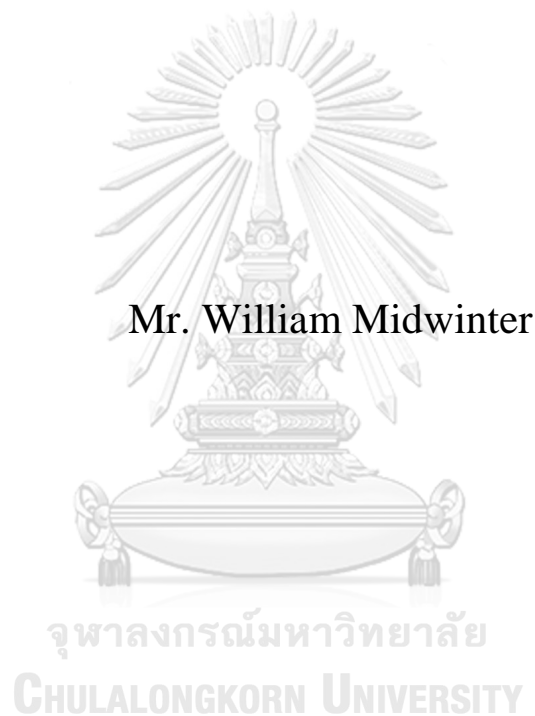


**HUMAN RIGHTS DUE DILIGENCE: PARTICIPATION
AND INNOVATION IN MULTI-NATIONAL BUSINESS IN
THAILAND**



Mr. William Midwinter

**A Thesis Submitted in Partial Fulfillment of the Requirements
for the Degree of Master of Arts in International Development Studies
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นวัตกรรมการและการมีส่วนร่วมในการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน ของบริษัทข้ามชาติใน
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หลักการชี้แนะเรื่องสิทธิมนุษยชนสำหรับธุรกิจของสหประชาชาติ (United Nations Guiding Principles for Business and Human Rights) ได้ทำให้ภาคธุรกิจมีแนวทางปฏิบัติและความเข้าใจในประเด็นสิทธิมนุษยชน ซึ่งมักจะเห็นได้ชัดในกลุ่มบริษัทข้ามชาติ โดยประเด็นสำคัญคือการให้ภาคธุรกิจมีการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน (Human Rights Due Diligence – HRDD) ตลอดห่วงโซ่อุปทาน โดยเริ่มจากการที่ภาคธุรกิจตรวจสอบห่วงโซ่อุปทานของตนเองว่ามีส่วนใดที่มีผลกระทบต่อโดยตรงต่อสิทธิมนุษยชน หรือมีความเสี่ยงที่จะมีผลกระทบต่อสิทธิมนุษยชน โดยมุ่งเน้นไปที่ความโปร่งใสในการดำเนินธุรกิจ การสามารถตรวจสอบย้อนกลับได้ และการมีส่วนร่วมของผู้มีส่วนได้ส่วนเสีย ซึ่งประเด็นเหล่านี้เป็นหัวข้อหลักในวิทยานิพนธ์ชิ้นนี้

วิทยานิพนธ์นี้ศึกษาสิทธิแรงงานในประเทศไทยเป็นหลัก โดยศึกษาความท้าทายที่ภาคธุรกิจต้องเผชิญในการดำเนินการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน และวิเคราะห์ถึงบทบาทของนวัตกรรมในการช่วยกำหนดสิทธิแรงงาน ดังนั้นวิทยานิพนธ์นี้จึงศึกษาความสัมพันธ์ของนวัตกรรม การจัดการกับการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน โดยใช้ข้อมูลหลักจากการสัมภาษณ์เชิงลึกกับผู้เชี่ยวชาญด้านสิทธิมนุษยชนในภาคธุรกิจจำนวนเก้าคน และพนักงานห้าคนในบริษัทข้ามชาติ ประกอบด้วยหลักฐานชั้นรองอื่น ๆ และวิทยานิพนธ์ชิ้นนี้มีเป้าหมายที่จะชี้ให้เห็นถึงความท้าทายและหลักปฏิบัติที่ดีที่สุดที่มีอยู่ในปัจจุบัน เพื่อเป็นเป็นเครื่องผลักดันให้ภาคธุรกิจ พัฒนานวัตกรรมสำหรับกระบวนการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน

จากการศึกษาพบว่า นวัตกรรมเครื่องมือสำคัญที่จะช่วยระบุถึงความท้าทายจากมุมมองของบริษัทข้ามชาติ ในกระบวนการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน ในขณะที่ตัวนวัตกรรมที่ช่วยชี้ให้เห็นถึงการปฏิบัติที่ดีในกระบวนการตรวจสอบทั้งในมาตรฐานระดับประเทศและระดับโลก นอกจากนี้ยังได้วิเคราะห์บทบาทของกลุ่มผู้มีส่วนได้ส่วนเสียที่มีความสำคัญต่อกระบวนการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน โดยได้กำหนดกรอบของการระบุตัวตนของผู้มีส่วนได้ส่วนเสียไว้อย่างชัดเจน และเสนอว่าควรมีกระบวนการตรวจสอบ การวิเคราะห์ผลกระทบด้านสิทธิมนุษยชน และการมีช่องทางรับฟังความคิดเห็นของผู้ปฏิบัติงาน ซึ่งเครื่องมือเหล่านี้จะช่วยให้บริษัทต่าง ๆ สามารถตรวจสอบการละเมิดสิทธิแรงงานได้ และควรส่งเสริมให้ใช้เครื่องมือทั้งสามนี้พร้อมกันตลอดห่วงโซ่อุปทาน เพราะการใช้เพียงเครื่องมือชนิดใดเพียงอย่างเดียวอาจทำให้กระบวนการไม่มีประสิทธิภาพมากพอ เพราะแต่ละเครื่องมือมีข้อจำกัดเฉพาะ

วิทยานิพนธ์นี้ต้องการเสนอว่า บริษัทข้ามชาติเหล่านี้ยังมีความท้าทายในการดำเนินการตรวจสอบสิทธิมนุษยชนอย่างรอบด้านอยู่ แต่ก็ควรพิจารณาปัจจัยเร่งด่วนเกี่ยวกับสิทธิมนุษยชน ในนวัตกรรมขององค์กรตามตัวแบบของ Tushman และ Nadler และนำไปประยุกต์ในบริบทของสิทธิแรงงานเพื่อตรวจหาการละเมิดสิทธิแรงงาน เพื่อให้สามารถระบุหรือรับทราบถึงการละเมิดสิทธิแรงงานเพื่อให้บริษัทได้ปรับตัวให้เข้ากับบริบทของสิทธิแรงงานต่อไป เช่น การจัดให้มีผู้มีความรู้ความสามารถหลายด้านในการตรวจสอบกระบวนการตรวจสอบสิทธิมนุษยชนอย่างรอบด้าน การสร้างกลไกที่จะเชื่อมโยงผู้มีส่วนได้ส่วนเสียเข้ามาในกระบวนการตรวจสอบ การสร้างความร่วมมือด้านนวัตกรรมกับบริษัทอื่น ๆ สร้างเครือข่ายการติดต่อสื่อสารหลายระดับ เป็นต้น และหากบริษัทข้ามชาติเหล่านี้มีการพัฒนานวัตกรรมอย่างต่อเนื่อง ก็จะสามารเพิ่มการมีส่วนร่วมของผู้มีส่วนได้ส่วนเสียในกระบวนการตรวจสอบสิทธิมนุษยชนอย่างรอบด้านได้ และ ปัจจัยเหล่านี้จะช่วยให้บริษัทข้ามชาติสามารถมีแนวปฏิบัติเกี่ยวกับสิทธิมนุษยชนของคนที่สูงกว่ามาตรฐานหรือกฎหมายของแต่ละประเทศที่บริษัทเหล่านั้นตั้งอยู่ได้

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William Midwinter : HUMAN RIGHTS DUE DILIGENCE: PARTICIPATION AND INNOVATION IN MULTI-NATIONAL BUSINESS IN THAILAND. Advisor: Asst. Prof. Carl Middleton, Ph.D.

The United Nations Guiding Principles (UNGPs) for Business and Human Rights has contributed to the way in which businesses engage with, and understand human rights, and has been most notable at the Multinational Corporations (MNC) level. A key duty placed on businesses is the expectation that they will conduct human rights due diligence (HRDD) across their supply chains. This multifaceted process involves the identification of actual or potential human rights impacts that the business may have in their supply chains, drawing heavily on notions of transparency, traceability and stakeholder engagement, and is the focus of this thesis.

Concentrating specifically on Thailand and labor rights, this thesis explores the challenges faced by businesses when conducting HRDD, and assesses the role of innovation in the identification of labor rights. Therefore HRDD and managing innovation are conceptualized to form the framework of this study, thus assessing how the two interrelate. The thesis does this through nine in-depth interviews with Business and Human Rights experts and five with the staff of MNCs, amongst multiple secondary sources. The thesis aims to be an acknowledgement of current challenges and good practice, in the hope that it can motivate other businesses to innovate in their HRDD process.

Innovation is proved to be necessary in the course of this thesis by acknowledging the challenges that exist(ed) with HRDD from a corporate perspective, while also identifying examples of good practice on a Thai and global scale. Furthermore, the thesis formulates the importance of stakeholder engagement in HRDD and explores the limits as to who can qualify as a stakeholder. Following this, the challenges and advantages of three BHR tools are put forth. These are; the established auditing process, human rights impact assessments, and workers voice programs. It is argued that all of these tools are necessary when identifying labor rights abuses and should be encouraged throughout the supply chain, however alone they do not offer a comprehensive identification process as they each have shortfalls.

The thesis argues that although some challenges remain, MNCs should consider and be inspired by Tushman and Nadler's (1986) critical factors for organizational innovation to an extent, and apply them in a labor rights context so to innovate ways of identifying potential areas of risk. These critical factors often don't transfer directly from an organizational context to a labor rights one, however there is value in acknowledging and adapting them. These include, but are not limited to; having a multiskilled individual overseeing the HRDD process, formal linking mechanisms between BHR stakeholders, venturing for innovations beyond the corporation, exploring and developing norms, building diverse communication networks, and considering critical roles. By continually

Field of Study: International Development Studies
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 Student's Signature
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This thesis stemmed from a broad interest in forced labor and labor rights abuses more widely, and through research and advice became focused on business and human rights and how MNCs can learn and innovate in their respect of human rights. This has involved copious amounts of new learnings for myself, and I would like to give a huge thanks to my advisor (and a key pillar of the MAIDS teaching team) Dr. Carl Middleton. Furthermore, I was lucky to have two other fantastic professors on my committee, Dr. Mike Hayes, and Dr. Supang Chantavanich- I have enjoyed learning from you both, and appreciate your support with the pages that follow. Finally, as with any piece of research, finding interviewees can be challenging, and given that the topic of this research can be considered controversial, I am grateful to all the interviewees I spoke to, this couldn't have happened without you, and I know we share a goal of wanting to see labor conditions where human rights are respected, and I truly believe that through these conversations we will edge closer to this.

Finally, I have to thank my brilliant parents who have brought me up in an environment where one can do what they believe in, and achieve what they put their mind towards.

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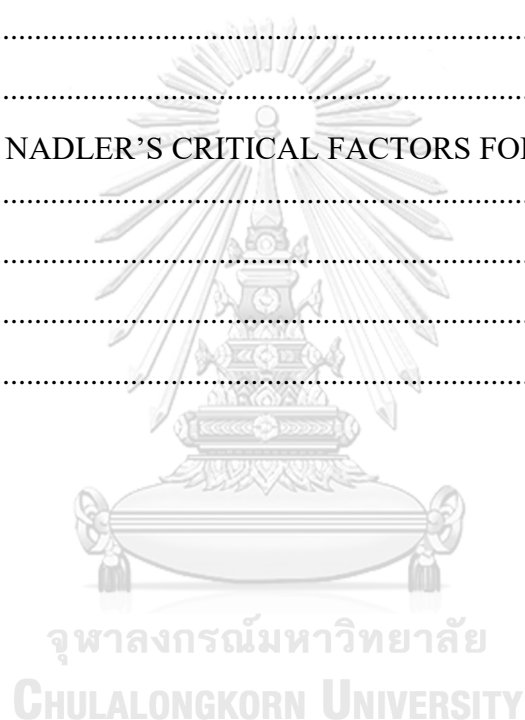
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ABBREVIATIONS AND TERMS

ABBREVIATIONS

BHR	Business and Human Rights
CB	Collective Bargaining
CEO	Chief Executive Officer
CSR	Corporate social responsibility
ETI	Ethical Trade Initiative
FOA	Freedom of association
HR	Human Resources
HRDD	Human Rights Due Diligence
HRIA	Human Rights Impact Assessments
HRSM	Human Rights Staff Member
ILO	International Labor Organization
IOM	International Organization of Migration
IFC	International Finance Corporation
MNC	Multinational Corporation
NGO	Non-governmental Organization

SME	Small and medium-sized enterprises
UN	United Nations
UNGP	United Nations Guiding Principles on Business and Human Rights
VP	Vice President
WV	Workers Voice



CHAPTER I

INTRODUCTION

1.1 OVERVIEW

The operations of international business have changed unrecognizably over the last few decades with the spread of a neoliberal fueled globalization which has nurtured a global economy based on competition. McMichael (1996, p.27) sees globalization's most significant impact as the rearrangement of states, bringing populations in to the same common dynamic, a dynamic based on capitalist social organization. A major actor in this phenomena has been the multinational corporation (MNC). Recognized as "engines of economic growth" (Passaris 2006) their impacts transcend the remits of their national borders¹. The outsourcing of labor to the Global South² has seen many MNC's supply chains extend and multiply³. Thailand provides an example of this, as its own domestic MNC's and foreign ones occupy the nation as a site for sourcing, manufacturing and processing products and services.

It is now commonplace that products on the shelves, of supermarkets and department stores in the Global North, and (more recently) South, have passed multiple pairs of hands in numerous working environments (even countries), on their journey from source to sale. This outsourcing procedure has become normalized to consumers all over the world, however it is not often that they are aware of the production web behind their products. This global web weaved by supply chains can

¹ The behavior of governments has reflected the growth of multinationals and their operations, exemplified by substantial statistic that '94% of foreign investment regulations being adapted across the globe between 1991 to 2001 to facilitate transnationals' (Ruggie 2015, p.4).

² Simply put, the aim is to acquire a competitive price advantage over the rest of the industry, by looking at ways that organizational activities can be done at a reduced cost.

³ To Sweeney (2009, P.15), "supply chains are in essence sets of activities representing successive stages of value creation."

possess a hidden, harmful side with “recurrent ethical dilemmas”(Clarke & Boersma 2019, p.2). The rights of laborers in the components of these supply chains have become a heightened priority to businesses, investors and consumers over the past two decades, as an abuse of rights can be morally and commercially damaging⁴. Labor rights abuses can include, but not limited to; forced labor, debt bondage, long working hours, withholding of wages, and passport confiscation (Petersen 2018), and an inability to collectively bargain and associate. The main labor rights abuses, which are relevant to my thesis can be seen in the International Labor Organization (ILO) core conventions, which are included in the appendix.

Due to the above, there has been a loudening call for businesses to take responsibility for their impacts on human rights, across their supply chains and beyond, which has resulted in the business and human rights discourse (BHR), and correlating soft and hard legislation, which is the cornerstone of this thesis. The 2011 United Nation’s Guiding Principles for Business and Human Rights (UNGPs) are the current regime which businesses and states are encouraged and expected to follow (Nolan 2014), in a rapidly evolving landscape.

Under the UNGPs, it is expected that businesses use international human rights law as a minimum standard when assessing their operations, as corporate compliance with a nation’s local labor law may fall short when regarding labor rights⁵. For

⁴ This study acknowledges that multinational business has circumstantially brought economic growth and job opportunities to developing nations and their populations, especially Asia (Clarke & Boersma 2019, p.2).

⁵ Corporate compliance, is an open-ended concept, which can apply at a number of levels. Traditionally speaking, businesses, when working extraterritorially have complied with local labor laws, however evermore so this has been replaced with a standard set at a global scale working under international human rights law. Up until now, MNCs have been expected to carry out legally binding human rights obligations in their supply chains, which quite often fall under the corporate compliance banner, often fulfilled through standard corporate practices such as auditing. Although important, these

example in Thailand, core ILO conventions surrounding freedom of association and collective bargaining have not been ratified (ILO.org n.d.), which are fundamental labor rights. Therefore the UNGPs call for businesses to comply at the level of international human rights law. This is done under pillar two of the regime which specifically calls on businesses to ‘respect human rights’⁶. As the preceding chapters will demonstrate, the traditional compliance requirements, such as auditing, have fallen short when accounting for labor rights, meaning that some abuses in the supply chain are overlooked⁷. Due to this, under pillar two, the UNGPs prescribe that businesses of all sizes conduct an ongoing Human Rights Due Diligence (HRDD) in relation to their capacity, with the aim of identifying, addressing, remediating and communicating their impacts on labor rights⁸.

It has been recognized that HRDD is integral to the respect pillar, as its successful implementation can lead to solving human rights impacts in complex, multinational supply chains. It does an admirable job of turning human rights into a business concern, by making it resemble a corporate procedure. Additionally, many existing corporate compliance practices can be aligned or developed with HRDD. However this is a big task as it is resource heavy, and guidance has been labeled as interpretive⁹. For example, the lack of minimal standards leaves HRDD to the

do not account for all the human rights impacts that the contracted supplier’s workforce maybe facing, let alone deeper in the supply chain, especially when regarding complicated issues such as forced labor. Therefore, this thesis looks to explore the ways in which MNCs are engaging with the notion of respecting human rights, as it is now encouraged that “each individual company should tailor its compliance with regards to its specific challenges and operating environment” (Andvig 2019).

⁶ The state’s responsibilities are listed under pillar one; the duty to ‘protect’ human rights.

⁷ This is especially the case with complicated and systemic issues such as forced labor.

⁸ This is actually applicable to all human rights, however I will be focusing specifically on labor rights.

⁹ For example, it has been observed that there are no minimal standards for important procedures in identifying human rights impacts, such as stakeholder engagement or reporting transparency in a supply chain.

interpretation of a business (Harrison 2013), and that in itself could deliver very mixed results. As we have seen in the media and on benchmarking initiatives¹⁰, this means that some MNCs are reputable for respecting human rights whereas others are notorious for falling short on doing so.

I explore how MNCs are engaging with their duty to conduct HRDD, specifically focusing on methods to identify labor rights in the supply chain. I focus on MNCs operating in Thailand, some of which are Thai and others that are international, so to give a variety of practices which highlight commonalities, anomalies and good practice in HRDD¹¹. I give Thailand explicit attention because of its reputation for extracting its natural resources and pursuing export orientated industrialization, inviting investment, from all over the world. In addition, Thailand has featured prominently in the global media as a destination that struggles to manage labor rights abuses, the Guardian's revelation of cases of forced labor on fishing boats, catching stock for many European and American MNCs, is perhaps the best known example of recent times (Kelly 2018). With the above reasons in mind, Thailand offers a fascinating case to explore the UNGPs in practice.

As with any shifting landscape (the marketplace for example), it is important that businesses adapt with the change and it is for this reason that Tushman and Nadler (1986) feel that there is no more important business ability than managing innovation. This denotes that innovation is no longer a bonus for business, but a necessity for

¹⁰ The Corporate Human Rights Benchmarks (CHRB) rank MNCs on their HRDD abilities, and this shows that, although many are attempting to fulfill this duty, shortcomings still persists. Know The Chain is another reputable benchmarking scheme which ranks MNCs based on their efforts to tackle forced labor.

¹¹ Although the majority of case studies/ examples relate to Thailand, I also share stories and experiences from other nations that these MNCs are/have operating in.

growth. This is reminiscent of the rising demand to respect human rights, in a similar way, business can no longer just choose to respect those in their supply chain as a nicety, rather they must, or risk commercial and legal repercussions. I find this pattern interesting and the aim of my thesis is to explore this pattern to discover the role of innovation in identifying labor rights abuses, by researching MNCs that have been recognized for good practice. The conceptual framework will differentiate innovation and good/best practice.

This research comes at a time when there are stark disparities between MNCs' efforts to respect labor rights in their supply chains. It looks to explore why this is the case, and what can be learnt by those succeeding, and the challenges that still remain. By sharing good practice in the HRDD process, this thesis aims to encourage and guide other MNCs to improve their respect for human rights. This will contribute to the BHR landscape in Thailand, and globally, by sharing how MNCs engage with, make sense of, and innovate towards the concept of HRDD. The aim of this is to (1) show how this evolving operating system (of respecting human rights) is impacting MNCs, (2) the current ways that these MNCs are identifying labor rights abuses in their supply chains, and the effectiveness and challenges surrounding this, and , (3) given the newness of HRDD, the relevance of organizational innovation in the identification of labor rights.

Due to the multifaceted nature of this thesis it is difficult to reduce its purpose to one statement. However, in sum, the overarching purpose argued in this thesis is that MNCs should explore the ways in which they can innovate to identify labor rights abuses in their supply chains, by continually innovating ways in which to further

deepen and strengthen stakeholder engagement. From this, it proposes that, to an extent, MNCs can apply the critical factors of organizational innovation (Tushman and Nadler 1986) to a labor rights context, with the aim being to strengthen the MNC's HRDD process. In short, it is argued that by adopting some of these relevant critical factors (of organizational innovation) MNCs can further move beyond standard compliance and domestic law, to address existing challenges in the identification of labor rights impacts in Thailand, and beyond.

1.2 RESEARCH QUESTIONS

The growth of MNCs and their impacts on laborers all over the world cannot be avoided, and even with growing BHR legislation, abuses of rights still occur in MNC supply chains. We are in an era where MNCs are required to take responsibility for their actions, and, given their strength, lead the business effort to respect human rights. In doing so, MNC's should continually assess their impacts on workforces, within and beyond their own facilities so that they can identify risks to labor rights across the whole supply chain (as outlined in HRDD). Due to the globalized nature of the world, this effort should be ongoing as new risks constantly occur as supply chains change and evolve, which would leave one to believe that businesses must innovate in this space. Which leads to the main question which guides this research:

In Human Rights Due Diligence, to what extent is innovation required in identifying labor rights abuses in MNC supply chains, with a specific focus on Thailand?

The conceptual framework (1.3) will define what exactly is meant by innovation in this thesis and also adds further clarification around labor rights abuses. Identifying

labor rights abuses has been focused on specifically, as the rest of the HRDD process will stem from the assessments that MNCs conduct in their supply chains. Due to the importance, and relevance of this important step, it is the only HRDD step focused on, so to provide a just analysis.

Due to the newness of the BHR discourse and rapid evolution of practices, it is important to answer foundational questions surrounding HRDD and the identification of labor rights abuses in supply chains, so to fully understand the main question which guides this thesis. Therefore I look to understand if the release of the UNGPs and HRDD affected MNCs, and what the main practices and challenges are when identifying labor rights in supply chains. The chapters of this thesis answer the following sub questions:

- 1) What impacts have the UNGPs and HRDD had on MNCs?
- 2) How are MNCs currently identifying labor rights abuses in their supply chains and what challenges remain?
- 3) How relevant are the critical factors for sustaining organizational innovation when identifying labor rights abuses in supply chains?

The sequential objectives which structure this thesis are:

- To examine the extent to which the new operating system set out by the UNGPs and HRDD impacted MNCs.
- To determine the measures taken by MNCs operating in Thailand to successfully identify labor rights impacts in their supply chain, and to analyze the challenges they face in doing this.

- To evaluate whether the same critical factors which lead to organizational innovation resulting in market success, also lead to innovation in the HRDD process.

1.3 CONCEPTUAL FRAMEWORK

This thesis doesn't have a theory which it uses throughout all of the chapters. Rather, it draws on various theories to help demonstrate arguments, and elaborate concepts. The main concepts are Business and Human Rights (BHR), Human Rights Due Diligence (HRDD) (which draws on stakeholder theory in Chapter 4, and innovation, (which is guided by Tushman and Nadler's 1986 theory of managing organizational innovation).

Through the concepts of BHR, HRDD, and innovation, this thesis contributes to an emerging and ever important field of study, by researching how MNCs engage with their responsibility to respect human rights, through the ways they interpret, innovate and practice the identification phase of HRDD .

i. Business and Human Rights

The concept of BHR recognizes the growing force and scale of business, and the correlating impact that it has on society and the environment. As globalization allows business to continue to grow, the BHR field continues to evolve (Hsieh 2015) and this is why I believe innovation in this space is important. As the literature

demonstrates the BHR discourse, and the leading operational regime, the UNGPs, encompass all human rights when considering the operations of business¹².

This thesis will specifically focus on labor rights which are outlined in the “The International Labor Organizations 1998 Declaration on fundamental principles and rights at work” as scholarship has acknowledged them as especially relevant (Cullen 2019). Labor rights cover “subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation” (ILO Labor Standards Page n.d.). The ILO specified these areas to highlight their belonging in the international human rights context, and these rights “do not necessarily require a given level of economic advancement and arguably do not impact comparative advantage” (Kolben 2010, P.454). The former sentence justifies the importance of labor rights, and why businesses should respect them, while also outlining that there is no reasonable excuse as to why all businesses can’t be attempting to respect these rights.

BHR as a concept explores the roles that various actors (Businesses, States and Civil Society) play in relation to impacting the human rights of populations, and individuals, in a business context. BHR garnered recognition in the 1990s, due to the expansion of international business which was accompanied by heightened social awareness (Ruggie 2011). Due to this growing acknowledgement

¹² The UNGPs have all human rights as stated in the Universal Declaration of Human Rights (UDHR) as a base level.

(of the impact of business on human rights), businesses became duty bearers.

However it is important to note that the obligations of business and states cannot be seen as the same, as their means of satisfying human rights are different (Hsieh 2015, P.224). Therefore, the same human rights protective measures that are demanded of states cannot be enforced on business, as their very being of existence is different¹³. Their duties must be tailored and allocated accordingly. The UNGPs do exactly this by calling for business to ‘respect’ human rights, displayed in a corporative manner, through the language employed and the suggestions in the accompanying commentary to each principle.

However, what exactly is meant by respecting human rights appears a somewhat subjective notion depending on the business, as multiple factors could play a role in how respect is interpreted. Thus how businesses understand their responsibility to respect human rights could vary, and I wanted to explore what may lead to this. Therefore, Chapter 3 looks specifically at how this new operating system (the UNGPs) has impacted businesses, and why it was necessary.

ii. Human Rights Due Diligence

The respect pillar of the UNGPs is comprised of 14 principles which guide business to identify, prevent, address and remediate current and potential human rights abuses. This can fall under their direct operations or through their business partners, such as suppliers. In the case of this thesis, this will extend beyond their direct operations, as the interest here is; how MNCs identify labor rights abuses in their supply chains. Fasciglione (2016, p.1) proclaims that the UNGPs seek to

¹³ Traditionally businesses have existed to make profit, the same cannot be said for states.

merge corporate due diligence with international human rights law which come together as “corporate human rights due diligence” (Fasciglione 2016, P.1). HRDD creates a tangible nexus between human rights and business, and is therefore at the center of the business duty to respect human rights (Harrison 2012, Fasterling and Demuijnck 2013). Given that businesses are not traditionally human rights centric, combined with the growing expectation of HRDD, it seems logical to assume that businesses must innovate to deliver HRDD.

As previously mentioned, the first; to identify existing or potential labor rights violations which are connected to businesses’ practice will be the main focus of this thesis. This is because it is the first step in which businesses undertake to respect human rights, before fulfilling the other steps. Identifying labor rights impacts is not a completely new task for business (since the UNGPs), as processes such as; risk assessments, and corporate due diligence have long been necessary. Therefore, existing compliance tools can be amalgamated within HRDD, as long as rights impacts to people are the point of assessment, rather than business risks¹⁴.

One of the main requirements for identifying labor rights impacts in the supply chain is the concept, of what the UNGPs label; “meaningful consultation” (UNGPs 2011, P.19). Broadly speaking this can be understood as stakeholder engagement, and it applies to the ways in which MNCs engage with those affected in

¹⁴ This thesis acknowledges that existing compliance tools, such as audits, risk assessments and human rights impact assessments can contribute to identifying human rights impacts in supply chains, thus contributing to HRDD. However the purpose of the thesis is to understand the overall social structure of conducting HRDD, which these tools are a part of. Therefore HRDD is regarded in a broader sense than a compliance tool, rather it is a multifaceted system within a business which incorporates the outlined tools, but has additional space to be filled in order to fully fill the HRDD requirements outlined in the UNGPs.

their supply chains to identify risks. However, it doesn't only apply to the workers in the supply chain, as a complete assessment of impacts on labor rights will require expert consultation and other opinions. Therefore it should be further explored as to what exactly makes stakeholder engagement "meaningful" in this space, and how leading MNCs are delivering this in relation to stakeholder theory. In addition, it is known that stakeholder engagement and the identification of labor rights is not without its challenges, and these are explored in Chapter 4.

iii. Managing Innovation

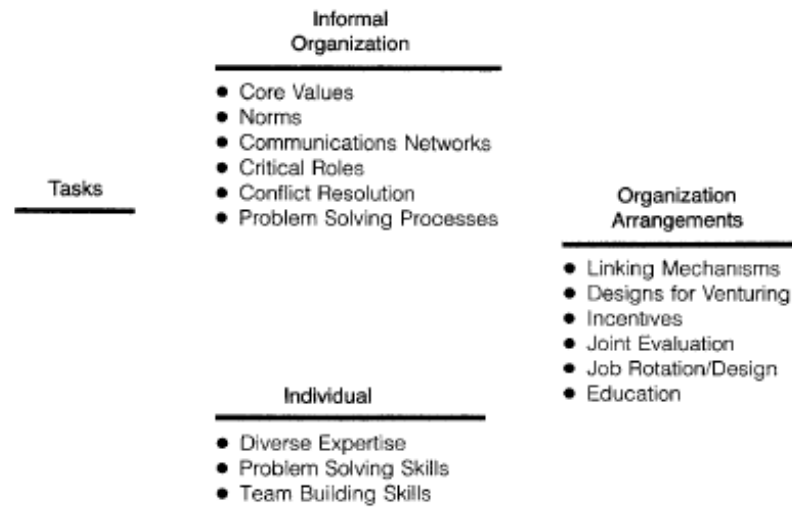
Innovation, an often used word, in basic terms can be regarded as a creative idea which results in a new normative practice benefitting stakeholders. This can happen in numerous ways, and in multiple environments, and will be the working definition for this thesis. This 'new/good practice', could be a product, service or process, and it's formulation is often down to the desired improvement of the aforementioned entities (Baregheh et al. 2009, P.1334). Therefore innovation can be seen as "successfully advancing" (Baregheh et al. 2009, P.1334) a process, with the aim of achieving better practice in a certain area. This demonstrates the relationship between innovation and good practice, as innovation is the means in which a business can look to improve their practices. In a HRDD context, given the importance of stakeholder engagement, it is crucial that businesses set an environment where engagement can be continually improved, leaving one to presume that innovation is necessary. Put alternatively, MNCs should be exploring the ways in which they can improve their respect for labor rights in their supply chains, by attempting to identify areas of risk, acknowledging the challenges in doing so, and innovating ways (based

on the above definition) of addressing these gaps. Therefore innovation and good practice are not the same thing, rather it can be assumed that the former aims towards achieving the latter. It should be explored what the factors are that lead to innovation in the identification of labor rights in the supply chain, and how can such an environment be created.

In 1986 Tushman and Nadler developed a theory of how to manage organizational innovation, which would result in business success. In ‘Organizing for Innovation’, the authors outline the importance of a business’ ability to innovate products, services and processes so to remain competitive in their desired market, thus evolving with the everchanging business ecosystem. This is based on the evidence that successful companies often become complacent which leads to negative business repercussions, therefore companies must ‘organize for today’s and tomorrow’s work’ (Tushman & Nadler 1986). In their article, the authors are focusing on how the innovation of processes and products can produce value in the marketplace, and my thesis looks to test this theory to discover whether it can bring a different type of value¹⁵. They do this by outlining “critical factors” which can either enhance or limit organizational innovation (these critical factors are outlined in Chapter 5, and can be seen in Figure 1. below). Here Tushman and Nadler’s framework for organizational innovation will be used, and applied to the research collected, to determine whether the same factors which inhibit organizational innovation, bringing market success, are the same for identifying labor abuse.

¹⁵ The value being the respect for human rights.

Figure 1 Tushman and Nadler's (1986) Critical Factors in Managing Innovation



1.4 RESEARCH METHODOLOGY

The following methodology has been selected to research the importance of innovation in identifying labor rights abuses in MNC supply chains. This is analyzed across three chapters, which will look at; the impact of the UNGPs on MNCs, the current MNC HRDD identification practices and challenges that exist, and whether the same factors which result in market success will also result in HRDD success. Therefore, MNCs are researched specifically, however there are themes which are relevant to businesses of all sizes.

Chapters three to five are threaded together, and framed by the identification of labor rights in supply chains as prescribed by HRDD, meaning that businesses methods and ability to deliver this is the entity which will be analyzed. With the former sentences in mind, the unit of analysis is the HRDD system of an MNC. This requires the use of multiple forms of data, which will be explained below. The

majority of data comes from interviews with senior MNC managers, (former or current) Thai government staff, and BHR experts who have some experience working in the region. This thesis aims to share good practices and acknowledge current challenges, while looking at ways of innovating improved practice.

With the above in mind the majority of the MNCs I spoke to have been recognized for their efforts to respect human rights. Therefore, it is important to emphasize that these MNCs are not representative of all MNCs in Thailand or globally, they have been specifically selected so to learn about how they have improved their practices. I selected these MNCs through researching businesses which have comprehensive human rights processes, via an online desk review, comparing benchmarks, reading company documentation, and attending events.

Given the creative and specific nature of this thesis, the majority of data will be primary and this will be collected through in depth interviews with the actors listed above. Secondary data was also drawn upon through civil society reports, MNC documentation, academic literature, and news articles, as this supports the primary data findings, offers case studies and expands knowledge surrounding the research problem. By combining the answers of the different interviews, with the secondary data, I was able to triangulate information surrounding the dominant themes of the thesis.

i. Data Collection

A purposive sampling strategy was utilized to identify key actors in MNCs. This involved MNCs that have supply chain activity in Thailand. With all of the interviews, whether it was MNCs, the government, or civil society, the most suitable

individual to talk about the topic was contacted. All of the interviews were in-depth, with key informants, and lasted between one and two hours.

ii. Primary Data

The categories of interviewees will be detailed below. It is worth emphasizing that the interviews were semi-structured, this means that although there were some common questions between the interviewees, the questions were often tailored to the specific actor. For example, my interviews with MNCs and BHR experts were different, and questions even differed between MNCs based on their policies, strategies and answers. This was done so to learn about different practices from different MNCs, and other members of the BHR network.

MNC interviews

Using benchmarks and wider online research, five MNCs which have operations in Thailand were selected. Operations at its minimum means that they source materials from Thailand, and at its maximum means that they have head offices in Thailand. As I mention in the limitations, although I could email and attempt to approach the majority of MNCs, I could not choose the ones that would agree to partake in the research. Therefore it was not possible to talk to MNCs from the same sector, however I was able to interview five senior staff members from global MNCs. The researched MNCs comprised of; two South East Asian MNCs, one global retailer, and two fast moving consumer goods MNCs (FMCGs). The interviewed staff were managers at a minimum, that would be involved in, or oversee

the HRDD process, they were usually members of a wider sustainability or human rights team.

It is worth highlighting, that the MNCs were not researched to be compared against one another. Each interview was set up in a similar way, however I wanted to draw out certain elements, tools, and processes from prior research. Additionally, answers and what the MNC staff wanted to talk about shaped the interviews.

Although these MNCs share the commonality of operating in Thailand, they are of different sizes, work in different sectors, and are located at different stages in the supply chain. This means that the data collected from these interviews was to share practices, challenges and examples of innovation (and the factors which lead to it) in identifying human rights, not a strict comparison between business entities. This will hopefully be of benefit to other MNCs and businesses that want to improve their HRDD in process in Thailand or elsewhere.

Government, Academics and Civil Society interviews

In addition to the data collected from the MNCs, there were two interviews with Thai BHR government staff, who were/are also key actors working on Thailand's National Action Plan (NAP). One of these had been a Thai government human rights expert, and the other was from the Rights and Liberties Protection Department within the Ministry of Justice. The former interviewee mentioned does feature in the thesis, however the latter does not as this thesis did not focus specifically on the NAP. These were important discussions as they show a non-corporate perspective on how to engage with HRDD in Thailand.

BHR experts were also interviewed. This was a combination of actors working for private companies, academics and members of civil society. These were based within the region and were required to have some working knowledge of the topic in a Thai context. The aim of these interviews was to gain alternating (from the MNC staff) perspectives on the topic. In addition, these are individuals that specialize and dedicate their lives to correcting issues such as forced labor, and other labor abuses, which means that they are passionate and knowledgeable.

With the above in mind, qualitative research methods were employed, through in-depth interviews with senior interviewees. The interviews covered;

- How MNCs have been impacted by the UNGPs and HRDD, and why this is important.
- Current methods for identifying labor rights abuses in supply chains, and problems remaining challenges.
- Evaluating the role of innovation in the identification of labor rights, with examples of success.

It is worth mentioning that there were also a number of “off the record” conversations with other members of the BHR community, which assisted in my understanding of the topic, however these were not included formally in the research.

Due to the sensitivity of the topic, it was decided to keep all interviewees anonymous, and below shows how they will be identified. See table 1 below for the list of interviewees.

Table 1: List of Interviewees

Interview Code	Title/ job position	Date of Interview	Interview medium/notes
C1	Senior Manager of Social and Environmental Impact of a global FMCG multinational.	1/5/2019	Skype Interview
C2	Vice President for Group Sustainability and Communications at a Thai Multinational.	21/5/2019	Face to Face
C3	Human Rights Manager of a global FMCG multinational.	3/5/2019	Skype Interview
C4	Head of Human Rights, Global Retailer	2/5/2019	Skype Interview
C5	Human Rights Manager of a South East Asian Seafood Multinational.	29/04/2019	Face to Face
E1	Business and Human Rights Consultant, Thailand.	8/5/2019	Face to Face
E2	Modern Day Slavery Expert	23/4/2019	Skype Interview
E3	BHR Academic	23/05/2019	Skype Interview

E4	United Nations BHR Regional Expert,	15/5/2019	Face to Face
E5	Labor Rights Expert	9/5/2019	Skype Interview
E6	Former Thai Government Human Rights Expert	18/4/2019	Face to Face
E7	Modern Day Slavery Expert	23/05/2019	Skype Interview
¹⁶ E8	Migrant Tech Project Associate		Skype Interview
E9	South East Asia BHR Advisor	20/05/2019	Skype Interview

iii. Secondary Data

Secondary data was used to support arguments and provide case studies, during parts of the thesis. This was predominantly provided through MNC documentation¹⁷, academic literature, civil society and U.N. reports, and online resources (such as news articles, opinion pieces, and blogs). I made a conscious effort to withdraw data from multiple sources so to provide a balanced data sample.

1.5 SCOPE AND LIMITATIONS OF RESEARCH

The research took place from April 2019- September 2019.

¹⁶ Although I learnt a lot during my conversation with E8, the contents of our interview do not feature in the thesis.

¹⁷ Many MNCs share information about their HRDD process and human rights strategies on their websites.

The research looked at MNCs that had a comprehensive human rights strategy (some of which had been credited for it on benchmarks or in the news), with operations in Thailand. Another reason for selecting MNCs with comprehensive human rights strategies, was because I knew that it was not possible for myself to go and personally verify whether the information I was given by MNC staff was true or not. A few of the sample came from Thailand given the nation's strong manufacturing and processing industry, and others were global MNCs which had their headquarters located elsewhere. With this in mind, interviewees answered questions by using examples and case studies from their own supply chains, with many citing Thailand, as I emphasized that I would rather this, however I welcomed other examples too. This means that, although the thesis focuses on Thailand, there are examples and case studies which are globally applicable or from other parts of the world.

As demonstrated in the research methodology, there was a rationale behind the MNCs that were selected to research, however this was also a little beyond my control given the sensitivity and time constraints of the research, meaning that there were also MNCs which I reached out to who didn't reply or agree to be interviewed. In other words, this means that I was restricted in the sample that I could research. Even with this said, I aimed to speak to five MNCs, and this was accomplished.

Some of the government officials and civil society staff interviewed were working on Thailand's NAP, and the others were experts in the field of BHR in Thailand/ globally. Given the sensitivity of this topic the interviewees and organization/MNC names have been kept anonymous.

1.6 SIGNIFICANCE OF RESEARCH

If HRDD is done correctly, Ruggie states that business can move away from the fear of ‘naming and shaming’ to ‘knowing and showing’ human rights impacts in their supply chains (Ruggie 2010). This thesis aims to show businesses how they can do this and what they should consider in the process, by demonstrating the crossovers with organizational innovation.

Therefore, the primary purpose of this thesis is to provide insights into how MNCs engage with their responsibility to respect human rights, and whether the critical factors for organizational innovation can enhance this. More specifically, this will be analyzed by investigating how MNCs identify labor rights abuses in their supply chains, as outlined in the HRDD process. This will share good corporate practices in the area of identifying labor rights, highlight current challenges, and emphasize the importance of employing innovation in the HRDD process. Academically, this will be contributing to an ever evolving field, and will share insights about how an MNC can deliver a comprehensive assessment of their impacts on labor rights.

CHAPTER II

LITERATURE REVIEW

This literature review is divided into the following four sections; business and human rights (BHR), human rights due diligence (HRDD), changing times (discussing the role of innovation), and knowledge gaps. The aim is to briefly show what has been written in the academic field of Business and Human Rights. More specifically, academic works are researched on the areas of the UNGPS, looking at HRDD and corporate capabilities of delivering this. The concept of innovation is also covered, and its role in HRDD is discussed.

2.1 BUSINESS AND HUMAN RIGHTS DISCOURSE, THE UNGPS AND THE RESPECT PILLAR.

In their introduction to *Business Ethics Quarterly* journal, Cragg et al. (2012) briefly inform the reader of the Business and Human Rights (BHR) journey. One of the main reasons behind doing a thesis contributing to the BHR discourse is to add to a new, and evolving area of study. This is supported by Cragg et al (2012) who loosely outline the inception of BHR in academia taking place in the 1990s¹⁸. Cragg et al (2012, p.2) locate the unavoidable and rapid growth of globalization as the primary factor for the birth of the discourse, as nation states' ability and willingness to fulfill their human rights responsibilities was tested. Although this resulted in global businesses bringing significant economic growth to developing nations, it also created "exploitive employment relations" (Clarke & Boersma 2017, p.111). Noticing this,

¹⁸ Even though there may have been previous mentions of the role of the private sector when considering human rights, up until the 1990s the nation state was seen as the main and sole protector of human rights.

civil society and poorly treated populations became the main actors behind the growth of the BHR discourse (Ruggie 2015, Harrison 2013, Clarke & Boesrsma 2017).

Although there had been movements centered towards BHR mainly led by the United Nations (U.N.) in the 1990s-2000s, the appointment of John Ruggie as special representative was a defining factor (Cragg et al 2012). John Ruggie has worked tirelessly for the best part of a decade in the evolving academic and practical discipline of BHR, his legacy has now been taken over by a U.N. working group who monitor the BHR landscape (Cullen 2019). Ruggie's appointment in the 2000s came with a consensus that businesses could infringe and abuse human rights so consequently had a responsibility to uphold (Cragg et al 2012). Cragg et al (2012) mention that legal practice took a similar turn, however legislation "attempts to extend human rights liabilities to home based companies" in the UK or Australia, failed. This appears to now be outdated, as once Ruggie's framework became operationalized, some states turned parts of the principles into legislation, the UK Modern Slavery act 2015 offers one such example.

Much has been written about Ruggie's framework, which is known as the 'protect, respect, remedy framework'. It was endorsed by the U.N. Human Rights Commission in 2011, and outlined states as responsible for protecting rights, businesses as responsible for respecting rights, and both actors for finding remedies when rights abuses occur. These actors were to employ a notion of due diligence in discovering existing and potential impacts on human rights (Cragg et al 2012). This framework became operationalized with the launch of the United Nations Guiding Principles for Business and Human Rights (UNGPs) which outlined 31 principles

under the three sections mentioned above (UNGPs, 2011). In his paper; 'The Social Construction of the UNGPs', Ruggie aims to show the theory and concepts behind the creation of the UNGPs. Importantly, Ruggie highlights three main modes of global governance. Firstly; public law at an international or domestic level, secondly; civil governance which involves various stakeholders usually exerting pressure, and finally; corporate governance, which shapes companies strategies (Ruggie 2015, p.12). Thus the UNGPs are a platform which accounts for these modes, and brings them together in the context of BHR.

The thesis at hand, is concerned with the second pillar of the UNGPs, as it will explore the ways in which Multinational Corporations (MNCs) engage with their responsibility to respect human rights. This has often been regarded as the most controversial part of the UNGPs (Ruggie 2015), perhaps because businesses primary aim is to create profit rather than respond to human rights, leaving one to wonder whether these two ambitions can fully coexist. More specifically, labor rights abuses within supply chains will be focused upon. Breaches of labor rights in a Thai context have been written about in scholarship, especially with reference to the fishing industry which has been cited as having systemic labor rights issues, such as forced labor (Chantavanich et al. 2016). This exists due to the lack of consent from workers to do this work, and the menace of facing a penalty for not doing so (Chantavanich et al. 2016). This is a clear example of the types of labor rights abuses that workers in multinational supply chains can potentially face.

The UNGPs outline that this respect for human rights is achieved in three ways. Fasterling and Demuijnck (2013, P.801) paraphrase these fulfillments as;

firstly, issuing a policy of commitment, secondly, conducting human rights due diligence (HRDD), and thirdly, providing remediation for when violations occur. It is the second of these fulfillments which the thesis is most concerned with as HRDD has often been regarded as the backbone of business' duty to respect human rights (Bonnitacha & McCorquodale 2017). Ruggie concludes his 2015 article by claiming that continuing to realize and witness abuses are important, however scholarship needs to combine this with "evidence-based insights into such matters as social capacity building, process sequencing, and institutional design" (Ruggie 2015, p.23). This thesis hopes to contribute to Ruggie's requests by researching the strategies, successes and challenges that businesses face when fulfilling their duty to respect human rights.

2.2 HUMAN RIGHTS DUE DILLIGENCE (HRDD)

Nowadays it is commonplace for MNCs to have departments dedicated to compliance and risk, which undertake a multitude of tasks to ensure that health and safety and other risks are accounted for. Due diligence is one such example, as businesses traditionally use this process to manage and mitigate business risk, and the aspects as to what this encompasses has expanded, to involve new activities, such as a business' environmental footprint (Graetz and Franks 2013, P.100)

The UNGPs also expand due diligence, by surpassing the requirements of domestic law by focusing specifically on human rights impacts. This means going beyond traditional requirements and compliance practice, which in some cases will fill "governance gaps" (Fasterling and Demuijnck 2013, p.807). For example, as Chantavanich et al. (2016) demonstrate in the context of the Thai fishing industry, many cases of forced labor (an ILO recognized labor rights abuse) start due to the

deceptive and coercive recruitment of migrant workers by brokers, and therefore new legislation to regulate this recruitment issue is perhaps required. In a HRDD context, MNCs sourcing seafood from Thailand have a duty to account for such issues in their HRDD process, while also advocating “for stricter regulatory standards to prevent and eliminate forced labor from occurring within Thailand's seafood supply chain” (Chantavanich et al. 2016, P.7).

Ruggie (2015) supports by outlaying that based on legal and moral norms, businesses should go beyond legal compliance, and conduct HRDD to realize and address the human rights impacts of their actions (Ruggie 2015, p.12), an integral part of the UNGPs (McCorquodale et al 2016)¹⁹. By placing the UNGPs as social norms, it shows businesses that they should not only respect human rights, but also how, as the quote below highlights;

“Accordingly, the UNGPs outline a four-step human rights due diligence process: assessing actual and potential human rights impacts, integrating and acting on the findings, tracking responses, and communicating how impacts are addressed.”

(Ruggie 2015, p. 14)

So why is this different to traditional due diligence? As the Ethical Trade Initiative highlight, the majority of contemporary due diligence systems look at recognizing and understanding risk, but unlike HRDD they don't look at action and prevention (Ethical Trade Initiative n.d.). For action and prevention of human rights, they must first be identified and assessed by businesses in their respective supply chains.

¹⁹ This applies directly to principles 17-21 (UNGPs 2011).

There is a consensus in literature that HRDD should use all internationally recognized human rights as a minimal standard, and potential rights abuses should be identified by meaningfully engaging with affected stakeholders where possible (Ruggie 2015, P.14, Cullen 2019, Fasciglione 2016). Fasterling & Demuijnck (2013, P.804) comment that Ruggie has a broad scope of human rights based on the ‘UDHR, ICESCR and the eight ILO core conventions’, and this is why I saw it fit to specifically focus on labor rights, thus joining other academics in seeing the ‘the International Bill of Rights’ and ‘The International Labor Organizations 1998 Declaration on fundamental principles and rights at work’ as minimum standards (Cullen 2019, Klanis 2015). Literature acknowledges that the fact that human rights are taking more of a central role in the business sphere proves that the principles are initiating change, however there seems to be little written about the impacts that this has had on businesses. In addition, some believe that there is the risk of the requirements not being fully adhered to, with short term business gains still taking precedence over human rights (Hess 2019, p.15).

The concept of HRDD was first described in the UNGPs (Cullen 2019), and it is commonly cited as being at its core, perhaps due to five of the 31 principles coming under its heading and many others referring to it (Fasterling & Demunjnck 2013, Bonnitacha & McCorquodale, 2017). By placing it in a mode of due diligence, the concept of human rights has become more manageable, which is appealing to business (Fasterling & Demuijnck 2013). Fasciglione (2016) believes that although the UNGPs have made the question of ‘how can companies respect human rights’, a pressing one, they only offer half an answer (Fasciglione 2016, p. 2). This is perhaps due to the non-legal binding of its call for businesses to become aware of, prevent and

address human rights impacts (Cullen 2019, Buhmann 2015, Bonnitacha & McCorquodale, 2017, Fasterling & Demunjnck 2013).

Although not legally binding, it is commonly established in scholarship that businesses should conduct HRDD in relation to their own direct business operations, or that of a partners. However, as mentioned, some commentators don't believe that the UNGPs define exactly how this assessment should be undertaken (Klanis 2015, p.423). Given the above, it is easy to understand why the concept of HRDD can cause contention, as it appears its mode of practice could be mixed, and that is one of the main reasons for this thesis. This area deserves further research so that those conducting HRDD effectively can share their practices with the rest of the business world. For the reasons above, and given the complexities of global supply chains from sector to sector in the globalized age, it becomes understandable why HRDD seems like an enormous, but important task for business. Therefore the sharing of practices in respecting human rights are key, and contributing to literature on this can only be an asset.

Through the concepts of 'harm and violation' (Fasciglone 2016) the UNGPs create a nexus between business governance and human rights (Cullen 2019). Arguably, this makes the concept of human rights easier to digest for business. However this doesn't address the absence of an agreed upon definition of HRDD (Fasciglone 2016, McCorquodale et al. 2016). Debatably this means that HRDD, although possessing four guidelines, is left to business' interpretation, this has led to a call for "consistency" (Cullen 2019).

Bonnitacha & McCorquodale (2017) argue that HRDD causes confusion, as due diligence in a business context is understood differently than in a human rights context, meaning that it can be read differently depending on the reader. In a business sense, literature notes that the concept is employed to identify commercial risks, but under human rights law it serves to discharge obligation (Bonnitacha & McCorquodale 2017). This confusion can consequent its implementation through “false understandings” (Bonnitacha & McCorquodale 2017). This allows one to believe that HRDD is an interpretive concept which, debatably, could give mixed results due to mixed understandings. However, in a response, Ruggie & Sherman (2017) reject this by claiming that Bonnitacha & McCorquodale’s confusion with HRDD is of their own making. They do however acknowledge that there will always be “situational complexities and ambiguities in different business sectors and operating environments” (Ruggie & Sherman 2017, p.928).

Some commentators believe that the majority of MNCs interpret and enact HRDD through already established systems. There are multiple procedures in existence, from standard due diligence, audits, and as Harrison (2013) notes, Human Rights Impact Assessments (HRIA), and this thesis looks to explore these processes. Although there are several commonalities between HRDD and HRIA, they are not an exact match and if HRDD is to be carried out to its full extent then HRIA framework is not enough on its own (Harrison 2013), rather HRDD should encompass HRIAs. Harrison supports, by identifying three areas beyond a standard HRIA which are essential for HRDD, and calls for minimum standards to be established for them. Harrison (2013) outlines these areas as transparency, external participation and verification, and independent monitoring and review (Harrison 2013).

External participation is of interest here as it relates with the identification of labor rights in supply chains, correlating with “meaningful consultation” (UNGPs 2011, P. 19), and this will be explored in Chapters 4 and 5. On external participation, Harrison (2013) notes that there needs to be further guidance as to what counts for “effective consultation”. Cullen (2019) draws similar claims to Harrison by suggesting that the practice of ‘engagement with stakeholders, transparency, and accessibility, are the distinguishing features in HRDD from ordinary corporate due diligence’. Cullen and Harrison’s research both identify engagement with stakeholders, and transparency as key themes surrounding HRDD, and that the extent to which these areas develop correlates with the effectiveness of HRDD. Therefore transparency and stakeholder engagement should be further explored.

Although they have different units of measure, perhaps there is a risk of confusing HRDD with standard due diligence, given that processes can overlap. Referring to traditional due diligence, McCordquodale et al. (2016) notes;

“it is an objective standard by which a defendant can show compliance with a certain duty of care, and it is a contextual enquiry which takes into account what the reasonable or prudent company knew or ought to have known in the circumstances” (McCordquodale et al 2016, p.223).

This common shared purpose can perhaps explain why some MNCs believe they are doing enough, in terms of respecting human rights, by following long-lasting standard procedures, as the UNGPs mention that they can be integrated into existing assessments (UNGPs 2011, P.19). However, given that HRDD is concerned with human rights as a reference (McCordquodale et al 2016), literature encourages

practices such as stakeholder engagement, ongoing assessment and supply chain transparency, as they go beyond traditional compliance.

It can be assumed that going beyond traditional compliance requires new processes, meaning that HRDD can be burdensome for businesses, given the extra efforts which could be costly (Fasterling & Demuijnck 2013, p.807). There are now a number of resources available for business, such as Shift's or Ethical Trade Initiative's UNGP Reporting Framework to draw on just a few. Although these are helpful for business, it doesn't detract from the challenge that HRDD "comes at a cost" (Human Rights Watch 2018). This thesis aims to build on this observation by investigating what resources HRDD has a strain on (e.g. financial or staff), and how MNCs address this challenge. This issue was recently evidenced on the proposition of Australia's 'Modern Slavery Bill 2018'. The legislation calls for businesses (with an annual turnover over \$100 million) to annually report modern slavery risks, and actions taken to address these risks (Baker 2018). Nestle retorted by claiming that this would add cost and time to operations, and these would have to be borne somewhere, especially when considering some businesses can't absorb this cost themselves (Baker 2018). Even accounting for the above, I have found limited information about the impacts of HRDD on the organizational structure and outlook of MNCs, so the thesis considers this in Chapter 3.

The above shows how literature from Harrison, Ruggie, and Cullen, amongst other scholars, acknowledge, transparency and stakeholder engagement as key practices in the HRDD process. However these processes, appear to lack detailed guidelines, and therefore are left up to interpretation. For that reason, more research in

the BHR field should be undertaken on how MNCs can meaningfully engage with stakeholders so to identify labor rights abuses in their supply chains, so that best practices can be shared, and challenges recognized. In the context of this thesis, best or good practices can be understood as exemplary examples of parts of the HRDD process, this may for example relate to the ways that a particular MNC is trying to go beyond domestic legislation to improve the working conditions that workers in their supply chains are subjected to. The UNGPs themselves support this sharing of knowledge, by calling for businesses to “know and show” their respect for human rights (UNGP 2011, p.24). However, as this literature review has already demonstrated there is limited guidance on how this can be fulfilled practically (Hess 2019, p.19).

2.3 THE UNGPS MAKING THEIR MARK AND THE ROLE OF INNOVATION

Although there has been an uptake of HRDD since its inception under the UNGPs, there is still limited information on how businesses are delivering this requirement (McCordquodale et al 2016). Although it is challenging to create indicators which assess businesses’ human rights efforts (Hess 2019), there are multiple rankings and benchmarks which give insights. Humanity United’s ‘Know The Chain’ industry reports, and Corporate Human Rights Benchmarks (CHRB), are two such benchmarks that provide consumers, and investors with important information regarding MNC’s human rights efforts. Some MNCs also share information on their websites about the ways in which they are respecting human rights, however the depth of information varies from business to business and is not always available. Besides the indicators set by the benchmarks mentioned above,

there appears to be less known, especially in scholarship, as to what differentiating practices go on between MNCs when conducting HRDD, even if the process has become more streamlined and developed over time. This thesis looks to contribute towards filling that gap by exploring how MNCs identify labor rights abuses in their supply chains and the challenges that remain.

Given that HRDD is still a relatively new business requirement, I assume that MNCs will be required to innovate to an extent, so to successfully deliver this duty. It seems that the willingness and capability of a business to innovate in this space will vary, and the second part of this thesis analyses whether the same factors which result in successful organizational innovation can also assist with strengthening the identification of labor rights in supply chains. I struggled to find academic literature which looked at the role of innovation in the BHR discourse, especially when considering the UNGPs and HRDD. Therefore it is difficult to review literature on such a topic, so instead I explore which concepts and understandings of innovation are the most relevant to the BHR discourse.

Innovation, at its simplest can be understood “as the adoption of an idea or behavior new to the adopting organization” (Damanpour 1996, p.694). This definition is simple, however it serves the purpose of this thesis, as the previous sections of this literature review have demonstrated that new ideas and behaviors are debatably required to fulfill effective HRDD. Creativity is often associated with innovation, as it can be understood as the “ability to produce both novel and original ideas appropriate for the task at hand” (Gassman & Zedtwitz 2003, p.702). Incorporating creativity as stated, with the former definition, innovation embraces the development of an idea

into a solution which offers value to stakeholders (Osburg 2013). With this in mind it seems interesting to consider what factors would lead to the adoption of new practices (innovation), stemming from creative ideas.

Although I have not seen him write about it, Ruggie (2014) acknowledges that innovation must play a role in respecting human rights. In a 2014 keynote address, titled “from audit to innovation”, he called for collaboration amongst businesses to share best practices when identifying labor rights abuses (amongst other issues), thus working together to address human rights (main points of this speech can be seen in Chapter 4). This collaboration should be through the common purpose of innovating for change (Ruggie 2014), by building on and undertaking practices such as; continuous improvements, collaborative assessments, supplier grievance mechanisms, capacity building, NGO partnerships, commercial incentives, metrics for social performance, aligning internal purchasing practices, and industry collaboration (Ruggie 2014).

It remains to be explored, what the factors are that lead to innovation in the HRDD space, and given that Ruggie himself declares innovation is required, this seems surprising. My thesis hopes to bring clarity in this area. However, before concluding this literature review there is one more factor which must be considered when considering how MNCs engage with their responsibility to respect human rights. This is the role of the state, which in this case, is Thailand. This is largely down to states still having the “critical role in legal mechanism” surrounding human rights (Fasciglione 2016). The UNGPs have guidelines for the state as well, under pillar one, which largely call for the protection of human rights through various

governmental measures, such as creating legislation. Beyond the UNGPs directly, new domestic legislation will also encourage MNCs to innovate so that they can keep up with the evolving legal landscapes. We have seen this fulfilled with the development of national action plans (NAP) for BHR, and at the time of writing, Thailand is expected to launch theirs in 2019.

2.4 KNOWLEDGE GAPS

The above literature review has provided an overview of relevant scholarship concerning a number of BHR topics in relation to MNCs respecting human rights. It seems fair to opine that the field of study is evolving, meaning that any contributions are worthwhile. In terms of HRDD, the review demonstrates that there is adequate literature surrounding the process, however there are gaps in understanding how MNCs engage this process, and therefore sharing effective practice would be worthwhile. It was also highlighted that HRDD had been described as being left to interpretation, and the repercussion of this should be explored. Therefore understanding how responsible MNCs interpret the HRDD process would provide valuable insights, surrounding effective practice, innovations and challenges. Innovation seems to be a key facet to most modern day business developments, and based on the understanding that it transforms ideas into normative practice, this thesis will research the extent to which innovation is necessary in the HRDD process, and how it can be nurtured.

CHAPTER III

A NEW BUSINESS OPERATING ENVIRONMENT: BUSINESS’ DUTY TO IDENTIFY LABOR RIGHTS ISSUES, HRDD AND UNGP IMPACT ON BUSINESS.

3.1 INTRODUCTION

Clearly responsible businesses are increasingly recognizing themselves as accountable ‘organs of society’ which have a responsibility to respect human rights. This has led to human rights impact assessments (HRIAs), and other tools and plans (Allison-Hope & Park 2018), which are explored in Chapter 4. The magnitude of the discourse can be seen through the 2011 formation of a UN Working Group for Business and Human Rights (UNWG) which is comprised of five regional experts, and deals with various BHR issues (Nurmalitasari 2018). Their 2018 report on HRDD is one of the most comprehensive pieces of work on the subject, as it outlines good practice and remaining challenges. From the report, and broader literature, a message resounds that although the HRDD process has become a norm, the majority of businesses are still failing to achieve and implement the process to the UNGP standard (Rutledge 2018).

The next Chapter (4) explores how MNCs have undertaken the duty of identifying and assessing labor rights impacts in their supply chains, and challenges which remain in doing so. However, prior to this, the thesis looks to understand, more widely and philosophically, what effects the UNGPs, and specifically the HRDD process, have had on business. Therefore, this chapter covers a number of foundational themes, with the aim of providing the reader with a comprehension of how the vague nature of the UNGPs were received by business, and perspectives

surrounding their significance and operationalization, especially when concerning the identification of labor abuses. The chapter provides insights into how the UNGPs were received, initial conceptual challenges and their impacts on MNCs. By exploring these topics, the chapter shows the impacts that the UNGPs have had on business, by creating a new operating environment. It takes the preceding structure; in section 3.2, the vagueness of the HRDD process is considered, which then leads to section 3.3 which develops an understanding as to why there is a duty for business to identify rights abuses in their supply chain. Finally, in section 3.4, how the UNGP regime has impacted businesses is emphasized.

3.2 THE FLEXIBLE NATURE OF THE UNGPS AND ITS RECEPTION

The fundamental difference between due diligence in a traditional sense, and HRDD, is that the latter focuses on a company's operational impact towards human rights, not just business risks (McCorquodale et al. 2016, p.223). Although constructed of multiple components, HRDD at its simplest is the identification and mitigation of human rights impacts (Lundan & Muchlinski 2015, p.183). This has oftentimes been dubbed as the core component of business' responsibility to respect human rights (Harrison 2013), meaning that an effective process must be in place to effectively assess human rights impacts. However, as one academic mentioned in their interview, the term of HRDD is very easily used, but it's not always elaborated as to what is implied, meaning that a great number of things can fall under it (E3, BHR Academic, 23/05/2019).

In my opinion, the MNC staff that were interviewed all demonstrated a clear understanding of the significance of HRDD, by acknowledging and discussing its role in identifying rights risks, rather than business. It seems that the practice of a HRDD

process is recognized as necessary amongst responsible multinationals. This is especially the case in terms of labor rights, as MNCs recognize that there is an expectation from consumers, investors and staff to source products responsibly.

Nevertheless, recognizing that there is a HRDD procedure, and delivering it effectively, are different things. As the literature review demonstrated (Chapter 2 section 2.2), the UNGPs outline the four procedural steps of HRDD. These steps have been criticized as lacking details and being left to interpretation. Mares (2018, P.7) supports that there is room for misinterpretation within the UNGPs²⁰, and claims that this is because the UNGPs “operate at a higher level of abstraction and generality given that it was meant as a foundational document applicable to all human rights, industries, and countries”. Similar perspectives were echoed during the interviews, as one MNC staff member mentioned that the UNGPs are “broad theoretical concepts of how to actually promote human rights in business, but the thing is, businesses, all types, from SMEs to big corporations are very operational” (C2, Vice President, 21/5/19). He went on to highlight that trying to operationalize these theoretical concepts can pose challenges to the operational environment of business.

The Vice President (VP) quoted above, mentioned that although there are UNGP guidelines there “is no operating manual” (C2, Vice President, 21/5/19). He believed that due to this, on the UNGP release, his own team felt unclear on which part of pillar two they should start with, as it can be broken into three main tasks; a policy commitment, HRDD, and measures of remediation. They considered whether

²⁰ As HRDD is a key part of the wider UNGP regime, this chapter will interplay between the two, sometimes bringing forward effects of the specific HRDD process, and other times looking at the wider UNGP regime.

these steps should be sequenced or done at the same time. This seems plausible as the three areas above are further broken down into fourteen principles. Understandably MNCs and experts have a better grasp of the UNGPs, and their implementation at this stage, given the years of practice that they have had. However, it seems that businesses can argue that there is not total clarity on a unanimous process.

Beyond sequencing, the VP highlighted that other operational issues such as how to budget and staff the delivery of the UNGPs needed to be addressed. He claimed that these are “operational questions that should also be embedded when we talk about promoting business and human rights, so this is the challenge” (C2, Vice President, 21/5/19). As the VP didn’t stress exactly who should produce such operational materials or where it should be embedded, it is assumed that he was calling for the extension of official UNGP material.

A similar observation was made by another human rights manager who said that “the way in which it (HRDD) is conducted is quite clear in terms of what is required, but how you do it, obviously is open to interpretation” (C3, Human Rights Manager, 3/5/2019). However, he believed that as it is continually used, and becomes more common, the capabilities in which it is conducted will improve. C1 gave the impression that we may be close to this, as he claimed that the interpretative nature of HRDD was no longer as prevalent as when it was released in 2011, and this was due to a narrower definition of HRDD, thanks to increased experience. Even with this said, he went on to claim that the process does allow “flexibility” to aligning with a business’ capacity, and existing processes (C1, senior manager, 1/5/2019). As the above shows, it is understood amongst responsible multinationals, as to what a HRDD

process should entail, however there is still flexibility on the issue which offers advantages and disadvantages. As one manager succinctly put it, “clarity is of the essence” as it will help MNCs, and smaller businesses specifically, have a clearer understanding of what exactly to do in HRDD, moving away from a feeling of piloting (C1, senior manager, 1/5/2019).

It seems sensible to assume that the increase in supplementary HRDD material, and services will of course have assisted in enabling MNCs to identify human rights impacts in their supply chains, as will the years of experience that businesses have now had to familiarize with the process. However it is unclear whether the abundance of guiding materials, and eight years of experience are; a) providing business with all of the answers they need in delivering HRDD, and b) if this multitude of material is a positive or causes confusion. One thing that does seem clear is that there is still the room for businesses of any size to interpret the HRDD process, and other parts of the UNGPs. In a positive light, this flexibility allows all business to adapt HRDD to their own capacity, and already existing processes (C1, senior manager, 1/5/2019).

Although there may be some other arguments as to why a flexible HRDD process is advantageous, ultimately it appears that “the lack of clarity doesn’t help” (C1, senior manager, 1/5/2019). Therefore it is important that this is addressed, “particularly because the non-binding UNGPs rely explicitly on their persuasive force to frame and set in motion dynamics that push forward BHR governance” (Mares 2018, P.7). As the above has shown, HRDD (and the UNGPs more widely) has increasingly become more understood amongst business, and this has only been

strengthened with the resources available, meaning that it is difficult for business to claim ignorance when respecting human rights. However, it seems fair to suggest that the HRDD process, due to its interpretive nature, still has the potential to confuse business at all levels, and this confusion is probably likely to increase reflective of the business' resources. Section 3.3 builds on the above by evaluating business' moral obligation to identify labor rights in their supply chains. This will offer a philosophical foundation as to where business should be placed when assessing labor rights in supply chains.

3.3 THE CORPORATE RESPONSIBILITY TO IDENTIFY LABOR ABUSES: MORAL OR COMPLIANCE?

This section will focus specifically on the main topic of the identification of labor rights abuses. To begin the analysis of how MNCs are identifying labor rights issues -the current practices and challenges- it will first be discussed as to 'why' this procedure is necessary, and falls under the responsibility of business. This section argues whether the UNGP expectation to identify labor rights abuses is a moral obligation. In doing so, this will provide insights beyond the operational measure of corporate compliance, emphasizing subjective viewpoints and ethical reasons, as to why MNCs are more holistically expected to assess the impacts of their operations. Collating the opinions of multiple perspectives from a variety of BHR actors can build insightful context, as literature appears to usually consider this topic at a macrolevel, leaving little room for subjective context.

As an entry point, it is necessary to analyze how exactly the UNGPs encourage business to assess human rights. From this, the perspectives shared in the interviews will be analyzed in relation to the UNGPs expectation, thus determining

whether understandings are coherent, and a moral obligation exists. Principle 18 from the UNGPs can be seen below;

“In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”

(UNGPS
2011, p.19)

The above displays an example of how each instructive step of the HRDD procedure is presented as a ‘principle’. Each principle is also accompanied with a commentary which is composed of a few paragraphs. Unpacking the above, and the commentary, key themes can be extracted which build a basic assessment process. Firstly, the purpose of identification is required in order for businesses to understand the actual and potential impacts of their operations, activities and relationships. This is obviously vital as the whole HRDD process stems from, and is built on this. Meaning that a poor and ineffective assessment will almost certainly result in wrongs not being addressed in the supply chain. In my own opinion the principles explain the operational reasons as to why business must assess their supply chains, however, arguably, there is a lack of moral reasoning as to why this is necessary.

Analyzing the principle, the UNGPs expect businesses to map those (potentially) impacted, and account for human rights related issues and standards in these environments. Specific attention should also be given to vulnerable groups, accounting for gender. Due to the dynamic nature of human rights, and the speed in which the business world evolves, the process should be assessed in an ongoing manner. Principle 18, under (a) and (b) does offer approximate guidance, however it is vague and, appears interpretive. Briefly unpacking the above, this assessment principle, calls for businesses to refer to human rights experts, and to enact the meaningful consultation of stakeholders. I believe that, similar to the MNC staff member's observation in section 3.2, this shows how the UNGPs theoretical approach may be difficult to operationalize and interpret. I would like to highlight that the word 'meaningful', without operational guidelines, could be argued to be a subjective standard, differing from MNC to MNC.

The corporate responsibility to respect human rights²¹ assigns a "negative duty on corporations to do no harm, [but] there is growing debate around the extent to which this principle confers a positive moral obligation to realize rights" (McPhail & Ferguson 2016, P.527). The difference between a 'negative duty' and a 'positive duty' is as such, the former is a duty which stems from a rule of not doing, or prohibiting a certain act, whereas "a rule that requires a certain action, and thus imposes a duty to do it, is thought of as a positive rule, imposing a positive duty" (Singer 1965, P.98). In other words, under the UNGPs, business has been handed a responsibility, or negative

²¹ There is very little written on the specific practice of assessing labor rights in supply chains, so the analysis must be expanded to the wider responsibility to respect human rights, which the assessment is part of. This will allow academic literature to be brought into the analysis.

duty, to refrain from infringing on human rights (Hazenberg 2016, P.491), as opposed to proactively protecting them, in the way states have. However, Hazenberg (2016, P.491) points out that the inclusion of HRDD means that MNCs do need to take positive steps to respect human rights, as “doing no harm is not merely a passive responsibility” (UNHCR 2011, P.7). Interviews provided insights into why the duty to identify human rights impacts, is a corporate responsibility of doing no harm, and a positive moral obligation.

From a corporate perspective, ‘accountability to stakeholders’ (C2, C4, C3, C1), and ‘a moral responsibility’ (C2, C4) were the most commonly cited reasons for identifying human rights. The latter point will first be briefly touched on first. Philosophically speaking, one human rights manager claimed that; “we (business) have a moral duty given we are doing business with lots of parts of the world, we are making profits from the products we sell, you know, we have a moral duty that no one is being adversely affected by that” (C4, Head of Human Rights, 2/5/2019). An understanding such as this, may show that MNCs have staff members who are viewing the responsibility to respect human rights as a “positive moral obligation” (McPhail & Ferguson 2016, P.527), thus identifying potential labor abuses appear to be regarded by some MNCs as more than a means of compliance. However, from this statement it is not clear whether the staff member believes that this is a positive or negative duty, perhaps the latter as he emphasizes that they should be preventing those in their supply chains being “adversely affected” (C4, Head of Human Rights, 2/5/2019).

A 'duty to accountable stakeholders', was the most cited reason as to why MNCs should identify rights. Beyond laborers in the supply chain, accountable stakeholders were acknowledged as; consumers and the general public, colleagues, investors, NGOs and activists. Two MNC staff highlighted that consumers have an expectation that their purchases shouldn't contribute to adverse effects, such as the abuse of labor rights (C4, Head of Human Rights, 2/5/2019, C1, senior manager, 1/5/2019). This shows a commercial obligation as MNCs are clearly becoming more aware of responsible consumption trends, and furthermore an appreciation that consumers and staff do not want to be involved with a business whose operations infringe on human rights. Arguably consumers themselves are also ensuring that they fulfil a negative duty by making sure their shopping habits don't impose harm on others, if they feel that they may be at risk of doing this, they could be inclined to shop somewhere else.

Some of the interviewed managers appreciated that due to the vast scale of their supply chains, and operations (one of the MNCs having over 2000 global brands for example), they're at risk when a sector comes under suspicion of abuse. Evidenced multiple times, with sectors such as fishing and palm oil, brands come under evaluation, and even scrutiny from consumers when scandals are publicized in the media. Commercially, it is clearly in a MNC's best interest to have assessed rights abuses in their supply chains, thus being prepared for such scandals, by having already acted upon the assessments and tracked the progress. Most importantly this will contribute towards protecting those in the chain (laborers), however beyond this it will shield consumers from being associated to abuses. Being prepared, by proactively engaging with HRDD, and identifying risks is clearly a commercial

protective measure. I remain unconvinced that HRDD is purely a negative duty, as there are encouragements which impose action.

Interestingly the interviews revealed that employees were also recognized as stakeholders, with the most obvious reason being that a consideration of social issues is an attractive pull factor to potential staff (Friedman 2018, P.71). Here employees are not necessarily regarded as vulnerable workers in the manufacturing side of the supply chain, but the staff occupying more visible jobs in the MNC, this could perhaps be marketing, or working in a retailer's stores. This was supported by an expert who specifically mentioned that there was a lot of "employee activism" (E5, Labor Rights Expert, 9/5/2019) in the tech sector, and, more generally, that image is important when attracting talent. This is especially the case with the millennial generation, occupying much of the labor market, as they seem to care more about the societal and environmental impacts of business, than previous generations (Schlitzer 2018). Although it may not be the primary reason, it is interesting to see that the way a business conducts itself can also affect a potential employee's decision on whether they will work for them. This not only shows the multiple stakeholders which can be seen as falling under the remit of a business, but also the multifaceted reasons for MNCs to assess their operations on human rights, as a reputational measure for commercial and employable status.

One Head of Human Rights (C4, Head of Human Rights, 2/5/2019) framed the above as an expectation of stakeholders, however another manager (C1, senior manager, 1/5/2019) emphasized the risk management necessity of identifying labor rights abuses in a supply chain. This highlights that there is not a singular reason as to

why MNCs have this responsibility, however there may be differing prioritizing motivations between businesses. It appears that there is a combination of motivations at play between; a moral responsibility placed on business to look after those in their supply chain, and to abide by responsible business practice on a compliance level so to reduce commercial risks. The data collected clearly supports Arnold's (2016, P.275) evaluation, that it is no longer a question whether MNCs should respect human rights, but rather how is this implemented. With specific reference to the assessment of rights abuses, the data demonstrated that there was no objection as to whether this was a corporate responsibility or not, as a consensus was held that business should be identifying such issues, however there are many reasons as to why.

Summarizing some of the other answers from the interviews (as to why MNCs should identify labor rights impacts), notions of leadership, understanding, and making business sense, were brought forward. For example, the VP at one MNC mentioned that MNCs are expected to take the lead on these issues, and in doing so will develop their own understandings of their supply chains and the "breadth of human rights' scope and scale" (C2, Vice President, 21/5/19). This is an interesting point as it alludes that MNCs, which have more resources than that of their suppliers, have an obligation to set an example of how labor rights should be respected. More so, it shows how HRDD can encapsulate positive duties, as an MNC has the potential to influence its supply chain. Discussing leverage as influence (a theme explored throughout this thesis), one manager mentioned that MNCs, such as his, should consider carefully where they have the ability to drive change, which is usually in circumstances where they have a significant proportion of a factory or farm, and there are long lasting relationships with suppliers (C4, Head of Human Rights, 2/5/2019). I

believe that these notions of influence, leading by example, and leverage demonstrate the areas of HRDD that can be regarded as a positive duty.

Exploring HRDD from a more humanistic standpoint, I asked some of the experts as to why they believe that some MNCs ‘care’ more than others about HRDD, and respecting human rights more generally. This sprouted a mix of answers, however some main themes can be acknowledged. Reputational and business risk remained key motivations, as one expert claimed “what they have to gain in taking shortcuts on BHR, is not worth what they could eventually lose” (E4, UN BHR Expert, 15/5/2019). In support another expert claimed that it would be great if companies saw HRDD as a “moral imperative” (E5, Labor Rights Expert, 9/5/2019), however the reality was that the business case still appeared to take precedent. Coming from a different angle, another expert mentioned the role of “human nature ness” (E2, Modern Day Slavery Expert, 23/4/2019), meaning that the issue really resonates with an individual who then drives change in their business, beyond the requirements of hard binding laws. In a similar vein, another expert highlighted how it is now evident that some CEO’s are driving efforts, so to be leaders in sustainable business (E5, Labor Rights Expert, 9/5/2019).

Although there were other potential motivations mentioned, the final reason I would like to focus on is the “global spotlight” (E1, business and human rights consultant, 8/5/2019). This is relevant to Thailand’s fishing industry, and overlaps with the sector wide risks that the managers above mentioned, where the publicity helps drive change in a sector. As the expert mentioned, we are now seeing this with construction, partly due to the revelations of abuse surrounding the Qatar FIFA World

Cup. Across the board, it appears that ‘risk’ is still a primary motivation for business to ‘care’ about identifying rights abuses in their supply chains, however as demonstrated, there are additional reasons as to why some MNCs are going beyond standard practice.

To conclude, there appear to be multiple reasons as to why MNCs should identify rights abuses in their supply chains. Ultimately, reasonings can be broken into two main categories, firstly that business has a moral duty to conduct HRDD and protect all stakeholders, by ensuring that they are not encroaching on human rights (a negative duty). Secondly, that this will lead to the commercial safety of the business. In other words, as one manager succinctly outlined, there is a duty to look after the people who allow your business to maximize profit, and this will also equate to commercial benefits (C4, Head of Human Rights, 2/5/2019). Arguments have been made that there are “compelling reasons to believe that TNCs have agentically grounded moral obligations to respect basic human rights” (Arnold 2016, P.275), however this thesis would claim that this is no longer an argument, but rather an expected norm, the boundaries of which are being explored. Additionally, I have learnt that the degree to which HRDD becomes a ‘positive duty’ is down to the discretion of the MNC. For example, this section has shown that by taking leadership and driving influence in the supply chain, MNCs can create positive duties when respecting human rights.

3.4 THE EFFECTS OF THE UNGPS ON BUSINESS STRUCTURES

The previous sections have shown how the business obligation to assess human rights across their whole supply chains was received, and reasonings behind this duty have been philosophically unpacked. However this final section considers to

what extent the calling for HRDD has impacted MNCs. In understanding how MNCs approach HRDD, it is important to assess whether the UNGP's release in 2011 impacted the makeup of MNCs, such as their ethos, key personnel, departmental structure and processes, or whether these were natural evolutions as BHR became more understood. Once again, this is a broad topic, and it was left up to the interviewees to assess whether the UNGPs had profoundly changed significant features of the business.

In 2016 the Institution for Human Rights and Business reflected on the progress of the UNGPs. Themes identified through that study pose as a useful entry point into reviewing how the UNGPs have affected business. A key acknowledgement was that the UNGPs had created a common language between governments, business, and civil society (Aizawa & Blackwell 2016). This was a view which was amplified by one manager, who theorized that the UNGPs had created a standard language which actors in the supply chain recognized, and also helped assign responsibilities between actors (C1, senior manager, 1/5/2019). Momentarily moving away from HRDD, but still looking at the importance of language in BHR, the former Thai government human rights expert mentioned the importance of “an agreed set of language” (E6, former Thai Government human rights expert, 18/4/2019). He claimed that the upcoming National Action Plan (for Thailand) will assist in aligning actors on different perspectives.

Referring to the UNGPs as a whole, another expert posited that they had “standardized the expectation as far as human rights is concerned and made it actionable, this had a big role to play at the level of language at least” (E5, Labor

Rights Expert, 9/5/2019). Evidently, one positive impact that the UNGPs have had on business (and other BHR actors) is the standardizing of language, which has contributed towards aligning understandings about BHR across supply chains.

Another statement was that new reporting measures, and guidelines, made corporate related human rights issues more accessible and easier to understand, thus creating a ‘race to the top’ mentality between early adopters, and investors, which was seen as promising for influencing laggards (BHRRC Infograph 2016). In addition, one of the experts interviewed raised that although criticized, “precompetitive collaborative efforts” are a welcome development, as businesses push each other to raise standards, with the alternative been ‘a race to the bottom’ (E5, Labor Rights Expert, 9/5/2019). She mentioned that even some European buyers still accept very low standards as far as labor rights are concerned, and that is why her organization work on creating a competitive environment through benchmarking initiatives, which supports the above notion of building towards a ‘race to the top’ mentality amongst businesses (E5, Labor Rights Expert, 9/5/2019). The impacts on business, of the evolving BHR discourse, UNGPs, and HRDD process, can be seen here through the development of a new competitive landscape. A combination of guidelines, reporting measures, and benchmarks have broken onto the business scene, which has created a new competitive measure amongst entities, as their efforts to respect human rights can be ranked.

Beyond the competitive nature of this ranking, is the precompetitive collaborating influence it has had between rival MNCs to address common labor rights issues. As one manager picked up, competitors can come together to look at

common problems through collaborative events and forums (detailed in Chapter 5) (C3, Human Rights Manager, 3/5/2019). This demonstrates that the UNGPs have not only developed a new competitive frontier for business (as stressed in the last paragraph), but they have also encouraged businesses to collaborate so to address issues in their shared supply chains, and “reduce the burden on suppliers” (C3, Human Rights Manager, 3/5/2019). Therefore, in the age of the UNGPs, businesses have new areas of competition which can be publicized, and has the potential to shape consumers attitudes towards an MNC, but they also have been encouraged to collaborate to address common labor rights issues.

Even with the above accounted for, it is not easy to tell how much business reshuffling of processes and other facets of an MNC are down to the release of the UNGPs, and how much is due to a natural progression of responsible businesses. The staff member from the largest MNC interviewed, claimed that many of the requirements and processes to respect human rights, were already in place prior to 2011, when he joined (C1, senior manager, 1/5/2019). At that time the MNC had already integrated their human rights policy into the wider corporate policy, and human rights impact assessments were in use (C1, senior manager, 1/5/2019). From this, it can be assumed, that there is a high probability that a number of larger early adopting MNCs already had processes, which the UNGPs encouraged, in place. This includes processes and risk assessments which can be integrated into HRDD. However what was needed was the bringing of these various processes together, and further developing them (C1, senior manager, 1/5/2019).

The hiring of the aforementioned staff member (C1), as senior public affairs manager, appears to illustrate an MNC's intention to upgrade and further organize their existing processes. This was further harnessed by the experience which the interviewee brought, given that he had previously worked with Ruggie on the UNGPs. This, and the continued commitment towards human rights, showed a dedication and approval from the CEO and top management (C1, senior manager, 1/5/2019). It was not discussed, thus it is unknown whether this hire would have been made without the release of the UNGPs. Therefore it is hard to tell if the UNGPs, themselves, contributed to significant changes in this MNC's makeup, or if it was the progressive expansion of the BHR landscape over the last few decades, a landscape which continues to evolve. An observation that leaves the impression that the UNGPs did weigh some influence on this particular hiring of a BHR expert, was the timing, as the hire was made in 2011 and that is the same years that the UNGPs were released.

In the proceeding years of the UNGP release, some states started developing legislation in attempts to fulfill the duty designated to them; protecting human rights. 'Modern slavery' is a particularly topical theme, and the domestic legal landscape of some countries reflect this, as regulatory examples can be found in United States, United Kingdom, France and Australia, to name a few. For example, the 2015 UK Modern Slavery Act (UK MSA) calls for businesses with a turnover of over 36 million pounds to "publish a yearly statement describing the steps they are taking to ensure that slavery is not taking place in their supply chains or businesses. This statement must be approved by the board and signed by a director" (Friedman, 2018 P.67).

Acknowledging the impact that this legislation had, one manager identified that the UNGP release itself, was not the only factor in MNCs evolving their engagement with the responsibility to respect human rights (C3, Human Rights Manager, 3/5/2019). The UK MSA has “got human rights on the agenda of the board room” (C3, Human Rights Manager, 3/5/2019), which has resulted in more resources being allocated towards identifying human rights issues (C3, Human Rights Manager, 3/5/2019). The MNC increase of focus, and resources towards respecting human rights, proves that “reporting has the potential to shape corporate behavior” (Ewing 2016, P.291). It appears that when considering labor rights, the “obligation to obey the law” (Arnold 2016, P.258), will shape MNC behavior, so to ensure that it adheres to regulatory requirements.

Perhaps influenced by domestic and international law, the cultural evolution of a business can occur at a more unpredictable rate, and could potentially affect, or be affected by respecting human rights. One manager highlighted how the evolution of becoming a more visible MNC can influence a business’ engagement with human rights. This manager’s employer had many brands under their umbrella, and although people may be aware of them, they may not have known the MNC (C3, Human Rights Manager, 3/5/2019). However as the MNC grows, it is becoming more “purpose-led” (C3, Human Rights Manager, 3/5/2019). For example, their team handling sustainability has grown in the last five years, including overseas staff, and the outsourcing team, who partner closely with procurement and suppliers (C3, Human Rights Manager, 3/5/2019). This is to improve the understanding of what is expected from sound labor practices, and improve compliance (C3, Human Rights Manager, 3/5/2019). Again, this example shows how MNCs are continuing to develop

their capacity to respect human rights, and it appears that corporate and legislative evolution accelerate the process.

Based on the interviews and wider research, there is an impression that the UNGPs launch in 2011 did have an impact on how MNCs engage with human rights, and subsequently how they adapted themselves to do this. However, as the above examples display, there were also actions by MNCs before, and after the UNGP release. The continuing development of a “legal landscape” (Friedman 2018, P.66) in the years since the release of the UNGPs also appears to be influencing MNC behavior when concerning labor rights. The UK Modern Slavery Act 2015, one of the first BHR related laws passed, is now joined by many other pieces of similar national legislation. It is not possible to predict whether these pieces of legislation would have existed without the UNGPs, or not, as the UNGPs do encourage the drafting of such laws. Finally, some of the MNCs falling under the ‘early adopter’ banner, already had human rights policies and processes in place. However the release of the UNGPs, and their implementation have encouraged process upgrading, streamlining, and organizing. This has seen changes in staffing, especially in the areas of sustainability/CSR/human rights, as the interviews showed that one MNC brought in a highly skilled expert to strengthen their HRDD, and another MNC expanded their team in this area.²²

²² It is important to note that both of the above MNCs have vast supply chains which infiltrate multiple nations, and that the above most likely applies to the MNC’s perspective from a headquarters context, rather than specifically in their Thai operations.

3.5 CHAPTER CONCLUSION

This chapter has aimed to holistically familiarize the reader with the impacts of the new operating landscape that MNCs face when engaging with human rights, with a specific focus on their responsibility to identify areas of potential labor rights abuse in their global supply chains. It did this by considering the ways in which MNCs have made the adaption to the UNGP age and the HRDD process, by considering comprehension challenges, and developing an understanding as to why business should identify human rights risks. By understanding this new operating landscape, one can start to understand why innovation is necessary for the HRDD process.

Firstly, it is clear that the UNGPs, and HRDD process specifically, have elements of flexibility to them, which can lead to confusion, however this was more the case in 2011 on its initial release than now. Through the years of experience, and proliferation of supporting documents, the opportunity for a business to make excuses for not conducting HRDD are shrinking, and at an MNC level, given the resources at hand, is inexcusable. With this said, there are areas of flexibility in the HRDD process, and at this stage it is difficult to determine whether this offers more strengths or weaknesses when respecting human rights.

Secondly, it has been interesting to further explore the construction of the duty to identify labor abuses in a supply chain, and why BHR actors see this as necessary. From the data collected, I would conclude that a nexus exists between a moral obligation, and commercial risk strategy, which seems to be a reciprocal relationship. Philosophically speaking, the respect of human rights by business is recognized as a negative duty, however I am of the belief that the inclusion of a robust

HRDD process can put forth the argument that it has elements of a positive duty, and this can be displayed by MNCs wanting to take leadership in this area, and act on leverage opportunities.

Finally, the last few decades have certainly seen responsible MNCs make, in relation to their operations, incremental changes to the way in which they respect human rights. To say that this is purely down to the UNGPs and HRDD would be inaccurate, however it is bound to have an influence, as has the evolving legal landscape in this space. Therefore, it appears clear that the UNGPs and HRDD process were disruptive for businesses that wanted to respect human rights, and that these disruptions would lead to the need to innovate, however the degree of disruption and innovation would vary between MNCs. To better understand the ways in which MNCs carry out the requirements of HRDD and the degree of which innovation is required in the process, the next chapter explores current practices for identifying labor rights abuses in supply chains.

CHAPTER IV

CURRENT MULTINATIONAL PRACTICES AND CHALLENGES IN IDENTIFYING LABOR RIGHTS IMPACTS IN SUPPLY CHAINS.

4.1 INTRODUCTION

Chapter 3 outlined the new operating environment into which business is encouraged to follow when respecting human rights, and the impacts this has had. Key conclusions from chapter 3 show that there remains an element of interpretation within the UNGPs and HRDD process, and that although the initial release of the regime may have caused some confusion, leading MNCs have developed a better comprehension of the HRDD process, and realize the moral duty they have. This chapter looks to answer sub question two; how are MNCs currently identifying labor rights abuses and what challenges remain?

In section 4.2, I have selected three secondary sources to analyze, which demonstrate the range of practices which should be undertaken in HRDD. I analyze these three sources together, to determine trends, and commonalities, which will help shape a clear understanding as to how labor rights impacts should be identified across the supply chain. The main analysis of the chapter starts with section 4.3, where I have outlined that ‘stakeholder engagement’ is, if not the most, an essential requirement of identifying labor rights abuses in the supply chain. Due to the specific importance of meaningful stakeholder engagement, it’s analysis is broken into two, firstly section 4.3.1.1 considers stakeholder identification, and section 4.3.1.2 furthers this into considering the importance and challenges of stakeholder engagement in the identification process of HRDD. Although traceability and transparency are also

important requirements when identifying labor rights in supply chains, this thesis doesn't have the scope to justly analyze these areas, however a brief overview of these concepts can be found in the appendix (Annex D).

Three BHR tools are then analyzed in section 4.4, these are (4.4.a) audits, (4.4.b) human rights impact assessments (HRIAs), and (4.4.c) workers voice programs (WV). These were selected as they featured prominently in the interviews as methods of assessing human rights, and appear to be widely practiced by MNCs. Although other tools can also be included in the HRDD process, these are three which I believe must feature²³. The tools selected are each faced with implementation, or other, challenges, which are highlighted and discussed. As will be demonstrated, the effectiveness of the tool's implementation is often down to the discretion of the business. The outline of the chapter is clarified in the appendix.

4.2 HRDD GUIDANCE: ENCOURAGED PRACTICES FOR IDENTIFYING LABOR RIGHTS IN SUPPLY CHAINS.

The nature and purpose of the three selected sources are different, so analyzing them brings forward a combination of expectations when identifying labor rights. Firstly is Ruggie's 2014 speech on innovative practice in mitigating labor abuses (Ruggie 2014), which has previously been referred to, secondly is the Ethical Trade Initiative's (ETI) HRDD framework (ETI HRDD Framework n.d.), and finally

²³In addition, grievance mechanisms should feature to, but this thesis doesn't have the remit to investigate these, as they would normally fall under remediation rather than identification. Grievance mechanisms are an essential part of remediating rights abuses and MNCs should have various programs, common examples include anonymous emails and hotlines. Technically, these fall under the remediation step of HRDD rather than the identification phase s for this reason they are not researched here. It is important to note though that grievance mechanisms do feed back into the identification phase as it will make MNCs aware of vulnerable areas in the supply chain, and some programs offer a form of engagement with stakeholders.

is an overview of the relevant parts of the UNWG's HRDD report (UNWG Report 2018).

Ruggie's 'From Audit to Innovation' speech (Ruggie, 2014), emphasizes the importance of innovation as he highlights nine practices MNCs should consider to develop their human rights strategy. As mentioned, the literature review failed to find other instances where Ruggie has outlined 'innovative' practices in such a way. This surprised me given that continuous improvement and new methods of mitigating rights abuses are central to the business responsibility to respect human rights. Ruggie's (2014) nine points of innovation are paraphrased below (Figure 2).

Figure 2 Ruggie's 'From Audit to Innovation' speech paraphrased (Ruggie, 2014)

1. Instead of looking at compliance as an area of pass or failure, look at it as a model of continuous improvement. There needs to be a movement away from the audit only approach, as findings don't remediate impacts, it is what happens after which matters.
2. Assessments must be made of 'root cause problems' to supplement audits.
3. The role of supplier mechanisms are important, and much can be learnt from them, especially where unions are weak, but care must be taken that they are not tokenistic.
4. Suppliers require capacity building, and approaches must be integrated. This can take the form of posters and webinars, however it must go deeper and provide technical expertise, and training.

5. NGO partnerships are significant in the identification and solving of issues, as well as providing capacity building as mentioned in the previous point.
6. The provision of commercial incentives can be used to reward and encourage sustained good practice. Examples include; price premiums, and extended contracts.
7. The development of metrics for suppliers so they can see the internal incentives.
8. Aligning corporate purchasing practice with a social commitment.
9. The acknowledgement that no company can eradicate systemic issues, and it involves industry collaboration.

Ruggie recognizes these nine innovations as going beyond traditional measures of legal compliance (Ruggie 2017, p.12). All nine practices are applicable to addressing labor abuses, and arguably feature in the HRDD process at varying stages. Although it is not explicitly stated, I believe practices 1-5, 7 and 9 relate to identifying labor rights abuses.

Ruggie is claiming that audits alone are not enough, and should be supported by assessing root cause problems, and having genuine mechanisms for identifying issues at the supplier level, while also building the supplier's capacity to identify issues, which can be complimented through incentives. Lastly, the calling for NGO partnerships is a practice which has featured extensively in my research for this thesis, and it seems that collaborations between civil society, and the private sector continues

to be a growing trend²⁴. This speech systematically offers a list of recommendations to business about how to move beyond standard compliance and deliver an effective HRDD process. However the usefulness is limited, as there are not many instructions as to how these suggestions can be implemented, for example in point 7, what should be measured and what incentives could be offered to suppliers.

To fill these implementation gaps I have included some instructions by the Ethical Trade Initiative (ETI)²⁵. ETI have an extensive partnership base, and over twenty years of experience (Ethical Trade Initiative Homepage n.d.). They were mentioned in interviews, and that is why I analyzed their HRDD process. Similar to many HRDD guides, their process is laid out in a 25 page document with a specific focus on labor abuses (ETI HRDD Framework n.d.) . Similar to Ruggie (2014), and the interviewees, ETI call for; deeper risk assessments with an analysis of human rights risks, causes and impacts, moving beyond audits and compliance-based approaches to manage and mitigate human rights risks (ETI HRDD Framework p.4)²⁶.

For the purpose of this research, it is not necessary to analyze the whole of ETI's HRDD process, but rather summarize their assessment/identification outline (seen in table 2. ETI's HRDD is directed by their own base code (available in the Appendix), this is an "internationally recognized code of labor practice" based on ILO

²⁴ This is especially the case when regarding systemic issues, such as forced labor in Thailand's fishing industry, as will be demonstrated in the section 4.3-4.4.

²⁵ They are a U.K. based organization who partner with companies, trade unions and NGOs to address supply chain issues which fall under the BHR remit

²⁶ The ETI approach goes beyond this as it offers internal reviewing advice to evaluate the company's policies and processes, effective stakeholder engagement with relevant actors' (ETI HRDD Framework p.4).

conventions, which outlines labor abuses that corporates must be wary of (ETI Base Code webpage, n.d.).

Table 2 Table adapted from ETI Labor Abuse Assessment Framework

Assess actual and potential human rights risks	Identify leverage, responsibility and actions to be taken
<ul style="list-style-type: none"> ● Review country risks. ● Map supply chains and services and prioritize. ● Identify risks to workers by sector, nature of work, type of worker, employment relationships and labor market dynamics. ● Identify direct and indirect causes and impacts. ● Review HR systems, contracting and recruitment. ● Assess workers' ability to access rights to freedom of association and collective bargaining. ● Rank risks by severity and degree of responsibility. 	<ul style="list-style-type: none"> ● Assess scale and scope of corporate responsibility, including direct and indirect labor rights impacts. ● Assess leverage with suppliers, agents and contractors. ● Review sourcing strategies and purchasing practices. ● Establish benchmarks and rules for monitoring improvements or termination with suppliers. ● Review supplier capacity to manage labor risks. ● Review policies and procedures to enable workers to access their right to organise and bargain collectively. ● Identify opportunities for collaborative action.

<ul style="list-style-type: none"> Analyse the data, identify next actions and process. 	<ul style="list-style-type: none"> Review corporate decision-making and accountability, policies and systems to manage risks.
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(The contents of this table are taken from ETI HRDD Framework p.12-13).

In line with the UNGPs, the process outlines that not all workers should be treated the same, and that certain groups are more vulnerable than others and these groups should be identified, and focused on. The first two stages of ETI's framework address the following; '1) Assess actual and potential human rights risks 2) identify leverage, responsibility and actions to be taken' (ETI HRDD Framework p.12-13). Each of these titles, are followed by a number of tasks for MNCs to enact, and each task comes with instructions making the framework extensive and operational for businesses (table 2 offers an adapted framework of these tasks)²⁷.

The UNWG's report on HRDD (2018), provides an up to date, expert account on the process²⁸²⁹. As Bickford (2017, P.155) acclaims, the UNWG has "created a key political opportunity structure in this field, since it potentially offers a way for civil society actors to engage with the GPs". Building on this point, a leading regional (Asia Pacific) U.N. BHR expert highlighted that the organization is in the "middle" of the actors, playing a central role in building collaborations (E4, UN BHR Expert, 15/5/2019). They spend a lot of time nurturing partnerships, building trust and

²⁷ The guide also gives a number of suggestions for businesses, including; which stakeholders to engage with, sector specific issues, and how to review their business model. It seems fair to claim that ETI's HRDD process is one of the most comprehensive available to MNCs.

²⁸ It is important to understand the significance of having a working group on this issue, as it emphasizes the efforts to bring various actors in this field together.

²⁹ On emailing one of the UNWG about this thesis, and requesting for an interview, they recommended that the 2018 HRDD report be studied, as that would provide the answers I was seeking about good practice and current challenges.

learning about the various actors (E4, UN BHR Expert, 15/5/2019). I felt it necessary to mention this, as the reader continues through this thesis they will understand the importance of cross industry collaborations, therefore it is necessary to highlight the U.N.'s involvement in this.

Regarding business, the UNWG mention that the majority of companies are not practicing HRDD to the level expected in the UNGPs, especially in the areas of “corporate disclosure of risk assessments and human rights due diligence processes” (UNWG Report 2018, p.2). The report demonstrates that beyond the efforts of early adopters, progress has been slow. However effective HRDD can be carried out, and citing a lack of knowledge is no longer plausible given the resources now available (as demonstrated above with ETI’s guide) (UNWG Report 2018, p.2). Some of the key recommendations from the report, encouraged that businesses start their process with an assessment of their actual and potential impacts, enhancing stakeholder engagement, and exercising collective leverage to address systemic issues (UNWG Report 2018, p.3).

These three sources show that conventional compliance practices, such as audits, may be used, however it is clear that all sources believe that this is not enough. Rather a rigorous assessment must be conducted which explores the root causes of human rights issues (Ruggie 2014), and the actual and potential impacts this has on laborers (UNWG 2018). This involves understanding issues at a country, sector and specific stakeholder level³⁰ (ETI). Mapping various actors in the supply chain appears to be just the start, as once underway, priorities must be made, and attention should be

³⁰ In other words, knowing the people in the supply chain.

given to specific labor issues such as; recruitment, freedom of association and collective bargaining. Strengthening stakeholder engagement, and collaborating with NGOs and suppliers are all areas that MNCs can innovate in and strengthen their HRDD, and the next section further explores such practices, and considers the challenges.

4.3 WHAT IS REQUIRED TO IDENTIFY LABOR RIGHTS ABUSES IN HRDD

As section 4.2 demonstrates, the HRDD process is formed from a number of different requirements, which are fulfilled by various tools and processes. Some of these practices already exist in the corporate structure, however as section 4.2 showed, new additions are encouraged too. Principle 18 itself (section 3.3), and the sources above (section 4.2), make it clear that collaborating with human rights experts/ NGOs, and engaging with those affected, are a (if not the most) vital part of assessing labor rights abuses. This ‘meaningful consultation’³¹ is aimed at amplifying the voice of workers, and other knowledgeable actors (e.g. suppliers, unions and NGOs) who can offer advice on how to drive change in the supply chain³².

4.3.1.1: STAKEHOLDER IDENTIFICATION

Stakeholder engagement is a much used term, and one that can be found in the corporate boardroom, or the NGO landscape, with each environment offering a different outcome. UNGP Principle 18.b does not provide strict instructions on how to carry out ‘meaningful’ stakeholder engagement, therefore it is left up to the MNC to

³¹ Known here as stakeholder engagement.

³² As I have mentioned, the traceability of products and services throughout the supply chain is also necessary for effective HRDD stakeholder engagement, as the more an MNC knows about its supply chain, the more equipped it will be to identify all potential labor abuses.

devise how this is implemented (although there are supporting resources available), an issue explored in the next section. Furthermore, the UNGPs do not give a precise definition as to who a stakeholder is, thus who should be specifically engaged with. As MNCs have a wide range of stakeholders, reviewing established stakeholder theory and combining it with a human rights lens can offer guidance and justification as to which individuals and groups in a supply chain should be engaged with. The concept of stakeholder identification in relation to HRDD is developed below.

The first thing that one may find themselves asking, when trying to conduct meaningful stakeholder engagement in HRDD, is; ‘who is a stakeholder?’ Freeman (1984/2010), one of the so-called ‘fathers’ of stakeholder theory, outlines that a stakeholder can be labeled as anyone who is impacted by a business’ actions. The theory has evolved to encompass that businesses are accountable to a wide variety of groups and individuals, which exceeds the small amount of actors that the enterprise relies on for its survival (Clarke & Boersma 2019, P.10). From this understanding, HRDD applies a human rights lens to identifying stakeholders, therefore a stakeholder is anybody whose human rights have been impacted by a business’ products, operations or services (UNGP Interpretive Guide 2012, P.8).

Mitchell et al (1997) offer a comprehensive analysis as to how MNCs can identify stakeholders that really count, however this theory was developed prior to the UNGPs. Controversially, the authors note that the socially responsible notion of ‘legitimacy’ is no longer the only requirement which a claimant holds, and in the modern corporate environment this is now joined by ‘power’ and ‘urgency’. Under this theory, ‘power’ and ‘legitimacy’ become the criteria in which to assess

stakeholders, however ‘urgency’ adds an evaluative measure which assists in this comprehension³³. The authors claim that:

“When stakeholder theory focuses only on issues of legitimacy, it acquires the fuzzy moral flavor of CSR1. Focusing only on stakeholder power, however, as several major organizational theories would lead us to do, yields the amorality and self-interested action focus of CSR2. Instead, we propose a merger (of ‘power’ and ‘legitimacy’)” (Mitchell 1997, P.882)³⁴.

Perhaps too much of a focus on powerful stakeholders explains why many businesses are falling short when identifying labor rights abuses in their supply chains. As it is, Mitchell et al.’s theory appears to be unsuitable for a human rights context, and therefore must be adapted. This is because, when conducting HRDD the ‘power’ of the stakeholder is not relevant, as the primary concern is not business risk. The main concern is a risk to human rights, so the ‘legitimacy’ of the stakeholder’s claim will be based on identifying those most at risk of a human rights abuse, and the role of vulnerability can be added to assist in making Mitchell et al’s (1997) theory applicable to HRDD.

Page one of the UNGPs clarifies that particular attention should be given to those at a “heightened risk of becoming vulnerable or marginalized” (UNGP 2011, P.1). Therefore an effective human rights assessment of stakeholders accounts for the risks

³³ According to Mitchell et al (1997, P.854); power refers to the influence that an actor has over a business, legitimacy refers to the actors relationship with the business, and urgency refers to severity of the claim towards the business.

³⁴ CSR1 and CSR2 are used by Mitchell et al. 1997, based on the work of William C. Frederick, who “observed that business and society scholarship was in a transition from a moral focus on social responsibility (CSR1) to an amoral focus on social responsiveness (CSR2)” (Mitchell et al 1997, P.882)

that vulnerable groups face (Kanis 2015, P.428). Given this, I propose that the attribute of ‘vulnerability’³⁵ is added to Mitchell et al’s (1997) attributes of ‘power’, ‘legitimacy’ and ‘urgency’. Therefore the identification of stakeholders as ‘vulnerable’ makes a stake urgent and legitimate, meaning it is crucial that MNCs engage with these stakeholders when identifying labor rights abuses in their supply chains. However, in a vast supply chain, identifying the most vulnerable stakeholders can be complex. Thus MNCs should strengthen their HRDD by broadening who they identify as stakeholders³⁶.

To assist in differentiating stakeholders, Mitchell et al. (1997) categorize stakeholders depending on the ‘power’, ‘legitimacy’ and ‘urgency’ of their claims. ‘Dependent stakeholders’ are those that have claims built on ‘legitimacy’ and ‘urgency’, however they lack ‘power’ so must rely on ‘dominant’ stakeholders “to carry out their will” (Mitchell et al. 1997, P.877)³⁷. Therefore, laborers in an MNC supply chain can be regarded as ‘dependent stakeholders’, and with the new addition of the ‘vulnerability’ attribute, an MNC can identify those most at risk to labor abuse. On the other hand, managers at various levels could be regarded as ‘dominant stakeholders’, which ‘dependent’ stakeholders rely on, especially those overseeing issues such as sustainability and human rights. However, in a global supply chain, there is the risk that this notion could become complicated, as different suppliers have their own workforces, meaning that it may not always be obvious as to who is the

³⁵ Here vulnerability meaning those most at risk to human rights abuse.

³⁶ Beyond those who have their labor rights directly impacted.

³⁷ Building on from last paragraph’s theory of stakeholder identification, Mitchell et al. (1997) theorize that different categories of a stakeholder can be determined from the degree that the attributes (of power, legitimacy and urgency) are present. It is not worth explaining all the types of stakeholder in this thesis, instead the most relevant profiles in relation to human rights will be highlighted.

‘dominant’ stakeholder, which could lead to the offsetting of blame. With this in mind, I posit that MNCs identify two other actors as ‘dominant’ stakeholders, who can assist in identifying labor abuses by representing dependent stakeholders, and identifying the most vulnerable. The next few paragraphs exemplify why suppliers and civil society can also be identified as MNC stakeholders when conducting HRDD.

Deva (2012), a UNWG member, encourages a relationship between MNCs and suppliers, as they have a shared responsibility to identify ‘dependent’ stakeholders, which may have their rights impacted, in their supply chains. Exemplifying this, a human rights manager talked about his responsibilities while developing relationships in his MNC’s cocoa supply chain operations in West Africa. After months of research, an international civil society organization recommended the enactment of a “child labor monitoring and remediation system” (C1, senior manager, 1/5/2019), which required the suppliers participation as they have the relationships with the farms and cooperatives. The MNC informed the suppliers that this was the direction that they were taking, and asked; “what are you going to do to help us do this?” (C1, senior manager, 1/5/2019) The manager recognized that being a large buyer gave them the leverage to have such fruitful discussions. This demonstrates Deva’s (2012) encouragement of an MNC/ supplier relationship, as the MNC identifies the supplier as a ‘dominant’ stakeholder that has the potential to assist in identifying ‘dependent’ stakeholders at a farm level, relating to child labor in this case. As the manager concluded, MNCs should “bring the suppliers into the solution, and make sure they are on board” (C1, senior manager, 1/5/2019).

The UNGPs (2011, P.20) note that it may not always be possible to identify or engage with the ‘dependent’ stakeholders. Therefore it is important to identify and build relationships with “credible, independent expert resources” (UNGP 2011, P.20), a point stressed in the interviews. This can include NGOs, labor unions and other civil society. On the whole, MNC staff regarded civil society as stakeholders (see section 3.3), with one human rights manager claiming that “we have important stakeholders in NGOs, trade unions and civil society who have expectations of us” (C4, Head of Human Rights, 2/5/2019)³⁸. Thus, relevant civil society should also be identified as a stakeholder in HRDD when attempting to assess labor rights in supply chains, as they share some common goals with businesses in this context (C1, senior manager, 1/5/2019).

This section has demonstrated that stakeholder identification, in a labor rights context, is a complicated, and, potentially, everchanging domain. Drawing on stakeholder theory assists in creating a clearer idea as to who really matters in an MNC’s supply chain when conducting HRDD. Mitchell et al’s (1997) general theory of different stakeholders can be updated, with the addition of a ‘vulnerability’ attribute, and used as guidance for identifying stakeholders under a labor rights lens. In this context, ‘dependent’ stakeholders are thus, those that are legitimate and vulnerable to human rights risks in the supply chain, and they should be the MNC’s primary concern. To better the chances of not overlooking the concerns of ‘dependent’ stakeholders, MNCs should try and have a specific team focusing on

³⁸ In the interviews it was made clear that the thesis was interested in how MNCs identify labor rights impacts, from this it was left to the interviewee to interpret who they felt fell within this bracket.

this³⁹. However, given the complexity of modern supply chains, I have posited that MNCs identify other ‘dominant’ stakeholders, including civil society and suppliers. With an MNC’s stakeholders established, the next section will outline a number of areas that I believe MNCs should consider if they want to make sure their stakeholder engagement is meaningful.

4.3.1.2: STAKEHOLDER ENGAGEMENT: CONSIDERATIONS

The previous section has outlined the stakeholders which businesses should look to engage with when identifying labor rights impacts in their supply chains. However this section explores a few themes which MNCs should consider when trying to successfully engage with these actors in HRDD. These themes are labeled as; mapping, critical voices and capacity building. I believe that the themes outlined above, can assist in contributing to an understanding of ‘meaningful’ stakeholder engagement (as the UNGPs prescribe) when concerning labor rights. It is important to consider such themes, because some MNCs still see stakeholder engagement as a public relations exercise rather than a risk mitigation protocol, therefore the most effective thing to do is to integrate the process into HRDD (E1, business and human rights consultant, 8/5/2019). Section 4.4 will then explore the tools which contribute to stakeholder engagement.

Mapping

The first thing to consider in stakeholder engagement is where are the stakeholders, and potential labor rights abuses in the supply chain. Section 4.2 and

³⁹ For example a HR team are often faced with dealing with the concerns of multiple stakeholders, what I mean here, is that there is a specific team that looks at stakeholders that may be having their human rights impacted.

4.3.1.2, both briefly mentioned the process of mapping the supply chain and an MNC's stakeholders. As table 2 displays, the mapping process should be one of the first things done in HRDD. This can be justified on one expert's claim that if businesses want to be sustainable, they must act preemptively and identify risk areas, and stakeholders, which will lead to the resolution of problems (E1, business and human rights consultant, 8/5/2019). For this reason, MNCs need to venture deeply into their supply chains to discover where the problems are (E7, Modern Day Slavery Expert, 23/05/2019), they need to know the root cause, because if you don't talk to the "right stakeholder" then the problem will remain unsolved (E1, business and human rights consultant, 8/5/2019).

As one expert warned, it is still common for companies to speak to the groups that are the easiest for them to engage with⁴⁰ (E5, Labor Rights Expert, 9/5/2019). MNCs must do more than this, and also look beyond the direct supply chain. "Thorough mapping of your supply chain, try and identify hotspots of risk whether that is regional or commodity based" (E3, BHR Academic, 23/05/2019). This should include mapping where there is foreign labor working in the supply chain and where they have been acquired from (the recruitment agencies), an example that was shared by the vice president (VP) of a large South East Asian MNC (C2, Vice President, 21/5/19). This is especially important in Thailand, as it is well known that large parts of the manufacturing, agricultural, and construction sectors rely on migrant labor (IOM n.d.). In fishing, for example, a sector which has become notorious for labor abuses such as forced labor and human trafficking (Hodal 2016), Burmese and

⁴⁰ The expert elaborated that these groups could be ones that speak the same language, or ones that the MNC know won't challenge them.

Cambodian migrants have been identified as victims of abuse (Chantavanich et al. 2015). Abuses such as this start at the recruitment stage so it is important that MNCs increase their mapping and look at recruitment agencies and logistics (E7, Modern Day Slavery Expert, 23/05/2019).

Talking about their HRDD process, the VP shared how his MNC map their supply chains (including in Thailand), and increase engagement with the right stakeholders from it. The VP mentioned that their MNC sees the importance of systematically mapping their stakeholders, which they then standardize, and require reporting on (C2, Vice President, 21/5/19). Recognizing that stakeholder engagement under HRDD is not only a job for Human Resources, this MNC trains “sustainability contact” staff across tiers, which cascades in the supply chain (C2, Vice President, 21/5/19). The aim is to give floor managers a sustainability mindset (C2, Vice President, 21/5/19), which I assume means that they are equipped to identify affected stakeholders and thus engage with them directly, while also offering the MNC increased visibility within their operations. Therefore, when mapping for human rights abuses, it is recommended that the exercise involve a range of the MNCs employees, with Friedman suggesting “legal, CSR. Supply chain management, risk and HR” (2018, P.68).

The VP concluded that it is important to have structure when mapping across the business, recommending that attention is given to communication, coordination, standardization and reporting (C2, Vice President, 21/5/19). This example shows how an MNC has made the effort to train a greater proportion of their staff, once they had mapped the supply chain, so to increase their HRDD identification capacity. HRDD

can be further strengthened through human rights knowledge sharing and capacity building within the supply chain (beyond the MNC's direct operations), as the next sub-section outlines.

Capacity Building

Labor abuse oftentimes takes place beyond the MNC facilities, meaning that they do not have the same power to drive change. In this case, it is important that MNC's identify areas in a supply chain where they hold leverage. In areas of risk in the supply chain where they lack leverage, they should consider ways of increasing it, and building the human rights capacity of partners could be a feasible option (Deva 2012, P.106). In section 4.3.1.1. I highlighted that suppliers could be regarded as stakeholders, which, if engaged with, could assist in identifying (and later addressing) labor rights abuses. Recognizing this, one human rights manager shared that he preferred to think of leverage as "influence"⁴¹ (C4, Head of Human Rights, 2/5/2019). For example, when identifying labor rights impacts, do they have enough influence in the supply chain to gather information about human rights standards, or to define them (C4, Head of Human Rights, 2/5/2019). It is important that MNCs assess their leverage, or influence, over suppliers, and in areas where this is lacking and there are risks, they should consider how they can increase the human rights capacity of the supplier⁴².

⁴¹ Due to the negative connotations that can be associated with the word, the manager mentioned that some suppliers associate leverage with MNC's exercising their power.

⁴² The magnitude of this is shown in table 2. of section 4.2, which displays an entire column towards identifying areas of leverage in the supply chain.

In Thailand, MNCs could build small and medium sized enterprises' (SMEs) capacity, so to “enable them to implement, more systematically, the UNGPs” (E6, Thai Government Expert, 18/4/2019). This seems necessary, as the VP highlighted that Thai SMEs pose a challenge when respecting human rights (C2, Vice President, 21/5/19) and “in aggregate they are the most important sector” (E6, Thai Government Expert, 18/4/2019). This may be down to a lack of interest, or resources as they are unsure how to finance this, or where to look for help, thus it is important to provide “technical support and capacity building” (C2, Vice President, 21/5/19). One Thai human rights expert shared that she knew multiple SMEs that would like to do responsible initiatives, however they lacked the resources and knowledge. She suggested that MNCs run CSR projects which offer financial support and training, so that these smaller enterprise can better identify labor rights abuses (E1, business and human rights consultant, 8/5/2019). Programs such as this can cascade “knowledge and responsibility down the supply chain” (Friedman 2018, P.69), leading to awareness amongst suppliers who could then engage with stakeholders themselves. But, it must start with the MNC influencing “their supply chain and the Thai companies that they work with” (E1, business and human rights consultant, 8/5/2019).

By identifying areas of leverage (or lacking), MNCs can engage with their suppliers where they believe there is risk, and they can do this through building their capacity and understanding for human rights. In turn, this will grow the suppliers capacity as a ‘dominant’ stakeholder (Mitchell et al. 1997) who can assist in identifying labor rights abuses in their own operations and across tiers⁴³. Using

⁴³ Ruggie (2014) supports this in his speech (section 4.2) suggesting that MNCs should look at training and building the human rights capacity of the business partners which make up their supply chain.

innovation to address risks together would show an allegiance towards addressing labor rights issues rather than disengagement. As one Thai expert put it; “the problem is, if companies disengage too quickly, too easily, too voluntarily, without using their leverage, what is the meaning of supply chain management, it is not managing. It’s termination of your contractual arrangement which is too easy to do” (E6, Thai Government Expert, 18/4/2019). Therefore it should be explored how innovation can be an alternative to an MNC’s disengagement with a supplier.

Critical Voices

The UNWG’s report (2018) highlights the importance of critical voices in stakeholder engagement. This can include; NGOs, unions, and human rights defenders (HRDs). As already illustrated in section 4.3.1.1., this is especially important when it is not possible to engage with laborers affected in the supply chain, as these actors become proxies⁴⁴. Although, not always a given action, business should engage with the national and international unions within a relevant sector, especially when concerning collective bargaining and freedom of association (E5, Labor Rights Expert, 9/5/2019). In addition, the regional U.N. expert emphasized the evolving role of human rights defenders (HRDs) as they can be an ally to business, rather than the old rhetoric of being on opposing sides (E4, UN BHR Expert, 15/5/2019). “No one knows better than the HRDs about the impacts on rightsholders”

⁴⁴ it is important to mention that this should not replace on the ground engagement where possible.

(E4, UN BHR Expert, 15/5/2019), therefore they should have a role in identifying labor rights impacts.

MNCs are encouraged to collaborate with civil society as it will strengthen the HRDD process, given the combination of resources and knowledge (Skroupa 2017). Partnering with ‘critical voices’ is “immensely important” (C4, Head of Human Rights, 2/5/2019) as these actors have information that the MNCs do not. Using a case from Malaysia, C4 emphasized how audits were not identifying issues surrounding unethical recruitment in the same way that these actors were (C4, Head of Human Rights, 2/5/2019). Therefore, collaborations are imperative when identifying labor rights in supply chains, regardless of the country, as these actors will have valuable insights and relationships, thus their voices must be heard. Another manager stressed that MNCs cannot face systemic issues alone, for example migrant labor rights abuses in Thailand (C3, Human Rights Manager, 3/5/2019). They must map, and bring together key stakeholders⁴⁵ for discussions and dialogue so to identify and begin to tackle such issues “in a more systemic way” (C3, Human Rights Manager, 3/5/2019).

The above shows that engaging with ‘critical voices’ to identify labor rights abuses in HRDD can be done in two main ways. Firstly, actors such as NGOs, unions and HRDs, who have relationships and understanding with impacted laborers can represent their claims, when it is not possible for the MNC to engage directly with them. Secondly, MNCs can collaborate with ‘critical voices’, by bringing them into the HRDD process, which assists in identifying labor rights issues in supply chains, and provides MNCs with more information about certain labor rights contexts. The

⁴⁵ E.g. NGOs, unions, peer companies, governments.

systemic issues highlighted in the Malaysia example are also relevant in a Thai context, thus projecting the importance of engaging with critical voices when facing risks surrounding migrant labor, ethical recruitment and forced labor, as these are areas that traditional compliance processes can miss (sub-section 4.4(a))⁴⁶.

Trust and Fear

The above has outlined a number of themes which MNCs should consider when meaningfully engaging with stakeholders in their supply chains. Thus far these have been rather practical, as they outline suggestions such as; mapping supply chains, building the human rights capacity of suppliers, and engaging with ‘critical voices’ in HRDD. This final section highlights social issues which MNCs should be aware of and account for when engaging with stakeholders.

A lack of ‘trust’ is an issue when concerning HRDD stakeholder engagement, according to the UNWG HRDD report (2018). Here I am primarily referring to trust between MNCs and laborers in the supply chain, however it could also be the laborers trust in mechanisms for identifying labor rights abuses⁴⁷. If there is a lapse in trust this will only make the legitimate stakeholders, the laborers, more vulnerable, as they may be averse to reporting abuse. As one manager highlighted, he has concerns in his Thai supply chain, that some laborers are afraid to speak out, because they fear “that the employer will retaliate” (C5, human rights manager, 29/04/2019). However, it is believed that this longstanding issue can be addressed if all parties concerned invest time into building trust.

⁴⁶ These are issues which are often associated with Thailand’s manufacturing sector.

⁴⁷ This could include grievance mechanisms, such as hotlines for reporting abuse to partner NGOs.

To further build trust, the HRDD process must lead to tangible improvements, to show that the process is effective. Although an international issue, in a Thai context an expert identified ‘trust’ as an area which requires specific attention (E1, business and human rights consultant, 8/5/2019). Building trust with stakeholders in the community can be an indicator that a business is serious about identifying and mitigating human rights impacts, as it can resolve problems (E1, business and human rights consultant, 8/5/2019). Swift (2001, P.24) validates the importance of trust in such a setting by claiming that it “is widely held to facilitate interdependent relationships in which stakeholders are given a voice to influence corporate social behavior for the welfare of society.”

What does a trusting corporate-stakeholder relationship look like, how is this established, and recognized? This will be down to a number of factors, but ‘it (trust) cannot just be expected or commanded, it must be earned’ (Swift 2001, P.22). It has been noted that independently verified, concrete evidence of MNC remedial actions, after stakeholder engagement, could “in turn build much-needed trust between the business and community” (Deva 2012, P.107). In a labor rights context, the area of trust is still contentious and evidently remains a barrier to identifying labor abuse, thus it deserves further independent research. As HRDD is an ongoing process, the building of trust must be as well, it cannot be treated as a singular activity. After all, the relationship between trust and stakeholder engagement is reciprocal, as trust not only leads to more effective stakeholder engagement, but continued and consistent stakeholder engagement will lead to enhanced trust (Greenwood 2007, P.318).

Summary

Building on the previous section which focused on the identification of stakeholders, the above has outlined some key themes which MNCs should consider when conducting stakeholder engagement. Furthermore, I posit that if these themes are considered then perhaps this will constitute the UNGPs calling of ‘meaningful consultation’. The themes that have been outlined here should be considered when identifying labor rights abuses in the HRDD process.

The first thing that should be done is a careful mapping exercise by the MNC, which identifies areas of risk across the whole supply chain, and also key stakeholders which should be engaged with. These stakeholders should be laborers in the supply chain, however relevant civil society actors should also be included in this mapping, and engaged with, as they offer valuable insights relating to the identification of labor rights impacts. These critical voices can be engaged in multiple ways, and MNCs should explore how they can bring them into the HRDD process. The most effective mapping exercises will assess the leverage that the MNC has with its suppliers, as suppliers can be an important connector to lower tiers. By building the human rights capacity of their suppliers, MNCs get visibility into deeper parts of the supply chain. Finally, even if the MNC is running a formulaic and comprehensive assessment step of HRDD, this will be jeopardized if they do not look to nurture trust and diminish fear.

4.4 CURRENT METHODS OF IDENTIFYING LABOR RIGHTS AND THE CHALLENGES

4.4.(a): AUDITING

Audits can take multiple forms as they investigate an MNC's ability and progress on various issues, and this can be carried out internally or externally⁴⁸. In terms of auditing for labor abuses, common practice has seen this outsourced to an independent auditing firm (LeBaron & Lister 2016). As this process is led by the hiring business, it runs the risk of prioritizing some issues over others (e.g. the environment over labor abuses), and not assessing the whole supply chain (Hoskins 2016). Therefore it may not be reaching the lower tiers of a supply chain, such as the subcontracting level (Hoskins 2016). As the last section demonstrated, if the MNC doesn't engage with the correct stakeholders, then issues will not be addressed at their root (E1, business and human rights consultant, 8/5/2019), meaning that the limitations of auditing have faced criticism (Brown 2016). Below will demonstrate how MNCs are approaching auditing in HRDD, and the limitations when identifying labor rights in Thailand and globally.

Firstly, I will discuss the reasons why audits are still important when assessing labor rights abuses in the supply chain, and thus shouldn't be terminated (E1, business and human rights consultant, 8/5/2019). Brown's (2016) research on The International Finance Corporation (IFC) and ILO's joint 'Better Work' initiative showed an improvement in the lives of workers. This program was implemented across multiple countries and focused on the auditing and advising of factories. As one would expect, the author continues that auditing is particularly effective when accompanied with supervisory skills, and worker empowerment training (Brown 2016)⁴⁹. As this was a

⁴⁸ Examples of the areas that audits can assess, include; compliance, construction, finances, information systems, investigative (when a specific issue has been identified for further examination), operational, and tax (Bragg 2018).

⁴⁹ It is important to note that the 'Better Work' initiative is more than a regular auditing practice, as it collaborates with actors across the garment industry.

specific auditing program, with the support of the ILO and IFC, I presume that all efforts were made to ensure that the auditing process was done in a careful and thorough manner, perhaps not representative of everyday auditing procedures. It does demonstrate though that audits have become “a central mechanism of global state and non-state efforts to monitor standards within corporate supply chains” (LeBaron & Lister 2016 P.3).

The interviews suggest that there is no uniform auditing process when identifying labor rights abuses. This means that the quality of auditing can differ between MNCs, as they will lead the process. One manager acknowledged the value that audits still offer, as his MNC’s human rights program had a pillar focusing on this. Specifically, it considered the follow up work that comes from audits (C4, Head of Human Rights, 2/5/2019). The efforts by the MNC’s human rights team to act upon the audit results, I feel showed responsible behavior, especially given that auditors don’t often have the influence to ensure that their findings are acted upon by business. As LeBaron & Lister (2016, P.5) note “their advice can be ignored; and there is no external accountability for the action plans”. Experts echoed that the data collected on human rights issues, must be acted upon.

External audits appear to be one of the most practiced methods, as this is easy for the MNC (E6, Thai Government Expert, 18/4/2019). This can be problematic, as these firms often lack investigative power to validate whether the information they receive is true (LeBaron & Lister 2016, P.4). It can also be problematic, as the business being audited may limit what the auditors see, as audits are often announced in advance (LeBaron & Lister 2016, P.4). It is perhaps for this reason that for non-food items,

one MNC had brought all of their auditing internally, as they found that third party audits weren't delivering full visibility as to what workers were experiencing (C4, Head of Human Rights, 2/5/2019). Even though this MNC had a strong auditing program, it was accepted that alone, they will not bring large scale changes. Thus the MNC was actively trying to work with a local NGO, so to give suppliers more ownership, "rather than the top-down approach of checking on people through audits" (C4, Head of Human Rights, 2/5/2019).

I learnt that there are different auditing processes dependent on the supply chain. Exemplifying this, one manager shared that their auditing program for fishing vessels they buy from globally was externally practiced, however an internal team audits the shrimp farms they source from (C5, human rights manager, 29/04/2019). Apparently, in Thailand, it remains common practice that MNCs opt for external auditors and NGOs to assist in identifying risks in their supply chains, seemingly once labor abuse had already occurred (E1, business and human rights consultant, 8/5/2019). This may be because many MNCs lack accessibility, and visibility beyond Tier 1 in the supply chain (E9, BHR Regional Advisor, 20/05/2019). Thus MNCs require the assistance of specialist organizations to deliver HRDD (E9, BHR Regional Advisor, 20/05/2019). One can see an increase in such companies, which probably best fall under the civil society banner, acting as a consulting resource to MNCs, as they offer services which will assist in identifying labor rights and devising solutions. Companies such as Verite have methods (e.g. satisfaction surveys) of diving deeper into supply chains to further worker voice and get more data (E9, BHR Regional Advisor, 20/05/2019). Some of the experts interviewed had, or were currently working for similar companies (E2, E7,

E9), and due to the newness of these collaborations there is “no universal model” yet (E9, BHR Regional Advisor, 20/05/2019).

Another limiting factor, with audits is the “time constraint” (E7, Modern Day Slavery Expert, 23/05/2019). Audits usually take place over one or two days, in the space of a year, which means that it is difficult to assess a site’s strengths and weaknesses in that time (C4, Head of Human Rights, 2/5/2019). This is even more problematic, when considering that the site being audited has most likely heard that the process will be taking place, with an approximate or definite timeline (LeBaron & Lister 2016). There is then the potential that documents may be falsified, or the hiding of agency contracted workers (LeBaron & Lister 2016, P.3). Considering the timing and authenticity limitations, the auditing process is a “snapshot in time” (E1, business and human rights consultant, 8/5/2019), which could be “rigged” (E3, BHR Academic, 23/05/2019).

A final limitation that I would like to illustrate, as it is especially relevant to Thailand, is language. This is an issue when auditing teams are local (Thai) and have to audit a business with a large migrant workforce (Burmese and Cambodian). This is because interviews with workers are one of the most important parts of a social audit when assessing ethical standards, such as wages, hours and working conditions (Yu 2016). If auditors only speak Thai, how are they going to get the necessary information from the most vulnerable migrant workers (E2, Modern Day Slavery Expert, 23/4/2019). From section 4.3, I have outlined that meaningful stakeholder engagement in HRDD must consider language so to ensure that workers receive fair representation, and that MNCs don’t just talk to the easiest stakeholders. If the

auditing process is not accounting for language, which my findings suggest can still be an issue, then it is falling short on identifying labor rights abuses⁵⁰.

Although there are multiple limitations, it is important to emphasize that audits are an essential compliance tool for checking that corporate practices are being abided by, across their partner and own sites. If a specific labor rights lens is applied to audits then they can offer visibility into the conditions that workers face (Friedman 2018). For auditing to successfully play its role in HRDD they must be implemented in a way that is specific to labor rights, which would include verifying that “all workers have written employment contracts in a language they understand, contracts have not been substituted at either source or destination, and contracts are compliant with local labor laws” (Friedman 2018, P. 68-69)⁵¹⁵².

McCorquodale et al. (2017, P.211), in their similar research surrounding HRDD, found similar results to my own, mainly, that auditing alone is ineffective for “detecting, reporting, or correcting ... labor problems in supply chains and human rights impacts in the absence of a wider, ongoing process” (McCorquodale et al. 2017, P.211). Therefore auditing does not do enough meaningful engagement with stakeholders to identify labor rights (C4, Head of Human Rights, 2/5/2019), and

⁵⁰ Especially those issues that are more complex such as forced labor and recruitment (E7, Modern Day Slavery Expert, 23/05/2019), which have been associated with Thailand.

⁵¹ One of the human rights managers mentioned that through auditing they discovered some issues on fishing vessels in Thailand. An example was worker contracts, as contracts need to be in a certain Thai template (in Thai), however their code of conduct says workers need to understand the contract they sign, but how can migrant workers understand this? The fishing owners are not language experts, they have to comply with the law, they must use the Thai template, which leaves the question of how can this issue be addressed.

⁵² This does not escape the position that audits alone leave the power in the hands of the MNC, which runs the risk of ‘reducing the role of the state, and reinforcing endemic problems in supply chains’ (Brown 2016).

should be supported with other tools in HRDD. Furthermore, given the limitations outlined above surrounding timing, authenticity, and language, the auditing space should be further innovated by the BHR community (as Chapter 5 will show). Any audits and innovations should account for the changes across a different product's supply chains, and MNCs should decide whether an internally or externally led process is most suitable as they each can offer different challenges and opportunities⁵³. Therefore, it is important to go beyond the auditing process, with mechanisms that get the perspective of the rights holders and workers in a way that audits cannot (C3, Human Rights Manager, 3/5/2019).

4.4.(b): HUMAN RIGHTS IMPACT ASSESSMENTS (HRIAS)

HRIAs appear to be the area which has developed the most over the last twenty years (World Bank 2013). Although the identification stage of HRDD is often referred to as assessing human rights, there is also a specific tool called a HRIA. HRIAs lead decision-making, with human rights being used as the foundations in which to consider the implications of a business' actions (Graetz & Franks 2017, p.97). They have sprouted from other assessments in the past, such as environmental or social assessments, however focus specifically on human rights. Their delivery can vary due to the goal of the assessment, meaning that there is not a uniform model, and the assessors can be civil society, the private sector or state bodies. They can work at a number of scales, with focuses on specific groups or issues, for example public policy in countries can be assessed, as can a new business' project. In the labor rights

⁵³ It appears that an internally led effort offers an MNC more visibility and control, however an externally led one can be supported by a labor rights consultancy company with the relevant expertise. Perhaps best practice is a combination of the two.

context, MNCs should conduct a specific HRIA for assessing labor rights in their supply chains, which accounts for vulnerable populations.

The human rights impacts assessed can be potential or actual, and could be caused by business operations, products, services and projects (Gonzalez 2015). Therefore, in a labor rights context, HRIAs can best be thought of as a preventative mechanism in HRDD's identification phase (Danish Institute For Human Rights 2017), which determine the human rights risks that businesses have on a variety of rightsholders, and what their responsibility is as duty bearers. Graetz & Franks (2017, p.102) suggest that leverage should also be identified in this process. Although there is not a strict way of carrying out HRIAs, the World Bank (2013) have noted nine core steps which all HRIAs should include, and I have paraphrased these in the table below (table 3).

Table 3: Table adapted from World Bank's Human Rights Impact Assessments (2013)

HRIA Step	Brief description
1.Preparation	Assessing the parameters and context of the HRIA. E.g. Labor abuse in supply chains
2.Screening	Narrowing the focus of the assessment, the stakeholders and human rights are identified.
3.Scoping	Here the terms of reference will be drafted. A roadmap for the process and

	responsibilities of the assessor are outlined.
4.Evidence Gathering	Here evidence is gathered about the impact of the intervention/policy (actual and potential), this should be quantitative and qualitative. Here those that are marginalized and vulnerable should be engaged with.
5.Consultation	Consult with a variety of stakeholders in the HRIA process and on conclusion. Timing and project will determine who is consulted.
6.Analysis	Here the likelihood of impacts and the related circumstances are considered.
7.Conclusions and Recommendations	Conclusions are made from the analysis and recommendations are made to all duty bearers.
8.Monitoring and Evaluation	Looks at the impacts of the intervention/project and assesses the HRIA itself.
9.Preparation of the Report	Documenting the mitigation steps to be taken, assessment of HRIA, and considerations for the future.

The implementation of HRIAs are not legally regulated at this point (Graetz & Franks 2017, p.101), meaning that it relies on the businesses being proactive and including them in their HRDD. As HRIAs are a form of assessment which can be conducted before or during a project/operation, it is recommended as the first step in the HRDD process (O'Brien & Dhanarajan 2016, P.548). One of the BHR experts I interviewed supported this, but warned that in Thailand many businesses start with a human rights policy⁵⁴ (E1, business and human rights consultant, 8/5/2019)⁵⁵. She continued, in Thailand, that even when some businesses do a HRIA, they hire consultants to do it without thorough understanding (E1, business and human rights consultant, 8/5/2019). For example, some companies are still looking at business risks rather than how they are impacting the various rightsholders, and how they could change their operations (E1, business and human rights consultant, 8/5/2019). “Until, I feel, a company does this well, then they can’t really, really create a meaningful policy” (E1, business and human rights consultant, 8/5/2019).

A well-developed HRIA (Table 3) allows MNCs to target stakeholder engagement to ensure that it is meaningful, harboring expertise from external agencies and experts and engaging with the most vulnerable in the supply chain. One of the researched MNCs had committed to implementing HRIAs in collaboration with an NGO, which applies a more holistic research process to their supply chain (C4, Head of Human Rights, 2/5/2019). Although the MNC had previously worked with NGOs, the adoption of HRIAs would bring civil society more formally into the HRDD process

⁵⁴ This is another step in Pillar two of the UNGPs, as it joins HRDD and offering remediation.

⁵⁵ This is a policy which is outlining what the business is doing to mitigate rights abuses in their operations, so therefore should be produced based on the results of the assessment.

(C4, Head of Human Rights, 2/5/2019). Going a step further, Gonzalez (2015) notes that there are community-led HRIAs which exist to ensure that those affected can actually participate⁵⁶.

One of the MNCs had been conducting HRIAs before the UNGPs, however I didn't investigate in what detail (C1, senior manager, 1/5/2019). This shows that businesses do have the means to carry out HRIAs, similar to how they carry out health and safety, or environmental assessments. However, for it to be effective, there must be the human rights knowledge to support the assessment. This MNC has a very knowledgeable staff member overseeing the HRIAs, a resource that many businesses may not have. With that being the case, they should refer to human rights experts, and agencies which specialize in HRIAs.

An MNC stated how they would be doing this in a "broader UNGP approach" (C3, Human Rights Manager, 3/5/2019). Beyond labor rights, they would be assessing how the MNC could play a role in addressing other human rights issues (C3, Human Rights Manager, 3/5/2019). In another example, the expert from the U.N. mentioned that a gender lens was being considered for integration into the UNGPs, so to provide gender specific instructions, and this was an element they had also introduced into the impact assessment tool. These two examples demonstrate a variation and tailoring of HRIAs, and also demonstrate the importance of focusing assessments on specific issues given that human rights is such a broad spectrum.

⁵⁶ Although it's demonstrated that civil society is playing a role in assisting MNCs identify labor issues, there didn't appear to be an example of a community led HRIA from my interviews, this may be an intriguing avenue for MNCs to look to develop in collaboration with their local NGO partners.

HRIAs are a necessary tool in the UNGP age, and their use is becoming more prevalent. However the quality of the process can vary in effectiveness, depending on how it is being implemented, with regards to participation from rightsholders (Gonzalez 2015). Following the steps in table 3. can help in structuring a HRIA, and Gonzalez (2015) supports this by suggesting that a truly effective assessment must have five basic elements. These elements are; human rights remain the standard of assessment, they must involve the participation of all affected stakeholders, must be conducted with equality and an appreciation for difference, be transparent in process and product so that stakeholders can understand it, and a focus on accountability by recognizing rightsholders and the required actions of duty bearers (Gonzalez 2015).

As human rights are a broad area, HRIAs can be adapted to particular issues, such as labor rights, and should be the first step that a business takes in HRDD. It can be implemented on a number of scales (from country, to sector to project), so it is up to the business to decide how many HRIAs they employ. Practice will be strengthened with the inclusion of experts and civil society, that can offer further insights and help design and implement the HRIA. As there is no uniform HRIA practice, business can continue to innovate the process, under the UNGP of continuous improvement. For example, well-resourced MNCs could create a fund initiative for communities to conduct HRIAs (Gonzalez 2015), which would increase worker representation and offer a channel of meaningful stakeholder engagement.

4.4(c) WORKERS VOICE

It is hard to find a strict definition of what exactly a ‘Workers Voice’ (WV) program is and what it consists of. Exemplified methods have included mobile phone

applications and workers surveys (Neale 2017) . Although the method may be lacking consistency, the goal doesn't seem to be; an effort to build worker representation, with the aim of driving change in working conditions. This has a “procedural dimension– the channel by which voice is expressed – and a substantive dimension, which is the extent to which voice shapes and impacts on workplace outcomes” (Pyman 2016). Businesses are experimenting with ways to further this worker representation, and this sub-section will draw on examples from the interviews.

It is important to note that, a WV program is not the same as a union as it isn't legally recognized. Traditionally unions were the main platform for representing the needs and desires of workers, and the research supports that unions still play an integral role, however it appears that there are now alternative platforms. These platforms can be setup by MNCs, or external organizations in an attempt to enhance dependent stakeholder engagement, and can be comprised of multiple channels. However indirectly collecting ‘voice’ (data) can still be conducted by engaging with a union (Pyman 2016), if available. If unions are not available, or are limited/restricted in some ways, then a business led WV program can be an important tool in allowing workers to vocalize issues and associate with one another⁵⁷. Therefore MNCs should be assessing their supply chains, and identifying areas where they can amplify the voice of vulnerable workers.

To challenge labor exploitation properly, workers must be heard, and this “requires a platform to which all workers should be entitled via freedom of association” (Esterhuizen 2016). Freedom of Association (FOA), is a basic labor right

⁵⁷ It is important to stress that I am not of the opinion that WV substitute unions, and the unionization of workers is always preferred and should be aimed for.

and one of the ILO's core conventions (convention 87), it basically requires that individuals can formally and informally meet as groups. However, along with Collective Bargaining (CB) (convention 98), FOA has yet to be ratified in Thailand, meaning that MNCs should be looking at ways of creating platforms and channels for workers to associate and share their voice. Beyond the ethical advancements, this can benefit businesses as "enabling workers to organize themselves can boost job security, clarify the employment relationship and help with the transition from informal to formal employment" (ETI Blog 2018). Therefore, it is in an MNCs best interest to be proactive and work with suppliers and civil society, to devise ways in which they can offer workers a secure and trustworthy space to associate and collectively represent themselves.

Given the above, it is clear that a comprehensive WV program can also contribute to meaningful stakeholder engagement. A number of the MNCs I interviewed were seeing that WV was a space for further innovation, and were looking at ways that they could improve worker representation. In achieving this, I recommend that the program comprises of direct channels of representation and association, but also secure anonymous ones too, which should be created and managed in collaboration with labor rights experts. One of the human rights managers interviewed, working for the large South East Asian seafood manufacturer (C5), provided detailed insights into their WV program, and I will share below the channels in which they offered.

The MNC (C5) have, in addition to their auditing process, a WV program running to identify labor abuses in their supply chains. The program is multifaceted, however the objective is to provide the multinational's workforce with a channel in which they

can express their concerns regarding their rights not being respected (C5, human rights manager, 29/04/2019). This is done through a combination of hotlines, emails, NGO partnerships and a committee. The hotlines and emails align with the observation by Esterhuizen (2016) that traditional WV tools have been used to acquire diagnostic data from workers which can help identify problem areas in the supply chain⁵⁸. These areas can then be investigated, however, alone, this doesn't provide a space for workers to collectively project their views (Esterhuizen 2016). As demonstrated in the preceding paragraphs, an effective WV program should provide laborers with a platform to share views about any issues they see fit (Esterhuizen 2016). As the next paragraph will show MNC C5's efforts to strengthen their worker committee, arguably show an attempt to create such a platform.

By Thai law, employers with more than 50 staff are obligated to provide a "worker welfare committee", and this is something that their factories enforce, with eligible workers standing for election on the committee (C5, human rights manager, 29/04/2019). However the challenge remains that although factories in Thailand may possess a committee, the impact may be minimal with some employers overlooking it, and running it as purely a legal obligation (C5, human rights manager, 29/04/2019). In the case of MNC C5, it was stressed that they wanted to ensure that their committees were operating as mandated, vis-à-vis offering a platform for workers to raise labor issues to their employer. Collaborating with an NGO the MNC looked at the ways that it could improve its committee as a platform of meaningful stakeholder engagement.

⁵⁸ Traditional WV tools have contributed to filling important gaps in understanding working conditions. (Esterhuizen 2016)

The NGO specializes in migrant workers' rights which appears to have brought an expert lens to the process. This was evidenced as before the collaboration, the MNC had rarely had migrant workers represented on the committee (C5, human rights manager, 29/04/2019). Therefore the migrants were being inadequately represented, as they often make up the majority of the workforce (C5, human rights manager, 29/04/2019). This led the multinational to question the effectiveness of the committee, hence the NGO collaboration. With the NGO, workers were made aware of the committee, and it's effectiveness (for raising concerns) was stressed. Once candidates were selected the multinational, and NGO, worked together to train the committee members by explaining their responsibilities, and what was expected of them in their roles.

The above example demonstrates a way in which an MNC can build a WV program which can assist in identifying labor rights issues in a supply chain, through meaningful stakeholder engagement. There are multiple channels of engagement (hotlines and emails), which are managed by a local NGO, and relayed back to the MNC. A 'Worker Welfare Committee' provides a mechanism for workers to gather, discuss issues and communicate them to an employer. This will not completely fill the gap left by the non-ratification of the FOA and CB ILO core conventions, however, if done effectively, it perhaps does offer a mechanism which can contribute to filling it⁵⁹. Furthermore, Thai law doesn't allow migrant workers to form unions, however mechanisms and committees, such as the one mentioned, allow migrants to have a voice and contribute to identifying labor abuses in facilities. It is understood that the

⁵⁹ I did not explore the effectiveness of the committee, however the MNC were pleased with it.

above is only practiced in the MNC's facilities, not across the whole supply chain (beyond Tier 1)⁶⁰. It could be interesting to explore the ways in which MNCs operating in Thailand could work with their suppliers in an attempt to strengthen 'Worker Welfare Committees' throughout the whole supply chain.

Although the above demonstrates a relatively extensive and inclusive WV program, which evidently tries to engage with vulnerable stakeholders, challenges remain which exemplify the importance of continuous improvement. The MNC mentioned that the welfare committee was just one mechanism, and that challenges remained with the overall program, rather than select parts. Similar to auditing, language, was mentioned by multiple interviewees as an issue, and the following chapter (5) will demonstrate how innovation is playing a role in countering this through technology. The MNC mentioned that there is a lack of Thai language knowledge amongst migrant workers, so they place interpreters in their factories to assist workers in communicating issues to the MNC's staff. However, there have been problems in the past with translators not having the required level of language expertise, which runs the risk of miscommunication (C5, human rights manager, 29/04/2019).

As mentioned, when analyzing meaningful stakeholder engagement in section 4.3, fear is a challenge which must be addressed for an effective WV program. For migrant workers there are worries around being sent back to their home countries by

⁶⁰ It was however highlighted that their code of conduct included a confidential email which offers laborers working for suppliers, the opportunity to share concerns with the MNC. However in reality, there is not much reported at this level, and this is predicted to be down to it making more sense for affected employees to talk to their direct employers (C5, human rights manager, 29/04/2019). This is plausible when considering that the multinational is a customer to the supplier, thus they are one step further removed from that workforce.

employers (C5, human rights manager, 29/04/2019). The WV program should ensure a safe space where workers can share their opinions without fear of repercussion. The MNC outlined that they were looking to strengthen the WV program in factories later in the year (2019), through a collaboration with a labor consultancy firm (C5, human rights manager, 29/04/2019). This appears to fit into one experts claim that HRDD should continuously improve to have direct channels, which allow workers and advisors to contribute to the process, with the outcomes being integrated in processes (E5, Labor Rights Expert, 9/5/2019). The collaboration with various NGOs and the improvement of the committee, I feel demonstrates that the MNC is moving towards this, and acknowledges that WV should be taken beyond a means of collecting data. This coincides with Esterhuizen's (2016) conclusion that beyond data diagnostic tools, the next procedure to improve working conditions, is to create an environment of engagement and dialogue between workers and other actors.

There are some concerns surrounding such committees in WV programs, and, before concluding it is important to recognize these. Kyritsis et al. (2019) worries that committees have the potential to be comprised of a controlled group, which doesn't truly represent the workers' needs, thus failing in their aim of providing "a viable form of protected collective representation". Although this may be the case with other WV related committees, it appears that the MNC, exemplified above, recognized the same issues, and was currently assessing, and innovating ways to address such shortcomings. However, opinions remain that for committees to effectively operate and democratically provide WV, they must complement, and not replace unions, and the legal framework surrounding FOA rights should be addressed (Anner 2018). Anner (2018) goes on to claim, that leading MNCs should identify breaches of labor

rights and FOA, and in doing so modify their sourcing practices so that these are not undermined⁶¹.

WV and workers representation is clearly an area that the BHR community see value in, however it must be enacted in an effective way, and continuously improved. It appears that MNCs are looking at various ways of strengthening WV to take it from a means of data collection which offers insights into working conditions, to a trusted platform which allows workers to identify labor rights (leading to real changes). Similar to audits and HRIAs, collaborating with labor rights experts from civil society will help, as demonstrated in MNC C5's case. Identification of labor rights can be strengthened by a multi-channel WV program which offers both an anonymous form of engagement (telephone hotlines to an NGO), and a platform such as a committee where workers can associate, engage with employers, and share their issues. Committees such as this can be valuable in any environment, however in a legal environment which affects unions, it appears necessary⁶². Mechanisms, such as the committee, will only offer value to workers if the results are acted upon by business, and trust is inhibited within the system. This means that power relations and the element of fear are addressed, with committee members being democratically voted for, so to represent a large share of the workforce (especially vulnerable populations such as migrant workers). I believe that WV is a work in progress within the BHR

⁶¹ In this research, I am only concerned with identifying labor abuses, and the literature on WV and committees also looks at actions, so it is important to note that this research is not evaluating whether the committees address impacted labor rights, but rather offer a mode of identifying them.

⁶² Although the best practice would be to engage with unions directly, if available, as a component of the WV program.

landscape, however it should be part of an MNC's HRDD process as it offers the potential to identify labor rights in the supply chain.

4.5 CHAPTER CONCLUSION

Chapter 4 has demonstrated the ways in which businesses are currently identifying labor rights abuses in their supply chains, and the challenges which they encounter in doing so. The aim of the chapter has been to show that this is not just about standard compliance for MNCs anymore, and that responsible business should be continuously looking at ways to further identify potential areas of abuse in their own operations and that of their partners. In other words, I posit that it is absolutely necessary for MNCs to look to continuously improve the methods in which they identify labor rights abuses, thus they are left with no choice but to innovate, however I have learnt that this innovation can take place in varying degrees. Moving beyond legal compliance can sound daunting, however there are a number of ways that MNCs have been encouraged to do this, and section 4.2 emphasizes the importance of innovating to; collaborate with experts (especially on systemic issues), enhance stakeholder engagement, understand and address the limitations of current practices (such as auditing), use leverage to build the human rights capacity of business partners. Before such innovations take place, MNCs should be assessing themselves (through an extensive mapping process) and the impacts that they can have at a number of different scales, from the country to the community.

In section 4.3, I posit that to achieve an effective identification process in HRDD, meaningful stakeholder engagement is imperative and this requires traceability of the supply chain and stakeholder identification. By innovating and continually engaging with the supply chain, MNCs can move towards a model of

100% traceability, with the aim of sharing this information (transparency) so that interested parties can learn more. Traceability is also necessary in identifying all the potential stakeholders in a supply chain, so that an MNC can focus their engagement efforts. Drawing on various stakeholder theories can assist in helping MNCs practice meaningful consultation, as it will allow them to assess the most dependent stakeholders, those who are vulnerable and have legitimate claims. The MNC can then engage with these stakeholders, which in itself could be innovative, as this involves broadening the stakeholders to collaborate with ‘critical voices’ (e.g, NGOs) which are not traditional business partners. The results of these innovative partnerships play a part in the HRDD process. Socially speaking, through these partnerships and other new approaches, MNCs must also innovate to address issues of trust and fear, as this will enhance the effectiveness of HRDD,

My findings show that the identification of labor rights abuses is implemented by three main tools in HRDD. These are audits, HRIAs and WV programs⁶³. The interesting thing is that these tools can be exercised in multiple ways meaning that the effectiveness of their implementation is somewhat down to the discretion of the MNC. Section 4.4 shows that each of these methods have limitations, thus offer room for innovation. Additionally, a combination of the three tools should be adopted by MNCs, and the MNC should innovate to implement these tools as effectively and extensively as possible in their specific supply chains. This should be done, while accounting for vulnerable groups at high risk which can be identified through an initial, but ongoing, HRIA. Even with the three tools in action, limitations may still

⁶³ I would include grievance mechanisms too, however, as mentioned, they belong in a different part of the HRDD process but do feed into the identification of labor rights in supply chains.

exist, therefore MNCs should continue to collaborate with the wider BHR community so to innovate enhanced and new ways of engaging stakeholders in a meaningful way. This, is of course, an easier task to write than to implement, but given the understanding of innovation as a new normative practice which brings value from a new creative idea, the next chapter analyzes the ways in which an MNC can encourage innovations in this space, which in turn could strengthen HRDD.



CHAPTER V

THE ROLE OF INNOVATION IN IDENTIFYING LABOR ABUSE IN MULTINATIONAL SUPPLY CHAINS.

5.1 INTRODUCTION

The previous Chapter considered the current ways of identifying labor rights abuse in MNC supply chains, and given the challenges, the importance of innovation in meaningful stakeholder engagement in the HRDD process. With an evolving BHR landscape and legislation, the UNGP's prescription for continuous improvement, and the rapid changeability of supply chains, this thesis argues that businesses have to be innovative to respect human rights in their supply chains⁶⁴. Referring back to the literature review in Chapter 2, I explained that Tushman and Nadler's (1986) paper, which focuses on how to set an environment where organizational innovation can foster, would be used as a framework to guide this Chapter. The aim of this Chapter is to assess whether the same critical factors that Tushman and Nadler believe lead to organizational innovation, also lead to a business' ability to innovate in the identification of labor rights. Therefore this chapter looks to answer whether the same trends which have led to organizational product and process innovation, also lead to innovation in the HRDD process.

Due to the digitally interconnected world we live in, I can understand why one expert observed that many people currently equate innovation to tech, but it doesn't have to be (E2, Modern Day Slavery Expert, 23/4/2019). Simply, innovation can be considered the "creation of any product, service or process which is new to a business

⁶⁴ With the HRDD process being part of this responsibility.

unit” (Tushman & Nadler 1986, P.75). I would also add that innovation has the aim of adapting to change so to bring value, meaning that business must “constantly anticipate tomorrow’s definition of value” (Tushman & Nadler 1986, P.74). In the context of this thesis, value is considered as a respect for human rights, which solves an issue in the “real world” (E2, Modern Day Slavery Expert, 23/4/2019). Innovation is “effective because it actually works to address an issue and as a result of that we improve something that is broken” (E2, Modern Day Slavery Expert, 23/4/2019).

5.2 INNOVATION IN ORGANIZATIONS

The four components which Tushman and Nadler (1986) advocate as being the cornerstones or obstacles in organizational innovation are ; “tasks”⁶⁵ (what needs to be done) “individuals” (staff), “organizational arrangements” (formal processes for staff to follow), and “informal organization” (the culture of how things are delivered). In their research, it is explored how practices and approaches towards each of these components can lead to innovation and increased value within a business. They highlight a number of “critical factors” (Tushman and Nadler 1986, P.83), which can be seen in the appendix, for each of the components .

Using each of these components as a section heading, I will explore whether Tushman and Nadler’s approaches and practices are applicable in innovating to identify labor rights abuses in supply chains. In terms of scale, Tushman and Nadler’s theory applies to a business entity, which they often refer to as organization. However I will apply the theory beyond this, to an MNC and its supply chain, which includes the stakeholders highlighted in previous chapters. In the same way that Tushman and

⁶⁵ It is worth noting that the component of ‘tasks’ doesn’t have its own section as we already know that the task is identifying labor rights abuses in the supply chain.

Nadler believe innovation is key to market success, I believe that it strengthens an MNC's HRDD process, and below explores how innovating in this space can be achieved.

5.3 INDIVIDUALS

For Tushman and Nadler (P.82), innovation requires individuals with in-depth expertise, combined with a knowledge of multiple disciplines. Furthermore, it is advised that MNCs equip themselves with a “top team” that can balance expertise and group solving processes, meaning that they can conduct current tasks and innovate for the future⁶⁶ (Tushman and Nadler 1986, P.83). I rarely saw such ‘top teams’ in a human rights context, rather individuals that were human rights managers/specialists with a diverse set of skills that oversaw a small team⁶⁷. Therefore, I believe that the individual skills put forth for organizational innovation are applicable when innovating for HRDD, however, this falls on an individual rather than a ‘top team’. Below considers the role of individuals when innovating in the human rights space in comparison to managing organizational innovation.

Human rights are a specialist subject, meaning that an individual with extensive knowledge of the subject should oversee the HRDD process. This is perhaps a contributing factor as to why we have seen a proliferation of human rights and sustainability managers in the last few years, as they have become an MNC necessity (Business Plus Magazine 2018). The title of the staff member who is

⁶⁶ For Tushman and Nadler (1986, P.83) this is a senior team formed by a group of individuals with diverse skills operating at the executive level, managing the tasks of today while preparing for the future, thus they are responsible for creating “conditions of learning and innovation throughout the organization”.

⁶⁷ I am not saying here that they act alone, managers often have a few staff members in a human rights or sustainability team working with them, however I cannot call this a top team.

responsible for innovating methods of identifying labor rights abuses may change between MNCs, therefore moving forward ‘human rights staff member’ (HRSM) will be used as an alias to encompass this responsibility. In the interviews, two of the senior MNC staff members I spoke to (C1, C5), mentioned that when they were hired, part of their duties were to build or improve the HRDD process. Thus, having an individual with specialist knowledge and human rights experience is needed when designing HRDD and conducting it.

However as HRDD permeates into so many different parts of a business, to successfully innovate ways of identifying labor abuse, an individual must; build a team, communicate effectively with many, and problem solve. As we have learnt, effective communication is key, because the HRSM should work with different sections of the business; procurement, sourcing, leadership, and human resources (HR), were all mentioned in the interviews. Different departments should contribute to HRDD so that the HRSM is not working in isolation (E3, BHR Academic, 23/05/2019, E7, Modern Day Slavery Expert, 23/05/2019). Talking about modern slavery specifically (however it is applicable to other labor abuses), it was claimed that this is not a CSR activity, and businesses should have a “top to bottom approach” on such issues (E7, Modern Day Slavery Expert, 23/05/2019). In other words, labor rights abuses “should be tackled throughout the whole company” (E7, Modern Day Slavery Expert, 23/05/2019). That responsibility needs to be put on everyone (E7, Modern Day Slavery Expert, 23/05/2019). The HRSM can play a leading role in spreading awareness, thus equipping more people with human rights knowledge, which may result in the identification of labor abuses.

By creating “the conditions for learning and innovation throughout the organization” (Tushman and Nadler 1986, P.83) the HRSM can extend enthusiasm and knowledge for labor rights in their MNC. Firstly, human rights must be made relevant and understandable for the rest of the business (Mullen et al. 2019, P.99). One way of doing this is to make sure the language is relevant to all appropriate departments. One manager mentioned that he tried to “translate” the UNGPs into “business language” for his colleagues, as he realized that if he is the only one talking about human rights in the MNC then it’s not going to “fly” (C1, senior manager, 1/5/2019)⁶⁸.

Secondly, thought should be given as to who may witness labor abuse, these individuals can be targeted for human rights training, which may lead to innovation in identifying labor abuse. Not applicable to Thailand, but one manager told me how his MNC were equipping more people in their UK stores with human rights knowledge so that they are aware of issues (C4, Head of Human Rights, 2/5/2019). It shouldn’t just be auditors that are equipped with human rights knowledge, but the capacity of other departments, such as business development staff that visit manufacturers, must be enhanced (E7, Modern Day Slavery Expert, 23/05/2019)⁶⁹. As these two examples demonstrate, innovation in this space requires thinking beyond third party audits and domestic legislation (E1, business and human rights consultant, 8/5/2019) and

⁶⁸ As section 5.4 (under conflict resolution and problem solving) discusses, the UNGPs in themselves are innovative as they have created a language that has been “catalytic” (Mullen 2019, P.99).

⁶⁹ This expert used the example of a hotel. She mentioned that staff must go and buy products for the hotel (such as furniture), however do they receive human rights training? To be innovative we should not just think of auditors as the means of identifying labor abuses, and therefore should increase the capacity of others that visit facilities.

building the human rights capacity of other individuals in the MNC (section 5.4 and 5.5 will further develop this).

Innovating to identify labor rights abuses, will also require the HRSM to reap crucial knowledge by engaging meaningfully with civil society. This in itself can be seen as a way of the MNC diversifying its expertise (as Tushman and Nadler encourage), by building external relationships to help better understand the human rights context of a supply chain, especially given that some civil society work directly with laborers (C5, human rights manager, 29/04/2019). If an MNC is sourcing from Thailand, it is important that they work with local organizations as the HRSM may not be fully aware of all the risks, however engaging with NGOs, unions and communities can fill this knowledge gap (E3, BHR Academic, 23/05/2019).

A manager mentioned that by partnering with a specialist agency in Thailand, they identified issues surrounding grievance mechanisms. However this partnership resulted in the innovating of a channel where abuse could be confidentially reported and shared with the MNC (C4, Head of Human Rights, 2/5/2019). Added to this, the HRSM must be “respected for their disciplinary competence” (Tushman and Nadler 1986, P.83). Monitoring the evolution of legislation (C1, senior manager, 1/5/2019), and tapping into resources which are created by civil society (such as reports) will assist with this (E3, BHR Academic, 23/05/2019). By building their links and expertise across different sources of knowledge, beyond the MNC, the HRSM will be “alert to external opportunities and threats” (Tushman and Nadler 1986, P.83).

Tushman and Nadler, mentioned that the “top team” must change with the environment to maintain innovation, however in a human rights context I don't

believe that this is necessary. Rather than changing the HRSM, I would propose that the MNC focuses on effective collaborations depending on the issue. Collaborating for innovation, will require the HRSM to garner information from multiple sources and this can be achieved “through recruitment, training, and socialization practices” (Tushman and Nadler 1986 P.82). Firstly, the HRSM can broaden knowledge through growing their internal team (as explored later in this section). Secondly, they should collaborate with local civil society. Thirdly, as touched on in Chapter 3, a manager highlighted that “we have seen a lot of innovation in collaborative forums, to tackle systemic issues that companies face” (C3, Human Rights Manager, 3/5/2019). Such “socialization practices” (Tushman and Nadler 1986 P.82) will provide a platform for MNCs to come together and innovate ways in which to tackle common labor rights issues⁷⁰.

Finally, Tushman and Nadler (1986) emphasize that the “general manager”⁷¹, must be able to build a top team which can collectively problem solve. As already mentioned, a “top team” focused specifically on human rights is unlikely and unnecessary⁷². However, I do believe that the HRSM have a team which can help with the HRDD process and also focus different geographies of supply chains. One manager mentioned that their human rights program was divided into three pillars (C4, Head of Human Rights, 2/5/2019), which was overseen by himself and five staff members, another had seen their team grow over the last five years, with staff being placed in high risk regions so to better support suppliers (C3, Human Rights Manager,

⁷⁰ The creation of such forums is also innovative in itself.

⁷¹ Who I am referring to as the HRSM.

⁷² The majority of human rights team I spoke to were smaller than ten individuals.

3/5/2019). Here we see teams, supervised by a general human rights manager, that specifically focus on various parts of the human rights program, or geographies of the supply chain⁷³. It seems fair to assume that this could lead to the development of group “problem-solving processes so that it can effectively manage both today’s work and tomorrow’s innovation” (Tushman and Nadler 1986 P.83).

This section has demonstrated that the factors relating to individuals which are linked to organizational innovation, are also applicable when innovating to identify labor rights. Although it is necessary for a HRSM to have a specialized human rights skill set, it is also important that they have a diverse skill set allowing them to understand the commercial side of a business, civil society and how to effectively communicate. I found that many of the managers interviewed had some previous experience in civil society, or had studied a relevant degree, which may help in achieving this. They also must be adept to build a team which can assist in the HRDD process. Although, Tushman and Nadler mention collaboration, I would like to further emphasize how important it is in this context that the HRSM is an accomplished collaborator. As the research has shown throughout, the effectiveness of the identification of labor rights abuses is extremely reliant on working with civil society, laborers, other business departments, and competitors. Therefore, I would add collaboration as a necessity which an individual overseeing the HRDD process needs when creating an innovative environment to identify rights abuses.

⁷³ As mentioned these are not the same “top teams” that Tushman and Nadler are describing because they are not operating at the same authority within the business (at an executive level). However besides the authority, the notion is similar as they are a specialist team focused on external issues which can affect current and future work.

5.4 FORMAL ORGANIZATIONAL ARRANGEMENTS

According to Tushman and Nadler (1986, P.83), formal organizational arrangements develop “structures, systems and procedures” to determine behavior within a business, which can influence innovation. These arrangements include; formal linking mechanisms (teams, committees, task forces, meetings and project managers), organization designs for venturing and entrepreneurship, incentives, staff evaluations, job design and education (Tushman and Nadler 1986). These arrangements are applicable to varying degrees when innovating to identify labor rights in a MNC supply chain.

Formal Linking Mechanisms

These linking mechanisms are carriers of innovation and creativity, as they help promote collaboration and problem solving throughout a business (Tushman and Nadler 1986, P.83)⁷⁴. Teams, committees, or task forces, can act as linking mechanisms which aim to bring together diverse actors with similar goals. When asked what the biggest innovation was in the BHR space, an expert responded that it was the recent efforts of business, which may be down to the emphasis on overall collaboration between actors (E7, Modern Day Slavery Expert, 23/05/2019). Perhaps this is down to global regimes, such as the sustainable development goals (SDGs) which have offered a wider “linking mechanism for NGO and private sector collaboration”(C1, senior manager, 1/5/2019). This leaves one wondering how formal linking mechanisms can operate beyond the infrastructure of one business and throughout the supply chain.

⁷⁴ When considering the scale of an MNC’s operations, which is usually over multiple locations, it is important to have these linking mechanisms throughout the supply chain too, if possible.

MNC engagements with actors can be formalized, such as the aforementioned collaborative forums (by C3 in section 5.3), where solutions for common issues are innovated amongst competitors (C3, Human Rights Manager, 3/5/2019). Further explaining the purpose of these forums, a manager shared that “through these industry collaborations we can pull our resources to talk about precompetitive challenges and work together to try to improve, in a way increase our leverage across our common supplier base in a way that improves standards, in a more meaningful, sustainable way” (C3, Human Rights Manager, 3/5/2019). Arguably this is innovative in itself, as we are seeing traditional business competitors acknowledge the issue of identifying labor rights as a common purpose in which they should work in partnership to address. Another example of a committee, in a different context, is the worker’s welfare committee (outlined in section 4.4(c)) linking laborers in the MNC’s operations with their employers, which, could give space for them to suggest innovations.

In the case of civil society, I agree with one expert that mentioned “shared value partnerships” (detailed below) as a way in which different stakeholders can put their differences aside and tackle mutual problems (E1, business and human rights consultant, 8/5/2019). Although it may take time, goals are aligned and relevant actors assembled to pilot something new, and if done right it could offer some “innovative recommendations that could make a big difference” (E1, business and human rights consultant, 8/5/2019)⁷⁵. Internally, a manager explained that his smaller sustainability team supported the HR team with policies, acting as a bridge between what can be

⁷⁵ Internet connectivity on fishing boats was cited as an example in Thailand (E1, business and human rights consultant, 8/5/2019), this will be revisited later in the chapter.

achieved “internally and then the demands by customers and NGOs and the external trends of sustainability” (C5, human rights manager, 29/04/2019). Unlike Tushman and Nadler, these examples demonstrate how the formalizing of collaborations through committees/forums, teams and mechanisms can establish innovation in identifying labor rights in the supply chain.

In a human rights context, I believe the above are the most relatable formal linking mechanisms put forward by Tushman and Nadler.⁷⁶ Beyond the MNC, some specialist agencies periodically bring stakeholders (including MNCs) together so to develop a multi-stakeholder approach. This peer pressures them into understanding the importance of the issue, while also being mentored (E2, Modern Day Slavery Expert, 23/4/2019).

Finally, I did not learn about specialist project managers that were brought deep into an MNC for the coordination of new processes as Tushman and Nadler suggest⁷⁷. Revisiting the concept of ‘shared value partnerships’, I will slightly adapt Tushman and Nadler’s concept of a project manager⁷⁸ to demonstrate how they can be a linking mechanism for innovation, beyond the MNC structure. This is exemplified through E1 (a business and human rights consultant in Thailand) and her project. She

⁷⁶ However the authors also mention the role of formal meetings and project managers. In my own research I didn’t see these mechanisms emphasized very often, however I am sure that formal meetings will play a role given that they are a normal practice in businesses. I am not clear on the formality and regularity of such meetings, but it was clear that the staff from the MNCs often had meetings with a number of stakeholders, for example meeting with civil society groups to improve the HRDD process (C3, Human Rights Manager, 3/5/2019).

⁷⁷ As mentioned in 5.3 many of the MNC staff I interviewed were overseeing the development and coordination of HRDD processes, however they were not project managers specifically, but fulltime staff who had a multitude of responsibilities. Tushman and Nadler do not clarify specifically what they mean by project manager.

⁷⁸ Tushman and Nadler’s (1986, P.83) definition of a project manager: “Project managers play a formal linking role which brings a general management perspective deep in the organization. A project manager works to achieve integration and coordination for new product and/or process development.”

is the partnership broker, meaning she brings together multiple actors⁷⁹, aligns goals and looks for solutions (E1, business and human rights consultant, 8/5/2019). The importance of this individual is evident, as they must discover a common purpose, and create an environment of trust which can lead to a platform for innovation when identifying labor rights abuses.

Organization Designs for Venturing and Entrepreneurship

For major innovations, that cause disruption, it may be more effective to work beyond the MNC's structure (Tushman & Nadler 1986, P.84). Tushman and Nadler (1986) outline that this can take a number of forms⁸⁰, and although I may not have recognized these organizational forms by name (such as corporate venture building or licensing) in a labor rights context, I did notice similarities. The main being, that in order to innovate new ways of carrying out existing identification processes (such as auditing) external assistance was required. I believe that some of the most responsible MNC's are pouring resources (whether through a paid membership or funding a tool) into external agencies which specialize in labor rights related issues, and they innovate methods to identify issues in supply chains. These are private entities, with an agenda resonant of civil society, and a workforce offering a variety of backgrounds (e.g. expertise in technology). The following demonstrates how collaborations with such agencies can catalyze innovation in a Thai labor rights context.

⁷⁹ an international development firm, MNC, local NGOs, and government agencies.

⁸⁰ Including; “venture capital, joint ventures, licensing, acquisition, internal venturing, and independent business units”, some of these forms are more closely tied to the organization than others (Tushman and Nadler 1986, P.84).

I spoke to the CEO (E2) and Program Director (E7) of one organization (based outside of Thailand) whose model is based on an association and paid membership, made up of MNCs from various sectors who come together to address the issue of modern slavery specifically. Signing up to this association offers many methods of support, however I will focus on the tools they innovate to assist MNCs. The development of a mobile application (app) for MNCs exemplifies how this organization can channel resources into new process developments (in this case auditing), in a similar way to a corporate venture. This particular app has been under production since 2012, with the latest version being released in 2018 for auditors, based on direct feedback from businesses and auditors (E7, Modern Day Slavery Expert, 23/05/2019). Referring to section 4.4, one will be familiar with the issues surrounding audits. Therefore it is understandable why MNCs are willing to invest in the app's innovation⁸¹.

The app shifts the burden from the workers to the auditor, unlike other mechanisms such as hotlines where workers have to take the initiative (E7, Modern Day Slavery Expert, 23/05/2019). It is downloaded onto the auditors phone, and then workers from a selected sample anonymously answer questions in their own language (E7, Modern Day Slavery Expert, 23/05/2019). Once completed, the app tabulates the results, and identified issues are updated onto a server (E7, Modern Day Slavery Expert, 23/05/2019).

The app also makes auditing more timely, as the auditor doesn't need to be present when this is happening, so they can focus on different parts of the process.

⁸¹ It addresses; time constraints, data consistency, language barriers and confidentiality issues (E7, Modern Day Slavery Expert, 23/05/2019).

The expert observed that in a factory of 3000 she saw four workers interviewed by traditional methods, however the app aims to bring a tenfold increase by the hour (E7, Modern Day Slavery Expert, 23/05/2019)⁸². In Thailand she had seen the app in action, where 25 workers were spoken to in three hours at a factory that had about 200 workers (E7, Modern Day Slavery Expert, 23/05/2019). There are other benefits of the app which could be listed, however the aim here is to show how innovating beyond the MNC structure has allowed for an innovative way to identify labor rights abuses.

Two of the MNC staff I spoke to (C1, C4) shared that they worked with a local institute to further strengthen their ability to identify labor rights in their Thai supply chains. One of these examples were highlighted in section 5.4, where an institute had innovated a way which allows migrant workers to have a confidential means of raising concerns (through apps and phonedlines, specific details were not given) (C4, Head of Human Rights, 2/5/2019)⁸³. The other MNC worked with the institute to engage with workers face to face so to better understand the Thai context and situation, and gather complaints about non-compliance (C1, senior manager, 1/5/2019). Although not as many details are given in this second example, the principle remains the same. By working with, and investing in an external capacity, new ways of identifying labor rights abuses in the MNCs supply chain in Thailand can be innovated.

⁸² Also the expert mentioned that a lot of audit service providers know that migrant labor is an issue, so they are charging more to interview them specifically, meaning that the app is also a cost effective option.

⁸³ Which is then shared with the MNC.

Although not identical to Tushman and Nadler’s design for venturing, the investment and partnering with expert organizations which have the labor rights and innovative knowhow can strengthen the identification of labor rights in supply chains. These companies often have a specialist team with a mixed skillset, intersecting human rights and technology. Tushman and Nadler (1986, P.84) encourage the employment of external capacities for innovation when the “required technology and markets are unfamiliar”. Replacing ‘markets’ with ‘supply chains’ and ‘labor issues’, I believe that this notion is applicable to the HRDD process.

Incentives

Tushman and Nadler (1986, P.85) recognize the importance of incentives when considering individual’s efforts to innovate in a business. Personal incentives were not cited by interviewees as affecting a HRSM’s effort to innovate. However the role of incentives did emerge in a different context within the supply chain. Therefore the concept of incentives does play a role in innovating to identify labor abuse, and I learnt about this in two main ways.

Firstly, there have been a number of benchmarking initiatives which are making “people care” (C3, Human Rights Manager, 3/5/2019). These usually rank businesses on ethical standards which relate to human rights (for example recruitment fees and stakeholder engagement) and are published into the public domain. I have mentioned a few of these benchmarks in the earlier chapters. For example, in the case that freedom of association is measured, a relevant benchmark can hold MNCs to a “certain level of responsibility when the facilities that they are buying from are

involved in freedom of association breaches” (E5, Labor Rights Expert, 9/5/2019)⁸⁴.

As these rankings are public and accessible to consumers and investors, it is commercially favorable for an MNC to score well.

Playing a slightly different role, incentives can foster innovation further down the supply chain. MNCs can encourage suppliers to respect human rights through incentives, one Thai MNC I spoke to have a responsible sourcing policy meaning that good practice gets suppliers on a preferred list (C2, Vice President, 21/5/19). The same MNC also uses blockchain technology in the traceability efforts of their corn (which is used for animal feed) (C2, Vice President, 21/5/19). They will pay a premium price for corn from suppliers that provide documents evidencing they own the land (C2, Vice President, 21/5/19). MNCs can also put clauses in contracts with suppliers, which obligate partners to respect human rights (E5, Labor Rights Expert, 9/5/2019), however this may be regarded as leverage rather than incentivizing. Although vague, there is enough evidence that incentives can be adopted⁸⁵ through benchmarks to encourage MNCs to innovate practices, and in clauses between entities in the supply chain, where good practice is rewarded⁸⁶.

Joint Evaluation, Staffing and Appraisal⁸⁷

⁸⁴ Supposedly, this is valuable when considering nations that don’t have the FOA legal regulations surrounding policies and interventions.

⁸⁵ In principle, this is similar to Tushman and Nadler’s proposal, however it is not operating on the individual level.

⁸⁶ I did not research the role incentives specifically, so do not have extensive details on how this may encourage innovation for identifying labor rights abuses in the supply chain.

⁸⁷ Although in the title Tushman and Nadler don’t appear to write specifically about staffing and appraisals. As far as I can see the main the topic in this subsection is around bringing a team together to problem solve.

Tushman and Nadler (1986), throughout their paper, greatly emphasize the importance of individuals coming together from different disciplines to create an environment fit for innovation. It is advised that these individuals form a problem solving team that can prioritize, direct and evaluate new processes, before sharing this with their colleagues (Tushman and Nadler 1986, P.86). If this is done effectively, “problem solving comes to be perceived as part of the normal process, rather than a bureaucratic intrusion” (Tushman and Nadler 1986, P.86). In short, these are teams that are composed of individuals from various parts of the MNC, which focus on the development of a new process or product, which can be evaluated and shared with other colleagues. It is hard to know on what scale this is currently happening in MNCs with regards to HRDD. The paragraph below emphasizes the importance of joint evaluation when identifying human rights by highlighting how it could tackle one of the main barriers to innovation in this space.

In a recent comprehensive piece of BHR research, an expert was asked what is the biggest challenge to progress in this space? They answered “the main barrier at the moment is the fact that still, even though other functions like procurement, HR, compliance are getting involved, this topic is being driven out of sustainability departments largely, which don’t have very much power within the organization. They are often seen as a cost center, not really part of core business, and so it really requires those departments to build relationships with other functions to get the budget, to get the leadership, to get the recognition of this as an important topic that the company needs to be looking at” (Mullen et al. 2019 P.119-120). This was echoed in my own interviews, as one expert mentioned that sustainability teams are often quite separate from procurement managers, who are important figures when

considering HRDD, and there needs to be a closer alignment with departments so that they can do HRDD together (E3, BHR Academic, 23/05/2019).

Therefore sustainability teams need a “real say” (E5, Labor Rights Expert, 9/5/2019). Their work needs to go into the commercial aspect of the business -the contract, responsible sourcing etc.- and although there is evidence of this, more needs to be done (E5, Labor Rights Expert, 9/5/2019). These teams know the issues, and other departments -such as legal, business and purchasing- have their own targets, however the sustainability team should be talking with them about labor rights (E5, Labor Rights Expert, 9/5/2019)⁸⁸. Using Tushman and Nadler’s (1986, P.85-86) concept of “joint evaluation” this could perhaps be strengthened and formalized, as members of the different departments within the MNC come together and work with the sustainability team, forming a taskforce which is led by HRSM. Together they conduct HRDD under the watch of the HRSM, thus creating a space for the different departments to innovate identification strategies. The taskforce can then share the learnings with their own teams⁸⁹.

Job Design, Job Rotation and Careers

Tushman and Nadler believe that innovation depends on motivated employees, something that can be positively influenced by job design, rotation and career paths.

⁸⁸ There was evidence of sustainability and human rights teams engaging with other departments, and this was in a more supportive role. One manager mentioned how they expanded their team in high risk regions so that their staff could partner closer with the procurement team and suppliers, so to really help them understand what is expected from sound labor practices and help them improve compliance at such level (C3, Human Rights Manager, 3/5/2019). Another mentioned how their small sustainability team guides and supports the larger H.R. team on policies (C5, human rights manager, 29/04/2019).

⁸⁹ Similar to many of the other subsections, from Tushman and Nadler’s work we can see an applicable notion (in joint evaluation here) which can be adapted at a different level or scale.

They believe that an autonomous position, varied career path, and well-balanced job promotion strategy, all have the ability to encourage innovation (Tushman and Nadler 1986, P.86). My findings lead me to believe that a varied career path bears some relevance when innovating in a human rights context (more so than job promotion and job design)⁹⁰. This is due to a number of the HRSMs I interviewed having varied career paths, before working for their respective MNCs.

Two of the MNC's HRSMs I spoke to had previously worked for NGOs before joining their sustainability teams (C4, C5), while another had worked at the United Nations (C1) demonstrating that responsible MNCs appear to prefer individuals who have worked in a human rights or similar context, even if this is not directly linked to an MNC or business. The VP, although in a fulltime role at his MNC, was also involved in Thailand's Global Compact, where he works to promote BHR issues in Thailand (C2, Vice President, 21/5/19). On the civil society side, two of the experts (E1, E7) had previously worked for businesses and had switched to working for BHR organizations. This proves the varied nature of BHR, as staff are required to have an understanding of the commercial essence of business, and the technical and moral comprehension of human rights. Therefore, a varied career path can contribute to innovation in the BHR space, whether that is in an MNC or civil society context.

Education

⁹⁰ In section 4.3, an MNC staff member mentioned that for changes to take place in identifying labor rights abuses, it does take time and should be approached with a mentality of continuous improvement. Therefore I do think that Tushman and Nadler's (1986, P.86) claim that individuals should expect to stay in their roles long enough to influence indicators of change is relevant.

Tushman and Nadler's concept of education appears to be one dimensional, by focusing on management programs -where managers learn from different departments through a formalized program- with the aim of nurturing innovation (Tushman and Nadler 1986, P.87). Although I am sure HRSMs will receive various trainings within the MNC and externally, programs such as this were not mentioned. Therefore in a human rights context I consider education as equally important, however I will demonstrate this through 'trainings' and 'knowledge sharing', and the various forms it can take, from individuals to suppliers, and how this leads to innovation.

Firstly, and most similarly aligned with Tushman and Nadler's concept of innovation, it was suggested that other managers and staff (beyond the sustainability team) be trained in human rights, especially those who are visiting sites that may be at risk of having labor rights abuses. This was mentioned by E7 in section 5.3 with reference to business development managers.

Secondly, and in contrast to Tushman and Nadler, I would like to reemphasize the role of capacity building within the supply chain, under the concept of education. Throughout this chapter and thesis, this has regularly been highlighted as a key component of meaningful stakeholder engagement under HRDD. The training of suppliers offers one means of building this capacity, and MNCs should consider the ways in which this can be enacted. The U.N. expert highlighted the challenge that exists in Thailand (and other nations) surrounding a lack of knowledge and finance lower down the supply chain which inhibits the adoption of HRDD (E4, UN BHR Expert, 15/5/2019). For these smaller enterprises to be given the chance to identify

labor rights, they should be supported and encouraged to innovate through trainings and other support.

Suggestions were put forth as to how to fill this gap, with one expert mentioning a tool which the mother company (MNC) invests in, and then feeds into the supply chain with trainings (E4, UN BHR Expert, 15/5/2019). The MNC can take lead in a variety of ways, such as running trainings (E1, business and human rights consultant, 8/5/2019). Attention should be given to these trainings to ensure that they are engaging for the various businesses that make a supply chain, and not just a “tick box” exercise (E1, business and human rights consultant, 8/5/2019). This is required if members of the supply chain are going to innovate ways to identify labor rights abuses as “fundamentally people don’t have the correct understanding of human rights” (E1, business and human rights consultant, 8/5/2019).

5.5 INFORMAL ORGANIZATION

Alone, individuals and formal organizational arrangements are not enough to catalyze the complex nature of innovative work, therefore it should be complemented by creativity which stems from dimensions of informal organization (Tushman and Nadler 1986, P.87). Tushman and Nadler’s dimensions of informal organization are listed below, and their applicability to a labor rights context is evaluated.

Core Values and Norms

Norms are rules that “specify the meaning of core values”, therefore I have placed them together⁹¹. In an organizational sense, the most innovative businesses

⁹¹ Although Tushman and Nadler (1986, P.88) separate core values and norms into different categories, they are linked.

have values that are meaningful, and broad enough to apply to all departments, while remaining focused so to encourage specific behavior (Tushman and Nadler 1986, P.87). Tushman and Nadler (1986, P.88) believe that the most innovative businesses have norms that stress “informality, high work standard, and exposure to multiple sources of information” which encourages collaborations. In the context of this thesis, I believe values are more relevant to respecting human rights when regarding an MNC supply chain, although norms can also play a role between MNC and supplier relationships through codes of conduct.

One MNC manager stressed that ‘responsibility’ was one of their core values which was applicable to all departments (C3, Human Rights Manager, 3/5/2019). Therefore “sourcing must respect labor rights and the environment” (C3, Human Rights Manager, 3/5/2019). According to the KTC 2019 benchmarks, Unilever are showing the best practice when concerning food and beverage MNCs that address forced labor, therefore I saw it fit to examine their core values (KTC website, 2019). Unilever mention how their core values were initiated to guide their business right down to the communities they work in through “always working with integrity, positive impact and continuous improvement, setting out our aspirations, and working with others” (Unilever.com 2019). Resembling the UNGPs, these values outline; impact on individuals should be continuously improved, a set of principles which employees at Unilever should follow, expectations that their business partners should follow around sourcing, amongst others (Unilever.com 2019). There is a clear correlation between the respect-driven nature of Unilever’s core values and their

impressive performance when addressing and mitigating forced labor⁹². This leads to the initial conclusion that Unilever have “effectively infused their value system throughout”, meaning that innovating to identify labor abuse is encouraged through values.

Tushman and Nadler (1986, P.88) note that norms have “clear behavioral referents”⁹³ and looking at Unilever’s Code of Business Principles, there is evidence that employees must respect the human rights of those that they work with (Unilever.com 2019). This emphasis on human rights specifically, gives the impression that Unilever are doing more than most MNCs to equip their employees with an understanding of human rights. Unilever’s principles outline that partner companies must respect a number of labor rights issues, such as; wages, freedom of association⁹⁴ and contracts (Unilever Code of Business Principles and Code Policies, 2017 P.24). There are specifically focused norms on human rights which individuals and partners must follow, demonstrating how an MNC can develop norms to assist in identifying labor rights. To innovate in identifying labor abuse, an MNC needs to find the time to engage, which means showing willpower beyond issues directly linked to market value (E2, Modern Day Slavery Expert, 23/4/2019). Having norms directly linked to respecting labor rights could be a way of showing the value in the issue, thus directing the MNC to innovate identification methods of labor rights.

⁹² Forced labor is focused on specifically here as that is the area that KTC focuses on.

⁹³ Such as appropriate dress and language in the workplace.

⁹⁴ E.g. “Respect employees’ rights to join or not to join a legally recognized trade union, or any other body representing their collective interests, and establish constructive dialogue and bargain in good faith with trade unions or representative bodies on employment conditions, labour management relations and matters of mutual concern, to the extent practicable taking national laws into consideration” (Unilever Code of Business Principles and Code Policies, 2017 P.24)

Unlike Tushman and Nadler, I would also mention that cultural norms should be considered by the MNC when respecting labor rights in the supply chain. By identifying cultural norms, they may develop their understanding and awareness of potential labor rights breaches. One expert referred to a U.N. report highlighting issues of discrimination and the history in the region between Thais and migrants from Laos, Cambodia, and Myanmar (E9, BHR Regional Advisor, 20/05/2019). Asking if there were campaigns by businesses to address these societal issues, the expert answered;

“Businesses leave it to their partner NGOs to work on what they feel is priority, when I have spoken about this with other Thai NGOs or Burmese they feel ... there is real concrete issues here with human trafficking and debt bondage and other concrete issues with lack of legislation to focus on, and this is more of a societal attitude stain ... a lot of people working on more of a legislative level, they don't want to focus too much on that, they just hope over time people's attitudes will change.”

จุฬาลงกรณ์มหาวิทยาลัย (E9, BHR Regional Advisor, 20/05/2019)

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Rewarding Risk

Although rewarding risk is important in organizational innovation, it does not have the same significance when innovating to respect human rights. Tushman and Nadler (1986. P.89) claim that innovative businesses encourage risk by tangibly gratifying success and downplaying failure. During my research, risking new methods to identify labor abuse was not something that was brought up, however I do think that the principle of risk taking bears relevance at the MNC level given a discussion I had with one expert.

In the context of respecting human rights, the more innovative businesses are the ones finding more cases of, in this case, forced labor, because they are taking the risk to do something and identify the problem, rather than those that are doing nothing (E2, Modern Day Slavery Expert, 23/4/2019). Although it can be alarming for the progressive businesses, when they start identifying forced labor, it demonstrates a want (or risk) to identify the problem by adopting tools, “opposed to others using hope as a strategy, hopefully no one will find anything, it doesn’t seem apparently obvious so we don’t have to do anything” (E2, Modern Day Slavery Expert, 23/4/2019). Not directly related to Tushman and Nadler’s concept of rewarding individuals for risk, the above does encourage MNCs to take the risk to look into their supply chains and innovate ways of identifying labor abuses, in doing so they will be creating a platform for addressing the issues, and been recognized as responsible.

Communication Networks

Tushman and Nadler (1986, P.89) emphasize the effectiveness of informal communication networks which allow for direct feedback when innovating processes, this avoids “formal bureaucratic procedures”. It is important that these are maintained within the MNC, but also beyond it (e.g. with suppliers), and can take a number of forms so that those concerned know who to contact about what. Furthermore, a shared purpose and language will assist with problem solving (Tushman and Nadler 1986, P.89), and as we have learnt, the UNGPs have assisted in creating this around human rights⁹⁵ (C1, senior manager, 1/5/2019). Communication networks, whether formal or

⁹⁵ The UNGPs have created a standard language that is applicable and understandable to business, civil society and the state (as will be referred back to later in the section).

informal, are important when innovating to identify labor rights, and my research revealed how grievance mechanisms fit this.

As I mentioned in section 4.1, grievance mechanisms are usually associated with remediation. These are channels by which workers can report labor rights related issues with the aim of resolving a rights abuse. However, information gathered from grievance mechanisms can also assist to identify labor rights abuses in the supply chain, meaning that they can become part of HRDD (of concern here). It was recognized that some businesses in Thailand were operating grievance mechanisms as one expert claimed “From my experience there have been some Thai businesses which really try to do the grievance mechanisms and other areas, more or less text training, and over time to develop that further to have the capacities” (E9, BHR Regional Advisor, 20/05/2019).

Two of the staff I spoke to shared that they had brought civil society actors into the management of their grievance mechanisms (C2, C5). These actors operate channels of engagement (hotlines and confidential emails were mentioned) for the MNC’s facilities (with no/little involvement of the MNC), creating an independent mechanism which should encourage autonomous reporting and whistleblowing (C2, Vice President, 21/5/19). I believe that this resembles an informal communication network (which, if used, could be argued as an innovative method of identifying labor rights abuses) as workers can directly relay feedback. This is supported as the hotlines exist to “empower workers to raise concerns... if they are not happy with the work or they feel their rights are not respected” (C5, human rights manager, 29/04/2019). In theory, a grievance mechanism, such as an NGO managed hotline resonates with

Tushman and Nadler's (1986, P.89) analogy that "people know who to call and the calls generally solve problems".

However, to be effective, grievance mechanisms should be "delivered in a honest, transparent and consistent way" (E1, business and human rights consultant, 8/5/2019). This means that an environment must be set by the MNC which will encourage workers to trust the mechanisms, by delivering tangible actions from the results. One manager shared that when the NGO receives a call from one of their factories, they relay this to the MNC staff so that they can address the issue (C5, human rights manager, 29/04/2019). Beyond their facilities they have a code of conduct which includes a confidential email for workers to report abuse (C5, human rights manager, 29/04/2019) (see footnote 22, Chapter 4). I think that this is an accurate representation, that grievance mechanisms can be seen as an informal communication network as the worker makes contact when an abuse occurs rather than at a specified time, which will then be passed on to the MNC via an NGO, as and when abuse occurs.

One thing I have wondered about grievance mechanisms is, that although the infrastructure exists, how do workers learn about the existence of these mechanisms. The VP claimed that a success factor should be the methods of internal communication; how information about grievance mechanisms are spread throughout operations (C2, Vice President, 21/5/19). This is an area that requires innovation, as communication tools must be adaptable dependent on the employee, for example a factory and office worker may listen and use different channels. Nuances are important, whether emails will work, or posters and hotlines, right down to the detail

of which messenger app is available in the country to spread information⁹⁶ (C2, Vice President, 21/5/19). The Vice President claimed that a good policy is needed and this has to be communicated effectively so to reach all levels of operation, and as the policy spreads there is hope “that the suppliers will adopt the same practice. If the top tiers are aware, then it should cascade down automatically” (C2, Vice President, 21/5/19).

Results from grievance mechanisms can dictate an MNC’s response to an identified labor issue, and provides new information for the MNC to keep in mind when they conduct other assessments. For example, one manager mentioned that the information gathered from hotlines assist him in preparing the social audit team, therefore he can tailor the auditing approach slightly to specific risks and issues (C5, human rights manager, 29/04/2019). This changing and adapting of an auditing process based on information gathered from a grievance mechanism, shows how informal communication methods can contribute to innovating ways of identifying labor rights. Although the above may appear as a formal communication network at times, I think that the direct feedback, and ‘as and when needed’ style of grievance mechanisms means that they overlap with Tushman and Nadler’s informal communication networks.

Critical Roles

Tushman and Nadler (1986) instruct that four key roles should be developed (but not formalized) to ensure that innovation doesn’t suffer. These can be developed

⁹⁶ Line may be used in Thailand, but in China it is WeChat, therefore MNCs must consider these details (C2, Vice President, 21/5/19).

within the business, and the following outlines each role's label with a brief snapshot of its purpose. These roles are; idea generators (new approaches put forward which link technology to processes), internal entrepreneurs (that make these new ideas tangible), gate-keepers (spreading external information throughout the local team) and mentors (managers which provide informal support to avoid organizational constraints) (Tushman and Nadler 1986, P.89). In a BHR context it is not appropriate to write about each of these roles individually, as from my assessment it is difficult to tell whether they are all equally necessary when innovating in HRDD. Instead, from the interview results, it seems clear that HRSM's at MNCs should incorporate these roles within themselves. I have recognized a few correlating trends between these critical roles and the duty of HRSMs to innovate to identify labor abuses.

We already know that many MNC HRSMs have a civil society background, meaning that they are familiar with human rights, thus seem to be engaged and emotionally invested in this field (as disclosed in section 5.3 subsection 'individuals'). Due to this, I believe that these staff members informally encompass the role of 'idea generator', 'internal entrepreneur' and 'gatekeeper', as it appears that they are often tasked with the responsibility of assisting in the development and innovation of HRDD and other BHR processes within the MNC⁹⁷. As we have seen in previous sections, there are cases where HRSMs have been brought into an MNC with the objective of developing the HRDD process and innovating new ways that their employer can further respect human rights. Therefore, these individuals must have the

⁹⁷ I have not mentioned 'mentors' here as the role of senior leadership, coaching and making resources available will be covered in the next section 'Executive Leadership and Innovation'. The HRSM already has the formal role of developing processes to identify labor abuses so I didn't see it as necessary to explore the informal role they may have as coaches.

space to generate ideas and develop them into tangible results with other departments in the business. Finally, HRSMs are usually representative of their MNCs at external BHR events and when building partnerships with other BHR actors, such as civil society and government agencies, which fulfills the role of gatekeeper as they listen to outside sources which is vital for innovation (Tushman and Nadler 1986, P.89).

Drawing on a secondary source, these critical roles conducted by a HRSM are evident through the case of Thai-Union's Global Director of Corporate Affairs and Sustainability, Dr. Darian McBain. Her efforts have led to international recognition, that Thai-Union are actively trying to address labor rights issues in their supply chains. This has been represented in the accolades she has received, such as the "Ethical Corporation's Sustainable Leadership award" (Balch 2018). On acceptance of this award an article (Balch, 2018) was published which I believe demonstrates how Dr. McBain has been a critical role in her MNC's innovation to identify and address labor abuses.

With a science and engineering background McBain is an idea generator with a "solutions-orientated" mindset (Balch 2018). This contributed to the innovation (which was implemented) of using satellite communication on fishing vessels so that labor abuses could be reported out at sea (Balch 2018). In addition, under McBain's watch, Thai-Union were one of the first businesses to abolish recruitment fees for workers employed in their factories and sites, so to tackle debt bondage (Balch 2018). I believe that this demonstrates how an individual (and MNC) can champion a cause, in the similar way that an internal entrepreneur does, which leads to "tangible innovations" (Tushman and Nadler 1986, P.89).

Due to the negative connotations attached to the fishing industry when McBain was appointed, she welcomed feedback on the sustainability policies that they were developing from civil society, some of which came to work with the MNC (Balch 2018). In her position, McBain held a seat on the Thai-Union board, and in combination with “personal attributes such as vision, strategic thinking and persistence” it is possible to achieve change (Balch 2018). McBain believes that if influencers can see the logic behind the proposed change, then they are open to it (Balch 2018). This is reminiscent of a Tushman and Nadler’s ‘gatekeeper’ as the HRSM should be monitoring and collecting feedback regarding identifying human rights and the current issues in that context, beyond their role. From this, “they acquire, translate, and distribute external information throughout” (Tushman and Nadler 1986, P.89) the business. The example of Dr. McBain, I believe proves that the HRSM at an MNC must embrace the responsibility to take on the critical roles of gatekeeper, internal entrepreneur and idea generator as this is necessary when innovating to identify labor rights.

Conflict Resolution and Problem Solving

Due to its disruptive nature, innovation is bound to cause conflicts in a business, as different departments have their own perceptions and priorities (Tushman and Nadler 1986, P.90). Throughout the thesis we have seen how HRDD should engage multiple departments and not be left to the HRSM and sustainability teams. Due to this, responsible businesses are bound to have conflicts across departments, whether that be sourcing, business development, sustainability, as they innovate methods to identify labor rights abuses in their supply chains.

Furthermore, similar to many of Tushman and Nadler's critical factors of organizational innovation, this need for informal conflict resolution permeates beyond the business, into the supply chain (suppliers and other partners), and other stakeholders (civil society and the government). My research supports that conflict resolution is a key factor when innovating to identify labor rights. Over the next few paragraphs I demonstrate how HRDD (and the UNGPs more widely) solves problems and allows for innovation in the BHR space, by nurturing civil society and private sector relationships, and birthing language which makes respecting human rights accessible for all.

Abuses of labor rights in an MNCs supply chain are problems in themselves which need a resolution through innovations from a number of actors. I personally believe one of the most profound innovations in the BHR space has been the growing relationships between business and NGOs, as both actors realize alone they do not have the capacity to identify and address labor rights in complex supply chains. These relationships, dubbed "social alliances", have often been unsuccessful "mainly because of the complexity of their management" (Barroso-Méndez et al. 2014, P.2). For example, in Thailand, there is still evidence of negative relationships between NGOs and businesses, as Chapter 4 details, this is due to misunderstandings and trust issues, leading to stereotyping and a lack of "constructive dialogues" (E1, business and human rights consultant, 8/5/2019). With this said, it is worth remembering that NGOs and businesses are different conceptually, which means that it may not be in the interest of every NGO to partner with business.

Having a capable mediator will assist in building a business and NGO partnership, and there are progressive organizations in Thailand to help bridge that gap (E1, business and human rights consultant, 8/5/2019). As referred to in section 5.4, one expert believes that the most profound innovation in this space “is when stakeholders put aside their differences to make a shared value partnership, to really tackle problems” (E1, business and human rights consultant, 8/5/2019). “This mutual interest, fueled by the private sector's assets, skills, and investment potential ... can help scale NGO impact in sustainable ways” (Peterson 2012).

Therefore the concept of a ‘shared value partnership’ is in itself a problem solving mechanism as it finds common value between varying stakeholders and brings them together so to amalgamate resources and risk which can lead to innovation (E1, business and human rights consultant, 8/5/2019). As section 5.4 demonstrates, I have placed shared value partnerships under formal linking mechanisms as they align the goals of multiple stakeholders, however the result is to solve a problem, hence why it is included here. It is thus a formal linking mechanism and problem solving process (formally and informally). This leads to innovation amongst actors as NGOs realize that those they are trying to serve may also be placed within an MNC’s supply chain, thus “NGOs should take the time to investigate their own specific shared value opportunities” (Peterson 2012).

Secondly, it deserves unpacking as to how HRDD, and the UNGPs, are problem solving processes in themselves. They are a “disruptive phenomenon” (Tushman and Nadler 1986, P.90), and have the potential to cause conflicts and collaborations between BHR actors in their implementation. HRDD has created a

focal point which communicates to all BHR actors by laying out how human rights can be respected “across all different sectors and industries” (Grosse and Meyer 2019, P.380). This creates an accessible platform for collaboration and innovation.

However, I do not think that HRDD can be called an informal method of conflict resolution or problem solving, even if it does “provide constructive ways to resolve” (Tushman and Nadler 1986, P.90) problems related to BHR. HRDD is able to do this because it directly links to the business nature of MNCs, as emphasized in chapter three, and when carried out correctly it can change, or at least shape a business’ core processes to “provide effective safeguards against violations of human rights”(Grosse and Meyer 2019 P.381).

Section 5.3 (under individuals) and earlier in this section (under communication networks) highlighted the role of standardized language (due to HRDD and UNGPs), which assists with cross sectoral understandings (C1, senior manager, 1/5/2019). As one MNC staff member claimed, if you show members of a business the universal declaration of human rights (UDHR) “they don’t get it”, but when you make it relevant to corporates (which HRDD does) “they listen”, thus the language is important (C2, Vice President, 21/5/19). HRDD is therefore creating an “overarching process” (Grosse and Meyer 2019 P. 380) which solves the problem of making human rights relevant to business processes.

In sum, HRDD has contributed towards solving the problem of making human rights relevant and understandable to business, and creating a rallying platform which civil society and business can collaborate and innovate to identify labor rights abuses. The standardizing of language, and the shared value partnership model do not neatly

fit into Tushman and Nadler's 'informal conflict resolution and problem solving' critical factor, however they have profoundly contributed to solving BHR problems.

5.6 EXECUTIVE LEADERSHIP AND INNOVATION

Innovation will exist when leaders of a business clearly communicate its importance, which can take place in multiple ways (Tushman and Nadler 1986, P.90). Firstly, the strategy of what and how to innovate should be clear and examples set, as ambiguity leaves employees resorting to the status quo (Tushman and Nadler 1986, P.90). Setting the "tone at the top" is important (C2, Vice President, 21/5/19) whether that is in the business, or supply chain. As the VP stressed, his MNC had support from executive leadership to focus on BHR issues, meaning his MNC was taking a leading role in their sector, as they want to implement the UNGPs in their group and across the industry (C2, Vice President, 21/5/19). Similar to Tushman and Nadler, the VP believed that leadership in the BHR space can make a difference when trying to encourage innovation to identify labor abuses in the supply chain, however this must be supported with resources, tools, passion and understanding (C2, Vice President, 21/5/19) and could be incentivized (which is Tushman and Nadler's second leadership method of encouraging innovation). Therefore, an MNC must take leadership in identifying labor rights abuses across the whole supply chain, as this has the potential to encourage innovation by business partners (E1, E3).

Tushman and Nadler (1986, P.91) claim that a business' history can shape or constrain current behavior surrounding innovation, so new visions and heroes are necessary. Developing this notion beyond a business, a whole sector may have a history which constrains or encourages innovation. The Thai fishing industry offers an accurate example of how history can shape innovation. Due to the labor and human

rights abuses which have been reported over the last decade, there exists a “global notoriety for Thailand's seafood sector, as one of the most abusive and destructive economic sectors in the world” (Trent 2019). Although this had commercial repercussions for businesses (Trent 2019), it encouraged MNCs to innovate new methods of identifying and addressing labor rights abuses.

Returning to the example of Thai-Union (section 5.4 under critical roles) it has been reported that due to the company being associated with the scandal it became more open to change (Balch 2018), and this is most likely what led to innovations, such as a digital traceability pilot project (Panyaarvudh 2018) and communications systems on fishing vessels so abuses could be reported (Balch 2018). Now recognized for their efforts, Thai-Union have been acclaimed for combatting labor abuses in supply chains (Panyaarvudh 2018). One of the managers, whose MNC imported seafood from Thailand, highlighted that it was new (interpreted as innovative) to see a supplier take lead and responsibility for what was going on in the supply chain (C1, senior manager, 1/5/2019) thus demonstrating that “key crises, events, prior executives, organizational myths, and heroes all shape and constrain current behavior” (Tushman and Nadler 1986, P.91).

Tushman and Nadler also believe that leadership must invest in a capable team which has technical and social skills, and the ability to problem solve and be alert to external risks and opportunities (Tushman and Nadler 1986, P.91). Similarly, in the BHR field, staffing is important, as it “reflects how much resources a company is willing to put into that particular aspect of a business” (E5, Labor Rights Expert, 9/5/2019). Added to this, having focused in-country staff gives an MNC a greater

understanding of the supply chain context and better opportunity to work with stakeholders (E5, Labor Rights Expert, 9/5/2019). One of the MNC managers (C3) shared this view, and the benefits of having an in-country staff member can be seen in section 5.4 (under joint evaluation). This manager would strongly advise dedicated regional resources, which are very operational and engage with internal teams and external suppliers, because it drives greater awareness (C3, Human Rights Manager, 3/5/2019).

It seems unanimous that a larger sustainability team will lead to a more successful effort when identifying labor rights in the supply chain, and leadership should innovate to make this happen (by employing staff in specific geographies) and give their teams space and support to be innovative, such as in the case of Thai-Union (see section 5.4 under critical roles). However, referring back to the start of this chapter (5.3 under individuals, and 5.4 under join evaluation), the potential of this team will be limited if they are isolated from other departments (E3, E5, E7), therefore executive leadership must make sure this team is connected to, and supported by other departments in the HRDD process (E3, BHR Academic, 23/05/2019). With this in mind, Tushman and Nadler (1986, P.91) stress that as the innovation changes, so must the nature of the team, however I would argue that this is not applicable here. Rather, leadership must give the (sustainability) team autonomy to conduct HRDD, so that they can direct the process clearly⁹⁸and innovate with specific departments when necessary⁹⁹.

⁹⁸ This notion of a “single voice” is one that Tushman and Nadler (1986, P.92) support so that innovation doesn’t get affected by “organizational politics”.

⁹⁹ For example they may need to innovate new processes with HR, and other ones with legal and auditing teams.

Finally, innovation requires a visionary leader who has a clear direction, and the three behaviors Tushman and Nadler (1986, P.92) claim enact this are an ability to ‘envision’, ‘energize’ and ‘enable’ this vision throughout their business. This is also the case when respecting human rights as executives are needed to drive the importance of human rights in the business (E1, business and human rights consultant, 8/5/2019,). Thus, it can be assumed that the most innovative and responsible MNCs (in a human rights context) are those with executives that recognize the importance of this issue. As one expert claimed, if “C-suite”¹⁰⁰ see the importance of the issue¹⁰¹ they will immediately take their entire business along with them (E2, Modern Day Slavery Expert, 23/4/2019). This was supported in the interviews as four of the five MNC staff I spoke to cited leadership as a defining factor as to why their MNC was innovating in the area of BHR.

The VP mentioned that three years ago staff proposed to conduct HRDD in 60% of the business, but the CEO said “no, 60% is too low, we need 100%”, he concluded that it was better to set an ambitious goal (C2, Vice President, 21/5/19). Another manager shared how their CEO decided that sustainability was at the “heart” of the business strategy (C5, human rights manager, 29/04/2019). These are examples of how leaders can set the “tone at the top” (C2, Vice President, 21/5/19), and feed a vision into their employees and operations. I suspect that if a CEO is making themselves available and proactively engaging with the HRSM then this will project “optimism, and enthusiasm” (Tushman and Nadler 1986, P92). One of the managers stressed that they had formal channels for updating, and receiving feedback from their

¹⁰⁰ With reference to executive level managers

¹⁰¹ Modern slavery in this case.

CEO, due to his interest in human rights standards (C4, Head of Human Rights, 2/5/2019). It is important for leadership to envision and energize a respect for human rights, however to achieve innovation in this space they must also enable their teams to do so by approving the process¹⁰².

5.7 CHAPTER CONCLUSION

Businesses “cannot stand still” (Tushman and Nadler’s 1986, P.92), this thesis posits that this observation is as relevant in a human rights context. Therefore, in HRDD, MNCs should not lose momentum on continually trying to improve the process through innovation. At this point, this thesis has demonstrated the importance of innovation for an effective HRDD process, this chapter has considered whether the same critical factors which lead to organizational innovation and market success, also lead to success in identifying labor rights abuses and a more responsible, effective HRDD.

The above analysis shows that the majority of Tushman and Nadler’s critical factors for managing organizational innovation also bear some relevance in a BHR context. It is worth noting that Tushman and Nadler’s theory is based on critical factors which occur at an organizational level (one entity), however in this chapter I argue that these factors must be addressed beyond this, and at various parts of the supply chain (such as training suppliers in human rights). Businesses of all sizes can use these factors as a framework to reflect and ideate whether they are nurturing an environment which will lead to innovation in the identification of labor rights. So not

¹⁰² One manager mentioned that when he joined his MNC he already had approval from the CEO to innovate (C1, senior manager, 1/5/2019).

to simply repeat each of the chapter's sections, the below table (table 4) summarizes the key findings from the comparative analysis over the last few pages.

Table 4: Summary table of how the critical factors of organizational innovation apply to HRDD

Critical Factor of Organizational Innovation	How this is applied in a human rights context to increase innovation in the HRDD process.
<p>5.3</p> <p>INDIVIDUALS</p>	<ul style="list-style-type: none"> • A permanent multiskilled individual, who oversees a specialized human rights team (in reality these appear to be under ten people, hence why a 'top team' is unrequired). • The skills Tushman and Nadler require a 'top team' to have can be absorbed by an individual HRSM. • The HRSM is required to build enthusiasm about the subject (identifying labor rights) within the business by making it understandable and relevant. • The HRSM must be knowledgeable about labor rights. • The HRSM should be a skilled collaborator as they are required to learn from multiple sources, including suppliers and NGOs, and foster partnerships.

5.4 FORMAL ORGANIZATION ARRANGEMENT	
Formal Linking Mechanisms	<ul style="list-style-type: none"> • I see great value in teams, committees and forums, as these encourage collaborations and problem solving across departments (e.g. within the MNC), competitors (e.g. working on common issues with competitors) and the sectors (e.g. forming partnerships with NGOs).
Organization Designs For Venturing and Entrepreneurship	<ul style="list-style-type: none"> • Using the same ‘venturing’ principle, but by different means, MNCs can fund innovations that address identification challenges (highlighted in Chapter 4, such as language), by partnering with institutes and agencies that are experts in this area.
Incentives	<ul style="list-style-type: none"> • Working in a different way to Tushman and Nadler’s suggestion, incentives can operate at a different level as they are adopted by MNCs when they design contracts with suppliers, thus it is encouraged that responsible practice be rewarded.
Joint Evaluation, Staffing and Appraisal	<ul style="list-style-type: none"> • To avoid the potential isolation of sustainability teams etc. from important business decisions, MNCs should consider the ways that these team’s influence can be amplified through joint evaluation.

Job Design, Job Rotation and Careers	<ul style="list-style-type: none"> • Having a HRSM with a varied career path, with experience in the different facets of BHR (e.g. having NGO experience) brings value, such as having insights into how to work with civil society.
Education	<ul style="list-style-type: none"> • Education should include trainings within the supply chain so that those placed in risk areas are equipped with suitable knowledge.
5.5 INFORMAL ORGANIZATION	
Core Values and Norms	<ul style="list-style-type: none"> • If an MNC is serious about respecting labor rights, then it may help to have this embedded in their value system, in the way that Unilever does, as this sets expectations to employees and partners, and could therefore encourage those actors to come forward with innovative suggestions to identify rights abuses¹⁰³.
Rewarding Risk	<ul style="list-style-type: none"> • Working differently, it is encouraged, that MNCs take on the responsibility to start looking for potential areas of abuse in their supply chains.
Communication Networks	<ul style="list-style-type: none"> • Vital in HRDD across the supply chain, and differing to Tushman and Nadler's opinion, they should be formalized given the importance of the issue.

¹⁰³ It goes without saying that values are worthless if they are not followed and enforced. Merely having human rights related values is not enough.

	<ul style="list-style-type: none"> • However, with this said, in some circumstances there may be value in having informal and simple methods of communication, especially given that human rights is a sensitive topic, for example in the case of migrant laborers reporting abuse, they may fear retaliation from an employer so feel more comfortable communicating with NGOs in a less official way
Critical Roles	<ul style="list-style-type: none"> • There is merit in the HRSM possessing the same traits as these roles. • There's value in them having the capacity to generate ideas, and an entrepreneurial spirit which results in "tangible innovations" (Tushman and Nadler 1986), which are not profit driven. • Furthermore, it is important that the HRSM is a gatekeeper as they are required to collaborate , and learn about their topic from different actors.
Conflict Resolution and Problem Solving	<ul style="list-style-type: none"> • The UNGPs, which are an innovation in themselves, prescribe business with an explicit responsibility, allowing other actors to hold MNCs accountable. • It is important for MNCs to capitalize on the UNGPs, by building partnerships with civil society, in the hope of innovating together.

	<ul style="list-style-type: none"> • An innovative method in doing so was shown through shared value partnerships.
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By acknowledging the critical factors related to ‘individuals’, ‘formal organizational arrangements’ and ‘informal organization’, it is evident that MNCs can manage and encourage the innovation of identifying labor rights in their supply chains. My research suggests that it is effective when these critical factors include, encourage or result in; collaboration, the formation of channels of communication, capacity building, and management within the MNC and the supply chain as a whole. Therefore executive leadership has an imperative role, as MNCs at the top of supply chains, and their leading staff (CEOs etc.) should thrive towards an environment where innovating to identify labor rights is encouraged and possible through a clear vision, backed up by the necessary resources. This, like with other innovations, can be a defining factor and should therefore be a target for BHR civil society who are looking to work with MNCs. This, and the preceding paragraphs, demonstrate that innovation in a market driven sense and human rights context share many of the same critical factors in principle, however the details and scale at which they operate do need adjusting, as the above has attempted to do.



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CHAPTER VI

CONCLUSION AND RECOMMENDATIONS.

6.1 REVIEW OF THE FINDINGS

The UNGPs release in 2011 saw the enactment of the most complete BHR regime in history, with one of its defining features being the duty to respect human rights placed on businesses, based on moral and legal groundings. This prescription of a direct business duty has provided a point of reference, and a platform for those impacted by the actions of business, civil society and other BHR actors, through the measurable expectation to respect all human rights.

“The UNGPs reaffirm that business enterprises must comply with all applicable laws. Beyond legal compliance, they also stipulate that enterprises have the responsibility to respect human rights, irrespective of a state’s willingness or ability to enforce the law” (Ruggie 2017, P.13)

One of the most defining features of the UNGPs, and the duty to respect human rights, is the invention of HRDD, which lies at the center of the regime. This process exists to make human rights understandable and relatable to business, with the main emphasis being that human rights are the marker of assessment, and not domestic law. The first step of the HRDD process is the identification and assessment of rights impacts related to the businesses operations, with all mitigation, addressment and remediation stemming from this. Given the vastness and resources available to MNCs, they were selected as the unit of study. This is of interest especially when one considers that there is a lot of diversity between MNCs and their duty to respect human rights, with many falling short of what is expected of them in the HRDD process. Human rights are incredibly broad, so it was necessary to focus on a specific

set of rights, and based on the growth in consumer awareness, benchmarks, media coverage of modern day slavery, and expanding legal landscape, labor rights were selected. Therefore this research considered MNCs at the top of the supply chain, operating in multiple nations, however a specific focus was given to Thailand, largely because of the nation's large manufacturing sector which feeds into many MNC supply chains. Furthermore, some of the nation's sectors have come under scrutiny for labor rights abuses in the past.

Largely through primary, but also secondary research, this thesis has aimed to deepen academic understandings of the identification of labor rights issues in MNC supply chains, as prescribed in HRDD. As HRDD calls for businesses to go beyond local law, new processes are required, with the most responsible businesses being proactive in doing this by innovating in various ways. Due to the newness of the UNGP regime, this thesis has considered the extent to which innovation has been necessary in the delivery of the HRDD process. It has done this by asking the question:

In Human Rights Due Diligence, to what extent is innovation required in identifying labor rights abuses in MNC supply chains, with a specific focus on Thailand?

This question was answered in this thesis by pursuing the following objectives.

To examine the extent to which the new operating system set out by the UNGPs and HRDD impacted MNCs.

As Chapter 2 demonstrates, HRDD has been regarded as imperative to corporate responsibility in the BHR age, and Chapter 3 explored the impacts of this

on business. In doing so, this has assisted in explaining why there is a need to innovate when conducting HRDD.

One of the successes of HRDD and the UNGPs is the potential it offers in uniting different actors through shared language. States, businesses and civil society have a common regime which they can collaborate over, and work towards, which also holds actors accountable. This encourages the innovation of new partnerships, the most common being between MNCs and civil society, as the former brings the latter into the HRDD process. Furthermore, HRDD has made human rights accessible and understandable to the business world, and, given the findings, this has resulted in some corporate changes, such as; the employment of new staff, cultivating of diverse partnerships, and collaborating with competitors to address common issues. Therefore, the new operating system that prescribes HRDD, does inspire innovation, as it encourages MNCs to make changes, however the degree of these changes will be down to a number of specific factors which vary from MNC. There have been other contributing factors which have led to these changes too, and these seem to have been influenced by the UNGPs more widely, such as the emergence of BHR legislation, and sectors falling into the ‘global spotlight’¹⁰⁴, such as Thailand’s fishing sector.

In addition, I set out to investigate whether HRDD confused MNCs given it’s interpretive and flexible nature, as the literature review (Chapter 2) had suggested. Findings demonstrate that all actors agreed that the HRDD process had clear steps laid out, and although there was still room for interpretation in the implementation, this was less the case now than in 2011 (when they first released). Even with that said,

¹⁰⁴ Here the global spotlight refers to a human rights abuses which become visible and mainstream news, therefore impacting businesses by making them enact changes.

it would still be helpful for all businesses, if they were provided further operational guidance, such as how to budget for HRDD etc. However given the different sizes of business that exist, this flexibility is still required to a degree, while smaller businesses get onboard. This doesn't excuse the fact that businesses of all sizes have had eight years (at the time of writing) to implement and improve their HRDD processes by experimenting, attempting and learning from experience. Therefore, MNCs should be using international human rights as a minimum standard when identifying labor rights in their supply chain, rather than local domestic law, and there is evidence that this can require innovation.

There is no doubt that all interviewees recognized the importance of HRDD, with a specific focus on identifying labor rights abuses in supply chains, and that this responsibility, largely belonged to business. Unanimously, from the research, it is agreed that business have a moral obligation to identify labor rights abuses in their supply chains, and the UNGPs have assisted with this understanding. I discovered that some MNCs recognized this responsibility before the UNGPs and may have been running human rights specific assessments, meaning that when the UNGPs called for HRDD some MNCs were better prepared than others. Revelations such as this explain why some MNCs have found the formulating of processes for HRDD less effort than others. I think that HRDD has led MNCs and other BHR actors to further appreciate a nexus between a moral obligation (which the business world has to identify labor rights), and the commercial risk it runs in not doing so, which motivates MNCs to innovate in the HRDD process. However, there is still certainly a worry that in Thailand, as with other manufacturing heavy nations, that this message may not be

felt, and that the majority of businesses see HRDD as a strategy for risk avoidance rather than a moral imperative (E5, Labor Rights Expert, 9/5/2019).

To determine the measures taken by MNCs operating in Thailand to successfully identify labor rights impacts in their supply chain, and to analyze the challenges they face in doing this.

This objective drew predominantly on examples from Thailand, however sharing some insights from other nations also offered interesting findings. Interestingly, as Chapter 4 explores, there seems to be an abundance of guidelines and material online that relates to the UNGPs, however it is not clear how knowledgeable MNCs are about them, and the effectiveness of these guidelines. Analyzing one of these guidelines (ETI HRDD) amongst other secondary sources, and combining this with the primary data results, it is clear that the majority of the BHR community believe ‘meaningful consultation’, put alternatively as stakeholder engagement, is one of, if not the most fundamental feature of identifying labor rights abuses. Therefore care should be taken as to who is identified as a stakeholder when considering labor rights, and what type of stakeholder are they.

Methods of conventional compliance, such as auditing and risk assessments, can be used in HRDD, however they must go beyond assessing business risks by looking at labor rights as the measure, which may result in the adjustment and modifying of these methods. Therefore, it appears vital that an MNC starts with an extensive mapping exercise of their supply chain so to assess all the areas they impact, but furthermore to identify their stakeholders, from those impacted (dependent stakeholders), to those that can strengthen the identification of labor rights

abuses (potential dominant stakeholders). From this they will be able to then innovate ways in which to identify potential labor rights abuses and engage with stakeholders, especially those that are most vulnerable. When carrying out stakeholder engagement itself, MNCs should; build the capacity of their suppliers to assist in the engagement, work with civil society so to develop their own understanding of localized human rights issues, and show the results of stakeholder engagement so to build trust in the supply chain. These are all areas that offer room for innovation.

The main tools that I have recognized MNCs using to identify labor rights issues in their supply chains during HRDD are; audits, HRIAs and WV programs (which are closely linked to grievance mechanisms). These can all be conducted in a variety of ways, so must be adopted with a specific labor rights lens, however they all have limitations, which again demonstrates why innovating beyond standard compliance is preferable. Auditing can overlook important issues given the manner in which it is conducted, and the process can even be manipulated by those being audited. There is no set way of conducting HRIAs, however it is crucial that they involve the participation of those affected, and should be adapted to different scales and sectors. One way of having participation from those affected is to build worker representation in the supply chain through WV programs. These can be multipronged through a combination of anonymous hotlines to committees, encouraging an environment where workers can associate, and engage with the MNC and other BHR actors. However, as emphasized, these should not be seen as a replacement of unions, but rather a supporting mechanism. As detailed in Chapter 4, these tools are effective to a degree when employed with care and through collaborations, however they all

face challenges, meaning that MNCs should continually look to improve their HRDD process through innovation.

To evaluate whether the same critical factors which lead to organizational innovation resulting in market success, also lead to innovation in the HRDD process.

Chapter 5 compared the extent to which Tushman and Nadler's critical factors can be adopted for innovation in the identification of labor rights. It is clear that not all of these critical factors offer a direct fit when the motive for innovation changes, however with some adjustments Tushman and Nadler's theory can offer inspiration and ideas as to how MNCs can strengthen their HRDD process. The adjustments which I have made to this theory are detailed throughout Chapter 5, and reemphasized in its conclusion, they are mainly about matters of scale, meaning that these factors should be considered across the whole supply chain, and not just within the MNC. They also reemphasize the importance of collaboration, and having an extremely capable and mobile human rights staff member or team. In sum, it seems that if MNCs focus on 'individuals', 'formal organizational arrangements', and 'informal organization' across the supply chain, then factors can be addressed which could lead to further innovation in HRDD.

This section has shown how the findings of this research have met the objective laid out, which has demonstrated that innovation in the HRDD process is key in identifying labor rights in the supply chain, and this is the case for MNCs operating in Thailand and other parts of the world. These findings show how the HRDD process has impacted MNCs, making innovation almost unavoidable for those

businesses wanting to respect human rights. It has also given insights into how MNCs are currently identifying labor rights abuses in their supply chains and the challenges which remain, thus demonstrating that innovation plays a role in addressing these challenges. Finally, this thesis does not want to give off the impression that innovation just appears, and therefore offers insights as to which critical factors lead to innovation in the HRDD process, whether that is in Thailand or other parts of the world. To answer the questions laid forth in the introduction (Chapter 1), innovation is required in HRDD when identifying labor rights abuses, because;

- 1) The UNGPs prescribe that business use human rights as a measure when identifying their impacts on various parts of the supply chain. This means that under HRDD, traditional compliance should be adapted to the measure of international human rights, and this will require innovations to varying degrees which balance moral obligations and commercial risks.
- 2) MNCs are currently identifying labor rights abuses through a number of tools, and these are mainly audits, HRIAs, and WV programs. Although these tools offer useful qualities for fulfilling this purpose, they all have shortcomings which can be exacerbated dependent on the context (e.g. auditing in Thailand can be very problematic for identifying labor rights abuses given the large migrant workforces). Therefore it is important that MNCs continue to innovate these tools, and consider new identification methods.
- 3) As identifying labor rights is a complex issue which spreads across the whole of a supply chain, the scale at which the critical factors for sustaining organizational innovation must be adapted. In doing so, Tushman and Nadler's

critical factors for innovation can become relevant to varying degrees in the HRDD process.

The UNGPs call for business to continuously improve their HRDD process, and this thesis shows that some MNCs are trying to do this by innovating the ways in which they identify labor rights abuses in their supply chains. It is not possible to reduce the contents of this complex topic to one all-encompassing statement, however it is clear from this thesis that if HRDD is to be delivered in an effective way that accounts for moral and commercial risks to the labor rights of those in a supply chain, then MNCs should innovate in the identification of labor rights impacts. This is especially the case in the area of stakeholder engagement, and this requirement demands innovation in the; scope of stakeholders and methods of engagement so that those most vulnerable are represented. Although classic means of compliance can be used in the identification of labor rights, it appears that many of these have shortcomings and therefore the most responsible MNCs are looking at the ways they can innovate beyond this, by exploring the ways in which they can further worker representation. From the insights gathered, the next section offers recommendations as to what MNCs should consider when identifying labor rights abuses, as well as areas of future study.

6.2 RECOMMENDATIONS

The overarching goal of this thesis has been to highlight how responsible MNCs are identifying labor rights abuses in their supply chains, and why it is necessary for MNCs to innovate in the HRDD process, and what can be done to encourage this. MNCs and other BHR actors continue to innovate in this space, and below are a few recommendations for business, based on the research.

6.2.1 Recommendations for MNCs

1) Start with an assessment of the complete supply chain after an extensive mapping of all operations and stakeholders.

MNCs should not just devise a human rights policy and then try to follow it. They should first map and assess their operations and then build a human rights policy based on those findings. The mapping and HRIA should be done at a number of levels (nation and sector specific) in collaboration with those affected, knowledgeable civil society, and other relevant departments in the MNC. Supply chains are not static, therefore MNCs should be continually innovating ways to learn about them.

2) Build the autonomy, effectiveness and influence of the human rights and sustainability teams.

Nowadays many MNCs have a sustainability department, and even a human rights team, however there are worries that these units of experts are limited in the influence and impact that they can have when identifying labor rights abuses. Therefore, it is encouraged that MNCs look to ensure that the team responsible for human rights is not isolated from other relevant departments, such as the HR, legal, business development, procurement and even factory managers. Working and engaging with these departments can result in two notable positives. One, these departments, which may be encountering areas of risk in the supply chain can learn about labor rights, which will therefore equip them with the knowledge they need to identify abuses and make human rights informed decisions. Secondly, human rights experts (from within the MNC) can offer human rights guidance in a variety of

procedures, such as selecting and signing contracts with suppliers. Therefore, MNCs should look at formalizing these working relationships and shared responsibilities.

However, before the above, it is important that MNCs recognize the importance of HRDD and therefore hire a human rights expert (or somebody at least with human rights knowledge) to manage and innovate the process. As demonstrated in Chapter 5, being a human rights manager in an MNC is a multifaceted role, therefore it is important that the individual is an effective collaborator, problem solver, idea generator and gatekeeper. Having a varied career path with some human rights experience should assist in this. Furthermore, if they can be supported with a small team then this will only add to the effectiveness of the HRDD process, especially if these staff members are located in, or have access to risky geographies in the supply chain as one human rights manager suggested (C3). This offers more support to suppliers, and provides the MNC with a ‘critical friend’.

3) Understanding that no supply chain is the same, therefore collaboration is key for innovation.

Supply chains vary vastly depending on the product or service, and with this so does the local context in which they carve through. For example, large parts of Thailand’s manufacturing industry is reliant of migrant labor from Laos, Cambodia and Myanmar. It is important that MNCs look to understand local phenomena by innovating partnerships with local NGOs and other civil society, who can assist in versing the MNC in related issues (such as ethical recruitment, discrimination and forced labor) and how they can be mitigated. For example in Thailand, knowing that migrant labor is prevalent will allow a responsible MNC to make sure that their

language needs are catered for when they are engaged with, whether this is through auditing or grievance mechanisms, and that all, but especially vulnerable groups are fairly represented in WV programs (especially when there are limitations on unions). These collaborations could look a number of ways, however I propose a combination of; working with a labor rights institution that specializes in strengthening the HRDD process, and partnering with local NGOs and even human rights defenders that can offer advice, assist with communications and grievances, or even visit and research the MNCs sites (over a number of weeks).

4) Supporting Innovation in the Supply Chain.

Findings from this research show that MNCs and other BHR actors are extremely conscious that suppliers and other smaller businesses within the supply chain need to not be seen as the problem, but rather as a solution to the problem. Referring to Mitchell et al's (1997) stakeholder theory, MNCs should still consider their suppliers as 'dependent stakeholders', however they should be looking at ways of making them 'dominant stakeholders' for their workforces. In other words, MNCs should be innovating ways in which they can build the human rights capacity of their business partners, so that these enterprises are equipped with the knowledge and resources to protect their workforces. If this happens, then there is potential for the same to cascade further down the supply chain, which is necessary, as it appears that most of the innovations in HRDD at the moment are still happening within MNC facilities. Therefore, MNCs should be innovative in the ways that they exercise leverage and influence in the supply chain. Some suggestions as to ways that MNCs

can get started on this were to; offer funding as part of a CSR program, and to design and conduct labor rights training in a way that is interesting and practical.

6.2.2 Recommendations for further research

As this thesis has covered a vast topic, the identification of labor rights abuses in MNC supply chains and the role of innovation, it has resulted in multiple questions that require answering. Therefore, I put forward a number of recommendations for future research, some of these are related specifically to Thailand and others are related to the business duty to respecting human rights more widely.

1) Further study on Workers Representation in Thailand.

A number of the MNC staff interviewed, mentioned that they were looking to improve worker's representation, or WV programs in their supply chains, and one expert even mentioned that a study should be conducted on such programs (E1, business and human rights consultant, 8/5/2019). Thailand could offer an interesting location to conduct such a study, given the large migrant workforce. Approaches and the results of increasing migrant workers' representation could be compared. It would also be interesting to see if, and how such approaches were looking to mitigate trust and fear, as some migrant workers worry that reporting labor abuse may end in employer retaliation, and if so how they were doing so.

2) Extensive study on the different HRDD guidelines and supporting documentation.

From the research undertaken for this thesis, it would be beneficial for a future study to research and evaluate the wealth of UNGP and HRDD guiding

documentation that is now available. Not only would this assist MNCs in selecting the most effective guiding framework for their operations, but it would also offer insights into what is missing in current supporting documents. Conducting such an analysis has been proposed by Mares (2018), who also acknowledges that an abundance of work on HRDD exists.

3) An analysis of sustainability teams, and the factors for success in respecting human rights.

As the research has shown, sustainability and human rights teams are often the human rights guardians of an MNC, and are responsible for the corresponding processes, such as HRDD. However there is concern that these knowledgeable units are sometimes underutilized, or worse, isolated from the rest of the business, meaning that their effectiveness could be limited, which could impact an MNC's respect of human rights. It would be beneficial to study these teams, with the aim of finding out what the teams do, and how this varies across MNCs, and what are the limiting or empowering factors for these teams to succeed in their roles.

4) Building the capacity of suppliers and SMEs in the supply chain.

Similarly to the recommendation to business, a sector specific, nation specific, cross sector, or cross nation study could offer insights into how MNCs are supporting business partners in the supply chain, and the problems which they face in doing so.

5) Research the impacts of the Thai National Action Plan on Business and Human Rights on domestic and foreign MNCs in Thailand.

I originally intended to research the above, however the NAP was not released during the period that I conducted my research. Although I learnt about the formulation process of the NAP, I didn't feel qualified to analyze it in the context of this thesis, which is; what does it mean for MNCs and their HRDD processes. For example, will it encourage them to innovate on, or develop new practices of identifying labor rights in their supply chains? Once the NAP has been released for a duration of perhaps six months to a year, this could be an interesting topic of research to pursue.



REFERENCES

Aizawa, M., & Blackwell, S. (2016, June 20). Where have the UN Guiding Principles Taken Us and Where Do We Go Next? Retrieved June 5, 2019, from <https://www.ihrb.org/focus-areas/finance/commentary-where-guiding-principles-taken-us-where-next>

Allison-Hope, D., & Park, J. (2018, December 11). Are You Prepared for the Future of Business and Human Rights? | *Blog*. Retrieved June 2, 2019, from <https://www.bsr.org/en/our-insights/blog-view/are-you-prepared-for-the-future-of-business-and-human-rights>

Andvig, E. (2019, May 24). Corporations must help shape a better world – or risk being left behind. Retrieved May 28, 2019, from <https://www.weforum.org/agenda/2019/05/corporations-businesses-better-world-human-rights-corruption-environmental-social-responsibilities/>

Anner, M. (2018). CSR Participation Committees, Wildcat Strikes and the Sourcing Squeeze in Global Supply Chains. *British Journal of Industrial Relations*, 56(1), 75–98. <https://doi.org/10.1111/bjir.12275>

Arnold, D. G. (2016). Corporations and Human Rights Obligations. *Business and Human Rights Journal*, 1, 255–276.

Baker, E. (2018, August 18). Nestle says slavery reporting requirements could cost customers. Retrieved from <https://www.smh.com.au/politics/federal/nestle-says-slavery-reporting-requirements-could-cost-customers-20180816-p4zy5l.html>

Balch, O. (2018). How Darian McBain brought about a sea change in sustainable fishing. *Ethical Corporation*. Retrieved 28 September 2019, from <http://www.ethicalcorp.com/how-darian-mcbain-brought-about-sea-change-sustainable-fishing>

Baregheh, A., Rowley, J., & Sambrook, S. (2009). Towards a multidisciplinary definition of innovation. *Management Decision*.
<https://doi.org/10.1108/00251740910984578>

Barroso-Méndez, M. J., Galera-Casquet, C., & Valero-Amaro, V. (2014). Partnerships Between Businesses and NGOs in the Field of Corporate Social Responsibility: A Model of Success From the *Perspective of Relationship Marketing*. *Journal of Relationship Marketing*, 13(1), 1–27.

Berry, L. L., Seiders, K., & Gresham, L. G. (1997, Autumn). For love and money: the common traits of successful retailers. *Organizational Dynamics*, 26(2), 6+. Retrieved from <http://link.galegroup.com/apps/doc/A20122545/AONE?u=chula&sid=AONE&xid=13a3033e>

Bickford, L. (2017). What Next for Business and Human Rights? In C. Rodriguez-Garavito (Ed.), *Business and Human Rights: Beyond the End of the Beginning* (Globalization and Human Rights, pp. 138-149). Cambridge: Cambridge University Press. doi:10.1017/9781316797990.010

Bragg, S. (2018, May 07). Types of audits. Retrieved June 10, 2019, from <https://www.accountingtools.com/articles/types-of-audits.html>

Brown, D. (2016, December 2). The Labor Rights and Business Case for Factory Audits and Advising. Retrieved September 28, 2019, from <https://www.cfr.org/blog/labor-rights-and-business-case-factory-audits-and-advising>.

Business and Human Rights: Understanding the UN Guiding Principles from the Perspective of Transnational Business Governance Interactions | Request PDF. (n.d.). <http://dx.doi.org/10.2139/ssrn.2425018>

Business-Human Rights. (2016). *Business-Human Rights*. Retrieved from https://www.business-humanrights.org/sites/default/files/images/Respect_Final.png

Chantavanich, S., Laodumrongchai, S., & Stringer, C. (2016). Under the shadow: Forced labour among sea fishers in Thailand. *Marine Policy*, 68, 1–7. <https://doi.org/10.1016/j.marpol.2015.12.015>

Chaplier, J. (2016, June 16). Business and human rights: The world is still waiting for action. Retrieved May 28, 2019, from <https://www.euractiv.com/section/development-policy/opinion/business-and-human-rights-the-world-is-still-waiting-for-action/>

Christopher, M. (2016). *Logistics & supply chain management*. Harlow: FT Publishing.

Clarke, T., & Boersma, M. (2017). The Governance of Global Value Chains: Unresolved Human Rights, Environmental and Ethical Dilemmas in the Apple Supply Chain. *Journal of Business Ethics*, 143(1), 111–131. <https://doi.org/10.1007/s10551-015-2781-3>

Clarke, T., & Boersma, M. (2019). Global Corporations and Global Value Chains. *The Oxford Handbook of the Corporation*.

<https://doi.org/10.1093/oxfordhb/9780198737063.013.18>

Cragg, W., Arnold, D. G., & Muchlinski, P. (2012). *Human Rights and Business*. *Business Ethics Quarterly*, 22(1), 1–7.

Cullen, H. (2019). THE IRRESISTIBLE RISE OF HUMAN RIGHTS DUE DILIGENCE: CONFLICT MINERALS AND BEYOND (Vol. 48).

Damanpour, F. (1996). Organizational Complexity and Innovation: Developing and Testing Multiple Contingency Models. *Management Science*, 42(5), 693–716. Retrieved from JSTOR.

Deva, S. (2012). Guiding Principles on Business and Human Rights: Implications for Companies. *European Company Law*, 9(2), 101-109, 2012. Retrieved from SSRN: <https://ssrn.com/abstract=2028785>

Doorey, D. J. (2011). The Transparent Supply Chain: from Resistance to Implementation at Nike and Levi-Strauss. *Journal of Business Ethics*, 103(4), 587–603. <https://doi.org/10.1007/s10551-011-0882-1>

Ellis-Petersen, H. (2018, December 09). NHS rubber gloves made in Malaysian factories linked with forced labour. Retrieved from

<https://www.theguardian.com/global-development/2018/dec/09/nhs-rubber-gloves-made-in-malaysian-factories-accused-of-forced-labour>

Esterhuizen, L. (2016, May 3). Are Worker Voice Tools Really About Workers' Voices? Retrieved September 28, 2019, from <https://ulula.com/are-worker-voice-tools-really-about-workers-voices/>.

Ethical Trade Initiative. Human Rights Due Diligence Framework. Retrieved from https://www.ethicaltrade.org/sites/default/files/shared_resources/eti_human_rights_due_diligence_framework.pdf

Ewing, A. (2016). Mandatory Human Rights Reporting. In *Business and Human Rights: From Principles to Practice* (1st ed.). New York: Routledge.

Fasciglione, M. (2016). The Enforcement of Corporate Human Rights Due Diligence: From the *UN Guiding Principles on Business and Human Rights* to the *Legal Systems of EU Countries* (Vol. 10).

Fasterling, B. (2017). Human Rights Due Diligence as Risk Management: Social Risk Versus Human Rights Risk. *Business and Human Rights Journal*, 2(2), 225-247. doi:10.1017/bhj.2016.26

Fasterling, B., & Demuijnck, G. (2013). Human Rights in the Void? Due Diligence in the UN Guiding Principles on Business and Human Rights. *Journal of Business Ethics*, 116(4), 799–814.

Franklin, A. (2018). Human Rights and Business: Best Practices and Potential Approaches (SSRN Scholarly Paper No. ID 3170789). Rochester, NY: Social Science Research Network. Retrieved from <https://papers.ssrn.com/abstract=3170789>

Freeman, R. E. (2010). *Strategic Management: A Stakeholder Approach*. Cambridge University Press

Friedman, M. (2018). Modern slavery and the private sector: sequencing of efforts. *Compliance And Ethics Professional*. Retrieved from https://assets.corporatecompliance.org/Portals/1/PDF/Resources/Compliance_Ethics_Professional/1118/scce-cep-2018-11-friedman.pdf

Gassmann, O., & von Zedtwitz, M. (2003). Innovation Processes in Transnational Corporations. In *The International Handbook on Innovation* (pp. 702–714). <https://doi.org/10.1016/B978-008044198-6/50048-6>

González, A. (2015, November 12). UN FORUM SERIES – Meaningful rights-holders engagement is key for human rights impact assessments. Retrieved June 29, 2019, from <https://blogs.lse.ac.uk/businesshumanrights/2015/11/12/un-forum-series-meaningful-rights-holders-engagement-human-rights-impact-assessments/>

Graetz, G., & Franks, D. M. (2013). Incorporating human rights into the corporate domain: Due diligence, impact assessment and integrated risk management. *Impact Assessment and Project Appraisal*, 31(2), 97–106.

<https://doi.org/10.1080/14615517.2013.771006>

Greenwood, M. (2007). Stakeholder Engagement: Beyond the Myth of Corporate Responsibility. *Journal of Business Ethics*, 74(4), 315–327.

<https://doi.org/10.1007/s10551-007-9509-y>

Grosse, R., & Meyer, K. (2019). *The Oxford handbook of management in emerging markets*. New York: Oxford University Press.

Harrison, J. (2013). Establishing a meaningful human rights due diligence process for corporations: learning from experience of human rights impact assessment. *Impact Assessment and Project Appraisal*, 31(2), 107–117.

<https://doi.org/10.1080/14615517.2013.774718>

Hazenberg, J. L. J. (2016). Transnational Corporations and Human Rights Duties: Perfect and Imperfect. *Human Rights Review*, 17(4), 479–500.

<https://doi.org/10.1007/s12142-016-0417-3>

Hodal, K. (2016, February 25). Slavery and trafficking continue in Thai fishing industry, claim activists. Retrieved June 26, 2019, from

<https://www.theguardian.com/global-development/2016/feb/25/slavery-trafficking-thai-fishing-industry-environmental-justice-foundation>

Hoskins, T. (2016, January 14). Supply chain audits fail to detect abuses, says report. Retrieved September 28, 2019, from

<https://www.theguardian.com/sustainable-business/2016/jan/14/supply-chain-audits-failing-detect-abuses-report>.

Hess, D. (2019). The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights. *American Business Law Journal*, 56(1), 5–53. <https://doi.org/10.1111/ablj.12134>

Home | Ethical Trading Initiative. (n.d.). Retrieved from <https://www.ethicaltrade.org/>

Home. (n.d.). Retrieved from <https://www.corporatebenchmark.org/>

HRW Staff. (2018, May 09). The Hidden Cost of Jewelry | Human Rights in Supply Chains and the Responsibility of Jewelry Companies. Retrieved from <https://www.hrw.org/report/2018/02/08/hidden-cost-jewelry/human-rights-supply-chains-and-responsibility-jewelry>

Hsieh, N. (2015). Should Business Have Human Rights Obligations? *Journal of Human Rights*, 14(2), 218–236. <https://doi.org/10.1080/14754835.2015.1007223>

ILO.org. (n.d.). Conventions and Recommendations. Retrieved September 30, 2019, from <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

ILO.org. (n.d.) Up-to-date Conventions and Protocols not ratified by Thailand. (n.d.). Retrieved from https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11210:0::NO::P11210_COUNTRY_ID:102843.

International Organisation of Migration. (n.d.). Migration Context. Retrieved June 22, 2019, from <https://thailand.iom.int/migration-context>

Kanis, B. (2015). Business, Human Rights, and Due Diligence. In J. Martin & K. Bravo (Eds.), *The Business and Human Rights Landscape: Moving Forward, Looking Back* (pp. 414-431). Cambridge: Cambridge University Press. doi:10.1017/CBO9781316155219.015

Kelly, A. (2018, January 23). Thai seafood: Are the prawns on your plate still fished by slaves? Retrieved from <https://www.theguardian.com/global-development/2018/jan/23/thai-seafood-industry-report-trafficking-rights-abuses>

KnowTheChain | Benchmarks. (2019). Retrieved 28 September 2019, from https://knowthechain.org/benchmarks/comparison_tool/5/

Kyritsis, P., Anner, M., & LeBaron, G. (2019, March 12). New buzzword, same problem: How 'worker voice' initiatives are perpetuating the shortcomings of traditional social auditing. Retrieved September 28, 2019, from <https://www.business-humanrights.org/en/new-buzzword-same-problem-how-worker-voice-initiatives-are-perpetuating-the-shortcomings-of-traditional-social-auditing>.

LeBaron, G., & Lister, J. (n.d.). Ethical Audits and the Supply Chains of Global Corporations. (1), 12.

Lundan, S. M., & Muchlinski, P. (2012). Human Rights Due Diligence in Global Value Chains. In R. Van Tulder, A. Verbeke, & L. Voinea (Eds.), *Progress in International Business Research* (Vol. 7, pp. 181–201).

[https://doi.org/10.1108/S1745-8862\(2012\)0000007011](https://doi.org/10.1108/S1745-8862(2012)0000007011)

Mares, R. (2018). Human Rights Due Diligence and the Root Causes of Harm in Business Operation A Textual and Contextual Analysis of the Guiding Principles on Business and Human Rights. *10*(1), 71.

McCorquodale, R., Smit, L., Neely, S., & Brooks, R. (2016). Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises (Vol. 2). <https://doi.org/10.1017/bhj.2017.2>

McCorquodale, R., & Bonnitcha, J. (2016). The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights (Vol. 28).

<https://doi.org/10.1093/ejil/chx042>

McMichael, P. (1996). Globalization: Myths and Realities1. *Rural Sociology*, 61(1), 25–55. <https://doi.org/10.1111/j.1549-0831.1996.tb00609.x>

McPhail, K., & Ferguson, J. (2016). The past, the present and the future of accounting for human rights. *Accounting, Auditing & Accountability Journal*.

<https://doi.org/10.1108/AAAJ-03-2016-2441>

Mitchell, R. K., Agle, B. R., & Wood, D. J. (1997). Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts. *The Academy of Management Review*, 22(4), 853–886.

<https://doi.org/10.2307/259247>

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Mullen, M., Polomski, D., Soares, T., Cassinerio, J., D’Cruz, M., & Hongsathavij, V. (2019). Navigating a new era of business and human rights [Ebook]. Article 30.

Neale, E. (2018, November 13). How to improve Worker Voice: WEST Principles and technological application. Retrieved August 20, 2019, from

<https://www.sedexglobal.com/how-to-improve-worker-voice-west-principles-and-technological-application/>

Nurmalitasari, N. (2018, July 10). Launching of Policy Paper on Business and Human Rights. Retrieved September 28, 2019, from <https://www.infid.org/peluncuran-kertas-kebijakan-bisnis-dan-ham/?lang=en>.

O'Brien, C.M, & Dhanarajan, S. (2015). The Corporate Responsibility to Respect Human Rights: A Status Review (SSRN Scholarly Paper No. ID 2607888). Retrieved from *Social Science Research Network* website: <https://papers.ssrn.com/abstract=2607888>

Osburg, T. (2013). Social Innovation to Drive Corporate Sustainability. In T. Osburg & R. Schmidpeter (Eds.), *Social Innovation: Solutions for a Sustainable Future* (pp. 13–22). https://doi.org/10.1007/978-3-642-36540-9_2

Our values & principles. Unilever. (2019). Retrieved 28 September 2019, from <https://www.unilever.com/about/who-we-are/our-values-and-principles/>

Panyaarvudh, J. (2018). Thai Union committed to help Thailand deal with sustainable fishing challenges. Retrieved 28 September 2019, from <https://www.nationthailand.com/national/30355054>

Passaris, C. E. (2006). The Business of Globalization and the Globalization of Business. *Journal of Comparative International Management*, 9(1). Retrieved from <https://journals.lib.unb.ca/index.php/JCIM/article/view/5666>

Peterson, K. (2012). NGOs partnering with business to accelerate shared value. Retrieved 28 September 2019, from <https://www.theguardian.com/sustainable-business/ngos-partnering-businesses-accelerate-shared-value>

Porter, M. E. (2008). *Competitive Advantage: Creating and Sustaining Superior Performance*. Simon and Schuster.

Pyman, A. (2018, September 13). They're the voice: How workers can be heard when unions are on the wane. Retrieved August 20, 2019, from <https://theconversation.com/theyre-the-voice-how-workers-can-be-heard-when-unions-are-on-the-wane-57209>

Ruggie, J. G. (2015). The Social Construction of the UN Guiding Principles on Business and Human Rights. 25.

Ruggie, J. (2014) . “From Audit to Innovation” Keynote Address at the Annual Conference of the Business Social Compliance Initiative. Brussels

Ruggie, J. G., & Sherman, J. F., III. (2017). The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale. *European Journal of International Law*, 28(3), 921–928. <https://doi.org/10.1093/ejil/chx047>

Rutledge, B. (2018, October 19). UN underlines importance of human rights due diligence in new #bizhumanrights report. Retrieved May 29, 2019, from <https://www.ethicaltrade.org/blog/un-underlines-importance-human-rights-due-diligence-new-bizhumanrights-report>

Sbc.org.nz. (2018). The rise of the sustainability manager in business - *SBC*. [online] Available at: <https://www.sbc.org.nz/news/2018/the-emergence-of-the-sustainability-manager> [Accessed 28 Aug. 2019].

Schlitzer, V. (2018, October 19). For Millennials, Does a Big Paycheck Trump Ethical Responsibility? Retrieved from <https://www.bentley.edu/news/millennials-does-big-paycheck-trump-ethical-responsibility>

Singer, M. G. (1965). Negative and Positive Duties. *The Philosophical Quarterly*, 15(59), 97–103. <https://doi.org/10.2307/2218209>

Skroupa, C. (2017, October 30). Advancing Human Rights is a Journey That Requires Collaboration and Standards. Retrieved from <https://skytopstrategies.com/advancing-human-rights-journey-requires-collaboration-standards/>

Slob, B. (2008). Global Supply Chains: The importance of traceability and transparency. 9.

Stavridou, M. (2017). Beyond Corporate Social Responsibility. *A Human-Centred Approach to Business Ethics in the 21st Century*. 9(1), 17.

Staff, Ethical Trade Initiative. (2018, October 25). Worker representation and freedom of association: its crucial importance in supply chains. Retrieved September 28, 2019, from <https://www.ethicaltrade.org/blog/worker-representation-and-freedom-association-its-crucial-importance-supply-chains>.

Staff United Nations Human Rights . (2012). The Corporate Responsibility to Respect Human Rights: An Interpretive Guide. The Corporate Responsibility to Respect Human Rights: An Interpretive Guide. United Nations Human Rights Office Of The High Commissioner . Retrieved from https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf

Staff, World Bank. (2013). Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development. Human Rights Impact Assessments: A Review of the Literature, Differences with other forms of Assessments and Relevance for Development. The World Bank and The Nordic Trust Fund. Retrieved from https://siteresources.worldbank.org/PROJECTS/Resources/40940-1331068268558/HRIA_Web.pdf

SupplyChainX. (2018, April 04). From Factory to Footwear. Retrieved from <https://supplychainx.highjump.com/nike-supply-chain.html>

Sweeney, E.: Supply Chain Management and the Value Chain. Supply Chain Perspectives, the *Journal of the National Institute for Transport and Logistics*, 10 (2), September 2009, p.13-15.

Swift, T. (2001). Trust, reputation and corporate accountability to stakeholders. *Business Ethics: A European Review*, 10(1), 16–26. <https://doi.org/10.1111/1467-8608.00208>

Theron, C. (2014, November 13). Human rights and business: Legal compliance and beyond. Retrieved May 28, 2019, from <https://www.ardeainternational.com/human-rights-business-legal-compliance-beyond/>

Trent, S. (2019). Fisheries abuse tied to poor regulation. Retrieved 28 September 2019, from <https://www.bangkokpost.com/opinion/opinion/1670052/fisheries-abuse-tied-to-poor-regulation>

Tushman, M., & Nadler, D. (1986). Organizing for Innovation: *California Management Review*. <https://doi.org/10.2307/41165203>

The Danish Institute for Human Rights. (n.d.). Retrieved from <https://www.humanrights.dk/>

United Nations. Office of the High Commissioner for Human Rights. (2011). Guiding principles on business and human rights : Implementing the united nations "protect, respect and remedy" framework. New York: United Nations, Office of the High Commissioner for Human Rights.

Unilever. (2018). Code of Business Principles and Code Policies. Retrieved from https://www.unilever.com/Images/code-of-business-principles-and-code-policies_tcm244-409220_en.pdf

United Nations, Working Group for Business and Human Rights, Working Group report on human rights due diligence to the 2018 General Assembly (2018) available from http://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163

United Nations Working Group On Business and Human Rights. (2018). Corporate human rights due diligence –Background note elaborating on key aspects. United Nations. Retrieved from <https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote1DiligenceReport.pdf>

United Nations Working Group On Business and Human Rights. (2018). Corporate human rights due diligence –Getting started, emerging practices, tools and resources. United Nations. Retrieved from <https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf>

Yu, V. (2016, January 11). How Effective are Worker Interviews During a Social Compliance Audit? Retrieved August 18, 2018, from <https://www.intouch-quality.com/blog/how-effective-are-worker-interviews-during-a-social-compliance-audit>



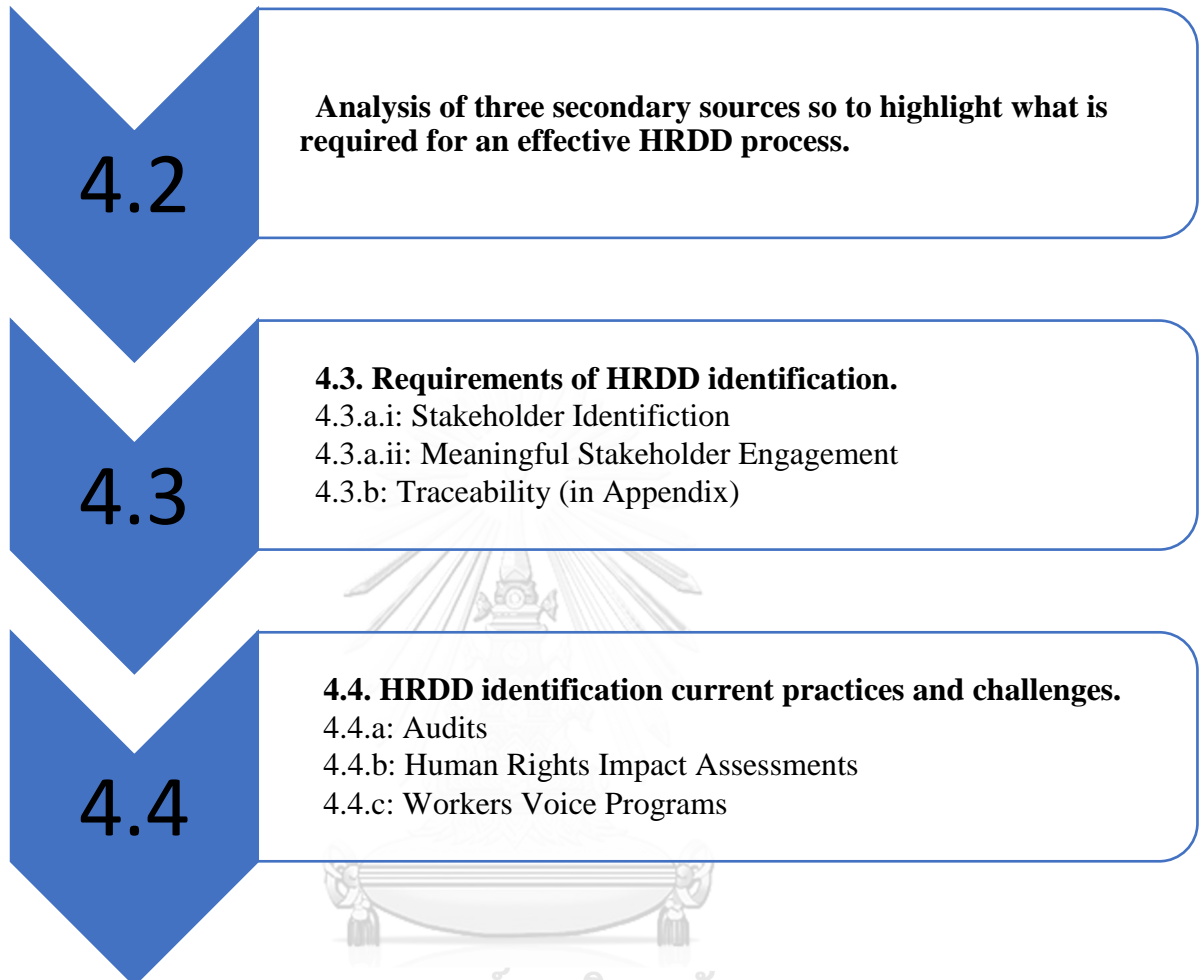
APPENDICES

ANNEX A

THE 8 FUNDAMENTAL ILO CONVENTIONS

<u>Name</u>	<u>Number</u>
<u>Freedom of Association and Protection of the Right to Organise Convention</u>	<u>87</u>
<u>Right to Organise and Collective Bargaining Convention</u>	<u>98</u>
<u>Forced Labour Convention</u>	<u>29</u>
<u>Abolition of Forced Labour Convention</u>	<u>105</u>
<u>Minimum Age Convention</u>	<u>138</u>
<u>Worst Forms of Child Labour Convention</u>	<u>182</u>
<u>Equal Remuneration Convention</u>	<u>100</u>
<u>Discrimination (Employment and Occupation) Convention</u>	<u>111</u>

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 (Content taken from <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>)

ANNEX B**A CHART EXPLAINING THE FLOW OF CHAPTER 4**

ANNEX C

THE ETHICAL TRADE INITIATIVE BASE CODE

ETI Base Code



Ethical
Trading
Initiative

Support
the
Responsible
Business

The ETI Base Code is an internationally recognised set of labour standards based on ILO conventions. It is used by ETI members and others to drive improvements in working conditions around the world.

www.ethicaltrade.org

 <p style="margin: 5px 0; font-size: 0.7em;">Employment is freely chosen</p>	 <p style="margin: 5px 0; font-size: 0.7em;">Freedom of association and the right to collective bargaining are respected</p>	 <p style="margin: 5px 0; font-size: 0.7em;">Working conditions are safe and hygienic</p>
 <p style="margin: 5px 0; font-size: 0.7em;">Child labour shall not be used</p>	 <p style="margin: 5px 0; font-size: 0.7em;">Living wages are paid</p>	 <p style="margin: 5px 0; font-size: 0.7em;">Working hours are not excessive</p>
 <p style="margin: 5px 0; font-size: 0.7em;">No discrimination is practised</p>	 <p style="margin: 5px 0; font-size: 0.7em;">Regular employment is provided</p>	 <p style="margin: 5px 0; font-size: 0.7em;">No harsh or inhumane treatment is allowed</p>

ANNEX D

THE ROLE OF TRACEABILITY IN IDENTIFYING LABOR RIGHTS IN SUPPLY CHAINS.

In the UNGP age it is expected that MNCs “know and show” (Ruggie 2017) their respect for human rights. An expert claimed “transparency and traceability are key in the knowing and showing of the supply chain” (E3, BHR Academic, 23/05/2019).

Therefore the more information that an MNC has about their supply chains, the more accurately they will be in the mapping process outlined in the next sub-section.

Regarding an abuse, such as modern slavery, Friedman (2018) highlights the relationship traceability, mapping and identifying labor abuse. Mapping efforts should aim for the complete traceability of products, which helps to assess the risks at all levels in the supply chain, and this should engage multiple departments’ (Friedman 2018, P.68)¹⁰⁵. However, the U.N. BHR expert mentioned that the process of going through the whole supply chain remains as one of the biggest challenges (E4, UN BHR Expert, 15/5/2019).

As an MNC attains traceability, it is encouraged that this information is made transparent so that concerned actors can see where human rights issues may be present. The calling for transparency is an important one but doesn’t directly relate to the identification phase of HRDD. Transparency relates to making the clarity of a supply chain available, which includes information such as who are suppliers and where are they located. Traceability refers to a product specifically, and the ability to track it

¹⁰⁵ Although the above process is quoted in relation to ‘modern day slavery’, it can be assumed that its application will work for other labor rights abuses. Within the corporation it is suggested that the traceability process ‘engage legal, CSR, supply chain management, risk and HR teams’ (Friedman 2018, P.68).

from source to shelf, thus knowing it's production journey. Slob (2008, P.169) marries the two by claiming that companies must know where products are from, and how they are made, and this information should be provided to stakeholders, as transparency is about openly communicating issues to those affected. This is also good for business, as it builds market trust.' In the context of identifying labor abuses, the more traceability a firm has, the less likely they are to miss areas of high risk (Friedman 2018, P.68).

The interviews revealed that the main practice undertaken to achieve traceability, traditionally and currently, was for MNC staff to simply ask actors in the supply chain, such as suppliers, where materials were being sourced. I was a little surprising that this method still appeared to be the primary way of learning about ones supply chain. One MNC manager mentioned that they had used face-to-face engagement with local suppliers to try and trace their supply chains to the farm level (C1, senior manager, 1/5/2019). This is a time consuming practice, however as the manager mentioned, it's a necessary process in acquiring traceability (C1, senior manager, 1/5/2019). It was concluded that this practice had allowed the MNC to establish approximately 80% traceability of raw materials across their supply chains (C1, senior manager, 1/5/2019). As explored in the next chapter, the MNC believed that they would succeed in filling the remaining gaps with new innovations.

This MNC was not alone, as another supported the face to face engagement approach, by claiming that if they wanted to completely trace their seafood supply chain to the lowest tier then they would ask suppliers for this information (C5, human rights manager, 29/04/2019). They claimed that this had led to 100% traceability in

their supply chains, meaning that the MNC knew where their products were coming from down to the exact fishing boat (C5, human rights manager, 29/04/2019). Using shrimp to exemplify this claim, the MNC are supplied by brokers, so they ask the brokers which farmers they get the shrimp from¹⁰⁶. Once this information has been collected, the MNC staff cross checks the data by talking to the farmers (C5, human rights manager, 29/04/2019). However there are concerns about sharing traceability information, as publishing this can apparently pose a commercial risk, as competitors would know who the suppliers they work with (C5, human rights manager, 29/04/2019).

Although it can be assumed that some supply chains are perhaps long established, the speed in which markets change mean that supply chain agility is crucial for corporations, as this has become a leading way of reducing costs for consumers and remaining competitive (Christopher 2011, P.16). Theoretically thinking of supply chains in this way assists one in understanding why face-to-face engagement has been the easiest and most practical way of acquiring traceability of products, given the susceptibility for sudden change, however for the same reason, it also leaves one feeling there is space for innovation in traceability. Therefore traceability, similar to stakeholder engagement, should be an ongoing process, and the main reason for this is because supply chains are constantly changing.

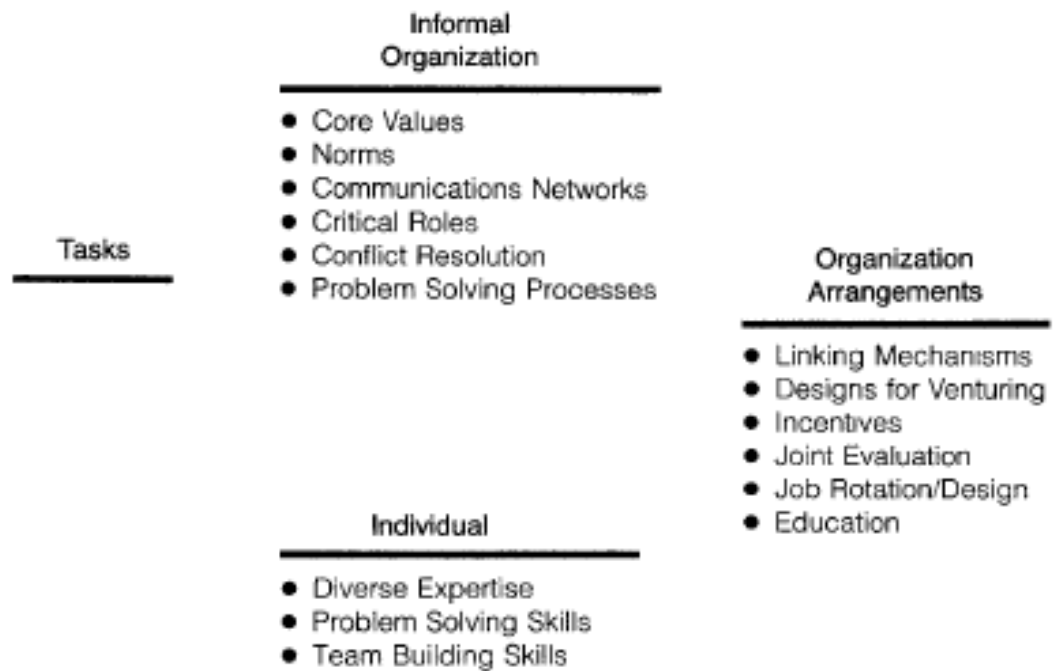
Given the above (the complex and evolving nature of supply chains) traceability is an ongoing challenge for MNCs, with transparency following this (C3, Human Rights Manager, 3/5/2019). However, it is a foundational requirement when

¹⁰⁶ The broker by regulation also needs to provide documentation about the farms they source from.

identifying labor abuses, it comes down to what is done next with this information, “and how that transparency can be used for actionable steps” (E5, Labor Rights Expert, 9/5/2019). Therefore, it is proposed that to effectively identify labor abuses in a supply chain, an MNC should; innovate and work towards complete traceability of their products and services, ongoingly mapping their supply chains, and identifying areas of risk. Actionable steps following this, fall under the banner of stakeholder engagement, where a variety of stakeholders should be consulted in a meaningful way, as the next section develops.



ANNEX E
TUSHMAN AND NADLER'S CRITICAL FACTORS FOR
MANAGING INNOVATION



VITA

Born in the green fields of Shropshire, United Kingdom on February 7th 1990, Will Midwinter started his educational journey at a local preparatory school. Born to enthusiastic antique dealers, Will adopted a keen interest in the social sciences largely History and Geography. It was this fascination which would pave the remainder of Will's academic trail, as a handful of social science A-levels led neatly into a Geography and Communications degree at Newcastle University. It was here that Will's fascination in space and time became more nuanced, as modules in Geopolitics, Culture and Development formed a bedrock for further study and practical learning.

However, it was the five years of professional experience that made the above intention a cemented plan. After a few placements in media and broadcasting, Will took a series of internships in Nepal and Thailand which would prove catalytic in his decision to pursue a career in International Development. During those years, Will has worked with close to 500 hundred volunteers in Thailand, Nepal and Laos, on projects related to income generation, education, health and renewable energy. Before enrolling in the Master of Arts at Chulalongkorn, Will developed an appetite to better understand forced labor, and how it could be addressed. A combination of; eye-opening and diverse experiences while working overseas, with an eagerness to expand his curiosity in social enterprise, modern day slavery, corporate social responsibility and migration, are what led Will to Bangkok and the Masters in International Development Studies. Shortly after defending his thesis, Will returned to the UK to work in an international non-profit's London office.

REFERENCES



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VITA

NAME	William Midwinter
DATE OF BIRTH	7 February 1990
PLACE OF BIRTH	Shropshire, United Kingdom



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CHULALONGKORN UNIVERSITY