

2 Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains

Claire Bright

► Introduction

In order to fulfil their responsibility to respect human rights under the United Nations (UN) *Guiding Principles on Business and Human Rights* (UNGPs), companies are expected to exercise human rights due diligence.¹ The concept of human rights due diligence refers to a “bundle of interrelated processes” (UNGA 2018b, para. 10) through which companies can identify, prevent, mitigate and account for the actual and potential adverse human rights impacts that they may cause or contribute to through their own activities, or which may be directly linked to their operations, products or services by their business relationships.

The UNGPs specify that the corporate responsibility to respect human rights applies in relation to all “internationally recognized human rights”, which are understood to include, at a minimum, those expressed in the International Bill of Human Rights and the fundamental rights in the eight ILO core Conventions, as set out in the Declaration on Fundamental Principles and Rights at Work. The convergence between labour rights and human rights has also been recognized in the literature (see, for example, Alston 2005), and there is now a wide consensus that fundamental labour rights are at the core of human rights (Mantouvalou 2012; Bellace, Blank, and ter Haar 2019).

The UNGPs have been highly influential (Smit et al. 2020a, 18), and the concept of human rights due diligence was subsequently incorporated in several other international instruments: for example, the OECD Guidelines for Multinational Enterprises, revised in March 2011 (OECD 2011), and the

1 UNGPs, Guiding Principle 15.

Due Diligence Guidance for Responsible Business Conduct (OECD 2018) and related sector and issue-specific guidelines, and the ILO MNE Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO 2017).

However, the soft law character of these instruments entails that they do not create legally binding obligations for either States or companies (Ramasastry 2013; López 2013, 58). In the absence of implementing regulation, the corporate responsibility to respect remains more of a moral obligation, which is rooted in social expectations (UNGA 2008, 17) – rather than a legal obligation. As a result, the fulfilment of the corporate responsibility to respect, and the correlated expectation to exercise human rights due diligence, rely on voluntary approaches by companies. However, a number of studies have highlighted the limitations of such voluntary approaches (Vigeo Eiris 2016; CHRB 2019; Smit et al. 2020a, 16). The 2020 Corporate Human Rights Benchmark assessment, which assessed the human rights disclosures of 230 global companies across five sectors identified as presenting a high risk of adverse human rights impacts, noted that, “human rights due diligence, despite being so crucial for the effective management of human rights risks, remains an area of poor performance across all sectors, with nearly half of the companies assessed (46.2%) failing to score any points for this part of the assessment” (CHRB 2020, 3). The report further highlighted a disconnect between commitments and processes on the one hand and actual performance and results on the other, and affirmed that “even for those companies with robust commitments and management systems, these do not automatically translate at a practical level, with allegations of severe human rights violations regularly raised, even against some of the highest scoring companies.” (CHRB 2020, 3)

In the absence of binding regulatory frameworks requiring companies to undertake human rights due diligence,² companies may continue to fall short of their corporate responsibility to respect human rights. They may also be constrained in their efforts for fear of being put at a competitive disadvantage compared to companies that are laggards in the field (Joseph 2004, 154). As well as being prejudicial to companies themselves, the lack of binding regulation and over-reliance on voluntary approaches by companies have been criticized as being prejudicial to rights holders, who have been adversely affected by business-related activities (Marx, Bright, and Wouters 2019).

The literature has noted that efforts to regulate labour rights abuses across global supply chains have remained limited to date (Nolan and Bott 2018). Nonetheless, in recent years, a growing number of countries have started to

² It should be noted that there are also other sources of legal obligations besides human rights due diligence laws which are relevant for corporate responsibility; however, the study of these sources are beyond the scope of this paper.

adopt, or are currently considering, legislative measures to that effect (Groulx Diggs et al. 2020, 507). First steps of regulatory efforts have focused on legislation seeking to incentivize the exercise of human rights due diligence in relation to certain labour rights issues through reporting requirements. In a second step, another type of legislation has emerged that goes beyond mere reporting requirements to create a positive duty for companies to exercise human rights due diligence. This paper endeavours to provide a comparative analysis of these different developments and evaluate their contribution in upholding labour standards in global supply chains.

▶ 1. Methodology

The purpose of this paper is to facilitate discussions around regulatory measures seeking to encourage or require companies to exercise human rights due diligence in relation to labour issues in the global supply chain. In this perspective, it proposes a mapping of key existing legislation and legislative initiatives at the national level. Even though the main focus of the paper is on Europe, other relevant legislation or initiatives of particular comparative value will be analysed. The ambition of the paper is not to be exhaustive but rather to map key legislation and legislative initiatives in order to gain a better understanding of the current legal landscape.

Based on extensive desk-based comparative research, the paper establishes a typology of two types of existing key legislations based on the type of obligations that they place on companies:

(1) *Reporting legislation*: This category incorporates national legislations that aim to encourage the exercise of human rights due diligence through reporting requirements. Two key examples of national legislations are analysed in particular: the United Kingdom (UK) Modern Slavery Act and the Australian Modern Slavery Act, which is of comparative value.

(2) *Mandatory human rights due diligence legislation*: This category encompasses national legislations that require companies to undertake substantive human rights due diligence. Two examples of such legislation which have been adopted to date are analysed in this paper – the French Duty of Vigilance Law and the Dutch Child Labour Due Diligence Act.

This paper also examines selected legislative proposals of particular comparative value because of the level of detail of the draft put forward and their specific characteristics. These are the Norwegian Draft Law and the Swiss Responsible Business Initiative and Indirect Counter-Proposal.

The paper compares and assesses the effectiveness of the various approaches based on an analysis of selected criteria. The paper concludes by considering the lessons that can be drawn from legislations and legislative initiatives analysed. It provides a framework, which can be used to inform policy-makers and other stakeholders in the evaluation of new legislation seeking to improve labour standards and decent work in global supply chains.

► 2. Mandatory reporting regulations

In recent years, a growing number of jurisdictions have introduced mandatory reporting legislation (Philipps, LeBaron, and Wallin 2018) in an attempt to improve corporate accountability by requiring companies to make certain information publicly available so as to facilitate public scrutiny by relevant stakeholders such as civil society, consumers and investors (Sinclair and Nolan 2020). The wave of regulatory measures using transparency to fight forced labour, in particular, in companies' supply chains was spearheaded by the California Transparency in Supply Chains Act of 2010,³ which requires certain large companies to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains. The legislation inspired other similar legislations around the world, such as the UK Modern Slavery Act which followed suit five years later and the Australian Modern Slavery Act which was adopted in 2018.

2.1 The UK Modern Slavery Act 2015

The UK Modern Slavery Act (UK MSA)⁴ was adopted in March 2015. Among the **aims of the legislation**, one key purpose is to address the role of businesses in “preventing modern slavery from occurring in their supply chains and organisations”. The legislation seeks to promote a “race to the top” by encouraging companies to exercise transparency in their operations, thus increasing competition to drive up standards and creating a “level playing field” between compliant and non-compliant businesses. (UK Home Office 2017, 3).

3 California Transparency in Supply Chains Act of 2010, Senate Bill No 657; https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB657.

4 UK Public General Acts, 2015 c.30, Modern Slavery Act 2015; <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

Main provisions

The **companies covered** by the UK MSA are those with an annual turnover of at least £36 million,⁵ which carry on a business, or part thereof, in any part of the UK, regardless of where they are incorporated. As a result of its broad scope, the UK MSA applies to an estimated total of 12,000 companies (Shift 2015, 2). In terms of **human rights and labour issues covered**, the legislation focuses narrowly on questions of modern slavery, which include the offenses of slavery, servitude, forced or compulsory labour, as well as human trafficking.⁶ The UK MSA does not cover other types of human rights or labour rights issues.

The **duties prescribed** in the UK MSA include, among others, the preparation of a yearly “slavery and human trafficking statement” disclosing the steps that the company has taken “to ensure that slavery and human trafficking is not taking place (i) in any of its supply chains, and (ii) in any part of its own business”.⁷ Alternatively, a company can issue a statement that it has taken no such steps. Three minimum requirements that must be satisfied by the statement: (1) it must be published on the company’s website (if it has one) and include a link to it in a prominent place on that website’s homepage; (2) it must be approved by the board of directors (or equivalent management body); and (3) signed by a director (or equivalent).⁸

The UK MSA does not mandate what should be reported in the statement but simply specifies that statements *may* include, inter alia, information about the company’s due diligence processes and other activities to counter slavery and human trafficking in its operations. While the **reporting obligation** covers both a companies’ own activities as well as those of entities in their supply chains, it does not extend to the entirety of the supply chain.⁹

5 The annual turnover threshold does not need to be generated in the UK and includes the turnover of the company as well as of any of its subsidiaries, including those operating wholly outside the UK (UK Home Office 2017, 7).

6 Slavery is defined by reference to the 1926 Slavery Convention; forced or compulsory labour is specified by reference to the ILO’s Forced Labour Convention, 1930 (No. 29) and its Protocol; and human trafficking is defined as requiring “that a person arranges or facilitates the travel of another person with a view to that person being exploited” (UK Home Office 2017, 17). In addition, the Home Office’s guide specifies that the worst forms of child labour, as defined by article 3 of the ILO Convention (No. 182), are very likely to constitute modern slavery (UK Home Office 2017, 17–18).

7 UK MSA, Section 54.

8 UK MSA, Section 54.

9 The guide issued by the UK Home Office clarifies in this respect that “this does not mean that the organisation in question must guarantee that the entire supply chain is slavery free. Instead, it means an organisation must set out the steps it has taken in relation to any part of the supply chain (that is, it should capture all the actions it has taken)” (UK Home Office 2017, 5).

As far as ***enforcement mechanisms*** are concerned, the Secretary of State may bring civil proceedings in the High Court requiring compliance if a company does not meet its reporting obligation. Failure to comply with the court's injunction constitutes contempt with a court order and is punishable by an unlimited fine (UK Home Office 2017, 6). However, this mechanism has never been used, and there have been no penalties to date for non-compliant organizations (Butler-Sloss, Miller, and Field 2019, 14).

Effectiveness and limitations

The UK MSA has contributed to greater awareness of modern slavery in companies' supply chains (Butler-Sloss, Miller, and Field 2019, 14) and has fostered internal conversations within companies (Smit et al. 2020a, 104), including at the senior level (Ergon Associates 2018). The number of CEOs and other senior executives actively involved in addressing modern slavery is said to have doubled since the act has come into force (Lake et al. 2016).

However, the obligation prescribed by the UK MSA is limited to a mere reporting requirement and does not place a legal duty on companies to exercise substantive human rights due diligence (Ergon Associates 2018, 2; Smit et al. 2020a, 172). Nor does it seek to assess the adequacy of the due diligence steps taken, if any (Nolan 2017, 42, 44). In fact, the law expressly allows companies not to take any steps in this respect.

Studies have suggested that, in practice, compliance with the reporting requirement has remained largely cosmetic (Nolan and Bott 2018, 53; Ergon Associates 2016), with many companies publishing generic statements committing to fight modern slavery (BHRRC 2018, 3) but failing to report on the human rights due diligence undertaken (Core Coalition 2017, 8). In the absence of monitoring, the quality of the statements issued have been poor (Butler-Sloss, Miller, and Field 2019, 43), and a number of companies have been approaching their obligations as a mere tick-box exercise (Butler-Sloss, Miller, and Field 2019, 39). In addition, many statements are not compliant with the basic requirements of the legislation, in particular with regard to senior level approval (Ergon Associates 2018, 2). Furthermore, since the duty to report on the steps taken does not have to cover the entirety of the supply chain, this creates issues of "companies offloading their responsibilities at the first tier" (Butler-Sloss, Miller, and Field 2019, 42).

The lack of an effective enforcement mechanism has led to widespread issues of non-compliance (Smit et al. 2020a, 246), with an estimated 40 per cent of eligible companies not complying with the legislation at all (Butler-Sloss, Miller, and Field 2019, 42). As a result, the legislation has been criticized by civil society organizations and leading companies alike for not having succeeded in its objective of creating a level playing field between those businesses that act

responsibly and those that need to change their policies and practices (Butler-Sloss, Miller, and Field 2019, 14). The basic rationale behind the approach of the UK Modern Slavery Act is that consumers, investors and non-governmental organizations (NGOs) would apply the necessary pressure in areas where they believed a company had not taken sufficient steps (UK Home Office 2017, 6). However, this approach has shown its limitations.

In its response to the transparency in supply chains consultation – which sought views from businesses, public bodies, investors and civil society on various options to strengthen the UK MSA – the UK Government recently committed to introducing new measures which would address a number of the issues identified (Home Office and Victoria Atkins MP 2020). These would include notably mandatory reporting areas that the modern slavery statements will need to cover (and which will include the topics that are currently suggested to be incorporated in companies' statements, and notably their due diligence processes), the requirement for companies to publish their statements on a new digital government reporting service, the extension of the requirements set out in the UK MSA to public bodies with a budget of £36 million or more, and the establishment of a single enforcement body for employment rights to “better protect vulnerable workers and ensure a level playing field for the majority of employers complying with the law” (Home Office and Victoria Atkins MP 2020).

Nonetheless, this will not change some of the more fundamental limitations of the UK Modern Slavery Act. In particular, the literature has converged in highlighting the limitations of the approach which requires mandatory reporting while failing to prescribe a duty to exercise substantive human rights due diligence and to provide for an assessment of the adequacy of the due diligence exercised (BHRRC 2018, 25; Nolan and Bott 2018, 53; Macchi and Bright 2020, 224).

Another important limitation of the legislation lies in the fact that it does not address any of the recurring obstacles in access to remedy faced by victims of corporate human rights abuses and, more specifically, by victims subjected to forced labour or human trafficking by UK companies or their business partners in the UK or abroad (Macchi and Bright 2020, 226). In addition, the act does not require reporting on companies' grievance mechanisms, where issues of modern slavery or human trafficking have been found to have taken place (Shift 2015, 3).

Finally, it has been noted that the narrow focus of the legislation on a specific labour issue could produce unintended effects by creating “a strong driver for businesses to prioritise efforts to address that particular issue, even if, objectively it would not qualify as one of the salient human rights risks facing that organisation” (Clifford Chance 2019, 7).

2.2 The Australian Modern Slavery Act 2018

Following in the footsteps of its predecessors, the Australian Modern Slavery Act (Australian MSA)¹⁰ was adopted in 2018 (Commonwealth Modern Slavery Act 2018, 13). The legislation entered into force on 1 January 2019. According to the Australian Department of Home Affairs, the *aims of the legislation* are to “increase business awareness of modern slavery risks, reduce modern slavery risks in the production and supply chains of Australian goods and services, and drive a business ‘race to the top’ to improve workplace practices” (Commonwealth Modern Slavery Act 2018, 13).

Main Provisions

The *companies covered* by the Australian MSA are large entities with an annual consolidated revenue¹¹ of more than AU\$100 million which are domiciled in Australia or which carry out business in Australia. An estimated 3,000 companies fall within the scope of the legislation (Sinclair and Nolan 2020, 167). With regard to *human rights and labour issues*, the act covers only issues related to modern slavery.¹²

The *duties prescribed* by the Australian MSA require relevant entities to report annually on the risks of modern slavery in their operations and supply chains, and actions the actions taken to address those risks, including the due diligence and remediation processes. The statement must be approved by the principal governing body of the entity, signed by a responsible member of the entity and communicated to the relevant minister within six months.¹³ The Australian MSA prescribes that the statement must cover seven mandatory criteria that comprise “the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes”.¹⁴

10 Australian Modern Slavery Act 2018, No 153, 2018; <https://www.legislation.gov.au/Details/C2018A00153>.

11 The annual consolidated revenue includes the total revenue of the entity as well as all the total revenue of all the controlled entities, considered as a group.

12 Modern slavery is defined by the legislation as: conduct which would constitute an offence under existing provisions of the Commonwealth Criminal Code (Divisions 270 and 271); trafficking in persons, as defined in article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime; or the worst forms of child labour, as defined in article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

13 Australian MSA, Section 14(2).

14 Australian MSA, Section 16(1)(d).

The ***business activities covered by the duty*** comprise the entirety of the supply chain, since the reporting obligation involves the “risks of modern slavery in the operations and supply chains of reporting entities and entities owned or controlled by those entities”.¹⁵ In case of non-compliance with the reporting obligation, the ***enforcement mechanism*** authorizes the relevant minister to send a written request to non-complying entities, asking them for an explanation or requiring them to take remedial action. The minister may publish information about a non-complying entity should it fail to comply with the request.¹⁶

Effectiveness and limitations

Given that the legislation only entered into force on 1 January 2019, there has not yet been any comprehensive evaluation of its effectiveness. The legislation provides for a three-year review, which will present an opportunity to consider potential improvements (Sinclair and Nolan 2020, 169). However, a few preliminary comments may be offered based on the existing literature. The Australian MSA is largely modelled on the UK MSA but differs in important points.

Firstly, the Australian MSA provides for the creation of a centralized government-run repository, known as the Modern Slavery Statements Register, which is freely available to the public on the internet.¹⁷ Scholars have noted that this should create greater certainty about publication and encourage higher rates of reporting (Sinclair and Nolan 2018).

Secondly, the Australian MSA sets out mandatory criteria against which companies must report, which include the measures taken to assess the effectiveness of their actions.¹⁸ Thus, it goes a step further than the UK MSA in incentivizing companies to conduct human rights due diligence by mandating reporting on such processes. Scholars have observed that this will allow for “more consistent and comparative statements” (Sinclair and Nolan 2020, 167) and create “an expectation that entities will undertake these actions as part of their reporting process” (Sinclair and Nolan 2018).

Thirdly, the reporting obligations are not limited to the private sector but extend to the Australian government itself, as well as public companies that have a consolidated revenue of at least AU\$100 million. This allows extending the scope of the legislation to public buyers, who have a heightened responsibility to fight human rights violations in supply chains (Martin-Ortega 2013).

¹⁵ Australian MSA, Part 2, Section 11.

¹⁶ Australian MSA, Part 2, Section 11.

¹⁷ Australian MSA, Part 3, Sections 17–20.

¹⁸ Australian MSA, Part 2, Sections 16 and 16A.

However, despite these noteworthy improvements, the Australian MSA suffers from some of the same limitations as the UK MSA. To begin with, it only requires companies to report, rather than to act, and, as scholars have pointed out, “the assumption that greater transparency and availability of information about companies’ activities will translate into both improvements in practice and increased corporate accountability remains largely untested” (Sinclair and Nolan 2020, 169). Moreover, the lack of effective enforcement mechanisms and financial penalties in case of non-compliance risks leading to issues of non-compliance similar to those of the UK MSA. In addition, the Australian MSA does not contain any provisions to facilitate access to remedy for victims of modern slavery (Macchi and Bright, 226). Finally, the Australian MSA, like the UK MSA, focuses on a single issue (that is, modern slavery), potentially to the detriment of other more salient issues. Scholars have noted that “the modern slavery approach enables states to create the appearance of being tough on modern slavery without having to adopt stronger or more effective labour or business regulation. For business, the modern slavery framework does not involve third parties such as unions and civil society in a formal system of enforcement in the same way that other laws do (Landau and Marshall, n.d.). The Australian Department of Home Affairs’ Guide seems to acknowledge this limitation, as it recognizes that not addressing other poor working conditions and limiting efforts to serious exploitation may also lead to modern slavery (Commonwealth Modern Slavery Act 2018, 8).

Overall, legislations on mandatory reporting have represented a first step towards greater corporate accountability (see chapter 1), and reporting is one of the steps of the human rights due diligence process as identified in the UNGPs. However, the UNGPs envisage it as the last core element of the human rights due diligence process, once the company has assessed its actual and potential human rights impacts, integrated and acted upon the findings and tracked responses. Detaching the reporting requirement from these other elements makes it lose its legitimacy (Sinclair and Nolan 2018). Despite their variations in terms of institutional design, reporting regulations have done little more than reinforcing the status quo by providing statutory endorsement of existing private voluntary initiatives and reporting (LeBaron and Rühmkorf 2019). These limitations point to the need to go beyond mere reporting towards more stringent requirements to exercise substantive human rights due diligence in order to uphold labour standards in companies’ operations and throughout their supply chains.

▶ 3. Mandatory human rights due diligence regulations

A number of jurisdictions have sought to implement the UNGPs and turn the soft law requirement to exercise human rights due diligence into a hard law requirement (Macchi and Bright 2010, 218). In this respect, different types of regulations exist. Some of them focus on a single labour issue, whereas others provide for an overarching framework (Bright et al. 2020, 18). They also differ in terms of scope of application and enforcement mechanisms. Two key examples of such regulations are provided by the Dutch Child Labour Due Diligence Act and the French Duty of Vigilance Law. They will be analysed in turn.

3.1 The Dutch Child Labour Due Diligence Act

Adopted on 14 May 2019, but not yet in force (Hoff 2019), the Dutch Child Labour Due Diligence Act (CLDDA)¹⁹ mandates companies selling goods or providing services to Dutch end users to exercise substantive human rights due diligence in relation to child labour (Bright et al. 2020, 27). The CLDDA is framed in terms of consumer protection (Enneking 2020, 178), the *aim of the legislation* being to ensure that goods and services brought onto the Dutch market are free from child labour so that consumers can buy them with “peace of mind”.²⁰

Main provisions

The legislation *applies to all companies* that sell or supply goods or services to Dutch end users.²¹ There are no restrictions in terms of the size of the companies, their turnover or their legal form, although certain categories of companies might be exempted from the legislation by future general administrative orders. These may pertain to smaller companies and companies from

19 The Dutch Child Labour Due Diligence Act 2019. An unofficial English translation of the act, commissioned by the law firm of Ropes & Gray, is available for downloading at <https://www.ropesgray.com/en/newsroom/alerts/2019/06/Dutch-Child-Labor-Due-Diligence-Act-Approved-by-Senate-Implications-for-Global-Companies>. For the original Dutch language text, see https://www.eerstekamer.nl/behandeling/20170207/gewijzigd_voorstel_van_wet/document3/f=vkbbk8pud2zt.pdf.

20 CLDDA, Preamble.

21 CLDDA, Article 4.

low-risk sectors (Enneking 2020, 174). Companies that are merely transporting goods are exempt from the law.²² In terms of **human and labour rights**, the CLDDA only covers issues related to child labour.²³

The **duties prescribed** by the CLDDA include the exercise of due diligence in order to prevent the use of child labour during the production of goods sold, or services provided, to the Dutch market. More particular, companies concerned are required: (1) to investigate “whether there is a reasonable suspicion that the goods or services to be supplied have been produced using child labor”²⁴; (2) if this suspicion arises, to adopt and implement a plan of action; and (3) to issue a statement declaring that the company has exercised due diligence as set out in the legislation.²⁵ Under the CLDDA, the **scope of the human rights due diligence obligation** extends throughout the supply chain, since companies are expected to investigate whether there is a risk that child labour has been used in the production of the goods sold or services supplied (Enneking 2020, 176).

The law provides for a state-based **enforcement mechanism** through a public supervising authority in charge of monitoring compliance with the legislation, and which may impose an administrative fine for failure to comply with the law.²⁶ Third parties affected by a company’s failure to comply may submit their claims to the public supervising authority on the basis of concrete evidence of non-compliance.²⁷ The public supervisory authority can give legally binding instructions to the company, accompanied by a time frame for execution, and the company may be fined up to €8,200 in case of failure to submit the statement, or up to 10 per cent of its worldwide annual turnover in case of failure to exercise due diligence (Littenberg and Blinder 2019). In addition, directors may incur criminal sanctions in case of repeat offenses.²⁸

22 CLDDA, Article 4.4.

23 Child labour is defined by reference to the ILO Worst Forms of Child Labor Convention, 1999 (No. 182) as well as to the Minimum Age Convention, 1973 (No. 138) in the situation where the work takes place on the territory of a State Party to that Convention. Otherwise, child labour is defined as: “(i) any form of work, whether or not under an employment contract, performed by persons who are subject to compulsory schooling or who have not yet reached the age of 15, and (ii) any form of work, whether or not under an employment contract, performed by persons who have not yet reached the age of 18, insofar as such work, by virtue of the nature of the work or the conditions under which it is performed, may endanger the health, safety or morality of young persons”. CLDDA, Article 2(c).

24 CLDDA, Article 5.1.

25 The law mandates the appointment of a public supervising authority to which the statement must be sent, and which is in charge of publishing the declarations in an online registry on its website (Enneking 2020, 175).

26 CLDDA, Article 3.1 and Article 7.

27 CLDDA, Articles 3.2.–3.4.

28 CLDDA, Article 9.

Effectiveness and limitations

Since the Dutch CLDDA has not entered into force, its implementation has not yet been evaluated, and any remarks related to its effectiveness will therefore remain preliminary. Scholars have highlighted that the legislation is overly focused on consumer protection and does not contain provisions that would ensure access to remedy for victims of child labour (Enneking 2020, 177). Nor does it require the exercise of due diligence in relation to goods which are not sold to end-users but are simply brought onto the Dutch market for further processing purposes. In addition, it leaves unaddressed issues of child labour linked to Dutch companies in other markets. Indeed, the legislation does not cover the goods and services sold by Dutch companies outside the Netherlands, and, as a result, it does not mandate Dutch companies to exercise due diligence to prevent and address issues of child labour concerning the goods sold or services supplied outside the country (Bright et al. 2020, 30). Furthermore, scholars have pointed out the limitations of the reporting requirement, which is a one-off exercise that does not need to be repeated annually, thus failing to incentivize a continuous exercise of human rights due diligence as required by the UNGPs (Macchi and Bright 2020, 231).

In addition, as argued by some scholars, the obligation “could also be understood as covering only the first tier of a supply chain if interpreted narrowly” (Krajewski and Faracik 2020, 10). In particular, the legislation specifies that companies can discharge their due diligence obligations by purchasing goods or services from companies that have issued a statement in this respect (Enneking 2020, 176), which may suggest that companies can fulfil their due diligence obligation simply by considering their immediate contractual partners (Krajewski and Faracik 2020, 10). Finally, the law requires the exercise of human rights due diligence only in relation to child labour. As noted above in relation to reporting regulations focusing on modern slavery, this may spur companies to prioritize their efforts to address this particular issue over potentially more salient human rights risks for the company in question (Chance 2019, 7). In turn, other types of legislation, such as the French Duty of Vigilance Law, have opted for an overarching approach.

3.2 The French Duty of Vigilance Law

The French Duty of Vigilance Law (DVL)²⁹ was adopted on 21 February 2017 and enacted on 27 March 2017. It was a pioneer legislation worldwide in turning the soft law human rights due diligence expectations under the UNGPs into hard law and extending it to health and safety and environmental issues (Barraud de Lagerie et al. 2020 and chapter 5). Introduced in the wake of the Rana Plaza tragedy, the **aims of the legislation** are two-fold: (i) to provide access to remedy for individuals and communities whose human rights were adversely affected by the activities of French companies or suppliers in their global supply chains; and (ii) to enhance corporate accountability.³⁰

Main provisions

The law **applies to companies** incorporated or registered in France under French company law as *sociétés anonymes*, *sociétés en commandite par actions* and European companies (Brabant and Savourey 2017, 3). Among these companies, the French DLV only applies to those employing, for two consecutive fiscal years, at least 5,000 people in France (either directly or through their French subsidiaries), or at least 10,000 people worldwide (through their subsidiaries located in France and abroad).³¹ The total number of companies affected is estimated between 200 and 250 (Duthilleul and de Jouvenel 2020). With regard to **human rights and labour issues**, the DLV covers “severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks”³².

The **duties prescribed** in the French DLV require the companies concerned to put in place, effectively implement and disclose a vigilance plan (*plan de vigilance*),³³ which include “the reasonable vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls ... as well as from the operations

29 Loi no. 2017–399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre. [For an English version of the law, see http://www.respect.international/french-corporate-duty-of-vigilance-law-english-translation/.](http://www.respect.international/french-corporate-duty-of-vigilance-law-english-translation/)

30 Even though the version of the legislation which was finally adopted on 21 February 2017 was watered down compared to the initial version, it nonetheless retained these two initial objectives (Bright 2020).

31 It therefore applies both to French parent companies and to the direct or indirect subsidiaries of companies whose head office is located abroad, and which satisfy these criteria.

32 French DVL, Article 1 (French Commercial Code, Article L. 225-102-4).

33 See chapter 5 in this volume for details regarding the vigilance plans.

of the subcontractors or suppliers with whom it maintains an established commercial relationship”³⁴.

The **due diligence obligations** cover the **business activities** of the concerned companies themselves, as well as those of companies under their control,³⁵ and of partners with whom they have an “established business relationship”³⁶.

In terms of enforcement, the French DVL sets out two judicial **enforcement mechanisms**. The first is an injunction to ensure corporate compliance with the vigilance obligations set out in the law. Under this mechanism, any interested party³⁷ can serve a non-complying company a formal notice (*mise en demeure*) asking the company to comply with its obligations to elaborate and publish its vigilance plan. In case of persisting or unsatisfactory compliance three months after the notice has been served, the interested party can seek an injunction with the relevant French court to order the company to comply, with periodic penalty payments in case of continued non-compliance.³⁸ To date, seven formal notices have been served to several French businesses – including some of its largest companies such as Total and EDF – for their alleged failure to comply with various aspects of the French DVL; all of these notices are currently pending (Brabant and Savourey 2020). The second enforcement mechanism provides for the possibility of remediation when harm has occurred which could have been prevented by the execution of the due diligence obligations set forth by the law. Interested parties can file civil proceedings, in the conditions set forth under French Tort Law.

Effectiveness and limitations

Various reports have evaluated the implementation of the French DVL over the first three years since its adoption. The 2020 report for the French Government on the implementation of the law noted that, as a result of their corporate culture or of the pressure of NGOs and public opinion, many companies were already exercising human rights due diligence prior to the adoption of the French Duty of Vigilance Law (Duthilleul and de Jouvenel 2020, 31). A 2018 report by Shift found that French companies had a slightly higher level of

34 French DVL, Article 1 (French Commercial Code, Article L. 225-102-4).

35 The French Commercial Code defines the concept of control as “exclusive control”, enabling the company to “have decision-making power, in particular over the financial and operational policies of another entity” (Brabant, Michon, and Savourey 2017, 2).

36 The notion of “established business relationships” covers stable, regular commercial relationships of a certain volume of business, with or without contract, which can be reasonably expected to last (Cossart, Chaplier, and Beau de Loménie 2017, 320).

37 Interested parties include affected individuals or communities, employees, consumers, trade unions and NGOs (Beau de Loménie and Cossart 2017, 5).

38 French DVL, Article 1 (French Commercial Code, Article L. 225-102-4).

reporting than other companies. On a scale of 1 to 5, French companies had an average level of 2.5, compared to a level of 2 for the average non-French company (which included over 130 of the largest companies worldwide) (Langlois 2018, 6). Nonetheless, several reports have documented the positive impacts that the French Duty of Vigilance Law has had on the due diligence practices of French companies, pushing them further towards the implementation of the UNGPs. For instance, according to a recent report from *Entreprises pour les droits de l'homme* (EDH), the law prompted 70 per cent of companies to start mapping risks of adverse human rights and environmental impacts or to revise existing mappings and processes (EDH 2019, 7). The report also highlights that 65 per cent of companies now have a dedicated process of identifying risks of adverse human rights impacts (while only 30 per cent had such a process prior to the adoption of the law) (EDH 2019, 13).

However, there is still room for progress. A report by a coalition of French NGOs, analysing 80 vigilance plans published between March and December 2018 (first year of the application of the law), concluded that “companies must do better” (ActionAid et al. 2019). The report revealed that the majority of the vigilance plans tended to be inward-looking, focusing on the risks to the business itself, when they should be outward looking, focusing on the risks to people and the planet (ActionAid et al. 2019, 10). Issues of non-compliance persist (Duthilleul and de Jouvenel 2020, 7; ActionAid et al. 2019, 10). A study has pointed to the insufficient and heterogeneous implementation of the law among the complying and eligible companies. It emphasizes that the concept of the duty of vigilance remains vague and is unevenly understood by stakeholders (Duthilleul and de Jouvenel 2020, 7). In the absence of a publicly available database, a great amount of uncertainty surrounds the question of which companies are actually concerned (Bright et al. 2020, 31) – to the point that it is currently impossible to establish a reliable list of those companies (Duthilleul and de Jouvenel 2020, 20). In addition, the legislation does not define what constitutes “severe violations”, which may generate legal uncertainty (Krajewski and Faracik 2020, 6). To remedy some of these weaknesses, it has been recommended to nominate a public authority which would be in charge of: (i) monitoring the promoting and implementation of the law; (ii) contributing to the harmonization of corporate practices; and (iii) promoting sectorial and multi-party approaches (Duthilleul and de Jouvenel 2020, 7).

Several reports have shown that, in practice, consultation with external stakeholders has remained limited (Barraud de Lagerie et al. 2020, 5; ActionAid et al. 2019, 13; Ibañez et al. 2020, 56). In this respect, the French DVL encourages the consultation among relevant stakeholders in the elaboration of the vigilance plan, which can take place, where appropriate, within multi-stakeholder initiatives that exist in the subsidiaries or at territorial level. However, the

legislation does not make such consultation a legally binding obligation at the drafting stage of the plan. It only imposes the consultation with trade unions about setting up the alert mechanism. These findings were corroborated by the recent report for the French Government, which observed that the insufficient dialogue with relevant stakeholders and more specifically NGOs was one of the main pitfalls of the implementation of the law (Duthilleul and de Jouvenel 2020, 37).

Furthermore, scholars have criticized the narrow scope of application of the law, which, as the result of a compromise in the negotiations leading to the adoption of the legislation, covers only a small number of large French companies of a certain corporate form (Brabant and Savourey 2017, 3). However, it is worth noting that, despite of its narrow scope of application, the French DVL has a trickle-down effect to a large number of entities down the supply chain of the companies concerned.

Finally, although the French DVL brings greater legal certainty on corporate accountability by making an explicit connection between human rights due diligence and civil liability, and by defining the conditions by reference to the general principles of French tort law, it nonetheless falls short of the UNGPs requirements of ensuring access to remedy for the victims (Macchi and Bright 2020, 235) and reducing legal and practical barriers that could lead to a denial of justice. In particular, the burden of proof remains on the claimants who have to show that the damage suffered was the result of a breach of the vigilance obligations on the part of the parent or lead company which, in practice, is likely to constitute a serious obstacle to accessing remedy for affected individuals, especially given the lack of access to information and to internal documents that often prevent claimants from substantiating their claims (Marx, Bright, and Wouters 2019, 15). To date, no legal action has been brought on that basis.

Despite of these limitations, the French DVL has inspired a number of new legislative initiatives in the EU and beyond.

► 4. Legislative initiatives

As the momentum for mandatory human rights due diligence is growing, a number of legislative initiatives have surfaced. Some have opted for a hybrid model with differentiated requirements (of transparency and human rights due diligence) depending on the type of companies or the issues concerned, while others prefer an overarching mandatory human rights and environmental due diligence applying to all types of companies.

4.1 The Norwegian Draft Act

The Norwegian Draft Act “relating to transparency regarding supply chains, the duty to know and due diligence” (Draft Act)³⁹ was published in November 2019. The aims of the legislation are twofold: (i) provide stakeholders – consumers, trade unions, civil society organizations – with the right to information on the impacts of companies on human rights and working conditions, enabling them to make informed decisions about purchases and investments,⁴⁰ and (ii) advance respect for and improve fundamental human rights and decent working conditions in businesses and their supply chains.⁴¹

The Draft Act provides for the **application of different types of duties** based on the size of a company. The Draft Act makes a distinction between (a) *all* enterprises which offer goods and services in Norway, regardless of their size or country of incorporation; and (b) *larger enterprises* which are covered by specific sections of the Norwegian Accounting Act or which exceed certain figures in sales income or assets or number of employees in an accounting year. The **issues covered** by the Draft Act relate to fundamental human rights and decent work.

Among the **duties prescribed**, the first one for any enterprise operating in Norway is the “duty to know” of “salient risks that may have an adverse impact on fundamental human rights and decent work, both within the enterprise

39 Report from the Ethics Information Committee, appointed by the Norwegian Government on June 1, 2018 (hereafter: Report from the Ethics Information Committee). Report delivered on November 28, 2019. Draft translation from Norwegian of sections of Part I: https://www.business-humanrights.org/sites/default/files/documents/Norway%20Draft%20Transparency%20Act%20-%20draft%20translation_0.pdf.

40 Report from the Ethics Information Committee, 3.

41 Report from the Ethics Information Committee, 1.

itself and in its supply chains”.⁴² Moreover, companies distributing goods to consumers must publish information about their production sites.⁴³ The Draft Act also provides for a correlated right to information, whereby any person is entitled to information about how a company conducts itself with regard to fundamental human rights and decent work within its enterprise and supply chains (for example, information about the enterprise’s work, systems and the steps taken to prevent or reduce adverse impact on human rights and working conditions).⁴⁴

The second duty provided for by the Draft Act, which only applies to larger companies, is the duty to exercise substantive human rights due diligence in relation to “fundamental human rights and decent work”. Larger enterprises would, in addition, be required to publicly report on their due diligence processes regarding actual and potential adverse impacts on human rights and decent work as well as the result of these processes.⁴⁵

Regarding the ***business activities covered by the duty***, the obligations under the Draft Act would extend throughout the supply chain. In terms of the ***enforcement mechanism***, the Consumer Authority and the Market Council would be in charge of monitoring and ensuring compliance with the provisions of the law. In case of non-compliance by a company, sanctions and penalties could be imposed.⁴⁶

Opportunities and challenges

One of the main opportunities of the Norwegian Draft Act stems from the fact that it is the first legislative attempt to explicitly require due diligence in relation to decent work specifically, as well as in relation to human rights more generally. While decent work has been recognized as a human right itself,⁴⁷ fundamental labour rights are generally considered to be limited to four specific issues: child labour, forced labour, non-discrimination and

42 The Draft Act specifies that “the duty to know applies in all cases where the risk of adverse impact is most severe, such as the risk of forced labour and other slavery-like labour, child labour, discrimination in employment and at work, lack of respect for the right to form and join trade unions and undertake collective bargaining and risks to health, safety and the environment in the workplace”. Norwegian Draft Act, Section, 5(2).

43 Norwegian Draft Act, Section 6.

44 Companies would, therefore, have an obligation to respond to specific enquiries for information, which may include the due diligence processes that they have in place. It is worth noting that the duty to know and the correlated right to information differ from a reporting requirement, as they do not oblige a company to prepare and publish an annual statement.

45 Norwegian Draft Act, Section 10(2).

46 Norwegian Draft Act, Section 13.

47 ILO Statement to the Third Committee of the 68th General Assembly, 23 October 2013, https://www.ilo.org/newyork/speeches-and-statements/WCMS_229015/lang--en/index.htm.

freedom of association; many other labour rights may be overshadowed in practice by the focus of companies on certain human rights issues perceived as more prominent. Against this backdrop, certain non-state actors have called for the adoption of an EU-level mandatory human rights due diligence legislation to “include trade unions’ and workers’ rights as main components” and to “ensure the full involvement of trade unions and workers’ representatives in the whole due diligence process” (ETUC 2019).

On the other hand, the limited scope of application of the due diligence duty to larger companies constitutes one of the main limitations of the draft legislation. In addition, it does not contain any liability mechanisms aimed at facilitating access to remedy for the victims. In this respect, the Swiss Responsible Business Initiative had taken a different approach.

4.2 The Swiss Responsible Business Popular Initiative and the Indirect Counter-proposal

In Switzerland, a federal popular initiative known as the Responsible Business Popular Initiative (RBI) for the protection of humans and the environment,⁴⁸ launched by a broad coalition of over 80 NGOs, was submitted in 2016 after having collected over 120,000 signatures (Werro 2019, 166). A popular vote took place on the 29th of November 2020. Although a popular majority supported the adoption of the initiative, it was eventually rejected as it did not obtain the support from a majority of the cantons (the double majority was required as the proposal required an amendment to the Federal Constitution). This means that the indirect counter-proposal which was adopted by the Swiss Parliament in June 2020 will most likely enter into force (Lenz & Staehelin 2020). Nonetheless, the support that the Swiss RBI got from a majority of voters and the content of the legislative initiative gives it a particular comparative value. Its content will therefore be briefly analysed before detailing the content of the counter-proposal.

The Swiss Responsible Business Popular Initiative

The *aim of the RBI* was to amend the Swiss Federal Constitution through the introduction of new provisions aimed at strengthening “respect for human rights and the environment through business”.⁴⁹ **Companies covered** by the

48 Confédération Suisse. Chancellerie fédérale, *Initiative populaire fédérale ‘Entreprises responsables – pour protéger l’être humain et l’environnement’* (2016), <https://www.bk.admin.ch/ch/f/pore/vi/vis462t.html>; for an unofficial English translation, see Swiss Coalition for Corporate Justice (SCCJ). 2016. “The Initiative Text with Explanations,” Factsheet V: 1–2, <https://corporatejustice.ch/about-the-initiative/>.

49 RBI, Article 101a(§2c).

initiative would have been the ones that “have their registered office, central administration, or principal place of business in Switzerland”, including small and medium enterprises that were operating in high-risk sectors.

The RBI *aimed to cover internationally recognized human rights* and international environmental standards. It *prescribed the legal duty* of Swiss-based companies to respect these international rights and standards and to ensure that the companies under their control also adhere to them.⁵⁰ The initiative also provides that, in order to fulfil their duty, companies were required to carry out “appropriate due diligence” in order to “identify real and potential impacts on internationally recognized human rights and the environment; take appropriate measures to prevent the violation of internationally recognized human rights and international environmental standards, cease existing violations, and account for the actions taken”.⁵¹ The due diligence obligation of the RBI would have applies to controlled companies and call *cover all business activities*.

The RBI provided for a *judicial enforcement mechanism* through a specific civil liability provision stipulating that “[c]ompanies are also liable for damage caused by companies under their control”.⁵² The provision is accompanied by a due diligence defence, according to which companies can escape liability “if they can prove that that they took all due care ... to avoid the loss or damage, or that the damage would have occurred even if all due care had been taken”.⁵³

Opportunities and challenges

The associated liability provision creating a strict liability regime constituted one of the strongest points of the draft text, since it would have entailed that parent and lead companies were presumed liable for the human rights or environmental harms caused by entities under their de facto or economic control, unless they could prove that they exercised the required human rights due diligence. This provision effectively reversed the burden of proof (in part) by placing the burden on companies to show that they exercised the appropriate human rights due diligence (Bright et al. 2020, 42), rather than leaving it up to the claimant to prove that the company failed to exercise such

50 The initiative further specifies: “Whether a company controls another is to be determined according to the factual circumstances. Control may also result through the exercise of power in a business relationship.” (RBI, Article 101a(\$2a)). The commentaries on the text of the initiative further explain that, while controlled companies are generally subsidiaries of parent companies, in certain cases, a lead company can also exercise de facto control over another entity through the exercise of economic control (SCCJ, “The Initiative Text,” Art. 101a(\$2a), 1).

51 RBI, Article 101a(\$2b).

52 RBI, Article 101a(\$2c).

53 RBI, Article 101a(\$2c).

due diligence (as in the case of the French DVL). Against this backdrop, the Swiss RBI would have alleviated persistent obstacles to access to remedy faced by claimants in business-related human rights cases. In this respect, the UN Commissioner of Human Rights also noted that a due diligence defence could incentivize companies to meaningfully engage in human rights due diligence activities, thereby constituting an important preventative effect (UNGA 2018a, para. 29; Werro 2019, 175).

The Indirect Counter-proposal

Two indirect counterproposals to the RBI were put forward by the two chambers of the Swiss Parliament. In June 2020, a parliamentary conciliation committee opted for the counterproposal of the Council of States, which was subsequently approved by both chambers (SCCJ 2020). As the RBI failed to obtain the double majority at the popular vote of the 29th of November 2020, the counter proposal should normally enter into force if no other facultative referendum is called on within 100 days.

The counter-proposal provides for differentiated duties with different scopes of application. The first duty prescribed is a reporting obligation on certain social, environmental and human rights matters (following from the EU Non-Financial Reporting Directive). This obligation would apply to large Swiss public-interest companies⁵⁴ which include publicly traded companies or regulated entities supervised by the Swiss Financial Market Supervisory Authority FINMA (Lenz & Staehelin 2020). The second duty prescribed is an obligation to exercise human rights due diligence, which is limited to conflict minerals (following from the EU Conflict Minerals Regulation) and child labour (following from the Dutch Child Labour Due Diligence Act of 2019) (Knöpfel 2020).

Companies covered by the due diligence obligations would be all companies which have their registered office, central administration, or principal place of business in Switzerland which either 1) put on the Swiss market or process minerals or metals containing tin, tantalum, tungsten, or gold from conflict or high-risk areas; or 2) offer goods and services in relation to which there is a reasonable suspicion of child labour.

The counter-proposal provides that the Swiss Federal Council may provide for exemptions based on annual import volumes of minerals and metals in the case of the due diligence obligations relating to conflict minerals, or based on the size of the company for the due diligence obligations relating to child

54 Defined as employing at least 500 full-time employees as an annual average over the course of two consecutive business years, or exceeding at least one of the following thresholds: a balance sheet sum of CHF 20 million or a turnover of CHF 40 million.

labour. It also provides that companies complying with internationally recognized standards such as the OECD Guidelines for Multinational Enterprises, may also be exempted from due diligence and reporting obligations.

In terms of enforcement mechanisms, the counter proposal provides for criminal sanctions and in particular fines in case of non-compliance with the reporting duties of for making false statements. However, the counterproposal does not contain any civil liability provision for affected individuals.

Opportunities and challenges

The counter-proposal is much less ambitious than the RBI and suffers from much of the same flaws identified in the existing reporting and issue-specific legislation analysed above and which will be summarized in the conclusion.

► 5. Conclusion and Policy Discussion

Home States are increasingly expected, and, arguably at least, even required to adopt domestic legislation mandating companies in their territory or under their jurisdiction to exercise human rights due diligence wherever they operate (De Schutter 2020, 16). Across Europe and beyond, a broad spectrum of legislation and legislative proposals has emerged over the past few years, with mandatory reporting or transparency regulations, at one end of the spectrum, and, at the other end, mandatory human rights and due diligence regulations (Bright et al. 2020, 18). The comparative analysis of various relevant legislations and legislative proposals undertaken in this paper points to a number of conclusions.

First of all, in terms of objectives, mandatory reporting laws intend to spur companies to fulfil their responsibility to respect human rights by incentivizing⁵⁵ or requiring⁵⁶ them to report on their human rights due diligence processes. With the aim of facilitating the availability of this information to civil society, investors and consumers, these laws, in effect, rely on pressure from public scrutiny to ensure corporate compliance. Transparency legislative proposals such as the Norwegian Draft Act share a similar objective by seeking to create a “duty to know” of salient risks associated with a correlated duty of information held by any interested person. However, the underlying assumption that companies will be eager to comply with reporting requirements as a

⁵⁵ For example, the UK MSA.

⁵⁶ For example, the Australian MSA.

result of the pressure exerted by civil society, consumers and investors has not been confirmed by early evaluative research (PwC 2018, 59). This is the case especially for non-public facing companies that are under less scrutiny (PwC 2018, 40). Furthermore, the assertion that mandatory reporting regulations could level the playing field between responsible companies and laggards, fuelling a race to the top for labour rights, is yet to be substantiated.

Secondly, in terms of scope of application, certain legislations and initiatives apply to companies of certain corporate forms domiciled in their territory,⁵⁷ whereas others also cover foreign-based companies doing business on their territory.⁵⁸ Most legislations and proposals are limited to larger companies fulfilling these criteria. These are defined in terms of annual turnover⁵⁹ or revenue⁶⁰, or in terms of number of employees.⁶¹ The criteria used to define larger companies give rise, in practice, to a wide variation in the number of affected companies, and developing clear and coherent thresholds has proven challenging (Krajewski and Faracik 2020, 8). This approach falls short of the UNGPs's approach, according to which human rights due diligence expectations apply to all companies, even though the extent of the expected due diligence exercise will be commensurate to the size and context of the company.⁶² Accordingly, small- and medium-size enterprises (SMEs) should not be exonerated altogether from any requirements to exercise human rights due diligence,⁶³ but their needs and special challenges should be taken into consideration in the implementation of these requirements (Smit et al. 2020, 267). Furthermore, the Australian MSA shows how governments can lead by example, by including reporting obligations for the public sector (Butler-Sloss, Miller, and Field 2019), in line with the UNGPs.⁶⁴

Thirdly, in terms of human rights covered, certain types of legislation and legislative proposals are issue-specific,⁶⁵ while others provide for an overarching framework for all human rights and environmental issues.⁶⁶ The analysis of issue-specific regulations suggests that this kind of focus creates fragmentation and may detract companies' attention from other more salient human rights or labour rights issues. It is noteworthy in this context that

57 For example, the French DVL.

58 Such as the UK MSA., the Australian MSA, the Dutch CLDDA and the Norwegian Draft Law.

59 For example, the UK MSA.

60 The Australian MSA.

61 For instance, the French DVL.

62 UNGPs, Guiding Principle 17.

63 UNGPs, Guiding Principle 17.

64 UNGPs, Guiding Principle 4.

65 This is the case of the UK and the Australian MSAs, the Dutch CLDDA and the Counterproposal to the Swiss RBI.

66 As in the French DVL and the Swiss RBI.

the corporate responsibility to respect under Guiding Principle 12 refers to all “internationally recognized human rights”.⁶⁷ The Norwegian Draft Act is the only example that makes specific reference to decent work in addition to human rights more generally, which, as argued, might prove useful to ensure that labour rights are given appropriate attention in companies’ due diligence practices. The French DVL only applies to “severe violations”, which remain undefined in the legislation (Krajewski and Faracik 2020, 6). Scholars have argued that this reference to “severe violations” can lead to legal uncertainty, as there is no internationally recognized definition of what might constitute a “severe violation”. Rather, they suggest that it “seems more appropriate to incorporate the seriousness of a human rights violation in companies’ respective responses as part of the proportionality principle” (Krajewski and Faracik 2020, 6), in line with Guiding Principle 24, which allows for a prioritization of companies’ responses based on the severity of the human rights impacts.⁶⁸

Fourthly, with regard to the duties prescribed by the legislations and legislative proposals, the established typology distinguished between transparency regulations (that is, mandatory reporting regulations⁶⁹ and transparency legislative initiatives⁷⁰) on the one hand, and, on the other hand, mandatory human rights due diligence legislations and legislative proposals⁷¹. The analysis has suggested that the first type of regulations, requiring companies to communicate information rather than to act, have not, to date, been successful in prompting a meaningful change in corporate behaviour. The experience of the French DVL shows that the second type of regulations – mandating the exercise of human rights due diligence – is much more likely to induce noticeable changes in corporate behaviour.

Fifthly, with regard to the business activities covered by the duty, all legislations and proposals cover the activities of the concerned companies themselves, but the reach of the obligations in the supply chain vary. Some cover part of the supply chains,⁷² while others extend to the entire supply chains.⁷³ In this respect, it is worth remembering that the UNGPs require the exercise of human rights due diligence throughout the entire value chains by providing that it should cover “adverse human rights impacts that the business enterprise may cause or contribute to through its own activities,

67 UNGPs, Guiding Principle 12.

68 UNGPs, Guiding Principle 24 and comment.

69 For instance, the UK MSA and the Australian MSA.

70 The Norwegian Draft Law.

71 Such as the French DVL and the Swiss RBI.

72 For example, the UK MSA and the French DVL inasmuch as the latter is limited to “established business relationships”.

73 For instance, the Australian MSA, the Norwegian Draft Act and the Swiss RBI.

or which may be directly linked to its operations, products or services by its business relationships”.⁷⁴

Sixthly, in terms of enforcement, the experience of the UK MSA shows that the lack of effective enforcement mechanisms and deterring sanctions have led to widespread issues of non-compliance. Other legislations have opted for stronger enforcement mechanisms, either through a supervising public authority⁷⁵ or through judicial enforcement mechanisms.⁷⁶ Reports on existing laws that do not provide for a public enforcement mechanism have suggested the need to amend this aspect of the legislation in order ensure legal certainty (Duthilleul and de Jouvenel 2020, 27). It has also called for a uniform interpretation of the relevant act by providing a clear and uniform interpretation of the legislation, in addition to monitoring and ensuring compliance (Duthilleul and de Jouvenel 2020; Butler-Sloss, Miller, and Field 2019). In this respect, scholars have argued that an “engaged and committed regulator” might help limit the risk of “cosmetic” compliance with human rights due diligence requirements (Landau 2019). At the same time, judicial enforcement mechanisms providing for the introduction of an associated liability regime aim to enhance effective access to remedy for affected individuals, and may prove useful to help close the accountability gap. In particular, the strict liability regime with the due diligence defence in the Swiss RBI presented some important advantages in easing potential obstacles to remedy for claimants. This is in line with the UNGPs requirements for States to ensure access to remedy for the victims (Macchi and Bright 2020) and reduce legal and practical barriers that could lead to a denial of justice. In addition, the explicit connection between human rights due diligence and civil liability ensures greater legal certainty in relation to corporate accountability (Bueno and Bright 2020, 789) However, in line with the UNGPs, conducting human rights due diligence should not, by itself, automatically and fully absolve companies from any type of liability.⁷⁷ Rather, the assessment should turn to the adequacy of the due diligence exercise. In this respect, setting out clear criteria – for instance, by reference to the UNGPs and the OECD Guidelines and related materials – will be key to ensuring legal certainty and avoiding the risk of assessing whether a company has indeed taken “all due care” from becoming highly subjective.

Finally, the experience of the French DVL shows that the lack of legal requirement for meaningful consultation with external stakeholders as part of the entire human rights due diligence process has, in practice, led to insufficient dialogue and is thought to constitute one of the main pitfalls of the

74 UNGPs, Guiding Principle 17.

75 Authorities in the Dutch CLDDA and the Norwegian Draft Act have the power to impose sanctions in case of non-compliance.

76 The French DVL and the Swiss RBI.

77 UNGPs, Commentary to Guiding Principle 17.

implementation of the French DVL. This finding points to the need to emphasize and potentially even require consultation with external stakeholders – including with potentially affected groups, NGOs and trade unions – in legislative instruments, which, in line with the UNGPs, should play a central part in the human rights due diligence process.

The momentum for mandatory human rights due diligence is growing and gaining increasing support from civil society organizations (ECCJ 2019) and trade unions (ETUC 2019) but also from a growing number of businesses (Smit et al. 2020a) and certain business organizations (see, for example, Amfori 2020). Scholars have argued that “the introduction in domestic legislation of the duty to practice human rights due diligence should be seen as an opportunity to counter the potentially negative impacts of economic globalization on human rights and workers’ rights as stipulated in the core ILO conventions” (De Schutter 2020, 3). However, despite the positive effects of the various domestic-level legislative developments in enhancing companies’ accountability for labour issues in their supply chains, the resulting legislative patchwork gives rise to legal uncertainty where companies are subject to multiple or different standards. In this respect, the adoption of a harmonized standard at the regional and international levels would allow for a more consistent approach.

References

- ActionAid, Les Amis de la Terre France, Amnesty International, Terre Solidaire, Collectif Ethique sur l’Etiquette, and Sherpa. 2019. *The Law on the Duty of Vigilance of Parent and Outsourcing Companies – Year 1: Companies Must Do Better*. <http://www.respect.international/the-law-on-duty-of-vigilance-of-parent-and-outsourcing-companies-year-1-companies-must-do-better/>.
- Alston, Philip. 2005. “Labour Rights as Human Rights: The Not So Happy State of the Art.” In *Labour Rights as Human Rights*, edited by Philip Alston, 1–24. New York: Oxford University Press.
- Amfori. 2020. “Human Rights Due Diligence Legislation in Europe: Recommendations for a European Approach, Taking into Account Key Principles of Due Diligence.” Position Paper, February 2020. <https://www.amfori.org/sites/default/files/amfori-2020-12-02-Position-Paper-Human-Rights-Due-Diligence.pdf>.
- Barraud de Lagerie, Pauline, Elodie Bethoux, Rémi Bourguignon, Arnaud Mias, Élise Penalva-Icher. 2020. *Mise en oeuvre de la Loi sur le devoir de vigilance Rapport sur les premiers plans adoptés par les entreprises*. Rapport remis au Bureau International du Travail. Genève: OIT. <https://hal.archives-ouvertes.fr/hal-02819496/file/2020%20-%20rapport%20OIT%20Vigilance.pdf>
- Beau de Loménie, Tiphaine, and Sandra Cossart. 2017. “Stakeholders and the Duty of Vigilance.” *Revue Internationale de la Compliance et de l’Ethique des Affaires. Supplément à la Semaine Juridique Entreprise et Affaires* 50 (14 Décembre): 1–6. <https://www.asso-sherpa.org/wp-content/uploads/2018/03/Stakeholders-and-the-Duty-of-Vigilance-Intl-Rev.Compl.-Bus.-Ethics.pdf>.

- Bellace, Janice R., and Beryl ter Haar. 2019. "Perspectives on Labour and Human Rights." In *Research Handbook on Labour, Business and Human Rights Law*, edited by Janice R. Bellace and Beryl ter Haar. 2–14. Northampton: Edward Elgar Publishing.
- BHRRC (Business & Human Rights Resource Centre). 2018. *FTSE 100 & the UK Modern Slavery Act: From Disclosure to Action*. <https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Briefing%202018.pdf>.
- Brabant, Stéphane, and Elsa Savourey. 2017. "Scope of the Law on the Corporate Duty of Vigilance: Companies Subject to the Vigilance Obligations." *Revue Internationale de la Compliance et de l'Ethique des Affaires. Supplément à la Semaine Juridique Entreprise et Affaires* 50 (14 Décembre): 1–8. <https://bit.ly/3fgR3xT>.
- . 2020. "All Eyes on France – French Vigilance Law First Enforcement Cases (1/2): Current Cases and Trends." https://www.cambridge.org/core/blog/2020/01/24/all-eyes-on-france-french-vigilance-law-first-enforcement-cases-1-2-current-cases-and-trends/#_edn13.
- , Charlotte Michon, and Elsa Savourey. 2017. "The Vigilance Plan: Cornerstone of the Law on the Corporate Duty of Vigilance." *Revue Internationale de la Compliance et de l'Ethique des Affaires. Supplément à la Semaine Juridique Entreprise et Affaires* 50 (14 Décembre): 1–15. https://www.business-humanrights.org/sites/default/files/documents/Law%20on%20the%20Corporate%20Duty%20of%20Vigilance%20-%20Vigilance%20Plan%20%20Intl%20Rev.Compl_.%20%26%20Bus.%20Ethics.pdf.
- Bright, Claire. 2020. "Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Duty of Vigilance Law the Way Forward?" EUI Working Papers. MWP 2020/01. Max Weber Programme. https://cadmus.eui.eu/bitstream/handle/1814/65957/MWP_2020_01.pdf?sequence=1&isAllowed=y.
- , Diana Lica, Axel Marx, and Geert Van Calster. 2020. *Options for Mandatory Human Rights Due Diligence in Belgium*. Leuven Centre for Global Governance Studies. https://ghum.kuleuven.be/ggs/publications/research_reports/options-for-mandatory-human-rights-due-diligence.pdf.
- , Marx Axel, Pineau Nina and Wouters Jan. 2020. "Towards a corporate duty for lead companies to respect human rights in their global value chains?", *Business and Politics* 22(4): 667-697.
- Bueno, Nicolas and Claire Bright. 2020. "Implementing Human Rights Due Diligence Through Corporate Civil Liability". *International & Comparative Law Quarterly* 69(4): 789-818.
- Butler-Sloss, Elizabeth, Maria Miller, and Frank Field. 2019. *Independent Review of the Modern Slavery Act 2015: Final Report*. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty. CP 100. London: HMSO. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads>.

- Chance, Clifford. 2019. *Business and Human Rights: Navigating a Changing Legal Landscape*. London: Global Business Initiative on Human Rights. <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2019/03/business-and-human-rights-navigating-a-changing-legal-landscape.pdf>.
- CHRB (Corporate Human Rights Benchmark). 2020. *2020 Key Findings – Across Sectors: Agricultural Products, Apparel, Automotive manufacturing, Extractives & ICT Manufacturing*. <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf>
- Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities*. Australian Government Department of Home Affairs. <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>.
- CORE Coalition. 2017. *Risk Averse: Company Reporting on Raw Material and Sector-Specific Risks under the Transparency in Supply Chains Clause in the UK Modern Slavery Act 2015*. London: Core Coalition. https://corporate-responsibility.org/wp-content/uploads/2017/10/171003_Risk-Averse-FINAL-1.pdf.
- Cossart Sandra, Julie Chaplier, and Tiphaine Beau de Loménie, 2017. “The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All.” *Business and Human Rights Journal* 2 (2): 317-323.
- De Schutter. Olivier. 2020. “Towards Mandatory Due Diligence in Global Supply Chains.” Paper prepared at the request of the International Trade Union Confederation (ITUC). https://www.ituc-csi.org/IMG/pdf/de_schutte_mandatory_due_diligence.pdf.
- Duthilleul, Anne, and Matthias de Jouvenel. 2020. *Evaluation de la mise en oeuvre de la loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*. Rapport à Monsieur le ministre de l'économie et des finances. <https://www.economie.gouv.fr/files/files/directions-services/cge/devoirs-vigilances-entreprises.pdf>.
- ECCJ (European Coalition for Corporate Justice). 2019. “Over 100 Civil Society Organisations Demand Human Rights and Environmental Due Diligence Legislation.” 2 December 2019. <https://corporatejustice.org/news/16800-over-100-civil-society-organisations-demand-human-rights-and-environmental-due-diligence-legislation>.
- EDH (Entreprises pour les droits de l'Homme). 2019. *Application de la loi sur le devoir de vigilance: Plans de vigilance 2018–2019*. <https://www.e-dh.org/userfiles/EDH%20-%20Etude%20plans%20de%20vigilance%202019.pdf>.
- Enneking, Liesbeth. 2020. “The Netherlands Country Report.” In *Study for the European Commission on Due Diligence Requirements through the Supply Chain. Part III: Country Reports*, by Smit et al. 2020b.170–196, Brussels: European Commission. <https://files.static-nzz.ch/2020/3/6/90f8f24b-a392-4c1b-870d-f37a6c3fb569.pdf>.
- Ergon Associates. 2016. *Reporting on Modern Slavery: The Current State of Disclosure*. London: Ergon Associates Ltd. <https://ergonassociates.net/wp-content/uploads/2017/06/Reporting-on-Modern-Slavery2-May-2016.pdf?x74739>.

- . 2018. *Modern Slavery Reporting: Is there Evidence of Progress?* London: Ergon Associates Ltd. https://ergonassociates.net/wp-content/uploads/2018/10/Ergon_Modern_Slavery_Progress_2018_resource.pdf.
- ETUC. 2019. “ETUC Position for a European Directive on Mandatory Human Rights Due Diligence and Responsible Business Conduct.” 18 December 2019. <https://www.etuc.org/en/document/etuc-position-european-directive-mandatory-human-rights-due-diligence-and-responsible>.
- Groulx Diggs, Elise, Brian Burkett and Mitt Regan. 2020. “The Regulation of Multinational Labour and Employment Practices Through a Galaxy of Norms.” In *Corporate Social Responsibility – Sustainable Business; Environmental, Social and Governance Frameworks for the 21st Century*, edited by Rae Lindsay and Roger Martella, 505–533. New York: Wolters Kluwer.
- Hoff, Anneloes. 2019. “Dutch Child Labour Due Diligence Law: A Step Towards Mandatory Human Rights Due Diligence.” Oxford Human Rights Hub, 10 June 2019. <https://ohrh.law.ox.ac.uk/dutch-child-labour-due-diligence-law-a-step-towards-mandatory-human-rights-due-diligence/>.
- Home Office and Atkins MP Victoria, “New tough measures to tackle modern slavery in supply chains”, 22 September 2020, available at: <https://www.gov.uk/government/news/new-tough-measures-to-tackle-modern-slavery-in-supply-chains>.
- Ibañez, Juan Ignacio, Chris N. Bayer, Jiahua Xu, and Anthony Cooper. 2020. *Devoir de Vigilance: Reforming Corporate Risk Engagement*. Development International e.V. https://www.ipoint-systems.com/fileadmin/media/downloads/Devoir-de-Vigilance_Loi-2017-399_Study_2020.pdf.
- ILO (International Labour Organization / International Labour Office). 2017. *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*. (MNE Declaration). 5th ed. Geneva: ILO. https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf.
- . 2020. “Achieving Decent Work in Global Supply Chains.” Report for Discussion at the Technical Meeting on Achieving Decent Work in Global Supply Chains (Geneva 25–28 February 2020).” TMDWSC/2020. Geneva: ILO. https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/meetingdocument/wcms_735378.pdf.
- . n.d. “The Rana Plaza Accident and its Aftermath.” https://www.ilo.org/global/topics/geip/WCMS_614394/lang--en/index.htm.
- Joseph, Sarah. 2004. *Corporations and Transnational Human Rights Litigation*. Oxford: Hart Publishing.
- Knöpfel, Laura. 2020. “The Swiss ‘Responsible Business Initiative’ – An Update.” 12 June. Cambridge Core Blog. <https://www.cambridge.org/core/blog/2020/06/12/the-swiss-responsible-business-initiative-an-update/>.

- Krajewski, Markus, and Beata Faracik. 2020. *Substantive Elements of Potential Legislation on Human Rights Due Diligence*. Briefing No. 1. Requested by the DROI Subcommittee of the European Parliament. Policy Department for External Relations. EP/EXPO/DROI/FWC/2019-01/LOT6/1/C/05-1. June 2020 – PE603.504. [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_BRI\(2020\)603504](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_BRI(2020)603504).
- Lake, Quitin, Jamie MacAlister, Cindy Berman, Matthew Gitsham, and Nadine Page. 2016. *Corporate Leadership on Modern Slavery: How Have Companies Responded to the UK Modern Slavery Act One Year on?* Berkhamsted and London: Hult Research and Ethical Trade Initiative. https://www.ethicaltrade.org/sites/default/files/shared_resources/corporate_leadership_on_modern_slavery_full_report_2016.pdf.
- Landau, Ingrid. 2019. “Human Rights Due Diligence and The Risk of Cosmetic Compliance.” *Melbourne Journal of International Law* 20 (1): 221–247. <http://classic.austlii.edu.au/au/journals/MelbJIL/2019/9.html>.
- , and Shelley Marshall. n.d. “What Are We Missing by Focusing on Modern Slavery?” Business & Human Rights Resource Centre. <https://www.business-humanrights.org/en/what-are-we-missing-by-focusing-on-modern-slavery>.
- Langlois, Michelle. 2018. *Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law*. Shift. New York: Shift Project, Ltd. <https://shiftproject.org/resource/human-rights-reporting-in-france/>.
- LeBaron, Geneviève, and Andreas Rühmkorf. 2019. “The Domestic Politics of Corporate Accountability Legislation: Struggles over the 2015 UK Modern Slavery Act.” *Socio-Economic Review* 17 (3): 709–743. <https://academic.oup.com/ser/article/17/3/709/4683730>.
- Lenz & Staehelin. 2020. “Counter-Proposal to Responsible Business Initiative: Overview of New Duties for Companies”. Newsflash November 2020. https://www.lenzstaehelin.com/fileadmin/user_upload/newsflash/201130_Newsletter_Counter_Proposal_EN_Final.pdf
- Littenberg, Michael R., and Nellie V. Blinder. 2019. “Dutch Child Labor Due Diligence Act Approved by Senate – Implications for Global Companies.” New York: Ropes&Gray. <https://www.ropesgray.com/en/newsroom/alerts/2019/06/Dutch-Child-Labor-Due-Diligence-Act-Approved-by-Senate-Implications-for-Global-Companies>.
- López, Carlos. 2013. “The ‘Ruggie Process’: From Legal Obligations to Corporate Social Responsibility?” In *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?*, edited by Surya Deva and David Bilchitz, 58–77. Cambridge: Cambridge University Press.
- Macchi, Chiara, and Claire Bright. 2020. “Hardening Soft Law: The Implementation of the UNGPs in Domestic Legislations.” In *Legal Sources in Business and Human Rights: Evolving Dynamics in International and European Law*, edited by Martina Buscemi, Nicole Lazzerini, Laura Magi and Deborah Russo. 218–274. Leiden and Boston, MA: Brill Nijhoff.

- Mantouvalou, Virginia. 2012. "Are Labour Rights Human Rights?" *European Labour Law Journal* 3 (2): 151–172.
- Martin-Ortega, Olga. 2013. "Human Rights Risks in Global Supply Chains: Applying the UK Modern Slavery Act to the Public Sector." *Global Policy* 8 (4): 512–521.
- Marx, Axel, Claire Bright, and Jan Wouters. 2019. *Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries*. Study requested by the DROI Committee, European Parliament. ([http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf)).
- Nolan, Justine. 2017. "Business and Human Rights: The Challenge of Putting Principles into Practice and Regulating Global Supply Chains." *Alternative Law Journal* 42 (1): 42–46.
- , and Gregory Bott. 2018. "Global Supply Chains and Human Rights: Spotlight on Forced Labour and Modern Slavery Practices." *Australian Journal of Human Rights* 24 (1): 44–69.
- OECD (Organisation for Economic Co-operation and Development). 2011. *Guidelines for Multinational Enterprises*. 2011 ed. Paris: OECD Publishing. <https://www.oecd.org/daf/inv/mne/48004323.pdf>.
- . 2018. *OECD Due Diligence Guidance for Responsible Business Conduct*. Paris: OECD Publishing. <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.
- Philipps, Nicola, Geneviève LeBaron, and Sara Wallin. 2018. *Mapping and Measuring the Effectiveness of Labour-Related Disclosure Requirements for Global Supply Chains*. ILO Research Department Working Paper No. 32. Geneva: ILO. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_632120.pdf.
- PwC. 2018. *Strategies for Responsible Business Conduct*. Report prepared at the request of the Ministry of Foreign Affairs of the Netherlands (December 2018). <https://zoek.officielebekendmakingen.nl/blg-874902.pdf>.
- Ramasastri, Anita. 2013. Closing the Governance Gap in the Business and Human Rights Arena: Lessons from the Anti Corruption Movement. In *Human Rights Obligations of Business* edited by Surya Deva and David Bilchitz. 162-90. Cambridge University Press. <https://ssrn.com/abstract=2736813>.
- SCCJ (Swiss Coalition for Corporate Justice). 2020. "Swiss Due Diligence Initiative Set for Public Referendum as Parliament only Opts for Reporting-Centred Proposal." Business & Human Rights Resource Centre. <https://www.business-humanrights.org/en/switzerland-ngo-coalition-launches-responsible-business-initiative>.
- Sherpa. 2019. "Sherpa and UNI Global Union Send Formal Notice to Teleperformance – Calling on the World Leader in Call Centers to Strengthen Workers' Rights." <https://www.asso-sherpa.org/sherpa-and-uni-global-union-send-formal-notice-to-teleperformance-calling-on-the-world-leader-in-call-centers-to-strengthen-workers-rights-2>.

- Shift. 2015. “Mapping the Provisions of the Modern Slavery Act against the Expectations of the UN Guiding Principles on Business and Human Rights.” <https://shiftproject.org/resource/mapping-the-modern-slavery-act-against-the-un-guiding-principles/>.
- Sinclair, Amy, and Justine Nolan. 2018. “The Australian Modern Slavery Act 2018 – Will It Live up to Expectations?” Business & Human Rights Resource Centre. <https://www.business-humanrights.org/en/the-australian-modern-slavery-act-2018-%E2%80%93-will-it-live-up-to-expectations>.
- . 2020. “Modern Slavery Laws in Australia: Steps in the Right Direction?” *Business and Human Rights Journal* 5 (1): 164–170.
- Smit, Lise, Claire Bright, Irene Pietropaoli, Juliannes Hughes-Jennett, and Peter Hood. 2020. “Business Views on Mandatory Human Rights Due Diligence Regulation: A Comparative Analysis of Two Recent Studies.” *Business and Human Rights Journal* (June 2020): 1–9.
- Smit, Lise, Claire Bright, Robert McCorquodale, Matthias Bauer, Hanna Deringer, Daniela Baeza-Breinbauer, Francisca Torres-Cortés, Frank Alleweldt, Senda Kara, Camille Salinier, and Héctor Tejero Tobed (for the European Commission Directorate General for Justice and Consumers). 2020a. *Study on Due Diligence Requirements Through the Supply Chain: Final Report*. Brussels: European Commission. <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.
- . 2020b. *Study for the European Commission on Due Diligence Requirements through the Supply Chain. Part III: Country Reports*. Brussels: European Commission. <https://files.static-nzz.ch/2020/3/6/90f8f24b-a392-4c1b-870d-f37a6c3fb569.pdf>.
- . 2020c. *Study on Due Diligence Requirements Through the Supply Chain, Part IV: Annexures*. Brussels: European Commission. <https://op.europa.eu/en/publication-detail/-/publication/f253e31f-4c80-11ea-b8b7-01aa75ed71a1/language-it>.
- UK (United Kingdom) Home Office. 2017. *Transparency in Supply Chains etc. A Practical Guide, Guidance Issued under Section 54(9) of the Modern Slavery Act 2015*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf.
- UN (United Nations) / OHCHR (Office of the United Nations High Commissioner for Human Rights). 2011. *Guiding Principles on Business and Human Rights: Implementing the “Protect, Respect and Remedy” Framework*. HR/PUB/11/04. New York and Geneva. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.
- UNGA (United Nations General Assembly). 2008. Human Rights Council. “Protect, Respect and Remedy: A Framework for Business and Human Rights.” Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie. 7 April 2008. A/HRC/8/5. <https://www.undocs.org/A/HRC/8/5/>.

- . 2018a. United Nations High Commissioner for Human Rights, “Improving Accountability and Access to Remedy for Victims of Business-Related Human Rights Abuse: The Relevance of Human Rights Due Diligence to Determinations of Corporate Liability.” Human Rights Council, 38th session. 1 June 2018, A/HRC/38/20/Add.2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/143/30/PDF/G1814330.pdf?OpenElement>
- . 2018b. Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises. “The Report of the Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises.” 16 July 2018. A/73/163. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>
- Vigeo Eiris. 2018. *Human Rights in a Globalised World: Why Do Companies Need to Pay More Attention? Rating the Human Rights Commitments, Risk Management and Reporting of 4,500 Companies Listed Worldwide*. http://www.vigeo-eiris.com/wp-content/uploads/2018/11/2018_Human-rights-study_VFok.pdf.
- Werro, Franz. 2019. “The Swiss Responsible Business Initiative and the Counter-Proposal.” *Journal of European Tort Law* 10 (2): 166–184.