



Stina-Maria Lusti

Lawyer

Estonian Ministry of Foreign Affairs

# Protection of Human Rights in the Global Garment Industry<sup>\*1</sup>

**Abstract.** Considerable expansion of the global garment industry, which in recent decades has become one of the largest employment sectors worldwide, has intensified scrutiny of states' and businesses' responsibilities, especially as production increasingly shifts to countries with less strict labour regulations. Analysis of the landscape reveals that, significant progress notwithstanding, world dialogue on business responsibilities has still not arrived at a solution. The complex network of stakeholders in the garment industry brings particular challenges to enforcing human-rights protection in this domain. The article explores the intersection of business practices and human rights within the garment sector, focusing on Bangladesh, India, and Pakistan, three countries which play a pivotal role in global fashion exports. Examining the legal obligations of state and non-state actors under various UN instruments by analysing the Universal Periodic Review mechanism and the concluding observations of the Committee on Economic, Social and Cultural Rights, it identifies critical issues in protecting human rights in these countries and briefly also reviews recent advances in the EU in the realm of business and human rights. The paper presents evidence that the growing influence of non-state actors calls for extending the obligations from traditional approaches', which have focused on state responsibilities. Among the solutions proposed are reforming wage systems and imposing direct human-rights requirements on corporations, supported by more vigorous enforcement.

**Keywords:** human rights, garment industry, work conditions, corporate diligence

## 1. Introduction

The global garment industry has experienced significant growth over the past decade and is currently the fifth-biggest industry by employment in the world.<sup>\*2</sup> While economically significant, this growth has also heightened scrutiny of the responsibilities of both states and businesses, especially as garment production increasingly shifts to the so-called developing countries. Focused discourse on these responsibilities began in the 1990s when companies started ramping up outsourcing to regions with less stringent labour

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<sup>1</sup> The paper deepens work begun with a thesis on this topic for the University of Tartu's International Law and Human Rights master's programme (work supervised by Merilin Kiviorg, JD; defended in 2023; and earning *cum laude* distinction in 2024). While the thesis examined solely the UN regulations, the discussion is slightly widened here to address new relevant developments at EU level in relation to both business and human rights.

<sup>2</sup> 'The 10 Global Biggest Industries by Employment' (IBISWorld Industry Reports, 2024) <<https://www.ibisworld.com/global/industry-trends/biggest-industries-by-employment/>> accessed on 30 March 2024.

regulations.<sup>3</sup> In 2024, notwithstanding considerable progress in both business law and international human-rights law, how business and human rights mesh in the garment industry, particularly in such South Asian countries as Bangladesh, India, and Pakistan, remains a critical concern.<sup>4</sup> Understanding of these nations is vital to analysing this topic because of their substantial share in the export of fashion goods globally and the disproportionately high percentage of fashion goods in their total volumes of exports relative to other major garment-producing countries' figures.<sup>5</sup>

Through analysis of a key inter-state co-operative mechanism called the Universal Periodic Review (UPR) and the 'concluding observations' that the Committee of Economic, Social and Cultural Rights<sup>6</sup> has reported for the above-mentioned states, this paper pinpoints some vital facets of the issue, and deeper examination of the knot of issues is woven throughout the article. Primary focus is on the legal obligations of state and non-state actors that arise from the UN's various legally binding and non-binding instruments. The paper also offers a brief illustration of the advancements made in the EU in the domain of business and human rights.

In exploring these issues, the article addresses how businesses and states can better align their practices with human-rights obligations, particularly in the context of the garment industry's challenges. This examination will provide a comprehensive picture of the current state of business and human rights, offering insight as to the effectiveness of the frameworks currently in place and suggesting pathways for future improvements.

## 2. Evolving responsibilities

Traditionally, articulation of human-rights obligations has focused on states.<sup>7</sup> Businesses, on the other hand, have been considered to have legally binding commitments only in jurisdictions where national laws explicitly dictate these.<sup>8</sup> However, ongoing debate about extending obligations to non-state actors is gaining impetus.<sup>9</sup> While some argue that the current human-rights treaties cannot be expanded to include companies directly, since they are directed at states, Louis Henkin wrote already in 1999 that legal persons too should adhere to the provisions of, for example, the Universal Declaration of Human Rights (UDHR) and strive for progressive measures in human-rights protection.<sup>10</sup> Despite the UDHR not being a legally binding document, several other treaties have incorporated its principles, giving those principles legal force and influence in international law. Its terms have also become synthesised with national legal frameworks<sup>11</sup>,

<sup>3</sup> 'The UN "Protect, Respect and Remedy" Framework for Business and Human Rights' (Business & Human Rights Resource Centre, September 2010) <<https://media.business-humanrights.org/media/documents/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>> accessed on 30 March 2024.

<sup>4</sup> Iona Cismas and Sarah Macrory, 'The Business and Human Rights Regime under International Law: Remedy without Law' in Alex Gough and James Summers (eds), *Non-State Actors and International Obligations: Creation, Evolution and Enforcement* (Brill 2018) 223. – DOI: [https://doi.org/10.1163/9789004340251\\_013](https://doi.org/10.1163/9789004340251_013).

<sup>5</sup> Antonella Teodoro and Luisa Rodriguez, 'Textile and Garment Supply Chains in Times of COVID-19: Challenges for Developing Countries' (UNCTAD Transport and Trade Facilitation Newsletter 86, 2020) <<https://unctad.org/news/textile-and-garment-supply-chains-times-covid-19-challenges-developing-countries>> accessed on 5 September 2023.

<sup>6</sup> In articulating this two-pronged approach of identifying major human-rights issues in the business and human-rights domain in the countries focused upon and providing a comprehensive context-specific tool for identifying violations of human rights, the paper constitutes a contribution of original thought to the literature. The method, which involved analysing multiple distinct reporting mechanisms within the UN human-rights protection system, is rooted in the work behind the thesis project.

<sup>7</sup> Maria Monnheimer, *Due Diligence Obligations in International Human Rights Law* (Cambridge University Press 2021) 9. – DOI: <https://doi.org/10.1017/9781108894784>.

<sup>8</sup> Office of the UN High Commissioner for Human Rights, *Frequently Asked Questions about the Guiding Principles on Business and Human Rights* (United Nations 2014) 30 <[https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf)> accessed on 5 September 2022; Jonathan Kolieb, 'Advancing the Business and Human Rights Treaty Project through International Criminal Law: Assessing the Options for Legally-Binding Corporate Human Rights Obligations' (2019) 50 *Georgetown Journal of International Law* 789, 813.

<sup>9</sup> Monnheimer (n 7) 11.

<sup>10</sup> Universal Declaration of Human Rights (adopted 10 December 1948), UNGA Res 217 A(III); Louis Henkin, 'The Universal Declaration at 50 and the Challenge of Global Markets' (1999) 25 *Brooklyn Journal of International Law* 17, 25.

<sup>11</sup> Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1996) 25(1) *GJICL* 287, 289.

just as much as with various codes of conduct and human-rights-related policies.<sup>\*12</sup> Many of the UDHR's clauses have even been accepted as rules of customary international law, which carry legal obligations for all states.<sup>\*13</sup> This means that states, regardless of treaty ratification, must uphold the corresponding rights, not excluding operations within the garment industry. Portions such as Article 20 (addressing the right to peaceful assembly and association), Article 21 (on economic, social, and cultural rights), Article 23 (pertaining to workers' rights), and Article 25 (dealing with the right to adequate standards of living) hold particular significance in the context explored by this article.

States assume human-rights obligations also from multilateral treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). The latter is intended to protect, among other things, workers' well-being, dignity, and livelihood. In addition to ensuring that their people's rights as outlined in the covenant are safeguarded, states must report on their actions in this respect.<sup>\*14</sup> Under the first clause of the ICESCR's Article 16, the state parties undertake to submit reports on the adoption of measures and progress related to the rights and obligations recognised in the covenant.<sup>\*15</sup> In combination with the output from the UPR, which offers an opportunity to assess the human-rights developments of states through interactive dialogue between those states subject to review and other member states of the Human Rights Council, the reports produced include information on both the progress of the state parties and key difficulties they have faced in fulfilling their obligations.<sup>\*16</sup> While these reports constitute tools for assessing the human-rights situation in specific countries, they also afford crucial awareness of how businesses operate within the given country's human-rights framework and highlight both positive contributions and areas that merit businesses' attention. For example, the 2018 UPR report on Bangladesh includes recommendations targeted at the garment industry, with emphasis on a need for improved labour conditions and corporate accountability for human-rights abuses.<sup>\*17</sup>

One especially significant document in the context of business and human rights is the United Nations Guiding Principles on Business and Human Rights (UNGPs), adopted in 2011.<sup>\*18</sup> While not legally binding, these principles give detailed instructions that all states and businesses, worldwide, are called upon to follow.<sup>\*19</sup> The UNGP instrument emphasises states' responsibility to safeguard against violations of human rights occurring within their territorial boundaries or perpetrated by third parties under their jurisdiction.<sup>\*20</sup> Furthermore, the UNGPs lay down foundational principles for corporate responsibility in the sphere of human rights.<sup>\*21</sup> Under the principles' final clause on responsibility, for example, businesses in the garment industry should not only ensure that their own actions respect human rights but also guarantee that the companies along their supply chain – particularly the factories from which they source products – uphold the human rights of their workers. Corporate responsibility should be fulfilled autonomously and extends beyond mere compliance with the national laws and regulations designed for safeguarding human rights.<sup>\*22</sup>

Since 2014, an open-ended intergovernmental working group considering transnational corporations and other business enterprises in relation to human rights, referred to below as the OEIGWG, has been working on the draft text for a treaty on business operations *cum* human rights.<sup>\*23</sup> In the years since the

<sup>12</sup> See, for example, Industria de Diseño Textil, 'Policy on Human Rights' (approved by the Inditex Board of Directors on 12 December 2016) <[https://www.inditex.com/itxcomweb/api/media/7e50ddce-a4de-4d51-9ab0-f7c248d23656/inditex\\_policy\\_on\\_human\\_rights.pdf](https://www.inditex.com/itxcomweb/api/media/7e50ddce-a4de-4d51-9ab0-f7c248d23656/inditex_policy_on_human_rights.pdf)> accessed on 3 December 2023.

<sup>13</sup> Hannum (n 11) 289.

<sup>14</sup> International Covenant on Economic, Social and Cultural Rights (adopted on 19 December 1966) 993 UNTS 3, art 16.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid art 17 cl. 2; 'The United Nations Human Rights Treaty System' (Fact Sheet 30, version 1, 1 August 2012) 44; Ionel Zamfir, 'The Universal Declaration of Human Rights and Its Relevance for the European Union' (European Parliamentary Research Service 2018) 2 <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS\\_ATA\(2018\)628295\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2018/628295/EPRS_ATA(2018)628295_EN.pdf)> accessed on 9 November 2023.

<sup>17</sup> UN Human Rights Council, 'Universal Periodic Review – Bangladesh' (second cycle, April 2013) matrix of recommendations cl 22.

<sup>18</sup> Office of the UN High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) ch IV (Guiding Principles).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid 3.

<sup>21</sup> Ibid 3–4.

<sup>22</sup> Ibid 13.

<sup>23</sup> Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises Concerning Human Rights (adopted in 2014) UNGA Res 26/9.

UN Human Rights Council established the OEIGWG, it has held nine sessions, progressing from initial deliberations on the content and scope of a future international instrument to regulate the activities of transnational corporations to discussing and revising successive drafts for a legally binding instrument.<sup>\*24</sup> In the most recent of these development and progress-review sessions, which took place in October 2023, the OEIGWG discussed the next steps toward finalising the treaty while stressing the importance of balancing state obligations and corporate responsibilities.<sup>\*25</sup> The updated draft legally binding instrument produced at the next session, due to take place in October 2024, will serve as the basis for the upcoming negotiations on the treaty in its final form.<sup>\*26</sup>

The relationship between the UN's draft business and human-rights treaty, on one hand, and the UNGPs, on the other, is central to understanding the evolution and current state of the business and human-rights landscape on international level. An ongoing process of dialogue and negotiation is in place within the UN to harmonise these instruments and ensure that they function smoothly together to promote and protect human rights effectively in the business context.<sup>\*27</sup> The draft treaty represents an effort to address gaps left by the UNGPs via provision of a stronger legal framework that includes preventing human-rights violations in business activities by establishing effective monitoring, enforcement, and accountability mechanisms. Additionally, its preparers strive to make sure that businesses adhere to their direct human-rights obligations at the state level.<sup>\*28</sup> States shall, for example, adopt legal-liability measures under which it should be possible to hold a business accountable (whether through criminal, civil, or administrative liability) for its violations.<sup>\*29</sup> Another portion of the draft treaty that deserves highlighting is Article 9.1 (c), which stipulates that states should establish jurisdiction over human-rights abuses committed by companies domiciled within their territory even when the abuses occur outside their borders.<sup>\*30</sup> Doing so is crucial in connection with the garment industry because of Western companies' widespread practice of outsourcing production to 'developing countries', where labour standards, regulations, and related enforcement often are not as strict. In consequence, workers in these countries frequently encounter poor work conditions, low wages, and violations of their fundamental rights. Establishing clear jurisdiction guarantees that these companies can be held to account for human-rights abuses wherever they occur, thereby promoting more ethical and responsible business practices globally. Under the treaty as drafted, state parties would be expected to supply mutual assistance for the prevention and remedying of the rights-abuse problem and hold businesses liable.<sup>\*31</sup> Just as with the ICESCR, states would submit reports on the measures they have taken. Per the proposed terms, such reports shall be submitted to the committee created under the treaty, which would be responsible for supervising and reviewing compliance with the treaty-imposed obligations, to render them more effective.<sup>\*32</sup>

<sup>24</sup> See materials from the UN Human Rights Council, 'Tenth Session of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (2024) <<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session10>> accessed on 5 August 2024 (Working Group Tenth Session).

<sup>25</sup> UN Human Rights Council, 'Ninth Session of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights' (26 December 2023) <<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session9>> accessed on 3 August 2024.

<sup>26</sup> Working Group Tenth Session (n 24).

<sup>27</sup> Office of the UN High Commissioner for Human Rights, 'Improving Accountability and Access to Remedy for Business and Human Rights Abuses: A Submission from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the Third Revised Draft of the Legally Binding Instrument (LBI) To Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises' (18 October 2021) 1 <<https://www.ohchr.org/sites/default/files/2021-11/igwg-7th-ohchr-submission.pdf>> accessed on 3 August 2024.

<sup>28</sup> Updated Draft Legally Binding Instrument (Clean Version) To Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (2023) art 2 (b).

<sup>29</sup> Ibid arts 8.1, 8.2.

<sup>30</sup> Ibid art 9.1 (c).

<sup>31</sup> Ibid art 12.1.

<sup>32</sup> Ibid art 15.2.

### 3. The garment industry's greatest human-rights challenges

One possible avenue for identifying the greatest human-rights challenges involves systematic analysis of the various reporting mechanisms with which the countries engage, alongside the material produced via each distinct mechanism. The UPR is an inter-state co-operative mechanism that allows member states to assess human-rights developments through interactive dialogue in the Human Rights Council setting.<sup>\*33</sup> During each reporting period, a state submits its report, which provides an overview of the country's human-rights situation and discusses its response to the recommendations received during the previous cycle of inter-state co-operation. Alongside the states, stakeholders such as NGOs, national human-rights organisations, and UN agencies submit information and participate in the review process.<sup>\*34</sup>

Another way to assess how well countries have advanced in their human-rights policies is to look at the concluding observations compiled by relevant treaty bodies. It has been brought out in multiple venues that the UPR and the reporting system connected with those observations are intertwined with each other in the sense that the UPR has proved to have a positive effect on state reporting under the international human-rights treaties.<sup>\*35</sup> In light of that synergy, this article attends specifically to the concluding observations by the Committee of Economic, Social and Cultural Rights (CESCR) by taking into consideration the periodic reports that states submit to the treaty body on their implementation of the rights outlined in the ICESCR.<sup>\*36</sup> In addition to states' reporting, the concluding observations take into account information received from other stakeholders: UN agencies, academic institutions, national human-rights organisations, etc.<sup>\*37</sup> The treaty body will both specify the positive steps taken by the given country to safeguard the rights provided for by the treaty and identify areas that need further work and development by the government.<sup>\*38</sup> Moreover, the concluding observations offer guidance by giving the states practical advice on how to proceed toward fuller implementation of the rights laid down in the relevant treaty.<sup>\*39</sup>

Analysing the UPR and concluding observations in parallel makes it possible to pinpoint the most significant worker-rights issues across the board, particularly with regard to the garment industry. Additionally, comparing the recommendations from the last two reporting periods aids in ascertaining whether the countries analysed have made progress in protection of human rights and in highlighting the main issues that persist. If the recommendations made by fellow member states or treaty bodies remain the same over the years, one may safely conclude that the government in question has not bettered the workers' human-rights situation and conditions in the interim. Hence, the approach represented here offers a comprehensive understanding of the most significant human-rights challenges in the garment industry in each of the countries considered.

Let us begin by looking at Bangladesh. In the wake of the second UPR reporting cycle, it received nearly 200 recommendations.<sup>\*40</sup> It was recommended that the country continue protecting and promoting human rights, particularly economic, social, and cultural ones. Some member states also stressed the need for Bangladesh to work to reduce the number of people living in poverty by improving human living standards.<sup>\*41</sup> There were recommendations specifically angled toward garment workers. One of these was to enforce international labour standards by adopting national laws that strengthen occupational health and workplace safety.<sup>\*42</sup> Other suggestions were to provide better legal and professional protection for those employed in the garment sector and to enable stronger protection for freedom of association.<sup>\*43</sup> Also, a need to enhance labour inspections was highlighted.<sup>\*44</sup>

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<sup>33</sup> Zamfir (n 16).

<sup>34</sup> 'The United Nations Human Rights Treaty System' (n 16).

<sup>35</sup> Ibid 40.

<sup>36</sup> Ibid *passim*.

<sup>37</sup> Ibid 27.

<sup>38</sup> Ibid 28.

<sup>39</sup> Ibid.

<sup>40</sup> 'Universal Periodic Review – Bangladesh' (n 17) matrix of recommendations, *passim*.

<sup>41</sup> Ibid cls 19–21.

<sup>42</sup> Ibid cl 22.

<sup>43</sup> Ibid cls 17, 23.

<sup>44</sup> Ibid cl 30.

Reviewing the concluding observations of the CESCR, in turn, reveals topics similar to those that the UPR found to be of concern – poverty in Bangladesh<sup>\*45</sup>, the matter of minimum wages<sup>\*46</sup>, health and safety of the workers<sup>\*47</sup>, support for just and favourable work conditions<sup>\*48</sup>, and the collective right to unionise<sup>\*49</sup>. Additionally, the committee addressed the informal economy in Bangladesh, highlighting that nearly 90 per cent of the country's labour force is engaged solely in the informal economy, meaning that social and labour protections rarely cover real-world workers. The CESCR recommended that Bangladesh 'regularise' the informal economy to improve the protection of those working within it.<sup>\*50</sup> While the conclusions do not cite the garment industry as a context wherein the informal economy poses problems, this question is worth further analysis.

With regard to India, the CESCR's concluding observations from 2008 – no report on India has been published in the years since then<sup>\*51</sup> – likewise express concern about the informal labour market. They explicitly highlight the issue of women predominating among workers occupied within the informal economy.<sup>\*52</sup> Even though none of the UPR recommendations have been directed expressly at the rights and protection of garment workers in India, various recommendations were given for occupational safety and the general strengthening of the labour laws in that regard.<sup>\*53</sup> Also, attention must be drawn to a recommendation singled out in the matrix of recommendations for India under the business and human-rights theme: India should enact legislation to hold businesses accountable for meeting and/or violating international standards related to human rights, labour, and the environment; national standards for these; and other, related norms.<sup>\*54</sup> The concluding observations articulate concerns also about the strict requirements imposed on unionising.<sup>\*55</sup> The fact that this issue was highlighted in India's 2017 UPR results indicates that insufficient attention was paid to that recommendation over the nine intervening years.<sup>\*56</sup> Furthermore, the CESCR noted that wages in India are inadequate for providing a decent living and pointed to a failure to enforce even the modest minimum-wage laws that apply nationwide.<sup>\*57</sup> This issue too remains unresolved, with India's UPR recommendations still recommending improvements to living standards in 2022, a full 15 years later.<sup>\*58</sup> The matters of occupational health and safety raised in the 2008 observations remain topics of concern likewise.<sup>\*59</sup>

Pakistan, in turn, received nearly 300 recommendations from member states in the 2017 cycle of periodic review.<sup>\*60</sup> Overall, the third cycle's UPR cycle yielded two general recommendations – for strengthening the economic, social, and cultural rights of the citizens of Pakistan and for dealing with the issue of poverty<sup>\*61</sup> – and called attention specifically to child labour. but no recommendation other than these focused on the rights of workers or the garment industry, let alone explicitly.<sup>\*62</sup> The CESCR brought out roughly 40 points of concern with regard to Pakistan.<sup>\*63</sup> There was a general worry that Pakistan has not managed to incorporate the rights foreseen by the ICESCR into its domestic legal order, with the Constitution of

<sup>45</sup> Office of the UN High Commissioner for Human Rights, 'Committee on Economic, Social and Cultural Rights: Concluding Observations on the Initial Report of Bangladesh' (18 April 2018) E/C.12/BGD/CO/1 1.

<sup>46</sup> Ibid 5.

<sup>47</sup> Ibid 6–7.

<sup>48</sup> Ibid 5.

<sup>49</sup> Ibid 7–8.

<sup>50</sup> Ibid.

<sup>51</sup> Office of the UN High Commissioner for Human Rights, Committee on Economic, Social and Cultural Rights, 'Concluding Observations on the Initial Report of India' (8 August 2008) E/C.12/IND/5.

<sup>52</sup> Ibid 4.

<sup>53</sup> Ibid 1, 17.

<sup>54</sup> Ibid 9.

<sup>55</sup> Ibid 5.

<sup>56</sup> UN Human Rights Council, 'Universal Periodic Review – India' (third cycle, May 2017) matrix of recommendations cls 43, 44.

<sup>57</sup> Concluding Observations on India (n 51) 5.

<sup>58</sup> 'Universal Periodic Review – India' national report (fourth cycle, 2022) cl 27.

<sup>59</sup> Concluding Observations on India (n 51) 10.

<sup>60</sup> UN Human Rights Council, 'Universal Periodic Review – Pakistan' (third cycle, November 2017) matrix of recommendations, *passim*.

<sup>61</sup> Ibid cls 16, 18–19.

<sup>62</sup> Ibid 50.

<sup>63</sup> Office of the UN High Commissioner for Human Rights, 'Committee on Economic, Social and Cultural Rights: Concluding Observations on the Initial Report of Pakistan' (20 July 2017) E/C.12/PAK/CO/1, *passim*.

Pakistan merely recognising those covenant-enshrined rights as policy guidelines.<sup>\*64</sup> According to the treaty body, the country exhibits an ongoing problem with occupational health and safety measures also, as well as with the informal economy.<sup>\*65</sup> Addressing the right to unionise, the committee stated that there are obvious shortcomings in the legislation pertaining to trade unions and the right to unionise, which manifest themselves in an extremely low number of unionised workers.<sup>\*66</sup> Finally, the committee drew a direct connection between the poverty in the country and levels of Pakistan's minimum wages: it found that the wages are often too low to cover the workers' and their families' living expenses.<sup>\*67</sup>

While Bangladesh has received recommendations directly concerning the garment industry, the recommendations given to India and Pakistan have remained more general or been directed toward other factors, such as how women are treated/protected in the society at large.<sup>\*68</sup> Also, the recommendations for human-rights protection in Pakistan attended to the fight against terrorism as a more urgent issue.<sup>\*69</sup> This by no means indicates that Pakistan and India do not have problems with protecting garment workers' human rights. Distinct points of focus are chosen for every country, precluding comparisons of such a nature. Irrespective of these differences in focus, though, it can still be concluded that the main problems in the garment industry for all three of these countries are lack of reasonable remuneration, poor workplace safety, impediments to collective labour, and the prevalence of informal arrangements in garment-related economic sectors.<sup>\*70</sup>

Once the new treaty on business and human rights enters into force, it will layer another accountability mechanism atop those analysed above. The observations and resulting conclusions of the committee established under that treaty should prove to be an essential source of information for further research in the field of business and human rights.<sup>\*71</sup>

## 4. Remedies against violations of human rights

### 4.1. Transformation of the wage systems

The minimum wages set in countries hosting outsourced operations can only rarely be classified as a living wage. With home-based workers in the informal folds of the garment industry suffering even more than most others from a lack of commensurate remuneration and from low unionisation,<sup>\*72</sup> transition toward a wage system that protects all workers equally, regardless of their level of unionisation, their workplace (factories, the home, etc.), and whether they are engaged in the informal sector, is needed.

One suggestion emerging from the concluding observations is that the countries should impose a universal national minimum living wage for all workers.<sup>\*73</sup> While India has passed laws for uniform minimum wages applying to all industries, Pakistan's and Bangladesh's wage policies vary by region and sector, leading to disparities in earnings.<sup>\*74</sup> Clearly, this complex issue must be dealt with by many other stakeholders also, on multiple levels. At present, government entities and local factory managers alike are afraid that raising wages will create excessive pressure related to production costs and eventually impinge on

<sup>64</sup> Ibid 1.

<sup>65</sup> Ibid 6, 7.

<sup>66</sup> Ibid 8.

<sup>67</sup> Ibid 7.

<sup>68</sup> Ibid 23–29, 49–50; 'Universal Periodic Review – India' (n 56) matrix of recommendations cl 17.

<sup>69</sup> 'Universal Periodic Review – Pakistan' (n 60) matrix of recommendations cl 38.

<sup>70</sup> Not ordered here by importance.

<sup>71</sup> Updated Draft LBI (n 28) art 15.2.

<sup>72</sup> Siddharth Kara, 'Tainted Garments: The Exploitation of Women and Girls in India's Home-based Garment Sector' (Blum Center for Developing Economies, University of California 2019) 7 <<https://blumcenter.berkeley.edu/wp-content/uploads/2019/01/Tainted-Garments-1.pdf>> accessed on 3 December 2023.

<sup>73</sup> Concluding Observations on Bangladesh (n 45) 6.

<sup>74</sup> Reyad Hossain, 'New Wage Board for Garment Workers on Cards' *The Business Standard* (Bangladesh, 31 January 2023) <<https://www.tbsnews.net/economy/rmg/new-wage-board-garment-workers-cards-577590>> accessed on 14 January 2024; 'Universal Periodic Review – India' national report (n 58) cl 13; Concluding Observations on Pakistan (n 63) 7; Clean Clothes Campaign, 'Historic Victory on Minimum Wage Win for Workers in Pakistan's Sindh Province' (21 June 2022) <<https://cleanclothes.org/news/2022/historic-victory-on-minimum-wage-win-for-workers-in-pakistans-sindh-province>> accessed on 10 January 2023.

competitiveness in the international market.<sup>\*75</sup> For this reason, the minimum wages often go untouched for long stretches of time.<sup>\*76</sup> Research suggests that minimum wages should be reviewed at intervals no greater than every three years; however, none of the acts of law prescribes doing so.<sup>\*77</sup> Providing a minimum wage consistent with the cost of living is fundamental to ensuring that workers can live in dignity and support their family.<sup>\*78</sup> Additionally, there is strong evidence that rising wages contributes to the macroeconomic growth of a state.<sup>\*79</sup>

External factors play a part in discouraging states and factories from guaranteeing a living wage. In an International Labour Organization survey, more than half of the apparel-suppliers reported that brand-owners not paying enough to cover production costs had led to low wages for workers.<sup>\*80</sup> There are indications that brands can set positive social standards.<sup>\*81</sup> For example, paying 10–20 cents more per T-shirt could double factory workers' salaries.<sup>\*82</sup> However, companies that run factories argue against such practices, citing reluctance to pay more when other businesses obtaining goods from their factory fail to follow suit.<sup>\*83</sup> Without collective action, individual buyers' efforts may fall short of motivating factories to increase worker wages.<sup>\*84</sup> Capacity and willingness to influence wage policies hinges on the size of the purchasers and the associated revenues also. Buyers with significant influence on a factory occupy a better position to promote higher wages.<sup>\*85</sup>

One tool that might hold value for tackling these challenges is integration of principles from the EU's recently enacted Corporate Sustainability Due Diligence Directive. Adopted in 2024, this directive emphasises stakeholder engagement, requiring companies to consult with directly affected stakeholders, including garment workers, to address their concerns and guarantee fair treatment.<sup>\*86</sup> It also mandates that firms establish grievance mechanisms and take corrective actions to rectify problems such as inadequate wages and unsatisfactory work conditions.<sup>\*87</sup> Implementing these principles could align with broader UN frameworks to address long-term challenges and make sure businesses are held accountable for their impact on wages and conditions in the workplace.

As a step to tackle precisely this issue, India has, according to its latest UPR report, been developing a national corporate-responsibility framework to create respect for fundamental human rights, among them fair pay for workers in the private sector.<sup>\*88</sup> The Corporate Social Responsibility legislative mandate introduced in India in 2013 has indeed amplified the role of businesses in upholding human rights.<sup>\*89</sup> However, enforcing such rules in cases of multinational companies operating across borders remains challenging.

In another positive development, which occurred in 2019, Pakistan's Sindh Assembly board for minimum wages included home-based workers in their minimum-wage catalogue for the first time.<sup>\*90</sup> This

<sup>75</sup> Hossain (n 74).

<sup>76</sup> Shaikh Abdur Rahman, 'After Rana Plaza, How Far Has Bangladesh Come on Worker Safety?' *The Diplomat* (28 April 2022) <<https://thediplomat.com/2022/04/after-rana-plaza-how-far-has-bangladesh-come-on-worker-safety/>> accessed on 15 January 2023.

<sup>77</sup> Ibid.

<sup>78</sup> Mark Starmanns for the International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, 'Purchasing Practices and Low Wages in Global Supply Chains: Empirical Cases from the Garment Industry' (*Conditions of Work and Employment* no 86, 2017) 4 <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_561141.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_561141.pdf)> accessed 5 on October 2023.

<sup>79</sup> Ibid.

<sup>80</sup> International Labour Office, 'Bangladesh Move towards Employment Injury Insurance: The Legacy of Rana Plaza' 2 <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/documents/publication/wcms\\_632364.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_632364.pdf)> accessed on 21 November 2022.

<sup>81</sup> Starmanns (n 78).

<sup>82</sup> Ibid 1.

<sup>83</sup> Ibid 8.

<sup>84</sup> Ibid 8.

<sup>85</sup> Ibid.

<sup>86</sup> European Parliament and Council Directive 2024/1760 of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 [2024] (Corporate Sustainability Due Diligence Directive) art 5 cl 1 (e), also art 13.

<sup>87</sup> Ibid art 12.

<sup>88</sup> 'Universal Periodic Review – India' national report (n 58) cl 16.

<sup>89</sup> Ibid cl 4.

<sup>90</sup> Ibid.



opens a gate to further opportunities for fair compensation of people who work from home.<sup>\*91</sup> India, too, offers an illustration of regulating the informal economy appropriately. In 2019, its Ministry of Labour and Employment launched the Pradhan Mantri Shram Yogi Maandhan national pension scheme<sup>\*92</sup>, which extends eligibility for a state pension to unorganised traders, shopkeepers, and self-employed persons.<sup>\*93</sup>

Systems that prevent transnational businesses from cancelling orders and payments at the last minute could contribute further to garment workers always receiving sufficient wages: a permanent guarantee mechanism should be set up such that retailers cannot walk away after ordering from factories. During the SARS-CoV-2 pandemic, many garment workers lost their livelihood amid financial hardship sparked by order cancellations from Western clothing companies.<sup>\*94</sup> Labour-rights organisations suggest that the purchasing businesses should pay higher prices in calmer times to ensure that workers are paid during crises.<sup>\*95</sup> This would give factories room to invest in production, the safety of their workers, and the workforce generally without fearing a lack of resources for paying the workers in leaner times.<sup>\*96</sup>

Another option is to implement a system wherein factories commence production only upon receiving pre-payment that covers at least production costs. Though not yet analysed in depth, this mechanism possesses potential to improve security by keeping large corporations from consistently exploiting workers. Among other possible solutions is businesses, as buyers, pre-financing the materials that the factory requires for their orders.<sup>\*97</sup> Pre-financing promotes security by reducing vulnerability to volatile material prices while assuring the buyer of suitable materials' use. When factories can purchase the necessary material without taking out loans, workers are more likely to get paid as agreed.<sup>\*98</sup> If the factories can be certain of having the means to purchase what is needed without having to appeal to outside lenders, the workers to gain greater security, of the amounts promised for doing the work promised.<sup>\*99</sup> Such approaches to financing can reduce the adverse human-rights impacts of garment-industry practices.

## 4.2. Direct obligations for non-state actors

Work-hosting states such as Bangladesh, India, and Pakistan are often seen as weak links in the global garment industry. They do not hold the means and power to alter the standing of garment workers<sup>\*100</sup>, and their failure to enforce business and human-rights laws represents a significant legal gap in state practice. Those laws, in turn, crucially influence corporate behaviour<sup>\*101</sup>. However, the states cannot fill this gap on their own.

The Office of the UN High Commissioner for Human Rights emphasises that influential brands must strengthen human-rights-linked due diligence so as to prevent and otherwise address business-related abuses of human rights through proper assessment and evaluation.<sup>\*102</sup> Recent UPRs and CESCR observations pertaining to Bangladesh, Pakistan, and India highlight longstanding issues with labour conditions and workplace safety.<sup>\*103</sup> Reports of hazardous work environments, such as H&M factories with

<sup>91</sup> Ibid cl 101.

<sup>92</sup> Ministry of Labour & Employment of the Government of India, 'Brief on [the] National Pension Scheme for Traders and Self-employed Persons (NPS-Traders) 2019' <<https://labour.gov.in/nps-traders>> accessed on 10 October 2023.

<sup>93</sup> Ibid.

<sup>94</sup> Georgia Bynum, 'The Impact of Fast Fashion in Bangladesh' (Borgen Project blog, 2021) <<https://borgenproject.org/fast-fashion-in-bangladesh>> accessed on 10 June 2022.

<sup>95</sup> Rhys Davies and Jean Jenkins, 'Workers' Lives at Risk: How Brands Profit from Unsafe Factory Work in Pakistan' (report compiled by WISERD and Cardiff University researchers, 2022) 7 <<https://respect.international/wp-content/uploads/2023/06/Report-%E2%80%93Workers-lives-at-risk-how-brands-profit-from-unsafe-factory-work-in-Pakistan.pdf>> accessed on 3 August 2024.

<sup>96</sup> Ibid.

<sup>97</sup> Starmanns (n 78).

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid 13–14.

<sup>101</sup> Guiding Principles (n 18) 5.

<sup>102</sup> Jenefa Jabbar, 'Protecting Human Rights at the Workplace: Observations for the RMG Industry' *Dhaka Tribune* (Bangladesh, 24 January 2022) <<https://www.dhakatribune.com/business/2022/01/24/protecting-human-rights-at-the-workplace-observations-for-the-rmg-industry>> accessed on 26 May 2024.

<sup>103</sup> Concluding Observations on Pakistan (n 63) 47.

exposure to dangers from gas leaks and open fires, underscore the need for improved safety measures.<sup>\*104</sup> Enhanced transparency through due diligence could provide a clearer picture of actual health and safety conditions, the standards followed, and unions' functioning.

Transparent due-diligence processes can improve health and safety oversight in garment factories and union operations partly by making it harder for purchasers to ignore what is going on. Currently, delegating all management to subcontractors lets brand-owners evade their responsibility for improving work conditions.<sup>\*105</sup> While numerous legally binding regulations and soft-law instruments address these issues, responsibilities remain unclear. In this climate, transparency has to be strengthened: publicly available due-diligence reports can pressure companies to act responsibly.<sup>\*106</sup> Also, with transparency facilitated through due-diligence procedures, unions and even individual workers can solve the mystery of which company someone is ultimately working for and, accordingly, against whom they should file any complaints about violations of human rights and other workplace-associated abuses.<sup>\*107</sup>

The EU Corporate Sustainability Due Diligence Directive aligns well with meeting these needs in this context by mandating comprehensive due-diligence practices. Namely, the directive mandates that due-diligence reports be publicly available and also be disseminated to interested parties. This should aid in increasing transparency and accountability<sup>\*108</sup> while, additionally, obliging companies to engage in corrective actions when rights violations are discovered and ensure that continual due diligence is maintained to prevent adverse impacts.<sup>\*109</sup>

That said, companies are already required to conduct human-rights due diligence, report on it, and communicate about this under the UN Guiding Principles.<sup>\*110</sup> The UNGPs thoroughly explain how due diligence for human rights ought to be conducted and how handling of the findings should be integrated across business-internal functions and throughout company actions. The reports should utilise internal and external expertise, be publicly accessible to the public, and communicate the findings to relevant parties.<sup>\*111</sup> However, it is important to note once again that the UNGPs are not legally binding, whereas the terms of the EU directive and the forthcoming UN treaty on business and human rights are. While the UNGP framework supports identifying best practice, it lacks the enforcement mechanisms of legally binding regulations.<sup>\*112</sup>

Another important element to note is that simply applying due diligence does not resolve the human-rights issues or absolve companies of liability. Per the UNGPs, if companies discover violations of human rights in their supply chain, they must take appropriate measures to minimise the negative consequences.<sup>\*113</sup> In a telling example, had companies employed proper human-rights due-diligence processes during the pandemic, they should not have been deemed eligible to appeal to *force majeure* clauses for cancelling their orders, since such cancellations were having a highly evident severe rights impact on numerous workers in the factories.<sup>\*114</sup>

For the companies to receive further outside pressure to comply with their due-diligence obligations, John Braithwaite's model of enforced self-regulation could be applied. Some scholars have even mooted that compliance managers could face criminal-law liability for failing to report non-adherence. Taking an approach similar to that of the French 2017 Duty of Vigilance Law could enhance the enforcement of due-diligence obligations by imposing well-defined civil penalties for non-compliance.<sup>\*115</sup> Under that act of law,

<sup>104</sup> Ibid.

<sup>105</sup> Bynum (n 94).

<sup>106</sup> Clean Clothes Campaign, '#GoTransparent' <<https://cleanclothes.org/campaigns/gotransparent>> accessed on 5 October 2023.

<sup>107</sup> Ibid.

<sup>108</sup> Corporate Sustainability Due Diligence Directive (n 86) art 5 cl 2 (h), also art 16.

<sup>109</sup> Ibid art 5.

<sup>110</sup> Guiding Principles (n 18) 16.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid 1.

<sup>113</sup> Ibid 16.

<sup>114</sup> John F Sherman, 'Irresponsible Exit: Exercising Force Majeure Provisions in Procurement Contracts' (2021) 6(1) Business and Human Rights Journal 127, 132–33. – DOI: <https://doi.org/10.1017/bhj.2020.27>.

<sup>115</sup> John Braithwaite, 'Enforced Self-Regulation: A New Strategy for Corporate Crime' (1982) 80(7) Michigan Law Review 1468, 1470. – DOI: <https://doi.org/10.2307/1288556>; Grant Hammond, Geoff McLay, and Wayne Mapp, 'Civil Pecuniary Penalties' (NZ Law Commission paper 33, 2012) <<https://www.lawcom.govt.nz/assets/Publications/IssuesPapers/NZLC-IP33.pdf>> accessed on 5 August 2024.

all French companies are required to conduct human-rights and environmental due diligence, and not honouring one's obligations under the act could result in pecuniary penalties imposed under civil law.<sup>\*116</sup> Implementing flexible and efficient due-diligence practices applicable along the entire supply chain is crucial to mitigating potential financial, legal, and reputation risks before they emerge.<sup>\*117</sup>

Businesses generally apply due diligence to reduce their legal or financial risks; that is, they follow the processes primarily to safeguard their own interests.<sup>\*118</sup> Without binding state-level obligations and consequences, businesses are unlikely to employ due diligence voluntarily.<sup>\*119</sup> The UN draft treaty on business and human rights foresees regulation requiring states to adopt measures that ensure corporate due-diligence reporting.<sup>\*120</sup> According to the draft text, the states are obliged to adopt legislation, regulations, or other suitable measures that guarantee following the established practice of company due-diligence reporting.<sup>\*121</sup> The terms would require businesses to engage in such actions as undertaking regular human-rights impact assessments and publishing the results.<sup>\*122</sup> Additionally, states that have signed the treaty would have to make sure that businesses operating under their jurisdiction prevent human-rights abuses by third parties under their control. This obligation may be fulfilled, for example, by imposing a legal duty for businesses to prevent any human-rights abuses from occurring in their supply chains, wherever this is possible.<sup>\*123</sup>

## 5. Conclusions

The expansion of Western companies into 'the developing world' in the 1990s sparked discussion of business responsibilities as the potential for human-rights violations expanded, a dialogue that has not reached consensus even after several decades of observation and analysis.<sup>\*124</sup> The garment industry's complex web of stakeholders highlights the challenges in protecting human rights. While international human-rights law has traditionally placed obligations on states' shoulders, growth in the role of non-state actors has increasingly complicated this state-centric approach.<sup>\*125</sup> Therefore, efforts to extend these responsibilities to non-state actors have been established, through initiatives such as the draft treaty on business and human rights, which is aimed at enforcing stricter regulation of corporations.<sup>\*126</sup>

Among the solutions proposed for tackling the human-rights issues that continue to plague the garment and fashion sector are reforming the wage systems involved and imposing requirements for human-rights directly on non-state actors – requirements backed up by solid enforcement. Such approaches aimed at strengthening accountability could protect workers more effectively. While progress has been made, it is vital to continue directing attention to addressing human-rights abuses. This calls for urgency if we wish to prevent further exploitation and ensure the protection of workers' rights.

<sup>116</sup> Christophe Clerc, 'The French "Duty of Vigilance" Law: Lessons for an EU Directive on Due Diligence in Multinational Supply Chains' (ETUI research paper – Policy Brief 1/2021, 2021) 1, 2. – DOI: <https://doi.org/10.2139/ssrn.3765288>.

<sup>117</sup> Francesca Richmond, Graham Stuart, and Adeel Haque, 'EU: European Commission Adopts Report on Corporate Due Diligence and Accountability' (Lexology: Baker McKenzie 2021) < <https://www.lexology.com/library/detail.aspx?g=edab6968-97bc-4323-853b-de241265f296> > accessed on 20 August 2024.

<sup>118</sup> Kolieb (n 8) 810–11.

<sup>119</sup> Ibid.

<sup>120</sup> Updated Draft LBI (n 29) art 6.2 (c).

<sup>121</sup> Ibid.

<sup>122</sup> Ibid art 6.4 (a).

<sup>123</sup> Ibid art 6.5.

<sup>124</sup> 'The UN "Protect, Respect and Remedy" Framework' (n 3).

<sup>125</sup> Monnheimer (n 7) 11.

<sup>126</sup> For instance, art 6.2 (c) of the updated draft legally binding instrument regulates the activities of transnational corporations and other business enterprises under international human-rights law.