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Human Rights abuses in the Clothing Industry

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<tr>
<td>Abolition of Forced Labour Convention</td>
<td>Abolition of Forced Labour Convention, 1957 (No. 105)</td>
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<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<td>ACHR</td>
<td>American Convention on Human Rights</td>
</tr>
<tr>
<td>Apartheid Convention</td>
<td>International Convention on the Suppression and Punishment of the Crime of Apartheid</td>
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<tr>
<td>Art.</td>
<td>Article</td>
</tr>
<tr>
<td>CAT</td>
<td>Convention Against Torture and other cruel, inhuman or degrading treatment or punishment</td>
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<tr>
<td>CCC</td>
<td>Clean Clothes Campaign</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention of Rights of the Child</td>
</tr>
<tr>
<td>CRMW</td>
<td>International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families</td>
</tr>
<tr>
<td>CRPD</td>
<td>Convention on the Rights of Persons with Disabilities</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Convention for the Protection of Human Rights</td>
</tr>
<tr>
<td>ECTHR</td>
<td>European Court of Human Rights</td>
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<td>ETI</td>
<td>Ethical Trading Initiative</td>
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<tr>
<td>Forced Labour Convention</td>
<td>Forced Labour Convention, 1930 (No. 29)</td>
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<tr>
<td>Forced Labour Recommendation</td>
<td>Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICCPED</td>
<td>International Convention for the Protection of all Persons from Enforced Disappearance</td>
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<tr>
<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICERD</td>
<td>International Convention on Elimination of all Forms of Racial Discrimination</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<tr>
<td>MNE</td>
<td>Multinational Enterprise</td>
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<tr>
<td>MNE Declaration</td>
<td>The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977)</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>OECD Guidelines</td>
<td>OECD Guidelines for Multinational Enterprises (2011)</td>
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<tr>
<td>SDG</td>
<td>Sustainable Development Goal</td>
</tr>
<tr>
<td>Supplementary Convention</td>
<td>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1957)</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights (1948)</td>
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<td>US$</td>
<td>US Dollar</td>
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INTRODUCTION

The promising idea of globalization was firstly a great variety of cheap products in the Western world and secondly increasing job opportunities in developing countries. Effectively, the win-win situation failed to appear. Instead, inequality and environmental destruction occurs. Globalisation disproportionately benefits capital opposed to labour.\(^1\) People in the developing country are unable to participate in the wealth and workers are exploited for the benefit of cheap labour costs. Global trade and technological innovation benefit consumers with cheaper products and economy with greater revenue. One’s benefit deprives others of their freedom. John Hillary, the executive director at War on Want, describes the Clothing Industry as “the clearest example where globalisation has failed”. Through the globalized production, especially women were supposed to get a chance to enter a job and start a process of emancipation. However, women are forced to work in unsafe conditions for poverty wages and miss out on the process of prosperity.\(^2\) At the latest since the collapse of the Rana Plaza building in Dhaka in Bangladesh in 2014 which killed 1.134 garment workers, the global trade-off is visible.\(^3\) In January 2019, for the first time, a company stood trial in Germany for the clothing production conditions of its subcontractor. In Karachi, Pakistan, in September 2012, a manufacturing factory was set on fire which caused the death of 258 workers and many were injured. Due to the, previously known, lack of safety standards, people could not have been evacuated fast enough. The German cheap fashion retailer KIK was one of the main contracting entities. At the time of the fire, the factory was running at full capacity with orders from KIK. KIK had great market power but missed to use its influence to improve inadequate safety and fire precautions.\(^4\) The mother of one of the workers killed sued for damages for pain and suffering. The German court dismissed the case, arguing that the claims were time-barred under Pakistani law.\(^5\) The question raises who is responsible for the working conditions

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2 John Hilary, Has Globalization been a Success? (Untold 2016)
3 Safia Minney, Slave to Fashion (New Internationalist Publications Ltd 2017) 11–15
4 David Ehl, ‘Diese Frau will KIK zur Verantwortung ziehen’ (13 December 2018) <https://perspective-daily.de/article/691/g6FtRdi7fbclid=1wAR1PRAil3Mar16iCdNPC-Oh1DMsd8ZwheVANyTPd0KjzUafRU-4H6W1UjU> accessed 10 January 2019
in the clothing manufactories abroad. And who governs human rights abuses in the clothing industry.

Everyone deserves a life in dignity. Recognizing the inherent dignity as well as equal and inalienable rights of all people, serves as the foundation of freedom, justice and peace.\(^6\) In 1948, more than seventy years ago, the United Nations General Assembly proclaimed fundamental human rights enshrined in the Universal Declaration of Human Rights (hereinafter UDHR). All human beings, without distinction, are free and equal (Art. 1-2). No one shall deprive another person of that freedom and equality in dignity and rights (Art. 4). With the adoption of formal treaties under international law, the binding nature of human rights enters into the scene. The most overarching treaties which obliges parties to grant and protect human rights within their territory of sovereignty are the International Convention on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2000, The United Nations Millennium Declaration proclaims the right to live in dignity as one of today’s essential values and accepts their responsibility to “uphold the principles of human dignity, equality and equity at the global level”\(^7\).

The Sustainable Development Goals (SDGs) are an integral part of the UN’s 2030 Agenda for sustainable development. All United Nations Member States agreed on a global partnership to end poverty and other deprivations. One of the targets respective to SDG 8 is to take “immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour” (SDG 8.7). The United Nations member states confirm the existence of forced labour and the need for immediate and effective measures. Recent reports\(^8\) on the progress of the SDGs do not mention any achievements regarding elimination of forced labour, modern slavery, or human trafficking. There is an increasing concern that the endeavour of the international community is failing. Despite international legal consent, human rights are still being violated and people are being deprived of their dignity. States have agreed on the

\(^{6}\) Universal Declaration of Human Rights 1948, UDHR (The General Assembly) Preamble


wrongful act of forced labour and know about the necessity of action. International treaties clearly prohibit exploitative employment relationships.9 Nevertheless, people suffer from human rights violations and become victims of forced labour.

The International Labour Organization (hereinafter ILO) is the UN tripartite agency which sets international labour standards, promotes rights at work and decent employment opportunities.10 As stated by the ILO, work should provide purpose in life and give people their humanity and dignity.11 On a global scale, the employment relationship is misused, and people are deprived of their dignity.12 Labour is traded on the market and people have become commodities to use or sell. According to the ILO and Walk Free Foundation, a global organisation to end modern slavery, more than 40 million people were victims of modern slavery in 2016. Modern slavery describes any form of slavery occurring today. Examples of situations where someone is forced to work or marry and cannot leave or refuse because of coercion or threat, are forced labour, debt bondage, child labour, forced marriage and human trafficking.13 The International Labour Organisation estimates 25 million people trapped in forced labour, and the numbers increase.14 Forced labour is a common form of modern slavery. Coercion is experienced in various forms through their recruiter or employer. The majority of forced labour occurs in the private economy.15 Almost every consumer good, from food or clothing to cell phones or computers, hides exploitation and forced labour in the process of production. Neither the buyer nor the seller might know the exact conditions of sourcing, manufacturing and distribution.16 Approximately US$150 billion illicit profits are generated per year by businesses employing forced labour. Labour intense industries with

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9 International Covenant on Civil and Political Rights 1976, CCPR (United Nations Human Rights) Art. 8
11 International Labour Organization, ILO at Work: Extended Version (International Labour Organization 2017)
little regulations and a lot of intermediaries are particularly at high risk to exploitation of forced labour.\textsuperscript{17} One of such labour intense industries is the clothing industry.

Clothing plays a significant role in everyday life. Clothes are a persons’ chosen skin. Through clothes, people communicate who they are or who they want to be. The perfect look for every occasion, the satisfying feeling after a successful bargain hunt or simply the desire for something new, motivates people to buy clothes. Fashion has become a symbol of status, budget, religion, gender and hierarchy. Moreover, dress codes have become a political issue.\textsuperscript{18}

The clothing industry is a long-established industry with diverse participants throughout the supply chain. In Europe, the clothing sector is of high relevance as it provides jobs for more than two million people along the supply chain, for example, in manufacturing, retailing, sales, marketing and logistics.\textsuperscript{19} The universal importance of clothing increases the importance of universal standards. The clothes we choose to wear have a great influence on the people who made them. Besides providing prestigiously well-paid jobs, the clothing industry is one of the industries often accused of forced labour and inhuman working conditions. Since 1989, the Clean Clothes Campaign, a global network of organisations and unions, is dedicated to improve working conditions and to empower workers in the clothing industry worldwide. Almost daily, the Clean Clothes Campaign publishes alerting news about workers strikes, human rights abuse, lack of fire and building safety in garment factories, discrimination of trade union members and poverty wages.\textsuperscript{20} Fashion brands struggle to keep a responsible production chain. Retailers acknowledge the recurring issue of forced labour.\textsuperscript{21} Due to fierce competition, the global supply chain of clothing is complex and difficult for all parties to control. Any scandalous news might cause huge loss of reputation. The advantages of low labour costs from abusive suppliers are diminished by negative publicity.\textsuperscript{22} On the one hand, consumers demand cheap clothes, but on the other hand no one wants to finance human

\textsuperscript{18} Barbara Vinken, ‘Keusche Provokation: Muslimische Mode’ (Eine Ausstellung in Frankfurt zeigt muslimische Mode, die viele Menschen aufregt - weil sie die alte Idee der Freiheit neu befragt. 3 April 2019) <https://www.zeit.de/2019/15/muslimische-mode> accessed 6 May 2019
\textsuperscript{19} Werner Stengg, The textile and clothing industry in the EU: A survey (Enterprise papers vol 2001,2, June 2001, Office for Official Publ. of the Europ. Communities 2001) 1
\textsuperscript{21} Lawrence (n 12)
\textsuperscript{22} Debora L Spar, ‘The spotlight on the bottom line: how multinationals export human rights.’ (1998) 77(2) Foreign Affairs 1, 2
rights abuse. The expectation of great selection at cheap price make exploitation inevitable. However, expensive prices are by no means a guarantee for humane working conditions. Throughout the economy, incidences of slavery have returned.\(^{23}\) Serious debates concerning corporate social responsibility and businesses’ human rights obligations emerge.\(^{24}\) Businesses shall be held responsible for their share in human rights abuses. More importantly, states must fulfil their duty and protect workers against human rights abuse from their employers. International Human Rights Law obliges states to respect, to protect and to fulfil human rights. States are obliged to protect groups and individuals against human rights abuse.\(^{25}\)

The exploitation of labour is prohibited by international declarations, treaties and conventions. One of the most current regarding the abolition of forced labour and human trafficking, is the *ILO Protocol of 2014 to the Forced Labour Convention 1930*, hereinafter referred to as the *Forced Labour Protocol*. After the *Forced Labour Convention, 1930* (*Forced Labour Convention*) and the *Abolition of Forced Labour Convention, 1957* (*Abolition of Forced Labour*), the ILO proposes a new legally-binding Protocol and complementary Recommendation on Forced Labour which was adopted in the 103rd ILC session in Geneva and entered into force on November 9\(^{th}\), 2016. The new Protocol aims to prevent and eliminate forced labour and improve enforcement of measures.\(^{26}\) Measures include education and information of stakeholders, the establishment and strengthening of labour inspection services, due diligence support by public and private actors to prevent the exposure to forced labour, and determined efforts to deal with the root causes of forced labour.\(^{27}\) The committed states are responsible for ensuring that people living in forced labour will be released, offer recovery and facilitate rehabilitation. With ratification, national legislation must protect all workers in all sectors and strengthen labour inspections. In addition, people are to be informed and educated about human right abusive practices. The Forced Labour Protocol aims to restore the dignity of people exploited and ensure the punishment of their perpetrators.\(^{28}\)

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\(^{23}\) Lawrence (n 12)  
\(^{26}\) 50 for freedom (n 13)  
Victims of forced labour shall be guaranteed access to justice, and compensation shall be irrespective of their legal status.\textsuperscript{29} So far only a few countries have ratified the Forced Labour Protocol. The ILO launched the campaign \textit{50 for freedom} to promote the ratification of the protocol of at least 50 countries by the end of 2019. By the end of 2019, 42 countries have ratified the protocol. Austria ratified the Protocol on September 12\textsuperscript{th} and the Protocol will enter into force for Austria on September 12\textsuperscript{th} 2020.\textsuperscript{30}

Even though the presence of forced labour in the clothing industry is undeniable, only a small number of studies address the issue. And even fewer studies discuss the Forced Labour Protocol in the context of the clothing industry. The aim of this study is to identify how to abolish human rights abuses, in particular forced labour, in the clothing industry and to closer examine the Forced Labour Protocol in this regard. To serve this research aim, the following research question is stated:

\textit{How can the Forced Labour Protocol be applied in the clothing industry?}

To answer the research question, the study draws on the foundations of human rights and slavery and the corresponding international laws. The proposed measurements of the Forced Labour Protocol are investigated. Furthermore, the clothing industry is scrutinized. The study confirms forced labour as a common form of modern slavery which is found in the clothing industry and highlights the impacts of the Forced Labour Protocol. All data is based on a comprehensive literature review.

The paper is structured as follows: In the first section, the UDHR and ICCPR which represent the core legislation on human rights and slavery for the purpose of the study, are presented.

In the second section, slavery, a sever human rights violation, is described. The evolution of slavery is presented and modern slavery is highlighted. This section leads than to forced

\textsuperscript{29} 50 for freedom (n 13)


labour. A definition is provided, indicators to identify forced labour are listed and the prohibition of forced labour is closer examined.

In the third section, the international labour standards set by the International Labour Organization, the relevant U.N. body on decent work, are addressed. For a sustained and contextualized study on forced labour, previous conventions are collated and described, and the advancement of the ILO Forced Labour Convention is assessed. The Forced Labour Convention 1930 (No.29), the Abolition of the Forced Labour Convention 1957 (No.105) and the Protocol of 2014 to the Forced Labour Convention, 1930 along with the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) are evaluated.

The fourth section examines the clothing industry. Findings on businesses’ human rights obligations, industry characteristics and labour standards are presented and forced labour in the clothing industry is identified.

In the fifth section, the measures required by the Forced Labour Protocol are applied to the clothing industry. The relevance of the ratification of the Forced Labour Protocol to eliminate forced labour in the clothing industry is evaluated. Possible advancements due to ratification are proposed. Finally, the findings are discussed, and a conclusion is drawn.

Figure 1 is the illustrative presentation of the structure.
1 HUMAN RIGHTS

Every person on this planet is equal in dignity and rights. This equality serves as foundation for inclusion and peace. Without the uncompromising aspire for human dignity, sustainable development is inaccessible.\(^{31}\) In 1945, after the second world war, the UN was founded to establish peace and development and to harmonize human rights. The UDHR accompanied by the ICCPR the ICESCR, form the international Bill of Human Rights. Most regional human rights instruments are grounded on the Bill of Human Rights.\(^ {32}\) With the ICCPR, states give up a certain amount of authority and grant for example freedom of speech, religion and assembly. Under the ICESR states are obliged to grant and provide for certain rights like education.\(^ {33}\) In the United Nations Millennium Declaration, the General Assembly declares to “spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.” Advancements have been made to protect human rights at local, national, regional and international level.\(^ {34}\) Various courts and commissions protect the rights of individuals to live in dignity.\(^ {35}\) Only if there is a possibility of enforcing human rights, they become relevant for individuals whose rights are violated.\(^ {36}\)

The Universal Declaration of Human Rights provides the fundamental basis for scholars discussing the essential value of human rights as well as human rights abuses. Consequently, the study draws upon the UDHR and derived conventions.

1.1 Universal Declaration of Human Rights

The UDHR, adopted in 1948, was an extraordinary accomplishment.\(^ {37}\) For the first time, representatives of different regional, legal and cultural backgrounds agreed on universal

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\(^{32}\) Christoph Bezemek, ‘Rechtsvergleichung und Internationaler Menschenrechtsschutz – Eine Annäherung’ [2013] Journal für Rechtspolitik 76, 76

\(^{33}\) Allversity, Human Rights Institutions and Documents (2013)


\(^{36}\) Smith (n 34) 215

\(^{37}\) Emelie Hafner-Burton, Making Human Rights a Reality (Princeton University Press 2013) 53
common values and standards for all people in all nations. All people are granted the same fundamental and inalienable human rights and freedoms.\(^{38}\) The UDHR encompasses 30 Articles which are the cornerstone for a human rights movement. According to Art. 1 “all human beings are born free and equal in dignity and rights”. Under Art. 2 UDHR every human being is entitled to all rights without distinction of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” and without distinction “on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty”. Signatories to the UDHR consent to grant and protect human rights within their territory of sovereignty. According to Art. 4 UDHR “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” Furthermore Art. 5 declares that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Since 1948, some great strides have been made. However, human rights violations have not been abolished entirely.\(^{40}\) Therefore, the recommitment of governments and individuals to the principles of the UDHR is still necessary.

The UDHR inspires legal instruments for the protection of human rights. Basic civil, political, economic, social and cultural rights were translated into treaties which are legally binding for their member states.\(^{41}\)

**1.2 International Covenant on Civil and Political Rights**

Based on the principle of non-discrimination and equality, human rights treaties evolved. The nine core treaties are the International Convention on Elimination of all Forms of Racial Discrimination (ICERD), ICCPR, ICESCR, Convention on the Elimination of All forms of Discrimination Against Women (CEDAW), Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (CAT), Convention of Rights of the Child (CRC), International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families (CRMW), Convention on the Rights of Persons with Disabilities (CRPD), and the International Convention for the Protection of all Persons from Enforced Disappearance (ICCPED). These treaties form complementary legally binding norms which are

\(^{38}\) ibid 56f  
\(^{40}\) UN agencies, ‘70 years of progress on Human Rights’ (2018) <https://www.humanrights70.org/#home> accessed 30 November 2018  
\(^{41}\) Universal Declaration of Human Rights 1948, UDHR (The General Assembly)
interdependent and mutually reinforcing. One of the nine core treaties is the ICCPR which covers the issue of slavery. The ICCPR prohibits slavery and servitude and obliges states to take positive measures to prevent such human rights abuses.\(^4^2\)

Preamble ICCPR proclaims the “inherent dignity” and “equal and inalienable rights” to all humans as the foundation of “freedom, justice and peace in the world”. These rights derive from the inherent dignity of every individual who shall enjoy his civil and political rights as well as his social, economic and cultural rights. The ICCPR prohibits slavery and slavery-like practices like servitude and forced or compulsory labour. Under Art. 8(1) “no one shall be held in slavery” and “slavery and the slave-trade in all their forms shall be prohibited”. Furthermore Art.8(2) “no one shall be held in servitude” and Art. 8(3) “be required to perform forced or compulsory labour”. Thus, freedom from slavery is an essential human right.\(^4^3\) Besides the prohibition of forced or compulsory labour, Art. 8(3) provides permissible exceptions and derogations for works and services not to be considered as forced labour. As a juridically punishment imposed for a crime, hard labour is tolerated. Without encouraging the abuse of the provision, Art. 8(3)(b) allows states to levy such punishment. Hard labour as punishment is an exception comparable with imprisonment which violates a person’s right to liberty. A competent court must render the decision and explicitly state hard labour. A general duty to work, violates the prohibition of forced or compulsory labour. Such punishment may be imposed only for serious offences. The job placement by unemployment assistance does not represent such violation as the intensity of involuntariness does not reach the degree of forced labour.\(^4^4\) Under Art. 8(3)(c)(i) states are entitled to compel prisoners to perform routine work. The court decision must provide the grounds for detention and primarily aim for social rehabilitation of the prisoners.\(^4^5\) Contemporary criminal work for juveniles provides the possibility of social work substituting a punishment. Such voluntarily chosen sentence does not represent forced labour. Subpara. c(ii) excludes any military or social services from the prohibition of forced labour. If a state allows for conscientious objections, the substituting national service is also exempted from the prohibition.\(^4^6\) When emergencies or calamities

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\(^{43}\) ibid 194  
\(^{44}\) ibid 202  
\(^{45}\) ibid 205  
\(^{46}\) ibid 206
threaten the well-being of the community, Art. (8)(3)(c)(iii) allows states to impose forced labour. In democratic communities, to fulfil essential states functions which cannot be met by other means, forced labour may be used. Art (8)(3)(c)(iv) excludes civil obligations and minor communal services from the prohibition of forced labour.

Whereas the UDHR applies to all UN member states, the jurisdiction of the treaties have to be accepted by states through ratification. With ratification, a state establishes its consent on international plane to be bound by the treaty. To modify or exclude the legal effect of a treaty, states may submit reservations. Reservations can though not be incompatible with the object and purpose of the treaty. With the acceptance of the treaty, states are obliged to implement the treaty in national law. The IICPR treaty is a legally binding instrument. To ensure continuous efforts of human rights implementation, a reporting system governs the process. Through the reporting process, the Human Rights Committee interacts with UN entities, national human rights institutions, non-governmental organizations (NGOs) and others. If the state violates a human right, guaranteed under the ICCPR, complaints by individuals will be possible. The individual complaints procedure is a significant enforcement and control instrument. Although the views of the Human Rights Committee are not legally binding, they are of political relevance. The assessment is public and derived from the ICCPR norms, state obligations follow to eliminate the violations and prevent future breaches. For all those reasons, international treaties shape domestic laws and effect states behaviours.

Both, the UDHR and the ICCPR prohibit slavery. Although states agreed to protect human rights within their territory of sovereignty, human rights abuses endure. With the example of slavery, states’ failure to protect human rights becomes obvious.

47 Smith (n 34) 216
51 ibid
53 ibid 206
54 ibid 209f
55 Hafner-Burton (n 37) 15f
2 SLAVERY

Freedom from slavery is an essential human right which shall be granted to all people. In the presence of slavery, human rights are violated. The idea that one's own life is worth more than that of another, or the dignity of another person does not deserve as much respect as one's own leads to racial thinking and hierarchy.\(^{56}\) Taking advantage of a vulnerable position for one's own profit has always been an aspect of human society and exploitation is part of human history. In former days, the American cotton industry and agriculture was dominated by white farmers who owned slaves, regarding them as their valuable property. Slavery was considered the necessary evil for self-preservation. The slave-based economy relied upon intimidation, de-humanisation and brutality.\(^{57}\) Often associated with Africans on cotton field, slavery seems to belong to the colonial past, invisible to the Western eye.\(^{58}\) However, slavery is not a peripheral Southern issue of the past. Slavery is part of the present and the study on slavery has occupied a pivotal global role.\(^{59}\)

Based on the respective frame of reference of human rights, slavery is investigated in this chapter. First, a definition of slavery is provided. Then the different manifestations of slavery are described. Finally, slavery is narrowed down to forced labour which is the core of the study.

2.1 DEFINITION OF SLAVERY

Slavery represents an extreme form of oppression which attacks a person’s freedom and dignity.\(^{60}\) To protect people from slavery and hold perpetrators responsible for enslavement, a common understanding and a definition, which can be relied upon in court, is necessary.\(^{61}\)

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\(^{58}\) James Walvin, Slavery in Small Things: Slavery and Modern Cultural Habits (John Wiley & Sons, Incorporated 2017) 5–7

\(^{59}\) ibid 3; 263

\(^{60}\) Nowak (n 42) 194

For the purpose of the study, different conventions on slavery have been collated. The main conventions are listed in the table below which shows the evolution of the term.

Table 1 Definition of Slavery (own illustration based on literature review)

<table>
<thead>
<tr>
<th>Slavery Convention</th>
<th>Definition/ Declaration Regarding Slavery</th>
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<tr>
<td>Slavery Convention (1927)</td>
<td>Art 1(1)</td>
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<td></td>
<td>Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.</td>
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<td></td>
<td>Art 1(2)</td>
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<tr>
<td></td>
<td>The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.</td>
</tr>
<tr>
<td></td>
<td>Art 5</td>
</tr>
<tr>
<td></td>
<td>Forced labour may only be exacted for public purposes</td>
</tr>
<tr>
<td></td>
<td>States are required “to prevent compulsory or forced labour from developing into conditions analogous to slavery”</td>
</tr>
<tr>
<td>Universal Declaration (1948)</td>
<td>Servitude added:</td>
</tr>
<tr>
<td></td>
<td>No one shall be held in slavery or servitude; slavery and the slave trade should be abolished in all their forms</td>
</tr>
<tr>
<td>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1954)</td>
<td>Servile Status added:</td>
</tr>
<tr>
<td></td>
<td>Art. 1</td>
</tr>
<tr>
<td></td>
<td>a) Debt bondage: “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”</td>
</tr>
<tr>
<td></td>
<td>b) Serfdom: “the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.”</td>
</tr>
<tr>
<td></td>
<td>c) Unfree marriages: “any institution or practice whereby:</td>
</tr>
</tbody>
</table>


A considerable amount of literature has been published elaborating on the term “slavery”. Several attempts have been made to explain the conditions of enslavement. The legal definition of slavery has initially been set out in The Slavery Convention under Art. 1(1) where slavery is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. Further, under the Rome Statue slavery is defined using the phrase “powers attaching to the right of ownership”. Bales (2000) defines slavery as “the complete control of a person for economics exploitation by violence or threat of violence”\textsuperscript{62}. Slavery marks the state where a person is forced to sell his or her labour power

and looses his or her free will by the means of violence or threat. Bales (2000) argues that the perception of slavery as the ownership of people has obscured the social and economic relationship that constitute slavery today. Slavery represents a social and economic relationship characterised by great imbalance in powers, continuous exploitation and the potential for violence, which is recognized by both parties. The core elements of this relationship according to Bales and Robbins (2001) are first the restrictions to freedom of movement and choice of work, second the loss of control over own productive capacity, personal belongings and wages, and third the missing informed consent and understanding to the nature of the relationship. Nowak (2005) describes slavery as a highly sophisticated form of dependence and humiliation, reducing the human being to a mere property. A person enslaved, de jure is a legal personality, de facto a trivial toll of someone else. Allain (2009) defines slavery as human exploitation with the manifestation of ownership. He distinguishes “the right of ownership” from “powers attached to the right of ownership”. If slavery is illegal, no legal rights of ownership will be possessed but powers attached to the right of ownership will be exercised. Thus, enslavement means exercising the powers attached to the rights of ownership but this ownership is illegal. Stoyanova (2017) describes slavery as the condition in which an individual is subjected to the powers attaching to the right of ownership. She found that the definition agreed on in the Slavery Convention does not only outlaw the legal status of slavery but also the condition itself.

Contradictory determinations of slavery in international law show the complexity of enslavement. In the Case Prosecutor v. Kunarac et al (2002), Serbian forces were accused of the systematic detention and rape of women in Foca, Bosnia-Herzegovina, in 1992. The International Criminal Tribunal for the former Yugoslavia held that “[i]n the case of these various contemporary forms of slavery, the victim is not subject to the exercise of the more

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63 Kevin Bales and Peter T Robbins, ““No one shall be held in slavery or servitude”: A critical analysis of international slavery agreements and concepts of slavery’ (2001) 2(2) Human Rights Review 18, 32 <https://link.springer.com/article/10.1007/s12142-001-1022-6>
64 Bales (n 62), 461f
65 Bales and Robbins (n 63), 31
66 ibid 28
67 Nowak (n 42) 195
68 Allain, ‘The Definition of Slavery in International Law’ (n 61) 26
69 ibid 27
70 ibid 17
71 Vladislava Stoyanova, Human Trafficking and Slavery Reconsidered: Conceptual Limits and States’ Positive Obligations in European Law (Cambridge University Press 2017) 6f
72 ibid 194
extreme rights of ownership associated with “chattel slavery”, but in all cases, as a result of the exercise of any or all of the powers attaching to the right of ownership, there is some destruction of the juridical personality; the destruction is greater in the case of “chattel slavery” but the difference is one of degree.” Therefore, the Appeals Chamber considers “these contemporary forms of slavery formed part of enslavement as a crime against humanity under customary international law” referring to the definition of slavery under the Slavery Convention, 1926.\footnote{Prosecutor v. Kunarac et al. (2002) IT-96-23 & IT-96-23/1-A at 117 (International Criminal Tribunal for the former Yugoslavia)} In the Case of Siliadin v. France (2005), a Togolese child was held as domestic worker, unlawfully present on French territory, who had to work unpaid excessive hours with no days off for four years. The European Court of Human Rights held that “[a]lthough the applicant was, in the instant case, clearly deprived of her personal autonomy, the evidence does not suggest that she was held in slavery in the proper sense”\footnote{CASE OF SILIADIN v. FRANCE (2005) 73316/01 Council of Europe 38 at 122 (European Court of Human Rights)} because no right of legal ownership has been exercised over her. Therefore, the condition was considered a violation of the European Human Rights convention touching on servitude but was dismissed as slavery as defined under the Slavery Convention, 1926.\footnote{ibid}

While a variety of definitions of the term slavery have been suggested, this paper will use the definition first suggested by the Slavery Convention in 1926 which defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Thus, enslavement represents the power of ownership and the continues control over another person which deprives an individual of his or her liberty. The phenomenon of possession demonstrates the loss of autonomy.\footnote{Jean Allain, ‘What Is Forced Labour?: A Practical Guide for Humanities and Social Science Research’ [2018] Proceedings British Academy, 5 <researchgate.net>} Enslavement does not only entail labour or service but is accompanied by an all-embracing control over other aspects of life beyond the work-place.\footnote{ibid} The following chapters show how contemporary forms of slavery fall under the scope of this definition.

\footnote{Prosecutor v. Kunarac et al. (2002) IT-96-23 & IT-96-23/1-A at 117 (International Criminal Tribunal for the former Yugoslavia)}  
\footnote{CASE OF SILIADIN v. FRANCE (2005) 73316/01 Council of Europe 38 at 122 (European Court of Human Rights)}  
\footnote{ibid}  
\footnote{ibid}
2.2 Forms of Slavery

Slavery pervades through human history, continues today and has taken many forms. The following table presents the findings of a comprehensive literature research regarding the different forms of slavery.

<table>
<thead>
<tr>
<th>Forms of slavery</th>
<th>Characteristic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional Slavery</td>
<td>• Personal ownership(^{79})</td>
</tr>
<tr>
<td></td>
<td>• Status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised (Art 1 of the Slavery Convention of 1926)</td>
</tr>
<tr>
<td>Forced Labour</td>
<td>• Economic and social constraint(^{80})</td>
</tr>
<tr>
<td></td>
<td>• All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. (ILO Convention No29)</td>
</tr>
<tr>
<td>Debt Bondage</td>
<td>• The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined. (Art. 1(a) Supplementary Convention)</td>
</tr>
<tr>
<td>Serfdom</td>
<td>• The condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status. (Art. 1(b) Supplementary Convention)</td>
</tr>
<tr>
<td>Child Labour</td>
<td>• Work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.(^{81})</td>
</tr>
<tr>
<td></td>
<td>• Worst forms of child labour comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. (Art. 3 Worst Forms of Child Labour Convention 2000)</td>
</tr>
</tbody>
</table>

\(^{78}\) Bales (n 62), 461
\(^{79}\) Bales and Robbins (n 63), 28
\(^{80}\) ibid 29
The nature of slavery is multifaceted. Most vulnerable to slavery are people living in poverty, socially excluded or discriminated. Particularly in geographically isolated regions, violent or political unstable countries, and in illicit activities, slavery appears. Victims of slavery and slavery-like practices including serfdom, debt bondage and trafficking, are not only economically exploited but totally dependent on another person. Deprived freedom, fear of deportation or drug addiction are possible reasons for their dependence.

### 2.3 Modern Slavery

Modern slavery is a destructive crime. In 2016, more than 40 million people were victims of modern slavery. There is no legal definition of “modern slavery”. Modern slavery describes any situation where a person experiences powers attaching to the right of ownership by which

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82 Nowak (n 42) 199f
85 Nowak (n 42) 200
87 International Labour Office and Walk Free Foundation (n 14) 5
he or she is forced to offer labour or service of any kind and unable to leave the situation due to coercion, violence, or deception. Modern slavery is manifested in various forms such as forced labour, debt bondage, children working in slavery or slavery-like conditions, domestic servitude, sexual slavery, servile forms of marriage and human trafficking. From 2012 to 2016 there has been a significant increase in the number of people in modern slavery. Especially in countries which are marked by conflicts, instability in rule of law or lack of safety, the prevalence of modern slavery is the highest. Even in countries with strong systems and stability in rule of law, vulnerable groups and certain minorities like irregular migrants and women or workers in the grey, lack protection. These gaps in protection are exploited by criminals. To abolish modern slavery, policies and programmes must tackle the root causes of modern slavery on national and international level. Grounded on a comprehensive understanding of the various forms and manifestations of contemporary slavery, effective measures should be established. Sustainable Development Goal 8.7 calls for “immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms” Modern slavery is a widespread and profitable business. For the most part enslavement is motivated by economic gains. The following section provides a more comprehensive investigation on modern slavery focusing on its manifestation in forced labour, debt bondage, child labour, forced marriage and human trafficking.

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88 50 for freedom (n 13)
91 The Minderoo Foundation Pty Ltd. (n 86)
92 International Labour Office and Walk Free Foundation (n 14) 15
93 Transforming our world: the 2030 Agenda for Sustainable Development 2015, A/RES/70/1 (The General Assembly) 20
94 The Minderoo Foundation Pty Ltd. (n 86)
2.3.1 Debt Bondage

Debt bondage is one of the most prevalent forms of slavery. The life of a person is pledged to the loan of money.\(^95\) The Oxford Dictionary defines debt as “a sum of money that is owed or due” and bondage as “the state of being a slave”. In the Supplementary Convention, debt bondage is defined as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”\(^96\). In most cases of debt bondage, the labour power of the debtor becomes the collateral property of the lender. The debtor is unable to repay the debt by his labour. In other cases of debt bondage, the labour power of the debtor is ostensibly applied to the debt. However, due to false calculation or extortionate interest, the debt cannot be repaid. In both cases, the lender has physical control of the labour and the life of the debtor is trapped in debt bondage.\(^97\) Debt bondage exists for an unspecified time and is not comparable with a loan with agreed and acceptable terms from a bank or other lender. Especially migrants are vulnerable to debt bondage.\(^98\) The debt may arise from recruitment costs, transportation, the issuance of working documents, accommodation, costs of living or emergency expenses. Also, workers recruited from poor villages are vulnerable for both economic and social reasons. The higher cost of living in the cities has to be maintained and they cannot go back to the families they have left.\(^99\) Victims who have been recruited for a loan given to their relatives, must pay off their debt before they are allowed to leave the work-place.\(^100\) Thus, debt bondage is used to forcibly obtain labour. On the one hand, debt bondage itself is a form of modern slavery, on the other hand, debt bondage is an indicator for forced labour.\(^101\) Forced labour often results in debt bondage or bonded labour. Half of the victims of forced labour are also affected by debt bondage.\(^102\)

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\(^95\) Bales (n 62), 463  
\(^96\) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1957, Art 1  
\(^97\) Ibid 464  
\(^98\) International Labour Office and Walk Free Foundation (n 14) 31  
\(^100\) ILO Special Action Programme to Combat Forced Labour, ‘ILO Indicators of Forced Labour’ (2012) 21  
\(^102\) International Labour Office and Walk Free Foundation (n 14) 5
2.3.2 Child Labour

Child Labour is defined by the Supplementary Convention as “[a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person”\(^{103}\). Worst forms of child labour involve the enslavement of children. The powers attaching to right of ownership are exercised and children are deprived of their childhood, their dignity and their potential. Child labour dangers mental, physical, social or moral development and hinders school education.\(^{104}\) The exploitation of children for the gains of someone else takes many different forms like child trafficking, child soldiers, child marriage or child domestic slavery, offering a child for prostitution or using the child for the delivery of drugs.\(^{105}\) Regarding forced labour, work is performed by the child under coercion. Either the child is threatened personally, or else the parents are. The coercion takes place during recruitment when a child or his parents are forced to accept the job, but also on the job to prevent the child from leaving.\(^{106}\) One in four victims of modern slavery is a child.\(^{107}\) Children are the most vulnerable to abuses and deserve exceptional protection.

2.3.3 Forced Marriage

Forced marriage is a slavery-like practice whereby women or girls are made objects of transaction, denied their freedom and socially isolated. Although the abusive practice does not use the victim’s labour capacity, powers attaching to the right of ownership are exercised.\(^{108}\) The Supplementary Convention defines servile marriage as “[a]ny institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or (iii) A woman on the death

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\(^{103}\) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (n 96) Art 1(d)
\(^{104}\) International Labour Organization (n 81)
\(^{105}\) Anti-Slavery International (n 17)
\(^{106}\) International Labour Office and Walk Free Foundation (n 14) 16
\(^{107}\) ibid 5
\(^{108}\) Stoyanova (n 71) 258f
of her husband is liable to be inherited by another person”. The individuals become objects to transactions and are deprived of their liberty which results in a servile status. According to global estimates, 15.4 million people live in forced marriages. Their sexual autonomy is lost under the guise of marriage. Mainly women endure forced marriage. Of the overall total, 84% of the victims of forced marriage are female and 37% are children. Victims of forced marriage are subjected to control and the sense of ownership through abuse and threats.

### 2.3.4 Human Trafficking

Human trafficking is defined by The Trafficking Protocol as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Almost every country and numerous victims are affected by human trafficking every year. A country might be the scene for human trafficking either as state of departure, state of transit or state of destination. Human trafficking is to be distinguished from migrant smuggling. Human trafficking does occur on a transnational level with border crossing, but also within national borders. Smuggling is a transnational action with migrants being smuggled across borders to assist in the entering of states. Yet, most significantly, smuggling relies on consent. The person usually wants to be transferred to a new destination. Although the journey might be harmful and dangerous, there is no coercive action. Smuggling ends with the migrant arriving

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109 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (n 96) Art.1(c)
110 Stoyanova (n 71) 226f
111 International Labour Office and Walk Free Foundation (n 14) 10
112 ILO Special Action Programme to Combat Forced Labour, ‘ILO 2012 Global estimate of forced labour’ (n 15) 10
at the agreed destination. Human trafficking continues in the country of destination with exploitation.\textsuperscript{117} Victims of trafficking might have agreed to travel and to the job they have been offered. Nonetheless, most of the time being unaware of the working and living conditions expected. Trafficked persons are exposed to danger of sexual, physical or psychological abuse.\textsuperscript{118} Moreover, smugglers earn money with the monitoring of the journey, while a trafficker profits from exploitation.\textsuperscript{119} The purpose of human trafficking is the exploitation of others for the own financial profit.\textsuperscript{120} Powers attaching to the right of ownership are exercised and individuals are deprived of their freedom. Victims of human trafficking often end up in forced labour.\textsuperscript{121}

### 2.3.5 **FORCED LABOUR**

In history, the distinction between free and unfree labour has been subjective. Marx argues that labour does not belong to the intrinsic nature of the workers and that labour is coerced. Furthermore, the connection between labour and production results in wage slavery and forces workers into labour.\textsuperscript{122} During the nineteenth century, workers were committed to contracts with set time periods of work. Regardless the treatment of the employees, states would guarantee the terms of these contracts.\textsuperscript{123} The voluntariness has been questionable. Societal changes and the rise of labour movements and trade unions caused a shift from indentured servitude to the development of labour standards. Maximum working hours and minimum wages regulate the industry and limit employer’s freedom.\textsuperscript{124}

On the foundation of slavery, the manifestation of slavery in the form of forced labour is closer examined. In the following, a definition of forced labour is provided, and indicators of

\textsuperscript{117} UNODC (n 115)
\textsuperscript{119} UNODC (n 115)
\textsuperscript{121} Prabha Kotiswaran (ed), *Revisiting the Law and Governance of Trafficking, Forced Labor and Modern Slavery* (Cambridge University Press 2017) 395
\textsuperscript{122} Karl Marx, ‘Estranged Labour’ [1844] Economic and Philosophical Manuscripts <https://www.marxists.org/archive/marx/works/1844/manuscripts/labour.htm>
\textsuperscript{123} Allain, ‘What Is Forced Labour?’ (n 76) 1
\textsuperscript{124} ibid
exploitative working relations are described. Furthermore, the legal framework prohibiting forced labour is presented.

### 2.3.5.1 Definition of Forced Labour

Forced labour requires an element of work or service and happens through working relations. Work should provide a person’s life with purpose, honour and dignity. Forced labour interferes with that purpose. People are forced to work, threatened with mental or physical abuse and are restricted in their freedom. The understanding of forced labour has not remained static. Observations by authoritative bodies, regional human rights courts and various domestic courts have updated the concept of forced labour. The ILO Forced Labour Convention 1930 offers the core definition on forced labour. The international agreement describes forced labour in Art. 2(1) as “all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Based on this definition, the three essential elements constituting forced labour can be defined which are illustrated in the following figure.

![Figure 2 elements of forced labour (own illustration)](image)

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125 ibid 2
126 The Minderoo Foundation Pty Ltd. (n 86)
127 International Labour Organization, ILO at Work: Extended Version (International Labour Organization 2017)
128 Anti-Slavery International (n 17)
129 Allain, ‘What Is Forced Labour?’ (n 76) 2
The situation which is considered forced labour consists of three elements.\textsuperscript{130} First, forced labour requires an element of work or service. The fundamental limitation of forced labour is a working relationship where an individual provides labour or service of any type in any industry either in the private or in the public sector.\textsuperscript{131} Forms of compulsory education or training are therefrom distinguished. To undergo imposed training, although including certain amount of practical work, does not constitute to forced labour in the meaning of the convention.\textsuperscript{132}

Second, the menace of penalty compels a person to perform forced labour.\textsuperscript{133} Any means or methods of threat imposed on a person who refuses to perform voluntary labour are recognised. The penalty refers to a wide range of direct and indirect coercions. In extreme cases of forced labour where workers are threatened with physical violence or death, the menace of penalty might be obvious. In other cases, psychological threat, non-payment of wages as well as the loss of rights and privileges such as promotion and transfer or access to new employment, are considered the menace of penalty.\textsuperscript{134} In the Case of Silidian v. France, the European Court of Human Rights hold that the seriousness fear of being arrested by the police, constituted as an equivalent situation in terms of the seriousness of the threat to the menace of penalty.\textsuperscript{135} Most victims endure numerous forms of coercion. Employers or recruiters threaten the workers by various forms to prevent them leaving. According to the ILO estimates, the most common practices are withholding of wages and the threat of non-payment of due wages (24\%). Furthermore, threat of violence (17\%), physical violence (16\%) and threats against the family (12\%) are common. Acts of sexual violence have been reported by 7\% of the victims.\textsuperscript{136}

The third element relates to consent. Under menace of penalty, freedom of work cannot exist. If a person did not freely and informed agree to enter an employment, and is derived of the

\textsuperscript{130} International Labour Organization, ‘General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)’ (Geneva 2007). Report 19
\textsuperscript{131} Allain, ‘What Is Forced Labour?’ (n 76) 2
\textsuperscript{132} International Labour Organization, ‘General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)’ (n 130) 19
\textsuperscript{133} Allain, ‘What Is Forced Labour?’ (n 76) 2
\textsuperscript{135} CASE OF SILIADIN v. FRANCE (n 74) 32.
\textsuperscript{136} International Labour Office and Walk Free Foundation (n 14) 11
freedom to leave the relationship at any time, no work or service has been offered voluntarily. The fundamental feature of involuntariness differentiates the prohibition of forced labour from those on slavery and servitude which are prohibited even when offered voluntarily. Employer’s practices like false promises or the retention of identity documents, may interfere with a worker’s voluntary offer of labour. No consent of forced labour is justified if not set out under law. A worker’s right to free choice of employment is inalienable. If a worker is required to work beyond the expiry of a contract with fixed duration, the workers freedom to leave their employment will be denied which results in forced labour. Most countries have established a minimum age limit to entering a labour contract. Before that age, a minor cannot be considered to offer his or her work voluntarily.

To conclude, forced labour is understood as the deprived freedom to voluntary offer labour. A work or service provided under the menace of any penalty which coerces the person into involuntary labour, results in forced labour. If one condition is missing, forced labour is not apparent.

### 2.3.5.2 Indicators of Forced Labour

The vast majority (90%) of exploitation happens in the private economy. Forced labour is not narrowed down to a specific sector but found in any industry. An estimate of US$150 billion illicit profit is generated by forced labour per year. Governments hence miss out on tax income and lose social security contribution. Labour intense industries like agriculture, manufacturing, mining, fishing, domestic work, construction and the informal economy are at high risk of exploiting forced labour. Victims are often hidden from public and difficult to

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137 Fundamentals (n 134) 5  
138 Nowak (n 42) 201  
139 International Labour Organization, ‘General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)’ (n 130) 20  
139 Allain, ‘What Is Forced Labour?’ (n 76) 3  
140 International Labour Organization, ‘General Survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)’ (n 130) 21  
The hidden nature of forced labour makes it difficult to generate accurate data about the numbers of victims. There is hardly any source which is able to provide reliable data on all forms of modern slavery. Therefore, the ILO investigates a variety of sources to provide estimates. In the period of 2012 to 2016, data is based on cases of 89 million people. According to the ILO’s report, there are 24.9 million people victims to forced labour. The number has increased from the report of 2012 when the ILO estimates counted for 20.9 million people trapped in the situation in which they are made to work against their free will and coercion is experienced by their recruiter or employer through different means. Of the total 24.9 million forced labourers, 16 million are exploited by individuals or enterprises in the private economy, 4.8 million are estimated in situations of forced sexual exploitation. In the cases of 4.1 million victims, state authorities have imposed forced labour whereby citizens are forced to participate in agriculture or construction work, young military conscripts are forced to provide labour of non-military nature, or prisoners are forced to work outside the ILO’s established exceptions considering work as punishment.

All regions of the world are affected. Men, women and children fall into the trap of forced labour. According to the ILO estimate, 3.8 million people are victims of forced sexual exploitation and 1.0 million children suffer sexual exploitation for commercial profit. The prevalence of forced labour is the highest in Asia and the Pacific where 62 of all victims of modern slavery are located. For every 1,000 people, four are victims of forced labour. Europe and Central Asia follow with 3.6 per 1,000, followed by Africa with 2.6 per 1,000, the Arab with 2.2 per 1,000 and the American States with 1.3 victims of forced labour per 1,000 people.

Forced labour requires an element of coercion and involuntariness to be distinguished from mere labour exploitation. The ILO provides indicators which shall help to identify situations

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144 Fundamentals (n 134) 3
145 Nolan and Bott (n 90), 47
146 International Labour Office and Walk Free Foundation (n 14) 12
147 ibid 10
148 ILO Special Action Programme to Combat Forced Labour, ‘ILO 2012 Global estimate of forced labour’ (n 15) 1
149 ibid
150 ibid 11
151 ibid 26
152 Special Action Programme to Combat Forced Labour (n 142) 3

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in which forced labour occurs and people who are trapped in such. Derived from theoretical research and practical experiences, the ILO presents the following indicators:\footnote{ILO Special Action Programme to Combat Forced Labour, ‘ILO Indicators of Forced Labour’ (n 100) 1}

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation
- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

Most vulnerable to abuse and found in forced labour are those who are set apart from the majority of society by any means. With forced labour, employers often take advantage of the lack of language skills, few livelihood options, religious and ethnic minority belonging, or physical and mental disability. According to the ILO’s global estimate, 44% of all victims of forced labour have migrated across borders or internally.\footnote{Special Action Programme to Combat Forced Labour (n 142) 7} Migrants are especially vulnerable to trafficking and exploitation. A survey on migrant workers in Eastern Europe has shown a correlation between the need to borrow money for the recruitment fee and the risk of ending in forced labour.\footnote{ibid} The limited knowledge of local conditions is preyed by employers and limits their bargaining power.\footnote{International Labour Office and Walk Free Foundation (n 14) 30} Migrants face employment under substandard working conditions and are payed below national standards. Furthermore, their immigration status makes it difficult to change employment.\footnote{ibid 31} Hereby domestic workers are especially vulnerable to exploitation, particularly if they are foreign, they are women and they come from poor societies.\footnote{ibid} With an increasing dependency, forced labour is more likely to occur. This is the case when the workers depend on the provision of housing, food and money not only for themselves but also for their relatives.\footnote{ILO Special Action Programme to Combat Forced Labour, ‘ILO Indicators of Forced Labour’ (n 100) 5}

\footnotesize
\begin{itemize}
\item \footnote{ILO Special Action Programme to Combat Forced Labour, ‘ILO Indicators of Forced Labour’ (n 100) 1}
\item \footnote{Special Action Programme to Combat Forced Labour (n 142) 7}
\item \footnote{ibid}
\item \footnote{International Labour Office and Walk Free Foundation (n 14) 30}
\item \footnote{ibid 31}
\item \footnote{ibid}
\item \footnote{ILO Special Action Programme to Combat Forced Labour, ‘ILO Indicators of Forced Labour’ (n 100) 5}
\end{itemize}
enslavement will increase.\textsuperscript{160} Household vulnerability to income shocks also increases the risk of ending up in forced labour. Especially in households below the food poverty line, men and women without social protection tend to accept jobs even under exploitative conditions. Such heavy dependence on creditors, recruiters and unscrupulous employers increase the risk of forced labour.\textsuperscript{161}

When promises given in writing or verbal are not fulfilled, deliberate deception is assumed. If the information about the type of work, job location, legal status, accommodation or employer’s identity prove to be false, no free and informed consent has been given. Workers find themselves trapped in an unexpected situation with abusive labour conditions.\textsuperscript{162} The restriction of movement becomes visible when workers are not allowed to leave their work premises, are constantly kept under surveillance by cameras and guards, or agents keep a watch on them outside of work. The denial of free movement is a strong indicator of forced labour. Legitimate restrictions are only those imposed for the security and safety of the worker or due to organisational necessity.\textsuperscript{163} If victims are denied contact to others, they will be isolated from family and friends and difficult to identify. Isolation appears both in remote areas but also in populated areas through the means of confiscation of mobile devices and surveillance. Especially non-registered businesses are difficult to locate and monitor which hampers law-enforcement.\textsuperscript{164} Physical or sexual violence is often used to force a person to undertake tasks which depart from the original agreement. Women and girls are especially vulnerable to be sexually exploited.\textsuperscript{165} Victims are forced to undertake domestic work, take drugs, drink alcohol, or perform sexual acts with their employers or others. Under no circumstances, violence is acceptable and represents a strong indicator of forced labour.\textsuperscript{166} Victims suffer intimidations and threats which deter them to leave their job or to complain about working conditions. The severity of the threat imposed must be evaluated from the worker’s perspective. Psychological pressure like the constant undermining and insulting of workers as well as the threat of non-payment, danger of family members, loss of housing or

\begin{flushright}
\textsuperscript{160} Allain, ‘What Is Forced Labour?’ (n 76) 6
\textsuperscript{161} Special Action Programme to Combat Forced Labour (n 142) 6
\textsuperscript{162} ILO Special Action Programme to Combat Forced Labour, ‘ILO Indicators of Forced Labour’ (n 100) 7
\textsuperscript{163} ibid 9
\textsuperscript{164} ibid 11
\textsuperscript{165} Fundamentals (n 134) 3
\textsuperscript{166} ILO Special Action Programme to Combat Forced Labour, ‘ILO Indicators of Forced Labour’ (n 100) 13
\end{flushright}
deportation increase the degree of coercion.\textsuperscript{167} With the retention of identity documents by the employer, the workers lose their access to essential services and the possibility to obtain a new job or leave the country.\textsuperscript{168} When wages are withheld, workers are obliged to remain with their employer in constant hope to receive what they are owed. Wages paid irregular or delayed does not automatically indicate forced labour. A systematically and deliberate withholding of wages to compel a person to work may however be evidence of forced labour.\textsuperscript{169} Debt bondage binds the debtor, the worker, to his or her creditor, the employer or recruiter. As mentioned before, debt bondage is the most common form of modern slavery and often accompanied by forced labour.\textsuperscript{170} Humiliating and dirty work, difficult or dangerous conditions and severe breaches of labour law should alert to the possibility of forced labour.\textsuperscript{171} Workers who are obliged to work excessive hours or are denied breaks and days off, may be in danger of forced labour. When the working conditions are contradicting with national law and the workers are obliged by threat or under the pressure to earn a living, the ILO amounts this to forced labour.\textsuperscript{172}

The indicators presented above help to identify situations in which forced labour may be present. Harsh or exploitative working conditions in itself do not constitute forced labour.\textsuperscript{173} The economic necessity and structural inequality which compels an individual to work does not necessarily equate to forced labour.\textsuperscript{174} Unless workers are obliged by the means of threat, no forced labour exists.\textsuperscript{175} In the Case Chowdury et al vs. Greece (2018), harvest workers from Bangladesh had to work excessive hours under the supervision of guarded men, were exposed to very poor living conditions and their wages were withheld. As illegal immigrants, the harvest workers could have been arrested, detained and deported. The employer used this precarious situation. The workers knew that they would never receive their outstanding salaries if they stopped working. The ECHR hold that the voluntariness to work has to be examined in the light of all the relevant circumstances of a case. The former consent of the harvest workers to work on the farm is not sufficient to exclude forced labour. If the employer abuses its power

\footnotesize{
\begin{itemize}
\item \textsuperscript{167} ibid 15
\item \textsuperscript{168} ibid 17
\item \textsuperscript{169} ibid 19
\item \textsuperscript{170} ibid 21
\item \textsuperscript{171} ibid 23
\item \textsuperscript{172} ibid 25
\item \textsuperscript{173} Allain, ‘What Is Forced Labour?’ (n 76) 5
\item \textsuperscript{174} ibid
\item \textsuperscript{175} ibid 7
\end{itemize}
}
or exploits a vulnerable situation, the labour provided will no longer be considered voluntary.\textsuperscript{176}

Barely anyone would accept the humiliating working and living conditions of a person in forced labour. Normative pressure against those who use or condone forced labour for their own profit, is essential.\textsuperscript{177} In the following, international law on forced labour is discussed.

2.3.5.3 Prohibition of Forced Labour

The international community agrees on the abolition of forced labour. The table below shows the relevant legislation, listed according to the date of entry into force.

\textit{Table 3 Prohibition of Forced Labour (own illustration based on literature review)}

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Prohibition of forced labour</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slavery Convention (1926)</td>
<td>Art. 5</td>
</tr>
<tr>
<td></td>
<td>The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.</td>
</tr>
<tr>
<td>Forced Labour Convention (1930)</td>
<td>Art. 1</td>
</tr>
<tr>
<td></td>
<td>Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period</td>
</tr>
<tr>
<td>Universal Declaration of Human Rights (1948)</td>
<td>Art. 4</td>
</tr>
<tr>
<td></td>
<td>No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.</td>
</tr>
<tr>
<td>European Convention on Human Rights (1950)</td>
<td>Art. 4(2)</td>
</tr>
<tr>
<td></td>
<td>No one shall be required to perform forced or compulsory labour</td>
</tr>
</tbody>
</table>

\textsuperscript{176} Chowdury und andere gegen Griechenland (2017) Beschwerde-Nr. 21884/15 (EGMR)

\textsuperscript{177} Special Action Programme to Combat Forced Labour (n 142) 1
| Abolition of Forced Labour Convention (1957) | Art. 1  
Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour |
| American Convention on Human Rights (1969) | Art. 6(2)  
No one shall be required to perform forced or compulsory labour |
| International Covenant on Civil and Political Rights (1976) | Art. 8(3)(a)  
No one shall be required to perform forced or compulsory labour; |
The Exploitation of the labour of the members of a racial group or groups, in particular by submitting them to forced labour |
Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited. |
Trafficking in persons (...) for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; |
Emphasizing the urgency of eliminating forced and compulsory labour in all its forms and manifestations |

The prohibition of forced labour is endorsed by international declarations, treaties and conventions such as the Slavery Convention, Forced Labour Conventions No 29 and No 105, UDHR, European Convention for the Protection of Human Rights (ECHR), American Convention on Human Rights (ACHR), International Covenant on Civil and Political Rights
Slavery

ICCPR, International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention), African Charter on Human and People’s Right (ACHPR), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol). The Slavery Convention allows forced labour to be “only exacted for public purposes” (Art. 5(1)) and prohibits its manifestation. Under Art. 5(2) the contracting parties “shall endeavour progressively and as soon as possible to put an end to the practice” and forced labour “shall invariably be of an exceptional character”. Art. 4 UDHR prohibits “slavery and the slave trade (...) in all their forms” and declares that “(n)o one shall be held in slavery or servitude”. Although not directly mentioning forced labour, forced labour is included as a form of servitude.\(^{178}\)

As shown above, the ICCPR prohibits slavery, servitude and forced labour and provides permissible expectations from forced labour. In contrast to the non-derogable prohibition of slavery, in terms of forced or compulsory labour there is provision of certain derogations.\(^{179}\) The regional conventions ECHR, ACHR and ACHPR provide similar provisions. The ECHR Art. 4 binds forced labour to the condition that the work or service is performed against the will of the worker. The Trafficking Protocol criminalizes intentional trafficking of persons for the purpose of labour exploitation.

The ILO Forced Labour Conventions No 29 and No 105 not only prohibit forced labour but also provide a definition. “(A)ll work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”, is understood as forced or compulsory labour. The derived prohibition is directed to both, states and non-state actors.\(^{180}\) According to the Convention 29, forced labour is not absolutely prohibited. For specific public purposes, forced labour shall still be permitted.\(^{181}\)

The issuing body of the Forced Labour Convention, the International Labour Organisation, is introduced in the following chapter. Moreover, the Forced Labour Convention which provides

\(^{178}\) Weissbrodt and Anti-Slavery International (n 83) 14
\(^{179}\) Nowak (n 42) 197
\(^{180}\) ibid 202
\(^{181}\) Allain, ‘What Is Forced Labour?’ (n 76) 4
the definition of forced labour is examined closer. Based on this frame of reference, the subject of study, the Forced Labour Protocol, is elaborated.
3 International Labour Organization

Major human rights issues are addressed by the ILO, one of the oldest international organisations to do so.\textsuperscript{182} Since 1919 the ILO mandate is to ensure social justice upon which universal and lasting peace can be established. The ILO promotes decent work worldwide. If labour conditions involve “injustice, hardship and privation”, unrest will be produced “so great that the peace and harmony of the world are imperilled”.\textsuperscript{183} Representing governments, employers and workers of 187 states, the ILO is the UN specialized tripartite body on work.\textsuperscript{184} The tripartite character shall guarantee equal voices for governments, employers and workers. Through international labour standards, the ILO aims to provide fair employment opportunities, enhance social protection, strengthen social dialogue, and guarantee fundamental principles and rights at work.\textsuperscript{185} \textsuperscript{186} The ILO’s Declaration on Fundamental Principles and Rights at Work (1998) draws on the UDHR and emphasizes the four essential workplace rights according to para. 2 “(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.” All members, “even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize” these fundamental rights.\textsuperscript{187} In 2019 the ILO celebrates its 100\textsuperscript{th} anniversary.\textsuperscript{188} In the ILO Centenary Declaration, the International Labour Conference reaffirms that labour is no commodity and calls upon all members to support the ILO’s human-centred approach and to ratify and implement the ILO fundamental conventions and other standards.\textsuperscript{189}

\textsuperscript{182} Smith (n 34) 233
\textsuperscript{183} ILO Constitution 1919 (International Labour Organization) Preamble
\textsuperscript{184} International Labour Organization (n 10)
\textsuperscript{185} Muhammad A Islam and Ken McPhail, ‘Regulating for corporate human rights abuses: The emergence of corporate reporting on the ILO’s human rights standards within the global garment manufacturing and retail industry’ (2011) 22(8) Critical Perspectives on Accounting 790, 793
\textsuperscript{186} International Labour Organization, ILO at Work (n 11)
\textsuperscript{187} ILO Declaration on Fundamental Principles and Rights at Work 1998, The text of the Declaration and its follow-up (International Labour Organization)
\textsuperscript{188} International Labour Organization, ILO at Work (n 11)
Since the ILO’s Declaration on Fundamental Principles and Rights at Work (1998), corporations increasingly address workplace human rights in their annual reports. Comparatively unsatisfactory are reports on freedom of association. Without freedom of association, workers do not have an effective bargaining position for improving working conditions and labour rights.\textsuperscript{190} The ILO core labour standards aim to protect union rights, guarantee freedom from forced labour, offer equal employment opportunity and eliminate child labour.\textsuperscript{191} Besides the core standards, standards on minimum wages, maximum working hours, remuneration of overtime and safety guidelines exist. However, these standards vary across countries.\textsuperscript{192} Recalling on the abusive practices of forced labour described previously, the relevance of fundamental rights at work and uniform standards are undeniable. In the following, the ILO Conventions and the thereof derived Forced Labour Protocol with Recommendation are introduced.

\section*{3.1 Forced Labour Convention 1930 (No. 29)}

The Forced Labour Convention is a fundamental ILO Convention. Since its date of entry into force on 1\textsuperscript{st} May 1932, the Convention has been ratified by 178 countries and is one of the most ratified Conventions.\textsuperscript{193} At the height of European colonialism, standards of forced labour have been set to avoid colonial labour abuse. With the Forced Labour Convention, such agreement on international level has been reached.\textsuperscript{194}

The Forced Labour Convention offers a definition and sets the baseline meaning of forced labour. Art. 2 provides the international accepted definition for forced labour according to which forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. Besides providing a definition of forced or compulsory labour, Art. 2 provides five exceptions which forced labour shall not include. Not included in forced labour are “(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military

\textsuperscript{190} Islam and McPhail (n 185), 798–799
\textsuperscript{191} Islam (n 1), 3
\textsuperscript{192} ibid
\textsuperscript{193} Special Action Programme to Combat Forced Labour, ‘The Protocol on the Forced Labour Convention’ (n 28) 1
\textsuperscript{194} Allain, ‘What Is Forced Labour?’ (n 76) 1; 4
character; (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.” These exceptions are in line with the permissible exceptions of the ICCPR mentioned above. Work of purely military character, normal civil obligations, work imposed as a consequence from a conviction in a competent court, work or services necessary in the event of war or calamity, as well as minor communal services are exempt from the definition of forced labour. According to Art. 4, regardless any exceptional cases, no forced labour shall be permitted “for the benefit of private individuals, companies or associations.” Art. 7 cedes the right to “chiefs who exercise administrative functions” to avail themselves of force labour and “chiefs who are duly recognised and who do not receive adequate remuneration in other forms” to enjoy personal services. Art. 10 to 17 provide provisions on the conditions of transitional allowed forced labour. A limitation to age, maximum period of time and working hours, remuneration and payment of wages, compensation for sickness and accidents, transfer of workers, and safety conditions are regulated.

The fundamental principle of the Forced Labour Convention is to prosecute Forced Labour. All members who have ratified the convention undertake “to suppress the use of forced or compulsory labour in all its forms within the shortest possible period” (Art. 1). All member states are required under Art. 25 to ensure that “the illegal exaction of forced labour or compulsory labour” is punishable and that “the penalties imposed by law are really adequate and are strictly enforced”. After a transitional period during which recourse of forced or
compulsory labour as an exceptional measure is permitted, the possibility of the total suppression of forced labour shall be considered.

3.2 ABOLITION OF FORCED LABOUR CONVENTION 1957 (NO. 105)

The Abolition of Forced Labour Convention was adopted in 1957 and advances the Convention 29. Focusing on practices which have emerged after the second World War, the Convention is primarily concerned with forced labour imposed by state authorities. The immediate abolition of forced labour in five specific cases is required, all related to forced labour imposed by States for either economic purposes or as political coercion. Members of the Convention are required to suppress and not make use of forced labour neither “as punishment for holding or expressing political views”, nor “for purpose of economic development”, nor “as a means of labour discipline”, nor “as a punishment for having participated in strikes”, nor “as a means of racial, social or religious discrimination” (Art. 1). All members shall “take effective measures to secure the immediate and complete abolition of forced or compulsory labour” (Art. 2). No transitional period is provided.

3.3 PROTOCOL OF 2014 TO THE FORCED LABOUR CONVENTION, 1930

In the 103rd Session of the International Labour Conference, governments, employers and workers overwhelmingly voted for a binding Protocol and Recommendation supplementing the Forced Labour Convention 1930 to fight forced labour. The Forced Labour Protocol emphasizes the urgency to advance prevention, protection and compensation measures to effectively abolish forced or compulsory labour. The Forced Labour Protocol entered into forced on November 9th 2016 and can since be ratified by countries. Most countries have already signed the Forced Labour Convention of 1930. In the Preamble of the Forced Labour Protocol the vital role of the Forced Labour Convention and the Abolition of Forced Labour

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195 Fundamentals (n 134) 4
198 Donald K. Anton (ed) (n 196) 2
Convention is recognized. The Forced Labour Protocol recalls the definition of forced labour provided in the Forced Labour Convention which covers all forms and manifestations of forced or compulsory labour. The Preamble recognises the changing context and forms of forced labour and the urgency for effective actions. The vulnerability of migrants and the increasing number of forced labour in the private economy is noted.²⁰⁰

The Forced Labour Protocol and Recommendation bring ILO standards into the modern world.²⁰¹ Due to globalisation, disruptive technologies and rising inequality, new forms of slavery have emerged. The complexity of forced labour and international difficulties in fighting contemporary slavery arising, have amplified the need for a supplementary convention. The Forced Labour Protocol tackles the root causes of slavery and includes trafficking in persons and slavery-like practices. According to Art. 1 all state parties of the Forced Labour Protocol shall take effective measures to prevent and eliminate the use of forced labour in all its forms, protect victims of forced or compulsory labour, provide victims access to remedies, and punish perpetrators of forced labour. National policies and action plans for sustained and effective suppression shall be developed.

Under Art. 7 the transitional provisions of the Forced Labour Convention, allowing for forced labour in regulated means, are removed. With deleting the provisions which constituted more than 24 Articles of the Forced Labour Convention, a comprehensive Protocol remains. The Protocol comprises the core elements of criminalizing forced labour, a definition to forced labour as well as exceptions to forced labour.²⁰² As provided under Art. 2 of the Forced Labour Convention, military conscription, normal civic obligation, penal labour, service exacted in the case of emergency and minor communal services, remain not to be considered as manifestations of compulsory or forced labour.

To suppress forced or compulsory labour, the Forced Labour Protocol works on three levels. Firstly, to eliminate the use of forced or compulsory labour, state parties shall prevent its use. Secondly, the member states shall protect people who became victims of forced or

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²⁰² Allain, ‘What Is Forced Labour?’ (n 76) 4
compulsory labour. Thirdly, member states shall provide access to appropriate **compensation** to those who have suffered from forced or compulsory labour.

<table>
<thead>
<tr>
<th>Prevention</th>
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<tbody>
<tr>
<td>• Art. 1(1): obligation to &quot;prevent and eliminate&quot;</td>
</tr>
<tr>
<td>• Art. 2(a): &quot;educating and informing people especially those considered particularly vulnerable&quot;</td>
</tr>
<tr>
<td>• Art. 2(b): &quot;educating and informing employers&quot;</td>
</tr>
<tr>
<td>• Art. 2(c): extending the coverage and enforcement of labour law to all workers and all sectors and strengthening &quot;labour inspection services and other services responsible for implementation of this legislation&quot;</td>
</tr>
<tr>
<td>• Art. 2(d): &quot;protecting (...) migrant workers from possible abusive and fraudulent practices during the recruitment and placement process&quot;</td>
</tr>
<tr>
<td>• Art. 2(e): &quot;supporting due diligence&quot; by public and private sector</td>
</tr>
<tr>
<td>• Art. 2(f): &quot;addressing the root causes and factors which heighten the risk of forced labour&quot;</td>
</tr>
<tr>
<td>• Art. 5: &quot;cooperate with each other to ensure the prevention and elimination&quot;</td>
</tr>
</tbody>
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<thead>
<tr>
<th>Protectoin</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Art. 1: &quot;provide to victims protection and access to appropriate and effective remedies&quot;</td>
</tr>
<tr>
<td>• Art. 3: &quot;identification, release, protection, recovery and rehabilitation of all victims of forced or compulsory labour, as well as the provision of other forms of assistance and support&quot;</td>
</tr>
<tr>
<td>• Art. 4(2): protecting victims from punishment of unlawful activities that they were compelled to commit</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Art. 1: provide access to &quot;effective remedies, such as compensation&quot;</td>
</tr>
<tr>
<td>• Art. 4(1): &quot;ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies, such as compensation&quot;</td>
</tr>
</tbody>
</table>

To prevent the use of forced labour, both potential victims and potential perpetrators are targeted. According to Art. 2, education and information of people particularly vulnerable to forced labour shall prevent their becoming victims. Furthermore, education and information of employers shall prevent their becoming involved in the use of forced labour. Effective labour law shall prevent forced labour. Therefore, labour law shall apply to all workers in all sectors and responsible services for the implementation shall be strengthened. Migrant workers shall be protected from fraudulent and abusive practices during placement processes to prevent their becoming victims of forced labour. Due diligence by public and private sectors
shall be supported. To ensure the prevention and elimination of forced labour, members to the Forced Labour Protocol are required to cooperate.

What sets the Forced Labour Protocol apart from previous legislation is the protection of the victims. According to Art. 3 effective measures shall be taken to identify, release and protect victims of forced or compulsory labour. Assistance and support shall be provided for victims to recover and rehabilitate. Art. 4(2) protects victims from punishment. If victims have been compelled to commit unlawful activities during their exploitation, entitled authorities shall not prosecute or impose penalties on them. Besides protecting victims, the protocol offers compensation to those whose human rights have been abused. According to Art. 4(1) member states shall ensure access to appropriate and effective remedies. Remedies shall be granted to all victims. The presence or legal status in the national territory shall not be relevant.

The Forced Labour Protocol supplements the Forced Labour Convention and may only be ratified by states which have ratified the Forced Labour Convention. The Forced Labour Convention itself is still open for ratification. With ratification of the Forced Labour Protocol, the obligations become legally binding. The government commits to implement measures and accepts the ILO supervisory system. Art. 1(2) requires governments to “develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour in consultation with employers’ and workers’ organizations”. Every three years, state parties must submit a report on measurements taken for implementation of the Protocol. The report is examined by the ILO supervisory bodies. By offering research, capacity building and field-based projects, the ILO provides support for governments in the ratification process.

With the campaign 50 for freedom the ILO promotes the ratification and aims to persuade at least 50 countries to ratify the protocol until the end of 2019. The first country in the world which has ratified the Forced Labour Protocol has been Niger in May 2015. In Niger, children are often born into slavery and subjected to sexual exploitation and forced labour. The Niger employment minister called the ratification of the protocol a “logical step” to fight modern slavery. On December 29th 2019, 42 countries have ratified the Forced Labour Protocol. In

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204 ibid 3
Africa: Côte d'Ivoire (entry into forced 2020), Djibouti, Lesotho (entry into force 2020), Madagascar (entry into force in 2020), Malawi (entry into forced 2020), Mali, Mauritania, Mozambique, Namibia, Niger and Zimbabwe. In America: Argentina, Canada (entry into force in 2020), Jamaica, Panama and Suriname (entry into force in 2020). In Asia and the Pacific: Sri Lanka (entry into force in 2020) and Thailand. In Europe and Central Asia: Austria (entry into force in 2020), Belgium (entry into force 2020), Bosnia and Herzegovina, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany (entry into force in 2020), Iceland, Ireland (entry into force in 2020), Israel, Latvia, Malta (entry into force in 2020), Netherlands, Norway, Poland, Russian Federation (entry into force in 2020), Spain, Sweden, Switzerland and United Kingdom, Uzbekistan (entry into force in 2020). In the Arab States, no country has ratified the Forced Labour Protocol yet.\textsuperscript{206}

3.4 Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)

In addition to the Forced Labour Protocol, the ILO on its 103\textsuperscript{rd} Session adopted the Forced Labour (Supplementary Measures) Recommendation, 2014 hereinafter referred to as the \textit{Forced Labour Recommendation}. In the Forced Labour Recommendation, the ILO addresses the gaps in implementation of the Forced Labour Convention and reaffirms the measures of the Forced Labour Protocol to achieve effective and sustained suppression of forced or compulsory labour. The Forced Labour Protocol obliges states to take effective measures of prevention, protection and compensation. The complementing non-binding Forced Labour Recommendation provides specific guidance on such effective measures. Some of the points are presented in the following.

First, members should establish or strengthen national policies and plans of action in a gender- and child-sensitive manner. Secondly competent authorities should be established to monitor and evaluate the national policies and plans of actions and ensure their development and coordination. Thirdly, “reliable, unbiased and detailed information and statistical data” [2.(1)]

on the nature and extent of forced labour should be collected regularly. Relevant characteristics should be analysed and data should be made available so for the assessment of the progress.

Preventive measures shall realize fundamental principles and rights at work, freedom of association and collective bargaining, programmes to combat discrimination, initiatives to safeguard children against child labour and steps to realize the objectives of the Forced Labour Protocol. To prevent forced or compulsory labour, the root causes of workers’ vulnerability should be addressed. Therefore, the employability of at-risk population groups should be increased by skill training programmes. To strengthen workers’ self-confidence, awareness-raising campaigns regarding workers’ rights and responsibilities at work should be launched. Furthermore, awareness should be raised about the sanctions when violating the prohibition on forced labour. (3.-4.)

In terms of protection, member states should endeavour to identify and release victims of forced or compulsory labour. Protection should be provided to all victims. Victims may be encouraged to cooperate with the legal authorities to identify and punish their perpetrators. However, protection should not depend on the degree of cooperation. Abuses and fraudulent practices by recruiters or agencies should be eliminated by the means of prohibited recruitment fees, transparent contracts, complaint mechanisms and adequate penalties. Victims and their families should be protected, victims should be provided appropriate accommodation, health care, material assistance and access to education and training opportunities. The privacy and identity of victims should be protected. (5.-11.)

All victims of forced or compulsory labour should receive fair justice. According to the Forced Labour Recommendation, compensation for personal and material damages should include effective access to courts and the possibility to pursue compensation from perpetrators such as unpaid wages. Furthermore, the victims should be provided information and advice in a language they can understand and preferably legal assistance free of charge. Irrespective of the victims’ presence or legal status in the state where forced or compulsory labour occurred, appropriate remedies can be pursued in that member state. (12.)

The enforcement of national laws and regulations shall be strengthened. Therefore, member states should provide the relevant authorities with the official mandate, necessary resources
and professional training. Authorities such as labour inspection services should be able to effectively enforce the law and cooperate with other organizations to prevent and protect victims of forced labour. To improve the identification of victims, indicators of forced or compulsory labour should be developed which can be used by relevant actors. In addition to penal sanctions, the violation of the prohibition of forced labour should be imposed with penalties like the confiscation of profits from forced labour. International and regional organizations should assist each other to effective and sustained suppress forced or compulsory labour. Labour law enforcement institutions should cooperate and resources for international technical cooperation should be mobilized. International and regional organizations should exchange information and share their lessons learned to jointly combat forced or compulsory labour.(13.-14.)

The field of application, the clothing industry, shall now be examined.
4 CLOTHING INDUSTRY

The clothing industry is a labour-intensive industry. Closer studies reveal severe unhuman practices as for example physical violence, dangerous working conditions, exposure to toxic materials, unpaid overtime, missing trade unions, and so forth. Consumers, NGOs, and other stakeholders pressure enterprises to comply with global labour and environmental standards and to take responsibility for the violations of their contracted entities. The following chapter begins by laying out human rights obligations of businesses. Relevant laws and regulations in place as well as voluntary guidelines and initiatives are discussed. To understand the complexity and difficulties in the clothing industry, the chapter will than go on to describe industry characteristics. In the end, the presence of forced labour in the clothing industry is addressed.

4.1 HUMAN RIGHTS OBLIGATIONS OF ORGANISATIONS

For any business to be successful, value creation is essential. Without trade-offs, value should be created for all stakeholders. Therefore, management is challenged to equally meet the interests of customers, suppliers, communities and financiers. If a business misses the interests of its customers, employs unsatisfied people, violates local customs and laws, or does not create financial profit for its shareholders, it will be a business in decline. Each one of the stakeholder group is important for a business to be successful. Therefore, businesses need do consider how ethics and values apply to the business activities they are involved in.

In the global economy, corporations do business in various locations. Facilities are located in different countries, people of different nationality are employed and the products and services provided are sold to international customers. In many cases, neither the legal incorporation, headquarter, manufacturing site, shareholders, nor employers are based in the same country. People are connected through global supply chains. It is becoming increasingly difficult to ignore the challenge to define the nationality of a company and the

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216 R. Edward Freeman, Business is about purpose: TEDx Charlottesville 2013 (2014)
217 Marx and Wouters (n 27), 496
law applicable for each business activity.\textsuperscript{218} Due to the multiple national locations of operations, the term Multinational Enterprise (MNE) has developed. This paper focuses on the responsibly of MNEs without distinction of size or turnover.

Establishment and investment decision of corporations often depend on tax incentives and national regulations. Countries compete for foreign investment of MNEs. The increase of investments by MNEs in the developing world has created a shift in powers. Economy has eroded state power.\textsuperscript{219} Legislation of the host country does generally target local conduct, therefore has limited effect on the operating MNE. Moreover, MNEs are not held accountable for the activities of their suppliers and subcontractors.\textsuperscript{220} Global actors are increasingly concerned about human rights abuses by MNEs. The focus has shifted from governments to businesses.\textsuperscript{221} Labour-right scandals have drawn attention to exploitative conditions of workers in a global supply chain.\textsuperscript{222} When business activities infringe upon the human dignity, someone must take legal responsibility. International scholars\textsuperscript{223} discuss the role of corporations in international economy and the obligations of such. Economy creates a special tie between people. Business activities might violate human rights and harm those with whom a special tie has been established. MNEs must be held responsible for human rights abuses taking place in their sphere of operations.\textsuperscript{224} Moreover, MNEs can use their influence to improve labour standards in the countries they operate.\textsuperscript{225}

The first Director of the Geneva Academy of International Humanitarian Law and Human Rights, Andrew Clapham is a well-known scholar on the issue of Human Rights.\textsuperscript{226} In his book, Human Rights Obligations of non-state actors, Clapham discusses the responsibility of

\textsuperscript{218} Andrew Clapham, \textit{Human rights obligations of non-state actors} (The collected courses of the Academy of European Law vol 15,1, Oxford University Press 2010) 199–200


\textsuperscript{220} Nolan and Bott (n 90), 45

\textsuperscript{221} Ratner (n 219), 446

\textsuperscript{222} Nolan and Bott (n 90), 44

\textsuperscript{223} Andrew Crane, ‘Modern Slavery As A Management Practice: Exploring the Conditions and Capabilities for Human Exploitation’ (2013) 38(1) Academy of Management Review 49; Clapham (n 218); Hafner-Burton (n 37); Monika Mayrhofer and others, ‘International Human Rights Protection: Institutions and Instruments’ (FRAME 2014) <https://repository.gchumanrights.org/handle/20.500.11825/68>; Ratner (n 219); Nolan and Bott (n 90)

\textsuperscript{224} Ratner (n 219), 448

\textsuperscript{225} Islam (n 1), 4

\textsuperscript{226} Graduate Institute of International and Development Studies, ‘Andrew Clapham’ (2018) <http://graduateinstitute.ch/home/study/academicdepartments/international-law/people/resources/prof-clapham.html> accessed 4 December 2018
Corporate accountability obliges businesses to behave corresponding to social norms. While corporate responsibility encourages voluntary responsible behaviour represented in codes of conduct, company guidelines and sectorial initiatives. These voluntary initiatives are often used as a loophole to avoid regulations and trade unions. According to Clapham, law and accountability measures are necessary. Without an international legal framework, the demands of governments, international and non-governmental organizations towards MNEs cannot be appraised and in the end resolved.

The benefits for companies adopting human rights policies may be good reputation, reduction of risk of strikes and increasing attractiveness for employees working for such company. Especially labour-intense consumer branded products, typically garments and footwear, are sensitive to public reputation. Labour-intense branded private consumer products are mainly produced in low-wage countries and the marketing strategy relies on reputation for quality and status. Individual consumers are more concerned about production standards than a purchasing executive might be and news about substandard working conditions will not benefit the reputation of the brand. The response of corporations varies from denying any responsibility to voluntary accepting constraining regulations. Some businesses, due to market pressure and demands of customers and shareholders, have adopted self-regulating policies and practices. Companies define purchasing conditions in their codes of conducts with social and environmental criteria. Commonly used social criteria are no child labour, regulation of working hours, no forced labour, no discrimination, employment compensation, freedom of association as well as health and safety practices. Others use code of conducts only for reputation and are reluctant to accept uniform standards.

Corporations should ensure both, on the one hand to not contribute to or benefit from human rights abuses committed by others, and on the other hand to be well acquainted with the human rights impact of their activities. Legally binding contracts or agreements may ensure

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227 Clapham (n 218)
228 ibid 196
229 Ratner (n 219), 448
230 Bremer and Udovitch (n 215), 334f
231 Ratner (n 219), 448
232 ibid 531
233 Stefan Winter and Rainer Lasch, ‘Environmental and social criteria in supplier evaluation – Lessons from the fashion and apparel industry’ (2016) 139 Journal of Cleaner Production 175, 184
234 Ratner (n 219), 532
human rights norms in principle activities as well as in proposed activities. However, corporations fail to use their influence and complicit in violation.\textsuperscript{235} Human rights violations by MNEs are often hidden in investments in repressive societies, leaking information to the government on suspected troublemakers, accepting violations to succeed a deal, very low payment of wages or bad working conditions. Businesses corporate with states to conduct their business.\textsuperscript{236} With an increasing tie to the government, corporation’s obligation to protect human rights increases. If knowingly and substantially human rights are violated or violation by the government is aided and abetted, businesses will also be responsible. The complicity-based duty of the corporation is to prevent human rights abuses.\textsuperscript{237} Business should be held liable when encouraging human rights abuses or fail to react to such violations.\textsuperscript{238} The following chapter discusses how corporations could be held accountable for their activities and introduces laws and regulations in place.

\textbf{4.1.1 LAWS AND REGULATIONS}

When international laws governing human rights abuses have been developed, the balance of power predominantly was focused on states. The prevalence of MNEs was fundamentally different from today. In general, national law on corporate activities does not apply extraterritorially.\textsuperscript{239} States are often seen as the prime source of human rights violations. However, with the increasing power of MNEs, human rights obligations of corporations become essential.\textsuperscript{240} Human rights are to be respected by corporations and no business operations should harm stakeholders. Business is conducted within the framework of national and international law. Governments are bound by international treaties to respect, to protect and to fulfil human rights. Therefore, states are responsible to ensure such respect by corporations.\textsuperscript{241} Governments might link export credit guarantees and other incentives to human rights compliance of the business. Furthermore, potential human rights impact might be factored into investment decisions.\textsuperscript{242} Governments could monitor human rights activities...
through regulatory schemes in the same way as environmental, anticompetitive or bribery-related activities are monitored.\textsuperscript{243} National regulation would allow states to regulate human rights abuses by national and foreign-based MNEs taking place on its territory as well as the abuses of MNEs headquartered on its territory taking place on both national and foreign territory. If the state of nationality and the territorial state place the same demands on corporations, the result will be effective. If one state places fewer requirements on businesses, the regulation will be put at risk and the dispute over limitations of jurisdiction will arise.\textsuperscript{244} Through soft law instruments, international organizations could prescribe corporate duties.\textsuperscript{245} A treaty process could promote uniformity for MNEs activities. Multilateral instruments would recognize certain obligations upon corporation. With domestic enforcement, states would be encouraged or required to investigate possible abuses and impose sanctions.\textsuperscript{246}

The ILO calls on enterprises to respect the principles of the UDHR and the fundamental rights of the eight Core Labour Conventions of the ILO:\textsuperscript{247} Freedom of Association and Protection of the Right to Organise Convention (No. 87, 1948), Right to Organise and Collective Bargaining Convention (No. 98, 1949); Forced Labour Convention (No.29, 1930); Abolition of Forced Labour Convention (No. 105, 1957), Minimum Age Convention (No. 138, 1973), Worst Forms of Child Labour Convention (No. 182, 1999), Equal Remuneration Convention (No. 100, 1951), Discrimination in Employment and Occupation Convention (No. 111, 1958). Regarding minimum wages, international labour law is rather weak. The ILO treaties leave great flexibility to states and do not guarantee individuals’ wages.\textsuperscript{248} The ILO offers a structure to monitor corporate compliance but has been limited to intergovernmental agreements.\textsuperscript{249}

Customary international law binds states and the criminalization of certain acts creates criminal responsibility. The complexity of business structures makes the identification of the natural person responsible, in a criminal law sense, difficult. States must determine effective measurements to hold businesses liable.\textsuperscript{251} So far, corporate conduct is not criminalized the

\textsuperscript{243} Ratner (n 219), 533f
\textsuperscript{244} ibid 535
\textsuperscript{245} ibid 536
\textsuperscript{246} ibid 539
\textsuperscript{248} Ratner (n 219), 530
\textsuperscript{249} Bremer and Udovich (n 215), 338
\textsuperscript{251} Clapham (n 218) 249
way criminal responsibility is demanded of individuals. Rather, treaties insist on corporation’s liability.\(^{252}\)

The large number of subcontractors of MNEs is based at various locations and management decisions are made in another country again. For MNEs to successfully monitor labour standards in the whole supply chain, thousands of production facilities overseas would have to be monitored.\(^{253}\) The rights of the stakeholders are protected by different governments. Nevertheless, someone must be held responsible for human rights protection. Governments favour their national businesses and aim for fair treatment abroad. Pressure on the host country to provide competitiveness and autonomy causes inconsistency with penalties of foreign investors.\(^{254}\) Little intention among states to develop new international law which focuses on human rights abuses enabled or committed by businesses is discovered. In the field of EU law, some treaties created direct obligation for businesses.\(^{255}\) States responsibility differs among entities empowered by the state and entities under a state’s control. States are responsible for the acts of the company if the state controls or directs the conduct.\(^{256}\) The degree to which a business is considered to be empowered by the state often depends on the history and tradition of the society.\(^{257}\)

In the discussion on enterprises’ human rights obligations, international law must provide a common language to set enforceable standards. If prescribed and applied legitimate and effective, international norms will provide a coherent global response to new challenges of human dignity.\(^{258}\) The UDHR addresses individuals, organs of society and governments emphasizing the rights of individuals rather than the obligations of governments.\(^{259}\) Recognizing human rights protection in national law and ensuring that businesses and organisations respect human rights, belongs to the sphere of influence of the governments. Vice versa, businesses have the obligation to respect, protect, secure fulfilment, and promote human rights likewise. Individuals are owed by their government the right to join trade unions, gain access to education, or enjoy adequate housing, these rights shall not be undermined by

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\(^{252}\) ibid 251  
\(^{253}\) Bremer and Udovich (n 215), 333  
\(^{254}\) Clapham (n 218) 237–238  
\(^{255}\) ibid 241  
\(^{256}\) Responsibility of States for Internationally Wrongful Acts 2001, Art. 8  
\(^{257}\) Clapham (n 218) 243  
\(^{258}\) Ratner (n 219), 545  
\(^{259}\) Clapham (n 218) 227
business activities. There is increasing concern about states fulfilling their responsibility to ensure such human rights.\textsuperscript{260} Clapham\textsuperscript{261} emphasizes that norms are effective only when implemented and monitored successful. Norms shall be incorporated into legal orders and effective procedures like contracts, policies or procurement frameworks. Unfortunately, the communities of corporations, governments and activists find no agreement on the desirability of monitoring such norms. Corporations hardly favour closer regulations. They accept the legitimacy of governments to enforce standards but are reluctant to international system set up by NGOs.\textsuperscript{262} Some corporations turn to monitoring coalitions. Global standards are beginning to emerge and international initiatives provide workplace standards assisting corporations in monitoring labour rights.\textsuperscript{263} Some guidelines and standards relevant for the clothing industry are presented in the following.

### 4.1.2 Guidelines and Standards

In addition to legal initiatives, voluntary guidelines and standards address human rights issues. Labour right organizations and NGOs (e.g. the International Confederation of Free Trade Unions; World Confederation of Labour; International Textiles, Garments and Leather Workers’ Federation; Oxfam international; Ethical Trading Initiative; Fair Wear Association; Clean Clothes Campaign) communicate expectations and create pressure on MNEs. Social and ethical accountability is demanded.\textsuperscript{264} These organizations can assist companies in monitoring labour rights and other standards.\textsuperscript{265} Especially in states where public interests are weakly protected, the regulatory role of NGOs is important\textsuperscript{266}. With codes of conducts, human rights violations are addressed and awareness increases.\textsuperscript{267} The most prominent guidelines and standards relevant for forced labour in the clothing industry are the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration), UN Global Compact, OECD Guidelines, UN Guiding Principles on Business and Human Rights, UK

\textsuperscript{260} ibid 227–231
\textsuperscript{261} ibid 237
\textsuperscript{262} Bremer and Udovich (n 215), 335
\textsuperscript{263} ibid 337
\textsuperscript{264} Islam and McPhail (n 185), 793
\textsuperscript{265} Bremer and Udovich (n 215), 333
\textsuperscript{266} Islam and McPhail (n 185), 794
\textsuperscript{267} Ratner (n 219), 532
Modern Slavery Act, Clean Clothes Campaign, Ethical Trading Initiative, and the Fair Wear Foundation.

**MNE Declaration**

The MNE Declaration is the only ILO instrument which provides guidance directly to enterprises. The Governing Body of the International Labour Office approved the MNE Declaration in 1977. Since then, the MNE Declaration was amended several times, most recently in 2017. Principles are set out in the fields of employment, training, conditions of work and life, and industrial relation. The ILO recognizes the important role of MNEs in the global economy. On the one hand, MNEs contribute to economic and social welfare through international trade, investment and other means. On the other hand, abuse of economic power, conflicting objectives with national policy and inconsistency with workers interests, affects human rights. All parties of the MNE Declaration should “respect the sovereign rights of the States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards.” According to the MNE Declaration 10.(c), MNEs have a corporate responsibility to “(i) avoid causing or contributing to adverse impacts through their own activities, and address such impacts when they occur; and (ii) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”

To maximise the positive contribution to development and decent work, MNEs shall take effort in contributing to human rights and labour standards, increasing employment opportunities, promoting advancement of stakeholders in the host country, using employment-generating technologies, acting without discrimination, avoiding arbitrary, and providing best possible wages and working conditions in developing countries.

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268 International Labour Organization (n 247)
269 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 1977, MNE Declaration (International Labour Organization) 2
270 ibid 5
271 Clapham (n 218) 218
**UN Global Compact**

The UN Global Compact promotes universal values in businesses around the world. The voluntary initiative visualizes the commitment of corporations to human rights and provides them flexibility regarding their implementation and compliance process. The ten principles of the UN Global compact call on businesses to incorporate the area of human rights, labour, environment and anti-corruption into their strategies, policies and procedures. According to the first principle, “businesses should support and respect the protection of internationally proclaimed human rights” and according to the second principle, “make sure that they are not complicit in human rights abuses”. Derived from the first principles, businesses are responsible beyond their immediate actions. Moreover, the UN Global compact appeals to businesses to establish a culture of integrity and enact values which respect, protect and promote human rights. Besides endorsing basic responsibility to society and nature, long-term success is achieved. Complicit behaviour covers contributing to illegal acts committed by someone else, knowingly assisting in the violation of law or failing to raise systematic or continuous abuses. Benefiting from another entity’s human rights abuses, encourages complicit in violation.

**OECD Guidelines**

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) provide principles and standards of due diligence for MNEs. Due diligence describes the process “through which enterprises can identify, prevent, mitigate and account for” their adverse impacts. The guidelines are sector-specific recommendations and offer advice on responsible supply chain management in a global context. The observance of the guidelines is not legally enforceable. MNEs voluntary do business in accordance with the principles and standards. The OECD guidelines have a supplementary character. They do not substitute but extent domestic

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272 Islam and McPhail (n 185), 793
273 Nolan and Bott (n 90), 52
275 Clapham (n 218) 224
276 United Nations Global Compact (n 274)
277 Clapham (n 218) 220–221
279 Nolan and Bott (n 90), 55
law. The guidelines are in consistence with international recognised standards and should not put the MNEs in a conflicting position. MNEs should obey domestic law and seek to honour the principles and standards of due diligence.\textsuperscript{280} According to the OECD Guidelines, MNEs should “respect the internationally recognised human rights of those affected by their activities”.\textsuperscript{281} The OECD Guidelines have relevance along the whole supply chain including the smallest sub-contractors. Enterprises should respect the view of their stakeholder and encourage business contacts to respect the guidelines likewise.\textsuperscript{282} However, MNEs are only bound to human rights obligations of the host state. Due to the fear of losing foreign investment, not all governments are determined to comprehensively protect human rights and companies accept exemptions of their subsidiaries or suppliers to stay competitive, making profit with human rights abuses.\textsuperscript{283}

The OECD Due Diligence Guidance for Responsibly Supply Chains in the Garment and Footwear Sector from 2018 (OECD Guidance) helps MNEs in this sector to implement the due diligence recommendations of the OECD Guidelines. The potential negative impacts of MNEs activities in the garment and footwear sector shall be addressed and avoided. Due diligence is an ongoing process which MNEs should conduct on their own activities and other business relationship along the supply chain based potential risks. One of the sector’s human rights and labour risk defined in the OECD Guidance is forced labour. In the context of the OECD Guidance, forced labour is understood as defined by the ILO Forced Labour Convention. To prevent forced labour, the OECD Guidance advises MNEs to adopt a zero-tolerance policy for forced labour, to identify actual and potential harms caused by own operations or by others in the supply chain, to constantly assess their suppliers, to extensively engage stakeholders, and to adopt measures tailored to the local circumstances. The OECD Guidance lists risk factors for forced labour in the garment and footwear sector which are state-orchestrated forced labour, private recruitment and employment agencies, existence of credit-arrangements and debt, children and adolescents in the workplace, employment of migrant workers, onsite housing of workers, prison labour, subcontracting, informal workers, and

\begin{itemize}
\item \textsuperscript{280} OECD \textit{(n 278) 17}
\item \textsuperscript{281} ibid \textit{19}
\item \textsuperscript{282} Clapham \textit{(n 218) 202–203}
\item \textsuperscript{283} ibid \textit{204–206}
\end{itemize}
production pressures.\textsuperscript{284} The OECD Guidance refers to the Forced Labour Protocol and encourages enterprises to report crimes of forced labour. Furthermore, if forced labour was caused or enterprises contributed to forced labour, they should cooperate with relevant authorities for appropriate compensation.\textsuperscript{285}

\textbf{UN Guiding Principles on Business and Human Rights}

The UN Guiding Principles on Business and Human Rights (Guiding Principles) provide guidelines for governments and companies on human rights abuses in business operations. The Guiding Principles recognize state’s obligation to respect, protect and fulfil human rights within their territory. To fulfil this obligations, appropriate measures must be taken, and human rights abuses must be prevented, investigated, punished and redressed. Furthermore, the Guiding Principles emphasize the special role of businesses in society which are required to comply with applicable law and respect human rights. Therefore, businesses should avoid infringement of human rights and address adverse impacts. The Guiding Principles do not create new international law, they rather provide enhancing standards and practices which may contribute to a socially sustainable globalization.\textsuperscript{286}

\textbf{UK Modern Slavery Act}

The UK Modern Slavery Act received royal assent on March 26\textsuperscript{th}, 2015 as an act to “make provision about slavery, servitude and forced or compulsory labour and about human trafficking”.\textsuperscript{287} Besides describing the offences of slavery, servitude, forced labour, human trafficking and exploitation, and providing regulations on penalties and sentencing, the act is concerned with the transparency of supply chains. In response to the increasing international awareness on the issue of modern slavery, the UK Modern Slavery Act provides national law enforcement with the necessary tools to punish perpetrators and protect victims of modern slavery.

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\textsuperscript{284} OECD, \textit{OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector} (OECD Publishing 2018) 127–129  \\
\textsuperscript{285} ibid 133  \\
\textsuperscript{287} Modern Slavery Act 2015
\end{flushright}
The act relies on transparency and reporting as potential mechanisms in regulating global supply chains. Any commercial organisation with a total turnover of £36 million or more, must prepare an annual slavery and human trafficking statement. In this statement the organisation must describe the steps they have taken to identify and eliminate modern slavery from their supply chains. If the company has a website, the statement must be published in a prominent place on the website’s homepage. If the company does not have a website, the statement must be made available to anyone who requests for one. The act does not impose financial penalties for non-compliance but aims for the power of stakeholders demanding actions to prevent slavery and exploitation.

**Clean Clothes Campaign**

The Clean Clothes Campaign (CCC) is a grass-roots networks based in the Netherlands which brings together trade unions and NGOs in garment-producing and in consumer markets. The CCC is dedicated to ensuring that fundamental rights of workers are respected, and workers are empowered worldwide. Focusing on the garment and sportswear industries, the CCC educates consumers, lobbies companies and governments, and offers direct support to workers, to improve working conditions. Based on field research and the identified problems, the CCC develops campaign strategies and cooperates with other initiatives to support the workers.

**Ethical Trading Initiative**

The Ethical Trading Initiative (ETI) joins companies, trade unions and organisations. Based on the ILO standards, ETI has developed a base code of labour practices for ethical trade. All ETI members agree to adopt the base code as minimum standards of their labour practices. According to this standards, employment is freely chosen, freedom of association and the right

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289 Nolan and Bott (n 90), 45

290 Minney (n 3) 12

291 Nolan and Bott (n 90), 53

292 Clean Clothes Campaign, ‘About Us: Who we are’ (2011) <https://cleanclothes.org/about/who-we-are> accessed 7 May 2019
to collective bargaining are respected, working conditions are safe and hygienic, no child labour is used, living wages are paid, working hours are not excessive, no discrimination is practised, regular employment is provided and no harsh or inhumane treatment is allowed. Companies report annually on the efforts at factory level. 293 ETI is a voluntary initiative and there are not consequences in case of non-compliance.

**Fair Wear Foundation**

The Fair Wear Foundation (FWF) is a non-profit organisation based in the Netherlands which aims to change the garment industry for workers to enjoy “safe, dignified and properly paid employment”. FWF works with brands, factories, trade unions, NGOs and governments to support workers and improve working conditions. Members must comply with the FWF labour standards which include free choice of employment, no discrimination in employment, no exploitation of child labour, freedom of association and the right to collective bargaining, payment of a living wage, reasonable hours of work, safe and healthy working conditions, and legally binding employment relationships. Annually, the FWF conducts a brand performance check of all members. The brand performance check helps to identify how business practices impact labour conditions. FWF evaluates how issues with suppliers have been assessed, identified and resolved. FWF does not focus on factory conditions only, but also considers management and purchase decisions which have an enormous influence on the working conditions in the factory. The data is not provided by the company but collected by FWF themselves. 294

To grasp the difficulties in monitoring human rights in the clothing industry, industry characteristics are presented in the following.

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4.2 Industry Characteristics

The clothing industry has a great sphere of influence. Clothing is purchased by almost every individual. Clothing serves as protection, represents social norms, is an expression of culture and satisfies basic needs of humans. The universal use of clothing creates a tremendous target group for companies engaging. What used to be a luxury item has now become mass production. The long-established industry has diverse participants throughout the supply chain. Today's global clothing industry spans six continents. Only in Europe, the clothing industry provides jobs for more than two million people along the supply chain, for example, in manufacturing, retailing, sales, marketing and logistics. The labour-intensive industry demands labour mostly in agriculture and manufacturing. Raw materials are cultivated, after harvest processed to fabrics, and further manufactured to goods and completed products. Conventional companies buy their goods and products from thousands of factories around the world which are rarely under their direct management and ownership control. Almost every step in the value chain is conducted by different actors and the number of subcontractors impede transparency.

The commercial clothing industry is a profitable business. The value of the apparel market worldwide is forecasted to be worth US$1.52 trillion by 2020. Sales in the clothing industry is predicted to grow. Especially in the Asia Pacific emerging markets, sales growth is above the growth in the total clothing industry. The WTO published a statistic displaying the value of clothing imported in 2017 in the EU. Germany is ranked the highest with clothing imports worth US$37.3 billion. Austria imports clothing worth US$6.8 billion. The leading supplier for clothing in the European market is China, followed by Bangladesh, Turkey, India and

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298 Stengg (n 19) 1
299 Fair Wear Foundation, ‘A more representative view of the context in which factories and companies work’<https://gbv.itcilo.org/images/FWF-formula-graphics-Jo2_S.jpg> accessed 14 October 2019
300 Stengg (n 19) 1
301 Bremer and Udovich (n 215), 335
Cambodia.\textsuperscript{305} The leading apparel brands worldwide are Nike, ZARA, Adidas and H&M. In 2019, Nike was the top ranked brand in the world, worth approximately US$32.4 billion. The second ranked brand was Zara with a brand value of approximately US$18.4 billion. Despite the global economic downturn, the clothing industry continues to grow.\textsuperscript{306}

In recent years, the emergence of “fast fashion” has transformed the clothing industry. The Oxford Dictionary describes fast fashion with “inexpensive clothing produced rapidly by mass-market retailers in response to the latest trends”. Fashion brands release at least 20 new collections every year.\textsuperscript{307} New items are offered in retail stores almost every week. H&M, for example, introduces 52 seasons per year inviting customers to discover something new every time entering a store. Low prices encourage to constantly search for a good bargain and buy in excess of need.\textsuperscript{308} Fast fashion has changed the perception of fashion. Clothes are no longer a luxury product but a social need. In Germany, the average consumer buys 60 pieces of clothes per year. Those five pieces a month are worn for a short time only.\textsuperscript{309} Most people buying clothes do not feel connected to the people who produced them. Although the human factor of the apparel industry is extremely high, the anonymity is increasing. Only a few consumers question the labour conditions under which the purchased garment has been produced.\textsuperscript{310}

The clothing industry is known for short production runs at high speed with low capitalisation in the early stage of the fashion cycle. Money is spent on expensive marketing campaigns with celebrities advertising the new styles which has been produced by under-paid and ill-treated workers.\textsuperscript{311} The profit generated through sales is spread unequally among the actors of the supply chain. Continuous reduction in costs and shorten of lead time is required.\textsuperscript{312} Due to high competition, international brands pass along the pressure on their supplier. With low

\begin{thebibliography}{99}
\bibitem{307} Ehl (n 4)
\bibitem{308} Andrew Morgan, \textit{The True Cost} (2015)
\bibitem{309} Ehl (n 4)
\bibitem{310} Morgan, \textit{The True Cost} (n 308)
\bibitem{312} Islam (n 1), 2
\end{thebibliography}
labour costs in manufacturing, the production costs are reduced. The race to the bottom intensifies and labour standards are disregarded. A high number of pieces at the lowest costs is usually only possible by relocating production to low-wage countries. Production is outsourced to countries where political authorities do not protect local workers but allows value extraction for the benefit of the industry.\textsuperscript{313} In the end, the price war is fought in the factories that are supposed to produce as cheap as possible. Factories try to offer their products at the cheapest price possible to avoid the commissioning brand to switch to another factory. Factory owners give in to the price pressure and admit enormously high quantities, which increasingly bring the workers to their psychological and physical limits.\textsuperscript{314}

Global fashion brands use questionable suppliers and are not sufficiently taking care of the working conditions in their factories.\textsuperscript{315} H&M for example, pays only a fraction of a living wage. For Bangladesh, the average monthly wage is US$95. To cover all costs of living though, US$448 would be necessary.\textsuperscript{316} Cheap labour is accompanied by human rights abuses and workers’ violation along the supply chain. Most women in the factories must produce 100 pieces per hour with two toilet breaks a day. If a woman is sick and does not come to work, she will be fired.\textsuperscript{317} The vulnerable position of the garment workers opens the door for human right’s abuses. The Spanish fashion retailer Inditex is listed on the Stock exchange since 2001 and generated €27.3 billion net sale in 2017. Inditex owns eight brands and sells clothing worldwide.\textsuperscript{318} Zara is one of Inditex’ brands which has been accused in 2008 of manufacturing in illegal factories where most workers are migrants who work under slavery-like conditions with excessive overtime, restricted freedom of movement and poor wages. Once these factories have been reported, they were closed which strengthened the accusations. Inditex denied any relationship with these factories and assured ethical business practices and continuous improvement to comply with occupational health and safety standards in its production chain.\textsuperscript{319} If it is not Zara it will be another brand. Especially in labour-intense

\begin{footnotes}
\item[313] Mc Guigan (n 311), 51
\item[314] Morgan, The True Cost (n 308)
\item[317] Morgan, The True Cost (n 308)
\item[318] Inditex, 'Who we are' <https://www.inditex.com/en/about-us/who-we-are> accessed 25 March 2019
\end{footnotes}
industries like the clothing industry, labour costs constitute an important part of production costs. Due to the highly flexible processes, production shifts quickly to locations with lower costs and poor enforced labour laws.\textsuperscript{320} Through international sourcing, corporations take advantage of lower labour costs which allows them to remain competitive.\textsuperscript{321}

Low wage countries are increasingly exporting products that have been manufactured in developed countries before. The national industry depends on MNEs. Cheap labour should encourage their remain.\textsuperscript{322} Governments hesitate to enforce labour standards due to the fear of losing production orders and withdraw of foreign investment.\textsuperscript{323} In order not to scare off valuable foreign investors, governments do rarely take actions against violations by foreign companies and reduce protection of employers to a minimum. As a result, labour rights do not exist or are disregarded, and trade unions are suppressed. The demand for a living wage that covers expenses for food, housing, healthcare, clothing, transport and education is ignored. Numerous claims have been made by NGOs and labour unions regarding the working conditions in the apparel industry.\textsuperscript{324} Sweatshops are emblematic for human rights abuses. Oppressive working conditions doom workers to live in poverty. Workers kept in firetraps, children exposed to dangerous chemicals, denial of bathroom breaks, demanding sexual favours, forced double shifts, excessive overtime, and the dismissal of anyone trying to organize or join an union, are some examples which have been uncovered.\textsuperscript{325} The manufactories engaging in abusive or discriminating practices are either directly owned by Western retailers or the manufacturers are subcontractors.\textsuperscript{326} The presumption is that if the factory is not directly owned by the retailer but owned by the brands subcontractor, the brand will be in most cases able to control the activities of the contractor and thus influence the working conditions.\textsuperscript{327}

\textsuperscript{320} Marx and Wouters (n 27), 496
\textsuperscript{321} Barnes and Kozar (n 214), 286
\textsuperscript{322} Islam and McPhail (n 185), 792
\textsuperscript{323} Barnes and Kozar (n 214), 290
\textsuperscript{324} Ratner (n 219), 529
\textsuperscript{326} Barnes and Kozar (n 214), 286
\textsuperscript{327} Ratner (n 219), 530
In his documentary movie, The True Cost, the director Andrew Morgan investigates the lives of people in the clothing industry. He appeals to consumers to reconsider purchase behaviour. By buying clothes, consumers have an influence on the lives of people whose hands produced those clothes. Lives are at stake by unsafe working conditions and exploitative contracts.\\(^{328}\) Moments of protests or sweatshop scandals are simply a momentary climax in an unfolding sequence of related events which are forgotten as soon as new events take their place.\\(^{329}\)

Industry characteristics have been described above, showing the complexity of the clothing industry. In the following, the emergence of forced labour is described.

### 4.3 Forced Labour in the Clothing Industry

Subcontracting reduces the visibility of labour standards and challenges the monitoring of human rights in the clothing industry. Exploitive working conditions are found in agriculture and manufacturing worldwide. Workers suffer under excessive overtime, mental and physical abuses by supervisors, withholding of wages, prohibit bathroom breaks, lock-ins and occasional drugging.\\(^{330}\) As previously mentioned, the situation which is considered forced labour consists of the three elements: work or service, menace of any penalty and involuntariness. If a person in the clothing industry involuntarily provides labour under the menace of any penalty, forced labour will be present.

#### 4.3.1 Indicators of Forced Labour in the Clothing Industry

In 2016, 16 million workers have been exploited by private actors. Forced labour in domestic work represented the largest share (24%). Followed by the construction (18%), manufacturing (15%) and the agriculture, forestry and fishing (11%) sectors.\\(^{331}\) The OECD Guidance emphasizes the potential harm due to production pressure. Production pressure increases the risk of forced labour. Set production quotas and fluctuating orders expose workers to overtime. If overtime is compulsory and exceeds the limits allowed by law, it will be considered

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\(^{328}\) Andrew Morgan, *Why This Film? - 'The True Cost'* (Untold 2015)

\(^{329}\) Mc Guigan (n 311), 51

\(^{330}\) Barnes and Kozar (n 214), 285

\(^{331}\) International Labour Office and Walk Free Foundation (n 14) 32
forced labour. In the clothing manufactories overtime is often demanded but not paid, neither breaks nor sick days are allowed. In exploitative sweatshops, risk-taking entrepreneurs are the factory owners who oppress workers to stay competitive. Workers are trapped in unsafe buildings, exposed to toxic chemicals, denied bathroom breaks and sexually assaulted. The garment industry has provided little possibilities for workers to leave their job if conditions are unbearable or to protest if problems emerge. If workers must pay of their debts for recruitment, housing or health care, they will be at high risk for debt bondage and forced labour. The terms of payment are often indefinite and interest rates diminish the ability to leave credit-arrangements. The use of dormitories on-site to house workers is common in the clothing industry. The onsite housing increases the risk of dependence on the employer even outside working hours and deprivation of liberty. Commercial fashion companies wilfully engage in practices violating human rights and are not hold accountable.

### 4.3.2 Forced Labour in Bangladesh

In South-Asia, where a lot of garment factories are located, slavery-like working conditions exist. Several scholars discuss the working conditions in the Bangladesh clothing industry. Although countries like Bangladesh earn the majority of foreign income by the exports of clothes, the workers struggle to make ends meet. Scrutinizing the manufacturing conditions in Bangladesh reveals the presence of forced labour in the clothing industry. Bangladesh is the world’s second largest exporter of clothing. Due to globalization, the clothing industry

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332 OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (n 284) 129
333 Ahmed (n 99), 34
334 Kristof and Wudunn (n 325)
335 Ahmed (n 99), 35
336 OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (n 284) 128
337 Barnes and Kozar (n 214), 286
338 International Labour Office and Walk Free Foundation (n 14) 28
339 Marx and Wouters (n 27); Mark Stevenson and Rosanna Cole, ‘Modern slavery in supply chains: a secondary data analysis of detection, remediation and disclosure’ (2018) 23(2) Supp Chain Mnagmnt 81; Genevieve LeBaron, Neil Howard, Cameron Thibos and Penelope Kyritsis (n 56); Ahmed (n 99); Shamima Akhter, ‘Endless Misery of Nimble Fingers: The Rana Plaza Disaster’ (2014) 20(1) Asian Journal of Women’s Studies 137; Barnes and Kozar (n 214); Bremer and Udovich (n 215); Muhammad A Islam, ‘Social and Environmental Reporting Practices of Organisations Operating in, or Sourcing Products from, a Developing Country: Evidence from Bangladesh’ [2009] School of Accounting and Law; Islam and McPhail (n 185); Islam (n 1); Nolan and Bott (n 90); Stengg (n 19); Monika Mayrhofer and others (n 223)
340 Akhter (n 339), 139
341 Islam (n 1), 2
emerged in Bangladesh.\textsuperscript{342} Clothes are exported from Bangladesh to countries around the globe and the majority of Bangladesh foreign income is generated by the garment industry.\textsuperscript{343} Almost 5,000 factories are found across the country and more than 3.5 million people work in the clothing industry.\textsuperscript{344} The Bangladesh garment industry has become the largest employer of women in manufacturing and employs the lowest paid garment workers in the world. The workers earn less than US$3 per day which is far below a living wage.\textsuperscript{345} In the European market, the unit value of Bangladeshi garments is the lowest compared to other countries and the wage rates are the lowest.\textsuperscript{346} The majority of workers in the garment factories are women.\textsuperscript{347} Especially unmarried women between 15 and 30 are in great demand by factory owners. The high productivity of the young women helps to meet the unrealistic targets set every day.\textsuperscript{348} The dual role of women in society as worker and mother places them at a disadvantage. Employment opportunities are limited and benefits are denied.\textsuperscript{349} Women in rural areas have little employment opportunities.\textsuperscript{350} Those women are recruited from villages as garment factory workers which is socially acceptable work, preferred to prostitution.\textsuperscript{351} Furthermore, monetary remuneration in the garment industry is marginally better than in domestic work or agriculture.\textsuperscript{352} Compelled to keep low labour costs, garment factory owners are vigilant to unionization of workers. Good job performance may improve bargaining power of individuals. Therefore, workers use breaks to improve speed and output performance. However, individual negotiation is ineffectual and cannot unionize the demand of national minimum wage.\textsuperscript{353}

The government of Bangladesh suppresses any attempt of workers to organize strikes or demonstrations. Recently, after a wage revision which amounted to only half of the unified workers’ demand, massive protests started. The protests were met with police violence and
union members got arrested. Many workers participating in those protests got fired. The threat of dismissals and interunion rivalry, reduces the cohesion within the workforce and organized labour lacks collective bargaining power.

One of the worst human-made disasters in the clothing industry was the collapse of the Rana Plaza in April 2013. The building situated six clothing manufactory. Before the collapse, a warning to avoid using the building was issued since cracks have been discovered. Despite the danger, garment workers were ordered to work. Those who wanted to refuse to go inside were threatened with salary cuts and went inside in fear. More than 1,000 workers died and many were injured when the building collapsed. Since the Rana Plaza disaster, international debates over labour standards increase. After the devastating collapse of the Rana Plaza building, a coalition of brands and retailers was formed, the Accord on Fire and Building Safety. The agreement covers over 1,000 suppliers in Bangladesh and has been signed by over 190 apparel corporations. The Accord has achieved some concrete and lasting factory safety improvements since. The government’s interception program, The Remediation and Coordination Cell, shall now take over and the Accord shall only continue with government oversight. The CCC is concerned, that factories will be not inspected regularly and thoroughly, and workers will not be able to freely voice concerns about workplace safety and will be again forced to work in dangerous surroundings.

Despite sales growth of the clothing industry, labour standards in Bangladesh’s garment industry fails to improve. Labour standards are often violated by corporations without relevant actions by the government. Governance failure and corruption has negative impacts on labour standards. Workers are forced to work in unsafe buildings, are denied payments for overtime work and are not allowed sick and maternity leaves. It shall be mentioned at this point, that Bangladesh has not yet ratified the Forced Labour Protocol.
Another example which is worth scrutinizing, are the labour conditions in the area of raw materials, the agriculture of cotton. Workers in the cotton industry are at the bottom of the clothing value chain and the labour conditions are alarming. The sixth largest producer of cotton is Uzbekistan. Almost one fifth of the Uzbekistan adult population is engaged in the harvest each year picking cotton, and 70% of arable land is used for cotton or wheat. The production, processing and marketing of the crop is controlled by the government and centrally mandated production quotas fuel the practice of forced labour. Farmers are forced to grow cotton under the menace of penalty or the risk of losing their land. During harvesting season, employees of state-owned companies are forced out of their regular job to pick cotton by hand. If someone refuses to work, they will risk getting fired or harassed. Due to the missing workers, hospitals and schools have been severely affected. Other businesses are forced to contribute financially if they want to stay open during harvest. The ILO estimates about 170,000 people worked involuntarily under the menace of penalty during the harvest in 2018. On September 16th 2019, Uzbekistan ratified The Forced Labour Protocol which will enter into force on September 16th 2020. Tangible steps forward have been made to reduce forced labour and the current government takes efforts to address the structural drivers. Medical workers and teachers have not been forced to work during harvest anymore, wages for cotton pickers have been increased and the government engages with civil society activists.

In the clothing industry, human rights are being violated. People are forced to work under the menace of violence, non-payment or job-loss. The vulnerability of people is exploited for competitive advantage. The examples provided above emphasize the urgent need for

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361 ZDFinfo Doku, Schmutzige Baumwolle – Sklaven der Textilindustrie (Zweites Deutsches Fernsehen 2019)
365 Namratha Somayajula (n 363)
366 Anti-Slavery International, Cotton Crimes: forced labour in Uzbekistan’s cotton industry (n 364)
367 International Labour Organization (n 362) 6
368 Namratha Somayajula (n 363)
governments action. The following chapter discusses the possible impacts due to the ratification of the Forced Labour Protocol.
5 THE FORCED LABOUR PROTOCOL & THE CLOTHING INDUSTRY

The severe human rights abuses of slavery manifested in forced labour, have become obvious. The scope of the ILO and the content of the Forced Labour Protocol have been presented above and the presence of forced labour in the clothing industry was confirmed. To eliminate forced labour, exploitation must not only be criminalized and prosecuted. More importantly, states must take effective measures to prevent forced labour, adequately protect victims and grant their access to justice. To win the global fight against forced or compulsory labour, states must jointly take responsibility and ratify the Forced Labour Protocol. To answer the research question, the measures required by the Forced Labour Protocol are now applied to the clothing industry.

The clothing industry is a labour-intense industry. However, labour standards are poor. Unsafe working conditions are not improved, workers benefits are limited and excessive working hours are demanded. To end modern slavery and abolish forced labour, multiple actions are necessary. Economic, social, cultural and legal issues need to be addressed. To offset the vulnerability of people in situations where slavery is most likely to occur is absolutely necessary. The following figure designed by the Fair Wear Foundation shows the complex supply chain of the labour-intense clothing industry and the diverse interaction of individuals and organisations.

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369 Fundamentals (n 134) 4
370 Barnes and Kozar (n 214), 286
371 Islam (n 1), 2
372 ibid
373 International Labour Office and Walk Free Foundation (n 14) 12
Local governments, international and local NGOs, trade unions, business associations, global unions and campaigns, inter-governmental organisations, consumer groups and the ILO all influence the conditions of the workers in the clothing industry. Each organisation has their own sphere of influence. To eradicate forced labour in the global supply chains of the clothing industry, collaboration between state authorities, business community and civil society organisations is essential.\textsuperscript{374} Given the scope and international nature of forced labour, partnerships are essential to succeed in tackling the problem.\textsuperscript{375} With increasing corporation among the actors, the measurements proposed by the Forced Labour Protocol and the Forced Labour Recommendation will be more effective to abolish forced labour in the clothing industry.

The Forced Labour Protocol does not provide specific guidelines on how governments are supposed to deal with forced labour in the clothing industry. The Forced Labour Protocol rather provides obligations to eradicate forced labour in general. After having identified

\textsuperscript{374} ibid
\textsuperscript{375} ILO (n 201) 5
characteristics of the clothing industry and indicators of forced labour, the Forced Labour Protocol shall be applied to the Clothing Industry and problem-solving approaches are proposed.

5.1 PREVENTION, PROTECTION AND COMPENSATION

The Forced Labour Protocol works on three levels. To eliminate forced or compulsory labour, member states must prevent forced or compulsory labour, protect victims and provide compensation. What measures might be effective is left to the determination of the states.

Article 2 provides prevention measures. According to Art 2(a), those considered particularly vulnerable must be educated and informed. As mentioned before, women comprise a majority of the clothing production industry and are considered particularly vulnerable.\(^{376}\) Women often suffer mental and sexual harassment and are threatened with discharge to detain them from speaking out.\(^{377}\) Gender discrimination and cultural stereotypes are found in countries where most clothing is currently produced. Reproductive and domestic responsibilities constrain women in their job opportunities. Some employers only hire women who agree to not have children during their time of employment. Pregnant workers experience harassment which includes verbal abuse, longer shifts standing and higher production quota.\(^{378}\) To reduce women’s vulnerability to exploitation, states should promote gender equality and grant women access to education and jobs equally. By providing educational support and training on skills and rights, their livelihood alternatives will increase.\(^{379}\)

The majority of apparel retailers uses numerous sub-contractors to produce their products. International sourcing allows for low labour costs.\(^{380}\) Low labour cost does not mean forced labour but might be an indicator for low labour standards. According to Art. 2(b) employers must be educated and informed to prevent them from becoming involved with forced labour.

\(^{376}\) Barnes and Kozar (n 214), 286
\(^{377}\) Akhter (n 339), 139–140
\(^{379}\) ILO (n 201) 5
\(^{380}\) Barnes and Kozar (n 214), 286
Employers need to be aware of the consequences when engaging in unlawful practices. In Uzbekistan, for example, the government implemented awareness campaigns about the legal consequences when using forced labour. The establishment of education and awareness programmes draws on experience and takes account of the fact that these are prevalent prevention techniques. For the clothing industry, education and information programmes for consumers are also of high importance to raise awareness for the working conditions in the clothing industry.

The Forced Labour Protocol emphasises the importance of educating and informing those affected. Workers often do not know about their rights, existing law, the possibility of individual complaints procedures or supranational courts. Thus, they do not demand greater protection of their rights. Garment workers, factory owners, fashion brands, consumers and organisations shall be incorporated in the process. States can draw on assistance of initiatives like CCC, ETI or FWF. Those can help assist MNEs in monitoring labour standards, inform workers about their rights and raise consumers’ awareness.

The Forced Labour Protocol Art. 2(c) strengthens the position of workers by extending the coverage and enforcement of labour law to all workers and all sectors. This is only possible if labour inspection services and other services responsible will be able to implement such legislation. For the clothing industry, the preservation of associations like the Accord on Fire and Building Safety in Bangladesh mentioned before, is of great importance. Such associations help to identify risks and can provide recommendations for improvements. The lack of bargaining power has made garment workers voiceless. Anti-sweatshop activism improved the situation of workers in Indonesia. Across all manufacturing, the minimum wage increased, as a result, only a few unskilled workers lost their jobs. In the textiles and apparel industry, wage soared and employment remained steady.

Migrants and informal workers are particularly vulnerable to exploitation in the clothing industry. Under Art. 2(d) migrant workers are to be protected from abusive and fraudulent

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381 Namratha Somayajula (n 363)
382 Donald K. Anton (ed) (n 196) 4
383 Hafner-Burton (n 37) 100
384 Akhter (n 339), 140
practices. Migrants have become an important workforce in the clothing industry. Migrant and informal workers though have a weak legal stand and are particularly vulnerable to exploitation.\(^{386}\) To protect migrants from forced labour, migration law must be taken into consideration and the integration of migrants into the labour market must be evaluated. Migrants must be granted equal access to rights and benefits compared to local workers.\(^{387}\) Besides earning a decent wage, economic empowerment requires knowledge and skills to access or create local employment opportunities.\(^{388}\)

Preventive measures shall support “due diligence by both the public and private sectors” [Art. 2(e)]. The OECD Guidelines presented above help enterprises to reduce their risk of direct and indirect potential adverse impact. In the clothing industry, meaningful stakeholders are the governments of jurisdictions that the corporations source from or operate in.\(^{389}\) Employer’s organisations and government should complement each other and support enterprises to put in place appropriate human rights due diligence processes.\(^{390}\) If the price of clothing does not include a reasonable payment and decent work for everyone in the supply chain, gross margins should be reconsidered.

Debt bondage is a widespread means of coercion. Addressing the root causes of debt bondage will prevent forced labour and improve the independence of potential victims.\(^{391}\) Art. 2(f) requires states to address such root causes and factors which heighten the risk of forced labour. To prevent forced labour, the root causes for exploitation have to be examined. In countries like Bangladesh, where the clothing industry has a great sphere of influence, the root causes for exploitation in the clothing industry might be different than in countries where the clothing industry is rather small. If the clothing industry is the only industry which provides jobs, the possibility to earn money will be limited.\(^{392}\) However, if regulations regarding

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\(^{386}\) OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (n 284) 127–129


\(^{388}\) ILO (n 201) 5

\(^{389}\) OECD, *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* (n 284) 27

\(^{390}\) Donald K. Anton (ed) (n 196) 4

\(^{391}\) International Labour Office and Walk Free Foundation (n 14) 12

\(^{392}\) Barnes and Kozar (n 214), 291
accommodation, working hours and recruitment fees are in place, workers must not fall into such great debt which bonds them to their employers.

Victims of forced labour shall be identified, released, protected and granted recovery and rehabilitation (Art. 3). The indicators of forced labour mentioned previously shall help organisations and individuals to spot situations where forced labour might be present. These indicators must be constantly updated to guarantee their relevance for the clothing industry. Workers in the clothing industry are often oppressed, and revolts are not tolerated. The fear of non-payment, job loss, endangerment of their families or other treats to become true, restrains victims of forced labour to proceed against their oppressors. Victims who have spoken up against their perpetrators might face threats and are in danger. The Forced Labour Protocol calls on states to protect victims from any harm. The victim-centred approach implies that victims will be consulted about their needs. When workers have been freed from their suffering, they might need new perspectives. Trainings and employment services are necessary to prevent them from going back to their old jobs, fall into depression or become involved in unlawful activities. Forced labour in the clothing industry is sometimes accompanied by physical and mental violence. To regain mental health, victims shall receive assistance and support to overcome their trauma. For the most part, in the producing countries, governments will rely on NGOs to be able to cover the costs and resources for the appropriate protection of victims.

Migrants or informal workers in the clothing industry might not be registered and work without permission which might be punishable under national law. The constant legal and economic insecurity increases their vulnerability. According to Art. 4(2) victims of forced labour shall be protected from punishment of unlawful activities they have been compelled to commit. Again, migration law and labour market regulations need to be evaluated. No one should take advantage of the legal status of another person and benefit from another person’s predicament. Migrants should be protected from such utilization.

Besides implementing measurements of prevention and protection, the Forced Labour Protocol asks states to provide victims access to effective remedies, such as compensation.
According to Art. 4(1), irrespective of the legal presence or legal status of the victims, they are entitled to reparation. Due to that, workers can demand withheld wages or pending promotions which strengthens their status. If workers do not have existential fear or worry about payment loss but are aware of their rights, they will be encouraged to rise their voice and to not accept any oppressions. The right to compensation is also derived from ICCPR Art. 2 (3.c) under which “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”. In the cases mentioned before, victims successfully sought compensation for their exploitation.

5.2 IMPLEMENTATION

The Preamble of the Forced Labour Protocol recognizes the gaps of implementation of the previous Convention 29 and 105. To eliminate forced labour from the global supply chain of the clothing industry, successful implementation, effective action and cooperation is urgent. Art. 6 requires governments to define national laws to eliminate forced labour in consultation with concerned organizations, employers and workers. If national law has effective measurements in place to enforce legislation, the labour standards in the national markets will increase. Thus, the working conditions in the local clothing industry improve likewise. According to Art. 5, states are obliged to cooperate to eliminate forced labour. The root causes of forced labour are often of international origin. Data regarding risks and incidents of forced labour shall be collected, analysed and shared on an international level. States shall be able to identify hazards more quickly and take effective action against suspicious employers and traffickers. The Forced Labour Protocol emphasizes the coverage, implementation and enforcement of legislation. Corporations' social responsibility might play an essential role in fighting forced labour in the clothing industry, properly resourced and implemented statutory enforcement measurements are though essential. By fighting forced labour and protecting the most vulnerable in the clothing industry as an international community, the implementation of the Forced Labour Protocol is strengthened and governments take on their responsibility to respect, protect and fulfil human rights.

396 Prosecutor v. Kunarac et al. (n 73); CASE OF SILIADIN v. FRANCE (n 74)
397 Donald K. Anton (ed) (n 196) 2–4
398 ibid 4
5.3 Monitoring

The measurements to eliminate forced labour will only be successful if monitored successfully. As a leading international organization, the UN promotes human rights standards. The universal membership and long history of the United Nations is unique. However, its authority and significance has been tarnished in the eyes of some Western states and MNEs.\textsuperscript{399} The OECD includes the home states of most significant MNEs but misses states of the developing world where a large number of businesses and victims have been located.\textsuperscript{400} Companies are permitted to interpret law as they see fit. Laws regularly disregarded making them seem arbitrary.\textsuperscript{401} National legal right regimes must be put in place to monitor human rights and impose sanctions on businesses violating human rights.\textsuperscript{402} The prohibition of slavery is recognized in all general human rights instrument and early international treaties agree on the prohibition of slavery and the protection of human rights. Derived from the ICCPR norms, states are obliged to eliminate human rights violation, prevent future breaches and provide information about measures taken.\textsuperscript{403} States commit to assist one another and to adopt national prohibitions.\textsuperscript{404} The legal framework does not obliges states to act in a specific manner.\textsuperscript{405} Overlapping laws and forums are weakening the coherence of the system’s obligation. Inconsistent recommendations allow a great deal of leeway.\textsuperscript{406} Forced Labour has been regulated but not abolished. The UN system monitors measurements but does not enforce them.\textsuperscript{407} A regulatory approach with normative framework would help to monitor the implementation of the forced labour protocol.\textsuperscript{408}

To effectively establish a legislative framework to combat modern slavery practices, shared responsibility of all stakeholders is required. Public and private efforts help to monitor, and report forced labour.\textsuperscript{409} The ILO’s tripartite structure incorporates labour and business

\begin{footnotesize}
\textsuperscript{399} Ratner (n 219), 536
\textsuperscript{400} ibid
\textsuperscript{401} Barnes and Kozar (n 214), 288
\textsuperscript{402} Ratner (n 219), 534
\textsuperscript{403} Kurt Hendl (n 52) 212–216
\textsuperscript{404} Slavery Convention 1927, OHCHR (United Nations Human Rights Office of the High Commisionar)
\textsuperscript{405} Nowak (n 42) 196
\textsuperscript{406} Hafner-Burton (n 37) 116
\textsuperscript{407} Smith (n 34) 215
\textsuperscript{408} Clapham (n 218) 225
\textsuperscript{409} Nolan and Bott (n 90), 59
\end{footnotesize}
viewpoints. The tripartite structure provides corporations the possibility to shape agenda and influence the content of social expectations and corporate performance. The engagement with MNEs may have proved a more effective way in adapting human rights standards.\textsuperscript{410} Corporations are willing to engage in normative aspiration as long as they can avoid legal obligations.\textsuperscript{411} The ILO achieved widespread ratification of its fundamental conventions but overall, treaties lack of many ratifications.\textsuperscript{412} Some states only join treaties for public relation purposes without the intention to national change and human rights are worse than before.\textsuperscript{413} Art. 1(2) requires governments to “develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour”. Every three years, ratifying members must submit a report on measurements taken for implementation of the Forced Labour Protocol. The report is examined by the ILO supervisory bodies. By offering research, capacity building and field-based projects, the ILO provides support for governments in the ratification process.\textsuperscript{414} NGOs and media can use the established reporting procedure to fortify their campaigns.\textsuperscript{415} States who have ratified the Forced Labour Protocol are than held accountable for their (not) taking action.

Neither public nor private actors are allowed to impose forced labour. In the clothing industry, human rights are violated by corporations due to their business activities, their subcontracting entities or suppliers. Governments could monitor human rights activities through regulatory schemes in the same way as environmental, anticompetitive or bribery-related activities are already monitored.\textsuperscript{416} National regulation would allow states to monitor business activities on their territory as well as business activities abroad conducted by corporations located on their territory. The UK Modern Slavery Act is an example how governments regulate human rights abuses of corporations. Corporations are obliged to publish annual slavery and human trafficking statements. As mentioned above, the marketing strategy for clothing brands relies on good reputation. Thus, such public reports either attract or deter their stakeholders.

\textsuperscript{410} Islam and McPhail (n 185), 793
\textsuperscript{411} ibid 808
\textsuperscript{412} Ratner (n 219), 530, 538
\textsuperscript{413} Hafner-Burton (n 37) 72-85
\textsuperscript{415} Hafner-Burton (n 37) 97–99
\textsuperscript{416} Ratner (n 219), 533f
The prevention, protection and compensation measures presented above, successfully implemented and monitored, may eradicate forced labour in the clothing industry. However, omissions remain, which is discussed in the following chapter.
6 Discussion & Limitation

Forced labour is not a national problem, forced labour is an international issue. The ratification of the Forced Labour Protocol is a crucial step to protect workers, strengthen labour inspections and other services and to inform and educate society.\textsuperscript{417} Due to global commerce, the proceeds and products or services of forced labour cross borders. Therefore, the issue of forced labour can not only be examined from the perspective of the place of perpetration but also of the place where the products or services are sold and consumed.\textsuperscript{418} A strong international community is necessary. The national governments’ power against large companies is sometimes limited. Most agreements, regulations and alliances are based on a voluntary commitment and MNEs resist legal monitoring. Nevertheless, to protect the rights of workers, corporations and foreign investment must be regulated. If trade unions are restricted and labour laws are not enforced, workers’ rights will be violated.\textsuperscript{419} States are obliged by international human rights law to respect protect and fulfil human rights within their territory. Therefore, states are obliged to protect individuals against human rights abuses by businesses or private actors. By moving jobs from the global north to the global south, standards should be transferred as well.\textsuperscript{420} Jobs are needed and most people in the manufacturing countries of the clothing industry are thankful for employment opportunities, but still they deserve to work under human conditions.\textsuperscript{421} Most enterprises in the clothing industry are primarily focused on profit, not employee happiness.\textsuperscript{422} Studies support that regardless expectations of the global community, organisations will not embrace social practices and accountabilities without economic incentives or legal pressure to do so.\textsuperscript{423} Social and environmental criteria are applied in the clothing industry through codes of conducts. However, the criteria are only applied to a certain extend.\textsuperscript{424} The poor protection of workers in the clothing industry is the result of continuing governance failure. The contradictions, myopic notions and unstable coalition of economic and political actors, buttress governance

\textsuperscript{418} The Minderoo Foundation Pty Ltd. (n 86)
\textsuperscript{420} Ahmed (n 99), 42
\textsuperscript{421} ibid 43
\textsuperscript{422} Barnes and Kozar (n 214), 290
\textsuperscript{423} Islam (n 339), 1
\textsuperscript{424} Winter and Lasch (n 233), 185
failure.\textsuperscript{425} To continuously improve labour standards in the clothing industry, a multi-
stakeholder model of governance is needed. Responsibility should not be outsourced to international brands and foreign governments.\textsuperscript{426} With the principle of stewardship, steward states deploy their power and other resources to promote human rights abroad. Steward states can impose punishment and rewards on states violating human rights and allowing forced labour to occur on their territory.\textsuperscript{427} States which have already ratified the Forced Labour Protocol should take on their responsibility to abolish forced labour not only in their own country but also in the countries they trade with and products are sourced from. States violate human rights when they fail to protect the rights of individuals.\textsuperscript{428} The abolishing of forced labour is the responsibilities of states in consumer and producer countries. The Forced Labour Protocol will only be successful if ratified by many countries around the world.

A number of important limitations of this study provide the foundation for continued research to improve the understanding of the relevance of the ratification of the Forced Labour Protocol for the clothing industry. Firstly, there are no preconditions to ratify the Forced Labour Protocol and no deadline for implementation of measurements is provided. Therefore, the number of ratifications does not correlate with the success in fighting forced labour. Secondly, the blurry boundaries between forced labour, bonded labour, mere labour exploitation and servitude, might provide difficulties in determining the offense. Furthermore, the numbers of victims of forced labour depend on the definition of forced labour and the organisation collecting the data. Thirdly, the Forced Labour Protocol is still new and there is no explorative data on the impact of the ratification. Field research might help to identify effective measures and to investigate on the progress of abolishment of forced labour due to ratification of the Forced Labour Protocol. Taken together, these results suggest, that coming researches might consider to investigate which measurements have been successful in fighting forced labour in the clothing industry and provide data on the correlation between the ratification of the Forced Labour Protocol and the decrease of forced labour in the clothing industry.

\textsuperscript{425} Islam (n 1), 2
\textsuperscript{426} ibid 7
\textsuperscript{427} Hafner-Burton (n 37) 157f
\textsuperscript{428} Kurt Hendl (n 52) 203
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7 CONCLUSION

Slavery is often associated with transatlantic slave trade and the exploitation of black Africans on cotton fields which belongs to the past, is wrong and would be unthinkable today. Unfortunately, this is only partially true. Enslavement describes the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. Forced Labour describes all work or service which is involuntarily provided under the menace of any penalty. Neither slavery nor forced labour are permitted under international law. However, numerous people are victims of modern slavery. The study showed that even today, people are forced to work under exploitative conditions. Anyone who deals with the working conditions in the clothing industry cannot ignore the human rights violations mainly caused by the trend of fast fashion. The dignity of the workforce is put behind profit and the right to freedom and equality is disregarded. Especially in agriculture and manufacturing, workers are unscrupulously exploited. Some guidelines and standards presented already target the human rights abuses in the clothing industry. Without the aspiring work of trade unions and NGOs the exploitative working conditions in the clothing industry remain. Freedom from forced labour should though not be a normative aspiration but a legal right. Without legal obligations, human rights in the workplace are not enforced.

The Forced Labour Protocol targets new forms of modern slavery. With the ratification of the Forced Labour Protocol, forced labour should be both, eliminated and prevented. No exceptions for the use of forced labour are provided. The Forced Labour Protocol is supposed to restore hope and freedom to the people trapped in forced labour. The victim-centred approach strengthens the workers’ rights and labour inspections. Governments are obliged to cooperate in information gathering and data exchange to better identify risks and harms. States commit themselves to fight root causes like human trafficking, vulnerability of migrants or gender discrimination. The most vulnerable are to be protected by the means of education and knowledge programmes. Thus, cooperation on a global level is required.

The purpose of the study was to evaluate the Forced Labour Protocol in the context of the clothing industry. The study showed that the clothing industry is a labour-intense industry with increasing production pressure due to fast fashion. Workers, especially in producing countries, run the risk of becoming victims of forced labour or are already living in forced labour. The complexity of the labour-intense clothing industry with numerous subcontractors
challenges the impact of the Forced Labour Protocol. The lack of information and resources makes it difficult for individuals suffering from forced labour to claim their rights. The impact of the Forced Labour Protocol on the clothing industry depends on the effective implementation of measurements, successful monitoring and a strong international community with steward states. Without effective implementation and monitoring of measurements, the abolishment of human rights abuses in the clothing industry remains admirable fiction. Future research is necessary to investigate on the progress of abolishment of forced labour due to the ratification of the Forced Labour Protocol.

Buying clothes is no longer a simple bargain but rather a statement. The fight against forced labour is everyone’s responsibility. No one should suffer for the clothes someone else wears and no one should be willing to wear clothes which have been produced by slaves; everyone deserves a life in dignity.
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