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Comparative Law**

Human rights responsibilities of multinational enterprises and States in the Cuban tourism

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Acronyms

ARSIWA	ILC Articles on the Responsibility of States for Internationally Wrongful Acts
CEDAW Women	Convention on the Elimination of all forms of Discrimination Against
CERD	Convention on the Elimination of Racial Discrimination
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention of Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Law Commission
ILO	International Labour Organisation
OECD	Organization of Economic Cooperation and Development
OHCHR	Office of the High Commissioner of Human Rights of the United Nations
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNWTO	UN World Tourism Organisation

Introduction

The tourism and hospitality sector has been key to the development of the Cuban economy for decades.¹ It is one of the essential economic pillars in the Cuban system, and one where foreign multinational corporations operate in partnership with State-owned companies to provide their services. As in many other geographical contexts, the Cuban tourism and hospitality sector has been associated with risks of labour exploitation, discrimination, and other human rights concerns.

In the Cuban context, these concerns include low wages, long hours of work, discrimination in the recruitment and employment on grounds of gender and ethnic origin, as well as graver forms of exploitation such as situations amounting to forced labour.² Limited access of workers to training on labour or human rights and to remedies for corporate-related human rights abuses are also common in the Cuban tourism sector.³ Yet, joining the tourism industry is seen by those employed in hotels or connected industries as an opportunity to access certain benefits and a higher status, working in an international environment, and requires a set of skills that only a selected number of Cubans have access to, including language skills. Foreign companies operating in Cuba do so in partnership with national, State-owned⁴ enterprises.⁵ That raises questions on the way in which foreign companies engage and how human rights responsibilities are upheld. It also raises the question of the responsibility of the Cuban State for failing to protect workers (omission), and of whether States where those foreign companies have their headquarters (their 'home States') have any responsibility for any aspect of the exploitation of workers in the Cuban tourism and hospitality sector. This report analyses the international standards relevant to these questions.⁶

The international legal framework, as well as regional and domestic legislation, create obligations for States to tackle labour exploitation and connected human rights abuses, and responsibilities for businesses to act in accordance with international labour and human rights standards. This analysis presents those international standards that are relevant to the protection against labour exploitation and connected human rights abuses in the Cuban tourism and hospitality sector. The analysis is structured in accordance with the three pillars of

1. E. Salinas, E. Salinas, L. Mundet I Cerdán, *El turismo en Cuba: Desarrollo, Retos y Perspectivas*, Rosa dos Ventos, vol. 11, num. 1, 2019.

2. In-island survey, unpublished, copy with the authors.

3. In-island survey, unpublished, copy with the authors.

4. For the purposes of this report, State-owned companies are defined following the OECD Guidelines on Corporate Governance of State-Owned Enterprises (SOE). The OECD Guidelines define State-owned companies as 'any corporate entity recognised by national law as an enterprise, and in which the state exercises ownership, should be considered as an SOE. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover, statutory corporations, with their legal personality established through specific legislation, should be considered as SOEs if their purpose and activities, or parts of their activities, are of a largely economic nature' (OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015, p. 14, <https://www.oecd-ilibrary.org/docserver/9789264244160-en.pdf?expires=1639431703&id=id&accname=oid008858&checksum=E06129B9B26617624F8709BF8FBD74A6>).

Gaviota or Cubanacan are examples of State-owned enterprises under this definition.

5. Cuban Foreign Investment Law. Training by the foreign companies is normally limited to procedures that the company follows or quality standards that the brand wants to ensure (Consultation with Derek Blackadder).

6. The report presents an analysis of the legal framework, not contemplating political considerations such as the impact of the US embargo in the Cuban economy and in the decisions of multinational corporations to operate in Cuba. Such considerations go beyond the scope of the report.

the UN Guiding Principles of Business and Human Rights (UN Guiding Principles):⁷ i) States' duty to protect human rights; ii) corporate responsibility to respect them; and iii) access of workers to remedies for corporate-related human rights abuses. The structure of the UN Guiding Principles is followed as they are the framework setting the rules for the action of companies and of the States in which those companies operate or have their headquarters. While these are guiding principles, they contain binding rules that have been regulated in other international law instruments, and they are seen as the most influential and authoritative global standard⁸ shaping the efforts of companies and States in this area.

The analysis relies on the relevant international and regional human rights treaties, ILO Conventions, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, as well as domestic legislation. In view of this, the report refers to 'standards' and 'responsibilities' of companies, and to 'duties' of States, following the terminology of the UN Guiding Principles on Business and Human Rights. It also refers to 'obligations' of States under international human rights law, and to the 'responsibility' of States under the international State responsibility framework (ILC Articles on the Responsibility of States for Internationally Wrongful Acts, ARSIWA).

Research methodology

The methodology includes desk research and consultation with stakeholders via interviews. The sectors covered in the study include those where there is stronger presence of foreign companies: transportation (airlines and cruises), accommodation (hotels, shared accommodation, and cruises) and connected industries (travel agents, tour operators, online travel agencies, tourism organisations).

The study focuses on a selection of multinational companies with strong presence in the area, and analyses the duties of States where those companies have their headquarters. The States included in the study are France, Germany, Mexico, Netherlands, Spain, United Kingdom, and the United States.⁹

In the first section, the analysis identifies the obligations of States under the international legal framework, including relevant treaties and guidelines at the international, regional and domestic level.¹⁰ It explores the potential international responsibility of States for breaches of those obligations in accordance with the International Law Commission (ILC) Articles on State Responsibility (ARSIWA) and with the responsibility regimes established in human rights treaties and International Labour Organisation (ILO) Conventions. In the second section, the analysis

7. UN Human Rights Council 'Guiding Principles on Business and Human Rights at 10: taking stock of the first decade: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises' (22 April 2021) UN Doc A/HRC/47/39.

8. J.-P. Gauci, 'When Private Vessels Rescue Migrants and Refugees: A Mapping of Legal Considerations', British Institute of International and Comparative Law, Mirpuri Foundation, 2020, p. 11, https://www.biiicl.org/documents/10538_private_vessels_research.pdf.

9. The companies included in the study have their headquarters in France (Accor S.A.), Germany (Lufthansa, TUI Group), Mexico (Fiesta Americana), Netherlands (Booking Holdings, NH Hotel Group), Spain (Melia Hotels, Iberostar Group), United Kingdom (Fred Olsen Cruise Lines) and United States (Airbnb, Delta Air Lines, Expedia Group, Holland America Line [part of Carnival Corporation & plc], Norwegian Cruise Line, Royal Caribbean, TripAdvisor, Virgin Voyages). Their inclusion in the study was based on their relevance in the Cuban tourism sector (M. A. Figueras, 'Foreign Participation in the Development of Tourism in Cuba' Columbia Law School, Cuba Capacity Building Project, 27 February 2020).

10. ILO Conventions and UN human rights treaties, as well as UN Guiding Principles, OECD guidelines and relevant domestic and regional legislation.

explores the corporate responsibility to respect the human rights of workers. In the third section, the analysis looks at access to remedy. An additional section looks at the impact of the COVID 19 pandemic on the Cuban tourism sector. The report concludes with a set of recommendations for States, companies and civil society organisations.

The State duty to protect the human rights of workers

The international legal framework set out in the core ILO Conventions and UN and regional human rights treaties creates obligations for States to prevent and punish labour exploitation within their jurisdiction, to protect victims, and not to exploit workers in the public sector or in State-owned companies. The gravest forms of labour exploitation may amount to forced labour and slavery, which are prohibited in various international instruments,¹¹ and States have the obligation to criminalize in domestic legislation.¹² The prohibition of slavery and the prohibition to subject persons to degrading treatment are also widely recognized as customary international law, which makes them binding for all States, including those not having ratified specific treaties.¹³ Exploitation in the working environment represents a 'continuum' where 'increasing degrees of coercion' limit 'free labour'.¹⁴ To protect workers from all degrees of exploitation, international law establishes standards through ILO Conventions¹⁵ and human rights treaties.¹⁶

This section looks at the obligations and duties of Cuba for the protection of the human rights of workers in their tourism and hospitality sector, including setting up and enforcing the Cuban legal framework for multinational corporations operating in the country ('host State'). It also looks at the obligations and duties of States where those multinational corporations have their main domicile or headquarters ('home States').¹⁷

11. ILO Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol); ILO Abolition of Forced Labour Convention, 1957 (No. 105); UN Slavery Convention (1926); UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); Article 8 ICCPR, Art. 8 ICESCR (child labour); Art. 32 UNCRC (economic exploitation of children); Art. 11 UN Convention on the protection of the rights of all migrant workers and their families (1990); Article 6 ACHR; Article 4 ECHR; Palermo Protocol (2000); Council of Europe Convention on Action against Trafficking in Human Beings (2005); EU Anti-Trafficking Directive (2011/36/EU), Article 5 African Charter on Human and Peoples Rights.

12. K. Schwarz, J. Allain, Antislavery in domestic legislation. An empirical analysis of national prohibition globally, University of Nottingham Rights Lab, 2020, pp. 9, 11, 18.

13. W. A. Schabas, *The Customary International Law of Human Rights* (OUP, 2021), chapter 1. The customary nature of forced labour remains contested (J. Allain, *Slavery in International Law: Of Human Exploitation and Trafficking* (Brill 2012), pp. 246-254).

14. J. Allain, 'Exploitation and Labour in International Law', Ch. 16, *The Law and Slavery: Prohibiting Human Exploitation* (2015) Brill & Martinus Nijhoff, pp.345-396, p. 345.

15. The eight fundamental Conventions are: 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98); 3. Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol); 4. Abolition of Forced Labour Convention, 1957 (No. 105); 5. Minimum Age Convention, 1973 (No. 138); 6. Worst Forms of Child Labour Convention, 1999 (No. 182); 7. Equal Remuneration Convention, 1951 (No. 100); 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Other ILO Conventions are also relevant to labour exploitation, e.g., the Labour Inspection Convention, 1947 (No. 81) and its 1995 Protocol (P081).

16. Art. 22 (freedom of association) and Art. 26 (equal treatment) ICCPR; Art. 6 (right to work), Art. 7 (right to the enjoyment of just and favourable conditions of work), 8 (right to form and join trade unions) and 9 (right to social security) ICESCR; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); Art. 11 CEDAW; Art. 32 UNCRC; Art. 5 CERD; Art. 27 CRPD Art. 11 ECHR; European Social Charter; Art. 16 ACHR; Art. 11 and 15 African Charter on human and Peoples Rights (1986).

17. See Annex 1 containing a table of relevant legal instruments, and ratifications by Cuba and other States.

Cuba's duties and potential international responsibility

Cuba is a member of the UN Human Rights Council¹⁸ and was one of the States which endorsed the UN Guiding Principles in 2011.¹⁹ It has also committed to 'promote (...) full and productive employment and decent work for all' under Sustainable Development Goal 8.²⁰ It is a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (the Palermo Protocol). It is also a party to other relevant international treaties,²¹ including all 8 core ILO Conventions.²² In addition, in line with the ILO Declaration on Fundamental Principles and Rights at Work (1988), as an ILO member, it has the obligation to respect, promote and realize the principles concerning the fundamental rights which are subject of certain ILO Conventions, even if not ratified. These include freedom of association, recognition of the right to collective bargaining, the elimination of forced and child labour, and the elimination of discrimination in respect of employment and occupation.²³ The ILO guidelines on decent work and socially responsible tourism provide guidance for States on how to implement international labour standards such as freedom of association, the right to collective bargaining, non-discrimination and decent working conditions.²⁴

Cuba has signed, but not ratified, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the rights of migrant workers and their families. Having signed but not ratified those treaties, it has the obligation to refrain in good faith from acts that would defeat the object and purpose of those treaties, although only ratification would make Cuba legally bound by the treaty provisions.²⁵

18. Freedom House, Deep Concern as Cuba is Re-elected to UN Human Rights Council, 13 October 2020, <https://freedomhouse.org/article/deep-concern-cuba-reelected-un-human-rights-council>; OHCHR Cuba homepage: <https://www.ohchr.org/en/countries/lacregion/pages/cuindex.aspx>

19. OHCHR, UN Guiding Principles next 10 years project website:

<https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRsnext10.aspx>

20. A/RES/70/1 - Transforming our world: the 2030 Agenda for Sustainable Development. Cuba is also part of the voluntary national review of the high-level political forum on sustainable development (<https://sdgs.un.org/topics/sustainable-tourism>).

21. ICERD; CEDAW; CEDAW Protocol; CRC; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

22. It has ratified the eight fundamental Conventions 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98); 3. Forced Labour Convention, 1930 (No. 29); 4. Abolition of Forced Labour Convention, 1957 (No. 105); 5. Minimum Age Convention, 1973 (No. 138); 6. Worst Forms of Child Labour Convention, 1999 (No. 182); 7. Equal Remuneration Convention, 1951 (No. 100); 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

23. ILO Declaration on Fundamental Principles and Rights at Work (1988), para 2. Cuba has also ratified the ILO Labour Inspection Convention (1947), but it has not ratified the 2014 Protocol to the Forced Labour Convention, the ILO Convention C172 on Working Conditions in Hotels and Restaurants, and other ILO conventions or protocols that would protect workers in the sector [P081 - Protocol of 1995 to the Labour Inspection Convention, 1947; C175 - Part-Time Work Convention, 1994 (No. 175); C175 - Part-Time Work Convention, 1994 (No. 175)].

24. ILO guidelines on decent work and socially responsible tourism, 2017, <https://www.humanrights-in-tourism.net/publication/ilo-guidelines-decent-work-and-socially-responsible-tourism>, designed to support States and all other actors working to promote full and productive employment and decent work in the tourism sector.

25. UNOHCHR, The United Nations Human Rights Treaty System, 2012, p. 59, <https://www.ohchr.org/documents/publications/factsheet30rev1.pdf>.

In examining Cuban legislation²⁶ and its enforcement in light of those international commitments, it is evident that there are various fronts where Cuba's responsibility could arise.

Working conditions of workers and 'cuentapropistas' in a State-controlled sector

When in 2008 Cuba signed the ICESCR, an action that is considered in treaty practice as 'a preparatory step on the way to ratification',²⁷ it declared that the rights protected under the Covenant, which include the right to work (art. 6), the right to the enjoyment of just and favourable conditions of work (art. 7), the right to form and join trade unions (art. 8) and the right to social security (art. 9), 'are enshrined in the Constitution of the Republic and in national legislation' and that the 'States' policies and programmes guarantee the effective exercise and protection of these rights for all Cubans'.²⁸

Article 64 of the Cuban Constitution enshrines the right to work as the right to access dignified employment ('empleo digno'), and article 65 recognises the 'right to a remuneration according to the quality and quantity of work, as an expression of the socialist principle of distribution'. In addition, the 2013 Labour Code regulates the conditions of working relationships, including working hours and holidays.²⁹ Cuba has the obligation to ensure that its domestic definition of those rights is in accordance with the labour standards established in ILO Conventions Cuba has ratified.³⁰

The working conditions of workers in the tourism and hospitality sector present some special characteristics. Under the 2014 Foreign Investment Act, foreign investment in the Cuban tourism and hospitality sector is subject to government authorisation, and hotel management and service agreements must take the form of international joint venture agreements.³¹ Under this law, Cuban workers and permanent residents working for joint-ventures are hired and paid through an employment agency proposed by the Ministry of Foreign Trade and Investment and authorized by the Ministry of Employment and Social Security,³² not directly by the foreign investor. The working conditions of workers are set out in accordance with domestic labour law and payments to Cuban workers and permanent residents are made in Cuban pesos.³³

Limited evidence on the details of labour exploitation

Although evidence is limited on the conditions under which many employees work in the Cuba tourism sector and the exact functioning of the interaction between foreign companies and

26. The main legal instruments setting out the protection of the rights of workers in Cuba are the 2019 Constitution, the 2013 Labour Code and the 2014 Foreign Investment Law (118).

27. UNOHCHR, The United Nations Human Rights Treaty System, 2012, p. 59, <https://www.ohchr.org/documents/publications/factsheet30rev1.pdf>.

28. Declaration by Cuba, UNHCHR, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=_en#EndDec

29. On Cuban labour legislation, see G. Radfar, *Una Mirada Crítica a La Legislación Laboral En Cuba: Del 'Periodo Especial' y La 'Batalla De Ideas' a La 'Actualización Del Modelo'* (A Critical Look at Labor Legislation in Cuba: From the 'Special Period' and the 'Battle of Ideas' to 'Upgrading the Economic Model') (April 2016). CLALS Working Paper Series No. 12, Available at SSRN: <https://ssrn.com/abstract=2768377> or <http://dx.doi.org/10.2139/ssrn.2768377>

30. B. Saul, D. Kinley, J. Mowbray, 'Article 6: The Right to Work', in *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, OSAIL, 2014, p. 275, fn. 27, citing M. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Its Development* (Oxford, Clarendon Press, 1995), 200. See Annex 6 for a table of relevant legal instruments and their ratification by Cuba.

31. Art. 13.2 and Art. 15.3 of the Law.

32. Art. 30.1 of the Foreign Investment Law.

33. Art. 30.4 of the Foreign Investment Law.

the State under those joint venture arrangements, the table below identifies scenarios that have been reported in the Cuban tourism sector and which conflict with international standards ratified by Cuba. It also identifies the fora where these issues could be discussed with Cuba, or its responsibility could be invoked.

Scenario	International Standard	Forum for action
<p>Precarious working conditions,³⁴ including low wages,³⁵ lack of access to an independent judicial system to protect workers' rights,³⁶ inability to change jobs without government permission.³⁷</p> <p>This also includes the limited protection of the working conditions of self-employed workers or 'cuentapropistas'.</p>	<p>Cuba has the obligation to create or maintain a minimum-wage fixing machinery,³⁸ including consultation with representative organisations of employers and workers in the decision-making process,³⁹ and to give publicity to minimum wage provisions.⁴⁰ It is also required to establish a national framework or policy to ensure occupational health and safety.⁴¹</p>	ILO
<p>Political dissent as a reason for dismissal in employment relationships with GAESA, a State-owned business group under the Ministry of the Revolutionary Armed Forces owning and</p>	<p>Although Cuba has not ratified the ICCPR (freedom of thought, art. 18) and ILO Convention 158 concerning termination of employment, dismissal for political reasons in a State-owned company would arguably go against the object and purpose of the ICCPR,</p>	ILO

34. IACHR, The Situation of Human Rights in Cuba, OEA/Ser.L/V/II; Doc. 2/20, October 3, 2020. p. 109. See also, Prisoners Defenders. 'Breve Dictamen Jurídico sobre Derechos Laborales en el Sector Turismo en Cuba', 19 de abril de 2021, p. 4; media coverage in Cuban newspapers like Cubanet.net and Diario de Cuba (e.g. <https://www.cubanet.org/destacados/los-trabajadores-fantasmas-del-turismo-cubano/>).

35. Article 29 of the Foreign Investment Law allows mixed-capital companies to establish a fund of economic stimulation for Cuban workers and permanent residents working in foreign investment companies, with contributions to the fund made from the benefits of the activity, but hotel management and service agreements are excluded from this provision (Art. 29.2).

36. Labour arbitration must take place in government offices with little protection to the worker (judges appointed by and work for the government). <https://cubanstudiesinstitute.us/social/exploitation-of-workers-in-cuba/>.

37. J. Suchlicki, 'Exploitation of Workers in Cuba', *Cuba Insight*, November 2018, <https://cubanstudiesinstitute.us/social/exploitation-of-workers-in-cuba/>.

38. ILO Convention 26 on Minimum Wage-Fixing machinery (1928); ILO Convention 131 on Minimum Wage Fixing (1970) all ratified by Cuba.

39. Art. 4 Convention 131 (1970), ratified by Cuba.

40. Art. 5 Convention 131, ratified by Cuba.

41. Convention No. 155 on Occupational Health and Safety 1981, Convention No. 187 on Promotional Framework for Occupational Safety and Health Convention 2006 (none of them broadly ratified), ratified by Cuba.

managing companies in the tourism sector. ⁴²	which is incompatible with Cuba's status of signatory to the treaty.	
Racial discrimination as part of the recruitment and employment relationship. ⁴³	<p>The Cuban Labour Code introduced a ban on discrimination, including discrimination based on 'colour, gender,⁴⁴ religious beliefs, sexual orientation, place of origin, disability or any other differentiation detrimental to human dignity' (art. 2d), a development that the CERD committee explicitly welcomed in its 2018 Concluding Observations.⁴⁵</p> <p>Yet, the Committee recommended that Cuba intensify its efforts to adopt and implement measures to put an end to the structural discrimination that affects the population of African descent in the country, including 'eliminating all obstacles that impede the effective enjoyment by this population of its economic, social and cultural rights, especially in the areas of work, housing, political participation and representation in decision-making positions'.⁴⁶</p>	CERD

Forced labour and slavery: the gravest forms of exploitation

At the gravest end of the spectrum in the 'continuum' of exploitation, Cuba has the obligation to criminalize forced labour and to set up a domestic legal framework sanctioning the various degrees of labour exploitation.⁴⁷ It also has the obligation to establish a system of labour inspectors to identify victims of labour exploitation,⁴⁸ and to adopt measures to ensure the effective enforcement of sanctions against labour exploitation and forced labour (administrative sanctions or criminal prosecution),⁴⁹ as well as the protection of victims (legal

42. Prisoners Defenders. 'Breve Dictamen Jurídico sobre Derechos Laborales en el Sector Turismo en Cuba', 19 de abril de 2021, p. 4.

43. In-island survey, unpublished, copy with the authors.

44. On the gender dimensions in the tourism sector, see D. Moreno, E. Cañada, 'Gender Dimensions in Tourism Work', Contrast Reports 04, 2018, <https://www.humanrights-in-tourism.net/publication/gender-dimensions-tourism-work>.

45. CERD Committee, Concluding observations on the combined nineteenth to twenty-first periodic reports of Cuba, UN Doc. CERD/C/CUB/CO/19-21, 20 September 2018, p. 1, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fCUB%2fCO%2f19-21&Lang=en

46. Ibid. Para 18.

47. K. Schwarz, J. Allain, Antislavery in domestic legislation. An empirical analysis of national prohibition globally, University of Nottingham Rights Lab, 2020, pp. 9, 11, 18.

48. ILO Convention 81 on Labour Inspection 1947.

49. Art. 5 Palermo Protocol.

assistance) and redress.⁵⁰ In addition, it has the obligation to prevent forced labour and labour exploitation by providing training and capacity building, addressing demand, and adopting measures to reduce vulnerability.⁵¹

Cuba's responsibility could arise under the ILO Labour Inspections Convention, the ILO Forced Labour Convention and the Palermo Protocol, for failing to put in place an effective system of labour inspections, able to identify and protect victims, and to ensure prosecution of offenders and redress to victims. Although Cuban domestic legislation does not contain an express prohibition of slavery, Cuba has the international obligation to criminalize slavery, forced labour and human trafficking as a party to the 1926 Slavery Convention and to the 1956 Supplementary Convention, as well as to the ILO Forced Labour Convention and the Palermo Protocol respectively. This obligation derives also from the customary nature of the prohibition of slavery. Fulfilling these obligations entails adopting the necessary measures for individuals to be protected from situations of slavery, forced labour and human trafficking. The Cuban Penal Code contains provisions related to trafficking in persons,⁵² and the international legislation Cuba has ratified could be the legal basis for the State's responsibility for failing to protect victims of labour exploitation in the tourism sector.

This would be in line with existing jurisprudence on States' responsibility for failing to comply with their positive obligations to protect victims of contemporary forms of slavery in various regional human rights courts. The Inter-American Court of Human Rights (IACtHR) delivered a key judgment on 'slave labour' practices in an agricultural complex in Brazil, where it found Brazil had breached its 'duty to guarantee' protection against contemporary forms of slavery, as 'it had not demonstrated that it had adopted specific measures or acted with due diligence to prevent' and 'put an end to the situation'.⁵³ The duty to guarantee protection against forced labour and child labour was also emphasized, more recently, in *Fábrica de Fuegos v. Brasil*, a case concerning the explosion of a fireworks company where 64 people died and 6 were severely injured. The factory operated without permission, did not comply with the minimum standards of health and safety, and was deploying child labour. The Court found, among other considerations, that Brazil had failed to comply with its international obligations regarding labour inspections (ILO Conventions No. 81 and 155) and was found responsible for violations to the right to life and personal integrity of the victims (Art. 19 and 1.1 of the American Convention on Human Rights).⁵⁴ The jurisprudence of the European and African Courts of Human Rights has adopted decisions in similar terms.⁵⁵

50. Art. 6 and 7 Palermo Protocol. See also UNODC Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2020, pp. 55-66.

51. Art. 8 Palermo Protocol. See also UNODC Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2020, pp. 77-90.

52. Articles 316, 347 and 302 of the Cuban Penal Code.

53. *Trabajadores de la Hacienda Brasil Verde v. Brasil*, Judgment of the Interamerican Court of Human Rights, of 22 August 2017. Quotes extracted from the summary in English, available here:

<https://www.corteidh.or.cr/corteidh/cf/Jurisprudencia2/overview.cfm?doc=1728&lang=en>. See also Jose Pereira v. Brazil case, Inter-American Commission of Human Rights, 24 October 2003.

54. According to the Court, the State's omission to perform the necessary inspections contributed to facilitate the explosion and that led to the violation of the right to life and the right to personal integrity of the victims (IACtHR, *Caso Empleados de la Fabrica de Fuegos en Santo Antonio de Jesus y sus Familiares v. Brasil*, Judgment of 15 July 2020, para 138, https://www.corteidh.or.cr/docs/casos/articulos/seriec_407_esp.pdf).

55. Relevant jurisprudence from the European Court of Human Rights (ECtHR) includes *Siliadin v. France* (Judgment of 26 July 2005), *Rantsev v. Cyprus and Russia* (Judgment of 7 January 2010), *Chowdury and Others v. Greece* (Judgment of 30 March 2017), and the very recent cases of *V.C.L. and A.N. v. the United Kingdom* (Judgment 16 February 2021), and *Zoletic and others v. Azerbaijan* (Judgment of 7 October 2021) (On ECtHR case law, see V. Stoyanova, *Human Trafficking and Slavery Reconsidered: Conceptual Limits and States' Positive Obligations in*

Cuba's duties vis a vis the operations of companies

Cuba also has the obligation to set up a clear framework for businesses operating in the tourism and hospitality sector, in line with UN Guiding Principles 2 and 3, ensuring that legal framework enables and requires companies to respect human rights. In this regard, it is noteworthy that Cuba was one of the States co-sponsoring the initiative led by Ecuador and South Africa at the UN level to advance efforts for a treaty on business and human rights.⁵⁶ The initiative was voted in June 2014 at the UN Human Rights Council, which decided to establish an Intergovernmental Working Group to 'elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'.⁵⁷ Yet, the Cuban legal framework falls short of legal provisions explicitly enshrining corporate responsibility for human rights. Cuban legislation refers to health and safety related matters in the labour space,⁵⁸ as well as to social protection in the working environment,⁵⁹ and to the provision of salaries in accordance with labour law,⁶⁰ but there are no specific provisions on human rights accountability for companies. Beyond that, the IACHR observed in 2020 that 'the recent authorization for the creation of non-State micro-enterprises in the tourism sector may be contributing to increasingly severe risks of women being sexually exploited on the island'.⁶¹

The obligation of the Cuban government to set up a clear legal framework for businesses operating in the tourism and hospitality sector includes the framework applying to State-owned companies. As UN Guiding Principle 4 establishes,

'States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence'.

European Law CUP (2017)).⁵⁵ In Africa, the ECOWAS Court clarified obligations of domestic authorities in Niger to prosecute and punish slavery in the case of *Hadijatou Mani Koraou v The Republic of Niger* (Judgment of the ECOWAS Court No ECW/CCJ/JUD/06/08 of 27 October 2008 (case on the obligations of domestic authorities in Niger to prosecute and punish slavery suffered by Hadijatou Mani).

56. B. Faracik, 'Implementation of the UN Guiding Principles on Business and Human Rights', study requested by the European Parliament's Subcommittee on Human Rights (DROI), 2017, p. 18, [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU\(2017\)578031_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/578031/EXPO_STU(2017)578031_EN.pdf).

57. Human Rights Council Resolution on elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, UN Doc A/HRC/26/9. The Working Group has held seven sessions so far at the UN and released the third version of the draft treaty, accessible here: <https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx>.

58. Art. 430 and 431 of Decree 281/2007 contain provisions on health and safety, Available at: https://www.gacetaoficial.gob.cu/sites/default/files/go_x_27_2014.pdf.

59. Law 105/09, Available at: https://www.minjus.gob.cu/sites/default/files/archivos/publicacion/2019-11/ley_105_y_reg_ley_seg_social.pdf.

60. Decree Law 46/2021, regulating Micro, Small and Medium Enterprises establishes, under art. 5, that these enterprises have the obligation to fix the salaries taking into consideration the minimum salaries established in labour law (Available at: <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2021-o94.pdf>).

61. IACHR, *The Situation of Human Rights in Cuba*, OEA/Ser.L/V/II; Doc. 2/20, October 3, 2020, para 322. The IACHR published this report based on its mandate under art. 106 Charter of the OAS, as part of its work monitoring the human rights situation in Cuba.

This is also an obligation under existing human rights and labour rights treaties,⁶² and is particularly relevant for this study, given the strong presence of State-owned companies in the Cuban tourism and hospitality sector. Decree Law 335/2017 regulates State-owned enterprises and, under article 15, establishes companies' accountability for damages to other companies, to State entities, to individuals and to the environment.⁶³

But the international responsibility goes beyond compensation for damages.⁶⁴ In addition to the consequences established in international human rights or labour instruments, the involvement of State-owned companies in labour exploitation could also raise the responsibility of the Cuban State. The ILC Commentary to the ARSIWA, some of which are considered customary international law,⁶⁵ makes clear that State-owned companies are considered to be separate from the State and in that regard *prima facie* their conduct is not attributable to the State. But it also establishes that, to the extent that they may be exercising elements of governmental authority within the meaning of article 5 ARSIWA, their actions or omissions are attributable to the State.⁶⁶ That will be the case if this company is empowered by the law of that State to exercise elements of governmental authority, and if it is acting in that capacity. In addition, even if the company has not been empowered by the law of that State to exercise elements of governmental authority, its acts or omissions could be attributable to the State under article 8 ARSIWA, if it can be proved that the company was acting 'on the instructions of, or under the direction or control of, that State in carrying out the conduct'.⁶⁷

Given the State-controlled model followed in Cuba, where a high number of companies in the tourism sector are owned and managed by GAESA,⁶⁸ Gaviota Hoteles or Cubanacan Group, which are State-owned business groups,⁶⁹ the consequences of these businesses' actions could be attributable to the Cuban State under article 5 or article 8 ARSIWA, depending on whether the specific function can be considered 'governmental'.⁷⁰

Other avenues for Cuba's responsibility in this regard are the ILO mechanisms and international guidelines. Cuba is a party to ILO Convention 94 concerning Labour Clauses (Public Contracts) (1949), which ensures respect for minimum labour standards in public contracts. The ILO Committee of Experts noted in 2017 that, despite some positive developments included in the 2013 Labour Code, 'the Convention continues to be practically without effect', and requested

62. Under international human rights and labour instruments, States are not only under the obligation to prevent labour exploitation and other human rights abuses but also have the obligation not to exploit workers employed in the public sector. P. Webb, R. Garcíandia, 'State responsibility for modern slavery: uncovering and bridging the gap', *International & Comparative Law Quarterly*, Volume 68, Issue 3, July 2019, pp. 539 – 571.

63. Available at: <https://www.gacetaoficial.gob.cu/sites/default/files/goc-2017-ex58.pdf>.

64. L. Soto, J. Batista, 'The Social Responsibility of the State Enterprise in the full Exercise of the Workers' Rights of the State-owned Firms in Cuba', *Revista IUS*, vol. 14, num. 45, pp. 55-79, 2020.

65. P. Webb, R. Garcíandia, 'State responsibility for modern slavery: uncovering and bridging the gap', *International & Comparative Law Quarterly*, Volume 68, Issue 3, July 2019, pp. 539 – 571, p. 558 and fn. 65 (p. 549) citing the ICJ (Genocide Convention (Bosnia v Serbia) case, ICJ (2007) 43, 209. See also references to the lack of consensus on the customary nature of arts. 8 and 16 ARSIWA (pp. 556-557).

66. ARSIWA Commentary to Art. 8, para 6, p. 48.

67. See R. McCorquodale, P. Simons, 'Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law', *Modern Law Review*, vol. 70, num.4, pp. 598-625.

68. Grupo de Administración Empresarial, SA.

69. Prisoners Defenders. 'Breve Dictamen Jurídico sobre Derechos Laborales en el Sector Turismo en Cuba', 19 de abril de 2021, p. 4.

70. On the contemporary application of the ARSIWA rules of attribution to State-owned enterprises, see Kristen E. Boon (2021) 'Attribution in International Law: Challenges & Evolution', August 2021 Draft, where an increasing disconnect between the traditional ARSIWA rules and the contemporary practice is emphasized.

the government to provide information about how it is being applied, 'including cases in which the conclusion of public contracts with private employers has been authorized, and the manner in which effect is given to Art. 2 of the Convention', which refers to working conditions of workers in such contracts. The ILO machinery could be used to encourage Cuba's compliance with the convention, with a positive effect on the working conditions of those workers.

The OECD 2015 Guidelines on Corporate Governance of State-Owned Enterprises,⁷¹ which provide a set of good practices on the legal and regulatory framework for State-owned enterprises, could also be relevant. Although Cuba is not a member of the OECD, the recommendations are 'internationally agreed standards of how governments should exercise the State ownership function'⁷² and those practices could be helpful for Cuba to align with other States' practices on governance of State-owned enterprises. These guidelines are recommendations to governments on 'how to ensure that State-owned enterprises operate efficiently, transparently and in an accountable manner'.⁷³ They include the disclosure of the objectives justifying State ownership, guidance on transparency and accountability in the management of State-owned enterprises, principles of fair competition and equitable treatment of shareholders, responsible business conduct by State-owned enterprises, standards of disclosure and transparency, and the responsibility of State-owned enterprises' boards.

The Guidelines require the 'ownership entity' to be 'held accountable to the relevant representative bodies and have clearly defined relationships with relevant public bodies, including the State supreme audit institutions', which presents an avenue for human rights abuses to be addressed.⁷⁴ Additionally, 'ownership rights should be clearly identified within the State administration' and 'should be centralised in a single ownership entity', which allows for labour exploitation to be attributed to a single legal body.⁷⁵ The Guidelines also recommend that State-owned enterprises involved in economic activities 'should not be exempt from the application of general laws, tax codes and regulations', which ensures workers enjoy the same legal protections regardless of the entity they are employed by.⁷⁶ State-owned enterprises are urged to recognise and respect the rights of their stakeholders, including labour rights, and to 'develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures'.⁷⁷ These monitoring efforts can be based on 'country norms', but must conform with 'international commitments', ensuring a minimum standard of responsible business practice is adopted.⁷⁸

A 2016 Report of the UN Working Group on Business and Human Rights to the Human Rights Council, which examined the duty of States to protect against human rights abuses involving State-owned enterprises,⁷⁹ explains that greater expectations are placed on States in relation

71. OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 edition, <https://www.oecd-ilibrary.org/docserver/9789264244160-en.pdf?expires=1621424319&id=id&accname=guest&checksum=0063E592C634EDFC927F9CC5D2CFF1E4>.

72. Foreword to the 2015 version of the OECD Guidelines, p. 3.

73. Ibid.

74. Section II of the OECD Guidelines, p. 18.

75. Ibid.

76. Section III of the OECD Guidelines, p. 20.

77. Section V of the OECD Guidelines, p. 23.

78. Ibid.

79. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 4 May 2016. UN Doc A/HRC/32/45. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement>.

to the enterprises they own due to the means States have at their disposal to respect human rights, for reasons of policy coherence, given States' broader human rights obligations, and for legitimacy and credibility, increasing the likelihood that private enterprises will comply with regulations.⁸⁰ Additionally, these enhanced obligations can be ascribed to existing State obligations under international law in general, as well as international human rights law in particular.⁸¹ Under those frameworks States have the duty to protect against abuse by third parties, including State-owned business enterprises, and could be responsible for failing to prevent, mitigate and remediate abuse.⁸² Treaty bodies also associate certain obligations of State-owned enterprises with the State duty to respect, considering them as quasi-State organs,⁸³ or if the State-owned company performs public functions.⁸⁴

Labour exploitation within State-owned enterprises would be better addressed by adherence to the Working Group's recommendations to States, including setting clear expectations to these enterprises regarding human rights compliance,⁸⁵ mandating that boards monitor the implementation of human rights standards and account for any shortcomings,⁸⁶ adopting explicit human rights targets and monitoring progress,⁸⁷ requiring the implementation of human rights due diligence,⁸⁸ requiring disclosure on environmental, social and human rights performance⁸⁹ and ensuring that victims have access to an effective remedy.⁹⁰

Trade union rights and strike

The Cuban Constitution recognizes the right to freedom of association, as long as it is for peaceful and lawful purposes.⁹¹ In addition, the Labour Code establishes that the State recognizes and encourages trade union organisations that group together workers of the different sectors and branches of the economy and represent their specific rights and interest, regardless of the nature or characteristics of their work relationships.⁹² Workers also have the right to voluntarily associate and form trade union organisations, in accordance with the founding unitary principles, their statutes and regulations.⁹³

The Cuban *Sindicato Nacional de Trabajo, Hostales y Turismo*, which celebrated its 25th Anniversary in 2020, has been reportedly supporting workers in the sector.⁹⁴ However,

80. Ibid, paras 26-28.

81. Ibid, paras 29-34.

82. Ibid, para. 30. See also UN Doc A/HRC/4/Add 1 and Universal Human Rights Index (www.uhri.ohchr.org).

83. See CEDAW/C/MAR/CO/5, on the need to increase the number of women in decision-making positions in State-owned enterprises, to reach the level of other governmental bodies.

84. Ibid, paras 32-33, see also UN Doc. A/HRC/15/31.

85. Ibid, paras 46-54.

86. Ibid, paras 60-64.

87. Ibid, paras 65-71.

88. Ibid, paras 74-77.

89. Ibid paras 78-82.

90. Ibid, paras 83-87. For a critical analysis of the framework, see L. Catá Backer (2017) 'The Human Rights Obligations of State-owned Enterprises (SOEs): Emerging Conceptual Structures and Principles in National and International Law and Policy', *Vanderbilt Journal of Transnational Law* 51, p. 33. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2980533.

91. Art. 56 Constitution. It is however noteworthy that, until 2019, article 62 of the Constitution stated that 'none of the freedoms which are recognised for citizens can be exercised contrary to what is established in the Constitution and law, or contrary to the existence and objectives of the socialist State, or contrary to the decision of the Cuban people to build socialism and communism. Violations of this principle can be punished by law'.

92. Art. 12 Labour Code.

93. Art. 13 Labour Code.

94. Consultation with Derek Blackadder.

allegations of exploitation in the sector raise concerns about the effectiveness of this support, and more general trade union efforts seem to have been more restricted.

The effective protection of the right to form and participate in trade unions has been questioned in the UN Universal Periodic Review (UPR) and in ILO monitoring processes. It is significant that the Cuban Constitution only recognizes explicitly the 'Central de Trabajadores de Cuba' as a union.⁹⁵ In the 2018 UPR process for Cuba, some civil society organisations (CSOs) submitted that no other trade unions were legally recognised,⁹⁶ and that independent trade union activists were systematically repressed.⁹⁷ The IACtHR has also expressed concerns about the obstacles faced by independent trade unions, such as the Independent Trade Union Association of Cuba.⁹⁸ Research has found that 'a wide range of highly restrictive, vague and broadly defined laws, create a web of control over many aspects of the lives of ordinary Cubans'⁹⁹ including people associated with trade unions. The Cuban Penal Code criminalises behaviour termed as "dangerousness"¹⁰⁰ which essentially provides the means for the Cuban authorities to put someone under surveillance or arrest and imprison them¹⁰¹ for engaging in their rights, including freedom of association.

The ILO has also been paying close attention to this issue. In March 2021, the ILO Committee on Freedom of Association issued its interim report on a complaint presented by the Independent Trade Union Association of Cuba (ASIC) against the State.¹⁰² This complaint was initially filed in 2016,¹⁰³ and the complainant organization submitted further allegations in 2019 and 2020. It alleges harassment and persecution of independent trade unionists, involving assaults, acts of aggression and dismissals, other acts of anti-union discrimination and interference by the public authorities; official recognition of only one trade union federation, controlled by the State; and the absence of collective bargaining and recognition of the right to strike.¹⁰⁴ In its interim report, the Committee emphasized the right to official recognition through legal registration as 'an essential facet of the right to organize' and that 'all workers, regardless of their status, should be guaranteed their freedom of association rights so as to avoid the possibility of having their precarious situation taken advantage of'.¹⁰⁵ It urged the

95. Art. 134, 164 and 227 Constitution.

96. Submission by Civil rights defenders (Sweden), see Human Rights Council, Summary of Stakeholders' submissions on Cuba, 9 March 2018, para. 58.

97. Joint submission by Centro para la Apertura y el Desarrollo de América Latina — CADAL (Argentina), Fundación para los Derechos Humanos en Cuba (United States of America), see Human Rights Council, Summary of Stakeholders' submissions on Cuba, 9 March 2018, para. 58.

98. IACHR, The Situation of Human Rights in Cuba, OEA/Ser.L/V/II; Doc. 2/20, October 3, 2020, p. 12.

99. Amnesty International, 'Your mind is in Prison', 2017, p. 16, <https://www.amnesty.org.uk/files/YourMindIsInPrison-Cuba-report-AI.pdf>.

100. Article 72 of the Cuban Penal Code defines dangerousness as the special inclination which an individual has to commit crimes depicted by his behaviour in manifest contradictions to the rules of socialist morality"¹⁰⁰ and includes, under Article 72(c) "antisocial behaviour." Cuban Penal Code Art 72 (translated resource Lawyers Without Borders UK Limited).

101. Many human rights defenders, including trade unionists have been arrested, charged and sentenced under Article 91 of the Penal Code. Article 91 states '[w]hosoever, in the interest of a foreign State, carries out an act with the aim of harming the independence of the Cuban State or the integrity of its territory shall be subject to a punishment of deprivation of freedom for a period of from ten to twenty years or death'.

102. Case No. 3271.

103. ILO Governing Body, 386th Report of the Committee on Freedom of Association, June 9, 2018, pars. 232-242.

104. Interim Report - Report No 393, March 2021, Case No 3271 (Cuba),

https://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4081842.

105. Ibid, para 342. The Committee has examined allegations of non-recognition and interference by the Government in the free operation of trade union organizations not affiliated to the CTC in various occasions (Cases Nos 1198, 1628, 1805, 1961 and 2258 of the Committee on Freedom of Association).

government to 'ensure that ASIC is given recognition and that it can freely operate and carry out its trade union activities'.¹⁰⁶

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly requested information and copies of court rulings connected with cases of convictions of workers belonging to independent trade unions, and threats of imprisonment against delegates of those organizations. The Committee has regretted that the Government continues to avoid sharing this information under the justification that those convictions were based on offences duly defined in law, as outlined above, and has requested the Government to provide copies of the rulings in question.¹⁰⁷

Moreover, Cuba's migration laws place limitations on the length of time a person can leave the country dependent on their type of employment, and it is difficult for certain professions to obtain a visa to leave the country.¹⁰⁸ With freedom of movement as a fundamental freedom not only for enjoying labour rights but also freedom of association, attempts to exit the State are perceived by the authorities as an expression of discontent with the political or economic system and people attempting to leave can be detained and excluded from access to State-employment,¹⁰⁹ or given low-level jobs which, if refused, can lead to a charge of "dangerousness".¹¹⁰ People who attempt to flee the country via "illegal" means are (wrongfully) dismissed from their employment in the public sector.¹¹¹ The State uses this as a form of control over people to silence criticism, and deny human rights defenders permission to leave.¹¹² If they do successfully leave, a continued form of control to silence people exists, as authorities will take reprisal on family members remaining in Cuba, including dismissing them from their employment,¹¹³ and discriminating against them for future employment. However, it is very difficult for this situation to reach the threshold for granting these persons refugee status, and the inability to gain employment upon return to Cuba and the potential of government surveillance is most likely insufficient to result in a successful asylum claim.¹¹⁴

The right to strike has also been a concern for the ILO Committee of Experts. For many years, it had called the government to include an explicit recognition of the right to strike in domestic

106. Ibid.

108. Ibid. Committee of Experts, 2019 Observations on the ILO Convention 87 (1948), https://www.ilo.org/dyn/normlex/es/f?p=1000:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:4022945,en:No

108. Amnesty International, 'Your mind is in prison', p. 26, <https://www.amnesty.org.uk/files/YourMindIsInPrison-Cuba-report-AI.pdf>.

109. Ibid, p. 25.

110. Ibid, p. 26.

111. Ibid, p. 20.

112. Amnesty International, 'Restrictions of Freedom of Expression in Cuba', 2010, p. 16, <https://www.amnesty.org/en/wp-content/uploads/2021/06/amr250052010en.pdf>.

113. Amnesty International, 'Your mind is in prison', p. 26

114. See OM (Cuba returning dissident) Cuba CG [2004] UKIAT 00120. In deciding this appeal, Judge N Ainley stated the following: 'We do not wish to underestimate the difficulties that the claimant would have if he were to return to Cuba, because plainly life would be difficult and perhaps unpleasant for a while. He might be under government surveillance. He might very well find it difficult, if not almost impossible to obtain a job, but we have had no material placed before us that indicates that he would be likely to be arrested or persecuted. Mr Allen is of the view that the Cuban authorities would dismiss him from his employment as being politically unreliable and would assign him to a work battalion as a field hand, presumably for some particular period of time. They might place him in a detention facility until he could obtain housing and he would be monitored by the neighbourhood CDR once he returned to the community. Even if all this is true we cannot see that it amounts to persecution albeit it amounts to treatment by an oppressive state of the type that would be entirely unacceptable in Europe. The threshold for persecution is set very high and we cannot see that that threshold is passed by the claimant in this case, even one takes what might happen to him as being what is likely to happen to him.'

legislation. In 2016, after the adoption of the 2013 Labour Code, the Committee of Experts regretted that the code does not contain an explicit recognition of the right to strike and referred to the Government's reiteration that there is no provision in law which prohibits the right to strike and no criminal penalty associated to the exercise of such rights. It recalled that:

'the Convention does not require the adoption of legal provisions to regulate the right to strike provided that this right, which is an expression of trade unions' rights to freely organize their activities for the legitimate defence of the interests of their members, may be exercised in practice without organisation and participants being at risk of the imposition of penalties'.¹¹⁵

It requested the Government to 'provide information on measures taken or envisaged to ensure that no one suffers discrimination or prejudice in their employment for having peacefully exercised the right to strike, and requested it to provide information on the exercise of this right in practice', including the number and nature of strikes called and any administrative or judicial investigations or procedures initiated or conducted in relation to the strikes.¹¹⁶ In 2017, it noted that there is no guarantee for the exercise of the right to strike in labour legislation, that it is prohibited in practice and that the State should ensure that workers can exercise it without risk of punishment.¹¹⁷ The 2019 Constitution could have included an explicit reference to the right to strike, as repeatedly recommended by the ILO Committee of Experts, but that was finally not the case.¹¹⁸

As mentioned above, Cuba has the obligation to provide, facilitate and promote union rights,¹¹⁹ and to take measures to promote collective bargaining.¹²⁰ Furthermore, Article 1 of ILO Convention 98 requires Member States to protect workers against anti-union discrimination in respect of their employment. Under article 19 of the ILO Constitution, member States undertake that they will, 'within a period of one year at most from the closing of the session of the Conference (or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference), bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action'. Members shall also inform the Director General of the International Labour Office of the measures taken to bring the recommendation before the competent authority and of the action taken by them.¹²¹ In addition to the regular reporting on compliance with ILO standards,¹²² the ILO Constitution also provides special procedures for representation or complaints. The special procedure for representation entitles an industrial association of employers or of workers to present to the ILO Governing Body a representation against any

115. ILO Committee of Experts, 2016, https://www.ilo.org/dyn/normlex/es/f?p=1000:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3300910,en:NO

116. ILO Committee of Experts, 2016, https://www.ilo.org/dyn/normlex/es/f?p=1000:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3300910,en:NO

117. ILO Committee of Experts on the Application of Conventions, Report III (Part 1A), 2017, p. 104.

118. Cuban 2019 Constitution.

119. B. Saul, D. Kinley, J. Mowbray, 'Article 8: Trade Union-Related Rights', in *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials*, OSAIL, 2014, p. 496.

120. Art. 5-8. See also ILO Recommendation No. 163 on Collective Bargaining 1981.

121. Art. 19, paras. 6 b and 6 c of the ILO Constitution.

122. Committee of Experts on the Application of Conventions and Recommendations and International Labour Conference's Tripartite Committee on the Application of Conventions and Recommendations.

member State which, in its view, 'has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party'.¹²³ The special procedure for complaints entitles a member State, a delegate to the International Labour Conference or the Governing Body on its own motion to file a complaint against another member State for not complying with a ratified Convention.¹²⁴ In addition, a special complaint procedure is available regarding freedom of association through the Freedom of Association Committee.¹²⁵ The spirit of the ILO framework is based on tripartite cooperation (governments, workers, and employer representatives) as well as on cooperation between States,¹²⁶ which makes the State responsibility approach less likely as an outcome in this process. The notion of State responsibility is, however, at the core of the ILO machinery as the basis for the cooperation mechanisms in place under the ILO Constitution.

The duties of home States of multinational companies operating in Cuba and their potential international responsibility

Home States - of foreign companies that operate in Cuba - also have obligations based on their international commitments. The States included in this study are France, Germany, Mexico, Netherlands, Spain, United Kingdom, and the United States. As parties to the ICESCR, all of them are required to adopt measures 'to ensure effective protection against Covenant rights violations linked to business activities' and to 'provide victims of such corporate abuse with access to effective remedies'.¹²⁷ They have the 'positive duty to adopt a legal framework requiring business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of Covenant rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control on the enjoyment of Covenant rights'.¹²⁸ States have to set out clearly the expectations that companies domiciled in their territory respect human rights.¹²⁹

States must take those steps not only to prevent human rights violations in their territory but also violations linked to the operations of those companies abroad. As the Committee on Economic, Social and Cultural Rights (CESCR) clarifies in its General Comment 24, those

123. Art. 24 and 25 ILO Constitution. 6 procedures were initiated so far in 2021, regarding Peru, Guinea, Poland, Uruguay, Ecuador and Chile

(https://www.ilo.org/dyn/normlex/en/f?p=1000:50010:16313235895342:::P50010_DISPLAY_BY:1).

124. Art. 26-34 ILO Constitution. See the ILO website for complaints procedures, including commissions of inquiry (<https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/lang-en/index.htm>).

125. Special procedures for the examination of complaints alleging violations of freedom of association (https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:4046805:NO/). See also <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-on-freedom-of-association/lang-en/index.htm>

126. The ILO Centenary Declaration for the Future of Work, adopted by the International Labour Conference at its 108th Session, on 21 June 2019, states that 'Social dialogue, including collective bargaining and tripartite cooperation, provides an essential foundation of all ILO action and contributes to successful policy and decision-making in its member States' (para. B, p. 5).

127. Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, UN Doc. E/C.12/GC/24, para 14.

128. Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, UN Doc. E/C.12/GC/24, para 16.

129. UN Guiding Principle 2.

obligations do 'not stop at their territorial borders'.¹³⁰ States shall protect the rights enshrined in the Covenant, taking 'steps to prevent and redress infringements (...) that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective'.¹³¹ As the commentary to the UN Guiding Principles emphasizes, the extraterritorial approach ensures 'predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation'.¹³² National Action Plans on business and human rights increasingly refer to extraterritorial jurisdiction.¹³³ The European Commission's proposed EU Directive on Corporate Sustainability Due Diligence also has an extraterritorial scope.¹³⁴ Domestic jurisprudence is also consolidating this notion, as discussed in section 3.3.¹³⁵

Home States may seek to comply with those obligations by requiring 'parent' companies to report on their operations globally, requiring them to comply with specific guidelines, such as the OECD Guidelines for Multinational Enterprises,¹³⁶ imposing tax or export restricting requirements, or incorporating reporting obligations for companies in domestic legislation, as the UK Modern Slavery Act did in 2015.¹³⁷ Recent legal developments at the national and regional level are consolidating the trend towards mandatory human rights due diligence, inspired by the UN Guiding Principles and strengthened by recent case law.¹³⁸

Human Rights Due Diligence legislation

Under UN Guiding Principle 3, States should 'enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps'. They also should 'provide effective guidance to business enterprises on how to respect human rights through their operations, and to encourage, and where appropriate require, business enterprises to communicate how they address their human rights impact'. They should also 'ensure that any laws and policies

130. Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, UN Doc. E/C.12/GC/24, para 26.

131. Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, UN Doc. E/C.12/GC/24, para 30.

132. Commentary to UN Guiding Principle 2.

133. Danish Institute for Human Rights, Extraterritorial jurisdiction in National Action Plans on Business and Human Rights, <https://globalnaps.org/issue/extraterritorial-jurisdiction/>.

134. M. Uhrynuk, T. Baines et al, Human Rights and the Environment – EU publishes draft Corporate Sustainability Due Diligence Directive, 24 February 2022, <https://www.eyonesg.com/2022/02/human-rights-and-the-environment-eu-publishes-draft-corporate-sustainability-due-diligence-directive/>.

135. *Vedanta Resources PLC and another v Lungowe and others* [2019] UKSC 20, 10 April 2019, <https://www.supremecourt.uk/cases/docs/uksc-2017-0185-judgment.pdf>; <https://www.etoconsortium.org/en/news/news/uk-supreme-court-rules-in-favour-of-zambian-communities-to-sue-british-company-in-uk-courts-179/>; *Nevsun Resources Ltd. v. Araya*, Supreme Court of Canada, 28 February 2020, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/18169/1/document.do>; <https://atelieraftab.com/insight/the-radical-implications-of-nevsun-corporate-responsibility-and-liability-under-customary-international-law>.

136. OECD Guidelines for Multinational Enterprises, 2011, <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

137. L. Hsin, S. J. New, I. Pietropaoli, and L. Smit (2021) *Accountability, Monitoring and the Effectiveness of Section 54 of the Modern Slavery Act: Evidence and Comparative Analysis*. London: Modern Slavery Policy and Evidence Centre.

138. French Duty of Vigilance Law, Norway and German Law, Dutch child labour due diligence law, EU proposed directive on corporate due diligence and corporate accountability.

governing the creation and operation of business enterprises do not constraint but enable business respect for human rights'.¹³⁹

While the UN Guiding Principles do not create new binding obligations but rather restate existing international law obligations on States and set out the responsibilities of business actors,¹⁴⁰ they are more than a mere compilation of existing obligations contained in international binding legal instruments. Since their adoption in 2011, various States have adopted or are in the process of adopting legislation creating binding duties based on the concepts of the UN Guiding Principles, including making human rights due diligence mandatory for businesses, both with respect of their operations within their jurisdiction and extraterritorially. In addition, the UN Guiding Principles are the basis for ongoing negotiations on the adoption of a treaty on business and human rights.¹⁴¹

Many States have taken this approach, with thematic focused legislation creating duties for companies to report on their efforts to tackle specific human rights issues such as human trafficking, forced labour or modern slavery. The California Transparency in Supply Chains Act, which became effective in 2012, requires businesses to report what measures they are adopting to combat slavery and human trafficking in their supply chains. The law establishes a minimum required content for companies to disclose,¹⁴² and specifies that this information must be posted online and be conspicuous and easily understood.¹⁴³ Non-compliance with these obligations may trigger actions under the Act itself, as well as under competition or consumer law.¹⁴⁴

The UK Modern Slavery Act creates the obligation for certain large companies (and the public sector as of 2021) to publish a statement on their actions to mitigate modern slavery risks in their supply chains.¹⁴⁵ The same approach was introduced in the Australian Modern Slavery Act, which, unlike the UK Act, included public procurement from the outset.¹⁴⁶ The Dutch Child Labour Due Diligence Law aims to prevent goods and services produced with child labour from being delivered to consumers in the Netherlands. To reach that goal, companies have to submit a statement to regulatory authorities declaring that they have carried out due diligence related to child labour in their full supply chains. Non-compliance results in a fine, although the amount is meant to be symbolic.¹⁴⁷

139. UN Guiding Principle 3.

140. UN Guiding Principle 1. See also J. P. Gauci, *When Private Vessels Rescue Migrants and Refugees: A Mapping of Legal Considerations*, BIICL, 2021.

141. C. Methven O'Brien, 'Confronting the Constraints of the Medium: The Fifth Session of the UN Intergovernmental Working Group on a Business and Human Rights Treaty', *Business and Human Rights Journal*, 5 (2020), pp. 150-155S; Deva and D. Bilchitz (eds), *Building a Treaty on Business and Human Rights: Context and Contours* (Cambridge University Press 2017); O. De Schutter, 'Towards a New Treaty on Business and Human Rights' (2016) 1 *Business and Human Rights Journal* 41; <https://www.business-humanrights.org/en/big-issues/binding-treaty/second-revised-draft-unofficial-summary/>; J. Ruggie, 'A UN Business and Human Rights Treaty Update' [2014] HARVARD Kennedy School.

142. California Code, Civil Code, § 1714.43(c).

143. California Code, Civil Code, § 1714.43.

144. Cal. Civ. Code § 1714.43(d)). See also <https://www.perkinscoie.com/images/content/2/1/v3/217134/The-California-Transparency-in-Supply-Chains-Act-Overview.pdf>.

145. UK Modern Slavery Act, s. 54. See also Independent Review of the Modern Slavery Act 2015: Final Report Presented to Parliament by the Secretary of State for the Home Department, May 2019, including recommendations on the content of companies' reporting obligations and on enforcement of the Act, which the Government committed to implementing.

146. Australian Slavery Act.

147. MVO Platform, Update: Frequently Asked Questions about the new Dutch Child Labour Due Diligence Law, June 2019, <https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/>.

The French Duty of Vigilance Law¹⁴⁸ is the first overarching human rights due diligence legislation, going beyond that thematic focus on modern slavery. It is also the first legislation to go beyond reporting requirements and establishing the obligation of businesses to set up and implement a human rights 'vigilance' process. It also establishes an associated civil liability regime in case failure to comply with those obligations gives rise to damage.¹⁴⁹ This has been defined as the 'most far reaching' domestic legislation on mandatory human rights due diligence.¹⁵⁰ The implementation of the reporting and risk management obligations has been assessed as good progress, although civil society organisations consider there is room for improvement.¹⁵¹ The law creates those obligations for French companies employing at least 5,000 employees in France, or at least 10,000 employees worldwide. This has been identified as a limitation, not only because it is leaving out medium and small enterprises, but also because there is no official list of the enterprises falling within the scope of this legislation.¹⁵² The civil liability regime, which has been tested in a few cases before French courts, is expected to contribute to clarifying when enterprises fail to comply with their obligations and therefore result in civil liability.¹⁵³

Subsequent to France, Norway and Germany have also adopted domestic legislation creating human rights due diligence obligations for companies, both in June 2021, illustrating the momentum for mandatory human rights due diligence in Europe. In Norway, the Act on business transparency concerning human rights and decent work creates obligations for big companies to disclose the measures they adopt to ensure respect for human rights in their value chains.¹⁵⁴ In Germany, the Act on Corporate Due Diligence in Supply Chains, which covers companies with 3,000 employees or more (from 2023 when it enters into force) and companies with 1,000 employees or more from 2024, establishes enterprises' duty to identify risks of human rights violations, to take steps to manage those risks, and to disclose that information to the Federal Office for Economic Affairs and Export Control. Non-compliance may result in fines by this authority.¹⁵⁵ There are significant differences in the three approaches,

148. Loi No 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

149. Art. 2 of the Law, which introduces a new article L. 225-102-5 to the French Commercial Code. See also Claire Bright, 'Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: is the French Duty of Vigilance Law the Way Forward?', EUI Working Paper MWP 2020/01 (2020) https://cadmus.eui.eu/bitstream/handle/1814/65957/MWP_2020_01.pdf?sequence=1&isAllowed=y.

150. OHCHR, UN Human Rights "Issues Paper" on legislative proposals for mandatory human rights due diligence by companies, June 2020, https://www.ohchr.org/Documents/Issues/Business/MandatoryHR_Due_Diligence_Issues_Paper.pdf.

151. Enterprises pour les Droits de L'Homme, Application de la Loi sur le Devoir De Vigilance, 14 June 2019, <https://www.e-dh.org/userfiles/EDH%20-%20Etude%20plans%20de%20vigilance%202019.pdf>

152. C. Macchi, C. Bright, 'Hardening Soft Law: The Implementation of Human Rights Due Diligence Requirements in Domestic Legislation', in M. Buscemi, N. Lazzerni, L. Magi and D Russo, *Legal Sources in Business and Human Rights. Evolving Dynamics in International and European Law*, Brill (2020), ch 10, p. 234. See also Sherpa, 'Duty of Vigilance Radar' <https://vigilance-plan.org/search/>.

153. O. de Schutter, 'Towards Mandatory Due Diligence in Global Supply Chains', International Trade Union Confederation (June 2020), p 50–51, https://www.ituc-csi.org/IMG/pdf/de_schutte_mandatory_due_diligence.pdf. See also E. Savourey, S. Brabant, 'The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption', *Business and Human Rights Journal*, 6 (2021), pp. 141–152.

154. M. Taylor, 'Mandatory Human Rights Due Diligence in Norway – A Right to Know', *Blogging for Sustainability*, 12 April 2021; Norwegian Transparency Act, June 2021.

155. German Act on Corporate Due Diligence in Supply Chains, <https://dserver.bundestag.de/btd/19/305/1930505.pdf>; Initiative Lieferkettengesetz, What the new Supply Chain Act delivers and what it doesn't, 11 June 2021, https://lieferkettengesetz.de/wp-content/uploads/2021/06/Initiative-Lieferkettengesetz_Analysis_What-the-new-supply-chain-act-delivers.pdf.

the Norwegian model being based on transparency, the German model not providing for remedies, and the French model being centred around civil remedies.

Various other European countries are currently considering domestic legislation making human rights' due diligence mandatory for companies, including Austria (Parliamentary Supply chain Bill),¹⁵⁶ Belgium (Parliamentary Duty of Vigilance Bill),¹⁵⁷ Finland (Corporate Social Responsibility Act),¹⁵⁸ and the Netherlands (Responsible and Sustainable International Business Bill).¹⁵⁹ In the UK, there are calls from civil society organisations and businesses for the UK government to introduce a new legal duty to prevent human rights and environmental harms.¹⁶⁰

This wave of adopted and proposed domestic legislation on mandatory human rights due diligence¹⁶¹ (especially within Europe) could be impacted significantly by the eventual adoption of the proposed EU Directive on corporate due diligence and corporate accountability,¹⁶² which would bring important legislative changes to all EU Member States.¹⁶³ In February 2022, the European Commission presented a proposal for a directive on supply chain due diligence, building on the UN Guiding Principles on Business and Human Rights and on the OECD Guidelines for Multinational Enterprises.¹⁶⁴ The proposed directive would apply to certain large European and non-European companies that operate in the single market, and within two years it would expand to mid-cap companies that operate in certain 'high impact' sectors, including sectors connected to tourism such as food and beverages. The proposed approach lays down rules to ensure that companies carry out effective due diligence with respect to potential or actual adverse impacts on human rights, make that strategy public; monitor the effectiveness of those measures; set up complaint mechanisms; and improve access to remedies. An important dimension of the Directive would be the monitoring component, coordinated by national competent authorities, which would be in charge of

156. J. Andras, P. Mayr, 'Supply chain legislation is on the way in Austria', Lansky Ganzger Goeth Frankl, 2021, <https://www.lansky.at/en/newsroom-en/news-media/info-magazine-lgp-news-022021/supply-chain-legislation-is-on-the-way-in-austria/>.

157. French Corporate Duty of Vigilance Law, 2017.

158. Business and Human Rights Resource Center, <https://www.business-humanrights.org/en/latest-news/finland-govt-publishes-study-on-possible-regulatory-options-for-proposed-due-diligence-legislation/>; Finish Ministry of Economic Affairs and Employment, Judicial analysis specifies the planned corporate social responsibility act in Finland, Press release, June 2020.

159. 'Dutch Bill on Responsible and Sustainable International Business Conduct', Business and Human Rights Resource Center, March 2021, <https://www.business-humanrights.org/fr/demi%C3%A8res-actualit%C3%A9s/dutch-bill-on-responsible-and-sustainable-international-business-conduct/>.

160. S. Butler, 'Retailers press for human rights and environmental checks on supply chains' (The Guardian, 22 October 2021), <https://www.theguardian.com/business/2021/oct/22/retailers-press-for-human-rights-and-environmental-checks-on-supply-chains>. See also I. Pietropaoli, L. Smit, J. Hughes-Jennett, P. Hood, 'A UK Failure to Prevent Mechanism for Corporate Human Rights Harms', https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf.

161. See R. Davis, 'Legislating for Human Rights Due Diligence: How Outcomes for People Connect to the Standard of Conduct', Shift, August 2021, <https://shiftproject.org/hrdd-outcomes-standard/>.

162. European Commission, Proposal for a Directive on corporate sustainability due diligence, 23 February 2022, https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex_en. <C:\Users\b.dawson\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\NURFY0IS\Proposal>

163. EPRS, 'Towards a mandatory EU system of due diligence for supply chains', Briefing, October 2020, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI\(2020\)659299_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf)

164 C. Bright, L. Smit, 'The new European Directive on Corporate Sustainability Due Diligence', BIICL & NOVA School of Law, 1 March 2022,

https://www.biicl.org/documents/11164_ec_directive_briefing_bright_and_smit_1_march_update.pdf; Shift, The EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive, March 2022, https://shiftproject.org/wp-content/uploads/2022/03/Shift_Analysis_EU_CSDDProposal_vMarch01.pdf.

monitoring the application of the directive.¹⁶⁵ Engagement with stakeholders is encouraged 'where relevant' in the design of their due diligence strategy, although it is not mandatory, and the proposal does not contain a dedicated provision on stakeholder engagement unlike in the text proposed by the European Parliament in March 2021.¹⁶⁶

Model legislation or proposals for mandatory human rights and environmental due diligence is also being discussed in other countries. In Canada, where Bill S-216 ('An Act to enact the Modern Slavery Act and to amend the Customs Tariff') is currently ongoing the legislative process,¹⁶⁷ the Canadian Network on Corporate Accountability has presented a model law on Corporate Respect for Human Rights and the Environment Abroad, which proposes the appointment of a Commissioner for Human Rights Protection in Business, who would be responsible for the administration and enforcement of the act. The model law establishes companies' duty to avoid, prevent and address adverse human rights impacts outside Canada through its own activities and through activities of its affiliates.¹⁶⁸ Civil society organisations in the global south are also advocating for mandatory human rights due diligence legislation in countries like Brazil,¹⁶⁹ Mexico and Colombia.¹⁷⁰

Other existing frameworks

A key aspect in States' obligations with regards to businesses is ensuring that existing laws directly or indirectly regulating business respect for human rights are correctly designed and enforced, including non-discrimination laws, labour laws or anti-bribery laws.¹⁷¹ An example of this is the UK adaptation of the 'failure to prevent' model of the UK Bribery Act 2010, as recommended by the UK Joint Committee on Human Rights, with influential companies supporting this approach.¹⁷² The duty to prevent human rights harm would be accompanied by a human rights' due diligence defence, 'which would allow the entity to avoid liability if it could show that it had put in place processes which are reasonable in all the circumstances'.¹⁷³ Tort laws and financial regulations are being used to seek accountability for businesses' human rights abuses.¹⁷⁴

165. Art. 17.

¹⁶⁶ European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)), https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html.

¹⁶⁷ Dentons, Modern slavery and supply chains - a significant ESG consideration, 5 April 2021, <https://www.dentons.com/en/insights/articles/2021/april/5/modern-slavery-and-supply-chains-a-significant-esg-consideration>; Gibson Dunn, Part Two – Mandatory Corporate Human Rights Due Diligence: What Now and What Next? An International Perspective, 10 March 2021, <https://www.gibsondunn.com/part-two-mandatory-corporate-human-rights-due-diligence-what-now-and-what-next-an-international-perspective/>

¹⁶⁸ <https://cnca-rcrce.ca/site/wp-content/uploads/2021/05/The-Corporate-Respect-for-Human-Rights-and-the-Environment-Abroad-Act-May-31-2021.pdf>

¹⁶⁹ Corporate Justice Coalition, 'Why Brazil needs a new law on supply chain reporting and mandatory human rights due diligence', April 2019, <https://corporatejusticecoalition.org/uncategorised/brazil-needs-new-law-supply-chain-reporting-mandatory-human-rights-due-diligence/>.

¹⁷⁰ D. Sanabria, D. Schonfelder, 'Recognising Nuances. Mandatory Human Rights Due Diligence in Mexico and Colombia', Verfassungsblog on Matters Constitutional, 21 April 2021, <https://verfassungsblog.de/recognising-nuances/>.

¹⁷¹ Commentary to UN Guiding Principle 3.

¹⁷² J. Hughes-Jennett, M. Parcasio, R. Polaschek, Companies Coming Out in Public Support of 'Failure to Prevent' Law on Human Rights Obligations, <https://www.jdsupra.com/legalnews/companies-coming-out-in-public-support-4234464/>

¹⁷³ I. Pietropaoli, L. Smit et al., A UK Failure to Prevent Mechanism for Corporate Human Rights Harms, BIICL Report, 2021.

¹⁷⁴ See for example, France's Duty of Vigilance Law, Law 2017-399 of 27 March 2017.

In the European context, the EU Non-financial Reporting Directive¹⁷⁵ requires large companies to publish information on their policies in relation to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards. This Directive does not make human rights due diligence mandatory, but it creates an obligation for those enterprises to disclose information on their due diligence processes. In April 2021, the European Commission adopted a proposal for a Corporate Sustainability Reporting Directive, which would amend the existing reporting requirements, simplifying the reporting process for companies and extending reporting requirements to a broader range of companies.¹⁷⁶ The proposal has been referred to the European Parliament's Committee on Legal Affairs, with MEP Pascal Durand acting as rapporteur, as well as to the European Council's working party on company law.¹⁷⁷ It is anticipated that a first set of draft sustainability reporting standards will be agreed upon by mid-2022, with the standards to first be applied by companies to reports published in 2024, covering the previous financial year.¹⁷⁸

Another area where some States are taking legislative steps is public procurement, where the introduction of requirements about human rights can be significant for the protection of rights.¹⁷⁹ An example of this is the requirement established in the ILO Convention concerning Labour Clauses in Public Contracts (No. 94), which requires States parties to include in public contracts clauses guaranteeing workers' protection and working conditions.¹⁸⁰ Public procurement activities are 'unique opportunities to promote awareness of and respect for human rights' by companies States conduct commercial transactions with.¹⁸¹ Beyond the opportunity to lead by example, State may face legal consequences for human rights abuses linked to their procurement activity. As an example, the UK government is facing legal action over links between Personal Protective Equipment used by NHS workers and alleged modern slavery in their production in countries like Malaysia.¹⁸²

175. Directive 2014/95/EU.

176. Proposal for a Directive of the EP and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, COM/2021/189 final, 21 April 2021; Commission Staff Working Document. Executive Summary of the Impact Assessment Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, SWD/2021/151 final, 21 April 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021SC0151>; <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-review-of-the-non-financial-reporting-directive/05-2021>.

177. See European Parliament, 'Legislative Train Schedule: A European Green Deal', <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-review-of-the-non-financial-reporting-directive>.

178. European Commission, 'Questions and Answers: Corporate Sustainability Reporting Directive Proposal', 21 April 2021, https://ec.europa.eu/commission/presscorner/detail/en/ganda_21_1806.

179. O. Martin Ortega, C. Methven O'Brien, *Public Procurement and Human Rights. Opportunities, Risks and Dilemmas for the State as Buyer*, Elgar 2019; OSCE, UK Government, Ethical Trade Initiative, 2019 International Conference on Tackling Modern Slavery, Forced Labour and Human Trafficking in Public Sector Supply Chains, Conference Report, 27 March 2019.

180. ILO Convention concerning Labour Clauses in Public Contracts No. 94 (1949), See also C. Barnard, 'Using procurement law to enforce labour standards' in G. Davidov, B. Langille (eds), *The Idea of Labour Law* (OUP, 2013) 256.

181. Commentary to UN Guiding Principle 6.

182. S. Lowett, 'Government facing threat of legal action over PPE links to modern slavery', Independent, April 2021, <https://www.independent.co.uk/news/uk/home-news/covid-ppe-modern-slavery-gloves-uk-b1825502.html>. See also A. Hughes et al, 'Forced Labour in the Malaysian Medical Gloves Supply Chain During the Pandemic', June 2021, <https://modernslaverypec.org/latest/forced-labour-malaysia-medical-glove>.

Of increasing relevance is the ESG (Environmental, Social and Governance) framework. It integrates environmental, social and governance policies and activities into the information large corporations make available to target potential investors, who are increasingly looking beyond financial metrics as the sole indicators of value.¹⁸³ While ESG is largely associated with reporting which is carried out on a voluntary basis, domestic legislation in some States also mandates these types of disclosures.¹⁸⁴ In many cases, the voluntary incorporation of an ESG framework into a corporation's investor relations strategy may amount to a 'box-ticking exercise', whereby vague commitments to sustainable business practice do not reflect or reveal the reality on the ground, including how human rights due diligence obligations are operationalised and how employees are treated.¹⁸⁵ This can even be the case for disclosures that are required by law.¹⁸⁶ But the ESG framework also represents an opportunity for much greater transparency in the communication of human rights commitments. The voluntary adoption of independent reporting guidelines and recourse to third-party verification services is indicative of the framework's mainstreaming within corporate culture.¹⁸⁷ The proliferation of different standards, may however undermine efforts to harmonise the business and human rights field.¹⁸⁸ One or more universal focal points, such as the UN Guiding Principles or the UN Sustainable Development Goals, should direct different sectors' approach to implementing an ESG framework in corporate disclosures.¹⁸⁹

There is an unfortunate tendency to reduce the ESG framework to the adoption of policies on sustainability, which in effect sees the environmental pillar subsume and obscure the social pillar.¹⁹⁰ This is of particular concern in the Cuban tourism sector, and the tourism sector more broadly, as the focus on threats to the environment conceals the reality of labour exploitation in regions where there are few employment options and labour rights are poorly enforced.

States' duties as members of multilateral institutions

Under UN Guiding Principle 10, when acting as members of multilateral institutions that deal with business-related issues, States should 'encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where

183. See George Kell (2018) 'The Remarkable Rise of ESG', *Forbes (online)*, 11 July 2018. Available at: <https://www.forbes.com/sites/georgkell/2018/07/11/the-remarkable-rise-of-esg/?sh=3a3cb41f1695> (accessed 30 August 2021).

184. See EY (2021) 'The future of sustainability reporting standards', *EY*, June 2021, pp.4, 11-12. Available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/sustainability/ey-the-future-of-sustainability-reporting-standards-june-2021.pdf (accessed 30 August 2021).

185. See, for example, the result of using certain ESG frameworks as a strategy for investing in bonds, J. Mackintosh 'Why Your Good Governance Fund Is Full of Saudi Funds: Investors in ESG Funds will end up with more exposure to Saudi Arabia than a passive investor, highlighting complexities in responsible investing', *The Wall Street Journal*, 26 November 2019. Available at: <https://www.wsj.com/articles/why-your-good-governance-fund-is-full-of-saudi-bonds-11574781431> (accessed 13 December 2021).

186. Airbnb's Modern Slavery Statement, which tells stakeholders nothing about the measures taken to address modern slavery

187. See the example of Lufthansa.

188. In the past five years, the number of ESG regulations and standards has doubled, and there are over 600 different ESG reporting standards, both mandatory and voluntary. See EY (2021) 'The future of sustainability reporting standards', *EY*, June 2021, pp.3-4. Available at: https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/sustainability/ey-the-future-of-sustainability-reporting-standards-june-2021.pdf (accessed 30 August 2021).

189. For a consideration of how the UN Guiding Principles may act as a focal point in an ecosystem of governance approaches, see Rodríguez-Garavito, César. 'Business and Human Rights: Beyond the End of the Beginning', in Rodríguez-Garavito (ed) *Business and Human Rights* (Cambridge University Press: 2017) 11.

190. XREF relevant summaries of tourism corporations' policies

requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising'.¹⁹¹ They also should draw on the UN Guiding Principles 'to promote shared understanding and advance international cooperation in the management of business and human rights challenges'.¹⁹² States have the opportunity and the responsibility to contribute to 'help States level the playing field with regard to business respect for human rights (...) by raising the performance of laggards'.¹⁹³

The States where foreign companies operating in the Cuban tourism sector have their headquarters (Spain, Canada and France are home States to the biggest companies operating in Cuba)¹⁹⁴ are part of multilateral institutions where they can use their leverage in line with UN Guiding Principle 10. The European Union, the World Tourism Organization and the International Labour Organisation could channel States' efforts to promote a shared understanding of the relevance of corporate respect for human rights in the tourism and hospitality sector, as well as to strengthen training and capacity-building efforts.

States' participation in human rights and labour multinational discussions at international and regional fora have the capacity to push towards enhanced protection against exploitation in the tourism sector, using peer pressure, negotiation of enhanced standards, and all the international mechanisms at their disposal.¹⁹⁵ The UN Sustainable Development Goals, some of which refer explicitly to tourism (Goals 8, 12 and 14), and the work of UN Special Rapporteurs, may serve as the supportive framework for some of those claims. As an example, UN experts have recently called for States and companies to protect children from exploitation as tourism resumes after the pandemic, with particular emphasis in the role that sustainable tourism can play in the protection of children.¹⁹⁶

The World Tourism Organization, a United Nations specialized agency of which Spain, France and Cuba are member States,¹⁹⁷ adopted in 1999 a Global Code of Ethics for Tourism, which refers to the rights of workers in the tourism industry,¹⁹⁸ and establishes a voluntary implementation mechanism through its recognition of the role of the World Committee on Tourism Ethics.¹⁹⁹ The General Assembly of the UNWTO adopted in 2019 the Framework Convention on Tourism Ethics,²⁰⁰ which is now open to ratifications and also refers to the rights of employees and professionals in the tourism sector.²⁰¹ An Optional Protocol to the Convention establishes an independent and voluntary conciliation mechanism before the World Committee on Tourism Ethics for disputes that may arise among States parties and/or

191. UN Guiding Principle 10.b.

192. UN Guiding Principle 10.c).

193. Commentary to UN Guiding Principle 10.

194. <https://horizontecubano.law.columbia.edu/news/foreign-participation-development-tourism-cuba>

195. See A. S. Barros, 'Member States and the International Legal (Dis)order: Accounting for the Notion of Responsible Government' Ch. 4 in *International Organizations and Member State Responsibility*, (Brill: 2016), pp. 48-71.

196. Statement of the UN Special Rapporteur on the Sale and sexual exploitation of children, endorsed among others by the UN Special Rapporteurs on contemporary forms of slavery and on human trafficking, 27 September 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27529&LangID=E>.

197. Canada was a member State until 2012, when it withdrew.

198. Art. 9 of the UNWTO Global Code of Ethics for Tourism, adopted by the General Assembly of the World Tourism Organisation in 1999 and acknowledged by the United Nations in 2001. See also ECPAT code:

<https://www.ecpatusa.org/code>.

199. Established in 2003, it is an independent and impartial body under the UNWTO, and a specialized Agency of the UN, subsidiary to the UNWTO General Assembly.

200. 12 September 2019, through resolution A/RES/722(XXIII).

201. Art. 12 of the Framework Convention.

stakeholders in tourism development.²⁰² The Code of Ethics, the Framework Convention and the Optional Protocol, which have been welcomed by UN human rights experts as an important step forward to ensure that 'workers' rights will be fully respected in line with international standards, and that businesses in the tourism sector will be held accountable for rights violations including for labour exploitation in their supply chains',²⁰³ could be valuable instruments to channel States' efforts toward a better protection of the rights of workers in the tourism and hospitality sector in Cuba. States parties to the UNWTO could influence that process.²⁰⁴

202. Art. 1 Optional Protocol.

203. OHCHR, Convention on tourism ethics is major step towards tackling child exploitation, say UN human rights experts, 19 November 2019,

https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25317&LangID=E&fbclid=IwAR2J_5PG8Q5i1htUe4y_J2OsU1CwVNqLuKwxIHg3QJatB-UDBU3uyBb19qs.

204. On the Convention and its critics, see <https://www.tandfonline.com/doi/abs/10.1080/09669582.2020.1730862>.

The corporate responsibility to respect the human rights of workers

Foreign companies are present in the tourism and hospitality sector in Cuba as part of international joint venture agreements with the Cuban government or with State-owned companies, employing local workers and operating with local actors to provide their services.²⁰⁵ Spanish, Canadian or French hotel companies are part of those agreements and interact regularly with taxi or bus companies, tourist guides, local food providers or entertainment workers.²⁰⁶

In line with the international legal framework, those companies should adopt human rights policies and should respect international human rights standards when operating in Cuba, even if local legislation may fall short of protecting them. The UN Guiding Principles,²⁰⁷ together with the OECD Guidelines for Multinational Enterprises,²⁰⁸ have developed and consolidated the notion of responsibility of businesses to respect the international human rights standards contained in the core ILO conventions²⁰⁹ and UN Human Rights Treaties.²¹⁰

Business enterprises have the responsibility to respect human rights, which means not only avoiding infringing on the human rights of others but also addressing adverse human rights impacts with which they are involved and seeking to prevent or mitigate adverse human rights impacts directly linked to their operations.²¹¹ This principle, established in UN Guiding Principle 11, is a 'global standard of expected conduct for all business enterprises wherever they operate', 'over and above compliance with national laws and regulations protecting human rights',²¹² and requires taking measures for the prevention, mitigation and remediation of adverse human rights impacts.²¹³ The responsibility of companies to respect human rights refers to 'internationally recognized human rights',²¹⁴ including the Universal Declaration of Human Rights, the ICCPR, the ICESCR, the ILO Declaration on Fundamental Principles and Rights at Work, and the eight ILO core conventions.²¹⁵

205. E. Salinas Chávez, E. Salinas Chávez, L. Mundet i Cerdán, 'El Turismo en Cuba: Desarrollo, Retos y Perspectivas', *Rosa dos Ventos* vol. 11, núm. 1, 2019.

206. M. A. Figueras, 'Foreign Participation in the Development of Tourism in Cuba' Columbia Law School, Cuba Capacity Building Project, 27 February 2020.

207. See Business and Human Rights Resource Center, Second Revised Draft: Unofficial Summary, last updated 13 December 2021, <https://www.business-humanrights.org/en/big-issues/binding-treaty/second-revised-draft-unofficial-summary/>.

208. <https://www.oecd.org/corporate/mne/>; OECD Due Diligence Guidance for Responsible Business Conduct.

209. The eight fundamental Conventions are: 1. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); 2. Right to Organise and Collective Bargaining Convention, 1949 (No. 98); 3. Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol); 4. Abolition of Forced Labour Convention, 1957 (No. 105); 5. Minimum Age Convention, 1973 (No. 138); 6. Worst Forms of Child Labour Convention, 1999 (No. 182); 7. Equal Remuneration Convention, 1951 (No. 100); 8. Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

210. ICESCR, ICCPR, Convention on the rights of migrant workers and their families, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).

211. UN Guiding Principle 13.

212. Commentary to UN Guiding Principle 11.

213. *Ibid.*

214. UN Guiding Principle 12.

215. Commentary to UN Guiding Principle 12.

In accordance with UN Guiding Principle 15, those companies should have in place the following three components of a human rights strategy:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.²¹⁶

The first component, a human rights policy commitment, consists of an express commitment of companies to meet their responsibility to respect human rights through a statement of policy approved at the most senior level of the company, publicly available and reflected in internal processes.²¹⁷ While the UN Guiding Principles are a soft law instrument,²¹⁸ the second component, human rights due diligence, has experienced an evolution towards mandatory provisions, as domestic legislation in various countries has created mandatory regimes for businesses to adopt due diligence processes to manage and mitigate human rights risks associated with the companies' operations and with their supply chains (UN Guiding Principles 17-22). The third component, enabling remediation, is covered under section 3.3 of this report.

The specific obligations of companies will vary depending on the legislative framework the State where it is domiciled has adopted. As explained in section 3.1.b, since the adoption of the UN Guiding Principles, many States have adopted legislation creating duties for companies of a certain size to disclose their due diligence processes, or to ensure that measures are in place to ensure access to remedy in case of adverse human rights impact. Some of the multinational corporations operating in the tourism sector in Cuba are European and therefore their obligations will be directly affected by the proposed Directive on corporate due diligence and corporate accountability and on the proposal for a Corporate Sustainability Reporting Directive, both moving towards mandatory human rights due diligence.

Human rights due diligence: challenges and promising practices

Human rights due diligence (HRDD) is a process set out in the UN Guiding Principles. It is defined as a process that business enterprises should carry out to assess actual and potential adverse human rights impacts, 'integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed'.²¹⁹

The UN Guiding Principles

The design of due diligence processes, which should be in accordance with the size and complexity of the company, should draw on internal and/or independent external human rights expertise, and involve meaningful consultation with potentially affected groups and stakeholders.²²⁰ The mapping of the groups or individuals who could be affected by the company's operations should pay particular attention to vulnerable groups and be regularly revised, as human rights situations are dynamic.²²¹ The findings of the independent analysis of

216. UN Guiding Principle 15.

217. UN Guiding Principle 16.

218. See supra note 123 on ongoing discussions about a treaty on business and human rights.

219. UN Guiding Principle 17.

220. UN Guiding Principle 18.

221. Commentary to UN Guiding Principle 18.

the human rights context and risks should be integrated 'across relevant internal functions and processes', assigning responsibility for addressing those impacts to the 'appropriate level and function within the company', and enabling effective responses to such impacts at internal decision-making level, as well as in budget allocations and oversight processes.²²² 'Where a company contributes or may contribute to an adverse human rights impact, it should take steps to cease or prevent its contribution, and use its leverage to mitigate any impact'.²²³

The process in place should be able to track effectiveness of its response, including through qualitative and quantitative indicators, and drawing on feedback from internal and external sources.²²⁴ Grievance mechanisms, surveys, audits or the collection of disaggregated data can be useful for that aim.²²⁵ Communication is another key element of the human rights due diligence process. Companies should communicate externally how they deal with human rights impact, making sure that this communication is sufficient to evaluate the adequacy of the company's response and that it does not pose additional risks.²²⁶

If a company has actually contributed to adverse human rights impacts, 'they should provide for or cooperate in their remediation through legitimate processes',²²⁷ and ensure that grievances are 'addressed early and remediated directly'.²²⁸ This will prevent 'harms from compounding and grievances from escalating'.²²⁹ Those operational-level grievance mechanisms are normally administered by enterprises or by a mutually acceptable external expert or body.²³⁰ In order to be effective, those mechanisms should be based on engagement and dialogue, consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.²³¹ It is important to emphasize that those mechanisms should not substitute or undermine access to other grievance mechanisms and the role of trade unions in addressing labour-related disputes.²³²

Companies' efforts

Aware of their responsibility, and as the binding nature of those obligations gets reinforced by domestic legislation and case law, many companies are adopting measures to prevent and manage human rights risks in their supply chain.²³³ This includes multinational companies operating in the tourism sector in Cuba, even if the legal framework in their home countries may not yet include mandatory human rights due diligence legislation.²³⁴ Their efforts to ensure respect for human rights through their operations needs to take into consideration sector specific regulations and models.²³⁵

222. UN Guiding Principle 19.

223. Commentary to UN Guiding Principle 19.

224. UN Guiding Principle 20.

225. Commentary to UN Guiding Principle 20.

226. UN Guiding Principle 21.

227. UN Guiding Principle 22. See section 3.3.

228. UN Guiding Principle 29.

229. Commentary to UN Guiding Principle 29.

230. Commentary to UN Guiding Principle 29.

231. UN Guiding Principle 31.h.

232. Commentary to UN Guiding Principle 29.

233. Consultation with Hemma Varma, Meryl Lawry-White and Michelle Grootedde.

234. European Coalition for Corporate Justice, Map with adopted laws, political processes and civil society action (<https://corporatejustice.org/publications/mapping-corporate-accountability-legislative-progress-in-europe/>).

235. FIDH, Analysing Modern Slavery Risks in Portfolio Companies: guidance for investors,

<https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/analysing-modern-slavery->

This study has analysed the public human rights commitments of a set of multinational companies operating in Cuba.²³⁶ Most of the analysed companies, particularly in the accommodation sector, have a human rights due diligence process in place and use strong human rights language in their public statements.²³⁷ Some companies add explicit references in their public human rights statements or codes to the human rights requirements that suppliers must comply with.²³⁸ Many of them are also members of sustainable tourism networks,²³⁹ although the main focus of those efforts continues to put more emphasis on the environmental sustainability of their business model than on social rights. Remedy is available in some of their human rights policies or human rights statements,²⁴⁰ although it is often not described as such and the extent to which it has been made accessible or it is effectively used cannot be accurately assessed via the mere analysis of those documents. Some of the companies analysed do not provide much information about their human rights due diligence processes, human rights policies, and grievance mechanisms for cases of labour exploitation or other

[risks-in-portfolio-companies-guidance-for](#). J. Nolan, 'From Principles to Practice. Implementing Corporate Responsibility for Human Rights', in J. Martin, K. E. Bravo (Eds.) *The Business and Human Rights Landscape. Moving Forward, Looking Back* CUP (2015), pp 387-413.

236. The selection of companies has been based on three criteria: a) that the company is foreign; b) that it operates in one of the sectors covered in the study; c) that it has significant operations in Cuba or in connection to Cuba.

237. This is the case of NH Hotel Group (Code of Conduct, at page 19, available [here](#)), and Human Rights Policy, [available here](#)), Meliá, Iberostar or Accor. Lufthansa's 2020 Modern Slavery Statement enumerates measures taken to combat human trafficking and uphold human rights. Its companies are obliged by the Group's Code of Conduct to identify human rights risks and employees and third parties are encouraged to come forward with complaints (Lufthansa Modern Slavery and Human Trafficking Statement 2020, section 2, available [here](#), and Code of Conduct is available [here](#)).

238. NH Hotel Group states that suppliers 'must' maintain compliance with international human rights in the conduct of their business. Its Code of Conduct and Human Rights Policy sets out that Suppliers are expected to treat employees with 'dignity and respect' and 'must' promote and respect principles such as the eradication of forced labour, maximum working hours and minimum wages, safe working environments, and freedom of association (page 19, available [here](#)). Royal Caribbean provide minimum standards for suppliers who do business with the company, although these are worded as suggestions ('encouraged') more than requirements (Supplier Guiding Principles, available [here](#)). TUI prohibits its accommodation suppliers from using forced labour and outline international standards that must be complied with, such as ILO Core Conventions 138 and 182 and the Convention on the Rights of the Child. Very clear expectations for working conditions of these third-party employees are outlined (TUI Sustainability Agreement for Accommodation Suppliers, link no longer available [online](#)). Expedia's Vendor Code of Conduct sets out encouragingly detailed expectations for the treatment of third-party employees, to ensure it is not complicit in labour exploitation. As well as requiring the use of only voluntary labour, Expedia does not allow vendors to require the surrender of identity documents, prohibits the withholding of wages as a disciplinary measure, requires the wage paid to meet legal standards and prohibits working beyond the maximum hours within a jurisdiction (Expedia Vendor Code of Conduct, available [here](#)). Fred Olsen's Ethical Trading Policy for suppliers includes a detailed Ethical Trading Code which must be abided by and prohibits forced labour and associated practices, such as the retention of identity documents (Fred Olsen Ethical Trading Policy, available [here](#)). Meliá's Code of Ethics for Suppliers outlines a range of standards they need to abide by, with reference to international law frameworks including UDHR, ILO Conventions, the Convention on the Rights of the Child, and the UN SDGs.

239. Many of the companies analysed are members to the Global Code of Ethics and Tourism (UNWTO 2011), the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tourism, Tobacco and Allied Workers Association (IUF), the Sustainable Hospitality Alliance, The Code (focusing on child abuse only) and Travelfe.

240. The NH Hotel Group Sustainable Business Report details a whistleblowing channel and an external communication channel to deal with breaches of corporate policy, including those relating to human rights. Such grievances are dealt with by NH's internal audits department (Sustainable Business Report 2020, page 43, available [here](#).) Royal Caribbean has a 'Compliance and Ethics AWARE' Hotline for anonymous reporting of violations, which is available to supplier and employees alike (Supplier Guiding Principles, available [here](#), and the Human Rights Statement and Core Labour Principles, available [here](#)). Norwegian Cruise Line has a Reporting Hotline through which reports on breaches of human rights and instances of human trafficking may be made (Code of Ethical Business Conduct, page 10, available [here](#) and Vendor Code of Conduct, page 4, available [here](#).) TUI released the number of reports received by its whistleblowing channel in 2018 and confirmed that none related to modern slavery (TUI 2019 Modern Slavery Statement, p.5, available [here](#)).

human rights abuses. This is particularly the case for some travel platforms.²⁴¹ This might be as a result of the sensitivities of the context, bearing in mind that in some specific instances disclosure of information might cause concerns for workers' safety.

As HRDD processes become mandatory through developments in home State legislation, businesses must address some of the practical challenges associated with establishing processes. This further necessitates the exchange of promising practices. Focusing on the tourism and hospitality sector in Cuba, there are various challenges that companies face and need to address to ensure that they have effective processes in place.²⁴² The main challenges those companies face are mentioned below. Based on consultation with sustainable tourism actors, this report also identifies some promising practices in different parts of the world that companies operating in Cuba could adapt to that specific context to overcome some of those challenges.

Challenges

One of the most important challenges in the sector has to do with the enforcement of codes of conduct for suppliers. Many companies in the sector require their suppliers to accept a certain code or set of standards, but often there are no consequences if the supplier breaches the code.²⁴³ The outsourcing of services is quite common in the sector and, although human rights requirements may be in place, companies may not have a strong enforceability mechanism in place for suppliers not complying with those standards. Evidence has also shown the limitations of contractual mechanisms, which may have the effect of outsourcing responsibilities to suppliers, without being accompanied by any financial resources or an increase in price which would allow suppliers to adhere.²⁴⁴ These dynamics are changing as companies understand the relevance of their responsibilities under the UN Guiding Principles and influenced by frameworks such as the ESG framework, which investors use to make their business decisions.²⁴⁵ Certain companies are advancing their efforts to set up concrete criteria in their code of conduct to be fulfilled by their suppliers and have adopted a more effective approach to their implementation.²⁴⁶ The American Bar Association has developed model contractual clauses which companies could use to ensure human rights due diligence in their value chains.²⁴⁷

Another sector-specific challenge is the 'complexity of hotels' ownership, management, and franchise models', which creates additional difficulties. It is increasingly common for hotel brands to lend their name and certain standards to third parties, but those standards do not

241. The names of those companies is not revealed in this report, as its aim is not to name and shame companies but to provide a clear analysis of the legal standards and to illustrate some promising practices they could consider adopting.

242. Identified through desk research and consultation with experts and sustainable tourism organisations. Despite continuous efforts to include in this study the views of the companies involved (invitations for interviews and anonymous survey), it has not been possible to include companies' views on the challenges they face and the way in which they implement their due diligence processes and their human rights policies.

243. FIDH, *Analysing Modern Slavery Risks in Portfolio Companies: guidance for investors*, <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/analysing-modern-slavery-risks-in-portfolio-companies-guidance-for>.

244. The Joint Ethical Trade Initiatives Guide to Buying Responsibly, https://www.ethicaltrade.org/sites/default/files/shared_resources/guide_to_buying_responsibly.pdf.

245. Consultation with Fernando López del Prado.

246. That is the case of Hauser Exkursionen, a tour operator offering trekking tours which is a member of the Roundtable Human Rights for tourism (<https://www.hauser-exkursionen.de/go-green/menschenrechte>).

247. American Bar Association, Contractual Clauses Project, https://www.americanbar.org/groups/human_rights/business-human-rights-initiative/contractual-clauses-project/.

usually include human rights standards, making it more difficult to monitor who is taking the responsibility for ensuring that human rights standards are respected.²⁴⁸ The franchising model is key to the accommodation business and could be used as an opportunity for leverage, to impose human rights conditions to franchisees. Yet, it is often used instead as an excuse: companies may claim that due to the franchise model structure they do not have control and responsibility over any human rights abuses or exploitation cases that may occur in the franchisee's hotel.²⁴⁹

The standards considered acceptable in 'home States' of foreign companies also have an influence in the way in which multinational corporations set their own human rights policy processes. Labour exploitation practices in the tourism sector are common in the home States of foreign companies operating in Cuba, and continue to be ingrained in the working culture of certain actors in the sector (e.g. cleaners in Spain or France being outsourced and often underpaid or not paid for extra-hours).²⁵⁰ This makes it more difficult to set and justify standards to partners in other jurisdictions.²⁵¹ Interestingly, the sector also presents some common patterns with the extraction sector, such as inability to relocate. As one of the interviewees for this project described it, 'Tourism is a special sector. You bring the people to the product, not product to the people. The product is human- and service-based. And that is key for human rights'.²⁵²

Promising practices and initiatives

The tourism sector is also one that requires collaboration between different sectors. That raises the issue of a potential shared responsibility, as it may not be clear sometimes what the responsibility of each actor may be.²⁵³ Cooperation between sectors is therefore crucial to enhance protection against exploitation, as some sustainable tourism initiatives have been increasingly promoting. The following examples implemented in other countries could be an inspiration for Cuba. In Cartagena (Colombia), 'La Muralla: Soy yo!' is an initiative encouraging cross-sectoral action to protect children from sexual exploitation in tourism. It includes hotels, restaurants, and tour operators, working together to construct safe environments in tourism, under the UNWTO Ethics Code.²⁵⁴ In Sri Lanka, a tour operator has been leading a dialogue with businesses and civil society on the impact of tourism on the land. This initiative, called 'forum of the hosts' became a regular dialogue following the initiative.²⁵⁵ The Mekong Club encourages hotels to work collectively, following the same set of rules. The use of peer pressure can bring hotels together achieving higher levels of coordination as they meet in a

248. International Labour Office, 'Sectoral Studies on Decent Work in Global Supply Chains Comparative Analysis of Good Practices by Multinational Enterprises in Promoting Decent Work in Global Supply Chains' (2015), p. 55, https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_467295.pdf.

249. Consultation with Fernando López del Prado.

250. The Guardian, 'Spanish hotel booking app to show working conditions of staff', 1 September 2021, <https://www.theguardian.com/world/2021/sep/01/five-stars-for-staff-working-conditions-on-new-hotel-booking-app>

251. FIDH, Analysing Modern Slavery Risks in Portfolio Companies: guidance for investors, <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/analysing-modern-slavery-risks-in-portfolio-companies-guidance-for>.

252. Consultation with Jara Schreiber. See also Guidance on UNGO and HR impact assessment in Thailand and Myanmar.

253. Consultation with Jara Schreiber and with Cindy Berman.

254. <http://www.lamurallasoyyo.org/la-muralla-soy-yo.php?la=en>

255. Consultation with Jara Schreiber.

confidential environment and that may allow them to address issues such as the challenges they face in a particular country or area.²⁵⁶

Also related to the issue of shared responsibility is the role of travel platforms.²⁵⁷ These multinational companies should comply, as other companies in the tourism sector, with their corporate human rights responsibility to respect. This would require a different approach from them, strengthening their human rights due diligence processes and human rights policies. In addition, those companies could play a key role in transforming the whole sector and influencing the decisions of consumers. If travel platforms included on their information about the extent to which those hotels are 'human rights responsible', this could have the potential of influencing the decisions of tourists.

In addition to the sector-specific challenges, companies may face challenges related to the legal and policy context in which they are operating. They may find that in order to comply with their human rights responsibilities they would have to try to influence the domestic legal order of the State where they are operating.²⁵⁸ This may pose particular difficulties in countries like Cuba, where the government regulates strongly certain sectors, and where the public sector controls the economic activity in those sectors (see section 2.1 below on leverage).

A promising practice in this regard is the value-chain focused Human Rights Impact Assessment conducted by the Roundtable of Human Rights in Tourism ('the Roundtable'), a German based, non-profit association promoting ethical tourism, underpinned by the UN Guiding Principles, in Thailand and Myanmar from a European tour operators' perspective. The assessment follows the requirements of the UN Guiding Principles, and 'identifies and prioritizes actual and potential human rights impacts, reaches conclusions about those impacts, and makes recommendations to [tour operators] for their mitigation and management'.²⁵⁹ The HRIA utilises the Roundtable's parallel work, such as the 'Get Started Tool' which provides the methodology for the research and encompassed a combination of methods, including desk and online research, stakeholder engagement consultations and lastly, on-site assessments which includes a range of activities such as workshops, focus group discussions, semi-structured interviews, observations and surveys. Further, in light of the fragile political situation in Myanmar, additional Roundtable resources such as *Tourism in Fragile Contexts: Guidelines for Product and Communication Managers for the Implementation of Human Rights-Related Due Diligence* and the 'Do No Harm Toolkit' where identified as potential tools for tour operators to engage and utilise during the HRIA. Although the HRIA has not been applied to the tourism industry in Cuba given the regional scope and membership of the Roundtable, its methodology and principles could provide inspiration or a model for the Cuban context.

In 2020, the ILO issued, together with the Institute for Human Rights and Business and the Ministry of Administrative Development, Labour and Social Affairs of Qatar, a Guidance Tool 'intended to help hotel companies in Qatar promote labour rights and fair recruitment in their business practices as part of wider efforts to strengthen a competitive and responsible hospitality

256. Consultation with Matt Friedman. Terre des Hommes Netherlands has also worked on this issue.

257. Also connected to this is the potential responsibility of tech companies, although this goes beyond the scope of this report.

258. Check L. Smit, G. Holly, R. McCorquodale, S. Neely, 'Human rights due diligence in global supply chains: evidence of corporate practices to inform a legal standard', *The International Journal of Human Rights* 2020.

259. Roundtable Human Rights in Tourism, Human Rights Impact Assessment Thailand & Myanmar A value-chain-focused human rights impact assessment conducted by the Roundtable Human Rights in Tourism, 2020, <https://www.humanrights-in-tourism.net/publication/human-rights-impact-assessment-thailand-myanmar>, p. 12.

industry'. While the recommendations included in the report focus on the Qatari particular context, there are many aspects of the Guidance Tool that could apply to Cuba as well as to other countries. These include due diligence guidance on how to engage with service providers and placement agencies, due diligence of recruitment practices and the design and effective implementation of grievance mechanisms.²⁶⁰

Another promising initiative is the Guidance and Benchmarking Tool launched in December 2021 by Walk Free in partnership with the Stock Exchange of Thailand and Finance Against Slavery and Trafficking (FAST) to assist Thai-listed companies to identify, address and report on modern slavery risks throughout their value chains.²⁶¹ Although not targeting the tourism industry specifically, this initiative could serve as inspiration for similar measures in that sector.

A relevant initiative, focusing on the exploitation of children in the tourism sector, is The Code - an 'industry driven responsible tourism initiative which provides awareness, tools and support to tourism companies in order to prevent the sexual exploitation of children'.²⁶² It recently launched a risk analysis framework highlighting the range of potential risk areas for companies. Another relevant initiative is the guidance for business developed by UNICEF and Save the Children, recommending ways for companies to incorporate children's rights into their policies and codes of conduct.²⁶³

Other relevant frameworks

Companies also rely on a variety of frameworks to certify their compliance with social standards. These include the UN Global Compact, ISO (International Organization for Standardization), Social Accountability certifications, the Global Reporting Initiative, and the UN Principles for Responsible Investment. The UN Global Compact is a voluntary initiative adopted in 2005 which encourages businesses to incorporate sustainability principles into their practice, creating a networked mode of governance.²⁶⁴ There is much greater uptake to the Compact within the tourism sector than for most other voluntary social commitments, with 332 participants in the 'travel and leisure' sector.²⁶⁵ Participants include international hotel companies and travel agencies operating in Cuba or in connection with Cuba, such as Accor Hotels, Fred Olsen S.A., Iberostar Group, Meliá Hotels International, the airline Lufthansa and the TUI Group.²⁶⁶

Unlike other standards in the ESG space, ISO 26000 is not designed to be used for certification purposes and instead encourages organisations in any sector to voluntarily contribute to sustainable development by offering guidance on how to do so, in line with the UNSDGs and

260. ILO, Promoting Fair Recruitment and Employment. Guidance Tool for Hotels in Qatar, 2020, <https://www.humanrights-in-tourism.net/publication/promoting-fair-recruitment-and-employment>. See also, I. Archer, D. McMullan, 'Checked Out. Migrant Worker Abuse in Qatar's World Cup Luxury Hotels', Business and Human Rights Resource Center, July 2021, <https://www.business-humanrights.org/en/from-us/briefings/checked-out-migrant-worker-abuse-in-qatars-world-cup-luxury-hotels/>.

261. Walk Free, Modern Slavery Benchmarking tool and Guidance on Modern Slavery Risks for Thai Businesses, December 2021, <https://www.walkfree.org/resources/modern-slavery-benchmarking-tool/>.

262. https://thecode.org/wp-content/uploads/2015/11/The-Code_Brochure_ENG.pdf; see also its recently launched risk analysis framework for companies: <https://thecode.org/assess-your-child-protection-risk/>.

263. <https://resourcecentre.savethechildren.net/document/childrens-rights-policies-and-codes-conduct-tool-companies/>

264. United Nations Global Compact (n.d.) 'Our Governance'. Available at: <https://www.unglobalcompact.org/about/governance>.

265. See <https://www.unglobalcompact.org/what-is-gc/participants>.

266. Ibid.

the OECD Guidelines.²⁶⁷ However, Travelife offers sustainability certification which integrates, among others, the ISO 26000 guidelines.²⁶⁸ Social Accountability 8000 is a social certification programme created in 1997, which incorporates labour standards from the UDHR and ILO Conventions and allows companies to be independently audited as part of a continual improvement process.²⁶⁹ SA8000 is more commonly utilised in manufacturing industries, with only a few tourism-related companies certified.²⁷⁰

The Global Reporting Initiative is an independent organisation which has developed the Global Reporting Initiative Standards (GRI Standards) for businesses to report on their sustainability impacts in a transparent manner, customised according to each organisations' material topics.²⁷¹ The GRI Standards are flexible, consisting of universal standards and topic-specific standards for economic, environmental and social impact.²⁷² GRI is also developing sector standards for high-impact sectors, with tourism part of the third group to be actioned.²⁷³ There are 346 organisations in the 'tourism/leisure' sector which utilise the GRI Standards, including multinational companies operating in Cuba, such as Accor, Booking Holdings, Meliá Hotels International and the TUI Group.²⁷⁴ The UN Principles for Responsible Investment consist of six principles for investors to incorporate ESG issues into their practice on a voluntary basis, in order to help develop a more sustainable global financial system.²⁷⁵ Signatories are required to report on their activities annually and are provided with a confidential score and compared to their peers.²⁷⁶ Given the focus of the Principles, signatories are operators in the financial sector, predominantly investment managers.²⁷⁷

Connection with Cuban authorities: potential for leverage?

A particularly relevant aspect in the context in which these companies operate is the connection to Cuban authorities. Under the Cuban Foreign Investment Law, those companies do not recruit local workers directly. Instead, they operate as part of an international joint

267. ISO (n.d.) 'ISO 26000:2010 – Guidance on social responsibility'. Available at: <https://www.iso.org/standard/42546.html>; ISO (2018) 'ISO 26000 and SDGs'. Available at: <https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100401.pdf>; ISO (2017) 'ISO 26000 and OECD Guidelines: Practical overview of the linkages'. Available at: <https://www.iso.org/files/live/sites/isoorg/files/store/en/PUB100418.pdf>

268. See https://www.travelife.info/index_new.php?menu=standardsandcriteria&lang=en.

269. Social Accountability International 'About SA8000'. Available at: <https://sa-intl.org/programs/sa8000/>.

270. See 'SA8000 Certified Organisations by Industry Q1 2021', downloadable spreadsheet from http://www.saasaccreditation.org/SA8000_Certified_Organisations_Pie_Chart_by_Industry; Meliá Hotels International (2018) 'Code of Ethics for Suppliers', p11. Available at: https://www.meliáhotelsinternational.com/EthicalDocs/Código%20ético%20proveedores%20EN/mhi_codigo_etico_a5_suppliers_jul18_en.pdf.

271. GRI (n.d.) 'The global standard for sustainability reporting'. Available at: <https://www.globalreporting.org/standards/>.

272. GRI 'The GRI Standards: A Guide for Policy Makers', 9. Available at: <https://www.globalreporting.org/media/nmmnwfsm/gri-policymakers-guide.pdf>.

273. Global Sustainability Standards Board (2020) 'GRI Sector Program – Revised list of prioritized sectors', 19 November 2020, 6. Available at: <https://www.globalreporting.org/media/maznr5mz/gri-sector-program-list-of-prioritized-sectors.pdf>

274. See <https://database.globalreporting.org/search/>.

275. Principles for Responsible Investment (n.d.) 'What are the Principles for Responsible Investment'. Available at: <https://www.unpri.org/pri/what-are-the-principles-for-responsible-investment>.

276. Principles for Responsible Investment (n.d.) 'Reporting & assessment'. Available at: <https://www.unpri.org/signatories/reporting-and-assessment>; Principles for Responsible investment (n.d.) 'How investors are assessed on their reporting'. Available at: <https://www.unpri.org/reporting-and-assessment/how-investors-are-assessed-on-their-reporting/3066.article>.

277. See <https://www.unpri.org/signatories/signatory-resources/signatory-directory>.

venture agreement with a State-owned company or with the government, and they employ locals through a Cuban recruitment agency.²⁷⁸ This connection raises important legal issues about what foreign companies can do given the Cuban domestic legislation and practices, that is, their potential for leverage, and their potential responsibility if they don't abide by international human rights standards due to the connection with Cuban authorities.

According to UN Guiding Principle 23, those companies should comply with all applicable laws and respect internationally recognized human rights wherever they operate, and seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements. When national law falls short of the human rights protection envisaged in international standards, foreign companies should 'operate to the higher standard'.²⁷⁹

Identifying the conflict or contradiction between international human rights standards and standards that the company must follow at the domestic level is an essential part of the HRDD process, understood as a comprehensive and ongoing process through which businesses identify actual and potential human rights impacts of their operations, respond to those impacts and communicate the measures adopted.²⁸⁰

In the Cuban tourism and hospitality sector, the conflicts arising are usually related to the foreign company having little or no control of the working conditions of the local employees working for them, as their contracts, wages and working conditions are controlled by the government or State-owned company. In those circumstances, corporations are usually seen as having very little potential for leverage, as they operate with a vertical relationship, 'under a domestic legal regime, which they are not empowered to modify'.²⁸¹ However, as the Commentary to UN Guiding Principle 19 clarified, companies should exercise their leverage if they have any, and if not, there may be ways to increase it through, inter alia, capacity building or collaboration with other actors.

There are various ways in which their HRDD processes could inform and influence the local context. Foreign companies should ensure that effective HRDD processes are in place for those areas of their operations they can influence. They should also consider the possibility of joining other businesses in sectoral associations, as collective engagement could have higher potential to influence the Cuban authorities and State-owned businesses for a better protection of human rights.²⁸² Although those companies could eventually consider the last resort option of exiting the jurisdiction if they have no way to ensure that human rights are being protected within their value chain,²⁸³ the rest of the options provide opportunities for companies to influence the context in which they operate.

278. In-island survey, unpublished, copy with the authors.

279. United Nations Office of the High Commissioner for Human Rights (OHCHR) 'The Corporate Responsibility to Respect Human Rights: An Interpretive Guide', available at: http://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf, p. 78. See also Final Statement of the Canadian NCP in Former Employees v Banro in the DRC NCP Canada, (filed 26 February 2016), available at: https://www.oecdwatch.org/cases/Case_469 at 7

280. UN Guiding Principle 17.

281. A. Griffith, L. Smit and R McCorquodale, 'Responsible Business Conduct and State Laws: Addressing Human Rights Conflicts', *Human Rights Law Review*, vol. 20, num. 4, pp.641-673, p. 650, citing Yael Ronen, 'Big Brother's Little Helpers: The Right to Privacy and the Responsibility of Internet Service Providers' (2015) 31 (80) *Utrecht Journal of International and European Law* 72.

282. L. Smit, A. Griffith, R. McCorquodale, 'When national law conflicts with international human rights standards: Recommendations for Business', *BIICL Report*, 2015, pp. 28-29.

283. *Ibid*, p. 32.

Consultation with experts for this project points at the limited potential for leverage with the Cuban government.²⁸⁴ Consulted experts still considered that some foreign companies have certain potential for leverage with the Cuban government and particularly with the *Sindicato Nacional de Trabajo, Hostales y Turismo*, which is an affiliate of the *Central de Trabajadores de Cuba*. A coalition of foreign companies could put pressure on the public system to encourage higher levels of compliance with Cuban labour rights, which on paper provide quite good levels of protection to workers in the sector.²⁸⁵ Some companies with longstanding presence in Cuba, such as Melia, could have higher potential for leverage, as they know the industry well, they know the context and they do have a relationship with the Cuban as well as the foreign management of their hotels.²⁸⁶

Another avenue to explore are projects led by foreign trade unions. The Canadian Union of State Administrative Workers has worked with Cuban Unions to improve health and safety of mining workers in Cuba. Although given the sensitivities of the tourism sector this may seem unlikely, it is a possibility that could be explored, with support of other international actors such as the International Union of Food Workers (IUF), which counts within its membership many foreign companies operating in Cuba. Those companies could, together with the UTI mediate or put pressure for such initiatives to be explored.

284. Consultation with Cindy Berman.

285. Consultation with Derek Blackadder.

286. Ibid.

Access of workers to remedies for corporate-related human rights abuses

Access to remedy constitutes the third pillar of the UN Guiding Principles, and the component of the principles on which States, companies and rights-holders continue facing some of the biggest challenges.²⁸⁷ The State's duty to protect includes the responsibility to investigate, punish and redress those abuses.²⁸⁸ States must take steps to ensure that when business-related human rights abuse occurs within their territory and/or jurisdiction, those affected have access to effective remedy.²⁸⁹ Those steps, which can be procedural as well as substantive, may include legislative, judicial, administrative or other appropriate means.²⁹⁰ Companies having contributed to human rights abuses should 'provide for or cooperate in their remediation through legitimate processes',²⁹¹ and ensure that grievances are 'addressed early and remediated directly'.²⁹²

Remedy includes apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions, injunctions or guarantees of non-repetition. Procedures should be impartial, protected from corruption and free from political influence.²⁹³ States have a variety of possible grievance mechanisms to choose from, including those available in labour tribunals, national human rights institutions, National Contact Points under the OECD guidelines, or ombudspersons. It is their responsibility not only to ensure the independent and effective functioning of those mechanisms, but also to raise public awareness of them.²⁹⁴

States should take steps to ensure that effective domestic judicial mechanisms are in place to address business-related human rights abuses, and to reduce barriers to access remedies.²⁹⁵ The Commentary to UN General Principle 26 describes judicial mechanisms as being 'at the core of ensuring access to remedy'. Those mechanisms should be protected by due process standards, and not threatened by corruption or political pressure. Impartial judges and protection of human rights defenders are key to ensure the proper functioning of those mechanisms.²⁹⁶ State should also provide effective and appropriate non-judicial grievance mechanisms for those abuses,²⁹⁷ including administrative and legislative mechanisms and access to support from national human rights institutions.²⁹⁸ Such State-based non-judicial

287. G. Skinner, R. McCorquodale, O. De Schutter, *The Third Pillar. Access to Judicial Remedies for Human Rights Violations by Transnational Business*, ICAR, CORE, ECCJ, 2013; S. Macgrath, *Fulfilling the Forgotten Pillar: Ensuring Access to Remedy for Business and Human Rights Abuses*, December 2015, Institute for Human Rights and Business, <https://www.ihrb.org/other/remedy/fulfilling-the-forgotten-pillar-ensuring-access-to-remedy-for-business-and>; See also Global Compact Network Germany, 'Worth Listening - Understanding and implementing human rights grievance management. A business guide', 2019, <https://www.humanrights-in-tourism.net/publication/worth-listening-understanding-and-implementing-human-rights-grievance-management>.

288. Commentary to UN Guiding Principle 25. See also J. Drimmer, L. J. Laplante, 'The Third Pillar. Remedies, Reparations and The Ruggie Principles', in J. Martin, K. E. Bravo (Eds.) *The Business and Human Rights Landscape. Moving Forward, Looking Back* CUP (2015), pp. 316-347.

289. UN Guiding Principle 25.

290. UN Guiding Principle 25 and Commentary to UNGP 25.

291. UN Guiding Principle 22, see also section 3.2.a.

292. UN Guiding Principle 29.

293. Commentary to UN Guiding Principle 25.

294. Commentary to UN Guiding Principle 25.

295. UN Guiding Principle 26.

296. Commentary to UN Guiding Principle 26.

297. UN Guiding Principle 27.

298. Commentary to UN Guiding Principle 27.

grievance mechanisms are described in the UN Guiding Principles as playing 'an essential role in complementing and supplementing judicial mechanisms' and should not be understood as an alternative to judicial remedies.²⁹⁹

In addition, States should consider ways to facilitate access to effective non-State-based grievance mechanisms,³⁰⁰ such as regional human rights bodies, or operational-level dialogue or mediation processes, through awareness raising or other measures.³⁰¹ National Human Rights Institutions can play a key role in enhancing access to remedy for business-related human rights abuses, as the Working Group on the issue of human rights and transnational corporations highlighted in its report to the Human Rights Council in July 2021.³⁰²

The UN Guiding Principles set a number of effectiveness criteria for non-judicial grievance mechanisms that States and companies should take into consideration. They should enable trust from stakeholder groups for whose use they are intended, accessible, predictable, equitable, transparent, aligned with internationally recognized human rights, and a source of continuous learning.³⁰³

On the basis of the UN Guiding Principles and on human rights treaties and ILO conventions, as described in section 3.1, Cuba has the responsibility to ensure access to remedy for victims of labour exploitation in its tourism and hospitality sector. Not doing so would raise questions about its failure to comply with its international obligations and could engage its international responsibility.

Foreign companies operating in the tourism and hospitality sector in Cuba have the duty to 'provide for or cooperate in their remediation' where they identify that they have caused or contributed to adverse impact.³⁰⁴ They should also ensure that grievances are 'addressed early and remediated directly',³⁰⁵ as stated above. The consequences of non-compliance will however depend on the room for leverage these companies may have.

There is also an extraterritorial dimension to the third pillar of the UN Guiding Principles. Given the difficulties for many victims to bring claims in the host States, the ability of courts in the home State of the company to consider these claims may be the only avenue to obtain a remedy.³⁰⁶ This avenue has been increasingly strengthened through case law. In 2019, in the *Vedanta* case, the UK Supreme Court ruled in favour of Zambian communities to sue a British company in UK courts.³⁰⁷ In 2020, the Canadian Supreme Court delivered its decision on the *Nevsun* case, opening the door to common law civil liability for extraterritorial corporate human rights abuses.³⁰⁸ In 2021, the Hague District Court in the Netherlands found that the UN

299. Commentary to UN Guiding Principle 27.

300. UN Guiding Principle 28.

301. Commentary to UN Guiding Principle 28.

302. A/HRC/47/39/Add.3. Check situation of Cuba re NHRI.

303. UN Guiding Principle 31 and commentary.

304. UN Guiding Principle 22, see also section 3.2.a.

305. UN Guiding Principle 29.

306. G. Skinner, R. McCorquodale, O. De Schutter, *The Third Pillar. Access to Judicial Remedies for Human Rights Violations by Transnational Business*, ICAR, CORE, ECCJ, 2013.

307. *Vedanta Resources PLC and another v Lungowe and others* [2019] UKSC 20, 10 April 2019,

<https://www.supremecourt.uk/cases/docs/uksc-2017-0185-judgment.pdf>;

<https://www.etoconsortium.org/en/news/news/uk-supreme-court-rules-in-favour-of-zambian-communities-to-sue-british-company-in-uk-courts-179/>.

308. *Nevsun Resources Ltd. v. Araya*, Supreme Court of Canada, 28 February 2020, <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/18169/1/document.do>; <https://atelieraftab.com/insight/the-radical-implications-of-nevsun-corporate-responsibility-and-liability-under-customary-international-law>.

Guiding Principles UNGPs form part of the “unwritten duty of care” of companies.³⁰⁹ Also in 2021, the French Supreme Court ordered for a case to be sent back to the Appeals Court on charges of complicity in crimes against humanity against a multinational corporation.³¹⁰ In the EU, the Brussels I Regulation mandates the national courts of EU Member States to accept jurisdiction in civil liability cases against defendants domiciled in the forum State.³¹¹

States that are home to corporations which have exploited workers have a positive obligation under international human rights law to make remedies available to affected workers, with failure to provide access to a remedy also constituting a breach of the UN Guiding Principles. The obligations of those States to ensure access to justice includes not only guaranteeing access the courts and legal representation, but also effective engagement with law enforcement authorities and access to informal, non-State justice mechanisms.³¹² Under the third pillar of the UN Guiding Principles, States must ensure domestic judicial mechanisms effectively address business-related human rights abuses, bearing in mind the legal, practical and procedural barriers that may be faced by victims seeking a remedy.³¹³ Such barriers include ‘[w]here claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits’, placing an obligation on host States to ensure that extra-territorial claims can be brought by victims, in an accessible and affordable manner.³¹⁴ The UN Guiding Principles also require State-based non-judicial grievance mechanisms to be made available, and States are also required to facilitate the provision of non-State based grievance mechanisms.³¹⁵ If host States’ domestic systems do not allow victims of the corporations they host access to justice, they are in breach of their positive human rights obligations and are subject to the obligations arising from an internationally wrongful act under ARSIWA.

Under ARSIWA, legal consequences include an obligation of cessation and non-repetition, and an obligation to make full reparation, including damages.³¹⁶ A State may not rely on provisions of its own legislation to avoid complying with the obligations that arise in consequence of committing an internationally wrongful act.³¹⁷ The ILC commentary to ARSIWA explains that the obligation to make full reparation is an extensive one, requiring all consequences of the illegal act to be wiped out and the situation re-established as though it

309. Shearman & Sterling, ‘Milieudéfense v. Shell – A Landmark Court Decision for Energy and Energy-Intensive Companies’, *Perspectives*, June 2021, <https://www.shearman.com/Perspectives/2021/06/Milieudéfense-v-Shell--Landmark-Court-Decision-For-Energy-Companies>.

310. Business and Human Rights Resource Center, Historic victory before French Supreme Court on the indictment of multinational Lafarge for complicity in crimes against humanity, 7 September 2021, <https://www.business-humanrights.org/en/latest-news/historic-victory-before-french-supreme-court-on-the-indictment-of-multinational-lafarge-for-complicity-in-crimes-against-humanity/>.

311. REGULATION (EU) No 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). One of the cases proceeding on the basis of Brussels I was the *Milieudéfense* case (full ref). See also A. Marx, C. Bright, J. Wouters, ‘Access to legal remedies for victims of corporate human rights abuses in third countries’, 2019, European Parliament Study requested by DROI Committee, [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf)

312. Human Rights and Access to Justice, American Bar Association,

https://www.americanbar.org/advocacy/rule_of_law/what-we-do/human-rights-access-to-justice/

313. UN Guiding Principle 26.

314. *Ibid.*

315. UN Guiding Principle 27-28.

316. ARSIWA, articles 28,30-31. See also Chapter II.

317. ARSIWA, article 32.

had not occurred, as formulated in the *Factory at Chorzów* case.³¹⁸ Thus, extraterritorial cases such as those outlined above may not be sufficient if the domestic system does not offer a comprehensive suite of measures to make reparation to victims, including restitution, compensation and satisfaction.³¹⁹ Additionally, member States of the European Convention on Human Rights will likely be found to owe such obligations without invoking ARSIWA, as the European Court of Human Rights 'has broadly interpreted many ECHR rights as giving rise to positive obligations' to avoid the difficulties that arise when applying ARSIWA rules to certain situations, including challenges of attribution.³²⁰

In addition, under UN Guiding Principle 30, multi-stakeholder initiatives should ensure that effective grievance mechanisms are in place. The role of the European Union in this regard is key for two reasons. First, many of the foreign companies operating in the tourism and hospitality sector in Cuba are European, and EU legislation has an impact on the duties of those companies and the EU member States in which they are domiciled. Second, the EU holds a human rights dialogue with Cuba which can be an effective channel for leverage at a very high level.³²¹

318. ARSIWA Commentary on Art. 31, para 3, p.91. See *Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 29, 47.

319. ARSIWA. Chapter II.

320. R. Garciandia (2019) 'State responsibility and positive obligations in the European Court of Human Rights. The contribution of the ICJ in advancing towards more judicial integration', *Leiden Journal of International Law*, 1, pp. 4-5.

321. EEAS, EU-Cuba: Formal meeting of the Human Rights Dialogue, 28 February 2021, https://eeas.europa.eu/headquarters/headquarters-homepage/94032/eu-cuba-formal-meeting-human-rights-dialogue_en

The impact of COVID 19 in labour exploitation in the tourism and hospitality sector in Cuba

As a tropical island with an economy largely dependent on tourism, Cuba struggled during the Covid-19 pandemic.³²² While the virus itself did not run rampant in Cuba thanks to strict public health measures, the depressed economy saw sky-rocketing prices on essential goods and the country suffered its worst food shortages since the 1990s, which led to widespread protests.³²³ Contributing to the shutdown brought on by the pandemic is Cuba's inability to access emergency financing from institutions such as the IMF or World Bank and the recent tightening of US sanctions.³²⁴

Prior to the pandemic, tourism made up an 11% share of the State's GDP, but plummeted to 4% in 2020.³²⁵ In 2019, there were over four million international tourist arrivals in Cuba, while in 2020, fewer than one million arrivals were recorded,³²⁶ indicating that similar numbers would have been reached if not for the disruptions to international travel which began at the end of the first quarter. As of August 2021, international tourists for the year to date numbered just over 160,000. Compared to 2019, the last season unaffected by the pandemic, this represents an almost 95% reduction in tourist numbers.³²⁷

Cuba stopped admitting foreign tourists on 24 March 2020, after confirmed Covid-19 cases reached 21 and suspected cases were over 700. When the measure was announced, the government claimed that Cubans out of work due to the closure, such as hotel workers, would be relocated to other State jobs as a priority and be paid a percentage of their salaries.³²⁸ By the end of the year, the Cuban government announced that the economy shrank by 11% in 2020, outpacing the predictions of the United Nations Economic Commission for Latin America and the Caribbean. Imports were down 30%, and with imports making up 50% of fuel, food and other basic goods, Cubans struggled.³²⁹

Cuba will gradually begin reopening to tourists in November 2021, when over 90% of Cubans will be vaccinated. The Minister of Tourism, Juan Carlos García, said that only fifty-five thousand

322. M. Stott, M. Frank, 'There is no food, money or work', *Financial Times*, 16 July 2021, <https://www.ft.com/content/970911b6-c4bf-4fd0-a5da-ea3c7b22ab70>.

323. S. Ray 'Cuba's Food Shortages and Pandemic-Fueled Economic Woes Drive Biggest Protests in Decades', *Forbes*, 12 July 2021. Available at: <https://www.forbes.com/sites/siladityaray/2021/07/12/cubas-food-shortages-and-pandemic-fueled-economic-woes-drive-biggest-protest-in-decades/?sh=7cc6f42472fb>.

324. E. Morris 'Cuba's mass protests are driven by the misery of COVID and economic sanctions', *The Conversation*, 16 July 2021. Available at: <https://theconversation.com/cubas-mass-protests-are-driven-by-the-misery-of-covid-and-economic-sanctions-164505>.

325. J. Degenhard 'Tourism sector GDP share forecast in Cuba 2010-2025', *Statista*. Available at: <https://www.statista.com/forecasts/1153548/tourism-sector-gdp-share-forecast-in-cuba>.

326. Ana M López, 'Cuba: Inbound visitor arrivals 2014-2020', *Statista*, 5 July 2021. Available at: <https://www.statista.com/statistics/816389/cuba-number-of-tourist-arrivals/>.

327. Tourism Analytics 'Cuba: Total International Tourist Arrivals 2021 YTD August', *Tourism Analytics*. Available at: <https://tourismanalytics.com/cuba.html>.

328. Caribbean Business Report 'Cuba to shut down air travel due to COVID-19', *Caribbean Business Report*, 22 March 2020. Available at: <https://caribbeanbusinessreport.com/news/cuba-to-shut-down-air-travel-due-to-covid-19/>.

329. Reuters Staff 'Cuban economy shrank 11% in 2020, government says', *Reuters*, 18 December 2020. Available at: <https://www.reuters.com/article/cuba-economy-idUSL1N2IX1V9>.

tourism workers remained engaged in the sector, representing about half of the pre-pandemic workforce, while other workers had been relocated or furloughed.³³⁰ The accuracy of these figures are disputed, however, as they do not account for the large number of workers in Cuba's tourism sector who are hired illegally and paid off-book. A professor from the University of Havana's School of Tourism told a media outlet, on the condition of anonymity, that there are at least 10,000 unofficial workers and that many workers who lost their jobs due to the pandemic cannot access financial assistance.³³¹ Thus the scale of the impact on the Cuban tourism sector is likely to be underappreciated.

The experience of those who were officially employed was often no better, as mandated severance payments were not paid and alternative positions often paid little.³³² A former hotel worker told a media outlet that relocation to a different sector would have resulted in a significant reduction in his pay, so he chose to work as a delivery rider. Other workers had their contracts terminated, and were told that they would be 'at the disposal of the Ministry of Labour and Social Welfare', to obscure the fact of their unemployment. Employees were not given payouts commensurate with their tenure as required by domestic law.³³³ Additionally, despite the huge job losses in the sector, employment agencies are still making the same amount in contract payments from hotels, for workers who no longer work there.³³⁴ COVID has also impacted exploitation in supply chains.³³⁵

330. The Caribbean Council 'Cuba to gradually reopen its borders to tourism in November', *The Caribbean Council*, (n.d.). Available at: <https://www.caribbean-council.org/cuba-to-gradually-reopen-its-borders-to-tourism-in-november/>.

331. Cubanet, 'The unofficial workers of the Cuban tourism industry', 26 August 2021. Available at: <https://www.cubanet.org/english/the-unofficial-workers-of-the-cuban-tourism-industry/>.

332. Cubanet 'Luxury hotels, the pandemic and the lay-off of workers', 14 January 2021. Available at: <https://www.cubanet.org/english/luxury-hotels-the-pandemic-and-the-lay-off-of-workers/>.

333. Ibid.

334. Ibid.

335. B. Pinnington, J. Meehan, A. Trautrim, Implications of Covid-19 for modern slavery challenges in supply chain management Research, Modern Slavery PEC, July 2021, <https://modernslaverypec.org/assets/downloads/MSPEC-Supply-Chain-Management-Full-Report.pdf>; A Khambay and Thulsi Narayanasamy, 'Wage theft and pandemic profits: The right to a living wage for garment workers', *Business & Human Rights Resource Centre*, March 2021, <https://www.business-humanrights.org/en/from-us/briefings/wage-theft-and-pandemic-profits-the-right-to-a-living-wage-for-garment-workers/>.

Recommendations

This study concludes with a set of recommendations to States, companies and civil society organisations, based on the legal research presented in this report and on consultation with experts. They provide a roadmap for States, companies and civil society organisations to engage, and continue to engage, in initiatives and actions that will strengthen the protection of workers in the Cuban tourism and hospitality sector.

Recommendations to States

Cuba and home States of companies operating in Cuba should take the following actions in order to comply with their human rights duties (Pillars 1 and 3 of the UN Guiding Principles).

What Cuba should do:

- 1) Cuba should ensure that its laws, policies and practices align with the obligation to respect, protect and fulfil human rights set out in international human rights law, including the duty to protect against labour rights abuses by business enterprises set out in the UN Guiding Principles. This should be achieved through a combination of legislative, administrative, policy and judicial measures, including both in its own operations, its relationships with business enterprises and in its actions in international fora.
- 2) Cuba should effectively implement the prohibition (including criminalisation) of all forms of labour exploitation, forced labour and trafficking in persons, as set out in ILO Convention No. 29, the Palermo Protocol and other relevant international instruments. This may require allocating more funds to labour inspections in the tourism sector and to the enforcement of criminal law rules on those crimes.
- 3) Cuba should ensure that its legal framework and law enforcement system prevent labour exploitation and discrimination in the recruitment and employment of workers in the tourism sector. The legal system should also ensure protection of *cuenta-propistas*.
- 4) Cuba should ensure that State-owned companies do not engage in or facilitate labour exploitation or discrimination. 'State-owned companies' include recruitment agencies controlled or owned by the Cuban State, which should ensure that no exploitation or discrimination is promoted through them; as well as companies which are joint ventures with the private sector.
- 5) Cuba should protect workers' trade union rights and their right to strike. It should recognize more than one trade union and facilitate the free choice of union membership and allow all Unions to operate freely of State pressure. It should also improve the situation of trade union activists, halting its pressure and harassment of the same, following recommendations from the ILO. The right to strike should be explicitly recognized in domestic legislation and upheld by the Courts.
- 6) Cuba should set up a clear framework for businesses operating in the tourism and hospitality sector. Such legal framework should be in line with the UN Guiding Principles and designed to enable and require companies to respect human rights through their operations. This should also include State-owned companies and companies involving public-private partnerships. Cuba should also respect human rights in its public procurement processes.

- 7) Cuba should address and discuss the issue of labour exploitation more openly and allocate funds to gather evidence of labour exploitation, discrimination, forced labour and trafficking in persons. It should engage with international institutions such as the ILO and the IACHR, as well as with civil society organisations and businesses, on issues concerning labour exploitation, discrimination, forced labour and access to remedies. It should also respond to ILO CEACR requests.

What home States of foreign companies operating in Cuba should do:

- 1) Home States should ensure that their laws, policies and practices align with the duty to protect human rights set out in the UN Guiding Principles. This includes the responsibility to 'enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps'.³³⁶ Home States should also 'provide effective guidance to business enterprises on how to respect human rights through their operations, and to encourage, where appropriate require, business enterprises to communicate how they address human rights impact'. They should also 'ensure that any laws and policies governing the creation and operation of business enterprises do not constraint but enable business respect for human rights'.³³⁷
- 2) Home States should 'consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights'.³³⁸ These may include trade policies, public procurement, stakeholder engagement, export credit, support to companies, and multi-stakeholder initiatives. In particular, home States should implement procurement policies that give consideration to the human rights due diligence practices of the tourism sector companies that the home State itself engages with, such as for official State travel and visitor delegates' accommodation, not only in Cuba but globally.
- 3) Home States should adopt mandatory human rights due diligence legislation, including for their companies operating outside the State, subsidiaries and franchises, with particular emphasis on prevention of human rights abuses and remedies for victims affected. Home States should also adapt their domestic legislation to international and regional instruments (and best practice) in this area, including the UN Guiding Principles and the proposed EU Directive on corporate accountability.
- 4) Home States should engage in discussions with companies to help them overcome the challenges they are facing to comply with their responsibility to respect human rights.
- 5) Home States should promote joint projects with other States and (international) stakeholders including the ILO, trade unions and broader civil society organisations.
- 6) Home States should take steps to ensure that effective domestic judicial mechanisms are in place to address business-related human rights abuses, and to reduce barriers to access remedies, including for those affected in the host States where the State's domestic companies operate.³³⁹

336. UNGP 3.

337. UNGP 3.

338. Commentary to UNGP 3.

339. UNGP 26.

- 7) Home States should use multinational fora, including tourism related fora, as a platform to influence the adoption of measures against labour exploitation.

Recommendations for business

Foreign companies operating in the Cuban tourism and hospitality sector should take the following actions in order to comply with their responsibility to respect human rights (Pillar II of the UN Guiding Principles):

- 1) Companies operating in Cuba should develop and implement human rights policies and use human rights due diligence (HRDD) in accordance with the UNGPs. In their development and design, which may occur at the companies' headquarters, the particular features of the countries where they operate should be taken into consideration. They should also make sure that they are effectively implemented in those countries.
- 2) Companies operating in Cuba should design human rights policies and human rights due diligence which consider the Cuban specificities and should implement them.
- 3) Contractual clauses and codes of conduct are useful tools in the implementation of human rights due diligence in the value chain, but should not be used to outsource risks and obligations to suppliers, and should be accompanied by resources, remuneration and support that facilitate their implementation. The American Bar Association's model clauses for implementing human rights due diligence in contracts are a handy reference.³⁴⁰
- 4) Companies should assess the implementation and effectiveness of their human rights due diligence system, including through surveys, human rights audits, worker voice tools or the collection of disaggregated data. – although the limitations of these tools should be understood and accounted for.
- 5) Companies should use an integrated approach with cross-functional teams, integrating human rights due diligence into all of the companies' operations and budget allocation. They should also include considerations on price and remuneration within their human rights due diligence process.
- 6) Companies should use human rights impact assessment and use the human rights lens in their operations, including focusing on intersectional inequalities that affect their workers in Cuba. When operating in Cuba, those companies should pay especial attention to the situation of workers more vulnerable to discrimination, such as women, workers of African descent or LGBT+ workers.
- 7) Companies should ensure meaningful consultation with stakeholders and workers in Cuba. This consultation, which will contribute to the design of more effective human rights policies and due diligence, should be undertaken with guarantees of protection to workers, trade union representatives and suppliers, to guarantee that their contribution will not represent any risk for them. The consultation process should engage human rights experts and specifically local human rights experts with knowledge of the issues that workers face.

340. American Bar Association, Contractual Clauses Project, https://www.americanbar.org/groups/human_rights/business-human-rights-initiative/contractual-clauses-project/.

- 8) Companies should ensure ongoing effective communication to stakeholders about the efforts they are making to respect human rights. Companies should communicate how their impacts are addressed, bearing in mind the risks that rights-holders may face if sensitive information is disclosed.
- 9) Companies should develop and provide human rights training for workers, suppliers, contractors, business partners, as well as the company's own home State operating teams, especially those that engage with management, procurement, legal, grievance mechanisms, public and private engagement.
- 10) Companies should set up effective and accessible operational-level grievance mechanisms in accordance with the criteria of UN Guiding Principle 31, that workers in their Cuban value chains can use without being put at any kind of risk. Companies should communicate to workers the existence of such mechanisms and facilitate their use, making them easy to use (and addressing issues of IT literacy).
- 11) Companies should use leverage with the government of Cuba, State-owned companies and the *Sindicato Nacional de Trabajo, Hostales y Turismo* to advance the prevention of labour exploitation and to improve the protection of workers' rights. Foreign companies should ensure that effective HRDD processes are in place for those areas of their operations they can influence. They should also consider the possibility of joining other businesses in sectoral associations, as collective engagement could have higher potential to influence the Cuban authorities and State-owned businesses for a better protection of human rights.³⁴¹ Ultimately, those companies could consider exiting the jurisdiction if they have no way to ensure that human rights are being protected within their value chain.³⁴²
- 12) Companies should use leverage on their home State's government to ensure a level playing field, including by supporting the introduction of mandatory human rights due diligence regulation.
- 13) Companies should use the relevant frameworks within their business model (e.g. ESG) to shift towards a new paradigm where social rights are paid more attention in all the countries where the company operates.
- 14) Companies should engage (continue engaging) in collective and coordinated action against labour exploitation. Continue to engage with, or become involved with, collaborative approaches based on existing models, pilots and good practices.

Recommendations for civil society organisations

International and local NGOs are encouraged to consider the following recommendations:

- 1) Foreign companies operating in the tourism sector are increasingly adopting measures to comply with their responsibility to respect human rights. However, the issue of labour exploitation does not yet receive the attention it has received in other sectors (e.g. garment or food industries). This is also the case in Cuba, where the joint venture model creates an additional challenge for companies. Advocacy work could raise awareness

341. L. Smit, A. Griffith, R. McCorquodale, 'When national law conflicts with international human rights standards: Recommendations for Business', *BIICL Report*, 2015, pp. 28-29.

342. *Ibid*, p. 32.

on the labour exploitation situation in the Cuban tourism sector and on the responsibility of companies to respect the rights of workers.

- 2) The situation of trade unions in Cuba is a concern, not only because of workers' limited enjoyment of their trade union rights but also due to the difficulty this creates to protect workers from labour exploitation situations. The Sindicato Nacional de Trabajo, Hostales y Turismo is the national sector-specific trade union and has reportedly worked relatively effectively in the protection of workers in the sector. Advocacy initiatives could explore the extent to which there has been collaboration with foreign companies to advance the protection of workers' rights, including training and awareness raising campaigns on labour rights and grievance mechanisms. This exploratory work could also be the basis for assessing the feasibility of other initiatives where international organisations or trade unions engage with Cuban trade unions. The Canadian Union of State Administrative Workers has worked with Cuban Unions to improve health and safety of mining workers in Cuba. Although given the sensitivities of the tourism sector this may seem unlikely, it is a possibility that could be explored, with support of other international actors such as the International Union of Food Workers (IUF), which counts within its membership many foreign companies operating in Cuba.
- 3) Workers' awareness of their rights and of mechanisms for remedy remains low in the Cuban tourism sector. Many workers report not having had any human rights issue with their employers but at the same time describe having suffered situations that amount to labour exploitation. Research also shows that workers perceive remedy mechanisms as a risk and lack trust in such systems. Advocacy work could engage with independent trade union activists in the island and with workers directly, to raise awareness on their rights and on available remedy mechanisms. Free legal advice to those workers may encourage them to use those mechanisms if the specific context ensures it is safe for them to do so.
- 4) Low wages and long working hours are two of the main characteristics of labour exploitation in the tourism sector in Cuba. Advocacy in partnership with the International Labour Organisation and the Inter-American Commission of Human Rights (REDESCA) could gather further information about how the joint ventures between State-owned companies and foreign companies work for the determination of wages, payment of salaries, establishment of working hours and monitoring of those conditions. It could also identify ways in which the process could be influenced to advance the protection of working conditions.
- 5) Discrimination on grounds including gender or ethnic origin is reported in the recruitment and employment of workers in the Cuban tourism sector. Civil society work could gather more evidence about how exactly the recruitment process works, what is the involvement of multinational corporations in recruitment and employment decisions, what is the incidence of discrimination in recruitment and employment, what remedies are available and to what extent they are used. This evidence would provide a solid basis for civil society action to tackle the issue, including as part of advocacy and campaigning for laws and policies that lead to improvement of working conditions and effective protection of workers.
- 6) In 2020, the Inter-American Commission on Human Rights observed that 'the recent authorization for the creation of non-State micro-enterprises in the tourism sector may be contributing to increasingly severe risks of women being sexually exploited on the

island'.³⁴³ Civil society initiatives could explore this dimension further and gather more evidence about the incidence of sexual violence in the Cuban tourism sector, in order to inform their campaign and advocacy efforts.

- 7) Companies are increasingly engaging in discussions on sustainable tourism and human rights under the leadership of the Sustainable Hospitality Alliance,³⁴⁴ The Code,³⁴⁵ or the UIF.³⁴⁶ Advocacy initiatives could engage with companies operating in Cuba to better understand the challenges they face in practice and to support them in their efforts to respect human rights.
- 8) There is very little evidence available about the impact of the various human rights due diligence efforts in the Cuban context. Civil society, including local and international rights groups, could gather further evidence on the impact of all those efforts (contractual clauses, aid requirements, home State reporting or due diligence regulation, ESG requirements, trade relationships between the US or EU and other home States and Cuba respectively). International and local NGOs, the ILO and others engaging with workers in the Cuban tourism sector could gather evidence on the impact of those measures on the ground, and what type of difference they are making. This evidence would fill an essential evidence gap as to which kind of laws and policies a) actually improve working conditions and protect workers, b) have very little real-life impact or c) lead to adverse consequences through creating contradictory practices or perverse incentives.

343. IACHR, The Situation of Human Rights in Cuba, OEA/Ser.L/V/II; Doc. 2/20, October 3, 2020. para 322.

344. www.sustainablehospitalityalliance.org/.

345. www.thecode.org/, consultation with Damien Brosnan.

346. www.iuf.org.

Annexes

Table of relevant legal instruments and ratifications by Cuba and other States

The States included in the table below are the home States of key hotels and tourism operators in Cuba: France (Accor S.A.), Germany (Lufthansa, TUI Group), Mexico (Fiesta Americana), Netherlands (Booking Holdings), Spain (Mélia Hotels, Iberostar Group, NH Hotel Group), United Kingdom (Fred Olsen Cruise Lines) and United States (Airbnb, Delta Air Lines, Expedia Group, Holland America Line [part of Carnival Corporation & plc], Norwegian Cruise Line, Royal Caribbean, Tripadvisor, Virgin Voyages).

Note that the United States is included in this table as the resumption of diplomatic relations between the two States, inaugurated by the Obama administration, has opened up legitimate commercial opportunities for US-based companies.³⁴⁷ US airlines and travel agents can offer air travel to Cuba for a number of authorised, non-tourism, purposes, including family visits, professional research and humanitarian projects.³⁴⁸ Additionally, the US government also announced that approved travellers would also be able to use Airbnb in Cuba.³⁴⁹ This required approval from the US Treasury Department.³⁵⁰

Legal Instrument	Signature or ratification by Cuba ³⁵¹	Ratification by other States relevant to this study	Overall ratification status
International Covenant on Social,	Signed 28 February 2008. ³⁵²	Convention ratified by France, Germany, Mexico,	Convention: 71 signatories and 171 ratifications;

347 Daniel Sachs 'Investing in Cuba: A Tantalizing and Troublesome Proposition', *Forbes*, 4 August 2015. Available at: <https://www.forbes.com/sites/riskmap/2015/08/04/investing-in-cuba-a-tantalizing-and-troublesome-proposition/?sh=1376619045d0>

348 See <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V/part-515/subpart-E#515.561> and American Airlines 'US to Cuba Travel Policy'. Available at: <https://www.aa.com/i18n/travel-info/international-travel/cuba.jsp>

349 Jessica Contrera 'The U.S. Government just made it easier to travel to an Airbnb in Cuba. Here's where you can stay', *The Washington Post*, 20 March 2016. Available at: <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2016/03/20/the-u-s-government-just-made-it-easier-to-travel-to-an-airbnb-in-cuba-heres-where-you-can-stay/>

350 Dante D'Orazio 'Airbnb and Starwood Hotels sign new deals to expand in Cuba', *The Verge*, 20 March 2016. Available at: <https://www.theverge.com/2016/3/20/11273204/airbnb-starwood-hotels-cuba-expansion-announced>

351 Multilateral human rights treaties provide for signature subject to ratification. In those cases, signature is seen as 'a preparatory step on the way to ratification. It creates an obligation to refrain in good faith from acts that would defeat the object and purpose of the treaty'. However, it is only through the ratification process that States become legally bound by the obligations included in the treaty (UNOHCHR, The United Nations Human Rights Treaty System, 2012, p. 59, <https://www.ohchr.org/documents/publications/factsheet30rev1.pdf>).

352 United Nations Treaty Collection, Chapter IV, 3. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&clang=en#EndDec

Note that Cuba also deposited the following declaration:

'The Republic of Cuba hereby declares that it was the Revolution that enabled its people to enjoy the rights set out in the International Covenant on Economic, Social and Cultural Rights.

The economic, commercial and financial embargo imposed by the United States of America and its policy of hostility and aggression against Cuba constitute the most serious obstacle to the Cuban people's enjoyment of the rights set out in the Covenant.

The rights protected under this Covenant are enshrined in the Constitution of the Republic and in national legislation.

Economic and Cultural Rights (1966)		Netherlands, Spain, United Kingdom and United States. Optional Protocol which allows for individual communications ratified by Spain. ³⁵³	Optional Protocol: 46 signatories and 26 ratifications. ³⁵⁴
International Covenant on Civil and Political Rights (1966)	Signed 28 February 2008. ³⁵⁵	Convention ratified by France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States. Optional Protocol which allows for individual communications ratified by France, Germany, Mexico, Netherlands and Spain. ³⁵⁶	Convention: 75 signatories and 173 ratifications; Optional Protocol: 35 signatories and 116 ratifications. ³⁵⁷
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	Ratified 15 February 1972. ³⁵⁸	Ratified by France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States. ³⁵⁹	88 signatories and 182 ratifications. ³⁶⁰

The State's policies and programmes guarantee the effective exercise and protection of these rights for all Cubans. With respect to the scope and implementation of some of the provisions of this international instrument, Cuba will make such reservations or interpretative declarations as it may deem appropriate.'

353 UN Treaty Collection, Chapter IV, 3 and United Nations Treaty Collection, Chapter IV, 3a. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-3-a&chapter=4&clang=en

France: acceded 4 November 1980; Germany: ratified 17 December 1973; Mexico: acceded 23 March 1981;

Netherlands: ratified 11 December 1978; Spain: ratified 27 April 1977 and ratified individual communications procedure under Optional Protocol 23 September 2010; United Kingdom: ratified 20 May 1976; United States: signed 5 October 1977.

354 Ibid.

355 United Nations Treaty Collection, Chapter IV, 4. International Covenant on Civil and Political Rights. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-4&chapter=4&clang=en

356 UN Treaty Collection, Chapter IV, 4 and UN Treaty Collection, Chapter IV, 5. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-5&chapter=4&clang=en

France: acceded 4 November 1980 and acceded individual communications procedure under the relevant Optional Protocol 17 February 1984; Germany: ratified 17 December 1973 and acceded Optional Protocol 25 August 1993; Mexico: acceded 23 March 1981 and acceded Optional Protocol 15 March 2002; Netherlands: ratified 11 December 1978 and ratified Optional Protocol 11 December 1978; Spain: ratified 27 April 1977 and acceded Optional Protocol 25 January 1985; United Kingdom: ratified 20 May 1976; United States: ratified 8 June 1992.

357 Ibid.

358 United Nations Treaty Collection, Chapter IV, 2. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-2&chapter=4&clang=en

359 Ibid.

France: acceded 28 July 1971; Germany: ratified 16 May 1969; Mexico: ratified 20 February 1975; Netherlands: ratified 10 December 1971; Spain: acceded 13 September 1968; United Kingdom: ratified 7 March 1969; United States: ratified 21 October 1994

360 Ibid.

Convention on the Elimination of All Forms of Discrimination Against Women (1979)	Ratified 17 July 1980 and signed Optional Protocol on individual communications procedure 17 March 2000. ³⁶¹	Convention ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. Convention signed but not ratified by United States. Optional Protocol which allows for individual communications ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. ³⁶²	Convention: 99 signatories and 189 ratifications; Optional Protocol: 80 signatories and 114 ratifications. ³⁶³
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)	No action taken. ³⁶⁴	Ratified by Mexico. No action taken by France, Germany, Netherlands, Spain, United Kingdom and United States. ³⁶⁵	39 signatories and 56 ratifications. ³⁶⁶
Convention on the Rights of Children (1989)	Ratified 21 August 1991. ³⁶⁷	Convention ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. Convention signed but not ratified by United States.	Convention: 140 signatories and 196 ratifications; Optional Protocol 52 signatories and 48 ratifications. ³⁶⁹

361 United Nations Treaty Collection, Chapter IV, 8. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en and United Nations Treaty Collection, Chapter IV, 8b. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=en

362 Ibid.

France: ratified 14 December 1983 and ratified Optional Protocol on individual communications 9 June 2000; Germany: ratified 10 July 1985 and ratified Optional Protocol on 15 January 2002; Mexico: ratified 23 March 1981 and ratified Optional Protocol 15 March 2002; Netherlands: ratified 23 July 1991 and ratified Optional Protocol 22 May 2002; Spain: ratified 5 January 1984 and ratified Optional Protocol 6 July 2001; United Kingdom: ratified 7 April 1986 and acceded Optional Protocol 17 December 2004; United States: signed 17 July 1980.

363 Ibid.

364 See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=44&Lang=EN

365 United Nations Treaty Collection, Chapter IV, 13. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=en

Mexico: ratified 8 March 1999.

366 Ibid.

367 United Nations Treaty Collection, Chapter IV, 11. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en

369 Ibid.

		Optional Protocol which allows for individual communications ratified by France, Germany and Spain. ³⁶⁸	
Convention on the Rights of Persons with Disabilities (2007)	Ratified 6 September 2007. ³⁷⁰	Convention ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. Convention signed but not ratified by United States. Optional Protocol which allows for individual communications ratified by France, Germany, Mexico, Spain and United Kingdom. ³⁷¹	Convention: 164 signatories and 184 ratifications; Optional Protocol: 94 signatories and 100 ratifications. ³⁷²
United Nations Slavery Convention (1926, as amended by the Protocol)	Signed 28 June 1954. ³⁷³	Signed by France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States. ³⁷⁴	99 parties. ³⁷⁵

368 UN Treaty Collection, Chapter IV, 11 and UN Treaty Collection Chapter IV, 11d, available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=en

France: ratified 7 August 1990 and ratified individual communications procedure under relevant Optional Protocol 7 January 2016; Germany: ratified 6 March 1992 and ratified Optional Protocol 28 February 2013; Mexico: ratified 21 September 1990; Netherlands: acceded 6 February 1995; Spain: ratified 6 December 1990 and ratified Optional Protocol 3 June 2013; United Kingdom: ratified 16 December 1991; United States: signed 16 February 1995.

370 United Nations Treaty Collection, Chapter IV, 15. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en

371 Ibid and United Nations Treaty Collection, Chapter IV, 15a. Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=en

France: ratified 18 February 2010 and ratified individual communications procedure under Optional Protocol 18 February 2010; Germany: ratified 24 February 2009 and ratified Optional Protocol 24 February 2009; Mexico: ratified 17 December 2007 and ratified Optional Protocol 17 December 2007; Netherlands: ratified 14 June 2016; Spain: ratified 3 December 2007 and ratified Optional Protocol 3 December 2007; United Kingdom: ratified 8 June 2009 and ratified Optional Protocol 7 August 2009; United States: signed 30 July 2009.

372 Ibid.

373 United Nations Treaty Collection, Chapter XVIII, 2. Available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-2&chapter=18&clang=en

374 Ibid.

France: signed 14 February 1963; Germany: signed 29 May 1973; Mexico: signed 3 February 1954; Netherlands: signed 7 July 1955; Spain: signed 10 November 1975; United Kingdom: signed 7 December 1953; United States: signed 7 March 1956.

375 Ibid.

United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	Ratified 21 August 1963. ³⁷⁶	Ratified by France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States. ³⁷⁷	35 signatories and 124 parties. ³⁷⁸
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ['Palermo Protocol'] (2000)	Acceded 20 June 2013. ³⁷⁹	Ratified by France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States. ³⁸⁰	117 signatories and 178 parties. ³⁸¹
Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms ['ECHR'] (1950)	Not applicable.	Ratified by France, Germany, Netherlands, Spain and United Kingdom. ³⁸² Not applicable to United States or Mexico.	47 ratifications. ³⁸³
European Social Charter (1961), its Protocols and the European Social	Not applicable	Charter ratified by France, Germany, Netherlands, Spain and United	Charter: 9 signatures not followed by ratification and 36 ratifications. ³⁸⁵

376 United Nations Treaty Collection, Chapter XVIII, 4. Available at: https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVIII-4&chapter=18&Temp=mtdsg3&clang=en

377 Ibid.

France: ratified 26 May 1964; Germany: ratified 14 January 1959; Mexico: ratified 30 June 1959; Netherlands: ratified 3 December 1957; Spain: acceded 21 November 1967; United Kingdom: ratified 30 April 1957; United States: acceded 6 December 1967.

378 Ibid.

379 United Nations Treaty Collection, Chapter XVIII, 12a. Available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en

380 Ibid.

France: ratified 29 October 2002; Germany: ratified 14 June 2006; Mexico: ratified 4 March 2003; Netherlands: acceded 27 July 2005; Spain: ratified 1 March 2002; United Kingdom: ratified 9 February 2006; United States: ratified 3 November 2005.

381 Ibid.

382 Council of Europe, Chart of signatures and ratifications of Treaty 005. Available at:

<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=005>

France: ratified 3 May 1974; Germany: ratified 5 December 1952; Netherlands: ratified 31 August 1954; Spain: ratified 4 October 1979; United Kingdom: ratified 8 March 1951.

383 Ibid.

385 Council of Europe, Chart of signatures and ratifications of Treaty 163. Available at:

<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=163>

Charter (Revised) (1996)		Kingdom. ³⁸⁴ Not applicable to United States or Mexico.	
Council of Europe Convention on Action against Trafficking in Human Beings (2005)	Not applicable.	Ratified by France, Germany, Netherlands, Spain and United Kingdom. ³⁸⁶ Not applicable to United States or Mexico.	48 ratifications. ³⁸⁷
American Convention on Human Rights (1978) and the Additional Protocol on Human Rights in the area of Economic, Social and Cultural Rights ['Protocol of San Salvador'] (1988)	No action taken. ³⁸⁸	Convention and Protocol ratified by Mexico. Convention only signed by United States, therefore no action taken on Protocol either. ³⁸⁹ Not applicable to France, Germany, Netherlands, Spain or United Kingdom.	Convention: 25 ratifications; Protocol: 16 ratifications. ³⁹⁰
African Convention on Human and Peoples' Rights (1981)	Not applicable.	Not applicable: the relevant accommodation providers and	54 ratifications. ³⁹¹

384 Council of Europe, European Social Charter Collected Texts (7th edition). Available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048b059>

France: ratified 1961 Charter 9 March 1973, signed Additional Protocol 22 June 1989, ratified Amending Protocol 24 May 1995, ratified Collective Complaints Protocol 7 May 1999, ratified Revised Charter 7 May 1999; Germany: ratified Charter 27 January 1965, signed Additional Protocol 5 May 1988, signed Revised Charter 29 June 2007; Netherlands: ratified Charter 22 April 1980, ratified Additional Protocol 5 September 1992, ratified Amending Protocol 1 June 1993, ratified Collective Complaints Protocol 3 May 2006, ratified Revised Charter 3 May 2006; Spain: ratified Charter 6 May 1980, ratified Additional Protocol 24 January 2000, ratified Amending Protocol 21 January 2000, signed Revised Charter 23 October 2000; United Kingdom: ratified Charter 11 July 1962, signed Amending Protocol 21 October 1991, signed Revised Charter 7 November 1997.

386 Council of Europe, Chart of signatures and ratifications of Treaty 197. Available at:

<https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=197>

France: ratified 9 January 2008; Germany: ratified 19 December 2012; Netherlands: ratified 22 April 2010; Spain: ratified 2 April 2009; United Kingdom: ratified 17 December 2008.

387 Ibid.

388 Note that exclusion of Cuba from participating in the Inter-American system was only lifted in 2009. See

http://www.oas.org/en/member_states/default.asp

389 OAS, American Convention on Human Rights, Pact of San Jose, Costa Rica (B-32). Available at:

http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm and Inter-American

Commission on Human Rights, A-52 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, Protocol of San Salvador. Available at:

<http://www.cidh.oas.org/basicos/english/basic6.prot.sn%20salv%20ratif.htm>

United States: signed 1 June 1977, no action taken on the Additional Protocol; Mexico: ratified 2 March 1981 and Additional Protocol ratified 8 March 1996.

390 Ibid.

391 ACHPR, State Parties to the African Charter. Available at:

<https://www.achpr.org/statepartiestotheafricancharter>

		tourism operators are European or American-based.	
ILO Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol (P029)	Ratified Convention 20 July 1953. No action taken on Protocol. ³⁹²	Convention ratified by France, Germany, Mexico, Netherlands, Spain, and United Kingdom. Protocol ratified by France, Germany, Netherlands, Spain and United Kingdom. No action taken by United States. ³⁹³	Convention: 179 ratifications; Protocol: 56 ratifications. ³⁹⁴
ILO Abolition of Forced Labour Convention, 1957 (No. 105)	Ratified 2 June 1958. ³⁹⁵	Ratified by France, Germany, Mexico, Netherlands, Spain, United Kingdom and United States. ³⁹⁶	176 ratifications and 2 denunciations (Malaysia and Singapore). ³⁹⁷
ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	Ratified 25 June 1952. ³⁹⁸	Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. No action taken by United States. ³⁹⁹	157 ratifications. ⁴⁰⁰

392 ILO Normlex, Ratification of CO29 – Forced Labour Convention, 1930 (No. 29). Available at: https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174 and ILO Normlex, Ratification of P029 – Protocol of 2014 to the Forced Labour Convention, 1930. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672:NO

393 Ibid.

France: ratified 24 June 1937 and ratified Protocol 7 June 2016; Germany: ratified 13 June 1956 and ratified Protocol 19 June 2019; Mexico: ratified 12 May 1934; Netherlands: ratified 31 March 1933 and ratified Protocol 8 August 2017; Spain: ratified 29 August 1932 and ratified Protocol 20 September 2017; United Kingdom: ratified 3 June 1931 and ratified Protocol 22 January 2016.

394 Ibid.

395 ILO Normlex, Ratification of C105 – Abolition of Forced Labour Convention, 1957 (No. 105). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO

396 Ibid.

France: ratified 18 December 1969; Germany: ratified 22 June 1959; Mexico: ratified 1 June 1959; Netherlands: 18 February 1959; Spain: ratified 6 November 1967; United Kingdom: ratified 30 December 1957; United States: ratified 25 September 1991.

397 Ibid.

398 ILO Normlex, Ratification of C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232:NO

399 Ibid.

France: ratified 28 June 1951; Germany: ratified 20 March 1957; Mexico: ratified 1 April 1950; Netherlands: ratified 7 March 1950; Spain: ratified 20 April 1977; United Kingdom: ratified 27 June 1949.

400 Ibid.

ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	Ratified 29 April 1952. ⁴⁰¹	Ratified by France, Germany, Mexico, Spain and United Kingdom. No action taken by Netherlands or United States. ⁴⁰²	168 ratifications. ⁴⁰³
ILO Minimum Age Convention, 1973 (No. 138)	Ratified 7 March 1975 and minimum age 15 years specified. ⁴⁰⁴	Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. No action taken by United States. ⁴⁰⁵	173 ratifications. ⁴⁰⁶
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	Ratified 28 September 2015. ⁴⁰⁷	Ratified by France, Germany; Mexico, Netherlands, Spain, United Kingdom and United States. ⁴⁰⁸	187 ratifications. ⁴⁰⁹
ILO Equal Remuneration Convention, 1951 (No. 100)	Ratified 13 January 1954. ⁴¹⁰	Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom.	173 ratifications. ⁴¹²

401 ILO Normlex, Ratifications of C098 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243:NO

402 Ibid.

France: ratified 26 October 1951; Germany: ratified 8 June 1956; Mexico: ratified 23 November 2018; Spain: ratified 20 April 1977; United Kingdom: ratified 30 June 1950.

403 Ibid.

404 ILO Normlex, Ratifications of C138 – Minimum Age Convention, 1973 (No. 138). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO

405 Ibid.

France: ratified 13 July 1990 and minimum age 16 years specified; Germany: ratified 8 April 1976 and minimum age 15 years specified; Mexico: ratified 10 June 2015 and minimum age 15 years specified; Netherlands: ratified 14 September 1976 and minimum age 15 years specified; Spain: ratified 16 May 1977 and minimum age 16 years specified; United Kingdom: ratified 7 June 2000 and minimum age 16 years specified.

406 Ibid.

407 ILO Normlex, Ratifications of C182 – Worst Forms of Child Labour Convention, 1999 (No. 182). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO

408 Ibid.

France: ratified 11 September 2001; Germany: ratified 18 April 2002; Mexico: ratified 30 June 2000; Netherlands: ratified 14 February 2002; Spain: ratified 2 April 2001; United Kingdom: ratified 22 March 2000; United States: ratified 2 December 1999.

409 Ibid.

410 ILO Normlex, Ratification of C100 – Equal Remuneration Convention, 1951 (No. 100). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245:NO

412 Ibid.

		No action taken by United States. ⁴¹¹	
ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Ratified 26 August 1965. ⁴¹³	Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. No action taken by United States. ⁴¹⁴	175 ratifications. ⁴¹⁵
ILO Labour Inspection Convention, 1947 (No. 81) and its 1995 Protocol (P081)	Ratified 7 September 1954. No action taken on Protocol. ⁴¹⁶	Convention ratified by France, Germany, Netherlands, Spain and United Kingdom. No action taken by these States on the Protocol. No action taken by Mexico or United States. ⁴¹⁷	Convention: 148 ratifications; Protocol: 12 ratifications. ⁴¹⁸
ILO Termination of Employment Convention, 1982 (No. 158)	No action taken. ⁴¹⁹	Ratified by France and Spain. No action taken by Germany, Mexico, Netherlands, United Kingdom or United States. ⁴²⁰	36 ratifications and 1 denunciation (Brazil). ⁴²¹

411 Ibid.

France: ratified 10 March 1953; Germany: ratified 8 June 1956; Mexico: ratified 23 August 1952; Netherlands: ratified 16 June 1971; Spain: ratified 6 November 1967; United Kingdom: ratified 15 June 1971.

413 ILO Normlex, Ratifications of C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256:NO

414 Ibid.

France: ratified 28 May 1981; Germany: 15 June 1961; Mexico: ratified 11 September 1961; Netherlands: ratified 15 March 1973; Spain: ratified 6 November 1967; United Kingdom: ratified 8 June 1999.

415 Ibid.

416 ILO Normlex, Ratifications of C081 – Labour Inspection Convention, 1947 (No. 81). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312226:NO and

ILO Normlex, Ratifications of P081 – Protocol of 1995 to the Labour Inspection Convention, 1947. Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312334:NO

417 Ibid.

France: ratified 16 December 1950; Germany: ratified 14 June 1955; Netherlands: ratified 15 September 1951; Spain: ratified 30 May 1960; United Kingdom: ratified 28 June 1949 (excluding Part II).

418 Ibid.

419 ILO Normlex, Ratifications of C158 – Termination of Employment Convention, 1982 (No. 158). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312303:NO

420 Ibid.

France: ratified 16 March 1989; Spain: ratified 26 April 1985.

421 Ibid.

ILO Hours of Work (Industry) Convention, 1919 (No. 1)	Ratified 20 September 1934. ⁴²²	Ratified by Spain. Ratified by but not in force in France. No action taken by Germany, Mexico, Netherlands, United Kingdom or United States. ⁴²³	52 ratifications, 1 denunciation (New Zealand). ⁴²⁴
ILO Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)	Ratified 24 February 1936. ⁴²⁵	Ratified by Mexico and Spain. No action taken by France, Germany, Netherlands, United Kingdom or United States. ⁴²⁶	30 ratifications, 2 denunciations (Finland and New Zealand). ⁴²⁷
ILO Forty-Hour Work Week Convention, 1935 (No. 47)	No action taken. ⁴²⁸	None of the relevant home States have ratified the Convention. ⁴²⁹	15 ratifications. ⁴³⁰
ILO Weekly Rest (Industry) Convention, 1921 (No. 14)	Ratified 20 July 1953. ⁴³¹	Ratified by France, Mexico, Netherlands and Spain. No action taken by Germany, United Kingdom or United States. ⁴³²	120 ratifications. ⁴³³
ILO Weekly Rest (Commerce and	Ratified 2 June 1958. ⁴³⁴	Ratified by France, Mexico, Netherlands and Spain.	63 ratifications. ⁴³⁶

422 ILO Normlex, Ratifications of C001 – Hours of Work (Industry) Convention, 1919 (No. 1). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312146:NO

423 Ibid.

France: ratified 2 June 1927 but not in force; Spain: ratified 22 February 1929.

424 Ibid.

425 ILO Normlex, Ratifications of C030 – Hours of Work (Commerce and Offices) Convention, 1930 (No. 30). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312175:NO

426 Ibid.

Mexico: ratified 12 May 1934; Spain: ratified 29 August 1932.

427 Ibid.

428 ILO Normlex, Ratifications of C047 – Forty-Hour Week Convention, 1935 (No. 47). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312192:NO

429 Ibid.

430 Ibid.

431 ILO Normlex, Ratifications of C014 – Weekly Rest (Industry) Convention, 1921 (No. 14). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312159:NO

432 Ibid.

France: ratified 3 September 1926; Mexico: ratified 7 January 1938; Netherlands: ratified 14 July 1965; Spain: ratified 20 June 1924.

433 Ibid.

434 ILO Normlex, Ratifications of C106 – Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312251:NO

436 Ibid.

Offices) Convention, 1957 (No. 106)		No action taken by Germany, United Kingdom or United States. ⁴³⁵	
ILO Holidays with Pay Convention (Revised), 1970 (No. 132)	No action taken. ⁴³⁷	Ratified by Germany and Spain. No action taken by France, Mexico, Netherlands or United Kingdom or United States. ⁴³⁸	38 ratifications. ⁴³⁹
ILO Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	Ratified 24 February 1936. ⁴⁴⁰	Ratified by France, Germany, Mexico, Netherlands and Spain. Denounced by United Kingdom and no action taken by United States. ⁴⁴¹	105 ratifications and 1 denunciation (United Kingdom). ⁴⁴²
ILO Minimum Wage Fixing Convention, 1970 (No. 131)	Ratified: 5 January 1972. ⁴⁴³	Ratified by France, Mexico, Netherlands and Spain. No action taken by Germany, United Kingdom or United States. ⁴⁴⁴	54 ratifications. ⁴⁴⁵

435 Ibid. Note that France and Mexico have both declared that the Convention also applies to persons employed in the establishments specified in Article 3, paragraph 1.

France: ratified 5 May 1971; Mexico: ratified 1 June 1959; Netherlands: ratified 2 May 2001; Spain: ratified 5 May 1971.

437 ILO Normlex, Ratifications of C132 – Holidays with Pay Convention (Revised), 1970 (No. 132). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312277:NO

438 Ibid.

Germany: ratified 1 October 1975 and 18 working days specified length of holiday; Spain: ratified 30 June 1972 and 3 weeks specified length of holiday.

439 Ibid.

440 ILO Normlex, Ratifications of C026 – Minimum Wage-Fixing Machinery Convention, 1928 (No. 26). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312171:NO

441 Ibid.

France: ratified 18 September 1930; Germany: ratified 30 May 1929; Mexico: ratified 12 May 1934; Netherlands: ratified 10 November 1936; Spain: ratified 8 April 1930; United Kingdom: denounced 25 July 1985.

442 Ibid.

443 ILO Normlex, Ratifications of C131 – Minimum Wage Fixing Convention, 1970 (No. 131). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312276:NO

444 Ibid.

France: ratified 28 December 1972; Mexico: ratified 18 April 1973; Netherlands: ratified 10 October 1973; Spain: ratified 30 November 1971.

445 Ibid.

ILO Protection of Wages Convention, 1949 (No. 95)	Ratified 29 April 1952. ⁴⁴⁶	Ratified by France, Mexico, Netherlands and Spain. Denounced by United Kingdom and no action taken by Germany and United States. ⁴⁴⁷	99 ratifications, 1 denunciation (United Kingdom). ⁴⁴⁸
ILO Collective Bargaining Convention, 1981 (No. 154)	No action taken. ⁴⁴⁹	Ratified by Netherlands and Spain. No action taken by France, Germany, Mexico, United Kingdom or United States. ⁴⁵⁰	49 ratifications. ⁴⁵¹
ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)	No action taken. ⁴⁵²	Ratified by France, Germany, Mexico, Netherlands, Spain and United Kingdom. No action taken by United States. ⁴⁵³	60 ratifications. ⁴⁵⁴
ILO Maternity Protection Convention, 1952 (No. 103)	Automatic denunciation on 1 June 2005 by ratification of Convention No. 183 (below). ⁴⁵⁵	Ratified by Spain. Automatically denounced Netherlands upon ratification of	41 ratifications, 17 denunciations. ⁴⁵⁷

446 ILO Normlex, Ratifications of C095 – Protection of Wages Convention, 1949 (No. 95). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312240:NO

447 Ibid. Note that Mexico and Spain excluded Article 11 by virtue of the ratification of Convention No. 173 (acceptance of Part II).

France: ratified 15 October 1952; Mexico: ratified 27 September 1955; Netherlands: ratified 20 May 1952; Spain: ratified 24 June 1958; United Kingdom: denounced 16 September 1983.

448 Ibid.

449 ILO Normlex, Ratifications of C154 – Collective Bargaining Convention, 1981 (No. 154). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312299:NO

450 Ibid.

Netherlands: ratified 22 December 1993; Spain: ratified 11 September 1985.

451 Ibid.

452 ILO Normlex, Ratifications of C102 – Social Security (Minimum Standards) Convention, 1952 (No. 102). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312247:NO

453 Ibid.

France: ratified 14 June 1974 and accepted Parts II and IV to IX; Germany: ratified 21 February 1958 and accepted Parts II to X (some of which are no longer applicable as a result of further ratifications); Mexico: ratified 12 October 1961 and accepted Parts II, III, V, VI and VIII to X; Netherlands: ratified 11 October 1962 and accepted Parts II to X (some which no longer applicable as above); Spain: ratified 29 June 1988 and accepted Parts II to IV and VI; United Kingdom: ratified 27 April 1954 and accepted Parts II to V, VII and X.

454 Ibid.

455 ILO Normlex, Ratifications of C103 – Maternity Protection Convention (Revised), 1952 (No. 103). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312248:NO

457 Ibid.

		Convention No. 183 (below). No action taken by France, Germany, Mexico, United Kingdom or United States. ⁴⁵⁶	
ILO Maternity Protection Convention, 2000 (No. 183)	Ratified 1 June 2004 and period of maternity leave 18 weeks. ⁴⁵⁸	Ratified by Germany (not yet in force) and Netherlands. No action taken by France, Mexico, Spain, United Kingdom or United States. ⁴⁵⁹	40 ratifications. ⁴⁶⁰
ILO Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)	No action taken. ⁴⁶¹	Ratified by Spain. No action taken by France, Germany, Mexico, Netherlands, United Kingdom or United States. ⁴⁶²	33 ratifications. ⁴⁶³
ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118)	No action taken. ⁴⁶⁴	Ratified by France, Germany and Mexico. Denounced by Netherlands and no action taken by Spain, United Kingdom or United States. ⁴⁶⁵	38 ratifications and 1 denunciation (Netherlands). ⁴⁶⁶

456 Ibid.

Netherlands: automatic denunciation on 19 April 2013 by Convention No. 183; Spain: ratified 17 August 1965 with the exception of persons specified in Article 7, paragraph 1(d).

458 ILO Normlex, Ratifications of C183 – Maternity Protection Convention, 2000 (No. 183). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312328:NO

459 Ibid.

Germany: ratified 30 September 2021 (will enter into force 30 September 2022) and period of maternity leave 14 weeks; Netherlands: ratified 15 January 2009 and period of maternity leave 16 weeks.

460 Ibid.

461 ILO Normlex, Ratifications of C117 – Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117).

Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312262:NO

462 Ibid.

Spain: ratified 8 May 1973

463 Ibid.

464 ILO Normlex, Ratifications of C118 – Equality of Treatment (Social Security) Convention, 1962 (No. 118). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312263:NO

465 Ibid.

France: ratified 13 May 1974 and accepted Branches (a) to (d), (f), (g) and (i); Germany: ratified 19 March 1971 and accepted Branches (a) to (c), (g) and (h); Mexico: ratified 6 January 1978 and accepted Branches (a) to (g);

Netherlands: denounced on 20 December 2004.

466 Ibid.

ILO Prevention of Major Industrial Accidents Convention, 1993 (No. 174)	No action taken. ⁴⁶⁷	Ratified by Netherlands. No action taken by France, Germany, Mexico, Spain, United Kingdom or United States. ⁴⁶⁸	18 ratifications. ⁴⁶⁹
ILO Occupational Safety and Health Convention, 1981 (No. 155) and its 2002 Protocol (P155)	Ratified 7 September 1982. No action taken on Protocol. ⁴⁷⁰	Convention ratified by Netherlands and Spain. No action taken by these States on the Protocol. No action taken by France, Germany, Mexico, United Kingdom or United Kingdom. ⁴⁷¹	Convention: 74 ratifications; Protocol: 17 ratifications. ⁴⁷²
ILO Convention on Occupational Health Services, 1985 (No. 161)	No action taken. ⁴⁷³	Ratified by Germany and Mexico. No action taken by France, Netherlands, Spain, United Kingdom or United States. ⁴⁷⁴	35 ratifications. ⁴⁷⁵
ILO Promotional Framework for Occupational Safety and Health	Ratified 5 August 2008. ⁴⁷⁶	Ratified by France, Germany, Spain and United Kingdom.	57 ratifications. ⁴⁷⁸

467 ILO Normlex, Ratifications of C174 – Prevention of Major Industrial Accidents Convention, 1993 (No. 174).

Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312319:NO

468 Ibid.

Netherlands: ratified 25 March 1997.

469 Ibid.

470 ILO Normlex, Ratifications of C155 – Occupational Safety and Health Convention 1981 (No. 155). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312300:NO and

ILO Normlex, Ratifications of P155 – Protocol of 2002 to the Occupational Safety and Health Convention, 1981.

Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312338:NO

471 Ibid.

Netherlands: ratified 22 May 1991; Spain: ratified 11 September 1985.

472 Ibid.

473 ILO Normlex, Ratifications of C161 – Occupational Health Services Convention, 1985 (No. 161). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312306:NO

474 Ibid.

Germany: ratified 17 October 1994; Mexico: ratified 17 February 1987.

475 Ibid.

476 ILO Normlex, Ratifications of C187 – Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312332:NO

478 Ibid.

Convention, 2006 (No. 187)_		No action taken by Mexico, Netherlands or United States. ⁴⁷⁷	
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⁴⁷⁷ Ibid.

France: ratified 29 October 2014; Germany: ratified 21 July 2010; Spain: ratified 5 May 2009; United Kingdom: ratified 29 May 2008.

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