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The implementation of the UNGPs on Business and Human Rights for SMEs: Challenges and Opportunities

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DISSERTATION

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I. Introduction

Business enterprises play a significant role in the economic growth and social well-being of countries by generating new jobs and alleviating poverty.¹ They may also support the fulfilment of basic rights including the right to work, to food and to shelter, children's right to education, as well as freedoms including freedom of expression and association.²

On the other hand, business practices have the potential to adversely impact the enjoyment of human rights, from civil and political rights to economic, social and cultural rights.³ Examples of the business-related negative impacts include a whole range of human rights issues such as include labour rights, the right to privacy, equality and non-discrimination, freedom of association and the right to health.⁴ Business enterprises can also violate the rights of indigenous communities or individuals, women, people with disabilities, as well as consumer rights and the rights concerning with environmental issues.⁵

These impacts have led to the debate of business and human rights (BHR) which aims to address whether corporations have human rights responsibilities and if so, what such responsibilities mean for corporate behaviour.⁶ Although fulfilling human rights obligations is traditionally seen as the duty of states⁷, certain initiatives have been taken at the international level to put human rights on the corporate agenda.⁸ In 2011, the United Nations (UN) Human Rights Council has taken the most important step in this debate by adopting the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁹, the first framework that providing a global standard for preventing and addressing the risk of adverse business-related human rights impacts.¹⁰ The endorsement of these principles improved the debate of BHR as an academic field involving various disciplines in law and non-law.¹¹ The UNGPs are built on a three-pillar framework: a duty of states to protect against human rights

¹ Dorothee Baumann-Pauly and Justine Nolan (eds.), *Business and Human Rights: From Principles to Practice* (Routledge, 2016), 3; Nadia Bernaz, *Business and Human Rights: History, Law and Policy-Bridging the Accountability Gap* (Routledge, 2017) 1.

² Baumann-Pauly and Nolan (n 1) 3; Bernaz (n 1) 1.

³ Angelica Bonfanti (ed) *Business and Human Rights in Europe, International Law Challenges* (Routledge, 2018) 1; Bernaz (n 1) 2.

⁴ *Improving access to remedy in the area of business and human rights at the EU level*, The European Union Agency for Fundamental Rights (FRA) Opinion – 1/2017, 4, 18
<https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-opinion-01-2017-business-human-rights_en.pdf> accessed 10 September 2019.

⁵ Ibid.

⁶ Judith Schrempf-Stirling and Harry J. Van Buren, *Bringing Human Rights Together with Management Studies: Themes, Opportunities and Challenges*, Academy of Management Annual Meeting Proceedings 2017 (1) 1.

⁷ FRA Opinion 2017 (n 4) 32.

⁸ Schrempf-Stirling and Buren (n 6) 1.

⁹ UN Human Rights Council, A/HRC/17/31, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UNGPs), Annex <https://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf> accessed 10 September 2019.

¹⁰ Jernej Letnar Cernic and Nicolas Carrillo Santarelli (eds.), *The Future of the Business and Human Rights, Theoretical and Practical Considerations for a UN Treaty* (Intersentia, 2018) 187.

¹¹ Florian Wettstein, Elisa Giuliani, Grazia D. Santangelo, Günter K. Stahl, 'International business and human rights: A research agenda (2019) Vol 54:1, Journal of World Business, 54-65, 55.

abuses by third parties, the responsibility of corporations to respect human rights and the need for access to effective remedies.¹² According to the second pillar, ‘the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure’.¹³ That is, this responsibility ‘applies fully and equally to all business enterprises’.¹⁴ It is clearly understood from this principle that small and medium-sized enterprises (SMEs) are within the scope of corporate responsibility to respect human rights.¹⁵

Before examining SMEs and their relationship with human rights, SMEs’ definition should be indicated. The definition of an SME often ranges from different countries and are generally based on the number of employees, the annual turnover or the value of assets of enterprises.¹⁶ One of the most broadly accepted definitions was offered by the European Commission.¹⁷ According to this definition, SMEs have three different categories including medium-sized, small and micro companies and consist of ‘enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million’.¹⁸ ‘A small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million, while ‘a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million’.¹⁹ Unless otherwise indicated, the definition of an SME that is used in this paper is any enterprise with fewer than 250 employees.

SMEs play an essential role in economies all around the world.²⁰ Since new innovations and increasing globalisation mitigate the significance of the scale of economies, the potential benefits of smaller companies are improved.²¹ SMEs account for a large proportion of the number of the world’s total businesses, between 85 and 99.9 per cent.²² They make a great contribution to job creation and income generation both in developed and developing countries.²³ They constitute two-thirds of all jobs globally²⁴ and are major contributors to value creation, creating between 50% and 60% of value-added on average.²⁵ The available data also confirm that SMEs have a large amount in employment in member countries of the

¹² A/HRC/17/31 (n 9) Introduction to the Guiding Principles, para. 6.

¹³ The Guiding Principle 14.

¹⁴ *Ibid.*, Commentary

¹⁵ *Ibid.*

¹⁶ International Labour Organization (ILO), *Small and Medium-sized Enterprises and Decent and Productive Employment Creation* (Geneva, 2015) para 5.

¹⁷ Michael K. Addo, *Business and Human Rights and the Challenges for SMEs* (Oxford University Press 2017), 317.

¹⁸ Extract of Article 2 of the Annex to Recommendation 2003/361/EC

¹⁹ European Commission, ‘User Guide to the SME Definition’ 2016, page 10; Annex L 124/39, 20.5.2003, Article 2.

²⁰ Addo (n 17) 316.

²¹ OECD Policy Brief ‘Small and Medium-sized Enterprises: Local Strength, Global Reach’ (Paris, 2000) 1.

²² Addo (n 17) 316.

²³ ILO, *Small and Medium-sized Enterprises and Decent and Productive Employment Creation* (n 16) para 1.

²⁴ *Ibid.*

²⁵ OECD, ‘Meeting of the OECD Council at Ministerial Level, Enhancing the Contributions of SMEs in a Global and Digitalised Economy’ (Paris, 2017) para 8.

Organisation for Economic Co-operation and Development (OECD) by accounting for over 95 per cent of all enterprises in these countries.²⁶

Besides the positive role of SMEs on the domestic and international economies, these enterprises have the capacity to impact human rights adversely.²⁷ One of the serious problems regarding labour rights is that there is limited information on the problems or disadvantages that are faced by SME workers.²⁸ There are not accessible information particularly in low- and middle-income countries.²⁹ The only available data come from the European Union (EU) and it shows that SMEs are generally at a lower level than large corporations in the aspect of the quality of employment.³⁰ Quality of employment involves workplace safety and health issues, decent wages and working hours, the security of employment and social protection.³¹ According to the ILO report in 2015, SMEs generally experience poor staff strategies, multifunctional management, high employee turnover, low productivity, challenges ‘in recruiting quality staff and an inability to adequately test and train employees in advance’.³²

Additionally, due to the prevalence of informal economy, SME workers have been reported to struggle more with poor working conditions and have less capacity to enjoy social protection regulations, especially when compared to larger corporations.³³ They have also been reported to face excessive working hours and receive lower wages than workers in large companies.³⁴ Particularly less developed countries’ labour laws do not encompass micro and small enterprises and in such circumstances, certain fundamental rights and freedoms of workers such as collective bargaining rights are not protected effectively.³⁵ There are also serious problems with workplace health and safety in some SMEs.³⁶ Workers of SMEs are more likely to face serious occupational accidents and to subject to physical and chemical hazards.³⁷ In Europe, 82 per cent of all occupational injuries and 90 per cent of all fatal accidents occur in SMEs.³⁸

Meanwhile, the significance of SMEs has been largely neglected in the debate of BHR.³⁹ Since the primary focus of the BHR scholars to improve the human rights responsibilities of

²⁶ ILO, Small and Medium-sized Enterprises and Decent and Productive Employment Creation (n 16) para.9

²⁷ The Guiding Principle 14, *Commentary*

²⁸ ILO, Small and Medium-sized Enterprises and Decent and Productive Employment Creation (n 16) page vi.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid., page 22, Figure 3.3.

³² UN Human Rights Council, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, A/HRC/35/32, 2017, para 12.

³³ ILO, The Impact of Social Dialogue and Collective Bargaining on Working Conditions in SMEs (Geneva, 2018) 15, 16.

³⁴ Ibid.,16.

³⁵ Ibid., 3.

³⁶ Ibid., 15.

³⁷ Ibid.

³⁸ ILO, Small and Medium-sized Enterprises and Decent and Productive Employment Creation (n 16) para 51.

³⁹ International Labour Organisation, ‘SMEs and Human Rights, What is the current state of play, what are the opportunities and challenges, what kind of support is needed?’ (November 2016) 3

businesses has been on large and transnational corporations, there is limited research on SMEs.⁴⁰ The primary focus of international soft law standards to enhance human rights standards has been on transnational corporations such as OECD Guidelines for Multinational Enterprises.⁴¹ Moreover, most governments have a thought that these enterprises have a lack of awareness of human rights or human rights are irrelevant to SMEs.⁴²

Additionally, several characteristics of SMEs pose specific challenges for fulfilling their responsibility to respect human rights.⁴³ SMEs can have less capacity as well as more informal processes in implementing human rights standards.⁴⁴ The structure of SMEs, which is generally large and diverse, leads to challenges in ‘identifying a typical human rights footprint with which to link interactions concerning business and human rights.’⁴⁵ Widespread informal economy among SMEs makes it difficult to implement the UNGPs.⁴⁶ SMEs also confront a lack of sufficient resources to pay for additional professional staff to enhance the implementation of the UNGPs.⁴⁷

On the other hand, some characteristics of SMEs provide an opportunity in implementing the UNGPs, especially when compared to large enterprises.⁴⁸ SMEs are more flexible than transnational corporations and thus ‘they are able to respond better to changes and disturbances in the social environment’.⁴⁹ SMEs make a significant contribution to economic and social well-being by creating new business lines and reducing poverty.⁵⁰ SMEs are more labour-intensive than large companies and often have a greater capacity to absorb labour.⁵¹ According to the Addo, small structure of the SMEs can also become an advantage in implementing the UNGPs because in SMEs, generally ‘there is one easily identifiable person who will be aware of all of the enterprise’s operations’.⁵² Larger companies do not have such advantage and therefore they have to set up a committee to view the company’s compliance with human rights.⁵³

Besides focusing on SMEs alone, it is important to consider their relationships with other companies as ‘SMEs and large enterprises do not exist in isolation, but form part of an interacting system’.⁵⁴ This interaction can result from formal supply chain relationships and

http://www2.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_535220.pdf> accessed 10 September 2019.

⁴⁰ Addo (n 17) 313.

⁴¹ A/HRC/35/32 (n 32) para 19.

⁴² Ibid., para 20.

⁴³ Addo (n 17) 315.

⁴⁴ The Guiding Principles 14, *Commentary*

⁴⁵ Addo (n 17) 315.

⁴⁶ Ibid.

⁴⁷ A/HRC/35/32, 2017 (n 32) para 11.

⁴⁸ Ibid., para 21.

⁴⁹ Addo (n 17) 326.

⁵⁰ Dima Jamali, Peter Lund-Thomsen and Soren Jeppesen, SMEs and CSR in Developing Countries, *Business & Society*, 2017, Vol. 56 (1) 11–22, 12.

⁵¹ A/HRC/35/32, 2017 (n 32) para 21.

⁵² Addo (n 17) 320.

⁵³ Ibid.

⁵⁴ ILO, The Impact of Social Dialogue and Collective Bargaining on Working Conditions in SMEs (n 33) 17.

more informal or general links with larger companies.⁵⁵ Especially the supply chain relationships between SMEs as suppliers and large corporations as buyers can provide an opportunity in implementing the UNGPs in supply chains by implementing human rights due diligence.⁵⁶ This is due to the fact that transnational corporations have the capacity to improve human rights standards in smaller business enterprises.⁵⁷ This situation complies with the UNGPs which expect buyers to ‘prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships’ including their supply chains.⁵⁸

On the other hand, poor human rights standards are common in supply chains.⁵⁹ Typical human rights abuses in the supply chains include slavery, forced labour, child labour, discrimination, freedom of association, informal work, unsafe work, low wages and excessive working hours and habitual use of precarious short-term contracts.⁶⁰ By the end of the 1990s, human rights activists had become considerably concerned about these violations and they have started to campaigns to force retailer companies to improve human rights conditions in their supply chains.⁶¹ As a result of the growing public pressure, retailer corporations had to adopt certain voluntary methodologies such as codes of conduct and social audits.⁶²

Even these methodologies can affect human rights responsibilities of SMEs as these enterprises can be buyer as well as supplier in the supply chain relationship⁶³, SMEs need more effective strategies to fulfil their human rights responsibilities by taking into account of SMEs’ limitations and opportunities.⁶⁴ Therefore, as SMEs have not been a central focus of the business and human rights (BHR) debate⁶⁵, this dissertation mainly aims to contribute to SMEs in implementing the UNGPs by specifying the challenges and opportunities of SMEs in this aspect. To do this, the human rights responsibilities of SMEs should be detailed. For this aim, the second section of this dissertation firstly elaborates the development of BHR debate which engages in the issue of human rights responsibilities of corporations. Especially the emergence of the UNGPs as these principles play an essential role in corporate responsibility. This section

⁵⁵ Addo (n 17) 327.

⁵⁶ Samentha Goethals, Joe Bardwell, Mariam Bhacker, Bahaa Ezzelarab, ‘Business Human Rights Responsibility for Refugees and Migrant Workers: Turning Policies into Practice in the Middle East’ (2017) Vol 2:2, *Business and Human Rights Journal*, 335-342, 341-342.

⁵⁷ A/HRC/35/32, 2017 (n 32) para 33.

⁵⁸ The Guiding Principle 13.

⁵⁹ ITUC Frontlines Report 2016, p 8 < <https://www.ituc-csi.org/frontlines-report-2016-scandal> > accessed 10 September 2019.

⁶⁰ Improving Paths to Business Accountability for Human Rights Abuses in the Global Supply Chains, A Legal Guide, Essex Business and Human Rights Project (December 2017) 5.

⁶¹ Jennifer Leigh and Sandra Waddock, The Emergence of Total Responsibility Management Systems: J. Sainsbury’s (plc) Voluntary Responsibility Management Systems for Global Food Retail Supply Chains *Business and Society Review* 111:4 409-426, 410.

⁶² Ibid.

⁶³ ILO, ‘SMEs and Human Rights, What is the current state of play, what are the opportunities and challenges, what kind of support is needed?’ (n 39) 3.

⁶⁴ Addo (n 17) 322.

⁶⁵ Michael K. Addo, ‘Business and Human Rights and the Challenges for SMEs’ (Oxford University Press 2017) 313.

also examines the position of SMEs in the BHR field and presents limited research on the SMEs regarding their human rights responsibilities.

Besides the BHR debate, there is also another concept, corporate social responsibility (CSR), an umbrella term concerning with the connections between business and society and refers to any concept related how managers should address public policy, social and environmental issues.⁶⁶ Even before the endorsement of the UNGPs in 2011, there are important efforts to promote SME engagement with CSR.⁶⁷ It has been reported that SMEs possess important characteristics that are positive for implementing CSR practices.⁶⁸ For instance, the owners and founders of SMEs have the capacity to imprint their personal ideology and views among their organisations, and thus they can implement the CSR practices easier than large companies.⁶⁹ On the other hand, it has been argued that the accepted standards of CSR are inaccessible and inapplicable for small businesses⁷⁰ and these standards can be ‘incomprehensible and unrealistic for SMEs, with the language that is unfamiliar’.⁷¹ Although there are certain problems concerning with the implementation of CSR practices, it is worth mentioning CSR concept, with the situation of SMEs, to broadly explore the opportunities and challenges of SMEs in implementing such voluntary initiatives. In line with this aim, in the third section of this dissertation, the concept of CSR is examined by comparing the CSR with the BHR field as there are certain differences between these areas.⁷² For instance, the CSR concept is generally perceived as voluntary-basis responsibility, while the BHR field put a specific emphasis on legal accountability.⁷³ While CSR policies are concerning with ‘the mere willingness of corporations to be good corporate citizens’⁷⁴, the debate of BHR is based on human rights norms as an internationally agreed normative framework.⁷⁵ Therefore, this dissertation mainly assesses the SMEs in line with BHR debate, ‘where accountability plays a central role’⁷⁶ to go beyond the voluntary-basis activities.

Following this assessment, characteristics of SMEs should be reviewed as they can pose specific challenges and opportunities in implementing the UNGPs. The fourth section of this dissertation elaborates which characteristics of SMEs are positive or negative in implementing the UNGPs. While resource poverty and widespread informal economy pose a challenge for SMEs, small structure and flexibility can create an opportunity in the implementation of the

⁶⁶ Dorothee Baumann-Pauly, Christopher Wickert, Laura J. Spence, Andreas Georg Scherer, ‘Organizing Corporate Social Responsibility in Small and Large Firms: Size Matters’ (2013) 115 J Bus Ethics 693–705, 693.

⁶⁷ Addo (n 17) 316.

⁶⁸ Jamali, Lund-Thomsen, Jeppesen (n 50) 12.

⁶⁹ Ibid.

⁷⁰ Association of Chartered Certified Accountants (ACCA), ‘Small Business: A Global Agenda’ (2010) 10 <<https://www.accaglobal.com/content/dam/acca/global/PDF-technical/small-business/pol-afb-sbaga.pdf>> accessed 10 September 2019.

⁷¹ Addo (n 17) 321.

⁷² Bernaz (n 1) 3.

⁷³ Ibid., 6; Wettstein, Giuliani, Santangelo, Stahl (n 11) 57.

⁷⁴ Carolijn Terwindt and Miriam Saage-Maass, ‘Liability of Social Auditors in the Textile Industry’ (December 2016, ECCHR and FES), 7, <https://www.ecchr.eu/fileadmin/Publikationen/Policy_Paper_Liability_of_Social_Auditors_in_the_Textile_Industry_FES_ECCHR_2016.pdf> accessed 10 September 2019.

⁷⁵ Wettstein, Giuliani, Santangelo, Stahl (n 11) 57.

⁷⁶ Bernaz (n 1) 6.

UNGPs. Moreover, SMEs' relationship with large companies plays a significant role in this aspect. Large enterprises have the capacity to support SMEs for fulfilling their human rights responsibilities by establishing a supply chain relationship embedding human rights into the relationship from the outset. Therefore, this dissertation highlights what are the effects of the multinational corporations on the human rights standards in supply chains that are structured as SMEs.

For this aim, this dissertation elaborates the establishment of a supply chain relationship and human rights conditions in supply chains in the fifth section. Then, it focuses on the voluntary initiatives conducted by retailer corporations such as codes of conduct, social audits and sustainability reports which aim to improve labour standards in their supply chains.⁷⁷ This section details these methodologies with their weaknesses by giving examples from different companies in different sectors. As the last step, this dissertation explores the effects of these methodologies for SMEs.

Finally, the sixth section of this dissertation mentions the Modern Slavery Act 2015, adopted by the United Kingdom (UK), which regulates the transnational corporations' responsibilities on their supply chains to see an example of legal regulation in this aspect to go beyond voluntary methodologies. The reason for choosing this Act is that it is seen as a landmark development and its policies have the capacity to influence future norms and to improve addressing human rights violations in supply chains.⁷⁸ Especially, the 'Transparency in Supply Chains' provision is important in this aspect and can also affect the responsibilities of SMEs.⁷⁹ After analysing the Act and mentioned provision, this section examines the position of SMEs in this regulation.

As a research method, this paper uses desk-based analysis to study the nature and characteristics of SMEs and also to understand in depth the corporate responsibility to respect. While it generally focuses on the UNGPs, this paper also examines other important voluntary initiatives such as CSR, codes of conduct and social audits.

II. Development of the Business and Human Rights Field and the Position of SMEs in this Field:

Business enterprises provide considerable benefits for economic and social development of countries by creating new jobs, alleviating poverty and improving the quality of life.⁸⁰ They also promote the fulfilment of certain rights and freedoms including the right to work, to health and food and freedom of association.⁸¹ On the other hand, business enterprises of all types,

⁷⁷ Terwindt and Saage-Maass (n 74) 2-3.

⁷⁸ Olga Martin Ortega, *Business and Human Rights in Europe, International Law Challenges: Due Diligence, Reporting and Transparency in Supply Chains* (Angelica Bonfanti ed, Routledge, 2018)

⁷⁹ The Provision of 54 of the Modern Slavery Act 2015 <<http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>> accessed 10 September 2019.

⁸⁰ Robert C. Bird, Danied R. Cahoy, Jamie Darin Prenkert (eds) *Law, Business and Human Rights: Bridging the Gap* (Edward Elgar 2014) page ix.

⁸¹ Baumann-Pauly and Nolan (n 1) 3.

‘large and small, domestic and international, public and private, and across all sectors’ have the potential to impact on a whole range of human rights adversely.⁸² They can lead to negative human rights impacts directly, by means of their operations, or indirectly, through their supply chains.⁸³

The adverse impacts of businesses can be both internal and external.⁸⁴ Examples of the internal impacts include poor health and safety conditions, the violations of right to health, restrictions of right to freedom of association, violations of the right to privacy of workers and customers by disclosing or selling their personal information and discriminative approaches to women or people who belong to specific ethnic or religious group, especially in recruitment process.⁸⁵

External impacts have a wider scope⁸⁶ and vary from the rights of the communities and groups such as indigenous people and the rights concerning with environmental issues.⁸⁷ Companies sometimes infringe the right to health and water by grabbing or polluting the land through their activities.⁸⁸ Some companies violate the indigenous people and individuals’ right not to be subjected to forced assimilation or destruction of their culture by compelling them to leave their lands to obtain an area for mining or other industrial projects.⁸⁹ Moreover, especially in conflict zones, some company activities can be seen as a war crime or crime against humanity ‘such as when a company manager provides a military officer with vehicles which allow the officer and his unit to get a village where they kill and rape civilians’.⁹⁰ In brief, business enterprises impacts can encompass the whole range of human rights including civil and political rights as well as economic, social and cultural rights.⁹¹ These impacts can be observed in all types and sizes of business enterprises, from transnational corporations to SMEs.⁹² For instance, according to a survey conducted by the UK Environment Agency, SMEs have the largest proportion in contributing the pollution, carbon dioxide emissions and commercial waste.⁹³

While human rights responsibilities have traditionally been considered regarding governments, business-related negative impacts have led to discussions on the responsibility of business enterprises since the mid-1990s.⁹⁴ These discussions have resulted in the emergence of the BHR debate.⁹⁵ At the international level, certain soft-law instruments have been introduced in line with this debate for determining the scope of human rights responsibilities of businesses

⁸² FRA Opinion (n 4) 18.

⁸³ Ibid., 19.

⁸⁴ Bernaz (n 1) 1.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ FRA Opinion (n 4) 18.

⁸⁸ Bernaz (n 1) 1.

⁸⁹ Bernaz (n 1) 2; UN Declaration on the rights of Indigenous Peoples, Article 8.

⁹⁰ Bernaz (n 1) 2.

⁹¹ Ibid.

⁹² The Guiding Principles 14, *Commentary*.

⁹³ Addo (n 17) 316; NetRegs, ‘SME-nvironment’ (2003) 1
<https://www.netregs.org.uk/media/1080/sme_2003_uk_1409449.pdf> accessed 10 September 2019.

⁹⁴ Wettstein, Giuliani, Santangelo, Stahl (n 11) 55.

⁹⁵ Bernaz (n 1) 1

and ‘exploring ways for corporate actors to be accountable for their activities leading to adverse human rights impacts.’⁹⁶ For instance, before the 1990s, the UN had already taken certain steps to regulate the business activities relating to human rights by adopting the Draft Code and establishing the Center on Transnational Corporations in 1974.⁹⁷ Besides the UN, the OECD had improved Guidelines for Multinational Enterprises in 1976.⁹⁸ Both the UN Draft Code and OECD Guidelines involved a paragraph relating to the corporate activities with human rights.⁹⁹ While the UN Draft Code and the UN Center was abandoned in 1993, ‘the OECD Guidelines have become one of the most important global codes on corporate responsibility and contain a full chapter on corporate human rights responsibility today, shaped on the 2011 UNGPs’.¹⁰⁰ In 2000, the UN launched the Global Compact, a global CSR initiative based on voluntary business membership.¹⁰¹ It was the first major international corporate responsibility action to put human rights centre-stage.¹⁰² Participated companies are expected to report actions taken in support of the principles of the Global Compact and publish their report publicly on the Global Compact website.¹⁰³ The aim of this initiative is encouraging businesses to ‘embrace, support and enact a set of core values in the areas of human rights, labour standards and environmental practices’.¹⁰⁴ However, it has been argued that this initiative does not put an effective pressure on businesses for taking expected actions in line with basic values.¹⁰⁵

The UN has continued to take initiatives in the BHR and its Sub-Commission on Human Rights attempted to develop an internationally-binding framework on human rights responsibility of businesses started in 1998, known as UN Draft Norms.¹⁰⁶ Although this attempt criticised especially by multinational corporations and was abandoned in 2004, it has made a significant contribution to the creation of the mandate of a UN Special Representative on business and human rights (SRSG), for which John Ruggie was appointed from 2005 to 2011.¹⁰⁷ The studies of SRSG has helped to the development of the BHR debate as an academic field.¹⁰⁸ John Ruggie introduced the ‘Protect, Respect and Remedy’ framework on BHR to the UN HRC in 2008.¹⁰⁹ The HRC unanimously accepted this framework in 2008 and extended the SRSG’s mandate until 2011 with the duty of ‘operationalising’ and ‘promoting’ the framework.¹¹⁰ In March 2011, Ruggie issued ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’ which was accepted by the UN

⁹⁶ Cernic and Santarelli (n 10) 186-187; Bonfanti (n 3) 1.

⁹⁷ Wettstein, Giuliani, Santangelo, Stahl (n 11) 55.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Simon Baughen, *Human Rights and Corporate Wrongs, Closing the Governance Gap* (Edward Elgar, 2015) 212.

¹⁰² Wettstein, Giuliani, Santangelo, Stahl (n 11) 55.

¹⁰³ Baughen (n 101) 212.

¹⁰⁴ Ibid., 214.

¹⁰⁵ Ibid.

¹⁰⁶ Wettstein, Giuliani, Santangelo, Stahl (n 11) 55.

¹⁰⁷ Ibid., 56.

¹⁰⁸ Ibid.

¹⁰⁹ Baughen (n 101) 228.

¹¹⁰ Ibid.

HRC in June 2011.¹¹¹ The endorsement of the UNGPs constitute a milestone in the debate of BHR¹¹² and make a significant contribution to the development of BHR into an interdisciplinary academic field.¹¹³ Although these principles have not the status of an international treaty and are not legally binding, they generate ‘a form of the multilevel and polycentric governance system in the field of BHR by establishing a set of global standards which cover all business enterprises and all human rights in all UN member states’.¹¹⁴

According to the first pillar of the UNGPs, states must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises, by taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.¹¹⁵ The second pillar recognised the responsibility of corporations to respect human rights, which applies to all enterprises from large and multinational corporations to SMEs.¹¹⁶ This responsibility requires that corporations should avoid infringing on the human rights of others and should address negative human rights impacts linked to their activities.¹¹⁷ In doing so, corporations must apply human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.¹¹⁸ This process also includes establishing policies by corporations to remedy adverse human rights impacts linked their business activities.¹¹⁹ Finally, the third pillar specified the responsibility of States to provide access to effective remedy through state-based judicial mechanisms, state-based non-judicial mechanisms and non-state-based grievance mechanisms.¹²⁰

The UNGPs clearly indicated that the responsibility to respect human rights is universal and applies to all business enterprises regardless of their size, sector, operational context, ownership and structure.¹²¹ On the other hand, the human rights responsibilities of SMEs have not been a central focus of the BHR field.¹²² According to the Addo, ‘SMEs have either been overlooked or not recognised, while the primary attention of business and human rights is focused on transnational enterprises’.¹²³ Similarly, international initiatives such as OECD Guidelines for Multinational Enterprises have paid more attention to larger corporations, rather than SMEs.¹²⁴ Since ‘most SMEs are relatively small and have most of their activities at home’,

¹¹¹ Baughen (n 101) 228; A/HRC/17/31 (n 9).

¹¹² ‘Non-state based non-judicial grievance mechanisms (NSBGM): An exploratory analysis’, Independent expert study by the Business and Human Rights Catalyst at University of Manchester, Alliance Manchester Business School, 13 July 2018, 3 <<https://www.ohchr.org/Documents/Issues/Business/ARP/ManchesterStudy.pdf>> accessed 10 September 2019.

¹¹³ Wettstein, Giuliani, Santangelo, Stahl (n 11) 56.

¹¹⁴ Alliance Manchester Business School, *Non-state based non-judicial grievance mechanisms* (n 112) 3.

¹¹⁵ The Guiding Principle 1.

¹¹⁶ The Guiding Principle 11

¹¹⁷ Ibid.

¹¹⁸ The Guiding Principle 15/b

¹¹⁹ Alliance Manchester Business School, *Non-state based non-judicial grievance mechanisms* (n 112) 3.

¹²⁰ Baughen (n 101) 239.

¹²¹ Baughen (n 101) 234; The Guiding Principles 14.

¹²² Addo (n 17) 313.

¹²³ Ibid.

¹²⁴ Ibid.

these initiatives do not put an emphasis on such enterprises.¹²⁵ Certain initiatives such as the Global Compact that basically involve all business enterprises, but in practice, these are unattractive to SMEs due to the challenging requirements that membership of the Global Compact imposes them.¹²⁶ In 2017, UN Working Group prepared a report on the issue of human rights and transnational corporations and other business enterprises and this report specifically examines the importance of SMEs regarding the UNGPs.¹²⁷

Besides international initiatives, there are certain approaches including CSR aiming to improve the human rights responsibilities of corporations. It should be noted that the debate of BHR evolved greatly in parallel to the CSR field, which plays a significant role for SMEs' human rights standards.¹²⁸ In order to broadly understand the improvement of corporate responsibility of human rights, particularly regarding SMEs, the next part of this dissertation firstly conducts a comparative analysis between BHR and CSR. Secondly, it examines the situation of SMEs in CSR concept.

III. A Comparative Analysis Between CSR and BHR and the Situation of SMEs in CSR Concept:

CSR is an umbrella term to 'describe the complex and multi-faceted relationships between business and society and to account for the economic, social and environmental impacts of business activity in the developing world'.¹²⁹ CSR emphasises on voluntary or optional responsibility, 'as praiseworthy behaviour and goodwill beyond the call of duty'.¹³⁰ This concept emphasizes that the obligations of enterprises not only include making a profit but also include social problems.¹³¹ It often promotes companies to adopt and share best practices, and to create value.¹³² Therefore, it has a wider scope than BHR field.¹³³ CSR defines responsibilities of corporations largely without reference to the responsibilities of the states.¹³⁴ Therefore, separation of public and private domains is clear in the CSR approach.¹³⁵ But the BHR blurs the division of these domains and its views that the responsibilities of corporates should be in line with state obligations to protect human rights.¹³⁶ The normative reference point of CSR field is undefined and diverse, unclear relation to domestic laws, while BHR field is based on human rights norms as an internationally agreed normative framework, takes precedence over domestic laws.¹³⁷ That is, BHR emerged from the legal discourse, while CSR based on management studies.¹³⁸ While most CSR activities exclusively engage in corporate

¹²⁵ Ibid., 314.

¹²⁶ Ibid.

¹²⁷ A/HRC/35/32 (n 32).

¹²⁸ Baumann-Pauly and Nolan (n 1) 78-79.

¹²⁹ Jamali, Lund-Thomsen, Jeppesen (n 50) 11.

¹³⁰ Wettstein, Giuliani, Santangelo, Stahl (n 11) 57.

¹³¹ Bernaz (n 1) 3.

¹³² Bernaz (n 1) 3.

¹³³ Ibid.

¹³⁴ Baumann-Pauly and Nolan (n 1) 81.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Wettstein, Giuliani, Santangelo, Stahl (n 11) 57.

¹³⁸ Ibid., 55.

responsibilities, the UNGPs handle both state and business responsibilities ‘in an integrated way.’¹³⁹ Thereby, states confront incentives and pressures to address the BHR with an active role rather than being the only observer and therefore many governments have developed appropriate policies concerning with the BHR debate, such as National Action Plans.¹⁴⁰ As the CSR brings voluntary policies, opportunistic and ad hoc implementation of standards may not create specific problems.¹⁴¹ However, the BHR and especially the UNGPs’ tools such as human rights due diligence, require a deliberate strategy and hence awareness of the UNGPs play a significant role in corporate responsibility to respect human rights.¹⁴²

When it comes to the situation of SMEs in CSR studies, CSR is not a new concept for SMEs.¹⁴³ A large proportion of SMEs has been taken part in CSR activities, with half of European SMEs currently involved in external socially responsible activities.¹⁴⁴ However, most CSR practices are designed basically for large companies that have sufficient human and financial resources to implement the required procedures into their business activities.¹⁴⁵ Moreover, information about CSR practices in SMEs that are embedded in global supply chains is particularly limited.¹⁴⁶ A study which compares SMEs and multinational corporations in respect of implementing CSR policies has found that the latter is more enhanced in making public commitments and publishing reports in line with CSR.¹⁴⁷ Conversely, SMEs are particularly enhanced in implementing the policies of CSR in organisational processes and procedures¹⁴⁸, while some characteristics of them restrict external communication and reporting about CSR.¹⁴⁹ The informal management approaches in SMEs make it difficult to reporting expectation of stakeholders regarding the implementation of CSR.¹⁵⁰ Unlike multinational corporations, SMEs have generally informal reporting mechanisms, based on the face-to-face interaction with stakeholders rather than formal written accounts such as annual CSR reports and thus meeting the demand of formal reporting requirements for CSR is difficult for SMEs in general.¹⁵¹

On the other hand, some organisational characteristics of small companies provide an opportunity for promoting the internal implementation of CSR practices in their operations.¹⁵² For instance, SMEs’ owners and founders tend to build organisations that comply with their philosophies, values and aspirations and thus they can implement required CSR policies.¹⁵³

¹³⁹ Baumann-Pauly and Nolan (n 1) 81.

¹⁴⁰ Ibid.

¹⁴¹ Addo (n 17) 322.

¹⁴² Ibid.

¹⁴³ European Commission, ‘Opportunity and Responsibility’: How to Help More Small Businesses to Integrate Social and Environmental Issues into What They Do’ (2007) 8.

¹⁴⁴ Addo (n 17) 316.

¹⁴⁵ Baumann-Pauly, Wickert, Spence, Scherer (n 66) 693.

¹⁴⁶ Ibid., 694.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid., 693.

¹⁵⁰ Ibid., 694.

¹⁵¹ Ibid., 701.

¹⁵² Ibid., 693.

¹⁵³ Jamali, Lund-Thomsen, Jeppesen (n 50) 12.

SMEs have close relationships with communities, employees and local institutions and this relationship provide SMEs to have a higher understanding of local cultural and political issues, which may improve their socially responsible practices.¹⁵⁴ According to the study related to CSR implementation in SMEs, such enterprises have been reported to demonstrate a high level of employee awareness of CSR issues, especially those that emerged because of their connection with global supply chains, including labour rights problems and states' weak regulation of the latter.¹⁵⁵ In this study, participated SMEs demonstrated that 'even small businesses can be innovators for their entire industry in terms of disclosure and transparency'.¹⁵⁶ This study also reported that SMEs' small size and low organisational complexity make it easier to spread CSR awareness for SME employees.¹⁵⁷

Such several characteristics of SMEs, which reflect positively to CSR practices, can also become an advantage in implementing the UNGPs.¹⁵⁸ Therefore, there is a need for reviewing which characteristics of SMEs are positive or negative in the implementation of UNGPs.¹⁵⁹ The next section of this dissertation details the specific challenges and opportunities of SME which result from their characteristics.

IV. Challenges and Opportunities of SMEs in Implementing the UNGPs:

Specific characteristics of SMEs make it difficult to fulfil their human rights responsibilities recognised by the UNGPs. Particularly, the lack of consistent definition of SMEs and the existence of factors that divide these enterprises such as geography, sector, operating contexts, development levels and governance make it difficult to identify a typical enterprise or a typical human rights footprint to specify how business and human rights interact.¹⁶⁰

The informal economy, defined as producing legal goods and services without any declaration to the public authorities¹⁶¹, is widespread in SMEs.¹⁶² The economy can be informal in two main ways.¹⁶³ The first way is that the existence of a workplace or company is not notified to authorities, while the second is that the lack of a legally binding employment contract with the workers and the employer.¹⁶⁴ In the latter, workers' social security contributions are not paid by the employer.¹⁶⁵

¹⁵⁴ A/HRC/35/32, 2017 (n 32) para. 22; Jamali, Lund-Thomsen, Jeppesen (n 50) 12.

¹⁵⁵ Baumann-Pauly, Wickert, Spence, Scherer (n 66) 698.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ A/HRC/35/32, 2017 (n 32) para. 22.

¹⁵⁹ Addo (n 17) 317.

¹⁶⁰ A/HRC/17/31 (n 9) Introduction to the Guiding Principles, para. 5.

¹⁶¹ Emre Eren Korkmaz, 'How do Syrian refugee workers challenge supply chain management in the Turkish garment industry?' (2017) No. 133, International Migration Institute (IMI), Working Papers Series, 5-6; Eurofound, Tackling undeclared work in Turkey (Dublin, 2013) 5.

¹⁶² ILO, Small and Medium-sized Enterprises and Decent and Productive Employment Creation (n 16) para 10.

¹⁶³ Korkmaz (n 161) 6.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

In most developing countries, informal SMEs are higher than the number of formal enterprises of the same size.¹⁶⁶ The evidence shows that there are 420 to 510 million SMEs globally, of which 9 per cent are formal SMEs, excluding micro-enterprises, and 80–95 per cent are in low- and middle- income countries.¹⁶⁷ According to the findings of the ILO in non-agricultural employment, there are nearly 375 million people in the informal economy, including 29 per cent of whom are women and 71 per cent men.¹⁶⁸ Among these, 156 million are self-employed in the informal economy (34 per cent women and 66 per cent men).¹⁶⁹ The high number of SMEs in the informal economy presents particular difficulties in implementing the UNGPs.¹⁷⁰

The results of the informal economy vary for different groups.¹⁷¹ For instance, authorities may lose the tax revenues, while consumers may purchase unsafe products resulting from a lack of official audits.¹⁷² The consequence for workers is more significant in terms of human rights as employees in informal economies tend to work under poor health and safety conditions, with excessive working hours and low wages. By and large, the informal economy is specified as business enterprises which have exploitative conditions for workers, including using child labour, discrimination and increased risk of occupational accidents.¹⁷³ Employees of informal economies generally cannot enjoy the fundamental rights and freedoms such as freedom of association and unionisation.¹⁷⁴ They ‘do not have legal and social protection through their work and are generally not unionised, and their working conditions more easily escape the oversight of labour inspectorates’.¹⁷⁵ Implementing, tracking and enforcing human rights standards are more difficult and more expensive as businesses in the informal economy has generally diffused and unorganised structure.¹⁷⁶ Therefore, there is a clear connection between the informal economy and a huge risk in occurring business-related human rights abuses as businesses in the informal economy conduct their operations without legal and regulatory frameworks.¹⁷⁷ Even in circumstances where companies are part of a formal structure, workers cannot enjoy the most fundamental rights and freedoms or protections and thus it can be argued that businesses in the informal economy are less likely to devote their limited resources for preventing and addressing adverse human rights impacts.¹⁷⁸ Hence, the implementation of the UNGPs gets difficult in SMEs.¹⁷⁹

¹⁶⁶ ILO, *Small and Medium-sized Enterprises and Decent and Productive Employment Creation* (n 16) para 10.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ A/HRC/35/32 (n 32) para. 10.

¹⁷¹ Korkmaz (n 161) 6.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ A/HRC/35/32 (n 32) para. 10.

¹⁷⁶ A/HRC/35/32 (n 32) para. 10; Addo (n 17) 318.

¹⁷⁷ A/HRC/35/32 (n 32) para. 10; Addo (n 17) 318.

¹⁷⁸ Addo (n 17) 318.

¹⁷⁹ A/HRC/35/32 (n 32) para. 10.

Another significant characteristic of SMEs which create challenges for implementing the UNGPs is resource poverty.¹⁸⁰ Most SMEs lack access to financial services; ‘between 45 and 55 per cent of those that are formally registered do not have access to formal institutional loans or overdrafts, despite a need for such facilities and the fact that these enterprises provide 45 per cent of total employment in the developing world’.¹⁸¹ Poverty relates to not only financial resources but also to the areas of knowledge, expertise and trained or qualified staff.¹⁸² The salary of an owner-manager represents a much larger portion of income than in a larger company, meaning that there may be insufficient resources to pay for additional professional staff with a mandate to supervise SMEs’ compatibility with the responsibility to respect human rights.¹⁸³ They may not have the capacity to ‘afford to pay for the kind of professional services, including accounting and reporting, that new initiatives may require’.¹⁸⁴

A survey conducted by the International Organization of Employers and ILO in 2016 confirmed the lack of sufficient resources in SMEs. According to the result of this survey, most indicated challenge faced by SMEs was the lack of resources (46%), a lack of clarity in their obligations in view of government duties (36%), ‘national law not being enforced in practice’ (36%), difficulties with operating in situations where basic economic, ecological and social standards are not in the scope of national law (31%) and challenges in translating policy commitments into relevant operational procedures (29%).¹⁸⁵

Additionally, the smaller size of SMEs creates specific difficulties.¹⁸⁶ The relatively lower number of workers provides ‘an organisational structure that tends to be more organic compared to a more bureaucratic structure in large firms’.¹⁸⁷ This situation can cause the lack of standardisation and the community of loose and informal business relationships where staff development is limited.¹⁸⁸

In this smaller structure, a single person - the owner-manager - is dominant in SMEs in general and tends to be an entrepreneur.¹⁸⁹ The disadvantage of this organisational situation is convincing the entrepreneurs to commit to new responsibility initiatives such as the UNGPs can be difficult as they may not even be aware of the existence of these initiatives or ‘where they may be aware of them have rather limited understanding of their implications’.¹⁹⁰ Hence, ‘they will be unable to share the necessary vision for change’.¹⁹¹ Moreover, even where awareness exists, SMEs tend to prioritize internal human rights issues including the right to

¹⁸⁰ Addo (n 17) 323.

¹⁸¹ A/HRC/35/32 (n 32) para. 11.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid., para. 12.

¹⁸⁵ ILO, ‘SMEs and Human Rights, What is the current state of play, what are the opportunities and challenges, what kind of support is needed?’ (n 39) 4.

¹⁸⁶ Addo (n 17) 319.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid., 320.

¹⁹¹ Ibid.

work, freedom of association, and prohibition of discrimination, while neglecting external human rights concerns including free community consultation.¹⁹²

On the other hand, several characteristics of SMEs can become an advantage in implementing the corporate responsibility to respect human rights. For instance, although the smaller size of SMEs leads to certain challenges in this aspect, it can be positive in certain circumstances. The smaller structure provides ‘one central figure is that there is one easily identifiable person who will be aware of all of the business’s operations’.¹⁹³ This structural feature can be a useful tool for the implementation of the UNGPs by the company, as the owner-manager is generally easy to identify, and his or her reach and power in the business provide them to be an ideal implementer.¹⁹⁴ This advantage does not exist in larger corporations and therefore they have to set up a committee to view the company’s compliance with human rights.¹⁹⁵ Moreover, ‘SMEs are usually locally owned and controlled and can therefore strengthen the extended family, as well as other social systems and cultural traditions’.¹⁹⁶ Especially, family-owned SMEs tend to present strong ethical and philanthropic approaches, which can contribute to adopting a wider strategy to respect human rights.¹⁹⁷

Besides the structural opportunities, SMEs play a significant role in the economic growth and social developments both of the developing and developed countries as they contribute to job creation and poverty alleviation.¹⁹⁸ ‘SMEs are more labour-intensive than large business enterprises and often have a greater capacity to absorb labour, including unskilled labour’.¹⁹⁹ They generally represent a significant source of employment for vulnerable or marginalised groups and individuals who often face exclusion in employment in large businesses such as elderly people, women and ethnic minorities.²⁰⁰ For such groups, self-employment and ownership of small businesses can be the way for involving in business life.²⁰¹ According to the ILO report published in 2015, the ratio of SMEs owned by women is on average 25 per cent.²⁰² This report has indicated that ‘the number of owned by women is growing faster than those owned by men’ and the average turnover of enterprises owned by the female is only a fraction of those owned by men.²⁰³ In developing countries, it is estimated that there are 8–10 million formal female-owned SMEs, which constitutes approximately a third of all formal SMEs.²⁰⁴ For smaller sized enterprises, a third of are owned by women and only 20 per cent of medium-sized enterprises.²⁰⁵ Although female entrepreneurs have been reported that they are

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ A/HRC/35/32 (n 32) para. 21.

¹⁹⁷ Ibid.

¹⁹⁸ Jamali, Lund-Thomsen, Jeppesen (n 50) 12.

¹⁹⁹ A/HRC/35/32 (n 32) para. 21.

²⁰⁰ A/HRC/35/32 (n 32) para. 22; A/HRC/17/31 (n 9) Introduction to the Guiding Principles, para. 7.

²⁰¹ A/HRC/35/32 (n 32) para. 21.

²⁰² ILO, *Small and Medium-sized Enterprises and Decent and Productive Employment Creation* (n 16) para 12.

²⁰³ Ibid.

²⁰⁴ Ibid., para 13.

²⁰⁵ Ibid.

more likely to operate in the informal economy,²⁰⁶ it has been assumed that women-owned SMEs represent a significant share of the total SME population and make great contributions to employment and income generation.²⁰⁷ This situation important for ensuring fundamental principles and rights at work for women.

Another specific feature of SMEs which provides an opportunity in implementing the UNGPs is the flexibility of such enterprises.²⁰⁸ It has been acknowledged that SMEs are more flexible than large corporations and this feature enables SMEs to respond better to changes in the social environment.²⁰⁹ ‘SMEs can often be more flexible and responsive to customer needs than large firms’.²¹⁰ They have the capacity to combine resources and share the costs of training, research, and marketing with other companies of a similar size and industry.²¹¹ Their goods tend to adopt local technology and are more likely to meet the needs of poor people than the goods of large corporations and foreign technology, and they can also quickly implement new technologies to gain an advantage over large companies.²¹² This flexibility can make a contribution to adapt new policies regarding fulfilling SMEs’ human rights responsibilities in line with the Guiding Principles.²¹³ Thanks to this flexibility, strategies of SMEs ‘are often intuitive and opportunistic’.²¹⁴

Besides own characteristics of SMEs that reflect positively in implementing the UNGPs, it should also be indicated that SMEs ‘do not operate in a vacuum’²¹⁵ and many of them will maintain relationships with other business enterprises.²¹⁶ SMEs can be in connection with large corporations through informal or general links for improving their adaptation to the market with the expectance of obtaining additional business networks.²¹⁷ This connection is particularly important for SMEs operating in sectors dominated by large enterprises.²¹⁸

Moreover, SMEs are part of the global supply chain relationship, as buyers and as suppliers.²¹⁹ A survey conducted by the UK on the SMEs’ relationship between large businesses have reported that ‘77 per cent of SMEs considered that they were part of a supply chain’ and ‘in 30 per cent of cases, the largest supply relationship contributed between a quarter and a half of total turnover’.²²⁰ In the survey, the role of SMEs in the supply chain is generally viewed as

²⁰⁶ Ibid.

²⁰⁷ Ibid., para 52.

²⁰⁸ Addo (n 17) 326.

²⁰⁹ A/HRC/35/32 (n 32) para. 23; Addo (n 17) 326.

²¹⁰ Addo (n 17) 326.

²¹¹ Ibid.

²¹² Ibid.

²¹³ A/HRC/35/32 (n 32) para. 23.

²¹⁴ Addo (n 17) 326.

²¹⁵ Ibid., 327.

²¹⁶ Ibid.

²¹⁷ A/HRC/35/32 (n 32) para. 35; Addo (n 17) 328.

²¹⁸ Addo (n 17) 328.

²¹⁹ ILO, ‘SMEs and Human Rights, What is the current state of play, what are the opportunities and challenges, what kind of support is needed?’ (n 39) 3.

²²⁰ A/HRC/35/32 (n 32) para. 35; Dougal Jamieson, Samantha Fettiplace, Cat York and Eileen Lambourne, Paul Braidford and Ian Stone, ‘Large Businesses and SMEs: Exploring how SMEs interact with large businesses’ (2012) ORC International, 5.

‘utilising their ability to provide a niche product or service that larger businesses are unable to provide themselves or cannot provide as cheaply’.²²¹

This supply chain relationship between an SME as a supplier and larger company as a purchaser can become an advantage in implementing the UNGPs by the smaller businesses because larger companies have the capacity to assist smaller business enterprises in fulfilling their human responsibilities by applying human rights due diligence among their supply chains.²²² Larger companies can encourage SMEs in the supply chain to advance technological and human capital.²²³ They ‘may use a command and control structure toward small suppliers’ and depending on their power, ‘SMEs will either accept command and control imposition by large firms or strive for better negotiation terms, based on their unique strengths.’²²⁴ According to the result of the mentioned survey in the above paragraph, 15 per cent of SMEs received some mentoring programmes from larger businesses as the latter aimed to improve productivity through their supply chains.²²⁵ SMEs’ connection with larger companies can create advantages in mitigating specific challenges that SMEs’ resource poverty may cause for the BHR agenda.²²⁶ Moreover, sometimes human rights criteria become a precondition for tendering a supply chain and this situation may improve human rights standards in smaller enterprises.²²⁷ For instance, some SMEs risked exclusion from supply chains as they did not engage in CSR activities.²²⁸ Therefore, it has been argued that ‘supply chain pressures are proving to be a more powerful force for social and environmental change than local regulation’.²²⁹

Meanwhile, in the supply chain relationship, the role of SMEs is not limited to be a mere supplier. ‘The same supply chain actor might be a supplier and a purchaser at the same time with varying degrees of market power in each position’.²³⁰ That is, SMEs can have long and complicated supply chains that ‘extend across national boundaries, or may service foreign customers, but are based in one nation’.²³¹ They can supply raw materials, manufacture goods and then distribute finished productions to customers.²³² SMEs are generally ‘seen as specialising in intermediate inputs, often acting as subcontractors several levels down from the ultimate buyer’.²³³ Therefore, it is worth mentioning SMEs’ role as a retailer - besides their

²²¹ Addo (n 17) 328.

²²² Addo (n 17) 327; Goethals, Bardwell, Bhacker, Ezzelarab (n 56) 341-342.

²²³ Addo (n 17) 328.

²²⁴ Paul Hong and Jungsik Jeong, Supply Chain Management Practices of SMEs: From a Business Growth Perspective, *Journal of Enterprise Information Management*, Vol. 19 No. 3, 2006 pp. 292-302, 294.

²²⁵ Addo (n 17) 328.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Improving Paths to Business Accountability for Human Rights Abuses in the Global Supply Chains (n 60) 5.

²³¹ Denis G Arnold, ‘Corporations and Human Rights Obligations’, *Business and Human Rights Journal*, 1 (2016), pp. 255–275, 256; Marino Donati, Small firms ignorant of Modern Slavery Act, *Supply Management*, 29 March 2016, <<https://www.cips.org/en-ME/supply-management/news/2016/march/small-firms-ignorant-of-modern-slavery-act/>> assessed 10 September 2019.

²³² Paul Hong and Jungsik Jeong, ‘Supply Chain Management Practices of SMEs: From a Business Growth Perspective’ (2006) Vol 19:3, *Journal of Enterprise Information Management*, 292-302, 293.

²³³ ACCA, ‘Small Business: A Global Agenda’ (n 70) 22.

position as a supplier - since SMEs will be influential in mitigating business-related human rights risks in the supply chains.²³⁴ Even though large companies may exert more influence on their supply chains, SMEs can also affect their suppliers on human rights in cascade by taking certain steps.²³⁵ The scope of the steps that SMEs need to take will depend on the nature and complexity of their supply chain relationships.²³⁶ SMEs which operate in high-risk sectors such as agriculture, telecommunications, hospitality and the manufacturing of electronics and consumer goods should take particular care.²³⁷ It is a clear fact that SMEs ‘do not have the same resources as larger businesses but there are simple strategies that can be applied’.²³⁸ In brief, it is an arguable fact that relationships between larger corporations and SMEs will be effective in eliminating addressing business-related adverse human rights in the supply chain.²³⁹

On the other hand, in practice, poor working conditions are common in supply chains, including SME business type.²⁴⁰ In such circumstances, the UNGPs accept that corporate ‘responsibility to respect human rights goes beyond the bounds of the enterprise to reach extended networks of third parties’.²⁴¹ These principles expect buyers to ‘prevent or mitigate adverse human rights impacts that are directly linked to their business relationships including their supply chains’.²⁴²

In parallel with this expectation and as a result of pressures from human rights advocates and other voluntary initiatives such as CSR, corporations have applied certain methodologies such as codes of conduct and social auditors to improve human rights standards in their supply chains. In the next section, this dissertation examines these methodologies by giving certain practical examples. But before doing this, the supply chain relationship and widespread poor human rights standards among supply chains are detailed.

V. Impacts of Voluntary Initiatives Conducted by Purchaser Corporations on Their Supply Chains

With the effect of globalisation, companies do not completely produce their outputs themselves within the boundaries of their domiciled country.²⁴³ Especially corporations in the global North

²³⁴ Marino Donati, Small firms ignorant of Modern Slavery Act, Supply Management, 29 March 2016, <<https://www.cips.org/en-ME/supply-management/news/2016/march/small-firms-ignorant-of-modern-slavery-act/>> accessed 10 September 2019; Hong and Jeong (n 232) 294.

²³⁵ Hong and Jeong (n 232) 294.

²³⁶ Anthony Macpherson, How will the Modern Slavery Act Affect SMEs?, 18 April 2016 <<https://www.kingsleynapley.co.uk/insights/blogs/corporate-and-commercial-law-blog/how-will-the-modern-slavery-act-affect-smes>> accessed 10 September 2019

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Donati (n 234).

²⁴⁰ Improving Paths to Business Accountability for Human Rights Abuses in the Global Supply Chains (n 60) 5.

²⁴¹ Justine Nolan, ‘Business and human rights: The challenge of putting principles into practice and regulating global supply chains’ (2017) Vol 42:1, *Alternative Law Journal*, 2017, 42–46, 43.

²⁴² The Guiding Principle 13/b.

²⁴³ Andreas Rühmkorf, ‘Corporate Social Responsibility, Private Law and Global Supply Chains’ (Edward Elgar 2015) 79.

and West distribute their production to suppliers in developing and transitional countries in order to reduce cost.²⁴⁴ To do this, they have developed the supply chain system, generally defined as ‘the series of companies, including suppliers, customers, and logistics providers that work together to deliver a value package of goods and services to the end customer’.²⁴⁵ Therefore, the supply chain relationship encompasses the seller of the good as well as manufacturer, retailers, transporters and sub-suppliers.²⁴⁶ In most industries, large corporations currently rely on a series of contractors and suppliers in a range of countries to produce and transport their goods.²⁴⁷ This system is widespread especially in labour-intensive manufacturing sectors such as garment and food sectors.²⁴⁸ The buyers in this supply chain relationship generally consist of multinational corporations.²⁴⁹

In general, retailer companies tend to prefer suppliers in low-labour-cost countries which have weak regulation in terms of labour rights.²⁵⁰ This situation leads to negative human rights impacts in supply chains particularly in labour-intensive sectors.²⁵¹ Examples of these impacts include forced labour, child labour, sexual harassment and discrimination.²⁵² Employees of supply chains have been reported to struggle poor working conditions with excessive working hours and low wages.²⁵³ When they face injury or illness because of the work, workers generally do not receive proper compensation.²⁵⁴ In April 2013, the collapse of the Rana Plaza Building in Bangladesh, which killed more than 1100 people, considerably drew attention on the working conditions of employees of factories.²⁵⁵ Besides the violations of labour rights, some activities of suppliers’ factories can contaminate the environment through poor manufacturing standards.²⁵⁶

Certain multinational brands have been accused of neglecting poor human rights standards in their supply chains. English food and drug supermarket multinational Tesco, the world’s third-largest retailer, has supply chains in more than 70 countries, especially in Asia including Bangladesh, Cambodia, Indonesia, China, Thailand and India.²⁵⁷ While Tesco has taken certain actions in terms of wages in its supply chains, ‘including becoming the first retailer to promise a living wage to banana workers by 2017, this did not contain workers in its apparel supply chains’.²⁵⁸ In 2015, Tesco was infamized as it sourced prawns from the Thai-based CP Food,

²⁴⁴ Ibid.

²⁴⁵ Michael J Maloni and Michael E. Brown, Corporate Social Responsibility in the Supply Chain: An Application in the Food Industry, *Journal of Business Ethics* (2006) 68:35–52, 36

²⁴⁶ Andreas Rühmkorf, ‘Global Supply Chain Governance: The Search for What Works’ (2018) 23 *Deakin Law Review*, 63-82, 64.

²⁴⁷ Nolan (n 241) 42.

²⁴⁸ Rühmkorf (n 243) 80.

²⁴⁹ Ibid.

²⁵⁰ ITUC Frontlines Report (n 59) 8.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Rühmkorf (n 243) 80.

²⁵⁶ Ibid.

²⁵⁷ ITUC Frontlines Report (n 59) 29.

²⁵⁸ Ibid.

which bought productions from suppliers relating to Burmese slave labour.²⁵⁹ While other buyers cut off relations with CP Foods, Tesco maintained its supplier relationship by arguing that ‘it preferred to work with suppliers and audit all Thai shrimp feed mills involved in the UK supply base and associated supply chains’.²⁶⁰

In the garment sector, Swedish-based multinational H&M consists of the world’s second-largest clothing retailer with a supply chain involving 1.6 million workers.²⁶¹ Its goods are outsourced to around 900 suppliers across nearly 2,000 factories, particularly in China, Bangladesh, Myanmar, Cambodia, Hong Kong and Indonesia.²⁶² While the company has taken steps for certain human rights issues such as supply chain transparency and collective bargaining in suppliers’ factories, the company has been criticised with allegations that it fails to provide living wages in practice.²⁶³

In the industry sector, The German multinational Siemens, Europe’s largest engineering company has also supply chain relationship with factories particularly in developing countries including China, Indonesia and the Philippines.²⁶⁴ Even though Siemens has taken steps for enhancing labour rights standards, it accused of involving in a price-fixing cartel and having to pay a fine for bribery.²⁶⁵ However, there are still problems regarding the issues of transparency and decent wages.²⁶⁶

The negligent approaches of transnational retailers, including but not limited to these examples, have attracted the attention of certain groups - including trade unions, non-governmental organisations, civil society groups and consumers - during the last two decades and several campaigns have been launched by these groups in order to exert pressure on transnational corporations to address poor human rights standards in their supply chains.²⁶⁷ In this process, the reputation of especially well-known brands was destroyed.²⁶⁸ In response to the increasing pressure, many corporations have attempted to implement CSR policies into their supply chains by developing their own codes of conduct.²⁶⁹ Companies can also adopt a code developed by a third party which contains the company’s policy on CSR.²⁷⁰

A code of conduct, ‘that is a set of written principles, guidelines or standards’, which are expected to ensure socially and environmentally ‘responsible business practices throughout the

²⁵⁹ Ibid.

²⁶⁰ Ibid.

²⁶¹ Ibid., 21

²⁶² Ibid.

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ Ibid., 28

²⁶⁶ Ibid.

²⁶⁷ Rühmkorf (n 243) 81; Pamela K. Robinson ‘Do Voluntary Labour Initiatives Make a Difference for the Conditions of Workers in Global Supply Chains?’ *Journal of Industrial Relations*, 52(5) 561–573, 564.

²⁶⁸ Robinson (n 264) 564.

²⁶⁹ Esben Rahbek Pedersen and Mette Andersen, ‘Safeguarding corporate social responsibility (CSR) in global supply chains: how codes of conduct are managed in buyer-supplier relationships’ (2006) *Journal of Public Affairs*, 228-240, 228; A/HRC/35/32 (n 32) para. 32.

²⁷⁰ Rühmkorf (n 243) 81.

chain – from the supplier of raw materials to final end-users’.²⁷¹ It generally consists of contracts between a retailer company.²⁷² Codes of conduct impose requirements concerning with a wide range of human rights issues, including child labour, forced labour, wages and benefits, working hours, disciplinary practices, the right to freedom of association, health and safety and environmental practices.²⁷³ These requirements must be fulfilled by all suppliers including SME business type with which they conduct business.²⁷⁴ They are generally based on the values and principles derived from international conventions and standards, such as the UN Global Compact or the ILO Declaration on Fundamental Principles and Rights at Work.²⁷⁵ The number of codes of conduct has grown considerably since the early 1990s.²⁷⁶

Some international well-known brands have drafted codes of conduct for their supply chains.²⁷⁷ For instance, personal goods retailer Unilever developed ‘Code of Business Principles and Code Policies’.²⁷⁸ These codes have a clause stated that ‘Unilever companies and employees are required to comply with the laws and regulations of the countries’ in which they operate.²⁷⁹ The codes also emphasise supply chain relationship by stating that ‘Unilever is developing new business practices to grow our company and communities, by doing business in a manner that improves lives of workers across our supply chain, their communities and the environment, consistent with the Unilever Sustainable Living Plan.’²⁸⁰ Unilever’s codes of conduct include a wide range of human rights issues such as anti-bribery, occupational health and safety, respect, dignity and fair treatment, protection of personal data and privacy.²⁸¹

Another example, Vodafone, in the telecommunication sector, developed codes of conduct demonstrating the requirements that every single person working for and with Vodafone must comply with, including its employees, directors, contractors, subsidiaries, joint ventures and suppliers.²⁸² These codes expect from their suppliers to uphold the same standards²⁸³ and state that ‘there are very serious there are very serious consequences for not complying with our

²⁷¹ Pedersen and Andersen (n 266) 229.

²⁷² Mette Andersen and Tage Skjoett-Larsen, ‘Corporate social responsibility in global supply chains’ (2009) Vol 14:2, *Supply Chain Management: An International Journal*, 75–86; 78.

²⁷³ Ivanka Mamic, Managing Global Supply Chain: The Sports Footwear, Apparel and Retail Sectors, *Journal of Business Ethics* (2005) 59: 81-100, 81.

²⁷⁴ A/HRC/35/32 (n 32) para. 32.

²⁷⁵ Andersen and Skjoett-Larsen (n 272) 78.

²⁷⁶ *Ibid.*, 77.

²⁷⁷ Terwindt and Saage-Maass (n 74) 2.

²⁷⁸ Unilever, ‘Code of Business Principles and Code Policies’ <https://www.unilever.com/Images/code-of-business-principles-and-code-policies_tcm244-409220_en.pdf> accessed on 10 September 2019.

²⁷⁹ *Ibid.*, 6.

²⁸⁰ *Ibid.*, 35.

²⁸¹ *Ibid.*, 2.

²⁸² Vodafone, ‘Our Code of Conduct Doing What’s Rights’ p. 4 <<https://www.vodafone.com/content/dam/vodafone-images/about-us/code-of-conduct/160419-FINAL-EXTERNAL-VERSION-Vodafone-Code-of-Conduct.pdf>> accessed on 10 September 2019.

²⁸³ *Ibid.*, 39.

Code of Conduct'.²⁸⁴ Vodafone's codes include health and safety, the right to privacy and anti-bribery clauses.²⁸⁵

On the other hand, codes of conduct often come under criticism in different aspects. They are generally criticised for being non-binding.²⁸⁶ It has been argued that 'codes of conduct exist but are purely voluntary and brands are under no legal obligation to act on the findings of audits of their suppliers, which are confidential and not subject to any independent verification'.²⁸⁷ There are several difficulties to the management and control of codes of conduct in global supply chains.²⁸⁸ Moreover, 'it is difficult to enforce codes of conduct in global supply chains because the involved companies are separated geographically, economically, legally, culturally and politically'.²⁸⁹ Hence, both multinational and supplier type business enterprises have struggled and continue to struggle with the issues of the implementation of their codes of conduct.²⁹⁰ Codes of conduct are often in the absence of efficient monitoring systems to determine compliance with these codes.²⁹¹

Human rights advocates soon forced corporations to demonstrate their conformity to the codes' standards they had adopted.²⁹² In line with the calls for independent, civil society-based forms of workplace assessments, audit mechanisms which can include ethical and social audit have started to include in codes of conduct to measure employer compliance with code standards.²⁹³ An ethical audit evaluates a company's systems, its documentation and facilities against the Ethical Trading Initiative (ETI) Base Code, as well as local laws.²⁹⁴ 'A social audit is defined as 'a workplace assessment conducted over just a few days by one auditor or an auditing team'.²⁹⁵ Social audits may help a company to monitor its internal progress in improving working conditions²⁹⁶ by investigating documentaries from the company to check whether the company's operations are compatible with labour standards.²⁹⁷ Social audits include physical inspection to examine whether there is sufficient measures for providing health and safety at work such as functioning emergency exists, ventilation, cleanliness, and safety equipment.²⁹⁸ There are also interviews conducted with management and employees to

²⁸⁴ Ibid., 4.

²⁸⁵ Ibid., 2.

²⁸⁶ Rühmkorf (n 243) 82.

²⁸⁷ Baughen (n 101) 221.

²⁸⁸ Pedersen and Andersen (n 269) 228.

²⁸⁹ Ibid.

²⁹⁰ Mamic (n 273) 82

²⁹¹ Pedersen and Andersen (n 269) 231.

²⁹² Clean Clothes Campaign (CCC), 'Looking for a quick fix: How weak social auditing is keeping workers in sweatshops' (Amsterdam 2005) 12.

²⁹³ Genevieve Lebaron and Jane Lister, Benchmarking Global Supply Chains: The Power of the 'Ethical Audit' Regime, *Review of International Studies* (2015), 41, 905–924, 905; Don Wells, 'Too Weak for the Job, Corporate Codes of Conduct, Non-Governmental Organizations and the Regulation of International Labour Standards' *Global Social Policy* (2007) vol. 7(1): 51–74; 52; CCC: Looking for a quick fix: How weak social auditing is keeping workers in sweatshops' (n 292) 12.

²⁹⁴ Verner Wheelock Associates Training Blog, 'Ethical Audits – What they are and why you need one' (2018) < <https://www.vwa.co.uk/blog/news/5914/>> accessed 10 September 2019.

²⁹⁵ Terwindt and Saage-Maass (n 74) 3.

²⁹⁶ CCC: Looking for a quick fix: How weak social auditing is keeping workers in sweatshops' (n 292) 19.

²⁹⁷ Terwindt and Saage-Maass (n 74) 3.

²⁹⁸ Ibid.

review whether the basic human rights standards are applied in practice.²⁹⁹ A company can conduct the audit itself, or it can engage with a social auditing firm can for carrying out the audit.³⁰⁰

On the other hand, evidence has suggested that audits are ‘ineffective tools for detecting, reporting, or correcting environmental and labour problems in supply chains’.³⁰¹ It has been reported that social audits are failing to deliver as a tool for assessing code of compliance, particularly in determining violations of freedom of association, excessive working hours, forced labour, mistreatment and discrimination.³⁰² It is due to the fact that workers and their entities are generally marginalised in the audit process and as a result of their full involvement in the auditing process, their concerns are missed.³⁰³ Moreover, relevant stakeholders outside the factory such as trade unions, women’s and labour NGOs are barely consulted or participated.³⁰⁴

Another significant problem is that social auditors generally receive misleading evaluations during their assessments at the workplace.³⁰⁵ This is due to the fact that they give relevant factory managers time to prepare for assessment by announcing audit visits in advance and thus managers convey a false impression of working conditions.³⁰⁶ Fake documentation may also be encountered by auditors.³⁰⁷ Moreover, apart from intentional falsifications, there are certain methodological problems that make it difficult for auditors to determine human rights abuses.³⁰⁸ Audits generally tend to be snapshot observations and certain abuses such as sexual harassment require a long period to explore whether there is an existence of such abuse.³⁰⁹

Workers are poorly informed about their rights and they often too scared for their own jobs to speak up about problems during audits.³¹⁰ They generally do not have the possibility to file a complaint.³¹¹ Even if audit reports identify problems truly, requirements of the reports are not implemented in practice.³¹² The tragedy of the Tazreen fire in November 2012 in Bangladesh was confirmed this situation as even social audits had warned about the inadequate fire safety conditions, no body have taken any action.³¹³

²⁹⁹ Ibid.

³⁰⁰ CCC: Looking for a quick fix: How weak social auditing is keeping workers in sweatshops’ (n 292) 19.

³⁰¹ Lebaron and Lister (n 293) 906-907.

³⁰² CCC: Looking for a quick fix: How weak social auditing is keeping workers in sweatshops’ (n 292) 14.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

³⁰⁶ Ibid.

³⁰⁷ Terwindt and Saage-Maass (n 74) 5.

³⁰⁸ Ibid.

³⁰⁹ Ibid.

³¹⁰ CCC: Looking for a quick fix: How weak social auditing is keeping workers in sweatshops’ (n 292) 15.

³¹¹ Ibid.

³¹² ITUC Frontlines Report (n 59) 3.

³¹³ Ibid.

By and large, social audits are ‘too short, too superficial and too sloppy to identify certain types of code violations’.³¹⁴ The large majority of social audits ‘is conducted by global firms whose staff is generally unskilled and inexperienced to do the job, and whose business model conflicts with the requirements for credible, independent social auditing’.³¹⁵ ‘The audit industry is closed and secretive, preventing serious discussion about its policy and practices and possible improvements to its methods’.³¹⁶ Audits are often not followed by effective remediation and improvements at the workplace are limited to health and safety issues.³¹⁷

Large and multinational companies also publish environmental and annual reports and sustainability strategies relating to their supply chains to provide public disclosure.³¹⁸ ‘Some companies have made public commitments to promote human rights in their supply chains and provided training and guidance to suppliers.’³¹⁹ However, there is a gap between the desirability of supply chain sustainability in theory and the implementation of sustainability in suppliers in practice.³²⁰

When it comes to the effects of these methodologies on SMEs, there are certain initiatives which regulate the relationship between codes of conducts and SMEs. One of the examples of these initiatives includes ‘Sample Code of Conduct for Small and Medium Enterprises’ regulated by the United Nations Development Programme (UNDP) and the Norwegian Ministry of Foreign Affairs in 2016.³²¹ These codes set up ethical and behavioural principles for SMEs’ shareholders, managers and employees.³²² The main aim of these codes is to assist SMEs ‘to pursue a fair, transparent and legal business activity’.³²³ These codes include different issues such as honesty, integrity and fair play, equal opportunity for all employees, health and safety practices, fair competition as well as financial reporting.³²⁴ These codes also include what are the sanctions in case of non-compliance with the codes.³²⁵ Sanction can include disciplinary action, warning, a private or public letter of reprimand or termination or removal.³²⁶ Even though such initiatives may assist SMEs in fulfilling their human rights responsibilities, SMEs need more effective and specific strategies which take into account SMEs’ specific organisational features for this aim. It can be the arguable fact that as they are weak in external reporting³²⁷, such merely voluntary-based methodologies can be ineffective in SMEs for implementing the UNGPs. When an SME acts as a supplier in a business, it must

³¹⁴ CCC: Looking for a quick fix: How weak social auditing is keeping workers in sweatshops’ (n 292) 15.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ Andersen and Skjoett-Larsen (n 272) 78.

³¹⁹ A/HRC/35/32 (n 32) para. 40.

³²⁰ Andersen and Skjoett-Larsen (n 272) 78.

³²¹ The UNDP and the Norwegian Ministry of Foreign Affairs, ‘Sample Code of Conduct for Small and Medium Enterprises’ (December 2016) <<https://www.undp.org/content/dam/moldova/docs/Publications/Sample%20Code%20of%20Conduct%20for%20Small%20and%20Medium%20Enterprises.pdf>> accessed 10 September 2019.

³²² Ibid., 2.

³²³ Ibid.

³²⁴ Ibid., 3-4.

³²⁵ Ibid., 7.

³²⁶ Ibid., 7.

³²⁷ Baumann-Pauly, Wickert, Spence, Scherer (n 66) 693.

implement the codes of conduct in their operations, and assist the sub-suppliers to comply with codes if it has supply chain relationships with other small enterprises. Moreover, as SMEs' supply chain relationships are complex³²⁸, it is difficult to monitor compliance with codes of conduct both within their own organisations and their sub-suppliers.³²⁹ Therefore, rather than focusing on implementing these methodologies by SMEs, improving the implementation of the UNGPs' tool such as human rights due diligence will be more effective for SMEs in fulfilling their human rights responsibilities. This is due to the fact that codes of conduct and audit mechanisms are voluntary-basis, and due diligence goes beyond auditing and includes accountability.³³⁰

Besides these voluntary methodologies, there are certain legal regulations regarding with human rights situations in supply chains. Modern Slavery Act 2015 can be a good example in this aspect. Therefore, the next section of this dissertation examines this Act with its impacts on SMEs.

VI. An Analysis on Modern Slavery Act 2015 and the Position of SMEs:

Various legal attempts to regulate the human rights situation in supply chains have emerged in recent years.³³¹ An example of the relationship between supply chains and large businesses have taken part in the Modern Slavery Act 2015 – adopted by the UK – which mainly aims to establish a comprehensive legal framework to prevent and address slavery, servitude and forced or compulsory labour as well as human trafficking.³³² While its core obligations, including monitoring and controlling operations and ensuring the absence of slavery and human trafficking, merely applicable to business enterprises with an annual turnover of more than £36 million, these business enterprises also have an obligation of reporting concerning with their supply chains.³³³ This obligation was specified by the 'Transparency in Supply Chains' provision which requires large companies to prepare a statement each year what steps they have taken to guarantee there is no modern slavery in their business activities or supply chains, and to publish information on the company's website.³³⁴ The statement can include information about the organisation's structure, company policies, due diligence processes, risks, performance indicators and training concerning slavery and human trafficking.³³⁵

On the other hand, the Act has been criticised as its certain weaknesses such as loophole that could allow companies to hide supply chain abuses'.³³⁶ In general, companies report only on

³²⁸ ACCA, 'Small Business: A Global Agenda' (n 70) 22.

³²⁹ Rühmkorf (246) 64.

³³⁰ Terwindt and Saage-Maass (n 74) 7.

³³¹ Nolan (n 241) 44.

³³² Martin-Ortega (n 78) 110.

³³³ Addo (n 17) 329.

³³⁴ Addo (n 17) 329; Modern Slavery Act 2015 <<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>> accessed on 10 September 2019; Martin-Ortega (n 78) 110; Nolan (n 241) 44.

³³⁵ Nolan (n 241) 44.

³³⁶ Fact Sheet Migrant Labour in the textile and garment industry, a focus on the role of buying companies, SOMO, February 2016, 5 <<https://www.somo.nl/nl/wp-content/uploads/sites/2/2016/02/migrant-labour-in-the-textile-and-garment-industry.pdf>> accessed 10 September 2019.

suppliers of the first tier and no company reported actually ‘on suppliers in its second tier or beyond, where the risks of human rights abuses increase’.³³⁷ Moreover, it has been argued that the Act includes weak enforcement mechanisms.³³⁸ In terms of reporting obligation, there is no agency or body which has competence or capacity to monitor the content of the statements nor whether their contents reflects the real situation of the company’s operations.³³⁹ Additionally, there are no financial or other penalties attached to non-compliance with the disclosure obligation.³⁴⁰ The obligation of reporting does not address negative human rights impacts, ‘let alone remediate them’ and thus the Act has a narrow approach to human rights in supply chains.³⁴¹ Finally, there is a practical risk that reporting obligation can lead to negative impacts to companies as more transparency will result in more investigation towards certain companies, ‘with the most compliant entities being at higher reputational risk’.³⁴² Moreover, this Act has criticised by arguing that it excludes the right for overseas domestic workers to change abusive employers and the lack of extraterritoriality of slavery offences.³⁴³

Although there are certain weaknesses of this Act, many companies are engaging in modern slavery policies and ‘there is certainly a discourse of awareness among large retailers’.³⁴⁴ Even though the Act ‘does not add further responsibilities beyond existing regulations or voluntary codes’, the obligation of reporting has positive impacts.³⁴⁵ Attention to the human rights standards in the supply chain has become more prominent as part of companies’ policies.³⁴⁶ It has been reported that a great number of companies have put emphasis to take actions in response to the Act.³⁴⁷ Bearing the weaknesses of the Act, it is ‘certainly a landmark development’, and the ways developed by itself have the capacity to ‘influence future normative developments and shape responses to violations of human rights in supply chains’.³⁴⁸

When it comes to the position of SMEs in this regulation, although the Act only explicitly applies to larger companies, its effects are already being felt by SMEs.³⁴⁹ In this process, if SMEs deal with companies turning over more than £36 million, they are likely to be part of the supply chain³⁵⁰ and in such circumstances, the obligation of publishing a statement annually has a cascading effect down the supply chain.³⁵¹ In order to verify the claims published in their statements, large companies have to conduct due diligence on their supply chain, ‘who in turn

³³⁷ Martin-Ortega (n 78) 118.

³³⁸ Ibid. 116.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ Ibid., 120

³⁴² Ibid., 121

³⁴³ Fact Sheet of SOMO (n 336) 5.

³⁴⁴ Ibid., 117.

³⁴⁵ Ibid., 119.

³⁴⁶ Ibid., 119.

³⁴⁷ Ibid., 121

³⁴⁸ Ibid.

³⁴⁹ Macpherson (n 236)

³⁵⁰ Anil Champaneri, Modern Slavery Legislation: What SMEs Need to Know, 14 Mar 2019

<<https://www.safecontractor.com/blog/march-2019/modern-slavery-legislation-what-smes-need-to-know>>

accessed 10 September 2019.

³⁵¹ Macpherson (n 236)

have to do the same'.³⁵² Businesses now have to include anti-slavery and human trafficking clauses in all of their supply contracts.³⁵³ These clauses can require supply chains 'to warrant that their business is compliant with the customer's anti-slavery policy and even to perform extensive due diligence procedures on their own suppliers'.³⁵⁴ 'The rules are meant to have a cascading effect on smaller businesses, to make their supply chains slavery-free also'.³⁵⁵ This means that SMEs have the potential to see contractual requirements in dealings with large companies, requiring the former to report how they operate in line with the Act.³⁵⁶ Hence, SMEs will have parallel reporting responsibilities to the large corporations they contract with, and 'along with the rest of the supply chain will contribute to efforts to eliminate slavery and human trafficking'.³⁵⁷ On the other hand, according to a survey conducted in the UK SMEs, nearly two-thirds of small businesses are not aware of the Modern Slavery Act.³⁵⁸ In the survey, 67% of SMEs have reported that they had never taken any action to address the issue of slavery, and three quarters said 'they would not know what to do if modern slavery was found in their supply chains'.³⁵⁹

On the other hand, it has been argued that the legal duty to address slavery in supply chains was on larger corporations, SMEs have a duty to ensure their supply chains were slavery-free.³⁶⁰ 'SMEs are now under pressure to publish their own statements in order to assuage larger commercial organisations covered by the regime'.³⁶¹ This can result from the case where an SME is a supplier and in the lack of a section 54 statement - or a similar statement - by the SME, the retailer company may refuse to contract with an SME.³⁶² Therefore, this Act can contribute to improving human rights responsibilities of SMEs in their supply chain relationships.

VII. Conclusion:

It is a clear fact that business enterprises make a significant contribution to the economic and social development of countries. On the other hand, business practices can lead to adverse human rights impacts which vary from civil and political rights to economic, social and cultural rights. Examples of these impacts include a wide range of human rights issues including forced labour, excessive working hours and low-wages, discrimination, right to privacy, freedom of association, using child labour and the right to health. There are also adverse business-related impacts on consumer rights and environmental issues. These impacts have led to the emergence of the BHR field which examines how business enterprises may adversely impact human rights

³⁵² Ibid.

³⁵³ Ibid.

³⁵⁴ Ibid.

³⁵⁵ Donati (n 234).

³⁵⁶ Addo (n 17) 329.

³⁵⁷ Ibid.

³⁵⁸ Donati (n 234).

³⁵⁹ Ibid.

³⁶⁰ Ibid.

³⁶¹ Modern slavery and supply chains – is your business legally compliant?, Moorcroft Corporate Law, <<https://moorcrofts.com/modern-slavery-and-supply-chains-is-your-business-legally-compliant/>> accessed 10 September 2019.

³⁶² Ibid.

and how these impacts can be prevented and addressed, including how business can be held accountable.³⁶³ In this field, there are certain international soft law initiatives to prevent and address business-related human rights impacts. In this dissertation, the development of the BHR field is detailed by examining these initiatives. The most significant initiative at this point is the endorsement of the UNGPs which provide an internationally accepted framework for improving standards concerning with business and human rights.³⁶⁴ With the adoption of the UNGPs, the BHR debate has developed as an interdisciplinary academic field.

The UNGPs are built on a three-pillar framework: the duty of states to protect human rights, the corporate responsibility to respect human rights and access to an effective remedy. The corporations' human rights responsibility applies to all business enterprises, regardless of their size. This means that SMEs which consist of 'enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million' are in the scope of this responsibility. SMEs are significant commercial actors both in developed and developing countries as they play a key role in creating new jobs and alleviating poverty. On the other hand, they can have severe human rights impacts, which will require corresponding measures regardless of their size.³⁶⁵ There is limited available data on the problems of SME workers, particularly in low- and middle-income countries. The available data shows that the quality of employment is not decent in SMEs. Employees of SMEs have been reported to work under hazardous and unsafe conditions. According to studies, they work excessive working hours and cannot receive low wages. Additionally, due to the prevalence of informal economy, SME workers have less capacity to enjoy social protection regulations, especially when compared to larger corporations.³⁶⁶ Particularly in less developed countries, which their labour laws do not encompass micro and small enterprises, certain fundamental rights and freedoms of workers such as collective bargaining rights cannot be protected effectively.

However, the importance of SMEs has been greatly ignored in the BHR field. Most international initiatives regarding BHR field mostly focus on large transnational corporations. As a result, there is limited research in respect of human rights responsibilities of SMEs. After specifying the situation of SMEs in the BHR debate, this dissertation also examines another relevant voluntary initiative, the CSR concept which engages in political, environmental and social responsibilities of businesses on society. It is useful to mention this concept as even before the endorsement of the UNGPs, SMEs have started to engage in CSR policies. Whilst certain features of SMEs are negative in implementing the CSR policies, such as the informal management approaches in SMEs, specific characteristics of SMEs can provide an opportunity in engaging in the concept of the CSR. For instance, the single-owner can impose new human rights voluntary initiatives in easier way than large corporations. With the close relationship of SMEs with the community groups and employees, they can recognise the changes or problems

³⁶³ Bernaz (n 1) 3.

³⁶⁴ Business and Human Rights, OHCHR, <<https://www.ohchr.org/en/issues/business/pages/businessindex.aspx>> accessible on 10 September 2019.

³⁶⁵ The Guiding Principles 14, Commentary

³⁶⁶ ILO, The Impact of Social Dialogue and Collective Bargaining on Working Conditions in SMEs (n 33) 15, 16.

in society and implement socially responsible policies for these changes or problems. Analysing the negative and positive features of SMEs in the aspect of implementing the CSR policies is important as these features can also be seen in the BHR field. To understand the challenges and opportunities of SMEs in a broader perspective, this dissertation compares the BHR and CSR areas which include certain differences. One of the salient differences is that the CSR concept emphasis on voluntary responsibility³⁶⁷, while the BHR field put a specific emphasis on legal accountability.³⁶⁸ While the normative reference point of the CSR concept is undefined and diverse, the debate of BHR is based on human rights norms as an internationally agreed normative framework.³⁶⁹ Therefore, the main focus of this dissertation is on the BHR field since this field is more effective for strengthening the human rights responsibilities of SMEs to go beyond mere voluntary-basis activities.

After this analysis, the next section of this dissertation elaborates the challenges and opportunities of SMEs in fulfilling the responsibility to respect human rights. Specific characteristics of SMEs make it difficult or easy to implement the UNGPs by SMEs. For example, the informal economy which is common among SMEs makes it difficult to implement the UNGPs. There is a salient link between the informal economy and a huge risk in occurring business-related human rights violations as businesses in the informal economy conduct their operations without legal and regulatory frameworks.³⁷⁰ The lack of a consistent definition of SMEs and their large and diverse structure lead to challenges in identifying a typical human rights footprint that links business and human rights interactions.³⁷¹ Moreover, it has been reported most SMEs cannot afford to pay for additional professional staff to ensure the fulfilment of the responsibility to respect human rights due to the resources poverty.³⁷²

On the other, specific characteristics of SMEs can become an opportunity in the implementation of the UNGPs. SMEs are more labour-intensive than large corporations and often have a greater potentiality to absorb labour.³⁷³ SMEs have been reported that they generally constitute a significant source of employment for vulnerable or marginalised groups and individuals which often face exclusion in employment in large businesses such as elderly people, women and ethnic minorities.³⁷⁴ SMEs are often more flexible than large corporations and thus they have the capacity to respond better to changes in society.³⁷⁵ The owner-manager structure of SMEs can also provide an opportunity for the implementation of the UNGPs by the company as the owner-manager is generally easy to identify, and his or her has the capacity to impose human rights policies.³⁷⁶ Moreover, the relationships of SMEs with other entities play a significant role in enhancing SMEs' human rights responsibilities. Especially the supply chain relationship between an SME and a larger company is important in this aspect because

³⁶⁷ Wettstein, Giuliani, Santangelo, Stahl (n 11) 57.

³⁶⁸ Bernaz (n 1) 6.

³⁶⁹ Wettstein, Giuliani, Santangelo, Stahl (n 11) 57.

³⁷⁰ A/HRC/35/32 (n 32) para. 10; Addo, (n 17) 318.

³⁷¹ *Ibid.*

³⁷² A/HRC/35/32 (n 32) para. 11.

³⁷³ *Ibid.*, para. 21.

³⁷⁴ *Ibid.*, para. 22.

³⁷⁵ Addo (n 17) 326.

³⁷⁶ *Ibid.*, 320.

larger companies have the capacity to set standards which dictate conditions for the smaller businesses by applying the UNGPs' tools such as human rights due diligence which can be implemented through supply chain relationships.³⁷⁷ The UNGPs also accepted that the corporate responsibility to respect human rights includes retailer companies' responsibility on their suppliers and retailer companies should prevent or mitigate adverse human rights impacts that are directly linked to their supply chains. Therefore, the role of transnational corporations on their supply chains is significantly emphasised in this dissertation.

For this aim, this dissertation firstly examines the supply chain relationship. A supply chain can be defined as 'the system that companies use to source and distribute their products and services from origin to customer'.³⁷⁸ In today's globalising world, most transnational corporations use supply chains via less developed countries in which they can get cheaper raw material, use low-cost labour, escape government regulation and taxes.³⁷⁹ Hence, there are significant human rights abuses in supply chains. Examples of these abuses include forced labour, child labour, excessive working hours and receive low wages, discrimination, harassment and restrictions of freedom of association. These abuses have been recognised by human rights advocates and certain civil society organisations force retailer companies to take action concerning address poor labour conditions in their supply chains. As a response to the growing pressure, retailer companies have started to adopt codes of conduct, a document stating a number of social and environmental standards and principles that a firm's suppliers are expected to fulfil'.³⁸⁰ Codes of conduct generally consist of contracts conducted by a purchaser company and a supplier company. These codes primarily aim to set standards concerning with a wide range of human rights issues, including child labour, forced labour, wages and benefits, working hours, the right to freedom of association, health and safety and environmental practices.³⁸¹ These requirements must be fulfilled by all suppliers including SME business type with which they conduct business.

But these codes have criticised for being non-binding and purely voluntary.³⁸² There are several challenges to the management and control of codes of conduct in global supply chains. Codes of conduct are often in the absence of efficient monitoring systems to determine the compliance with these codes. To monitor the conformity to the codes, the process of social audits, 'a workplace assessment conducted over just a few days by one auditor or an auditing team',³⁸³ has been developed.³⁸⁴ Social audits may help to a company to monitor its internal progress in improving working conditions. But this mechanism also criticised as social audit reports can reflect misleading information about labour conditions in supply chains. This is due to the fact that they give relevant factory managers time to prepare for assessment by announcing audit visits in advance and thus managers convey a false impression of working conditions. The

³⁷⁷ Ibid., 328.

³⁷⁸ ITUC Frontlines Report (n 59) 8.

³⁷⁹ Ibid.

³⁸⁰ Andersen and Skjoett-Larsen (n 272) 78.

³⁸¹ Mamic (n 273) 81.

³⁸² Rühmkorf (n 243) 82.

³⁸³ Terwindt and Saage-Maass (n 74) 3.

³⁸⁴ Ibid.

duration of audit assessments at the workplace is quite short and this situation leads to specific challenges such as failing to identify the human rights violations. Moreover, workers have been reported to fear the tell the realities for their working conditions.

There are also other voluntary reports conducted by large companies such as sustainability reports to provide transparency in the public. However, these reports remain weak in the implementation.

When it comes to the effects of these methodologies on SMEs, bearing in mind the above criticisms related to voluntary mechanisms conducted by purchaser companies, SMEs need more effective and specific strategies for implementing the UNGPs. Specific challenges and opportunities of SMEs should be taken into account in determining such strategies. For this aim, rather than focusing on implementing purely voluntary methodologies by SMEs, the implementation of the UNGPs' tool such as human rights due diligence by SMEs should be improved as these tools will be more effective for SMEs in fulfilling their human rights responsibilities. This is due to the fact that codes of conduct and audit mechanisms are voluntary-basis, and due diligence goes beyond auditing and includes accountability.³⁸⁵ Moreover, it has been argued that human rights due diligence gradually taking the place of certain voluntary initiatives such as CSR since 'the way for corporations to deal with the demand that attention be paid to human rights violations in supply chains and worldwide business operations'.³⁸⁶

Besides voluntary initiatives conducted by purchaser companies, there are also certain legislation such as UK Modern Slavery Act 2015 which aims to set standards for preventing and addressing slavery, servitude and forced or compulsory labour and human trafficking. Especially, the provision of 'Transparency of Supply Chains etc', which draws attention on the responsibilities of large companies in their supply chains, plays a significant role in improving human rights conditions in supply chains. This provision obliges large companies to publish a statement each year what steps they have taken to guarantee there is no modern slavery in their business activities or supply chains. Therefore, this Act and its obligations can also be an example for improving human rights conditions in supply chains, including SMEs when they act as a supplier.

Although the Act has certain weaknesses such as poor enforcement mechanisms, obligation of preparing an annual report is a landmark in imposing concrete duties on large companies to improve human rights conditions of their supply chains. This Act also influences SMEs as such enterprises also take part in global supply chains as a supplier or a retailer. As a result of the obligation of reporting, SMEs 'will have in practice similar reporting obligations to the large businesses they contract with, and along with the rest of the supply chain will contribute to efforts to eliminate slavery and human trafficking'.³⁸⁷ Therefore, awareness of SMEs about this

³⁸⁵ Terwindt and Saage-Maass (n 74) 7.

³⁸⁶ Ibid.

³⁸⁷ Addo (n 17) 329.

Act and its policies should be raised. SMEs, whether they act as suppliers or retailers, should be strengthened to fulfil their responsibilities resulting from the Act.

In brief, among the challenges and opportunities of SMEs, this dissertation put more emphasis on SMEs' connection with large enterprises through a supply chain relationship. Because this feature is more likely to become an advantage if the large enterprises fulfil their human rights responsibilities by applying human rights due diligence. SMEs can also assist their sub-suppliers – if there is an existence of such relationship – and hence SMEs can fulfil their human rights.

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