform and Consumer Protection Act 2010

The Dodd-Frank Wall Street Reform and Consumer Protection Act was part of former US President Barack Obama's response to the Great Recession, and was enacted in July 2010.⁴³³ Section 1502 of the act – proposed by Senator Sam Brownback – seeks to ensure US companies in the extractive sector carry out due diligence, and was seen as a way of stripping militias of a large part of their resources.⁴³⁴ The act covers the DRC and adjoining countries, namely the CAR, Uganda, South Sudan, Rwanda, Burundi, Tanzania, Malawi, Zambia, and Angola. It led to the setting up of a monitoring system in which the whole supply chain process is monitored. Inspectors visit mines in order to verify their status, pushing for them to be conflict free. Minerals are then followed as they make their way through the supply chain.⁴³⁵

With the current US administration, section 1502 is now at risk of being suspended by the US Securities and Exchange Commission (SEC). There have been calls for its

⁴³¹ Child Labour Due Diligence Law (Wet Zorgplicht Kinderarbeid) <<https://zoek.officielebekendmakingen.nl/kst-34506-3.html>> accessed 10 May 2017.

⁴³² The International Labour Organization and Ministry of Social Affairs and Employment of the Netherlands (n 13).

⁴³³ Dodd-Frank Wall Street Reform and Consumer Protection Act, (2010) <<https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>> accessed 21 March 2017.

⁴³⁴ Todd Frankel, 'Why Apple and Intel Don't Want to See the Conflict Minerals Rule Rolled Back' (Washington Post, 23 February 2017) <https://www.washingtonpost.com/business/economy/why-apple-and-intel-dont-want-to-see-the-conflict-minerals-rule-rolled-back/2017/02/23/b027671e-f565-11e6-8d72-263470bf0401_story.html> accessed 15 March 2017.

⁴³⁵ Ibid.

suspension by the current US government, the US Chamber of Commerce, and the National Association of Manufacturers.⁴³⁶ It is held within the act that it can be suspended or revised for two years by the SEC if it is in the interests of America's national security.⁴³⁷ The SEC could stop enforcing the act, but cannot fully repeal it without the backing of Congress.⁴³⁸ It has been argued by those opposed to the law that it has been counterproductive and a threat to the United States' security due to companies boycotting minerals in the affected region, leaving a vacuum for more hostile actors to take their place. The SEC is considering whether the section is still relevant and has reported that legitimate mining operations are being put out of business because they cannot afford to comply with the regulations,⁴³⁹ and that the State and Treasury departments will be able to devise a more efficient plan within 180 days.⁴⁴⁰

According to a report by New York based firm Assent Compliance⁴⁴¹ and Tulane University⁴⁴² in New Orleans, publicly traded companies in America spent around \$709 million as well as \$6 million in working hours in the year of 2014 in order to comply with the Dodd-Frank Act.⁴⁴³ There are many who argue that it is more than reasonable to expect companies who have global profits in the region of \$125bn to be able to use their resources to confidently assess their supply chains in order to check where they are sourcing their minerals from and in what manner those minerals are being sourced.⁴⁴⁴ There are different views on the act and distinct differences in estimates in regard to costs, and this may be because – as reports suggest – the precise expenditure related to

⁴³⁶ Ibid.

⁴³⁷ Dodd-Frank Wall Street Reform and Consumer Protection Act (n 433); Sarah N Lynch and Emily Stephenson, 'White House Plans Directive Targeting "Conflict Minerals" Rule: Sources' (Reuters, 9 February 2017) <<http://www.reuters.com/article/us-usa-trump-conflictminerals-idUSKBN15N06N>> accessed 6 March 2017.

⁴³⁸ Ibid.

⁴³⁹ Securities and Exchange Commission, 'Reconsideration of Conflict Minerals Rule Implementation' <<https://www.sec.gov/news/statement/reconsideration-of-conflict-minerals-rule-implementation.html>> accessed 15 March 2017.

⁴⁴⁰ Rathi (n 107).

⁴⁴¹ Assent Compliance <<https://www.assentcompliance.com>> accessed 19 May 2017.

⁴⁴² Tulane University <<https://tulane.edu/>> accessed 19 May 2017.

⁴⁴³ Assent Compliance and Development International, 'Conflict Mineral Benchmarking Study RY2015' <<http://www.assentcompliance.com/conflict-mineral-benchmarking-study-ry2015/>> accessed 19 May 2017.

⁴⁴⁴ Jane Wakefield, 'Apple, Samsung and Sony Face Child Labour Claims' (BBC News) <<http://www.bbc.co.uk/news/technology-35311456>> accessed 20 March 2017.

the Dodd Frank Act is difficult to ascertain.⁴⁴⁵ There is also the factor of political agenda, which must be considered.

Companies supporting the act's repeal believe that it is an abuse of US securities law⁴⁴⁶ and that it makes companies release information that is politically charged and irrelevant to investment decisions. They also contend that it costs companies too much money to trace where they get their minerals from.⁴⁴⁷ Furthermore, those against the act hold that it has been ineffective and that companies are still unaware of where their minerals come from,⁴⁴⁸ with only 11% of companies meeting the requirements set out by the law in 2015.⁴⁴⁹ Certain companies have further stated that they are so far removed from the source that compliance is extremely difficult and a great strain on resources.⁴⁵⁰

The aforementioned report by Assent Compliance and Tulane University stated that out of the 1,262 companies that filed their conflict minerals disclosures, around 90% of them could not say whether the metals in their products were conflict free, nor could they name their country of origin.⁴⁵¹ Chris Bayer, a research consultant specialising in conflict minerals, also found that less than 24% of companies (314) managed to reach full compliance with the Dodd-Frank Act by 2015.⁴⁵² Furthermore, he found that 43% of companies are unable to show that they are performing due diligence to a suitable standard, as required.⁴⁵³ Whether the companies do not have data on the matter or are refusing to supply it is not clear, and can most likely only be answered on a company-by-company basis.

⁴⁴⁵ Llewellyn Hinkes-Jones, 'How Much Did Dodd-Frank Cost? Don't Ask Banks' (Bloomberg BNA, 2 February 2017) <<https://www.bna.com/doddfrank-cost-dont-n57982083211/>> accessed 15 May 2017.

⁴⁴⁶ Frankel (n 434).

⁴⁴⁷ Lynch and Stephenson (n 437).

⁴⁴⁸ Frankel (n 434).

⁴⁴⁹ Global Witness, 'The Dodd Frank Act' (1 February 2016) <<https://www.globalwitness.org/en/gb/campaigns/conflict-minerals/dodd-frank-act/>> accessed 18 March 2017.

⁴⁵⁰ Frankel (n 434).

⁴⁵¹ Assent Compliance and Development International (n 443).

⁴⁵² Winsor (n 103).

⁴⁵³ Ibid.

Others argue that improvements have been made under the legislation and that repealing the act could undo those improvements.⁴⁵⁴ A report by Enough Project claimed that the Dodd Frank Act had pushed companies to make improvements, encouraging more scrutiny and cleaner supply chains. The adoption of the act can be correlated with the Congolese army and other armed groups ceding control of 66% of the mines surveyed, which in turn led to legitimate Congolese miners earning 40% more.⁴⁵⁵ Over 200 mines are now considered to be conflict free in Congo.⁴⁵⁶

Regarding American companies, a recent report by Amnesty International and Global Witness found that only 21% of companies are managing to check their supply chains for conflict minerals to the acceptable level in order to be compliant with the aforementioned section 1502 of the Dodd-Frank Act 2010, with many conflict minerals still able to enter the US due to blind spots.⁴⁵⁷ The report further held that only 16% of companies go further than their direct suppliers in order to contact those who process the minerals, such as the smelters and refiners.⁴⁵⁸ The only company who were able to provide specific information regarding the mine of origin for the minerals found within its products was Boeing.⁴⁵⁹

Companies and consumers have moved towards the belief that products should be conflict free, and it can be argued that the Dodd Frank Act has assisted in altering corporate thinking.⁴⁶⁰ Companies including Apple, Intel, and Tiffany⁴⁶¹ have spoken out against the potential revoking of section 1502 of the Dodd Frank Act.⁴⁶² These companies state that they will not abandon their efforts to support the improvement of human rights, regardless of whether their efforts are undermined by domestic law. Proponents of section 1502 hold that it has led to companies taking a more careful

⁴⁵⁴ Ed Pilkington, 'Proposed Trump Executive Order Would Allow US Firms to Sell "Conflict Minerals"' (The Guardian, 8 February 2017) <<https://www.theguardian.com/us-news/2017/feb/08/trump-administration-order-conflict-mineral-regulations>> accessed 6 March 2017.

⁴⁵⁵ Frankel (n 434).

⁴⁵⁶ Ibid.

⁴⁵⁷ Global Witness and Amnesty International, 'Digging For Transparency' (n 106).

⁴⁵⁸ Ibid.

⁴⁵⁹ Ibid; Avaneesh P, 'Conflict Minerals Enter US Unchecked, Hidden By "Blind Spots" In Supply Chains' (International Business Times, 22 April 2015) <<http://www.ibtimes.com/conflict-minerals-enter-us-unchecked-hidden-blind-spots-supply-chains-1891692>> accessed 6 March 2017.

⁴⁶⁰ Frankel (n 434).

⁴⁶¹ Tiffany & Co., 'Statement Supporting Diligence and Transparency in Addressing Conflict Minerals | United States' <<http://press.tiffany.com/News/NewsItem.aspx?id=302>> accessed 15 March 2017.

⁴⁶² Frankel (n 434).

approach when stating whether or not they are using conflict minerals, with them now less likely to state so outright and unequivocally. This could be, in part, due to the potential backlash, with section 1502 pressuring companies to pay greater attention to the issue. Those in favour of the act also argue that the expenses related to it have been exaggerated, that it has cost a lot less than the initial estimates, and that exports of the minerals covered under the act have increased greatly since it came into force.⁴⁶³

iii) The EU Non-Financial Reporting Directive

There is discussion of a European Union regulation akin to the Dodd-Frank Act.⁴⁶⁴ Under this regulation, companies based in the EU would have to show increased transparency within their supply chains and that they are being responsible. The EU Non-Financial Reporting Directive is expected to impact 6,000 large companies, including US companies operating in Europe.⁴⁶⁵ In addition to the directive, the EU will take diplomatic and development measures in order to maximise efficiency, as it has been argued that the directive alone cannot be expected to address the issues at hand to their full extent.⁴⁶⁶

The directive has been criticised for not coming into force immediately due to the proposal containing a planned phase-in period. Groups such as PowerShift⁴⁶⁷ are sceptical about this due to the fact that companies carry the entailed responsibilities already. Furthermore, the regulation is only seeking to cover certain minerals, excluding – for example – diamond, and it would cover solely the importation of these raw materials into the EU directly, but not products that contain minerals which may have been produced at the expense of labour rights.⁴⁶⁸ This could be exploited through

⁴⁶³ Ibid.

⁴⁶⁴ James Wood, 'The New Risk Front for GCs – Nearly Half of Contracts Have Human Rights Clauses, LB Research Finds' (legal business, 8 September 2016) <<http://www.legalbusiness.co.uk/index.php/lb-blog-view/7311-soft-law-hard-sanctions-almost-half-of-commercial-contracts-have-human-rights-clauses-new-study-finds>> accessed 9 March 2017.

⁴⁶⁵ Ibid.

⁴⁶⁶ Global Witness, 'EU: Conflict Minerals Agreement Reached as Exemptions Added' (22 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/eu-conflict-minerals-agreement-reached-exemptions-added/>> accessed 10 March 2017.

⁴⁶⁷ PowerShift <<https://power-shift.de/language/en/>> accessed 10 March.

⁴⁶⁸ Global Witness, 'Conflict Minerals in the EU' (3 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-europe-brief/>> accessed 7 March 2017.

loopholes, and is a point that the EU's Parliament and Council disagree upon.⁴⁶⁹ The European Parliament voted in 2015 for the introduction of a regulation that would be much stronger on the importing of minerals than what has now been discussed by the European Council.⁴⁷⁰

The import volume thresholds that have been introduced late into negotiations means that many companies will not have to comply with the directive. It has also been reported that the European Commission has made exemptions for private bodies that many companies currently outsource their due diligence to,⁴⁷¹ with it being alleged that these bodies will not have to meet the same requirements as other companies.⁴⁷² Furthermore, the EU will recommend a number of smelters and refiners that they consider to be responsible, but some argue that very little in the way of checks have been carried out regarding this.⁴⁷³ The EU directive will – if adopted – cover tin, tungsten, tantalum, and gold from all countries.⁴⁷⁴ Although it is a step forward, the regulation would still only cover a small part of the supply chain. Further improvements in this directive would be to include other minerals linked to abuses, extend to manufactured goods that contain these minerals,⁴⁷⁵ and remove exemptions for private bodies.

⁴⁶⁹ Global Witness, 'Conflict Minerals: European Policy' (17 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-shaping-eu-policy/>> accessed 7 March 2017.

⁴⁷⁰ Ibid.

⁴⁷¹ Ibid.

⁴⁷² 'EU: Conflict Minerals Agreement Reached as Exemptions Added' (n 466).

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ Global Witness, 'EU Political Agreement on Conflict Minerals Risks Allowing Deadly Trade to Continue' (16 June 2016) <<https://www.globalwitness.org/en/press-releases/eu-political-agreement-conflict-minerals-risks-allowing-deadly-trade-continue/>> accessed 7 March 2017.

VII) How Can Initiatives be Beneficial?

a) Resource Rich Countries

Governments must protect human rights. It is their duty to do so.⁴⁷⁶ In regard to this, there are clear benefits that trade can have, with initiatives being a way in which trade can offer more protection for human rights, supporting states in their duty. An ILO Report in 2013 held that “In appropriate circumstances, trade, investment and technology can offer developing and transition countries opportunities to reduce the gap that separates them from advanced industrialized countries, and can create good jobs. However, the problem is that the current globalization processes are not sufficiently inclusive or fair; the benefits are not reaching enough people, especially those most in need. Globalization lays bare poor governance. Trade, without export subsidies that distort the market, without unfair practices or the application of unilateral measures, would help living standards to be raised and conditions of employment to be improved in developing countries, and would reduce decent work deficits in the informal economy”.⁴⁷⁷

There are potential benefits to be gained if the way in which globalisation impacts resource rich countries can be altered and improved upon. It (arguably) can be, through the assistance of initiatives helping to create more structure. For example, resource rich countries capturing more of the revenue from resource exploitation instead of letting it go abroad may allow these countries to develop themselves better. Furthermore, throwing money at developing countries without giving any direction is likely to have negative impacts. Many resource rich countries have been hit with what is being labelled as the resource curse, with the discovery of resources within a country’s

⁴⁷⁶ United Nations Guiding Principles (n 385).

⁴⁷⁷ The International Labour Organization (International Labour Conference and International Labour Office), 'Transitioning from the Informal to the Formal Economy: Fifth Item on the Agenda', 2014 (first edition released 2013) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf> accessed 14 March 2017.

territory sometimes leading to negative impacts regarding good governance and economic development.⁴⁷⁸

Also, taxing more efficiently would arguably benefit both developing and developed countries, because foreign aid could be reduced if developing countries were able to capture more of the tax from the natural resources in their lands. It should be noted that countries tend to want to improve. For example, the DRC government is working with the World Bank in order to improve economic governance. This is being approached through reforms set to “strengthen governance and transparency in the extractive industries”.⁴⁷⁹ There have been improvements made recently regarding the aforementioned, with most contracts relating to mining, oil, and forestry being available to the public, and the DRC government playing an active role in submitting reports to the Extractive Industries Transparency Initiative (EITI), which is discussed in the next chapter on initiatives.⁴⁸⁰ As seems to be the pattern in this area of law, although improvements have been made more must be done.

i) The Informal Economy

The informal economy is an issue, particularly for developing countries. It is a concept that was invented by the ILO, with ILO Recommendation 204 (R204) defining the informal economy as “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements”.⁴⁸¹ It relates to economic activity that takes place out of the reach, wholly or partially, of the national regulatory framework, and includes businesses that operate unlicensed and unregulated, as well as companies that work in the formal sector and buy goods and services from the informal sector (possibly within their supply chain, unknowingly).⁴⁸²

⁴⁷⁸ Kwadwo Mensah, ‘The Discovery of Oil in Ghana - Time for a Reality Check’ <<http://www.cddghana.org/documents/Briefing%20Paper%20Vol%209.%20No.%201.pdf>> accessed 3 April 2017.

⁴⁷⁹ World Bank (n 111).

⁴⁸⁰ Ibid.

⁴⁸¹ The International Labour Organization, Recommendation R204 - Concerning the Transition from the Informal to the Formal Economy (section A) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204> accessed 3 April 2017.

⁴⁸² ‘Transitioning from the Informal to the Formal Economy (n 477).

Bringing informal work into the formal economy is something that many countries struggle with. One factor faced by a number of developing countries is the amount of employment within the informal sector, as can be seen with India, with the country's informal market making up 90% of the economy (in large part due to their agricultural sector).⁴⁸³ With many other developing countries, the number is still within the 70%-80% range.⁴⁸⁴ In parts of Asia and Latin America, the informal workforce – without including agriculture – is between 40% and 85% (the informal workforce was held to be 40% in Brazil 1999, and between 50% and 60% in Colombia), and is around 80% within the continent of Africa.⁴⁸⁵

It may, on the face of it, seem beneficial to rely the informal economy: The job and income generation potential is high – in part – because of the relative ease of entry. Also, there are low requirements in regard to education, skills, technology, and capital. However, reliance on the informal economy for job creation, growth, and development is not acceptable for any nation. It does not contribute to the national economy as much as it ought to, as the work is not registered. This means that the system does not benefit from the activity in the way that it could. The work is generally not taxed, which is a clear disadvantage from a governmental standpoint.⁴⁸⁶ Workers are not benefiting as much as they should be, either. The informal economy is synonymous with the denial of rights at work. Workers are not covered by taxes or benefits, so if a worker is sick they are a burden on the community instead of social security.⁴⁸⁷ It is therefore clear that reliance on the informal economy for job creation, growth and development is not a viable option.

ii) Issues related to extractive industries: Oil

It is important for industries to contribute to the economic and social development of communities from which they are obtaining resources by, at very least, not causing or exacerbating human rights abuses. Although rich in resources, some countries are confronting exploitative forces that they are not equipped to handle, and need support to fight against this vulnerability. With an agreement between a government and an oil

⁴⁸³ Marion Jansen and Eddy Lee (n 1).

⁴⁸⁴ Ibid.

⁴⁸⁵ Ibid.

⁴⁸⁶ Transitioning from the Informal to the Formal Economy (n 477).

⁴⁸⁷ Ibid.

company, oil can be extracted. As it is extracted – and not produced – it may require minimal input from a country’s labour force. It can also bypass political institutions with trade unions, civil services, local distribution, and even a country’s legislature not necessarily being consulted before the process is underway.⁴⁸⁸ Because of this, development can suffer. Rents – the monetary difference between the price of oil and the amount it costs to extract it – are heavily linked to corruption within resource rich countries, with powerful actors trying to gain whatever they can from the process.⁴⁸⁹ Whether it is due to political corruption or because the expertise involved lies with the oil companies (or both), governments in developing countries may find themselves in positions where they are agreeing to contracts that are not in the best interests of the development of their country.⁴⁹⁰

A process known as Dutch Disease can occur, where a government in a resource rich country sees an influx of money flowing into its economy, and the exchange rate increases rapidly. This can lead to other sectors collapsing, as can be seen through agriculture in Cameroon, Nigeria, and Gabon, where an increase in exchange rates led to negative world market impacts, with their non-oil exports becoming uncompetitive and – subsequently – jobs being lost.⁴⁹¹ This can also lead to an increase in imports with citizens selecting imported goods over domestic goods, because – as has already been mentioned in regard to globalisation – foreign goods can become cheaper than purchasing or producing domestically.⁴⁹²

There are also issues with the volatility of oil and other natural resources, and the lack of assurance regarding how much revenue will be produced. Countries may spend a great deal of money in a fashion that they cannot maintain. Investing the newfound finances in a sustainable manner would allow for sustainable development to occur.⁴⁹³ Furthermore, due to its unsustainability, the revenues obtained from non-renewable sources should be separated from the rest of government expenditure. However, public

⁴⁸⁸ Ibid.

⁴⁸⁹ Ibid.

⁴⁹⁰ Mensah (n 476).

⁴⁹¹ Ibid.

⁴⁹² Ibid.

⁴⁹³ Ibid.

pressure leads to politicians increasing spending and refusing to resist the urge to spend these revenues in order to please the electorate voting for them.⁴⁹⁴

iii) The Compromise

Initiatives can fill the gap that governments have left due to lack of capacity or political will. Involving governments in initiatives could be a challenge,⁴⁹⁵ however, it is important that national governments are involved. Initiatives such as the Bangladesh Accord and Alliance are undecided on how to incorporate government institutions, with neither focusing on the issue of governmental capacity building.⁴⁹⁶ When governments are against signing up to an initiative in its entirety, for whatever reason, potential partner governments could put pressure on them to sign trade deals with initiatives included in them, but with the initiatives only being relevant to that specific trade deal. This could be a compromise between signing up to the initiative in its entirety and not acting at all.

iv) Sovereignty: Reactions and Domestic Laws to Build Upon

There are occasions where trade provisions could state that assistance – through initiatives or otherwise – must be given so that domestic laws already in place can be more efficiently followed. This would arguably counter the argument of infringing on a nations sovereignty, as it relates to laws that a country already has. This means that assistance could be given without infringing on sovereignty through trade agreements and negotiations. Initiatives could state that they are simply helping countries implement laws that they already have in place.

Some countries have – prima facie – reacted to the issues discussed within the supply chain. For example, the Congo’s mining minister introduced a decree in 2012 after the Kivu provinces saw a return of violence. The decree seeks to tackle issues within supply chains, focusing on mining and mineral trading companies working within the country,

⁴⁹⁴ Ibid.

⁴⁹⁵ Alexa Roscoe, ‘The Evolution of Multi-Stakeholder Initiatives: Lessons for the Bangladesh Garment Sector’ <<https://alexaroscoe.com/2013/07/22/the-evolution-of-multi-stakeholder-initiatives-on-business-and-development-lessons-for-the-bangladesh-garment-sector/>> accessed 3 April 2017.

⁴⁹⁶ Ibid.

and pushing them to meet the OECD Guidance.⁴⁹⁷ All companies involved in the mining of minerals such as gold, tin, tantalum and tungsten are now to carry out due diligence on their supply chains in order to ensure that their operations are not financial incentives for activities prolonging conflict and the abuse of human rights.⁴⁹⁸ A key aspect of the law is that companies are to produce reports annually, showing that they have identified and mitigated risks within the supply chain. The law holds that the reports are to “red flag” issues and risks within the supply chain, noting them within the report.

However, reports suggest that this decree has been loosely enforced.⁴⁹⁹ Although it looks promising, NGOs have claimed that very few companies are meeting the minimum requirements stipulated and that the Congolese government does not appear to be rectifying the situation, reporting that none of the six official artisan-trading houses produced due diligence reports in 2014 or 2015.⁵⁰⁰ The government has made efforts to collect companies’ reports and publish them on the Ministry of Mines’ website, which – if the law is enforced – would be extremely beneficial, as it centralises reports so that companies around the world can view their supply chains.⁵⁰¹ This approach is similar to that of the Better Factories Cambodia approach (discussed in the next chapter).⁵⁰² The Congolese government suspended two North Kivu based mineral traders in 2012,⁵⁰³ with the minister of mines also calling for a clean-up of the mines in South Kivu.⁵⁰⁴ Nevertheless, since then – according to reports – there has been very little in the way of suspensions.

⁴⁹⁷ Arrêté ministériel 0189/CAB.MIN/MINES/01/2012; The Organisation for Economic Co-operation and Development (OECD), ‘Upstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Final Report on one-year pilot implementation of the Supplement on Tin, Tantalum, and Tungsten’ (2013) <<https://www.oecd.org/corporate/mne/DDguidanceTTTUpstreamJan2013.pdf>> accessed 7 March 2017.

⁴⁹⁸ Ibid; Global Witness, ‘Four Years On, Congolese Government Still Failing to Enforce Its Law Designed to Stem Conflict and Human Rights Abuses in the Minerals Trade’ (4 November 2016) <<https://www.globalwitness.org/en/blog/congolese-government-failing-to-enforce-law-to-stem-conflict-abuses-in-minerals-trade/>> accessed 7 March 2017.

⁴⁹⁹ Global Witness, ‘Conflict Minerals in East Congo’ (2 March 2015) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-eastern-congo/>> accessed 18 March 2017.

⁵⁰⁰ Global Witness (n 498).

⁵⁰¹ Ibid.

⁵⁰² Better Factories Cambodia, <<http://betterfactories.org/>> accessed 15 May 2017.

⁵⁰³ TTT Mining and Huaying Trading Company.

⁵⁰⁴ Global Witness, ‘Press Release: Congo’s Mines Minister Calls For “genuine Clean Up” of Gold Sector Following Global Witness Investigation’ (30 August 2016) <<https://www.globalwitness.org/en/press->

v) Domestic Law and the Interests of Citizens

Transparency promotes democracy, as it allows citizens to hold their governments to account. There is a solid argument that transparency is therefore in the best interests of citizens. It is important to note that further transparency could be achieved through the use of initiatives. This is an area where initiatives could arguably build upon domestic law without infringing upon the sovereignty of a nation, as many countries already have laws in place regarding the interests of citizens. Botswana's Mines and Minerals Act (1999) discusses the state ownership of minerals and the interests of the public.⁵⁰⁵ Also, the Mineral and Petroleum Resources Development Act (2002) in South Africa holds that the state is the "custodian" of the mineral and petroleum resources on behalf of the South African people.⁵⁰⁶ In Ghana, the president holds the rights to minerals, but the Minerals and Mining Act (2006) explicitly states that this is held in trust for the citizens of Ghana: "... is the property of the Republic and is vested in the President in trust for the people of Ghana".⁵⁰⁷ In addition, the Mines and Minerals Development Act (2015) of Zambia holds that "all rights of ownership in, searching for, mining and disposing of, minerals wheresoever located in the Republic vest in the President on behalf of the Republic".⁵⁰⁸ To reiterate: Transparency – which is in the best interests of citizens – is an area where initiatives can be of great use.

b) Companies

The UN Guiding Principles hold that businesses are to respect human rights, ensuring that human rights are respected in their own activities as well as those activities connected to them through their business relationships (such as relationships with

releases/congos-mines-minister-calls-genuine-clean-gold-sector-following-global-witness-investigation/> accessed 7 March 2017.

⁵⁰⁵ Mines and Minerals Act, (Chapter 66:01, 1999)

<<http://www.mines.gov.bw/mines%20and%20minerals%20%20Act.pdf>> accessed 9 March 2017.

⁵⁰⁶ Mineral and Petroleum Resources Development Act (2002)

<http://www.saflii.org/za/legis/consol_act/maprda2002452/> accessed 9 March 2017.

⁵⁰⁷ Minerals and Mining Act (2006)

<<http://www.resourcegovernance.org/sites/default/files/Minerals%20and%20Mining%20Act%20703%20Ghana.pdf>> accessed 9 March 2017.

⁵⁰⁸ Mines and Minerals Development Act, (2015)

<<http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Mines%20and%20Minerals%20Act,%202015.pdf>> accessed 9 March 2017.

suppliers).⁵⁰⁹ Companies are responsible for making sure that they carry out effective due diligence, objectively assessing human rights risks. They are to mitigate abuses where they are found and avoid them when possible.⁵¹⁰

Additionally, companies should make sure that remedies are easily accessible for victims of human rights abuses.⁵¹¹ There is also the real need for companies to be transparent throughout the process in order to be held accountable. There have been reports that many companies are failing in regard to their duty to respect human rights and regulate their business activity efficiently.⁵¹² Human Rights Watch has claimed that businesses have failed to perform sufficient human rights due diligence, and that this failure has exacerbated human rights abuses.⁵¹³

i) Struggling with Due Diligence

Tracking down natural resources can prove to be taxing for companies. There are many levels within supply chains, and many sub-suppliers. In what may be considered an investigative process,⁵¹⁴ companies must contact their first-tier suppliers to find out information about second tier suppliers and so on in order to meet their CSR due diligence requirements. If companies are to be successful with their due diligence, they must track their minerals from when they are extracted in the mines, and through the trading houses, exporters, transit countries, and refiners.⁵¹⁵ Many companies may find the task of due diligence overwhelming, particularly smaller companies who may struggle to properly audit their supply chains due to a lack of resources. This is an area where initiatives can be beneficial by supporting companies.

Many companies do not know whether their products were made through abuses to workers, leading to critics claiming they are taking an out-of-sight, out-of-mind approach. Companies should make their best effort to have policies in place rejecting serious abuses within their supply chains. It is important that companies make practical

⁵⁰⁹ United Nations Guiding Principles (n 385).

⁵¹⁰ Ibid.

⁵¹¹ Ibid.

⁵¹² Ibid.

⁵¹³ Human Rights Watch, 'Make Rules on Rights Binding for Businesses' (30 May 2016) <<https://www.hrw.org/news/2016/05/30/make-rules-rights-binding-businesses>> accessed 15 March 2017.

⁵¹⁴ Winsor (n 103).

⁵¹⁵ Ibid.

use of their resources in order to identify and mitigate risks such as the worst forms of child labour and forced labour, provide detailed reports of supply chains, and make those reports publically available. They should use industry schemes to work on due diligence issues, but should not use these industry schemes to outsource their due diligence responsibilities. Industry schemes can lead to successful management and consistent standard setting regarding supply chains, but they should not negate the due diligence responsibilities of companies regarding their supply chains. They should be seen as purely supplementary. Companies should not accept the results of industry schemes without further checks, as the role of industry schemes is to support companies with their due diligence, as opposed to replacing it altogether.⁵¹⁶

A number of companies now produce CSR reports that cover areas such as labour and manufacturing, stating issues they currently have, progress made, and how they looking to improve. Some companies produce more comprehensive reports than others, and improvements can be made by failing companies through the use of initiatives such as the GRI Standards (discussed in the next chapter). Furthermore, monitoring and unannounced inspections could also be beneficial. If carried out correctly, they would highlight companies' duty to respect human rights and make sure they are not causing or contributing to these abuses.⁵¹⁷

The OECD Guidance covers risks to look out for, but this should be viewed as a starting point for businesses, and not the finishing line.⁵¹⁸ Currently, many companies are taking the wrong approach. Due diligence is being treated as an exercise with an expiration date. In reality, it has to be an on-going process in which risks are identified and managed.⁵¹⁹ Apple's 2015 report on conflict minerals has been praised for not stating that its products are conflict free, despite having achieved a conflict free status regarding its metal processors (smelters and refiners).⁵²⁰ The company held that third party audits are not enough, and that it "has more work to do".⁵²¹ Apple takes note that

⁵¹⁶ Ibid.

⁵¹⁷ Juliane Kippenberg (n 133).

⁵¹⁸ 'Civil Society Statement at the 10th Forum on Responsible Mineral Supply Chains' (n 398) .

⁵¹⁹ Ibid.

⁵²⁰ Apple Inc. 'Conflict Minerals Report' (2015)

<<https://www.sec.gov/Archives/edgar/data/320193/000119312516523320/d168894dex101.htm>> accessed 10 March 2017.

⁵²¹ Ibid.

outsourcing due diligence does not offer enough protection against human rights abuses within the supply chain.

The ‘This Is What We Die For’ report by Amnesty International and Afreewatch held that out of the 26 companies they asked, not one was able to give them enough information to verify whether or not the cobalt in their products came from safe and reliable sources.⁵²² Furthermore, Human Rights Watch suggested – in ‘Precious Metal, Cheap Labour’ – that a number of international refiners sourcing gold from Ghana’s artisan mines did not publicly report to a sufficient level, and also failed to assess child labour risks.⁵²³ Although child labour is rife in Ghana – which should be a red flag – it was claimed the refiners in question were buying gold from traders without asking any questions about its origin.

It was held within the Global Witness and Amnesty International ‘Digging for Transparency’ report that more than half of the companies they observed failed to go as far as reporting potential risks within supply chains.⁵²⁴ To be effective, companies must partake in serious risk management, and release detailed reports yearly, stating what risks they have identified and what they are doing about them. Red flags regarding sourcing or trading must be identified and dealt with.⁵²⁵ They must be ready to deal with issues such as forced and child labour, as well as – inter alia – corruption, extortion, smuggling, funding militias, negative environmental impacts, and health impacts.⁵²⁶

ii) Acknowledging Abuses

Here, just as in many walks of life, acceptance of a problem’s existence is the first step to tackling it. Through the Bitter Coffee report from Danwatch, Nestlé and Jacobs Douwe Egberts both announced that forced labour may be linked to their coffee beans.⁵²⁷ The inability to confirm whether or not forced labour has been used came as a result of the companies being unaware of all the plantations that they source from

⁵²² ‘This Is What We Die For’ (n 418).

⁵²³ ‘Precious Metal, Cheap Labor’ (n 126).

⁵²⁴ Global Witness and Amnesty International (n 106).

⁵²⁵ United Nations Guiding Principles (n 229).

⁵²⁶ Ibid.

⁵²⁷ Danwatch, ‘Bitter Coffee’ (2016) <<https://www.danwatch.dk/wp-content/uploads/2016/03/Danwatch-Bitter-Coffee-MARCH-2016.pdf>> accessed 21 March 2017.

within Brazil. Additionally, Nestlé publicly announced that it had found forced labour and child labour within its supply chains in Thailand and the Ivory Coast. The announcement is a step in the right direction, as the company stated that it was ready to start self-policing its supply chains.⁵²⁸ Nestlé's supply checks were carried out with US corporate accountability business, Verité. Verité also did similar work with clothing company, Patagonia.⁵²⁹

Despite having a zero tolerance policy towards child labour, Apple, Samsung, and Sony have all faced allegations of having child labour present within their supply chains and not carrying out basic checks that could prevent abuses from occurring.⁵³⁰ Apple has held that if child labour is found within its supply chains, it ensures that the supplier pays for the child's safe return home; his or her education at a school decided upon by the child or the child's family; continues to pay the child; and offers the child a job when he or she reaches the legal age to work.⁵³¹

⁵²⁸ Annie Kelly, 'Nestlé Admits Slavery in Thailand While Fighting Child Labour Lawsuit in Ivory Coast' (The Guardian, 1 February 2016) <<https://www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast>> accessed 21 March 2017.

⁵²⁹ Patagonia, 'Corporate Responsibility: Protecting Migrant Workers' (7 April 2004) <<http://www.patagonia.com/protecting-migrant-workers.html>> accessed 9 March 2017.

⁵³⁰ Jane Wakefield (n 444).

⁵³¹ Ibid.

VIII) Initiatives

A number of trade agreements state that when disputes occur, experts can be consulted. Trade panels are usually not experts on labour rights or at evaluating technical evidence, and so they rely on specialists.⁵³² The panels can receive expertise from the ILO and initiatives, and be advised on the likes of scope, legal content, implications, assessments regarding compliance, gathering information, facilitation of dispute resolution, and addressing compliance issues.⁵³³

This paper argues that the aforementioned process should take place before hand: Instead of waiting for abuses to occur and for disputes to come to fruition, having experts involved in the whole process could lead to less disputes overall, and also improve labour conditions within the territories of the state parties. Initiatives could be included in trade deals from the beginning to assist members, helping to ensure that improvements are made. Furthermore, initiatives and bodies such as the ILO could be involved in the developing of trade agreements, offering support and ensuring that the labour provisions included can be realistically met.

The potential inclusion of initiatives in trade agreements has already been touched upon. The Trans-Pacific Partnership (TPP)⁵³⁴ has made a conscious effort to improve on and strengthen compliance with labour principles. The trade agreement holds that: “(a) each country shall “adopt and maintain” statutes and regulations governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; (b) Each party shall discourage “**through initiatives it considers appropriate**” the importation of goods produced in whole or in part by **forced labor, including forced child labor**; (c) Each party shall “endeavor to encourage” businesses to “voluntarily adopt” **corporate social responsibility initiatives** on labor issues “endorsed or... supported” by that party; and (d) Parties may use “corporate labor dialogue” to resolve labor issues expeditiously, to help them mutually agree on a course

⁵³² Agustí-Panareda, Ebert and LeClercq (n 192).

⁵³³ Ibid.

⁵³⁴ The Trans-Pacific Partnership Agreement, (2016) <<https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>> accessed 10 April 2017.

of action”.⁵³⁵ Steps to improve the current situation may come in the shape of action plans such as labour inspections, investigations, and independent outside verification.⁵³⁶ Prior to this agreement, dispute settlement procedures had been the only way under which action plans could be authorised. The TPP provision gives the blueprint to initiate action plans earlier.⁵³⁷

There have been cases where stakeholders such as trade unions and employers’ organisations have been referred to within trade agreements. Some trade agreements have included mechanisms for stakeholders’ involvement and there can be ad hoc or permanent consultative mechanisms between stakeholders and governments, allowing for stakeholder involvement and intergovernmental dialogue.⁵³⁸ However, it has been reported that many stakeholders have claimed that they are unhappy with the overall transparency and accountability within the process, especially in regard to the negotiation stage.⁵³⁹ This is still something that could be built upon. Stakeholders could be provided with feedback on how their work is being used within the decision-making process, which would help to improve transparency and accountability.⁵⁴⁰

Some initiatives encompass all industries while others are industry specific. Regarding the latter, the initiatives included in each trade agreement would differ depending on the specific issues of the countries involved. For example, an initiative that focuses on minerals is less likely to be relevant to a trade deal focusing on fisheries or agriculture, where minerals are not included. There are many initiatives that could help countries and companies with compliance. The following section will discuss potential initiatives – both comprehensive and industry specific – that could be included in trade agreements to offer better protection against severe abuses of labour rights.

⁵³⁵ Ibid.

⁵³⁶ Bolle (n 284).

⁵³⁷ Ibid.

⁵³⁸ Agustí-Panareda, Ebert and LeClercq (n 192).

⁵³⁹ The International Labour Organization (n 2).

⁵⁴⁰ Ibid.

a) Initiatives by Name

i) Principles

The Equator Principles of project financing are ten principles that apply to all industry sectors globally. The principles look to combat potential adverse environmental and social risks.⁵⁴¹ The Equator Principles Financial Institutions (EPFIs) will only provide finances for projects that meet the ten principles, however it should be noted that the principles are derived from the IFC Performance Standards,⁵⁴² and studies suggest they are not regularly implemented.⁵⁴³

The Voluntary Principles on Security and Human Rights support companies, guiding them in their efforts to maintain safety and security in their operations.⁵⁴⁴ They have involved the engagement of the UK and US governments, as well as companies within the extractive and energy industries, and NGOs. The principles hold that companies should consider: Identification of security risks; potential for violence; human rights records; the rule of law; conflict analysis; and equipment transfers. They also cover areas such as responses to human rights abuses and how to engage with private security (e.g. reviewing their backgrounds).⁵⁴⁵

Shift – an expert group on the Guiding Principles – is chaired by John Ruggie, and helps to create a greater understanding of the Guiding Principles, offering expert advice on business and human rights.⁵⁴⁶ It does so through business learning (advising companies), government engagement (supporting governments in order to follow the Guiding Principles more efficiently), international partnerships (working with

⁵⁴¹ The Equator Principles <http://www.equator-principles.com/resources/equator_principles_III.pdf> accessed 9 March 2017.

⁵⁴² International Finance Corporation, 'IFC Performance Standards' <http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards> accessed 5 April 2017.

⁵⁴³ International Finance Corporation, 'Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information', 2010 <<http://www.accountabilitycounsel.org/wp-content/uploads/2012/02/IFC-Mark-Up-of-its-2006-Policy.pdf>> accessed 5 April 2017.

⁵⁴⁴ The Voluntary Principles on Security and Human Rights <<http://www.voluntaryprinciples.org/>> accessed 15 May 2017.

⁵⁴⁵ The Voluntary Principles on Security and Human Rights, 'What are the Voluntary Principles?' <<http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>> accessed 6 April 2017.

⁵⁴⁶ Shift, 'Shift Is the Leading Center of Expertise on the UN Guiding Principles on Business and Human Rights.' <<https://www.shiftproject.org/>> accessed 16 May 2017.

intergovernmental institutions, industries and multi-stakeholder initiatives), and through education and outreach.⁵⁴⁷ Companies and governments who are currently struggling with their obligations would benefit from following their guidance.

ii) The United Nations Global Compact

The Global Compact is a learning platform and voluntary initiative consisting of ten principles covering human rights, labour rights, the environment, and anti-corruption.⁵⁴⁸ It was not initially a soft law instrument endorsed by the UN. In regard to labour rights, the four areas that the Global Compact covers are – as may be presumed – forced labour, child labour, freedom of association, and discrimination. It is open to all stakeholders interested in its principles.⁵⁴⁹

The Global Compact allows for better companies to share their practices with companies that are struggling to improve in the four aforementioned areas. It allows companies to collaborate, pulling resources and expertise together in order to have a greater impact. It was initiated by then-Secretary-General Kofi Annan to encourage learning and the spread of good practices. Before the Global Compact in 2000, fewer than 100 out of 80,000 corporations had human rights policies.⁵⁵⁰ It currently has around 12,000 members, 8,000 of which are companies.⁵⁵¹ The Global Compact relies on local networks, of which it has approximately 100.⁵⁵² When there are complaints regarding the Global Compact, the complaints can be made to these networks and do not have to be dealt with in New York.

If a company is a member of the Global Compact, its primary responsibility is to deliver annual reports to display how it has been implementing the principles.⁵⁵³ However, some companies fail to do this, and as a result, critics have labelled the Global Compact as misguided and pro-business. This has led to the Global Compact becoming much

⁵⁴⁷ Ibid.

⁵⁴⁸ United Nations, 'UN Global Compact' <<https://www.unglobalcompact.org/>> accessed 15 May 2017.

⁵⁴⁹ Ibid.

⁵⁵⁰ Wood (n 464).

⁵⁵¹ Global Compact (n 548).

⁵⁵² Global Compact, 'Engage Locally' <<https://www.unglobalcompact.org/engage-locally/about-local-networks>> accessed 15 May 2017.

⁵⁵³ Global Compact, 'Participation' <<https://www.unglobalcompact.org/participation/report>> accessed 15 May 2017.

tougher: Companies that do not submit reports are now given a warning before being delisted the following year if they fail to submit again.⁵⁵⁴ Furthermore, the Global Compact hears complaints behind closed doors, working with the companies. It is a very confidential process, so it is difficult to assess how well it works in this regard. The initiative has had a mixed reception; however, a clear positive is its use as an engagement platform: Giving the opportunity to public and private actors to work together.

iii) The Danish Institute's Human Rights Compliance Assessment

The Danish Institute for Human Rights – cooperating with other organisations – has set out a tool called the Human Rights Compliance Assessment (HRCA). Comprising almost 200 questions, or 28 questions on the quick check version,⁵⁵⁵ the HRCA can help companies comply with human rights standards.⁵⁵⁶ It is a tick-box exercise that covers all internationally recognised human rights, including forced labour and child labour. Incorporated within the assessment are the Universal Declaration of Human Rights, and over 80 human rights instruments and ILO conventions.⁵⁵⁷

iv) The Global Reporting Initiative's G4 Sustainability Reporting Guidelines and the GRI Standards

Split into two sections – (i) reporting principles and standard disclosures, and (ii) an implementation manual – the G4 Sustainability Reporting Guidelines offer assistance to reporters in order to achieve more comprehensive reports regarding sustainability.⁵⁵⁸ Under the social category of the guidelines, the sub-categories of labour practices and

⁵⁵⁴ The Global Compact, '859 Companies Delisted for Failure to Communicate on Progress' 2010, <<https://www.unglobalcompact.org/news/8-859-companies-delisted-for-failure-to-communicate-on-progress>> accessed 15 May 2017.

⁵⁵⁵ The Danish Institute for Human Rights, 'Human Rights Compliance Assessment (HRCA) Quick Check' <https://hrca2.humanrightsbusiness.org/docs/file/HRCA%20Quick%20Check_English.pdf> accessed 15 May 2017.

⁵⁵⁶ The Danish Institute for Human Rights, 'Human Rights Compliance Assessment' <<https://hrca2.humanrightsbusiness.org/>> accessed 15 May 2017.

⁵⁵⁷ The Danish Institute for Human Rights, 'The Human Rights Compliance Assessment' <<https://www.humanrights.dk/business/the-human-rights-compliance-asesment>> accessed 15 May 2017.

⁵⁵⁸ Global Reporting Initiative, 'G4 Sustainability Reporting Guidelines' <<https://www.globalreporting.org/resourcelibrary/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf>> accessed 15 May 2017.

decent work, and human rights are present. These sub-categories cover, inter alia, occupational safety and health, child labour, and forced and compulsory labour.⁵⁵⁹

The G4 Sustainability Reporting Guidelines will only be valid until June 2018, as they have been restructured and superseded by the GRI Standards,⁵⁶⁰ which are the first global standards in regard to sustainability reporting. The GRI Standards “feature a modular, interrelated structure, and represent the global best practice for reporting on a range of economic, environmental and social impacts”.⁵⁶¹ They are made up of universal standards (foundations, general disclosures, management approach) relevant to all, and topic specific standards that are split into economic, environmental and social impacts; each covering different topics within those areas. Due to the modular structure used, the GRI Standards are responsive to new developments, and therefore easier to keep up to date and relevant. New standards can be added and existing standards can be updated without the whole set having to be revised.⁵⁶²

v) Fair Labour Association

There are various initiatives that attempt to monitor performance in supply chains. The Fair Labour Association (FLA) – for example – consists of companies, civil society, and universities, and works to protect and promote workers’ rights.⁵⁶³ It seeks successful outcomes to labour issues, and looks to improve compliance systems. Furthermore, it produces transparent and independent assessments, and also has a third-party complaint process to address the most serious labour rights abuses.⁵⁶⁴

vi) Reporting by Industry Schemes

Industry schemes should give full reports on information, including risks identified and how they are being dealt with, and should also make the publishing of separate due diligence reports a requirement for companies who are members to their initiative. Furthermore, member companies should be encouraged to promote the OECD Due

⁵⁵⁹ Ibid.

⁵⁶⁰ Global Reporting Initiative, ‘GRI Standards’ <<https://www.globalreporting.org/standards>> accessed 15 May 2017.

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ Fair Labor Association <<http://www.fairlabor.org/>> accessed 15 May 2017.

⁵⁶⁴ Fair Labor Association ‘About Us’ <<http://www.fairlabor.org/about-us>> accessed 5 April 2017.

Diligence Guidance by taking actions such as, for example, using Artisanal and Small-scale Mining (ASM) producers who are taking serious steps towards its implementation.⁵⁶⁵ On top of the aforementioned, independent and transparent third-party audits within the supply chain should occur. This is a way of measuring progress and bringing real legitimacy to the process.⁵⁶⁶

b) Industry Specific Initiatives

Many industry specific initiatives are seeking to tackle the issues relating to global business, development, and labour rights, and could be included in trade agreements dealing with what they cover. Initiatives that should be considered in this vein include the Better Cotton Initiative (BCI);⁵⁶⁷ the Roundtable of Sustainable Palm Oil (RSPO);⁵⁶⁸ the Fisheries Transparency Initiative (FiTI);⁵⁶⁹ Bonsucro (in regard to the sugar industry);⁵⁷⁰ and Goodweave (through its no child, forced or bonded labour standard in regard to the production of rugs and carpets).⁵⁷¹ Furthermore, child labour discovered in the Ivory Coast and Ghana within the cocoa industry led to the emergence of the Harkin-Engel Protocol, which could be included in trade agreements relating to this industry. The protocol seeks to remove the worst forms of child labour from cocoa production.⁵⁷² It should be noted that certification schemes are also of importance, as they allow for the standardisation of due diligence. In the coca industry, tackling labour issues started with certification schemes – the International Cocoa Initiative⁵⁷³ and International Cocoa Verification Board – before moving on to development initiatives, aiming to improve the cocoa sector’s sustainability.

⁵⁶⁵ ‘Civil Society Statement at the 10th Forum on Responsible Mineral Supply Chains’ (n 398).

⁵⁶⁶ Ibid.

⁵⁶⁷ Better Cotton Initiative <<http://bettercotton.org/>> accessed 15 May 2017.

⁵⁶⁸ Roundtable on Sustainable Palm Oil, ‘RSPO’ <<http://www.rspo.org/about>> accessed 15 May 2017.

⁵⁶⁹ The Fisheries Transparency Initiative, ‘FiTI’ <<http://fisheriestransparency.org/>> accessed 15 May 2017.

⁵⁷⁰ Bonsucro, <https://www.bonsucro.com/en/home-page-c/?utm_expId=141778976-0.gtijPmQ5RHC_E-IXVP15zA.3&utm_referrer=https%3A%2F%2Fwww.google.co.uk%2F> accessed 15 May 2017.

⁵⁷¹ Goodweave, ‘Child Labor Free Certification, Child Labor Free Rugs & Carpets’ <http://www.goodweave.org.uk/about/child_labor_free_rugs> accessed 23 May 2017.

⁵⁷² Harkin-Engel Protocol, <<http://www.slavefreechocolate.org/harkin-engel-protocol/>> accessed 15 May 2017.

⁵⁷³ The International Cocoa Initiative, ‘ICI’ <<http://www.cocoainitiative.org/>> accessed 15 May 2017.

The ILO's Better Factories Cambodia project is an example of an initiative that transpired through a trade agreement.⁵⁷⁴ In regard to the garment sector, the United States gave Cambodia better access to its markets in return for improved working conditions, and commissioned the ILO to lead the effort. Its online transparency database⁵⁷⁵ gives progress on individual factories, providing updates on progress in regard to working conditions. Better Work is relevant to all garment factories within Cambodia and – as well as playing a pivotal role in changing domestic law – it has resulted in almost universal correct payments of wages and first-generation Cambodian supervisors. It has also led to the Better Work collaboration between the ILO and the IFC⁵⁷⁶, which looks to improve labour standards and is currently present in seven countries.⁵⁷⁷

After the Rana Plaza Disaster in 2013, Bangladesh saw the introduction of the European Accord on Fire and Building Safety in Bangladesh,⁵⁷⁸ and the North American Alliance for Bangladesh Worker Safety.⁵⁷⁹ The Accord and Alliance were both introduced in the same year that the disaster occurred, with the Accord being the stronger of the two agreements. The Accord has six main components, which are: It is a five-year legally binding agreement between trade unions, global brands and retailers; an independent inspection program; public disclosure; commitments from brands to ensure funding; health and safety committees; and worker empowerment.⁵⁸⁰

i) Extractive Industries Transparency Initiative

The Extractive Industry Transparency Initiative – also known as the EITI – helps resource rich countries improve their governance, and carries out work in countries such

⁵⁷⁴ Better Factories Cambodia, 'Better Factories Cambodia' <<http://betterfactories.org/>> accessed 15 May 2017.

⁵⁷⁵ Better Factories Cambodia, 'Better Factories Cambodia's Transparency Database' <<http://betterfactories.org/transparency/>> accessed 15 May 2017.

⁵⁷⁶ International Finance Corporation (n 542).

⁵⁷⁷ Better Work, 'The Programme' <<http://betterwork.org/about-us/the-programme/>> accessed 15 May 2017.

⁵⁷⁸ The Bangladesh Accord <http://bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf> accessed 15 May 2017.

⁵⁷⁹ Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/>> accessed 15 May 2017.

⁵⁸⁰ The Bangladesh Accord, 'About the Accord' <<http://bangladeshaccord.org/about/>> accessed 6 April 2017.

as Colombia, Peru, Nigeria, Congo, and Indonesia.⁵⁸¹ It is a global standard and international coalition that seeks to promote “public awareness about how countries manage their oil, gas and mineral resources”.⁵⁸² The EITI works with governments, companies, and civil society within each of its member countries. It is an informative tool – and not something that governments have to abide by – seeking to help states improve their mining, gas and oil sectors, and aiming to tackle corruption. The standard they hold is one of pure accountability and transparency, aiming to follow oil, gas, and minerals from the beginning of the process, when they are extracted.

Companies report what government payments they have made and governments state what they receive. The two numbers are taken and published by the EITI in their reports.⁵⁸³ This is done so that the money can be followed, and citizens can be more aware that it is not being used for corrupt purposes. Due to the links between both child and forced labour and corruption, this could be vital to improving the current climate. A number of countries, including some that many would expect to be members – such as Sweden and Denmark – are not members of the EITI.⁵⁸⁴ If more countries become members, then the legitimacy of the initiative may increase even further. It is also believed that governments and companies alike are not utilising the information produced by the EITI. Rectifying this could better inform lawmakers, allowing for improvements in policymaking and accountability.⁵⁸⁵

Recently, the EITI met in Bogota to discuss project level reporting,⁵⁸⁶ and announced that companies in the 51 countries that are following the initiative will now be expected to publish payments to governments for oil, gas and mining projects separately, with governments receiving payments being required to publish receipts.⁵⁸⁷ The change has

⁵⁸¹ Extractive Industries Transparency Initiative, ‘EITI Countries’ <<https://eiti.org/countries>> accessed 2 March 2017.

⁵⁸² Extractive Industries Transparency Initiative <<https://eiti.org>> accessed 2 March 2017.

⁵⁸³ Extractive Industries Transparency Initiative, ‘Explore the Data Portal’ <<https://eiti.org/data>> accessed 22 March 2017.

⁵⁸⁴ Extractive Industries Transparency Initiative, ‘Countries’ (n 581).

⁵⁸⁵ Natural Resource Governance Institute, ‘Dataset: Unlocking EITI Data for Meaningful Reform’ (22 June 2015) <<http://www.resourcegovernance.org/analysis-tools/tools/dataset-unlocking-eiti-data-meaningful-reform>> accessed 10 March 2017.

⁵⁸⁶ Global Witness (n 425).

⁵⁸⁷ Global Witness, ‘EITI Ramps up Reporting Requirements for Oil, Gas and Mining Companies’ (9 March 2017) <<https://www.globalwitness.org/en-gb/press-releases/major-step-forward-anti-corruption-103>>

led to the US considering its withdrawal from the EITI.⁵⁸⁸ The reason for this change was due to criticism that the reporting received for failing to go into depth. Before, if an oil, gas, or mining company held numerous projects within a country, all of its payments were reported together as one lump sum. This would allow companies and/or governments to potentially hide billions obtained from a project.⁵⁸⁹ The money could end up with private parties instead of benefiting the citizens of a country, as was reported in the OPL 245 case with Shell and Eni, where payments were allegedly made behind closed doors to a company secretly owned by Nigeria's former oil minister (as opposed to the government, where the finances were supposed to go).⁵⁹⁰ It was important for this to change to nullify the possibility of this happening, and for payments regarding projects to be reported separately.⁵⁹¹

ii) The Kimberley Process

The Kimberley Process Certification Scheme (KPCS)⁵⁹² was initiated in 2003 through the US Clean Diamond Trade Act (CDTA)⁵⁹³ and seeks to combat corruption within the diamond trade. It was introduced after many civil wars, predominantly in West Africa, led to jewellers coming under scrutiny for the use of blood diamonds.⁵⁹⁴ Consumers were not comfortable purchasing their products, and so the Kimberley Process (KP) came into fruition.⁵⁹⁵ It focuses on both import and export controls of states, and has over 75 participants from countries producing, trading and manufacturing diamonds.⁵⁹⁶

There has been criticism of the KP. Its definition of conflict diamonds has raised cause for concern for some as it only relates to diamonds "used by rebel movements to finance

fight-global-transparency-standard-ramps-reporting-requirements-oil-gas-and-mining-companies/> accessed 10 March 2017.

⁵⁸⁸ Global Witness, 'U.S. Administration Sounds Death Knell for Transparency Initiative (20 March 2017) <<https://www.globalwitness.org/en-gb/press-releases/us-administration-sounds-death-knell-transparency-initiative/>> accessed 22 March 2017.

⁵⁸⁹ Global Witness (n 425).

⁵⁹⁰ Global Witness, 'Shell and Eni's Misadventures in Nigeria' (17 November 2015 <<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-and-eni-misadventures-nigeria/>> accessed 10 March 2017.

⁵⁹¹ Global Witness (n 425).

⁵⁹² The Kimberley Process <<https://www.kimberleyprocess.com>> accessed 10 March 2017.

⁵⁹³ US Clean Diamond Trade Act (2003) <<https://www.state.gov/documents/organization/77550.pdf>> accessed 10 March 2017.

⁵⁹⁴ Frankel (n 434).

⁵⁹⁵ Ibid.

⁵⁹⁶ The Kimberley Process (n 592).

wars against legitimate governments”.⁵⁹⁷ It therefore does not cover human rights abuses that are not related to rebel groups, despite being pressured to include them.⁵⁹⁸ There have also been issues regarding enforcement, with diamonds from CAR still making their way into the market despite the country facing an embargo from the Kimberley Process.⁵⁹⁹ The KP has also been criticised for only covering rough diamonds.⁶⁰⁰ This means that when the stones are cut and polished, they are no longer covered by the scheme. The aforementioned issues led to Global Witness resigning from its position as observer of the Kimberley Process.⁶⁰¹

iii) The Issue of Competing Initiatives

Certain industries have competing schemes, meaning that those operating within an industry may feel compelled to deal with differing schemes. The schemes could be international or national, and governmental or non-governmental. For instance, after the Rana Plaza Disaster, Bangladesh saw not only the introduction of the aforementioned Alliance and Accord, but also domestic industry associations’ health and safety schemes.⁶⁰² Furthermore, in relation to palm oil, the Government of Indonesia set up its own scheme after the RSPO set up an independent certification scheme.⁶⁰³ The importance of coordination with governments cannot be stressed enough, as it is the government that can enforce standards.⁶⁰⁴ If one initiative is put into a trade deal, it could help to set precedence, allowing those within that particular industry to know what scheme the government considers to carry the most weight. It should be noted that an issue with this approach is that other schemes could become impotent, especially those which have higher standards to meet, as governments tend to be attracted to initiatives that do not put too much pressure on them.

⁵⁹⁷ Ibid.

⁵⁹⁸ Global Witness, ‘The Kimberley Process’ (1 April 2013) <<https://www.globalwitness.org/en/campaigns/conflict-diamonds/kimberley-process/>> accessed 10 March 2017.

⁵⁹⁹ Ibid.

⁶⁰⁰ Ibid.

⁶⁰¹ Global Witness, ‘Global Witness Leaves Kimberley Process, Calls for Diamond Trade to Be Held Accountable’ (2 December 2011) <<https://www.globalwitness.org/en/archive/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable/>> accessed 10 March 2017.

⁶⁰² Alexa Roscoe (n 495).

⁶⁰³ Oliver Balch, ‘Sustainable Palm Oil: How Successful is RSPO Certification?’ (The Guardian, 4 July 2013) <<https://www.theguardian.com/sustainable-business/sustainable-palm-oil-successful-rspo-certification>> accessed 3 April 2017.

⁶⁰⁴ Alexa Roscoe (n 602).

IX) Conclusion

The paper initially introduced the topic, giving context, and asked whether or not trade agreements – while avoiding protectionism – could help in preventing abuses of labour rights within the global supply chain. Background was then provided, setting the scene and giving historical context. The developing countries chapter focused on industries such as mining, agriculture, and fishery, and showed how abuses to labour rights are linked to the global market. This was followed by the chapter on developed countries, which clarified that this is not just a problem for developing countries.

The paper then turned to trade agreements, focusing primarily on labour provisions and the ILO as well as the importance of ILO involvement. Then the attention turned towards the legal picture, with a focus on how fundamental labour rights within the global supply chain (particularly regarding the extractive industries) could be protected by including relevant laws in trade agreements. It was held that doing so could potentially create new obligations or reinforce old ones where obligations already exist. International instruments (such as fundamental ILO conventions, and those within the UN system and the OECD) and domestic laws (including the Dodd-Frank Act and the UK Modern Slavery Act) were explored next.

How countries and companies can benefit from initiatives was the next topic of discussion, indicating how initiatives can help combat the abuse of labour rights in certain resource rich countries, where issues such as the informal economy and exploitive forces are prominent. The chapter looked at how the domestic law already in place in developing countries can be used to improve the protection of labour rights. This led to the chapter on initiatives: How they can be included and consulted throughout the trade agreement process, and not just after a dispute occurs. Certain initiatives – both all-encompassing and industry specific – that could prove to be beneficial to protecting the most fundamental labour rights within global supply chains were discussed. Issues such as the potential setback of too many initiatives in the same area leading to too many standards for companies to comply with was also highlighted.

There is an argument, and not without merit, that laws and provisions may be used for protectionist purposes. Where international and domestic laws – and other labour provisions – are too strong to be realistically included within certain trade agreements without delving into protectionism, initiatives could be included. If all the above can be included, then this would be beneficial for reinforcement and monitoring purposes, but – as discussed – where this is not possible, initiatives can be seen as a compromise. Future work could examine more closely what specific initiatives could be in specific trade agreements. Furthermore, many initiatives lack grievance procedures, which can arguably “erode their perceived legitimacy”,⁶⁰⁵ and so this is an issue that could be tackled. In addition, if initiatives begin to have more enforcement, they may be complied with more frequently by those who have signed up to them. However, on the other hand, it could make members to trade agreements less likely to accept their inclusion in the agreements. These are all topics that could be explored in further research.

⁶⁰⁵ The United Nations, ‘Promotion of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development - Business and Human Rights: Towards Operationalizing the “Protect, Respect and Remedy” Framework’
<<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>> accessed 17 May 2017.

X) Bibliography

Legal Instruments

Final Act of the Congress of Vienna/General Treaty (1815)
<<http://www.dipublico.org/100513/final-act-of-the-congress-of-viennageneral-treaty-1815/>> accessed 24 May 2017.

Treaty of Versailles (1919) <<https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf>> accessed 14 April 2017.

United Nations

The United Nations, Charter of the United Nations, (24 October 1945)
<<http://www.un.org/en/charter-united-nations/>> accessed 10 May 2017.

The United Nations, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>> accessed 11 May 2017.

The United Nations, Convention on the Elimination of all Forms of Discrimination Against Women (1979) <<http://www.un.org/womenwatch/daw/cedaw/>> accessed 10 May.

The United Nations, Convention on the Prevention and Punishment of the Crime of Genocide, 1948
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CrimeOfGenocide.aspx>> accessed 11 May 2017.

The United Nations, Convention on the Rights of Persons with Disabilities, 2006
<<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>> accessed 10 May.

The United Nations, Convention on the Rights of the Child, 1989
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>> accessed 3 March 2017.

The United Nations, International Convention on the Elimination of All Forms of Racial Discrimination (1965)
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>> accessed 10 May 2017.

The United Nations, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>> accessed 10 May 2017.

The United Nations, International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973
<<https://treaties.un.org/doc/publication/unts/volume%201015/volume-1015-i-14861-english.pdf>> accessed 11 May 2017.

The United Nations, International Covenant on Civil and Political Rights (1966)
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 3 March 2017.

The United Nations, International Covenant on Economic, Social and Cultural Rights, UN General Assembly (1966)
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 3 March 2017.

The United Nations, Minamata Convention on Mercury (2013)
<<http://www.mercuryconvention.org/Convention>> accessed 10 May 2017.

The United Nations, Universal Declaration of Human Rights (1948)
<http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf> accessed
3 March 2017.

The International Labour Organization

International Labour Organization, Abolition of Forced Labour Convention, 1957 (No. 105)
<http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105> accessed 1 May 2017.

International Labour Organization, Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111> accessed 10 May 2017.

International Labour Organization, Equal Remuneration of Men and Women Workers for Work of Equal Value Convention, 1951 (No. 100)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100> accessed 10 May 2017.

International Labour Organization, Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:3174688> accessed 1 May 2017.

International Labour Organization, Forced Labour Convention, 1930 (No. 29)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029> accessed 21 March 2017.

International Labour Organization, Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232> accessed 10 May 2017.

International Labour Organization, Protocol of 2014 to the Forced Labour Convention, 1930 (P029)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029> accessed 1 May 2017.

International Labour Organization, Right to Organise and Collective Bargaining Convention, 1949 (No. 98),
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098> accessed 10 May 2017.

International Labour Organization, Worst Forms of Child Labour Convention, 1999 (No. 182)
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182> accessed 21 March 2017.

International Labour Organization, Worst Forms of Child Labour Recommendation, 1999
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:SUP,en,R190,/Document> accessed 21 March 2017.

The International Labour Organization, ‘ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up’ (1998) (annex revised 2010)
<http://www.ilo.org/declaration/info/publications/WCMS_467653/lang--en/index.htm> accessed 15 March 2017.

The International Labour Organization, ‘Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy’ (MNE Declaration) (5th Edition, March

2017) <http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm> accessed 10 May 2017.

The International Labour Organization, Declaration on Social Justice for a Fair Globalization (2008) <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf> accessed 4 April 2017.

The International Labour Organization, ILO Constitution (1919) <http://blue.lim.ilo.org/cariblex/pdfs/ILO_Constitution.pdf> accessed 3 March 2017.

The International Labour Organization, Minimum Age Convention, 1973 (No. 138) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138> accessed 1 May 2017.

The International Labour Organization, Occupational Health Services Convention, 1985 (No. 161) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C161> accessed 3 March 2017.

The International Labour Organization, Occupational Safety and Health (no. 155) <http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO:12100:P12100_INSTRUMENT_ID:31230> accessed 3 March 2017.

The International Labour Organization, Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187> accessed 3 March 2017.

The International Labour Organization, Recommendation R204 - Concerning the Transition from the Informal to the Formal Economy (section A) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204> accessed 3 April 2017.

World Trade Organization

The World Trade Organization, 'Singapore Ministerial Declaration' (1996)

<https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm> accessed 14 April 2017.

The World Trade Organization, Doha Ministerial Conference (2001)

<https://www.wto.org/english/thewto_e/minist_e/min01_e/min01_e.htm> accessed 14 April 2017.

The World Trade Organization, Havana Charter for an International Trade Organization (1948) <https://www.wto.org/english/docs_e/legal_e/havana_e.pdf> accessed 14 April 2017.

The World Trade Organization, Seattle Ministerial Conference (1999)

<https://www.wto.org/english/thewto_e/minist_e/min99_e/min99_e.htm> accessed 14 April 2017.

The World Trade Organization, The General Agreement on Tariffs and Trade (1986)

<https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf> accessed 14 April 2017.

Other

African Growth and Opportunity Act, (2000) <<http://trade.gov/agoa/>> accessed 10 April 2017.

Andean Trade Preferences Act, (1991)

<https://www.usitc.gov/publications/332/pub4486_0.pdf> accessed 10 April 2017.

Haitian Hemispheric Opportunity through Partnership Encouragement Act, (2006)

<<https://www.gpo.gov/fdsys/pkg/CFR-2016-title19-vol1/pdf/CFR-2016-title19-vol1-part10-subpartO.pdf>> accessed 10 April 2017.

Domestic Legislation

United Kingdom

The Children's Act for Responsible Employment, (text of H.R. 3564 (111th), 2009)
<<https://www.govtrack.us/congress/bills/111/hr3564/text>> accessed 9 May 2017.

The Children's Act, (1998)

<<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/56216/65194/E98GHA01.htm>>
accessed 3 March 2017.

The Combination Act, (1799) <<http://statutes.org.uk/site/the-statutes/nineteenth-century/1800-39-40-geo-iii-c-106-the-combination-act/>> accessed 24 May 2017.

The Education Act, (1880) <<http://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/school/overview/1870educationact/>>
accessed 24 May 2017.

The Factory Act, (1833) <<http://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/19thcentury/overview/factoryact/>> accessed
24 May 2017.

The Factory Act, (1878) <<http://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/19thcentury/overview/latefactoryleg/>>
accessed 24 May 2017.

The Mines Act, (1842) <<http://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/19thcentury/overview/coalmines/>> accessed
24 May 2017.

The Modern Slavery Act, (2015)

<<http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>> accessed 21 March
2017.

United States

The California Transparency in Supply Chains Act, (2010)

<http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf> accessed 21 March 2017.

The Clean Diamond Trade Act, (2003)

<<https://www.state.gov/documents/organization/77550.pdf>> accessed 10 March 2017.

The Dodd-Frank Wall Street Reform and Consumer Protection Act, (2010)

<<https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>> accessed 21 March 2017.

The Fair Labor Standards Act (1938) § 213

<<https://www.dol.gov/whd/regs/statutes/FairLaborStandAct.pdf>> accessed 19 April.

The Trade Act 1974, section 507(4)(E)

<<http://legcounsel.house.gov/Comps/TRADE74.PDF>> accessed 10 April 2017.

Other

Arrêté ministerial 0189/CAB.MIN/MINES/01/2012.

The Mineral and Petroleum Resources Development Act (2002)

<http://www.saflii.org/za/legis/consol_act/maprda2002452/> accessed 9 March 2017.

The Minerals and Mining Act (2006)

<<http://www.resourcegovernance.org/sites/default/files/Minerals%20and%20Mining%20Act%20703%20Ghana.pdf>> accessed 9 March 2017.

The Mines and Minerals Act (Chapter 66:01, 1999)

<<http://www.mines.gov.bw/mines%20and%20minerals%20%20Act.pdf>> accessed 9 March 2017.

The Mines and Minerals Development Act, (2015)

<<http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Mines%20and%20Minerals%20Act,%202015.pdf>> accessed 9 March 2017.

Relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre
(Relating to the duty of vigilance of the parent companies and the ordering companies)
(2017) <<http://www.assemblee-nationale.fr/14/pdf/ta/ta0924.pdf>> accessed 6 March 2017.

Case Law

Philip Morris Asia Limited (Hong Kong) v. The Commonwealth of Australia (2015)
<<https://www.italaw.com/sites/default/files/case-documents/ita0664.pdf>> accessed 13 May 2017.

Trade Agreements

CAFTA-DR.

Canada-Colombia Agreement on Labour Cooperation.

Canada-Costa Rica Agreement on Labour Cooperation.

Canada-Peru Agreement on Labour Cooperation.

Chile-Colombia Trade Agreement.

Chile-Panama Trade Agreement (Memorandum of Understanding on Labour and Social Security Cooperation).

China-New Zealand Trade Agreement.

Draft EU-Colombia and Peru Trade Agreement.

Draft EU-Peru and Colombia Trade Agreement.

EU-Cariforum Trade Agreement.

EU-Montenegro Trade Agreement.

EU-Republic of Korea Trade Agreement.

European Union-African Caribbean and Pacific Trade Agreement

European Union-Caribbean Forum

Hong Kong (China)-New Zealand.

Memorandum of Understanding on Labour cooperation between New Zealand and
Hong Kong, China.

New Zealand-Malaysia Agreement on Labour Cooperation.

New Zealand-Philippines Memorandum of Agreement on Labour Cooperation.

North American Free Trade Agreement.

Panama-Chile Agreement on Labour Cooperation.

Peru-Chile Agreement on Labour Cooperation.

Taiwan, China-Nicaragua Trade Agreement.

Thailand-New Zealand Free Trade Agreement.

The North American Agreement on Labour Cooperation.

The Trans-Pacific Partnership Agreement.

US-Bahrain Free Trade Agreement.

US-Chile Trade Agreement.

US-Colombia Trade Agreement.

US-Jordan Free Trade Agreement.

US-Oman Trade Agreement.

US-Peru Trade Agreement.

US-Republic of Korea Trade Agreement.

Reports/Articles

United Nations

Ruggie J, 'Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises' (29 Neth. Q. Hum. Rts. 224, 2011) <http://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nethqur44§ion=14> accessed 18 March.

The United Nations General Assembly, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (2015)
<http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 3 March 2017.

The United Nations, 'Promotion of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development - Business and Human

Rights: Towards Operationalizing the “Protect, Respect and Remedy” Framework’
<<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>>
accessed 17 May 2017.

International Labour Organization

Andrees B and Vuong A, ‘Eradicating Forced Labour from Supply Chains’ (October 2011) <http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/meetingdocument/wcms_322422.pdf> accessed 21 March.

Gravel E and Delpesch Q, ‘The Comments of the ILO’s Supervisory Bodies’
<http://ilo.ch/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_207860.pdf> accessed 14 April 2017.

Jansen M and Lee E, 'Trade and Employment: Challenges for Policy Research: A Joint Study of the International Labour Office and the Secretariat of the World Trade Organization' (World Trade Organization:International Labour Office, 2007)
<http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_091038.pdf> accessed 15 March 2017.

The International Labour Office, ‘Labour-Related Provisions in Trade Agreements: Recent Trends and Relevance to the ILO’ (International Labour Organization, 2016)
<http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_530526.pdf> accessed 15 March.

The International Labour Organization (International Labour Conference and International Labour Office), 'Transitioning from the Informal to the Formal Economy: Fifth Item on the Agenda', 2014 (first edition released 2013)
<http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_218128.pdf> accessed 14 March 2017.

The International Labour Organization and Ministry of Social Affairs and Employment of the Netherlands, ‘The Hague Global Child Labour Conference: Towards a World without Child Labour Mapping the Road to 2016’ (2010)

<<http://ilo.org/ipecc/Campaignandadvocacy/GlobalChildLabourConference/lang--en/index.htm>> accessed 3 March 2017.

The International Labour Organization, 'Child Labour: Combating the Worst Forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand' (2016) <http://www.ilo.org/asia/whatwedo/projects/WCMS_161095/lang--en/index.htm?ssSourceSiteId=washington> accessed 20 March 2017.

The International Labour Organization, 'Fundamental Principles and Rights at Work: From Commitment to Action, Recurrent Discussion under the ILO Declaration on Social Justice for a Fair Globalization and the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, ILC, 101st Session' (2012) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_176149.pdf> accessed 14 April 2017.

The International Labour Organization, 'New ILO Global Estimate of Forced Labour: 20.9 Million Victims' <http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang--en/index.htm> accessed 22 March 2017.

The International Labour Organization, 'New Study of Migrant and Child Labour in the Thai Seafood Industry' <http://www.ilo.org/asia/info/public/pr/WCMS_402371/lang--en/index.htm> accessed 21 March 2017.

The International Labour Organization, 'World Employment and Social Outlook: The Changing Nature of Jobs' (2015) <http://www.ilo.org/global/research/global-reports/weso/2015-changing-nature-of-jobs/WCMS_368626/lang--en/index.htm> accessed 15 March 2017.

World Trade Organization

World Trade Organization, 'Standards for Reformulated and Conventional Gasoline' (United States, Appellate Body Report WT/DS2/AB/R, adopted on 20 May 1996) <https://www.wto.org/english/tratop_e/dispu_e/2-9.pdf> accessed 14 March 2017.

Yuan, 'Looking Back 14 Years after Accession: Case of China (World Trade Organization, 2015) <https://www.wto.org/english/thewto_e/acc_e/Session2YuanYuanPostAccessionLookingback14yearafter.pdf> accessed 19 April 2017.

Other

Agustí-Panareda J, Ebert F and LeClercq D, 'Labour Provisions in Free Trade Agreements: Fostering Their Consistency with the ILO Standards System' (International Labour Office 2014) <http://natlex.ilo.ch/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_237940.pdf> accessed 19 April 2017.

Apple Inc. 'Conflict Minerals Report' (2015) <<https://www.sec.gov/Archives/edgar/data/320193/000119312516523320/d168894dex101.htm>> accessed 10 March 2017.

Autor D, Dorn D and Hanson G, 'The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade' (2016) 8 Annual Review of Economics 205 <<http://www.ddorn.net/papers/Autor-Dorn-Hanson-ChinaShock.pdf>> accessed 19 April 2017.

Assent Compliance and Development International, 'Conflict Mineral Benchmarking Study RY2015' <<http://www.assentcompliance.com/conflict-mineral-benchmarking-study-ry2015/>> accessed 19 May 2017.

Bolle M, 'Overview of Labor Enforcement Issues in Free Trade Agreements' (2016) <http://digitalcommons.ilr.cornell.edu/key_workplace/1492/> accessed 10 April 2017.

Danwatch, 'Bitter Coffee' (2016) <<https://www.danwatch.dk/wp-content/uploads/2016/03/Danwatch-Bitter-Coffee-MARCH-2016.pdf>> accessed 21 March 2017.

Mensah K, 'The Discovery of Oil in Ghana - Time for a Reality Check' <<http://www.cddghana.org/documents/Briefing%20Paper%20Vol%209.%20No.%201.pdf>> accessed 3 April 2017.

Mostashari S, 'Economic Letter, Expanding Variety of Goods Underscores Battle for Competitive Advantage' (15 December 2010) <<https://pdfs.semanticscholar.org/da9f/c25436de26f50cb249d81a473938255de326.pdf>> accessed 19 April 2017.

O'Rourke K and Williamson G, 'When Did Globalisation Begin?' (6 European Review of Economic History 23, 2002) <<https://academic.oup.com/ereh/article-abstract/6/1/23/540507/When-did-globalisation-begin?redirectedFrom=fulltext>> accessed 14 April 2017.

ReliefWeb, 'Large-Scale Mining in Colombia: Human Rights Violations Past, Present and Future - Colombia' (9 May 2013) <<http://reliefweb.int/report/colombia/large-scale-mining-colombia-human-rights-violations-past-present-and-future>> accessed 20 March 2017.

Riker D, 'Export-Intensive Industries Pay More on Average: An Update' (6 Journal of International Commerce and Economics, 2015) <<http://www.usitc.gov/publications/332/ec201504a.pdf>> accessed 19 April 2017.

The International Finance Corporation, 'Progress Report on IFC's Policy and Performance Standards on Social and Environmental Sustainability, and Policy on Disclosure of Information', 2010 <<http://www.accountabilitycounsel.org/wp-content/uploads/2012/02/IFC-Mark-Up-of-its-2006-Policy.pdf>> accessed 5 April 2017.

The Organisation for Economic Co-operation and Development (OECD), 'Upstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Final Report on one-year pilot implementation of the Supplement on Tin, Tantalum, and Tungsten' (2013)

<<https://www.oecd.org/corporate/mne/DDguidanceTTTpilotUpstreamJan2013.pdf>>
accessed 7 March 2017.

NGO Resources

Amnesty International and Afreewatch, 'This Is What We Die For' (2016)
<<https://www.amnesty.org/en/documents/afr62/3183/2016/en/>> accessed 14 March
2017.

Global Witness and Amnesty International, 'Digging For Transparency' (22 April 2015)
<<https://www.globalwitness.org/en/campaigns/conflict-minerals/digging-transparency/>>
accessed 7 March 2017.

Global Witness, 'Blood Timber' (15 July 2015)
<<https://www.globalwitness.org/en/campaigns/forests/bloodtimber/>> accessed 10
March 2017.

Global Witness, 'Breaking the Links between Natural Resources and Conflict: The Case
for EU Regulation' (2013)
<[https://www.globalwitness.org/documents/18059/Breaking_the_Links_-_
_Joint_NGO_Position_Paper_ENG.pdf](https://www.globalwitness.org/documents/18059/Breaking_the_Links_-_Joint_NGO_Position_Paper_ENG.pdf)> accessed 3 March.

Global Witness, 'Civil Society Statement at the 10th Forum on Responsible Mineral
Supply Chains' (10-12 May 2016)
<[https://www.globalwitness.org/en/campaigns/conflict-minerals/civil-society-
statement-10th-forum-responsible-mineral-supply-chains-paris-10-12-may-2016/](https://www.globalwitness.org/en/campaigns/conflict-minerals/civil-society-statement-10th-forum-responsible-mineral-supply-chains-paris-10-12-may-2016/)>
accessed 18 March 2017.

Global Witness, 'Conflict Minerals in East Congo' (2 March 2015)
<[https://www.globalwitness.org/en-gb/campaigns/conflict-minerals/conflict-minerals-
eastern-congo/](https://www.globalwitness.org/en-gb/campaigns/conflict-minerals/conflict-minerals-eastern-congo/)> accessed 18 March 2017.

Global Witness, 'Conflict Minerals in East Congo' (2 March 2015) <<https://www.globalwitness.org/en-gb/campaigns/conflict-minerals/conflict-minerals-eastern-congo/>> accessed 18 March 2017.

Global Witness, 'Conflict Minerals in the EU' (3 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-europe-brief/>> accessed 7 March 2017.

Global Witness, 'Conflict Minerals in the EU' (3 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-europe-brief/>> accessed 7 March 2017.

Global Witness, 'Conflict Minerals: European Policy' (17 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/conflict-minerals-shaping-eu-policy/>> accessed 7 March 2017.

Global Witness, 'EITI Ramps up Reporting Requirements for Oil, Gas and Mining Companies' (9 March 2017) <<https://www.globalwitness.org/en-gb/press-releases/major-step-forward-anti-corruption-fight-global-transparency-standard-ramps-reporting-requirements-oil-gas-and-mining-companies/>> accessed 2 March 2017.

Global Witness, 'EU Political Agreement on Conflict Minerals Risks Allowing Deadly Trade to Continue' (16 June 2016) <<https://www.globalwitness.org/en/press-releases/eu-political-agreement-conflict-minerals-risks-allowing-deadly-trade-continue/>> accessed 7 March 2017.

Global Witness, 'EU: Conflict Minerals Agreement Reached as Exemptions Added' (22 November 2016) <<https://www.globalwitness.org/en/campaigns/conflict-minerals/eu-conflict-minerals-agreement-reached-exemptions-added/>> accessed 10 March 2017.

Global Witness, 'Four Years On, Congolese Government Still Failing to Enforce Its Law Designed to Stem Conflict and Human Rights Abuses in the Minerals Trade' (4 November 2016) <<https://www.globalwitness.org/en/blog/congolese-government->

failing-to-enforce-law-to-stem-conflict-abuses-in-minerals-trade/> accessed 7 March 2017.

Global Witness, ‘Glencore Redirected \$75m to Scandal-Hit Friend of Congolese President’ (3 March 2017) <<https://www.globalwitness.org/en/press-releases/glencore-redirected-over-75-million-mining-payments-scandal-hit-friend-president-global-witness-reveals/>> accessed 10 March 2017.

Global Witness, ‘Global Witness Leaves Kimberley Process, Calls for Diamond Trade to Be Held Accountable’ (2 December 2011) <<https://www.globalwitness.org/en/archive/global-witness-leaves-kimberley-process-calls-diamond-trade-be-held-accountable/>> accessed 10 March 2017.

Global Witness, ‘New Investigation Shows Why EITI Must Enforce Project-Level Reporting by Oil and Mining Companies’ <<https://www.globalwitness.org/en/blog/glencores-75-million-payments-show-why-eiti-must-enforce-project-level-reporting-oil-and-mining-companies/>> accessed 10 March 2017.

Global Witness, ‘Press Release: Congo’s Mines Minister Calls For “genuine Clean Up” of Gold Sector Following Global Witness Investigation’ (30 August 2016) <<https://www.globalwitness.org/en/press-releases/congos-mines-minister-calls-genuine-clean-gold-sector-following-global-witness-investigation/>> accessed 7 March 2017.

Global Witness, ‘Shell and Eni’s Misadventures in Nigeria’ (17 November 2015) <<https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-and-eni-misadventures-nigeria/>> accessed 10 March 2017.

Global Witness, ‘The Dodd Frank Act’ (1 February 2016) <<https://www.globalwitness.org/en-gb/campaigns/conflict-minerals/dodd-frank-act/>> accessed 18 March 2017.

Global Witness, 'The Kimberley Process' (1 April 2013) <<https://www.globalwitness.org/en/campaigns/conflict-diamonds/kimberley-process/>> accessed 10 March 2017.

Global Witness, 'U.S. Administration Sounds Death Knell for Transparency Initiative (20 March 2017) <<https://www.globalwitness.org/en-gb/press-releases/us-administration-sounds-death-knell-transparency-initiative/>> accessed 22 March 2017.

Human Rights Watch, 'Bangladesh: Tanneries Harm Workers, Poison Communities' (8 October 2012) <<https://www.hrw.org/news/2012/10/08/bangladesh-tanneries-harm-workers-poison-communities>> accessed 3 March 2017.

Human Rights Watch, 'Ghana: Child Labor Taints Gold Supply Chain' (10 June 2015) <<https://www.hrw.org/news/2015/06/10/ghana-child-labor-taints-gold-supply-chain>> accessed 3 March 2017.

Human Rights Watch, 'Human Rights in Supply Chains' (30 May 2016) <<https://www.hrw.org/report/2016/05/30/human-rights-supply-chains/call-binding-global-standard-due-diligence>> accessed 16 March 2017.

Human Rights Watch, 'Human Rights in Supply Chains' (30 May 2016) <<https://www.hrw.org/report/2016/05/30/human-rights-supply-chains/call-binding-global-standard-due-diligence>> accessed 15 March 2016.

Human Rights Watch, 'Make Rules on Rights Binding for Businesses' (30 May 2016) <<https://www.hrw.org/news/2016/05/30/make-rules-rights-binding-businesses>> accessed 15 March 2017.

Human Rights Watch, 'Make Rules on Rights Binding for Businesses' (30 May 2016) <<https://www.hrw.org/news/2016/05/30/make-rules-rights-binding-businesses>> accessed 15 March 2017.

Human Rights Watch, 'Precious Metal, Cheap Labour: Child Labour and Corporate Responsibility in Ghana's Artisanal Gold Mines' (10 June 2015) <<https://www.hrw.org/report/2015/06/10/precious-metal-cheap-labor/child-labor-and-corporate-responsibility-ghanas>> accessed 3 March 2017.

Human Rights Watch, 'US: Child Farmworkers' Dangerous Lives' (5 May 2010) <<https://www.hrw.org/news/2010/05/05/us-child-farmworkers-dangerous-lives>> accessed 16 March 2017.

Kippenberg J, 'France Takes Historic Step Toward Reducing Supply Chain Abuses' (Human Rights Watch, 27 February 2017) <<https://www.hrw.org/news/2017/02/27/france-takes-historic-step-toward-reducing-supply-chain-abuses>> accessed 6 March 2017.

Kippenberg J, 'Regulate Small Gold Mines, Too' (Human Rights Watch, 25 November 2016) <<https://www.hrw.org/news/2016/11/25/regulate-small-gold-mines-too>> accessed 6 March 2017.

Encyclopaedias

Britannica, 'Black Death: Causes, Facts, and Consequences' <<https://www.britannica.com/event/Black-Death>> accessed 24 May 2017.

Books

Abu-Lughod J, 'Before European Hegemony: The World System A.D' (1991) (ISBN: 9780195067743).

Ellis C, 'The Origin, Structure & Working of the League of Nations' (2003) (ISBN: 1-58477-320-0).

Frank A, 'ReORIENT: Global Economy in the Asian Age' (1998) (ISBN 978-0-520-92131-3) <<http://www.jstor.org/stable/10.1525/j.ctt1ppvvd>> accessed 14 April 2017.

Hobbs S, McKechnie J, and Lavalette M, 'Child Labor: A World History Companion' (1999) (ISBN: 0-87436-956-8).

Kastner D, 'Kinderarbeit im Rheinland: Entstehung und Wirkung des ersten preußischen Gesetzes gegen die Arbeit von Kindern in Fabriken von 1839' (2004) (ISBN: 978-3-89498-129-7).

Peter N. Stearns, 'Globalization in World History' (2016) (ISBN: 978-1-317-20116-8).

Reinalda B, 'Routledge History of International Organizations: From 1815 to the Present Day' (2009) (ISBN: 978-1-134-02405-6)

Servais J, 'International Labour Law' (2011) (ISBN: 978-90-411-3805-7).

Sweepston L, 'The Development in International Law of Articles 23 and 24 of the Universal Declaration of Human Rights: The Labor Rights Articles' (2014) (ISBN: 90-04-24455-7 978-90-04-24455-9).

News Articles

Avaneesh P, 'Conflict Minerals Enter US Unchecked, Hidden By "Blind Spots" In Supply Chains' (International Business Times, 22 April 2015) <<http://www.ibtimes.com/conflict-minerals-enter-us-unchecked-hidden-blind-spots-supply-chains-1891692>> accessed 6 March 2017.

Balch O, 'Sustainable Palm Oil: How Successful is RSPO Certification?' (The Guardian, 4 July 2013) <<https://www.theguardian.com/sustainable-business/sustainable-palm-oil-successful-rspo-certification>> accessed 3 April 2017.

BBC News, 'DR Congo Country Profile' (15 November 2016) <<http://www.bbc.co.uk/news/world-africa-13283212>> accessed 6 March 2017.

CSR Wire, '85 Firms Still "silent" on California Transparency in Supply Chains Act' (12 February 2014 <http://www.csrwire.com/press_releases/36712-85-firms-still-silent-on-California-Transparency-in-Supply-Chains-Act> accessed 10 May 2017.

Foley Hoag LLP, 'French National Assembly Adopts Corporate Duty of Vigilance Law' <<http://www.csrandthelaw.com/2017/02/28/french-national-assembly-adopts-corporate-duty-of-vigilance-law/>> accessed 10 May 2017.

Frankel T, 'Why Apple and Intel Don't Want to See the Conflict Minerals Rule Rolled Back' (Washington Post, 23 February 2017) <https://www.washingtonpost.com/business/economy/why-apple-and-intel-dont-want-to-see-the-conflict-minerals-rule-rolled-back/2017/02/23/b027671e-f565-11e6-8d72-263470bf0401_story.html> accessed 15 March 2017.

Gettleman J, 'The Price of Precious' (National Geographic) <<http://ngm.nationalgeographic.com/2013/10/conflict-minerals/gettleman-text>> accessed 14 March 2017.

Goodman P, 'More Wealth, More Jobs, but Not for Everyone: What Fuels the Backlash on Trade' (The New York Times, 28 September 2016) <<https://www.nytimes.com/2016/09/29/business/economy/more-wealth-more-jobs-but-not-for-everyone-what-fuels-the-backlash-on-trade.html>> accessed 19 April 2017.

Hawksley H, 'India's Exploited Child Cotton Workers' (BBC News) <<http://www.bbc.co.uk/news/world-asia-16639391>> accessed 20 March 2017.

Hinkes-Jones L, 'How Much Did Dodd-Frank Cost? Don't Ask Banks' (Bloomberg BNA, 2 February 2017) <<https://www.bna.com/doddfrank-cost-dont-n57982083211/>> accessed 15 May 2017.

Kannan S, 'Child Labour: India's Hidden Shame' (BBC News) <<http://www.bbc.co.uk/news/business-25947984>> accessed 20 March 2017.

Kelly A, 'Nestlé Admits Slavery in Thailand While Fighting Child Labour Lawsuit in Ivory Coast' (The Guardian, 1 February 2016) <<https://www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast>> accessed 21 March 2017.

Kilner J, 'Global Clothing Brands Boycott Uzbek Cotton' (18 September 2011) <<http://www.telegraph.co.uk/news/worldnews/asia/uzbekistan/8771473/Global-clothing-brands-boycott-Uzbek-cotton.html>> accessed 4 April 2017.

Lynch S and Stephenson E, 'White House Plans Directive Targeting "Conflict Minerals" Rule: Sources' (Reuters, 9 February 2017) <<http://www.reuters.com/article/us-usa-trump-conflictminerals-idUSKBN15N06N>> accessed 6 March 2017.

Matsangou E, 'The Gig Economy and Its Long-Term Effects' (World Finance, 13 January 2016) <<https://www.worldfinance.com/strategy/the-long-term-effects-of-the-gig-economy>> accessed 21 May 2017.

Perlez J and Bonner R, 'Below a Mountain of Wealth, a River of Waste (The New York Times)' <http://www.nytimes.com/2005/12/27/world/asia/below-a-mountain-of-wealth-a-river-of-waste.html?_r=3> accessed 17 March 2017.

Pilkington E, 'Proposed Trump Executive Order Would Allow US Firms to Sell "Conflict Minerals"' (The Guardian, 8 February 2017) <<https://www.theguardian.com/us-news/2017/feb/08/trump-administration-order-conflict-mineral-regulations>> accessed 6 March 2017.

Rathi P, 'Trump Executive Order On Conflict Minerals? Leaked Memo Suggests White House May Remove Ban On US Companies' (International Business Times, 9 February 2017) <<http://www.ibtimes.com/trump-executive-order-conflict-minerals-leaked-memo-suggests-white-house-may-remove-2488994>> accessed 6 March 2017.

Roscoe A, 'The Evolution of Multi-Stakeholder Initiatives: Lessons for the Bangladesh Garment Sector' <<https://alexaroscoe.com/2013/07/22/the-evolution-of-multi-stakeholder-initiatives-on-business-and-development-lessons-for-the-bangladesh-garment-sector/>> accessed 3 April 2017.

Sutter J, 'Slavery's last stronghold' (CNN), <<http://edition.cnn.com/interactive/2012/03/world/mauritania.slaverys.last.stronghold/index.html>> accessed 24 May 2017; World Population Review, 'Mauritania Population (2017)' <<http://worldpopulationreview.com/countries/mauritania-population/>> accessed 24 May 2017.

The Guardian, 'Revealed: Asian Slave Labour Producing Prawns for Supermarkets in US, UK' <<https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>> accessed 22 March 2017.

Wakefield J, 'Apple, Samsung and Sony Face Child Labour Claims' (BBC News, 19 January 2016) <<http://www.bbc.co.uk/news/technology-35311456>> accessed 20 March 2017.

Widrich L, 'The Origin of the 8 Hour Work Day and Why We Should Rethink It', (Huffington Post, 22 Nov 2016) <http://www.huffingtonpost.com/leonhard-widrich/the-origin-of-the-8-hour-_b_4524488.html> accessed 24 May 2017.

Winsor M, 'Congo's Conflict Minerals: US Companies Struggle To Trace Tantalum, Tungsten, Tin, Gold In Their Products' (International Business Times, 18 September 2015) <<http://www.ibtimes.com/congos-conflict-minerals-us-companies-struggle-trace-tantalum-tungsten-tin-gold-their-2102323>> accessed 14 March 2017.

Winsor M, 'Inside Congo's Rape Crisis' (International Business Times, 15 September 2015) <<http://www.ibtimes.com/inside-congos-rape-crisis-2095817>> accessed 14 March 2017.

Wood J, 'The New Risk Front for GCs – Nearly Half of Contracts Have Human Rights Clauses, LB Research Finds' (legal business, 8 September 2016)
<<http://www.legalbusiness.co.uk/index.php/lb-blog-view/7311-soft-law-hard-sanctions-almost-half-of-commercial-contracts-have-human-rights-clauses-new-study-finds>>
accessed 9 March 2017.

Web Pages

United Nations

The Office of the United Nations High Commissioner for Refugees (UNHCR),
'Democratic
Republic of the Congo Regional Office - Global Focus'
<<http://reporting.unhcr.org/node/4874?y=2017#year>> accessed 9 May 2017.

The United Nations Environment Programme <<http://www.unep.org>> accessed 10 May 2017.

The United Nations Security Council, 'Due Diligence Guidelines for the Responsible Supply Chain of Minerals from Red Flag Locations to Mitigate the Risk of Providing Direct or Indirect Support for Conflict in the Eastern Part of the Democratic Republic of the Congo'
<https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/due_diligence_guidelines.pdf> accessed 10 May 2017.

United Nations Conference on Trade and Development, 'Fourteenth Session of the United Nations Conference on Trade and Development (UNCTAD 14)'
<<http://unctad.org/en/pages/MeetingDetails.aspx?meetingid=808>> accessed 21 April 2017.

United Nations Conference on Trade and Development, 'Maafikiano UNCTAD Work Programme' (Paragraph 41, 2016)
<http://unctad.org/meetings/en/SessionalDocuments/td519add2_en.pdf> accessed 21 April 2017.

United Nations Educational, Scientific and Cultural Organization (UNESCO), 'Lorentz National Park' <<http://whc.unesco.org/en/list/955>> accessed 17 March 2017.

United Nations, 'World Summit for Social Development, Copenhagen' (1995) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/116/51/IMG/N9511651.pdf?OpenElement>> accessed 15 March 2017.

International Labour Organization

International Labour Organization, 'What Is Child Labour (IPEC)' <<http://ilo.org/ipecc/facts/lang--en/index.htm>> accessed 3 March 2017.

The International Labour Organization, 'About the ILO' <<http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>> accessed 17 May 2017.

The International Labour Organization, 'All Comments, Forced Labour Convention, 1930 (No. 29)' <http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:3241912> accessed 24 May 2017.

The International Labour Organization, 'Governing Body' <<http://www.ilo.org/gb/lang-en/index.htm>> accessed 15 March 2017.

The International Labour Organization, 'Hazardous Child Labour' <http://www.ilo.org/asia/WCMS_224118/lang--en/index.htm> accessed 21 March 2017.

The International Labour Organization, 'Hazardous Child Labour' <http://www.ilo.org/asia/WCMS_224118/lang--en/index.htm> accessed 21 March 2017.

The International Labour Organization, 'ILO Comments, Observation (CEACR), 106th ILC Session (2017)' (2016)

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3298576:NO> accessed 9 May 2017.

The International Labour Organization, 'International Labour Conference'
<<http://ilo.org/global/about-the-ilo/how-the-ilo-works/international-labour-conference/lang--en/index.htm>> accessed 15 March 2017.

The International Labour Organization, 'International Labour Office'
<<http://ilo.org/global/about-the-ilo/who-we-are/international-labour-office/lang--en/index.htm>> accessed 15 March 2017.

The International Labour Organization, 'Occupational Safety and Health (OSH)'
<http://www.ilo.org/asia/WCMS_224121/lang--en/index.htm> accessed 21 March 2017.

The International Labour Organization, 'Ratifications of ILO Conventions: Ratifications by Convention'
<http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO> accessed 1 May 2017.

The International Labour Organization, 'Studies on Growth with Equity: Assessment of labour provisions in trade and investment arrangements' (2016)
<http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_498944.pdf> accessed 18 April 2017.

The International Labour Organization, 'What Is Forced Labour, Modern Slavery and Human Trafficking (Forced Labour, Modern Slavery and Human Trafficking)'
<<http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>> accessed 1 May 2017.

The International Labour Organization, Decent Work Agenda

<<http://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> accessed 4 April 2017.

World Trade Organization

World Trade Organization, ‘Conditions for the Granting of Tariff Preferences to Developing Countries’ (European Communities, Report of the Appellant Body, Para. 182, 2004)

<[https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(@Symbol=%20wt/ds246/ab/r*%20not%20rw*\)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(@Symbol=%20wt/ds246/ab/r*%20not%20rw*)&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true#)> accessed 14 April 2017.

World Trade Organization, ‘Pre-WTO Legal Texts’

<https://www.wto.org/english/docs_e/legal_e/prewto_legal_e.htm> accessed 14 April 2017.

World Trade Organization, ‘Understanding the WTO - Labour Standards: Consensus, Coherence and Controversy’

<https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm> accessed 13 April 2017.

European Union

European Commission and Directorate-General for Trade, The Top 10 Myths about TTIP: Separating Fact from Fiction. (Publications Office, 2015)

<<http://dx.publications.europa.eu/10.2781/83337>> accessed 4 April 2017.

European Commission, Everything but Arms (EBA) Arrangement

<http://trade.ec.europa.eu/doclib/docs/2013/april/tradoc_150983.pdf> accessed 11 May 2017.

European Union, ‘List of Conventions to Qualify for “GSP Plus”

<http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm> accessed 10 April 2017.

The European Commission, ‘Questions and Answers (TTIP)’
<http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/questions-and-answers/index_en.htm> accessed 13 May 2017.

Other

‘Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’

<<http://hrlibrary.umn.edu/business/commentary-Aug2003.html>> accessed 4 April 2017.

Assent Compliance <<https://www.assentcompliance.com>> accessed 19 May 2017.

Bloy M, ‘Robert Owen and New Lanark’

<<http://www.historyhome.co.uk/peel/factmine/owennewl.htm>> accessed 24 May 2017.

Child Labour Due Diligence Law (Wet Zorgplicht Kinderarbeid)

<<https://zoek.officielebekendmakingen.nl/kst-34506-3.html>> accessed 10 May 2017.

CIDSE, ‘No Free Trade at the Expense of the People of Latin America’ (20 March 2012) <<http://www.cidse.org/articles/business-and-human-rights/extractive-industries-in-latin-america/no-free-trade-at-the-expense-of-the-people-of-latin-america.html>> accessed 21 March 2017.

Economic History Association ‘Child Labor during the British Industrial Revolution’

<<https://eh.net/encyclopedia/child-labor-during-the-british-industrial-revolution/>> accessed 24 May 2017.

Freeport-McMoRan Copper & Gold Inc., ‘Making The Commitment’ (2004)

<http://www.socialfunds.com/csr/reports/Freeport-McMoran_2004_Sustainable_Development_Report.pdf> accessed 17 March.

National Institute for Occupational Safety and Health (NIOSH), ‘Preventing Deaths, Injuries, and Illnesses of Young Workers’ (National Institute for Occupational Safety

and Health (NIOSH) <<https://www.cdc.gov/niosh/docs/2003-128/pdfs/2003128.pdf>> accessed 9 May 2017.

Natural Resource Governance Institute, ‘Dataset: Unlocking EITI Data for Meaningful Reform’ (22 June 2015) <<http://www.resourcegovernance.org/analysis-tools/tools/dataset-unlocking-eiti-data-meaningful-reform>> accessed 10 March 2017.

Office of the United States Trade Representative Executive Office of the President, ‘U.S Generalized System of Preferences Guidebook’ <<http://studylib.net/doc/10591576/u.s.-generalized-system-of-preferences-guidebook-executiv...>> accessed 10 April 2017.

Parametrix, <<http://www.parametrix.com>> accessed 17 March 2017.

Patagonia, ‘Corporate Responsibility: Protecting Migrant Workers’ (7 April 2004) <<http://www.patagonia.com/protecting-migrant-workers.html>> accessed 9 March 2017.

Pew Research Center <<http://www.pewresearch.org>> accessed 19 April 2017.

Pew Research Center, ‘Faith and Skepticism about Trade, Foreign Investment’ <<http://www.pewglobal.org/2014/09/16/faith-and-skepticism-about-trade-foreign-investment/>> accessed 19 April 2017.

Philippine Statistics Authority, ‘Estimated Number of Working Children 5 to 17 Years Old Who Worked During The Past Week Was 3.3 Million (Final Results of the 2011 Survey on Children)’ (2015) <<https://psa.gov.ph/content/estimated-number-working-children-5-17-years-old-who-worked-during-past-week-was-33-million>> accessed 9 May 2017.

Securities and Exchange Commission, ‘Reconsideration of Conflict Minerals Rule Implementation’ (31 January 2017) <<https://www.sec.gov/news/statement/reconsideration-of-conflict-minerals-rule-implementation.html>> accessed 15 March 2017.

The International Labour Organization, 'Ratifications of ILO Conventions: Ratifications by Convention'
<http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:31232> accessed 9 May 2017.

The National Archives, 'Citizenship, Struggle for democracy'
<http://www.nationalarchives.gov.uk/pathways/citizenship/struggle_democracy/childlabour.htm> accessed 24 May 2017.

The National Archives, 'Slavery'
<<http://www.nationalarchives.gov.uk/education/resources/slavery/>> accessed 24 May 2017.

The National Archives, 'The Struggle for Democracy, Trade Unionism'
<http://www.nationalarchives.gov.uk/pathways/citizenship/struggle_democracy/trade_unionism.htm> accessed 24 May 2017.

The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights 2003 (E/CN4/Sub2/2003/12/Rev2)
<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/160/08/PDF/G0316008.pdf?OpenElement>> accessed 4 April.

The Organisation for Economic Co-operation and Development (OECD), 'List of OECD Member countries - Ratification of the Convention on the OECD',
<<http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm>> accessed 18 March 2017.

Tiffany & Co., 'Statement Supporting Diligence and Transparency in Addressing Conflict Minerals | United States'
<<http://press.tiffany.com/News/NewsItem.aspx?id=302>> accessed 15 March 2017.

Tulane University <<https://tulane.edu/>> accessed 19 May 2017.

World Bank, 'Democratic Republic of Congo Overview'
<<http://www.worldbank.org/en/country/drc/overview>> accessed 14 March 2017.

Initiatives

Alliance for Bangladesh Worker Safety <<http://www.bangladeshworkersafety.org/>>
accessed 15 May 2017.

Better Cotton Initiative <<http://bettercotton.org/>> accessed 15 May 2017.

Better Factories Cambodia, 'Better Factories Cambodia' <<http://betterfactories.org/>>
accessed 15 May 2017.

Better Factories Cambodia, 'Better Factories Cambodia's Transparency Database'
<<http://betterfactories.org/transparency/>> accessed 15 May 2017.

Better Factories Cambodia, <<http://betterfactories.org/>> accessed 15 May 2017.

Better Work, 'The Programme' <<http://betterwork.org/about-us/the-programme/>>
accessed 15 May 2017.

Bonsucro, <https://www.bonsucro.com/en/home-page-c/?utm_expId=141778976-0.gtijPmQ5RHC_E-IXVP15zA.3&utm_referrer=https%3A%2F%2Fwww.google.co.uk%2F> accessed 15 May 2017.

Caribbean Basin Initiative (1983)
<http://www.belizeinvest.org.bz/uploads/6/4/9/6/64967361/caribbean_basin_initiative_v2.pdf> accessed 10 April 2017.

Conflict-Free Smelter Program <<http://www.conflictreesourcing.org/conflict-free-smelter-program/>> accessed 18 March 2017.

Conflict-Free Sourcing Initiative <<http://www.conflictreesourcing.org>> accessed 18 March 2017.

Conflict-Free Tin Initiative <<http://solutions-network.org/site-cfti/process/>> accessed 18 March 2017.

Dubai Multi/Commodities Center's Responsible Sourcing of Precious Metals <<https://www.dmcc.ae/gateway-to-trade/commodities/gold/responsible-sourcing>> accessed 18 March 2017.

Extractive Industries Transparency Initiative <<https://eiti.org>> accessed 2 March 2017.

Extractive Industries Transparency Initiative, 'EITI Countries' <<https://eiti.org/countries>> accessed 2 March 2017.

Extractive Industries Transparency Initiative, 'Explore the Data Portal' <<https://eiti.org/data>> accessed 22 March 2017.

Fair Labor Association 'About Us' <<http://www.fairlabor.org/about-us>> accessed 5 April 2017.

Fair Labor Association <<http://www.fairlabor.org/>> accessed 15 May 2017.

Global Compact, 'Engage Locally' <<https://www.unglobalcompact.org/engage-locally/about-local-networks>> accessed 15 May 2017.

Global Compact, 'Participation' <<https://www.unglobalcompact.org/participation/report>> accessed 15 May 2017.

Global Reporting Initiative, 'G4 Sustainability Reporting Guidelines' <<https://www.globalreporting.org/resourcelibrary/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf>> accessed 15 May 2017.

Global Reporting Initiative, 'GRI Standards' <<https://www.globalreporting.org/standards>> accessed 15 May 2017.

Goodweave, 'Child Labor Free Certification, Child Labor Free Rugs & Carpets' <http://www.goodweave.org.uk/about/child_labor_free_rugs> accessed 23 May 2017.

Harkin-Engel Protocol, <<http://www.slavefreechocolate.org/harkin-engel-protocol/>> accessed 15 May 2017.

ICGLR, Regional Initiative against the Illegal Exploitation of Natural Resources <<https://www.oecd.org/investment/investmentfordevelopment/50473614.pdf>> accessed 18 March 2017.

International Conference of the Great Lakes Region <<https://www.icglr.org/index.php/en/>> accessed 18 March 2017.

International Finance Corporation, 'IFC Performance Standards' <http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards> accessed 5 April 2017.

ITRI Supply Chain Initiative <<https://www.itri.co.uk/itsci/itsci-project-overview/itsci-project-overview>> accessed 18 March 2017.

London Bullion Market Association's Responsible Gold Program <<http://www.lbma.org.uk/responsible-sourcing>> accessed 18 March 2017.

PowerShift <<https://power-shift.de/language/en/>> accessed 10 March.

Responsible Jewellery Council's Chain of Custody Certification <<http://www.responsiblejewellery.com/chain-of-custody-certification/>> accessed 18 March 2017.

Roundtable on Sustainable Palm Oil, 'RSPO' <<http://www.rspo.org/about>> accessed 15 May 2017.

Shift, 'Shift Is the Leading Center of Expertise on the UN Guiding Principles on Business and Human Rights.' <<https://www.shiftproject.org/>> accessed 16 May 2017.

Solutions for Hope <<http://solutions-network.org/site-solutionsforhope/>> accessed 18 March 2017.

The Bangladesh Accord <http://bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf> accessed 15 May 2017.

The Bangladesh Accord, 'About the Accord' <<http://bangladeshaccord.org/about/>> accessed 6 April 2017.

The Danish Institute for Human Rights, 'Human Rights Compliance Assessment (HRCA) Quick Check' <https://hrca2.humanrightsbusiness.org/docs/file/HRCA%20Quick%20Check_English.pdf> accessed 15 May 2017.

The Danish Institute for Human Rights, 'Human Rights Compliance Assessment' <<https://hrca2.humanrightsbusiness.org/>> accessed 15 May 2017.

The Danish Institute for Human Rights, 'The Human Rights Compliance Assessment' <<https://www.humanrights.dk/business/the-human-rights-compliance-assesment>> accessed 15 May 2017.

The Fisheries Transparency Initiative, 'FiTI' <<http://fisheriestransparency.org/>> accessed 15 May 2017.

The Global Compact, ‘859 Companies Delisted for Failure to Communicate on Progress’ 2010, <<https://www.unglobalcompact.org/news/8-859-companies-delisted-for-failure-to-communicate-on-progress>> accessed 15 May 2017.

The International Cocoa Initiative, ‘ICI’ <<http://www.cocoainitiative.org/>> accessed 15 May 2017.

The Kimberley Process, <<https://www.kimberleyprocess.com>> accessed 10 March 2017.

The Organisation for Economic Co-operation and Development (OECD), ‘Guidelines for MNEs’ <<http://mneguidelines.oecd.org/industry-initiatives-alignment-assessment.htm>> accessed 18 March 2017.

The Voluntary Principles on Security and Human Rights
<<http://www.voluntaryprinciples.org/>> accessed 15 May 2017.

The Voluntary Principles on Security and Human Rights, ‘What are the Voluntary Principles?’ <<http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>> accessed 6 April 2017.

United Nations, ‘UN Global Compact’ <<https://www.unglobalcompact.org/>> accessed 15 May 2017.

World Gold Council’s Conflict-Free Gold Standard
<https://www.gold.org/sites/default/files/documents/Conflict_Free_Gold_Standard_English.pdf> accessed 18 March 2017.

Guidance

OECD Watch, ‘Calling for Corporate Accountability: A Guide to the 2011 OECD Guidelines for Multinational Enterprises’ (2013)
<http://www.oecdwatch.org/publications-en/Publication_3962> accessed 18 March 2017.

Ruggie J, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’ (2011)

<http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>
> accessed 9 March 2017.

Ruggie J, ‘UN Guiding Principles Reporting Framework’ (2011)

<http://www.ungpreporting.org/wp-content/uploads/2015/03/UNGPRReportingFramework_2017.pdf> accessed 18 March 2017.

The China Chamber of Commerce of Metals, Minerals, and Chemicals Importers & Exporters (CCCMC), ‘Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains’ <<http://www.cccmc.org.cn/docs/2016-05/20160503161408153738.pdf>> accessed 14 March 2017.

The Equator Principles <http://www.equator-principles.com/resources/equator_principles_III.pdf> accessed 9 March 2017.

The Organisation for Economic Co-operation and Development (OECD), ‘Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’ <<http://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>> accessed 18 March 2017.

The United Nations, ‘An Interpretive Guide: The Corporate Responsibility to Respect Human Rights’ (2011)

<<http://acornintl.net/pdf/Un%20Guiding%20Principles%20Guide%20for%20Business%20Nov%202011.pdf>> accessed 5 April 2017.