

April 2021
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New Models for an
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Due Diligence and Transparency Legislation

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Acknowledgements:

We are grateful to Humanity United and Freedom Fund for project funding and the following experts for their feedback on an earlier draft of this brief: Sarah Carpenter, Patricia Carrier, Charita Castro, David Cohen, Andrew Crane, Alison Friedman, Matt Higgins, Waseem Mardini, Robert McCorquodale, Nele Meyer, Charity Ryerson, Miriam Saage-Maaß. We alone are responsible for any shortcomings.

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Recommended citation:

Re:Structure Lab. *Forced Labour Evidence Brief: Due Diligence and Transparency Legislation* (Sheffield: Sheffield, Stanford, and Yale Universities, 2021).

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About

This work is part of a series of Forced Labour Evidence Briefs that seek to bring academic research to bear on calls to address the root causes of the phenomenon in global supply chains and catalyse systemic change. To do so, the briefs consolidate evidence from recent academic research across several disciplines, including political science, law, sociology, business, and management, identified through literature reviews in Web of Science and other academic databases.

At a critical moment when COVID-19 has led to increased focus on conditions in global supply chains and growing calls for systemic change, these briefs seek to inject new knowledge from academic research into ongoing debates about how practical reforms can be achieved. They focus on six themes: mandatory human rights due diligence and transparency legislation; commercial contracts and sourcing; investment patterns and leverage; the labour share and value redistribution; ethical certification and social auditing; and worker debt. Each brief presents new ideas and examples of how business models and supply chains can be restructured to promote fair, equitable labour standards and worker rights.

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Executive Summary

- **Forced labour and human rights abuses of workers are endemic across several sectors of the global economy.** Recognising this, governments around the world have introduced legal frameworks designed to encourage corporations to take responsibility for tackling this abuse in global supply chains.
- **Transparency legislation, a dominant mode of regulation, is not working.** Academic research has highlighted major weaknesses in the effectiveness of transparency legislation to influence corporate behaviour. Corporations can comply with transparency legislation without altering the commercial practices that lead to forced labour and exploitation. Strong sanctions for non-compliance are lacking, as are paths for remedy and redress for victims. Briefly put, to date, transparency has sparked disclosure without actually changing things. Early efforts towards human rights due diligence to date have similarly focused on mapping with little action towards meaningful change.
- **Fortunately, there are potential solutions. Transparency legislation should be reformed and strengthened. In addition, mandatory human rights due diligence legislation (mHRDD) should be passed requiring companies to address adverse human rights impacts, including forced labour, linked to their supply chains.** mHRDD introduces a new duty on corporations to carry out robust human rights due diligence across their entire supply chains and it can be combined with strong sanctions such as civil liability and supervision by a public oversight body that can impose a fine on those not carrying out the duty.

- **Whilst governments should focus efforts on introducing mHRDD laws, work should also be taken to reform transparency legislation where it is in place, through the addition of criminal, civil, and administrative accountability measures for false reporting or failure to report.** Introducing mHRDD laws and upgrading transparency laws is not a binary choice. Action is needed on both fronts. Governments should collaborate to harmonize a proven, effective model of mHRDD across jurisdictions.
- **These measures will contribute to, and can be complemented by, broader legal reforms and initiatives to effectively regulate 21st century corporations and their supply chains to ensure they are no longer hard-wired to produce exploitation.** These may include, for instance, enforcing labour rights through trade laws, anti-trust reform, innovative labour law enforcement, and reorienting corporate purpose and duties towards stakeholder value.
- **Implementing effective mHRDD legislation and practices will necessarily disrupt the status quo of how business is currently done in global supply chains, including value distribution and the role of workers within governance.** These issues are explored within other briefs in this series.

Problem

Forced labour and human rights abuses of workers in global supply chains is endemic. Over the last decade, governments – including the United Kingdom (UK) and the state of California in the United States (US) – have enacted new transparency legislation to encourage corporations to take responsibility for these problems.¹ Although this body of legislation varies across jurisdiction, such as with respect to regulatory approach, level of stringency (e.g. coverage of supply chain, penalties for non-compliance), and enforcement provisions (e.g. level of government involvement, if any),² overall, it has been largely ineffective in achieving its aims of reducing levels of forced labour and human rights abuses in global supply chains.³

Legal approaches to addressing forced labour in global supply chains grounded in transparency are weak,⁴ have not spurred significant changes in corporate behaviour,⁵ and fail to reach the segments of supply chains where the worst human rights violations are occurring.⁶ They focus on disclosure, without actually addressing root causes. While some positive developments are associated with transparency legislation – such as raised awareness amongst corporate leaders about the problem of forced labour, and increased collaboration between business and civil society – evidence is lacking in demonstrating reduced prevalence or severity of forced labour on the ground.



Figure 1:
What is a supply chain?

A supply chain encompasses all of the activities required by a business to deliver goods or services, from raw materials to consumer delivery. It includes producers and labour market intermediaries along both product and labour supply chains.⁷ This figure shows key actors within a simplified supply chain.



A growing body of academic research has documented widespread flaws with transparency legislation.

- **Transparency laws lead to superficial reporting, focused on processes rather than outcomes.** Most legislation requires corporations to report on the risks of forced labour in their supply chains and action taken to prevent or address these risks. Yet, to date, most corporations have failed to report meaningful information and action. Reporting tends to focus on *cosmetic compliance*⁸ processes – policies and structures that convey action without achieving the intended goal of addressing human rights abuses – rather than substantive risks and outcomes. Reports are not comparable between businesses nor reliable, and there is no independent verification requirement. Corporations can comply with transparency laws without reporting any information about their risks of forced labour and without taking action to address these risks.
- **Legislation has been paralleled by the proliferation of ineffective monitoring tools that are owned and commissioned by corporations and for-profit consultancies rather than being independent.** Transparency legislation has expanded the role of certification standards and social auditing in supply chains that are opaque, inconsistent, and lack coherence.⁹ Not only are these ineffective tools to detect, address, and correct forced labour,¹⁰ but they can also mislead consumers and policymakers about working conditions in supply chains.¹¹ Weak industry-led monitoring tools like social auditing enable corporations to create an illusion of combatting forced labour while simultaneously reinforcing business demand for it amongst suppliers and intermediaries.
- **Laws lack robust, state-led enforcement and access to remedy.**¹² Transparency laws are often drafted in a way that gives wide discretion to corporations about how they act and do not contain strong sanctions for noncompliance.¹³ There is little enforcement of the duties imposed on corporations; for instance, in the UK, the duty to publish an annual report is not enforced, although the Secretary of State can issue an injunction.¹⁴ States have “almost completely withdrawn [themselves] from the oversight and enforcement roles and assigned these crucial accountability functions” to private parties such as social auditing firms, civil society organisations, and consumers.¹⁵ Most legislation also lacks clear and accessible paths for remedy and redress for victims when abuses are found,¹⁶ despite that being a core pillar of the UN Guiding Principles on Business and Human Rights’ “Protect, Respect and Remedy” framework.

- **Laws are not stringent enough to spur meaningful change in corporate policies and practices.** Research comparing the impact of transparency legislation, which establishes new reporting requirements, and bribery legislation, which establishes corporate criminal offense, found that transparency legislation had little impact on corporate policies and practices, but bribery legislation did yield meaningful changes in corporate policies and practices to prevent bribery in supply chains.¹⁷ In other words, because transparency legislation is less exacting, it is far less effective than more stringent legislative approaches, such as those that would create corporate criminal liability for forced labour (see [Figure 2](#)).¹⁸

- **Laws reinforce large power imbalances between corporations and their suppliers, and employers and their workers.¹⁹ They can also exacerbate inequalities along lines of gender, race and ethnicity, and geography in supply chains.²⁰** Transparency law has enabled corporations at the top of supply chains to use their market power to coercively and unilaterally impose new standards onto suppliers, often without providing the necessary funds to meet the costs of compliance. Research has linked this style of top-down supply chain governance to multiple forms of inequality, including along lines of gender, race, and geography. Additionally, laws that fortify the power and dominance of lead firms on one end of supply chains while upholding extractivism and the exclusion of workers and local governments from supply chain governance can reinforce legacies of colonialism, slavery, and dispossession.²¹ While some firms have sought to implement measures to detect and address forced labour in gender and race-blind ways, there has been little progress in addressing the root causes of discrimination that shape vulnerability to exploitation for the majority of supply chain workers.²²

Figure 2:
Comparative impacts of bribery and transparency legislation on corporate behaviour

Issue	Main Finding	Bribery	Forced Labour
Clear policy banning practice	25 of 25 companies (=100%) publish a bribery policy or mention bribery due diligence and/or bribery risk assessment or anti-bribery policies on their website, but this occurs only sporadically for forced labour	Companies publish and/or mention stringent policies aimed at preventing bribery in their business relationships; these policies appear to constitute due diligence processes	Companies do not publish and/or mention the same stringent policies for forced labour and only sporadically refer to specific policies on forced labour
Code of conduct	23 out of 25 companies (=92%) have stricter requirements on bribery than on forced labour in their code of conduct or supplier-related documents	Several terms and conditions of purchase clearly show a prioritisation of bribery; the documents contain strict language aimed at prohibiting bribery	The wording on forced labour is much more aspirational, e.g. <i>we do not support forced labour</i>
Strictness of language	25 of 25 companies (=100%) use stricter language for bribery than for forced labour	Bribery is combined with strict language such as <i>zero tolerance</i> or <i>anti</i>	Forced labour is usually linked with more aspirational language such as <i>we will seek to</i> , <i>we strive to</i>

→ **Transparency legislation has failed to root out forced labour and exploitation from prevailing business models.** Corporations to date have been able to comply with transparency legislation without altering the commercial practices that research shows give rise to forced labour and exploitation.²⁴ These include sourcing below the costs of production and failing to pay suppliers sufficient margins to enable them to meet wage laws and standards, much less a living wage. Compliance with existing laws creates an illusion of good practice and positive momentum towards eradicating forced labour, yet such exploitation remains rampant. Prevailing business models remain fully intact, and shareholder primacy continues to trump human rights.²⁵

These problems with transparency legislation are part of a broader set of challenges in engineering a legal regime that ensures corporate accountability for labour standards in supply chains.

In the absence of a binding international human rights framework for corporations,²⁶ legislation in the home states of multinational corporations (MNCs) has increasingly become the focus of efforts to combat forced labour in global supply chains.²⁷ But the complexity and international character of the business structures pose challenges for the reach of this approach.²⁸

Within corporate groups, although parent companies own shares of their subsidiary companies, they are usually not liable for the acts of their subsidiaries as courts are generally unwilling to pierce the so-called *corporate veil*.²⁹ Efforts by victims of forced labour to sue corporations in the latter's home states are often thwarted by rules of conflict of laws.³⁰ And too often, lawmakers still tend to regulate business activities within national boundaries, whereas the business activities and networks are transboundary, as are human rights violations.³¹

Solutions

It is fully possible to create a robust legal regime to effectively guide corporations in eliminating forced labour in global supply chains via proper accountability, noting that many large MNCs have outwardly expressed a commitment to a zero-tolerance approach.³²

As one component of that agenda, we outline how a new mandatory human rights due diligence legislation (mHRDD) regime could be established to spur meaningful action to end abuses in supply chains and how existing transparency laws could be enhanced.



Enact mHRDD Legislation

Transparency legislation should be supplemented by mHRDD that establishes clear liability. Human rights due diligence (HRDD) can be either voluntary or mandatory; while HRDD is now accepted as necessary to manage corporate responsibility, progress on voluntary adoption has been slow and ineffective, so making HRDD mandatory is important. Such legislation introduces a new duty on corporations to carry out robust HRDD across the entire supply chain.

Following the HRDD process outlined in internationally accepted documents such as the United Nations' Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct,³³ the four core components of corporations' duty are:

- 01 Identification and assessment of actual or potential adverse human rights impacts in their business relationships.
- 02 Formation and implementation of a plan of actions to address these risks.
- 03 Effective monitoring of measures taken.
- 04 Issuing reports on actions taken and their outcomes.³⁴

To date, voluntary HRDD efforts have tended to focus on *mapping* potential risks. Effective mHRDD legislation would need to spur corporations into actually *addressing* the human rights impacts and forced labour drivers that corporations cause or contribute to, or which are linked to their commercial practices (see [Figure 3](#)).

Figure 3:
Key criteria for strong Human Rights Due Diligence (HRDD) in practice

Governance dimension	Effective due diligence	Ineffective due diligence
Responsibility within organisation	HRDD is undertaken through collaboration between several teams and senior leadership, including sourcing, compliance, and social responsibility.	HRDD is undertaken by CSR team only.
Assess risks	Assessment of human rights risks involves analysis of product and labour supply chains, with focus on portions of supply chains that carry highest risks of forced labour. Assessment incorporates up-to-date research about the patterns and drivers of forced labour in supply chains.	Assessment is limited to a focus on top segment of product supply chain.
Take action	Actions involve meaningful changes to company policies and practices relevant to the root causes of forced labour in supply chains, including both reducing vulnerability of the workforce (eg. through living wages, fair recruitment, removing barriers to worker freedom of association) and eliminating business demand for forced labour (eg. through value redistribution). ³⁵	Action revolves around ineffective private compliance initiatives. Core commercial practices remain unchanged.
Role of government	Producer countries and 'home' states enact measures to influence corporate behaviour to promote fair, equitable labour practices.	Producer countries and 'home' states keep weak legal governance regime, which allows business to use forced labour with widespread impunity.
Delivery	Meaningfully involves workers, unions, and worker organizations, and key stakeholders in delivery and remediation, and is overseen by an independent body.	Enacted by industry and for-profit consultants only.

By covering the entire supply chain, including controlled companies and their business relationships, mHRDD would prevent corporations at the helm of supply chains from being able to avoid liability by creating layers of subcontractors and would establish a level playing field for all businesses in corporate structures.³⁶ This approach also has the potential to generate valuable data to feed into business intelligence that corporations can use to better track what is and is not working to rid supply chains of severe labour exploitation.

To ensure that mHRDD is effective in spurring meaningful changes in corporate behaviour and does not become simply another box-ticking exercise, it is essential that mHRDD is linked with civil liability.³⁷ Laws should create a civil (tort) liability in domestic courts for the failure to prevent human rights violations (e.g. the use of forced labour) to give victims a civil claim for compensation against MNCs. This civil claim would be separate from liability for the human rights violation itself (that is usually committed overseas). The liability targets lead firms who would be liable for their own failures and the failures of those with whom they have a business relationship.³⁸ This approach could make it a defence for corporations if they can demonstrate that they have undertaken adequate HRDD and thus met a certain standard of care.³⁹ Victims would thus have a direct course of action against MNCs and be able to gain compensation.⁴⁰

To give laws *more teeth*, four further aspects are important. First, given that the victims of human rights abuses are usually based in producer countries, worker organisations, trade unions, and NGOs should be given standing to bring claims on behalf of victims (with their full participation and approval). Second, corporate compliance with this duty will not be achieved by creating civil liability alone; rather, a public supervisory agency needs to be tasked with overseeing corporate compliance and be given the power to effectively sanction companies that do not carry out their HRDD duty, for example, by financial penalties.⁴¹ This would be a public oversight body whose function is to ensure state oversight and enforcement of the corporate due diligence duties (for example, the Dutch Child Labour Due Diligence Law is overseen by such a public body). Third, and overlapping with the previous aspects, workers and their organisations – including trade unions, where relevant – need to be given a meaningful role in implementing and monitoring mHRDD, as do local governments. Fourth, the law would need to cover a broad range of companies, including large, listed corporations, but also non-listed companies and small and medium-sized enterprises, as human rights abuses can occur in their supply chains, too.

Moreover, mHRDD processes should be embedded into all government procurement contracts to ensure state-business interactions set a rights-based standard of business conduct, including, but not limited to, threshold requirement for corporations to have mHRDD policies and processes in place at the time of tender and comply with them during the contract term.

For mHRDD legislation to be effective, the required standard of care must:

- **Address commercial drivers and the root causes of business demand for forced labour in supply chains.** Corporate HRDD action needs to centre on business practices that cause or contribute to forced labour in supply chains. For corporations at the helm of global supply chains, this includes assessing and addressing core commercial practices, such as purchasing below the costs of production, speed to market pressures, and steep penalties for suppliers. For suppliers, this can include assessing risky business practices, such as reliance on informal labour market intermediaries and unauthorized subcontracting (see [Figure 3](#)). These issues are further explored in other briefs within this Forced Labour Evidence Brief series.
- **Prompt corporations to *take meaningful action* to address the root causes of forced labour, rather than simply understanding and mapping risks, which has been the focus of business efforts to date** (see [Figure 4](#)). Meaningful action could include altering value distribution along supply chains by ensuring living wages are paid; benchmarking labour costs in sourcing contracts; creating commercial arrangements that enable suppliers to cover the costs of relevant labour laws and standards; and supporting worker-driven social responsibility programs. These actions are explored in other briefs within this Forced Labour Evidence Brief series.
- **End prevailing social auditing ‘rubber stamping’ practices which lead to dangerous and exploitative worksites being certified.**⁴² As part of mHRDD, corporations should evaluate the effectiveness of their monitoring and certification tools in relation to forced labour and be required to report on the *effectiveness and outcomes* of these tools rather than merely disclosing they are using them. Governments should create penalties and liability for misleading certifications and social audits.

- **Put in place robust, state-based, worker-driven, and co-enforcement strategies for mHRDD enforcement.** These include co-enforcement approaches, in which “government partners with organizations that have industry expertise and relationships with vulnerable workers”;⁴³ worker-driven approaches in which workers and unions play a key role in monitoring labour standards in supply chains; and state-based⁴⁴ approaches with state enforcement and oversight, which could enforce liability for false, misleading, incomplete, or non-existent statements.⁴⁵
- **Take action to rebalance power relations related to employers and employees’ gender, race and ethnicity, nationality, and geography within the revised approach so as to not reinforce existing inequalities in supply chains.**⁴⁶ mHRDD cannot simply be top-down, but rather needs to enable business actors and workers along supply chains to play a meaningful role in designing and implementing solutions.⁴⁷ Additionally, mHRDD strategies and remedy programs must be sensitive to inequalities and needs along lines of gender, race and ethnicity, ability, and migration status, among other characteristics, as these are articulated and developed through participatory approaches.⁴⁸

Figure 4:
*Key factors that enable forced labour in supply chains*⁴⁹

- Weak labour law enforcement
- Low wages and barriers to labour rights
- Unequal power dynamics between workers and employers
- Unequal value distribution, with profits concentrated at the top of supply chains
- Discrimination, such as on the basis of race, gender, sexuality, and ability
- Irresponsible corporate practices (e.g. sourcing below cost of production, unfair recruitment)
- Lacking social safety nets and labour protections for workers

Reform Transparency Legislation

Existing reporting-only transparency laws could be reformed to increase their stringency and effectiveness through the following key changes:

- Reformed transparency laws should require corporations to report in a reliable and comparable way on the indicators that matter most for forced labour (e.g. percentage paid over costs of production, percentage of supply chain workforce receiving living wage, percentage of workers with regular contracts), focusing on outcomes rather than processes (e.g. non-compliances detected, their resolution, and measures to prevent reoccurrence).⁵⁰
- The duty to report must be enforced by a public oversight body, and inaccurate or missing reports must be sanctioned through meaningful criminal or administrative penalties that could not simply be absorbed as a cost of doing business.⁵¹
- Consistent with domestic law around notions of liability, legislative improvements need to include a “reckless disregard” standard into criminal and civil law that would enable governments to incorporate changing expectations and requirements in assessing whether corporations are meeting developing standards and duties of care, and would prevent companies from taking refuge behind “wilful blindness” about their supply chains.
- To identify and make public those corporations that are not complying with their reporting duty, a public register should be created that contains both a list of all companies that are due to report, and the actual reports that have been submitted.⁵²

Enact Complementary Measures

These legal reforms should form part of a broader effort by home states of MNCs to more effectively utilise the legal levers at their disposal, including through anti-trust reform, bilateral trade agreements, extraterritorial jurisdiction, labour law enforcement, and new criminal offenses.⁵³ Additionally, the ideas that underpin the introduction of mHRDD and improved transparency legislation advance the blossoming movement towards redirection of the corporate objective away from the shareholder value theory of the firm towards a more pluralist, stakeholder-oriented concept of the firm and directors' duties.⁵⁴

The shareholder value theory argues that the role of business in society is primarily to serve the interests of shareholders and maximize their profits, and directors may only promote the interests of stakeholders other than shareholders insofar as this increases the overall wealth of shareholders (i.e. on the so-called *business case*).⁵⁵ As this view of the role of corporations in society is a key root cause of corporate irresponsibility and the subordination of labour standards and human rights to profits in global supply chains, it is important to shift corporate theory to a more pluralist conception in order to remove key drivers for short-termism and irresponsible corporate behaviour. This overhaul of corporate law, corporate objectives, and directors' duties plays a central part of the wider legal reform framework, as do measures to empower workers and unions.⁵⁶

Recommendations

Recommendations for Governments

Mandatory human rights due diligence can play an important part in the necessary wholesale reform of the laws governing corporations at this critical time. Governments should act swiftly to introduce mandatory human rights due diligence legislation that disrupts and renders unviable business models configured around forced labour.

Where mHRDD legislation has already been proposed, governments can take action by:

- Accelerating activities to pass and implement new laws.
- Enacting legislation that avoids compromises around accountability measures and coverage that would result in *toothless* and unobserved due diligence standards.
- Legislatures and appropriate executive actors creating vigorous funding streams and administrative apparatuses for application of the mHRDD processes.
- Following enactment with robust regulatory and enforcement efforts, with legislative or administrative oversight and public information clearinghouses.

Where mHRDD legislation has not yet been proposed, governments can take action by:

- Studying proposed legislation from around the world to learn from and emulate best practice and consider how to avoid pitfalls and opposition.
- Publishing draft mHRDD legislation and consulting widely with academia, business, workers and unions, civil society, and the public.
- Making government financial support for private firms (e.g., COVID-19 related grant, loan, and rebate schemes) conditional on companies having mHRDD processes in place.
- Establishing expert advisory groups with a central role in designing laws and implementation processes – including workers, trade unions representing workers employed by home state parent companies and business actors along the supply chain, survivors of previous abuses, representatives of industry bodies for key sectors, NGOs, and academic experts on forced labour, human rights, and mHRDD – and giving them a central role in designing laws and implementation processes.

Where transparency legislation is already on the statute books, governments can:

- Require companies to report on *outcomes* rather than just processes.
- Require reports be verified by independent third parties or government oversight agencies.
- Require corporations to report on their human rights due diligence processes, with that duty enforced by a public authority.
- Impose financial penalties for inaccurate or missing reports.
- Follow the reform measures set out above: introducing new mHRDD laws and upgrading transparency laws is not an either/or choice. Action is needed on both fronts.

Recommendations for Business

MNCs and business actors at all stages of the supply chain can begin taking action now to ensure their business models, and those of producers and intermediaries within their supply chains, protect workers from forced labour rather than enabling it. They can:

- Examine and take action to address the human rights impacts and forced labour risks associated with: commercial practices; supply chain structure and relationships; and their business model, as well as those of commercial partners, including both producers and intermediaries within supply chains (see [Figure 3](#)).
- Ensure collaboration between teams within organisations, including supply director and sourcing teams, operations management, and social responsibility and compliance teams. Too often, businesses undermine their own efforts to promote social responsibility through irresponsible practices in other areas of their operations. High-level leadership and collaboration are needed to prevent forced labour.
- Integrate and act upon research about the patterns of forced labour in supply chains and enable other stakeholders to act. This includes research on *worker vulnerability*, including links between forced labour and low wages, migrant and informal workers, gender and racial discrimination in the workplace, as well as *business demand*, including links between forced labour and sourcing at or below the costs of production.⁵⁷
- Strengthen efforts to communicate about the risks of forced labour within supply chains and how these are being addressed. Reporting on the measures being taken – such as social auditing or ethical certification – is insufficient. Businesses should shift towards reporting on the *effectiveness* of the measures they are undertaking to detect, prevent, and address forced labour.

- Initiate conversations with workers, trade unions, and worker organizations about the causes of forced labour in supply chains and measures that could be taken to address these.
- Explore possibilities for binding worker-driven social responsibility agreements⁵⁸ and meaningful worker empowerment.

These actions are in line with United Nations' Guiding Principles on Business and Human Rights, which note that HRDD must "cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships."⁵⁹

Notes

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⁷ For a description of labour and product supply chains, see: Allain et al, *Forced Labour's Business Models and Supply Chains*.

⁸ Landau, 'Cosmetic Compliance'; Jolyon Ford & Justine Nolan, 'Regulating Transparency on Human Rights and Modern Slavery in Corporate Supply Chains: the Discrepancy Between Human Rights Due Diligence and the Social Audit,' *Australian Journal of Human Rights*, 26(1), 2020, pp. 27-45.

⁹ Villiers, 'Corporate Transparency Requirements'; A. Claire Cutler & David Lark, 'The Hidden Costs of Law in the Governance of Global Supply Chains: the Turn to Arbitration,' *Review of International Political Economy*, online first (doi: 10.1080/09692290.2020.1821748); Sarfaty, 'Shining Light on Global Supply Chains.'

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¹⁶ Chambers & Vastardis, 'Human Rights Disclosure and Due Diligence Laws.'

¹⁷ LeBaron & Rümke, 'Steering CSR Through Home State Regulation.'

¹⁸ Anne-Jetske Schaap, 'Legally Binding Duties for Corporations Under Domestic Criminal Law Not to Commit Modern Slavery' in Liesbeth Enneking, Ivo Giesen, Anne-Jetske Schaap, Cedric Ryngaert, Francois Kristen, and Lucas Roorda (eds) *Accountability, International Business Operations and the Law: Providing Justice for Corporate Human Rights Violations in Global Value Chains* (New York: Routledge, 2020); Landau, 'Cosmetic Compliance.'

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²⁰ For a study of how corporate social responsibility approaches perpetrate coercive top-down power relations, see: Andrew Crane, Vivek Soundararajan, Michael Bloomfield, Laura Spence, and Genevieve LeBaron, *Decent Work and Economic Growth in the South Indian Garment Industry* (Bath: University of Bath, 2019). For an overview of gender-based vulnerability to forced labour and exploitation in supply chains and overlapping relations of social reproduction, see: Stephanie Barrientos, *Gender and Work in Global Value Chains: Capturing the Gains?* (Cambridge: Cambridge University Press, 2020); Genevieve LeBaron & Ellie Gore, 'Gender and Forced Labour: Understanding the Links in Global Cocoa Supply Chains,' *The Journal of Development Studies*, 56(6), 2020, pp. 1095-1117; Wilma Dunaway (ed) *Gendered Commodity Chains: Seeing Women's Work and Households in Global Production* (Stanford: Stanford University Press, 2014). For an overview of race and ethnicity-based vulnerability to forced labour and exploitation in supply chains, see: Siobhan McGrath, 'Many Chains to Break: The Multi-Dimensional Concept of Slave Labour in Brazil,' *Antipode* 45(4), 2013, pp. 1005-1028.

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²² Ramona Vijayarasa, 'Women, Work and Global Supply Chains: The Gender-Blind Nature of Australia's Modern Slavery Regulatory Regime,' *Australian Journal of Human Rights* 26(1), 2020, pp. 74-92; Linnea Kristiansson & Nora Götzmann, 'National Implementation Processes for the United Nations Guiding Principles on Business and Human Rights: Towards Gender-Responsive Approaches,' *Australian Journal of Human Rights* 26(1), 2020, pp. 93-109.

²³ LeBaron & Rümke, 'Steering CSR Through Home State Regulation.' The selected companies: (1) operate internationally and have overseas suppliers (thus creating a risk of forced labour and bribery within their global supply chain); (2) have a sufficient number of publicly available documents; (3) are covered under both Acts; (4) represent key industries such as mining, energy, agriculture, retail and consumer goods, defence and automobiles, pharmaceuticals, hotels and airlines, outsourcing, communications, and financial services.

²⁴ LeBaron, *Combatting Modern Slavery*.

²⁵ LeBaron, *Combatting Modern Slavery*; Sjøfjell, 'How Company Law has Failed Human Rights'; Lise Smit, Gabrielle Holly, Robert McCorquodale & Stuart Neely, 'Human Rights Due Diligence in Global Supply Chains: Evidence of Corporate Practices to Inform a Legal Standard,' *The International Journal of Human Rights*, onlinefirst (doi: 10.1080/13642987.2020.1799196); Andrew Crane, Genevieve LeBaron, Kam Phung, Laya Behbahani and Jean Allain, 'Confronting the Business Models of Modern Slavery,' *Journal of Management Inquiry*, onlinefirst (doi: 10.1177/1056492621994904).

²⁶ Peter Muchlinski, 'Implementing the New UN Corporate Human Rights Framework: Implications for Corporate Law, Governance, and Regulation,' *Business Ethics Quarterly*, 22(1), 2015, pp. 145, 148.

²⁷ For the term 'home state' see: Brittany Cragg, 'Home is Where the Halt is: Mandating Corporate Social Responsibility through Home State Regulation and Social Disclosure,' *Emory International Law Review*, 24, 2010, p. 735-776.

²⁸ Charlotte Villiers, 'Collective Responsibility and the Limits of Disclosure in Regulating Global Supply Chains,' *Deakin Law Review* 23, 2018, pp. 143-144.

²⁹ *Adams v Cape Industries plc* [1990] BCLC 479, 520. See generally: Christian Witting, *Liability of Corporate Groups and Networks* (Cambridge: Cambridge University Press, 2018).

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³¹ Kasey McCall-Smith & Andreas Rühmkorf, 'Reconciling Human Rights and Supply Chain Management Through Corporate Social Responsibility,' in Verónica Ruiz Abou-Nigm, Kasey McCall-Smith, and Duncan French (eds) *Linkages and Boundaries in Private and Public International Law* (Oxford: Hart, 2018), pp. 147 - 173.

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³⁷ Sandra Cossart, Jérôme Chaplier & Tiphaine Beau de Lomenie, 'The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All,' *Business and Human Rights Journal*, 2, 2017, pp. 317–323.

³⁸ Lise Smit, Claire Bright, Robert McCorquodale et al., *Study on Due Diligence Requirements Throughout the Supply Chain: Final Report* (Study for the European Commission, January 2020).

³⁹ *ibid*, pp. 250-253.

⁴⁰ See for the example of the French Devoir de Vigilance law: Cossart, Chaplier & Beau de Lomenie, 'The French Law on Duty of Care.'

⁴¹ See for the Dutch child labour law: Anneloes Hoff, 'Dutch Child Labour Due Diligence Law: A Step Towards Mandatory Human Rights Due Diligence,' Oxford Human Rights Hub, 2019.

⁴² This will be explored in a future brief.

⁴³ Janice Fine, 'Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Alone Has Failed?' *Politics & Society*, 2018, pp. 143-176, quote from abstract.

⁴⁴ Janice Fine & Tim Bartley, 'Raising the Floor: New Directions in Public and Private Enforcement of Labor Standards in the United States,' *Journal of Industrial Relations* 61(2), 2019, pp. 252-276; Matt Amengual & Janice Fine, 'Co-Enforcing Labor Standards: The Unique Contributions of State and Worker Organizations in Argentina and the United States,' *Regulation & Governance*, 11(2), 2017, pp. 129-142; LeBaron, *Combatting Modern Slavery*.

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⁴⁹ LeBaron, 'The Role of Supply Chains in the Global Business of Forced Labour.'

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