

# **How the modern slavery is addressed and regulated today**

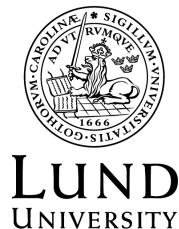
**A legal and CSR perspective**

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# Abstract

Modern slavery is connected to the global trade and company supply chains. This essay aims to examine how this is regulated and addressed today, from a legal and corporate social responsibility (CSR) perspective, and analyse the extent to which such obstacles can be overcome. To reach the aim of this study, a traditional legal dogmatic method, together with an empirical method in the form of a case study, has been used. The findings of this study were that there are several international laws and/or standards that concern the regulation of slavery, forced labour and human rights, which only bind states that have ratified them. In general, companies are not bound by international laws and subsequently, only self-regulate to how they would handle CSR. There are certain national laws that cover global companies and impose obligations to be more transparent and disclose information on the manner in addressing modern slavery in their supply chains. However, these international and national regulations lack the necessary sanctions and enforcement mechanisms. Companies' CSR efforts are also insufficient in this regard. As such, it is difficult to address and tackle modern slavery and further research is thus necessary.

**Keywords:** Modern slavery, forced labour, human rights, CSR.





# Abbreviations

AU MSA	Australia's Modern Slavery Act
BHRRC	Business and Human Rights Resource Centre
CSR	Corporate Social Responsibility
EU	European Union
GBNFL	Global Business Network on Forced Labour
HRDD	Human Rights Due Diligence
ILO	International Labour Organisation
ICCPR	International Covenant On Civil and Political Rights
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
MNE Declaration	The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
MNE Guidelines	The OECD guidelines for Multinational Enterprises
NFRD	Non-Financial Reporting Directive
TSCA	The California Transparency in Supply Chain Act
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UK MSA	United Kingdom's Modern Slavery Act
UN	United Nations

UNCTAD

United Nations Conference on Trade and Development

UNGP

United Nations Guiding Principles on Business and  
Human Rights

# 1. Introduction

## 1.1 Background

In 2013, the Rana Plaza factory in Bangladesh collapsed and resulted in the death of more than 1,100 people. H&M, Disney and Zara were some of the companies that produced clothing in the Rana Plaza factory. The factory had been constructed illegally and contained several faults, however, still managed to “pass” the safety checks done by inspectors prior to the collapse. Despite the owners of the factory having been warned about the unsafety of the building, they told the workers to return back to work. The Rana Plaza collapse ultimately started many conversations concerning labour safety and CSR.<sup>1</sup> To discuss global trade, its effect on human rights and the manner in which companies can be more responsible in their operations and supply chains therefore bears significant importance today.

Trade between countries has been going on for thousands of years as a way to exchange crucial resources between one another. Over the years, international trade has evolved and is currently regarded as a fundamental aspect of the global economy, with the modern industrialised world dependent on it. Some of the common reasons to trade are due to goods and/or services that are significantly cheaper abroad, better quality or easier availability.<sup>2</sup> However, such globalisation efforts also result in many human rights disadvantages, a global concern that is a part of the so-called “modern slavery”. Modern slavery exists everywhere, with forced labour the most common form.<sup>3</sup> More than 25 million people worldwide are exposed to forced labour practices,<sup>4</sup> with profits estimated at 150 billion US dollars per year.<sup>5</sup> Despite slavery deemed to be illegal in the 21st century, it is still a regular

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<sup>1</sup> Chao, Rebecca. ‘Dhaka factory collapse: how far can businesses be held responsible?’ (*The Guardian*, 16 May 2013) [www.theguardian.com/sustainable-business/dhaka-factory-collapse-businesses-held-responsible](http://www.theguardian.com/sustainable-business/dhaka-factory-collapse-businesses-held-responsible); Yardley, Jim. ‘Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame’ (*New York Times*, 22 May 2013) [www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html](http://www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html).

<sup>2</sup> ‘Why do countries trade?’ (*Economics Online*) [www.economicsonline.co.uk/Global\\_economics/Why\\_do\\_countries\\_trade.html](http://www.economicsonline.co.uk/Global_economics/Why_do_countries_trade.html).

<sup>3</sup> ‘What is forced labour’ (*Anti-Slavery*) [www.antislavery.org/slavery-today/forced-labour/](http://www.antislavery.org/slavery-today/forced-labour/).

<sup>4</sup> Hess, David. ‘Modern Slavery in Global Supply Chains: Towards a Legislative Solution’ (2020), *Cornell Int. Law J.* (forthcoming), p. 1.

<sup>5</sup> ‘ILO says forced labour generates annual profits of US\$ 150 billion’ (*International Labour Organisation*, 20 May 2014) [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm).

occurrence. Some say it is being used more now than ever.<sup>6</sup> The abolition of such a form of slavery began hundreds of years ago, however, it has since reemerged through globalisation into a new era of modern slavery in company supply chains. Companies are structured in a way that creates the conditions that foster slavery and forced labour, usually in their lower supply chains in distant developing countries. It is therefore crucial for companies to take responsibility and ensure no slavery occurs in their supply chains.<sup>7</sup> Prohibitions on slavery and forced labour can be found in many international treaties and conventions, however, the responsibility to ultimately end slavery and forced labour lies with the company's self-regulatory provisions. It has been argued that this is not enough and that stronger binding legislation, amongst others, is needed to tackle such issues. The high profits that companies make out of slavery and forced labour will always clash with the work of addressing these issues.<sup>8</sup> It can therefore be questioned as to the best manner in addressing and regulating modern slavery today. Perhaps, it is through binding legislation and/or self-regulation (CSR) by companies. In light of the above, this study will further address and analyse such uncertainties.

## 1.2 Aim and research questions

This paper aims to analyse how modern slavery, with focus on forced labour, is addressed and regulated in today's society. It is therefore essential to examine international, together with certain national, regulations regulating human rights, forced labour and slavery, as well as respective company CSR commitments in this regard. To reach the aim, the following research questions will be studied:

- How is modern slavery legally addressed through international and national instruments?
- How do companies, through CSR initiatives, self-regulate in addressing modern slavery and forced labour in their global supply chains, and to what extent can such obstacles be overcome?

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<sup>6</sup> Gerrard, Brayden. 'Are there really more slaves now than anytime in history?' (*Medium*, 1 November 2020) <https://medium.com/the-innovation/are-there-more-slaves-now-than-anytime-in-history-38420e0542e5>.

<sup>7</sup> Chawatama, Ronald. 'Modern slavery and supply chains', *Global Newsstream (The Zimbabwean*, 27 May 2016) <https://search-proquest-com.ludwig.lub.lu.se/globalnews/docview/1791579225/690930C9B0F04F8EPQ/4?accountid=12187>.

<sup>8</sup> Bhoola, Urmila. 'Soft law not enough to prevent slavery and exploitation' (*Word Policy*, 20 September 2016) <http://worldpolicy.org/2016/09/20/soft-law-not-enough-to-prevent-slavery-and-exploitation/>.

Furthermore, this essay will provide an example as to the manner in which modern slavery and forced labour is a worrisome issue across today's global trade. The relevant instruments used in this example will be presented through the lens of this essay's aim and research questions.

### **1.3 Scope and constraints**

This study will essentially focus on forced labour within the scope of modern slavery, to the exclusion of, *inter alia*; any other specific areas such as child labour, bonded labour and/or domestic servitude etc. In this regard, the term human rights will also be used throughout this essay, however, it will only focus on the areas that are within the scope of this study. Furthermore, the research will be portrayed from a legal and CSR perspective, and not from an economic and political view, despite such areas are interlinked within this context. Thus, the international legal frameworks on slavery, forced labour and soft law instruments that were established to regulate company activities with the view of being more socially responsible will be described and examined. Furthermore, certain relevant national legislation covering modern slavery will be discussed, despite various national laws of potential interest to explore for this study. Lastly, one case study example will be provided to analyse how today's modern slavery and forced labour are addressed from a global business perspective.

### **1.4 Materials and method**

Modern slavery and forced labour cover both legal and non-legal areas. To reach the aim of this essay, two methods have been used, namely a legal method and a non-legal method.

The first method is a traditional legal dogmatic approach. This method seeks answers in the generally-accepted sources of law, including law and doctrine.<sup>9</sup> Primary data from this method is therefore based on standards, regulations and conventions. Furthermore, academic literature, journals and articles, coupled with secondary data based on non-legal research from articles and books, are used.

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<sup>9</sup> Nääv, M & Zamboni, M (ed.). *Juridisk metodlära* (Lund, Studentlitteratur AB, 2 ed. 2018) p. 21.

The second method of this study is based on a case study, or an “elaborate example”, which is a form of empirical method. Case studies are mainly about carefully studying one or multiple cases with the purpose of understanding more of these cases in a greater and real-life context. Such a (non-legal) method is in the scope of social science, but within the context of this essay, this method aims to provide a clearer perspective on how laws (and non-binding laws) are applied, or misapplied, in practice by a company.<sup>10</sup> Since the partial purpose of this essay is to get in-depth knowledge about how modern slavery and forced labour are addressed today by companies, the use of this method is highly relevant. The primary data from the case study method in this essay has thus been based on one company’s (H&M) instruments used to regulate modern slavery and forced labour in its organisation and supply chain. The company was selected on the basis of its CSR commitments and the significant social impact it has on modern slavery and forced labour today. The company is publicly committed to CSR, engaged in global trade and has a strong social impact within its field through its organisation and supply chain.

## **1.5 Structure**

In the second part of this essay, chapter two will begin with first addressing international regulation on slavery and forced labour and then some relevant national legislations on modern slavery. The third chapter will then describe the existing CSR instruments, companies’ self-regulation and relation to modern slavery in their supply chains as well as a critical perspective on CSR. The fourth chapter will subsequently provide a case study on how modern slavery and forced labour are tackled and addressed in a company’s organisation and supply chain today. Lastly, the fifth chapter will present the author’s reflections and conclusions of the essay’s findings.

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<sup>10</sup> Webley, Lisa. ‘Stumbling Blocks in Empirical Legal Research: Case Study Research’ (2016) *Law and Method*, p. 1 ff.; See also Etienne, Julien. ‘Case studies in administrative law: the example of self-reporting rules in the regulation of business activities’, in H. van boom, Willem, Desmet, Pieter and Mascini, Peter (Ed.). *Empirical Legal Research in Action* (Edward Elgar Publishing, 2018), p. 174.

## 2. Regulation on Slavery and Forced Labour

### 2.1 Introduction

The prohibitions on slavery and forced labour can be found in international law.<sup>11</sup> When it comes to the precision of legal definitions there are two key concerns. First, States must define precisely what actions are allowed and prohibited so that there can be more certainty when it comes to how the law is enforced and labour services. To only have some general laws that prohibit slavery and forced labour has been argued not to be sufficient enough for national authorities to follow. Secondly, slavery and forced labour need to be addressed in different ways depending on what exact type of slavery or forced labour it is (for example debt bondage differs from a classic form of slavery even though they both are a form of forced labour).<sup>12</sup>

Furthermore, it is important to understand the relationship between international law and states in order to see how conventions, treaties etc. affect and govern countries and private companies. It is therefore necessary to look at the legal value, binding effects and potential “sanctions” of international law in states. It can first be stated that international law and its legal system governs the relationship between states, of which states are the main actors. Regarding the binding effects of conventions, states are as a main rule only bound by such international law that they have agreed to be bound by.<sup>13</sup> Then, the legal value of international law has increased with modern developments and the improved universality between

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<sup>11</sup> Swebston, Lee & International Labour Office. ‘Forced and compulsory labour in international human rights law’ (2014) Paper presented at the Conference “Shaping the Definition of Human Trafficking”, held at Dickson Poon School of Law, King’s College London, May 2014, available at [https://ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_342966.pdf](https://ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_342966.pdf), see preface.

<sup>12</sup> Ibid, p. 23.

<sup>13</sup> ‘Towards Universal Participation and Implementation’ (2011, United Nations) [treaties.un.org/doc/source/events/2011/press\\_kit/fact\\_sheet\\_1\\_english.pdf](https://treaties.un.org/doc/source/events/2011/press_kit/fact_sheet_1_english.pdf), p. 1.; Note that there are exceptions to this. Some rules are always binding for a state, even though it has not agreed and ratified it. Examples of this are areas concerning certain acts of war, genocide, prohibition of torture etc. However, this will not be addressed further in this essay.

states.<sup>14</sup> For example, the area of human rights has been improved by conventions in international law. It is believed that nothing can be achieved if states do not want to participate in doing something, states' participation and implementation of international conventions are therefore important.<sup>15</sup> According to a general principle when it comes to states breaching international law, they must be held accountable and take responsibility one way or the other.<sup>16</sup> The only specific "consequence" is that the state who violates a certain convention immediately must stop its illegal activities and repair any damages it has caused. A state has legal responsibility both towards other states and persons that are covered by international law.<sup>17</sup> An example of the latter are individuals that are protected under human rights law.<sup>18</sup> Additionally, states are assumed to be obliged to regulate companies violations of international conventions through national law, since companies themselves are not directly obliged to follow international law.<sup>19</sup> This is due to the fact that companies' activities have been viewed as being a potential threat to states' sovereignties, which is a reason why states have been hesitant to regulate it through international law.<sup>20</sup> However, it is difficult for most states to put legal obligations on international companies in areas that go outside their territory. These type of companies, that operates in several states, can be "protected" from a state's obligation if the state is restrained by other international responsibilities, for example, an existing investment agreement with another country. Although, if the company has its main office in a state with strong resources, the state can regulate the company's activities outside its territory, but only if it decides to do that.<sup>21</sup>

The two leading organisations with international rules on slavery and forced labour are the United Nations (UN) and International Labour Organisation (ILO). In general, it can be stated that the UN mainly has rules on slavery and the ILO mainly

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<sup>14</sup> Sangroula, Yubaraj. 'International Treaties: Features and Importance from International Law Perspective' (2010), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2359978](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359978), p. 1.

<sup>15</sup> Ibid.

<sup>16</sup> 'Enforcement of International Law' (*Diakonia International Humanitarian Law Centre*) [www.diakonia.se/en/IHL/The-Law/International-Law1/Enforcement-of-IL/](http://www.diakonia.se/en/IHL/The-Law/International-Law1/Enforcement-of-IL/).

<sup>17</sup> Ibid.

<sup>18</sup> 'Towards whom is a state responsible?' (*Diakonia International Humanitarian Law Centre*) [www.diakonia.se/en/IHL/The-Law/International-Law1/Enforcement-of-IL/Towards-whom-is-a-state-responsible/](http://www.diakonia.se/en/IHL/The-Law/International-Law1/Enforcement-of-IL/Towards-whom-is-a-state-responsible/).

<sup>19</sup> Karavias, Markos. *Corporate Obligations under Treaty Law*, Oxford University Press, 2013, p. 67.

<sup>20</sup> Ibid, p. 17.

<sup>21</sup> McCorquodale, Robert & Simons, Penelope. 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law' (2007), *MLR*, vol. 70, no. 4, pp. 598-625, p. 599 f.



has rules concerning forced labour.<sup>22</sup> Some of these, including some international rules on human rights, will be mentioned hereafter.

## **2.2 UN's Instruments covering Modern Slavery and Forced Labour**

### **2.2.1 Introduction**

The UN is an international organisation created in 1945 that today consists of 193 Member States. It is guided by the principles and goals in its founding UN Charter<sup>23</sup> and has a slogan that states “peace, dignity and equality on a healthy planet”. Furthermore, the UN is a part of the UN system which provides many different programmes, agencies and funds financed by voluntary contributions.<sup>24</sup> An example of such a specialised agency is the ILO,<sup>25</sup> which will be further addressed later on. Moreover, it can be noted that international legislation did not start with the UN, however, it has had a very important role in consolidating and developing it. The UN systematically examines certain areas which can either be used to develop existing standards and legislation or in the process of drafting new laws, a process that member states are becoming more engaged with.<sup>26</sup> It is the international courts, multilateral treaties, tribunals and the security council that carries out the work of developing and respecting international law by the power given from the UN Charter. Besides, it is the general assembly that is the main representative UN organ and initiates studies and recommendations on how to promote and develop international law.<sup>27</sup>

The common goal of the UN members is to maintain international peace and security, develop good relationships, promote social development and improve human rights and living standards. The UN is active all around the world and works with several fundamental issues like countering terrorism, protecting the environment and refugees, sustainable development, promoting equality and human

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<sup>22</sup> Swepston (n 11), p. 5.

<sup>23</sup> 'United Nations Charter' (*United Nations*) [www.un.org/en/about-us/un-charter](http://www.un.org/en/about-us/un-charter).

<sup>24</sup> 'About Us' (*United Nations*) [www.un.org/en/about-un/](http://www.un.org/en/about-un/).

<sup>25</sup> 'UN System' (*United Nations*) [www.un.org/en/about-us/un-system](http://www.un.org/en/about-us/un-system).

<sup>26</sup> 'Internationell lagstiftning' (*Förenta Nationerna*) <https://unric.org/sv/internationell-lagstiftning/>.

<sup>27</sup> 'Uphold International Law' (*United Nations*) [www.un.org/en/our-work/uphold-international-law](http://www.un.org/en/our-work/uphold-international-law).

rights etc.<sup>28</sup> The UN instruments on slavery/forced labour and human rights will be mentioned hereafter.

## **2.2.2 The Slavery Convention**

The Slavery Convention of 1926<sup>29</sup> was amended by the UN in 1953. It defines slavery in article 1 which states the following;

“(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”

## **2.2.3 Universal Declaration of Human Rights**

The UDHR<sup>30</sup> was announced in 1948 and is one of the most important achievements in human rights history. It is an international document that was drafted by representatives from all over the world who had different cultural and legal backgrounds. Since it is not a treaty it is not a legally binding document, however, most of its contents have been incorporated into upcoming treaties (more than 70) and instruments regarding the protection of human rights. The document has a total of 30 articles that covers the fundamental human rights that need to be protected, which is the first document to ever do this.<sup>31</sup> When it comes to the prohibition of slavery, Article 4 in the UDHR states;

“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

## **2.2.4 The International Covenant on Civil and Political Rights**

The International Covenant on Civil and Political Rights<sup>32</sup> (ICCPR) is an international treaty on human rights that was adopted by the UN General Assembly

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<sup>28</sup> ‘History of the UN’ (*United Nations*) [www.un.org/un70/en/content/history/index.html](http://www.un.org/un70/en/content/history/index.html).

<sup>29</sup> ‘Slavery Convention Signed at Geneva on 25 September 1926’ (*United Nations Human Rights Office of the High Commissioner*) [www.ohchr.org/en/professionalinterest/pages/slaveryconvention.aspx](http://www.ohchr.org/en/professionalinterest/pages/slaveryconvention.aspx).

<sup>30</sup> ‘Universal Declaration of Human Rights’ (*United Nations*) [www.un.org/sites/un2.un.org/files/udhr.pdf](http://www.un.org/sites/un2.un.org/files/udhr.pdf).

<sup>31</sup> ‘Universal Declaration of Human Rights’ (*United Nations*) [www.un.org/en/about-us/universal-declaration-of-human-rights](http://www.un.org/en/about-us/universal-declaration-of-human-rights).

<sup>32</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976).

in 1966. The purpose of the treaty is to “protect and preserve basic human rights”.<sup>33</sup> Article 8 in the ICCPR states;

“No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.” (para 1) and,

“No one shall be required to perform forced or compulsory labour.” (para 3).

### **2.2.5 The UN Guiding Principles on Business and Human Rights**

The United Nations Guiding Principles on Business and Human Rights<sup>34</sup> (UNGP) contains a set of international guidelines which was endorsed by the Human Rights Council in 2011.<sup>35</sup> It applies to all 193 UN member states.<sup>36</sup> The principles are built on implementing the “Protect, Respect and Remedy” framework and they should be used as global standards for all the UN member states and companies. UNGP 1(3) states, amongst other things, that states should provide effective guidance for business enterprises to respect human rights by sharing the best practices and the most appropriate methods, such as human rights due diligence (HRDD) etc.<sup>37</sup> The corporate social responsibility (CSR) to respect business and human rights is focused on companies’ ability to understand and address their impact on society.<sup>38</sup> More about CSR and HRDD will be further addressed in chapter 3.

### **2.2.6 The 2030-Agenda**

The United Nations adopted the Sustainable Development Goals<sup>39</sup> (SDGs) in 2015 consisting of 17 goals to be achieved by 2030, called the 2030-agenda, with the aim to protect the humanity and planet.<sup>40</sup> As the SDGs in the 2030-agenda sets out the ambition on what standards that needs to be met for the public and global policy development, it is important that the legal community negotiates on how to shape

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<sup>33</sup> ‘Summary: International Covenant on Civil and Political Rights’ (*Canadian Civil Liberties Association*, 27 October 2015) <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/>.

<sup>34</sup> ‘Guiding Principles on Business and Human Rights’ (*Office of the United Nations High Commissioner*) [www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf), p. 17 ff.

<sup>35</sup> ‘UN Guiding Principles’ (*Business & Human Rights Resource Centre*) [www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/](http://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/).

<sup>36</sup> ‘United Nations Member States’ (*Worldometer*) [www.worldometers.info/united-nations/](http://www.worldometers.info/united-nations/).

<sup>37</sup> ‘Guiding Principles on Business and Human Rights’ (*Office of the United Nations High Commissioner*) [www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf), p. 1 ff.

<sup>38</sup> ‘Frequently asked questions about the Guiding Principles on Business and Human Rights’ (*Office of the United Nations High Commissioner*) [www.ohchr.org/documents/publications/faq\\_principlesbusinesshr.pdf](http://www.ohchr.org/documents/publications/faq_principlesbusinesshr.pdf), p. 10.

<sup>39</sup> UN General Assembly, Resolution 70/1. ‘Transforming our world: the 2030 Agenda for Sustainable Development’, UN Doc A/Res/70/1 (*United Nations*, 21 October 2015), [www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf).

<sup>40</sup> ‘The Sustainable Development Agenda’ (*United Nations*) [www.un.org/sustainabledevelopment/development-agenda/](http://www.un.org/sustainabledevelopment/development-agenda/).

the law so that it can establish a future that is more fair and sustainable.<sup>41</sup> The goal to eliminate forced labour and end modern slavery can be found in SDG 8.7, which is set out to be reached by 2025.<sup>42</sup>

To reach the SDG target 8.7, companies, governments, civil society and the financial sector needs to take action and work towards finding a solution to the root causes of human rights violations. Since companies' global supply chains are strongly linked to human rights violations, such as forced labour, the responsibility to address these issues therefore lies on the people that operate in the supply chains.<sup>43</sup> The supply chain issue will be mentioned more in the next chapter.

## **2.3 ILO's instruments covering Modern Slavery and Forced Labour**

### **2.3.1 Introduction**

The ILO was created in 1919 and has members from 187 member states. The organisation is built on a set of international labour standards and it aims at making work more sustainable, safe and equal.<sup>44</sup> "Security, humanitarian, political and economic considerations" were the motivations behind creating the ILO.<sup>45</sup> When it comes to forced labour ILO has a few instruments, which will be mentioned below.

### **2.3.2 Forced Labour Convention 1930, (No. 29)**

The Forced Labour Convention<sup>46</sup> was adopted by the ILO in 1930 and entered into force in 1932. It has since been ratified by 178 ILO members,<sup>47</sup> and is considered

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<sup>41</sup> McCall-Smith, Kasey & Rühmkorf, Andreas. 'Sustainable global supply chains: from transparency to due diligence', in Gammage, Clair & Novitz, Tonia (ed.), *Sustainable trade, investment and finance: toward responsible and coherent regulatory frameworks*, Edward Elgar Publishing, Cheltenham, 2019, p. 112.

<sup>42</sup> 'Relevant SDG Targets related to Forced Labour' (*International Labour Organisation*) [www.ilo.org/global/topics/dw4sd/themes/forced-labour/WCMS\\_558561/lang--en/index.htm](http://www.ilo.org/global/topics/dw4sd/themes/forced-labour/WCMS_558561/lang--en/index.htm).

<sup>43</sup> 'Ending child labour, forced labour and human trafficking in global supply chains' (*International Labour Organisation*, 2019) [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipec/documents/publication/wcms\\_716930.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_716930.pdf), p. 1.

<sup>44</sup> 'About the ILO' (*International Labour Organisation*) [www.ilo.org/global/about-the-ilo/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/lang--en/index.htm).

<sup>45</sup> 'History of the ILO' (*International Labour Organisation*) [www.ilo.org/global/about-the-ilo/history/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm).

<sup>46</sup> Forced Labour Convention, 1930 (No.29) (adopted 28 June 1930, entered into force 01 May 1932).

<sup>47</sup> 'Ratifications of C029 – Forced Labour Convention, 1030 (No. 29)' (*International Labour Organisation*) [www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312174](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174).

to be one of ILO's top 8 fundamental conventions.<sup>48</sup> The term "forced labour" is defined in article 2:1, which states;

"For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>49</sup>

The definition of this includes, inter alia, practices of slavery.<sup>50</sup> However, there are some exceptions to this prohibition, which can be found in article 2:2(a-e) in the Forced Labour Convention. The latter article states that forced (or compulsory) labour should not include work that has to do with military services, civic obligations, consequences of a court conviction, emergency cases and minor communal services. So, even though forced labour (and slavery) are prohibited by law, similar practices can under certain circumstances be allowed. To fully understand how forced labour and slavery is being used, and know how to tackle it, it is thus important to define its scope and what kind of "forced labour" that can be exempted.

### **2.3.3 The Abolition of Forced Labour Convention, 1957 (No. 105)**

The ILO adopted the Abolition of Forced Labour Convention<sup>51</sup> in 1957, which entered into force in 1959. In its preamble, it states that it is a supplementary convention to the Forced Labour Convention 1930. Furthermore, forced labour is more specified in this Convention where article 1(a-e) states that forced labour cannot be used as (see quote);

- "(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (b) as a method of mobilising and using labour for purposes of economic development;
- (c) as a means of labour discipline;
- (d) as a punishment for having participated in strikes;
- (e) as a means of racial, social, national or religious discrimination."

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<sup>48</sup> 'Conventions and Recommendations' (*International Labour Organisation*)  
[www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm](http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm).

<sup>49</sup> Forced Labour Convention, 1930 (No.29) (adopted 28 June 1930, entered into force 01 May 1932).

<sup>50</sup> 'ILO Global Estimate of Forced Labour' (*International Labour Organisation*)  
[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf), p. 19.

<sup>51</sup> Abolition of Forced Labour Convention, 1957 (No. 105).

Since the adoption of the Abolition of Forced Labour Convention, it has been ratified by 176 ILO members.<sup>52</sup> Moreover, the convention prohibits practices of slavery, such as forced labour, and aims to promote labour and human rights. Just like the Forced Labour Convention, this convention is one of ILO's most fundamental conventions.<sup>53</sup>

#### **2.3.4 Protocol of 2014 to the Forced Labour Convention, 1930 and the Forced Labour Recommendation 2014**

The Protocol of 2014 to the Forced Labour Convention 1930<sup>54</sup> (the Protocol) was adopted in 2014 and entered into force in November 2016. So far it has been ratified by 51 ILO members.<sup>55</sup> Together with the Forced Labour (Supplementary Measures) Recommendation<sup>56</sup> (the Recommendation), adopted in 2014, it aims to strengthen the measures that prevent forced labour and protects and compensate the victims of it. Also, it aims to increase the efforts to abolish the modern forms of slavery/forced labour.<sup>57</sup> The Protocol's provisions are legally binding for its members. Since the Protocol is a supplement to the Forced Labour Convention 1930 it can only be ratified by countries that previously have ratified the Forced Labour Convention 1930. The Recommendation however is not binding, it only serves to supplement the Forced Labour Convention and the Protocol and thus gives practical guidance in the areas that they concern.<sup>58</sup>

#### **2.3.5 ILO Declaration on Fundamental Principles and Rights at Work**

The ILO Declaration on Fundamental Principles and Rights at Work<sup>59</sup> (the Declaration) was adopted in 1998 and aims to encourage the ILO members to

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<sup>52</sup> 'Ratifications of C105 - Abolition of Forced Labour Convention, 1957 (No. 105)' (*International Labour Organisation*)

[www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312250](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250).

<sup>53</sup> 'Conventions and Recommendations' (*International Labour Organisation*)

[www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm](http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm).

<sup>54</sup> Protocol of 2014 to the Forced Labour Convention, 1930.

<sup>55</sup> 'Ratifications of P029 - Protocol of 2014 to the Forced Labour Convention, 1930' (*International Labour Organisation*)

[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:3174672](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672).

<sup>56</sup> Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

<sup>57</sup> 'Forced Labour' (*International Labour Organisation*) [www.ilo.org/global/topics/dw4sd/themes/forced-labour/lang--en/index.htm](http://www.ilo.org/global/topics/dw4sd/themes/forced-labour/lang--en/index.htm); Also, see the preamble of the Protocol of 2014 to the Forced Labour Convention, 1930.

<sup>58</sup> 'Strengthening the global fight against all forms of forced labour – The Protocol to the Forced Labour Convention' (*International Labour Organisation*) [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_321414.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_321414.pdf).

<sup>59</sup> 'ILO Declaration on Fundamental Principles and Rights at work and its Follow-up' (*International Labour Organisation*) [www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm](http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm).

promote the fundamental principles and rights stated in the ILO constitution. It declares that;

“all 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”.<sup>60</sup>

The quote above then refers to four different categories of which “the elimination of all forms of forced or compulsory labour” is one. The Declaration thus states that the rights mentioned in the ILO constitution are universal, which means that they apply to every member state in the ILO, even though they might not have ratified all of ILO’s fundamental conventions.<sup>61</sup>

### **2.3.6 The Global Business Network on Forced Labour**

The ILO’s Global Business Network on Forced Labour<sup>62</sup> (GBNFL) connects different companies and their networks from all over the world with the aim to eliminate forced labour. It operates through all sectors and develops local solutions etc. which helps create national frameworks and long-lasting change.<sup>63</sup> The GBNFL thus provides a platform where valuable exchanges of information and problem solving can be made between companies. In this way, companies can easier follow upcoming trends and adapt to the rapid changes happening in the world. Furthermore, the GBNFL gives the opportunity to take advantage of ILO’s unique structure, based on worker and employer organisations and governments. It is necessary to engage with these groups in order to conduct a successful HRDD (see more about this in chapter 3).<sup>64</sup> Besides this GBNFL, there are other programmes

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<sup>60</sup> ILO Declaration on Fundamental Principles and Rights at work and its Follow-up’ (*International Labour Organisation*) [www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm](http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm).

<sup>61</sup> ‘ILO Declaration on Fundamental Principles and Rights at Work’ (*International Labour Organisation*) [www.ilo.org/declaration/lang--en/index.htm](http://www.ilo.org/declaration/lang--en/index.htm).

<sup>62</sup> ‘The ILO Global Business Network on Forced Labour’ (*ILO Global Business Network on Forced Labour*) <https://flbusiness.network/#about>.

<sup>63</sup> ‘ILO Global Business Network on Forced Labour’ (*International Labour Organisation*) [www.ilo.org/actemp/areas-of-work/WCMS\\_632434/lang--en/index.htm](http://www.ilo.org/actemp/areas-of-work/WCMS_632434/lang--en/index.htm).

<sup>64</sup> ‘ILO Establishes a Global Business Network on Forced Labour and Human Trafficking’ (*International Labour Organisation*, 2 June 2017) [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_556159/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_556159/lang--en/index.htm).

by ILO that aims at raising the global awareness of modern slavery and forced labour, but these will not be mentioned further.<sup>65</sup>

## **2.4 Examples of National Legislations to Combat Modern Slavery**

### **2.4.1 Introduction**

Modern slavery is in most countries considered to be a criminal offence.<sup>66</sup> Countries like the United Kingdom (UK), United States and Australia have adopted their own national laws that regulate how companies should address modern slavery in their organisation and supply chain.<sup>67</sup> Some of these, as well as a directive on human rights in Europe, will be mentioned below.

### **2.4.2 The California Transparency in Supply Chains Act**

The California Transparency in Supply Chains Act of 2010<sup>68</sup> (TSCA) came into force in January 2012. It was the first legislation of its kind to tackle modern slavery.<sup>69</sup> Through this act, it was stated that slavery (and human trafficking) are illegal. It was also recognised by the legislature that companies and consumers unintentionally promote slavery when buying goods from supply chains engaging in it. The TSCA therefore aims to ensure that big companies (manufacturers and retailers) can give consumers information on what they are doing to eliminate slavery in their supply chains. Consumers consequently need to be educated on how to buy goods from companies that are more socially responsible in their supply chains.<sup>70</sup>

Furthermore, the TSCA does not have any provisions on how companies need to regulate their working conditions, neither does it have any requirements for companies to disclose secret or confidential information. However, companies are

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<sup>65</sup> The Special Action Programme to combat Forced Labour is an example. See 'Special Action Programme to Combat Forced Labour' (*International Labour Organisation*, 15 April 2013) [www.ilo.org/global/topics/forced-labour/WCMS\\_210827/lang--en/index.htm](http://www.ilo.org/global/topics/forced-labour/WCMS_210827/lang--en/index.htm).

<sup>66</sup> 'Modern Slavery in Company Operation and Supply Chains: Mandatory transparency, mandatory due diligence and public procurement due diligence' (*Business & Human Rights Resource Centre*, September 2017) <https://media.business-humanrights.org/media/documents/fb7a2e03e33bcec2611655db2276b4a6a086c36c.pdf>, p. 7.

<sup>67</sup> Ibid.

<sup>68</sup> The California Transparency in Supply Chains Act of 2010, Senate Bill No. 657.

<sup>69</sup> Chaban, Vadim. 'What is the State of the Law for Companies When It Comes to Modern Slavery?' (*The Fashion Law*, 14 July 2020) [www.thefashionlaw.com/what-is-the-state-of-the-law-when-it-comes-to-companies-and-modern-slavery/](http://www.thefashionlaw.com/what-is-the-state-of-the-law-when-it-comes-to-companies-and-modern-slavery/).

<sup>70</sup> 'The California Transparency in Supply Chains Act' (*State of California Department of Justice*) <https://oag.ca.gov/SB657>.



obligated to reveal information about their business activities for consumers to make more well-informed decisions, as previously mentioned. Moreover, to be covered by the TSCA, a company must be a manufacturer or retail seller, do business in California and have yearly gross revenue of 100 million US dollars or more.<sup>71</sup> Also, there are no specific legal consequences or penalties for companies that provide misleading transparency statements or none at all, it can only lead to a bad reputation and in some cases injunctive relief from the California Attorney General.<sup>72</sup>

In a research from 2015, a few years after the implementation of the TSCA, it was found that only 31% out of 500 companies had provided disclosure statements that were in compliance with the requirements of TSCA. It was hence stated that there was a huge inconsistency between the TSCA requirements and the information that companies gave out in their statements.<sup>73</sup>

### **2.4.3 UK Modern Slavery Act 2015**

The UK Modern Slavery Act 2015<sup>74</sup> (UK MSA) got enacted in October 2015 and was based on the TSCA.<sup>75</sup> It was the first act that addressed crimes of global modern slavery and the difficulties that victims face from these crimes. It also attempted to address the multifaceted role that supply chains have, in regards to how linked the global trade in supply chains is with modern slavery.<sup>76</sup> The goal of the UK MSA is to end all forms of labour exploitation, such as forced labour and slavery, and to increase the transparency of labour standards in companies supply chains. In accordance with the UK MSA, any commercial companies that have a yearly turnover of at least 36 million pounds and operates in Great Britain “must prepare a slavery and human trafficking statement” for every fiscal year. This means that a company must write down what steps they have taken (or if none has been taken)

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<sup>71</sup> ‘The California Transparency in Supply Chains Act - A Resource Guide’ (*State of California Department of Justice*) <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>, p. 3.

<sup>72</sup> ‘What is the California Transparency in Supply Chains Act?’ (*Assent*) [www.assentcompliance.com/assent/resources/article/california-transparency-in-supply-chains-act/](http://www.assentcompliance.com/assent/resources/article/california-transparency-in-supply-chains-act/).

<sup>73</sup> ‘Five Years of the California Transparency in Supply Chain Act’ (*Know The Chain*, 30 September 2015) [https://knowthechain.org/wp-content/uploads/2015/10/KnowTheChain\\_InsightsBrief\\_093015.pdf](https://knowthechain.org/wp-content/uploads/2015/10/KnowTheChain_InsightsBrief_093015.pdf), p. 5 f.

<sup>74</sup> The United Kingdom’s Modern Slavery Act 2015.

<sup>75</sup> ‘Modern Slavery in Company Operation and Supply Chains: Mandatory transparency, mandatory due diligence and public procurement due diligence’ (*Business & Human Rights Resource Centre*, September 2017) <https://media.business-humanrights.org/media/documents/fb7a2e03e33bcec2611655db2276b4a6a086c36c.pdf>, p. 8.

<sup>76</sup> Kirkpatrick, Anna. ‘The UK Modern Slavery Act – Recent Developments’ (*Clifford Chance*, 17 December 2019) [www.cliffordchance.com/insights/resources/blogs/business-and-human-rights-insights/the-uk-modern-slavery-act-recent-developments.html](http://www.cliffordchance.com/insights/resources/blogs/business-and-human-rights-insights/the-uk-modern-slavery-act-recent-developments.html).

to guarantee that there have not been any practices of modern slavery in its organisation or supply chains. However, there is no obligation for a company to take any steps in eliminating modern slavery under the UK MSA, but the companies who do not do this will probably get a bad reputation.<sup>77</sup> Furthermore, the rules about transparency in supply chains can be found in section 54 in the UK MSA. In 2017 the UK government published updated guidance<sup>78</sup> on how to follow the rules on this. The aim of the transparency provision is to establish a “race to the top” where companies get encouraged to be transparent, which will improve the competition between companies to increase standards.<sup>79</sup> There are currently no legal consequences or penalties for companies who do not comply with the transparency rules in the UK MSA, but there have recently been discussions on potentially incorporating it. These discussions have arisen in connection with the UK’s efforts in addressing human rights abuses allegedly happening in a region in China (see more about China and the human rights abuses in chapter 4).<sup>80</sup>

Consequently, the rules in the UK MSA is intended to combat modern slavery in the UK, but companies worldwide can be required to follow it if they conduct their business in the UK, wholly or partially.<sup>81</sup> In recent years it has been shown that the UK MSA has contributed to raising the consciousness of modern slavery, this has in turn led to more reports on modern slavery abuses.<sup>82</sup> But despite these improvements from the act, modern slavery exploitations still exist and is difficult to tackle.<sup>83</sup>

In a research from 2017, it was found that only 14% out of 2.108 statements were in compliance with the UK MSA information requirements.<sup>84</sup> The one that has been monitoring the qualities of these statements, since the implementation of the UK

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<sup>77</sup> Howse, Matthew & Whitaker, Pulina. ‘The UK Modern Slavery Act 2015’ (*National Law Review*, 08 October 2015) [www.natlawreview.com/article/uk-modern-slavery-act-2015](http://www.natlawreview.com/article/uk-modern-slavery-act-2015); Also, see section 54(1) in the UK MSA 2015.

<sup>78</sup> ‘Transparency in Supply Chains etc. A practical guide’ (*The Home Office*) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/649906/Transparency\\_in\\_Supply\\_Chains\\_A\\_Practical\\_Guide\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf).

<sup>79</sup> *Ibid.*, p. 5.

<sup>80</sup> Elson, Sean. ‘Modern slavery transparency failings to lead to UK fines’ (*Pinsent Masons*, 20 January 2021) [www.pinsentmasons.com/out-law/news/modern-slavery-transparency-failings-to-lead-to-uk-fines](http://www.pinsentmasons.com/out-law/news/modern-slavery-transparency-failings-to-lead-to-uk-fines).

<sup>81</sup> Kirkpatrick, Anna. ‘The UK Modern Slavery Act – Recent Developments’ (*Clifford Chance*, 17 December 2019) [www.cliffordchance.com/insights/resources/blogs/business-and-human-rights-insights/the-uk-modern-slavery-act-recent-developments.html](http://www.cliffordchance.com/insights/resources/blogs/business-and-human-rights-insights/the-uk-modern-slavery-act-recent-developments.html).

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> ‘Modern Slavery Reporting: Weak and Notable Practice’ (*Corporate Justice Coalition*, June 2017) [https://corporatejusticecoalition.org/wp-content/uploads/2017/06/Core\\_ExamplesFINAL.pdf](https://corporatejusticecoalition.org/wp-content/uploads/2017/06/Core_ExamplesFINAL.pdf).

MSA, is the Business and Human Rights Resource Centre (BHRRC).<sup>85</sup> In 2018, the BHRRC stated in its rapport that the UK MSA had “failed to deliver the transformational change many hoped for”.<sup>86</sup> It has been argued that the reason for this could be because there is no economic benefit for producers and suppliers etc. to act responsibly, the existence of cheap labour thus makes it difficult for them to comply with the UK MSA.<sup>87</sup>

Potential future changes of the UK MSA will be discussed below, in relation to the next subheading.

#### **2.4.4 Australia’s Modern Slavery Act 2018**

Australia’s Modern Slavery Act 2018<sup>88</sup> (also called the Commonwealth Act, but will subsequently be called the AU MSA) came into force in January 2019. It requires that big companies, that operate in Australia, reports on the steps they are taking to combat and identify modern slavery in their supply chains. The obligation for companies to report these statements is mandatory.<sup>89</sup> The deadline for the first reporting period (2019-2020, Australian financial year) was on the 31st of March 2021.<sup>90</sup> Moreover, the aim of the reporting requirement is to help companies to address and recognise modern slavery and uphold transparent and responsible supply chains.<sup>91</sup> In comparison with the UK MSA, the AU MSA is more comprehensive. Despite the statements that companies publish under these two acts are very similar, there are some differences.<sup>92</sup> A guidance<sup>93</sup> for companies on how

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<sup>85</sup> Steiner-Dicks, Katherine. ‘We know most global companies have modern slavery in their supply chains’ (*Reuters Events*, 6 August 2019) [www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains](http://www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains).

<sup>86</sup> ‘FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action’ (*Business & Human Rights Resource Centre*, 2018) [https://media.business-humanrights.org/media/documents/files/FTSE\\_100\\_Briefing\\_2018.pdf](https://media.business-humanrights.org/media/documents/files/FTSE_100_Briefing_2018.pdf), p. 3.

<sup>87</sup> Steiner-Dicks, Katherine. ‘We know most global companies have modern slavery in their supply chains’ (*Reuters Events*, 6 August 2019) [www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains](http://www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains).

<sup>88</sup> The Australian Modern Slavery Act 2018.

<sup>89</sup> McGregor, Abigail. ‘Modern Slavery Act: What businesses in Australia need to know’ (*Norton Rose Fulbright*, August 2020) [www.nortonrosefulbright.com/en/knowledge/publications/06a565ee/modern-slavery-act-what-businesses-in-australia-need-to-know](http://www.nortonrosefulbright.com/en/knowledge/publications/06a565ee/modern-slavery-act-what-businesses-in-australia-need-to-know).

<sup>90</sup> ‘Modern Slavery’ (*Australian Government – Department of Home Affairs*) [www.homeaffairs.gov.au/criminal-justice/Pages/modern-slavery.aspx](http://www.homeaffairs.gov.au/criminal-justice/Pages/modern-slavery.aspx).

<sup>91</sup> ‘Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities’ (*Australian Government – Department of Home Affairs*) [www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf](http://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf), p. 13.

<sup>92</sup> Kelly, Matt. ‘What Is the Australian Modern Slavery Act & How Does It Differ from UK’s’ (*JDSupra*, 03 January 2020) [www.jdsupra.com/legalnews/what-is-the-australian-modern-slavery-26073/](http://www.jdsupra.com/legalnews/what-is-the-australian-modern-slavery-26073/).

<sup>93</sup> ‘Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities’ (*Australian Government – Department of Home Affairs*) [www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf](http://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf).

to report in accordance with the AU MSA was published in October 2019.<sup>94</sup> Furthermore, Australia is (so far) the first country to have a national act/legislation that defines modern slavery. In the AU MSA, the term modern slavery includes eight different cases of abuse, of which forced labour is one. The other seven cases of abuse are slavery, trafficking in persons, debt bondage, forced marriage, servitude, the worst forms of child labour and deceptive recruiting for labour or services.<sup>95</sup> The term forced labour is defined in the AU MSA as “situations where the victim is either not free to stop working or not free to leave their place of work”.<sup>96</sup>

Companies are covered by the AU MSA either if they have their company based in Australia, or if it is a foreign company carrying on business there. Also, the company must have a yearly revenue of 100 million AU dollars or more.<sup>97</sup> Besides, the AU MSA does not have any penalties for companies that fail to publish, prepare or in any way mislead their modern slavery statement. Hence, companies cannot be liable for any offences or civil penalties for not complying with the reporting requirement in the AU MSA. However, the company that does not conform can as a consequence have their company details and identity being published by the Minister of Home Affairs (the Minister), which is the one that companies should send their statements to.<sup>98</sup> In this case, before the information gets published, the Minister is required to give the company 28 days to explain the reason behind its non-compliance with the reporting requirement or require that the company undertakes remedial actions. If no explanation has been given during this time, then the Minister is allowed to publish information and details about the non-complying company.<sup>99</sup> Non-compliance can thus only lead to reputational damage for the non-compliant company, and not any financial penalties. The thought behind this has

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<sup>94</sup> Sharma, Sonia & Lau, Emily. ‘Final Commonwealth guidelines for Modern Slavery Act reporting entities released’ (*Maddocks*, 08 October 2019) [www.maddocks.com.au/insights/final-commonwealth-guidelines-for-modern-slavery-act-reporting-entities-released](http://www.maddocks.com.au/insights/final-commonwealth-guidelines-for-modern-slavery-act-reporting-entities-released).

<sup>95</sup> ‘Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities’ (*Australian Government – Department of Home Affairs*) [www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf](http://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf), p. 8.

<sup>96</sup> *Ibid*, p. 77.

<sup>97</sup> *Ibid*, p. 17.

<sup>98</sup> Rozario, Marianne. ‘Key differences between the New South Wales and Commonwealth Government’s Modern Slavery Acts in Australia’ (*Santa Marta Group*, 09 January 2019) <http://santamartagroup.com/key-differences-between-the-new-south-wales-and-commonwealth-governments-modern-slavery-acts-in-australia/>.

<sup>99</sup> Selleck, Sean & Rao, Sunil. ‘Australian Modern Slavery Act now in effect’ (*Legalwise*, 07 March 2019) <https://legalwiseseminars.com.au/insights/australian-modern-slavery-act-now-in-effect/>.

been to let companies be driven by social pressure instead since the world today puts a lot more pressure on companies to take social responsibility.<sup>100</sup> Societies have in general gotten more aware of the existence of modern slavery today and how companies are linked to it through its practices. Companies therefore only benefit to be socially responsible if it means attracting more socially aware consumers and getting good publicity. An example of this is the negative publicity companies, like H&M, has gotten because it turned out that they sourced cotton from a region in China where modern slavery allegedly occurred (more about this in chapter 4).<sup>101</sup> Despite the approach to not have any penalties for non-compliance has received a lot of positive feedback, it has also been criticised. Some say the reputational risks are more efficient with keeping the companies on track, while some say it needs penalties. However, the AU MSA should be under a three-year review later this year, questions that concerns the enforcement and penalties might then be subject to further discussions.<sup>102</sup> Companies could then maybe in the future risk having legal consequences for ignoring the AU MSA.<sup>103</sup>

Furthermore, it has been argued that the mandatory reporting criteria that the AU MSA has may motivate the UK to do a revision of section 54, about transparency in supply chains, in the UK MSA to incorporate the same.<sup>104</sup> It is also said that if the UK government would change the UK MSA and put stricter reporting requirements on companies, it would be because of the independent review of the Modern Slavery Act<sup>105</sup> (the review).<sup>106</sup> The review contains several recommendations of which one is that the reporting criteria in the UK MSA need to be mandatory, and another one is that it should not be allowed for companies to

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<sup>100</sup> Sprague, Jason & Borg, Lucinda. 'Australia: Modern slavery reporting – the clock is ticking' (*mondaq*, 10 August 2020) [www.mondaq.com/australia/compliance/974590/modern-slavery-reporting-the-clock-is-ticking](http://www.mondaq.com/australia/compliance/974590/modern-slavery-reporting-the-clock-is-ticking).

<sup>101</sup> Ibid.

<sup>102</sup> McGaughey, Fiona, Cule, Holly & Faugno, Rebecca. 'Australia's world-first repository of 'modern slavery statements' a step in the right direction' (*The Conversation*, 20 October 2020) <https://theconversation.com/australias-world-first-repository-of-modern-slavery-statements-a-step-in-the-right-direction-151029>.

<sup>103</sup> Fernyhough, James. 'Companies risk litigation over modern slavery ignorance' (*The Australian Financial Review*, 16 December 2020) [www.afr.com/wealth/investing/companies-risk-litigation-over-modern-slavery-ignorance-20201215-p56nix](http://www.afr.com/wealth/investing/companies-risk-litigation-over-modern-slavery-ignorance-20201215-p56nix).

<sup>104</sup> Steiner-Dicks, Katherine. 'We know most global companies have modern slavery in their supply chains' (*Reuters Events*, 6 August 2019) [www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains](http://www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains).

<sup>105</sup> 'Independent Review of the Modern Slavery Act 2015: Final Report' (*The Home Office*, May 2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/803406/Independent\\_review\\_of\\_the\\_Modern\\_Slavery\\_Act\\_-\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf).

<sup>106</sup> Steiner-Dicks, Katherine. 'We know most global companies have modern slavery in their supply chains' (*Reuters Events*, 6 August 2019) [www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains](http://www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains).

report on taking “no steps” in addressing modern slavery issues.<sup>107</sup> Moreover, the review refers to the AU MSA on several occasions, where it is being used as an inspiration for changing the UK MSA.<sup>108</sup> The AU MSA might thus motivate the UK government to keep up with the Australian legislation and revise the UK MSA.<sup>109</sup>

#### **2.4.5 EU’s Directive on Corporate Sustainability Reporting**

EU’s Directive 2014/95/EU<sup>110</sup>, known as the Non-Financial Reporting Directive (NFRD), contains rules on corporate sustainability reporting.<sup>111</sup> The NFRD was published in 2014 and every EU member state had to implement it into national law by the end of 2016.<sup>112</sup> The rules in the NFRD thus requires certain big companies, with over 500 employees, to reveal information about how they address and manage social and environmental difficulties (there are several categories). Regarding the social aspect, companies must show how they respect human rights and treat their employees. Guidelines<sup>113</sup> for companies on how to report on this was published in 2017.<sup>114</sup> The first reporting was expected to be done by companies in 2018.<sup>115</sup> Even though the terms forced labour and modern slavery are not mentioned directly in the NFRD they are still covered under the prohibitions on human rights abuses. Companies should in their reports include a description of their due diligence process to show the potential risks or outcomes to human rights, amongst others, in their organisation and supply chain. Areas this might concern could be labour

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<sup>107</sup> ‘Independent Review of the Modern Slavery Act 2015: Final Report’ (*The Home Office*, May 2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/803406/Independent\\_review\\_of\\_the\\_Modern\\_Slavery\\_Act\\_-\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf), p. 14.

<sup>108</sup> See for example ‘Independent Review of the Modern Slavery Act 2015: Final Report’ (*The Home Office*, May 2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/803406/Independent\\_review\\_of\\_the\\_Modern\\_Slavery\\_Act\\_-\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf), p. 43 f. & 39 f.

<sup>109</sup> Steiner-Dicks, Katherine. ‘We know most global companies have modern slavery in their supply chains’ (*Reuters Events*, 6 August 2019) [www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains](http://www.reutersevents.com/sustainability/we-know-most-global-companies-have-modern-slavery-their-supply-chains).

<sup>110</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

<sup>111</sup> ‘Corporate sustainability reporting’ (*European Commission*) [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en).

<sup>112</sup> ‘Member State Implementation of EU NFI Directive’ (*Accountancy Europe*, 23 April 2018) [www.accountancyeurope.eu/publications/member-state-implementation-eu-nfi-directive/](http://www.accountancyeurope.eu/publications/member-state-implementation-eu-nfi-directive/).

<sup>113</sup> Communication from the Commission - Guidelines on non-financial reporting, OJ C 215, C/2017/4234, 5.7.2017, p. 1–20.

<sup>114</sup> ‘Corporate sustainability reporting’ (*European Commission*) [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en).

<sup>115</sup> Ward, Francesca. ‘Sustainability reporting in the EU: What’s the law?’ (*Context*, 06 May 2020) <https://context sustainability.com/sustainability-reporting-in-the-eu-whats-the-law/>.

conditions and how different conventions of the ILO are implemented etc.<sup>116</sup> Besides the guidelines mentioned previously, companies can rely on other frameworks, such as the United Nations Global Compact, UNGP, The OECD Guidelines for Multinational Enterprises, ISO 2600, The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy etc.<sup>117</sup> Some of the latter, that has not already been discussed in this chapter, will be described more in the next chapter.

Lastly, it can be noted that recently, on April 21st this year, the European Commission adopted a new proposal for a Corporate Sustainability Reporting Directive<sup>118</sup>, which would lead to an amendment of the NFRD. Furthermore, the proposed rules aim to, amongst other things, extend the law's scope, to include every big company and every company that is listed on a regulated market, and have the reporting requirements more detailed and in accordance with binding EU sustainability reporting standards.<sup>119</sup>

## 2.5 Summary

From what is stated in this chapter about regulation on labour and human rights and slavery, it becomes clear that there are several laws, both international and national, that regulate these areas and prohibits such harmful practices. When it comes to international law, the primary rule is that only the states that ratify it are bound by it. The relationship between states and international law is thus important to look at since states are the ones who need to implement international law into national law. However, it has been argued that there is not enough certainty about the legal definitions of slavery and forced labour when states implement it into national law, which is important if national authorities are going to be able to follow it. To achieve some kind of international system that prohibits slavery and forced labour etc., states need to participate. There are further no specific sanctions for states that breach international law, other than to stop its illegal activities and repair any damages it might have caused. In terms of the role of companies, they have been

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<sup>116</sup> See para 6 f. in the NFRD Preamble.

<sup>117</sup> See para 9. in the NFRD Preamble.

<sup>118</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting.

<sup>119</sup> Corporate sustainability reporting (*European Commission*) [https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting\\_en](https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en).

viewed as being a potential threat to states' sovereignties, which is the reason why they are not being directly covered by international law. They should therefore only be regulated through states implementation of international law. This does however get problematic when companies are doing business outside their national territory. Overall, it can be stated that it is difficult for a state to act and put obligations on a global company that engages in unlawful activities, such as modern slavery and forced labour.

The different international laws, together with guidelines, standards and principles, presented in this chapter has been based on UN's and ILO's instruments on human rights, modern slavery and forced labour. These instruments (the Slavery Convention, UDHR, ICCPR, UNGP, Forced Labour Convention, The Abolition of Forced labour convention, the Protocol and Recommendation on forced labour and Declaration on Fundamental Principles and Rights at Work) thus clearly states, in different ways, that practices of slavery and forced labour are prohibited by law and that human rights shall be protected and respected. The UN and ILO also provide several goals (the 2030-agenda) and a network (GBNFL) where companies can connect from all over the world in the work to eliminate forced labour and modern slavery together.

When it comes to national legislations on modern slavery, there are some which global companies should or must follow. Unlike international law, the national laws mentioned in this chapter (the TSCA, UK MSA, AU MSA and EU's NFRD) covers companies that perhaps not are headquartered within their country's territory but in some way runs their business there (provided that the company's annual turnover/employees in that country/region exceeds the threshold to be covered by the law). Even though global companies are obliged in some way to follow these laws, they do not have any sanctions like criminal liabilities or penalties for the companies that do not follow them. In this regard, the only consequence can in general terms be said to be "bad reputation" for the non-complying company.



## 3. CSR, Supply Chains and Modern Slavery

### 3.1 Introduction

An activity or movement across a border between two countries, that are needed to produce goods or services, are often referred to as global supply chains.<sup>120</sup> In several countries, specifically developing countries, the global supply chains have created many employment opportunities for social and economic development. However, these supply chains have also been shown to have a negative effect on the working conditions,<sup>121</sup> a part of the modern slavery.

Modern slavery is, as stated previously, a huge problem that exists globally today. Many companies use forced labour in their supply chains (usually in poor, developing countries) as a way to gain profit, which is the foundation and structure that the companies are built on. It is therefore incredibly difficult to tackle and eliminate the modern slavery. More companies thus need to take responsibility and be held accountable for their actions.<sup>122</sup> The accountability to regulate modern slavery in companies' supply chains lays on the global companies themselves. The main method that is used today for measuring accountability is by using transparency mechanisms. This requires the companies to disclose information about what measures they have taken to make sure that there is no slavery involvement in their supply chain.<sup>123</sup>

Labour violations and human rights violations in suppliers' factories etc. have been in the centre of attention numerous times the last few years, especially in developing countries, also called "the global south"<sup>124</sup>. A reason for this is that developing countries do not have as good supporting law systems and enforcement mechanisms

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<sup>120</sup> 'Global Supply Chains' (*International Labour Organisation*)  
[www.ilo.org/global/topics/dw4sd/themes/supply-chains/lang--en/index.htm](http://www.ilo.org/global/topics/dw4sd/themes/supply-chains/lang--en/index.htm).

<sup>121</sup> Ibid.

<sup>122</sup> Hess (n 4), p.1.

<sup>123</sup> Ibid, p, 5.

<sup>124</sup> The definition "Global South" mainly refers to the regions; Africa, Asia, Oceania and Latin America; See Dados, Nour and Connell, Raewyn. 'The Global South' (2012), Vol. 11 issue: 1, pp. 12-13, p. 12.

as developed countries. As a consequence, powerful companies take advantage of the “weaker” countries where only the business economic value is important and not the human rights and sustainability issues.<sup>125</sup> Nevertheless, because of the increased pressure on companies over the years to have a better business reputation CSR has become more relevant and important. Hence, there has been a more global use of due diligence (see more in section 3.3.2) in companies supply chains to improve their CSR.<sup>126</sup> The terms CSR and sustainability can be used as synonyms for each other. A sustainable supply chain is an important part of CSR and they are therefore connected, but they can sometimes be separated in their definitions.<sup>127</sup> To accomplish a sustainable supply chain and CSR, transparency is needed. Without this, it is impossible to control the exploitation of, for example, forced labour.<sup>128</sup>

Furthermore, powerful global companies must start to follow stricter CSR policies and calculate potential harms or actors behaving badly in their supply chains. They therefore need to adopt global ethics that prevent unlawful activities and the interlinked imbalance between a company’s profit and an individual’s harm. They can incorporate these global ethics when they are contracting by including both hard law and soft law, such as the UN and OECD (Organisation for Economic Co-operation and Development) conventions.<sup>129</sup> Some of the latter conventions together with other guidelines, principles and standards which a company can follow to obtain a sustainable global supply chain will be mentioned in the next subsection.

## **3.2 CSR Instruments**

### **3.2.1 Introduction**

Any specific legislation on merely CSR does not exist. CSR is a self-regulated area with non-binding guidelines, which means that companies decide for themselves how socially responsible they want to be.<sup>130</sup> A company can for example come up with their own program on how to be more socially responsible within their

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<sup>125</sup> McCall-Smith (n 41), p. 110.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid, p. 112.

<sup>128</sup> Ibid.

<sup>129</sup> Kuehl, Heidi. ‘Global Legal Ethics and Corporate Social Responsibility: Where’s the Beef?’ (2021) *NCJ Int’l L*, Vol. 46 issue: 1, pp. 111-156, p. 112.

<sup>130</sup> Lowrie, Leanes. ‘Laws for Governing the Social Responsibilities of Business’ (*Chron*) <https://smallbusiness.chron.com/laws-governing-social-responsibilities-businesses-76661.html>.

organisation. Companies can also by reporting initiatives on their compliance with different CSR standards get good rankings, which encourages them to do better.<sup>131</sup> International guiding principles furthermore have required/encouraged companies to meet specific standards in certain areas, such as labour standards, which has contributed to companies giving more effort into being socially responsible.<sup>132</sup>

However, CSR is connected to many areas of law; international law and EU law, labour law, procedural law, criminal law, environmental law et. al. These areas all have an important role in responding to the challenges the world stands before today, and most significantly, they contribute to the CSR development.<sup>133</sup> A general framework for global governance is the Earth Charter. It is a document that contains 16 principles with the aim to drive the global movement forward. The goal of the Earth Charter is to make people get into action and get all life on Earth to thrive. It therefore emphasizes that it is important to take shared responsibility and be globally interdependent in order to reach that goal.<sup>134</sup> In the preamble of the Earth Charter it says;

“We stand at a critical moment in Earth’s history... To move forward we must recognize that in the midst of a magnificent diversity of cultures and life forms we are one human family and one Earth community with a common destiny. We must join together to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace. Towards this end, it is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life, and to future generations.”<sup>135</sup>

Thus, the Earth Charter can work as a way to assist people in understanding their individual responsibilities. Nevertheless, other rules, such as soft law, private regulatory regimes and quasi-legal rules, also play a significant part when companies implement CSR, just like the traditional legal regimes.<sup>136</sup>

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<sup>131</sup> Lowrie, Leanes. ‘Laws for Governing the Social Responsibilities of Business’ (*Chron*) <https://smallbusiness.chron.com/laws-governing-social-responsibilities-businesses-76661.html>.

<sup>132</sup> Ibid.

<sup>133</sup> Lambooy, Tineke. ‘Legal Aspects of Corporate Social Responsibility’ (2014) 30 *Utrecht J Int'l & Eur L* 1, p. 1.

<sup>134</sup> ‘About Us - What is the Earth Charter document’ (*Earth Charter*) <https://earthcharter.org/about-the-earth-charter/>.

<sup>135</sup> ‘The Earth Charter’ (*Earth Charter*) <https://earthcharter.org/read-the-earth-charter/preamble/>.

<sup>136</sup> Lambooy (n 133), p. 2.

Henceforth, a few different CSR instruments will be described on social responsibility and sustainability.<sup>137</sup>

### 3.2.2 ISO on Social Responsibility

ISO 26000<sup>138</sup> was created in 2010 by the international organisation for standardisation. It is an international standard that provides a set of guidelines, which are voluntary, on social responsibility.<sup>139</sup> Its goal is to help companies and organisations act more globally socially responsible and it clarifies what social responsibility is.<sup>140</sup> Social responsibility is about how much a company or organisation contributes to the development of sustainability and what impacts it has on the society and environment. The ISO 2600 has standards that help to contribute to the SDGs and 2030 Agenda.<sup>141</sup>

### 3.2.3 The UN Global Compact

The United Nations Global Compact (UN global compact) was created in 2000 and is the world's biggest sustainability initiative.<sup>142</sup> Today it has more than 12.000 participants in over 160 countries.<sup>143</sup> The initiative is voluntary and based on supporting the UN goals.<sup>144</sup> It is leading both global and local impact initiatives so that companies can implement the necessary practices and methods in their operations and value chains to achieve the SDGs for the 2030 agenda.<sup>145</sup>

The UN global compact has 10 principles in the areas of human rights, labour, environment and anti-corruption. Companies are thus encouraged to follow these principles when doing business so that the fundamental responsibilities in these

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<sup>137</sup> Note that some of these are from the ILO and UN, the reason why these CSR instruments were not mentioned under their subsections in the previous chapter is because the focus now is on companies (and not on the rules of human rights, slavery and forced labour stated in chapter 2).

<sup>138</sup> 'Discovering ISO 26000' (*International Organisation for Standardisation*, 2018) [www.iso.org/files/live/sites/isoorg/files/store/en/PUB100258.pdf](http://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100258.pdf).

<sup>139</sup> Ibid, p. 2 f.

<sup>140</sup> 'ISO 26000 Social Responsibility' (*International Organisation for Standardisation*) [www.iso.org/iso-26000-social-responsibility.html](http://www.iso.org/iso-26000-social-responsibility.html).

<sup>141</sup> 'ISO 26000 and the SDGs' (*International Organisation for Standardisation*) [www.iso.org/files/live/sites/isoorg/files/store/en/PUB100401.pdf](http://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100401.pdf), p. 1 f.

<sup>142</sup> 'The UN Global Compact Turns 20' (*United Nations Global Compact*) [www.unglobalcompact.org/take-action/20th-anniversary-campaign](http://www.unglobalcompact.org/take-action/20th-anniversary-campaign).

<sup>143</sup> 'We're shaping a sustainable future. You need to be part of it' (*United Nations Global Compact*) [www.unglobalcompact.org/participation](http://www.unglobalcompact.org/participation).

<sup>144</sup> 'About the UN Global Compact' (*United Nations Global Compact*) [www.unglobalcompact.org/about](http://www.unglobalcompact.org/about).

<sup>145</sup> 'Global Impact Initiatives' (*United Nations Global Compact*) [www.unglobalcompact.org/take-action/globalimpactinitiatives](http://www.unglobalcompact.org/take-action/globalimpactinitiatives).

areas are met. The section that covers the CSR area is found in the Global Compact's first 6 principles.<sup>146</sup>

In 2008 the UN Global Compact went into a collaboration with the Earth Charter and the Global Reporting Initiative to give “guidance to users in the synergies in application and reporting”.<sup>147</sup> This had the objective to encourage the users of these initiatives in using more of each other's instruments, in this way CSR could be discussed more widely.<sup>148</sup>

According to a report<sup>149</sup> made by the UN Global Compact in 2018, it is difficult to understand the magnitude of human rights violations, such as modern slavery and forced labour, without having a look at the statistics of these issues. The number of people engaged in forced labour and the high profits that are made from it is, as stated in chapter one, at an alarmingly high rate. The UN Global Compact therefore encourages companies to take responsibility and make bigger efforts in eliminating these violations.<sup>150</sup>

Apart from companies, the UN Global Compact also engages civil society and governments, since they all are interlinked. However, it is the companies that have the biggest social, economic and environmental effects on the world and thus needs to take greater accountability and reflect on their corporate responsibilities (CSR).<sup>151</sup> As stated previously, the UN Global Compact sustainability initiative has thousands of participants from all over the world. It therefore serves as strong guidance for its participants, as well as non-participants, in encouraging them to be more socially responsible. Since the principles of the UN Global Compact are voluntary, it relies on the companies (and other parties) own interests in taking public accountability and being transparent about their activities. Besides this, the

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<sup>146</sup> ‘The Ten Principles of the UN Global Compact’ (*United Nations Global Compact*) [www.unglobalcompact.org/what-is-gc/mission/principles](http://www.unglobalcompact.org/what-is-gc/mission/principles).

<sup>147</sup> ‘Earth Charter and The Global Impact’ (*Scribd*) [www.scribd.com/document/27322709/Earth-Charter-and-the-Global-Impact](http://www.scribd.com/document/27322709/Earth-Charter-and-the-Global-Impact).

<sup>148</sup> ‘Earth Charter Initiative – at a glance’ (*Earth Charter*, 2010) <https://earthcharter.org/wp-content/assets/virtual-library2/images/uploads/10%20years%20at%20a%20Glance.pdf>, p. 24.

<sup>149</sup> ‘Business: It’s time to act’ (*United Nations Global Compact*, 2018) [https://d306pr3pise04h.cloudfront.net/docs/publications%2FIts\\_Time\\_To\\_Act.pdf](https://d306pr3pise04h.cloudfront.net/docs/publications%2FIts_Time_To_Act.pdf).

<sup>150</sup> ‘Business: It’s time to act. Decent work, modern slavery and child labour’ (*Altioem*, 06 November 2019) <https://altioem1.medium.com/research-profile-business-its-time-to-act-decent-work-modern-slavery-and-child-labour-e880c0db046>.

<sup>151</sup> Özsözgün Caliskan, Arzu. ‘How UN Global Compact can contribute corporate accountability and sustainability?’, in Gonzalez-Perez, Maria-Alejandra & Leonard, Liam. (ed.), *The UN global compact: Fair competition and environmental and labour justice in international markets*, Vol. 16, Emerald, Bingley, UK, 2015, p. 17 ff.

UN Global Compact is based on two approaches. The first one is about the establishment of its 10 principles. The second one is about providing a platform for companies and non-governmental organisations where they can have conversations about problems related to the principles, as a way to learn and benefit from each other. Subsequently, it is clear from the UN Global Compact that companies' responsibilities go further than just the financial results.<sup>152</sup>

Besides the UN's global compact, the UN also has other guidelines on corporate responsibility, but this will not be furtherly addressed.<sup>153</sup>

### 3.2.4 The OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises<sup>154</sup> (MNE guidelines) is one of the most authoritative soft law instrument on CSR.<sup>155</sup> These guidelines set out governmental recommendations to multilateral enterprises/companies through different standards and principles on how to act in good practice with laws and standards. Since these guidelines are not binding it requires voluntary action by the companies to live up to them.<sup>156</sup> The MNE guidelines aim at getting companies to act in a more responsible manner, where some of its standards cover guidelines on how to act on issues related to the environment, labour rights and human rights.<sup>157</sup> In relation to the latter, it provides recommendations on how companies should conduct due diligence to address and identify (potential) impacts (see section 3.3.2).<sup>158</sup>

Today, there are 37 members of the OECD which stand for 80% of the world's trade and investments.<sup>159</sup> When it comes to CSR the OECD has said that "Corporate responsibility involves the search for an effective "fit" between businesses and the

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<sup>152</sup> Özsözgün Caliskan (n 151), p. 24 ff.

<sup>153</sup> See for example 'Guidance on Corporate Responsibility Indicators in Annual Reports' (*United Nations Conference on Trade and Development*, 2008) [https://unctad.org/system/files/official-document/iteteb20076\\_en.pdf](https://unctad.org/system/files/official-document/iteteb20076_en.pdf).

<sup>154</sup> OECD Guidelines for Multinational Enterprises (*Organisation for Economic Co-operation and Development*, 2011) [www.oecd.org/daf/inv/mne/48004323.pdf](http://www.oecd.org/daf/inv/mne/48004323.pdf).

<sup>155</sup> Mares, Radu. 'Decentering Human Rights from the International Order of States: The Alignment and Interaction of Transnational Policy Channels' (2016) 23 *Ind J Global Legal Stud* 171, p. 16.

<sup>156</sup> 'OECD Guidelines for Multinational Enterprises' (*Organisation for Economic Co-operation and Development*, 2011) [www.oecd.org/corporate/mne/1922428.pdf](http://www.oecd.org/corporate/mne/1922428.pdf), p. 17.

<sup>157</sup> 'The OECD Guidelines' (*OECD Watch*) [www.oecdwatch.org/oecd-ncps/the-oecd-guidelines-for-mnes/](http://www.oecdwatch.org/oecd-ncps/the-oecd-guidelines-for-mnes/).

<sup>158</sup> 'OECD Due Diligence Guidance for Responsible Business Conduct' (*Organisation for Economic Co-operation and Development*) [www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm](http://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm).

<sup>159</sup> 'Where: Global reach' (*Organisation for Economic Co-operation and Development*) [www.oecd.org/about/members-and-partners/](http://www.oecd.org/about/members-and-partners/).

societies in which they operate.”<sup>160</sup> To get some clarity on how to find this “fit” the OECD published the MNE guidelines. The OECD thus built up a strong base for it to become the frontrunner organisation that it is today in promoting CSR globally.<sup>161</sup>

### **3.2.5 Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**

The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy<sup>162</sup> (MNE Declaration) was adopted by the ILO in 1977. The aim of the MNE Declaration is to give guidance and encouragement to global/multinational companies on how to contribute to social (and economic) development and decrease the negative impacts they may have in their organisation/supply chain.<sup>163</sup> It is mainly based on ILO’s principles in the international labour conventions and recommendations.<sup>164</sup> The MNE Declaration promotes good practice for both global and national companies and it covers areas such as work and life conditions, training, employment and industrial relations. It also emphasizes how important the rule of law, enforcement of the law and the social dialogues are. Everyone should therefore respect the rights of workers and help to achieve these rights as well as other fundamental principles. Social dialogues between parties can result in global companies’ being more responsible and sustainable in their business conducts abroad.<sup>165</sup>

The MNE Declaration is the first (and only so far) international instrument on multinational enterprises and social policy that has been developed and adopted by states, workers and employers from all over the world. It has been amended many

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<sup>160</sup> ‘Corporate Responsibility – Private initiatives and Public goals’ (*Organisation for Economic Co-operation and Development*, 2001) [www.oecd.org/daf/inv/corporateresponsibility/35315900.pdf](http://www.oecd.org/daf/inv/corporateresponsibility/35315900.pdf), p. 7.

<sup>161</sup> Robinson, Scott. ‘International Obligations, State Responsibility and Judicial Review Under the OECD Guidelines for Multinational Enterprises Regime’ (2014) *Utrecht J Int'l & Eur L*, Vol. 30, No. 78, pp. 68-81, p. 68.

<sup>162</sup> ‘Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy’ (*International Labour Organisation*, March 2017) [www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

<sup>163</sup> ‘Multinational enterprises’ (*International Labour Organisation*) [www.ilo.org/global/topics/employment-promotion/multinational-enterprises/lang--en/index.htm](http://www.ilo.org/global/topics/employment-promotion/multinational-enterprises/lang--en/index.htm).

<sup>164</sup> ‘Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy’ (*International Labour Organisation*, March 2017) [www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf), p. V.

<sup>165</sup> ‘What is the ILO MNE Declaration?’ (*International Labour Organisation*) [www.ilo.org/empent/areas/mne-declaration/WCMS\\_570332/lang--en/index.htm](http://www.ilo.org/empent/areas/mne-declaration/WCMS_570332/lang--en/index.htm).

times over the years, lastly in 2017, and has therefore become stronger and more expanded with principles tackling working issues, such as forced labour.<sup>166</sup>

### **3.3 Companies Self-Regulation and Relation to Modern Slavery and Forced Labour**

#### **3.3.1 Introduction**

International companies have grown a lot in the last decades and it has, in parallel to this, been difficult to find the right ways of regulating the harmful impacts that it has on human rights.<sup>167</sup> The increased number of connections companies have all over the world leads to their traditional control mechanisms not going far enough. The responsibility to protect and respect human rights were formerly considered to be the State's duty, where rules were based on international treaties which could then be converted to national laws, like labour law for example. Then a few years back, the discussions on this changed to focus more on companies' responsibilities to respect and protect human rights.<sup>168</sup> The development of business and human rights has over the past decades led to a more private regulation, both legal and non-legal, so that companies can have the same consensus on how they can and should protect and respect human rights.<sup>169</sup> International laws on human rights and its state-focused framework have not been enough to stop such violations by companies. This has therefore resulted in gaps for the human rights protection that non-state actors around the world have tried to fill, through private regulation. This consists of a mixture of legal/hard law (international and national rules) and non-legal/soft law (standards, principles etc.).<sup>170</sup>

Companies self-regulatory process on protecting and respecting human rights and their relation to modern slavery and forced labour in their supply chain will be described subsequently.

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<sup>166</sup> 'What is the ILO MNE Declaration?' (*International Labour Organisation*)  
[www.ilo.org/empent/areas/mne-declaration/WCMS\\_570332/lang--en/index.htm](http://www.ilo.org/empent/areas/mne-declaration/WCMS_570332/lang--en/index.htm).

<sup>167</sup> Nolan, Justin. 'Refining the Rules of the Game: The corporate Responsibility to Respect Human Rights' (2014) 30 *Utrecht J Int'l & Eur L* 7, p. 7.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*, p. 8.

<sup>170</sup> *Ibid.*



### 3.3.2 Self-Regulation through Due Diligence on Human Rights

To address companies demands for having forced labour in their supply chains the due diligence on human rights instrument, HRDD, can be a good tool to use.<sup>171</sup> It can be found in many different international laws and is for example a very central concept of the UNGP (mentioned in chapter 2).<sup>172</sup> However, the HRDD is not specifically defined in the UNGP, it only states (in principle 15) that companies should perform an HRDD to “identify, prevent, mitigate and account for how they address their impacts on human rights”. The definition varies in different international instruments, and there is no consensus on the definition on a global level. The OHCHR has tried to define HRDD as something which “comprises an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances [...] to meet its responsibility to respect human rights.”. In general terms, HRDD can thus be defined as a risk and/or impact assessment on human rights (note that it is not about business risks).<sup>173</sup> When it comes to the scope of a company’s HRDD it depends on several factors. Principle 17 in the UNGP states that companies HRDD should cover severe human rights impacts they might cause or be a part of through its actions or just by being directly linked to it, it then states that the complexity of this will vary depending on the company’s size and the risk of adversely affecting human rights.<sup>174</sup>

Countries need to have national legal systems that regulate both public and private actors’ due diligence obligations to ensure accountability. When it comes to CSR in supply chains the term supply chain due diligence, which includes human rights, has been referred to in several international law instruments, such as the UNGP and MNE guidelines.<sup>175</sup> In relation to the latter, the OECD has also published a Due Diligence Guidance for Responsible Business Conduct<sup>176</sup> (due diligence guidance), which provides more practical guidance for multinational companies on how to implement the standards on due diligence set out in the MNE guidelines. It also

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<sup>171</sup> LeBaron, Genevieve. *Combatting modern slavery: Why labour governance is failing and what we can do about it*, Polity Press, Cambridge, UK, 2020, chapter 5 section 6 para 1.

<sup>172</sup> Robert McCorquodale and Lise Smit and Stuart Neely and Robin Brooks, 'Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises' (2017) 2 *BHRJ* 195, p. 195.

<sup>173</sup> *Ibid*, p. 198 f.

<sup>174</sup> 'Guiding Principles on Business and Human Rights' (*United Nations Human Rights office of the High Commissioner*, 2011) [www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf), p. 17 f.

<sup>175</sup> McCall-Smith (n 41), p. 116 f.

<sup>176</sup> 'OECD Due Diligence Guidance for Responsible Business Conduct' (*Organisation for Economic Co-operation and Development*, 2018) <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

aims to be a guidance for the due diligence recommendations set out in the MNE Declaration and UNGP.<sup>177</sup> Moreover, as previously mentioned, there are no legal obligations for companies to follow the UNGP and MNE guidelines since they are both soft law. But, they give great guidance for companies on how to effectively carry out due diligence in their supply chains. The due diligence process for a company can be summarised into four steps; first, it must assess and identify the potential risks in its supply chain; second, make up a strategy to address these risks; third, assess the outcome of the due diligence; fourth, make a public report on its strategy and the outcome of it. To have transparency in all these steps is very important. The standards on transparency have in recent years become more incorporated into national law and policies.<sup>178</sup>

When it comes to the HRDD process on what a company must do to tackle companies demand of forced labour, they must at least follow the three steps (in line with the ones previously mentioned with due diligence). First, it must assess its commercial activities, its relations with other companies and actors in their supply chains as well as examine how they are linked to any kind of forced labour and exploitation of workers. Second, it must act on the results of the assessment and change the activities that create the labour exploitation, by safeguarding workers right to justice and remedy. Third, it must show what actions it has taken in addressing its demand for forced labour.<sup>179</sup>

So far, civil society has been very enthusiastic about the HRDD process. However, companies are not equally putting in the same efforts in HRDD. There is still a great need for companies to handle and change the critical commercial dynamics between them. The implementation of HRDD thus needs to be stronger so that companies can have a more efficient approach to changing their demands of forced labour.<sup>180</sup>

### **3.3.3 Modern Slavery and Forced Labour in Global Supply Chains**

To say that companies must or should respect human rights in all the areas they operate is easier said than done. States have an important role in this aspect and

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<sup>177</sup> 'OECD Due Diligence Guidance for Responsible Business Conduct' (*Organisation for Economic Co-operation and Development*) [www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm](http://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm).

<sup>178</sup> McCall-Smith (n 41), p. 120.

<sup>179</sup> LeBaron (n 171), chapter 5 section 6 para 3 ff.

<sup>180</sup> Ibid, chapter 5 section 6 para 6.

must work more effectively to implement the international standards to protect human rights into their national regulations. One way for the states' and private companies to be more efficient is by working together since the regulatory burden connected to the human rights problems existing globally mainly lays on the companies.<sup>181</sup>

Global supply chains are very much linked to industries and companies operating in different countries, to which some are engaged in practices of labour exploitation. Back in 2013, the UN Conference on Trade and Development (UNCTAD) estimated that about 80% of the world's trade were going through global supply chains connected to international companies,<sup>182</sup> of which some were involved in labour exploitation.<sup>183</sup> Scandals, such as the Rana Plaza collapse (mentioned in chapter 1), have in recent years given more attention towards exploitative labour practices and modern slavery taking place in companies' global supply chains. Over the last few decades, more jobs have been created as a result of globalisation, which has lifted millions of people out of poverty. But, the consequence of this has been the human rights and forced labour issues that can be found in the global supply chains. The role of international companies on how to conduct their businesses has therefore also changed over time, the expectation that companies should respect standards on human rights and have a bigger regulatory role in this has thus been increased.<sup>184</sup> See for example the UK MSA, AU MSA and TSCA.<sup>185</sup>

Moreover, the increased digitalisation and use of technology have resulted in people being isolated which makes it harder to address and combat issues of modern slavery in global supply chains. When people order products over the internet, for instance, they are detached from reality and how linked they are to the human rights violations occurring in the supply chains where the products are made.<sup>186</sup>

In regards to the ongoing Covid-19 pandemic, the labour of modern slavery is believed to be increasing. This due to so many people being unemployed which in

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<sup>181</sup> Nolan (n 167), p. 21 f.

<sup>182</sup> See report 'Global value chains and development' (*United Nations Conference on Trade and Development*, 2013) [https://unctad.org/system/files/official-document/diae2013d1\\_en.pdf](https://unctad.org/system/files/official-document/diae2013d1_en.pdf), p. iii.

<sup>183</sup> Justine Nolan & Gregory Bott. 'Global supply chains and human rights: spotlight on forced labour and modern slavery practices' (2018) *AJHR*, vol. 24, no. 1, pp. 44-69, p. 44.

<sup>184</sup> *Ibid*, p. 44 ff.

<sup>185</sup> See section 3.2.7.

<sup>186</sup> Di Martino, Sarah. 'Modern Slavery in Transnational Supply Chains. Public National Regulations: Words or Deeds?' (2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3575895](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3575895), p. 1 f.

turn forces people to work under exploitative conditions to economically survive.<sup>187</sup> According to the ILO, the labour and economic crisis that has been followed by the Covid-19 pandemic is estimated to increase global unemployment by 24.7 million.<sup>188</sup> When it comes to working poverty, it is estimated to be between 20.1 million and 35 million people working under such conditions as a result of Covid-19.<sup>189</sup>

To estimate exactly how many people in forced labour are linked to the production in global supply chains is very difficult. This is due to the fact that goods (and services) that the consumers buy have been composed of different parts of the world, they can be processed in one country and packed in another and so on. To keep track of a certain product's way through these complex supply chains can therefore be challenging.<sup>190</sup>

Forced labour can be located when three critical dimensions interact, so-called “risk factors” (note that all of these three dimensions not are required for forced labour to occur). First, when there is gaps in the statutory legislation, the enforcement mechanism and the accessibility to justice. Second, when workers or people are pressured by social and economic factors. Third, when the business conduct and environment has a lack of awareness, policy commitment, action and capacity. These three dimensions thus show that forced labour in supply chains has to be seen as a structural phenomenon. It is not enough to only look at a supply chain's production settings to eliminate forced labour, legal gaps and social and economic pressures also need to be addressed.<sup>191</sup>

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<sup>187</sup> Smith, Angharad & Cockayne, James. 'The Impact of COVID-19 on Modern Slavery' (*Delta87*, 27 March 2020) <https://delta87.org/2020/03/impact-covid-19-modern-slavery/>.

<sup>188</sup> 'COVID-19 and the world of work: Impact and policy responses' (*International Labour Organisation*, 18 March 2020) [www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms\\_738753.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_738753.pdf), p. 3.

<sup>189</sup> *Ibid*, p. 5.

<sup>190</sup> 'Ending child labour, forced labour and human trafficking in global supply chains' (*International Labour Organisation*, 2019) [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_716930.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_716930.pdf), p. 5.

<sup>191</sup> *Ibid*, p. 17.

### 3.4 CSR vs. A New Labour Governance

In recent discussions on the topic of CSR, another aspect has been arising on the potential need for a new labour governance. In this regard, professor LeBaron has stated the following.

Companies usually show their efforts to combat modern slavery through fancy brochures, statements, awards and so on.<sup>192</sup> They like to portray themselves as heroes who rescue the victims of modern slavery, but this is only their CSR image. In reality, these fairy-tale stories are created by marketing professionals etc. who only show the good sides and positive impacts the company has, which is very seductive for the public.<sup>193</sup> Besides, hard efforts to address the modern slavery issues are being made by people working at these companies, and they usually themselves believe that it is possible to abolish modern slavery within our lifetimes. Many people therefore believe in the fairy-tale stories that companies portray through their CSR images. For most, it is just easier to rely on the companies engaged in it to solve the modern slavery issues, since it feels too impossible to change anything ourselves.<sup>194</sup> But this approach is not very effective since companies claims of making positive changes and eliminating modern slavery are seldom true.<sup>195</sup> It is thus difficult to assess the different outcomes that companies have with their stories about eradicating modern slavery, because they hardly share any information or evidence that supports their CSR statements.<sup>196</sup>

For companies to combat modern slavery, it has further been argued by LeBaron that CSR is not the right tool to use.<sup>197</sup> This claim is based on the fact that companies CSR efforts during the last few decades not have solved any modern slavery issues. The promises and goals made by companies to eliminate labour exploitation and hazardous working conditions etc. have not been accomplished. Addressing forced labour and labour exploitation in company supply chains therefore seems impossible to do through CSR, according to LeBaron.<sup>198</sup> The reason that makes CSR inefficient and “needlessly” is the big “bad” companies. They live off forced

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<sup>192</sup> LeBaron (n 171), chapter 6 section 1 para 1.

<sup>193</sup> Ibid, chapter 6 section 1 para 2 f.

<sup>194</sup> Ibid, chapter 6 section 1 para 4 f.

<sup>195</sup> Ibid, chapter 6 section 1 para 6.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid, chapter 6 section 1 para 7.

<sup>198</sup> Ibid, chapter 6 section 1 para 7.

and exploitative labour practices as a way to generate profit and value for their shareholders as well as expanding their business.<sup>199</sup> As long as this structure of doing business is generating these profits and so on it does not matter how many CSR initiatives and efforts are made since the root problem are these business models. The only effective way to tackle modern slavery would then be to change the structure of these big and powerful companies, which cannot be done through CSR.<sup>200</sup> It is important to emphasise here that taking matters into your own hands by “rescuing” workers, like some companies, groups and organisations do, is not a good approach, such actions can lead to collateral damages for other vulnerable people that needs and wants to work.<sup>201</sup>

Since LeBaron argues that CSR is not working, she has shifted the focus to the need for a new/stronger labour governance. This, in order to tackle the issue of companies’ demand for forced labour and supply of vulnerable people.<sup>202</sup> To be able to achieve this, major changes will be required. When it comes to the demand for forced labour, companies’ structures/business models need to change, this includes the distribution of their supply chains. Then, the power that big companies have needs to be controlled. Furthermore, international standards and state regulations regarding modern slavery and labour protection need to be strengthened as well as the companies approach to implement due diligence.<sup>203</sup> When it comes to the supply of vulnerable people, reliable measures that are protecting workers from forced labour needs to be implemented. The power of the workers in relation to the companies also need to be strengthened, for example through unions. Furthermore, the regulations on the recruitment industry and migration need to be more overhauled.<sup>204</sup> LeBaron thus argues that these approaches would move the focus away from CSR programmes into having conversations about the needed structural change of companies instead.<sup>205</sup>

To eliminate all forms of slavery (including forced labour), several issues need to be mutually addressed by companies and industries as well as civil society and

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<sup>199</sup> LeBaron (n 171), chapter 6 section 1 para 8.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid, chapter 6 section 1 para 9.

<sup>202</sup> Ibid, chapter 6 section 3 para 1 & 4.

<sup>203</sup> Ibid, chapter 6 section 3 para 2.

<sup>204</sup> Ibid, chapter 6 section 3 para 3.

<sup>205</sup> Ibid, chapter 6 section 3 para 4.

governments. It is argued by professor Kara that the factors that promote slavery are within the so-called “Five P” framework, these are; prevention, prosecution, protection, partnership and progress. Furthermore, to be able to address the issues within these fields ten initiatives need to be implemented, listed below;<sup>206</sup>

1. “Elevated scaling and effectiveness of global antipoverty programs”
2. “Rapid-response teams focused on prevention and protection in crisis zones”
3. “Awareness and education campaigns”
4. “A “technology trust” focused on creating innovative solutions to the current barriers in antislavery efforts”
5. “Redesign of the process and governance of labor migration”
6. “Legal reform”
7. “Policy reforms”
8. “A mandatory united nations fund for slavery”
9. “International slavery courts”
10. “A transnational slavery intervention force”.<sup>207</sup>

If all of the initiatives listed above are fulfilled, then it would be possible to abolish slavery, according to Kara.

### **3.5 Summary**

This chapter has touched upon areas related to CSR, supply chains and modern slavery. The focus has thus primarily been on modern slavery from a global business perspective. It can first be stated that companies’ linkage to forced labour usually occurs in their supply chains. Moreover, it is the companies themselves that need to take responsibility to address and regulate modern slavery. Hence, it is important that big and powerful companies that operate globally follows international CSR policies and carries out assessments of their potential harms on human rights and/or actors behaving badly in their global supply chains. A HRDD is a commonly used concept and framework used by companies when assessing their impact and risks of harming human rights in their supply chains. It is further up to the companies how they want to incorporate the different hard and soft law instruments into their organisation. Subsequently, there are many aspects of how and where modern slavery and forced labour can be located in a company’s supply

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<sup>206</sup> Kara, S. (2017). *Modern Slavery: A Global Perspective*. [ebook] Columbia University Press, [www.perlego.com/book/773682/](http://www.perlego.com/book/773682/), chapter 8 section 2 para 1 ff.

<sup>207</sup> Ibid, chapter 8 section 3.

chain, usually, it is a combination of different factors. Besides, it has been stated that modern slavery and forced labour has increased due to the recent digitalisation and the current Covid-19 pandemic.

When it comes to CSR, there is no binding legislation that companies must follow. However, CSR is connected to many areas of law. Companies thus self-regulate and freely choose to follow any international convention or guidelines and standards etc. to obtain a more sustainable global supply chain and a good CSR image. The non-binding CSR and sustainability instruments mentioned in this chapter (ISO 26000, UN global compact, MNE guidelines and the MNE Declaration) gives guidance, encouragement and recommendations for companies on how to: be more socially responsible, support the UN goals, act in good practise with laws and standards, contribute to the social (and economic) development and reduce potential negative impacts in its supply chain etc. All of the latter is voluntary for companies to follow.

Discussions on CSR and its efficiency has been under debate. Global companies' growth in the last decades has also made it harder to regulate harmful impacts that they have on modern slavery, forced labour and human rights. It was previously considered to be the states duty to protect and respect human rights, but the focus then shifted to focus more on CSR. Nevertheless, it has recently been argued that the concept of CSR is no longer efficient and that there instead is a need for a new and/or stronger labour governance in order to tackle the issues of modern slavery.



## 4. Case Study

### 4.1 Introduction

A lot of the products sold by global companies are in some way linked to modern slavery and forced labour in their supply chain. This kind of slavery is for example very common in the cotton industry, which the example in this case study will shine a light on.<sup>208</sup> One company (H&M) has thus been chosen to examine how modern slavery and forced labour is troubling and addressed in the global trade today. This will be analysed hereafter.

### 4.2 H&M banned in China

#### 4.2.1 Introduction

A few weeks ago H&M, and some other western fashion brands, was banned by the Chinese government. This was due to the fact that the Xinjiang region of China had been accused by several fashion companies of using forced labour in its cotton industry, which China denied. It resulted in China “hitting back” at the companies by banning them.<sup>209</sup>

It all started last year, in 2020 when H&M and the other companies had posted statements on their respective websites expressing their concerns about human rights violations occurring in their supply chain in Xinjiang.<sup>210</sup> Over 190 organisations from 36 countries had at the time got together and created “a call for action”<sup>211</sup> to make fashion companies stop all of their sourcing from Xinjiang within the following year. Since one-fifth of the clothes sold worldwide are made with cotton from Xinjiang the issue is very much linked to fashion companies and the global trade. Companies and consumers have thus been encouraged to stop

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<sup>208</sup> ‘Slavery in supply chains’ (*Anti-Slavery International*) [www.antislavery.org/slavery-today/slavery-in-global-supply-chains/](http://www.antislavery.org/slavery-today/slavery-in-global-supply-chains/).

<sup>209</sup> Friedman, Vanessa & Paton, Elizabeth. ‘What is going on with China, Cotton and all of these clothing brands?’ (*The New York Times*, 29 May 2021) [www.nytimes.com/2021/03/29/style/china-cotton-uyghur-hm-nike.html](http://www.nytimes.com/2021/03/29/style/china-cotton-uyghur-hm-nike.html).

<sup>210</sup> Ibid.

<sup>211</sup> ‘Call to Action’ (*Coalition to End Forced Labour in the Uyghur Region*, October 2020) <https://enduyghurforcedlabour.org/call-to-action/>.

buying products that are made out of cotton from Xinjiang to end the existing labour exploitation. Hence, this case has raised awareness on how companies need to take greater accountability and work against eliminating forced labour in their supply chains.<sup>212</sup> Consequently, China's response to all of this was to ban the companies. They stated that the accusations were to be considered offences to the Chinese state. The ban has resulted in China's most well-known internet trading platforms removing several of these big international companies from their websites etc. The Chinese government has thus reacted with a huge backlash at the companies. Moreover, this case has become a big deal because it shows that consumers have gotten more aware of where their clothes come from and what the workers' working conditions look like, which has led to the consumers putting more pressure on companies to be more responsible in their supply chains. This case is a good example of what can happen when the global market meets global morality. It has been estimated that this kind of forced labour in Xinjiang has been going on for at least five years, and it is not until after last year's publicity and call for action that companies started to re-evaluate their relationships with their cotton suppliers in Xinjiang.<sup>213</sup>

Note that China has been a member of the UN since 1945.<sup>214</sup> China has also been a founding member of the ILO since 1919.<sup>215</sup> However, it has not ratified ILO's fundamental Forced Labour Convention and Abolition of Forced Labour Convention,<sup>216</sup> only the ILO Declaration on Fundamental Principles and Rights at Work.<sup>217</sup>

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<sup>212</sup> Paton, Elizabeth & Ramzy, Austin. 'Coalition brings pressure to end Forced Uighur Labour' (*The New York Times*, 23 July 2020, [www.nytimes.com/2020/07/23/fashion/uighur-forced-labor-cotton-fashion.html](http://www.nytimes.com/2020/07/23/fashion/uighur-forced-labor-cotton-fashion.html)).

<sup>213</sup> Friedman, Vanessa & Paton, Elizabeth. 'What is going on with China, Cotton and all of these clothing brands?' (*The New York Times*, 29 May 2021) [www.nytimes.com/2021/03/29/style/china-cotton-uyghur-hm-nike.html](http://www.nytimes.com/2021/03/29/style/china-cotton-uyghur-hm-nike.html).

<sup>214</sup> 'Member States' (*United Nations*) [www.un.org/en/about-us/member-states](http://www.un.org/en/about-us/member-states).

<sup>215</sup> 'China relations with the ILO' (*The Congressional-Executive Commission on China*) <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/roundtables/2002/CECC%20Roundtable%20Testimony%20-%20Tony%20Freeman%20-%202018.02.pdf>, p. 1.

<sup>216</sup> 'Up-to-date Conventions and Protocols not ratified by China' (*International Labour Organisation*) [https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210\\_COUNTRY\\_ID:103404](https://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:103404).

<sup>217</sup> 'China relations with the ILO' (*The Congressional-Executive Commission on China*) <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/roundtables/2002/CECC%20Roundtable%20Testimony%20-%20Tony%20Freeman%20-%202018.02.pdf>, p. 7.

More about H&M, their approach to China's ban and what instruments they have on regulating modern slavery and forced labour in their supply chain will be analysed henceforth.

## 4.2.2 H&M

### 4.2.2.1 Introduction

The Swedish fashion brand H&M is a part of the H&M group (hereinafter referred to as H&M), which also include other brands such as Weekday, Monki, H&M Home and Arket.<sup>218</sup> It was founded in 1947 and has today 4372 stores around the world.<sup>219</sup> Moreover, H&M has in total about 1300 suppliers and represent 2400 factories. It is important to note here that H&M does not own any factories, it only buys from them.<sup>220</sup>

H&M's dispute with China started, as previously mentioned when H&M issued its statement in September 2020 expressing its "deep concerns" about the recently published news on forced labour being used in its supply chain (Xinjiang) and chose to cut its ties with the supplier. It was not long afterwards that the (now removed) statement were all over the Chinese media and H&M got boycotted.<sup>221</sup> Their products were then quickly being taken down on the Chinese online clothing-trading platforms. Since China is H&M's fourth largest marketplace, with annual sales of 1.13 billion US dollars in 2020, the consequences of the ban have come at a great cost.<sup>222</sup> Moreover, H&M has said that they are taking the forced labour allegations in Xinjiang very seriously and subsequently states that they are not cooperating with any factories or have any materials coming from the region. They have also stated that they are fully aware of the complexity of this issue and that they, therefore, are keeping a close dialogue with human rights experts and other actors to safeguard that international law on labour rights are properly followed and addressed.<sup>223</sup>

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<sup>218</sup> 'About H&M Group' (*H&M Group*) <https://hmgroup.com/about-us/>.

<sup>219</sup> 'H&M' (*H&M Group*) <https://hmgroup.com/brands/hm/>.

<sup>220</sup> 'Working Conditions' (*H&M Group*) <https://hmgroup.com/sustainability/fair-and-equal/working-conditions/>.

<sup>221</sup> Friedman, Vanessa & Paton, Elizabeth. 'What is going on with China, Cotton and all of these clothing brands?' (*The New York Times*, 29 May 2021) [www.nytimes.com/2021/03/29/style/china-cotton-uyghur-hm-nike.html](http://www.nytimes.com/2021/03/29/style/china-cotton-uyghur-hm-nike.html).

<sup>222</sup> 'China net users call for H&M boycott after ban of Xinjiang cotton' (*Bloomberg News*, 24 March 2021) [www.aljazeera.com/economy/2021/3/24/chinanetusers-call-for-hm-boycott-after-ban-of-xinjiang-cotton](http://www.aljazeera.com/economy/2021/3/24/chinanetusers-call-for-hm-boycott-after-ban-of-xinjiang-cotton).

<sup>223</sup> 'Frågor och svar' (*H&M*) <https://schysstmode.hm.com/fragor-och-svar/>.

To analyse and understand more about H&M's approach to the forced labour and human rights abuse situation in Xinjiang, the laws that H&M is covered by and the instruments they have on modern slavery and forced labour will be described in the following.

#### 4.2.2.2 H&M's Approach, Instruments and Self-Regulation on Modern Slavery

Over the years, H&M has been under fire several times for being linked to human rights scandals, such as the Rana Plaza collapse in 2013 (mentioned in chapter 1) and now the (alleged) use of forced labour in Xinjiang. H&M has claimed to be working on improving its labour policies to address these kinds of issues, but even though there has been some progress it has not been sufficient. In regards to H&M's supply chains, barely any of them has been certified by labour standards on labour rights etc.<sup>224</sup> Besides, when it comes to H&M's sourcing of cotton and its connection to the forced labour situation in Xinjiang, they have stated that the one they collaborate with to source their cotton (the Better Cotton Initiative) has stopped sourcing from Xinjiang.<sup>225</sup>

H&M's approach to respecting human rights is based on its ambition to lead a more sustainable and responsible industry in the future. To achieve this, H&M uses several instruments.<sup>226</sup> In 1997 H&M's launched its Code of Conduct. It contained a set of guidelines that aimed at helping H&M making its supply chain more sustainable. It also had standards and requirements that every supplier and business partner needed to follow, such as better working conditions. In 2016 it got replaced with the Sustainability Commitment<sup>227</sup>, which was based on the same principles as the Code of Conduct. The Sustainability Commitment requires a signature by every H&M supplier and business partner before any business relationship can be established.<sup>228</sup> Furthermore, H&M has their own Human Rights Policy<sup>229</sup>, which

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<sup>224</sup> Robertson, Lara. 'How Ethical Is H&M?' (*Good On You*, 30 September 2020) <https://goodonyou.eco/how-ethical-is-hm/>.

<sup>225</sup> 'Frågor och svar' (*H&M*) <https://schysstmode.hm.com/fragor-och-svar/>.

<sup>226</sup> 'Our Approach to Respecting Human Rights' (*H&M Group*) [https://hmgroup.com/sustainability/fair-and-equal/human-rights/our\\_approach/](https://hmgroup.com/sustainability/fair-and-equal/human-rights/our_approach/).

<sup>227</sup> 'Sustainability Commitment H&M Business Partner' (*H&M Group*) [https://hmgroup.com/wp-content/uploads/2020/10/Business-Partner-Sustainability-Commitment\\_en.pdf](https://hmgroup.com/wp-content/uploads/2020/10/Business-Partner-Sustainability-Commitment_en.pdf).

<sup>228</sup> 'Sustainability Commitment' (*H&M Group*, 1 November 2012)

<https://hmgroup.com/sustainability/standards-and-policies/sustainability-commitment/>.

<sup>229</sup> 'Human Rights Policy' (*H&M Group*) <https://hmgroup.com/wp-content/uploads/2020/10/Human-Rights-Policy.pdf>.

shows its commitment to respect human rights. When it comes to their HRDD, their approach is guided by the UNGP and OECD's due diligence guidance.<sup>230</sup> The human rights policy also gives an expression for other international standards and guidelines on human rights and modern slavery, such as the UDHR.<sup>231</sup> Moreover, H&M has, since 2002, annually published a transparent sustainability report, which contains information about H&M's performance, goals, programmes and strategies. It also includes reporting on external initiatives, such as the UNGP, and more.<sup>232</sup> In H&M's latest Sustainability Performance Report 2020<sup>233</sup> (the report) it states that H&M works alongside, amongst others, the UN global compact, to achieve its goal to be a more sustainable business.<sup>234</sup> H&M became a member of the UN global compact in February 2001.<sup>235</sup> Overall, the report gives a summary of its most recent goals and performances, it also details its response to the current Covid-19 pandemic and how it has affected the H&M business.<sup>236</sup> In addition to the above, H&M has, since 2013, provided a supplier list<sup>237</sup> on its website to create transparency and trust for its consumers and business partners.<sup>238</sup> H&M is also the first big fashion brand that provides supplier details to every individual garment on its website, with the aim to tackle labour abuses and slavery in its industry.<sup>239</sup>

Apart from the collaborations with organisations and initiatives mentioned above, there are several others that H&M's has partnered with, such as the UN and ILO.<sup>240</sup> In January 2019, H&M expanded its partnership with the ILO, with the goal to improve the labour conditions and efficiency in companies supply chains in the garment/textile industry. This cooperation will thus contribute to driving the SDGs

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<sup>230</sup> 'Our Approach to Respecting Human Rights' (*H&M Group*) [https://hmgroup.com/sustainability/fair-and-equal/human-rights/our\\_approach/](https://hmgroup.com/sustainability/fair-and-equal/human-rights/our_approach/).

<sup>231</sup> 'Modern slavery statement' (*H&M Group*) <https://hmgroup.com/sustainability/standards-and-policies/modern-slavery-statement/>.

<sup>232</sup> 'Sustainability Performance Report 2020' (*H&M Group*) <https://hmgroup.com/wp-content/uploads/2021/03/HM-Group-Sustainability-Performance-Report-2020.pdf>, p. 3.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid, p. 5.

<sup>235</sup> 'H&M, Hennes & Mauritz AB' (*United Nations Global Compact*) [www.unglobalcompact.org/what-is-gc/participants/4719-H-M-Hennes-Mauritz-AB](http://www.unglobalcompact.org/what-is-gc/participants/4719-H-M-Hennes-Mauritz-AB).

<sup>236</sup> 'Sustainability Performance Report 2020' (*H&M Group*) <https://hmgroup.com/wp-content/uploads/2021/03/HM-Group-Sustainability-Performance-Report-2020.pdf>, p. 3.

<sup>237</sup> 'Supply Chain' (*H&M Group*) <https://hmgroup.com/sustainability/leading-the-change/supplier-list.html>.

<sup>238</sup> Ibid.

<sup>239</sup> Elks, Sonia. 'H&M Is the First Major Fashion Chain to List Suppliers for All Garments to Combat Slavery' (*Global Citizen*, 26 April 2019) <https://www.globalcitizen.org/en/content/hm-list-suppliers-all-garments-modern-slavery/>.

<sup>240</sup> 'Memberships and collaborations' (*H&M Group*) <https://hmgroup.com/sustainability/leading-the-change/memberships-and-collaborations/>.

set out in the 2030-agenda forward.<sup>241</sup> In regards to H&M’s partnership with the UN, H&M has stated that it finds their collaboration very productive and efficient on a systematic level, where their work is primarily about preventing labour rights issues.<sup>242</sup>

Besides H&M’s instruments and collaborations with organisations etc. to address modern slavery issues, H&M self-regulate (to some extent) in accordance with some national legislations on modern slavery (see section 2.4). The first one that can be mentioned here, which H&M is covered by, is the TSCA. It, as previously stated, requires big companies to disclose what steps they have taken to eliminate slavery in their supply chain. In accordance with the TSCA, H&M is disclosing five of its efforts to abolish slavery and forced labour in its supply chain on its website. The first effort is having “verification”, which means that H&M uses HRDD to analyse its (potential) impact on human rights. H&M thus states that it carefully assesses a company’s legal, economic and social (human rights) aspects following its guidelines on due diligence before any business relationship can be established. Also, as previously stated, every H&M supplier needs to sign H&M’s Sustainability Commitment, which prohibits forced labour. It is not until after the verification is made and requirements are met that the production can start. The second effort is doing “audits”, this means that H&M continuously follows up and verifies that their suppliers implement and complies with the Sustainability Commitment. The third effort is having “certification”, which H&M also show through their Sustainability Commitment. Besides, the Sustainability Commitment shows how H&M is committed to promoting international standards, such as the UDHR and UNGP. It also states that the suppliers must follow the national labour laws in the country that they are active in. The fourth effort is taking “internal accountability”, H&M thus apply its Sustainability Impact Partnership Programme<sup>243</sup> (SIPP) and makes sure that workers in its suppliers’ factories can contact them in case they have any business-related concerns. SIPP is a program that monitors how H&M’s suppliers perform on human rights and forced labour issues, the suppliers’ factories then get

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<sup>241</sup> ‘ILO and H&M Group expand partnership’ (*International Labour Organisation*, 24 January 2019) [www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_664764/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_664764/lang--en/index.htm).

<sup>242</sup> ‘Organisation name: H&M’ (*SDG Fund*) [https://www.sdgfund.org/sites/default/files/business-and-un/SDGF\\_BFP\\_HKSCSRI\\_Business\\_and\\_SDGs-HandM.pdf](https://www.sdgfund.org/sites/default/files/business-and-un/SDGF_BFP_HKSCSRI_Business_and_SDGs-HandM.pdf).

<sup>243</sup> ‘Sustainable Impact Partnership Program’ (*H&M Group*) <https://hmgroup.com/sustainability/standards-and-policies/sustainable-impact-partnership-program/>.

a score between 0 and 100 of how good their sustainability is. H&M also makes sure to work closely with its business partners, human rights professionals, investors and so on to achieve the human rights principles. The fifth effort is “training”, H&M has in this area advanced training on responsibility and human rights, which is based on the UNGP, that aims at providing awareness on potential and actual impacts on human rights. This thus has the objective to train co-workers in getting more knowledge and learn how to implement H&M’s policy on human rights.<sup>244</sup>

As stated previously, H&M’s Human Rights Policy includes rules on modern slavery. Moreover, it can be noted here that H&M also is covered by the UK MSA. In accordance with the UK MSA, H&M should annually publish a modern slavery statement that shows what steps they have been taken in addressing modern slavery in its organisation and supply chain.<sup>245</sup> H&M’s latest available modern slavery statement<sup>246</sup> on its webpage is from the financial year 2018 to 2019. Since no later statement can be found, the latter will be described. In regards to H&M’s HRDD approach, it has in its statement set out four steps taken following the UK MSA. The first step is “process to identify and assess”, which includes numerous different processes: the identification of H&M’s salient human rights issues, due diligence on potential business partners, a yearly sustainability risk assessment conducted by every business function, supply chain management, material risk assessment and country sustainability risk assessment.<sup>247</sup> It can be noted here that H&M’s latest published Salient Human Rights Issues 2020<sup>248</sup> (updated in March 2021) describes where salient human rights issues are, or potentially can be, occurring in its supply chain. The assessment is thus based on several different ILO conventions, such as the forced labour convention and the abolition of forced labour convention.<sup>249</sup> The second step is “components in H&M’s Sustainability Program”, which contains detailed standards and policies, business partner monitoring on sustainability

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<sup>244</sup> ‘CA Supply Chains Act’ (H&M) [https://www2.hm.com/en\\_us/customer-service/legal-and-privacy/ca-supply-chains-act.html](https://www2.hm.com/en_us/customer-service/legal-and-privacy/ca-supply-chains-act.html).

<sup>245</sup> ‘Modern slavery statement’ (H&M Group) <https://hmgroupp.com/sustainability/standards-and-policies/modern-slavery-statement/>.

<sup>246</sup> ‘Modern slavery statement Financial year 2018-2019’ (H&M Group) [https://hmgroupp.com/wp-content/uploads/2020/10/HM\\_2019\\_Modern\\_Slavery\\_Statement\\_final.pdf](https://hmgroupp.com/wp-content/uploads/2020/10/HM_2019_Modern_Slavery_Statement_final.pdf).

<sup>247</sup> Ibid, p. 6 ff.

<sup>248</sup> See ‘Salient human rights issues 2020’ (H&M Group) <https://hmgroupp.com/wp-content/uploads/2021/03/Salient-Human-Rights-Issues-2020.pdf>.

<sup>249</sup> Ibid, p. 4 f.

performance, a process on incident management for human rights impacts and other targeted programs, projects, actions and systems. The third step is “track and communicate”, where H&M states that it reports on its goals and key performance indicator and follows the UK MSA, the UNGP and other standards. H&M furthermore states that they disclose information about their suppliers and data of compliance, how their business partners perform and also that they respond to grievances and queries from stakeholders. The fourth, and final, step is “training and stakeholder engagement” (similar to H&M’s fifth step in accordance with the TSCA). In this step H&M works with training their employees and business partners, to learn more about H&M’s policies and commitments, and collaborates with their stakeholders.<sup>250</sup> Without going into more details about these steps and procedures, H&M made it quite clear that they were engaged and making many efforts in addressing modern slavery issues.

Furthermore, H&M is also covered by the AU MSA. However, there is no statement to be found yet from H&M. Note that the deadline for the first reporting statement was on 31st of March earlier this year.<sup>251</sup> Subsequently, when it comes to the NFRD, several categories must be disclosed on H&M’s website.<sup>252</sup> In regards to the category which concerns respect for human rights, it can be stated that H&M, at least to some extent (based on what has been stated above) complies with the NFRD (even though the NFRD is not specifically mentioned anywhere on its website).

Concerning what has been stated above about the UK MSA and AU MSA, the author of this essay has contacted H&M and asked why no new statements in accordance with these two have not been published. In a response on the 18th of May, H&M said that they will publish those statements within the upcoming weeks.

### **4.3 Summary**

The case study example, of H&M and China, described in this chapter has provided an in-depth look at how forced labour and modern slavery are addressed and self-regulated today by H&M. The recent, highly publicised, incident that China

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<sup>250</sup> ‘Modern slavery statement Financial year 2018-2019’ (*H&M Group*) [https://hmgroup.com/wp-content/uploads/2020/10/HM\\_2019\\_Modern\\_Slavery\\_Statement\\_final.pdf](https://hmgroup.com/wp-content/uploads/2020/10/HM_2019_Modern_Slavery_Statement_final.pdf), p. 6 ff.

<sup>251</sup> See section 2.4.4.

<sup>252</sup> See section 2.4.5.



(allegedly) engages in forced labour of cotton in the Xinjiang region led H&M, and some other global companies, to take action. H&M thus published and expressed its concern on its website about violations of human rights / forced labour occurring in its supply chain. Moreover, several organisations from all over the world got together and created a “call for action”, which encouraged both consumers and companies (like H&M) to stop purchasing products made out of cotton from the Xinjiang region. China claimed the forced labour allegations were false and responded by banning H&M. This case has therefore received a lot of attention and it has shown how companies like H&M publicly addresses situations of forced labour occurring in its supply chain. However, it was estimated that the forced labour in Xinjiang had been going on for at least five years.

To get an in-depth view of how H&M as a global business address and tackle modern slavery and forced labour within its organisation and supply chain, this chapter subsequently analysed some of its CSR instruments and how it self-regulates on respecting human rights. It was shown that H&M has various instruments on this (Sustainability Commitment, Human Rights Policy, HRDD etc.) and is covered by several national legislations addressing modern slavery (TSCA, UK MSA, AU MSA and EU’s NFRD). It becomes clear from H&M’s instruments that they follow many international guidelines, standards and recommendations on modern slavery, forced labour and human rights (the UNGP, UDHR, UN Global Compact, OECD Due Diligence Guidance etc.), it is also stated that H&M has partnered with both the UN and ILO. Regarding H&M’s self-regulation following certain national legislation on modern slavery, they are lacking in disclosing all of the information needed on its website. Many of H&M’s instruments may cover the information needed by the different national laws, but no specific statements on each law (that is needed) can be found (yet). We can only wait and see if H&M will publish the promised statements in accordance with the UK MSA and AU MSA on its website within the next few weeks. The NFRD does not require that a company must publish a statement but only that certain specific categories are disclosed on its website, which H&M in this case can (through the instruments it has) be assumed to have achieved.

## 5. Reflections and conclusions

This essay has given a legal and CSR perspective on how the modern slavery is addressed and regulated today. The aim has been to analyse how the modern slavery, when it comes to forced labour, is addressed and regulated in the world today. International and certain national regulation on labour and human rights and slavery as well as companies CSR approach to this has thus been studied. It becomes apparent from chapter 2 and 3 that there are several instruments covering these areas. It is also clear that the relationships between companies, international laws and states are very complex and contains gaps. Even though several international laws on slavery, forced labour and human rights are ratified in most countries, companies are not directly covered by them. There is, for example, no UN or international “police” or “labour inspectorate” that can put sanctions on companies that do not comply with the UN and ILO conventions, they can only express that they think a company acts wrongful and “name and shame” it. The same goes for the national legislations that certain global companies are covered by, they can thus be covered by one of these laws but the states cannot impose sanctions on them for not following and complying with the law. The only consequence is then bad reputation for the non-compliant company. Companies own efforts, through CSR and self-regulation, to combat human rights issues such as modern slavery and forced labour is therefore important. But just like LeBaron argues, such efforts might not be enough to make any real change in the world. It can be stated that companies CSR initiatives and programs to some extent have made a positive impact and changed things for the better. However, this process has been going on for decades and still, we are seeing these harmful human rights impacts happening daily. It is almost impossible to believe that slavery exists more today than it has ever done before, companies efforts to decrease this have thus not been enough.

The example of H&M and China in chapter 4 shines a light on how forced labour can exist today and how it is addressed and tackled by H&M. One could ask why China even have slavery and forced labour at all. It can be noted that almost every

country has joined ILO's rules on slavery and most likely has national legislation that prohibits slavery, so why this is not enough to eliminate modern slavery and forced labour can thus be questioned. The fact that China is a member of both the UN and the ILO shows that it is not the legislations and guidelines that are lacking, it is the implementation and enforcement of sanctions. China might not have ratified ILO's fundamental conventions on forced labour and abolition of forced labour, but by being part of ILO's declaration on fundamental principles and rights at work China is obliged to eliminate all forms of forced labour. Yet, no sanctions can be made against China either by the UN or ILO for not following the international laws and principles on respecting human rights. Just like for companies, China can only get publicly "named and shamed". In this case, China's (alleged) use of forced labour has led to H&M's and other companies cutting their ties with the Xinjiang region and consumers have stopped purchasing products that are made out of cotton from there. These consequences show that the public and civil society cares about what kind of impact they are having on human rights in the world.

The increased global awareness about modern slavery does push countries and companies into being more socially responsible. But still, even though progress has been made, more needs to be done. To put the responsibility on companies to address these kinds of issues with only "peer pressure" as a driving force is not motivation enough. Stronger sanctions must be put in place for the "big bad" companies engaging in these harmful human rights practices. At the end of the day, it is the companies that are winning economically, to expect that they should be the ones to eradicate what they earn their profits on does not seem logical to me at all. Again, I agree with LeBaron's views that the world needs a new, or stronger, labour governance. The problem with CSR lies within the existing business models and their supply chain distribution, which needs to change. It is more important to address the root problems of modern slavery than to wait around for CSR promises that will never happen. The world needs real change in order to protect the exploited workers' that are victims of this modern slavery era. Instead of CSR and self-regulation by companies, we need (more) binding law with stronger enforcement mechanisms and sanctions for companies (and countries) that are not following the rules. Perhaps the ILO or UN could introduce sanctions for the ones not complying with their conventions, standards and principles. Examples of such sanctions could

be financial penalties and trading restrictions. The aforementioned would then have to outweigh the economical profits that the “bad actor”, engaged in modern slavery, has for it to have any effect to stop the harmful behaviour. However, this approach would be very difficult to implement since states almost certainly would be less likely to join international conventions etc. Also, enforcing sanctions against those countries that do not want to comply with the requirements can be difficult, as it is not possible to go to war with a country that does not follow them.

Nevertheless, there might be other ways to incorporate sanctions. Maybe bilateral investment treaties could incorporate more human rights standards, like the ones we see from the UN and ILO, which then would make it possible for a party to sue under a bilateral instrument. A company could in that case then get a court or arbitration order against a country that breaches the bilateral investment agreement and get compensated for it. Let us demonstrate this with a hypothetical example of the case study example with H&M and China; if they would have entered into such an agreement, H&M could claim that China breaches their bilateral investment agreement, and thus H&M’s will to invest in China, by using forced labour in their production of cotton. In this way, there would be no need for an international or UN “police” or “labour inspectorate”. Also, another aspect could be to maybe expand national jurisdictions, with effective sanctions and enforcement mechanisms, to include a company’s activity in another country (China for example). If such legislation would hold companies accountable for what they are doing in another state, which has a weak sanction system, then that might be an efficient way of tackling it. To address the companies engaging in modern slavery rather than the actual factory where it happens could thus be another way to tackle modern slavery. The areas mentioned here could hence be subject to further research.

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