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**Shattering Illusions: Rethinking Human Rights Protection within the
Corporate Social Responsibility Framework**
The case of child labor in the agricultural sector

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Abstract

The research examines the potential corporate pretense when it comes to a company advertising its social responsibility, by manipulating its CSR program, as a strategy to deflect public attention away from human rights violations committed by or in complicity with the company itself, undermining in this way the advancement of BHR agenda. By using a statistical exploration and a case study analysis of three TNCs from the agricultural sector that have been accused of using child labor in their supply chains, it observes that a certain degree of pretense may be assumed, among other possible eventualities and explanations, given the discrepancy found between CSR commitments and ratings on the one hand, and corporate human rights performance, on the other. Therefore, it concludes that there is a possibility of corporations using their CSR programs as a tool with the aim of masking their involvement with human rights violations. Finally, it suggests that corporations should at least acknowledge the objective difficulties of identifying and fighting possible human rights violations occurring along their supply chains and mention relevant restrictions when advertising their endeavors to implement responsible business practices.

Keywords:

Corporate Social Responsibility; Business & Human Rights; CSR instrumentalization; Child Labor

Abbreviations

AbTF	Aid by Trade Foundation
ACF	African Cotton Foundation
AGM	Annual General Meeting
BAT	British American Tobacco
BATB	British American Tobacco Bangladesh
BCI	Better Cotton Initiative
BHR	Business & Human Rights
CHRB	Corporate Human Rights Benchmark
CmiA	Cotton made in Africa
CRC	Convention on the Rights of the Child
CSR	Corporate Social Responsibility
CSV	Creating Shared Value
ECCHR	European Centre of Constitutional and Human Rights
FLA	Fair Labor Association
GOTS	Global Organic Textile Standard
GRI	Global Reporting Initiative
HR	Human Rights
ICT	Information and Communications Technology
ILO	International Labor Organization
ILRF	International Labor Rights Fund
IO	International Organization
ISO	International Organization for Standardization
KPIs	Key Performance Indicators
NCP	National Contact Point
NGO	Non-governmental Organization
OECD	Organization for Economic and Co-operation and Development
SA	Social Accountability
SAI	Social Accountability International
SRTP	Supplier Responsible Tobacco Program

TNCs	Transnational Corporations
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCTC	United Nations Centre on Transnational Corporations
UNGC	United Nations Global Compact
UNGP	United Nations Guiding Principles on Business & Human Rights
UNICEF	United Nations International Children's Emergency Fund
US	United States
WWII	World War II

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Introduction

A. Background information

John Ruggie, when formulated the UN framework of Guiding Principles on Business and Human Rights (UNGP), which is so far the most important and well-accepted international instrument of the field, considered as the primary incentive for corporations to uphold human rights one that would be subject to scrutiny and evaluation by the general public as part of the social expectations placed on corporations or, in other words, as a requirement for a corporation to maintain its social license to operate.¹ Indeed, corporations heavily rely on social expectations and perceptions when deciding the content of their Corporate Social Responsibility (CSR) programs.²

Besides, according to research published in “Frontiers in Psychology” in 2020, “consumers' CSR expectations and CSR perceived performance have a significant impact on their perception of [corporate] hypocrisy”.³ But, what if these perceptions are erroneous? In this regard, another study has indicated that relying solely on the court of public opinion may not always be effective in aligning decision-making with legal and ethical standards when it comes to safeguarding human rights. This is because a significant discrepancy has been observed between how people perceive a business's involvement in human rights violations and the actual behavior of the business. The study involved 2,420 American adults who were presented with various hypothetical scenarios, resulting in over 12,000 responses. Despite the fact that all the scenarios depicted actions that would be deemed unacceptable according to the UNGP, it was discovered that 40% of the time, the participants did not believe that the business had engaged in a human rights violation.⁴ It is not impossible, thus, that corporations attempt to mislead consumers into perceiving their CSR performance as successful and avoid, in this way, being considered as having a hypocritical stance. Therefore, a CSR mindset has the capacity to hinder and undermine progress in the field of Business and Human Rights

¹ Sally Wheeler, ‘Global Production, CSR and Human Rights: The Courts of Public Opinion and the Social Licence to Operate’ (2015) 19 *The International Journal of Human Rights* 757.

² Matthew Amengual, Rita Mota and Alexander Rustler, ‘Research: Public Opinion Is Not Enough to Hold Companies Accountable’ (*Harvard Business Review* 6 September 2022) <https://hbr.org/2022/09/research-public-opinion-is-not-enough-to-hold-companies-accountable> accessed 1 July 2023.

³ Wang Zhigang, Zhang Lei and Liu Xintao, ‘Consumer Response to Corporate Hypocrisy from the Perspective of Expectation Confirmation Theory’ (2020) 11 *Frontiers in Psychology*.

⁴ *Ibid.*

(BHR). Although CSR may appear to be a beneficial approach in promoting responsible business practices, it can also work against the objectives of the BHR agenda at a deeper level.⁵ Eventually, despite the increase of statutory requirements and a tendency towards CSR juridification both at the international and the national level, and in both public and private spheres, the eagerness and effectiveness of business in promoting human rights remains questionable.⁶

B. Research hypothesis and objectives

Taking into consideration the public's tendency to misinterpret when a corporate activity constitutes a human rights violation, along with the fact that social expectations and consumers' perspectives have indeed a strong impact on CSR projects' formulation, then businesses may actually exploit consumers' fallible perceptions regarding their CSR programs, in order to hide behind them any discrepancies in relation to human rights protection. This particular inference led to the undertaking of the present research. Thereby, the core hypothesis that seeks to be examined is that corporations can instrumentalize CSR, counteracting the promotion of the BHR agenda, with the aim of diverting the public's attention from their human rights violations.

The concepts of CSR manipulation, as well as of corporate hypocrisy have been extensively analyzed within various contexts. Examples of what has already been addressed in academic literature is the negative side of CSR in several terms, such as of shareholders' interests, employees' relations and performance, as well as the usage of CSR by corporations as a form of promoting their image or brand. On the other hand, what has been barely addressed, and what this research's contribution intends to be, concerns the potential corporate pretense when it comes to a company's advertisement of being socially responsible through the instrumentalization of its CSR program, as a strategy to deflect public attention away from human rights violations committed by or in complicity with the company itself, undermining

⁵ Florian Wettstein, 'The History of "Business and Human Rights" and Its Relationship with Corporate Social Responsibility' in Surya Deva and David Birchall (eds), *Research handbook on human rights and business* (Edward Elgar Publishing 2020) 24.

⁶ Karin Buhmann, 'Human Rights and Business: Expectations, Requirements and Procedures for the Responsible Modern Company' in Barnali Choudhury and Martin Petrin (eds), *Understanding the Company : Corporate Governance and Theory* (Cambridge University Press 2017) 215.

in this way the advancement of BHR agenda. Therefore, the research will be focused on CSR in relation to human rights protection within the corporate framework, while the added value of this endeavor revolves around the use of tangible data when discussing the element of pretense and the possibility of its existence within this context.

In order to assess the main hypothesis and reach a conclusive answer, a series of sub-questions need to be addressed:

- (a) What is the relationship between the CSR and the BHR agenda?
- (b) Which is the situation on the ground, when it comes to corporations' human rights performance in relation to a (seemingly) successful CSR program?
- (c) When corporations are found responsible for human rights violations, while having a strong CSR program in place, can this behavior be translated as pretense?

C. Methodology and structure

For the investigation of the research problem and the evaluation of the research hypothesis, a mixed-method approach was followed. Firstly, in quantitative terms, a statistical analysis was conducted, with the aim of obtaining objective and accurate results regarding the CSR and HR performance of a defined sample of transnational corporations (TNCs) and identifying possible trends or patterns in this regard. Subsequently, in qualitative terms, a three-case study was carried out for a realistic view and a contextual understanding of the issue at hand, which was followingly assessed based on content analysis of documents, such as companies' annual and CSR records, as well as IOs' and NGOs' reports. This mixed approach generally serves a double objective: numeric data add precision to the narrative ones, while textual information offers details and gives meaning to the statistical results.

The data collection for the conduct of both methods was based on desk-based research that included literature review, in some cases legal research and analysis, as well as exploration of online databases with CSR and human rights-related rankings and ratings. More specifically, the literature review was based on primary material, such as IOs' and corporate documents,

legal instruments and official statements, as well as on secondary material, such as books, academic articles, commentaries by experts and NGOs' reports.

As regards the structure of the thesis, it is divided into two parts. The first one presents the relevant theoretical and legal framework, while the second examines the practical side of the issue under consideration. In particular, Chapter 1 explores the distinctiveness of CSR and BHR, by discussing their starting points and historical evolution, their objectives as well as the particular relationship between them. Chapter 2 lists the legal instruments governing the two debates, while focusing on and even questioning their voluntary nature. Chapter 3 explores the different interpretations of CSR instrumentalization, examines the relationship between CSR and BHR on the ground from a statistical perspective and lastly, introduces the context within the TNCs selected as case studies operate. Chapter 4 presents and analyses the case studies.

PART I: THEORETICAL AND LEGAL FRAMEWORK

Chapter 1: CSR and BHR: a theoretical analysis

Human rights responsibilities within the corporate context is a multi-perspective issue and it can be mainly associated with two broad discussions of both the business and academic world: CSR and BHR. But, what is the relationship between these two discussions, if there is one at all? Present-day trends suggest that the majority of business professionals classify BHR as a subset of the CSR field, while others even interpret them as one and the same.⁷

1.1 CSR and BHR as distinct debates

Despite the existence of a close relationship between the two debates, a more thorough analysis indicates a much more complicated relationship between them, in terms not only of conceptual foundation and legal nature,⁸ but also of historical evolution. Despite any convergences and overlaps, BHR has arisen and developed as for the most part separately and alongside the broader CSR debate.⁹

1.1.1 The development of the CSR discourse

Historically, it is well-known that the branch of international human rights law has emerged right after and due to the atrocities of World War II. It came to regulate the protection of human life and reassure the world's growing concern regarding the repetition of similar brutalities. Thus, it can be argued that this legal development occurred as a result of an intrinsic moral shift, - combined of course with other political, institutional, and socioeconomic factors - based on which, the value of human life and dignity came into the spotlight.

⁷ Ibid 214.

⁸ Ana Čertanec, 'The Connection between Corporate Social Responsibility and Corporate Respect for Human Rights' (2019) 10 DANUBE: Law, Economics and Social Issues Review 4.

⁹ Florian Wettstein (n 5) 23.

However, the world, as we knew it seven decades ago has enormously and variously changed. The complexity of the modern era, arising from the intricate interaction between the structure, policies, and activities of the open economies of the world, has posed multiple additional challenges to the applicability of international human rights law. When the international regime was established, states were designated as the sole duty-bearers and thus, the only subject that could actually violate international human rights law.¹⁰ In this regard, one of the most significant issues is the increasing power of multinational corporations, which play one of the most important roles in global economic activity. It is only reasonable, hence, that this dominance seriously affects the society itself and the particular needs of the human beings comprising it. In other words, this development seems to have created a gap in terms of safeguarding human rights, since multinational corporations appear as only right-holders, without bearing any legal obligation under international human rights law, as it is currently formulated.

The concern about the potential impacts that private individuals and legal entities may have on human rights and thus, the necessity to protect those rights, especially against TNCs' often unethical and abusive practices, have existed in the global governance agenda for more than forty years.¹¹ This debate has arisen since human rights violations within the corporate context began to be recorded all over the world. Gradually, it became evident that the increasing corporate power, largely supported by the legal gaps existing in terms of corporate accountability and impunity, has led TNCs and other business enterprises to act irresponsibly as regards human rights protection.¹² Obviously, corporations' main goal is profit-making. However, their commercial behavior and the whole range of their activities are so focused on economic factors that in the end, they often disregard any other concern about social needs and well-being.¹³ The result was, in part, the ongoing debate on CSR, dimensions of which

¹⁰ Sandra Epal-Ratjen, *Adjudicating Economic, Social and Cultural Rights at National Level* (International Commission of Jurists 2014) 64-65.

¹¹ Steven R Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility' (2001) 111 *The Yale Law Journal* 447-448.

¹² Daniel Uribe and Danish, 'Designing an International Legally Binding Instrument on Business and Human Rights' (South Centre 2020) 7-8.

¹³ The Encyclopedia of World Problems, 'Corporate Self Interest Overriding Community | World Problems & Global Issues' (*Uia.org* 2016) <<http://encyclopedia.uia.org/en/problem/157909>> accessed 7 July 2023.

constitute, among others, the social development, the environmental protection, and the labor conditions.¹⁴

Essentially, the CSR approach came into play to reconcile the traditionally conflicting ideas of generating profit on the one hand and promoting development, protecting the interests of the social community, as well as respecting human rights, on the other.¹⁵ Therefore, CSR is largely linked with the issue of corporations' impact on society. 'Corporate responsibility is the manifestation of a corporation's social and environmental obligations to its constituencies and great society,' says Paul Argenti. But, when did society start to expect from business entities to incorporate into their activities responsible social behavior while generating profit? Until very recently, almost three decades ago, the general public used to expect such humanistic and altruistic practices to come exclusively from non-profit and religious organizations, since corporations were considered solely self-interested entities, with their only objective being profit maximization. Any attempts on their side to make an offer to the community were limited to some charity and philanthropic initiatives.¹⁶ In the 1970s, the Nobel Prize-winning economist Milton Friedman's doctrine became widely known. According to it, businesses' purpose is exclusively economic, while social or environmental concerns should burden only non-profit organizations and governments.¹⁷

However, in the same period, the public started to be concerned and even question the profit-making processes of corporations, a fact which led to the acknowledgment for the first time that business practices are in fact considerably connected with society's prosperity and welfare.¹⁸ This realization occurred mainly for four reasons:

(1) Businesses' expansion worldwide, along with the internationalization of the global economy:¹⁹ This was the last out of several transformations that corporations went through. It started in the 1950s and it is said that it is still carrying on. The beginning of this transition occurred by companies, which were initially based in only one state and then became

¹⁴ Irina Nicolae, 'Corporate Social Responsibility and Human Rights in the Context of the European Union | Working Paper Series Number 16' (Canadian Centre for German and European Studies (CCGES) 2008) 3.

¹⁵ Ana Certanec (n 8) 103.

¹⁶ Paul A Argenti, *Corporate Responsibility* (Sage 2016) 2.

¹⁷ Milton Friedman, 'The Social Responsibility of Business Is to Increase Its Profits' [1970] *The New York Times Magazine*.

¹⁸ Paul A Argenti (n 16).

¹⁹ Frederick Nixson and Mo Yamin, 'The United Nations on Transnational Corporations: A Summary and a Critique' (1980) 6 *British Journal of International Studies* 18-19, 21, 24, 26.

multinational enterprises, by expanding their operational activities abroad and creating subsidiaries in multiple countries. This procedure was intensified in the 1990s, as more States started to welcome foreign direct investments, communications were upgraded and markets, production facilities, as well as research and development proficiency was diffused around the world.²⁰

(2) Acknowledgement of the gradual environmental degradation and the emergence of environmental movements:²¹ It was several large-scale environmental disasters that actually led to extensive unrest regarding corporations' lack of responsibility.²² Two important ones were, first, the Union Carbide's fatal corporate negligence that caused the leak of 27 tonnes of deadly methyl isocyanate gas into the air in Bhopal of India in December 1984, which led to millions of people being exposed and thousands of them losing their lives;²³ and second, the spill of 11 million gallons of oil by the tanker Exxon Valdez in Prince William Sound, Alaska, in March 1989, which constitutes one of the biggest US environmental disasters, since it had far-reaching consequences, impacting over 1,300 miles of coastline and causing significant disruptions to fish, wildlife, their habitats, as well as local industries and communities.²⁴ Therefore, this fact, along with the realization by the public of the environmental movements' increasing presence and the multiplication of their activities on the global scene, played an essential role in connecting the dots between corporate activities and societal needs.²⁵

(3) Revelation of corporate scandals, along with the international media expansion: In the 1990s, a series of boycotts of several garment and footwear companies took place around the

²⁰ Reuven S Avi-Yonah, 'The Four Transformations of the Corporate Form' in Barnali Choudhury and Martin Petrin (eds), *Understanding the Company: Corporate Governance and Theory* (Cambridge University Press 2017) 35; See also Steven R Ratner (n 11) 447.

²¹ Lorraine Elliott, 'Environmentalism - History of the Environmental Movement', *Encyclopædia Britannica* (2019) <<https://www.britannica.com/topic/environmentalism/History-of-the-environmental-movement>> accessed 7 July 2023.

²² Daniel Franklin, 'Just Good Business' (*The Economist* 17 January 2008) <<https://www.economist.com/special-report/2008/01/19/just-good-business>> accessed 7 July 2023.

²³ 'The Bhopal Gas Disaster' (*The Bhopal Medical Appeal*) <<https://www.bhopal.org/continuing-disaster/the-bhopal-gas-disaster/>> accessed 7 May 2023.

²⁴ 'Exxon Valdez | Oil Spills | Damage Assessment, Remediation, and Restoration Program' (17 August 2020) <<https://darrp.noaa.gov/oil-spills/exxon-valdez>> accessed 7 May 2023.

²⁵ Lorraine Elliott (n 21).

world, after the revelation by media that they use child labor and maintain poor labor conditions along their supply chains.²⁶

(4) Growth of ethical consumerism: Over the last few decades, there is an increasing concern regarding corporate practices' ethical problems, which entails a shift in the individual decision-making process in cases, in which ethics and social responsibility are involved. Hence, it seems that nowadays, ethical ideology is an essential factor in consumers' behavior and decision-making.²⁷

Nowadays, it seems that corporations are aware of the impact that their activities may have on society and the communities they operate within. Indeed, they are increasingly engaging in dealing with societal issues that until recently were not considered related to their operational mission. The most exemplary among them are even trying to implement innovative and sustainable policies, by conducting due diligence procedures, collaborating with non-profit organizations, and shifting the operational framework of their business through the incorporation of more responsible practices.²⁸

1.1.2 The development of the BHR discourse

Traditionally, the creation of international human rights law is intertwined with individuals as beneficiaries and States as duty-bearers. However, this is in accordance with an outdated interpretation of international law within a purely state-centric structure. In the last decades, the world has witnessed an increase in society's expectations and a series of policy discussions regarding businesses - as legal and not physical entities - and their responsibilities in terms of their human rights impact.²⁹

In the academic world, the debate on BHR was initiated by legal scientists in the late 1990s. Hence, from a historical perspective, it is evident that the BHR agenda did not arise from the

²⁶ Paul A Argenti (n 16) 3.

²⁷ Dayananda Palihawadana, Pejvak Oghazi and Yeyi Liu, 'Effects of Ethical Ideologies and Perceptions of CSR on Consumer Behavior' (2016) 69 *Journal of Business Research*.

²⁸ Paul A Argenti (n 16) 3.

²⁹ Karin Buhmann (n 6) 213; *See also* Samantha Besson, 'The Bearers of Human Rights' Duties and Responsibilities for Human Rights: A Quiet (R)Evolution?' (2015) 32 *Social Philosophy and Policy*.

more well-established debate on CSR. Instead, it originated from purely legal discussions related to international human rights law and particularly from the obstacles that victims of corporate-related human rights violations were facing in accessing justice, which in turn led to the still ongoing pursuit of corporate accountability. Therefore, BHR is essentially a legal field, the main issues of which are linked with the quest for sufficient legal grounds for the undisputed establishment of directly enforceable international human rights obligations to corporations.³⁰

Very similarly to the CSR development, the principal factor that triggered the increase of human rights protection in the corporate framework, led to the transformation of the human rights discourse in this context and eventually gave rise to the BHR movement, was the processes of globalization, along with the upgrade of multinational corporations on the one hand, and the realization that state control over this process is actually diminishing, on the other.

As described above, the rise of business enterprises in terms of power and influence on the global scale gradually formulated a series of societal expectations about corporations' responsibilities beyond the traditional financial and trading aspects. On the side, what also influenced this formulation was the information flows that progressively led to increased knowledge about the conditions and the ways in which goods are manufactured. Besides, the privatization of many sectors and services was a key issue, in this regard, since many human rights issues emerged, ranging from poor working conditions and even forced labor to environmental degradation and issues of access to water, land, and shelter due to wide-reaching agricultural projects and use of toxic chemicals.³¹

Most commonly, the starting point of a more settled international BHR agenda is placed at the moment that it reached the international scale in the 1990s.³² Multinational corporations mainly from the mining industry began to be accused publicly, among others, for their involvement in human rights violations committed by mercenaries or even for their collaboration with authoritarian governments. Nevertheless, the link between business and human rights was not a new element at that particular moment in time. It was rather an

³⁰ Steven R Ratner (n 11) 448-449.

³¹ Karin Buhmann (n 6) 213-214.

³² Florian Wettstein, (n 5) 25.

expansion of it beyond labor rights and a fresh examination of the connection between these two areas under new perspectives. Eventually, the delineation and formulation of this connection has been the main goal of what is now known as the "business and human rights debate".³³

However, some pertinent efforts to construct what we call today "corporate human rights responsibilities" can be traced back to the 1970s. More specifically, in 1975, the UN created the Centre on Transnational Corporations (UNCTC), as an early attempt to deal with the interconnection of corporate responsibility and global governance, through the formulation of an all-inclusive code of conduct for TNCs. Nevertheless, due to strong resistance by the business sector and several States, the code project was never completed, while the UNCTC itself was disestablished in 1992.³⁴ In line with this effort, in 1976, the Organization for Economic Co-operation and Development released its famous Guidelines, known as "OECD Guidelines for Multinational Enterprises", addressed to and accepted by States themselves at a voluntary basis. Even though the very first design of the Guidelines included a small reference to the corporate human rights responsibilities, over the years the subject acquired a significant place within the document.³⁵

Although legal science is the main driving force of the BHR field, it has certainly acquired interdisciplinary elements to a great extent, combining accounts from several other areas, such as business ethics and CSR.³⁶ Besides, the relevant academic debate has not only developed conceptually, but it has also made important steps towards institutionalization as a research field, especially after the appearance of the UNGP.³⁷

³³ Florian Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (2012) 22 *Business Ethics Quarterly* 742.

³⁴ Khalil Hamdani and Lorraine Ruffing, *United Nations Centre on Transnational Corporations* (Routledge 2015).

³⁵ Florian Wettstein (n 5) 25-26.

³⁶ *Ibid* 29-30.

³⁷ *Ibid* 32.

1.2 The relationship between CSR and BHR

Contrary to the BHR agenda, whose straightforward focal point is human rights, CSR has always been considered a much wider field both conceptually and in terms of initiatives adopted for its promotion.³⁸ However, both of them can be seen as interested in establishing corporate responsibility that goes beyond profit-making. Thus, from this perspective, the two debates may be considered ‘if not as fully congruent, at least as compatible and complementary’, Wettstein argues. Examined from this point of view, BHR may indeed be construed as a component of CSR or even a protraction of CSR to include human rights issues in its entirety.³⁹

Nevertheless, their distinct starting points should not be forgotten, as this constitutes a strong argument in favor of the divergence of the two discussions. According to this line of reasoning, the scant and fragmented existence of human rights concerns for a long time throughout the history of CSR is pivotal. This was particularly evident before the publication of the UNGP in 2011, both in terms of corporate initiatives undertaken and standards adopted, despite a relative opening of the CSR focus in the 1990s, due to a series of exposés about the terrible working conditions prevailing in multinational corporations’ factories, such as Nike.⁴⁰

All that being said, it is quite obvious that the relationship between CSR and the BHR agenda is complex and evolving. On the one hand, CSR and the BHR agenda share a common goal of promoting responsible business practices that respect and protect human rights. Both recognize the important role that businesses can play in addressing social and environmental issues, and both encourage businesses to adopt best practices in areas such as human rights, labor standards, environmental protection, and anti-corruption.⁴¹

However, there are also important differences between the two. CSR is a voluntary concept, which practically means that it depends on the individual business’ discretion to decide whether to adopt any CSR policies. This particular nature also allows businesses to choose

³⁸ Ana Čertanec (n 8) 110.

³⁹ Florian Wettstein (n 5) 32.

⁴⁰ Laura Pincus Hartman, Denis Gordon Arnold and Richard E Wokutch (eds), *Rising above Sweatshops: Innovative Approaches to Global Labor Challenges* (Praeger 2003).

⁴¹ Anita Ramasastry, ‘Corporate Social Responsibility versus Business and Human Rights: Bridging the Gap between Responsibility and Accountability’ (2015) 14 *Journal of Human Rights* 250.

the issues they want to focus on and the initiatives they want to undertake, which are often characterized by their proactive nature. The structure of the CSR program, thus, depends entirely on the ethical identity and the strategic priorities of each company. That being said, a CSR initiative could simply constitute “a cosmetic exercise”, without an actual impact.⁴² In contrast, BHR is grounded in international human rights law and establishes a legal framework for holding businesses accountable for their impact on human rights, while at the same time, it recognizes that businesses have a responsibility to respect human rights and that governments have a duty to protect human rights and ensure that businesses do not cause or contribute to human rights abuses.⁴³ Importantly, this is not relevant only with direct corporate-related human rights abuses, but also and maybe primarily with indirect ones, meaning violations committed not by the corporation itself, but rather by a supplier, a business partner, or a contractor along its supply chain. This is crucial, as most cases of human rights violations, in which corporations are found involved today are indirect.⁴⁴

Thus, in simplified terms, the BHR regime is characterized by a far more restrictive perspective on wrongdoing (negative obligations to respect human rights⁴⁵) that generally contrasts with CSR’s push for proactive engagement (the so-called “do-gooding”⁴⁶). Therefore, while CSR does not sufficiently focus on human rights issues, the BHR agenda, on the other hand, does not look at the potentiality of corporations acting positively and having a meaningful impact on society, instead of being solely a part of the problem when it comes to the current difficulties we encounter as a society.⁴⁷

Another key difference between CSR and the BHR agenda is their approach to accountability. CSR relies primarily on self-regulation and voluntary reporting by businesses, which can be difficult to monitor and enforce. In contrast, the BHR agenda gives emphasis on the need for strong legal and regulatory frameworks that establish clear standards and provide remedies for human rights violations. This is the reason why the relevant literature deals predominately

⁴² Michael E Porter and Mark R Kramer, ‘Strategy and Society: The Link between Competitive Advantage and Corporate Social Responsibility’ [2006] Harvard Business Review 79.

⁴³ Anita Ramasastry (n 41) 237-238.

⁴⁴ Florian Wettstein (n 33) 755.

⁴⁵ See UN Office of the High Commissioner for Human Rights (OHCHR), ‘Fact Sheet No. 33, Frequently Asked Questions on Economic, Social and Cultural Rights’.

⁴⁶ The Economist, ‘The Halo Effect: Do-Gooding Policies Help Firms When They Get Prosecuted’

<<https://www.economist.com/business/2015/06/25/the-halo-effect>> accessed 24 April 2023.

⁴⁷ Florian Wettstein (n 33) 751.

with the legal and not the ethical or moral aspect of human rights. In other words, BHR as a field of inquiry has emerged out of the companies' negative impacts on human rights and thus, seeks mainly to remedy the damage already caused, instead of discussing the possible positive role that corporations could play, alongside States, in actively promoting human rights.⁴⁸

Despite these differences, there is growing recognition that CSR and the BHR can complement each other and work together to promote responsible business practices and protect human rights. Based on that and taking into consideration the limitative -in terms of human rights violations- character of the BHR agenda, along with the more proactive and engaging nature of the CSR field, a promising option as regards a possible conceptual integration or at least convergence of these two, may actually appear, which could lead to an increase of their legitimacy accordingly. What is needed for this realization is, on the one hand, the enlargement of the BHR, so that it does not only encompass non-violation of human rights, victims' access to justice, and corporate accountability, but also a discussion about positive corporate responsibilities, and on the other hand, the placement of human rights at the core of the CSR field. As a result of merging and integrating the two discussions, there is now a broader emphasis on active participation by businesses in safeguarding and realizing human rights. This engagement is seen not merely as a matter of voluntariness or act of charity, but rather as an ethical commitment. Essentially, combining these debates creates an opportunity to conceptualize corporations' affirmative obligations towards human rights.⁴⁹

In general terms, while there are differences between the two debates, they do share common goals.⁵⁰ The challenge is to find ways to bridge the gap between the two and establish a coherent framework for promoting sustainable and responsible business practices.

Confidently, one of the finest articulations of the relationship between the two discourses has been offered by Ramasastry, also cited by Wettstein:

Corporate Social Responsibility (CSR) and Business and Human Rights (BHR)
are like two close cousins – they are intertwined concepts focused on companies

⁴⁸ Anita Ramasastry (n 41) 240.

⁴⁹ Florian Wettstein (n 33) 752.

⁵⁰ Nojeem Amodu, 'Business and Human Rights versus Corporate Social Responsibility: Integration for Victim Remedies' (2021) 21 African Human Rights Law Journal 863.

engaging in responsible and socially beneficial activities – but both concepts have key differences and hence distinct identities based on their origins. They are in essence two different but overlapping discourses: CSR growing out of scholarship from the business academy and BHR emerging from the work of legal academics and human rights advocates focused on formalistic notions of rights and remedies.⁵¹

The question that arises at this point is the following: What could be the effect of corporate social responsibility's implementation on the promotion of the BHR agenda? Theoretically, the effect of CSR's implementation on the promotion of the BHR agenda can be positive or negative, depending on how CSR is implemented and the extent to which it incorporates human rights standards.

On the positive side, the implementation of CSR can contribute to the promotion of the BHR agenda by raising awareness among businesses of their responsibilities to respect human rights, and by encouraging them to adopt policies and practices that are consistent with human rights standards. CSR initiatives that are grounded in human rights standards can also provide a platform for dialogue between businesses, civil society organizations, and other stakeholders, leading to greater cooperation and collaboration on human rights issues.

However, the implementation of CSR can also have negative effects on the promotion of the BHR agenda. For example, if CSR initiatives are narrowly focused on philanthropic or environmental initiatives and do not address the broader human rights context in which businesses operate, they may contribute to the perception that businesses are addressing social and environmental issues while ignoring their human rights responsibilities. Additionally, CSR initiatives that are not comprehensive and all-inclusive may lack clear goals, targets, and monitoring mechanisms, making it difficult to hold businesses accountable for their actions.

Moreover, some critics argue that CSR can be used as a tool for greenwashing, where businesses use CSR initiatives to improve their public image without actually addressing the root causes of social and environmental problems. This can undermine the credibility of CSR

⁵¹ Anita Ramasastry (n 41) 240; *See also* Florian Wettstein (n 5) 34-35.

initiatives and lead to a perception that they are simply marketing tools, rather than genuine efforts to promote sustainable and responsible business practices.

All in all, the effect of CSR's implementation on the promotion of the BHR agenda depends on the extent to which CSR initiatives incorporate human rights principles and address the broader social and environmental context in which businesses operate. While CSR can contribute to the promotion of the BHR agenda, it must be part of a comprehensive approach that includes strong legal and regulatory frameworks to ensure accountability and promote respect for human rights.

On this basis, even though CSR could serve as a tool for the promotion and protection of human rights, it may ultimately prove to be inadequate in addressing the intricate relationship between business and human rights. There are several possible constraints that can be mentioned in this regard, such as the optional and -more often than not- charitable character of CSR activities, and the top-down decision-making approach in CSR initiatives. Therefore, in this context, it becomes imperative to foster stronger cooperation between the private and public sectors and establish a CSR public policy framework that acknowledges international principles and standards related to human rights.⁵²

Against this background, the interpretation of BHR as a subset of the CSR field consists a quite outdated perspective and even a political falsification. Rather than as a subset, an issue, or a complement to CSR, BHR should be depicted as a critical response to it. The opposite approach would only result in undermining the BHR concept at its very essence.⁵³

⁵² Thomas Thomas and Alexander Chandra, 'Baseline Study on the Nexus between Corporate Social Responsibility & Human Rights: An Overview of Policies & Practices in ASEAN' (ASEAN Intergovernmental Commission on Human Rights (AICHR) 2014) 6, 8, 19, 21.

⁵³ Florian Wettstein (n 5) 24.

* The Chapter contains sections drawn from the author's previous own work, cited as Alexandra Rafaela Vernidaki, 'Moving towards a Legally Binding Instrument on Business and Human Rights: The Third UN Revised Draft' (Master Thesis 2023).

Chapter 2: The legal framework regulating CSR and BHR*

As already mentioned, CSR as a concept is voluntary in essence. This automatically entails its formulation being governed exclusively by standards contained in international instruments of a purely declaratory character. Paradoxically, the case for BHR is quite similar, since there is not a legally binding international convention that regulates the activities of TNCs and other business enterprises in respect of human rights.⁵⁴ Yet, there are ongoing negotiations regarding the adoption of such an instrument at the UN level since 2014.⁵⁵

2.1 International Standards in the area of CSR and BHR

In general terms, most of the instruments available at the international level are governing both fields in parallel. In fact, their connection in regulatory terms can even be characterized as indivisible, since any effort to compartmentalize the norms, standards and instruments regulating them will most probably end up valueless.⁵⁶ This regulatory link is particularly obvious in the examination of the following instruments: the UNGPs, the UN Global Compact, the OECD Guidelines and the ILO Tripartite Declaration.

A. The UN Guiding Principles on Business and Human Rights

They were unanimously endorsed by the Human Rights Council in 2011. They are also known as the “Ruggie Principles” or the “UN Protect, Respect and Remedy Framework”. They are essentially a corporate human rights responsibility initiative and currently qualify as the internationally agreed baseline concerning the BHR agenda.

The document is based on three core pillars: the first one refers to the State’s duty to protect human rights; the second one defines the responsibility of corporations to respect human

⁵⁴ Barnali Choudhury, ‘Balancing Soft and Hard Law for Business and Human Rights’ (2018) 67 *International and Comparative Law Quarterly* 962.

⁵⁵ Human Rights Council, ‘Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights’ (*Office of the UN High Commissioner for Human Rights*) <<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>> accessed 14 May 2023.

⁵⁶ Nojeem Amodu (n 50) 861.

rights; lastly, the third pillar requires both States and corporations to provide adequate and effective remedies.⁵⁷

The Principles included in the first pillar are a reaffirmation of States' hard obligations, arising from international human rights law. The responsibility analyzed under the second pillar refers to corporate social responsibility and not the one that arises from the international responsibility regime, which specifies the consequences of a substantive international obligation's breach by a State. Therefore, the pillar presents an appropriate standard of conduct in terms of human rights respect by business actors, based on social and moral principles, rather than legal. Lastly, the third pillar addresses the issue of adequate and effective remedies that should be provided to victims of corporate-related human rights abuses by corporations, which have caused them or even contributed to their perpetration.⁵⁸

B. The UN Global Compact

It is an initiative launched by the former UN Secretary General, Kofi Annan, in 1999, regarding the promotion of human rights, responsible labor and environmental standards within the business context, on a voluntary basis. It relies on a bottom-up approach and it contains ten universal principles relevant to the fields under which good corporate practices need to be developed.

In particular, the first two principles concern the general obligations that corporations have in accordance with international human rights standards. Subsequently, the next four principles are concerned with labor rights, such as the elimination of forced labor and of discrimination within the work context. Principles 7 to 9 are dedicated to the environmental aspect of corporate duties towards human rights protection. Lastly, the tenth principle supports the work towards the elimination of corruption.⁵⁹ In this context, all corporations that proceed with the signature and thus the endorsement of the UNGC, are asked to consistently implement the principles enriched therein.

⁵⁷ 'The UN Guiding Principles on Business and Human Rights : UN Guiding Principles Reporting Framework' (*Ungpreorting.org* 2017) <<https://www.ungpreorting.org/resources/the-ungps/>> accessed 7 July 2023.

⁵⁸ Anne Peters and others, 'Business and Human Rights: Making the Legally Binding Instrument Work in Public, Private and Criminal Law' (2020) Research Paper No. 2020-06 Max Planck Institute for Comparative Public Law and International Law (MPIL).

⁵⁹ United Nations Global Compact, 'The Ten Principles | UN Global Compact' (*unglobalcompact.org* 2023) <<https://unglobalcompact.org/what-is-gc/mission/principles>> accessed 5 July 2023.

The importance of the UNGC, in spite of its non-legally binding character, is also supported by the establishment of a particular procedure, according to which adhering corporations are obliged to submit a report once per year regarding the specific measures that they have enacted for the proper implementation of the UNGC's content. Failing to do so, they risk being removed from the adhering parties list.⁶⁰

C. The OECD Guidelines for Multinational Enterprises

They were adopted by the Organization for Economic Cooperation and Development in 1976. They are essentially recommendations towards corporations regarding responsible business operations in relation to respect of human rights, sustainable development and the environment, labor rights, consumers' protection, taxation, and anti-corruption, among others.⁶¹

The document's legal value is essential, considering its non-legally binding nature, as its implementation mechanism is a great example in this regard. The standards arising from the Guidelines are actually put into practice in States that have adhered to the document, through the establishment of National Contact Points (NCP) for responsible business conduct. They are government-established agencies, which apart from promoting the principles and standards of the Guidelines, also deal, as a non-judicial complaint mechanism, with cases initiated by victims against corporations for their non-abidance by these international standards.⁶² Currently, the NCPs are gaining growing importance in the pursuit for accountability within the wider BHR movement.⁶³

D. The ILO Tripartite Declaration

The International Labor Organization (ILO) was established in 1919 with the aim of promoting social development and upgrading working conditions globally. In the framework of ILO, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was adopted in 1977 with principal addresses national and multinational

⁶⁰ Ludovica Chiussi Curzi, *General Principles for Business and Human Rights in International Law* (Brill | Nijhoff 2021).

⁶¹ 'MNE Guidelines - Organization for Economic Co-Operation and Development' (*Oecd.org* 2011) <<https://mneguidelines.oecd.org/mneguidelines/>> accessed 7 July 2023.

⁶² 'National Contact Points - Organization for Economic Co-Operation and Development' (*mneguidelines.oecd.org*) <<http://mneguidelines.oecd.org/ncps/>> accessed 7 July 2023.

⁶³ Florian Wettstein (n 5) 26.

corporations, States, employers, and employees. Its content covers a wide range of workers' rights.

Like the OECD Guidelines, the Declaration provides both States and business enterprises with a solid, valuable framework of principles and standards. It is largely considered as a complementary tool, used for the interpretation of the treaties adopted in the ILO context and other human rights conventions. This view is also supported by the establishment firstly, in 1980 of a procedure available to States, organizations of workers, and employers, for submitting requests for the interpretation of the Declaration and secondly, in 2014 of a follow-up mechanism with a reporting system.⁶⁴

Important instruments governing CSR include the ISO 26000 and the Global Reporting Initiative.

A. The ISO 26000

It is a standard for social responsibility developed through a collaborative effort among various groups, including businesses, workers, consumers, NGOs, and developing countries. It provides guidance to companies and organizations on how to adopt a responsible business approach by incorporating ethical principles into their operational processes. Even though ISO 26000 offers a thorough perspective on social responsibility, it is not certifiable as other ISO standards.

B. The Global Reporting Initiative

The GRI offers a universal framework for creating sustainability reports that adhere to internationally accepted standards. Its reporting structure encompasses criteria and metrics that enable businesses and other organizations to gauge their social, economic, and environmental performance. By adhering to GRI guidelines, a company's sustainability report can provide stakeholders with an open and clear overview of its pertinent sustainability factors.⁶⁵

⁶⁴ Ludovica Chiussi Curzi (n 60).

⁶⁵ Swiss State Secretariat for Economic Affairs SECO, 'International CSR Standards and Developments' (5 June 2023)

<https://www.seco.admin.ch/seco/en/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/nachhaltigkeit_unternehmen/gesellschaftliche_verantwortung_der_unternehmen/internationale-csr-standards-und-entwicklungen.html> accessed 7 July 2023.

Reviewing the international standards presented above, on the positive side, it can be argued that most of them cover a wide range of thematic areas and most importantly the three dimensions of social responsibility: social, economic, and environmental, commonly referred to as the Triple Bottom Line.⁶⁶ On the negative side, the majority of them cannot get certified. They primarily consist of guidelines or manuals that cannot be verified by an independent party. While certification of a standard may lead to increased costs, it also provides an objective evaluation of socially responsible practices within the organization.⁶⁷

2.2 Corporate human rights obligations under international law

The central focus of the BHR debate has primarily revolved around the practical aspects of implementing and enforcing corporate obligations regarding human rights within the framework of international human rights standards. Therefore, the primary concern has not been the fundamental ethical justification for these obligations, but rather their potential enforceability within the international human rights system.⁶⁸

Traditionally, there is a conceptual obstacle in terms of imposing direct international human rights obligations on non-state actors, since they are not considered as subjects under general international law. This has as a result for TNCs' activities to be regulated only through domestic legislation by States. In particular, the various international human rights conventions impose the obligation on their States parties to control the corporations operating within their territory. States need to do so, by establishing, within their national legal order, preventive measures, as well as the legal liability of corporations that do not act in accordance with the international human rights standards.⁶⁹

On this basis, it is argued that a potential legally binding instrument on BHR, which is currently under negotiation, could be approached in a similar way.⁷⁰ However, restating in a

⁶⁶ Telma Mendes and others, 'Linking Corporate Social Responsibility, Cooperation and Innovation: The Triple Bottom Line Perspective' [2021] *Innovation & Management Review*.

⁶⁷ Lucie Kvasničková Stanislavská, 'International Standards of Corporate Social Responsibility' [2010] *Agris On-line Papers in Economics and Informatics*.

⁶⁸ Florian Wettstein (n 33) 744.

⁶⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), 'General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities | E/C.12/GC/24' (10 August 2017).

⁷⁰ Daniel Uribe and Danish (n 12) 24.

new international convention what is already established would not be of particular use. Perhaps, the only advantages of this approach would be the clarification of corporate liability standards and the harmonization of national legislation. Nevertheless, important gaps, such as the regulation of extraterritorial activities of TNCs or the victims' effective access to justice, would remain.

On the other hand, what needs to be underlined is that even though a different approach was to be followed, meaning adopting a legally binding instrument with directly enforceable legal obligations on TNCs, this also would not constitute a panacea. The complexity of the issues under consideration is such that one should recognize the significance of the progress, which has been achieved until today.⁷¹

Returning to the challenges of the establishment of a convention on BHR and specifically, to the one related to the subjectivity of multinational corporations under international law, the first major barrier is clearly conceptual. Generally, international law is conceived as a legal system that is dominated only by States and in which non-state actors have no place. This conception largely relies on States' restlessness, regarding the perceived legal and political effects, which the recognition of non-State entities as subjects under international law may entail. Therefore, the issue at hand is linked with the possible political legitimacy that non-State actors may gain through their legal legitimization.

In view of this problem, a shift, in the way that international obligations are conceptually conceived, seems quite reasonable and perhaps may be proven useful in addressing the issue. It is true that a big part of scholars tend to equate the legislators of international rules with the receivers of these rules, by confusing the notions of personality and legitimacy. Based on this presumption, in case non-State entities become direct addressees of international obligations, this will place them on a politically equal footing with States. However, more recent studies suggest an approach more focused on the normative aspect of the non-state actor regulation, disregarding the effects linked with a possible law-making capacity or an enhanced political position. That being said, it would be useful to examine the pure theoretical basis of the

⁷¹ Nicole Bigby and Berwin Leighton Paisner, 'A Gordian Knot - the Proposed Business and Human Rights Treaty' (*Business & Human Rights Resource Centre* 23 October 2017) <<https://www.business-humanrights.org/en/blog/a-gordian-knot-the-proposed-business-and-human-rights-treaty/>> accessed 7 July 2023.

concept of international legal personality.⁷² The International Court of Justice seems to present it as neutral and quite open. In this regard, a Court's quotation, drawn from one of its advisory opinions can be considered:

‘The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States [...] But to achieve these ends the attribution of international personality is indispensable.’⁷³

Thus, based on that quotation and from a normative point of view, it can be argued that international legal personality can be applied to multinational corporations solely for the purpose of imposing direct international obligations on them, without any additional assumptions about their rights or capacities as subjects of international law.

Therefore, this conceptual interpretation of international legal personality seems to create a solid theoretical ground, upon which a legally binding instrument may build a provision related to the direct regulation of TNCs.⁷⁴

Nevertheless, despite the existing intense debate on the TNCs’ subjectivity under international law, as well as on whether some sort of legal effects are produced by the available international instruments that may bind even private entities, at the time being, all the ones that set human rights standards for corporations are considered as soft law.⁷⁵

However, they may be *prima facie* voluntary, but their exact legal status under international law may need further consideration. In other words, even though they are non-legally binding

⁷² Lee McConnell, ‘Assessing the Feasibility of a Business and Human Rights Treaty’ (2016) 66 *International and Comparative Law Quarterly* 146-149.

⁷³ *Reparation for injuries suffered in the service of the Nations*, Advisory Opinion, [1949] ICJ Rep 174, 178.

⁷⁴ Lee McConnell (n 72) 151.

⁷⁵ Patrick Miller and Kabir Duggal, ‘Evolution of Business & Human Rights Obligations – from Soft Law to Voluntary Initiatives to Emerging International Standards & National Regulations’ (*Harvard International Law Journal*)

<<https://harvardilj.org/2023/04/evolution-of-business-human-rights-obligations-from-soft-law-to-voluntary-initiatives-to-emerging-international-standards-national-regulations/>> accessed 4 July 2023.

per se, their legal effects must be evaluated in relation to other relevant international law rules and principles.⁷⁶

2.2.1 The soft-hard law dipole of BHR agenda

This section raises the question of whether initiatives outlining the responsibilities of businesses towards human rights must include legally binding obligations in order to achieve effectiveness. All the initiatives mentioned above traditionally fall under the category of soft law. However, this term is very generic, often misleadingly oversimplified, and perhaps with no practical use. The wide variety of legal instruments labeled as soft law precludes a valid evaluation of their regulatory value.⁷⁷ In addition, the dipole of hard and soft law is not adequate for one to really understand the functionality of international law.⁷⁸

The relative softness or hardness of an international rule actually depends on various factors and cannot be absolute in most cases. These factors include the relationship of the rule in question with other relevant international norms or rules and of course, the specific content of the rule itself.⁷⁹

The “soft law” label is often intentionally used by States, in order to emphasize the instruments’ non-legally binding nature and thus the fact that they are not obliged to comply with them. Nevertheless, while soft law instruments are mainly presented as ‘the proposed law or the law as it should be’,⁸⁰ they can still generate legal effects.⁸¹

According to Thirlway, soft law refers to an international commitment or obligation, which, in a pyramid graph, would be placed below a hard directly enforceable international rule, but

⁷⁶ Ludovica Chiussi Curzi (n 60).

⁷⁷ Christine M Chinkin, ‘The Challenge of Soft Law: Development and Change in International Law’ (1989) 38 *International and Comparative Law Quarterly* 870.

⁷⁸ Oscar Schachter, ‘The Twilight Existence of Nonbinding International Agreements’ (1977) 71 *American Journal of International Law* 296.

⁷⁹ Gabrielle Kaufmann-Kohler, ‘Soft Law in International Arbitration: Codification and Normativity’ (2010) 1 *Journal of International Dispute Settlement* 285.

⁸⁰ Hugh Thirlway, ‘Concepts, Principles, Rules and Analogies: International and Municipal Legal Reasoning (Volume 294)’ [2002] *Collected Courses of the Hague Academy of International Law* 273, 389.

⁸¹ David Turns, ‘Rosalyn Higgins, Problems and Process: International Law and How We Use It’ (1995) 58 *The Modern Law Review* 767–770.

certainly above a ‘mere political gesture, so that there is an expectation of compliance, even if there is no legal duty’ on the part of States to do so.⁸²

Besides, the actual rationale behind the idea of adopting soft law instruments is not necessarily the avoidance of binding obligations, but it may rather be their special characteristics as intrinsically flexible. Based on that, such instruments should not automatically be seen as a “way out” from the bindiness of hard law, but rather as a supplementary tool to it.

Attempting to place the BHR initiatives on the soft-to-hard law continuum, a preliminary assessment suggests that the current global governance framework for BHR can be categorized as soft law due to the voluntary and non-binding nature of the leading international initiatives. However, specific criteria can be employed to differentiate between soft and hard law, such as the binding nature of obligations, the level of precision in defining obligations, and the legal consequences for compliance and breach, as well as the delegation of interpretation to a third party. Therefore, a fresh reading of the relevant initiatives in light of these criteria may actually indicate that some of them exhibit features that are typically linked to hard law.

For instance, despite not being legally binding, the OECD Guidelines exhibit elements commonly associated with binding legislation. They entrust the interpretation of the guidelines to external bodies, the NCPs, established in individual countries, which are responsible for both their interpretation and the monitoring of their application. However, the NCPs lack the authority to impose legally binding penalties on companies for violating the guidelines, and their effectiveness as oversight and accountability entities has been questioned by experts. Although the OECD Guidelines possess some characteristics of binding legislation, they extend beyond being purely non-binding soft law.

Similarly, the ILO Tripartite Declaration incorporates features reminiscent of binding legislation. Developed under the auspices of the ILO, the Tripartite Declaration outlines specific standards pertaining to labor and employment issues. It includes detailed policies concerning employment promotion, child and forced labor, safety and health regulations, and numerous other labor-related matters. Additionally, the ILO delegates the interpretation of the

⁸² Hugh Thirlway, *Sources of International Law*. (2nd edn., Oxford University Press 2014) 166.

Tripartite Declaration to the Officers of the Committee on Multinational Enterprises and imposes reporting obligations on governments. However, the declaration neither specifies the consequences for breaching its provisions nor establishes an enforcement mechanism. While it possesses fewer characteristics of binding legislation compared to the OECD Guidelines, one could argue that it remains more than mere non-binding law.

Although all of the mentioned initiatives are non-binding, they vary in their degree of adherence to the characteristics of soft law. The UNGC, for example, lacks precise obligations, clear consequences for breaches, and third-party oversight, making it softer in nature compared to the OECD Guidelines, which incorporate stronger versions of these characteristics. On the continuum between soft and hard law, the ILO Tripartite Declaration and the UNGPs occupy intermediate positions. The ILO Tripartite Declaration, with its inclusion of third-party oversight, leans closer to the hard law end, where the OECD Guidelines are situated. In contrast, the UNGPs lean more towards the soft law end, along with the UNGCt, due to the absence of consequences for breaches and third-party oversight, although they contain more elements resembling hard law compared to the UNGC.

However, it is important to note that none of these initiatives, even those exhibiting several features associated with hard law, can be considered as binding legal obligations. Nonetheless, the OECD Guidelines demonstrate that BHR initiatives can approach the hard law end of the continuum by adopting certain characteristics traditionally associated with binding legislation. Therefore, this perspective indicates that, even if the current endeavor for strengthening or moving BHR initiatives closer to mandatory obligations ends up not feasible due to various obstacles, this could potentially be achieved without adopting purely binding legal obligations.⁸³

2.2.2 The concept of CSR “voluntariness”

Turning to the issue of CSR, Amodu argues:

CSR is a neutral idea. As a regulatory concept, it may instrumentally be used as a countervailing power by the State to check adverse human rights impacts, the result of

⁸³ Barnali Choudhury (n 54) 966-970, 985-986.

the raw exercise of corporate power, it may also be self-regulatorily used by the business community to manage risks associated with balancing their legal, ethical and socio-economic responsibilities in the wider societal context. Therefore, there is nothing inherently voluntary or mandatory about the CSR movement or about making businesses behave responsibly and accountably. Different regulatory techniques may be adopted across national or intergovernmental levels whether rule-based, principle-based, soft law, hard law, voluntary, mandatory or a smart mix of all of the above.⁸⁴

Based on this argument, this particular part of the present research, when examining the voluntary nature of CSR, focuses purely on the regulatory aspect of the concept, in order to determine its value in terms of implementation and effectiveness as regards the promotion and protection of human rights.

In respect of CSR's legal nature, Wettstein has referred to it as 'the problem of voluntariness'.⁸⁵ In this regard, he identifies three interpretations of the term: the legalistic, moral, and the one that is relevant to what Kant has called imperfect obligations. The legalistic interpretation points towards the letter of the law, meaning that what is not mandated by it, it is simply voluntary. The ethical aspect of the concept refers to actions that are considered morally discretionary, going beyond what is strictly required, and therefore may be seen as unnecessary. Lastly, as per the third interpretation proposed by Wettstein, voluntariness can be understood within the realm of imperfect obligations, as defined by Kant, which does not necessarily exclude moral obligations from the domain of CSR but restricts them to those that are not based on rights.

Hence, the clash between conventional understandings of CSR and the emerging discourse on BHR becomes apparent due to a significant distinction. Traditional CSR has typically revolved around notions of virtue and acts of goodwill, often prioritizing what is desirable (and hence discretionary) rather than obligatory. On the other hand, human rights assertions pertain to what is essential and owed to individuals, firmly situated within the realm of justice. This disparity crystallizes the core differentiation between the two approaches.⁸⁶

⁸⁴ Nojeem Amodu (n 50) 858.

⁸⁵ Florian Wettstein (n 33) 748.

⁸⁶ Ibid 748-750.

PART II: PRACTICAL VERIFICATION

Chapter 3: CSR and human rights in practice

At a theoretical level, as mentioned in the first chapter, CSR has the potential to produce significantly positive results, such as the promotion of socially beneficial and responsible business practices in various areas and the advancement of BHR agenda by raising awareness among businesses of their responsibilities to respect human rights, and by encouraging them to adopt policies and practices that are consistent with human rights principles. However, these results depend entirely on each corporation's particular approach to the implementation of CSR. Most importantly, their very goal is decisive in this regard.

3.1 CSR instrumentalization

When CSR is primarily used as a tool or strategy to achieve specific business objectives, enhance reputation, or gain competitive advantage, rather than as a genuine commitment to address social, environmental, and ethical issues, then things may become problematic. In fact, some of the literature on CSR describes this approach as “instrumental”. Definitions in this vein underscore an economic perspective on business responsibility. Although CSR is seldom defined solely in economic terms, numerous scholars highlight its instrumental nature. For instance, McWilliams and Siegel propose that CSR can be seen as an investment and emphasize the need for managers to ascertain the suitable level of CSR investment.⁸⁷

In this regard, Wettstein talks about ‘instrumental CSR in the human rights context’⁸⁸ and he supports that CSR is instrumental when undertaken by a company in order to increase its profits, meaning when it justifies its ‘human rights responsibility based on strategic and economic considerations’, instead of promoting human rights on genuinely moral grounds.⁸⁹ In other words, CSR pays off.

⁸⁷ Andreas Rasche, Mette Morsing and Jeremy Moon, *Corporate Social Responsibility: Strategy, Communication, Governance* (Cambridge University Press 2017) 67-68.

⁸⁸ Florian Wettstein, ‘Human Rights as a Critique of Instrumental CSR: Corporate Responsibility beyond the Business Case’ (2012) 18 *Notizie di Politeia* 19.

⁸⁹ *Ibid* 28.

In a different context, Wettstein describes the concept of CSR instrumentalization as supporting this idea in order to ‘counter mandatory BHR measures’. In light of this context, scholars in critical management studies have characterized CSR as a ‘Trojan horse,’ deliberately aimed at co-opting criticism and reinforcing the prevailing paradigm of global unsustainability. The instrumentalization of CSR to counter mandatory BHR measures aligns perfectly with this rationale. The concept of CSR does not seek to curtail corporate unaccountability and impunity, but instead, its purpose is to legitimize and strengthen the influence of large corporations. Its role is to demonstrate that social justice is achievable not in spite of, but by means of unrestricted free-market capitalism.⁹⁰

For the purposes of this research, CSR instrumentalization will be defined as the process that occurs when a company treats CSR as a means to an end, rather than embracing it as a core part of its business philosophy and values. During this process, the focus shifts from the substantive impact and contribution to society to the strategic positioning of CSR activities. This can lead to CSR initiatives that are superficial, disconnected from the company's core operations, and lack a comprehensive approach to addressing broader societal challenges.

When it comes to the presence of CSR instrumentalization in the relevant literature, the particular issue that seems prevalent in research under this title is the usage of CSR by companies for the improvement of their public image and reputation. Therefore, since this is a topic that has been extensively analyzed⁹¹, it will not be addressed in the present research. Rather, what this research seeks to examine is whether CSR can be instrumentalized in a way, so as not to enhance a corporation's public image, but instead to mask or divert attention from human rights violations committed by the corporation itself.

⁹⁰ Florian Wettstein, ‘Betting on the Wrong (Trojan) Horse: CSR and the Implementation of the UN Guiding Principles for Business and Human Rights’ (2021) 6 *Business and Human Rights Journal* 12.

⁹¹ See Kajal Maheshwari and Vinay Kumar, ‘To Create a Positive Brand Image through Corporate Social Responsibility’ [2013] *SSRN Electronic Journal*; Brijlal Mallik, Dasarathi Sahu and Sisir R Dash, ‘CSR & Brand Image: The Causal Link Detected through Regression Analysis’ (2018) 39 *Revista Espacios*; Yan Zhao and others, ‘Exploring the Relationship between Corporate Social Responsibility, Trust, Corporate Reputation, and Brand Equity’ (2021) 12 *Frontiers in Psychology*; Joana Araújo, Inês Veiga Pereira and José Duarte Santos, ‘The Effect of Corporate Social Responsibility on Brand Image and Brand Equity and Its Impact on Consumer Satisfaction’ (2023) 13 *Administrative Sciences*.

3.2 Statistical analysis

In this part of the research, a statistical analysis will be undertaken with the aim of exploring possible trends or patterns as regards the CSR program development in relation to the advancement of BHR within a total sample of 126 TNC's from the food and agriculture, ICT and automotive manufacturing sectors [See [Appendix A](#)]. This will be an initial attempt to assess the hypothesis, for which this research is undertaken.

The data that will be used in the analysis were obtained from two databases: CSRhub and Corporate Human Rights Benchmark. These two databases use specific methodologies, in order to evaluate each company's performance on CSR implementation (CSRhub) and human rights protection (CHRB).

More specifically, CSRhub attempts to eliminate as much as possible biases or inconsistencies, by following a five-step path: (1) 'Map to a central schema', by dividing the CSR performance into four categories and twelve subcategories; (2) 'Convert to a numeric scale' from 0 to 100; (3) 'Normalize' and create a consistent rating, after comparing a company's scores from various sources; (4) 'Aggregate' the available data, first, at the subcategory and, then, at the category level; and (5) 'Trim' by removing any company for which there is not enough information.⁹² In other words, each company's overall score comes up by combining the scores of the four categories (step 1), each of which has been derived from the combination of each category's three subcategories. The first category is called "Community" and its three subcategories are "Community Development & Philanthropy", "Product Quality, Safety & Sustainability" and "Human Rights & Supply Chain"; the second category is called "Employees" and its three subcategories are "Compensation & Benefits", "Diversity & Labor Rights", and "Training, Health & Safety"; the third category is called "Environment" and its three subcategories are "Energy & Climate Change", "Environment Policy & Reporting" and "Resource Management"; lastly, the fourth category is called "Governance" and its three subcategories are "Board", "Leadership Ethics" and "Transparency & Reporting".⁹³

⁹² 'CSRHub ESG and CSR Ratings Methodology' (www.csrhub.com) <<https://www.csrhub.com/csrhub-esg-ratings-methodology>> accessed 19 June 2023.

⁹³ 'The CSRHub ESG Data Schema' (www.csrhub.com) <<https://www.csrhub.com/csrhub-esg-data-schema>> accessed 20 June 2023.

Accordingly, CHRB offers a comparative overview of the world's largest corporations, examining their policies, procedures, and methods implemented to establish a structured approach towards human rights. It assesses their responses to significant allegations by utilizing a literature review, insights gathered from regional and multi-stakeholder consultations, as well as a public questionnaire. The evaluation places particular emphasis on the actual performance of companies and the forms of engagement with stakeholders throughout different phases of their business operations.⁹⁴ Each company's overall score is depicted on a numeric scale from 0 to 100 and it is calculated by combining the score of five categories ("measurement themes"), which are "Governance & Policy Commitments", "Embedding Respect & Human Rights Due Diligence", "Remedies and Grievance Mechanisms", "Performance: Practices" and "Performance: Responses". Each theme consists of a set of indicators that examine various aspects of how a business strives to uphold human rights within its own operations and supply chain. These indicators are based on the UNGP, as well as other international human rights standards. In certain cases, sector-specific requirements are also applied to some indicators.⁹⁵

The statistical analysis will be based on the probability theory, according to which 'the probability [P] of an event [E] occurring is intuitively understood to be the likelihood or chance of it occurring'.⁹⁶ The "event" is defined as 'a particular outcome or a set of outcomes'.⁹⁷ 'The probability of an outcome is 1 if that outcome is certain, and 0 if that outcome is impossible.'⁹⁸ Therefore, 'no matter how we choose E, P(E) is always between 0 and 1 [$0 \leq P(E) \leq 1$]'.⁹⁹ Furthermore, it is possible for one to work with combinations of two or more events, by using defined intersections. With this operation, the probability of two events occurring at the same time can be calculated as well. If the probability is 0, the two events are mutually exclusive and they can never occur at the same time.¹⁰⁰

⁹⁴ 'The Methodology for the 2022–2023 Corporate Human Rights Benchmark' (World Benchmarking Alliance 30 September 2021)
<<https://www.worldbenchmarkingalliance.org/research/the-methodology-for-the-2022-corporate-human-rights-benchmark/>> accessed 18 June 2023.

⁹⁵ 'Methodology | Corporate Human Rights Benchmark WBA' (World Benchmarking Alliance)
<<https://www.worldbenchmarkingalliance.org/publication/chrb/methodology/>> accessed 20 June 2023

⁹⁶ Stephen Garrett, *Introduction to Actuarial and Financial Mathematical Methods* (Academic Press 2015) 276.

⁹⁷ 'Probability Calculator' (www.statskingdom.com)
<<https://www.statskingdom.com/probability-calculator.html>> accessed 20 June 2023.

⁹⁸ Stephen Garrett (n 96) 278.

⁹⁹ 'Probability Calculator' (n 97).

¹⁰⁰ Stephen Garrett (n 96) 284-285.

The research is carried out based on the two databases that have been selected and consequently the 126 unique companies that are included in both of these bases are defined as a sample. Given that X is the CSR rating of a company, X is considered poor when $(0 \leq X < 50)$, X is satisfactory when $(50 \leq X < 80)$ and X is excellent when $(80 \leq X \leq 100)$. Accordingly, given that Y is the HR performance of a company, given the objective difficulties, Y is considered poor when $(0 \leq Y < 30)$, Y is satisfactory when $(30 \leq Y < 50)$ and Y is excellent when $(50 \leq Y \leq 100)$.

Based on the theoretical framework and the assumptions that have been taken for granted, the following eventualities are designated:

A: A company's CSR rating is above 80.

B: A company's HR performance is below 30.

C: A company's HR performance is above 50.

Followingly, based on the collected data, the probability of the following eventualities will be calculated: $P(A)$, $P(B)$, $P(A \cap B)$, $P(C)$, $P(A \cap C)$.

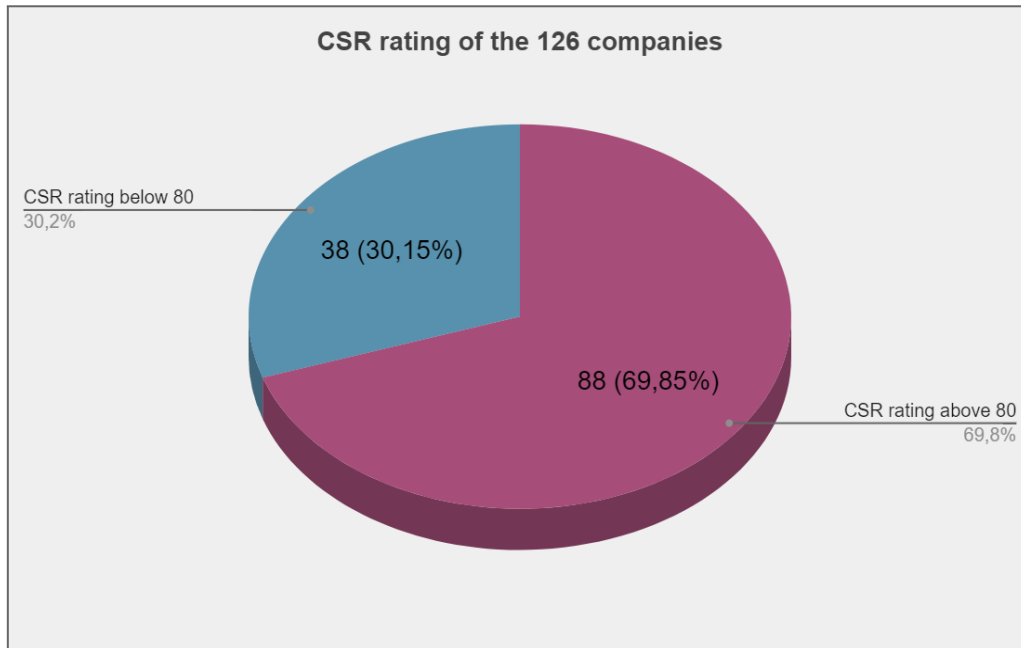
The $P(E) = n(E) / n(S)$ formula will be used, which calculates the probability of an event happening based on the total number of eventualities observed within the sample, divided by the number of the sample itself. Subsequently, the result will be multiplied by 100, so that a percentage is obtained.

For determining the probability of the defined eventualities occurring, the following data are needed. Within the sample:

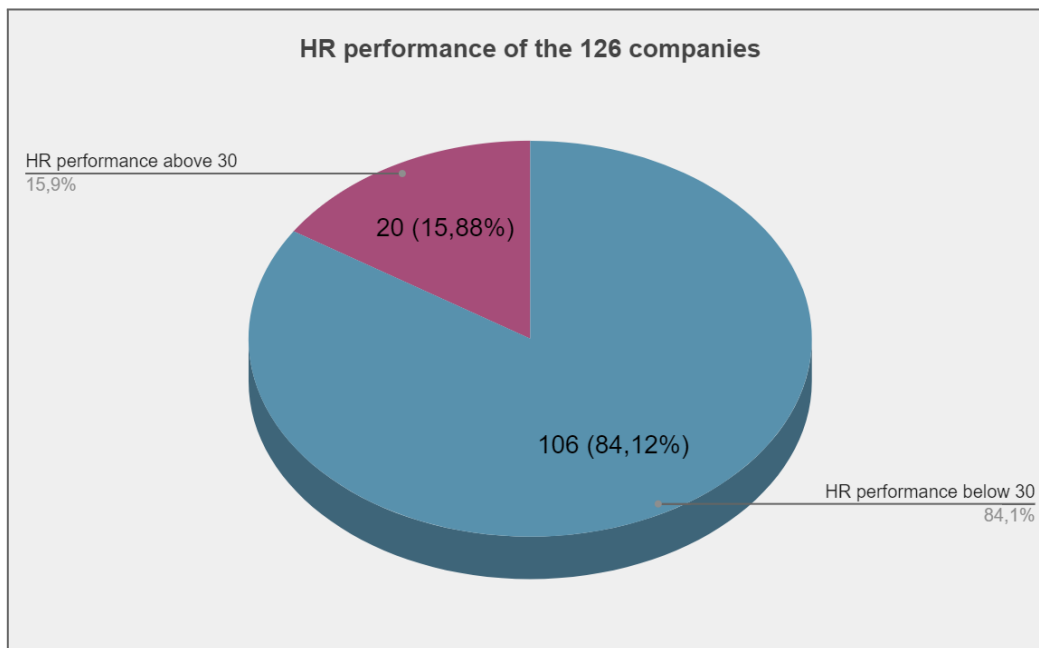
- 88 companies have a CSR rating above 80;
- 106 companies have a HR performance below 30;
- 1 company has HR performance above 50.

Calculations:

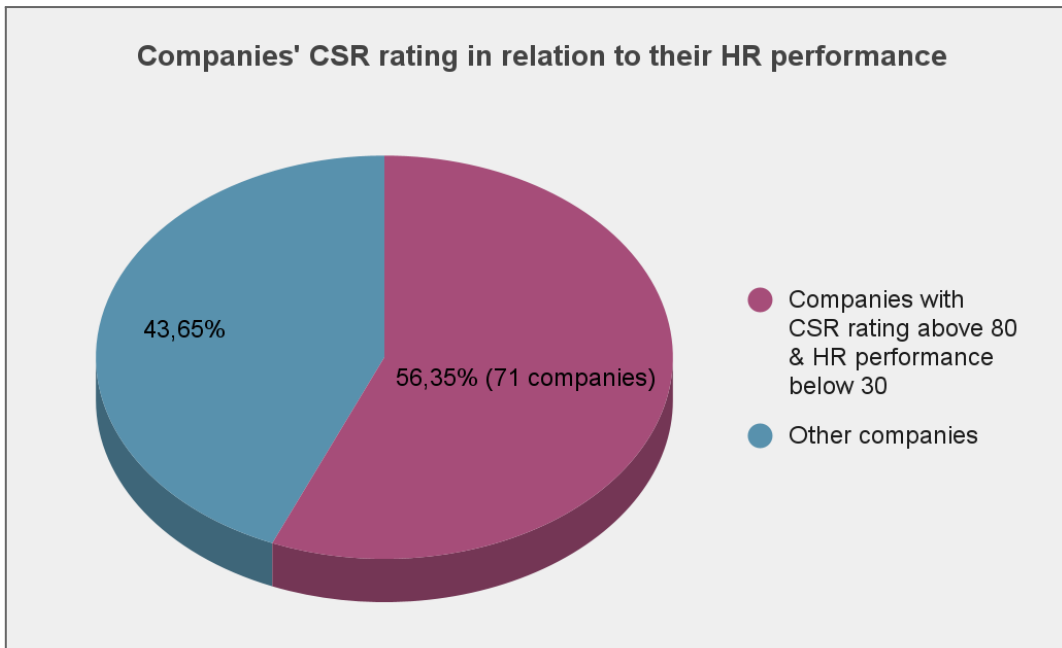
- $P(A) = (88 \div 126) * 100 = 69,85\%$



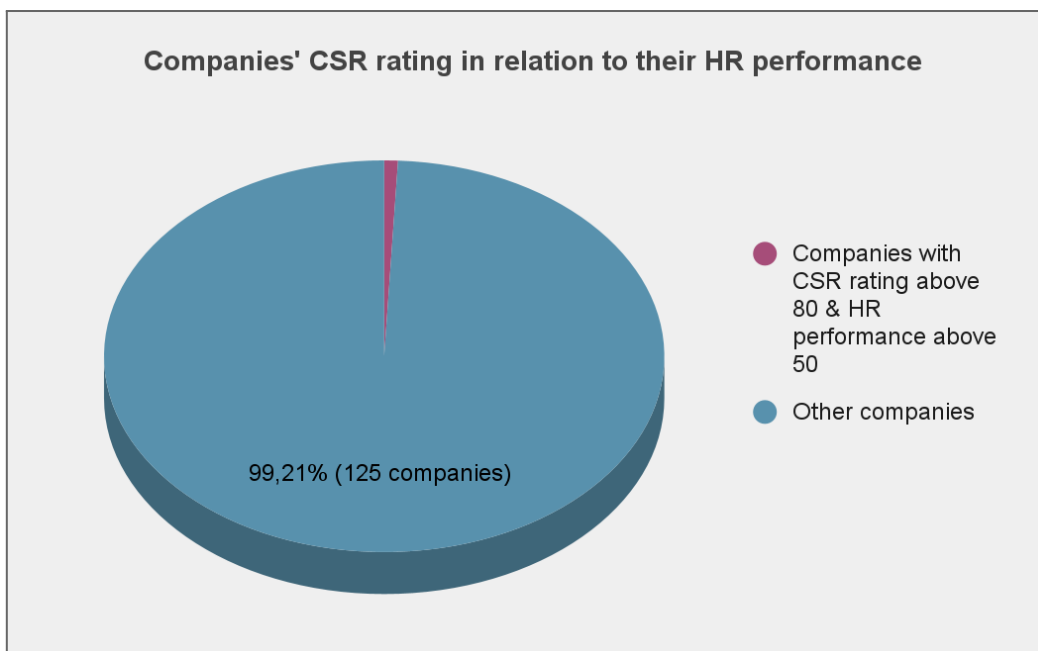
- $P(B) = (106 \div 126) * 100 = 84,12\%$



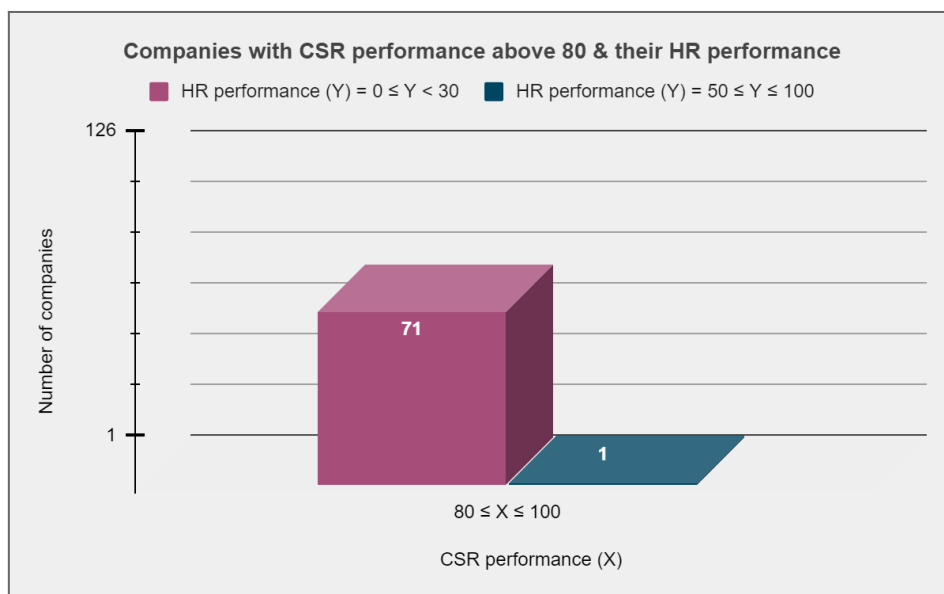
- $P(A \cap B) = (71 \div 126) * 100 = 56,35\%$



- $P(C) = (1 \div 126) * 100 = 0,79\%$
- $P(A \cap C) = (1 \div 126) * 100 = 0,79\%$



		CSR
HR		$80 \leq X \leq 100$
$0 \leq Y < 30$		71
$50 \leq Y \leq 100$		1



Evaluating the statistical outcomes and based on the CSR framework presented in Chapter 1, a paradox is observed. The first calculation indicates that 69,85% of the sample's companies have a CSR rating above 80, which is a very positive and optimistic fact and it theoretically means these companies have adopted and implemented socially responsible practices. At the same time, however, 84,12% of the companies are found to have a HR performance score below 30 and when calculating the probability of these events happening simultaneously, the result is equal to 56,35%. This means that more than half of the sample's companies, while they appear to have an excellent CSR performance, their HR rating is considerably poor. Importantly, only one company, meaning 0,79%, was found to have a CSR ranking above 80 and a HR record above 50.

The outcomes presented above are fairly significant, in order to reach a safe conclusion, based on the sample used. The analysis indicates that even though the majority of companies have a strong CSR performance, at the same time their HR rating is extremely low. This may occur, among others, due to the lack of technical or financial capacity to implement their commitments, or their inability to track the human rights violations taking place along their complex and opaque supply chains. Nevertheless, this may also happen due to the reason supporting the research's initial assumption, meaning that they might deliberately use their CSR program as a tool, in order to mask or divert attention from their human rights violations. However, taking into consideration the limitations of the statistical research, such as the narrowness of the sample used, this is only a rough and provisional answer to the question set above.

3.3 TNCs and the case of child labor

Having already established the differences between CSR and BHR in terms of historical evolutions, conceptual and practical accounts, and thus, the fact that they consist of two distinct fields of inquiry; having examined at a theoretical level, the different scenarios as concerns the possible effects of CSR' implementation on the promotion of human rights within the corporate context; having analyzed the legal framework governing the two debates under consideration; and most importantly, having found, through the statistical exploration, that the majority of companies with an excellent CSR rating, present a very poor HR performance, at this point, it would be meaningful to proceed with the consideration of certain case studies, in order to be able to give a safer and more realistic answer to the research question.

In this context, what will be examined is a series of TNCs from the agricultural sector, which have been publicly accused of using child labor along their supply chains, despite having a CSR program in place. Methodologically, the type of case studies used, in this regard, is illustrative, with the aim of describing and depicting one very common, persistent, and extremely weighty problem appearing in global supply chains and particularly in the sector of

agriculture. The aim of this endeavor is to paint a detailed picture of the topic at hand, using only a small number of cases.¹⁰¹

TNCs wield significant socio-economic influence, often surpassing that of nation-states. Particularly in developing countries, TNCs are known to target impoverished and unregulated markets, exploiting inexpensive and vulnerable child labor to gain a competitive edge and fulfill global market demands. While some TNCs contribute to business growth and economic prosperity in these regions, their irresponsible behavior can result in damages that outweigh the benefits. These negative impacts can severely impede the enjoyment of children's civil, political, economic, social, and cultural rights, occasionally causing irreversible harm.¹⁰²

According to the ILO and UNICEF, it is estimated that approximately 160 million children, consisting of 63 million girls and 97 million boys, were engaged in child labor worldwide at the beginning of 2020. This accounts for nearly 1 in 10 children globally. Approximately half of all children engaged in child labor, totaling around 79 million, were exposed to hazardous conditions in sectors such as agriculture, mining, and tasks involving dangerous machinery or working at heights. However, estimating the exact number is challenging due to the covert nature of child labor. Identifying children in workplaces is hindered by factors like the absence of reliable documentation, such as birth certificates, as well as the prevalence of child labor in rural areas or hidden corners of cities, where authorities have limited oversight.¹⁰³ [*See Appendix B*]

3.3.1 Child labor: concept delineation

According to the ILO, 'the term 'child labor' is work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental

¹⁰¹ Pam Epler, 'Types of Case Studies' in Annette Baron and Kelly McNeal (eds), *Case Study Methodology in Higher Education* (Information Science Reference 2019).

¹⁰² Isabel Mota Borges, 'The Responsibility of Transnational Corporations in the Realization of Children's Rights' (2016) 5 University of Baltimore Journal of International Law 1.

¹⁰³ International Labor Office and United Nations Children's Fund, 'Child Labor: Global Estimates 2020, Trends and the Road Forward' (ILO and UNICEF 2021).

development'.¹⁰⁴ It encompasses activities that pose risks to the mental, physical, social, or moral well-being of children. It also includes work that hampers their educational opportunities by preventing them from attending school, forcing them to drop out prematurely, or burdening them with excessively demanding and time-consuming work while attempting to balance it with schooling.¹⁰⁵

As regards the minimum age to work, it is defined by the ILO Minimum Age Convention, No. 138 of 1973, which establishes a universal minimum age of 15 for employment, allowing, at the same time, certain deviations for developing countries that may initially set a minimum age of 14 as a temporary measure due to inadequate economic and educational infrastructure. Nevertheless, children as young as 13 (or 12 as a temporary measure) can undertake light work as long as it does not disrupt their education and does not have detrimental effects on their health.¹⁰⁶ Accordingly, the ILO Worst Forms of Child Labor Convention, No. 182 of 1999, lists the types of activities that are included within the concept of the “worst forms of child labor.” These cover, among others, the sale and trafficking of children, as well as the involvement of children in prostitution, pornographic activities, or any other illegal undertakings.¹⁰⁷

However, child labor also encompasses hazardous work carried out by young workers who are above the legally permissible minimum age for employment but below 18 years of age. In this regard, ILO defines hazardous work as ‘work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children’.¹⁰⁸ It may encompass, among others, work in an unhealthy environment with exposure to dangerous substances, agents, or processes, as well as undertaking tasks under demanding circumstances, like overtime, overnight shifts, or unreasonable confinement within the employer's property.¹⁰⁹

¹⁰⁴ International Labor Organization, ‘What Is Child labor (IPEC)’ (*Ilo.org* 2022) <<https://www.ilo.org/ipec/facts/lang--en/index.htm>> accessed 21 June 2023.

¹⁰⁵ *Ibid.*

¹⁰⁶ Convention Concerning Minimum Age for Admission to Employment (adopted 26 June 1973, entered into force 19 June 1976) ILO, C138.

¹⁰⁷ Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (adopted 17 June 1999, entered into force 19 November 2000) ILO, C182.

¹⁰⁸ International Labor Organization (n 104).

¹⁰⁹ *Ibid.*

The two ILO Conventions, along with the UN Convention on the Rights of the Child¹¹⁰ constitute the framework for national legal orders to establish a clear distinction between acceptable and unacceptable forms of child employment. The elimination of child labor is considered one of the five core rights and principles of the ILO, which member states are obligated to promote, regardless of whether they have ratified the relevant conventions.¹¹¹

As regards child labor's potential impact on children's rights, the CRC provides a non-exhaustive list, which includes the right to education (article 28), the right to health (article 6) the right to an adequate standard of living (article 27), the right to rest, leisure and cultural life (article 31), as well as the right to protection from economic exploitation (article 32).¹¹²

3.3.2 Child labor in global supply chains

Nowadays, TNCs follow a business model that involves concentrating their core business functions within the parent company while delegating other production operations to external entities.¹¹³ This creates a hierarchical structure consisting of the parent company, subsidiaries, contractors, and suppliers.¹¹⁴ As a result, TNCs' business activities span multiple jurisdictions and involve numerous interconnected enterprises.¹¹⁵ This has led to the establishment of global supply chains as the prevailing model for transnational business.¹¹⁶

¹¹⁰ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 7 March 1990) Treaty no. 27531. UNTC, 1577.

¹¹¹ United Nations Global Compact, 'Definition & Legal Instruments • Business & Human Rights Navigator' (*Business & Human Rights Navigator*) <<https://bhr-navigator.unglobalcompact.org/issues/child-labor/definition-legal-instruments/>> accessed 4 June 2023.

¹¹² Convention on the Rights of the Child (n 110).

¹¹³ Janet Dine, *Companies, International Trade, and Human Rights* (Cambridge University Press 2005) 4.

¹¹⁴ Justine Nolan, 'Human Rights and Global Corporate Supply Chains: Is Effective Supply Chain Accountability Possible' in Surya Deva and David Bitchitz (eds), *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge University Press 2017) 239.

¹¹⁵ Surya Deva, 'Scope of the Proposed Business and Human Rights Treaty: Navigating through Normativity, Law and Politics' in Surya Deva and David Bitchitz (eds), *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge University Press 2017) 4.

¹¹⁶ Radina Ugrinova, 'The Use of Child Labor in Global Supply Chains: International Regulatory Responses to Human Rights Violations Occurring in the Supply Chains of Transnational Corporations' (Master Thesis 2019) 19.

Within this schema, the TNC possesses an overseeing role, while other entities that function along the supply chain, operate under varying degrees of control from the parent company.¹¹⁷ Nevertheless, the parent company and other entities in the supply chain are considered separate legal entities with their own distinct legal identities.¹¹⁸ This is called the “doctrine of separate legal personalities” and it allows the parent company to be held accountable for human rights violations within the supply chain only in rare cases, even if it is the TNC that, in fact, retains control over its partners and subsidiaries. Exploiting this legal gap, TNCs have been known to deliberately establish intricate corporate structures and lengthy supply chains with multiple subsidiaries in order to distance themselves from human rights abuses and avoid liability.

In this regard, the agricultural link of most supply chains has historically operated with limited transparency and a high level of dispersion, involving numerous enterprises divided among several jurisdictions.¹¹⁹ As a result, a significant regulatory challenge exists in establishing a direct connection between instances of child labor occurring within this complex, global supply chain and the parent company.¹²⁰

3.3.3 Child labor in the agricultural sector

Addressing farm-level issues like forced labor or child labor in agricultural supply chains is complex due to their multifaceted nature. These challenges arise from various factors, including irresponsible recruitment practices and systemic issues like poverty, illiteracy, or inadequate enforcement of existing laws.¹²¹

Child labor is a prevalent issue in various industries, but agriculture stands out as a sector with particularly high-risk levels. According to estimates from the ILO in 2020, approximately 70% of child laborers worldwide, which amounts to 112 million children, are

¹¹⁷ Olivier De Schutter, ‘Towards a New Treaty on Business and Human Rights’ (2015) 1 Business and Human Rights Journal 41, 47-48.

¹¹⁸ Ibid 48.

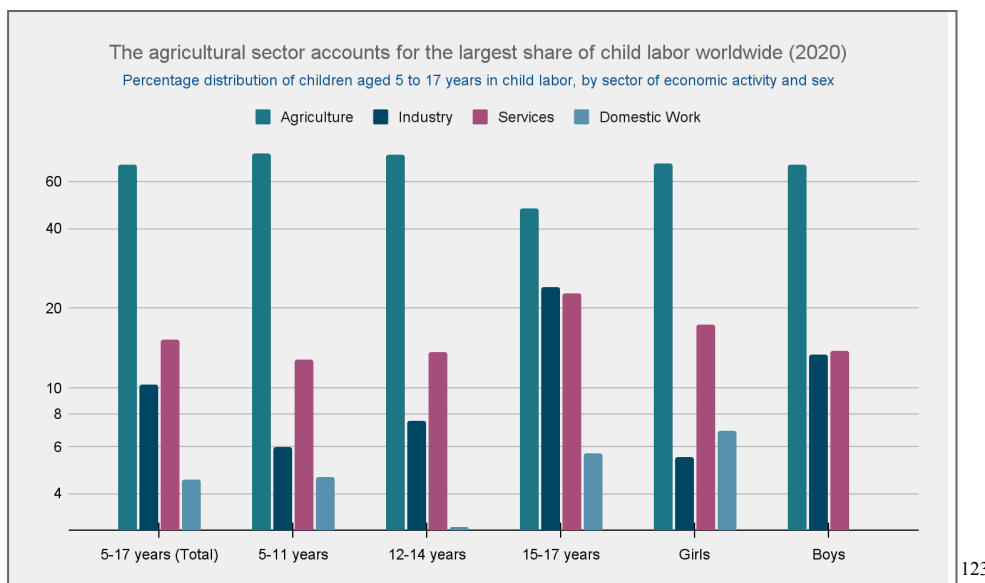
¹¹⁹ Fundamental Principles and Rights at Work Branch, ‘Child Labor in Cotton: A Briefing ’ (International Labor Organization 2016) v, 5.

¹²⁰ Radina Ugrinova (n 116) 20.

¹²¹ ‘Fair Labor Agriculture Alliance’ (*Fair Labor Association* July 2018)

<<https://www.fairlabor.org/projects/fair-labor-agriculture-alliance/>> accessed 26 June 2023.

engaged in agricultural activities. This includes work in areas such as farming, fishing, aquaculture, and livestock rearing. The agricultural sector poses unique challenges and vulnerabilities for child labor, making it a critical area of concern in efforts to address this global problem.¹²²



While certain types of work on family farms are considered allowable for children, as long as it is safe and does not interfere with their education, there are many forms of child labor in agricultural supply chains that are illicit. A 2020 report from the US Department of Labor highlights several common items produced with the involvement of child labor in the agricultural sector. These include bananas, cattle, dairy products, cocoa, coffee, cotton, fish, rice, sugar, and tobacco.¹²⁴

Significant issues related to child labor within the agricultural sector include: health and safety risks, due to exposure to various hazards, such as handling sharp tools, carrying heavy loads beyond children's capacity, and operating dangerous machinery that may result in accidents, injuries, and even fatalities; exposure to harmful substances, like toxic pesticides;

¹²² International Labor Office and United Nations Children's Fund (n 103).

¹²³ Ibid.

¹²⁴ U.S. Department of Labor's Bureau of International Labor Affairs (ILAB), 'List of Goods Produced by Child Labor or Forced Labor' (US Department of Labor 2020) 25.

unhygienic conditions, which can increase the likelihood of diseases and infections among child laborers; as well as, trafficking and forced labor, since children may be coerced or deceived into exploitative labor situations against their will.¹²⁵

Agricultural commodities' cultivation and harvest, especially in regions of the world with lower economic development often entail a pervasive occurrence of human rights abuses. The income earned by workers is often insufficient, so they struggle to survive on their wages. Low wages are indeed a major concern, but there are numerous other issues that are widespread in the industry. These include instances of forced labor and child labor, health problems, the detrimental impact of deforestation on people's livelihoods, as well as the displacement of communities resulting from large-scale land acquisitions.¹²⁶

¹²⁵ 'UNEP Finance Initiative - Human Rights Guidance Tool for the Financial Sector' (www.unepfi.org) <<https://www.unepfi.org/humanrightstoolkit/agriculture.php>> accessed 4 June 2023.

¹²⁶ Public Eye, 'Agricultural Commodity Traders in Switzerland – Benefitting from Misery?' (2019) 4.

Chapter 4: Case studies

Having outlined the context, within which the TNCs that will be examined, operate, the research proceeds with the presentation of the case studies. For each one of the cases, what needs to be answered are the following: what is the content of their CSR programs, and what are the accusations that have been made against them?; Do their commitments within their CSR programs correspond to the situation on the ground and if not, how could this be translated?; As mismanagement, in case they are not aware of their alleged indirect involvement with the abusive practices?; As incapacity, in case they are aware of their involvement, but unable to act?; Or as pretense, in case they are both aware and competent to act responsibly, but they do not do so?; and lastly, what are the conclusions that can be drawn from the case studies analysis when examined in combination with the outcomes of the statistical analysis presented above?

The information that will be used, in order for the case studies to be presented and analyzed, has been obtained through a literature review and a document analysis of companies' CSR and annual reports, as well as a series of UN and NGO reports.

4.1 Paul Reinhart AG

Paul Reinhart AG is a global merchant of cotton and other agricultural products. Having its headquarters in Winterthur of Switzerland and deploying its activities all over the world, the corporation plays a leading role in the international cotton trade. It was established in 1788 and its ownership has remained in the same family ever since. It sources cotton from all exporting countries and releases it into more than 50 countries' markets. It essentially operates as an intermediary throughout the supply chain from farmers to ginners and textile manufacturers.¹²⁷

¹²⁷ 'Our Company - Reinhart - 1788' (www.reinhart.ch) <<https://www.reinhart.ch/our-company>> accessed 2 May 2023.

4.1.1 CSR implementation within the company

According to one of the latest documents issued “Reinhart’s Sustainability Journey: Transforming Implicit Knowledge into Measurable Targets”, the company, in the context of identifying the economic, environmental and social goals that should be set as a priority and thus setting its Key Performance Indicators (KPIs), initiated a materiality assessment, by using the framework provided by the GRI, in order to facilitate its policies’ alignment with the international reporting standards. It also organized a workshop with the Swiss Federal Department of Foreign Affairs and the Institute for Human Rights and Business where stakeholders were engaged to discuss and address the most significant material topics. The primary focus of the workshop was on "Labor and Human Rights" and "Supplier Assessment and Policies."¹²⁸ According to the outcomes of these actions, the company classified “Labor and Human Rights”, as well as “Supplier Assessment and Policies” as “Very High” in terms of both Relevance for Stakeholders and Impact on Sustainability in Value Chain.¹²⁹

Followingly, based on the materiality assessment that it conducted, the corporation adopted several documents, such as an updated Code of Conduct, a Supplier Code of Conduct, as well as a Corporate Responsibility Handbook.¹³⁰ According to the Code of Conduct,

[the company supports] the Core Conventions of the ILO, aligns with the UNGC and the UNGP, and undertakes to address human and labor rights [issues] in its operations, subsidiaries, and entire supply chain, [including] the protection of human and labor rights relating to child labor, forced labor, land rights, working hours, wages, freedom of association, freedom of speech, harassment, privacy, collective bargaining, discrimination, and health and safety.¹³¹

Moreover, it has set as its mission the existence of ‘a sustainable and fair value chain from grower to consumer’, while it proclaims itself as ‘a significant pioneer and player in the global sustainable cotton market’.¹³² Marco Bänninger, head trader of the company, in one of

¹²⁸ Philippe Saner and Bernd Kasemir, ‘Reinhart’s Sustainability Journey: Transforming Implicit Knowledge into Measurable Targets’ (Paul Reinhart AG 2020) 6.

¹²⁹ ‘Corporate Responsibility Report’ (Paul Reinhart AG 2020) 9.

¹³⁰ Philippe Saner and Bernd Kasemir (n 128) 7.

¹³¹ Jürg Reinhart and Thomas Glaus, ‘Code of Conduct - Statement from the Chairman’ (Paul Reinhart AG 2023) 2.

¹³² ‘Certified Cotton - Reinhart - 1788’ (www.reinhart.ch)

<<https://www.reinhart.ch/our-business/cotton/certified-cotton>> accessed 2 May 2023.

its interviews, refers to the company's partnership with Textile Exchange - a nonprofit organization that aids textile companies in their pursuit of enhanced sustainability, particularly in the development of the organic cotton sector in Sub-Saharan Africa, contributing to the industry-wide objective set by Textile Exchange to reduce CO2 emissions by 2030.¹³³ Moreover, in relation to the company's collaborations and certifications, in 2009 it was licensed to merchandise FairTrade and Organic Cotton by receiving the FairTrade Mark;¹³⁴ it was accredited as a GOTS Certified Entity;¹³⁵ in 2012, it became a partner of the AbTF, as well as a member of the Technical Advisory Group of CmiA;¹³⁶ in 2013, joined the BCI;¹³⁷ and lastly, in 2018 became founding and board member of the ACF,¹³⁸ proclaiming itself as one of the top certified cotton merchants.¹³⁹

Alongside its environmental impact, the company has also set forth its commitment towards a strong positive social impact, by declaring its engagement in meaningful dialogue with the relevant stakeholders on labor and human rights issues, as well as its support to several social community projects, such as educational programs for young Africans through the Paul Reinhart Foundation.¹⁴⁰

In the context of its sustainable impact, the company, as well as all its stakeholders, adhere to the principles of responsible corporate governance and ethical standards, while following all

¹³³ Textile Exchange, 'Organic Cotton Market Report' (2021).

¹³⁴ 'Products bearing these Marks meet the internationally agreed social, environmental and economic Fairtrade Standards. The FairTrade Marks are registered certification marks and trademarks owned and licensed by Fairtrade International'. ['The Fairtrade Marks' (*Fairtrade International*) <<https://www.fairtrade.net/about/fairtrade-marks>> accessed 2 May 2023.]

¹³⁵ 'GOTS (Global Organic Textile Standard) is the worldwide leading textile processing standard for organic fibres, including ecological and social criteria, backed up by independent certification of the entire textile supply chain. GOTS certified final products may include fibre products, yarns, fabrics, clothes, home textiles, mattresses, personal hygiene products, as well as food contact textiles and more.' ['The Standard - Worldwide Leading for Organic Textile Production - GOTS' (*global-standard.org*) <<https://global-standard.org/the-standard>> accessed 2 May 2023.]

¹³⁶ Cotton made in Africa (CmiA) is an internationally recognised standard for sustainable cotton from Africa. Aid by Trade Foundation (AbTF) is the foundation that administers the Cotton made in Africa standard. ['Cotton Made in Africa | CmiA' (*Cotton Made in Africa*) <<https://cottonmadeinafrica.org/en/>> accessed 2 May 2023.]

¹³⁷ Better Cotton Initiative (BCI) is the leading one in the world in terms of cotton sustainability. Its logo set in products is 'a way of showing that a retailer and brand is investing in sustainable farming practices'. ['What's behind the Logo?' (*Better Cotton*) <<https://bettercotton.org/who-we-are/our-logo/>> accessed 2 May 2023.]

¹³⁸ African Cotton Foundation (ACF) has as its vision to 'create a thriving, modern, and sustainable African cotton sector - where farming is profitable, communities are empowered, human rights respected, and the environment is protected'. ['African Cotton Foundation' <<https://www.africacotton.org/foundation/>> accessed 2 May 2023.]

¹³⁹ The company's collaborations and certifications were sourced from its CSR report: 'Corporate Responsibility Report' (n 129) 10.

¹⁴⁰ Ibid 8.

the laws and regulations that apply in the states, in which it deploys its activities, and promoting ‘transparency, accountability, responsibility, openness, and integrity’.¹⁴¹

4.1.2 The company's accusation

In October 2010, the European Center for Constitutional and Human Rights (ECCHR) filed a written request to the Swiss NCP to examine a specific case concerning the application of the OECD Guidelines. The case involved allegations of potential child labor in the supply chain of cotton trading with Uzbek suppliers, specifically implicating the Swiss-based company Paul Reinhart AG. ECCHR claimed that the company was purchasing cotton from Uzbek state-run cotton merchants, contributing in this way, to the widespread and systematic use of child labor. It further alleged that the company was able to exercise influence on the Uzbek authorities as concerns the issue of child labor, either independently or through collaborative efforts with other cotton merchants and relevant associations. In short, ECCHR reported the company’s non-compliance with Chapter II (General Policies)¹⁴² and Chapter IV (Employment and Industrial Relations) of the OECD Guidelines.¹⁴³

On January 10, 2011, Paul Reinhart AG provided a written response to the submission made to the NCP and the submitting party, expressing its disagreement with the allegations of violating the OECD Guidelines and being complicit in child labor. The company emphasized its condemnation of child and forced labor in all circumstances and expressed its commitment to fully adhere to the OECD Guidelines, while also encouraging its suppliers to do the same. Additionally, it stated its support for the ongoing transformation process in Uzbekistan and argued that suspending its trade relationship with Uzbek cotton exporters would be counterproductive.

In September 2011, the two parties convened to discuss and share their perspectives on the matters brought up in the particular case. A crucial agreement was reached, emphasizing the need for an assessment of the allegations by the ILO.

¹⁴¹ Jürg Reinhart and Thomas Glaus (n 131).

¹⁴² Organization for Economic Co-operation and Development, ‘OECD Guidelines for Multinational Enterprises’ (2011) 19.

¹⁴³ Ibid 31.

The filing of the complaint in Swiss NCP, coupled with extensive media attention on the situation in Uzbekistan, prompted certain European traders who were the subject of OECD complaints to commit to tangible measures and collaborative efforts aimed at exerting pressure on the Uzbek government to put an end to forced labor.

Nevertheless, once the mediation procedures concluded and media attention waned, the dedication of the cotton traders to their commitment gradually waned as well, and the recommendations put forth by ECCHR for meaningful engagement were largely disregarded. Consequently, it is questionable whether the actions taken by the traders had a significant impact on the aforementioned policy shift in Uzbekistan.

Throughout the agreed-upon period of cooperation, the cotton trading companies demonstrated a lack of genuine eagerness to engage in a constructive dialogue with the complainants or to embrace their suggestions. Due to this lack of progress, in December 2012, ECCHR made the decision to discontinue its collaboration with the cotton traders.¹⁴⁴

Summarizing the issue at hand, Tobias Webb, Editor of Ethical Corporation, stated that:

The global cotton industry clearly lags behind some other agricultural sectors in considering where its raw material emanates from. Our investigations and those of others have shown that the large cotton buyers appear to operate on a “don’t know, don’t care” basis with regard to the social, economic and environmental impact of cotton farming, harvesting and distribution.¹⁴⁵

In this regard, Thomas Reinhart stated that he had never been aware of the use of child labor in the region. He mentioned that his company procures cotton from government agencies and remains unaware of the conditions prevailing in the fields where the cotton is grown.¹⁴⁶

4.2 British American Tobacco PLC

British American Tobacco plc (BAT) is a British multinational corporation specializing in the production and sale of cigarettes, tobacco, and other nicotine-related products. It was founded

¹⁴⁴ European Center for Constitutional and Human Rights, ‘Forced Labor of Children and Adults in Uzbekistan: How Effective Is the OECD Complaint Mechanism?’ (ECCHR 2013) 3-4.

¹⁴⁵ Environmental Justice Foundation, ‘White Gold - the True Cost of Cotton’ (EJF 2005) 33-34.

¹⁴⁶ Environmental Justice Foundation, ‘The Children behind Our Cotton’ (EJF 2007) 20.

in 1902 and its headquarters are located in London, England. With net sales ranking it as the largest tobacco company worldwide, BAT operates in approximately 180 countries. Some of its cigarette brands include Dunhill, Kent, Lucky Strike, Pall Mall, and Rothmans.¹⁴⁷

4.2.1 CSR implementation within the company

Even with a quick glance at the company's official website, it seems that it heavily invests in its CSR program. The multiplicity of the relevant headings (sustainable approach; harm reduction; standards of business conduct; policies, principles and standards; corporate behavior; supply chain management; human rights and modern slavery etc),¹⁴⁸ as well as the number of various reports that have been published (diversity and inclusion; gender pay; conflict minerals; modern slavery statement)¹⁴⁹ are indicative of this.

With respect to human rights, the document "Standards of Business Conduct 2022" mentions that the company respects the fundamental human rights as enriched in the UDHR, while its policies and practices are aligned with the ILO Declaration on Fundamental Principles and Rights at Work, the UNGP and the OECD Guidelines, as well as with all the relevant labor regulations applicable where it deploys its activities.¹⁵⁰ More specifically on child labor, the report underlines the inexistence of such practices in corporate operations, as well as the company's support to the ILO Conventions 138 (Convention on Minimum Age) and 182 (Convention on the Worst Forms of Child Labor).¹⁵¹ Besides, the company expects its suppliers and its business partners to respect the standards defined in the Code of Conduct, along with the minimum age requirements.¹⁵² According to the Human Rights Report released by BAT in 2020, out of the 99,6% of the farms monitored, only 0.57% of them were identified with child labor incidents.¹⁵³

¹⁴⁷ British American Tobacco, 'We Are BAT' (www.bat.com)

<https://www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DOB4JJB8> accessed 24 June 2023.

¹⁴⁸ 'British American Tobacco - Corporate Governance' (www.bat.com)

<https://www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO5TUMM8> accessed 6 May 2023.

¹⁴⁹ 'British American Tobacco - Reporting' (www.bat.com)

<https://www.bat.com/group/sites/UK__9D9KCY.nsf/vwPagesWebLive/DO9DCKV8> accessed 6 May 2023.

¹⁵⁰ British American Tobacco, 'Our Standards of Business Conduct' (2022) 17.

¹⁵¹ International Labor Organization, 'ILO Conventions and Recommendations on Child Labor (IPEC)' (2019)

<<https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabor/lang--en/index.htm>> accessed 7 May 2023.

¹⁵² British American Tobacco (n 123) 18.

¹⁵³ British American Tobacco, 'Human Rights Report' (2020) 6.

4.2.2 The company's accusation

In June 2016, Swedwatch, an independent organization that scrutinizes Swedish companies' extraterritorial operations, released a report accusing BAT of being involved in child labor practices in Bangladesh.¹⁵⁴

Based on Swedwatch's interview surveys conducted in Bandarban, Chakoria, and Lalmonirhat, it was found that adolescent boys were engaged in similar tasks as adult men in the fields. Both girls and boys of various ages were responsible for activities such as irrigating, leveling the fields and carrying loads. Additionally, after the harvest, they participated in tasks such as breaking leaves, cutting stems, and assisting in monitoring the temperature during the curing process.¹⁵⁵

According to a local community development worker associated with an NGO in Bandarban, which has been actively involved in livelihoods and poverty alleviation, women and children play a significant role in tobacco cultivation in the district. The worker mentioned that approximately 50% of the workforce of the tobacco farms comprises women, with a significant presence of children engaged in these activities as well.¹⁵⁶

Similarly, a former child laborer, during an interview, stated that child labor is prevalent in tobacco production areas associated with British American Tobacco Bangladesh (BATB) in Bandarban and Chakoria and over 50 percent of the employers affiliated with BATB in these regions depend on the use of child labor. On average, each BATB farm employs two to three children, aged 12 and above, for tobacco cultivation. These children include both the farmers' own children and hired laborers working on the farms.¹⁵⁷

Alongside Swedwatch's report, a similar one was published by Human Rights Watch in 2018 regarding BAT's involvement in child labor practices in Zimbabwe. The organization collected evidence of child labor occurring on tobacco farms in Zimbabwe, which involved the employment of children below the age of 18 in dangerous duties. Furthermore, there were instances where children were employed as hired workers, violating the minimum age requirements stipulated by national regulations.

¹⁵⁴ Swedwatch, 'Smokescreens in the Supply Chain: The Impacts of the Tobacco Industry on Human Rights and the Environment in Bangladesh | Report #81 (Kalle Bergbom 2016) 27.

¹⁵⁵ Ibid 47.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

Children and young adults who were interviewed for the report shared their experiences of working under hazardous conditions on tobacco farms. Moreover, several other individuals interviewed also confirmed the presence of child labor on tobacco farms in Zimbabwe. Educators in areas where tobacco is cultivated at primary and secondary school levels raised concerns regarding the impact of children participating in tobacco farming, which resulted in frequent absences and difficulties for students to maintain their school progress.¹⁵⁸

Human Rights Watch reached out to the main purchasers of tobacco in Zimbabwe to collect information on their policies and procedures for ensuring human rights compliance. Detailed letters were sent to 15 tobacco companies, including BAT, which was among the eight companies responsible for 86 percent of tobacco purchases in Zimbabwe in 2016. The letters requested information about the companies' purchasing practices in Zimbabwe and their policies and actions related to human rights.¹⁵⁹

In response to the specific allegations, BAT stressed that its suppliers in Zimbabwe conduct their own ongoing due diligence. However, the company itself announced its intention to perform a provisional human rights investigation, by conducting visits without prior warning to fields in Zimbabwe during the first months of 2018, even though it has not received any reports regarding the existence of child labor on Zimbabwean tobacco farms supplying its company.

Besides, BAT reported that in a 2015 audit conducted under the Supplier Responsible Tobacco Program (SRTP), the score for the "People Pillar," which encompasses, among others, child labor, was 50 percent for one of their major suppliers in Zimbabwe, with areas identified for improvement. It further reported that the supplier's self-assessment score was 94 percent in 2017. However, BAT did not provide detailed information or explanations regarding the content or significance of these scores, despite requests from Human Rights Watch. Consequently, these scores do not offer meaningful insight into the progress made by the major supplier in Zimbabwe in addressing child labor or other labor incidents and risks. Human Rights Watch has encouraged BAT to provide more substantive information and

¹⁵⁸ Human Rights Watch, 'A Bitter Harvest: Child Labor and Human Rights Abuses on Tobacco Farms in Zimbabwe' (2018) 28.

¹⁵⁹ Ibid 76.

make it publicly available in order to clarify the meaning and implications of the numerical scores.¹⁶⁰

Concerning the Swedwatch's report, the company released a document under the title "Responding to Allegations of Human Rights Abuses in the Bangladesh Tobacco Supply Chain", in which it stated that it conducted its own review in Bangladesh and maintained its position that the report did not accurately reflect the situation on the ground. Nevertheless, to further address the concerns raised, BAT commissioned a third-party evaluation of the human rights-related impacts of tobacco plantations within the country. The assessment was conducted by DNV GL Business Assurance Services, as a company with expertise in issues of sustainability and human rights.

DNV GL adopted a risk-based approach to determine the farms in Bangladesh that would be audited. Its approach involved a combination of on-site visits and an evaluation of the farms' management systems with the aim of discovering any potential systemic problems. In most cases, the visits were conducted without prior notification to the farmers, ensuring a more accurate assessment of their typical practices.¹⁶¹ The assessment's outcome did not identify any indications that the management arrangements implemented by BATB for controlling human rights-related risks were not followed at the Bangladeshi fields supplying BATB. More specifically, the sample examined and the evidence reviewed did not reveal violations regarding child labor at the registered farms. Contrariwise, measures were in force to mitigate relevant risks.¹⁶²

As concerns some additional remarks, the employment contracts at the visited farms did not explicitly specify a minimum age for workers. However, interviews conducted during the assessment revealed that the farmers had a clear understanding of the minimum age requirements set by BATB and were aware of the company's expectations in this regard.¹⁶³

The most important part of the report for the purposes of the present research was the section under the title "limitations of our work", in which DNV GL's sample size, covering only 17 out of almost 34,000 Bangladeshi farms supplying BATB indicates the insufficiency of the

¹⁶⁰ Ibid 88-89.

¹⁶¹ British American Tobacco, 'Responding to Allegations of Human Rights Abuses in the Bangladesh Tobacco Supply Chain' (2017) 2.

¹⁶² Ibid 4.

¹⁶³ Ibid 6.

whole project. In addition, the limitations include the fact that due to the casual nature of agricultural labor and the absence of local records maintained by farmers on laborers working on BATB-registered tobacco farms, there is a lack of formal documentation regarding the workforce. Verbal agreements are commonly made on a daily basis, further complicating the tracking of labor information. Additionally, during the visits to BATB farms, the auditors were unable to verify the records of workers' ages, leading to reliance on interviews conducted with farmers and workers for the assessment. These interviews served as the primary source of information for evaluating the labor conditions and practices on the farms. Lastly, the company concludes its report by mentioning that:

DNV GL's work is based on the assumption that the information provided to us by BATB as part of our assessment has been provided in good faith. DNV GL expressly disclaims any liability or co-responsibility for any decision a person or an entity may make based on this Assessment Statement.¹⁶⁴

As concerns BAT's response to Human Rights Watch with respect to their allegations, the company stated that it takes human rights and specifically child labor allegations very seriously, while it highlighted that the majority of tobacco leaf purchased by BAT in Zimbabwe comes from Northern Tobacco, one of the most prominent tobacco buyers in the country. As part of their contractual agreements, all suppliers, including Northern Tobacco, are obligated to prevent any child labor practices and protect the workers' well-being, safety, and labor rights. Therefore, BAT expressed confidence in the strength of its policies and processes. However, acknowledging the gravity of the allegations raised in the report, BAT conducted unannounced visits to farms in Zimbabwe that supply their tobacco. These visits did not uncover any significant issues of concern.¹⁶⁵

Nevertheless, according to Marty Otañez, an associate professor at the University of Colorado Denver with extensive experience in studying the subject for two decades, 'there is a disconnect between what company representatives say they do and what they actually do. In

¹⁶⁴ Ibid 8.

¹⁶⁵ 'British American Tobacco - Responding to Human Rights Allegations' (www.bat.com) <<https://www.bat.com/humanrights/respond>> accessed 7 May 2023.

every segment during the tobacco production process, you find different magnitudes of child labor.’¹⁶⁶

During BAT's AGM in April 2019, Chairman Richard Burrows expressed sympathy towards the raised concerns. However, he asserted that ‘you will find BAT has not got any questions to answer in respect of these issues’ and he stressed that ‘human rights is something we take very seriously as a company and as a board’. In the meeting, Hazel Cheeseman, the director of the anti-smoking charity Ash, raised concerns about child labor and requested clarifications from BAT regarding its stance on the issue. In response, BAT stated that its policy forbids individuals below 18 from participating in activities involving contact with green tobacco. However, the company permits ‘non-hazardous tasks associated with tobacco growing’ to be performed by those below the age of 18. Jacqueline Baroncini, from the International Union of Food and Allied Workers, sought clarifications from the corporation regarding its guarantee that no underaged individuals were employed on tobacco field supplying BAT. The Chairman reaffirmed his confidence in the programs and audits in place, asserting that they ensured compliance with the policy.¹⁶⁷

4.3 Nestlé SA

Nestlé S.A. is a Swiss multinational corporation that specializes in food and beverage processing. It was created in 1905 through the merger of the "Anglo-Swiss Milk Company" and "Farine Lactée Henri Nestlé." The former was founded in 1866 by brothers George and Charles Page, while the latter was established in 1867 by Henri Nestlé. Nestlé's headquarters are located in Vevey, Vaud, Switzerland.¹⁶⁸

It has a vast portfolio of brands, with over 2,000 different ones, it operates in 188 countries around the world and employs approximately 275,000 people.¹⁶⁹ Its product range spans various categories, including powdered and liquid beverages, milk products, ice cream,

¹⁶⁶ Julia Kollwe, ‘Tobacco: Activist Investors Pressure £20bn Companies over Child Labor’ (*the Guardian* 25 June 2018) <<https://www.theguardian.com/world/2018/jun/25/tobacco-companies-child-labour-pressure>> accessed 7 May 2023.

¹⁶⁷ Ibid.

¹⁶⁸ ‘The Nestlé Company History’ (*Nestlé Global* 2022) <<https://www.Nestlé.com/about/history/Nestlé-company-history>> accessed 19 June 2023.

¹⁶⁹ Nestlé, ‘About Us’ (*Nestlé Global* 2023) <<https://www.Nestlé.com/about>> accessed 19 June 2023

prepared dishes, cooking aids, nutrition and health science products, pet care, confectionery, and bottled water.¹⁷⁰

Nestlé operates within the secondary sector of industry, which involves the manufacturing and processing of raw materials into finished products. It sources raw materials, such as cocoa, directly from farmers and uses them in the production of various products, including popular ones like KIT KAT, AERO®, and SMARTIES. Nestlé's manufacturing facilities transform these raw materials into packaged goods that are then distributed to consumers through various channels.¹⁷¹

4.3.1 CSR implementation within the company

Nestlé's corporate social responsibility program, known as Creating Shared Value (CSV), aims to generate positive impacts on individuals, communities, and the environment as a responsible global company. This program is built upon three key pillars: nutrition, water, and rural development, reflecting Nestlé's dedication to creating shared value in these areas. Within this framework, the Nestlé Healthy Kids (NHK) program and the Knowledge Sharing (KNHK) program aim to encourage healthy eating habits and physical exercise among kids living in remote regions. In addition, it has established purified drinking water tanks and sanitation facilities in village schools, specifically for girls, to ensure uninterrupted education for children. They also collaborate with local NGOs for the provision of training for farmers and the implementation of the "Amra Korbo Joy" initiative, which aims to enhance the well-being of street sellers, while a series of nutrition training programs targeting women are organized that emphasize nutrition education and traditional support during childbirth.

Nestlé's sustainability strategy encompasses a broad range of initiatives, including commitments to achieve net-zero emissions, eliminate deforestation from its supply chains, and promote regenerative agriculture on a large scale. Additionally, the company is dedicated

¹⁷⁰ 'Nestlé Annual Report' (2014).

¹⁷¹ Sanjeet Singh, Jagmeet Bawa and Gagan Deep Sharma, 'A Case Study on Corporate Social Responsibility in NESTLE, TATA, ITC' (2016) 3 Advanced Research Publications (ADR) Journals 5.

to enhancing water stewardship, implementing more sustainable packaging solutions, creating opportunities for youth, and fostering a diverse and inclusive workforce.¹⁷²

Nestlé's approach to sustainability also includes specific actions in relation to human rights. According to the latest CSV report of 2022, it places great importance on people and upholding human rights. This commitment is deeply ingrained in the company's culture and values, and it plays a vital role in its efforts to create a fair, equitable, and sustainable food system. Nestlé believes that by offering secure and dignified employment opportunities, while also striving to reduce inequalities, it can actively contribute to the advancement and promotion of human rights.¹⁷³

The publication titled "Human Rights Framework and Roadmap," released in 2021, outlines Nestlé's comprehensive role in championing a fair transition that prioritizes the well-being of individuals. The document emphasizes the central role of due diligence in their approach and defines five key factors that support the company's efforts. It also identifies ten critical areas where human rights could be particularly at risk within Nestlé's business and value chain. To address these concerns, Nestlé has developed action plans for each of these significant issues and is committed to reporting on the progress made in implementing these plans by 2025. Engaging stakeholders and fostering partnerships have always been crucial elements of Nestlé's strategy, and the company actively collaborates with various organizations, including the Fair Labor Association (FLA) and the International Cocoa Initiative (ICI), among many others, to address human rights challenges.¹⁷⁴

Nestlé maintains a strict stance of not tolerating child labor. The company acknowledges the intricate nature of the problem and collaborates with its suppliers, local communities, and other relevant parties to prevent and address the risks associated with child labor within its supply chain.¹⁷⁵

Its strategy for addressing child labor encompasses various measures such as facilitating education, combating poverty through economic stability and societal well-being, and

¹⁷² Nestlé, 'Sustainability at Nestlé' (*Nestlé Global* 2022) <<https://www.nestle.com/sustainability>> accessed 8 July 2023.

¹⁷³ Nestlé, 'Creating Shared Value and Sustainability Report' (2022) 33-34.

¹⁷⁴ Ibid.

¹⁷⁵ Nestlé, 'Child Labor and Access to Education' (*Nestlé Global* 2022) <<https://www.nestle.com/sustainability/human-rights/child-labor-education>> accessed 8 July 2023.

enhancing transparency and accountability. The company facilitates access to bridge classes for children who have missed out on education and need to catch up. Additionally, Nestlé actively works within communities to ensure the provision of school kits and birth certificates, which are necessary for children to attend school in Côte d'Ivoire. To date, Nestlé has also contributed to the construction and renovation of over 50 schools in Côte d'Ivoire.¹⁷⁶ It maintains transparency in its endeavors to combat child labor and regularly publishes updates on its advancements. The company's initiatives and their impact on society undergo evaluation by independent third-party organizations like the FLA.¹⁷⁷

4.3.2 The company's accusation

Nestlé has gained notoriety as one of the world's most contentious corporations. Over a span of more than twenty years, the Nestlé brand has been consistently linked to controversy, notably due to the marketing of infant formula in impoverished nations, which led to a longstanding boycott. Additionally, Nestlé has become a focal point of the worldwide movement opposing the bottled water industry. The company's labor relations practices in economically disadvantaged countries have also garnered significant criticism, positioning Nestlé as a negative figure in the eyes of the international labor union movement.¹⁷⁸

Child labor is one of the most severe human rights violations, which was committed by Nestlé. Specifically, there have been allegations suggesting that the company was involved in trafficking children to work in cocoa plantations located in the Ivory Coast, where they were subjected to exploitative conditions, including forced labor, absence of wages, and various forms of mental and physical abuse.¹⁷⁹

¹⁷⁶ Nestlé, 'How Is Nestlé Helping to Stop Child Labor?' (*Nestle.com* 2019)
<<https://www.nestle.com/ask-nestle/human-rights/answers/nestle-child-labour-supply-chains>> accessed 8 July 2023.

¹⁷⁷ Joe Sandler Clarke, 'Child Labor on Nestlé Farms: Chocolate Giant's Problems Continue' (*The Guardian* 6 October 2017)
<<https://www.theguardian.com/global-development-professionals-network/2015/sep/02/child-labour-on-nestle-farms-chocolate-giants-problems-continue>> accessed 8 July 2023.

¹⁷⁸ Mattera P, 'Nestlé: Corporate Rap Sheet | Corporate Research Project' (*Corp-research.org* 2012)
<<https://www.corp-research.org/Nestlé>> accessed 26 June 2023.

¹⁷⁹ Prasadi Wijesinghe, 'Human Rights Violations by Multinational Corporations: Nestle as the Culprit' [2018] SSRN Electronic Journal 7.

In 2005, the International Labor Rights Fund (ILRF) filed a lawsuit against Nestlé and several other companies in U.S. federal court under the Alien Tort Claims Act. The lawsuit was filed on behalf of three Malian children who were trafficked to cocoa plantations, alleging that these companies were complicit in the abuse and forced labor of child workers within the cocoa supply chain in West Africa. Although Nestlé was not directly involved in committing these acts, it was argued that the company was aware of the harsh conditions occurring on cocoa farms in Ivory Coast but failed to take preventive action. Additionally, Nestlé continued to purchase cocoa from these farms, indirectly supporting child trafficking and slavery in Ivory Coast. This lawsuit sparked lengthy debates, and ultimately, in 2021, the Supreme Court ruled that human rights violations by a non-U.S.-based company like Nestlé cannot be addressed under the Alien Tort Statute.¹⁸⁰

In response to mounting pressure, Nestlé took the initiative to engage the FLA in order to conduct a comprehensive mapping of its cocoa supply chain in Ivory Coast, which is responsible for producing nearly half of the world's cocoa. The FLA subsequently released a detailed report outlining its findings after mapping Nestlé's entire cocoa sourcing process in Ivory Coast.¹⁸¹

Through an extensive and independent investigation, the FLA discovered multiple instances of labor code violations within Nestlé's operations, particularly concerning child labor. Consequently, Nestlé committed to establishing a monitoring system to address child labor, forced labor, and health and safety risks throughout the entire crop cycle. Additionally, the company pledged to invest in alternative solutions for farmworkers and their families.

Within Nestlé's supplier code, the FLA uncovered several severe violations, with child labor emerging as the foremost area of concern. Despite the existence of alternative options for children, such as attending school, many continue to work in hazardous conditions on cocoa farms. Following the FLA's findings, Nestlé developed a plan of action that outlined three progressive stages of improvement initiatives to be completed by the end of 2012, 2013, and

¹⁸⁰ Ibid.

¹⁸¹ Humphrey Hawksley, 'Nestle "Failing" on Child Labor Abuse, Says FLA Report' *BBC News* (29 June 2012) <<https://www.bbc.com/news/world-africa-18644870>> accessed 8 July 2023.

2016. As a first measure, Nestlé pledged to create a concise and visually engaging handbook detailing its supplier code by October 2012.¹⁸²

As a member of the FLA since 2012, Nestlé undergoes an annual independent evaluation of a representative portion of its supply chain. In Nestlé's case, this evaluation focuses on the segment of its cocoa supply chain that falls under the Nestlé Cocoa Plan (NCP), accounting for approximately 20 percent of the company's total cocoa supply chain.

During the peak cocoa-harvesting period from October to December 2013, the FLA conducted visits without prior notice as part of its independent external monitoring. These visits took place in five cooperatives located in the Ivory Coast, which supply cocoa to Nestlé through the NCP. A total of ten visits were made, with each visit focusing on 20 farms in different communities. In total, 200 farms were assessed, representing approximately seven percent of the 2,863 farm owners associated with the inspected cooperatives.¹⁸³

The FLA assessments uncovered several troubling findings. Four children below the age of 15 were found to be working in the cocoa fields, and one case of forced labor involved a young worker from Burkina Faso, estimated to be 15 years old, who had been working without pay or official documentation since the age of 13. Additionally, seven other young workers between the ages of 15 and 18 were identified as working on the farms. These children and young workers were involved in both hazardous and non-hazardous tasks, working similar hours as adult workers. Interviews with farmers revealed that a significant number of children and young adults from their immediate and extended families were engaged in farm-related activities, such as cocoa picking, transporting wet beans, and land clearing. Some of these children were not attending school. The assessments also highlighted a lack of age verification and documentation systems on the farms, as well as a lack of mechanisms to remove working children from agricultural operations.¹⁸⁴

Accordingly, in 2014, between September and December, the FLA conducted 13 unannounced independent external monitoring visits to four cooperatives in the Ivory Coast

¹⁸² Bill Furmanski, 'FLA Highlights Underlying Challenges of Child Labor after Extensive Investigation of Nestlé's Cocoa Supply Chain' (*Fair Labor Association* 29 June 2012) <<https://www.fairlabor.org/fla-highlights-underlying-challenges-of-child-labor-after-extensive-investigation-of-Nestle/>> accessed 7 July 2023.

¹⁸³ Fair Labor Association, '2013 Independent External Monitoring of Nestlé's Cocoa Supply Chain in Ivory Coast' (2014) 1.

¹⁸⁴ *Ibid* 2.

that supply cocoa to Nestlé through the NCP. The evaluators visited a total of 260 farms, assessing 20 farms in each of the 13 communities. These 260 farms represented approximately 6 percent of the 4,103 farm owners associated with the four cooperatives that underwent inspection.¹⁸⁵

Despite an increase in awareness about child labor in cocoa-growing communities, a total of 25 child workers under the age of 15 were identified during the FLA's farm visits. These child workers were distributed among different regions, with 13 found in Aboisso, six in Divo, three in Guitry, and three in the San Pedro region. Out of the 260 farms visited, child workers were present on 17 farms. Among them, 24 were family members who were not attending school, and one child worker had been hired. The presence of child workers accounted for approximately three percent of the total workforce encountered during the assessments, including the farmers themselves. The evaluators also identified 31 young workers between the ages of 15 and 18, which also represented three percent of the total workforce. These children and young workers were involved in various farm tasks, including land clearing, harvesting, transporting and opening cocoa pods, and moving cocoa beans. Some of these tasks were considered hazardous due to the use of machetes and the transportation of heavy loads. The farmers did not have an implemented age verification system, and there was a lack of age documentation on the farms. The children and young workers did not possess identification documents, and many of the family workers did not have birth certificates, which is a common issue in Ivory Coast.¹⁸⁶

The FLA's assessments in 2016, when compared to the findings from 2014 and 2015, demonstrated progress in certain aspects of the FLA Workplace Code of Conduct. However, the evaluations also uncovered persistent challenges regarding the age-verification process, effective communication of workplace regulations to workers, shortcomings in the provided grievance mechanisms, engagement of child and young family workers without adhering to appropriate conditions, and concerns related to chemical management and machinery safety.¹⁸⁷

¹⁸⁵ Fair Labor Association, '2014 Independent External Monitoring of Nestlé's Cocoa Supply Chain in Ivory Coast' (2015) 1.

¹⁸⁶ Ibid 4.

¹⁸⁷ '2016 Executive Summary, Nestlé Cocoa Supply Chain, Côte d'Ivoire (*Fair Labor Association* 2 October 2017) <<https://www.fairlabor.org/reports/2016-executive-summary-nestle-cocoa-supply-chain-cote-divoire/>> accessed 8 July 2023.

A Nestlé representative, interviewed by the Guardian, mentioned, in this regard:

To date, we have identified 3,933 children working on their family farms (around 10% of the children surveyed) who were involved in hazardous tasks classified as child labor. We have included half of them in our Child Labor Monitoring and Remediation System, which entails providing school kits, obtaining birth certificates and developing income-generating activities for the families of 312 identified children. Unfortunately, the scale and complexity of the issue is such that no company sourcing cocoa from Ivory Coast can guarantee that it has completely removed the risk of child labor from its supply chain.¹⁸⁸

4.4 Assessment of the hypothesis' validity through the analysis of case studies

The agricultural sector is often characterized by a lack of sufficient regulations, resulting in inadequate legal protections and limited avenues for child laborers to raise complaints. Children can be hired through subcontractors, enabling farmers to ignore age requirements and working conditions more easily. Then, they can be further exploited by not getting their payments or by being charged excessive fees for basic necessities like food, transportation, and accommodation. The failure of manufacturers and retailers to effectively monitor their supply chains allows products arising from child labor to reach major markets of the West without detection. In parallel, the complex and non-transparent nature of the supply chains enables merchants to evade the responsibility of ensuring that their products are free from child labor or other forms of abuse, which in turn, deprives consumers of the ability to make well-informed choices about the products they purchase.¹⁸⁹

These facts are also supported by a study carried out by the Economist Intelligence Unit, under the name 'No more Excuses', which highlights 'a worrying degree of complacency' among corporations. More specifically, four out of five managers surveyed asserted that the supply chain of their firms was responsible, by meeting or even exceeding the requirements set by national legislations and industry standards. Particularly interesting is the fact that

¹⁸⁸ Joe Sandler Clarke (n 178).

¹⁸⁹ Environmental Justice Foundation (n 146) 5.

companies with closer physical proximity to their suppliers were more likely to consider themselves as responsible for the practices occurring along their supply chains. Nevertheless, the research reveals that a notable portion of businesses have deprioritized supply chain responsibility over the past five years.

The study also highlights the alarming lack of attention given by companies to important issues such as child labor, climate change, carbon footprints, and gender equality. Only a small percentage of companies, namely 22% for child labor, 23% for climate change and carbon footprints, and 28% for gender equality, are actively addressing these concerns. These findings are particularly worrisome, considering the seriousness of these issues and their significance in the Asian region, where the majority of the surveyed companies are seated.¹⁹⁰

4.4.1 Child labor in the cotton industry and the case of Paul Reinhart

Most of the top cotton producers in the world have been reported for the usage of child labor in the fields.¹⁹¹ Prominent example consists the Republic of Uzbekistan, where cotton production is considered one of the most exploitative enterprises globally. Approximately one-third of the country's workforce is compelled to toil on cotton farms, enduring unfavorable conditions such as lack of land ownership and inadequate wages. Disturbingly, tens of thousands of children are forced into the labor-intensive task of picking cotton during the harvest season. What makes this situation particularly distressing is that the responsibility for these abuses lies with the Uzbek government itself, rather than criminal organizations within the country. The government plays a significant role in initiating and perpetuating the human rights violations associated with the production and trade of cotton.¹⁹²

In Uzbekistan, young children, some as young as seven years old, are employed as cheap or unpaid labor during the cotton harvest. This practice results in these children missing out on months of education as schools are closed, and they are instead sent to work in the cotton fields. In these fields, the fortunate ones among them receive meager compensation, usually just a few cents, for each kilogram of cotton they pick. While child labor unfortunately exists

¹⁹⁰ The Economist Intelligence Unit, 'No More Excuses: Responsible Supply Chains in a Globalised World' The Economist (London 2017).

¹⁹¹ Environmental Justice Foundation (n 146) 3.

¹⁹² Environmental Justice Foundation (n 145) 2.

in various countries, Uzbekistan stands out because it is the government and public employees who actively promote and facilitate this practice. Despite being prohibited by the Uzbek constitution, child labor persists due to campaigns that emphasize a sense of duty towards cotton as "the wealth of our country." Additionally, strict enforcement of cotton quotas leaves families and children with no alternative but to engage in this exploitative labor.¹⁹³

For the past two years, the Uzbek-German Forum for Human Rights has been closely monitoring the issue of child labor in the Uzbek cotton industry. Their findings confirm that the use of forced child labor is a deeply rooted and pervasive practice within Uzbekistan's cotton industry. Experts estimate that each harvest season, from September to the end of November, between 1.5 and 2 million schoolchildren aged 10 to 16 are coerced by local authorities to engage in cotton picking. Shockingly, this practice has remained largely unchanged since the era of Stalin. Observers assert that the Uzbek central government is the orchestrator of forced child labor, while simultaneously denying any responsibility for this reprehensible conduct.¹⁹⁴

Uzbek cotton is sold to international trading companies by three state trading organizations; Uzprommashimpeks, Uzmarkazimpeks and Uzinterimpeks. These government-controlled agencies have as clients some of the world's biggest cotton traders, among which is Paul Reinhart AG.¹⁹⁵ It is quite evident, thus, that since the company itself sources its cotton from Uzbekistan, without denying it, it is indirectly involved with the child labor occurring in the Uzbek cotton farms.

4.4.2 Child labor in the tobacco industry and the case of British American Tobacco

Multinational tobacco corporations involve small-scale farmers, primarily in developing countries, to grow and process tobacco leaves, which make up the supply side of the tobacco industry. The global tobacco supply chain is complex, and these companies do not provide transparent information about the different parties involved or the circumstances in which

¹⁹³ Ibid 19.

¹⁹⁴ Uzbek-German Forum for Human Rights, 'Reports from the Uzbekistan Cotton Harvest' (*The Child Labor Coalition* 21 October 2010) <<https://stopchildlabor.org/reports-from-the-uzbekistan-cotton-harvest-2010/>> accessed 8 July 2023

¹⁹⁵ Environmental Justice Foundation (n 145) 19.

tobacco is cultivated and produced. Tobacco farmers are engaged through direct contracts with tobacco companies that handle purchasing and manufacturing, such as BAT, or through intermediary entities called "commercial leaf suppliers." These commercial leaf suppliers, which are often large multinational companies themselves, buy tobacco from the farmers and then sell it to the purchasing and manufacturing companies.¹⁹⁶

Multinational corporations in the tobacco industry, including BAT, have faced scrutiny and accusations from stakeholders regarding various concerns. Specifically, BAT's operations in Bangladesh related to tobacco leaf have received criticism for their adverse effects on human rights and the environment. These effects impact households engaged in contract farming, laborers working on BATB tobacco farms, indigenous landowners, and local forest resources. In order to evaluate the level of responsibility that BAT holds for these impacts and risks, and to determine appropriate actions that BAT should undertake, Swedwatch has utilized the UNGP analytic model as a framework. The research findings have been compared with BAT's policies, due diligence practices, and the corrective measures they have implemented thus far.

Based on the assessment of BAT's responsibility for the impacts of its operations in Bangladesh, Swedwatch concludes that BAT holds complete accountability for the actions of its subsidiary, BATB. This responsibility is derived from BAT's majority ownership of BATB and the requirement for BATB to comply with the sustainability and human rights policies of the BAT Group in all of its operations. BATB is also obligated to implement the global supply chain management program of BAT, known as Social Responsibility in Tobacco Production (SRTP), and provide reporting on its implementation as part of BAT's annual sustainability report.¹⁹⁷

4.4.3 Child labor in the cocoa industry and the case of Nestlé

The majority of cocoa production in West Africa is carried out by small-scale farmers. In Côte d'Ivoire and Ghana alone, it is estimated that around 1.56 million children are engaged in labor activities. Cocoa-growing households in these regions face the harsh realities of rural

¹⁹⁶ Ibid 18.

¹⁹⁷ Ibid 63.

poverty, including challenges such as limited access to land, food insecurity, inadequate education opportunities, lack of clean drinking water, and insufficient healthcare services. Research indicates that most children working on cocoa farms do so within their immediate or extended families. While not all of this work can be categorized as child labor, it becomes unacceptable when it negatively impacts a child's health, development, or education, as per internationally agreed-upon conventions. Children living in cocoa-growing areas are particularly vulnerable to engaging in child labor during specific periods of the year, coinciding with the fluctuating labor demands throughout the seasons. They may be required to work more frequently during times such as the harvest season. Notably, identified cases of child labor tend to be higher during school holidays when children have more free time available.¹⁹⁸

The West Africa Cocoa and Commercial Agriculture Project (WACAP) initiated the monitoring of children's involvement in cocoa production across West Africa. Launched in 2002 by the International Programme on the Elimination of Child Labor (IPEC) of the International Labor Organization (ILO), WACAP aimed to address child labor issues in Cameroon, Côte d'Ivoire, Ghana, Guinea, and Nigeria. The project encompassed activities such as gathering information and raising awareness about which types of work were appropriate for children at various age levels.¹⁹⁹

Nevertheless, in September 2001, industry participants, together with Senator Tom Harkin from Iowa and Representative Eliot Engel, came to a consensus to eradicate the most extreme types of child labor in the cocoa and chocolate sector. This agreement was prompted by increasing media coverage shedding light on the exploitative circumstances faced by children employed on cocoa farms in West Africa. Known as the Harkin-Engel Protocol, the agreement outlined a series of actions that the industry would undertake to publicly reveal labor practices in cocoa farming, with the goal of eliminating the most severe instances of child labor.²⁰⁰

¹⁹⁸ International Cocoa Initiative, 'Child Labor in Cocoa' (www.cocoainitiative.org) <<https://www.cocoainitiative.org/issues/child-labour-cocoa>> accessed 26 June 2023.

¹⁹⁹ Dorte Thorsen and Roy Maconachie, 'Children's Work in West African Cocoa Production: Drivers, Contestations and Critical Reflections' in James Sumberg and Rachel Sabates-Wheeler (eds), *Children's Work in African Agriculture* (Bristol University Press 2023).

²⁰⁰ '20 Years after Harkin-Engel Protocol, Amount of Child Laborers in West Africa Increases' (*The Future of Coffee and Chocolate* | *California Cultured* 28 May 2021)

The industry aimed to establish and enforce industry-wide criteria to certify that their cocoa production was free from the most severe forms of child labor by July 1, 2005. However, as the deadline approached, it remained uncertain to what extent children were still involved in cocoa farming. Surveys conducted in households and research conducted by the respective governments of Côte d'Ivoire and Ghana revealed that in 2011, there were still 1.8 million children engaged in cocoa farming, with only a very small percentage (5% in Côte d'Ivoire and 10% in Ghana) receiving compensation for their work.²⁰¹

More than two decades have elapsed since the implementation of the protocol, and regrettably, the situation has further deteriorated. The COVID-19 pandemic has exacerbated the issue of child labor, amplifying the distressing news. According to *The Economist*, this is the first time since the signing of the Harkin-Engel Protocol that the number of child laborers in Africa has increased. Recently, authorities in Côte d'Ivoire rescued 68 children who were working on cocoa farms, but this represents only a fraction of the approximately 790,000 children involved in cocoa production in that country alone. A report released by the ILO emphasizes a significant rise in the number of children between the ages of 5 and 11 affected by child labor, during the last years.²⁰²

Child labor continues to persist as an ongoing issue in cocoa farms in West Africa, and there is compelling evidence that indicates the presence of forced labor within the industry. Recent reports, including Ghana's GLSS 7 survey and a study commissioned by the United States government and conducted by the University of Chicago, present strong evidence suggesting that approximately 1.5 million children are engaged in hazardous or age-inappropriate work on cocoa farms in Ghana and Cote d'Ivoire. The majority of these child laborers are subjected to the most severe forms of child labor, which involve tasks such as carrying heavy loads,

<<https://www.cacultured.com/chocolate-crisis/20-years-after-harkin-engel-protocol-amount-of-child-laborers-in-west-africa-increases>> accessed 26 June 2023.

²⁰¹ Green America, Global Exchange, and the International Labor Rights Forum, 'Ten Years, Little Progress: As Profits Soar, Chocolate Industry Fails to Deliver on Promises to End Forced and Child Labor on Cocoa Farms' (www.prnewswire.com 19 September 2011)

<<https://www.prnewswire.com/news-releases/ten-years-little-progress--as-profits-soar-chocolate-industry-fails-to-deliver-on-promises-to-end-forced-and-child-labor-on-cocoa-farms-130114408.html>> accessed 8 July 2023.

²⁰² '20 Years after Harkin-Engel Protocol, Amount of Child Laborers in West Africa Increases' (n 202).

working with dangerous tools, and being exposed to harmful agrochemicals, thus posing significant risks to their well-being.²⁰³

In the case of Nestlé, in contrast to Paul Reinhart and BAT, there is no need for the presence of child labor in its supply chain to be proven since the company itself has publicly acknowledged the existence of such practices and has committed to a remediation process. Therefore, in this case, the question that arises refers to the existence as such, despite its acknowledgment, in combination with the company's "rich and fancy" CSR program: does the company pretend, when advertising its responsible practices?

²⁰³ 'Global Civil Society Statement on Child Labor in Cocoa' (*The Child Labor Coalition* 12 June 2021) <<https://stopchildlabor.org/global-civil-society-statement-on-child-labour-in-cocoa-june-12th-2021/>> accessed 8 July 2023.

Conclusion

CSR policies and human rights function in inherently distinct ways. CSR is often strategically managed, with businesses developing strategies to integrate social, environmental, and ethical standards into their operations and communicate this approach accordingly. Despite global efforts, numerous multinational corporations continue to employ child labor, whether knowingly or otherwise, due to many factors and -if this happens deliberately- with various purposes. As businesses increasingly rely on global supply chains, the ethical and legal practices of their contractors and subcontractors can become unclear. While many business entities claim to be committed to ending such practices, the truth is that they must assume greater accountability for the sourcing and manufacturing of their products.

In this context, this research neither intends nor is able to prove the existence of pretense in the case of CSR's implementation in relation to human rights protection. In fact, it is probably infeasible for this existence to be proven, due to the subjectivity that characterizes this notion. Instead, this research suggests, based on the data used and their analysis, the possibility of this existence. In other words, it concludes that it is possible that corporations use their CSR programs as a tool with the aim of masking their involvement with human rights violations. Certainly, in any case, the statistical analysis results, meaning the majority of companies' high CSR records in combination with very poor HR performance, does not automatically entails those companies' pretense. Nevertheless, the statistics as such trigger a certain degree of suspicion. Observing the particularly high CSR rankings, one would expect, to a certain extent, an analogous level of HR ratings, assuming that HR as a category contributing to the overall score, is calculated as having at least an equal weight with the rest of the categories.

Generally, a company's CSR performance is measured based on specific categories' scores. These scores are calculated on the basis of the weighted average of sub-categories' scores underlying each category, normalized by the total sum of weights underlying each category. Therefore, there are various weights depending on each particular theme, which contributes to the overall score accordingly. CSRhub from which the data used in this research have been obtained does not follow such a methodology, as it relies on multiple other CSR databases, the data of which are gathered, evaluated by CSRhub and subsequently incorporated into its

own database. However, all these scattered databases, upon which CSRhub relies its rankings, follow a methodology similar to the one explained above.

Hence, several possible occurrences may explain this inconsistency regarding those companies' CSR and HR performance: (1) HR as a category has a low weight; (2) The research for the evaluation of corporations' CSR performance stays at the level of commitments in relation to HR and does not take into consideration what happens in practice; and (3) The companies engage themselves only in philanthropic and charity initiatives or focus their CSR activities on fields other than HR protection and thus, they do not follow an all-inclusive approach when implementing their CSR programs.

Even though one eventuality does not necessarily rule out the other, in case the third one is valid, there is also a series of possible explanations; (1) Companies' lack of knowledge/expertise/capacity to implement a comprehensive CSR program; (2) The economic and commercial pressure that corporations may face, such as on price, cost, and speed, which could lead them to use practices, such as child labor, in order to retain their position within a competitive market; (3) Strategic manipulation of CSR for achieving specific business objectives.

Considering the case studies examined above, the suspicion of pretense becomes stronger. Apart from the Nestlé case, in which the company acknowledged its involvement in child labor practices and proceeded with remediation processes, the other two cases operate supportively to the core argument of this research. Both Paul Reinhart AG and British American Tobacco PLC follow rich CSR programs with a diversity of relevant activities. What is more, both publicly advertise their strong commitment to human rights protection and the abolition of child labor. However, in practice, according to a variety of sources, they do not respect this commitment, as they have been found responsible, among others, for the usage of child labor along their supply chains. More importantly, they never recognized their human rights violations. It would not be unreasonable, thus, for one to assume a certain degree of pretense on their part as regards the advertisement of their responsible and sustainable corporate practices.

Undoubtedly, child labor is a widespread and deeply rooted phenomenon. Furthermore, allegations of child labor and other human rights violations are often complex and can

involve multiple actors, including suppliers, subcontractors, and other business partners. The intricacy of such situations cannot be denied or ignored. Nevertheless, companies are required to perform proper human rights and other pertinent due diligence processes. Even in cases in which such procedures are proven inadequate, due to the complexity of the issue, corporations should be open to relevant criticism and prepared to act in a reparative and reforming way, especially when allegations against them are supported by well-documented evidence. Eventually, legally speaking, their unaware involvement with human rights violations does not exempt them from their human rights responsibilities and thereby, from their culpability for these abuses. Hence, companies are ultimately responsible for ensuring that their business practices are consistent with human rights standards. If they fail to do so, they may face both reputational and legal risks.

Therefore, as regards the element of pretense and taking into account the particular difficulty underlying the fight against human rights violations occurring along a company's supply chain, together with child labor as a widespread phenomenon that affects the majority of products circulated globally, corporations should at least acknowledge these facts and mention relevant restrictions when advertising their endeavors to implement responsible business practices.

The aim of this research is to answer the following question: can corporations instrumentalize CSR, counteracting the promotion of the BHR agenda, with the aim of diverting the public's attention from their human rights violations? Generally, corporations can and do manipulate CSR for various reasons, which may include the diversion of the public's attention from their human rights violations. The "damage" in the promotion of the BHR agenda may occur either as a side-effect of the manipulating process, or as an actual objective, which would be part of a double goal. In the first case, the main goal of the corporation is to cover its human rights abuses behind a seemingly successful CSR program. This would operate against the agenda's promotion despite the corporation's unintentionality. In the second case, apart from aiming at the coverage explained above, the company also intends to weaken the BHR agenda and its institutionalization that would entail strict mandatory corporate regulations and accountability mechanisms. This is what Wettstein has described as CSR instrumentalization with the aim of countering mandatory BHR measures.²⁰⁴

²⁰⁴ Florian Wettstein (n 90).

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Appendix A

Company	No of Allegations of Human Rights Violations	CSRhub Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
Aeon		82	17.9	1.6	2	7.9	2.9	3.6
Ahold Delhaize	1	89	22.4	3.6	7	9.3	2.5	0
Alimentation Couche-Tard		62	3.4	0	2	0.7	0	0.7
Amazon	9	63	15.1	1.9	2	3.5	4.7	3
Amphenol	1	71	8.6	2	2	0.9	2	1.7
Analog Devices		86	4.1	0.8	0	0.2	2.3	0.8
Anheuser-Busch InBev		90	34.8	4.8	6	13.4	5.8	7
Anhui Jianghuai Automobile Group		20	0	0	0	0	0	0
Apple	6	86	31.6	2.8	9.5	5.3	8.7	5.2
Applied Materials		97	12.2	1.6	4	1.8	2.4	2.4
Archer Daniels Midland	1	77	17.9	2.3	3.5	8.1	1.5	2.5
Asahi Group		96	19.8	3.3	2.5	10.1	0	4
ASML		96	17.2	2.1	3	5.6	3.8	3.4
Associated British Foods	1	87	15.4	1.3	1	4.4	5.7	3.1
Beijing Automotive	1	74	1.8	0.2	0.5	0	1.1	0
BMW	4	87	24.1	1.6	5	9.9	4.3	3.4

Company	No of Allegations of Human Rights Violations	CSRhub Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
BOE Technology Group		69	6.3	0.6	2	0.2	2.2	1.3
Broadcom		67	13.3	1.9	3.5	2.3	3	2.7
Brown-Forman Corporation		90	3.6	0.8	1.5	0	0.6	0.7
BYD	1	73	0.7	0	0	0	0.6	0.1
Canon	1	92	25.2	2.2	5	11.2	4.3	2.5
Carlsberg		91	15.5	2	5	4.1	1.3	3.1
Carrefour	3	92	12.1	0.3	1.5	7.9	0	2.4
Changan Automobile	1	61	0	0	0	0	0	0
China FAW Group		62	0	0	0	0	0	0
Cisco	3	97	29.2	3.3	5.5	10.6	4	5.8
Coca-Cola Company	3	86	21	3.4	3.5	8.9	2.7	2.5
Coles Group		86	39.1	4.1	8.5	12.4	6.3	7.8
Compass Group	1	77	25.6	3.4	8.5	7.2	1.5	5
Conagra Brands		90	8.6	1.4	4	0.5	1	1.7
Constellation Brands		71	1.8	0.2	1	0	0.3	0.4
Corning		77	36.2	3.3	6.5	12.1	7.1	7.2
Costco	3	63	9	0.3	3.5	1.6	1.8	1.8
Danone	2	96	27.7	4.5	6	10.5	5.4	1.3
Dell	2	95	27.2	2.3	8	8.4	5.9	2.5
Diageo		98	37.3	4.1	7.5	12.2	6	7.5
Dongfeng Motor Group		65	0	0	0	0	0	0
Ericsson		88	33.5	2.2	7	11.6	5.9	6.7

Company	No of Allegations of Human Rights Violations	CSRhub Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
Ford	5	91	39	4.1	7.5	13.1	6.5	7.8
Geely	1	81	6.5	0.2	3.5	1.1	1.7	0
General Mills		94	30.3	3.4	4	11.8	5	6.1
General Motors	2	96	36.7	5	7.5	13.4	8.3	2.5
George Weston (Weston Foods & Loblaw)		50	10.4	0.8	2	1.1	4.4	2.1
Glencore	6	74	33.8	4.3	8.5	8.4	5.9	6.8
Great Wall Motor Company		74	0	0	0	0	0	0
Guangzhou Automobile Group		67	2.6	0	1.5	0	0.6	0.5
Heineken	1	92	28.5	3.6	7.5	12.4	2.5	2.5
Hewlett Packard Enterprise		96	39.1	5.9	8	11.5	5.8	7.8
Hitachi	2	86	16.8	2.3	2.5	7.4	1.1	3.4
Hon Hai Precision Industry Co., Ltd.(Foxconn)	3	71	7.6	1.6	1.5	0.9	2.1	1.5
Honda Motor Company MO E	2	84	11	1.3	2	3.8	1.7	2.2
Hormel Foods		84	12.9	2	4	0.7	3.6	2.6
HP	3	97	31.6	3.9	8	9	6.5	4.2

Company	No of Allegations of Human Rights Violations	CSRhub Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
Hyundai Motor	2	90	9	1.7	3	0.7	1.8	1.8
Infineon Technologies AG	1	94	13.5	2	3.5	2.3	3	2.7
Intel IT	1	93	22.2	2.3	8	7.1	4.8	0
Itochu		91	11.6	2.2	3	4.1	0	2.3
Kellogg's		94	33.6	5.3	6	10.1	5.4	6.7
Kerry Group		84	27.3	3.9	6	8.4	3.5	5.5
Keyence Corporation		56	7.7	2	1.5	1.8	0.8	1.5
Kia Motors Corporation		82	7.9	1.9	2.5	1.1	0.9	1.6
Kirin Holdings		84	22.7	3.8	3.5	9.3	1.7	4.5
Kraft Heinz AG	2	88	13.8	2.8	4	4.3	1.5	1.3
Kroger AG	2	86	10.7	1.7	1.5	5.6	0.6	1.3
Kweichow Moutai		43	0	0	0	0	0	0
Kyocera Corporation IT	1	95	8.2	1.9	1	1.4	4	0
Lam Research		91	16.1	0.3	6.5	3.7	2.4	3.2
Largan Precision		75	5.4	0	1.5	0	2.8	1.1
Lindt & Sprungli		74	20.1	1.7	6.5	5.1	2.7	4
Mahindra and Mahindra		91	12.6	1.4	4	2	2.7	2.5
Marks & Spencer AG/AP	3	89	38.1	4.8	8.5	11.1	8.7	5

Company	No of Allegations of Human Rights Violations	CSRhub Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
Mazda Motor Corporation		79	7	0.3	2	1.6	1.7	1.4
McCormick		93	9.2	0.3	4.5	0.5	2.1	1.8
McDonald's AG	2	69	16.1	1.3	4.5	6.3	0.8	3.2
Mercedes-Benz Group MO	3	85	29.9	3.3	6.5	13.4	4.6	2.1
Microchip Technology		60	7.5	1.3	3	0	1.8	1.5
Micron Technology		80	13.7	1.7	4.5	2.7	2.1	2.7
Microsoft IT	5	96	28.8	3.8	7.5	7.9	5.4	4.3
Mitsubishi Motors Corporation MO	1	87	5.8	2.2	1.5	1.6	0.6	0
Mondelez International AG	2	91	21.2	2.2	5.5	9.8	2.7	1.3
Monster Beverage		55	10.2	1.4	3.5	3.1	0.2	2
Murata Manufacturing IT	1	96	19.4	3.4	3.5	5.9	6.6	0
Nestlé AG	6	90	34.3	3.8	6	11	9.8	3.8
Nintendo IT	1	65	10.3	1.7	1	2.6	2.9	2.1
Nissan Motor Company MO	2	85	10.5	2.2	1.5	4	0.9	1.9
Nokia IT	2	96	20.8	2.7	7	4.3	3.7	3.1
Nvidia		97	14.2	3.1	3.5	1.4	3.3	2.8
NXP	1	90	30.4	0.9	6.5	9	7.8	6.1

Company	No of Allegations of Human Rights Violations	CSRhubs Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
Semiconductors IT								
Panasonic Corporation IT	5	86	12.4	1.6	2	3.6	2.7	2.5
PepsiCo AG	6	94	40.1	6.4	9	12.6	5.4	3.1
Pernod Ricard		95	21.1	2.3	3.5	7.7	3.3	4.2
Qualcomm		91	17.8	2.7	4	3.9	3.7	3.6
Renault MO	3	85	18.8	3.3	2	9	2	2.5
SACI Falabella		87	8.7	1.7	3	1.3	1	1.7
SAIC Motor		46	0.1	0	0	0	0.1	0
Samsung Electronics IT	3	91	35.1	4.4	10.5	9.2	6	5
Seven & I Holdings		89	8.4	2	2	1.8	0.8	1.7
Shoptite Holdings		76	4.1	0.9	1.5	0.2	0.6	0.8
SK Hynix		88	14.2	0.9	4.5	2	4	2.8
Skyworks Solutions		69	11.9	1.4	4.5	0.9	2.7	2.4
Sony IT	4	92	19	1.4	6	5.6	2.9	3.1
Starbucks AG	4	83	15.4	3	3.5	3.3	3.4	2.2
Stellantis MO	1	89	17.9	1.7	3.5	7.7	2.5	2.5
Subaru		82	14.5	1.4	2	5.8	2.4	2.9
Suntory		87	27.2	2	5.5	13	1.3	5.4
Suzuki Motor Corporation MO	1	79	2.4	0.2	1.5	0	0.3	0.5

Company	No of Allegations of Human Rights Violations	CSRhubs Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
Sysco		82	9.6	1.4	2	4.1	0.2	1.9
Target Corporation		95	17.5	2.1	5.5	2.4	4	3.5
Tata Motors MO	1	85	4.6	1.1	2	0	0.6	0.9
TE Connectivity		88	9.7	2.1	3.5	0.7	1.7	1.8
Tesco AG/AP	6	87	34.8	4.8	6	11.9	5.6	6.5
Tesla MO	6	44	7.3	1.4	1.5	0.9	3	0.4
Texas Instruments IT	1	96	8.1	0.5	2	2.5	3.1	0
The Hershey Company AG	2	97	38.5	3.1	8.5	14.8	4.4	7.7
Tokyo Electron		96	15	3.1	4.5	2.5	1.9	3
Toyota Motor Corporation MO	2	94	15.7	2.7	1.5	6.6	3.1	1.9
TSMC		96	23.9	2	7	5.8	4.3	4.8
Tyson Foods AG	1	71	6.9	0.9	3.5	0.5	0.6	1.4
Unilever AG	4	95	50.3	5.3	9.5	18.2	10.7	6.6
Volkswagen MO	6	81	22.8	1.6	4	9	4.1	4.2
Walmart IT/AG/AP	7	82	21.4	2.2	6.5	6.9	1.9	3.8
Western Digital IT	1	88	26.5	2.7	7	7.4	4.1	5.3
Wilmar International AG	2	74	43.5	4.1	13.5	10.3	6.9	8.7

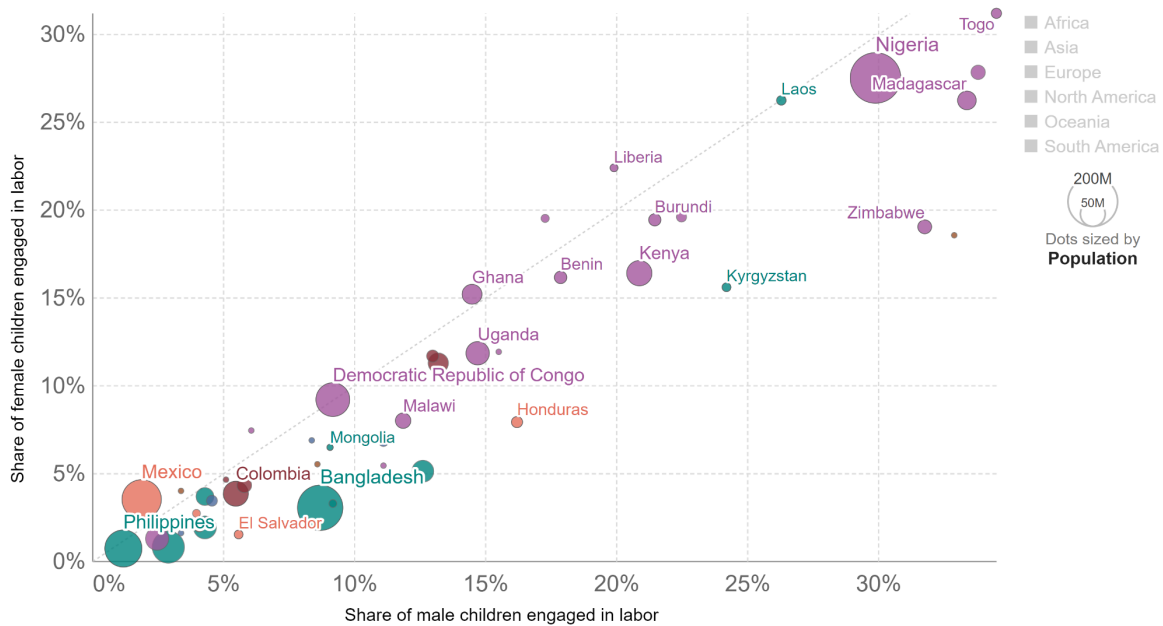
Company	No of Allegations of Human Rights Violations	CSRhub Ranking (0-100)	Corporate Human Rights Benchmark (0-100)	Governance and policy commitments (0-10)	Remedies and grievance mechanisms (0-20)	Embedding respect and human rights due diligence (0-25)	Performance : Practices (0-25)	Performance : Responses (0-20)
Woolworths Group	1	84	36.2	4.7	8	13.3	7.7	2.5
Yili Group		76	0.8	0	0	0	0.6	0.2
Yum! Brands		85	9.7	1.1	3.5	2.4	0.7	1.9

Appendix B

Share of children aged 5-17 years engaged in labor, 2020

Child employment is defined based on the amount of time spent participating in economic activities during the reference week of a survey. The threshold for being counted as participating in economic activity varies by age group: for ages 5-11, it is one hour; for ages 12-14, it is 14 hours; and for ages 15-17, it is 43 hours.

Our World
in Data



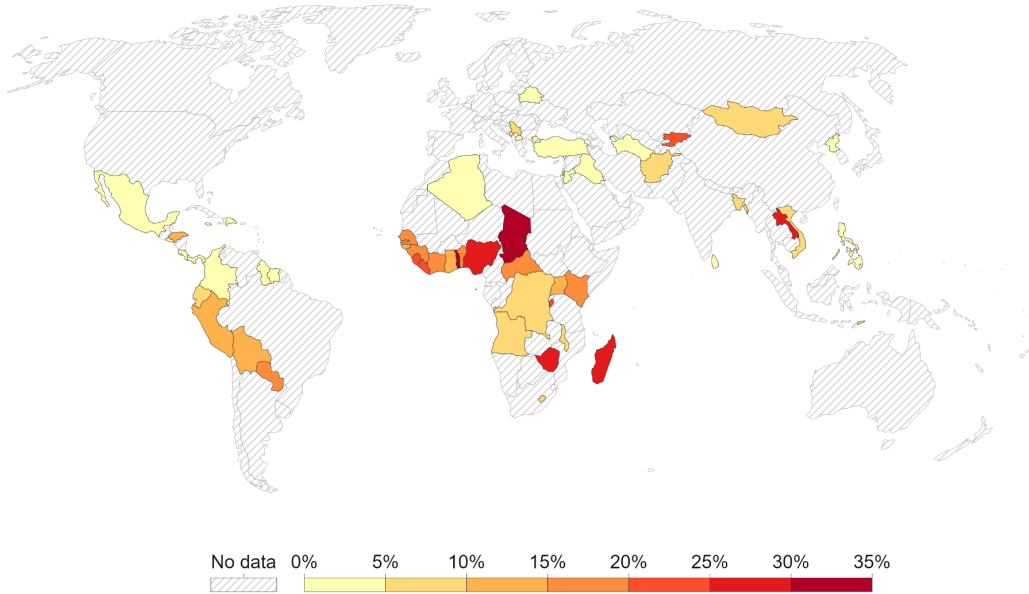
Source: UNICEF and International Labour Organization (ILO)

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Share of children aged 5-17 years engaged in labor, 2021

Our World in Data

Child employment is defined based on the amount of time spent participating in economic activities during the reference week of a survey. The threshold for being counted as participating in economic activity varies by age group: for ages 5-11, it is one hour; for ages 12-14, it is 14 hours; and for ages 15-17, it is 43 hours.



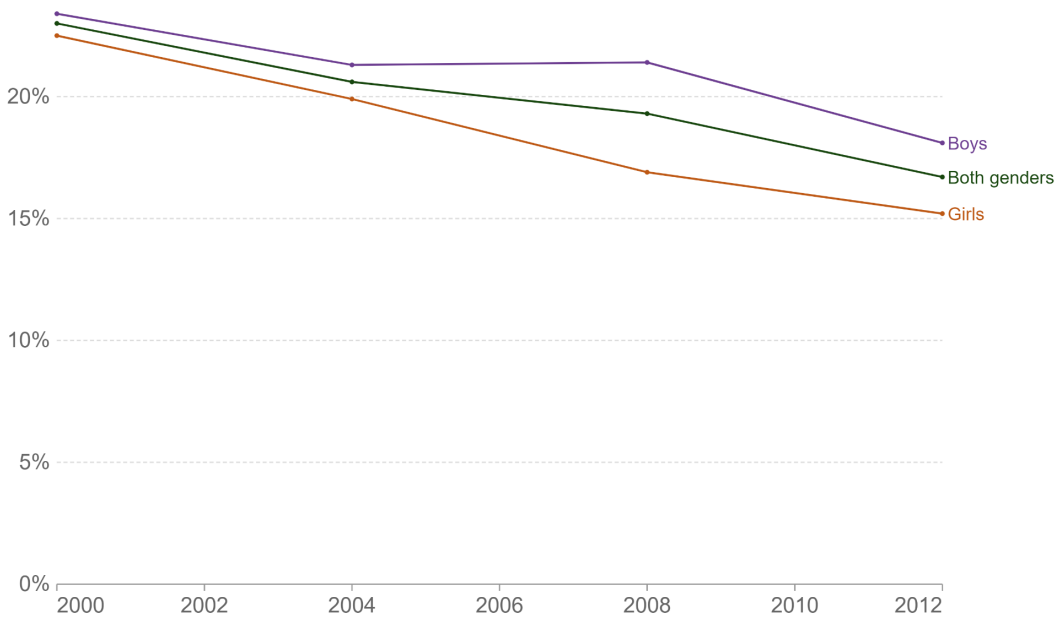
Source: UNICEF and International Labour Organization (ILO)

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Global incidence of child labor

Our World in Data

Share of children ages 5-17 involved in economic activity for at least one hour in the reference week of the corresponding survey (irrespective of school attendance).



Source: ILO - Marking Progress Against Child Labor

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