LABOUR STANDARDS IN GLOBAL SUPPLY CHAINS: THE RELATIONSHIP BETWEEN DUE DILIGENCE AND LABOUR INSPECTORATES

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ABSTRACT

Global supply chains are a widespread phenomenon and responsible for the majority of current international trade. Although they may benefit companies, consumers and, to some extent, workers, they pose major challenges to labour rights. Recent workplace tragedies and deteriorating working conditions, which relate to the underlying rationale of global supply chains and to supply chain management techniques, have brought attention to the topic. Following a call from non-governmental organizations, consumers, and states to lead firms to address the problems, private codes of conduct emerged as a possible solution. As a result of their failure, recent international and domestic extraterritorial regulation initiatives are trying to tackle labour issues in global supply chains, bringing due diligence processes to their heart. Although these regulatory initiatives are still in their infancy, they handle due diligence and the most traditional method for enforcing labour rights – labour inspectorates – at arm's length. In this context, they suggest multinational enterprises assess local labour inspectorates while evaluating their risks. Demonstrating how this assessment is easier said than done, this article proposes a different interaction between businesses and labour inspectorates in the context of due diligence processes. This interaction could be beneficial for both labour

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inspectorates and firms, while bringing more effectiveness to the enforcement of labour law.
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1. INTRODUCTION

"Steve Jobs couldn't have made the smartphone without a global supply chain" (FRIEDMAN, 2016, p. 199). In 2012, approximately 90% of the iPhone's components were made outside the United States, according to estimates (PARELLA, 2014, p. 759). But if it is true that Apple became a corporate giant, to a great extent, by mastering global supply chains (GSCs) (PARELLA, 2014, p. 756), it is also true that its reliance on an international supply chain is not unique to its industry (WEIL, 2014, p. 173). It is also a widespread phenomenon.

In 2001, global outsourcing was already a trillion dollar industry, regarded as one of the most important organisational and industrial structural changes of the 20th Century (SARFATY, 2015, p. 425). GSCs composed of multinational enterprises (MNEs) are responsible for approximately 80% of global trade (LEE, 2016, p. 1). Studies show that more than half the value of global exports is compounded of products commercialised through this system (DE BACKER; MIROUDOT, 2013, p. 16). According to the International Labour Organisation (ILO), 453 million people were employed under such arrangements in 2013 (OFFICE, 2015, p. 132).

Through GSCs, consumers might gain access to more affordable products, while workers can be lifted out of extreme poverty (LABOWITZ; BAUMANN-PAULY, 2014, p. 44). But they have also raised awareness of the need for companies to check compliance of their suppliers, assuring responsible and transparent value chains (SARFATY, 2015, p. 419). Foxconn, the world's leading contract manufacturer of electronics, supplies for international brands such as Apple, Dell, Sony and Nokia (PARELLA, 2014, p. 767). In 2010, it became internationally infamous for a series of suicides which occurred in its facilities near Shenzhen (China) (PARELLA, 2014, p. 767), when 18 workers attempted suicide, leading to 14 deaths (MOORE, 2012). The suicides were linked to exhausting working conditions (PARELLA, 2014, p. 768).

In 2013, a factory complex at Rana Plaza industrial district in Dhaka, Bangladesh's capital, collapsed, killing 1,129 garment workers (LABOWITZ; BAUMANN-PAULY, 2014, p. 9). Over 2,500 people were injured (RÜHMKORF, 2015, p. 213). Considered to be the world's "worst industrial accident ever recorded in the global garment industry", (POSTHUMA; ROSSI, 2017, p. 197) it happened 5 months after the Tazreen Fashions factory fire, which killed around 120 workers (LABOWITZ; BAUMANN-PAULY, 2014, p. 9). This factory was located in the same industrial district of the Rana Plaza and also produced clothes for international brands (POSTHUMA; ROSSI, 2017, p. 197), including Walmart (RÜHMKORF, 2015, p. 213).

Such tragedies have called attention to the risks of outsourcing to suppliers with poor working conditions (SARFATY, 2015, p. 419). However, these episodes have even been regarded by some as a natural result of the "highly disaggregated sourcing model" which forms the basis of GSCs (LABOWITZ; BAUMANN-PAULY, 2014, p. 9). The issue is that organisational and industrial structure changes over the last few decades allowed companies to reduce production costs considerably, but led to a "fissured workplace" (WEIL, 2014). In such scenarios, companies exert control without carrying responsibility for the observance of labour standards within their network of suppliers in different places around the globe (ORGANISATION, 2017, p. 14).

The development of new information and communication technologies (ORGANISATION, 2017, p. 13) allowed production to be performed in emerging economies, while lead firms in developed economies still maintain control over crucial business functions (RAWLING; BARNES; MARKEY, 2015, p. 662). Accordingly, many powerful corporations now arguably control the chain of suppliers and distributors, providing indirect labour (RAWLING; BARNES; MARKEY, 2015, p. 662). The solution to those issues might come from realigning control and responsibility in GSCs (ORGANISATION, 2017, p. 14). There is, thus, a growing call for regulation to assure responsible supply chains, which might hold corporations liable for human rights violations in their value chains (SARFATY, 2015, p. 424).

But whether in international instruments or in domestic legislation, a common feature of recent initiatives to tackle issues related to working conditions in GSCs is the call for due diligence. Nevertheless, international norms on this subject are still in their infancy, and there is a shortage of guidance on the interpretation and

implementation of such mechanisms (SARFATY, 2015, p. 448). So far, standards say little about the interaction of state agencies, such as labour inspectorates, with due diligence processes. In this context, this article will explore this relationship.

It is organised as follows: the next section presents the basic concepts of GSCs and the discussions about its impacts on working conditions. It then presents recent governance solutions to address those issues, featuring due diligence. Section 3 examines the concept of due diligence. It then highlights its regulation, its current procedural standards in both international and domestic regulation, and how labour inspectorates appear in this process. Section 4 examines labour inspectorates in the light of such a standpoint. It then provides a further possible interaction between these two entities. Final conclusions are drawn in the last section.

2. GLOBAL SUPPLY CHAINS

2.1 DEVELOPMENT AND BASIC CONCEPTS

During the 1980s and the 1990s, privatisation of state-owned enterprises, deregulation of national economies, and liberalisation of international trade compounded to create a highly attractive environment for MNEs to run businesses in developing countries (LUND-THOMSEN; LINDGREEN, 2014, p. 12). The growth of global manufacturing capacity and further reduction of transportation costs added to this scenario (WEIL, 2014, p. 167). Moreover, new communication technologies allowed international retailers to source products from Asia, Africa, and Latin America, which provided abundant labour supplies (with much lower wages), necessary skills and manufacturing capabilities (LUND-THOMSEN; LINDGREEN, 2014, p. 12). Hence, most of the unskilled and labour-intensive production tasks started being offshored by developed countries' corporations to developing nations which held a comparative advantage in completing these tasks (PARK; NAYYAR; LOW, 2013, p. 31).

The term "supply chain" gained momentum in the 1990s, in tandem with the concept of supply chain management (SCM), which was introduced in the 1980s (PARK; NAYYAR; LOW, 2013, p. 42). The latter concept refers to the planning, coordination and control of the supplier's activities, especially through the creation and

implementation of standards (WEIL, 2014, p. 168). In the 1990s, this concept became very important in business schools, as industries were re-evaluating processes of production, due to the introduction of new information technologies, lower cost of computers and adoption of common communication standards (WEIL, 2014, p. 167).

The underlying rationale of GSCs thus consists of a two-fold decision process. First, an organisational decision, regarding what ought to be performed inside or outside a corporation's walls – a decision for outsourcing (WEIL, 2014, p. 167) or "make or buy decision" (PARK; NAYYAR; LOW, 2013, p. 56). Then there is the decision of geographical relocation of such activities from the corporation's domestic country to a foreign country – "offshoring" or "international outsourcing" (PARK; NAYYAR; LOW, 2013, p. 56). This cost calculation balances "direct factor" costs (e.g., wages and capital costs) with "separation" costs (e.g., transmission costs and transportation costs) (PARK; NAYYAR; LOW, 2013, p. 30). The result of that decision process is that of a lead firm focussing on core activities and transferring other tasks (e.g., manufacturing and assembly) to other businesses, but assuring that some standards (e.g., technical and quality) are strictly followed by the "subordinate suppliers" (WEIL, 2014, p. 168).

In that sense, a supply chain has been defined "as a set of three or more entities directly involved in the upstream and downstream flows of products, services, finances, and/or information from a source to a customer" (PARK; NAYYAR; LOW, 2013, p. 45). Finally, the ILO defines global supply chains as "demand-supply relationships that arise from the fragmentation of production across borders, where different tasks of a production process are performed in two or more countries" (OFFICE, 2015, p. 132). But, as shown below, such an arrangement can cause many issues regarding labour conditions.

2.2 LABOUR STANDARDS IN GLOBAL SUPPLY CHAINS

2.2.1 Potential benefits

Arguably, GSCs create benefits for the companies that use this model, for consumers who purchase cheaper goods produced as a result of this system, and for

the workers who are employed in the companies within the network (WEIL, 2014, p. 176). For instance, the garment sector has been regarded as an important driver of development and economic growth in Bangladesh, whose economy has grown almost 6% per year since the mid-1990s and is linked to an increase in human development (LABOWITZ; BAUMANN-PAULY, 2014, p. 16). This economic growth has arguably led to the empowerment of women, as they started to work in that very sector (LABOWITZ; BAUMANN-PAULY, 2014, p. 16). Educational enhancements have also been linked to GSCs, as Vietnamese workers started learning a foreign language when the country began participating in such arrangements (GROUP, 2018, p. 12). Finally, product upgrading which is connected to the chains has possibly contributed to the upgrading of workers' skills (EMPLOYERS, 2016a).

In that context, some argue that economic globalisation has had little impact on the deregulation of labour markets (LEE, 2016, p. 3). Accordingly, tragedies such as the Rana Plaza accident would not be a necessary corollary of the economics of GSCs, since local weak laws and enforcement are a crucial factor here (RÜHMKORF, 2015, p. 216). Furthermore, the International Organisation of Employers (IOE) contends that GSCs are "not intrinsically bad," for they have created jobs, growth and development, besides lifting a large number of people out of poverty (EMPLOYERS, 2016b).

2.2.2 Deteriorating working conditions

Nonetheless, the early idea that participation and economic upgrading in GSCs would automatically lead to "social upgrading," i.e., the improvement of workers' entitlements and rights as social actors and furtherance of their employment quality, has been recently disputed (LEE, 2016, p. 3). Evidence from recent empirical studies suggests that the relationship between participation in GSCs and social upgrading is not always positive (LEE, 2016, p. 3). In fact, economic upgrading in GSCs may be connected to worsening working conditions, as existing jobs in GSCs in developing countries can be insecure, unprotected and lack safety regulations (RAWLING; BARNES; MARKEY, 2015, p. 666).

Moreover, many workers engaged in GSCs earn a wage which does not meet their basic needs (RAWLING; BARNES; MARKEY, 2015, p. 666). Yet issues such as

child labour, forced labour, unwilling overtime working, the absence of freedom of association and the right to collective bargaining seem to be an accepted practice in such arrangements (RAWLING; BARNES; MARKEY, 2015, p. 666). Although informal economy has always existed, the development of GSCs are still linked to its exponential growth (UNGA, 2016, p. 7). Finally, there is a trend towards a concentration of women at the bottom levels of GSCs, usually associated with lower pay and fewer benefits (UNGA, 2016, p. 8).

The IOE regards these problems as reflecting "general challenges in local environment," so that working conditions in GSCs are no worse than those found locally on a domestic level (EMPLOYERS, 2016b). They have therefore started emphasising the states' responsibilities in ratifying international labour conventions and in legislating, implementing and enforcing their domestic labour regulation (POSTHUMA; ROSSI, 2017, p. 188).

Nevertheless, the paradox is that poor home states, which might have been chosen as locations for production precisely for their weak labour regulation, bear the responsibility for protecting their workers (RAWLING; BARNES; MARKEY, 2015, p. 667). Besides, multinational corporate wealth can be multiple times greater than that of many nations - a situation which has effectively allowed GSCs to override states' sovereign democracy (UNGA, 2016, p. 4). This leads to the analysis of the "law shopping" phenomenon.

2.2.3 **Law shopping and the race to the bottom**

The freedom of businesses to span the structure of their operations across many actors located in different continents allows them to escape national regulation in favour of a less regulated space (PARELLA, 2014, p. 749). Supiot has pointed out that the law itself has been transformed into just another product competing in the international market, as legal systems better suited for financial profitability displace the others (SUPIOT, 2010, p. 155). "Structural adjustment policies" in developing countries have introduced incentives for foreign direct investment, reduced state programs and weakened labour market regulation (RAWLING; BARNES; MARKEY,

2015, p. 662). In this way, corporations evade the laws of countries where they operate and choose a jurisdiction more compatible with their interests – a phenomenon called “law shopping” (SUPIOT, 2010, p. 156).

Moreover, the possibility of shifting the production of goods and services to companies in countries with lower costs and fewer regulations places pressure on manufacturers and service providers in GSCs to cut costs, which has changed employment relationships globally (UNGA, 2016, p. 6). Hepple stresses that the development of GSCs has led national labour laws towards the fragmentation of labour markets, featuring more insecure, irregular and non-unionised forms of employment (HEPPLE, 1997, p. 354). The result is headlines “filled with stories of corporate wrongdoing,” such as Rana Plaza in Bangladesh and Foxconn in China (PARELLA, 2014, p. 749). In the end, very different levels of labour protection and labour costs across countries lead to social dumping, whereby products are exported at low cost due to the exploitation of workers, and to the “race to the bottom,” in which nations try to outcompete one another with lower labour standards (HEPPLE, 1997, p. 356). Supply chain management adds further to this scenario.

2.2.4 Supply Chain Management strategies

Besides the law shopping phenomenon, some lead firms’ practices have been regarded as the main cause of worsening labour conditions at the bottom of GSCs (LEE, 2016, p. 4). In that sense, many SCM techniques, while set up to deliver efficiency and responsiveness, facilitating “global just-in-time” sourcing and production for the buyers, are linked to issues such as excessive working hours, involuntary overtime (LEE, 2016, p. 3), and the extensive use of casual and temporary workers in GSCs (LEE, 2016, p. 4).

For example, cracks in the building structure were found the day before the eight-story commercial Rana Plaza building collapsed (RÜHMKORF, 2015, p. 213). While the banks and shops which functioned on the lower floors closed promptly, the workers at the clothing factories which operated on the other floors were ordered to return to work the following day – when the building collapsed (RÜHMKORF, 2015, p. 213).

Sarfaty claims that anthropologists have regarded SCM as an “ethic of detachment” in which companies are frequently establishing boundaries and endpoints to supply chain relationships (SARFATY, 2015, p. 436). Those techniques are applied by MNEs in developing countries, which usually neglect social upgrading at the expense of economic growth when engaging in GSCs (LEE, 2016, p. 5). While the results of these practices have already been shown, the solutions that have surfaced to address these issues are the focus of the next section.

2.3 ADDRESSING THE ISSUES

2.3.1 **The focus on multinational enterprises**

As nongovernmental organisations (NGOs), trade unions, student organisations and the media started campaigns bringing attention to labour issues such as child and forced labour in suppliers that produced items destined for developed countries (LUND-THOMSEN; LINDGREEN, 2014, p. 12), the idea of strengthening regulation of GSCs became more broadly accepted (RAWLING; BARNES; MARKEY, 2015, p. 667). The proposed approaches have mainly focussed on the role MNEs play in those arrangements for two reasons. Firstly, labour rights violations in GSCs usually occur where host countries have weak legal institutions (SARFATY, 2015, p. 425). They usually feature public institutions which are inadequate and ineffective and do not bear the power “to engage in effective administrative enforcement” (KOLBEN, 2015, p. 434). The reasons for that weakness stem from a lack of funding of enforcement bodies, political corruption, a lack of skills and of willingness to regulate - as this could cause them to lose their competitive advantage (KOLBEN, 2015, p. 435). In either case, MNEs seem to take advantage of it (LEE, 2016, p. 12).

Secondly, the lead firm is arguably the most commercially influential party in the chain, usually located at its pinnacle (RAWLING; BARNES; MARKEY, 2015, p. 663). It often has strong market power, grasps crucial regulatory resources and exerts significant control and influence over smaller firms’ behaviour (HARDY et al., 2015, p. 564), including production process and working conditions (RAWLING; BARNES; MARKEY, 2015, p. 664). In this way, they “govern” the other participants in the chain,

as they prescribe the conditions of trade and parameters of participation in the GSCs, and define standards to suppliers (e.g., price and quality) (RAWLING; BARNES; MARKEY, 2015, p. 664). What now follows is the analysis of the recent attempts to solve those issues.

2.3.2 **Private governance**

Private voluntary codes of conduct, coupled with private monitoring mechanisms, surfaced as the solution for both MNEs and NGOs concerned with labour rights, which sought for an answer to poor working conditions in GSCs (LOCKE; AMENGUAL; MANGLA, 2009, p. 320) - the idea of “private governance” (LEE, 2016, p. 11). But the private governance regime, which constitutes a major branch of the Corporate Social Responsibility (CSR) movement (LIN, 2009, p. 718-719), has failed to avoid tragedies such as the Rana Plaza building collapse (RÜHMKORF, 2015, p. 220). “Private sector social compliance audits” had taken place in two factories located in the Rana Plaza building some weeks before it collapsed, but had failed to detect any issues (POSTHUMA; ROSSI, 2017, p. 197). Apple increased the number of audited facilities between 2007 and 2010 (from 39 to 102), but it did not avoid the cluster of suicides in the latter year (PARELLA, 2014, p. 779).

So while businessmen have insisted on voluntary CSR, adopting and implementing codes of conduct in their supply chains, the situation does not seem to have changed (RÜHMKORF, 2015, p. 220). Some argue that they provided few incentives for behavioural change (SARFATY, 2015, p. 420). Additionally, the lack of independent monitoring and enforcement mechanisms led to criticisms in terms of greenwashing (SARFATY, 2015, p. 427). They are still regarded as non-sustainable, limited in scope and democratically illegitimate (KOLBEN, 2015, p. 439). Some suggest, therefore, that it is already clear that systems of global labour governance, based mainly on private, voluntary and self-regulatory standards and private monitoring, leave “governance gaps” (THOMAS; TURNBULL, 2018, p. 537).

2.3.3 International regulation

The failure of the private governance to eliminate or reduce labour violations in GSCs (RAWLING; BARNES; MARKEY, 2015, p. 667) resulted in a search for alternative paths for social upgrading (LEE, 2016, p. 15) in the realm of international public governance. To this end, some international instruments have been introduced. The 2011 United Nations Guiding Principles on Business and Human Rights ("UNGP" or "UN Guiding Principles") states that companies should "seek to prevent and mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business operations" (NATIONS, 2011, p. 14) including relationships with "entities" in their supply chain (NATIONS, 2011, p. 15). The Guiding Principles advocate that companies develop supply chain monitoring and due diligence processes (TURNER, 2016, p. 199).

Another instrument is the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises ("OECD Guidelines for MNEs"), which "provide non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards" (OECD, 2011, p. 3). Although it was first adopted in 1976, its last update took place in 2011 and included a new human rights chapter in harmony with the UNGP (CÎRLIG, 2016, p. 232). Allegedly providing a "comprehensive approach to due diligence and supply chain management" (OECD, 2011, p. 4), it states that enterprises should "carry out risk-based due diligence" in order to "identify, prevent and mitigate" adverse impacts (OECD, 2011, p. 20). Global standards such as the UNGP and the OECD Guidelines for MNEs expect businesses to respect all internationally accepted human rights, which include rights embedded in the 1998 ILO Declaration on Fundamental Principles and Rights at Work (DFPRW) (CENTRE, 2017, p. 7).

Finally, the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy ("ILO MNE Declaration") provides principles to be used "as guidelines for enhancing the positive social and labour effects of the operations and governance of" MNEs to achieve decent work for all (OFFICE, 2017). Its 5th edition states that MNEs "should carry out due diligence to identify, prevent, mitigate and

account for how they address their actual and potential adverse impacts that relate to internationally recognized human rights," and encompasses the rights set out in the ILO's DFPRW (OFFICE, 2017, p. 5).

Hepple, however, highlights that attempts to regulate MNEs through voluntary international guidelines date back to the 1970s and have not shown to have a great impact (HEPPLE, 1997, p. 358). Although they have been easily adopted by corporations, they have also been "easily ignored," as it is difficult to monitor compliance and they lack any real sanction for breaches (HEPPLE, 1997, p. 358). Sarfaty agrees that these initiatives still have to be translated into mandatory regulation (SARFATY, 2015, p. 426). In that regard, there is neither an ILO Convention nor a binding international treaty regulating GSCs to protect workers (RAWLING; BARNES; MARKEY, 2015, p. 666).

2.3.4 Domestic extraterritorial legislation

In the absence of international binding regulation, and as the international voluntary standards have been unsuccessful in holding companies responsible for human rights violations in their GSCs, some advocates are now moving towards domestic law as an alternative (CHILTON; SARFATY, 2017, p. 7). Arguably, domestic regulation for supply chain is a mechanism through which home states might set human rights regulation for third-party suppliers making use of MNEs (SARFATY, 2015, p. 420).

Accordingly, some governments are demanding more information about the source of products from their companies – a movement towards supply chain transparency (SARFATY, 2015, p. 420). For instance, legislation in the United States (2010 California Transparency in Supply Chains Act – "California Act") and United Kingdom (2015 Modern Slavery Act – "Modern Slavery Act") demand that businesses disclose human rights due diligence conducted on their supply chains abroad (CHILTON; SARFATY, 2017, p. 7). From a different standpoint, 2017 French "Loi de Vigilance n° 2017-399" ("French Due Diligence Law") requires companies of a certain size to establish and implement due diligence plans, in order to identify risks and prevent serious violations of human rights and fundamental freedoms, human health

and safety, and the environment in their supply chains (CENTRE, 2017, p. 4). It even establishes basic contents of the “plan de vigilance” (due diligence plan) (CENTRE, 2017, p. 8).

But whether in international regulation or domestic extraterritorial regulation, due diligence is the buzzword when it comes to protecting human rights, including labour standards, in GSCs. The next section of this article will focus on how it works and how it might relate to labour inspectorates.

3. DUE DILIGENCE

3.1 CONCEPT

It has been suggested that due diligence bears two different concepts: business people see it as a way to manage risks, whereas human rights lawyers view it as a standard of conduct in order to discharge an obligation (BONNITCHA; MCCORQUODALE, 2017, p. 900). From a business standpoint, due diligence is viewed as a “process of investigation conducted by a business to identify and manage commercial risks,” commonly used in the areas of mergers and acquisitions, to confirm facts and data and determine value, price and risks of such transactions (BONNITCHA; MCCORQUODALE, 2017, p. 901). On the other hand, from a standard of conduct standpoint, its origins date back to Roman Law, under which a person would be considered liable for accidental harm caused to others in case he or she failed to meet standards of a diligent “head of a household” (BONNITCHA; MCCORQUODALE, 2017, p. 902). It then formed the basis for the development of the “reasonable man” test in English law of negligence and similar standards in civil legal systems (BONNITCHA; MCCORQUODALE, 2017, p. 903).

Later, the term began to be used to refer to states’ obligation to engage in fact-finding towards non-state actors (such as companies), with regard to international human rights law (TREBILCOCK, 2015, p. 93). In this sense, its concept plays an important role by setting the extent of a state’s obligation to prevent and respond to human rights violations committed by private actors within its jurisdiction (BONNITCHA; MCCORQUODALE, 2017, p. 904). As such, states have the obligation

to satisfy a certain standard of conduct (due diligence) in order to prevent and reply to third parties' conducts (BONNITCHA; MCCORQUODALE, 2017, p. 904).

One fundamental difference regarding the model adopted for due diligence inside businesses and in the human rights approach is that the former is based upon the corporation's own interest, while the latter refers to norms which have been internationally defined (TREBILCOCK, 2015, p. 94). This leads to a better understanding of how due diligence surfaced in recent discussions about business and human rights.

3.2 HUMAN RIGHTS DUE DILIGENCE

In 2008, John Ruggie, Special Representative of the UN Secretary-General, suggested a framework to address the relationship between business and human rights, which makes it the responsibility of the former to respect the latter (BONNITCHA; MCCORQUODALE, 2017, p. 899). In its "Protect, Respect and Remedy Framework," the recognition of the "corporate responsibility to respect human rights" requires that companies abstain from violating the rights of others (PARELLA, 2014, p. 773). According to this document, to discharge that responsibility requires due diligence, understood as "steps a company must take to become aware of, prevent and address adverse human rights impacts" (UNHRC, 2008, p. 17). After further consultations and research, in 2011 Ruggie presented the UN Guiding Principles, which were later formally endorsed by the UN Human Rights Council (CASSELL; RAMASATRY, 2016, p. 8), as an attempt to set up pragmatic steps towards the implementation of his previous framework (BONNITCHA; MCCORQUODALE, 2017, p. 899). It could be said that "human rights due diligence" (HRDD) was born at this moment (MARTIN-ORTEGA, 2014, p. 51).

However, the concept of due diligence is still under development (MARES, 2010, p. 197). A further challenge is to clarify the boundaries and limits of the effort placed by companies and the entities towards it should aim - whether direct contractors only or the entire supply chain (MARES, 2010, p. 197). Besides, in the context of liability, there is an issue as to whether it constitutes an obligation of means or of result (TREBILCOCK, 2015, p. 94). Nevertheless, due diligence requirements are currently

one of the most common methods used to attach corporate responsibility to human rights in law (COSSART; CHAPLIER; BEAU DE LOMENIE, 2017, p. 318). To this end, transparency laws and HRDD regulations have surfaced targeting human rights violations in MNEs' global supply chains (MARES, 2017, p. 277). The next section will scrutinise current regulatory approaches.

3.3 REGULATION

3.3.1 **Disclosure mechanisms**

Research has shown that different regulatory approaches towards due diligence can be traced (TAYLOR, 2014, p. 87). Firstly, due diligence can be encouraged through disclosure mechanisms (TAYLOR, 2014, p. 87). Measures which focus on transparency seek the improvement of accountability through several tools (e.g., consumer awareness and action), which might "push or nudge" corporations to free their GSCs from labour exploitation (KOEKKOEK; MARX; WOUTERS, 2017, p. 523). As such, the California Act, the first attempt from a governmental entity to codify supply chain disclosures (GREER; PURVIS, 2016, p. 56), does not require companies to act against violations of human rights in their supply chains, but to disclose information regarding their efforts on such a path (KOEKKOEK; MARX; WOUTERS, 2017, p. 524). It requires companies (retailers and manufacturers operating in California) with annual worldwide gross receipts that exceed US$100 million to disclose on their websites their efforts to "eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale" (CALIFORNIA, 2010).

Another example is the UK's Modern Slavery Act, which requires commercial organisations to "prepare a slavery and human trafficking statement" (UNITED KINGDOM, 2015). This statement may include information about its "due diligence processes in relation to slavery and human trafficking in its business and supply chains" (UNITED KINGDOM, 2015). There is no prescription as to the procedural steps the company should take. Finally, it leaves companies to decide whether they are going to address forced labour or slavery in their GSCs, as they can be compliant with the law by merely publishing a statement (LEBARON; RÜHMKORF, 2017, p. 20).

Both the California Act and UK's Modern Slavery Act models can be classified as mandatory transparency, as they require companies to disclose the steps taken (if any) to tackle modern slavery in their supply chains and regular operations (CENTRE, 2017, p. 4). As such, due diligence is not a requirement, but it may feature in the disclosed information. Some flaws in this kind of legislation have been pointed out elsewhere, such as the limited information required to be disclosed, the lack of obligation to report in the jurisdiction where the violation has happened, the poor enforcement structure and the lack of financial penalties in the case of non-compliance (TURNER, 2016, p. 204). Furthermore, they do not establish rules for parents of subcontracting companies in terms of liability (BUENO, 2017, p. 580).

3.3.2 Mandatory due diligence

A different regulatory approach emerges through adopting due diligence as a form of regulatory or legislation compliance (TAYLOR, 2014, p. 88). In that context, some existing international standards highlight the role played by due diligence in identifying and preventing human rights violations (CENTRE, 2017, p. 4). For instance, the legally binding ILO's Protocol to the Forced Labour Convention of 1930 expressly refers to the support of due diligence by both the public and private sectors as one of the measures to be taken for the prevention of forced labour (ILO, 2014).

Furthermore, due diligence might prove beneficial not only by encouraging or requiring companies to implement internal processes of investigation and control, but also by establishing liability (BONNITCHA; MCCORQUODALE, 2017, p. 907). Some regulatory schemes even combine these two ideas in various ways (BONNITCHA; MCCORQUODALE, 2017, p. 907). For instance, the French law builds on the legal concept of "devoir de vigilance" (duty of care) mirroring the definition of business responsibility elaborated by the UN Guiding Principles (TAYLOR, 2014). It requires companies to develop and implement a disclosed due diligence plan (CENTRE, 2017, p. 17). This kind of initiative highlights the role played by due diligence in identifying and preventing risks to human rights, including those related to labour standards (CENTRE, 2017, p. 4). It has henceforth been categorised as "mandatory due diligence" (CENTRE, 2017, p. 18).

Some studies suggest that many firms will only implement due diligence if they are able to foresee a short-term economic benefit or when they are compelled by law to implement those processes (HOFMANN; SCHLEPER; BLOME, 2018, p. 136). Thus, legislation which requires reporting might not be sufficient to avoid the violation of labour rights, as this requires changes to corporate strategies, through the adoption, inter alia, of mandatory due diligence processes (TURNER, 2016, p. 209). The establishment of procedural standards, their content and how they might relate to labour inspectorates is the focus of the next section.

3.4 PROCEDURAL STANDARDS

3.4.1 **In the UN Guiding Principles**

According to the UN Guiding Principles, the due diligence process should contain the following steps: a) identification of the enterprise's possible adverse human rights impacts, which might involve consultation with other relevant stakeholders; b) assessment of such impacts; c) prevention and mitigation of these impacts (remediation in cases where they have occurred); d) accountability for how they have been addressed; e) integration of the assessments across relevant internal functions and processes; f) verification of whether the impacts are being addressed and tracking of responses; g) tracking of the effectiveness of such responses; h) communication on how the impacts were addressed - but it does not specify to whom (TREBILCOCK, 2015, p. 99).

Three primary elements concerning the implementation of due diligence can be identified in the UNGP (MCCORQUODALE et al., 2017, p. 204-205). The first main aspect of HRDD includes the identification of actual or potential human rights impacts, through a "human rights impact assessment" (MCCORQUODALE et al., 2017, p. 205). At this stage, it seems to be common practice to hold a consultation with stakeholders, such as local communities, employees, suppliers and trade unions (MCCORQUODALE et al., 2017, p. 208). However, whereas the UNGP uses a wide range of stakeholders, which might even include governmental bodies, studies show that companies so far have had a limited view of the concept (MCCORQUODALE et

al., 2017, p. 210). Besides, it is left to the company to determine the level of engagement with relevant stakeholders, which might lead to superficial exercises which do not have any impact on the assessment (HARRISON, 2013, p. 114).

A second element of HRDD implementation under the UNGP requires that companies take action to address actual or potential human rights impacts and incorporate any findings from their assessments into their internal functions and processes (MCCORQUODALE et al., 2017, p. 212). The third main element of HRDD under the UNGP involves monitoring any adverse human rights impacts through tracking and feedback, which can be done by using benchmarking tools and indicators (MCCORQUODALE et al., 2017, p. 218).

All in all, the monitoring procedure drawn up by the UNGP is mainly an "internal affair," executed by the business with optional involvement of the stakeholders (GARCÍA-MUÑOZ ALHAMBRA; HAAR; KUN, 2013, p. 261). Besides, it seems that HRDD is easier said than done (SALCITO; WIELGA, 2018, p. 114). In this regard, there is disparity amongst due diligence practices, as international regulation is just beginning to surface (HOFMANN; SCHLEPER; BLOME, 2018, p. 117). Developments in law are arguably an important factor with regard to how companies implement HRDD, as they would rather have clear regulation instead of "uncertainty and inconsistency" (MCCORQUODALE et al., 2017, p. 223). The next section will examine the binding regulation in domestic legislation.

3.4.2 **In domestic extraterritorial legislation**

The California Act demands that companies disclose "to what extent, if any," whether they: a) verify their product supply chains; b) audit their suppliers; c) require certifications from direct suppliers; d) maintain internal accountability; e) train employees and management (CENTRE, 2017). It is thus possible to name five elements in their process: verification, auditing, certification, internal accountability, and training (MA; LEE; GOERLITZ, 2016, p. 310). Nevertheless, the Act does not require covered companies to follow any of these five steps (NOLAN, 2017, p. 250), as decided by California's court in Wirth v Mars (CENTRE, 2017, p. 11).

The French law specifies the due diligence plan content, which must include: a) risk mapping for the identification, analysis and prioritisation of risks; b) procedures for regular assessment of the situation of the company's subsidiaries, subcontractors or suppliers; c) appropriate actions to mitigate and prevent human rights (and environmental) violations; d) whistleblowing mechanisms; e) tools for monitoring and assessing the effectiveness of the measures taken (CENTRE, 2017, p. 17). The plan is intended to be developed in association with stakeholders or within multi-party initiatives (COSSART; CHAPLIER; BEAU DE LOMENIE, 2017, p. 320). As one can see, none of these procedural standards for due diligence establishes a clear relationship with local enforcement agencies, which include labour inspectorates. Nonetheless, as shown below, some of the OECD's documents incidentally touch on that point.

3.4.3 Labour inspectorates in the scope of risk assessment

Due diligence should meet nationally or internationally recognised standards, such as those provided by the OECD (SARFATY, 2015, p. 422), "a global forum for all types of issues, including social ones" (JEAN-MARC, 2015, p. 386). Although the documents it produces are categorised as promotional and encouraging (mere "soft law"), some of them have been promoting, explicitly and incrementally, principles that support international labour law (JEAN-MARC, 2015, p. 391). In the context of GSCs and labour issues, two documents intend to provide businesses with specific guidance on due diligence.

The first, the 2017 OECD's Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, states that due diligence should be risk-based, and conducted based on the likelihood and the severity of the harm (OECD, 2017, p. 21). The same document states, as an example, that "if an enterprise is sourcing from a country with a weak labour inspectorate, the measures that the enterprise will need to take to prevent child labour, forced labour and other labour impacts will be more extensive than the measures an enterprise may need to take if sourcing from a supplier operating in a jurisdiction with a strong labour inspectorate" (OECD, 2017, p. 21). Another document with such a view is the 2018 OECD Due

Diligence Guidance for Responsible Business Conduct (RBC), which uses the "strength of inspectorates" as an example of geographic risk factors for companies, in terms of governance (OECD, 2018, p. 63).

Both documents are in line with the General Policies of the OECD Guidelines for MNEs which define due diligence as a risk assessment tool (MARTIN-ORTEGA, 2014, p. 56). However, these instruments also seem to support the following: a) labour inspectorates are the traditional method in terms of enforcement of labour standards and b) the possibility of assessing the "strength" of labour inspectorates. Although the OECD Due Diligence Guidance for RBC does mention that businesses should encourage "relevant authorities in the country where the impact is occurring to act" (OECD, 2018, p. 31), in general, labour inspectorates and due diligence processes seem to be treated at arm's length. This standpoint is analysed in the following section, which still proposes a different relationship between those institutions.

4. LABOUR INSPECTORATES

4.1 ACCORDING TO THE OECD'S GUIDANCE

4.1.1 Traditional method of enforcement

Labour law research does not only encompass "forms and legalities," but also the idea of effectiveness of regulation in terms of achieving its objectives, i.e., the link between regulation and compliance (HOWE; COOPER; TOWNSEND, 2017, p. 215). In that sense, the design of labour market institutions is only one side of the coin; the other side concerns enforcement and making those institutions work (AMENGUAL, 2014, p. 5). Nevertheless, not only regulatory, but also enforcement gaps around labour standards in GSCs have been broadly reported in the literature (LEBARON; RÜHMKORF, 2017, p. 20). In the absence of an adequate system of enforcement, labour law might remain "declarations of good intentions" (ANNER, 2008, p. 42). A crucial component of such system is labour inspection (ANNER, 2008, p. 42), especially in developing countries (HOWE; COOPER; TOWNSEND, 2017, p. 215).

Labour inspectorates are, in short, agencies responsible for enforcing labour law (AMENGUAL, 2014, p. 5) and as such, some suggest that they are the main

response to the existing gap between formal regulations and the improvement of workers' conditions across the globe (AMENGUAL; FINE, 2017, p. 129). These state regulators hold the monopoly of coercive powers that might be used to induce compliance, while setting standards and influencing firms' behaviour (AMENGUAL; FINE, 2017, p. 132). In that context, they may demand information, carry out inspections in facilities and check records (AMENGUAL; FINE, 2017, p. 132). Furthermore, they might not only issue penalties and determine firm shutdowns, but also deny licences (AMENGUAL; FINE, 2017, p. 132).

In regard to GSCs, the ILO MNE Declaration explicitly refers to public labour inspection as one of the policies, measures and actions to be adopted by governments to further the aim of that document, especially regarding minimising and resolving "difficulties" that may arise due to MNEs' operations (OFFICE, 2017, p. 2). Thus, and in accordance with OECD's guidelines, it seems that labour inspectorates are indeed the most traditional method of enforcement of labour regulation and they may play an important role in enhancing working conditions in GSCs. But is it possible to measure their "strength"?

4.1.2 The strength of labour inspectorates

The OECD Guidelines highlight the strength of labour inspectorates as a risk factor to be assessed by MNEs. However, assessing local labour inspectorates might not be a simple task. Firstly, it might be difficult to find objective parameters for such an evaluation. Although article 10 of ILO's Convention 81 asks for a "sufficient number" of inspectors, there is no precision in that number, as many factors need to be taken into account (e.g., number and size of establishments and size of the workforce) (OFFICE, 2006, p. 4). Moreover, the ILO's statistical dataset (ILOSTAT) only provides information on the number of inspectors and inspections per year concerning labour inspectorates for 53 countries (RAVI; LUCAS, 2018, p. 53). This information is still limited in what it tells us. Furthermore, data concerning the qualitative aspect of the inspection (e.g., thoroughness) is also unavailable (DEWAN; RONCONI, 2018, p. 45). So, the ability to measure the capacity of labour inspectorates is hardly feasible in the

absence of systematically collected data from a large number of countries over a sufficient period of time (BERLINER et al., 2015, p. 129).

Secondly, there is an issue regarding who is responsible for making the assessment of labour inspectorates' strength. Although the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), set up in 1926 to examine government reports on ratified conventions, publishes reports requested and replies to its comments on the Labour Inspection Convention,[2] it does not provide an overall assessment of labour inspectorates.

Nevertheless, labour inspectorates have generally been facing diminishing budgets and shrinking staff across the globe (WEIL, 2008, p. 349). In 2006, the ILO raised concern about labour inspection services in many countries not being able to perform their functions, as they were "understaffed, underequipped, undertrained and underpaid" (OFFICE, 2006, p. 4). This situation is made worse by the existence of "intricate value chains," which demand more from inspectors (AMENGUAL; FINE, 2017, p. 130). Thus, the limitations of labour inspectorates have become more evident in the current economic context, which features labour market fragmentation, informality, outsourcing and global competitive pressures (ANNER, 2008, p. 44). Smaller and more dispersed workplaces arguably require more inspectors in relation to the size of the workforce than an economy featuring large and geographically concentrated workplaces (ANNER, 2008, p. 44).

While labour inspectorates might play a crucial role in improving labour standards through enforcement, this is not always the case (AMENGUAL, 2014, p. 29). Some suggest that almost every country which hosts GSCs has passed strict laws to regulate working conditions and protect workers' rights, although in many of them inspectorates are "weak, underfunded and, at times, corrupt" (DISTELHORST et al., 2015, p. 232). Recognising an international crisis in labour inspection, the ILO has asked states to strengthen and modernise their labour inspectorates (WEIL, 2008, p. 349).

[2] Reports requested and replies to CEACR comments: C081 - Labour Inspection Convention, 1947 (No. 81) <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:14001:0::NO::P14001_INSTRUMENT_ID:312226> accessed 12 sep 2022

4.2 RESPONDING TO THE CRISIS: A WIN-WIN GAME

In order to respond to the labour inspectorate crisis, two solutions usually arise. The first is to increase the number of inspectors, since studies have shown a direct relationship between the size of inspectorates and the positive outcomes (AMENGUAL; FINE, 2017, p. 130). For instance, in the aftermath of the Rana Plaza tragedy, the government of Bangladesh started a "National Tripartite Plan of Action on Fire Safety" which identified the relevant issues necessary to change the garment sector, including the recruitment of additional factory inspectors (LABOWITZ; BAUMANN-PAULY, 2014, p. 35).

The second standpoint relies not on the quantity of inspectors, but on the efficacy of the way they work (AMENGUAL; FINE, 2017, p. 130). GSCs pose a massive challenge for these regulatory bodies, especially in times of constrained resources, as they make non-compliance detection difficult and burdensome (HARDY et al., 2015, p. 564). Furthermore, the existence of a great number of workplaces challenges the "workplace-by-workplace" model of investigation (WEIL, 2014, p. 220). In that sense, enforcement agencies should focus their attention on where incentives for low-tiered employers begin, rather than where problems occur (WEIL, 2014, p. 220). For instance, Weil calls the "strategic approach" for labour inspection a standpoint that focusses on where, when and how interventions are made (WEIL, 2008, p. 353).

Besides stemming from the lack of adequate resources of enforcement agencies, these theories recognise that social problems, interests and interactions are complex, and that knowledge, information and regulatory powers are fragmented (DUPPER; FENWICK; HARDY, 2016, p. 6). Finally, they incentivise a regulatory approach that may "harness and exploit the resources of non-state actors" (DUPPER; FENWICK; HARDY, 2016, p. 6), which could be achieved through a more effective interaction of labour inspectorates with businesses, through due diligence processes. Such a standpoint seems to be in line with the complexity of GSCs.

The "pro-active function" of labour inspectorates, targeting compliance through positive support (GARCÍA-MUÑOZ ALHAMBRA; HAAR; KUN, 2013, p. 262), is also compatible with the ILO's current regulation on labour inspection systems. According

to the ILO Convention 81, the “effective co-operation between the inspection services and … private institutions engaged in similar activities” should be promoted (ILO). However, the participation of labour inspectorates in due diligence processes could also be desired by businesses.

Firstly, although due diligence processes are “self-reflective” by nature, there is a clear need for companies to engage with “actors outside the corporation” (HARRISON, 2013, p. 113). Corporations should therefore acknowledge that they have a new compliance challenge to tackle, which requires the deployment of new tools and a shift towards a compliance culture (SARFATY, 2015, p. 458). Labour inspectorates could provide a necessary help. Secondly, the interaction with labour inspectorates could lead to the improvement of their reputation, especially amongst consumers and investors (SARFATY, 2015, p. 459). Thirdly, while state labour inspection is usually perceived as a burden on businesses’ productivity and competitiveness, it may also have a beneficial impact on social and economic development, as it can lead to constructive changes in firms (e.g., through legal and managerial advancement) (GARCÍA-MUÑOZ ALHAMBRA; HAAR; KUN, 2013, p. 266). This could result not only in management improvement and reduction of costs (SARFATY, 2015, p. 460), but also the mitigation of potential risks (SARFATY, 2015, p. 459). The interaction between these two entities could still reduce adversarial costs (DUPPER; FENWICK; HARDY, 2016, p. 7).

The literature suggests that the particular features of private regulatory efforts have limited effects on improving working conditions, which are driven rather by domestic states’ institutions (DISTELHORST et al., 2015, p. 235). Nevertheless, private regulation can enhance local regulatory institutions by, for instance, either calling attention to violations or by incentivising management to address them in order to avoid state regulatory sanctions (DISTELHORST et al., 2015, p. 235). Arguably, neither state regulation nor private voluntary regulation alone is efficient, thus a combination of both is needed in order to enhance labour standards in GSCs (COSLOVSKY; LOCKE, 2013, p. 498). The following section will explore this standpoint.

4.3 A WAY FORWARD: DUE DILIGENCE AS AN AVENUE FOR INTERACTION

4.3.1 “Dialogic” approach

Rather than considering inspectorates as a mere factor of risk in due diligence processes, they could be seen from a complementary perspective. Kolben argues that complementary interaction between public and private regulatory regimes is possible, in which both systems promote the same objectives, while coexisting in the same policy field (KOLBEN, 2015, p. 443). Complementarity might describe the phenomenon that occurs when a private regime fills the regulatory gaps left by inadequate public regimes, allowing both regimes to target areas in which they enjoy comparative advantage (KOLBEN, 2015, p. 444). Amengual argues that this is the main driver for complementary regulation which portrays mutually supportive actions from both the state and private regulators (AMENGUAL, 2010, p. 412). Since these entities have different structures and suffer different pressures, they make use of different tools and focus on issues which they are better suited to address, creating a “positive-sum” gain (AMENGUAL, 2010, p. 412).

This interaction might lead to a level of hybridity in which public and private regimes are used in a holistic and integrated manner - the climax of a “new governance” model (KOLBEN, 2015, p. 445). However, in such a “hybrid system of regulation,” different forms of governance and actors have to reinforce and rely on one another (LEE, 2016, p. 19). In that regard, whilst interacting they should maintain the normative value of such interaction and highlight both the theoretical and practical importance of the state in the labour governance of supply chains (KOLBEN, 2015, p. 429). By reinforcing the state regulatory institutions, private transnational initiatives can be more than just “stopgap measures” (AMENGUAL; CHIROT, 2016, p. 1075).

Kolben thus develops a “dialogic regulatory framework” to analyse the different ways in which private and public regimes interact with one another, classifying them in terms of formality (formal/informal) and intentionality (intentional/unintentional) (KOLBEN, 2015, p. 447). Although these interactions might happen at the level of norm creation (KOLBEN, 2015, p. 448), the focus of this article is on how it takes place at

the level of enforcement. In that sense, this article argues that due diligence processes might be used as a formal and intentional mechanism of interaction, in which the parties interact in a formal institutional setting (KOLBEN, 2015, p. 448).

This is in line with the experience of previous interactions between the state and employers, where it has been shown that more formal processes are necessary in order to foster compliance (BARTLEY, 2018, p. 277). The interaction of labour inspectorates with due diligence processes could be further developed within that framework, especially given the role of the lead businesses in the economy and the shifts in modern employment (WEIL, 2014, p. 287). In this context, some "mechanisms of interaction" (KOLBEN, 2015, p. 445) are now provided.

4.3.2 Interaction in practice

A major gap seems to exist in regulatory literature describing, both theoretically and empirically, how public and private regulatory regimes interact with each other (KOLBEN, 2015, p. 441). However, the ILO's Better Work Program could provide some insights in that regard (MARSHALL, 2018, p. 476). The program constitutes a partnership between the ILO and the International Finance Corporation, which targets enhancing working conditions in the global garment industry in several countries across the globe, including Jordan and Indonesia (DUPPER; FENWICK; HARDY, 2016, p. 15). The global Better Work program model is based on providing three kinds of services: assessment, advisory and training (KOLBEN, 2015, p. 454). It derived from the Better Factories Cambodia, a project developed in 2001 by the US government and the ILO, as the result of a trade agreement between those countries (MARSHALL, 2018, p. 476). It aimed at improving both labour conditions and the capacity of local labour inspectorates (MARSHALL, 2018, p. 476).

Using this program as background, this article now shows that the participation of labour inspectorates in due diligence processes can happen in some ways, such as through information sharing and partnership in training. The exchange of information between inspectorates and businesses could be a game-changer whilst addressing the risks. For instance, under the Better Work Jordan program, a protocol was established in which any major human rights violations (e.g, child and forced labour)

would be reported by the private auditors to the local Ministry of Labour (KOLBEN, 2015, p. 459). In the same way, a “Zero Tolerance Protocol” has been discussed between the Ministry of Manpower and Transmigration (to which the local labour inspectorate is linked) and Better Work Indonesia, whereby labour inspectors are to be informed within 24 hours (in writing) of the violation of important rights (e.g., sexual violence and forced labour) (DUPPER; FENWICK; HARDY, 2016, p. 17).

According to the literature, the combination of information gathered and shared by private auditors with state regulation has led to improved working conditions, as suppliers have a greater incentive to respond to violations (identified by private auditors) when faced with the threat of fines or other sanctions (DISTELHORST et al., DISTELHORST; LOCKE; PAL; SAMEL, 2015, p. 235). This seems to be addressed in the UNGP when it states that, when lead firms lack the leverage to prevent or mitigate an adverse impact in the supply chain, they should seek to increase it by, for instance, collaborating with other actors (NATIONS, 2011, p. 22) – potentially including enforcement agencies, such as labour inspectorates.

In terms of partnership in training, the California Act expressly identifies training as one possible stage of due diligence processes. It can be important at all stages of HRDD, but especially while identifying and responding to human rights impacts (MCCORQUODALE et. al, 2017, p. 216). In the Better Work Jordan, there is some engagement of private auditors with the local Ministry of Labour, consisting of quarterly joint training sessions, in which best practices are shared (KOLBEN, 2015, p. 458-459). In July 2010, the two entities agreed on a collaboration plan which would include supplementary training and quarterly meetings between the advisors of the program and the local labour inspectorate (KOLBEN, 2015, p. 459). The importance of such actions has resulted in, for example, better interview skills and enhanced sampling methods for the local inspectorate (KOLBEN, 2015, p. 459). But this can be a two-way interaction. In Indonesia, labour inspectors worked temporarily in the Better Work team in Geneva to update Better Work’s training modules (DUPPER; FENWICK; HARDY, 2016, p. 25). As they returned to Indonesia, they trained workers and managers of factories participating in the program (DUPPER; FENWICK; HARDY, 2016, p. 25).

Labour inspectorates could still play an important role in other phases of the due diligence processes, such as during the design and implementation of strategies to

respond to risks. In this context, the literature has recently argued that the state may collaborate with private actors through the provision of technical assistance and the support of initiatives that build local capacity, in order to avoid the “low road” (GEREFFI; LEE, 2016, p. 34). This is in line with the ILO’s Convention 81, which states that the functions of the labour inspection system comprise, amongst others, supplying “technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions” (ILO). Outside the scope of the Better Work program, but still in the context of a developing country, Brazil provides such an example.

There, labour inspectors (and prosecutors) helped small farmers to create “employers’ consortia” in order to promote the hiring of informal and temporary workers, where the farmers share some fixed costs associated with the hiring process and with the provision of personal protection equipment, food and transportation (COSLOVSKY, 2014, p. 203). Through this arrangement, the former temporary workers became formally employed all year long, merely moving between farms to meet the farmers’ specific demands (COSLOVSKY, 2014, p. 203). By 2001, 3,446 farms had created 103 consortia employing 65,587 workers who became entitled to all the benefits of formal employees (e.g., social security benefits and unemployment insurance) (COSLOVSKY, 2014, p. 203). This example shows that it is possible for state agents to go beyond the enforcement model (based on finding violations and imposing fines) and devise local arrangements which realign interests, reshape conflicts and redistribute businesses’ risks, costs and benefits, while complying with the law (COSLOVSKY, 2014, p. 210). Certain caveats will nonetheless be necessary.

4.3.3 Caveats

First of all, the participation of the labour inspectorate in due diligence processes should not, in any case, be regarded as a dismissal of either later sanctioning or of further inspections, as this could undermine the deterrence principle (HARDY et al., 2015, p. 578). Arguably, the lack of possible future government sanctions leads to less willingness to establish and support ongoing monitoring regimes (HARDY et al., 2015, p. 578). Moreover, Pires shows that sanctions produce a productive dialogue and

learning process, which in turn encourages a climate for change (PIRES, 2008, p. 223). In that sense, sustainable compliance solutions emerge, as a combination of deterrent and pedagogical enforcement is adopted by inspectorates (PIRES, 2008, p. 200).

Secondly, the proposed interaction of labour inspectorates with due diligence processes might not be suitable for the enforcement of all labour standards. This is mainly for two reasons, the first being the natural focus of the HRDD on the "core labour standards," which have been regarded as human rights (NATIONS, 2011, p. 22). Those are listed in the ILO's Declaration of Fundamental Principles and Rights at Work, and encompass the freedom of association and the right to collective bargaining, the prohibition of discrimination regarding employment and occupation, the prohibition of forced labour and the abolition of child labour (NOVITZ; FENWICK, 2010, p. 27-28). Other labour rights (such as wages, working time, and occupational safety and health) could therefore be left out in this context.

Furthermore, there is an issue regarding the suitability of the proposed interaction and this model of enforcement for specific standards – for instance, those relating to discrimination and collective labour law. As enforcement of labour law is not only delivered through workplace inspection, some issues could require other avenues for enforcement, such as labour courts (ANNER, 2008, p. 44). However, examining other methods of labour law enforcement in GSCs falls beyond the scope of this article.

While it is not yet clear what lies within the reach of due diligence in terms of improving labour conditions in GSCs, it does seem to constitute one important tool amongst many (TREBILCOCK, 2015, p. 107). However, it still requires "further refinement," especially concerning the participation of state agencies, such as labour inspectorates, in the process (TREBILCOCK, 2015, p. 107).

5. CONCLUSION

Massive workplace tragedies and worsening working conditions in GSCs are a reminder that there is a need to reconcile markets with the idea that labour is a not a commodity, as stated in the Declaration of Philadelphia towards the end of the Second World War (SUPIOT, 2010, p. 160). The private governance based upon corporate codes of conduct and private monitoring systems have failed in such an endeavour. In

the context of public governance, the two mainstream models which are currently being developed – domestic extraterritorial legislation and international regulation – both use due diligence as a core mechanism to foster compliance with human rights (including some labour rights) in global supply chains.

Nevertheless, these initiatives vary widely. While some consist of transparency requirements, others go further and try to establish standards for due diligence procedures. Even amongst the initiatives for setting up standards, the content is still not consistent. But all in all, they seem to give little emphasis to the role that state enforcement agencies might play in those processes. The reductionist standpoint, that the strength of local labour inspectorates should be assessed in the context of risk assessment, might not prove very helpful.

Stemming from Kolben's dialogic regulation approach, this article has proposed a possible complementary relationship between labour inspectorates and firms throughout due diligence processes. This relationship could be explored at various stages of the process, encompassing partnership in training, information sharing and even the design of responses to adverse human rights impacts. Examples of these kinds of initiatives have been provided with positive outcomes, working as two-way avenues in other contexts.

However, the enforcement of labour regulation requires countries to have both capacity and political will (DEWAN; RONCONI, 2018, p. 36). Although this article expands on the idea of due diligence fostering capacity building and reinforcing local labour inspectorates, ultimately this relies on the political willingness of states to enforce labour rights. The absence of this component will be fatal to any attempt in that direction.

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