



# Child labour in Indian companies that are part of global supply chains

Literature review from a labour law & CSR perspective

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## **List of abbreviations**

CSR	Corporate Social Responsibility
Guiding Principles	Guiding Principles on Business and Human Rights, 2011
ILO	International Labour Organization
MNE Declaration	Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, 1977
OECD Guidelines	OECD Guidelines for Multinational Enterprises, 1976
UN	United Nations
UNICEF	United Nations Children's Fund
CLPRA	the Child Labour - Prohibition and Regulation – Act, 1986 (India)

## Chapter 1 Introduction

### 1.1 Problem description

Mohammad Manan Ansari is a 14-year-old boy from Samsahiriya, a village in the state of Jharkhand, India. He began working in a mica mine at the age of eight in one of the poorest districts of the state. After four years, he was able to escape from working in the mines. “More than half the children of our village are engaged in mica mining and so are their parents. The youngest are 6-7 years old,” Manan said. Families in Samsahiriya on average have ten members who are employed in the mines. For Manan a working day would begin at 10 am and last until 6 pm. The day's haul would then be sold, with the price varying according to the quality. A kilo of ore could sell for as low as 4-8 rupees or as high as 20 rupees (which is about €0.25). This mining is not without danger, as in the past some tunnels have collapsed killing miners.<sup>1</sup> Manan was lucky, but a lot of children in India are still suffering in child labour.

Child labour is an enormous problem in India. Some sources express that India has the highest number of child labourers in the world.<sup>2</sup> Moreover, child labourers in India are exposed to enormous risks. Amongst them, there are children who are exposed to hazardous work environments, and risks to mental and physical health, sexual abuse, malnutrition and illiteracy among several other vulnerabilities.<sup>3</sup> Even more disastrous is that the Thomas Reuters Foundation did an investigation in 2016 to children in mines in India and discovered that no fewer than seven children had died in two months time.<sup>4</sup>

The current rise of global supply chains, has made the problem even bigger, since the use of child labour has become intricately connected to companies and consumers around the world.<sup>5</sup> For many multinational enterprises, the ability to generate high profits and stay ahead of competitors in the modern global economy depends, in part, on their capacity to exert downward pressure on labour costs. This is often accomplished through opaque and complex supply chains, which stretch into the poorest regions of the world in search of cheap labour.<sup>6</sup> It is estimated that

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<sup>1</sup> *Child labour: An Indian boy tells his story to the ILO in Geneva*, November 2009, via <http://www.asianews.it/news-en/Child-labour:-An-Indian-boy-tells-his-story-to-the-ILO-in-Geneva-15489.html>.

<sup>2</sup> *Child Protection & Child Rights: Child Labour in India*, via <http://surejob.in/child-labour-in-india.html> and *Child Labour in India – Causes, Concerns & How to Stop*, 2017, via <http://www.childlineindia.org.in/child-labour-india.html>.

<sup>3</sup> A. Minhaz, *Millions of kids in danger: Why India struggles with a massive child labour problem*, 2017, via <https://www.thenewsminute.com/article/millions-kids-danger-why-india-struggles-massive-child-labour-problem-70661>.

<sup>4</sup> N. Bhalla, *Exclusive - In search of sparkle: is corporate inaction on mica condemning Indian children to death?*, December 2017, via: <https://www.reuters.com/article/us-india-minerals-child-deaths-exclusive/exclusive-in-search-of-sparkle-is-corporate-inaction-on-mica-condemning-indian-children-to-death-idUSKBN1ED16P>.

<sup>5</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, Law Journal Library, 2017, p. 1249.

<sup>6</sup> C. Burkett, *International Labour Human Rights: Supply Chain Transparency*, Employment & Labour Law Review, Volume I, Number 1, n.d., p. 1.

60 per cent of global trade in the real economy depends on the supply chains of 50 enterprises, which employ only 6 per cent of workers directly and rely on a hidden workforce of 116 million people.<sup>7</sup> These obscure employment relations increase the chances of companies being involved in human rights abuses such as child labour. Children are employed because they are cheap and pliable to the demands of the employer and are not aware of their rights.<sup>8</sup>

Since my masters is interdisciplinary and combines labour law with social perspectives, this thesis will have a legal part as well as a social section. However, the focus will be on the legal perspective of this problem.

## 1.2 Research questions

This research is about child labour in Indian companies that are part of global supply chains. Whereby, there is special attention for mica mines. This thesis has the following main research question:

*“To what extent can different instruments – international obligations, India’s national legal framework and CSR policies – contribute to solving the problem of child labour, taking the current situation with respect to Indian mica mines as an example, in companies in India that are part of global supply chains?”*

First, this thesis will focus on international obligations and the Indian regulatory framework concerning child labour. Thereafter, it will discuss the legal responsibility of multinational enterprises for violations of the prohibition of child labour. Additionally, it will be about CSR, which includes international guidelines for human rights as well as the investigation of CSR policies of mica-using companies in two branches, namely cosmetics and vehicles. To find an answer to the main research question, this thesis will first try to answer the following three sub-questions:

*“What are the recent developments in India’s regulatory framework concerning child labour and are these in line with international obligations?”*

*To what extent are multinational enterprises legally responsible for violations of the prohibition of child labour in companies in India that are part of their global supply chain?”*

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<sup>7</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, Law Journal Library, 2017, p. 1249.

<sup>8</sup> UNICEF, *Child Labour in India*, via <http://unicef.in/Whatwedo/21/Child-Labour>.

*Is the preventing of child labour included in the CSR policies of the selected multinational enterprises, which make use of mica from India? And if so, what are the differences between the two branches?”*

### **1.3 Societal and scientific relevance**

Work keeps children away from their right of education, playing and basic amenities of life. Moreover, child labour harms children's safety and health. The maximum development of children is needed for the development of a society as well as for the whole country. If children are in a rich environment for development, it will enhance their physical, intellectual and social abilities. But the earlier engagement of children in work affects their capabilities.<sup>9</sup> The societal relevance is to find out how the different instruments can provide suggestions for improvement of the situation of child labour in India.

The scientific relevance is to investigate whether or not there is a cohesion between the different instruments. This thesis will combine a legal perspective with a HRM perspective, whereby some CSR policies will be investigated. This combination might lead to new, interesting outcomes, which might be an addition to the existing body of knowledge.

### **1.4 Research method and structure of the thesis**

The first sub-question is answered by an investigation of the relevant laws and regulations. There has been looked at the Conventions of the ILO and the UN, thereafter the laws of India regarding child labour are explored. Hereby are Normlex, the website of the UN and the Blainpan encyclopaedia being used. The second sub-question is answered by a literature review. The search engines that were used are Google Scholar and WorldCat Discovery, with mostly the following words and combinations of these words 'responsibility', 'global supply chains', 'multinational enterprises', 'human rights' and 'corporate social responsibility'. To answer the last sub-question, first some literature is considered. Again, Google Scholar and WorldCat Discovery were used, with the following words 'codes of conduct', 'effects of codes of conduct' and 'codes of conduct and child labour'. Afterwards, the relevant documents on the websites of the selected companies that use mica are investigated. Furthermore, these companies were e-mailed with the question if they could provide some more information. The selected companies are: L'Oréal, Estée Lauder, Merck, BMW, Vauxhall and Audi. Since an investigation of the Guardian found out that these companies are linked to mica mines in India where child labour is widespread.<sup>10</sup> The research question of this thesis will also be answered by literature. Again, the two mentioned search engines are used, with mostly the following words 'child labour and global supply chains',

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<sup>9</sup> S. Goyal, *Child labour in India*, International Journal of Social Science and Economic Research Volume: 2, Issue 2, December 2007, p. 5623.

<sup>10</sup> K. Hodal, *India to legalise mica mining in bid to tackle endemic child labour*, 8 May 2017, via: <https://www.theguardian.com/global-development/2017/may/08/india-to-legalise-mica-mining-bid-tackle-endemic-child-labour-guardian-investigations>.

'child labour and CSR', 'solutions to child labour' and 'improving child labour in global supply chains'. Some literature is used for different chapters.

This thesis will be structured as follows. The second chapter will contain some general information about child labour in India. Besides, it will discuss the international regulation concerning child labour. Chapter three will describe the most important Indian laws concerning child labour and the recent developments of India's regulatory framework. Chapter four will be about the legal responsibility of multinational enterprises concerning violations of child labour. Hereby, it will also be explained what CSR is. Besides, some important international guidelines for human rights will be described. In chapter five, an investigation of the CSR policies of some selected multinational enterprises will be discussed. Chapter six will provide suggestions for improving the problem of child labour. Finally, this thesis will be ended with a conclusion in chapter seven. During this thesis, child labour in mica mines will be emphasized.



## Chapter 2 Child Labour

This chapter will first describe what child labour is, what the causes of child labour in India are and how many children there are in child labour in India. Thereafter, this paper will focus on international regulation, which prohibit child labour. In the end, a conclusion will be given.

### 2.1 What is child labour?

It is difficult to define the concept of child labour, because it can be appreciated in various ways. According to Stegeman and van Leur, for some, child labour is any form of (paid) work that is carried out by children under the age of fifteen and that should be banned as such. At the same time, the authors define that, others can refer to child labour in particular to those forms of work that impede with good physical, psychological or emotional development of children or that interfere with their educational possibilities.<sup>11</sup> Furthermore, some policymakers have defined child labour as economic activities that are deleterious to the well-being of children.<sup>12</sup>

Children's participation in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as positive. For instance, activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children's development, since they provide them with skills and experience. Plus, it helps them preparing to be productive members of society during their adult lives.<sup>13</sup> This can be called 'child work' instead of 'child labour'. The strategies should not focus on combating 'child work' but on the abolishment of 'child labour' that impedes the development of children, including their education.<sup>14</sup> Besides, the ILO makes a difference between 'children in employment' and 'child labour'. 'Children in employment' are children working in any form of market production and certain types of non-market production. This group includes forms of work in the formal and informal sector, inside and outside family settings, for pay or profit and domestic work outside the child's own household for an employer. On the other hand, 'child labour' is a narrower category than children in employment. It reflects the engagement of children in prohibited work, and more generally, in types of work to be eliminated as socially and morally undesirable as guided by national legislation, as well as ILO's Conventions and Recommendations. It excludes

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<sup>11</sup> M. Stegeman and A. van Leur, *Kinderarbeid wereldwijd, beleidsnotitie*, Den Haag: Drukkerij Tuijtel, mei 1998, p. 9-10.

<sup>12</sup> E.V. Edmonds and N. Pavcnik, *Child Labor in the Global Economy*, Journal of Economic Perspectives, Volume 19, Number 1, 2005, p. 200.

<sup>13</sup> *What is child labour*, via <http://www.ilo.org/ipecc/facts/lang--en/index.htm>.

See also Sem Moeskops, *Child Labour in the Textile Industry in India*, paper for International Labour Law and Globalisation, p. 4.

<sup>14</sup> M. Stegeman and A. van Leur, *Kinderarbeid wereldwijd, beleidsnotitie*, Den Haag: Drukkerij Tuijtel, mei 1998, p. 9-10.

children in employment who perform light work and those above the minimum age whose work is not classified as a worst form of child labour or as hazardous work.<sup>15</sup>

Whether 'child labour' is good or acceptable, is not unambiguous. There are some situations where it is hard to imagine how an activity could not be harmful to children, such as forced prostitution and child soldiers. However, most working children participate in activities that can be harmful or beneficial for the child, depending on the circumstances. Such as, the child's age, the type and hours of work performed, the conditions under which it is performed and ultimately on what the child would be doing in the absence of work.<sup>16</sup> The answers vary from country to country, as well as among sectors within countries.<sup>17</sup>

For this thesis, I will follow the definition of the ILO of child labour, since the ILO is the most important organization for labour issues and one of its fundamental principles is the elimination of child labour. According to the ILO, child labour:

*"refers to work that:*

- *is mentally, physically, socially or morally dangerous and harmful to children; and*
- *interferes with their schooling by:*
- *depriving them of the opportunity to attend school;*
- *obliging them to leave school prematurely; or*
- *requiring them to attempt to combine school attendance with excessively long and heavy work."*<sup>18</sup>

The work in mica mines is heavy and it happens under hazardous working conditions. The biggest risk of underground mines is that they can collapse. Further, people inside mica mines inhale respirable quartz in silica dust. Long term exposure to this may lead to silicosis, a potentially deadly lung disease.<sup>19</sup> So mica mining is physically dangerous to children. Additionally, it might also cause mental, social or moral problems by children. Besides, if you take Manan as an example, who worked from 10 am till 6 pm in the mines, this work also interferes with children's schooling. In general, I believe that working in mines can be qualified as child labour.

After describing what child labour is, the following paragraph will shortly describe the causes of child labour in general and specifically, the causes of child labour in India.

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<sup>15</sup> ILO, *Global estimates of child labour: Results and trends, 2012-2016*, Geneva: ILO, 2017, p. 20-21.

<sup>16</sup> E.V. Edmonds and N. Pavcnik, *Child Labor in the Global Economy*, Journal of Economic Perspectives, Volume 19, Number 1, 2005, p. 200.

<sup>17</sup> *What is child labour*, via <http://www.ilo.org/ipecc/facts/lang--en/index.htm>.

<sup>18</sup> *What is child labour*, via <http://www.ilo.org/ipecc/facts/lang--en/index.htm>.

<sup>19</sup> A. ten Kate et al., *Beauty and a beast: Child labour in India for sparkling cars and cosmetics*, Amsterdam: SOMO, March 2016, p. 8.

## **2.2 Why is there child labour in India?**

One of the reasons of child labour is that children join the labour force to satisfy the demand for cheap, unskilled labour.<sup>20</sup> This is reinforced by globalization. Globalization does not only have positive impacts, it has also brought adverse impacts on child labour in developing countries. Many international companies moved their production abroad, where these companies often indulge in hiring children as cheap labourers.<sup>21</sup>

Other factors that contribute to child labour are the poverty and illiteracy of a child's parents, the family's social and economic circumstances, a lack of awareness about the harmful effects of child labour, lack of access to basic and meaningful quality education and skills training, high rates of adult unemployment and under-employment and the cultural values of the family and society. Further reasons can be drought and other natural disasters or children can be bonded to labour due to family indebtedness.<sup>22</sup>

In India, the main reason of child labour was the caste system. In the past, only the upper caste people got the opportunity to go to school, whereas the lower caste Indians remained poor and uneducated. Nowadays, the major cause of child labour in India is poverty. Besides, other reasons are overpopulation, illiteracy and lack of awareness.<sup>23</sup>

Now it is known why there is child labour in India, it is good to see how big the problem is. The next paragraph will give information about how many children in India are involved in child labour.

## **2.3 How many children are involved in child labour in India?**

Estimating the number of children working around the world is a difficult task. Most working children live in low-income countries and these countries often lack reliable data on many aspects of their labour market.<sup>24</sup> Moreover, as seen before, there is not one clear definition of child labour. In addition, not all parties evaluate the work done by children as harmful, often due to the lack of knowledge. Therefore, working in the household or family business is often seen as normal and is sometimes firmly rooted in traditions as well as values and norms.<sup>25</sup> However, to

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<sup>20</sup> P. Overeem and M. Theuws, *Fact Sheet: Child labour in the textile & garment industry*, SoHo: Amsterdam, March 2014, p. 3.

<sup>21</sup> N. Nagar and B. Roy, *A Critical Analysis Of Child Labour in India*, International Journal of Current Research in Multidisciplinary, Volume 1, Issue 5, 2016, p. 11.

<sup>22</sup> UNICEF, *Child Labour in India*, via <http://unicef.in/Whatwedo/21/Child-Labour>.

<sup>23</sup> S. Bolla, *Child Labor in India*, 2010, available at: [http://web.mit.edu/angles/2010\\_Srikanth\\_Bolla.html](http://web.mit.edu/angles/2010_Srikanth_Bolla.html).

<sup>24</sup> E. V. Edmonds and N. Pavcnik, *Child Labor in the Global Economy*, Journal of Economic Perspectives, Volume 19, Number 1, 2005, p. 200.

<sup>25</sup> M. Stegeman and A. van Leur, *Kinderarbeid wereldwijd, beleidsnotitie*, Den Haag: Drukkerij Tuijtel, mei 1998, p. 12.

give an impression how serious the problem of child labour in India is, some studies will be discussed.

The ILO has done an investigation to child labour in South Asia in 2015, which looked to information from 2005 to 2012. According to this study, there were 16.7 million children between the ages of 5-17 years in child labour in South Asia. India represented the highest rate, with 5.8 million children in child labour.<sup>26</sup>

According to Census 2001, there were 12.7 million working children in the age group of 5-14 years. Ten years later, the Census of 2011 showed that there were 4.35 million children between 5-14 years working.<sup>27</sup> However, an article stated that the number of child labourers in India as per Census 2011 arrives at 10.1 million and not at 4.35 million as it is popularly quoted.<sup>28</sup> Also, UNICEF mentioned that there were 10.1 million children between 5 to 14 years engaged in work in India in 2011, of which 4.5 million are girls and 5.6 million are boys. Furthermore, UNICEF indicates that child labour constitutes a shocking 13% of the workforce in India.<sup>29</sup>

Another source mentioned, in 2017, that India has a whopping 33 million children between the age of 5-18 years employed in various forms of child labour and that 1 in every 11 children in India works to earn a living.<sup>30</sup>

SOMO did an investigation to the numbers of child labourers in mica mines. They state that nobody knows exactly how many children there are working in the mines. However, in their report of 2016, SOMO estimated that the number of child labourers involved in mica mining in Jharkhand and Bihar was up to 20,000.<sup>31</sup> According to the Thomson Reuters, there are 2 million workers employed in India's mines, of which 1 in 5 workers is a child.<sup>32</sup>

Concluding, it is not clear how many children there are in child labour in India, but it is expected that the number is enormous. One of the places where a lot of children work, is in the mica mines. Since every child in child labour is one too many, it is important to see what can legally

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<sup>26</sup> S. Khan and S. Lyon, *Measuring children's work in South Asia: perspectives from national household surveys*, New Delhi: ILO, 2015, p. 7-8.

<sup>27</sup> Ministry of Labour & Employment, *Working children, Census 2011*, via: <https://labour.gov.in/childlabour/census-data-child-labour>.

<sup>28</sup> A. Minhaz, *Millions of kids in danger: Why India struggles with a massive child labour problem*, 2017, via <https://www.thenewsminute.com/article/millions-kids-danger-why-india-struggles-massive-child-labour-problem-70661>.

<sup>29</sup> UNICEF, *Child Labour in India*, via: <http://unicef.in/Whatwedo/21/Child-Labour>.

<sup>30</sup> *World Day Against Child Labour 2017: Key Statistics*, June 2017, via: <https://www.moneycontrol.com/news/india/world-day-against-child-labour-2017-key-statistics-2302279.html>.

<sup>31</sup> A. ten Kate et al., *Beauty and a beast: Child labour in India for sparkling cars and cosmetics*, Amsterdam: SOMO, March 2016, p. 31.

<sup>32</sup> *Blood Mica: Deaths of child workers in India's mica "ghost" mines covered up to keep industry alive*, via: <http://news.trust.org/shorthand/mica/>.

be done to combat this. The next paragraph will therefore focus on international obligations which prohibit child labour.

## **2.4 International regulation concerning child labour**

Legislation is one of the main weapons of empowerment of children. The creating of legislation does not necessarily mean that the objective will be achieved, but the existence creates an enabling provision whereby the state can be compelled to take action.<sup>33</sup> The issue of child labour has been the subject of widespread regulatory attention since the early 20th century. Several industrialized countries had adopted laws that limited the minimum working age of children. Also, international organizations were requested to take similar measures worldwide.<sup>34</sup> This paragraph will focus on these international organizations. It will describe the most important regulations against child labour of the ILO and the UN.

### **2.4.1 The ILO**

In 1919, the ILO was created with the abolishment of child labour as one of its fundamental objectives.<sup>35</sup> The ILO has created two Conventions on child labour: the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182). Since these Conventions are fundamental, they are binding upon every member country of the ILO, regardless of ratification.<sup>36</sup>

#### **2.4.1.1 Minimum Age Convention, 1973**

Between 1919 and 1965 the ILO had adopted ten Conventions concerning the minimum age for admission to employment and work in specific sectors, such as for underground work, agriculture, sea and industry. In 1973, these Conventions were consolidated into one Convention, the Minimum Age Convention, which has application in all sectors.<sup>37</sup> This Convention wants to achieve the total abolition of child labour.<sup>38</sup> The member states have to carry on a national policy that ensures the effective abolition of child labour and to raise the minimum age for employment to a level that is coherent with the fullest physical and mental development of youngsters. This minimum age shall not be less than the age of completion of compulsory schooling and in any case not less than 15 years. For developing countries, which are countries whose economy and educational facilities are insufficiently developed, the minimum age may be lowered to 14 years. Moreover, for work that is likely to jeopardise the health, safety or morals of young persons, the

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<sup>33</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 8.

<sup>34</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 292-293.

<sup>35</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 292-293.

<sup>36</sup> A. Campos et al., *From moral responsibility to legal liability?*, Amsterdam: SOMO and Repórter Brasil, May 2015, p. 23.

<sup>37</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, PER, Volume 16, Number 5, 2013, p. 124-125.

<sup>38</sup> Preamble of the Minimum Age Convention, 1973 (No. 138).

minimum age is 18 years and under certain strict conditions 16 years. Additionally, light work, which is work that is not likely to be harmful to children's health or development and does not prejudice their attendance at school, may be permitted to children from 13 to 15 years and for developing countries to children from 12 to 14 years.<sup>39</sup>

The Convention does not define what child labour is. According to Mavunga, it is difficult for member states to abolish child labour if they do not know what kind of work they are supposed to abolish. As a consequence, this Convention leaves member states to define what they consider as child labour. Which will therefore result to different definitions from country to country, having a negative impact on the universal implementation of this Convention.<sup>40</sup> In my opinion, this is not something negative. It is very difficult to make one definition of child labour that is applicable for every member state. Since member states differ enormously, I think it is good that they can decide themselves what is considered as child labour.

Bourdillon et al. have the opinion that excluding children below a given age from employment or work in any occupation is unjustified. They have three reasons for that. First, the real impact on children is insufficient determined. Secondly, existing evidence suggests that the policy often harms the children it claims to protect. Finally, the effort to prohibit all work, even safe work, diverts attention from the urgent need to intervene in work that is genuinely harmful to children.<sup>41</sup> My first thoughts were, a law that excludes children below a given age from employment is a good law, since it is a clear measure that member states can follow. I agree with Bourdillon et al. that the priority should be to abolish hazardous work, since safe work can have a positive effect on children. But, I think that the exception for light work, that can be done by children from 13 to 15 years (or 12 to 14), gives the opportunity to let children work safely, but at the same time prohibits harmful work. In my view, it is the ideal situation that children under 13 (or 12) years do not work at all, and that children from 13 (or 12) years and older can do light work. I also believe it is positive that the ILO had decided to combine the ten, different Conventions on minimum age into one Convention. In my opinion, it is easier to have one minimum age for all sectors, than a different minimum age for different sectors.

However, the authors are also claiming that the real impact on children is not sufficient investigated and that the Convention can harm children instead of protecting them. Also, White criticises the Convention for not making rules in the best interest of the child.<sup>42</sup> He mentions that,

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<sup>39</sup> Articles 2-7 of the Minimum Age Convention, 1973 (No. 138).

See also Sem Moeskops, *Child Labour in the Textile Industry in India*, paper for International Labour Law and Globalisation, p. 6.

<sup>40</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, PER, Volume 16, Number 5, 2013, p. 125-126.

<sup>41</sup> M.F.C. Bourdillon et al., *Re-assessing minimum-age standards for children's work*, International Journal of Sociology and Social Policy, Volume 29, Number 3/4, 2009, p. 106.

<sup>42</sup> B. White, *Globalization and the Child Labour Problem*, Institute of Social Studies, Working Paper, Series Number 221, June 1996, p. 9.

with an increase in worldwide poverty, widespread disease and the increase of child-headed households, it could be in the best interest of children to participate in some form of work to prevent starvation.<sup>43</sup> White argues that children in hazardous work should be removed immediately. But for the great majority of child workers, the priority should not be to remove children from work but to improve the working conditions.<sup>44</sup> I can imagine that in the poorest countries this Convention is not helping the children, since it is possible that they are better off with a job than without one. So says E. Webbink, 'What if a girl from the factory goes into the prostitution? Is that better?'<sup>45</sup> Therefore, the abolishment of child labour is not enough. We should also consider where the children will end up, if their jobs are taken away.

Concluding, this Convention sounds as the ideal situation, the total abolishment of child labour. However, this Convention might not work for all children, especially for children in developing countries. In the mid-1990s the Minimum Age Convention was considered to be too complicated. The ILO reacted to this by proposing a new Convention to focus world attention on the most intolerable forms of child labour.<sup>46</sup>

#### **2.4.1.2 Worst Forms of Child Labour Convention, 1999**

In 1999, the Worst Forms of Child Labour Convention came into force, which recognised for the first time the need of an international legal instrument to protect children from being used to commit crime and to make it clear that this is a form of exploitation and abuse.<sup>47</sup> The aim of this Convention is that member states implement effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.<sup>48</sup> Furthermore, this Conventions requires immediate and comprehensive action to remove the children concerned from all such work and to provide for their rehabilitation and integration.<sup>49</sup> For this Convention, the term child applies to all persons under eighteen.<sup>50</sup> The worst forms of child labour are:

- a) *"all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*

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<sup>43</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, PER, Volume 16, Number 5, 2013, p. 142.

<sup>44</sup> B. White, *Globalization and the Child Labour Problem*, Institute of Social Studies, Working Paper, Series Number 221, June 1996, p. 11-12.

<sup>45</sup> M. op de Woerd, *Promovenda nuanceert negatiefbeeld van kinderarbeid*, 16 May 2013, via: <https://www.trouw.nl/home/promovenda-nuanceert-negatief-beeld-van-kinderarbeid~ae929d76/>.

<sup>46</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, PER, Volume 16, Number 5, 2013, p. 142.

<sup>47</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, PER, Volume 16, Number 5, 2013, p. 143.

<sup>48</sup> Article 1 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

<sup>49</sup> Preamble of the Worst Forms of Child Labour Convention, 1999 (No. 182).

<sup>50</sup> Article 2 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

- b) *the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*
- c) *the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*
- d) *work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*<sup>51</sup>

As seen before, working in mica mines is likely to harm the health, safety or morals of children. So, working in mica mines must be seen as a worst form of child labour.

Smolin finds it strange that the focus of the Convention is in areas more commonly considered as criminal matters, rather than labour matters. Pornography, prostitution, and the drug trade are generally criminal law.<sup>52</sup> While the ILO's core competency, due to its tripartite design, consisting of employer, employee and national representatives, lays in the labour area.<sup>53</sup> I think it is good that the ILO also has attention for these criminal matters, although it is not their core competency, since these practises take place on the labour market. Also, because different laws of countries are not independent, they interface with each other.

The Convention encourages the removal, rehabilitation, and social integration of child labour victims. But it does not provide any kind of guideline that member states can use when initiating such rehabilitation and reintegration of child labourers. According to Mavunga, the practicality and effectiveness of this clause depends on many other factors that do not necessarily fall within the labour law arena.<sup>54</sup> In my opinion it is difficult to make a guideline for rehabilitation and reintegration that will work in every situation, in every country. For instance, a child saved from the mines can have different needs than a child that is saved from prostitution. Besides, the social, cultural and economic circumstances differ from country to country. Therefore, I think it is better that member states themselves decide how to fill in the rehabilitation and integration of child labourers. Besides, as said before, national laws are never independent. The effectiveness of a law does always depend on many other laws. However, it is good that member states have to prohibit the worst forms of child labour, since this may also have influences on other national laws.

Furthermore, Estacio and Marks disapprove the Convention because of its heavy reliance on written policies. Since the majority of children in child labour are out of school, and therefore are

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<sup>51</sup> Articles 2-3 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

<sup>52</sup> D.M. Smolin, *Strategic Choices in the International Campaign Against Child Labor*, Human Rights Quarterly, Volume 22, Number 4, November 2000, p. 947.

<sup>53</sup> D.M. Smolin, *Strategic Choices in the International Campaign Against Child Labor*, Human Rights Quarterly, Volume 22, Number 4, November 2000, p. 974.

<sup>54</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, PER, Volume 16, Number 5, 2013, p. 154.



likely to be unable to read and write.<sup>55</sup> I think that this is not a weak point of this Convention, but a weakness in general in the abolishment child labour. It is very difficult for children to know what their rights are, especially when they are used to child labour, because they are working from a very young age and/or children around them are also working.

Besides, the Convention stimulates member states to adopt effective measures to take account of the special situation of girls.<sup>56</sup> Mavunga is scared that, by placing an emphasis on the situation of girls, there is a potential negligence of boys, who are equally prone to such exploitation. Also, Mavunga mentions that according to numbers of the ILO, there are far more boys involved in child labour than girls.<sup>57</sup> Though, the ILO explains that this may also be a reflection of an under-reporting of girls' work, particularly in domestic child labour.<sup>58</sup> I believe that boys and girls do deserve the same protection. But considering that there are a lot of girls working without being reported, I believe it is good to have a special rule to take into account their vulnerable position. For instance, a country can introduce measures which try to detect domestic child labourers. So, that governments become aware of the numbers of girls in child labour and that these girls do also receive protection.

Concluding, I believe that this Convention is positive. Although it focuses on matters that fall outside the scope of labour law, I think it is good that the ILO wants to prohibit the worst forms of child labour in all member states, since these forms of labour always have a negative impact on children.

Besides the ILO, the UN is also an international organization that can take action on various issues confronting humanity.<sup>59</sup>

## **2.4.2 The UN**

The UN is founded in 1945 and in 1989, the UN has made a Convention special for children, the Convention for the Rights of the Child. This Convention will be binding upon those governments who take the necessary steps to ratify it.<sup>60</sup>

### **2.4.2.1 Convention on the Rights of the Child, 1989**

This Convention is the most comprehensive human rights treaty and legal instrument for the promotion and protecting of children's rights. For this Convention, a child is someone below the

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<sup>55</sup> E.V. Estacio and D. F. Marks, *Child labour and the ILO Convention 182: A critical perspective*, London: Journal of Health Psychology, April 2005, p. 483.

<sup>56</sup> Articles 7 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

<sup>57</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, PER, Volume 16, Number 5, 2013, p. 155.

<sup>58</sup> *Child Labour*, <http://www.ilo.org/global/topics/child-labour/lang--en/index.htm>.

<sup>59</sup> *Overview*, via: <https://www.un.org/en/sections/about-un/overview/index.html>.

<sup>60</sup> T. Hammarberg, *The UN Convention on the Rights of the Child – And How to Make It Work*, The Johns Hopkins University Press, Volume 12, Number 1, February 1990, p. 99.

age of eighteen unless under the law applicable to the child, majority is attained earlier.<sup>61</sup> Under the provisions of this Convention, states parties are legally obliged to fulfil the rights of every child. The Convention is based on four core principles: non-discrimination, best interest of the child, the right to life, survival and development and respect for the views of children.<sup>62</sup> Article 32 is about work, which requires that children are protected from economic exploitation and from performing work that is likely to be hazardous, to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Moreover, states parties shall take measures that provide a minimum age for admission to employment, to regulate the hours and conditions of employment and to provide for appropriate penalties or other sanctions.<sup>63</sup>

A Convention is the strongest kind of international treaty, since Conventions are binding and create legal obligations. The Convention on the Rights of the Child is the most widely agreed treaty ever.<sup>64</sup> However, there is also criticism on this Convention. One of these criticisms is that the Convention does not consider cultural differences. According to Gadda, the Convention is not neutral, but a Western ideal of childhood has to be adopted. The authors states that 'nations which are unable or unwilling to adopt this ideal are judged to be immoral and in need of salvation'.<sup>65</sup> Another criticism is that it is just a piece of paper which gives everyone an excuse to sit back and think they have done all they should do for children.<sup>66</sup>

According to Alderson, this Convention is positive because it is a tool for change, since governments, who have ratified the Convention, have to report regularly to the UN Committee on their progress in putting this Convention into practice and the Committee can give comments. Moreover, the author thinks that successes and problems in the way governments treat their children are widely publicized in the media and children's organizations use them as opportunities to press for improvements for the protection of children in their country.<sup>67</sup>

I find it positive that all the rights of children are put together into one Convention. This clearly shows that children have specific rights, and what their rights are. A negative point is that the Convention presumably lays down a Western ideal of childhood. I think one of the most difficult

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<sup>61</sup> Article 1 of the the Convention on the Rights of the Child, 1989.

<sup>62</sup> UNICEF, *The state of the world's children*, New York, November 2009, p. 2.

<sup>63</sup> Article 32 of the Convention on the Rights of the Child, 1989.

See also Sem Moeskops, *Child Labour in the Textile Industry in India*, paper for International Labour Law and Globalisation, p. 7.

<sup>64</sup> P. Alderson, *UN Conventions on the Rights of the Child: Some Common Criticisms and Suggested Responses*, *Child Abuse Review*, Volume 9, 2000, p. 442.

<sup>65</sup> A. Gadda, *Rights, Foucault and Power: A Critical Analysis of the United Nation Convention on the Rights of the Child*, *Edinburgh Working Papers in Sociology*, Number 31, January 2008, p. 7.

<sup>66</sup> P. Alderson, *UN Conventions on the Rights of the Child: Some Common Criticisms and Suggested Responses*, *Child Abuse Review*, Volume 9, 2000, p. 442.

<sup>67</sup> P. Alderson, *UN Conventions on the Rights of the Child: Some Common Criticisms and Suggested Responses*, *Child Abuse Review*, Volume 9, 2000, p. 442-443.

parts of forming rights for children is to make sure that developing countries can apply these rights and, at the same time, that Western countries can also associate with such rights. A positive point of Conventions is that governments have to report their progress, this makes that governments have to do their best to improve the rights of children. Besides, I agree with Alderson that 'naming and shaming' by media can have a powerful influence on the application of this Convention by member states. I believe that when a country will be publicized negatively, the country wants to clear this bad reputation. As regards article 32 about work, I believe that the protection from performing hazardous work is good. But the setting of a minimum age can also put children in a worse position, as seen before in paragraph 2.4.1.1.

## **2.5 Conclusion**

This chapter has described that there is not one single definition of child labour. There is a distinction between 'child work' and 'child labour'. For this thesis child labour is seen as work, which is mentally, physically, socially or morally dangerous and harmful to children and interferes with children's schooling. It has also been stated that in general working in mica mines can be qualified as child labour. Because working in mica mines can be dangerous to the health, safety or morals of children, it can also be seen as a worst form of child labour. Thereafter, the causes of child labour in India have been addressed. Nowadays, the major causes of child labour in India are poverty, overpopulation, illiteracy and lack of awareness. Thereupon, some studies, which investigate the amount of children in child labour in India, have been considered. Finally, this chapter was about international regulation which wants to address the problem of child labour. First the ILO's Minimum Age Convention, 1973, was discussed. This Convention wants to achieve the total abolition of child labour. The total abolishment of child labour all over the world would be the ideal situation. However, this Convention might harm children instead of protecting them, since children are sometimes better off with a job than without one. The second Convention of the ILO is better at protection children. The Worst Forms of Child Labour Convention, 1999, requires immediate and comprehensive action to remove children from hazardous work. In my opinion, it is good that the worst forms of child labour are prohibited, because these forms of labour always have a negative impact on children. Furthermore, the UN Convention on the Rights of the Child, 1989, was discussed. I find it positive that all the rights of children are put together into one Convention. A negative point of this Convention is that it might lay down a Western ideal of childhood. On the other hand, a positive point of Conventions is that member states, who ratify the Convention, have to report their progress, whereby 'naming and shaming' by media can play an important role. As regards the specific article about work, I have the same opinion as with the two Conventions of the ILO.

Since this thesis is about child labour in India, the next chapter will be about the regulations, concerning child labour, in India.

## Chapter 3 India's regulatory framework

After discussing the international obligations to prohibit child labour, this chapter will focus on the legislation of India. Even though appropriate legislation may not necessarily mean that the objectives of the legislation will be achieved, it reflects the commitment of the state to promote an ideal and progressive value system.<sup>68</sup> So, it is relevant to see which rights children have according to Indian law. To know what the recent developments of the Indian legislation are, it is good to see how child labour legislation has been evolved over time in India. That is why the first paragraph will give an historical overview of the most important Indian Acts relating to child labour. Thereafter, the recent developments in India's regulatory framework, related to child labour, will be discussed. This chapter will be ended with an answer on the first sub-question.

### 3.1 History of India's legislation concerning child labour

The Constitution of India is the fundamental law of the country, which lays down the most important principles. This Constitution gives also rights to children, which include the right to be protected from any hazardous employment till the age of 14 years and from being abused and forced by economic necessity to enter occupations that are unsuited to their age or strength.<sup>69</sup> Besides the Constitution, India has also other legislation to control and regulate child labour, which already have existed for several decades.<sup>70</sup> These laws will be discussed below.

#### 3.1.1 The Factories Act, 1881 and 1948

In 1881, the first Factories Act was created for factories employing 100 or more persons. It contained a minimum age of 7 years for employment in factories. Moreover, the Act prohibited the employment in two factories on the same day and it regulated the duration of employment.<sup>71</sup> In the years afterwards, a lot of amendments had taken place, which eventually resulted in the Factories Act, 1948, which is still in force. The Factories Act, 1948, has a higher minimum age and prohibits the employment of children under fourteen in any factory.<sup>72</sup> Children who have completed their fourteenth year are allowed to work in a factory if they have a certificate of fitness.<sup>73</sup> Besides, the Act states that no child shall be permitted to work, in any factory, for more than four and a half hours in any day or during the night. Children are still not allowed to work in two factories on one day.<sup>74</sup> If a child works in two factories in one day, the parent or guardian of the child shall be punishable with a fine, unless the child worked without the consent or

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<sup>68</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 8.

<sup>69</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 8.

<sup>70</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 292.

<sup>71</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 292.

<sup>72</sup> Article 67 of the Factories Act, 1948.

<sup>73</sup> Article 68 of the Factories Act, 1948.

<sup>74</sup> Article 67 of the Factories Act, 1948.

connivance of such parent or guardian.<sup>75</sup> Some years after the first Factories Act, there also came an Act for working in mines.

### **3.1.2 The Mines Act, 1901 and 1952**

For mica mines, an important law was the Mines Act, which was adopted in 1901 and prohibited working in mines for children under the age of 12 years.<sup>76</sup> In 1923, the minimum age was raised to 13 years.<sup>77</sup> With an amendment in 1935, a division of age groups was introduced. This resulted in the prohibition of employment of children under 15 years old in mines. Plus, children between 15 and 17 years could only work in underground mines with a certificate of physical fitness. The hours of work were restricted to a maximum of ten hours a day for work above the ground and nine hours a day for underground work.<sup>78</sup> Later on, the Mines Act 1952 was introduced, which is still in force. This Act contains that persons below the age of 18 shall not be allowed to work in any mine or part thereof and they are also not allowed to be present in any part of a mine above the ground, where any mining operation is being carried on.<sup>79</sup> If a person under eighteen is employed in a mine, the owner of such mine shall be punishable with a fine.<sup>80</sup> Plus, persons who violate any provision of this Act shall be punishable with imprisonment, a fine or both.<sup>81</sup> After the Acts for specific jobs in factories and mines, a general Act against the pledging of child labour was created, in 1933.

### **3.1.3 The Children - Pledging of Labour - Act, 1933**

This Act, which is still in force, prohibits the pledging of labour of children. An agreement to pledge means:

*“... an agreement, written or oral, express or implied, whereby the parent or guardian of a child, in return for any payment or benefit received or to be received by him, undertakes to cause or allow the services of the child to be utilized in any employment.”<sup>82</sup>*

Such an agreement shall be void. The parents or guardians, the people who make an agreement with a parent or guardian and the people who employ a child whose labour has been pledged can be punished with a fine.<sup>83</sup> A few years later, an Act to prohibit the employment of children in transport came into force.

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<sup>75</sup> Article 99 of the Factories Act, 1948.

See also Sem Moeskops, *Child Labour in the Textile Industry in India*, paper for International Labour Law and Globalisation, p. 9.

<sup>76</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 292.

<sup>77</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 293.

<sup>78</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 294.

<sup>79</sup> Article 40 and 45 of the Mines Act, 1952.

<sup>80</sup> Article 68 of the Mines Act, 1952.

<sup>81</sup> Article 73 of the Mines Act, 1952.

<sup>82</sup> Article 2 of the Children - Pledging of Labour - Act, 1933.

<sup>83</sup> Article 3-6 of the Children - Pledging of Labour - Act, 1933.

### 3.1.4 The Employment of Children Act, 1938

According to this Act, children under 15 years were not permitted to work in occupations connected with transportation of passengers, goods or mails by railway.<sup>84</sup> There were different amendments, which, amongst others, lead to the prohibition of the employment of children between 15 and 17 years at night in the railways and ports, and to the requirement of maintaining a register for children under 17.<sup>85</sup> Later on, the act also prohibited employment of children under 15 years in work carried on close to or between the railways.<sup>86</sup> This Act provided penalties for whoever employed any child or permitted any child to work and for whoever failed to give notice or to maintain a register. The penalties could be an imprisonment, a fine or both.<sup>87</sup> The Act was found not to be responding to all problems of child labour, and the need was felt to have a law that prohibits certain employments for children and lays down, for work that is permitted for children, certain safeguards in terms of working conditions. This led to its replacement, in 1986, with the Child Labour - Prohibition and Regulation - Act.<sup>88</sup>

### 3.1.5 The Child Labour - Prohibition and Regulation – Act, 1986

The CLPRA is still an important Act in India and prohibits the engagement of children in certain employments and regulates the conditions of work of children in other employments.<sup>89</sup> It applies to children under the age of fourteen.<sup>90</sup> It prohibits their employment in several listed trades, for example work connected to railroads, carpet-weaving and cloth printing. And also in mica mines.<sup>91</sup> Over the years, the list of occupations was different times expanded to substantially expand the list of prohibited occupations.<sup>92</sup> Finally, this resulted in 83 prohibited occupations and processes.<sup>93</sup> Within trades where children may work, the Act regulates the working hours. Children are not allowed to work more than three hours at a time and must have an interval of rest of one hour before working again. Furthermore, it forbids night work and overtime work, provides for a weekly day of rest and there are basic health and safety requirements.<sup>94</sup> The penalties under this Act are the same as in the Employment of Children Act, 1938. However, the

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<sup>84</sup> Article 3 of the Employment of Children Act, 1938.

<sup>85</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 295.

<sup>86</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 296.

<sup>87</sup> Article 4 of the Employment of Children Act, 1938.

<sup>88</sup> D.S. Saini, *Child Labour in India and the International Human Rights Discourse*, in L. Williams, *International Poverty Law: An Emerging Discourse*, The CROP International Studies Series in Poverty Research, London: Zed Books, 2006, p. 209.

<sup>89</sup> Preamble of the Child Labour – Prohibition and Regulation – Act, 1986.

<sup>90</sup> Article 2 of the Child Labour – Prohibition and Regulation – Act, 1986.

<sup>91</sup> Schedule Part A and B of the Child Labour – Prohibition and Regulation – Act, 1986.

<sup>92</sup> This was in 1994, 1998 and 2001. See C.K. Johri, *India*, in the International Encyclopaedia of Laws: Labour Law, Wolters Kluwers, April 2014, p. 136.

<sup>93</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 302.

<sup>94</sup> Articles 7, 8 and 13 of the Child Labour – Prohibition and Regulation – Act, 1986.

See also Sem Moeskops, *Child Labour in the Textile Industry in India*, paper for International Labour Law and Globalisation, p. 9.

length of imprisonment may be longer and the fines can be higher.<sup>95</sup> This Act has been amended in 2016, which will be discussed in the next paragraph.

Summing up, regulation for child labour in India has existed since 1881. There were several adjustments since then. Over the years, the age under which labour is prohibited has been increased. There also came rules regarding working hours for children and the punishments became stricter. I think these changes are good, since they provide more protection for children. First, there were different Acts for specific occupations, but in 1986 the CLPRA came into force, which prohibited child labour in several occupations and activities. This modification is also positive, since in my opinion one Act is easier than several different Acts. This makes the Indian regulatory framework concerning child labour more clear.

The next paragraph will focus on the recent developments of the Indian regulatory framework regarding child labour.

### **3.2 Recent developments in India concerning child labour**

After the historic overview of the most important child labour regulations in India, this paragraph will discuss three recent developments of India's legislation, which are the amendment in 2016 of the CLPRA, the ratification of the two ILO Conventions on child labour in 2017 and the start of legalising mica mines in 2017.

#### **3.2.1 The Child Labour - Prohibition and regulation – Amendment Act, 2016**

In 2016, the CLPRA has been amended to the Child and Adolescent Labour – Prohibition and Regulation – Act, 1986.<sup>96</sup> The amendment has ensured that the Act prohibits the engagement of children (persons under 14 years) in all occupations and the engagement of adolescents (persons between 14 and 18 years) in hazardous occupations.<sup>97</sup> There are two exceptions made for work that children are allowed to do. The first one is, helping his family or family enterprise, as far as it is not a hazardous occupation and it is after school hours or during vacations. Secondly, working as an artist in an audio-visual entertainment industry.<sup>98</sup> Furthermore, the amendment has led to stricter penalties for those who employ a child or permit a child to work.<sup>99</sup>

At first the amendment seems positive, however a closer look shows also some negative elements. First, children are allowed to work in their family or family enterprise. A family does not only include a child's parents and siblings, but also the siblings of his parents.<sup>100</sup> According to the Indian Express, this has as a result that, instead of abolishing child labour, this amendment

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<sup>95</sup> Article 14 of the Child Labour – Prohibition and Regulation – Act, 1986.

<sup>96</sup> Article 3 of the Child Labour – Prohibition and Regulation – Amendment Act, 2016.

<sup>97</sup> Article 2 and 4 of the Child Labour – Prohibition and Regulation – Amendment Act, 2016.

<sup>98</sup> Article 5 of the Child Labour – Prohibition and Regulation – Amendment Act, 2016.

<sup>99</sup> Article 18 of the Child Labour – Prohibition and Regulation – Amendment Act, 2016.

<sup>100</sup> Article 5 of the Child Labour – Prohibition and Regulation – Amendment Act, 2016.

makes a large part of child labour lawful. Since it is estimated that around 80 per cent of child labour is in work with family members.<sup>101</sup> Secondly, the work that is seen as hazardous is drastically reduced by the amendment. The Act had 83 occupations that were labelled as hazardous, now it only includes three activities, namely mines, inflammable substances or explosives and hazardous process.<sup>102</sup> Essentially, this nullifies the expanded list of occupations that had been included in this Act over the past several years. Concluding, the government's move to legitimize child participation in family enterprises and reduce what counts as hazardous work, in effect deregulates the bulk of child labour in the country.<sup>103</sup>

Nonetheless, in 2017, there came additional rules for this Act, the Child Labour - Prohibition and Regulation - Amendment Rules, 2017. These rules lay down conditions under which the child can help his family or family enterprise and can work as an artist.<sup>104</sup> For helping his family or family enterprise, the rules include that a child shall not perform any tasks during the night and that a child shall not help for more than three hours. Particularly, a child shall not be engaged in tasks which hinder his attendance at school or his right to education, including activities which are inseparably associated to complete education, such as homework.<sup>105</sup> Since there are these rules, I think that the legitimating of child participation in family enterprises has not lead to a full deregulation of the bulk of child labour in India.

I think the amendment is a good step forward in tackling the problem of child labour in India. Nonetheless, as seen before, only setting a minimum age for child labour is not enough. According to Mendelivich, legislation should be combined with practical measures. The author states that social policies should be used to attack poverty and some of its effects, such as absenteeism from school. Social protection instruments can serve to prevent vulnerable households from resorting to child labour. The author argues that it is important to work towards profound economic, social, and cultural changes in developing countries.<sup>106</sup> In my opinion, child labour is part of a bigger problem, which can only be addressed if the economic, social and cultural situations in a country develop. For instance, the governments should make sure that families can earn a decent income without letting their children work, plus all children should be able to go to school. So, there is more needed in India than just setting a minimum age.

The same applies to the exception for helping in the family or family enterprise. I understand the criticism for allowing children to help in the family or family enterprise, but I think that it is

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<sup>101</sup> H. Mander, *A law against children*, July 2016, via <https://indianexpress.com/article/opinion/columns/child-labour-bill-unequal-childhood-family-workers-free-education-2941209/>.

<sup>102</sup> Article 22 of the Child Labour – Prohibition and Regulation – Amendment Act, 2016.

<sup>103</sup> S. Balagopalan, *'Afterschool and during vacations': on labor and schooling the postcolony*, *Children's Geographies*, July 2018, p. 2.

<sup>104</sup> Article 2B and 2C of the Child Labour (Prohibition and Regulation) Amendment Rules, 2017.

<sup>105</sup> Article 2B of the Child Labour (Prohibition and Regulation) Amendment Rules, 2017.

<sup>106</sup> R.A. Mavunga, *A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999*, *PER*, Volume 16, Number 5, 2013, p. 127.



complicated for the Indian government to prohibit these forms of child labour. On the one hand, it is not easy to monitor the prohibition of work inside the family or family business, since this is hidden labour. On the other hand, I can believe that the help of children can be really necessary for some families in the poorest districts. I am positive about the additional rules that were made in 2017, since these rules provide some good restrictions for children helping their families, which include that a child's help may not hinder his/her schooling.

Webbink et al. have done research to child labour in housework and family businesses in different developing countries. The results of this study were the following. Firstly, the availability of electricity reduces the number of hours children spend on housework. Secondly, children spend fewer hours on both types of child labour if the mother has at least primary education. Thirdly, the number of hours worked increases with the number of brother and sisters. According to these results, policy makers can stimulate changes that can reduce these forms of child labour in the three mentioned areas. The authors plead for improving the basic facilities, such as electricity networks and facilities for clean drinking water. Plus, enhance education and empowerment of women and organize information campaigns to limit the family size.<sup>107</sup> India was not included in this study, although I do believe that those kind of policies, can also have a positive impact in India. I hope that India will implement such policies, so that the exception for children working in the family or family enterprise can be erased in the future.

Furthermore, it is good that hazardous work is prohibited for every child under the age of eighteen. Unfortunately, the list of hazardous occupations has been reduced to only three activities. For children in mica mines there is no difference, since working in mines is still considered as a hazardous occupation. However, I think it was better to keep the existing list of 83 occupations, since this offers more protection to children in hazardous forms of work.

Concluding, the amendment is a good step forward, but India is still not there. The setting of a minimum age is not sufficient. Besides, children helping in the family or family enterprise is still allowed. India should make changes in their policies, so that the help of children is less needed and that the exception for helping in the family or family enterprises can be abolished in the future. Finally, it is regrettable that the list of hazardous occupations is reduced enormously.

The amendment of the CLPRA made India able to ratify the child labour Conventions of the ILO. This will be discussed in the next paragraph.

### **3.2.2 Ratification of ILO Conventions on child labour**

India is already a member of the ILO since 28 June 1919. However, the country never ratified the two, core ILO Conventions on child labour. At the International Labour Conference in 2006,

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<sup>107</sup> E. Webbink et al., *Hidden child labour: Determinants of housework and family business work of children in 16 developing countries*, Nijmegen: NiCE Working Paper 10-110, October 2010, p. 15-16.

the Indian government stated that the Worst Forms of Child Labour Convention, 1999, would be ratified when national laws and practices were in full conformity with its provisions. With regard to the Minimum Age Convention, 1973, 'the government referred to the need to establish conditions ensuring that children are not being compelled by circumstances to seek work and an appropriate enforcement machinery'.<sup>108</sup>

So, India refused to ratify the Conventions, because their national laws were not in accordance with these Conventions. India did not have a minimum age of 15 (or 14) years, as laid down in the Minimum Age Convention, 1973. Besides, the Worst Forms of Child Labour Convention, 1999, prohibits hazardous employment for children under the age of 18 and India had the minimum age of 14 years for employment in hazardous occupations.<sup>109</sup> However, in 2016, the amendment of the CLPRA changed this, since this amendment prohibits the employment of persons under 14 years and persons under 18 years in hazardous occupations. On 13 June 2017, this resulted in India's ratification of the two fundamental ILO Conventions concerning the elimination of child labour.<sup>110</sup> With India's ratification, almost all children are covered by the Worst Forms of Child Labour Convention, 1999 and coverage of the Minimum Age Convention, 1973, rose to 80 per cent of the world's children.<sup>111</sup>

Countries who do not ratify these two Conventions, still have to respect, promote and realize the principles of these Conventions. This follows from the Declaration on Fundamental Principles and Rights at Work, 1988, because these two Conventions contain fundamental rights.<sup>112</sup> I think it is positive that India has ratified these Conventions. It shows that they are willing to address the problem of child labour in their country. Besides, if a country has ratified a fundamental Convention, it is obliged to report every three years on measures it has taken to implement it.<sup>113</sup> Therefore, India is obliged to report the improvements they have made according to child labour. However, as seen in the previous paragraph, India still need to do more to abolish child labour completely.

Besides, India's regulation to prohibit child labour in general, they also started making rules specially for mica mines.

### **3.2.3 Start legalising mica mines**

Another development in 2017, particularly for mica mines, is that India has started to legalise this industry. Some believe that legalising mica mines could undermine the black market in mica

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<sup>108</sup> Governing Body, *Ratification and promotion of fundamental ILO Conventions*, Geneva: ILO, November 2007, p. 4.

<sup>109</sup> A. Bajpai, *Child Rights in India: Law, Policy, and Practice*, Oxford Scholarship Online, November 2017, p. 339.

<sup>110</sup> [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_557295/lang--ja/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_557295/lang--ja/index.htm).

<sup>111</sup> ILO, *Global estimates of child labour: Results and trends, 2012-2016*, Geneva: ILO, 2017, p. 54.

<sup>112</sup> Article 2 of the Declaration on Fundamental Principles and Rights at Work, 1998.

<sup>113</sup> ILO, *Rules of the Game: A brief introduction to International Labour Standards*, Revised Edition 2014, Geneva: ILO, 2014, p. 102.

and helps to improve health and safety standards as well as combating child labour.<sup>114</sup> Also, according to Terre des Hommes, this is an important step forward in the process of eradicating child labour, however the positive impact depends on the conditions of the auction process.<sup>115</sup> Frémont, executive director of the Responsible Mica Initiative, says:

*“It could ensure, for example, that adults are earning fair wages and are able to work in safe and healthy conditions; they would have the opportunity to improve their living conditions so the children could go to school instead of working in the mines,”<sup>116</sup>*

But he also says that, although legalising the mines is a decisive step, the full extent of the positive impact it can have, depends on how it is conducted and managed.<sup>117</sup> Again, in my opinion, it is good that the Indians government wants to do something about the problem of mica mining. Since detailed information about the process has not yet been revealed, it is waiting for what the government will do.

### **3.3 Conclusion**

The first paragraph describes the most important Indian Acts relating to child labour that were created in the past. It started with the Factories Act, 1881 and 1948. Thereafter, the Mines Act of 1901 and 1952 were discussed. Followed by the Children – Pledging of Labour – Act, 1933 and the Employment of Children Act, 1938. It ended with the CLPRA in 1986. It was concluded that the adjustments over time were positive.

After discussing the international obligations and India's regulatory framework concerning child labour, the first sub-question can be answered:

*“What are the recent developments in India’s regulatory framework concerning child labour and are these in line with international obligations?”*

The problem of child labour in India is big because of poverty. Families with little resources are forced to send their children to work. Besides, birth control remains a taboo among many Indian cultures. Some families believe that more children means a higher income.<sup>118</sup> Hence, India did made some recent developments in their regulatory framework concerning child labour, these

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<sup>114</sup> *Blood Mica: Deaths of child workers in India's mica "ghost" mines covered up to keep industry alive*, via: <http://news.trust.org/shorthand/mica/>.

<sup>115</sup> *India starts legalising mica mines*, 5 May 2017, via: <https://www.terredeshommes.nl/en/news/india-starts-legalising-mica-mines>.

<sup>116</sup> H. Vella, *Legalising North East India's mica mines*, 16 July 2017, via <https://www.mining-technology.com/features/featurelegalising-north-east-indias-mica-mines-5863607/>.

<sup>117</sup> H. Vella, *Legalising North East India's mica mines*, 16 July 2017, via <https://www.mining-technology.com/features/featurelegalising-north-east-indias-mica-mines-5863607/>.

<sup>118</sup> *Child Protection & Child Rights: Child Labour in India*, via <http://surejob.in/child-labour-in-india.html> and *Child Labour in India – Causes, Concerns & How to Stop*, 2017, via <http://www.childlineindia.org.in/child-labour-india.html>.

developments were discussed in paragraph two. India has amended the CLPRA, which resulted in being able to ratify the two ILO Conventions on child labour. These developments show that India is willing to address the problem of child labour. But, India is still not there, the government has to be active in reducing, and eventually remove, child labour. Besides, India has started to legalise mica mines.

By the amendment of the CLPRA, India has implemented a minimum age of 14 years. Assuming that India can be seen as a developing country, this minimum age is in line with the Minimum Age Convention, 1973. Furthermore, India has prohibited hazardous work for children under eighteen years, which is in line with the Worst Forms of Child Labour Convention, 1999. However, the amendment does not mention implicitly slavery, prostitution, pornography or illicit activities, but only talks about mines, inflammable substances or explosives and hazardous process.

The next chapter will focus on the role of multinational enterprises regarding the problem of child labour in India.

## Chapter 4 Legal responsibility of multinational enterprises

The issue of child labour is not only a matter of governments, enterprises must also play their own role in this respect and take their responsibilities.<sup>119</sup> That is why this chapter will focus on the legal responsibility of multinational enterprises for violations of child labour in their supply chain. Responsibility can be explained as:

*"Responsibility refers to the care and consideration a person has for the outcome of their actions. It can also refer to a person's accountability for an outcome to which their actions have contributed, together with any legal obligation they may have to repair any damage caused."<sup>120</sup>*

This chapter will first describe which legislation is applicable for multinational enterprises. Thereafter, it will look if international obligations concerning child labour do also apply to multinational enterprises. Subsequently, it will investigate if multinational enterprises should be responsible for violations of child labour in their supply chain. Additionally, CSR and international guidelines for human rights will be discussed.

### 4.1 How is the behaviour of multinational enterprises regulated?

The main characteristic of multinational enterprises is that they operate across the borders of states. In principle, the law of their corporate seat governs these enterprises. However, home states do generally not have any legislative power or control when their corporate citizens operate across the borders of nation states because of the territoriality principle. Therefore, the legislation of the country in which the multinational enterprise operates will have the legal authority to regulate the behaviour of this enterprise.<sup>121</sup>

But there can be some problems with this. First of all, it is possible that these governments cannot regulate the behaviour of the multinational enterprises. According to Vandenberg, governments may lack the expertise or resources to regulate adequately.<sup>122</sup> Secondly, these countries may be unwilling to make regulations. Conflicting interests can play a role by local governments. Vytopil gives the example of a country's dependency on these foreign companies for their economy. The author mentions:

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<sup>119</sup> A. Kolk and R. van Tulder, *The Effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour*, European Management Journal, Volume 20, Number 3, 2002, p. 269.

<sup>120</sup> *Liability vs. responsibility*, via: <https://www.translegal.com/lesson/2518>.

<sup>121</sup> A.L. Vytopil, *Contractual Control in the Supply Chain: On Corporate Social Responsibility, Codes of Conduct, Contracts and (Avoiding) Liability*, The Hague: Eleven International Publishing, 2015, p. 27.

<sup>122</sup> M.P. Vandenberg, *The New Wal-Mart Effect: The Role of Private Contracting in Global Governance*, UCLA Law Review 913, 2007, p. 919.

*“These states can lose popularity with foreign investors if their government reproaches the investors for their behavior, which could in turn have a detrimental effect on the local economy of the host country.”*<sup>123</sup>

Thirdly, the ‘race to the bottom’ can be relevant. Through globalization, companies can choose various locations to set up their business. These companies will choose the most favourable country. Not only in terms of costs, but also in terms of fewer regulations. Countries that are looking for foreign investors, will adjust their legislation accordingly. So, the legislation of the host state is applicable, but this legislation can be of a lower level than the legislation of the multinational’s home country.<sup>124</sup> This has created regulatory gaps, which means that the multinational enterprise has to comply with more severe legislation in the home country than in the host country. For instance, the minimum age for employment can be 16 years in the home country, but only 14 years in the host country.

Besides that the legislation of the host states can be weak, there are also some legal obstacles that reduce the responsibility of multinational enterprises. Due to legal principles such as corporate separateness, limited liability and the territoriality principle, national labour administrations have been largely unable to hold multinational enterprises liable for violations of labour law that occur at lower tiers of their supply chains.<sup>125</sup> Corporate separateness contains that the owners of corporations are not liable for the debts or actions of the corporations they own or control.<sup>126</sup> The rule of limited liability holds that the investors in a corporation are not liable for more than the amount they invest.<sup>127</sup> The territoriality principle means that states have limited jurisdiction to regulate corporate activities that occur outside their national boundaries.<sup>128</sup> These legal rules make it difficult to hold owners and multinational enterprises liable for their global supply chain.

Another issue is that multinational enterprises often have complex legal structures. To explain this, I will take the Dutch law into account. The most straightforward case is the situation in which a multinational enterprise opens a branch abroad. In that case, the branch and the multinational enterprise can be considered as one corporate group, whereby the parent company is probably responsible for the branch. However, a more common situation is the one in which a corporation creates a separate legal entity that operates under the laws of the host country but is controlled by the parent country. Corporations are establishing complicated corporate structures consisting of numerous legal entities with multiple layers of limited liability. A multinational

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<sup>123</sup> A.L. Vytopil, *Contractual Control in the Supply Chain: On Corporate Social Responsibility, Codes of Conduct, Contracts and (Avoiding) Liability*, The Hague: Eleven International Publishing, 2015, p. 27.

<sup>124</sup> A.L. Vytopil, *Contractual Control in the Supply Chain: On Corporate Social Responsibility, Codes of Conduct, Contracts and (Avoiding) Liability*, The Hague: Eleven International Publishing, 2015, p. 27.

<sup>125</sup> ILO, *Decent work in global supply chains*, Geneva: International Labour Conference, report IV, 2016, p. 6.

<sup>126</sup> M.C. Keeley and B.A. Bennett, *Corporate Separateness*, FRBSF Weekly letter, June 1988, p. 1.

<sup>127</sup> F.H. Easterbrook and D.R. Fischel, *Limited Liability and the Corporation*, The University of Chicago Law Review, Vol 52, Number 1, 1985, p. 89-90.

<sup>128</sup> ILO, *Decent work in global supply chains*, Geneva: International Labour Conference, report IV, 2016, p. 42.

enterprise cannot simply be held liable for acts of legally separate subsidiaries. A more complicated situation that further limits a corporation's liability results when a multinational enterprise enters into contractual relations with partners in other countries. In this case, the multinational cannot be held liable for the acts of the foreign partner.<sup>129</sup>

Concluding, on the one hand the legislation of the host country can be weak, on the other hand, multinational enterprises can legally avoid responsibilities. Multinational enterprises can take advantage of the weak points of specific legal systems, and at the same time they can carefully plan how each daughter company should be structured, so that the corporation is not held liable for any violations of the law.<sup>130</sup> Considering, according to Weissbrodt and Kruger, multinational enterprises have increased their power in the world and with power should come responsibility.<sup>131</sup> That is because, on the one hand, these enterprises are capable of exerting a positive influence in promoting development. On the other hand, because some multinational enterprises do not respect minimum human rights standards, which affects 'developing countries, children, minorities, and women who work in unsafe and poorly paid production jobs, as well as indigenous communities and other vulnerable'.<sup>132</sup> The authors are stating that international human rights law needs to focus adequately on these international non-state actors.<sup>133</sup> The next paragraph will see if international human rights law regarding to child labour is applicable to multinational enterprises.

## **4.2 Multinational enterprises legal responsibility for violations of child labour**

The enforcement of child labour imposes obligations on the states, as the main parties to the treaties and as the main drivers to respect, promote and protect children from child labour.<sup>134</sup> But, do these international regulation also apply to multinational enterprises? This paragraph will discuss the ILO Conventions and the Convention on the Rights of the Child.

### **4.2.1 The ILO Conventions**

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<sup>129</sup> N.M.C.P. Jägers and M.J.C. van der Heijden, *Corporate human rights violations: the feasibility of civil recourse in the Netherlands*, Brooklyn Journal of International Law, 2008, p. 840-841.

<sup>130</sup> A.L. Vytopil, *Contractual Control in the Supply Chain: On Corporate Social Responsibility, Codes of Conduct, Contracts and (Avoiding) Liability*, The Hague: Eleven International Publishing, 2015, p. 26.

<sup>131</sup> D. Weissbrodt and M. Kruger, *Norms on the Responsibilities of Transnational Corporation and Other Business Enterprises with Regard to Human Rights*, The American Journal of International Law, Volume 97, Number 4, October 2003, p. 901-902.

<sup>132</sup> D. Weissbrodt and M. Kruger, *Norms on the Responsibilities of Transnational Corporation and Other Business Enterprises with Regard to Human Rights*, The American Journal of International Law, Volume 97, Number 4, October 2003, p. 901.

<sup>133</sup> D. Weissbrodt and M. Kruger, *Norms on the Responsibilities of Transnational Corporation and Other Business Enterprises with Regard to Human Rights*, The American Journal of International Law, Volume 97, Number 4, October 2003, p. 901.

<sup>134</sup> I.M. Borges, *The Responsibility of Transnational Corporations in the Realization of Children's Rights*, University of Baltimore Journal of International Law, Volume 5, Article 2, 2016, p. 31.

The Convention on the Worst Forms of Child Labour, 1999, expresses that member states should support each other via international cooperation and assistance.<sup>135</sup> According to Borges, this may include the contribution of multinational enterprises.<sup>136</sup> However, I believe that this Convention does only attribute obligations to member states and not to multinational enterprises. See the following articles:

*“Each Member [...] shall take immediate and effective measures [...].  
Each Member shall [...] establish or designate appropriate mechanisms to monitor the implementation of [...] this Convention.  
Each Member shall design and implement programmes of action to eliminate [...] child labour.”*<sup>137</sup>

The same applies for the Minimum Age Convention, 1973.<sup>138</sup> Moreover, the two Conventions contain the following article:

*“This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.”*<sup>139</sup>

Therefore, I agree with van der Heijden that ILO Conventions are usually addressed to national government and do not have a direct effect on others.<sup>140</sup>

#### **4.2.2 Convention on the Rights of the Child, 1989**

According to Borges, the Convention on the Rights of the Child shows a horizontal effect, as states parties have the obligation to prevent and restrain violations against the right to protection from economic exploitation by private entities, which include multinational enterprises.<sup>141</sup> I do not believe that there is a horizontal effect, since the Convention does not create obligations for others than member states. Moreover, the author describes that India, a party to the Convention on the Rights of the Child, has included the prohibition of labour for children under the age of fourteen in its legislation. This is legally enforceable not only against the state but also against

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<sup>135</sup> Article 8 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

<sup>136</sup> I.M. Borges, *The Responsibility of Transnational Corporations in the Realization of Children's Rights*, University of Baltimore Journal of International Law, Volume 5, Article 2, 2016, p. 24.

<sup>137</sup> Articles 1, 5 and 6 of the Worst Forms of Child Labour Convention, 1999 (No. 182).

<sup>138</sup> Among others: article 1 and article 2, sub 1 and 2, of the Minimum Age Convention, 1973 (No. 138).

<sup>139</sup> Article 10, sub 1, of the Worst Forms of Child Labour Convention, 1999 (No. 182) and article 12, sub 1, of the Minimum Age Convention, 1973 (No. 138).

<sup>140</sup> P.F. van der Heijden, *Opinie: De ILO en het Nederlandse arbeidsrecht*, Boom Juridische Uitgevers, May 2018, p. 5.

<sup>141</sup> I.M. Borges, *The Responsibility of Transnational Corporations in the Realization of Children's Rights*, University of Baltimore Journal of International Law, Volume 5, Article 2, 2016, p. 19.



multinational enterprises.<sup>142</sup> In my opinion, this indicates that the Convention on the Rights of the Child is only legally enforceable against multinational enterprises, if a country has ratified this Convention and has adjusted their legislation accordingly.

Concluding, the ILO Conventions concerning child labour and the Convention on the Rights of the Child are not directly applicable to multinational enterprises. These Conventions first have to be implemented into national legislation, which does apply to multinational enterprises. The next question is: should these Convention be applicable to multinational enterprises? The following paragraph will discuss some arguments for and against the principle that multinational enterprises should be responsible for human rights.

### **4.3 Pros and cons to make multinational enterprises responsible for human rights**

As a main rule, international human rights law is only binding upon states.<sup>143</sup> But this traditional notion that only states can be held accountable for violations of human rights is being challenged now that the power of multinational enterprises is increasing.<sup>144</sup> However, should multinational enterprises be accountable for these violations in their global supply chain? Some pros and cons will be discussed below.

There are some arguments for extending multinational enterprises responsibility for human rights. First of all, the observance of human rights by enterprises may enhance their trademark.<sup>145</sup> It may also lead to a good reputation. Besides, multinational enterprises are more likely to pull working conditions up than to pull them down.<sup>146</sup> Which can lead to the reduction of the risk of strikes and protests. Furthermore, it attracts and retains a higher quality of workforce and increases job satisfaction. Additionally, multinational enterprises can promote the protection of human rights because they are able to reach across borders and allow people to work together.<sup>147</sup>

On the other hand, the author Muchlinski also explains some arguments against extending human rights responsibilities to multinational enterprises. The first one is that multinational enterprises are in business, which means that their only social responsibility is to make profits for their shareholders. Secondly, private non-state actors do not have any positive duty to observe human rights. They only have the duty to follow the law. It is for the state to regulate human rights. A

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<sup>142</sup> I.M. Borges, *The Responsibility of Transnational Corporations in the Realization of Children's Rights*, University of Baltimore Journal of International Law, Volume 5, Article 2, 2016, p. 19.

<sup>143</sup> A. Henriksen, *International Law*, Oxford: Oxford University Press, 2017, p. 183.

<sup>144</sup> P.T. Muchlinski, *Human rights and multinationals: is there a problem?*, International Affairs, Volume 77, Issue 1, December 2002, p. 31.

<sup>145</sup> I.M. Borges, *The Responsibility of Transnational Corporations in the Realization of Children's Rights*, University of Baltimore Journal of International Law, Volume 5, Article 2, 2016, p. 6.

<sup>146</sup> P.T. Muchlinski, *Human rights and multinationals: is there a problem?*, International Affairs, Volume 77, Issue 1, December 2002, p. 38-39.

<sup>147</sup> I.M. Borges, *The Responsibility of Transnational Corporations in the Realization of Children's Rights*, University of Baltimore Journal of International Law, Volume 5, Article 2, 2016, p. 6.

further question is: which human rights do multinational enterprises have to observe? They can influence some social and economic matters, but they cannot prepossess any civil or political rights. Only states have the power and ability to do this. Additionally, it can create a 'free rider' problem. Not all multinational enterprises will put the same effort in paying attention to human rights. An enterprise that invests more time and money in human rights, will be at a competitive disadvantage in comparison with enterprises that will not put much effort and money in this. Enterprises may also lose business opportunities in countries with poor human rights practices, where these governments may not want to accept enterprises that are ethically driven. Finally, there can be unfairness by the selective and politically driven activities of NGOs, which may want to maintain a high profile for their particular campaigns, instead of holding all enterprises equally accountable.<sup>148</sup>

Thus, there are some pros and cons to hold multinational enterprises responsible for violations of human rights in their supply chain. The authors Amaeshi et al. make a distinction in their article between the situation in which enterprises are having control over their suppliers and the situation in which enterprises are being able to influence their suppliers. According to the authors, only in the case of control, the enterprise should be responsible for the activities of others firms in the group.<sup>149</sup> The authors state that it is inappropriate to hold any enterprise responsible for the activities of another firm, unless the actions of that enterprise consequentially lead to the action of that other firm whereby the relationship is not at arm's-length.<sup>150</sup> In the case that enterprises cannot control the activities of their suppliers, these enterprises should not bear 'indefinite' responsibilities for the actions of these suppliers, but should try to influence the suppliers' practices.<sup>151</sup>

I agree with the authors that it goes too far to held multinational enterprises responsible for matters that they cannot control, because this will lead to an impossibility to do business. Therefore, in my opinion, multinational enterprises should not be legally responsible for violations of human rights in their whole supply chain. However, there are some international attempts made to influence the behaviour of multinational enterprises, which will be introduced in the next paragraph.

#### 4.4 CSR

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<sup>148</sup> P.T. Muchlinski, *Human rights and multinationals: is there a problem?*, International Affairs, Volume 77, Issue 1, December 2002, p. 35-36.

<sup>149</sup> K.A. Amaeshi et al., *Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications*, Journal of Business Ethics, 2008, p. 229.

<sup>150</sup> K.A. Amaeshi et al., *Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications*, Journal of Business Ethics, 2008, p. 231.

<sup>151</sup> K.A. Amaeshi et al., *Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications*, Journal of Business Ethics, 2008, p. 230.

International human rights law does not directly apply to multinational enterprises. However, it has been acknowledged that enterprises have the responsibility to respect human rights.<sup>152</sup> In the 1970s, the role of multinational enterprises became controversial for the first time. The debate was about the relocation of production to developing countries with lower social and environmental standards, where an appropriate regulatory framework to protect (child) workers and the environment was missing. This gave rise to a reflection on multinational enterprises' ethical behaviour. In response to these concerns, attempts were made to regulate their behaviour.<sup>153</sup> A number of international instruments, that address labour rights in global supply chains, were created.<sup>154</sup> In 1976, the OECD came with their OECD Guidelines and a year later the ILO followed with the MNE Declaration, 1977. Also at the UN level it has been acknowledged that companies have the responsibility to respect human rights. In 2000, the UN Global Compact was created. A few years later, the UN formalised the 'Protect, Respect and Remedy' framework, which was followed by the adoption of the Guiding Principles in 2011.<sup>155</sup> These instruments form part of the broader concept of CSR. For that reason, it will first shortly be explained what CSR is, since a thorough discussion of the concept of CSR will go beyond this thesis. Afterwards, it will be about these various international guidelines.

There is not one clear definition of CSR. This is because the term does not always mean the same thing to everybody. For the one it can have the meaning of legal responsibility, for the other it is about socially responsible behaviour in an ethical sense.<sup>156</sup>

The World Business Council for Sustainable Development describes CSR as 'the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large'.<sup>157</sup>

Moreover, the UN Industrial Development Organization has the following definition:

*"Corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives [...], while at the same time addressing the expectations of shareholders and stakeholders."*<sup>158</sup>

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<sup>152</sup> A. Campos et al., *From moral responsibility to legal liability?*, Amsterdam: SOMO and Repórter Brasil, May 2015, p. 24.

<sup>153</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 292.

<sup>154</sup> ILO, *Workplace Compliance in Global Supply Chains*, Geneva: ILO, Sectoral Policies Department, 2016, p. 4.

<sup>155</sup> A. Campos et al., *From moral responsibility to legal liability?*, Amsterdam: SOMO and Repórter Brasil, May 2015, p. 24-25.

<sup>156</sup> S.R. Raman, *Corporate Social Reporting in India - A View from the Top*, New Delhi: Sage Publications, 2006, p. 314.

<sup>157</sup> PwC, *Handbook on Corporate Social Responsibility in India*, November 2013, p. 7.

<sup>158</sup> PwC, *Handbook on Corporate Social Responsibility in India*, November 2013, p. 7.

According to the ILO, 'CSR is commonly used as the broader term for enterprises' voluntarily self-regulating social, environmental or economic issues'.<sup>159</sup> Besides, the European Commission sees CSR as 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis'.<sup>160</sup>

Also scholars use different definitions of CSR. In a scientific article with a HRM perspective, Jamali et al 'understand CSR as the social obligation to impact society beyond pure profit maximization objectives'.<sup>161</sup>

In some articles of the International Journal of Human Resource Management, scholars refer to different definitions of CSR. Preuss et al<sup>162</sup> use the CSR definition of McWilliams and Siegel, whereby CSR has been defined as 'actions that appear to further some social good, beyond the interests of the firm and that which is required by law'.<sup>163</sup> Likewise, Vlachos et al.<sup>164</sup> exert the definition of Aguilera et al., which defines CSR as 'context-specific organizational actions and policies that take into account stakeholders' expectations and the triple bottom line of economic, social, and environmental performance'.<sup>165</sup>

Furthermore, van Marrewijk did an investigation to the concepts and definitions of CSR and he describes CSR as following:

*"In general, corporate sustainability and, CSR refer to company activities – voluntary by definition – demonstrating the inclusion of social and environmental concerns in business operations and in interactions with stakeholders."*<sup>166</sup>

The definitions of the ILO, the European Commission and of van Marrewijk mention the voluntary basis of CSR. According to Castermans et al, CSR is in most cases considered to be

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<sup>159</sup> ILO, *Decent work in global supply chains*, Geneva: International Labour Conference, report IV, 2016, p. 47.

<sup>160</sup> R. Gautam and A. Singh, *Corporate Social Responsibility Practices in India: A Study of Top 500 Companies*, Global Business and Management Research: An International Journal, 2010, p. 42.

<sup>161</sup> D.R. Jamali et al., *Exploring human resource management roles in corporate social responsibility: the CSR-HRM co-creation model*, Business Ethics: A European Review, Volume 24, Number 2, April 2015, p. 126.

<sup>162</sup> Preuss et al, *The rise of CSR: implications for HRM and employee representation*, The International Journal of Human Resource Management, Volume 20, Number 4, April 2009, p. 954.

<sup>163</sup> A. McWilliams and D. S. Siegel, *Corporate Social Responsibility: A Theory of the Firm Perspective*, Academy of Management Review, Number 26, 2001, p. 117.

<sup>164</sup> P.A. Vlachos et al., *When do corporate social responsibility initiatives impact on customer-facing employees? Evidence from India and the Netherlands*, The International Journal of Human Resource Management, Volume 25, Number 22, July 2014, p. 3086.

<sup>165</sup> D.E. Rupp et al., *Increasing Corporate Social Responsibility through Stakeholder Value Internalization (and the Catalyzing Effect of New Governance): An Application of Organizational Justice, Self-Determination, and Social Influence Theories*, in *Managerial Ethics: Managing the Psychology of Morality*, ed. M. Schminke, Routledge/ Psychology Press, 2011, p. 3.

<sup>166</sup> M. van Marrewijk, *Concepts and Definitions of CSR and Corporate Sustainability: Between Agency and Communion*, Journal of Business Ethics 44, 2003, p. 102.

voluntary. CSR exceeds the legal minimum responsibilities, whereby corporations determine additional responsibilities for themselves. The voluntary nature is reflected in all kinds of actions, such as philanthropy, as well as corporate governance and compliance with standards and reporting.<sup>167</sup>

These different definitions make clear that CSR goes beyond the economic purpose of businesses and their legal obligations, but focuses on what enterprises can do to improve social and environmental well-being and that it mostly has a voluntary nature. The drivers for enterprises to include a CSR policy in their business are that the concept of CSR reduces costs and risks, increases the brand value and reputation, plus the effectiveness and the efficiency of employees and it improves transparency in the working environment of the business.<sup>168</sup>

In the next paragraph the international guidelines for human rights will be discussed.

#### **4.5 International guidelines for human rights**

After explaining what CSR is, the international guidelines that were mentioned in the previous paragraph will now be described. These guidelines are multinational initiatives, which are defined by international organizations and then implemented by different actors, such as governments, enterprises and unions.<sup>169</sup> These initiatives are explicitly non-binding. However, they have gained authority and now provide inspiration for multinational enterprises in formulating CSR codes and establishing responsible practices.<sup>170</sup>

##### **4.5.1 OECD Guidelines, 1976**

The OECD Guidelines represent one of the most comprehensive international instruments on responsible business conduct, for enterprises in the OECD states. The initial aim was to promote business investments which offer positive outcomes to global economic and social progress. The Guidelines were further developed into a set of recommendations in key areas of business ethics, including labour standards and human rights.<sup>171</sup> One of the principles of the Guidelines is that enterprises should contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour.<sup>172</sup> The guidelines are for multinational enterprises as well as for governments. While for enterprises the observance is voluntary and legally non-binding, the governments have the obligation to set

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<sup>167</sup> A.G. Castermans et al., *Explaining CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 31.

<sup>168</sup> R. Gautam and A. Singh, *Corporate Social Responsibility Practices in India: A Study of Top 500 Companies*, Global Business and Management Research: An International Journal, 2010, p. 42.

<sup>169</sup> ILO, *Decent work in global supply chains*, Geneva: International Labour Conference, report IV, 2016, p. 58.

<sup>170</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 88.

<sup>171</sup> K. Lukas et al., *Corporate accountability: The Role and Impact of Non-Judicial Grievance Mechanisms*, Cheltenham: Edward Elgar Publishing Limited, 2016, p. 21.

<sup>172</sup> P. Overeem and M. Theuws, *Fact Sheet: Child labour in the textile & garment industry*, So mo: Amsterdam, March 2014, p. 4.

up National Contact Points (NCPs).<sup>173</sup> The aim of NCPs is to assist multinational enterprises and their stakeholders in taking appropriate measures to act in accordance with the OECD Guidelines.<sup>174</sup> In May 2018, the OECD did also publish the OECD Due Diligence Guidance for Responsible Business Conduct. This report provides practical support to enterprises on the implementations of the OECD Guidelines by providing explanations of its due diligence recommendations.<sup>175</sup> This report seeks to align with the UN Guiding Principles.<sup>176</sup>

#### **4.5.2 MNE Declaration, 1977**

Besides the OECD, the ILO also created an instrument, namely the MNE Declaration. This Declaration is the only global instrument that was negotiated on a tripartite basis. It 'provides direct guidance to enterprises (multinational and national) on social policy and inclusive, responsible and sustainable workplace practices'.<sup>177</sup> The aim of this Declaration is to encourage the positive contribution multinational enterprises can make to economic and social progress and the realization of decent work for all. Its principles are addressed to multinational enterprises, governments and employers' and workers' organizations, covering the following areas: employment, training, conditions of work and life and industrial relations. One of the topics of employment is the effective abolition of child labour. The Declaration has been revised in 2017, to respond to new economic realities and to take into account new developments.<sup>178</sup> This revision also provided guidance on due diligence processes, which are consistent with the UN Guiding Principles, see paragraph 4.5.4.<sup>179</sup>

#### **4.5.3 UN Global Compact, 2000**

The Global Compact wants businesses to operate in ways that meet fundamental responsibilities. The Compact lays down ten principles in the areas of human rights, labour, environment and anti-corruption. These principles should be incorporated by companies into strategies, policies and procedures, so that these companies hold up their basic responsibilities to people and planet, and also set the stage for long-term success. One of the labour principles is about the effective abolition of child labour. According to the Global Compact, 'responsible businesses enact the same values and principles wherever they have a presence, and know that good practices in one area do not offset harm in another'.<sup>180</sup> Enterprises that want to adhere the principles can register

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<sup>173</sup> K. Lukas et al., *Corporate accountability: The Role and Impact of Non-Judicial Grievance Mechanisms*, Cheltenham: Edward Elgar Publishing Limited, 2016, p. 21.

<sup>174</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 92.

<sup>175</sup> OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, p. 3.

<sup>176</sup> OECD, *OECD Due Diligence Guidance for Responsible Business Conduct*, 2018, p. 11.

<sup>177</sup> ILO, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) – 5th Edition (2017)*, via: <https://www.ilo.org/empent/areas/mne-declaration/lang--en/index.htm>.

<sup>178</sup> ILO, *What is the ILO MNE Declaration?*, via: [https://www.ilo.org/empent/areas/mne-declaration/WCMS\\_570332/lang--en/index.htm](https://www.ilo.org/empent/areas/mne-declaration/WCMS_570332/lang--en/index.htm).

<sup>179</sup> ILO, *ILO revises its landmark Declaration on multinational enterprises*, 17 March 2017, via: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_547615/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_547615/lang--en/index.htm).

<sup>180</sup> United Nations, *Global Compact: Guide to corporate sustainability*, p. 11.

online. Nowadays, thousands of enterprises have registered in every part of the world. The participants are under the obligation to report on their progress periodically and advance CSR in their sector.<sup>181</sup>

#### **4.5.4 Guiding Principles, 2011**

The Guiding Principles represent the implementation of the 'Protect, Respect and Remedy' framework. The Principles rest on three pillars. The first pillar exists of the duty of the state to protect citizens against human rights abuses by third parties. The second pillar consists of the corporate responsibility to respect human rights. The third pillar is about access to effective remedy. The Principles cover human rights, employment, the environment and corruption. For enterprises there is a reporting mechanism. Enterprises have to communicate annually on the progress on CSR goals.<sup>182</sup>

#### **4.5.5 Assessment of the international guidelines for human rights**

These initiatives are positive, since they step in to close the regulatory gap. As seen above, the transnational character of multinational enterprises makes public law ineffective in regulating the behaviour of these enterprises. Through certain initiatives, multinational enterprises can take on tasks that the traditional public law cannot regulate.<sup>183</sup> According to van Woensel, the framework of CSR has the following advantages. First, it is an inspiration for businesses and a reminder of their role in society. Second, CSR helps to improve access to justice where harm is caused to people or the environment in the course of business. Third, since the world is becoming more internationally, CSR is becoming an ecosystem to promote a more sustainable view on the market economy.<sup>184</sup>

CSR consists of soft law, which can be seen as an advantage as well as a disadvantage. On the one hand, corporations commit more easily to soft law than to legally enforceable rules. On the other hand, the framework does not guarantee that the corporation will carry out its responsibilities.<sup>185</sup> Although the named initiatives may require reporting, monitoring activities or complaints processes, they have limited capacity to enforce their standards directly.<sup>186</sup> Coherent to soft law, the penalty for not considering responsibilities is usually 'naming and shaming',

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See also Sem Moeskops, *Child Labour in the Textile Industry in India*, paper for International Labour Law and Globalisation, p. 8.

<sup>181</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 90.

<sup>182</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 89-90.

<sup>183</sup> A.L. Vytöpil, *Contractual Control in the Supply Chain: On Corporate Social Responsibility, Codes of Conduct, Contracts and (Avoiding) Liability*, The Hague: Eleven International Publishing, 2015, p. 32.

<sup>184</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 86.

<sup>185</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 97.

<sup>186</sup> ILO, *Decent work in global supply chains*, Geneva: International Labour Conference, report IV, 2016, p. 58.

which can be a powerful tool. Negative publicity can force an enterprise to take CSR standards into account, otherwise it can have a negative influence on the share-prices. Adversely, positive publicity can reward responsible practices as well, which can attract more customers.<sup>187</sup>

In my opinion, CSR and the international guidelines are becoming more important, since they reduce the regulatory gap. Although there is no legal enforcement, there are due diligence requirements. Besides, the penalty of 'naming and shaming' can be very powerful, which makes that these international guidelines can have a strong influence on businesses.

#### **4.6 Conclusion**

This chapter has answered the following sub-question:

*"To what extent are multinational enterprises legally responsible for violations of the prohibition of child labour in companies in India that are part of their global supply chain?"*

The outcome is that the country where multinational enterprises operate has the legal authority to regulate the behaviour of these enterprises. It has been seen that the legislation of the host country can be weak, because these countries may lack the expertise or resources to regulate the behaviour of multinational enterprises, besides conflicting interests or the 'race to the bottom' can be relevant. This can create regulatory gaps. Moreover, multinational enterprises can legally avoid responsibilities. On the one hand, due to legal principles, such as corporate separateness, limited liability and the territoriality principle, that reduce their responsibilities. On the other hand, by creating complex, international structures. Hereafter, it was investigated if the ILO Conventions on child labour and the Convention on the Rights of the Child, 1989, do also apply to multinational enterprises. It was concluded that the mentioned Conventions do not create responsibilities for enterprises directly. The host country has to ratify these Conventions and adjust their legislation accordingly. Subsequently, some pros and cons to make multinational enterprises responsible for human rights were discussed. Some arguments for making these enterprises responsible is that it will enhance their trademark, it attracts a higher quality of workforce and multinational enterprises can promote human rights, because they are able to reach across borders. Arguments against this extension include that the solely social responsibility of multinational enterprises is to make profits for their shareholders, only states have civil and political powers and that it can create a 'free rider' problem. It was concluded that it goes too far to held multinational enterprises legally responsible for violations of human rights in their supply chain, since enterprises cannot always control this.

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<sup>187</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 98-99.



After investigating the legal responsibilities of multinational enterprises, non-legal initiatives that want to influence the behaviour of these enterprises came across. First, it is explained what CSR is. Afterwards, the OECD Guidelines, 1976, the MNE Declaration, 1977, the UN Global Compact, 2000 and the Guiding Principles, 2011 were discussed. These guidelines try to regulate the behaviour of multinational enterprises in a voluntary way. However, there are due diligence requirements, whereby the penalty of 'naming and shaming' can be very powerful. This makes that these international initiatives can have a strong influence on businesses.

Chapter 5 will be about CSR policies of multinational enterprises.

## Chapter 5 CSR policies of multinational enterprises

In this chapter, the CSR policies of some selected companies will be discussed. These policies are mostly laid down in enterprises' CSR codes. For that reason, it will first, shortly be described why those codes are created and what the negative and positive aspects of these codes are. Thereafter, the CSR policies of the enterprises will be investigated and finally the last sub-question of this thesis will be answered.

### 5.1 CSR codes

As seen in the previous chapter, international instruments, that address labour rights in global supply chains, were created. Besides these international organizations, enterprises also started to take into account human rights.<sup>188</sup> First of all, this was due to new media exposés and general public awareness of labour and social issues. A number of enterprises received negative attention. At the same time, communication technologies have provided a rapid spread of brand image damaging information. Another reason is that many organisations found out that employees increasingly wanted to work for enterprises that are considered ethical and play a positive role in society.<sup>189</sup> Ultimately, enterprises started to draw up CSR codes in which they voluntarily committed themselves to a particular set of norms and values.<sup>190</sup> Enterprises choose which issues to address, who is covered, and the remedy for violations.<sup>191</sup> Because of this, these CSR codes may vary in subject and scope. For instances, there are codes that only focus on combating forced labour, but there are also codes which want to reduce environmental pollution. Besides, these codes can either apply to business operations of the multinational enterprises itself, or it can apply to the whole supply chain, the supplier codes of conduct.<sup>192</sup>

The use of such CSR codes for child labour does not only have positive effects, there are also some negative sides. Some negative and positive effects will be discussed below.

#### 5.1.1 Negative and positive effects of CSR codes

Kolk and van Tulder have done research to the effectiveness of self-regulation of multinational enterprises in combatting child labour. This research indicates that a strict approach of multinational enterprises, involving firing child labourers or terminating relationships with

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<sup>188</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 292.

<sup>189</sup> I. Mamic, *Implementing Codes of Conduct: How Businesses Manage Social Performance in Global Supply Chains*, Geneva: Greenleaf Publishing, 2004, p. 25-26.

<sup>190</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 292.

<sup>191</sup> ILO, *Workplace Compliance in Global Supply Chains*, Geneva: ILO, Sectoral Policies Department, 2016, p. 10.

<sup>192</sup> A.L. Vytopil, *Zin en onzin van gedragscodes, contractenrecht en aansprakelijkheidsrecht voor het bevorderen van duurzaamheid in handelsketens*, April 2014, via: <https://www.rutgersposch.com/downloads/Louise%20Vytopil%20-%20Zin%20en%20on%20zin%20gedragscodes%20DEF.pdf>, p. 1.

suppliers that employ children, does not change the underlying causes of the problem.<sup>193</sup> This can even make the situation worse for children who are forced to find work somewhere else, often in the informal sector.<sup>194</sup> Moreover, not all CSR codes of conduct are extended to the whole supply chain. Because, it can be very complex and expensive to monitor the whole chain, since sourcing networks may involve tens of thousands of factories spread across different countries. The authors are also stating that an effective strategy against child labour can only succeed if the economic conditions for large groups of the population are improved. Furthermore, there could be tensions between developing, host countries and multinational enterprises. Kolk and van Tulder give the following example: if an enterprise requires a higher minimum age than the laws of the host country, this might be regarded as a disapproval of local legislation and even as the imposition of Western standards. The enterprise could be blamed for impeding the national laws and of disrespect of the countries' cultural traditions.<sup>195</sup> Another weak point of codes of conduct is their voluntary nature. Compliance with these codes is dependent upon the interests of the multinational enterprise that promote the scheme. The enterprises have to lead the enforcement mechanisms, not the state.<sup>196</sup>

However, codes of conduct can also be positive. Gereffi mentions that enterprises have a significant impact on labour practices within the supply chain, particularly when the issue is compelling, such as child labour.<sup>197</sup> Besides, according to Kolk and van Tulder, developing codes of conduct can be important, since enterprises set a standard of corporate conduct and with this they influence other firms and governments, which can result in further international attempts to address child labour. The authors argue that this is even more the case if these enterprises take responsibility for improving the working conditions of children and their education and health, or assist in finding other options to earn a family income.<sup>198</sup> Furthermore, the research of Kolk and van Tulder did ultimately show that self-regulation, with codes of conduct as most common instruments, is considered effective in promoting CSR. For child labour, the codes of conduct have to be strictly implemented and monitored, combined with alternative arrangements for under-age child labourers. Moreover, the implementation of such codes may reduce reputational risks when violations come to light. It is expected that negative publicity and image damage will be more considerable if the enterprise does not address the problem of child labour in their CSR policies.<sup>199</sup>

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<sup>193</sup> A. Kolk and R. van Tulder, *The Effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour*, European Management Journal, Volume 20, Number 3, 2002, p. 260.

<sup>194</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 298.

<sup>195</sup> A. Kolk and R. van Tulder, *The Effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour*, European Management Journal, Volume 20, Number 3, 2002, p. 268-269.

<sup>196</sup> ILO, *Workplace Compliance in Global Supply Chains*, Geneva: ILO, Sectoral Policies Department, 2016, p. 11.

<sup>197</sup> ILO, *Workplace Compliance in Global Supply Chains*, Geneva: ILO, Sectoral Policies Department, 2016, p. 14.

<sup>198</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 298.

<sup>199</sup> A. Kolk and R. van Tulder, *The Effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour*, European Management Journal, Volume 20, Number 3, 2002, p. 269-270.

Concluding, these codes can have negative and positive side-effects. I believe that the use of CSR codes should be stimulated, since they can improve labour conditions and influence other firms to do the same. It is true that these codes do not always apply to the whole supply chain and that the codes have a voluntary nature, however I think it is better to have such a code than to do nothing. Besides, the codes may create tension between the host country and the enterprise, but perhaps this will stimulate the host countries to revise their laws and try to reach Western standards. The CSR codes still can have an important disadvantage. As stated before in this thesis, the firing of children in child labour is not enough, since they can end up worse. But, this is a problem that goes beyond CSR codes.

Since these codes can be so different, the next paragraph will investigate if the preventing of child labour is included in the CSR codes of the selected companies.

## **5.2 Investigation of enterprises' CSR policies**

An investigation of the Guardian showed that the following enterprises are linked to mica mines in India where child labour is widespread: L'Oréal, Estée Lauder, Merck, BMW, Vauxhall and Audi.<sup>200</sup> This paragraph will have a look at the CSR policies of these enterprises. I will investigate the enterprises' websites and other relevant documents, among which the enterprises' CSR codes. Furthermore, I will examine if there are differences in the CSR policies of the two branches: cosmetics and vehicles.

### **5.2.1 Cosmetics**

The companies that fall under the branch cosmetics are L'Oréal, Estée Lauder and Merck. Merck is also active in other branches, but since the company also sells cosmetics, the company will be added to the branch cosmetics.

#### **5.2.1.1 L'Oréal**

L'Oréal is a beauty company, which is present in 130 countries on five continents. L'Oréal owns various cosmetic brands, including Lancôme, Garnier and Maybelline New York.<sup>201</sup> Their headquarters is in France.<sup>202</sup> The enterprise calls themselves the number 1 cosmetics group worldwide and in 2017, the enterprise earned €26.02 billion on sales.<sup>203</sup>

L'Oréal has an article on their website about sustainable mica sourcing in India. The enterprise mentions that it is committed to respect and promote human rights throughout their supply chain.

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<sup>200</sup> K. Hodal, *India to legalise mica mining in bid to tackle endemic child labour*, 8 May 2017, via: <https://www.theguardian.com/global-development/2017/may/08/india-to-legalise-mica-mining-bid-tackle-endemic-child-labour-guardian-investigations>.

<sup>201</sup> L'Oréal, *Brands*, via: <https://www.loreal.com/brand>.

<sup>202</sup> L'Oréal, *2017 Annual Report*, 2017, p. 57.

<sup>203</sup> L'Oréal, *2017 Annual Report*, 2017, p. 1.

More than 60% of L'Oréal's mica comes from the United States, while the rest comes from other countries such as India. The enterprise is aware that mica from India can be mined by children. However, the company says the following:

*"In spite of these challenges, L'Oréal has committed itself to remain in India and ensure the traceability and transparency of its supply chain. We believe that discontinuing the use of Indian mica would further weaken the situation in the region."*<sup>204</sup>

Therefore, L'Oréal has implemented a sustainable procurement policy in India, with only a limited number of suppliers who source from legal mines only, 'where working conditions can be closely monitored and human rights respected'. These suppliers also have to conduct independent audits. As a result, 99.2% of mica that L'Oréal uses, comes from secured sources.<sup>205</sup>

L'Oréal has a Code of Ethics, in which the enterprise claims to be alert on issues that are dealt with in the Fundamental Conventions of the ILO. Plus, 'as a responsible corporate citizen, [the company] wants to help end the exploitation of children in the workplace'.<sup>206</sup>

Furthermore, L'Oréal also has a Code of Business Ethics for suppliers and subcontractors concerning child labour. In this Code the Company lays down a minimum age:

*"Our suppliers and our subcontractors cannot hire employees who are under the minimum local legal or who have not yet finished their mandatory schooling and in any case who are under the age of 16. No person under the age of 18 may carry out dangerous or night work for our suppliers/subcontractors."*<sup>207</sup>

Hereby, a waiver can be requested for 'apprenticeships or for children carrying out light work if this work does not affect their health and safety or their regular attendance at school'. There is a remedial action included. If child labour is uncovered, the supplier or subcontractor has the duty to make sure that the child returns to school.<sup>208</sup>

Additionally, L'Oréal supports the UN Global Compact since 2003.<sup>209</sup>

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<sup>204</sup> L'Oréal, *Sustainable Mica Sourcing*, via: <https://www.loreal.com/suppliers/our-sustainable-procurement-policy/sustainable-sourcing-mica>.

<sup>205</sup> L'Oréal, *Sustainable Mica Sourcing*, via: <https://www.loreal.com/suppliers/our-sustainable-procurement-policy/sustainable-sourcing-mica>.

<sup>206</sup> L'Oréal ethics, *Code of Ethics: The way we work*, 3rd edition, France, n.d., p. 8.

<sup>207</sup> L'Oréal, *Code of Business Ethics: Suppliers/Subcontractors and Child Labour*, October 2010, p. 2.

<sup>208</sup> L'Oréal, *Code of Business Ethics: Suppliers/Subcontractors and Child Labour*, October 2010, p. 2-3.

<sup>209</sup> L'Oréal, *L'Oréal supports the United Nations Global Compact*, via: <https://www.loreal.com/group/governance/acting-ethically/1%E2%80%99or%C3%A9al-supports-the-united-nations-global-compact>.

### 5.2.1.2 Estée Lauder

Estée Lauder Companies is also a cosmetics company. Their headquarters is in New York and their products are sold in more than 135 countries.<sup>210</sup> Estée Lauder as well owns various brands, among which DKNY, MAC and Michael Kors.<sup>211</sup> The net sales of 2017 were 11.8 billion dollars.<sup>212</sup>

In their Corporate Responsibility Report of 2012, Estée Lauder confirms that their companies use mica from India:

*“Less than 10% of the mica we use comes from India, but we continue to source there because we have an opportunity to improve conditions in the mica mining communities.”<sup>213</sup>*

This Report further describes that Estée Lauder works ‘with suppliers and experts to identify and develop ethical sources of raw materials where the rights of workers are protected’. Moreover, it says that every supplier of Estée Lauder should hand in paperwork that shows compliance with their Supplier Code of Conduct as well as with local regulations. Estée Lauder expects that all their suppliers strive for the highest standards of business ethics. Plus, the report states that the suppliers have to follow the Supplier Code of Conduct.<sup>214</sup> In the Supplier Code of Conduct, the following is included concerning child labour:

*“[Estée Lauder] suppliers must not employ child labor. The term 'child' means any person employed under the age of 15 (or 14 where the law of the country permits) or under the minimum age for employment in the country, whichever is greater.”<sup>215</sup>*

Besides, Estée Lauder has mentioned on their website that many of their brands use resources from all over the world. Estée Lauder strives to a responsible and sustainably sourcing, with respect for local people. The company expects that their suppliers obey with local rules and national regulations governing, amongst others, child labour.<sup>216</sup>

Additionally, I had an e-mail conversation with an employee of Estée Lauder, who wrote that the enterprise has been taking efforts to eliminate child labour in the mica industry in India since

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<sup>210</sup> Estée Lauder, *Corporate Information*, via: [https://www.esteelauder.com/corp\\_info](https://www.esteelauder.com/corp_info).

<sup>211</sup> Estée Lauder Companies, *Our Brands*, <http://www.elcompanies.com/our-brands>.

<sup>212</sup> Estée Lauder Companies Inc., *Annual report 2017*, p. 23.

<sup>213</sup> Estée Lauder Companies, *The Beauty of Responsibility: The Estée Lauder Companies Corporate Responsibility Report 2012*, June 2012, p. 60.

<sup>214</sup> Estée Lauder Companies, *The Beauty of Responsibility: The Estée Lauder Companies Corporate Responsibility Report 2012*, June 2012, p. 58.

<sup>215</sup> Estée Lauder Companies, *Supplier Code of Conduct*, via: <https://www.elcompanies.com/suppliers/what-we-value/supplier-code-of-conduct>.

<sup>216</sup> Estée Lauder Companies, *Sourcing Practices*, via: <https://www.elcompanies.com/our-commitments/sustainability/sustainable-sourcing>.

2005. The company is working together with a local NGO partner, called Bachpan Bachao Andolan (Save the Childhood Movement or BBA), to actively promote 'education as an alternative to work for children in mica-sourcing communities'.<sup>217</sup>

### 5.2.1.3 Merck

Merck is an enterprise active in healthcare, life science and performance materials.<sup>218</sup> Moreover, the enterprise is selling cosmetics.<sup>219</sup> Merck is located in Germany. In 2017, the enterprise generated a net sales of €15.3 billion in 66 countries.<sup>220</sup>

In a company report about mica in the supply chain, Merck confesses that the enterprise mainly procures mica from India, from the regions Jharkhand and Bihar, where child labour is widespread. Therefore, the enterprise has taken special measures to ensure compliance with its standards. In the report it is further recorded that:

*"We do not tolerate child labor and, as a signatory to the United Nations Global Compact, are actively working to end this practice. We require all our suppliers to act accordingly and as such prohibit child labor in our contracts."*<sup>221</sup>

Besides this report, Merck also has a number of others reports. In its Code of Conduct there is nothing mentioned about child labour, but in the other reports there is.<sup>222</sup> In the enterprises' Responsible Sourcing Principles, 'child labour is strictly prohibited', whereby the ILO Conventions and national laws regarding minimum ages should be met.<sup>223</sup> Furthermore, Merck has a Human Rights Charter, in which the following is included concerning child labour:

*"Merck only hires people who are above the minimum age of employment as stipulated in the ILO Conventions or national law whichever is higher. If child labor is detected we will provide for adequate remediation."*<sup>224</sup>

### 5.2.1.4 Responsible Mica Initiative

L'Oréal, Estée Lauder and Merck are all active members of the Responsible Mica Initiative. This Initiative has the aim to eradicate child labour and unacceptable working conditions in the Indian mica supply chain by joining forces across industries. The Initiative has three main objectives.

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<sup>217</sup> See attachment 1.

Note: I did e-mail all the companies. L'Oréal, BMW and Vauxhall informed me that they could not help me any further. Merck and Audi did not reply to my e-mail.

<sup>218</sup> Merck, *Our Headquarters*, via: <https://www.merckgroup.com/en/company/who-we-are/ourheadquarters.html>.

<sup>219</sup> Merck, *Cosmetics that shape your brand*, via: <https://www.merckgroup.com/en/s/merck4cosmetics.html>.

<sup>220</sup> Merck, *News*, via: <https://www.merckgroup.com/en/news/q4-2017-08-03-2018.html>.

<sup>221</sup> Merck, *Suppliers: mica supply chain*, via: <http://reports.merckgroup.com/2016/cr-report/suppliers/mica-supply-chain.html>.

<sup>222</sup> Merck, *What guides us: The Merck Code of Conduct*, July 2017.

<sup>223</sup> Merck, *Responsible Sourcing Principles*, Germany, March 2013, p. 3.

<sup>224</sup> Merck, *Merck Human Rights Charter*, December 2013, p. 6.

First of all, it wants to implement fair, responsible and sustainable practices and increase traceability along the Indian mica supply chain. Secondly, it aims to empower the local community so that a long lasting change can be secured, due to the implementation of inclusive empowerment programs. Lastly, the initiative aspires to build a legal and liveable environment for local communities by working together with the Indian government.<sup>225</sup>

## **5.2.2 Vehicles**

The other companies, BMW, Vauxhall and Audi, fall inside the branch vehicles.

### **5.2.2.1 BMW**

The BMW Group produces vehicles. The company owns three automobile brands, which are BMW, MINI and Rolls-Royce. The group is represented in more than 150 countries and has its headquarters in Germany.<sup>226</sup> The total revenues of the group were €98,678 million in 2017.<sup>227</sup>

On the website of BMW Group, it is not mentioned that the enterprise uses mica from India. Nonetheless, the guardian mentions that BMW halted purchased of Indian mica until its suppliers could guarantee that their supply chains were free from child labour.<sup>228</sup> This seems that the enterprise is making use of mica from India.

In both, the Corporate Governance Code of 2017 and the Legal Compliance Code of 2016, BMW Group did not mention that the company is against or prohibits child labour.<sup>229</sup>

In the BMW Group supplier sustainability policy, it is included that is ‘crucially important that all business activities take account of the enterprises’ social responsibility towards its own employees and society’. All suppliers are requested to observe the principles and rights of the ILO’s Declaration on Fundamental Principles and Rights at Work, 1998, the UN Guiding Principles and the UN Global Compact, of which BMW Group is a member. Whereby, ‘the most important of these are the respect of human dignity and internationally recognised human rights, especially the prohibition of child labour’.<sup>230</sup>

### **5.2.2.2 Vauxhall**

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<sup>225</sup> Responsible Mica Initiative, *Towards a responsible Indian mica supply chain*, via: <http://responsible-mica-initiative.com/>.

<sup>226</sup> BMW Group, *We are shaping the mobility of the future: annual report 2017*, p. 30 and 38.

<sup>227</sup> BMW Group, *We are shaping the mobility of the future: annual report 2017*, p. 72.

<sup>228</sup> P. Bengtsen, *Major car paint suppliers join initiative against child labour in mica mines*, February 2017, via: <https://www.theguardian.com/global-development/2017/feb/24/major-car-paint-suppliers-join-initiative-against-child-labour-in-mica-mines-ppg-axalta>.

<sup>229</sup> BMW Group, *Corporate Governance Code: Principles of Corporate Governance*, Munich: Bayerische Motoren Werke Aktiengesellschaft, December 2017 and BMW Group, *Legal Compliance Code: Compliance, Driving the Right Way*, Germany: Bayerische Motoren Werke, November 2016.

<sup>230</sup> BMW Group, *BMW Group supplier sustainability policy*, May 2017, p. 1.



Vauxhall is owned by GM (General Motors) Group. Besides Vauxhall, other brands of GM include Chevrolet and Cadillac. The global headquarters of GM is in Michigan, USA and the company is presented in 125 countries.<sup>231</sup> The total net sales of GM in 2017 was \$14.59 billion.<sup>232</sup>

According to their Sustainability Report of 2017, GM had 'uncovered a risk of child labour in mining mica in India'. The Report mentions that GM has worked with and met face-to-face its Tier I supplier. The enterprise had stopped working together with its Tier II supplier until the problem was mitigated.<sup>233</sup> Furthermore, the report states that, beyond the Supplier Code of Conduct, the company outlines its expectations for suppliers in purchase terms and conditions, 'which clearly state [the] prohibition against any use of child labor'. Besides, 'each tier is responsible to ensure that their sub-tiers have compliance programs'. Further, the enterprise requires all of its supplier quality employees who visit supplier facilities to follow a training concerning responsible working conditions, including child labour.<sup>234</sup>

The Supplier Code of Conduct contains the following about child labour:

*"Suppliers will not use child labor. GM has a zero tolerance policy regarding the employment of children where the age of employment is not in accordance with applicable laws."*<sup>235</sup>

Besides the Supplier Code of Conduct, GM also has a Code of Conduct. In this Code, it is described that GM 'respects human rights and dignity of people throughout [... its] operations and global supply chain'. Moreover, the enterprise expects its suppliers to comply with certain laws, whereby the laws which prohibit the employment of underage children are mentioned implicitly.<sup>236</sup> The Code of Conduct also presents an example about what to do when a contractor, who is a co-worker, is considering a project that has been linked to child labour. The question is, if a person is not involved in the decision, should the person concerned say something about it? The Code gives the following answer:

*"Yes. Selecting a partner that has a history of engaging in human rights abuses is against GM's values and could put our company at risk. You should tell your coworker or another appropriate internal resource what you know about the contractor to help inform GM's decision."*<sup>237</sup>

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<sup>231</sup> General Motors, *Our Company*, via: <https://www.gm.com/company/about-gm.html>.

<sup>232</sup> General Motors Company, *Annual report*, February 2018, p. 8.

<sup>233</sup> General Motors, *2017 Sustainability Report*, 2017, via: <https://www.gmsustainability.com/act/supply/cobalt.html>.

<sup>234</sup> General Motors, *2017 Sustainability Report*, 2017, via: <https://www.gmsustainability.com/manage/supply.html>.

<sup>235</sup> General Motors, *Supplier Code of Conduct*, n.d., p. 1.

<sup>236</sup> General Motors, *GM's Code of Conduct: Winning with Integrity*, n.d., p. 19.

<sup>237</sup> General Motors, *GM's Code of Conduct: Winning with Integrity*, n.d., p. 19.

### 5.2.2.3 Audi

Volkswagen owns 12 brands of which Audi is one. Other brands include Bentley, Porsche and Lamborghini.<sup>238</sup> In 2017, the sales revenue consisted of €230.7 billion.<sup>239</sup> The headquarters of Volkswagen is in Germany and Volkswagen is selling their vehicles in 153 countries.<sup>240</sup>

Nothing can be found about mica from India on the website of Volkswagen. But, on various news websites, it is stated that: '...Volkswagen has suspended acceptance of mica from some of its Indian suppliers, owing to death or child labour in these illegal mining facilities'.<sup>241</sup>

Volkswagen has a Code of Conduct in which the company records that they 'respect, protect and promote all regulations in force to protect human rights and children' rights'. Moreover, the enterprise 'rejects all use of child labour'. The Code mentions that this does not only apply to the cooperation within the Company, 'but also as a matter of course to the conduct of and toward business partners'.<sup>242</sup>

Besides, the Code of Conduct gives an example, in which someone is responsible for purchasing goods and was informed that a business supplier uses child labour. The following answer is giving:

*"Take the necessary steps and inform your superior and the units responsible for sustainability in supplier relations. Our Company must examine business relations with this business partner more closely and, if necessary, break them off."*<sup>243</sup>

## 5.3 Conclusion

This chapter started with the description why CSR codes were created. Thereafter, some negative and positive effects of these codes were discussed, whereby I concluded that the use of CSR codes should be stimulated, since these codes can improve labour conditions and have a positive influence on other firms. Afterwards, the CSR policies of the firms were discussed, whereby the following sub-question can be answered:

*"Is the preventing of child labour included in the CSR policies of the selected multinational enterprises, which make use of mica from India? And if so, what are the differences between the two branches?"*

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<sup>238</sup> Volkswagen Aktiengesellschaft, *Shaping the transformation together: annual report 2017*, p. 1.

<sup>239</sup> Volkswagen Aktiengesellschaft, *Shaping the transformation together: annual report 2017*, p. 115.

<sup>240</sup> Volkswagen Aktiengesellschaft, *Portrait & Production Plants*, via:

<https://www.volkswagenag.com/en/group/portrait-and-production-plants.html>.

<sup>241</sup> Financial Express, *Volkswagen breaks ties with some mica suppliers for paint in India*, September 2016, via: <https://www.financialexpress.com/auto/news/volkswagen-breaks-ties-with-some-mica-suppliers-for-paint-in-india/398865/>.

<sup>242</sup> Volkswagen Aktiengesellschaft, *Volkswagen Group Code of Conduct*, Germany: 2017, p. 9.

<sup>243</sup> Volkswagen Aktiengesellschaft, *Volkswagen Group Code of Conduct*, Germany: 2017, p. 9.

All the investigated enterprises have included in their CSR policies that they are against child labour. This is done in different ways, varying from articles on websites, including it in their codes of conduct or other reports. Also, the wording of the policies are different. One policy talks about 'to help end the exploitation of children', the other says that 'child labour is strictly prohibited' and another one mentions 'we do not tolerate child labour'. Besides, L'Oréal, Merck and BMW do refer to ILO Conventions or to the Declaration of the ILO. The other enterprises do not refer to international guidelines of the ILO. Furthermore, only L'Oréal has a specific remedial action against child labour that requires suppliers to make sure that the child returns to school. Closing, every enterprise has included the preventing of child labour in its policies in its own way.

There are some differences between the two branches. First of all, the websites of the cosmetics enterprises made it clear that they do use mica from India. It seems that these companies are aware of the problem and made special articles or reports about child labour in Indian mica mines. On the other hand, there are the vehicles enterprises and these websites did not mention anything about children in mica mines. Besides, the cosmetics enterprises do contain to source from India and with that they want to improve the working conditions of the people who are mining in India. The opposite happens at the vehicles enterprises. These enterprises immediately stop sourcing from Indian mines which have the risk of child labour. Lastly, the cosmetics enterprises have joint the Responsible Mica Initiative and the branch vehicles did not.

After answering the different sub questions, the next chapter will focus on the research question of this thesis.

## Chapter 6 Suggestions for improvement of the problem of child labour

After discussing the different instruments that try to eliminate child labour, this chapter will focus on how these different instruments can improve the problem of child labour in global supply chains.

### 6.1 The problem

As seen in the previous chapters, the problem of child labour is a shared responsibility of governments and multinational enterprises. On the one hand, governmental ratifications of Convention on child labour do not solve the problem. The prohibition of child labour may even be counterproductive, since it can worsen the situation for the children who are forced to find work elsewhere, often in the informal sector.<sup>244</sup> An effective strategy to combat child labour can only succeed if the economic circumstances for large groups of the population are improved.<sup>245</sup> Plus, the scope of national laws and regulations to address child labour in global supply chains is inadequate, since the legislation of the host country can be weak and multinational enterprises can legally avoid responsibilities, which leads to regulatory gaps.

On the other hand, child labour can also not be effectively addressed solely through corporate self-regulation.<sup>246</sup> International guidelines for human rights try to regulate the behaviour of multinational enterprises, however these guidelines are voluntary, so there is no guarantee that the corporation will carry out its responsibilities. Besides, there are the CSR codes. According to a research of Barrientos and Smith, corporate codes of conduct can indeed reduce the occurrence of child labour in upper supply chain tiers.<sup>247</sup> However, many practices of child labour take place further down the supply chain, which makes it difficult to enforce corporate codes and policies.<sup>248</sup> So codes of conduct have a limited reach and are only helpful for a small fraction of children. Therefore, enterprises cannot solve the problem alone and set an example for governments and other businesses.<sup>249</sup> In a transnational world, laws and regulations should be

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<sup>244</sup> A. Kolk and R. van Tulder, *Child Labor and Multinational Conduct: A Comparison of International Business and Stakeholders Codes*, the Netherlands: Kluwer Academic Publisher, 2002, p. 298.

<sup>245</sup> A. Kolk and R. van Tulder, *The Effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour*, *European Management Journal*, Volume 20, Number 3, 2002, p. 269.

<sup>246</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, Law Journal Library, 2017, p. 1256.

<sup>247</sup> S. Barrientos and S. Smith, *Do workers benefit from ethical trade? Assessing codes of labour practice in global product systems*, *Third World Quarterly*, 2007, p. 723.

<sup>248</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, Law Journal Library, 2017, p. 1253.

<sup>249</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, Law Journal Library, 2017, p. 1251.

complemented by CSR guidelines and codes, rather than exclude one another.<sup>250</sup> The next paragraph will focus on some improvements for the problem of child labour in supply chains.

## **6.2 Suggestions for improvement**

This paragraph will first look at suggestions for improvement that the different stakeholders can apply individually, then it will focus on a collaboration of different stakeholders as an improvement for the problem.

### **6.2.1 Promoting international labour standards**

At the level of the ILO or the UN, an assessment could be done to see if the existing instruments provide a sufficient framework for member states to promote decent work in global supply chains. Besides, it could be investigated what the barriers are for member countries to ratify the international standards and what additional guidance or assistance is needed to effectively promote decent work in global supply chains.<sup>251</sup> Besides the ILO and the UN, governments can also play a role in improving the situation of children in labour.

### **6.2.2 Closing governance gaps**

The national governments should try to eliminate the existing regulatory gaps. According to the ILO, this needs to be done by the 'coordination and combination of different and complementary compliance mechanisms'. Besides, it is argued that the primary role of the government is to ensure enforcement of legislation and fundamental rights at work and that the national systems need to promote effective governance of global supply chains.<sup>252</sup> Closing the governance gap is not the only thing that governments can do. This will be explained in the following paragraph.

### **6.2.3 Additional role of governments**

There are governments who have introduced legislation to conduct due diligence throughout supply chains. For child labour, the United Kingdom has already enacted the Modern Slavery Act<sup>253</sup> and in the Netherlands there is a proposal for the Child Labour Due Diligence Law (Wet Zorgplicht Kinderarbeid).<sup>254</sup> However, the government can also be involved in the problem in other forms than law-making. The governments can encourage the use of CSR by multinational enterprises. Van Woensel gives the following examples for governments: take the role of

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<sup>250</sup> A.L. Vytopil, *Contractual Control in the Supply Chain: On Corporate Social Responsibility, Codes of Conduct, Contracts and (Avoiding) Liability*, The Hague: Eleven International Publishing, 2015, p. 33.

<sup>251</sup> ILO, *Decent work in global supply chains*, Geneva: International Labour Conference, report IV, 2016, p. 66.

<sup>252</sup> ILO, *Decent work in global supply chains*, Geneva: International Labour Conference, report IV, 2016, p. 66.

<sup>253</sup> Modern Slavery Act, 2015.

<sup>254</sup> Initiatiefvoorstel-Kuiken Wet zorgplicht kinderarbeid, via:  
[https://www.eerstekamer.nl/wetsvoorstel/34506\\_initiatiefvoorstel\\_kuiken](https://www.eerstekamer.nl/wetsvoorstel/34506_initiatiefvoorstel_kuiken).

facilitator of sectoral agreements<sup>255</sup> or offering sanctioning help, in order to scale the efforts of enterprises.<sup>256</sup> Also multinational enterprises should contribute their fair share.

#### **6.2.4 Multinational enterprises' influence of suppliers**

Powerful multinational enterprises should try to positively influence the practices of their suppliers. Amaeshi et al. give three options to do this. First, by codes of conduct. Hereby, the multinational enterprise can ensure that any supplier that is found guilty, would be named and shamed. On the other hand, enterprises can also set up some sort of rewards for suppliers who meet the standards. Second, multinational enterprises can serve as a role model. To do this, enterprises should 'exhibit high level of ethical orientation that is permeated in its culture'.<sup>257</sup> A third option would be to influence through personal training and value orientation. The enterprise can extend his training programmes to the staff of their suppliers, which would result in a long-lasting relationship.<sup>258</sup> The next paragraph will focus on a suggestion whereby different stakeholders work together.

#### **6.2.5 Working together**

Besides the individual suggestions given above, the different actors can also work together. The issue of child labour cannot be resolved on the basis of solo efforts by stakeholders, so there is a need for a collaborative approach. According to a research of Boersma, to address child labour in global supply chains effectively, companies need to work together with a broad range of stakeholders.<sup>259</sup> The author states that various stakeholders have a strong interest in protecting human rights in global supply chains, such as unions, religious charities, NGOs and aid organisations.<sup>260</sup> Instead of cutting off ties with suppliers when enterprises discover child labour, there is a need for a 'contextual and holistic approach by considering local circumstances and broader human rights, and by focusing on prevention and remediation'.<sup>261</sup> This includes

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<sup>255</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 104.

<sup>256</sup> C. van Woensel, *The Framework of CSR*, in A.G. Castermans and C. van Woensel, *CSR for young business lawyers*, the Netherlands: Eleven International Publishing, 2017, p. 99.

<sup>257</sup> K.A. Amaeshi et al., *Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications*, *Journal of Business Ethics*, 2008, p. 230.

<sup>258</sup> K.A. Amaeshi et al., *Corporate Social Responsibility in Supply Chains of Global Brands: A Boundaryless Responsibility? Clarifications, Exceptions and Implications*, *Journal of Business Ethics*, 2008, p. 231.

<sup>259</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, *Law Journal Library*, 2017, p. 1256.

<sup>260</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, *Law Journal Library*, 2017, p. 1253.

<sup>261</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, *Law Journal Library*, 2017, p. 1273.

promoting decent and secure labour, raising family income and facilitating school attendance.<sup>262</sup> This multi-stakeholder approach has the potential to increase the 'leverage' of enterprises, which refers to the capacity of these enterprises to tackle harmful practices related to their business operations by changing their own behaviour and as well influence suppliers, consumers and government relations.<sup>263</sup>

Furthermore, a research from the ILO concluded that stakeholders need to work together. At the transnational level, lead firms, trade unions and governments can combine their strengths to design and implement collective strategies to reach common goals.<sup>264</sup> Hereby, a synergistic governance is suggested. This means an approach where public, private and social governance strategies are not solely layers of regulations, but are mutually reinforcing for effective compliance, and to set a level playing field for fair competition.<sup>265</sup>

Additionally, the research of Winstanley et al. concluded that is easier for enterprises to work in partnership, both with other enterprises using the same suppliers as with a variety of other stakeholders. NGOs and other international organisations can provide valuable advice and support in the process. This research also found out that is enormously difficult to change local culture and practices. Therefore, it is important to work together with the local workforce, management and the community.<sup>266</sup> Moreover, an approach of 'zero tolerance' of child labour should 'focus on the context in which it is being addressed, considered for whose benefit such a declaration is being made, and produce workable arrangements that can be implemented over the long term to develop sustainable rather than short-term solutions'.<sup>267</sup>

### 6.3 Conclusion

In this chapter, an answer is given on the research question of this thesis:

*“To what extent can different instruments – international obligations, India’s national legal framework and CSR policies – contribute to solving the problem of child labour, taking the current situation with respect to Indian mica mines as an example, in companies in India that are part of global supply chains?”*

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<sup>262</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, Law Journal Library, 2017, p. 1271.

<sup>263</sup> M. Boersma, *Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights*, Law Journal Library, 2017, p. 1254.

<sup>264</sup> ILO, *Workplace Compliance in Global Supply Chains*, Geneva: ILO, Sectoral Policies Department, 2016, p. 31.

<sup>265</sup> ILO, *Workplace Compliance in Global Supply Chains*, Geneva: ILO, Sectoral Policies Department, 2016, p. 24.

<sup>266</sup> Winstanley et al., *Approaches to child labour in the supply chain*, Blackwell Publishers Ltd., Volume 11, Number 3, July 2002, p. 222.

<sup>267</sup> Winstanley et al., *Approaches to child labour in the supply chain*, Blackwell Publishers Ltd., Volume 11, Number 3, July 2002, p. 223.

It is seen that child labour is an enormously difficult problem, since it is tough to abolish. This thesis showed that there are different instruments with the aim of eliminating child labour, but these instruments do not always work. This chapter tried to find some suggestions for improvement. First, there are some measures that the individual stakeholders can apply themselves. The ILO and the UN can carry out a critical assessment of the existing instruments. Governments should try to close the regulatory gaps and encourage the use of CSR by other means than law-making. Powerful multinational enterprises in their turn, should try to influence the practices of their suppliers. But, in my opinion, a better suggestion for improvement is, a collaboration of different stakeholders: ILO, UN, national governments, multinational enterprises, unions, NGOs, etc. These different stakeholders should try to make use of the advantages of the different instruments and to eliminate the negative elements. I believe that it is also important to work with local stakeholders, to make sure that child labourers do not end up worse and to make sure that they can go to school. Besides, it is important that the family earns enough so that they do not have to send their children to work. Hopefully, child labour will no longer exist in the future.



## Chapter 7 Conclusion

This thesis is about child labour in Indian companies that are part of global supply chains and especially about child labour in Indian mica mines.

Chapter two contains some general information about child labour. Child labour is work which is mentally, physically, socially or morally dangerous and harmful to children and interferes with their schooling. Working in mica mines can be considered as child labour, since this is work that is physically dangerous to children. It also may be mentally, socially and morally dangerous and it is expected to interfere with children's schooling. Child labour is a big problem in India, due to poverty. Families with little resources are forced to send their children to work. Besides, birth control is still a taboo among many Indian cultures and some families believe that more children means a higher income. Other reasons are overpopulation, illiteracy and lack of awareness. The number of child labourers in India is not exactly known. However, it is estimated that there are already up to 20,000 children working in the mines. Legislation is one of the main weapons against child labour. The existence creates an enabling provision whereby the state can be compelled to take action. International organizations have created Conventions against child labour. The ILO's Minimum Age Convention, 1973, wants to achieve the total abolition of child labour. However, the great majority of child labourers are in jobs that are not directly harmful or dangerous. These children might be better off with improved working conditions than with a removal from their job, because they can end up worse. Meanwhile, child labour in mica mines, and in other hazardous occupations, should be prohibited immediately. That is also the aim of the ILO's Worst Forms of Child Labour Convention, 1999. This Convention requires immediate and comprehensive action to remove children from hazardous work. It also takes into account some matters that are commonly considered as criminal matters. However, these practices also happen on the labour market and with including this in national labour laws, this might also influence other national laws. Besides, the UN has also made a Convention to protect children, the Convention on the Rights of the Child, 1989. A negative point is that the Convention presumably lays down a Western ideal of childhood, but it is difficult to form rights for children that developing and western countries can associate with.

Conventions must be converted into national laws, that is why the next chapter, chapter 3, lays down the most important Indian laws regarding to child labour. In India, regulation for child labour has existed since 1881. Over the years, laws were amended and there also came new laws, which lead to more protection for children. An important law is the CLPRA of 1986. Chapter 3 answers the first sub-question:

*"What are the recent developments in India's regulatory framework concerning child labour and are these in line with international obligations?"*

One of the recent developments is the amendment of the CLPRA in 2016. Whereby, India introduced a minimum age for working of 14 years and prohibited hazardous work to children under 18 years. A negative point of this amendment is that it allows children to help their family or family enterprise and work as an artist. Besides, the amendment reduced the occupations that were labelled as hazardous from 83 to only 3 occupations. One of these occupations is working in mines. So, the setting of a minimum age is a good step forward, however there are also some negative elements in this amendment. A positive consequence of this amendment is that India was able to ratify the two ILO Conventions on child labour in 2017. India refused to ratify the Conventions earlier, because their national laws were not in accordance with these Conventions. Because of the amendment of the CLPRA, India has a minimum age that is in line with the Minimum Age Convention, 1973. Furthermore, India has prohibited hazardous work for children under eighteen years, which is in line with the Worst Forms of Child Labour Convention, 1999. Now India has ratified these Conventions, the country have to report their progress concerning child labour regularly. Another development, specially for mica mines, is that India has started to legalise this industry.

Where chapter 2 and 3 focus on the role of international organizations and national governments, chapter 4 focuses on the role of multinational enterprises regarding the problem of child labour. It answers the second sub-question:

*"To what extent are multinational enterprises legally responsible for violations of the prohibition of child labour in companies in India that are part of their global supply chain?"*

This chapter describes that multinational enterprises have to follow the laws of the countries where they operate. These laws can be weak, because these countries may lack the expertise or resources to regulate the behaviour of multinational enterprises, besides conflicting interests or the 'race to the bottom' can be relevant. Moreover, multinational enterprises can legally avoid responsibilities. On the one hand, due to legal principles, such as corporate separateness, limited liability and the territoriality principle, that reduce their responsibilities. On the other hand, by creating complex, international structures. Also, the before mentioned Conventions on child labour do not create legal responsibilities for multinational enterprises directly. Governments have to ratify these Conventions and adjust their legislation accordingly, before these Conventions can have an effect on multinational enterprises. This is also right, because multinational enterprises perform business across different countries, often with complex structures, therefore it goes too far to held multinational enterprises responsible for human rights. These enterprises cannot control everything that happens in their global supply chain. If they would be legal responsible for their whole supply chain, it would be impossible to do business. So, the country in which the multinational enterprise operates has the legal authority to regulate the behaviour of these enterprises. This can create regulatory gaps. To reduce this, some

international human rights instruments were created, which are non-binding. Some important instruments are the OECD Guidelines, 1976, the MNE Declaration, 1977, the UN Global Compact, 2000 and the Guiding Principles, 2011. These have a voluntary character and cannot guarantee that the corporation will carry out its responsibilities. However, these instruments have due diligence requirements, such as reporting, whereby the penalty of 'naming of shaming' can have an important role. This makes these instruments powerful.

Besides international initiatives that want to regulate the behaviour of multinational enterprises, these enterprises can also themselves decide to act responsibly. This can be done by CSR policies, that is why chapter 5 is about CSR policies of multinational enterprises. CSR policies are mostly laid down in CSR codes. These codes do also have a voluntary nature. These codes do not change the underlying causes of child labour, but they can influence other firms and governments to address the problem of child labour. Furthermore, chapter 5 investigates the CSR policies of the selected companies in the branches cosmetics and vehicles and answers with that the last sub-question:

*"Is the preventing of child labour included in the CSR policies of the selected multinational enterprises, which make use of mica from India? And if so, what are the differences between the two branches?"*

All the selected multinational enterprises have included in their CSR policies that they are against child labour. They did that in different ways. Additionally, there are differences between the two branches. It was easier to find information about the use of mica from India on the websites of the cosmetics companies. Besides, the cosmetics enterprises do contain to source from India and with that they want to improve the working conditions. On the other hand, the vehicles enterprises immediately stopped sourcing from India. Lastly, the cosmetics enterprises have joined the Responsible Mica Initiative and the branch vehicles did not.

The last chapter gives an answer to the research question of this thesis:

*"To what extent can different instruments – international obligations, India's national legal framework and CSR policies – contribute to solving the problem of child labour, taking the current situation with respect to Indian mica mines as an example, in companies in India that are part of global supply chains?"*

There are some suggestions for improvement that the different stakeholders can apply individually. The ILO and the UN can carry out a critical assessment of the existing instruments. Governments should try to close the regulatory gaps and encourage the use of CSR by other means than law-making. Powerful multinational enterprises should try to influence the practices of their suppliers. However, a better suggestion would be a collaboration of different

stakeholders. These different stakeholders should try to make use of the advantages of the different instruments and to eliminate the negative elements. Whereby they also should work together with local stakeholders, to make sure that child labourers do not end up worse and to make sure that they can go to school. Hopefully, in the future child labour will no longer exist in mica mines in India, and even better in the whole world.

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## **Attachment 1**

### **Email from Estée Lauder**

Dear Sem,

Thank you for your interest in Estée Lauder.

Thank you for your question. The Estée Lauder Companies has been spearheading efforts to eliminate child labor in the mica collection industry in India since 2005 through our partnership with our longtime, local NGO partner, Bachpan Bachao Andolan (Save the Childhood Movement or BBA) where we are actively promoting education as an alternative to work for children in mica-sourcing communities. For additional information, we invite you to visit the Responsible Mica Initiative website: <http://responsible-mica-initiative.com/>.

I appreciate the opportunity to respond to your question, and sincerely hope I was able to be of assistance. You are valued as our consumer and we hope you will continue to use and enjoy our products with confidence and satisfaction.

Sincerely,

*Jessica G*

Consumer Response Representative