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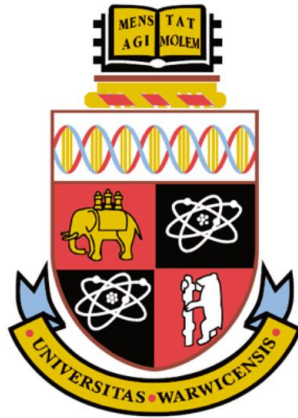
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The effectiveness of corporate human rights self-regulation: empirical research into the Tanzanian tea industry

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Thesis submitted for the degree of
Doctor of Philosophy

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October 2019

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ABBREVIATIONS

Antiretroviral Therapy [ART]

Collective Bargaining Agreement [CBA]

Commission for Human Rights and Good Governance [CHRAGG]

Corporate Social Responsibility [CSR]

Environmental and Social Management System [ESMS]

Ethical Tea Partnership [ETP]

Field Force Unit [FFU]

Financial Year [FY]

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome [HIV/AIDS]

International Covenant on Civil and Political Rights [ICCPR]

International Covenant on Economic, Social, and Cultural Rights [ICESCR]

International Federation of Organic Agriculture Movements [IFOAM]

International Labour Organisation [ILO]

Legal and Human Rights Centre [LHRC]

Ministry of Labour, Youth and Employment Development [MoLEYD]

Mufindi Tea and Coffee Limited [MTC]

National Action Plan [NAP]

National Contact Point [NCP]

Non-Governmental Organisation [NGO]

Occupational Health and Safety [OHS]

Occupational Safety and Health Administration [OSHA]

Organisation for Economic Co-operation and Development [OECD]

OECD Guidelines for Multinational Enterprises [OECD Guidelines]

Personal Protective Equipment [PPE]

Sexually Transmitted Disease [STD]

Tanzania Plantation and Agricultural Workers Union [TPAWU]

Tanzanian Union of Industrial and Commercial Workers [TUICO]

Tea Association of Tanzania [TAT]

Tanganyika Law Society [TLS]

Tanzania Women Lawyers Association [TAWLA]

Trade Union Congress of Tanzania [TUCTA]

United Kingdom [UK]

United Nations [UN]

United Nations Guiding Principles on Business and Human Rights [UNGPs]

United States [US]

Workers' Compensation Fund [WCF]

ACKNOWLEDGMENTS

I would first like to thank my supervisor, Prof. James Harrison, for the countless hours of support and advice (PhD- or life-related), reassurance, and encouragement! I cannot thank you enough for making me feel like a valuable member of the Law School and of this field, and for opening so many doors for me.

I also owe a huge debt of gratitude to the Centre for Human Rights in Practice for generously contributing to this thesis's fieldwork, and to all the interviewees who agreed to take part in this research. Also, to everyone in the Law School for being so supportive.

I am immensely grateful to Jaba Shadrack for being a wonderful friend, and for kindly sharing your Tanzanian contacts, experience, and expertise (asante sana!) Discovering Tanzania with you was fascinating – hopefully see you there soon!

I would like to thank Zaina Athumani for being so much more than a translator: a friend, a companion, and a great lawyer on top of it all. I still miss our dinners at Mama's in Mafinga!

Thank you also to Mark Wielga and Kendyl Salcito for generously advising me on all matters related to business and human rights, and for their insight on the realities of empirical research. Your work is truly an inspiration.

I also owe a huge debt of gratitude to my wonderful parents, who are always supportive (even of the crazy idea of spending three years on a single project) and to whom I will always be immensely grateful. Merci, merci, merci!

I would also like to thank my friends and family, who have had to bear with me and this research for quite a long time and who will never have to hear to the word 'thesis' again, I promise.

Finally, I am eternally grateful to my amazing life companion and the most metal microbiologist in the world, James Kerr – thank you so much for living and breathing this thesis with me, and for taking such good care of our family.

DECLARATION

This thesis is submitted to the University of Warwick in support of my application for the degree of Doctor of Philosophy. It has been composed by myself and has not been submitted in any previous application for any degree.

ABSTRACT

This thesis explores the extent to which voluntary self-regulatory mechanisms are effective in ensuring that companies meet their international human rights responsibilities. First the thesis develops a typology of corporate self-regulatory mechanisms which differentiates, most importantly, between company-level (e.g. human rights policies, industry codes of conduct, international human rights conventions) and product-level (e.g. certification labels) self-regulatory mechanisms. The thesis argues that the effectiveness of company-level and product-level mechanisms should be evaluated collectively because (1) companies view them as component parts of their overarching human rights/sustainability strategies, and (2) they address many of the same human rights issues.

The literature on self-regulation is then explored and a series of characteristics are identified for effective self-regulation, such as an inclusive drafting process, internal and external communication of standards, and clear sanctioning guidelines. A case study is then undertaken of three tea firms operating in Tanzania with differentiated levels of commitment to company/product level self-regulation. Field research was carried out in Tanzania involving 161 interviews. The field research identifies various positive human rights impacts of the self-regulatory mechanisms examined, but also serious deficiencies in design and implementation as well as inherent limitations in what human rights-based approaches can achieve when seeking to address critical social problems in challenging environments. Some of the characteristics for effective self-regulation which were earlier identified are found to be particularly important to well-functioning mechanisms, such as the inclusion of a comprehensive set of human rights, management's genuine motivation, training of workers and managers, and third-party monitoring with significant consequences for non-compliance. However, a number of additional factors are also identified which are critical to improve corporate human rights performance, such as the conditions under which bottom-up action from affected stakeholders occurs and the state of the company's financial resources.

On the basis of this case study, conclusions are therefore drawn about the effectiveness of self-regulatory mechanisms in the context of the Tanzanian tea industry. Suggestions are also made for further work that is then needed to address the issue of effectiveness of voluntary self-regulatory mechanisms in other industries and geographical settings.

Chapter 1 – Introduction

Out of the 200 biggest economies worldwide, 43 are countries and 157 are corporations^{1 2}. This shows how increasingly powerful business enterprises are around the world, benefitting from enormous financial resources. Proportionately, the potential for (positive or negative) impact of business activities on human rights is tremendous wherever they operate – although this concern is also valid for smaller companies, and all business activities may have an impact on the rights of their employees and local communities. In this context, academic scholarship has increasingly acknowledged the legal human rights responsibilities of corporations. However, the main challenge lies with the enforcement of these international norms. Governments have been slow to domestically address them in a context of economic liberalisation and general deregulation. Other regulatory mechanisms – such as corporate self-regulation – have emerged in parallel in the past few decades to fill this regulatory vacuum³, creating a system of transnational private governance⁴.

1.1.Aims of the thesis and research questions

Exploring corporate self-regulation, this thesis strives to understand and systematise the different mechanisms used by firms when they commit to abide by human rights standards⁵, and to develop a methodology for testing their effectiveness. This thesis therefore explores whether voluntary corporate self-regulation is effective⁶ in helping

¹ Global Justice Now, 'Corporations Data', 2017, <https://docs.google.com/spreadsheets/d/12Jdgaz_qGg5o0m_6NCU_L9otur2x1Y5NgbHL26c4rQM/edit#gid=1364122473> (accessed 11 October 2019)

² Past rankings had compared countries' Gross Domestic Product with corporate revenues, which was criticised for lack of rigour in using indicators of different nature; addressing this issue, Global Justice Now compares state and corporate revenues in their 2017 ranking.

³ Laura T. Raynolds, Douglas Murray, and Andrew Heller, 'Regulating sustainability in the coffee sector: A comparative analysis of third-party environmental and social certification initiatives', *Agriculture and Human Values* 24, 2007, 147, 148.

⁴ Gary Gereffi, Ronie Garcia-Johnson, and Erika Sasser, 'The NGO-Industrial Complex', *Foreign Policy* 125, 2001, 56, 65.

⁵ However, it is notable that, whether or not companies decide to voluntarily commit to respecting human rights principles, they have, in any case, international human rights responsibilities.

⁶ I will adopt a definition of 'effectiveness' derived from the ones offered by Oran Young (*The effectiveness of international environmental regimes: causal connections and behavioural regimes*,

businesses meet their international human rights responsibilities. There has been a general effort in the past two decades towards more respectful business practices but it is difficult to determine whether the situation has really improved on the ground: while the standards adopted by corporations are publicly available, their implementation and effectiveness on the ground remain for the most part obscure.

Before going any further, it is important to define voluntary corporate self-regulation. Although it may be difficult to give a general but precise definition because of the variety of forms it may take⁷, it is commonly used to describe attempts by corporations to voluntarily adopt internal rules on their own behaviour with no external coercive constraints⁸. Corporations commonly self-regulate by adopting, or committing to, the following mechanisms: corporate policies and codes of conduct, intergovernmental instruments, industry-level mechanisms, multi-stakeholder initiatives, and certification labels. It is acknowledged that not all these self-regulatory tools may be considered ‘mechanisms’ as they do not all include implementation processes. However, firms use these different types of self-regulation (including those with no built-in implementation process) as part of their human rights strategy. For the purpose of comprehensively assessing the effectiveness of self-regulation (and for ease of reading), I will therefore refer to all of them as ‘self-regulatory mechanisms’.

All these mechanisms have human rights dimensions, as I will explain in more detail later in this chapter. Because of the influence of the United Nations Guiding Principles on Business and Human Rights [UNGPs], which I will explore below, I will follow in this thesis the definition of corporate human rights responsibilities as set out in this framework, and therefore understand such responsibilities “as those expressed, [at a minimum], in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International labour Organisation’s

MIT Press, 1999, 5) and Edwin Stene (‘An approach to a science of administration’, *American Political Science Review* 34(6), 1940, 1124, 1127): the effectiveness of a mechanism is the extent to which a mechanism carries out its purpose, which includes the extent to which rules are followed, policies are accordingly changed, and programmes initiated to ensure implementation.

⁷ Neil Gunningham and Joseph Rees, ‘Industry Self-Regulation: An Institutional Perspective’, *Law & Policy* 19(4), 1997, 363, 364.

⁸ David Graham and Ngaire Woods, ‘Making Corporate Self-Regulation Effective in Developing Countries’, *World Development* 34(5), 2006, 868, 869; John W. Maxwell, Thomas Peyton Lyon, and Steven Curtis Hackett, ‘Self-regulation and social welfare: The political economy of corporate environmentalism’, *The Journal of Law and Economics* 43(2), 2000, 583, 584; and *ibid*, 364-365.

Declaration on Fundamental Principles and Rights at Work”, as set out in the UNGPs.

It is important to note that this thesis will look at the various mechanisms *together*, and not focus only on one type of self-regulation, for several reasons. First, I will argue that, all the mechanisms have – to some extent – the same aims. Second, they are all commonly used by corporations as complementary elements of a single strategy. Third, authors writing about mechanisms find broadly similar features helping guarantee the mechanisms’ effectiveness: inclusive drafting process; inclusion of a comprehensive set of human rights; training of stakeholders; strong monitoring and reporting systems; and a clearly defined sanctioning process. It is therefore important to study all mechanisms together, in order to comprehensively assess the value of corporate human rights self-regulation as a driver of change on the ground. Such an approach is particularly needed since, as will become clear, very few studies have empirically and holistically investigated the impact of corporate self-regulation on human rights. This thesis, by addressing the following research question, aims to contribute to filling that gap: ‘to what extent is it possible to evaluate the effectiveness of voluntary corporate self-regulatory mechanisms in ensuring that companies meet their international human rights responsibilities?’

And, to help answer the main question, three sets of sub-questions have been developed:

- (1) What are the self-regulatory mechanisms used by corporations to improve their human rights performance? Why should one analyse them collectively? (This set of sub-questions will be answered in Chapters 1 and 2);
- (2) What academic scholarship has been undertaken which evaluates their effectiveness from a human rights perspective? How does one develop a methodology for testing out the human rights effectiveness of these mechanisms ‘on the ground’? (These questions will be answered in Chapters 3 and 4);
- (3) Testing out that methodology, what kind of effect do these mechanisms have on corporate human rights performance with regard to a particular industry in a particular geographical setting? To what extent are those findings generalisable to other industries and geographical settings? (These questions will be answered in Chapters 5 to 8.)

In order to answer these questions, this thesis will engage with a number of academic literatures. I will start in this chapter by reviewing the relevant literature around corporate human rights responsibilities, which will allow me to define the nature and extent of such responsibilities. I will then review the literature around corporate human rights self-regulation, which I will use in Chapter 2 to develop a typology of the different self-regulatory mechanisms used by firms. In this typology, I will differentiate between company- and product-level mechanisms, broadly based on the scope of applicability of their human rights standards within firms. Building on this, I will engage in Chapter 3 with the (theoretical and applied) literature on effectiveness of self-regulation, in order to analyse the ‘key features’ identified by authors as helping make the different types of mechanisms effective. This will allow me to develop a framework for analysis of the effectiveness of self-regulation, which I will use in my case study of three tea corporations operating in Tanzania. I will then outline my empirical methodology in Chapter 4 before investigating in Chapters 5, 6, and 7 the human rights performance of the firms and the impact of mechanisms. Using my framework for analysis, the linked assessment of the three companies will allow in Chapter 8 for the evaluation of the effectiveness of the different self-regulatory mechanisms and for the identification of any other influential factors⁹.

This introductory chapter is structured as follows: first, I will review the theoretical debates around corporate human rights responsibilities; second, I will introduce the various mechanisms explored by academic scholars to ensure that firms meet such responsibilities; third, I will briefly explain this thesis’s methodology; and finally, I will outline the structure of this thesis.

1.2. Academic debates around corporate human rights responsibilities

Academic debates around corporate human rights responsibilities have considerably shifted in the past seventy years. They no more focus on *whether* businesses have human rights responsibilities but rather on the *extent* of corporate human rights

⁹ This may cover national legislation, collective bargaining agreements, or pressure from external actors such as local government representatives.

responsibilities¹⁰. Indeed, it is now widely accepted that private corporate entities must consider the human rights impact of their activities, and that they have a responsibility to limit negative impacts. In this section I will therefore first investigate the context for this shift and the progressive recognition that corporations have human rights responsibilities. Secondly, I will briefly look into the source of such responsibilities. Third, I will explore the extent of corporate human rights responsibilities as debated by the literature. Building on this, the next section will explore the mechanisms which corporations have adopted to respond to these responsibilities.

1.2.1. Increased corporate power with increased corporate responsibilities?

In the past few decades, a growing corporate accountability gap (mostly affecting multinational corporations, but relevant to all types of firms) has been identified by scholars, resulting from three simultaneous phenomena: first, the global deregulation taking place since the 1980s¹¹ has led to the decreased willingness and/or ability of governments to regulate corporate behaviour; second, and linked to the first point, firms may engage in ‘jurisdiction shopping’, which means that they may choose where to conduct business (and possibly the jurisdiction with fewer regulations)¹²; third, the scale of contemporary global production has challenged the capacity of states to regulate activities that extend beyond their borders¹³. This leaves a regulatory gap which is particularly problematic in developing countries¹⁴ and which self-regulation proposes to fill¹⁵.

¹⁰ Michael Addo and Jena Martin, ‘The evolving business and society landscape: Can human rights make a difference?’, in Jena Martin and Karen Bravo, (eds.), *The Business and Human Rights Landscape – Looking Forward and Looking Back*, Cambridge University Press, 2015, 348; Florian Wettstein, ‘Normativity, Ethics and the UN Guiding Principles on Business and Human Rights: A Critical Assessment’, *Journal of Human Rights* 14(2), 2015, 162, 164; and James Harrison and Sharifah Sekalala, ‘Addressing the compliance gap? UN initiatives to benchmark the human rights performance of states and corporations’, *Review of International Studies* 41, 2015, 925, 927.

¹¹ Mathias Koenig-Archibugi, ‘Transnational Corporations and Public Accountability’, *Government and Opposition*, 39(2), 2004, 234, 246.

¹² Ibid, 257.

¹³ Kenneth Abbott and Duncan Snidal, ‘The Governance Triangle: Regulatory Standards Institutions and The Shadow of the State’, in Walter Mattli and Ngaire Woods (eds.), *The Politics of Global Regulation*, Princeton University Press, 2009, 44.

¹⁴ Koenig-Archibugi (n. 11), 258.

¹⁵ David Vogel, ‘The Private Regulation of Global Corporate Conduct Achievements and Limitations’, *Business & Society* 49(1), 2010, 68, 73.

In this context, it has become generally accepted among scholars that increased globalisation and the presence of corporations in many countries and continents have helped produce a shift in the past century in international power relations¹⁶. This has led most authors to call for a redefinition of public and private entities' responsibilities, and some to state that companies now hold more control over certain human rights than states themselves.

Indeed, Gerald Frug questioned in 1984 the distinctive status of public and private entities altogether when they share many common features¹⁷ and when the legal arguments articulated in defence of their power are applicable to both kind of entities¹⁸. Professor Frug refers¹⁹ to a case of the Supreme Court of the United States of America²⁰ [US], dating back to 1949, in which two judges argued that, in recognition of corporate power, firms should no longer be recognised as “persons” protected from government control by the fourteenth amendment of the US constitution. Alfred Chandler wrote in 1977 that the exponential growth and concentration of (American) corporate power goes back to the American Civil War²¹, whereas Wesley Cragg, writing in 2000, places it a century later and argues that, because of the advance of economic globalisation and the growing power and influence of multinational corporations, the social contract in place since after the Second World War (assigning responsibility for generating wealth to business and ensuring the equitable sharing of wealth to governments) is no longer viable²². He called for a new social contract that shares responsibility for human rights and related ethical responsibilities. Michael Addo and Jena Martin take a slightly different approach and argue that the traditional separation between the functioning of economic undertakings (which are run following the principles of the free market) and the social and moral expectations of society (which are seen as the responsibility of political authorities) is unsustainable

¹⁶ Graham and Woods (n. 8), 868; and Stephen Botromley ‘Taking Corporations Seriously: Some Considerations For Corporate Regulation’, *Federal Law Review* 19, 1990, 203, 221.

¹⁷ Gerald Frug, ‘The Ideology of Bureaucracy in American Law’, *Harvard Law Review* 97(6), 1984, 1276, 1278.

¹⁸ Gerald Frug, ‘The City as a Legal Concept’, *Harvard Law Review* 93(6), 1980, 1057, 1141.

¹⁹ See *ibid*, 1133.

²⁰ *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 576, 1949 (Douglas, J., dissenting, joined by Black, J.), as cited in Frug, ‘The City as a Legal Concept’ (n. 18), 1133.

²¹ Alfred Chandler, *The Visible Hand: The Managerial Revolution in American Business*, Harvard University Press, 1977, as cited in Frug, ‘The City as a Legal Concept’ (n. 18), 1138.

²² Wesley Cragg, ‘Human Rights and Business Ethics: Fashioning a New Social Contract’, *New England Journal of Public Policy* 16(2), 2000, 205, 205.

and unrealistic, leading to a search for standards “that credibly blend the economic, the social and the moral imperatives that exist in society”²³. They trace this “campaign” on corporate social responsibility [CSR] to the Second World War, and state that it is due to the social changes resulting from the prominent roles in the economic and social restructuring of society played by corporate entities²⁴. Moreover, Diane Swanson writes that there is a general acknowledgment within the relevant literature that the modern corporation operates on an expanded scale that requires a new business and societal relationship²⁵. Douglas Cassel goes further and writes that this shift in responsibilities from the public to the private sector has led to a loss of power for governments and intergovernmental organisations²⁶, who may therefore “lack effective power to safeguard basic rights” while this power has increasingly come to rest in the private hands of multinational corporations “for an important spectrum of rights”²⁷. This power transfer may be linked to the regulatory vacuum left by global liberalisation, as explained at the beginning of this section. Keith Davis, David Kinley, and Junko Tadaki²⁸ agree to some extent with Douglas Cassel but write that transnational companies’ power must be accompanied by commensurate responsibility under international human rights law²⁹ – although they merely argue for a redistribution of responsibilities that would match the power shift experienced by states and companies. I will explore further the extent to which authors consider that corporations have human rights responsibilities in the third part of this section.

It is therefore clear that authors generally agree that the shift in power between states and corporations in the past few decades challenges the traditionally defined social contract. Some scholars go particularly far in their assessment of this phenomenon and explain that this shift means that corporations have more power than states over a significant spectrum of rights. Others argue that corporate power must be accompanied

²³ Addo and Martin (n. 10), 351.

²⁴ Ibid, 352; and Michael Addo, ‘The Reality of the United Nations Guiding Principles on Business and Human Rights’, *Human Rights Law Review* 14(1), 2014, 133, 146.

²⁵ Diane Swanson, ‘Addressing a Theoretical Problem by Reorienting the Corporate Social Performance Model’, *Academy of Management Review* 20(1), 1995, 43, 51.

²⁶ Douglass Cassel, ‘Corporate Initiatives: A Second Human Rights Revolution?’, *Fordham International Law Journal* 19(5), 1996, 1963, 1984.

²⁷ Ibid.

²⁸ Keith Davis, ‘Can Business Afford to Ignore Social Responsibilities?’, *California Management Review* 2(3), 1960, 70, 71; and David Kinley and Junko Tadaki, ‘From Talk to Walk: The Emergence of HR responsibilities for corporations at international law’, *Virginia Journal of International Law* 44(4), 2004, 931, 935.

²⁹ Keith Davis only refers to “social responsibility”.

by corporate responsibility. Building on this, I will first explore the issue of the source of corporate human rights responsibilities, and secondly their nature and extent, as discussed and progressively recognised the relevant literature.

1.2.2. International law and corporate human rights responsibilities

Scholars have written about the source of corporate human rights responsibility. Some authors consider that international norms directly oblige corporations to respect human rights. Lance Compa and Tashia Hinchliffe-Darricarrère³⁰ point out that it has not always been the case, as the globalisation of the economy and the globalisation of human rights concerns developed separately from each other in the second half of this century. However, Beth Stephen³¹ writes that it is precisely the great strides made in the past decades by international law in articulating human rights obligations applicable to corporations that allowed for greater corporate accountability. This echoes Diane Orentlicher and Timothy Gelatt's thesis³² that international human rights law provides an objective basis for identifying corporate human rights responsibilities. Steven Ratner³³ and Upendra Baxi³⁴ have similarly identified businesses' responsibilities under international law, although the latter deplores that these obligations remain at the level of "the law in the making", "high on a wish list" because the "eminently state-centric human rights discourse extends primarily to state actors, and is thus not entirely open to translocation to the real world of trade, business and industry". This is indeed one of the main challenges of the field of business and human rights, as I will explore later in this thesis: the translation of high-level human rights principles into implementable – and implemented – corporate standards.

Some authors also argue that corporate human rights obligations may stem from national regulation. For instance, Daniel Augenstein and David Kinley argue that

³⁰ Lance Compa and Tashia Hinchliffe-Darricarrère, 'Enforcing International Labor Rights through Corporate Codes of Conduct', *Columbia Journal of Transnational Law* 33, 1995, 663, 665.

³¹ Beth Stephen, 'The Amoral of profit – Transnational Corporations and Human Rights', *Berkeley Journal of International Law* 20(1), 2002, 21, 68.

³² Diane Orentlicher and Timothy Gelatt, 'Public Law, Private Actors: The Impact of Human Rights on Business Investors in China Symposium: Doing Business in China', *Northwestern Journal of International Law & Business* 14(1), 1993, 66, 68.

³³ Steven Ratner, 'Corporations and Human Rights: A Theory of Legal Responsibility', *Yale Law Journal* 111(3), 2001, 443, 449.

³⁴ Upendra Baxi, 'Market Fundamentalisms: Business Ethics at the Altar of Human Rights', *Human Rights Law Review* 5(1), 2005, 1, 14.

business entities are in practice legally bound to respect human rights in their global operations via the medium of state regulation and control³⁵, and Jill Murray calls for a binding and consistent set of labour standards which are subject to appropriate monitoring and enforcement³⁶. Some states have recently adopted legislation (although most have, to the contrary, been liberalising their economies³⁷, as explained earlier) allowing for greater responsibility for corporate human rights violations. For instance, the United Kingdom [UK] adopted in 2015 the Modern Slavery Act and France their Duty of Vigilance Law³⁸ in 2017, both focusing on human rights due diligence and reporting. In the US, the 1789 Alien Tort Claims Act is nowadays used for the remediation of human rights abuses allegedly committed abroad by corporations. It is interesting to see that some states are trying to strengthen the accountability mechanisms at their disposal to control and monitor the human rights performance of firms at home and abroad – and that these instruments may include legally-defined corporate human rights responsibilities. However, as state-based regulation is not the focus on my thesis, I will not explore these legislative instruments in more details.

It is now clear that authors generally agree that companies do have human rights responsibilities under international law, although some scholars also consider that such responsibilities are included under national law. Moving beyond the issue of the source of corporate human rights responsibilities, I will now investigate their nature and extent, as discussed in the relevant literature.

1.2.3. Extent of corporate human rights responsibilities

Section 1.2.1. outlined the reasons which motivated some authors to call for a redefinition of corporate responsibilities as including, to some extent, human rights aspects. I will build on this global context to explore the academic debate on the nature

³⁵ Daniel Augenstein and David Kinley, ‘When Human Rights ‘Responsibilities’ become ‘Duties’: The Extra-Territorial Obligations of States that Bind Corporations’, in David Bilchitz and Surya Deva (eds.), *Human Rights Obligations Of Business: Beyond The Corporate Responsibility To Respect?*, Cambridge University Press, 2013, 275.

³⁶ Jill Murray, ‘Corporate Codes of Conduct and Labour Standards’, *Corporate Codes of Conduct*, Paper 7, 1998, 1, 60.

³⁷ Dara O’Rourke, ‘Multi-stakeholder Regulation: Privatizing or Socializing Global Labor Standards?’, *World Development* 34(5), 2006, 899, 899.

³⁸ LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

and extent of corporate human rights responsibilities. To do so, I will first briefly outline the evolution of academic opinions before investigating the current debate, which focuses on how far corporate responsibility should go, and how corporations should be held to account for human rights violations.

The extent to which corporations have human rights responsibilities (and even their mere existence) has been widely debated in the literature. In 1979, Archie Carroll summarised the different academic trends from that time regarding CSR, ranging from profit-making only (Friedman³⁹), all the way to corporate social responsiveness, which places the emphasis on what the role of corporations should be in the long-run in a dynamic social system (Ackerman and Bauer, Sethi)⁴⁰. Building on scholars' views, Carroll explains that corporate social responsibilities include the economic, legal, ethical, and discretionary expectations – in the order of weight afforded by the author to each category – which society has of organisations at any given point in time^{41 42}.

Today, academic debates no more focus on *whether* businesses have human rights responsibilities but rather on the *extent* of corporate human rights responsibilities⁴³. Indeed, most authors have now accepted the idea that corporations have, to some extent, human rights responsibilities. Indeed, Diane Swanson argued in 1995 that many researchers had been interested in defining corporate responsibility for social progress that matches an expanded agenda of human rights issues and needs⁴⁴. Eight years later, Scott Pegg explained that there had been a noticeable shift in the previous decade toward the recognition of the social responsibility of corporations⁴⁵ and Michael Addo and Jena Martin wrote in 2015 that the fact that business entities had social

³⁹ Milton Friedman famously argued in 1962 in favour of restricting the social responsibility of corporations to “making as much money for their stockholders as possible”. (Milton Friedman, *Capitalism and Freedom*, University of Chicago Press, 1962, 133.)

⁴⁰ Archie B. Carroll, ‘A three-dimensional conceptual model of corporate performance’, *Academy of management review* 4(4), 1979, 497, 499.

⁴¹ Ibid, 500.

⁴² This is the basis for Carroll’s ‘corporate social performance model’. In order to help scholars to “locate works within a broad model of business-society relationships”, Donna Wood also proposed such a model, although hers was based upon principles of corporate social responsibility, processes of corporate social responsiveness, and outcomes of corporate behaviour. (Donna Wood, ‘Corporate social performance revisited’, *Academy of management review* 16(4), 1991, 691, 691.)

⁴³ Addo and Martin (n. 10), 348; and Wettstein, ‘Normativity, Ethics and the UN Guiding Principles on Business and Human Rights: A Critical Assessment’ (n. 10), 164.

⁴⁴ Swanson (n. 25), 52.

⁴⁵ Scott Pegg, ‘An Emerging Market for the New Millenium: Transnational Corporations and Human Rights’, in Jędrzej Frynas and Scott Pegg (eds.), *Transnational Corporations and Human Rights*, Springer, 2009, 8.

responsibilities was no longer as contentious an issue as it used to be⁴⁶. A year later, Denis Arnold identified multiple, compelling, and overlapping justifications of corporate human rights obligations⁴⁷. And indeed, Klaus Leisinger, Special Advisor to the UN Secretary General on the Global Compact, stated in 2006 that all companies must avoid direct or indirect involvement with human rights abuses⁴⁸ and the United Nations [UN] Human Rights Council endorsed in 2011 a framework allocating responsibility to corporations for human rights violations (the UNGPs)⁴⁹, and the author of the framework has written that businesses themselves have acknowledged some responsibility⁵⁰. However, the nature and extent of these responsibilities as well as their consequences are still debated⁵¹, and scholars' opinions broadly sit on a spectrum.

On one end of the spectrum, authors such as Paul Walken and William Mc Donough write that, because corporations are the “dominant institutions of the planet”, they *must* address the social and environmental problems that affect humankind *in order to fulfil their social contract*⁵². However, this view is not widely shared. On the other end of the spectrum, some authors mainly consider that corporations should not get involved with entities which commit human rights abuses, such as governments. Indeed, Steven Ratner assigned human rights responsibilities to corporations “insofar as their activities infringe upon the human dignity of those with whom they have special ties” and “insofar as [businesses] cooperate with those actors whom international law already sees as the prime sources of abuses – states”⁵³. This echoes Andrew Clapham and Scott Jerbi's conclusion⁵⁴ that international law considers that intentional

⁴⁶ Addo and Martin (n. 10), 348.

⁴⁷ Denis Arnold, ‘Corporations and Human Rights Obligations’, *Business and Human Rights Journal* 1(2), 2016, 255, 255.

⁴⁸ Klaus Leisinger, ‘On Corporate Responsibility for Human Rights’, 2006, 17.

⁴⁹ Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations’ “Protect, Respect and Remedy” Framework’ (hereinafter ‘UNGPs’), A/HRC/17/31, 21 March 2011. Please see Section 2.2.1.2.1. for more details.

⁵⁰ John Ruggie, ‘Global Governance and “New Governance Theory”: Lessons from Business and Human Rights’, *Global Governance* 20, 2014, 5, 13.

⁵¹ Addo and Martin (n. 10), 348.

⁵² Paul Walken and William Mc Donough, ‘Seven Steps to Doing Good Business’, *Inc.*, 1993, 79, 80; Christine Parker, *The Open Corporation: Effective Self-regulation and Democracy*, Cambridge University Press, 2002, 2; and Richard Barnett and Ronald Müller, *Global reach: the power of the multinational corporations*, Simon and Schuster, 1974, 363.

⁵³ Ratner (n. 33), 449.

⁵⁴ Andrew Clapham and Scott Jerbi, ‘Categories of Corporate Complicity in Human Rights Abuses’, *Hastings International and Comparative Law Journal* 24(3), 2001, 339, 349.

participation of a corporation in an internationally wrongful act constitutes complicity in the breach of international human rights law.

Taking a more middle ground approach, authors such as David Kinley and Junko Tadaki argue that companies “do have duties to prevent human rights abuses [...] where they maintain close connections with potential victims or potential perpetrators”⁵⁵, consider that corporations also have the responsibility to prevent abuses when firms generally are in a position to influence the level of enjoyment of human rights⁵⁶. This broadens the scope of corporate responsibilities. Similarly, Diane Orentlicher and Timothy Gelatt define corporate responsibilities as the responsibility to ensure that firms’ actions do not, however inadvertently, contribute to the systematic denial of human rights⁵⁷.

Finally, part of the literature assesses corporate human rights responsibilities by linking firms’ responsibility to their proximity to the violations. For instance, Barbara Frey⁵⁸ states that the continuum of human rights responsibilities of corporations is constructed according to the relationship between the corporations’ activities in a country, and the degree to which human rights are respected in that country. Similarly, Cassel⁵⁹ suggests that the level of responsibility for a corporation depends on the proximity of the corporation's operations to human rights violations, in combination with the seriousness of the violations. He then outlines five gradations of responsibility: treatment of firm or contractor employees; directly supporting the repressive activities of a repressive regime; supporting the non-repressive activities of a repressive regime; corporate advocacy on issues related to its operations; corporate advocacy on issues not directly related to its operations.

The debate around the scope of corporate human rights obligations as explored above was reshaped by the adoption of the UNGPs in 2011 by the UN Human Rights Council, three years after the publication of the “Protect, Respect, and Remedy” framework by John Ruggie and his team. The Guiding Principles are grounded in recognition of “the role of business enterprises as specialized organs of society performing specialized

⁵⁵ Kinley and Tadaki (n. 28), 964.

⁵⁶ Ibid.

⁵⁷ Diane Orentlicher and Timothy Gelatt (n.32), 68.

⁵⁸ Barbara Frey, ‘The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights’, *Minnesota Journal of International Trade* 6, 1997, 153, 180.

⁵⁹ Cassel, ‘Corporate Initiatives: A Second Human Rights Revolution?’ (n. 26), 1964.

functions, required to comply with all applicable laws and to respect human rights.” The UNGPs were generally celebrated as an advancement⁶⁰ in the prevention and remediation of corporate human rights abuses. As Florian Wettstein explains⁶¹, by complementing governments’ duty to protect with direct corporate responsibilities, Professor Ruggie “move[s] decisively beyond the traditional view”, and “has effectively abandoned state-exclusivity in human rights matters”: the UNGPs signal a shift in the mainstream debate, traditionally conservative, towards shared responsibility. However, Wettstein also highlights the inherent danger of the voluntary nature of the instrument, which would be stripping corporate responsibility to its bare minimum⁶². Some authors also criticised the instrument for not going far enough, including because it maintains the main responsibility on states⁶³.

Beyond debates about its value, the framework has had a deep influence on the field. Most articles⁶⁴ written after the publication of the tripartite framework and of the UNGPs build upon the principles outlined within these two complementary documents – or, at the least, make reference to them. Florian Wettstein stated that the business and human rights debate today revolves around it⁶⁵, and Peter Muchlinski qualified the debate set in motion by John Ruggie and the Guiding Principles as “perhaps the most comprehensive discussion to date of the relationship between corporations and human rights”⁶⁶. Larry Catá Backer concurs, in particular regarding the elaboration of a corporate governance framework that is meant to apply concurrently with corporate

⁶⁰ Nicola Jägers, ‘The UN Guiding Principles, Making Headway Towards Real Corporate Accountability?’, *Netherlands Quarterly of Human Rights* 29(2), 2011, 159, 159; Larry Catá Backer, ‘From Institutional Misalignments to Socially Sustainable Governance: The Guiding Principles for the Implementation of the United Nations Protect, Respect and Remedy and the Construction of Inter-Systemic Global Governance’, *Pacific McGeorge Global Business & Development Law Journal* 25, 2012, 69, 98; and Wettstein, ‘Normativity, Ethics and the UN Guiding Principles on Business and Human Rights: A Critical Assessment’ (n. 10), 163.

⁶¹ Wettstein, ‘Normativity, Ethics and the UN Guiding Principles on Business and Human Rights: A Critical Assessment’ (n. 10), 166.

⁶² Ibid.

⁶³ Robert Blitt, ‘Beyond Ruggie’s Guiding Principles on Business and Human Rights: Charting an Embracive Approach to Corporate Human Rights Compliance’, *Texas International Law Journal* 48(1), 2012, 33, 44.

⁶⁴ E.g. *ibid*; Florian Wettstein, ‘CSR and the Debate on Business and Human Rights: Bridging the Great Divide’, *Business Ethics Quarterly* 22(4), 2015, 739.

⁶⁵ Wettstein, ‘CSR and the Debate on Business and Human Rights: Bridging the Great Divide’ (n. 64).

⁶⁶ Peter Muchlinski, ‘Implementing the New UN Corporate Human Rights Framework: Implications for Corporate Law, Governance, and Regulation’, *Business Ethics Quarterly* 22, 2012, 145, 145.

obligations under the laws of the jurisdiction in which they operate, which he considers one of the greatest advancements of this framework⁶⁷.

The way the broader debates in the field have shifted over the years may also be reflected in the changing opinion of certain authors. For instance, referring to the 2008 ‘Protect, Respect, and Remedy’ framework, Denis Arnold⁶⁸ stated in 2010 that only a moral account of the basic human rights duties of transnational companies provides a sufficiently deep justification of the corporate responsibility to respect human rights feature of the tripartite framework. It is interesting to see that, six years later, Professor Arnold wrote the following: “The international legal system of human rights includes explicit expectations for [transnational corporations] to respect the international human rights regime”⁶⁹. This seems to indicate a shift in what he conceives is the source of corporate human rights responsibilities, moving from a moral to a legal type of responsibility, which is the view shared by most authors.

Over the past 30 years, the opinion of scholars has generally greatly evolved, starting from a conservative approach – although sometimes balanced with cautious calls for greater accountability for corporate human rights violations – to a proactively progressive stance on the social (and environmental) role played by the private sector and the responsibilities associated with it. Culminating with the adoption of the UNGPs, the view that corporations do have human rights responsibilities is nowadays widely accepted – albeit with some differences in opinion as to how extensive these responsibilities are. However, no system or mechanism for ensuring that firms meet these responsibilities is universally supported by scholars, and the main debate in academia on this issue revolves around the ‘hard law versus soft law’ and ‘compulsory versus voluntary’ conundrum – of which a significant part is the ‘regulation versus self-regulation’ debate⁷⁰. As self-regulatory mechanisms are increasingly adopted by corporations, it is sometimes said that such mechanisms may redress many human

⁶⁷ Larry Catá Backer, ‘On the Evolution of the United Nations’ ‘Protect-Respect-Remedy’ Project: The State, the Corporation and Human Rights in a Global Governance Context’, *Santa Clara Journal of International Law* 37(9), 2011, 37, 43.

⁶⁸ Denis Arnold, ‘Transnational Corporations and the Duty to Respect Basic Human Rights’, *Business Ethics Quarterly* 20(3), 2010, 371, 389.

⁶⁹ Arnold, ‘Corporations and Human Rights Obligations’ (n. 47), 21.

⁷⁰ Cary Coglianese and Evan Mendelson, ‘Meta-Regulation and Self-Regulation’, in Martin Cave, Robert Baldwin, and Martin Lodge, *The Oxford Handbook on Regulation*, Oxford University Press, 2010, 146-147; John C. Ruhnka and Heidi Boerstler ‘Governmental Incentives for Corporate Self-Regulation’, *Journal of Business Ethics* 17(3), 1998, 309, 309; and Gunningham and Rees (n. 7), 363-364.

rights issues and achieve more than what formal regulation can do. It is therefore important to investigate the extensive literature on self-regulation – starting with general self-regulation, then focusing on *corporate* self-regulation, and finally on corporate *human rights* self-regulation – with the aim to understand where corporate human rights self-regulatory mechanisms sit within the broader context of the regulation of corporate behaviour, and to identify the mechanisms’ strengths and weaknesses, as informed by scholars’ writings.

1.3.Introduction to self-regulation

In this section, I will define ‘self-regulation’ as it applies to corporations and outline the different types of (business) self-regulation, before focusing on its ‘voluntary’ and ‘coerced’ forms. Building on the strengths and weaknesses of the former, I will explain why some scholars believe that the latter is the best solution. This debate is an important one in the literature on corporate self-regulation, and it highlights the many challenges inherent to voluntarism as well as theoretical solutions which I will consider and test out in this thesis. Finally, I will introduce corporate *human rights* self-regulation, explain why it is important to study its different mechanisms together, and outline the divides within scholarship as to its potential effectiveness. Taken against the previously-explored backdrop of corporate human rights obligations, this will set the context for my research into the effectiveness of firms’ self-regulatory mechanisms in meeting their international human rights responsibilities – before I move on to laying out the methodology which I have used to explore this question.

I will first briefly introduce the concept of regulation taken generally (i.e. not focusing on the regulation of corporations specifically). Any regulatory approach has four characteristics: target (“the individual or organisation to which a regulatory instrument applies and on whom or which consequences can be imposed”), regulator (“the entity that creates the rule and dispenses the consequences”), command (“a rule [which] direct that a target adopt means or achieve ends”), and consequences (penalty or reward)⁷¹. In the case of self-regulation, the regulator and the target will either be the

⁷¹ Cary Coglianese, ‘Engaging Business in the Regulation of Nanotechnology’, in Christopher John Bosso (ed.), *Governing Uncertainty: Environmental Regulation in the Age of Nanotechnology*, Routledge, 2010, 50.

same entity, or the target will have voluntarily accepted the authority of the (non-governmental) regulator⁷². It follows that the most general definition of self-regulation may be the performance of a regulatory function by an entity or group of entities acting together, in respect of themselves, and others who accept their authority⁷³. However, different types of self-regulation exist. They can all be placed on a spectrum, depending on the degree of freedom afforded by the government to self-regulating entities: Anthony Ogus writes that, at one extreme, rules may be private to an entity whereas, on the other, they may have to be approved by government or a public authority⁷⁴. Similarly, Julia Black differentiates between voluntary self-regulation, sanctioned self-regulation, mandated self-regulation, and coerced self-regulation⁷⁵. However, this thesis will focus on the first type – voluntary self-regulation – and more specifically on the self-regulation of corporations, on which I will now concentrate.

1.3.1. Introduction to corporate self-regulation

Although it is difficult to give a general but precise definition⁷⁶ because of the different forms it may take⁷⁷, I understand ‘corporate self-regulation’⁷⁸ in this thesis as attempts by corporations to adopt rules to control their own behaviour with no external coercive constraints⁷⁹. These rules may be developed by the firm itself, intergovernmental organisations, by non-governmental entities whose authority the firm voluntarily

⁷² Coglianese and Mendelson (n. 70), 150.

⁷³ Julia Black, ‘Constitutionalising Self-Regulation’, *The Modern Law Review* 59(1), 1996, 24, 27.

⁷⁴ Anthony Ogus, ‘Rethinking Self-Regulation’, *Oxford Journal of Legal Studies* 15(1), 1995, 97, 100.

⁷⁵ As the ‘voluntary’ and ‘coerced’ types of self-regulation will be defined later in this section, I will here only provide the definition of the ‘mandated’ and ‘sanctioned’ self-regulation: first, mandated self-regulation happens when “a collective group, an industry or profession for example, is required or designated by the government to formulate and enforce norms within a framework defined by the government, usually in broad terms”. Second, sanctioned self-regulation happens when “a collective group itself formulates the regulation, which is then subjected to government approval” (Black (n. 73), 27).

⁷⁶ Cary Coglianese and Evan Mendelson write that there is no “agreed-upon definition” for self-regulation (Coglianese and Mendelson (n. 70), 147). Neil Gunningham and Joseph Rees stated that “no single definition [of self-regulation] is entirely satisfactory.” (Gunningham and Rees (n. 7), 364).

⁷⁷ Self-regulation used to control the behaviour of business entities may take a variety of forms of expression (Gunningham and Rees (n. 7), 364.) and may happen at different levels: the firm, the industry, and the economy (Ian Maitland, ‘The Limits of Business Self-Regulation’, *California Management Review*, 27(3), 1985, 132, 135). This thesis will focus on self-regulatory instruments adopted at firm-level, although industry mechanisms will be included to the extent that corporations voluntarily adopt them.

⁷⁸ To make this thesis easier to read, I will refer to ‘corporate self-regulation’ as ‘self-regulation’.

⁷⁹ Graham and Woods (n. 8), 869; Maxwell, Lyon, and Hackett (n. 8), 584; and Gunningham and Rees (n. 7), 364-365.

accepts⁸⁰, and may cover areas of concern such as labour rights, health and safety, non-discrimination, environmental issues, community rights, or women's rights. Generally, it “promises simultaneously to allay business fears of further government encroachment and to restore the public's faith in business”⁸¹. Some authors such as Christopher Stone believe that, rather than relying on the “insufficient” deterrent effect of legal sanctions to prevent harmful corporate behaviour, the law could most effectively shape organisational behaviour by generating normative commitments through systemic internal controls⁸². There are different ways to do so: as for *general* self-regulation, different types of *corporate* self-regulation exist. *General* self-regulation, as I have explained above, may take different forms, depending on how free it is from government intervention: the same dynamic also exists for self-regulation focused on *corporate activities*. Indeed, Jean-Pascal Gond, Nahee Kang and Jeremy Moon⁸³ offer a typology mirroring Julia Black's typology outlined above and setting corporate self-regulation on a spectrum: they distinguish between (1) Self-regulation as self-government (voluntary and non-enforceable); (2) Self-regulation as facilitated by government; (3) Self-regulation as partnership with government; (4) Self-regulation as mandated by government⁸⁴; and (5) Self-regulation as a form of government.

Building on the two typologies cited above, I will now outline the dichotomy between voluntary and coerced self-regulation. Comparing the two most different forms of self-regulation allows for a deeper understanding of the characteristics and potential value (as assessed by authors) of voluntary self-regulation, which is the focus of this thesis. On the one hand, self-regulation is considered voluntary when there is no active state involvement, direct or indirect, in promoting or mandating self-regulation⁸⁵. Some authors consider that this approach holds promise, mainly based on the speed and

⁸⁰ Black (n. 73), 27.

⁸¹ Maitland (n. 77), 132.

⁸² Christopher D. Stone, *Where the law ends : the social control of corporate behaviour*, Waveland Press, 1991, as cited in Jodi Short and Michael W. Toffel, ‘Making Self-Regulation More Than Merely Symbolic: The Critical Role of the Legal Environment’, *Administrative Science Quarterly* 55(3), 2010, 361, 362.

⁸³ Jean-Pascal Gond, Nahee Kang and Jeremy Moon, ‘The government of self-regulation: on the comparative dynamics of corporate social responsibility’, *Economy and Society* 40(4), 2011, 640, 642.

⁸⁴ Because Gond *et al* define ‘mandated self-regulation’ as ‘regulated by government’ and using “*ex ante* governmental framing” of initiatives through the “control of outcomes or disclosure”, I understand the fourth category as covering ‘coerced’ forms of self-regulation.

⁸⁵ Black (n. 73), 27.

flexibility it allows⁸⁶. Other arguments in favour of voluntarism include the fact that firms are more knowledgeable about their own operations and therefore more likely to find effective solutions⁸⁷ with reduced costs⁸⁸, and that they may comply with their own rules more readily than they would with national legislation⁸⁹. Moreover, some argue that it may allow for a lesser disruption of corporate activities than legislation⁹⁰. Self-regulation may also be more effective in *preventing* infringements, whereas government regulation only *punishes* violations once serious problems have arisen⁹¹. Generally, some authors believe that self-regulation may help the firm enmesh together economic and non-economic goals, thereby triggering a virtuous circle between the firm's new structure and the employees' attitude⁹².

However, other scholars have mixed opinions about the effectiveness of voluntary self-regulatory. While John Braithwaite writes that corporate inspectors may be better trained than their government counterparts, and that their power to trap suspected wrongdoers is often greater than that possessed by government investigators⁹³, he also considers that voluntary self-regulation is most attractive in areas of business regulation where the public interests threatened are not great and where industry does not have much to lose or something to gain because it is the cheapest option⁹⁴. David Vogel writes that, while some self-regulatory instruments have improved aspects of corporate conduct, business compliance with their own rules has been uneven⁹⁵. He has also stated that a voluntary programme will only stop violations that cost the company money and some violations that benefit the company financially in the short-term for the sake of the long-term benefit of fostering employee commitment to compliance – but the rest will commonly be ignored⁹⁶.

⁸⁶ Coglianese and Mendelson (n. 70), 152; Gunningham and Rees (n. 7), 366; Ruhnka and Boerstler (n. 70), 314.

⁸⁷ Coglianese and Mendelson (n. 70), 152.

⁸⁸ Ruhnka and Boerstler (n. 70), 316.

⁸⁹ Coglianese and Mendelson (n. 70), 152.

⁹⁰ Harvey L. Pitt and Karl A. Groskaufmanis, 'Minimizing Corporate Civil and Criminal Liability: A Second Look at Corporate Codes of Conduct', *Georgetown Law Journal* 78, 1990, 1559, 1561.

⁹¹ Ruhnka and Boerstler (n. 70), 314.

⁹² Oren Perez, Yair Amichai-Hamburger, and Tammy Shterenta, 'The Dynamic of Corporate Self-Regulation: ISO 14001, Environmental Commitment, and Organizational Citizenship Behavior', *Law & Society Review* 43(3), 2009, 593, 594.

⁹³ John Braithwaite, 'Enforced Self-Regulation: A New Strategy for Corporate Crime Control', *Michigan Law Review* 80(7), 1982, 1466, 1468-69.

⁹⁴ *Ibid.*, 1501.

⁹⁵ Vogel (n. 15), 79-80.

⁹⁶ *Ibid.*

Other voices are even more critical and state that corporate self-regulation is a “dubious proposition”⁹⁷ and not a serious solution. Marc Jones writes that the “prime directive is to act according to the tenets of social responsibility *if it pays*”⁹⁸. Ronen Shamir agrees and states that, “while counter-hegemonic pressures often seek the backing of law and regulation”, corporations seek to invest in self-regulatory schemes that have the capacity to open up new market opportunities⁹⁹ and to pre-empt viable threats to corporate interests¹⁰⁰. Subhabrata Bobby Banerjee is as sceptical, considering that “corporate strategies will always be made in the interests of enhancing shareholder value and return on capital, not social justice or morality”¹⁰¹. Mark Suchman concurs and suspects that corporations engaging in self-regulation favour the “flexibility and economy of symbolism” over “substantive responses”¹⁰² and real change. The main issue with voluntary corporate self-regulation is therefore that implementation is left up to the discretion of managers¹⁰³, which is why some authors argue that self-regulation will not work unless there is some element of external coercion^{104 105} and sanctions¹⁰⁶. It also leads some scholars to write that voluntary self-regulation will be more effective if it is combined with legal regulation¹⁰⁷. Another

⁹⁷ Ronnie D. Lipschutz and James K. Rowe, *Globalization, Governmentality and Global Politics: Regulation for the Rest of Us?*, Psychology Press, 2005, 132.

⁹⁸ Marc T. Jones, ‘Missing the Forest for the Trees: A Critique of the Social Responsibility Concept and Discourse’, *Business & Society* 35(1) 1996, 7, 35.

⁹⁹ Ronen Shamir, ‘The age of Responsibilization: On Market-embedded Morality’, *Economy & Society* 37(1), 2008, 1, 14.

¹⁰⁰ Ronen Shamir, ‘The De-Radicalization of Corporate Social Responsibility’, *Critical Sociology* 30(3), 2004, 669, 680.

¹⁰¹ Subhabrata Bobby Banerjee, ‘Corporate social responsibility: The good, the bad and the ugly’, *Critical Sociology* 34(1), 2008, 51, 74.

¹⁰² Mark Suchman, ‘Managing Legitimacy: Strategic and Institutional Approaches’, *Academy of Management Review* 20(3), 1995, 571, 576.

¹⁰³ Coglianese and Mendelson (n. 70), 153.

¹⁰⁴ Maitland (n. 77), 139; Abe de Jong, Douglas V. DeJong, Gerard Mertens, and Charles E. Wasley, ‘The role of self-regulation in corporate governance: evidence and implications from The Netherlands’, *Journal of Corporate Finance* 11(3), 2005, 473, 500; Coglianese and Mendelson (n. 70), 161; and Short and Toffel (n. 82), 366.

¹⁰⁵ Kathleen Segerson and Thomas J. Miceli believe that “the agreed upon level of [commitments] will be directly related to the magnitude of the threat” (‘Voluntary approaches to environmental protection: the role of legislative threats’, in Carlo Carraro and Francois Leveque (ed.) *Voluntary approaches in environmental policy*, Springer, 1999, 105, 119). Moreover, Mancur Olson specifies that, “in a large group in which no single individual’s contribution makes a perceptible difference to the group as a whole, [...] it is certain that a collective good will not be provided unless there is coercion or some outside inducements that will lead the members of the large group to act in their common interest” (*The Logic of Collective Action*, Harvard University Press, 1965, 44).

¹⁰⁶ Ian Ayres and John Braithwaite, ‘Tripartism: Regulatory Capture and Empowerment’, *Law & Social Inquiry* 16(3), 1991, 435, 490.

¹⁰⁷ Gunningham and Rees (n. 7), 396; and Annette Elisabeth Töller, ‘Voluntary Approaches to Regulation – Patterns, Causes and Effects’, in David Levi-Faur (ed.) *Handbook of the Politics of Regulation*, Edward Elgar Publishing, 2011, 507.

important limit to voluntarism is the fact that managers' discretion itself is limited because they operate in a market economy so that, no matter how well-intentioned they are, they are unable to subordinate profit-maximisation to social objectives¹⁰⁸. These limitations lead some scholars to favour coerced self-regulation.

Coerced self-regulation implies that there is some degree of external coercion from the government – but not all authors agree on the degree to which the government intervenes in the enforcement of self-regulation. Some consider that it happens when an entity (or a group of entities) “itself formulates and imposes regulation in response to threats by the government that, if it does not, the government will impose statutory regulation”¹⁰⁹. Others deem self-regulation to be coerced when criminal sanctions apply for the violation of self-regulatory rules¹¹⁰. It follows that there is no universally accepted definition of coerced self-regulation. Despite this problem, proponents of this form of self-regulation argue that enforced self-regulation achieves the ‘best of both worlds’. The main weakness of voluntary self-regulation is the fact that entities may not be willing to self-regulate effectively¹¹¹ whereas weaknesses inherent to government regulations include delay, red, tape, costs, and stultification of innovation¹¹². Enforced self-regulation is therefore seen by some as combining the “versatility and flexibility of voluntary self-regulation, but avoid[ing] many of the inherent weaknesses of voluntarism”¹¹³, and thus as a guarantee that rules will be properly implemented¹¹⁴. For instance, it is argued that it would reduce “the confusion that flows from having two rulebooks (the government’s and the company’s)”, and that compliance would be the “path of least corporate resistance”¹¹⁵. Relatedly, some authors argue that the threat of governmental punishment is counterproductive, and that positive governmental incentives is more likely to push firms to implement self-regulation¹¹⁶. A few scholars point to the necessity of *collective* action if self-regulation is going to be effective as self-regulated entities may not be willing to implement the rules if they are not assured that all will do the same¹¹⁷: only self-

¹⁰⁸ Maitland (n. 77), 133.

¹⁰⁹ Black (n. 73), 27.

¹¹⁰ Braithwaite (n. 93), 1470.

¹¹¹ Ibid, 1469.

¹¹² Ibid, 1470.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid, 1482-3.

¹¹⁶ Ruhnka and Boerstler (n. 70), 325.

¹¹⁷ Maitland (n. 77), 139; John Rawls, *A Theory of Justice*, Harvard University Press, 1971, 270.

regulation at the level of the economy (business-wide) would allow managers to “heed society’s demands that the firm behave responsibly while at the same time protecting them from the charge that their generosity at the stockholders’ expense was jeopardizing the firm’s competitive position”¹¹⁸. Finally, some scholars point to the fact that compliance works best when management can say that the government insists upon it¹¹⁹.

As Cary Coglianese and Evan Mendelson explain, “understanding what efforts work best to foster positive forms of self-control — whether these efforts take the form of conventional regulatory strategies or of alternatives like meta-regulation — should remain at the centre of social scientists’ agenda for research on regulatory governance”¹²⁰. Accordingly, some scholars have attempted to identify characteristics of effective corporate self-regulation, of which I will provide a brief overview here and a detailed analysis in Chapter 3. Beyond the call of certain authors for collective, business-wide action¹²¹, which is outside the scope of this thesis, others have stated that the effectiveness of self-regulation depends on the firms’ “intrinsic and reputational motivations”¹²², and especially whether firms believe it is in their interest to implement their own rules. Another crucial element is performance and compliance monitoring¹²³, including by third parties¹²⁴. Some scholars also advocate for sanctions, although others warn that certain enforcement tools may undermine intrinsic motivations to cooperate with others or execute certain tasks¹²⁵. I will explore these features in more detail in Chapter 3.

It has become clear in this section that the literature is divided as to the value of *voluntary* self-regulation, especially in contrast to what some scholars believe *coerced* forms of self-regulation can potentially achieve. Some authors write that it offers flexibility, reduced costs, and efficiency in the implementation of rules, whereas others believe that implementation will not happen without external constraints. It follows

¹¹⁸ Maitland (n. 77), 138; Olson (n. 105) 138.

¹¹⁹ Braithwaite (n. 93), 1497.

¹²⁰ Coglianese and Mendelson (n. 70), 164.

¹²¹ Maitland (n. 77), 145.

¹²² Short and Toffel (n. 82), 366.

¹²³ Ibid, 386.

¹²⁴ De Jong, DeJong, Mertens, and Wasley (n. 104), 474.

¹²⁵ Short and Toffel (n. 82), 366.

that research is needed into the value of voluntary self-regulation as a tool to change corporate behaviour. More specifically, as this thesis focuses on corporate *human rights* self-regulation, it is important to assess whether (human rights) self-regulation can help firms improve their human rights performance on the ground. I will therefore explore the literature on corporate *human rights* self-regulation in the next section, with the aim to identify the relevant mechanisms used by firms and explain why I chose in this thesis to study them all together.

1.3.2. Introduction to corporate human rights self-regulation

As was outlined in section 1.2., it has become progressively accepted that firms have human rights obligations, and companies themselves have been feeling increasing pressure¹²⁶ around the globe to acknowledge their responsibilities and show that they are taking them seriously. Accordingly, firms have been adopting human rights self-regulatory mechanisms, such as company codes, industry codes, multi-stakeholder initiatives, intergovernmental instruments, and certification labels¹²⁷. Before getting to the question of the effectiveness of these different mechanisms, it is important to outline first why I argue that they are all forms of voluntary human rights self-regulation, and second why it is important to study them all together.

I will start by explaining why each type of instruments (human rights policies and codes, intergovernmental instruments, industry and multi-stakeholder initiatives, and certification labels) is a form of voluntary human rights self-regulation. First, human rights policies are instruments developed and adopted by the firm itself outlining commitments to (specific) human rights, potentially by referring to intergovernmental instruments such as international conventions – which I review below. Codes of conduct are also written and adopted by the corporation itself, but they will commonly

¹²⁶ Ronen Shamir, ‘Between Self-Regulation and the Alien Tort Claims Act: On the Contested Concept of Corporate Social Responsibility’, *Law & Society Review* 38(4), 2004, 635, 659; Laura Albareda, ‘Corporate responsibility, governance and accountability: From self-regulation to co-regulation’, *Corporate Governance International Journal of Business in Society* 8(4), 2008, 430, 438; De Jong, DeJong, Mertens, and Wasley (n. 104), 474.

¹²⁷ Perhaps as a consequence, a study concluded that business enterprises recognise the significance of human rights in their daily activities both as a matter of legal compliance and as part of good practice (Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporation and other business enterprises, ‘Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms’, 28 February 2007, A/HRC/4/35/Add.3, as cited in Addo, The Reality of the United Nations Guiding Principles on Business and Human Rights’ (n. 24), 135.)

outline practical means to implement the general commitments to human rights made by the same firm. They are both attempts by corporations to *voluntarily* adopt internal rules on its own behaviour, which follows the definition of self-regulation given at the beginning of this chapter. Human rights policies commonly set out goals whereas codes of conduct typically detail how to achieve the goals in question. However, even when I study stand-alone human rights included in corporate policies and codes developed by firms themselves, I do not claim that such principles were solely created by corporations, but rather that they emerged from a “networked governance”¹²⁸ of States, Non-Governmental Organisations [NGOs], and the private sector, and as part of the global conversation on the relationship between business and human rights¹²⁹. For instance, Unilever’s Human Rights Policy covers the following human rights (among others), and the firm’s Code of Business Principles outlines the behaviour expected of management, employees, and suppliers to ensure that the following human rights (among others) are respected across all its operations: right to be free from exploitative child labour and from forced labour, just and favourable working conditions, freedom from discrimination, fair wages, and the freedom of association and the effective recognition of the right to collective bargaining.

Second, firms may commit to intergovernmental instruments, which were not developed by corporations themselves, but rather by international organisations – mainly the UN, such as for the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights [ICCPR] and International Covenant on Economic, Social, and Cultural Rights [ICESCR], or International Labour Organisation [ILO] Conventions. The Unilever Declaration of Human Rights covers the following human rights (among others): right to life, freedom from slavery, freedom of association, right to work, right to equal pay, freedom from discrimination, freedom from forced labour, right to just and favourable working conditions, right to just and favourable remuneration, right to an adequate standard of living, including adequate housing, clothing, and food, right to health, right to a family life, and right to education. The ICCPR covers the following human rights (among others): right to life, freedom from slavery and from forced labour, and freedom of association. The ICESCR covers the following human rights (among others): freedom from forced

¹²⁸ Abbott and Snidal (n. 13), 57.

¹²⁹ Baxi (n. 34).

labour and from discrimination, right to work, right to just and favourable conditions of work, right to an adequate standard of living, including adequate housing, clothing, and food, right to a family life, freedom of housing, right to health, and right to education. ILO Conventions cover the following human rights (among others): freedom from exploitative child labour, from forced labour, and from discrimination, equal pay, right to just and favourable working conditions, right to just and favourable remuneration, freedom of association, and right to strike. Although these texts were not originally drafted for the purpose of regulating corporate behaviour, firms may choose to unilaterally commit to respecting the principles laid out in these texts, either as stand-alone commitments or as part of a human rights (or other) policy, thereby imposing rules on themselves. These instruments are therefore used by businesses as part of corporate self-regulatory mechanisms, relevant to this research. However, it is notable that, whether or not companies decide to voluntarily commit to respecting human rights principles, they have, in any case, international human rights responsibilities, as explained in Section 1.2.

Third, industry and multi-stakeholder initiatives are relevant to this thesis to the extent that companies may decide to take part in these initiatives on a voluntary basis. Doing so, firms voluntarily commit to behave according to the standards (which may be included in a code or policy) from the initiative in question, and (if relevant) accept the authority of an external industry body monitoring adherence to the standards. Voluntary industry and multi-stakeholder initiatives are therefore voluntary self-regulatory mechanisms which will be relevant to this thesis. Moreover, they may have human rights aspects. As an example, the Electronic Industry Citizenship Coalition Code of Conduct is “derived from key international human rights standards including the ILO Declaration on Fundamental Principles and Rights at Work and the UN Universal Declaration of Human Rights”¹³⁰. The Voluntary Principles on Security and Human Rights also recognise the “importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society [...] can play in advancing these goals”¹³¹. Moreover, the Global Network Initiative requires participants to commit to implement the organisation’s Principles on Freedom

¹³⁰ Electronic Industry Citizenship Coalition, ‘Code of Conduct’, 2014, 1.

¹³¹ Steering Committee of the Voluntary Principles on Security and Human Rights, ‘Voluntary Principles on Security and Human Rights’, 2000, 1.

of Expression and Privacy, which are a framework established to “provide direction and guidance to the ICT industry and its stakeholders in protecting and advancing the enjoyment of these human rights globally”¹³². These few examples show that industry and multi-stakeholders initiatives may have human rights dimensions and aims.

Finally, certification labels are mechanisms in which companies may choose to take part: they voluntarily adopt the label’s standards, choose to behave accordingly, and accept the authority of the certifying body. Certification labels are therefore self-regulatory mechanisms as defined in this thesis. Furthermore, they often include human rights standards, whether or not these standards are framed in such terms. For instance, Fairtrade is a certification label which has developed standards which firms must meet in order to get specific products certified; on its website, the organisation states that “human rights are an integral part of [the certification label’s] mission”¹³³. Among others, Fairtrade covers the following human rights: freedom from exploitative child labour and from forced labour, right to just and favourable remuneration, right to just and favourable working conditions, freedom of association, freedom from discrimination, right to an adequate standard of living, right to a clean environment, right to health, and right to education. Moreover, the certification label Rainforest Alliance has adopted a “human rights approach” and acknowledges that “advancement of basic human rights is intrinsic to sustainable land management and forest conservation”¹³⁴, which sit at the heart of the organisation’s mission. Among others, the Rainforest Alliance covers the following human rights: freedom from exploitative child labour and from forced labour, right to just and favourable remuneration, right to just and favourable working conditions, freedom of association, freedom from discrimination, right to an adequate standard of living, right to a clean environment, land rights, right to health, and right to education.

I will explore each of these mechanisms in more detail in Chapter 2, but first – and expanding on the explanation provided in the introduction to this chapter – I will explain why it is important to study all these mechanisms together: firstly because of

¹³² Global Network Initiative, ‘GNI Principles on Freedom of Expression and Privacy’, 2017, 2.

¹³³ Fairtrade’s Media Centre, ‘Six Ways Fairtrade Strengthens Human Rights’ (*Fairtrade Blog*, 10 December 2018) <<https://www.fairtrade.org.uk/Media-Centre/Blog/2018/December/Six-Ways-Fairtrade-Strengthens-Human-Rights>> (accessed 19 October 2019)

¹³⁴ Rainforest Alliance, ‘Advancing the Human Rights of Rural People’ (*Rainforest Alliance’s website*, 25 June 2018) <<https://www.rainforest-alliance.org/articles/advancing-the-human-rights-of-rural-people>> (accessed 19 October 2019)

their substantive content and objectives, secondly because of the way which firms use them, and third because of their similar ‘key features’, as identified by scholars looking at what would make mechanisms effective.

First, the various mechanisms are adopted by corporations with social and/or environmental goals in mind. It follows that the standards which are included in the self-regulatory mechanisms will have social and/or environmental dimensions. Whether they are framed in human rights terms or not, they will therefore be expected to have positive human rights impacts – and the rights in question are fairly similar across the different types of mechanisms. Commonly included are the right to health, the right to fair remuneration, or the prohibition of discrimination in the workplace, which all are for instance covered by Pepsi’s Human Rights Policy¹³⁵, ILO Conventions C100¹³⁶, C111¹³⁷, and C155¹³⁸, the Electronic Industry Citizenship Coalition Code of Conduct¹³⁹, and the Food Alliance¹⁴⁰, Fairtrade¹⁴¹, and Rainforest Alliance¹⁴² certification labels. Moreover, all mechanisms also purport to achieve the same goal: they aim to shape corporate behaviour along the lines of certain social, economic, and environmental principles¹⁴³. These may include human rights principles – again, whether they are explicitly formulated in human rights terms or not –, which aim to ensure that business activities do not negatively impact the human rights of workers and of community members living nearby. For instance, Unilever’s Human Rights Policy contains “over-arching principles which [the firm] embed[s] into [its] policies and systems” to ensure that “human rights are upheld across [its] operations and [its] value chain”¹⁴⁴. ILO conventions aim to “lay down the basic minimum social

¹³⁵ PepsiCo, ‘Global Human Rights Policy’, 2017.

¹³⁶ ILO Convention C100, ‘Equal Remuneration Convention’, 1951.

¹³⁷ ILO Convention C111, ‘Discrimination (Employment and Occupation) Convention’, 1958.

¹³⁸ ILO Convention C155, ‘Occupational Safety and Health Convention’, 1981.

¹³⁹ Electronic Industry Citizenship Coalition, ‘Code of Conduct’, 2014.

¹⁴⁰ Food Alliance, ‘Sustainability Standard for Crop Operations’, 2018.

¹⁴¹ Fairtrade, ‘Hired Labour Standard’ (hereinafter ‘Fairtrade ‘Hired Labour Standard’), 2014.

¹⁴² Rainforest Alliance, ‘Sustainable Agriculture Standard’ (hereinafter ‘Rainforest Alliance ‘Sustainable Agriculture Standard’), 2017.

¹⁴³ This is also true for intergovernmental instruments. Although these instruments target states, I argue that, when firms decide to commit to implement these principles, they broaden the scope of application of these instruments and, as a result, expands their objectives and targets to encompass corporate activities. Importantly, the ILO itself has acknowledged that many companies had committed in their codes to principles derived from ILO conventions, and stated that, while these “codes are no substitute for binding international instruments, they play an important role in helping to spread the principles contained in international labour standards.” (ILO, ‘How International Labour Standards are used’ <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-use/lang--en/index.htm>> (accessed on 19 October 2019))

¹⁴⁴ Unilever, ‘Human Rights Policy’, 2014, 1.

standards agreed upon by all the players in the global economy” and to achieve the “goal of decent work”, based on “social protection, rights at work and social dialogue”, among others¹⁴⁵. Fairtrade standards aims to “ensure that the conditions of production and trade of all Fairtrade certified products are socially, economically fair and environmentally responsible”¹⁴⁶. It is therefore clear that these different types of mechanisms share many standards and aim to shape corporate behaviour towards more human rights-friendly practices. When assessing whether they achieve these goals, it is therefore important to do it across all mechanisms.

This leads me to the second reason why it is crucial to assess them together: corporations themselves see these different types of mechanisms as parts of a single strategy. Indeed, businesses do not differentiate between the different mechanisms: firms’ priority is to communicate to the outside world (and perhaps first and foremost, to their customers) that they are aware of the potential impact of their activities on a whole range of stakeholders, and that they are addressing associated human rights risks. This becomes obvious when looking at corporate websites: when explaining their efforts in the area of sustainability, firms mention all of their initiatives together in signposting their human rights and/or sustainability commitments. For instance, Unilever mentions certification as part of their sustainability and human rights efforts, alongside their Human Rights Policy and other internal human rights instruments. Nestlé’s Cocoa Plan¹⁴⁷ includes their own instruments, certification mechanisms (such as UTZ and Fairtrade), a private-public partnership initiative, and an annual third-party auditing mechanism, all part of the same efforts towards human rights-friendly cocoa farming and harvesting. Mars references ILO conventions in their own policies and mentions certification as part of their sustainable cocoa plan¹⁴⁸. PepsiCo’s human rights strategy includes commitments to its own Global Code of Conduct, the International Bill of Human Rights, the ILO’s Declaration on Fundamental Principles and Rights at Work, the UN Global Compact, and the UNGPs – all mentioned in its

¹⁴⁵ ILO, ‘The benefits of International Labour Standards’ (ILO’s website) <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/the-benefits-of-international-labour-standards/lang--en/index.htm>> (accessed on 19 October 2019)

¹⁴⁶ Fairtrade, ‘What does it guarantee?’ (Fairtrade’s website) <<http://www.vartotojai.lt/en/fairtrade/what-is-fairtrade/guarantees>> (accessed on 19 October 2019).

¹⁴⁷ Nestlé has created a website dedicated to their Cocoa Plan, which is accessible here: <<https://www.nestlecocoaplan.com/>> (accessed on 19 October 2019)

¹⁴⁸ Mars, ‘Our Cocoa and Forests Policy’ (Mars’s website, 21 March 2019) <<https://www.mars.com/about/policies-and-practices/cocoa-and-forests-policy>> (accessed 19 October 2019)

Human Rights Policy¹⁴⁹ –, and includes its commitment to only use Roundtable on Sustainable Palm Oil-certified oil by 2020¹⁵⁰. It is therefore clear that corporations themselves see these various mechanisms as part of a unique ‘human rights’ strategy.

Third, as briefly outlined at the beginning of this chapter and in the previous section, authors writing about general self-regulation and those writing about individual mechanisms find broadly similar features helping guarantee the mechanisms’ effectiveness (although, as will become clear in Chapter 3, literature on product-level mechanisms is narrower than the literature on product-level mechanisms). In summary, the following features were identified: the need for an open and transparent process; clear and specific standards developed by a whole range of stakeholders; monitoring of implementation; reporting of progress; and sanctions for non-compliance. Indeed, most of them highlight the importance of opening the drafting process to all stakeholders, including worker representatives, NGOs, and experts, to ensure that the views all concerned will be considered. It is also crucial to cover a comprehensive set of human rights in the mechanisms’ standards, so as to ensure that no human right is forgotten. Moreover, the training of relevant stakeholders is deemed crucial by most authors – although, depending on the type of mechanisms, the stakeholders in question may not be the same. For instance, scholars writing on certification labels mainly focus on the training of auditors¹⁵¹. Furthermore, a strong – internal and/or external – monitoring system is underlined as an essential guarantee of the effectiveness of mechanisms. Finally, setting up a sanctioning process, with clearly defined consequences for breaches of standards, is seen as a helpful feature by most of the literature, across mechanisms. It is therefore clear that the different types of self-regulatory mechanisms share many ‘key features’ which would, according to scholars, ensure their effectiveness, and that it is important to investigate the extent to which these features actually help mechanisms *across the board* impact firms’ human rights performance on the ground. I will expand on the identified features and the framework of analysis which will result from their investigation in Chapter 3.

¹⁴⁹ PepsiCo (n. 135), 1.

¹⁵⁰ PepsiCo, ‘Palm Oil Sustainability – Our Approach and Policy’ (PepsiCo’s website) <<https://www.pepsico.com/sustainability/palm-oil>> (accessed on 19 October 2019)

¹⁵¹ Although I acknowledge that audits are an integral part of product-level mechanisms, I argue in Chapter 3 that scholars should not adopt such a narrow focus, and that most of the features identified by authors regarding company-level mechanisms (and those writing generally about self-regulation) are relevant to product-level mechanisms as well.

Corporate self-regulatory mechanisms therefore share many standards, aim to shape corporate behaviour towards more human rights-friendly practices, are used by corporations as parts of a unique ‘human rights’ strategy, and finally share many ‘key features’ which would, according to scholars, ensure their effectiveness. It is therefore important to study them all together, as it will allow for the comprehensive evaluation of the value of voluntary corporate human rights self-regulation in driving respectful business practices.

Now that the different types of human rights self-regulatory mechanisms have been introduced, it is important to investigate their value in improving corporate human rights performance, as assessed by relevant scholarship. Indeed, these self-regulation mechanisms all claim to be able to achieve a great deal and to contribute to the global regulation of corporate behaviour. Some authors explain that it is an attempt to “extend regulation to a wide range of global business practices for which the scope or effectiveness of national and international government authority is currently either weak, limited, or non-existent”¹⁵². Whether these goals are met in reality is a complex question and authors writing on corporate *human rights* self-regulation are as divided about their effectiveness as scholars writing about self-regulation *in general*, whose opinions I explored in Section 1.3.1. above. Some are sceptical: Upendra Baxi writes that human rights instruments may become meaningless references¹⁵³ and that voluntarism necessarily seeks to “minimise the range of human rights responsibilities extendable to trade and business”¹⁵⁴. Similarly, Tony Royle underlines the importance of binding international labour standards and stronger national law, without which it will be impossible to “significantly change the status quo”¹⁵⁵, and Mathias Koenig-Archibugi writes that robust accountability mechanisms require state action¹⁵⁶. Ans Kolk and Rob Van Tulder agree to a certain degree as they write that “codes will not be effective if they substitute for government regulation”¹⁵⁷. Similarly, while writing about certification systems, Ewald Rametsteiner and Markku Simula advocate for

¹⁵² Vogel (n. 15), 73, also citing Koenig-Archibugi (n. 11), 235; Short and Toffel (n. 82), 391.

¹⁵³ Baxi (n. 34), 4; Baxi also cites Julius Stone, *Legal System and Lawyers' Reasonings*, Stanford University Press, 1964, 235.

¹⁵⁴ Baxi (n. 34), 23.

¹⁵⁵ Tony Royle, ‘The ILO's Shift to Promotional Principles and the 'Privatization' of Labour Rights: An Analysis of Labour Standards, Voluntary Self-Regulation and Social Clauses’, *International Journal of Comparative Labour Law* 26(3), 2010, 249, 271.

¹⁵⁶ Koenig-Archibugi (n. 11), 259.

¹⁵⁷ Ans Kolk and Rob Van Tulder, ‘The Effectiveness of Self-regulation: Corporate Codes of Conduct and Child Labour’, *European Management Journal* 20(3), 2002, 260, 262 and 270.

“comprehensive development strategies”¹⁵⁸ on a global scale involving governments and in which certification and labelling would only play a “complementary” role. Moreover, Michael Addo and Jena Martin argue that voluntarism has constrained progress on CSR by separating it from firms’ legal and economic responsibilities and privileging the economic case for corporate policy¹⁵⁹. They also write that the wide discretion afforded to corporations by voluntarism, the lack of accountability of such corporate initiatives, and the challenges of implementation have all contributed to the credibility and effectiveness gaps in the field¹⁶⁰. Finally, Jean-Pascal Gond, Nahee Kang, and Jeremy Moon argue that self-regulation gives corporations a “façade of morality” which frees them from governmental pressures¹⁶¹.

Others are more optimistic and believe that the private sector has an active role to play in the full development and realisation of human rights: Jodi Short and Michael Toffel believe that “it can play an important role in promoting compliance”¹⁶². Moreover, Adelle Blackett writes that corporate self-regulation initiatives are emerging forms of labour regulation¹⁶³, while Florian Wettstein advocates for proactive company involvement “in the protection and realization of human rights”¹⁶⁴. Perhaps reflecting the academic split, an examination of 79 studies into the effectiveness of corporate codes showed mixed results, with 35% of the studies finding that codes are effective, 16% that the relationship is weak, 33% that there is no significant relationship, and 14% presenting mixed results¹⁶⁵.

Scholarship is therefore split as to the potential of corporate self-regulation in helping businesses respect human rights. However, researchers have rarely gone into the field to verify their respective claims: out of the 79 studies mentioned above – although only

¹⁵⁸ Ewald Rametsteiner and Markku Simula, ‘Forest certification—an instrument to promote sustainable forest management?’, *Journal of Environmental Management* 67, 2002, 87, 97.

¹⁵⁹ Addo and Martin (n. 10), 356.

¹⁶⁰ Ibid, 349.

¹⁶¹ Gond, Kang, and Moon (n. 83), 641.

¹⁶² Short and Toffel (n. 82), 391.

¹⁶³ Adelle Blackett, ‘Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct’, *Indiana Journal of Global Legal Studies*, 8(2), 2001, 401, 402.

¹⁶⁴ Wettstein, ‘CSR and the Debate on Business and Human Rights: Bridging the Great Divide’ (n. 64), 757.

¹⁶⁵ Muel Kaptein and Mark S. Schwartz, ‘The Effectiveness of Business Codes: A Critical Examination of Existing Studies and the Development of an Integrated Research Model’, *Journal of Business Ethics* 77(2), 2008, 111, 115.

concerning corporate codes –, only one uses field research¹⁶⁶, the rest relying on desk research, questionnaires (mostly about perception of practice), interviews with managers or marketing researchers, or laboratory tests. This illustrates the lack of research into the impact of self-regulation on the ground. Yet it is crucial to go in the field to assess whether self-regulation mechanisms do help companies effectively implement their human rights commitments and meet their human rights responsibilities¹⁶⁷, in order to hold firms to account for the pledges which they publicly make (and use as part of their marketing strategy). This thesis aims to help fill that gap; the next section will outline the methodology which I have used to do so.

1.4. General methodology

I will here outline the methodology I have used to conduct my research. Firstly, as recommended by scholars writing on methodology¹⁶⁸, I started my research by reviewing the relevant literature. Second, answering this thesis's main question requires empirical research into the implementation of human rights commitments. I will now explore the two in more detail.

1.4.1. Literature review conducted in this thesis

I started my research by conducting a thorough literature review which, as outlined in Section 1.1. above, covered the following literatures: the literature around corporate human rights responsibilities (which allowed me to define the nature and extent of such responsibilities), the literature around corporate human rights self-regulation (replied upon in Chapter 2 to develop a typology of the different self-regulatory mechanisms used by firms), and the (theoretical and applied) literature on effectiveness of self-regulation (in order to analyse the 'key features' identified by authors as helping make the different types of mechanisms effective). This allowed me

¹⁶⁶ See César Rodríguez-Garavito, 'Global Governance and Labor Rights: Codes of Conduct and Anti-Sweatshop Struggles in Global Apparel Factories in Mexico and Guatemala', *Politics Society* 33, 2005, 203.

¹⁶⁷ James Harrison and Sharifah Sekalala explain that there are few significant studies looking into how, and whether, corporate human rights responsibilities are meaningfully enacted (Harrison and Sekalala (n. 10), 927).

¹⁶⁸ Robert Yin, *Case Study Research: Design and Methods*, Beverly Hills, Calif: Sage Publications, 1984, 21; H M Cooper, *The integrative research review*, Beverly Hills, Sage, 1984; and Lisa Webley, 'Stumbling Blocks in Empirical Legal Research: Case Study Research', *Law and Method*, 2016, 6.

to identify the gaps in academic debates, to define my research questions accordingly, and to determine the various theories to be tested as part of this research¹⁶⁹.

As I have briefly mentioned in this chapter and will further explore in Chapter 2, there is little scholarship looking at all mechanisms together, and no holistic typology has yet been developed. However, such a typology is necessary if I am to analyse different types of corporate mechanisms together and from a human rights perspective¹⁷⁰. This thesis's typology therefore allows for the classification of corporate human rights self-regulatory mechanisms, for the identification of the strengths and weaknesses of each type of instrument, and for the formulation of expectations as to how they work in practice. It also allows for the comparison of not only different types of mechanisms, but also of different mechanisms within the same category.

Once the self-regulatory mechanisms are mapped out, I explore in Chapter 3 the theories put forward by scholarship about the features which would make self-regulation effective. For instance, what is the value afforded by authors to transparency, inclusiveness, training, or sanctions for non-compliance? These hypotheses will be tested out empirically during the case study to find out if they contribute to making human rights self-regulation effective (in a specific setting).

Once I have defined my research questions (Chapter 1), developed a typology mapping out relevant mechanisms (Chapter 2), and formulated various hypotheses (Chapter 3), I need to design an empirical study to test these out. Although I will outline my methodology in detail in Chapter 4, I will explain here why conducting a case study is the most appropriate empirical method for this research.

1.4.2. Empirical methods used in this thesis

Empirical methods may be case studies, experiments, surveys, archival analyses, and histories¹⁷¹. I eliminated from the start the option of conducting archival analyses and histories as this thesis focuses on a current phenomenon. Moreover, experiments focus on current phenomena but presuppose that they can be studied in a controlled

¹⁶⁹ Webley (n.168), 6; and Robert Yin, *Case Study Research: Design and Methods*, Sage, 2018.

¹⁷⁰ The importance of analysing corporate mechanisms from a human rights perspective will be explained in Section 3.1.2.

¹⁷¹ Robert Yin, *Case Study Research: Design and Methods*, Sage, 2009, 8.

environment, separated from the real-world¹⁷² and with few variables. Surveys allow researchers to study phenomena in their context but allow no room for the complexities of real-life situations¹⁷³. All these research methods are therefore inadequate. However, case studies are real-world, holistic, and in-depth investigations of current complex phenomena¹⁷⁴. They focus on only a limited geographical area, with a specific number of subjects of interest¹⁷⁵, and aim to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result¹⁷⁶. They generate data which, when triangulated, provides a means through which to draw robust, reliable, valid conclusions about law in the real world¹⁷⁷. Case studies as a research method are recommended by the academic literature when the boundaries between phenomena and context are not quite clear and cannot be separated¹⁷⁸, or when contextual conditions are highly pertinent to the phenomenon of study¹⁷⁹. It therefore helps to explain the complexities of real-life situations which may not be captured through experimental or survey research¹⁸⁰. A case study is therefore well-suited to address my main research question, which focuses on the effectiveness of corporate mechanisms in helping businesses respect human rights and requires the exploration of the impact on the ground of mechanisms from drafting stage to implementation. It follows that I will have to study how business activities are conducted in general, which means that I cannot separate the context from the object of the study. Another advantage of case studies is the fact that they allow for the understanding of perceptions of processes and how they influence behaviour¹⁸¹, and are specifically suited to situations when the main research questions are “how” and “why” questions¹⁸². They allow researchers to “explain the presumed causal links in real-life interventions that are too complex for the survey or experimental strategies”, and to “enlighten those situations in which the intervention being evaluated has no

¹⁷² Zaidah Zainal, ‘Case study as a research method’, *Jurnal Kemanusiaan* bil 5(1), 2007, 4.

¹⁷³ Yin (n.171), 18.

¹⁷⁴ Ibid.

¹⁷⁵ Zainal (n. 172), 1.

¹⁷⁶ Wilbur Schramm, ‘Notes on Case Studies of Instructional Media Projects’, *California Institute for Communication Research, Stanford University*, 1971, 6.

¹⁷⁷ Webley (n.168), 2.

¹⁷⁸ Robert Yin and Darnella Davis ‘Adding New Dimensions To Case Study Evaluations: The Case Of Evaluating Comprehensive Reforms’, *New Directions for Evaluation* 2007 (113), 2007, 75.

¹⁷⁹ Ibid.

¹⁸⁰ Zainal (n. 172), 1.

¹⁸¹ Yin (n. 171), 4.

¹⁸² Yin (n. 168), 21.

clear, single set of outcomes”¹⁸³. The study of the way in which self-regulatory mechanisms influence decision-making and how standards are implemented is central to this thesis’s research question, which means that I will study the behaviour of decision makers and of individuals in charge of implementing these decisions on the ground, as well as the results of these decisions¹⁸⁴. The way a business conducts its activities may be influenced by a range of factors, such as the economic context, available labour force, personality of managers, the national and local environment, the type of industry, or the resources available where the company operates. This complex real-life environment may be captured by a case study, which is best equipped to deal with a context where a significant number of external variables, and not only the studied phenomenon, may affect the object of study¹⁸⁵. It will therefore be possible to explore complex issues, including the behavioural conditions through the perspective of actors¹⁸⁶ such as managers and workers, and for the understanding of both the process and outcome of the phenomenon¹⁸⁷ of corporate behaviour. Finally, case studies are helpful when researchers cannot control the behaviour of participants¹⁸⁸, and when multiple sources of evidence are used¹⁸⁹, which is the case here as I will have no control over the subjects of the study (e.g. managers; workers; community members), and will use interviews, observations, and document analysis for my data collection¹⁹⁰.

However, case studies do present some drawbacks. One of the risks of conducting a case study is a lack of rigour¹⁹¹, which can be mitigated against with a robust research design¹⁹². Secondly, it may be difficult to generalise the results beyond the scope of the case study¹⁹³. However, some authors consider that, if researchers establish

¹⁸³ Yin (n. 171), 19.

¹⁸⁴ Robert Yin gives “small group behaviour, organisation and managerial processes, neighbourhood change” as good examples of the kind of research focus for which case studies are best suited (Yin (n. 171), 18).

¹⁸⁵ Ibid.

¹⁸⁶ Zainal (n. 172), 1.

¹⁸⁷ Winston Tellis, ‘Introduction to Case Study’, *The Qualitative Report*, 3(2), 1997, 1, 6.

¹⁸⁸ Yin (n. 171), 2.

¹⁸⁹ Ibid.

¹⁹⁰ As is recommended by Muel Kaptein and Mark S. Schwartz, who write that “measuring the effectiveness of a business code requires multiple methods and sources of data.” (Kaptein and Schwartz (n. 165), 122)

¹⁹¹ Yin (n. 171), 14.

¹⁹² Zainal (n. 172), 2.

¹⁹³ Tellis (n. 187), 5.

parameters and set specific objectives to be met, a small sample size is acceptable¹⁹⁴. Third, it is often said that case studies produce a lot of data, which may become problematic when it is not systematically managed and organised¹⁹⁶. All three criticisms of case studies can be mitigated against with serious preparation and solid research design, which I will outline in the rest of this chapter and in more detail in Chapter 4.

Having identified the case study as the best research method to adopt, I must define its parameters. As I explain below when outlining the details of the selected firms, my study will include many variables of interest, and primarily seeks to identify which processes and characteristics make corporate self-regulation effective. Consequently, a causal¹⁹⁷ and linked multiple case-study¹⁹⁸ – which is likely to be stronger than a single-case study¹⁹⁹ – would be best suited to my research, although I will make sure to set all my individual cases in one region and one industry to reduce the risks of inferential error as much as possible. In particular, I will choose to study companies in one country to make sure that differences in corporate impacts on human rights would not stem from national legislation²⁰⁰. Moreover, I will select corporations of different sizes, including small and medium enterprises²⁰¹ as this category of firms has been largely ignored in the business and human right debate²⁰². Assessing the effectiveness of mechanisms in helping *all* types of corporations meet their human rights responsibilities is therefore important to contribute comprehensive evidence to this debate.

¹⁹⁴ Ibid, citing Jacques Hamel et al., *Case study methods Vol. 32*, Sage, 1993, and Yin (n. 168), 23.

¹⁹⁵ I will also address this particular issue in this thesis's concluding chapter.

¹⁹⁶ Yin (n. 168), 21.

¹⁹⁷ A case study is causal when it “looks for causal relationships between concepts”, as outlined in Yin (n. 169)).

¹⁹⁸ “If limited to a single practice, project, or program, a “single-case” study is the result. However, the same evaluation could cover practices at several sites that might be part of the same program. Under this circumstance, if the practice remains the unit of analysis, the result is a “multiple-case” study.” (Yin and Davis (n.178), 80)

¹⁹⁹ Yin (n. 169).

²⁰⁰ This means that my case study will follow a theoretical, rather than literal, replication model, as explained in Yin (n. 169).

²⁰¹ As Michael Addo explains, the definition of a small and medium enterprise may vary across the world; Addo for instance compares the definition used by the African Development Bank (up to 50 employees) and the one used by the World Bank (up to 300 employees and \$15 million in turnover). (Michael Addo, ‘Business and Human Rights and the Challenges for Small and Medium-Sized Enterprises’, in Thilo Rensmann (ed.), *Small and Medium-Sized Enterprises in International Economic Law*, Oxford University Press, 2017, 319.)

²⁰² Ibid, 313.

This fieldwork will allow for the comparison of mechanisms on paper with practice on the ground and involve a review of existing (non-human rights) studies of corporate activities and site visits. So as to have a ‘best-case’ scenario and test out whether self-regulatory mechanisms are truly effective in preventing and remedying human rights breaches, I conducted fieldwork in a particular industry where human rights issues are widespread and standards are common, and in a location where human rights issues are prevalent. Consequently, I chose to focus on agricultural firms operating in Tanzania, and more specifically producing tea. Indeed, human rights violations are commonplace in this field: among others, labour rights issues – with 60% of child labour happening in agriculture²⁰³, for instance –, issues with the right to water and sanitation, and with the right to land²⁰⁴. Furthermore, human rights self-regulation is common in agriculture: of the ten biggest tea companies worldwide, all have adopted self-regulatory standards, including five with company-level mechanisms and seven with product-level mechanisms (see Annex 1 for details)²⁰⁵. Finally, I chose to focus on Tanzania as the country’s law enforcement is weak, leaving gaps in state protection and allowing corporations to commit human rights violations on a regular basis across the country²⁰⁶. As a result, the country still faces widespread human rights violations: in their 2016 Human Rights and Business Report²⁰⁷, the Legal and Human Rights Centre [LHRC] identified the following human rights issues in the country: labour rights, land rights, gender-related rights, environmental justice, CSR, regulatory authorities performance, and taxation. I also chose Tanzania as it is a country with numerous tea companies operating side by side, and so where it is possible to compare and contrast human rights conditions in tea plantations and factories in a limited amount of time.

Keeping all this in mind, I identified three – multinational and national – companies producing tea in Tanzania, which all offer very different approaches to sustainability

²⁰³ Thomas Pogge, *World Poverty and Human Rights*, Polity, 2008, 103; and Susan Mapp, *Human Rights and Social Justice in a Global Perspective: An Introduction to International Social Work*, Oxford University Press, 2014, 34.

²⁰⁴ Peter Nestor, ‘Four Human Rights Issues Every Food and Agriculture Company Needs to Understand’ (*Business for Social Responsibility’s blog*, 12 February 2013) <<https://www.bsr.org/en/our-insights/blog-view/four-human-rights-issues-every-food-and-agriculture-company-needs-to-understand>> (accessed on 24 October 2019)

²⁰⁵ Research undertaken on websites of relevant companies on 21 October 2019.

²⁰⁶ See Section 4.1.2.3.3. for details.

²⁰⁷ LHRC, ‘Report on Human Rights and Business 2016’, 2017, xxvi.

and human rights protection²⁰⁸: Unilever, Mufindi Tea and Coffee Ltd. [MTC], and Chai Bora. I chose to name the three companies of my study for three reasons: first, all three companies are large enough to ensure the anonymity of all interviewees, including managers and workers. Second, a number of studies on self-regulation do include the names of the corporations which they investigate²⁰⁹. Third, it will allow me to discuss their structures and performance, as set in their specific environment, more easily.

Of all three companies, Unilever is the only firm which makes use of all types of mechanisms mentioned above (company-level (internal and external instruments) and product-level mechanisms) and, perhaps as a result, the firm has made the most extensive range of commitments of all three corporations and has been recognised as a human rights leader globally²¹⁰. MTC has had its plantations certified by Fairtrade and the Rainforest Alliance and has committed to some ILO conventions. By adopting these mechanisms, both Unilever and MTC have committed to labour rights, community rights, and education- and health-related rights. Finally, Chai Bora has not adopted any human rights self-regulatory mechanism. Given the extensive range of human rights mechanisms and approaches used by the three companies, this case study will allow for the assessment of the potential effectiveness of all mechanisms, which will be carried out by analysing the human rights performance of the three companies²¹¹ and (if applicable) the impact of self-regulatory mechanisms on

²⁰⁸ Please see Annex 3 for a table summarising the differences between the companies in this regard.

²⁰⁹ For instance, see Allison Loconto, 'Sustainability: Shaping Sustainability In Tanzanian Tea Production', *Department of Sociology, Michigan State University*, 2010; Johannes Brinkmann and Ronald Sims, 'Enron Ethics (Or: Culture Matters More than Codes)', *Journal of Business Ethics* 45(3), 2003, 243, 243; and Mark Moberg, 'Fair trade and eastern Caribbean banana farmers: Rhetoric and reality in the anti-globalization movement', *Human organization* 64(1), 2005, 4.

²¹⁰ For instance, Rachel Wilshaw, author of a book on labour rights in Unilever's supply chain and Oxfam's Ethical Trade Manager, wrote that the company showed 'leadership' by carrying out and publishing its 2015 Human Rights Report ('Unilever opens a can of worms on corporate human rights reporting' (Oxfam blog, 12 August 2015) <<https://oxfamblogs.org/fp2p/unilever-opens-a-can-of-worms-on-corporate-human-rights-reporting/>> (accessed on 19 October 2019)); and John Morrison, Chief Executive of the Institute for Business and Human Rights, referred to Unilever's report as a 'benchmark' ('How elephants can dance: Unilever's human rights report sets a new benchmark for business' (Institute for Business and Human Rights's website, 30 June 2015) <<https://www.ihrb.org/focus-areas/benchmarking/how-elephants-can-dance-unilevers-human-rights-report-sets-a-new-benchmark>> (accessed 19 October 2019)).

²¹¹ This method is supported by Kaptein and Schwartz: "the content of a business code is the basis for determining the indicators for measuring its effectiveness: the behavior that is addressed in the code is the behavior that is expected." (Kaptein and Schwartz (n. 165), 122)

corporate behaviour, as assessed using the framework of ‘key features’ which I will develop in Chapter 3 and based on scholars’ hypotheses.

It is important to note that this case study does not aim to directly compare individual corporate performances. However, covering three companies which operate side-by-side, produce the same product, and have adopted very different types of mechanisms, makes it possible to draw stronger conclusions about the kind of impact which self-regulation may have on corporate human rights performance.

It is especially important to explain why I selected Chai Bora as one of my case studies. I will here rely on two concepts developed by Yin when exploring multiple-case study design: “theoretical replication” and “rival explanations”²¹². I will first offer some detail about both concepts and then link them to my own empirical research. First, when a multiple-case study follows the “theoretical replication” model, it includes a case for which some of the experimental conditions considered challenges to the original finding are altered to see whether the finding may be duplicated. An example of such a multiple-case study is Peter Szanton’s book, *Not Well Advised*²¹³, in which Szanton analyses the attempts of academics and other consultants to provide useful advice to officials of city government during the urban crisis of the 1970s and 80s. To support his analysis, Szanton conducts a multiple-case study with (1) studies of university groups providing research to city governments; (2) studies of non-university groups doing the same thing; (3) studies of university groups providing research to sectors *other* than city government (e.g. businesses); and (4) studies of groups which were able to help city government. Bringing in a broad array of evidence from all these case studies helped strengthen Szanton’s overall conclusion – as will including Chai Bora in this thesis’s multiple-case study, as explained below. The second concept taken from Yin – addressing the “rival explanations” for the case study’s findings – is also considered a “major” strategy for strengthening the findings in question. Yin gives the following example of addressing ‘rivals’: “the original hypothesis might be that summer reading programmes improve students’ reading scores, and [the researcher] already might have shown this result through two or three programmes whose case studies served as literal replications. A rival explanation might be that parents also work more closely with their children during the summer and that this circumstance

²¹² Yin (n.169).

²¹³ Peter Szanton, *Not Well Advised*, iUniverse, 2001, cited in Yin (n.169).

can account for the improved reading scores. [The researcher] would then find another case, with parent participation but no summer reading programme, and in this theoretical replication, [they] would predict that the scores would not improve.”

Building on these two concepts, it is expected that including Chai Bora in my multiple-case study will strengthen my findings. First, following Yin’s “theoretical replication” model, it is important to include at least one case study where some of the experimental conditions are altered, leading to different results for “anticipable reasons”²¹⁴. Studying Chai Bora meets this criterion as the firm has not adopted any self-regulatory mechanisms, contrary to the other two companies. Moreover, drawing from the relevant literature outlined earlier in this chapter, these ‘altered conditions’ are expected to lead to different results; as in, the firm’s human rights performance is anticipated to be worse than the other two companies’. It is however important to keep in mind that the ultimate aim of this thesis is not to compare the situation in the three companies, but rather draw on a broader array of evidence than would be available if only Unilever and/or MTC were considered. This is where Yin’s “theoretical replication” model draws its strength from, and why it is important to include Chai Bora. Second, including Chai Bora will help me address some “rival explanations” as to why the human rights performance of Unilever and MTC improved on certain issues (the original explanation lying with the sole adoption of self-regulatory mechanisms). This will be particularly helpful when it is difficult to trace the improvement to the adoption of self-regulation. Yin writes that “the more rivals that have been addressed and rejected, the stronger will [the findings] be”. As will be uncovered during the analysis of the multiple-case study, some of the ‘rivals’ relevant to this research hypothesis will indeed be rejected, and others will not. Again following Yin’s recommendation, I included data about the ‘rivals’ as part of my data collection and analysis in Chapters 7 and 8. Overall, including Chai Bora allows for this side of the empirical analysis to take place and, in turn, to make my answers to the research questions more robust.

By going beyond theoretical analysis of corporate standards, this thesis’s fieldwork will contribute to academic debates by introducing empirical evidence about the potential of different self-regulation mechanisms in corporate mitigation of human

²¹⁴ Yin (n.169).

rights risks and compliance with firms' human rights obligations, albeit in a small-scale study. More broadly, this study aims to contribute empirical evidence to academic debates about the potential of self-regulation as a complementary (or alternative) mechanism to traditional, state-centred regulation²¹⁵. Further details about case selection, data collection methods, and methods of analysis will be outlined in Chapter 4.

1.5. Conceptual framework

This thesis explores the concept of corporate human rights self-regulation, both theoretically and empirically. Building on this, the conceptual framework used in thesis is fourfold.

First, I adopt in this thesis a legal positivist approach in regards to international human rights law and, following the majority of academic authors, I endorse the UNGPs' framework laying out the corporate responsibility to respect human rights as follows: corporate responsibilities, applicable to all corporate entities around the globe, extend – at a minimum – to those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO's Declaration on Fundamental Principles and Rights at Work. This is outlined primarily in this chapter.

Second, I investigate the concept of 'human rights self-regulation', which is operationalised through specific mechanisms (with human rights aims) voluntarily adopted by corporations (as explained in Section 1.1.). As this thesis aims to address the extent to which it is possible to assess the effectiveness of corporate human rights self-regulation *as a form of regulation*, a key aspect of my conceptual work is to explore the full range of self-regulatory mechanisms which companies can adopt. This is outlined primarily in Chapter 2, where I explore the relevant self-regulatory mechanisms adopted by companies: corporate policies and codes of conduct, intergovernmental instruments, industry-level mechanisms, multi-stakeholder initiatives, and certification labels. I explore typologies for conceptualising and organising self-regulatory mechanisms and, taking the form as a starting point, I develop my own typology which divides these mechanisms into two broad categories:

²¹⁵ Abbott and Snidal (n. 13); and Section 1.3.2. generally.

mechanisms which cover the whole corporate structure (which I dub ‘company-level mechanisms’), and those who do not (dubbed ‘product-level mechanisms’).

On the one hand, company-level mechanism are applicable to the *entire* firm and involve the setting-up of processes across the whole company, covering all departments, products, and staff members (e.g. from field labourer to customer service); the adopted standards included in these mechanisms are supposedly upheld in all corporate processes, and that all the products made by the firms in question will have been made respectfully of the human rights included in the company-level mechanisms used by the firms. More details about the concept of company-level mechanisms as I adopt it in this thesis are available in Section 2.2.1.

On the other hand, product-level mechanisms aim to guarantee that certified products have been made in certain conditions using certain materials. It is acknowledged that these mechanisms may be developed internally²¹⁶ – however, the vast majority are developed by external organisations. Moreover, while some product-level mechanisms do not include a certification process, such as the international code for the production of cut flowers, most do. I therefore focus in this thesis on the initiatives which involve the “(voluntary) assessment and approval by an (accredited) party on an (accredited) standard”²¹⁷. As such, they allow corporations to label some of their products as having been produced in a way that did not infringe on human rights. However, how this is achieved will greatly vary from one certification system to the next: some certification schemes will focus on environmental, social, or economic criteria, while others will be more all-encompassing. More details about the concept of product-level mechanisms as I adopt it in this thesis are available in Section 2.2.2.

Finally, I make an important conceptual contribution by developing a framework of ‘key features’ which allows for the investigation of the effectiveness of the various mechanisms used by the firms in this thesis’s case study in helping them meet their human rights responsibilities. This contribution builds on two elements of my

²¹⁶ One of the rare examples of internal product-level mechanism would be Sainsbury’s recent ‘Fairly Traded’ certification (more information is available on the company’s website, available here: <<https://www.about.sainsburys.co.uk/news/latest-news/2017/27-10-17-fairlytraded-faq>>, accessed on 20 October 2019)

²¹⁷ Miranda P.M. Meuwissen, Annet G.J. Velthuis, Henk Hogeveen and Ruud B. M. Huirne, ‘Technical and economic considerations about traceability and certification in livestock production chains’, in *New Approaches to Food-Safety Economics*, A.G.J. Velthuis, L.J. Unnevehr, H. Hogeveen, R.B.M. Huirne (ed.), Springer Science & Business Media, 2003, 53.

conceptual framework which I develop in my thesis. First, I explore the value given to voluntary self-regulation by scholars throughout the thesis, with the aim to reflect on the validity of their claims (this is outlined primarily in this chapter); second, I assess the features identified by scholars as helping guarantee the effectiveness of mechanisms with, again, the aim to reflect on the validity of authors' claims. This is outlined in this chapter and formalised as part of a framework (created for this thesis) laid out in Chapter 3. Two bodies of literature have traditionally been developed separately: the literature exploring the effectiveness of company-level mechanisms and that exploring the effectiveness of product-level mechanisms. However, I argue that both literatures (and both types of self-regulation) should be considered together, firstly because of their substantive content and objectives, secondly because of the way which firms use them, and third because of their similar 'key features', as identified by scholars looking at what would make mechanisms effective. These three arguments were outlined in more detail in Section 1.3.2. above. When both literatures are examined together, it is clear that they share key aspects in their approach to evaluating the value of self-regulation, and that the remaining aspects are important to include for both types of mechanisms. Indeed, as will be outlined in more detail in Sections 3.2. and 3.3., the importance of good and operationable criteria developed by a broad range of stakeholders, a strong external monitoring process with trained and independent investigators, and the genuine motivation of firms are included in the literature looking at company-level mechanisms and looking at product-level mechanisms. Moreover, the embedding of standards (communication of policies, and training of employees and managers), regular monitoring of compliance, the setting up of free and anonymous complaints mechanism(s), and sanctions for non-compliance are included in product-level mechanisms themselves and in the literature looking at self-regulation generally. From this common approach I draw out a set of 'key features', divided into five main categories: drafting of standards; embedding of standards into everyday operations; monitoring and reporting of compliance; setting up of complaint mechanism(s); and sanctioning. To the extent possible, motivation may also be taken into account. This framework of 'key features' allows for the investigation of the effectiveness of the various mechanisms used by the firms in this thesis's case study in helping them meet their human rights responsibilities. It also allows for the analysis of the value of each 'key feature' in supporting the effectiveness of mechanisms.

Finally, any other factors which are found to play a role in the effectiveness of mechanisms or in the human rights performance of companies will also be examined.

Corporate self-regulatory mechanisms therefore share many standards, aim to shape corporate behaviour towards more human rights-friendly practices, are used by corporations as parts of a unique ‘human rights’ strategy, and finally share many ‘key features’ which would, according to scholars, ensure their effectiveness. It is therefore important to study them all together, as it will allow for the comprehensive evaluation of the value of voluntary corporate human rights self-regulation in driving respectful business practices.

In summary, this thesis explores the concept of corporate human rights self-regulation by taking a legal positivist approach. I investigate the scholarship on self-regulation with a human rights focus, bringing together two literatures traditionally kept apart. This allows me to identify gaps in the scholarship and to comprehensively explore the effectiveness of corporate human rights self-regulation.

1.6. Structure of the thesis

This chapter introduced crucial elements for the rest of the thesis. First, it was established that businesses have human rights responsibilities. Second, in order to ensure that firms meet their responsibilities, academic scholarship consider a variety of regulatory instruments, including *self-regulatory* mechanisms, and more specifically *voluntary* self-regulation. Third, scholars have contrasting opinions regarding the (potential) effectiveness of the latter, ranging from those who see it as an inherently positive mode of regulation to those who are sceptical that it has any positive role to play. Fourth, scholars fail to study all these mechanisms together despite the fact that they address the same human rights issues, are used by firms as part of single strategies, and the same features may be used to assess their effectiveness. Five, little scholarship has looked into the impact on the ground of such mechanisms – an issue which I will explore further in Chapter 3. Considering the paucity of empirical research, and the importance of conducting such investigation, it is necessary to contribute to filling that gap with a case study in an appropriate setting: the Tanzanian tea industry. This will help develop appropriate methods for investigating the effectiveness of different types of self-regulatory mechanisms. It will also start contributing empirical evidence as to their effectiveness (including the role

played by key features), albeit restricted to a certain industry and geographical location.

This thesis is divided into eight chapters: in Chapter 1, I introduce the research project, set out the main questions which this thesis strives to answer, and lay out my methodology; in Chapter 2, I outline my typology of corporate self-regulatory mechanisms; Chapter 3 offers theoretical insight into what may make these mechanisms effective; in Chapter 4, I detail my case selection, data collection methods, and methods of analysis; in Chapters 5, 6, and 7, I lay out a detailed account of the human rights performance of the three companies selected for my case study (Unilever, MTC, and Chai Bora) as assessed against their own human rights commitments (if relevant) and using the framework of ‘key features’ developed in Chapter 3; finally, in Chapter 8, I outline the general findings of the case study, answer the thesis’s questions, and set forth areas for further study.

Chapter 2 will now outline my typology of corporate human rights self-regulatory mechanisms.

Chapter 2 – Typology of Corporate Human Rights Self-Regulatory Mechanisms

This chapter will explore the different types of self-regulatory mechanisms which corporations use to improve their human rights performance, as categorised in a new typology. I will first briefly review the existing typologies and explain why they are not adequate for the purpose of assessing the effectiveness of mechanisms on the ground. I will then outline my typology and, building on the information provided in Chapter 1, explore each type of mechanism in more detail.

2.1.Existing typologies

Adopting a typology of corporate human rights self-regulatory mechanisms is necessary prior to conducting my study: businesses use different kinds of mechanisms, it is therefore indispensable to map these out before I can move on to analysing their content, their implementation, and their impact, as explained in Chapter 1. Before reviewing existing typologies, it is crucial to highlight that I need a typology which would categorise mechanisms *at the level of the firm*: I am interested in how self-regulation helps *firms* improve their human rights performance. It follows that the point of focus of this thesis is the way which *companies* use these mechanisms, and what kind of effect this has on their behaviour. An adequate typology therefore needs to take the firm as a starting point, and assess the mechanisms based on how firms will use them. Building on this, I felt it was necessary to develop my own typology of mechanisms as the four which are publicly available did not seem adequate as they were not developed for the same purpose. It is important to note that I do not claim that my typology is superior than the other typologies, but only that it fits my research aims better.

First, to examine the relevance and limitations of codes of conduct designed to promote the effective application of labour standards in the manufacturing operations of multinational corporations, Olivier Boiral identified in 2003 four types of voluntary

instruments available to corporations [typology 1 in the table below]²¹⁸: 1) “certified social labels”; 2) “certified external codes”; 3) “ethical investment and sourcing”; and 4) “in-house codes of conduct”. These four categories are unsatisfactory because they leave out all company-level mechanisms except for corporate codes of conduct – which means that instruments such as ILO conventions, industry codes, or multi-stakeholder initiatives are not included. Furthermore, Boiral includes “ethical investment and sourcing” as an instrument which may be used by firms to “promote labour standards”, but ‘ethical investment and sourcing’ may be considered as goals or perhaps processes but, as such, do not qualify as formal instruments in themselves²¹⁹. Finally, it distinguishes between certification standards and labelling schemes, which I argue should be considered part of the same mechanisms: once a firm implements the labelling scheme’s certification standards, it is allowed to use the label as part of its communication efforts about (relevant) products. It follows that certification standards and labelling schemes overlap and should not fall into two different categories.

Second, the typology developed by Gary Gereffi, Ronie Garcia-Johnson, and Erika Sasser [typology 2] to study whether “certification arrangements really affected corporate behaviour” only covered mechanisms which included a “reporting or monitoring” component²²⁰, thereby leaving out important mechanisms, such as ILO conventions or (certain) company and industry codes.

Third, Mathias Koenig-Archibugi’s typology [typology 3], developed in 2004 while considering the issue of public accountability of transnational corporations in the light of the experiences of the previous 30 years, differentiated between 1) internal standards and certification; 2) sectoral standards and certification; and 3) external standards and certification²²¹. This typology is not adequate for two reasons: first, it primarily focuses on the entity which created the mechanisms, rather than the internal dynamic of the mechanisms and the use which firms will make of them. This is problematic, as I explained at the beginning of this section. Second, it leaves out

²¹⁸ Olivier Boiral, ‘The certification of corporate conduct: issues and prospects’, *International Labour Review* 142(3), 2003, 317, 326.

²¹⁹ Ibid.

²²⁰ Gereffi, Garcia-Johnson, and Sasser (n. 4), 57.

²²¹ Koenig-Archibugi (n. 11), 251-257.

intergovernmental instruments, such as international human rights conventions, which are instruments commonly used by firms to improve their human rights performance.

Fourth, with the aim to “identify, enhance as needed, and promote the best existing standards (developmental, social and environmental) for responsible investment in value chains and voluntary investor compliance with these standards”, the UN categorised in 2011 business standards as follows [typology 4]²²²: 1) intergovernmental organisation standards derived from universal principles; 2) multi-stakeholder initiative standards; 3) industry association codes; and 4) individual company codes. This categorisation did not differentiate between internal and external mechanisms, which does not allow for the assessment of the role played by certain features in the effectiveness of the mechanisms in question²²³. Moreover, the UN categorisation left out product-level mechanisms, despite their playing an important part in firms’ human rights self-regulation. Missing them out would therefore paint an incomplete picture of self-regulatory mechanisms and of their potential effectiveness.

²²² Inter-Agency Working Group on the Private Investment and Job Creation Pillar of the G-20 Multi-Year Action Plan on Development, ‘Promoting Standards for Responsible Investment in Value Chains: Report to the High-Level Development Working Group’, UN Conference on Trade and Development, 2011, 3, as cited in James Jackson, ‘Codes of Conduct for Multinational Corporations: An Overview’, *US Congressional Research Service*, 2013, 5.

²²³ E.g. standard drafting. I will go into more detail about this in Chapter 3.

The four existing typologies (as well as mine, for ease of comparison) are summarised in this table:

		My typology	Boiral [1]	Gereffi, Garcia- Johnson, and Sasser [2]	Koenig- Archibugi [3]	United Nations [4]
	Internal company-level mechanisms	X	X	X (only mechanisms with a “reporting or monitoring” component)	X	X
External company-level mechanisms	Industry-led mechanisms	X		X (only mechanisms with a “reporting or monitoring” component)	X	X
	Inter-governmental mechanisms	X		X (only mechanisms with a “reporting or monitoring” component)		X
	Multi-stakeholder initiatives	X		X (only mechanisms with a “reporting or monitoring” component)	X	X
	Product-level mechanisms	X	X	X (only mechanisms with a “reporting or monitoring” component)	X	

As I explained in Chapter 1, it is important to assess the effectiveness of various types of self-regulatory mechanisms together as their aim is similar, because they all include (at least some) human rights standards, and because companies themselves see them as different parts of one strategy. Since none of the existing typologies is adequate, I have developed my own typology, which I will now outline.

2.2. Typology of corporate human rights self-regulation

Taking the firm as a starting point, mechanisms as part of this typology fall into two broad categories: mechanisms which cover the whole corporate structure (company-level mechanisms), and those who do not (product-level mechanisms). On the one hand, company-level mechanism are applicable to the *entire* firm and involve the setting-up of processes across the whole company, covering all departments, products, and staff members (e.g. from field labourer to customer service); the adopted standards will therefore be applicable to the whole corporate structure. Company-level mechanisms are themselves divided into two sub-categories: internal and external instruments. The former includes instruments which were developed and adopted by the firm itself, such as human rights policies and codes of conduct. The latter encompasses all instruments which were not developed by the firm itself (or at least not *only* by the firm) but by external entities (or group thereof): first, intergovernmental instruments; second, industry-level instruments; and third, multi-stakeholder initiatives. The origin of the mechanisms, and whether they are created by the firm itself or an external category, are important to the extent that it will determine whether the firm will have control over certain stages of the process, such as the drafting phase. However, they are matters of secondary importance in the context of this thesis because they will not determine the dynamic of the mechanism.

On the other hand, product-level mechanisms are only relevant to specific products and include processes starting and ending with the product; it follows that the standards adopted by the firm will only be applicable to the certified product. Similarly to company-level mechanisms, product-level mechanisms may be internally or externally developed. However, as there are very few internal product-level mechanisms, I will not divide this category further.

I will first review company-level mechanisms and secondly product-level mechanisms.

2.2.1. Company-level mechanisms

Company-level mechanisms are applicable to the whole corporate structure. It follows that the standards included in these mechanisms are supposedly upheld in all corporate processes, and that all the products made by the firms in question will have been made

respectfully of the human rights included in the company-level mechanisms used by the firms. I have broadly divided this type of mechanisms into two categories, based on whether the instruments were developed by the firm itself (internal mechanisms) or by external entities (external mechanisms).

2.2.1.1. Internal instruments

Internal company-level mechanisms are developed and adopted by the firm itself and are usually human rights policies or codes of conduct – for ease of reading, this section will refer to ‘corporate codes’ to refer to both these instruments. The explicit intention behind corporate codes is to set clear standards regarding corporate conduct²²⁴ and create a “set of activities that a company commits to undertake when a conflict arises between a business and society at large”²²⁵, which in practice translates into “written statements of principle or policy intended to serve as the expression of a commitment to particular enterprise conduct”²²⁶. However, such instruments are also sometimes labelled ‘paradoxical’: Jill Murray writes that they are “a creature of the firm, yet are used to temper the power of the firm in relation to its dealings with its employees”²²⁷. Perhaps because of this paradoxical nature, many authors underline the fact that companies may adopt corporate codes for reasons other than ethical behaviour and social responsibility²²⁸. Whatever hidden motives corporations may have for adopting corporate codes, they are the most common means for companies to express and implement their human rights responsibility²²⁹.

Before getting into further analysis of internal company-based mechanisms, it is important to note that corporations may adopt sub-codes to elaborate the general principles outlined in their main corporate code²³⁰. Sub-codes focus on particular issues and outline with more details the principles laid out in general policies. Beyond

²²⁴ Krista Bondy, Dirk Matten, and Jeremy Moon, ‘Multinational Corporation Codes of Conduct: Governance Tools for Corporate Social Responsibility?’, *Corporate Governance: An International Review* 16(4), 2008, 294, 299.

²²⁵ S. Prakash Sethi, *Setting Global Standards: Guidelines for Creating Codes of Conduct in Multinational Corporations*, John Wiley & Sons, 2003, 64.

²²⁶ Janelle Diller, ‘A social conscience in the global marketplace? Labour dimensions of codes of conduct, social labelling and investor initiatives’, *International Labour Review* 138(2), 1999, 99, 102.

²²⁷ Murray (n. 36), 1.

²²⁸ Ibid; and Michael Lenox, ‘The Prospects For Industry Self-Regulation Of Environmental Externalities’, *Working Paper*, 2003, 1, 10.

²²⁹ Kolk and Van Tulder (n. 157), 260.

²³⁰ Kaptein and Schwartz (n. 165), 117.

its Human Rights Statement and its Code of Business Principles, Unilever has for instance adopted a Responsible Business Partner Policy, a Responsible Sourcing Policy, a Fairness in the Workplace Policy, and Opportunities for Women Policy. Sub-codes are relevant to this thesis since the extent to which companies' main codes are elaborated in sub-codes may be taken into account when evaluating their implementation and effectiveness²³¹.

Twenty years ago, corporate codes were still uncommon: Douglas Cassel²³², as well as Lance Compa and Tashia Hinchliffe-Darricarrère²³³, wrote in the mid-1990s that most multinational corporations had not issued codes covering labour or human rights, although companies were then starting to do so. Although Steven Ratner dates the emergence of corporate codes back to the beginning of the twentieth century²³⁴, one of the very first (and most influential) 'modern' corporate codes was published in 1974 by Caterpillar²³⁵. The basis for the code was the following: "we support laws of all countries which prohibit restraint of trade, unfair practices, or abuse of economic power. And we avoid such practices in areas of the world where laws do not prohibit them"²³⁶. The scope of commitments was not as large as it may generally be today, but it is typical of corporate codes adopted in the 1970s²³⁷. Levi Strauss was a pioneer in this regard, with their own code developed in 1975 indicating that compliance with laws was in addition to its promise to treat workers "fairly" and "well above the minimum legal standard"²³⁸.

The situation has changed dramatically, as most multinational corporations today have adopted corporate codes (which may take different names, such as "human rights statement", "codes of business ethics", or "codes of business standards"). Of the biggest 40 companies in six of the biggest industries worldwide (automobile, commodities, construction, electronics, food and drinks, and pharmaceuticals), 33 have specific (and publicly available) codes of conduct, two have published 'human

²³¹ Kaptein and Schwartz (n. 165), 120.

²³² Cassel, 'Corporate Initiatives: A Second Human Rights Revolution?' (n. 26), 1974.

²³³ Compa and Hinchliffe-Darricarrère (n. 30), 686.

²³⁴ Ratner (n. 33), 531.

²³⁵ Max Stackhouse, *On Moral Business: Classical and Contemporary Resources for Ethics in Economic Life*, Wm. B. Eerdmans Publishing, 1995, 796.

²³⁶ Ibid.

²³⁷ David Doorey, 'The Transparent Supply Chain: from Resistance to Implementation at Nike and Levi-Strauss', *Journal of Business Ethics* 103, 2011, 587, 595.

²³⁸ Ibid.

rights statements' only, and five have not adopted any publicly available mechanisms or commitments (see Annex 2 for details). It is important to note that the literature overwhelmingly focuses on standards adopted by multinational corporations, which leads me to believe that multinationals are most likely to have human rights policies²³⁹, such as Unilever's human rights statement.

I will now move to the second category of company-level mechanisms: external mechanisms.

2.2.1.2. External mechanisms

External mechanisms are developed by entities external to the company which will adopt them; they are broadly divided between intergovernmental instruments; industry-level instruments; and multi-stakeholder initiatives.

2.2.1.2.1. Intergovernmental instruments

As mentioned in Chapter 1, companies commit to intergovernmental instruments in their company-level internal mechanisms, or as stand-alone commitments. Intergovernmental instruments include standards to which companies commit but which were not developed by the firms themselves. They are mostly developed by the international community and have traditionally been adopted by states only. The fact that corporations now commit to such instruments may reflect the shift in international law regarding corporate human rights responsibilities.

I distinguish here between two types of intergovernmental instruments. First, instruments simply citing international principles as recognised by international law – using 'ends'-type of command which lays out the aim(s) to be achieved²⁴⁰. Second,

²³⁹ This may be explained by the fact that multinationals face greater exposure to – and so pressure from – civil society to publicly commit to uphold human rights. Pressure is also necessarily greater as multinational corporations, because of their very nature, operate in different jurisdictions and it may be more difficult to hold them accountable for human rights breaches. Finally, it may be a matter of resources: smaller firms may face a shortage of expertise and human capital when trying to address their potential human rights impact. The main issue remains: are these self-regulatory mechanisms effective in improving the human rights situation on the ground?

²⁴⁰ I am using here the differentiation made by Cary Coglianese between 'ends' or 'means' commands. The former lays out the aim(s) to be achieved whereas the latter focuses on how to achieve them (Coglianese (n. 71), 50). I will further explore these concepts in Chapter 3.

mechanisms developed by the international community to implement these principles – using ‘means’-type of command which explains how to achieve the aim(s) to be achieved.

In the first category are (among others) the International Bill of Human Rights, composed of the Universal Declaration of Human Rights, the ICCPR, its two protocols, the ICESCR, and eight fundamental ILO Conventions²⁴¹. Firms regularly refer to these instruments, understood as directly applicable to companies²⁴², when they make human rights commitments. They will commit to respect instruments in full – like Unilever²⁴³ and PepsiCo²⁴⁴ do, with the International Bill of Rights –, or individual rights such as the right to a safe working environment, to freely join trade unions, to be free from forced labour, hazardous child labour, and discrimination – as Coca-Cola does²⁴⁵.

Second, mechanisms developed by the international community to implement these standards were first tentatively drafted in the 1970s and 1980s. One of the most famous attempts was the UN Centre on Transnational Corporations Draft Code, which meant to establish a multilateral framework to define, in a balanced manner, the rights and responsibilities of transnational corporations and host country governments in their relations with each other²⁴⁶. Codes were also developed by the European Community in 1977, and by Canada in 1985²⁴⁷.

Most famously, the Organisation for Economic Co-operation and Development [OECD] also developed such an instrument. Adopted as an annex to the OECD Declaration on International Investment and Multinational Enterprises, the Guidelines

²⁴¹ ILO Conventions C029 (‘Forced Labour Convention’, 1930), C087 (‘Freedom of Association and Protection of the Right to Organise Convention’, 1948), C098 (‘Right to Organise and Collective Bargaining Convention’, 1949), C100 (‘Equal Remuneration Convention’, 1951), C105 (‘Abolition of Forced Labour Convention’, 1957), C111 (‘Discrimination (Employment and Occupation) Convention’, 1958), C138 (‘Minimum Age Convention’, 1973), and C182 (‘Worst Forms of Child Labour Convention’, 1999).

²⁴² Kendyl Salcito, Chris Wielga, and Burton Singer, ‘Corporate human rights commitments and the psychology of business acceptance of human rights duties: A multi-industry analysis’, *The International Journal of Human Rights* 19(6), 2015, 673, 673.

²⁴³ Unilever ‘Human Rights Policy’ (n. 144), 1.

²⁴⁴ PepsiCo (n. 135), 1.

²⁴⁵ Coca-Cola, ‘Human Rights Policy’, 2014, 2-3.

²⁴⁶ Karl Sauvant, ‘The Negotiations of the United Nations Code of Conduct on Transnational Corporations, Experience and Lessons Learned’, *The Journal Of World Investment & Trade* 16, 2015, 11, 11.

²⁴⁷ Christopher McCrudden, ‘Human Rights Codes for Transnational Corporations: What Can the Sullivan and MacBride Principles Tell Us?’, *Oxford Journal of Legal Studies* 19(2), 1999, 167, 168.

for Multinational Enterprises²⁴⁸ [OECD Guidelines] were developed as an international code of conduct for corporations. Before the endorsement of the UNGPs in 2011, they were the only corporate responsibility instrument adopted by governments²⁴⁹. As of 2019, all 36 OECD Member States and 12 non-OECD countries had subscribed to the Guidelines²⁵⁰, which are addressed to (and endorsed by) corporations and cover the following areas²⁵¹: human rights, employment and industrial relations, the environment, corruption, competition, taxation, consumer interest, disclosure, and science and technology. The National Contact Points [NCPs], located in each OECD Member State, play a big part in the implementation of the Guidelines, and are responsible for ensuring that they are well understood by the business community²⁵², although some commentators have questioned the effectiveness of NCPs²⁵³.

Moreover, the Global Compact was launched by the UN in 2000 to align “corporate strategies and operations with universal principles” on human rights, labour (freedom of association and collective bargaining; prohibition of forced labour; prohibition of child labour; prohibition of discrimination), environment (precautionary principle; development of environmentally-friendly technologies), and anti-corruption.²⁵⁴ It prescribes ten principles to which participating companies are required to commit, and encourages firms to take strategic actions to advance societal goals, including through networks, dialogues, learning, initiatives and partnership projects²⁵⁵. When it was first introduced by the UN Secretary General, it was understood more as a basis for

²⁴⁸ OECD, ‘Declaration on International Investment and Multinational Enterprises, the Guidelines for Multinational Enterprises’ (hereinafter ‘OECD Guidelines’), 1976.

²⁴⁹ Jernej Letnar Čerňič, ‘Corporate responsibility for human rights: A critical analysis of the OECD guidelines for multinational enterprises’, *Hanser Law Review* 3(1), 2008, 71, 77.

²⁵⁰ OECD, ‘OECD Declaration and Decisions on International Investment and Multinational Enterprises’, available at: <<http://www.oecd.org/investment/investment-policy/oecddeclarationanddecisions.htm>> (accessed on 19 October 2019)

²⁵¹ OECD Guidelines, 5.

²⁵² UN Global Compact Office and the OECD Secretariat, ‘The UN Global Compact And The OECD Guidelines For Multinational Enterprises: Complementarities And Distinctive Contributions’, *OECD Investment Committee*, 2005, 6.

²⁵³ Christian Aid, Amnesty International, and Friends of the Earth, ‘Flagship or failure? The UK’s implementation of the OECD guidelines and approach to corporate accountability’, 2006, 3.

²⁵⁴ UN Global Compact, ‘The Ten Principles of the UN Global Compact’ (UN Global Compact’s website) <<https://www.unglobalcompact.org/what-is-gc/mission/principles>> (accessed on 19 October 2019)

²⁵⁵ UN Global Compact, ‘Local Network Issue Engagement Framework’ (UN Global Compact’s website) <<https://www.unglobalcompact.org/engage-locally/manage/engagement>> (accessed on 19 October 2019)

dialogue and sharing of best practice than a prescriptive code of conduct²⁵⁶. However, before the adoption of the UNGPs, Wagaki Mwangi, Lothar Rieth, and Hans Peter Schmidz²⁵⁷ wrote that the Global Compact was the main UN-sanctioned soft law designed to commit corporations to international standards of human rights and environmental protection – although some authors disagree with this terminology and affirm that the initiative is nothing more than a “set of ideals”²⁵⁸. In 2010, the Global Compact partnered with the Global Reporting Initiative to help corporations fulfil their reporting obligations²⁵⁹.

Finally, the UNGPs are to date the most authoritative and inclusive normative framework on business responsibilities for human rights²⁶⁰. The Guiding Principles aim to “reflect a common understanding of existing standards between stakeholders as distilled from many multi-stakeholder consultations over many years”²⁶¹. The UNGPs were adopted in 2011 and build upon the ‘Protect, Respect, Remedy’ Framework which was unanimously endorsed by the Human Rights Council in 2008²⁶². Since the adoption of the Guiding Principles, corporations have increasingly endorsed the framework, which is currently at the core of corporate human rights management²⁶³. The UNGPs were developed by the team of former UN Special Representative on business and human rights Professor John Ruggie, and are divided into three pillars: (1) the state’s duty to protect human rights; (2) the corporation’s responsibility to respect human rights; and (3) the duty to remedy any human rights violations. The first pillar outlines the duty of states to adopt effective policies, legislation and regulations

²⁵⁶ Uwe Kerkow, Jens Martens, and Tobias Schmitt. ‘The limits of voluntarism: Corporate self-regulation, multistakeholder initiatives and the role of civil society.’ *World Economy, Ecology and Development Association*, 2003, as cited in Dilek Cetindamar, ‘Corporate Social Responsibility Practice and Environmentally Responsible Behaviour: The Case of the United Nations Global Compact’, *Journal of business Ethics*, 76(2), 2007, 163, 167.

²⁵⁷ Wagaki Mwangi, Lothar Rieth, and Hans Peter Schmidz, ‘Encouraging Greater Compliance: local networks and the Global Compact’ in Thomas Risse, Stephen Ropp, and Kathryn Sikkink (eds.), *The Persistent Power of Human Rights*, Cambridge University Press, 2013, 203.

²⁵⁸ Cubie Lau, Cliff Fisher, John Hulpke, William Kelly, and Susanna Taylor, ‘United Nations Global Compact: The Unmet Promise of the UNGC’, *Social Responsibility Journal* 13(1), 2017, 48, 50.

²⁵⁹ Jiri Hřebíček, Jana Soukopová, Michael Štencl, and Oldrich Trenz, ‘Integration of Economic, Environmental, Social And Corporate Governance Performance and Reporting in Enterprises’, *Acta universitatis agriculturae et silviculturae Mendelianae Brunensis* 59, 2011, 157, 159.

²⁶⁰ Karlijn Kuijpers, Mariëtte van Huijstee, and Joseph Wilde-Ramsing, ‘A normative-empirical analysis of state duties and corporate responsibilities related to adverse human rights impacts on the Amazonian minerals-energy frontier’, *Journal of cleaner production* 84, 2014, 786, 787.

²⁶¹ Addo, The Reality of the United Nations Guiding Principles on Business and Human Rights’ (n. 24), 135.

²⁶² Ibid, 141.

²⁶³ Salcito, Wielga, and Singer (n. 242), 673.

to prevent, investigate, punish and redress human rights abuses²⁶⁴. The last two pillars aim to help companies respect their human rights responsibilities, and require the embedding of human rights due diligence, corporate reporting, and grievance mechanisms in business strategy. At the core of the instrument lies the requirement that companies respect international human rights standards, understood “at a minimum” as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO’s Declaration on Fundamental Principles and Rights at Work. Although the Principles encourage companies to prioritise actions to address the most adverse actual and potential impacts²⁶⁵, it does require firms to commit to respect all international human rights standards.

Most scholars believe that the UNGPs have helped build momentum around the issue of corporate human rights responsibilities and contributed to advance global governance²⁶⁶, including by making human rights matters more customary in corporate management procedures²⁶⁷. It was also argued in 2013 that the UNGPs may contribute to higher levels of accountability and awareness within corporations in respect of the negative impact of business activities on human rights²⁶⁸. Moreover, it is notable that the UNGPs have influenced a number of self-regulatory initiatives. This is for example the case for the Fair Labor Association, the Global Network Initiative, the Voluntary Principles on Security and Human Rights, and the Thun Group of Banks²⁶⁹.

However, some authors have criticised the UNGPs for restricting the role of corporations to ‘doing no harm’ instead of actively contributing to realising human rights²⁷⁰, especially in contexts where governments are unwilling or unable to adequately protect human rights²⁷¹. Parts of the literature are also sceptical about the

²⁶⁴ Addo, *The Reality of the United Nations Guiding Principles on Business and Human Rights*’ (n. 24), 134.

²⁶⁵ UNGPs, Principle 24.

²⁶⁶ Susan Ariel Aaronson and Ian Higham, ‘Re-righting business: John Ruggie and the struggle to develop international human rights standards for transnational firms’, *Human Rights Quarterly* 35, 2013, 333, 337; and Jägers (n. 60), 163.

²⁶⁷ Björn Fasterling and Geert Demuijnck, ‘Human Rights in the Void? Due Diligence in the UN Guiding Principles on Business and Human Rights’, *Journal of Business Ethics* 116 (4), 2013, 799, 799.

²⁶⁸ Ibid.

²⁶⁹ Addo, *The Reality of the United Nations Guiding Principles on Business and Human Rights*’ (n. 24), 145.

²⁷⁰ Florian Wettstein calls this “human rights minimalism” (Wettstein, ‘CSR and the debate on business and human rights: Bridging the great divide’ (n 64), 745).

²⁷¹ Anita Ramasastry, ‘Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability’, *Journal of Human Rights* 14(2), 2015, 237, 247.

(potential and actual) impact of the instrument, especially because of the lack of enforcement tools which would hold non-compliant firms to account²⁷². Indeed, the mechanism remains voluntary and therefore depends on the good will of corporations not only for endorsement, but for full implementation. To help guarantee implementation, authors outline the importance of educating firms regarding their human rights responsibilities²⁷³. Another limit of the mechanism may also lie with the lack of *actual* incorporation by firms of the UNGPs into corporate processes, which is a necessary step in the implementation of the mechanism. As Kendyl Salcito *et al.* uncovered²⁷⁴, over half of the largest companies in six of the biggest industries worldwide had taken no action to incorporate the Principles into policies or management systems as of 2015. Ken McPhail and Carol Adams²⁷⁵ find a similar trend: while they find “emergent” human rights due diligence procedures, there is little engagement with the ‘Access to Remedy’ pillar of the Guiding Principles. Finally, the UNGPs were criticised for providing benchmarks for corporate self-reporting which may lead to the superficial legitimization of corporate human rights performance (without evidence that substantive action has taken place) and for failing to provide a process creating conditions under which engagement of appropriate third-party can occur²⁷⁶.

Despite the UNGPs’ potential as a transformative mechanism for corporations in their approach to human rights, it is therefore important to study their impact on the ground as a mechanism for helping corporations meet their human rights responsibilities – which this thesis aims to do as part of a broader study into the impact of company-level mechanisms, albeit focusing on a specific industry in a specific region.

2.2.1.2.2. Industry-level mechanisms

Some industries have also come together and adopted sets of bespoke principles, especially industries where human rights risks are high. Principles are usually put

²⁷² Jägers (n. 60), 163.

²⁷³ Aaronson and Higham (n. 266), 337.

²⁷⁴ Salcito, Wielga, and Singer (n. 242), 690.

²⁷⁵ Ken McPhail and Carol A. Adams, ‘Corporate respect for human rights: meaning, scope, and the shifting order of discourse’, *Accounting, Auditing & Accountability Journal* 29(4), 2016, 2016, 650, 668-669.

²⁷⁶ Harrison and Sekalala (n. 10), 928.

together in a comprehensive document²⁷⁷, relevant to all companies in the specific industry, thus putting pressure on individual companies to publicly commit to common principles.

The banking industry is a particularly interesting example in this regard as its potential impact on human rights is further reaching than most industries: the lending power of banking institutions may allow corporate borrowers to breach fundamental rights. To respond to this risk, the banking industry has adopted principles striving to regulate the lending behaviour of the sector, and so control corporate impact on human rights. Such codes require that, in addition to carrying out the usual financial checks, banks conduct human rights due diligence, and only lend to companies which have mechanisms in place to prevent and mitigate human rights risks. The most widely endorsed instrument is the Equator Principles²⁷⁸, a benchmark for determining, assessing, and managing environmental and social risks in projects. This “commitment code”, covering both principles and intended behaviours²⁷⁹, is based on the International Finance Corporation performance standards on social and environmental sustainability and on the World Bank Group’s Environmental, Health, and Safety general guidelines²⁸⁰. As of April 2017, 89 financial institutions representing over 70% of project lending in emerging nations had adopted the Principles²⁸¹. However, some authors are sceptical about this initiative: in his preliminary analysis of the Equator Principles, Franck Amalric formulates three hypotheses, all based on the assumption that companies that have endorsed the instrument have done so because it will enhance firm value²⁸². Bert Scholtens and Lammertjan Dam concluded that the adoption of the Principles is mainly used to signal responsible conduct²⁸³, and that the main difference between adopters and non-adopters was their social, ethical, and

²⁷⁷ An example is the Electronics Industry Citizenship Coalition’s Code of Conduct.

²⁷⁸ Equator Principles, ‘Principles’, 2013.

²⁷⁹ Christopher Wright and Alexis Rwabizambaga, ‘Institutional Pressures, Corporate Reputation, and Voluntary Codes of Conduct: An Examination of the Equator Principles’, *Business and Society Review* 111(1), 2006, 89, 99.

²⁸⁰ John Conley and Cynthia Williams, ‘Global Banks as Global Sustainability Regulators?: The Equator Principles’, *Law & Policy* 33(4), 2011, 542, 544.

²⁸¹ Peter Gould, ‘Collision or Collaboration? Archaeology Encounters Economic Development: An Introduction’, in Peter G. Gould and K. Anne Pyburn (eds.), *Collision or Collaboration, Archaeology Encounters Economic Development*, Springer, 2016, 3.

²⁸² Franck Amalric, ‘The Equator Principles: A Step Towards Sustainability?’, *Centre for Corporate Responsibility and Sustainability Working Paper 01/05*, 2005, 2.

²⁸³ Bert Scholtens and Lammertjan Dam, ‘Banking on the Equator. Are Banks that Adopted the Equator Principles Different from Non-Adopters?’, *World Development* 35(8), 2007, 1307, 1308.

environmental policies. Niahm O'Sullivan and Brendan O'Dwyer's analysis shows that the initial group of banks created the Equator Principles partly to repair the perceived reputational damage caused to them by NGO campaigns²⁸⁴. Some authors also criticise the instrument for not providing affected citizen groups with a mechanism to directly challenge screening decisions or the adequacy of environmental or social management plans²⁸⁵. Furthermore, Avital Eshet conducted a study into the environmental impact of the Equator Principles and concludes that membership does not lead to improvements in environmental performance²⁸⁶. The Principles are therefore an interesting (and one of the most studied) example of an industry mechanism. However, I will not be looking into their effectiveness myself as this thesis's case study is set in the food and drinks industry.

2.2.1.2.3. Multi-stakeholder initiatives

Multi-stakeholder initiatives are mechanisms created and managed collaboratively by several types of organisations, usually corporations, business associations, and NGOs, but also sometimes governments and international organisations²⁸⁷. They set social and environmental standards, monitor compliance, promote reporting auditing, and encourage stakeholder dialogue and “social learning”²⁸⁸. It is acknowledged that certain multi-stakeholder initiatives may also be considered product-level mechanisms, if they focus on specific products, such as the Roundtable on Sustainable Palm Oil or the Roundtable on Responsible Soy.

²⁸⁴ Niahm O'Sullivan and Brendan O'Dwyer, 'Stakeholder perspectives on a financial sector legitimisation process: the case of NGOs and the Equator Principles', *Accounting Auditing & Accountability Journal* 22(4), 2009, 553, 564-5.

²⁸⁵ S. L. Kass and J. M. McCarroll, 'The Equator Principles: Lending with an environmental string', *New York Law Journal* 23, 2004, as cited in Wright and Rwabizambuga (n. 279), 99; and John Ruggie, 'Protect, respect and remedy: A framework for business and human rights', *Innovations: Technology, Governance, Globalization* 3(2), 2008, 189, 208.

²⁸⁶ Avital Eshet, 'Sustainable finance? The environmental impact of the 'equator principles' and the credit industry', *International Journal of Innovation and Sustainable Development* 11(2/3), 2017, 106, 125.

²⁸⁷ Luc Fransen and Ans Kolk, 'Global Rule-Setting for Business: A Critical Analysis of Multi-Stakeholder Standards', *Organization* 14(2), 2007, 667, 667.

²⁸⁸ Peter Utting, 'Regulating Business Via Multistakeholder Initiatives: A Preliminary Assessment', *Voluntary approaches to corporate responsibility: Readings and a resource guide*, 2001, 61, 61.

Multi-stakeholder codes primarily focus on issues that cross both industry-specific concerns and national and regional boundaries²⁸⁹. As explained by Lance Compa and Tashia Hinchliffe-Darricarrère²⁹⁰, behind the emergence of some of these codes is a strategy to promote the use of consistent language in codes of conduct and benchmarks for evaluating and comparing codes adopted unilaterally.

Regularly mentioned in the literature are the Sullivan Principles, regarding South Africa, and the MacBride principles, concerning Northern Ireland. Both focused primarily on labour standards, particularly equality of employment opportunities²⁹¹. The Sullivan code was developed in 1977 for US companies operating in South Africa, and initially included six principles: the desegregation of the workplace, fair employment practices for all employees, equal pay for equal work, job training and advancement of black people, increasing the number of black people in management, and the improvement of the quality of workers' lives outside of the work-place²⁹². Authors²⁹³ generally recognise some (albeit limited) degree of effectiveness to the Principles.

As Kevin McNamara writes²⁹⁴, the MacBride Principles, published in 1984, were greatly influenced by the Sullivan Principles. They included 'equal opportunity' guidelines intended to curb discriminatory hiring practices by US firms operating in Northern Ireland by prohibiting violence in the workplace and requiring that employers recruit underrepresented, minority applicants for job openings²⁹⁵. Authors²⁹⁶ mostly agree that the MacBride principles played an important role in ending employment discriminatory practices in Northern Ireland. Christopher McCrudden also mentions the existence of similar private-initiative codes such as the

²⁸⁹ S. Prakash Sethi, *Globalization and Self-Regulation: The Crucial Role That Corporate Codes of Conduct Play in Global Business*, Springer, 2016, 4.

²⁹⁰ Compa and Hinchliffe-Darricarrère (n. 30), 665.

²⁹¹ McCrudden (n. 247), 170.

²⁹² Mzamo Mangaliso 'South Africa: Corporate Social Responsibility and the Sullivan Principles', *Journal of Black Studies* 28(2), 1997, 219, 228.

²⁹³ McCrudden (n. 247), 177; and *ibid*, 229.

²⁹⁴ Kevin McNamara, *The Macbride Principles: Irish America Strikes Back*, Liverpool University Press, 2009, 20; and McCrudden (n. 247), 198.

²⁹⁵ Neil Conway, 'Investment Responsibility in Northern Ireland: The MacBride Principles of Fair Employment', *Loyola Of Los Angeles International And Comparative Law Review* 24(1), 2002, 1, 1.

²⁹⁶ McCrudden (n. 247), 197.

Slepak Principles, the Miller Principles, the Maquiladora Standards of Conduct, the Valdez Principles, the Caux Principles, and the Kyosei Principles²⁹⁷.

In conclusion, company-level mechanisms are broadly divided into internal and external mechanisms, based on whether the entity which develops the set of standards is the firm itself or an external entity. This categorisation will help with the analysis of the effectiveness of mechanisms. I will now move on to product-level mechanisms.

2.2.2. Product-level mechanisms

Product-level mechanisms guarantee that certified products have been made in certain conditions using certain materials. It is acknowledged that these mechanisms may be developed internally²⁹⁸ – however, the vast majority are developed by external organisations. I will therefore not divide this category further and will focus on externally developed product-level mechanisms. Moreover, while some product-level mechanisms do not include a certification process, such as the international code for the production of cut flowers, most do. This is why I will focus in this thesis on the initiatives which involve the “(voluntary) assessment and approval by an (accredited) party on an (accredited) standard”²⁹⁹. As such, they allow corporations to label some of their products as having been produced in a way that did not infringe on human rights. However, how this is achieved will greatly vary from one certification system to the next: some certification schemes will focus on environmental, social, or economic criteria, while others will be more all-encompassing. It follows that certain multi-stakeholder initiatives may also be considered product-level mechanisms, if they focus on specific products, such as the Roundtable on Sustainable Palm Oil or Soy, as mentioned in Section 2.2.1.2.3.

²⁹⁷ Ibid, 168.

²⁹⁸ One of the rare examples of internal product-level mechanism would be Sainsbury’s recent ‘Fairly Traded’ certification (more information is available on the company’s website, available here: <<https://www.about.sainsburys.co.uk/news/latest-news/2017/27-10-17-fairlytraded-faq>>, accessed on 20 October 2019)

²⁹⁹ Miranda P.M. Meuwissen, Annet G.J. Velthuis, Henk Hogeveen and Ruud B. M. Huirne, ‘Technical and economic considerations about traceability and certification in livestock production chains’, in *New Approaches to Food-Safety Economics*, A.G.J. Velthuis, L.J. Unnevehr, H. Hogeveen, R.B.M. Huirne (ed.), Springer Science & Business Media, 2003, 53.

This section will briefly outline the history of product-level mechanisms before exploring their functioning further, including their risks and advantages. Finally, I will further explain why these certification labels – and in particular those relevant to the food and drink industry, as the case study will be focused on this industry – are human rights mechanisms, building on what was briefly outlined in Chapter 1. I will here focus on labels which are relevant to the tea industry, to make it as relevant as possible in preparation for the case study.

Certification labels are not new, as one of the first reported schemes was set up in the US in 1875 by the Cigar Makers' Association of the Pacific Coast. However, the motivations behind this particular certification label were fuelled by racist, anti-immigration sentiments as union members were threatened by the low wages and low standard of living acceptable to Chinese workers³⁰⁰. In the following decades, 'union labels' multiplied in the US, allowing consumers to identify products which had been made by union members³⁰¹. In parallel, other schemes were established; the "white list" was for instance set up in the late 1890s in New York City (US) and allowed customers to identify shops where female sale clerks enjoyed fair pay and working conditions³⁰². This included equal pay between men and women, minimum wage, compensation of overtime, limited working hours, paid holidays, and prohibition of employment of children under 14 years old. Building on this, Tim Bartley traces the inspiration for modern social and environmental labels (aiming to verify compliance with standards of sustainability and social justice on the ground) to the 1970s when the International Federation of Organic Agriculture Movements [IFOAM] started developing standards and organic certification labels emerged, such as the Blue Angel label in Germany³⁰³. Social (and environmental) labels such as Max Havelaar (later Fairtrade) and the Rainforest Alliance followed and proliferated in the 1980s³⁰⁴.

Certification schemes stand out as mechanisms used by companies because they are product-based. When firms apply to become certified, they demonstrate that they fulfil

³⁰⁰ Wendy A. Wiedenhoft, 'Consumer Tactics as "Weapons": Black Lists, Union Labels, and the American Federation of Labor', *Sociology* 14, 2006, 261, 270.

³⁰¹ Ibid, 269-271.

³⁰² Wendy A. Wiedenhoft, 'An Analytical Framework for Studying the Politics of Consumption: The Case of the National Consumers' League', *Sociology* 15, 2008, 281, 285.

³⁰³ Tim Bartley, 'Certification as a Mode of Social Regulation', in Levi-Faur (n. 107), 444.

³⁰⁴ Daniel Jaffee, *Brewing Justice: Fair Trade Coffee, Sustainability, and Survival*, University of California Press, 2014, 13.

all the criteria – but only as it affects the product in question. They do not need to make general commitments applicable to the whole corporate structure. A certified product will usually be regularly reassessed and the certification renewed (or not). Moreover, the process requires independent assessment from a third party: experts, usually from the certification organisation, conduct inspections on the ground. Organisations may also hire external audit firms to carry out such assessments. It is for instance the case of the Rainforest Alliance, which requires applicants to contact the relevant accreditation body in their country and will issue its certification for three years to products which have successfully passed the third-party inspection³⁰⁵. As for Fairtrade, the certification is issued for three years after third-party inspection by FLOCERT auditors and renewed every three years after a successful inspection³⁰⁶.

It follows that these mechanisms derive their power not from the state but from the market³⁰⁷. This is because, contrary to company-level mechanisms, product-level mechanisms allow for the easy identification of products whose production has been officially recognised as meeting certain standards. Such a label gives certified products visibility on the market and is therefore attractive to firms as a way to distinguish themselves as responsible businesses. Authors explain that, within these ‘information-based’ mechanisms, the application of rewards and penalties is left to external audiences – but issues arise when the information is either publicly unavailable or misleading³⁰⁸. One of the reasons this could happen is lax auditing practices³⁰⁹ and, because of the direct link between certifying organisations and companies seeking certification, there is some degree of scepticism among scholars about the impartiality of labels and the objectivity of audits. It is acknowledged that certification bodies are often competing for credibility and recognition and depend on the support of firms³¹⁰. I will look into these issues in more detail in Chapter 3. The risk of “greenwashing” is particularly high with certification labels because they are made to be easily identifiable on products – contrary to company-level mechanisms. This is one of the

³⁰⁵ Rainforest Alliance, ‘Certification Rules’, 2017, 11-12.

³⁰⁶ Fairtrade, ‘How Fairtrade Certification Works’ (Fairtrade’s website) <<https://www.fairtrade.net/about/certification>> (accessed on 14 October 2019)

³⁰⁷ Reynolds, Murray, and Heller (n. 3), 148; and Bartley (n. 303), 442.

³⁰⁸ Bartley (n. 303), 442.

³⁰⁹ Ibid, 442.

³¹⁰ Ibid, 442.

reasons why it is so important to check what is happening in reality, and whether product-level mechanisms are effective on the ground.

Finally, as explained in Chapter 1, many social and environmental certification schemes include human rights elements – many of which are specifically relevant to the food and drink industry. It follows that I will take the Rainforest Alliance and Fairtrade as examples. The Rainforest Alliance includes the following general criteria: fair wages (right to a just remuneration); health and safety (right to life, and right to just and favourable conditions of employment); community relations (indigenous rights³¹¹, right to land, and cultural rights); water protection (right to water and sanitation); right to association. More specifically, it is noticeable that Fairtrade requires corporations to pay their suppliers a minimum set price for their products – striving to respect workers’ right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity³¹² –, whereas the Rainforest Alliance only requires buyers to respect the suppliers’ rights to fair remuneration, but without setting a fixed price. Both the Rainforest Alliance and Fairtrade require that certified products be made while respecting the prohibition of child labour³¹³ and workers’ right to be free from discrimination at work³¹⁴. In an effort to respect indigenous and cultural rights, the Rainforest Alliance requires the involvement of local communities in decision-making, contrary to Fairtrade or UTZ, for instance. Furthermore, in order to help workers fulfil their rights to just and favourable working conditions³¹⁵, and to protection against unemployment³¹⁶, Fairtrade requires that a written contract³¹⁷ be signed between buyers and sellers, contrary to the Rainforest Alliance or IFOAM, for instance. It is therefore clear that certification labels’ standards commonly have broad human rights aims, covering labour rights, community rights, environmental rights, civil rights, economic rights, and cultural rights.

³¹¹ In general, I understand ‘indigenous rights’ as the rights included in the UN Declaration on the Rights of Indigenous Peoples and in ILO Convention C169 (‘Indigenous and Tribal Peoples Convention’, 1989).

³¹² UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Article 23(3).

³¹³ As is prescribed by ILO Conventions C138 and C182.

³¹⁴ As is prescribed by ILO Convention C111.

³¹⁵ Universal Declaration of Human Rights, Article 23(1).

³¹⁶ Ibid.

³¹⁷ Fairtrade ‘Hired Labour Standard’, Standard 3.5.6.

Product-level mechanisms have a very contrasting dynamic to company-level mechanisms. Focusing on specific products, they involve third-party organisations in compliance monitoring processes and allow for the clear identification of their label on certified products. They also include human rights elements, and firms use them as part of their human rights strategy, alongside company-level mechanisms.

2.3. Conclusion

As explained in Chapter 1, it is important to study all types of corporate mechanisms together. To do so, it is necessary to first understand how the mechanisms work and identify their common and distinctive features, which requires a typology of mechanisms. As the existing typologies were not adequate for this research, I developed my own, taking the firm as a starting point to broadly differentiate between company- and product-level mechanisms. Chapter 3 will build on this typology and explore academic scholarship into the impact of the different types of self-regulatory mechanisms, with the view to investigate the key characteristics which authors consider as helping mechanisms be effective on the ground. I will then use the typology to design my case study and test out hypotheses put forward by the literature as to the effectiveness of corporate self-regulation.

Chapter 3 – Framework for Analysis of Effective Self-Regulation

This chapter has a double aim: first, explore the literature studying the impact of self-regulatory mechanisms on corporate human rights performance; second, highlight the ‘key features’ which scholars have identified as potentially contributing to the effectiveness of each type of self-regulatory mechanisms (using the typology developed in the previous chapter), and demonstrate that the same set of features should be used when assessing both types of self-regulation.

First, this chapter will investigate the extent to which scholars have looked empirically into the human rights impact of company- and product-level mechanisms on the ground. This will allow for the identification of important gaps in the literature since, as will become clear, very little literature has empirically explored the impact of company-based mechanisms on corporate behaviour on the ground. On the other hand, empirical studies on product-level mechanisms are more common, but they have a limited focus and do not take a broad human rights approach, which will necessarily restrict the assessment of the effectiveness of the mechanisms from a human rights perspective and may miss out on important effects.

Second, I will examine the literature which has identified features contributing to the effectiveness of these self-regulatory mechanisms. I will first outline the characteristics identified by scholars writing on corporate self-regulation in general, and then focus on company-level mechanisms and finally on product-level mechanisms, based on the typology outlined in Chapter 2. As will become clear, similar features are relevant to both types of self-regulatory mechanisms and it will be important to use the same set of features when evaluating the effectiveness of both. Building on this, the chapter will close with the framework for analysis (using the ‘key features’ identified throughout the chapter) which will be used in the context of this thesis’s case study, and which will inform the assessment which I will make of the effectiveness of the different mechanisms in my own case study.

3.1.Existing research into the effectiveness of corporate self-regulatory mechanisms on human rights

This section will investigate the existing studies into the effectiveness of self-regulation, first focusing on existing research into company-level mechanisms and second on studies into product-level mechanisms.

3.1.1. Research into company-level mechanisms

As seen in Chapter 2, there is extensive literature on the development, content, and implementation of company-based mechanisms but only limited scholarship has looked into the impact of these mechanism. I will expand on the detailed findings of this scholarship in the second part of this chapter, but I will now briefly outline the key studies.

Kaptein and Schwartz's review of 79 studies into the effectiveness of internal mechanisms (company codes) produced conflicting results³¹⁸. As explained in Chapter 1, 35% of the studies found that codes are effective, 16% that the relationship is weak, 33% that there is no significant relationship, 14% presenting mixed results, and 2% (one study) finding that codes had a negative impact. However, there is limited literature empirically testing the *impact* of such mechanisms on human rights *on the ground*. With the exception of César Rodríguez-Garavito's research³¹⁹, the studies into the implementation (and potential impact) of internal company-level mechanisms do not rely on data which the researchers have collected in the field themselves to verify

³¹⁸ Kaptein and Schwartz (n. 165), 111.

³¹⁹ Rodríguez-Garavito (n. 166).

firms' claims³²⁰. It is also the case for the first two categories of external company-level mechanisms (intergovernmental instruments and industry-level instruments)³²¹.

Finally, the range of multi-stakeholder initiatives is very broad; and it is therefore necessary to focus on what is most relevant to this thesis: the food and drink industry. In this context, there is no literature on the impact of relevant multi-stakeholder initiatives from a human rights perspective on the ground. Most scholars in this field focus on the development and adoption of these instruments and overlook their implementation and impact^{322 323}. Further research is therefore needed, in order to determine whether firms in the food and drinks industry go beyond adopting these multi-stakeholder mechanisms and set up processes effectively implementing commitments with a positive impact on human rights on the ground.

The paucity of the literature focusing on impact is problematic as it does not allow for an independent assessment of the implementation of company-based mechanisms and

³²⁰ Kaptein and Schwartz (n. 165), 111; also see Mark Schwartz's study, which looked into the influence of codes on behaviour by interviewing corporate employees but did not observe or measure "actual behaviour" ('The Nature of the Relationship between Corporate Codes of Ethics and Behaviour', *Journal of Business Ethics* 32(3), 2003, 247, 259); Margaret Cleek and Sherry Leonard conducted a similar study, although focusing on business students ('Can corporate codes of ethics influence behavior?', *Journal of Business Ethics* 17(6), 1998, 619); Jang B. Singh, after stating that there was a lack of research into the effectiveness of codes, purported to identify the determinants of the effectiveness of codes by solely collecting managers' answers to a questionnaire ('Determinants of the Effectiveness of Corporate Codes of Ethics: An Empirical Study', *Journal of Business Ethics* 101(3), 2011, 385); finally, also see generally, Brenda Joyner and Dinah Payne's study which "identified the [...] implementation of values, business ethics, and CSR actions" within two corporations, although relying exclusively on information provided by managers (in 'Evolution and Implementation: A Study of Values, Business Ethics and Corporate Social Responsibility', *Journal of Business Ethics* 41(4), 2002, 297, 309).

³²¹ Apart from Ariel Meyerstein's study into the effectiveness of the Equator Principles, ('On the Effectiveness of Global Private Regulation: The Implementation of the Equator Principles by Multinational Banks', *University of Berkeley*, 2011), and Syamantak Bhattachary's study into the effectiveness of the International Safety Management code which focuses on maritime health and safety ('The effectiveness of the ISM Code: A qualitative enquiry', *Marine Policy* 36(2), 2012, 528), I could not find any relevant empirical study into the effectiveness industry codes relying on data which had been collected on the ground. No study looked into the *human rights* effectiveness of industry codes on the ground.

³²² Domenico Dentoni and H. Christopher Peterson, 'Multi-stakeholder sustainability alliances in agri-food chains: A framework for multi-disciplinary research', *International Food and Agribusiness Management Review* 14, 2011, 83, 90.

³²³ An example of such a study would be: Greetje Schouten, Pieter Leroy, and Pieter Glasbergen, 'On the deliberative capacity of private multi-stakeholder governance: the roundtables on responsible soy and sustainable palm oil', *Ecological Economics* 83, 2012, 42. Moreover, John McCarthy and Zen Zahari's study into the Roundtable on Sustainable Palm Oil did use empirical methods, including fieldwork, but the empirical investigation did not focus on the multi-stakeholder initiative but rather on the role which this initiative could play to help improve the situation ('Regulating the oil palm boom: assessing the effectiveness of environmental governance approaches to agro-industrial pollution in Indonesia', *Law & Policy* 32(1), 2010, 153).

of their effect on human rights³²⁴. In turn, it is impossible to draw any serious conclusion as to the impact of the adoption of company-based mechanisms on firms' human rights performance.

3.1.2. Research into product-level mechanisms

Authors writing about product-level mechanisms are generally more interested in impact than the literature studying company-based self-regulation. However, most studies explore the effect of (relevant) product-level mechanisms specifically on income. Ruerd Ruben and Guillermo Zuniga's comparative impact of coffee certification schemes focuses on certification's effect on income, production and investments³²⁵. Similarly, Pradyot Jena *et al* assess the impact of certification on producers' livelihoods, productivity, price premiums, and access to credit³²⁶. Andréa Cristina Dörr and Ulrike Grote's study³²⁷ on the impact of certification in the Brazilian fruit sector focused on the productivity and income of farmers. This clear economic focus is most striking with Fairtrade, which is devoted to increasing income. Ruerd Ruben and Ricardo Fort³²⁸, when studying the impact of Fairtrade certification for coffee farmers in Peru, compare the net effects on "production, income, and expenditures, wealth and investment", and do not address the potential impact of the certification on social or labour rights, for instance. The same researchers conducted a study on the impact of Fairtrade on banana producers in Northern Peru³²⁹, assessing whether income and other welfare indicators (such as household consumption expenditures, value of agricultural assets, animal stocks) improved with Fairtrade. Christopher Bacon examined³³⁰ whether Fairtrade and organic certifications reduced

³²⁴ Harrison and Sekalala (n. 10), 927.

³²⁵ Ruerd Ruben and Guillermo Zuniga, 'How standards compete: comparative impact of coffee certification schemes in Northern Nicaragua', *Supply Chain Management: An International Journal* 16(2), 2011, 98.

³²⁶ Pradyot Ranjan Jena, Bezawit Beyene Chichaibelu, Till Stellmacher, and Ulrike Grote, 'The impact of coffee certification on small-scale producers' livelihoods: a case study from the Jimma Zone, Ethiopia', *Agricultural Economics* 43, 2012, 429.

³²⁷ Andréa Cristina Dörr and Ulrike Grote, 'The Role of Certification in The Brazilian Fruit Sector', *Revista de Economia Contemporânea* 13(3), 2009, 539.

³²⁸ Ruerd Ruben and Ricardo Fort, 'The Impact of Fair Trade Certification for Coffee Farmers in Peru', *World Development* 20(10), 2012, 570.

³²⁹ Ruerd Ruben and Ricardo Fort, 'The impact of Fairtrade on banana producers in Northern Peru' in Ruerd Ruben (ed). *The impact of Fairtrade*. Wageningen: Wageningen Academic Publishers, 2008.

³³⁰ Christopher Bacon, 'Confronting the Coffee Crisis: Can Fair Trade, Organic, and Specialty Coffees Reduce Small-Scale Farmer Vulnerability in Northern Nicaragua?', *World Development* 33(3), 2005, 487.

small-scale farmers' livelihood vulnerability in northern Nicaragua. In their study, Marc Poncelet *et al* concluded in passing that the impact of Fairtrade on “rights, gender” was “insufficient” without giving out more details³³¹. Finally, Sarah Lyon's research³³² on the certification system and its relationship to human rights in Guatemala was approached through the lens of the political–economic forces shaping the transnational fair trade and organic coffee market, and of attempts to forge equitable trade relationships between producers and consumers by making visible the social and environmental conditions of coffee production. Lyon also says that she studied producers' livelihoods and production practices but Fairtrade human rights standards are not mentioned and she does not seem to explore human rights conditions on and around coffee plantations.

Some studies include social and/or environmental elements in their evaluation of the impact of labels, but always in addition to financial considerations and, most importantly, not touching upon certain important issues that would be covered by a human rights approach. Joni Valkila and Anja Nygren's study of the impact of Fairtrade on coffee farmers, cooperatives, and labourers in Nicaragua only includes the working conditions of hired coffee labourers³³³. Mark Moberg conducted a study of Fairtrade Eastern Caribbean Banana Farmers in which he touched upon the impact of the label's environmental criteria on local agricultural practices and briefly on the social effect of Fairtrade's democratic community organisations and social premiums, but only in addition to addressing economic benefits of the scheme for producers³³⁴. Sally Smith, as commissioned by the Fairtrade foundation, studied the impact of the certification scheme on the banana industry in a number of Central and Latin American countries and Ghana, but she focused on social differentiation, the socio-economic situation of workers and their households, the organisation of workers, the local and national development, and the management of natural resources³³⁵. Stacy Philpott *et al* assessed the ecological and economic benefits of coffee certification programmes

³³¹ Marc Poncelet, Jacques Defourny, and Patrick De Pelsmaker, ‘A Fair and Sustainable Trade, between Market and Solidarity: Diagnosis and Prospects’, *Belgian Science Policy*, 2005, 116.

³³² Sarah Lyon, ‘Fair Trade Coffee and Human Rights in Guatemala’, *Journal of Consumer Policy* 30(3), 2007, 241.

³³³ Joni Valkila and Anja Nygren, ‘Impacts of fair trade certification on coffee farmers, cooperatives, and laborers in Nicaragua’, *Agriculture and Human Values* 27(3), 2009, 321.

³³⁴ Moberg (n. 209).

³³⁵ Sally Smith, ‘Fairtrade Bananas: A Global Assessment of Impact’, *Institute of Development Studies*, 2010.

and left out crucial human rights issues (e.g. right to clean water)³³⁶. Finally, Raluca Dragusanu *et al*³³⁷ provide an overview of the theory and empirical evidence available about Fairtrade, and conclude that the certification (and other environmental labels) have been successful in promoting more environmentally friendly farming practices among certified farmers, but they did not touch upon other crucial human rights issues (e.g. working conditions). In general, Valerie Nelson and Barry Pound, who conducted a review of impact studies carried out about Fairtrade, found that few of the studies assess social impacts in any great depth (e.g. changes in health and education)³³⁸.

Allen Blackman and Jorge Rivera have conducted some research into the study of the impact of certification, which concludes that, of only 14 studies (out of 37 relevant studies) using methods likely to generate credible results, only 6 find that certification has environmental or socioeconomic benefits.³³⁹ These findings are consistent with Daniele Giovannucci and Jason Potts's study, which concluded that the effectiveness of sustainability initiatives is heavily influenced by local conditions in terms of the manner in which they are implemented and enforced. They used the Committee on Sustainability Assessment, which strives to allow stakeholders to assess and predict what sort of social, economic and environmental outcomes they may have by implementing different sustainability initiatives³⁴⁰. In the same vein, Ann Le Mare conducted³⁴¹ a literature review into social and economic impacts of Fairtrade and drew similar conclusions. Le Mare stated that, although the certification can be seen as making a significant contribution to development by improving the well-being of individuals and families and in fostering sustainable institutions, the actions of Fairtrade practitioners and organisations are complex and variable, with multiple outcomes with rather less of the certainty than is offered in some marketing portrayals of the label.

³³⁶ Stacy M. Philpott, Peter Bichier, Robert Rice, and Russell Greenberg, 'Field-Testing Ecological and Economic Benefits of Coffee Certification Programs', *Conservation Biology* 21(4), 2007, 975.

³³⁷ Raluca Dragusanu, Daniele Giovannucci, and Nathan Nunn, 'The Economics of Fair Trade', *Journal of Economic Perspectives* 28(3), 2014, 217.

³³⁸ Valerie Nelson and Barry Pound, 'The Last Ten Years: A Comprehensive Review of the Literature on the Impact of Fairtrade', *Natural Resources Institute*, 2009, 1.

³³⁹ Allen Blackman and Jorge Rivera, 'The Evidence Base for Environmental and Socioeconomic Impacts of "Sustainable" Certification', *Discussion Paper*, 2010, 1.

³⁴⁰ Daniele Giovannucci and Jason Potts, 'Seeking Sustainability COSA Preliminary Analysis of Sustainability Initiatives in the Coffee Sector', *Committee on Sustainability Assessment: Winnipeg, Canada*, 2008, ix.

³⁴¹ Ann Le Mare, 'The Impact of Fairtrade on Social and Economic Development: A Review of the Literature', *Geography Compass* 2(6), 2008, 1922.

Some studies go beyond the impact on stakeholders and focus on how certification standards fit into local institutions. Sietze Vellema and Jeroen van Wijk³⁴² state that certification standards govern by facilitating the emergence of *agencements*, whereby a range of actors and devices are brought together in order to achieve both global and local objectives. Allison Loconto³⁴³ concurs in that, when global and local partnerships interact – not only via hierarchically organised value chains, but also via a newly emerging public space –, co-creation in standard-setting and certification may occur. So, certification processes may also give more vulnerable stakeholders a platform to help create standards. However, these studies do not touch upon the impact of these same (sometimes co-created) standards in facilitating change on the ground.

The literature on product-level mechanisms is much more focused on impact than the literature on other types of self-regulatory mechanisms. However, authors have so far mainly focused on income and livelihoods and ignored the impact of certification standards on a comprehensive set of human rights. This is problematic as important issues, such as working conditions or discrimination, may fall outside the scope of impact studies as a result. While it is important to test whether Fairtrade and the Rainforest Alliance help guarantee better income, it is similarly crucial to study whether certification helps guarantee that labourers have safe and healthy working conditions, or that there is no negative impact on the environment, for instance. Studies have also rarely touched upon the effect of certification on corporate practices or examined whether labels may help businesses ensure that they are respectful of human rights, but rather tend to focus on smallholder farmer organisations³⁴⁴. Yet, it is crucial to also check whether the certification of corporations helps them respect human rights as they employ a considerable number of workers and may impact the lives of an even higher number of community members. For instance, about a fifth of all organisations certified with Fairtrade were companies in 2016³⁴⁵.

³⁴² Sietze Vellema and Jeroen van Wijk 'Partnerships intervening in global food chains: the emergence of co-creation in standard-setting and certification', *Journal of Cleaner Production* 107, 2015, 105, 105.

³⁴³ Allison Loconto, 'Assembling governance: the role of standards in the Tanzanian tea industry', *Journal of Cleaner Production* 107, 2015, 64, 64; and Loconto 'Sustainability: Shaping Sustainability in Tanzanian Tea Production' (n. 209), 193.

³⁴⁴ Valerie Nelson and Barry Pound's research into Fairtrade impact studies found that, out of 33 studies, 31 were of smallholder farmer organisations, and only two of hired labour situations (see above: Ruben and Fort (n. 329); and Moberg (n. 209)) (Nelson and Pound (n. 338), 6)

³⁴⁵ Fairtrade, 'Monitoring the Scope and Benefits of Fairtrade -9th Monitoring Report', 2016, 1, 17.

In conclusion, studies looking empirically at the impact of self-regulatory mechanisms remain, for the large part, focused on product-level mechanisms; they also mainly address pre-defined issues and rarely investigate corporate practices. The paucity of this literature is denounced by Jodi Short and Michael Toffel³⁴⁶, who volunteered several explanations for it. They explain that it partly comes from a desire to “move law and society scholarship beyond simple measurements of the distinction between formal law [...] and legal outcomes [...] toward a more complicated understanding of the processes by which both law and legal outcomes are constructed”³⁴⁷. They also point out the difficulty of obtaining data on the existence of internal compliance structures and the outcomes they produce.

It follows that there is a need for empirical studies looking into the impact of self-regulation on corporate human rights performance – a gap which this thesis aims to help fill. In order to assess the effectiveness of self-regulatory mechanisms, it is necessary to identify the features which scholars believe are important to ensure these mechanisms’ effectiveness – which I will do in the next section.

3.2.Key features for effective self-regulation

Some authors are sceptical of “perfect recipes”³⁴⁸ for efficient mechanisms due to the great differences in cultures and structures of corporations using self-regulation, but others have attempted to identify the features which may make these mechanisms effective. It is notable that, as explained in Chapter 1 and in the first part of this chapter, these scholars have rarely gone into the field to collect empirical evidence supporting their claims, which is what this thesis purports to do. This chapter, building upon the typology developed in Chapter 2, therefore reviews the characteristics identified by scholars as helping guarantee the effectiveness of both company- and product-level mechanisms. Reviewing the literature on company-level mechanisms, it became evident that most scholars write on internal mechanisms. However, most characteristics will also be relevant for *external* company-level instruments, as they all apply to the whole corporate structure. It follows that, except for the drafting stage

³⁴⁶ Short and Toffel (n. 82), 361.

³⁴⁷ Ibid, 387.

³⁴⁸ Parker (n. 52), 55.

which will not be carried out at company level but rather at or intergovernmental-, industry-, or ‘organisational’-level, the characteristics which could help make *internal* mechanisms effective will be equally applicable to *external* company-level mechanisms. Once authors’ claims have been discussed, I will use them to inform the design of my case study with the aim of testing them out empirically.

Before going into detail and reviewing scholars’ writings about specific mechanisms, I will briefly explore the literature studying self-regulation generally. Although a fair share of the relevant scholarship is sceptical about what self-regulation can achieve, the writers who put forward characteristics for effective mechanisms generally agree on the same ones. First, a few authors underline the importance of the genuine motivation of firms to implement the standards³⁴⁹. Second, objectives must be defined “precisely and transparently enough to make it possible to determine clearly whether they have been attained”³⁵⁰. Third, ‘values’ and standards must be embedded into the practice and structure of the enterprise, which can be done by publicising policies, practicing sensitive recruitment of staff, inculcating appropriate attitudes and habits, establishing special units to implement policies affecting the well-being of employees, or environmental and consumer protections, and by cooperating with relevant outside groups, such as trade unions and public agencies³⁵¹. Fourth, an independent monitoring system (including by third parties) must be set up³⁵². Finally, sanctions for non-compliance must be put in place³⁵³. Generally, processes must be transparent, and striving to be continuously improving³⁵⁴.

I will now review what authors say specifically about internal company-level mechanisms on the one hand, and about product-level mechanisms on the other hand.

³⁴⁹ Coglianesi and Mendelson (n. 70), 161; Short and Toffel (n. 82), 369.

³⁵⁰ Töller (n. 107), 506.

³⁵¹ Ibid, 506; and Philip Selznick, *The Communitarian Persuasion*, Woodrow Wilson Center Press, 2002, 101.

³⁵² Töller (n. 107), 506; Short and Toffel (n. 82), 386; and De Jong, DeJong, Mertens, and Wasley (n. 104), 500.

³⁵³ Töller (n. 107), 506; Archong Fung, Dara O’Rourke, and Charles Sabel, *Can We Put an End to Sweatshop?*, Beacon Press, 2001, 19.

³⁵⁴ Fung, O’Rourke, and Sabel (n. 353), 19.

3.2.1. Key features for effective company-level mechanisms

Some academics have suggested some characteristics which would help make company-level mechanisms effective. These ‘key features’ may be broadly divided into five stages of the process: drafting of standards; day-to-day implementation; monitoring and reporting of their implementation; setting up of a complaints mechanism; and sanctioning in case of non-compliance.

3.2.1.1. Drafting of standards

At the drafting stage, which Muel Kaptein and Johan Wempe consider as even more important than the instrument itself³⁵⁵, I have identified four key features: an inclusive and open process; the inclusion of a comprehensive set of internationally-recognised human rights; clear and reasonable targets; and regular revision and updating of codes. However, it is notable that authors such as Gary Weaver are sceptical of the value of scholars’ “putatively ideal formats and contents for codes” since, in his opinion, “this advice often is of an intuitive, unsystematic, and ambiguous character”^{356 357}. Even if this were true, one of the aims of this thesis is to test out the value of the key features identified by scholarship; it is therefore necessary to first review these features.

Firstly, most authors highlight the need for an open and transparent process with oversight from stakeholders to mitigate against the risk of developing a policy perceived as illegitimate to those outside the organisation if the process is closed to outside scrutiny³⁵⁸. Moreover, to be effective, a code of conduct must be acceptable to

³⁵⁵ Muel Kaptein and Johan Wempe, ‘Twelve Gordian Knots When Developing an Organizational Code of Ethics’, *Journal of Business Ethics* 17(8), 1998, 853, 853.

³⁵⁶ Gary Weaver, ‘Does Ethics Code Design Matter? Effects, of Ethics Code Rationales and Sanctions on Recipients’ Justice Perceptions and Content Recall’, *Journal of Business Ethics* 14(5), 1995, 367, 367.

³⁵⁷ As examples, Weaver cites Stephen Landekich, *Corporate Codes of Conduct: An Examination and Implementation Guide*, National Association of Accountants, 1989; Walter Manley, *Executive's Handbook of Model Business Conduct Codes*, Prentice-Hall Direct, 1991; Earl A. Molander, ‘Paradigm for Design, Promulgation and Enforcement of Ethical Codes’, *Journal of Business Ethics* 6(8), 1987, 619; Cecily A. Raiborn and Dinah Payne, ‘Corporate Codes of Conduct: A Collective Conscience and Continuum’, *Journal of Business Ethics* 9(11), 1990, 879.

³⁵⁸ Bob Hepple, ‘Equality and Empowerment for decent work’, *International Labour Review* 140(1), 2001, 5, 17; Virginia Haufler, *A Public Role for the Private Sector: Industry Self-Regulation in a Global Economy*, Carnegie Endowment, 2013, 72.

all the relevant stakeholders³⁵⁹ and a sense of ownership developed³⁶⁰. All parties potentially affected by business activities should take part in the self-regulatory process³⁶¹. This especially concerns trade unions³⁶², representing workers³⁶³, and communities living near corporate facilities³⁶⁴, with the view of allowing all to wield some influence on management³⁶⁵. A code unilaterally imposing outcomes on the workforce may be criticised for lacking independence and representativeness³⁶⁶ and may be harmful and counterproductive³⁶⁷. In Europe, codes are reportedly increasingly negotiated between workers' organisations and enterprises, and most of these codes incorporate international labour standards in a more consistent pattern than do other types of codes³⁶⁸. This brings me to the second important characteristic of the drafting of codes: the inclusion of a comprehensive range of internationally recognised human rights.

Upendra Baxi wrote that, as a minimum, companies should include violations of international humanitarian law, including benefiting from war crimes, crimes against humanity, genocide, torture, hostage taking, and extrajudicial or summary or arbitrary executions³⁶⁹. However, the general level and extent of corporate commitments is debated – perhaps because it is difficult to find trends among corporate codes of conduct³⁷⁰. On the one hand, some authors argue that firms generally go beyond legal

³⁵⁹ Sethi (n. 225), 64; and Ans Kolk, Rob van Tulder, and Carlijn Welters, 'International codes of conduct and corporate social responsibility: can transnational corporations regulate themselves?', *Transnational Corporations* 8(1), 1999, 143, 151.

³⁶⁰ Ethics Resource Center, *Creating a Workable Company Code of Ethics*, Ethics Resource Center Incorporated, 1990, as cited in Kaptein and Schwartz (n. 165), 119.

³⁶¹ Pins Brown, 'Principles that make for effective governance of multi-stakeholder initiatives', *UN SRSF/CCC Expert Workshop on Improving Human Rights Performance of Business through Multi-stakeholder Initiatives*, 2007, 19-20; Greg Wood and Malcolm Rimmer, 'Codes of Ethics: What Are They Really and What Should They Be?', *International Journal of Value-Based Management* 16(2), 2003, 181, 191.

³⁶² Tony Royle, although otherwise sceptical about the potential of self-regulation as a driver of change, wrote that strong unions are needed to protect and improve labour conditions (Royle (n. 155), 269); and Haufler (n. 358), 57.

³⁶³ Neil Kearney mentions workers specifically (Neil Kearney, 'Corporate Codes of Conduct: The Privatised Application of Labour Standards', in Sol Picciotto and Ruth Mayne (eds.), *Regulating International Business: Beyond Liberalization*, Springer, 2016, 211.)

³⁶⁴ Hepple, 'Equality and Empowerment for decent work' (n. 358), 17.

³⁶⁵ Parker (n. 52), x.

³⁶⁶ Abbott and Snidal (n. 13), 47.

³⁶⁷ Murray (n. 36), 60; and Kearney (n. 363), 211.

³⁶⁸ Diller (n. 226), 110.

³⁶⁹ Baxi (n. 34), 15.

³⁷⁰ Michael Urminsky, 'Self-regulation in the workplace: Codes of conduct, social labelling and socially responsible investment', *Series on Management Systems and Corporate Citizenship, ILO, Working Paper 1*, 2001, 1, 21; and Jackson (n. 222), 1.

requirements in terms of social and environmental standards³⁷¹, and that the following rights are commonly included in codes: labour rights, including prohibition of child labour³⁷² and forced labour³⁷³; freedom from discrimination³⁷⁴; health and safety³⁷⁵; freedom of association³⁷⁶; minimum wage³⁷⁷. Others consider that most standards included in codes are inferior to what is demanded by national law³⁷⁸. Further criticism rests on the tendency for codes to focus on particular issues regarded as highly damaging for companies³⁷⁹, and especially issues that are considered most newsworthy to consumer and advocacy groups in developed countries. Part of the scholarship regrets that some core ILO standards may be overlooked as a result³⁸⁰, and authors therefore recommend including the ILO core standards^{381 382} as a minimum, which may then be expanded in the light of local conditions³⁸³. The inclusion of the local needs of workers and the payment of a living wage³⁸⁴ are also flagged up as important minimum guarantees.

Beyond this debate, some authors distinguish between different types of standards: as was explained in Chapter 2, the distinction is made between ‘ends’ or ‘means’ commands³⁸⁵. The former lays out the aim(s) to be achieved whereas the latter focuses on how to achieve them. For instance, a company writing that they commit to respecting their workers’ “right to equal pay” is an ‘end’ command, and the same firm

³⁷¹ Lenox (n.228), 1.

³⁷² Margaret Emmelhainz and Ronald Adams, ‘The Apparel Industry Response to “Sweatshop” Concerns: A Review and Analysis of Codes of Conduct’, *The Journal of Supply Chain Management* 35(2), 1999, 51, 56.

³⁷³ Urminsky (n. 370), 25.

³⁷⁴ Ibid, 21.

³⁷⁵ Ibid; and Emmelhainz and Adams (n. 372), 56.

³⁷⁶ Kearney (n. 363), 211.

³⁷⁷ ILO, ‘Overview of global developments and Office activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues’, GB.273/WP/SDL/1, 1998.

³⁷⁸ Kearney (n. 363), 209.

³⁷⁹ Rhys Jenkins, ‘Codes of Conduct: Self-Regulation in a Global Economy’, *UN Research Institute for Social Development*, 2001, 28; and Pamela Varley, *The Sweatshop Quandary, Corporate Responsibility on the Global Frontier*, Investor Responsibility Research Center, 1998, as cited in Ruth Pearson and Gill Seyfang, ‘New Hope or False Dawn? Voluntary Codes of Conduct, Labour Regulation and Social Policy in a Globalising World’, *Global Social Policy* 1(1), 2001, 48, 56.

³⁸⁰ Bob Hepple, ‘New Approaches to International Labour Regulations’, *Industrial Law Journal* 26(4), 1997, 353, 364; and Claire Ferguson, ‘A Review of UK Company Codes of Conduct’, *UK Department for International Development, Social Development Division*, 1998, as cited in Pearson and Seyfang (n.379), 73.

³⁸¹ Kearney (n. 363), 211.

³⁸² For details about the ILO’s core standards, please see (n. 241).

³⁸³ Bob Hepple, ‘A Race to the Top – International Investment Guidelines and Corporate Codes of Conduct’, *Comparative Labour and Policy Journal* 20(3), 1999, 347, 363.

³⁸⁴ Murray (n. 36), 60; and Kearney (n. 363), 209.

³⁸⁵ Coglianese (n. 71), 50.

explaining that they commit to auditing the salary levels of all their employees yearly to check whether male and female workers are paid the same amount for the same work and remedy any discrepancies would be a ‘means’ command. It is said that standards using ‘means’ command work well when the regulator understands what actions are needed and when the targets covered by the regulation are similar enough that the mandated means will work when applied universally³⁸⁶. It follows that ‘means’ standards would work best if they are tailored to a specific industry, so that they are relevant to each corporate operation. Finally, and similarly to some extent to Kaptein and Wempe’s opinion about the development of codes, some authors take the view that the mere presence of a code is more important than the content of the code *per se*: codes may influence behaviour more by generally legitimising and communicating the importance of appropriate behaviour than by educating employees about what specifically constitutes ethical behaviour³⁸⁷.

Thirdly, codes should also be strict in their wording³⁸⁸, and have clearly defined objectives³⁸⁹: in their review of 79 studies into the effectiveness of corporate codes of conduct – of which only one uses field research, as mentioned in Chapter 1 –, Muel Kaptein and Mark Schwartz conclude that “the more difficult it is to realise the objectives of a code, the greater the chance that it will be ineffective”³⁹⁰. However, it is important that these objectives are not too ambitious, or it is said that codes will also be less likely to be effective.

Finally, some authors underline that it is important that codes be regularly reviewed³⁹¹ to include up-to-date rules.

However, other features are disputed: some scholars write that codes need to be detailed³⁹², but others warn that “an exhaustively detailed code risks becoming so

³⁸⁶ Ibid.

³⁸⁷ Janet S. Adams, Armen Tashchian, and Ted H. Shore ‘Codes of Ethics as Signals for Ethical Behavior’, *Journal of Business Ethics* 29(3), 2001, 199, 208.

³⁸⁸ Kolk and Van Tulder (n. 157), 262.

³⁸⁹ Singh (n. 320), 390; and S. Prakash Sethi, and Donald H. Schepers, ‘Developing a framework for critiquing multi-stakeholder codes of conduct’, in Knut J. Ims and Lars J.T. Pedersen (eds.) *Business and the Greater Good*, Edward Elgar Publishing, 2015, 209.

³⁹⁰ Kaptein and Schwartz (n. 170), 115.

³⁹¹ Patrick E. Murphy, ‘Implementing Business Ethics’, *Journal of Business Ethics* 7(12), 1988, 907, 909; and Singh (n. 320), 392.

³⁹² Kaptein and Wempe (n. 355), 859.

unwieldy as to be ignored by most people”, whereas a generalised code risks “being so open-ended that impartial and unambiguous application is difficult”³⁹³.

3.2.1.2. *Embedding of code policies in corporate processes*

Once a code has been drafted and adopted, some authors point to the importance of embedding its principles into the firm’s operating procedures, everyday decision-making, ordinary performance appraisal systems, and reward systems^{394 395}. Although some authors say that financial executives are more likely to integrate their company’s business code into their strategic decision-making processes if they are under pressure from market stakeholders to do so³⁹⁶, others write that the company must be genuinely interested in going beyond mere declarations if they want to create change³⁹⁷, with the aim of making the principles part of the everyday functioning of the company at every level. This applies to everyone, from top management, who should publicly support the standards³⁹⁸, to low-level employees. To this end, publicity should be given to policies as widely as possible within and outside the corporation³⁹⁹, and in languages understood by the workforce in every region where the company is present⁴⁰⁰. Supporting the need for publicity, some authors assert that codes may create ethical behaviour by creating dialogue among employees about ethical issues⁴⁰¹. However, others argue that mere communication of policies is unlikely to capture employees’

³⁹³ Weaver (n. 356), 367.

³⁹⁴ Parker (n. 52), 55. Christine Parker supports this finding with the conclusions of studies conducted by leading scholars: John Braithwaite (*Corporate Crime in the Pharmaceutical Industry*, Routledge, 1984, and *To Punish or Persuade: Enforcement of coal mine safety*, State University of New York Press, 1985), Pastin and Breto (‘Survey by Council of Ethical Relations of 750 000 employees in 203 large US companies over five years’, 1995), and Alison Eyring and Bette Ann Stead (‘Shattering the Glass Ceiling: Some Successful Corporate Practices’, *Journal of Business Ethics* 17(3), 1998, 245, 245). Also see Sethi and Schepers (n. 389), 209.

³⁹⁵ This whole process is sometimes called ‘institutionalisation’, see Ronald R. Sims, ‘The Institutionalization of Organizational Ethics’, *Journal of Business Ethics* 10(7), 1991, 493, 493.

³⁹⁶ John Stevens, Kevin Steensma, David Harrison and Philip Cochran, ‘Symbolic or Substantive Document? The Influence of Ethics Codes on Financial Executives Decisions’, *Strategic Management Journal* 26(2), 2005, 181, 193.

³⁹⁷ Hepple, ‘Equality and Empowerment for decent work’ (n. 358), 16; Royle (n. 155), 263; Kearney (n. 363), 211; and Kaptein and Wempe (n. 355), 862.

³⁹⁸ Sims (n. 395), 504; Gary R. Weaver, Linda Klebe Treviño, and Philip L. Cochran, ‘Integrated and Decoupled Corporate Social Performance: Management Commitments, External Pressures, and Corporate Ethics Practices’, *Academy of Management Journal* 42(5), 1999, 539, 550.

³⁹⁹ Wood and Rimmer (n. 361), 192; and Singh (n. 320), 390.

⁴⁰⁰ Haufler (n. 358), 60.

⁴⁰¹ Adams, Tashchian, and Shore (n. 387), 208; Margaret Cleek and Sherry Leonard concur, although more in a much more nuanced way, writing that “perhaps wording and content [...] is not as important as how they are communicated to employees” (Cleek and Leonard (n. 320), 627).

attention⁴⁰². Beyond this debate, some authors write that it is important that corporate codes of conduct be communicated externally, so that information about commitments become known to consumers and other stakeholders⁴⁰³. It is especially necessary when codes are directly applicable to suppliers⁴⁰⁴, sometimes with potential far-reaching consequences for non-compliance (e.g. end of business relationship, as will be covered below). Further, training of employees and managers should be conducted with appropriate resources⁴⁰⁵, and should notably cover practical cases⁴⁰⁶ to best translate abstract concepts into concrete measures. Finally, reward systems may reinforce the message of the codes⁴⁰⁷, including rewards for whistleblowing^{408 409}.

3.2.1.3. Monitoring and reporting of implementation

Another key stage of the process is the monitoring of corporate performance⁴¹⁰, by the firm itself but also by local workers' representatives and independent experts⁴¹¹. First, internal monitoring, including through due diligence and impact assessments, is important for the company to anticipate and prevent issues⁴¹². Regular internal monitoring may also be done by dedicated employees in charge of monitoring

⁴⁰² Richard E. Petty and John T. Cacioppo, *Communication and persuasion: central and peripheral routes to attitude change*, Springer, 1986, 183, as cited in Weaver, Treviño, and Cochran (n. 398), 541.

⁴⁰³ Diller (n. 226), 102 and Leisinger (n. 48), 10.

⁴⁰⁴ E.g. Levi Strauss's 1991 code (Compa and Hinchliffe-Darricarrère (n. 30), 677-678). Also, Caterpillar encouraged its dealers worldwide to adopt the standards contained in their 1974 code.

⁴⁰⁵ Kearney (n. 363), 211; Rodríguez-Garavito (n. 166), 228; Schwartz (n. 320), 258; Peter J. Dean, 'Making codes of ethics real?' *Journal of Business Ethics*, 11(4), 2012, 285, 285; Patrick MacLagan, 'The Concept of Responsibility: Some Implications For Organizational Behaviour And Development', *Journal of Management Studies*, 20(4), 1983, 411, 415.

⁴⁰⁶ Sims (n. 395), 504.

⁴⁰⁷ Linda K. Treviño, 'A cultural perspective on changing and developing organizational ethics', *Research in organizational change and development* 4(2), 1990, 195, cited in Weaver, Treviño, and Cochran (n. 398), 541; and Wood and Rimmer (n. 361), 191.

⁴⁰⁸ Sims (n. 395), 504.

⁴⁰⁹ Some authors such as Grace and Cohen, or Jang Singh, only mention the *protection* of whistleblowers (Damian Grace and Stephen Cohen, *Business Ethics: Australian Problems and Cases*, Oxford University Press, 1998, 154; and Singh (n. 320), 390).

⁴¹⁰ Kearney (n. 363), 211; Forest L. Reinhardt, *Down to Earth: Applying Business Principles to Environmental Management*, Harvard Business School Press, 2000, 54; and Renée De Nevers, 'The effectiveness of self-regulation by the private military and security industry', *Journal of Public Policy* 30(2), 2010, 219, 223.

⁴¹¹ Kolk and Van Tulder (n. 157), 262 and 270; Hepple, 'A Race to the Top – International Investment Guidelines and Corporate Codes of Conduct' (n. 383), 363; McCrudden (n. 247), 198; Cragg (n. 22), 118; and Sethi and Schepers (n. 389), 210.

⁴¹² James Harrison, 'Establishing a meaningful human rights due diligence process for corporations: learning from experience of human rights impact assessment', *Impact Assessment and Project Appraisal* 31(2), 2013, 107, 108.

corporate behaviour and compliance in order to swiftly detect and remedy any breach⁴¹³. Second, involving local workers in monitoring activities means that working conditions are recorded first-hand and that any violations of labour standards will be reported by workers themselves. The involvement of independent experts is important as third-party monitoring keeps external pressure on the firm to uphold their principles. Overall, internal monitoring needs to be conducted by the firm itself (first-party) in parallel to the monitoring carried out by (second-party) workers and (third-party) independent experts⁴¹⁴ to guarantee objectivity to the extent possible and prevent potential corporate attempts to ignore violations. The company's subcontractors' behaviour must also be subject to independent verification by third-party assessors⁴¹⁵. The lack of such independent monitoring would give rise to suspicion that codes are nothing more than a communication exercise, and that they will not be used as instruments capable of genuinely improving working and living conditions⁴¹⁶. However, be it for internal or external monitoring, it is acknowledged that information requirements for effective monitoring may be tremendous⁴¹⁷ considering that one buyer might have agreements with literally thousands of suppliers, and each of their suppliers may have their own suppliers. Some therefore suggest that systems such as SA 8000 may be part of the solution: "each separate facility would seek out its own certification, and ultimately the hope is that buyers would only contract with certified factories"⁴¹⁸.

Finally, resources must also be allocated by firms for the reporting of standards' implementation⁴¹⁹, to guarantee transparency and encourage the monitoring of implementation⁴²⁰, especially in countries without capacity to closely and effectively regulate business activities⁴²¹. Because instruments such as codes of conduct are criticised for consistently – with few exceptions – keeping the processes leading to

⁴¹³ Tara J. Melish, and Errol Meidinger, 'Protect, respect, remedy and participate: 'new governance' lessons for the Ruggie framework', in Radu Mares (ed.), *The UN Guiding Principles On Business And Human Rights: Foundations And Implementation*, Martinus Nijhoff Publishers, 2012, 321.

⁴¹⁴ Ibid.

⁴¹⁵ Kearney (n. 363), 212.

⁴¹⁶ Jenkins (n. 379), 27; and De Nevers (n. 410), 223.

⁴¹⁷ Haufler (n. 358), 78.

⁴¹⁸ Ibid.

⁴¹⁹ Kearney (n. 363), 211; Brown (n. 361), 21; and Short and Toffel (n. 82), 367.

⁴²⁰ Harrison and Sekalala (n. 10), 941-942.; and Sethi and Schepers (n. 389), 210.

⁴²¹ Graham and Woods (n. 8), 868.

human rights due diligence opaque⁴²², César Rodríguez-Garavito writes that transparency is a challenge but that it is crucial⁴²³. David Graham and Ngaire Woods concur and explain that transparency “offers a relatively more straightforwardly enforceable standard than direct regulation of practices but by catalysing other social forces”⁴²⁴.

3.2.1.4. Complaints mechanisms

Another important feature identified by scholars is an effective complaints mechanism at company-level, which must be free and anonymous so as to encourage workers and third parties to speak out about any violations of corporate standards⁴²⁵. A genuinely accessible complaints mechanism demonstrates the real motivation of a firm to implement the principles it has adopted⁴²⁶. Authors also mention the need for complaints mechanisms at national and international level⁴²⁷.

3.2.1.5. Sanctioning

Finally, monitoring and sanctioning are two sides of the same coin: monitoring with no sanction mechanism means there will be no consequences for violations. In the context of self-regulation, and therefore of ‘soft’ regulation, a wide range of authors envisage sanctions as an integral part of the process. Such sanctions may be similar to sanctions included in traditional regulation, or take different forms. In any case, the forms of sanctions involved here are different from the forms of sanctions involved in traditional command and control regulation: it is not the state which is the party who imposes the sanctions but rather it is a range of non-state actors (e.g. certification bodies or the company itself). For instance, sanctions for breaches of corporate policies may be disciplinary measures that will be taken by a company when an employee violates standards (e.g. dismissal) or, in the case of an industry code, when a company

⁴²² Salcito, Wielga, and Singer (n. 242), 688.

⁴²³ Rodríguez-Garavito (n. 166), 228.

⁴²⁴ Graham and Woods (n. 8), 879.

⁴²⁵ Ruggie, ‘Protect, respect and remedy: A framework for business and human rights’ (n. 285), 208; Rodríguez-Garavito (n. 166), 228; and Brown (n. 361), 21-22.

⁴²⁶ Brown (n. 361), 21.

⁴²⁷ Hepple, ‘A Race to the Top – International Investment Guidelines and Corporate Codes of Conduct’ (n. 383), 363.

fails to uphold the code's standards (e.g. fines, expulsion from industry association)⁴²⁸. In the case of breaches down the supply chain, sanctions may include cancellations of orders⁴²⁹ and ending of contract – although Rhys Jenkins warns that this approach may not be the most desirable as contractor workers end up suffering most⁴³⁰. In any case, some authors believe that sanctions make it much more likely that codes will have an impact⁴³¹. Even if the codes are voluntary mechanisms, it is therefore clear that authors generally advocate for 'hard' sanctions in case of violations of code standards. And some mechanisms used by corporations do include sanctions. It is for example the case of Unilever's Code of Business Principles, which include dismissal and/or legal action. However, others warn against the risk that an employee "be treated as a scapegoat to be sacrificed to public demands that something be done to remedy a company's ethical failings", pointing out that such punishment "may do little to make employees more concerned about ethics"⁴³². Relatedly, some scholars also advocate for clear guidelines within codes as to how to deal with compliance failure^{433 434}. Including penalties for non-compliance is another way for firms to show that they are serious about their commitments.

In conclusion, the key features identified by scholars writing on company-level mechanisms may be broadly divided into five categories: drafting of standards; embedding of standards into everyday operations; monitoring and reporting of implementation; setting up of complaints mechanisms; and sanctioning non-compliance. I will now review the key features which authors consider help make product-level mechanisms effective.

⁴²⁸ De Nevers (n. 410), 224.

⁴²⁹ Emmelhainz and Adams (n. 372), 56.

⁴³⁰ Jenkins (n. 379), 26.

⁴³¹ Harvey Hegarty and Harry Sims, 'Organizational philosophy, policies, and objectives related to unethical decision behavior: A laboratory experiment', *Journal of Applied Psychology*, 64(3), 1979, 331, 337; Gene R. Laczniak and Edward J. Inderrieden, 'The Influence of Stated Organizational Concern upon Ethical Decision Making', *Journal of Business Ethics* 6(4), 1987, 297-307, 298, also citing Theodore Purcell, 'Institutionalizing Ethics on Corporate Boards', *Review of Social Economy* 36(1), 1978, 41, and James Weber, 'Institutionalizing Ethics into the Corporation', *MSU Business Topic*, 1981; and Schwartz (n. 320), 258.

⁴³² Weaver, Treviño, and Cochran (n. 398), 549-550.

⁴³³ Sims (n. 395), 504; Jenkins (n. 379), 26; and Emmelhainz and Adams (n. 372), 56.

⁴³⁴ In 2001, Rhys Jenkins stated that 60% of codes within the OECD did not specify any penalties for non-compliance. (Jenkins (n. 379), 26.)

3.2.2. Key features for effective product-level mechanisms

There appears to be a consensus among authors writing about product-level mechanisms – although literature in this area remains scarce compared with scholarship on company-level mechanisms⁴³⁵ – agreeing that the strength of product-level mechanisms is on-site investigations conducted by the certifying body⁴³⁶ with non-renewal of the certification as the main sanction. However, this important independent monitoring system⁴³⁷ could be compromised by various factors, including the fact that certifiers are paid by the certified companies⁴³⁸ (with related issues of “low-balling”⁴³⁹); that certifiers often seek to reduce audit costs and so may want to conduct superficial inspections⁴⁴⁰; that auditing focuses on measuring procedure implementation rather than substance⁴⁴¹; that auditing processes fail to thoroughly investigate all stakeholders and everyday corporate performance⁴⁴²; that consequences for gross negligence in carrying out inspection duties are insignificant⁴⁴³; that individual inspectors may be bribed⁴⁴⁴, and that companies may not be interested in the highest possible standard of inspection and so may seek auditors known to employ

⁴³⁵ Friederike Albersmeier, Holger Schulze, Gabriele Jahn, and Achim Spiller, ‘The reliability of third-party certification in the food chain: From checklists to risk-oriented auditing’, *Food Control* 20(19), 2009, 927, 927; Anne Tallontire, Valerie Nelson, Jami Dixon and Tim G. Benton, ‘A review of the literature and knowledge of standards and certification systems in agricultural production and farming systems’, *University of Greenwich Natural Resource Institute Working Paper series on sustainability standards* No. 2, 2012, 1, 91; and Axel Marx, ‘Global Governance And The Certification Revolution Types, Trends and Challenges’, *Working Paper No. 53, University of Leuven*, 2010, 1, 5.

⁴³⁶ Marx (n. 435), 95; Hanne Haaland and Øystein Aas, ‘Eco-tourism Certification – Does it Make a Difference? A Comparison of Systems from Australia, Costa Rica and Sweden’, *Scandinavian Journal of Hospitality and Tourism* 10(3), 2010, 375, 382; and Gabriele Jahn, Matthias Schramm, and Achim Spiller, ‘Differentiation of Certification Standards: The trade-off between generality and effectiveness in certification systems’, IAMA’s 14th World Forum and Symposium, Montreux, Switzerland, June 2004, 335, 336.

⁴³⁷ Rametsteiner and Simula (n. 158), 87; Oliver von Hagen, Stephen Manning, and Juliane Reinecke, ‘Sustainable Sourcing in the Food Industry: Global Challenges and Practices’, *Moderne Ernährung Heute* 4, 2010, 1, 7; Haaland and Aas (n. 436), 382; and Jahn, Schramm, and Spille (n. 436), 1.

⁴³⁸ Albersmeier, Schulze, Jahn, and Spiller (n. 435), 927

⁴³⁹ Michael Calegari, Jeffrey Schatzberg and Galen Sevcik, ‘Experimental Evidence of Differential Auditor Pricing and Reporting Strategies’, *The Accounting Review* 73(2), 1998, 255.

⁴⁴⁰ Albersmeier, Schulze, Jahn, and Spiller (n. 435), 929.

⁴⁴¹ Shamir, ‘The De-Radicalization of Corporate Social Responsibility’ (n. 100), 680.

⁴⁴² Genevieve LeBaron and Jane Lister, ‘Benchmarking global supply chains: the power of the ‘ethical audit’ regime’, *Review of International Studies* 41(5), 2015, 905, 919-920.

⁴⁴³ Robert Grabosch and Christian Scheper, ‘Corporate Obligations with Regard to Human Rights Due Diligence: Policy and Legal Approaches’, *Friedrich Ebert Stiftung*, 2015, 1, 52.

⁴⁴⁴ Lambros Pechlivanos, ‘Self-enforcing corruption: Information transmission and organizational response’, in Johann Graf Lambsdorff, Matthias Schramm, and Markus Taube (Eds.), *Corruption and the new institutional economics*, Routledge, 2004, 92-104.

low inspection standards⁴⁴⁵. These risks are exacerbated by the intensive competition between certification labels⁴⁴⁶: as certifications multiply, they compete for clients (certified firms), and seek to reduce their prices and so their costs as much as possible⁴⁴⁷. All this may impede efforts for thorough and high-quality audits and could lead to considerable credibility losses⁴⁴⁸.

More broadly, authors such as Genevieve LeBaron and Jane Lister criticise audit systems for addressing labour and environmental issues unevenly because “ ‘people’ are more difficult to classify and verify through numbers”⁴⁴⁹ and because of the more tangible business value gains of environmental versus social programmes⁴⁵⁰. They also argue that auditing conceals “real problems in global supply chains” by creating the appearance of independent supply chain monitoring while the information produced is partial, highly political, and fundamentally shaped by the client⁴⁵¹, in particular regarding the timing of audits, the auditors selected, and the communication of results⁴⁵². Relatedly, they denounce the lack of transparency around auditing processes and results⁴⁵³.

Perhaps because of these difficulties, sceptical authors write that certification systems’ only potential is to help raise awareness of related human rights and environmental issues⁴⁵⁴. However, not all scholars share this opinion, and various key features have been put forward in the literature which would help guarantee the effective implementation of product-level standards, mainly focusing on firms’ genuine motivation for getting certified, on effective criteria, on measures to help guarantee the independence of certification systems, and on auditors’ training.

⁴⁴⁵ Bernard Pierce and Breda Sweeney, ‘Cost–quality conflict in audit firms: an empirical investigation’, *European Accounting Review* 13(3), 2004, 415; and Gabriele Jahn, Matthias Schramm, and Achim Spiller, ‘The Reliability of Certification: Quality Labels as a Consumer Policy Tool’, *Journal of Consumer Policy* 28(1), 2005, 53, 60.

⁴⁴⁶ Jahn, Schramm, and Spiller (n. 445), 54; and Chema Abderrazak and Adel Ben Youssef, ‘Multiplicity of eco-labels, competition, and the environment’, *Journal of Agricultural and Food Industrial Organization* 7(2), 2009.

⁴⁴⁷ LeBaron and Lister (n. 442), 918.

⁴⁴⁸ Albersmeier, Schulze, Jahn, and Spiller (n. 435), 930.

⁴⁴⁹ LeBaron and Lister (n. 442), 908.

⁴⁵⁰ Ibid, 921.

⁴⁵¹ Ibid, 908 and 914.

⁴⁵² Ibid, 917.

⁴⁵³ Ibid, 915.

⁴⁵⁴ Rametsteiner and Simula (n. 158), 97.

First, some authors explain that, from a political-institutional perspective, one would expect certification to work when firms think that it is in their best interest not only to get certified, but also to uphold the standards as best they can⁴⁵⁵. However, some warn that the large amount of regulations and documentation requirements could significantly reduce the willingness to implement the necessary programs and thus reduce intrinsic quality motivation⁴⁵⁶.

The second important characteristic of effective certification systems is good and operational criteria⁴⁵⁷, developed by a broad range of stakeholders⁴⁵⁸, including relevant professionals and/or scientists.

Third, as mentioned above, a big part of the literature around the effectiveness of product-level mechanisms focuses on audits. For instance, to help guarantee the integrity and effectiveness of certification systems, scholars recommend intensifying control in areas (e.g. child labour; land issues; health and safety) where the risk has been assessed by auditors as being high⁴⁵⁹, thereby making the self-responsibility of auditors central to the process⁴⁶⁰. Similarly, some scholars also recommend *not* having a detailed specification of auditing procedures to help boost the personal responsibility of auditors to individually improve auditing quality⁴⁶¹. This could also reduce the risk of audits becoming mere ‘box-ticking’ exercises. It also follows from the ‘risk-approach’ that time, expenditures, and intervals between audits can vary depending on risk factor⁴⁶². Moreover, authors are advocating for the possibility of random audits⁴⁶³. Finally, some authors underline the importance of adequate training for auditors if certification schemes are to be successful in creating a positive net outcome⁴⁶⁴. Poor training may indeed be reflected in the high variability between the reports of different auditors of the same scheme (with a number of standard requirements overlooked)⁴⁶⁵.

⁴⁵⁵ Marie-France Turcotte, Juliane Reinecke, and Frank den Hond, ‘Explaining variation in the multiplicity of private social and environmental regulation: a multi-case integration across the coffee, forestry and textile sectors’, *Business and Politics* 16(1), 2013, 151, 154-155.

⁴⁵⁶ Jahn, Schramm, and Spille (n. 436), 13.

⁴⁵⁷ Haaland and Aas (n. 436), 384.

⁴⁵⁸ Ibid.

⁴⁵⁹ Wayne Alderman and Richard Tabor, ‘The Case for Risk Driven Audits’, *Journal of Accountancy* 167(3), 1989, 55, 55.

⁴⁶⁰ Albersmeier, Schulze, Jahn, and Spiller (n. 435), 931.

⁴⁶¹ Ibid, 932.

⁴⁶² Ibid.

⁴⁶³ Ibid.

⁴⁶⁴ Jahn, Schramm, and Spiller (n. 445), 67.

⁴⁶⁵ Marx (n. 435), 95.

This leads to corporations not taking certification systems seriously and refusing to accept them as elements of the learning process⁴⁶⁶. Consequently, it is important to ensure that auditors are adequately trained to guarantee consistency in auditing results and standard implementation.

It follows that the strongest feature of product-level mechanisms, third-party auditing, is also their riskiest and one of the most criticised processes. It is generally acknowledged that on-site verification of the implementation of standards carried out by independent auditors is indispensable to an effective (and credible) self-regulatory mechanism. The fact that all certification systems inherently include such a process is generally perceived by scholars as an advantage over corporate policies, for instance. However, as was observed, it also carries considerable risk, mainly because of the potential poor training and lack of integrity of auditors themselves, and the possibly problematic organisation of audits. This is the reason why some authors suggest a few measures to implement if the independence of certification systems is to be guaranteed at the stage of audits. It was important to review the literature and to understand what authors think would improve the effectiveness of product-level mechanisms – however, guaranteeing the independence, integrity and skills of third-party certification auditors sits outside certified firms' sphere of influence, and will therefore be outside the scope of this research. It follows that I will not assess the value of these 'key features'. However, I will evaluate the role played by third-party audits in the effectiveness of product-level mechanisms as this 'key feature' is directly relevant to corporate behaviour.

Now that I have highlighted the 'key features' which authors writing on each type of self-regulatory mechanisms consider as playing an important role in their effectiveness, I will briefly analyse both literatures and sets of key features together.

3.2.3. Key features for both types of mechanisms

Studying the literature around effective corporate self-regulation allows me to paint a comprehensive picture of inherent features that may help company- and product-level mechanisms drive change on the ground. I now have an idea of the features which will

⁴⁶⁶ Jahn, Schramm, and Spiller (n. 431), 12.

theoretically impact the effectiveness of self-regulation, and which I will be able to test on the ground as part of my case study. It is now important to carry out a brief comparative analysis of the key features of both types of mechanisms. I have divided this section into two parts: I will first review the common features to company- and product-level mechanisms, and secondly those ones which were mostly (or only) relevant to one type of self-regulation. I will conclude by arguing that the effectiveness of both types of mechanisms should be assessed using the same framework of key features.

First, I broadly find the same characteristics for both types of mechanisms: the need for an open and transparent process; clear and specific standards developed by a whole range of stakeholders; monitoring of implementation; reporting of progress; and sanctions for non-compliance⁴⁶⁷. Motivation of management may also come into play⁴⁶⁸. This (mostly) matches the findings from the literature studying self-regulation in general, which was investigated at the beginning of section 3.2. in this chapter. It follows that scholars *mostly* consider that the same features will help guarantee the effectiveness of the mechanisms, despite the fact that these mechanisms, by definition, operate differently. Nevertheless, the actors expected to implement these features are different depending on whether one is concerned with (internal or external) company-level mechanisms, or product-level mechanisms. The responsibility to guarantee an inclusive and transparent drafting process rests on companies for the development of their own policies, whereas it rests on external actors for external company-level mechanisms and on certifiers for the drafting of certification criteria. Similarly, the monitoring of implementation of company- and product-level mechanisms rests *primarily* with, respectively, firms and certifiers. As for sanctions, they shall be internally driven for violations of company-level internal mechanisms, whereas they are struck by industry/multi-stakeholder bodies in case of violation of industry/multi-stakeholder codes or by certifying bodies in case of violations of product standards.

Second, some features are highlighted as important only for one type of mechanism. It is the case for the embedding of standards into corporate processes or for complaints mechanisms, on which the literature around product-level mechanisms remains silent

⁴⁶⁷ The sanction for non-compliance with certification standards will be non-renewal of the certification.

⁴⁶⁸ As explained in this chapter, I will attempt to assess corporate motivation but only as a general feature and not as a stand-alone category of 'key features'.

– contrary to the literature around company-based mechanisms. Similarly, regular internal monitoring of firms’ performance is mentioned by some scholars writing about company-based mechanisms but is missing in the certification literature, which for the most part leaves the monitoring of implementation to certifiers. Moreover, the issue of transparency is mentioned by a few scholars writing about company-based mechanisms but not by scholars writing about product-level mechanisms. These disparities are mostly due to the narrow focus of scholars studying the latter category. Indeed, they mainly focus on audits and how to mitigate the risks associated with the auditing process, and therefore miss out on other important features which are covered by the literature on company-based mechanisms. This is problematic as these missing key features, such as embedding of standards or internal monitoring of implementation may play an important role in the effectiveness of product-level mechanisms – just as they may do for company-based mechanisms. And indeed, the literature looking at self-regulation in general outlines the importance of these features⁴⁶⁹, as I have explained earlier in this chapter. Moreover, product-level mechanisms themselves include most of the features which were identified as important by scholars writing on company-level mechanisms: Fairtrade, the Rainforest Alliance, and the Ethical Tea Partnership [ETP] seek to ensure the embedding of their standards into the operations of companies by requiring that relevant standards be communicated to employees in a language which they understand⁴⁷⁰, and that training be provided to ensure that employees (and management, for ETP⁴⁷¹) are familiar with the relevant standards⁴⁷².

⁴⁶⁹ Selznick (n. 351), 101; and Fung, O’Rourke, and Sabel (n. 353), 19.

⁴⁷⁰ Fairtrade ‘Hired Labour Standard’: Standards 3.6.1. and 3.6.3. about health and safety, Standard 3.5.27. about grievance mechanisms, Standard 3.5.10. about exceptions to mandatory days of rest, Standard 3.4.4. about freedom of association, and Article 9 of the Freedom of Association Protocol; Rainforest Alliance ‘Sustainable Agriculture Standard’: Continuous improvement criterion 4.22. about terms of work, Critical criterion 4.14. about health and safety and occupational health; ETP, ‘Global Standard’ (hereinafter ‘ETP ‘Global Standard’”), 2016: Standard 1.1. about forced and bonded labour, Standard 1.3. about freedom to leave employment, Standards 2.1. and 2.2. about freedom of association and collective bargaining, Standard 3.12. about health and safety and medical aid, Standard 4.2. about child labour remediation, Standard 9.1. about harsh and inhumane treatment of workers and grievance mechanism, and Standard 9.2. about disciplinary procedure.

⁴⁷¹ ETP ‘Global Standard’, Standard 9.1., requiring that managers be trained in fair treatment of workers and on disciplinary and grievance procedures.

⁴⁷² Fairtrade ‘Hired Labour Standard’: Standard 2.1.17. on risk assessments for premium fund administering, Standard 2.3.3. on training Premium fund committee worker members, Standard 2.2.4. on training trade union representatives, Standard 3.3.4. on child labour, Standard 3.5.27. on the grievance mechanism, Standards 3.6.2., 3.6.6., 3.6.7., 3.6.16., 3.6.22., and 4.2.4. on health and safety and occupational health, Standard 3.6.15. on evacuation procedures, 4.4.1. on waste handling, and Standard 2.2.6. and Article 6 of the Freedom of Association Protocol on women’s training and empowerment; Rainforest Alliance ‘Sustainable Agriculture Standard’: Continuous improvement criteria 1.8.; and ETP ‘Global Standard’: Standard 2.2. on collective bargaining, Standards 3.2. and 3.3.

Moreover, all three certification labels require that companies provide a free and anonymous complaints mechanism to workers and community members⁴⁷³, and Fairtrade requires the company to regularly monitor its compliance with the label's standards⁴⁷⁴. Furthermore, the main sanction of product-level mechanisms is the non-renewal of certification (it is for example the case for both Fairtrade and the Rainforest Alliance). Finally, an important feature which should be taken into account for both types of mechanisms is transparency: it is crucial for firms to be as transparent as possible when implementing the labels' standards, for the same reasons as for company-based mechanisms but also because of the risks associated with auditing – as I have explained in section 3.2.2. above.

So, the literature on self-regulation generally and on company-level mechanisms (and, to some extent, on product-level mechanisms), as well product-level mechanisms themselves, all cover the same 'key features'. It follows that this thesis will use these features to help assess the effectiveness of both types of mechanisms. They are broadly divided into the following five categories: drafting of standards; embedding of standards into day-to-day operations; monitoring and transparent reporting of implementation; setting up of a complaints mechanism; and sanctions. Motivation, as it was highlighted generally as an important feature, will also be taken into account whenever possible – although it is acknowledged that it may be difficult to assess it rigorously. However, it is important to note that, as my thesis focuses on whether self-regulation is effective in helping *corporations* meet their human rights responsibilities, I will only study those features which are within the control of firms. It follows that, as mentioned above in section 3.2.2., certain features (i.e. drafting of standards of all mechanisms apart from internal company-level mechanisms; training, skills, and integrity of auditors) will sit outside the scope of this study.

3.3. Conclusion

on health and safety and the proper use of equipment, Standard 3.12. on first aid, Standard 9.1. on fair treatment of workers and on disciplinary and grievance procedures (specifically for managers), Standard 10.2. for workers coming into contact with agrichemicals, Standard 10.4. on ecosystem conservation.

⁴⁷³ Fairtrade 'Hired Labour Standard': Standard 3.5.27.; Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.9.; and ETP 'Global Standard', Standard 9.1.

⁴⁷⁴ Fairtrade 'Hired Labour Standard', Standard 1.2.1.

This chapter allowed for the identification of an important gap in the literature: research into the impact of corporate human rights self-regulatory mechanisms on firms' human rights performance. This thesis aims to contributing to filling that gap by conducting empirical research. In order to assess the effectiveness of mechanisms on the ground, it was necessary to identify the key features which, according to scholars, would help guarantee it, which the second part of this chapter covered. On the one hand, authors writing on company-level mechanisms identified the following key features, broadly divided into five stages. First, the drafting process should be inclusive and open; a comprehensive set of internationally recognised human rights should be included; clear and reasonable targets should be set; and standards should be regularly revised and updated. Second, policies should be embedded in everyday corporate processes, through internal and external communication, training, and reward systems. Third, internal and third-party monitoring and transparent reporting of implementation should be carried out. Fourth, complaints mechanism(s) should be set up. Finally, clear sanctioning guidelines for non-compliance should be provided.

On the other hand, the key features explicitly identified by authors writing on product-level mechanisms are narrower: good and operationable criteria⁴⁷⁵, developed by a broad range of stakeholders, a strong auditing process with trained and independent auditors, and genuine motivation on the part of the certified firms. While the key features specific to product-level mechanisms are indeed important, those features identified in the context of company-level mechanisms also look essential for product-level mechanisms. Indeed, the embedding of standards (communication of policies, and training of employees and managers), regular monitoring of compliance, the setting up of free and anonymous complaints mechanism(s), and sanctions for non-compliance are included in product-level mechanisms themselves and in the literature looking at self-regulation generally.

It follows that, in this thesis's case study, both types of mechanisms will therefore be analysed following the same set of features: drafting of standards; embedding of standards into everyday operations; monitoring and reporting of compliance; setting up of complaint mechanism(s); and sanctioning. To the extent possible, motivation may also be taken into account. This framework of 'key features' will allow for the

⁴⁷⁵ Haaland and Aas (n. 436), 384.

investigation of the effectiveness of the various mechanisms used by the firms in this thesis's case study in helping them meet their human rights responsibilities. It will also allow for the analysis of the value of each 'key feature' in supporting the effectiveness of mechanisms. Finally, any other factors which are found to play a role in the effectiveness of mechanisms or in the human rights performance of companies will also be examined.

Chapter 4 will outline the methodology for this thesis's case study, covering the selection of the case study, and specifically the choice of country, industry, and individual corporations, the design of my data collection, and my interpretation methods.

Chapter 4 – Methodology of empirical research

The previous chapter started with an exploration of the literature on the impact of corporate self-regulation. This led to the conclusion that, while such self-regulatory mechanisms were being investigated, studies focusing on the effectiveness of these initiatives on human rights in the real world were lacking. This thesis aims to start filling that gap by conducting a case study evaluating the effects of the different types of self-regulatory mechanisms on corporate behaviour in a single industry and location, and testing out the theories put forward by the academic literature regarding the impact of self-regulation on the ground.

I do not claim that this case study allowed me to give definitive answers about the effectiveness of *all* self-regulatory mechanisms in *all* industries *everywhere* on the planet. A case study is necessarily limited in scope, and different findings will emerge from different circumstances – especially since corporate activities are very specific to the firm's industry. Another crucial factor is the area where the firm operates, which came with specific challenges. However, I designed this case study so that it could provide lessons about the effectiveness of mechanisms in a challenging environment and in a problematic industry, providing a blueprint methodology that could be adapted and used in studies in other industries and geographical regions, as I explore in the concluding chapter.

This chapter builds upon the introduction made to this thesis's methodology in Chapter 1, and outlines the case study's selection by exploring first the tea industry worldwide and second the Tanzanian business and human rights context, before investigating the Tanzanian tea industry in general and finally the three specific companies which I have selected for my case study. This will allow for a deeper understanding of the context of my empirical research, and for the formulation of expectations as to the human rights performance of each company. This chapter will conclude with further details about my methodology, including the design of my data collection and interpretation of my findings, building on what was already outlined in Chapter 1.

4.1. Selection of the case study

As explained in Chapter 1, this thesis required fieldwork in a particular industry where human rights issues are widespread and self-regulation is common, and in a location where human rights issues are prevalent and state enforcement is weak. This allowed for the testing of the potential of self-regulation in helping firms respect human rights and prevent, to the extent possible, any ‘false positives’ mistakenly attributed to self-regulation but truly taking place because of the unproblematic environment. The impact of self-regulation was more easily identified in an environment where human rights violations are rife; any improvement stemming from the implementation of self-regulatory mechanisms was more easily identified as such.

Moreover, one of the main considerations for choosing a case study is accessibility of the data, “whether to interview people, review documents or records, or make observations in the field”⁴⁷⁶. Keeping this in mind, researchers select the cases that will most likely help answer their research questions⁴⁷⁷: for this case study, I therefore identified three agricultural firms operating in Tanzania (and more specifically producing tea), which would be accessible and help determine the potential effectiveness of corporate self-regulation. Given the fact that there is such an extensive range of mechanisms adopted by companies, it is a ‘best case’ study which tests out the potential of all mechanisms to have an effect on the ground.

I will now outline the reasoning behind my choice of case study, starting with the tea industry, and then moving on to the country, region, and specific corporations.

4.1.1. Introduction to the tea industry worldwide

This section will start by introducing the tea industry generally, before outlining the human rights issues commonly recorded in the industry.

⁴⁷⁶ Yin (n. 171), 26.

⁴⁷⁷ Ibid.

4.1.1.1. Description of the tea industry worldwide

Tea is the manufactured drink most consumed in the world⁴⁷⁸ and comes from the leaves of *camellia sinensis*. It was domesticated in China millennia ago⁴⁷⁹, for its medicinal and stimulating properties as well as for its refreshing taste⁴⁸⁰, and six main varieties are today available for consumption (white, green, yellow, oolong, black, and post-fermented)⁴⁸¹. Native to South Asia, it is now widely found in tropical and subtropical zones and grows best in temperatures ranging from 18°C to 25°C⁴⁸². Left undisturbed, tea trees will grow up to ten meters, but domesticated trees are pruned and so will be kept under one meter high⁴⁸³. It takes bushes four to twelve years to bear leaves⁴⁸⁴, which are then plucked every seven to fifteen days⁴⁸⁵. As tea leaves are mostly made of water, picked leaves are to be dried before they may be fit for consumption.

The global tea industry amounted to an annual turnover of almost US\$50 billion in 2017⁴⁸⁶, with a price at US\$2.21/kilo in October 2019⁴⁸⁷. The biggest tea producers in the world are China, India, Kenya, Sri Lanka, and Turkey, making up 79% of the global production of 5.95 million tonnes in 2016⁴⁸⁸. Tanzania produced 32.400 tons in 2013, making the country the world's 14th, and Africa's 4th, largest tea producer⁴⁸⁹.

I will now explore the human rights issues commonly recorded in tea industry.

⁴⁷⁸ Kaison Chang 'World Tea Production and Trade, Current and Future Development', *Food and Agriculture Organisation of the UN, I4480E/1/03.15*, 2015, 2; and Ashis Biswas, 'Global warming hits tea industry worldwide' (*Dhaka Tribune*, 20 February 2018) <<https://www.dhakatribune.com/business/2018/02/20/global-warming-hits-tea-industry-worldwide/>> (accessed on 21 October 2019)

⁴⁷⁹ Houyuan Lu *et al.*, 'Earliest tea as evidence for one branch of the Silk Road across the Tibetan Plateau', *Nature* 6:18955, 2016, 1, 1.

⁴⁸⁰ Ibid.

⁴⁸¹ Chang (n. 478), 2.

⁴⁸² Tong Liu, *Chinese Tea*, Cambridge University Press, 2012, 9.

⁴⁸³ Ibid, 11.

⁴⁸⁴ James A. Duke, *CRC Handbook of Alternative Cash Crops*, CRC Press, 1993, 87.

⁴⁸⁵ Ibid, 88.

⁴⁸⁶ Zion Market Research, 'Tea Market By Product Type (Green Tea, Black Tea, Oolong Tea, Herbal Tea, and Others), By Application (Household and Commercial), By Packaging (Plastic Container, Loose Tea Packets, Tea Bags, and Aluminum Tins), and By Distribution Channel (Supermarket/Hypermarket, Convenience Store, Specialty Store, Online Retail and Others): Global Industry Perspective, Comprehensive Analysis and Forecast, 2017–2024', 2018.

⁴⁸⁷ Index Mundi, 'Tea Monthly Price' (21 October 2019) <<https://www.indexmundi.com/commodities/?commodity=tea&months=60>> (accessed on 21 October 2019)

⁴⁸⁸ Food and Agriculture Organization of the UN, Statistics Division, 'World tea production in 2016; Crops/World Regions/Production Quantity from picklists', 2017.

⁴⁸⁹ Chang (n. 478), 4.

4.1.1.2. Human rights issues in the tea industry worldwide

The tea industry is known for difficult working conditions⁴⁹⁰ and wages failing to meet the basic needs of workers⁴⁹¹. This remains a problem even though tea workers are often provided with in-kind benefits, such as accommodation and health care⁴⁹². As a result, many tea workers have a secondary source of income, working a second job or conducting business on the side⁴⁹³. It is also important to note that tea workers' wages are usually based on the weight of plucked tea, with a fixed per-kilo rate, rather than on the number of hours worked. This means that factors such as physical fitness and seasons will impact workers' pay⁴⁹⁴.

Moreover, corporations employ workers on a temporary basis because tea is a seasonal crop⁴⁹⁵. However, seasonal workers are generally paid a lower wage than permanent workers and are commonly denied access to benefits and social protection for themselves and their family⁴⁹⁶. This casualisation of workers becomes particularly problematic when tea companies employ these seasonal workers for years without offering them a permanent contract⁴⁹⁷ – a practice to which firms such as Unilever have admitted⁴⁹⁸.

Health and safety is also a problem, including because protective equipment is not always (freely) provided⁴⁹⁹ and some products used by workers are toxic⁵⁰⁰. General health issues such as Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome [HIV/AIDS] and malnutrition – one reason for the latter being

⁴⁹⁰ Sanne van der Wal, 'Sustainability Issues in the Tea Sector: A Comparative Analysis of Six Leading Producing Countries', *Centre for Research on Multinational Corporations (SOMO)*, 2008, 27.

⁴⁹¹ This is true despite the potential bonuses to which tea pluckers may have access when they exceed targets (Ann-Marie Brouder, Simon Billing and Sally Uren, 'The Future of Tea, A Hero Crop for 2030', *Forum for the Future*, 2014, 14; Ethical Tea Partnership & Oxfam, 'Understanding Wage Issues in the Tea Industry, Report from a Multi-Stakeholder Project', 2013, 17; Tulshi Kumar Dass and M. Hasan Zakirul Islam, 'Human Rights Of The Tea Gardeners: Case Study of selected gardens In Sylhet', *Asian Affairs* 28(3), 2006, 25, 32; *ibid*, 27; and Michael Groosman, 'Tea sector overview', *Sustainable Trade Initiative*, 2011, 9).

⁴⁹² Van der Wal (n. 490), 27.

⁴⁹³ *Ibid*.

⁴⁹⁴ *Ibid*.

⁴⁹⁵ Groosman (n. 491), 9.

⁴⁹⁶ Brouder, Billing and Uren (n. 491), 14; and Van der Wal (n. 490), 27.

⁴⁹⁷ Van der Wal (n. 490), 33.

⁴⁹⁸ *Ibid*.

⁴⁹⁹ ILO, 'Hazardous child labour in agriculture, tea sector (Safety and health)', *UN, International Programme on the Elimination of Child Labour*, 2004, 2.

⁵⁰⁰ *Ibid*.

the poor nutritious value of the workers' lunch provided in the field⁵⁰¹ – are common. Discrimination based on ethnicity, migrant status, and gender are also reported in the tea industry⁵⁰².

Research into the tea industry has also concluded that local trade unions tended to be weak or non-existent, and bargaining processes are often absent⁵⁰³. Child labour is also common in tea plantations around the world, mostly due to poverty⁵⁰⁴. Gender inequality⁵⁰⁵ and sexual harassment (including of children)⁵⁰⁶ were also reported as important issues.

Furthermore, tea workers' housing is often in bad condition⁵⁰⁷, with poor sanitation, limited access to drinking water or electricity, and overcrowding issues, and its allocation is “riddled with allegations of corruption, tribalism, and sexual harassment”⁵⁰⁸.

Finally, issues with the right to water and sanitation⁵⁰⁹, to education⁵¹⁰, and to land⁵¹¹ are frequent in the tea industry.

However, and perhaps as a reaction to the issues described above, some experts have noted that tea corporations have increasingly been adopting mechanisms to help them conduct business in a socially responsible way, and the ten biggest tea companies in the world have indeed done so⁵¹². It is therefore necessary to investigate the impact of these self-regulatory mechanisms on working and living conditions in, and around, tea plantations.

As explained in Chapter 1, the case study needed to be set in an industry where human rights abuses are commonly reported. As outlined above, a number of human rights issues are ordinarily reported in the tea industry, which therefore offered a good setting

⁵⁰¹ Van der Wal (n. 490), 30.

⁵⁰² Ibid, 32; and Groosman (n. 491), 10.

⁵⁰³ Van der Wal (n. 490), 32; Brouder, Billing and Uren (n. 491); and Groosman (n. 491), 10.

⁵⁰⁴ Dass and Islam (n. 491), 34; and Van der Wal (n. 490), 35.

⁵⁰⁵ Dass and Islam (n. 491), 36.

⁵⁰⁶ ILO (n. 499), 2.

⁵⁰⁷ Groosman (n. 491), 9.

⁵⁰⁸ Van der Wal (n. 490), 29.

⁵⁰⁹ Dass and Islam (n. 491), 36.

⁵¹⁰ Ibid, 31.

⁵¹¹ Peter Nestor, 'Four Human Rights Issues Every Food and Agriculture Company Needs to Understand' (*Business for Social Responsibility*, 12 February 2013) < <https://www.bsr.org/en/our-insights/blog-view/four-human-rights-issues-every-food-and-agriculture-company-needs-to-understand> > (accessed 21 October 2019); and Van der Wal (n. 490), 46.

⁵¹² See Annex 1.

to study whether corporate self-regulation may have a positive human rights impact. Moreover, this study allowed for global relevance as it investigated one of the most consumed goods in the world. Now that I have selected the industry, I will explain why Tanzania is the right location for my case study.

4.1.2. Introduction to Tanzania

This section will explore the demographic, economic, and social context of Tanzania, before studying the relevant international conventions and national legislation in force in the country, and finally investigating the business-related human rights issues commonly reported nationally. This will allow for the understanding of the context in which corporations operate as well as the challenges facing companies and relevant stakeholders.

4.1.2.1. National context

It is essential to understand the social context in which companies operate in Tanzania: a firm does not operate in a vacuum, but must consider its environment, including the community living in the same area. I will therefore start this section by briefly exploring the demographic, economic, and social context of the country before investigating specifically the extent to which the health and education needs of the Tanzanian population are met. Finally, I will end this section with some labour statistics, in order to provide some context for the operation of businesses in the country, and more specifically of tea corporations.

4.1.2.1.1. General statistics

The United Republic of Tanzania was created in April 1964 with the union of recently independent mainland Tanzania (*Tanganyika*) with the archipelago of Zanzibar. It has a population of 56 million, with a high population growth rate (3%⁵¹³) and a life expectancy of 66 years⁵¹⁴. The country has sustained a high economic growth rate,

⁵¹³ UN Population Division, 'Population Growth (annual %) – Tanzania' <<https://data.worldbank.org/indicator/SP.POP.GROW?locations=TZ>> (accessed on 21 October 2019)

⁵¹⁴ Ibid.

between 6% and 7% annually for the past decade⁵¹⁵, and the poverty levels have decreased in recent years, although remaining high at 27%⁵¹⁶, which means that 13 million Tanzanians are still living in poverty. Moreover, vast geographical disparities remain as the national poverty decrease is mainly driven by gains in large urban centres to the detriment of rural regions⁵¹⁷. Furthermore, electrification rates have hugely improved in the past three decades: 32.8% of Tanzanian households had electricity in 2017, from 4.2% in 1993⁵¹⁸ – although, again, there are vast disparities between rural areas (16.8%) and urban centres (65.3%). Moreover, only 7% of rural residents and 20% of urban residents had access to improved sanitation facilities in 2010 and 56% of the rural population and 21% of urban residents did not have access to drinking water in 2010⁵¹⁹. Finally, 60.6% of households were constructed with earth floors, 51.8% were built with non-durable walls, and over 50% with non-durable roofs⁵²⁰ in 2011/12. In rural areas, most materials are bamboo, timber, round pole, straw, grass and mud or adobe, leading to poor housing conditions⁵²¹.

Now that I have provided basic demographic, economic, and social information about Tanzania, I will investigate the extent to which the health and education needs of the population are met. This is particularly important to understand since a corporation may have an important impact on the community. It may, for instance, bring in a significant number of migrant workers, which risk putting a strain on the local health and education services and may have public health implications, such as transmission of diseases or reduced access to water. The latter is an especially important risk in a country like Tanzania, as I have explained above. Understanding this context will help with the assessment of firms' human rights performance and of the effectiveness of their self-regulatory mechanisms (if relevant). I will therefore briefly explore the

⁵¹⁵ USAID, 'Economic Growth and Trade' (19 August 2019) <<https://www.usaid.gov/tanzania/economic-growth-and-trade>> (accessed on 21 October 2019)

⁵¹⁶ World Bank, 'Tanzania – Overview' (30 September 2019) <<https://www.worldbank.org/en/country/tanzania/overview>> (accessed on 21 October 2019)

⁵¹⁷ Ibid.

⁵¹⁸ World Bank, 'Access to Electricity (% of population) – Tanzania' <<https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS?locations=TZ>> (accessed on 21 October 2019)

⁵¹⁹ UN-Water, 'Country Brief: United Republic of Tanzania', 2013, 4.

⁵²⁰ Elias M. Kwanama, 'The Present Housing Challenge In Tanzania And Efforts Towards Provision Of Affordable Housing', *Paper Presented to the 28th National Conference 2015 of The Institution of Engineers Tanzania*, 2015, 2.

⁵²¹ Ibid, 9-10.

coverage of two of the most important social needs of the population, education and health, in the next section.

4.1.2.1.2. Social development indicators

4.1.2.1.2.1. Education

Access to education is improving, with 76% of women⁵²² and 69% of men⁵²³ having completed primary education, and 32% of women⁵²⁴ and 37% of men⁵²⁵ having completed secondary education. The literacy rate has also improved in the past decade, reaching 78% in 2015⁵²⁶. Enrolment in primary and secondary schools has increased in the past 25 years, growing from 48% in 2005 to 94% in 2008 but falling to 80% in 2014⁵²⁷. This trend is true at all education levels (pre-school, primary, and secondary)⁵²⁸, and may be linked to the fading enthusiasm over the government's announcement of free education, followed by the subsequent realisation that the schooling conditions were rather poor⁵²⁹ (as will be covered at the end of this section). The graph below illustrates the rates of enrolment in educational institutions in the country (% of children), by age and survey year.

⁵²² UN Educational, Scientific, and Cultural Organization (UNESCO) Institute for Statistics, 'Primary completion rate, female (% of relevant age group) – Tanzania' <<https://data.worldbank.org/indicator/SE.PRM.CMPT.FE.ZS>> (accessed on 21 October 2019)

⁵²³ Ibid.

⁵²⁴ Ibid.

⁵²⁵ Ibid.

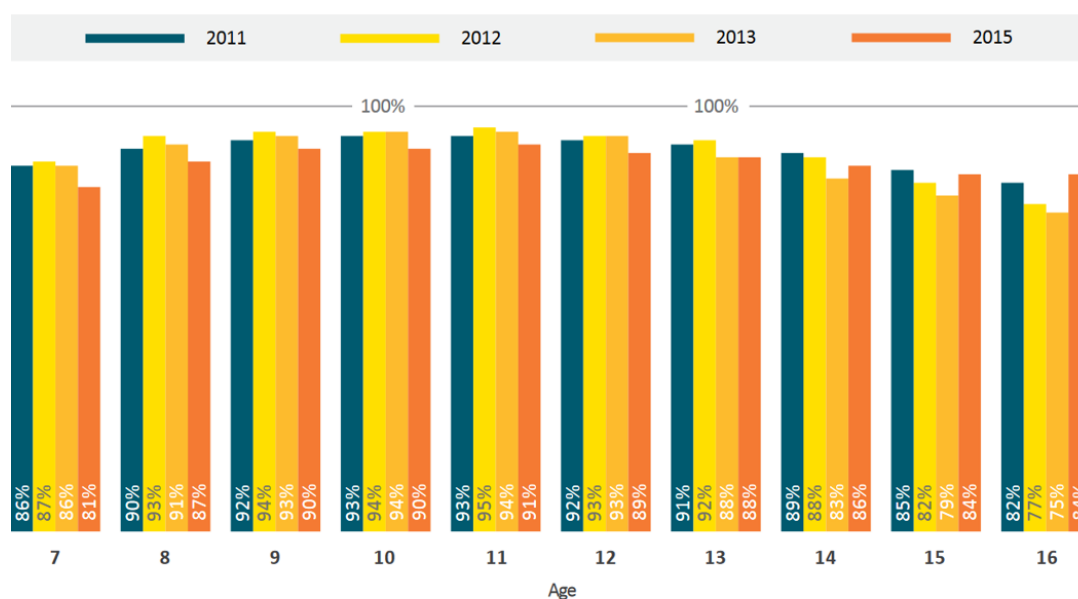
⁵²⁶ Ibid.

⁵²⁷ Ibid.

⁵²⁸ Uwezo, 'Are Our Children Learning? Uwezo Tanzania Sixth Learning Assessment Report', *Twaweza East Africa*, 2017, 37.

⁵²⁹ Ibid, 54.

Figure 1 – Rates of enrolment in educational institutions (by age and survey year)



Notes: A child was deemed to be enrolled if s/he was attending either pre-school, primary or secondary school.

Source: Calculated from data from the 2011, 2012, 2013 and 2015 rounds of the Uwezo ALA

(Source: Uwezo (2017) 'Are Our Children Learning? Uwezo Tanzania Sixth Learning Assessment Report', Twaweza East Africa, 37)

Despite high levels of enrolment, there are big differences between children living in urban and rural environments, as described by the following graph, showing rates of enrolment in educational institutions (% of children), by age, location, and survey year:

Figure 2 – Rates of enrolment in educational institutions by age, location, and survey year



Notes: A child was deemed to be enrolled if s/he was attending either pre-school, primary or secondary school.

Source: Calculated from data from the 2011 and 2015 rounds of the Uwezo ALA

(Source: Uwezo (2017) 'Are Our Children Learning? Uwezo Tanzania Sixth Learning Assessment Report', Twaweza East Africa, 39)

Furthermore, the quality of free public education leaves much to be desired, mostly because of inadequate curricula, lack of teachers⁵³⁰, and overcrowded classrooms⁵³¹. Poor infrastructure has also been linked to poor results⁵³², considering that fewer than one in four schools nationally has access to electricity, that only 40% have access to clean water, and that there is on average one toilet for every 50 pupils and one textbook for every three pupils⁵³³. This leads to poor results: in 2015, it was estimated that only

⁵³⁰ It is estimated that there is on average one teacher for every 44 pupils, but that teacher's absenteeism reaches 25% nationally (Uwezo (n. 523), 49).

⁵³¹ Interview with civil society representative A2.

⁵³² Uwezo (n. 523), 52.

⁵³³ Uwezo (n. 523), 48; although it should be noted that, in 2013, the ratio was 30 pupils for one textbook.

56% of the children in standard 3 were able to read a simple standard 2 Swahili text⁵³⁴, and only 35% were able to do multiplications which they were required to learn in standard 2. Pupils' absenteeism is also high, with a national average of 29%⁵³⁵. The situation may improve following the recent budget increase voted by the Parliament, which will allow for the recruitment of 54.000 new teachers⁵³⁶. This may help tip the scales back in favour of public schools, which are free and have fallen behind private schools in terms of the quality of the education which they offer⁵³⁷.

4.1.2.1.2.2. Health

Tanzania's national health services have historically been poor, and mostly concentrated in big urban centres⁵³⁸. However, the government has been working to improve the situation in recent years by setting up hospitals in each district, and health centres at local level⁵³⁹, so that most people now have access to primary health care wherever they are in the country⁵⁴⁰. The Parliament has also recently approved a budget increase that will allow for the recruitment of 15.000 new healthcare professionals⁵⁴¹. However, cost is still an issue as healthcare is not free and health insurance is too expensive for a significant part of the population⁵⁴².

Furthermore, Tanzania has a high rate of HIV/AIDS, as explained above⁵⁴³: in 2016, it was estimated that 4.7% of the population were living with the disease⁵⁴⁴, 62% of which were receiving antiretroviral therapy [ART]⁵⁴⁵. In the region where the case study is set (Iringa), 11.3% of the population lives with HIV/AIDS, which makes it the region with the second highest rate nationally behind Njombe (11.4%)⁵⁴⁶. However,

⁵³⁴ Ibid, 19; although the passing rate was 29% in 2011.

⁵³⁵ Ibid, 51.

⁵³⁶ Interview with civil society representative A2.

⁵³⁷ Interviews with civil society representatives A3 and A7.

⁵³⁸ Interview with civil society representative A2.

⁵³⁹ Interview with civil society representative A7.

⁵⁴⁰ Interview with civil society representative A2.

⁵⁴¹ Interview with civil society representative A2.

⁵⁴² Interview with civil society representative A7.

⁵⁴³ See Section 4.1.2.3.2.2.

⁵⁴⁴ UN Agency UNAIDS, 'Country Factsheet – Tanzania', 2016. <<https://www.unaids.org/en/regionscountries/countries/unitedrepublicoftanzania>> (accessed on 21 October 2019)

⁵⁴⁵ Ibid.

⁵⁴⁶ PHIA Project, 'Tanzania Impact HIV Survey', *Colombia University*, 2019, 2.

the government is trying to provide education on this issue to the population⁵⁴⁷, and there has been a sharp decline in both the amount of new infections and the amount of AIDS-related deaths over the past 20 years⁵⁴⁸, and a great increase in the ART coverage of HIV/AIDS-infected individuals⁵⁴⁹. The figures are encouraging but education efforts must continue as part of the population, especially in rural areas, do not know enough to adequately protect themselves against the spread of HIV/AIDS⁵⁵⁰. In order to help fight against the disease and help the lives of workers living with HIV/AIDS, all businesses are legally required to have an HIV/AIDS policy in place, and to financially support employees living with the disease⁵⁵¹. However, implementation of these provisions is very low⁵⁵², despite a good response coming from some corporations in the country⁵⁵³.

The health and education needs of the Tanzanian population are not therefore met evenly across the country and public services are generally insufficient, although the situation is improving in some respects. This broader social context helps understand the environment in which corporations must operate and informed my evaluation of the performance of each firm as part of the case study. It was particularly important to investigate whether corporations have taken measures to mitigate against the health and education impact of employing a significant number of migrant workers in this context of overstretched public services. I will now provide some labour-related statistics to further outline the context of the case study.

⁵⁴⁷ Interview with civil society representative A7.

⁵⁴⁸ 170,000 people got infected in 1998, and 60,000 people in 2016; 120,000 AIDS-related deaths were reported in 2004, and 33,000 in 2016 (UNAIDS (n. 539)).

⁵⁴⁹ 18% of people living with HIV/AIDS were receiving treatment in 2010 (ibid).

⁵⁵⁰ Interview with civil society representative A3.

⁵⁵¹ Interview with civil society representative A3.

⁵⁵² Interview with civil society representative A3.

⁵⁵³ Interview with civil society representative A1.

4.1.2.1.3. Labour statistics

In 2014, it was estimated that less than 2% of the male workforce⁵⁵⁴, and less than 3% of the female workforce⁵⁵⁵ were unemployed. As of 2017, 67% of the Tanzanian employed workforce were working in the agricultural sector⁵⁵⁶ (64% of the male employed workforce⁵⁵⁷, and 70% of female employed workforce⁵⁵⁸), of which 89% are considered ‘vulnerable’⁵⁵⁹, placing them at a higher degree of economic risk and vulnerability than other employees.

In 2017, it was reported that almost 30% of Tanzanian children aged 5-14 were working⁵⁶⁰, accounting for 3.6 million children, of which 94% were working in agriculture – including tea⁵⁶¹. This mainly comes from the fact that children traditionally help their parents with farming; in a country such as Tanzania, it is sometimes difficult to distinguish between children helping the family, and doing work at the expense of their education⁵⁶². It is therefore difficult for the government to intervene in matters seen as private by most of the population, as the culture sees state intervention into familial matters as intrusive. As part of my case study, I therefore investigated whether child labour was an issue in the operations of the selected tea companies.

The Tanzanian workforce is therefore overwhelmingly employed and, for the most part, works in the agricultural sector. However, high rates of child labour and of vulnerable employment across the country are important issues, which will be relevant in the context of my case study. I will now explore the international conventions and national legislation which Tanzania has adopted and which are relevant to my research.

⁵⁵⁴ ILO, ‘Unemployment, male (% of male labor force) (national estimate) – Tanzania’, ILOSTAT database <<https://data.worldbank.org/indicator/SL.UEM.TOTL.MA.NE.ZS?locations=TZ>> (accessed on 21 October 2019)

⁵⁵⁵ Ibid.

⁵⁵⁶ Ibid.

⁵⁵⁷ Ibid.

⁵⁵⁸ Ibid.

⁵⁵⁹ Tanzania National Bureau of Statistics, ‘2014 Integrated Labour Force Survey’, 2015, 29.

⁵⁶⁰ United States Department of Labor, ‘2017 Findings on the Worst Forms of Child Labor - Tanzania’, 2017, 1.

⁵⁶¹ Ibid.

⁵⁶² Interview with civil society representative A1.

4.1.2.2. Relevant international conventions and national legislation

The United Republic of Tanzania has committed to protecting the rights enshrined in several international treaties, among the most important of which are the ICESCR⁵⁶³, the ICCPR⁵⁶⁴, the International Convention on the Elimination of All Forms of Racial Discrimination⁵⁶⁵, the Convention on the Elimination of All Forms of Discrimination against Women⁵⁶⁶, the Supplementary Convention on the Abolition of Slavery⁵⁶⁷, and the Convention on the Rights of the Child⁵⁶⁸. At the regional level, Tanzania has ratified the African Charter on Human and Peoples' Rights⁵⁶⁹, the African Charter on the Rights and Welfare of the Child⁵⁷⁰, and signed the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa⁵⁷¹.

Moreover, the United Republic of Tanzania has ratified 37 ILO conventions⁵⁷² (including the eight fundamental conventions), of which four do not apply to Zanzibar⁵⁷³. However, Tanzania has yet to ratify the Labour Inspection (Agriculture) Convention (C129). Implementing these conventions, the Tanzanian government undertook comprehensive labour law and regulatory reforms in the early 2000s, culminating in the adoption of the following⁵⁷⁴:

- The Occupational Health and Safety Act, 2003
- The Employment and Labour Relations Act, 2004
- The Labour Institutions Act, 2004
- Workmen's Compensation Act, 2008

⁵⁶³ Accessed on 11 June 1976.

⁵⁶⁴ Accessed on 11 June 1976.

⁵⁶⁵ Accessed on 27 October 1972.

⁵⁶⁶ Ratified on 20 August 1985.

⁵⁶⁷ The full name of the Convention is the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, to which Tanzania accessed on 28 November 1962.

⁵⁶⁸ Ratified on 10 June 1991.

⁵⁶⁹ Ratified on 18 February 1984.

⁵⁷⁰ Ratified on 16 March 2003.

⁵⁷¹ Signed on 5 November 2003.

⁵⁷² The full list is available on the ILO's website, available at this address: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103476> (accessed on 21 October 2019)

⁵⁷³ ILO, 'Technical Memorandum, United Republic of Tanzania labour administration and inspection audit', 2010, 16.

⁵⁷⁴ ILO, 'Tanzania – Labour Inspection Structure and Organisation' <http://www.ilo.org/labadmin/info/WCMS_122481/lang--en/index.htm> (accessed on 21 October 2019)

- Social Security (Regulatory Authority) Act, 2008

In addition to these reforms, it was reported during interviews that a bill was tabled in Parliament in 2014 to make CSR compulsory⁵⁷⁵. In 2017, Parliament amended mining laws to require that companies prepare a “credible CSR plan” which shall take into account “environmental, social, economic and cultural activities based on local government authority priorities of host community”⁵⁷⁶. In turn, “every local government authority shall (a) prepare guidelines for CSR within their localities; (b) oversee the implementation of CSR action plan; and (c) provide awareness to the public on projects in their areas”⁵⁷⁷. The Tanzanian government is therefore starting to legislate about the impact of corporate activities on issues such as the environment or the local community – although no similar law was adopted for the agricultural sector. In addition, the Tanzanian government committed in 2014 to the adoption of a National Action Plan⁵⁷⁸ [NAP], which would be a one-stop-shop policy document for all business and human rights issues in the country. The NAP is currently being drafted by the Commission for Human Rights and Good Governance [CHRAGG] and is expected to take several years to complete⁵⁷⁹. This NAP would address the widespread human rights violations which the country faces: as mentioned in Chapter 1, the LHRC identified in their 2016 Human Rights and Business Report numerous business-related human rights issues in the country⁵⁸⁰.

Relatedly, I will now provide background information about corporate practice in the country by referring to the LHRC report(s). Relevant aspects of business and human rights issues are divided into the following three overarching categories: labour rights, discrimination issues, and the performance of Tanzanian labour authorities.

4.1.2.3. Business and human rights issues in Tanzania

This section will explore business-related human rights issues in Tanzania, for which I will mainly refer to the LHRC’s recent Business and Human Rights reports. I will here cover labour rights, discrimination issues, and the performance of official

⁵⁷⁵ Interview with civil society representative A1.

⁵⁷⁶ The Written Laws (Miscellaneous Amendments) Act, 2017, Articles 102(5)(1) and 105.

⁵⁷⁷ The Written Laws (Miscellaneous Amendments) Act, Article 105(4).

⁵⁷⁸ Interview with civil society representative A7.

⁵⁷⁹ Interview with civil society representative A7.

⁵⁸⁰ LHRC (n. 207).

regulatory authorities. For each theme, I will first investigate the relevant legal provisions before exploring the common problems encountered with corporate activities in practice. This informed my assessment of the human rights performance of the case study's firms.

4.1.2.3.1. Labour rights

This section covers the following issues: right to fair and decent pay, contracts, freedom of association and collective bargaining, injuries and compensation, right to a safe working environment, and the working conditions of seasonal workers.

4.1.2.3.1.1. Right to fair and decent pay

The Universal Declaration of Human Rights states that “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity”⁵⁸¹, and the ICESCR requires that the level of remuneration allow workers to make “a decent living for themselves and their families”⁵⁸². However, there is no Tanzanian provision implementing this principle into national legislation, and the central government only sets the level of minimum wage per sector. The last update to minimum wage in the tea sector took place in 2013, when the government set the amount to Tsh100.000 monthly for the agricultural sector⁵⁸³. This contrasts with the monthly average (Tsh750.000) which would allow a couple with four children to live decently, according to a study conducted by the Trade Union Congress of Tanzania [TUCTA]^{584 585}. The issue of low wages is prevalent in Tanzania: pay is an “auction for the lowest bidder”⁵⁸⁶, even regarding managers’

⁵⁸¹ Universal Declaration of Human Rights, Article 23(4).

⁵⁸² UN General Assembly, International Covenant on Economic, Social, and Cultural Rights (hereinafter ‘ICESCR’), 16 December 1966, Article 7(a).

⁵⁸³ Gazette of the United Republic of Tanzania, Supplement No. 24, Vol. 94, No. 26, 28 June 2013, Second Schedule (a).

⁵⁸⁴ Interview with trade union representative F1.

⁵⁸⁵ Another study from January 2018 found that, for a ‘standard’ family of two parents and two children, the cost of living amounted to between Tsh406.700 and Tsh584.100 (Wage Indicator, ‘Living Wage Series – Tanzania’, 2018. <<https://wageindicator.org/salary/living-wage/tanzania-living-wage-series-january-2018-country-overview>> (accessed on 21 October 2019))

⁵⁸⁶ Interviews with civil society representative A1 and trade union representative F2.

salary⁵⁸⁷ and, because of underlying poverty issues, employees accept low wages⁵⁸⁸. Employers are also known to ask employees to lie to regulatory authorities and state that they earn higher wages than what they actually receive⁵⁸⁹. In addition to the fact that the minimum set by the government has not been updated in six years – while inflation rates have remained between 3.5% and 6.1% annually since 2013⁵⁹⁰ –, one of the main problems remains the difficulty for employees to bargain above the minimum amount set at national level⁵⁹¹, especially considering that trade unions are not always effective, as will be explored in Section 4.1.2.3.1.3. below.

4.1.2.3.1.2. Contracts

Section 15 of the Employment and Labour Relations Act⁵⁹² requires employers to provide employees with, among others, a job description, date of commencement, form and duration of contract, place of work, working hours, and remuneration. However, the contract must be in writing only for employees stationed outside of Tanzania⁵⁹³.

According to LHRC's study, 62% of employees across the country do not have employment contracts⁵⁹⁴ - but even when corporations offer contracts, they often use a 'one-size-fits-all' type of document, which leaves no room for negotiation of terms⁵⁹⁵, and sometimes is in a language other than Swahili⁵⁹⁶. Businesses also do not always provide employees with a copy of their contract⁵⁹⁷. Moreover, the LHRC denounced the abusive reliance on seasonal contracts to exploit cheap labour⁵⁹⁸ and to

⁵⁸⁷ Interview with civil society representative A8.

⁵⁸⁸ Interviews with civil society representatives A1, A3, and A7.

⁵⁸⁹ Interview with civil society representative A1.

⁵⁹⁰ Knoema, 'United Republic of Tanzania - Average consumer prices inflation rate', 2018. <<https://knoema.com/atlas/United-Republic-of-Tanzania/Inflation-rate>> (accessed on 21 October 2019)

⁵⁹¹ Gazette of the United Republic of Tanzania (n. 583).

⁵⁹² Employment and Labour Relations Act (No. 6 of 2004) (Cap. 366) (hereinafter 'Employment and Labour Relations Act'), 2004.

⁵⁹³ Employment and Labour Relations Act, Section 14(2).

⁵⁹⁴ LHRC (n. 207), xxvi; and interview with civil society representative A1.

⁵⁹⁵ Interview with civil society representative A3.

⁵⁹⁶ Interview with civil society representative A3.

⁵⁹⁷ LHRC (n. 207), xxvii.

⁵⁹⁸ Ibid, 31.

keep employees from making demands⁵⁹⁹, and called on the government to reform the Employment and Labour Relations Act to protect ‘short-term’ workers⁶⁰⁰.

4.1.2.3.1.3. Freedom of association and collective bargaining

Freedom of association is guaranteed under both international and national law. Firstly, ILO Conventions C087 and C098 guarantee the right of workers and employers to establish and join unions, and their right to be protected from anti-union discrimination at work. The Universal Declaration of Human Rights⁶⁰¹, the African Charter of Human and Peoples’ Rights⁶⁰², and the ICESCR also guarantee freedom of association. Secondly, the Constitution of the United Republic of Tanzania states that “every person has a freedom to freely and peaceably assemble, association and cooperate with other persons, and for that purpose [...], to form and join with associations [...] formed for purposes of preserving or furthering his beliefs or interests [...]”⁶⁰³. Accordingly, the Labour and Employment Relations Act⁶⁰⁴ protects the right of employees to form and join trade unions, and to not be discriminated for exercising this right. Considering that ‘employee’ is defined as an individual who “has entered into a contract of employment”⁶⁰⁵, this includes seasonal and permanent workers.

Despite this strong constitutional and legislative framework, union-related rights are at risk in Tanzania. At national level, some civil society representatives denounce the fact that umbrella union organisations are staffed with individuals close to the government⁶⁰⁶. It follows that workers’ associations may not be well represented at national level, and that trust and confidence in unions may be undermined. A national civil society organisation also said that unions fear the government, and so do not stand up for their members⁶⁰⁷.

⁵⁹⁹ Interview with civil society representative A3.

⁶⁰⁰ LHRC (n. 207), 33.

⁶⁰¹ Universal Declaration of Human Rights, Article 20.

⁶⁰² Organisation of African Unity, African Charter on Human and Peoples' Rights (hereinafter ‘African Charter on Human and Peoples' Rights’), 27 June 1981, CAB/LEG/67/3, 1982, Articles 10 and 11.

⁶⁰³ Constitution of the United Republic of Tanzania, (Cap. 2), 1977, Article 20.

⁶⁰⁴ Employment and Labour Relations Act, Articles 9(1) and (3).

⁶⁰⁵ Employment and Labour Relations Act, Article 4.

⁶⁰⁶ Interview with civil society representative A3.

⁶⁰⁷ Interview with civil society representative A3.

At local level, the LHRC reported that almost 36% of employees said that their trade union did not have the capacity to represent them⁶⁰⁸, including because of mistrust between workers and union representatives⁶⁰⁹ and the fact that some workers feel that their representatives are on the employers' side⁶¹⁰. It follows that workers may not want to join unions which they see as unrepresentative or useless⁶¹¹.

A related problem is the miscommunication between workers and their representatives: 90% of workers are not aware of the existence of collective bargaining agreements [CBAs], and most companies treat CBAs as confidential agreements which are not made available to employees⁶¹². These figures confirm the fact that workers' awareness of their rights is crucial but presently too low, as denounced by Tanzanian civil society⁶¹³.

Another reason why freedom of association is under threat in the country is firms' intimidation of workers who strive to be unionised⁶¹⁴. Because of underlying poverty and unemployment issues, businesses may take advantage of workers and ensure that unions remain inexistent or weak⁶¹⁵. The common use (and abuse) of seasonal and day-by-day contracts exacerbates this problem⁶¹⁶.

Perhaps because of all the reasons outlined above, the right to strike is not often used by workers, and commonly suppressed by the government or corporations⁶¹⁷.

4.1.2.3.1.4. Injuries and compensation

ILO Convention C121, adopted in 1964 and revising Conventions C012 on agricultural workers' compensation⁶¹⁸ and C019 on equality of treatment for accident compensation⁶¹⁹, requires all signatory States to enact legislation requiring the provision of medical care and compensation to workers suffering from work-related

⁶⁰⁸ LHRC (n. 207), xxvii.

⁶⁰⁹ Ibid, 40.

⁶¹⁰ Ibid, 44.

⁶¹¹ Interviews with civil society representatives A6 and A7.

⁶¹² LHRC (n. 207), 40-41; and my personal experience.

⁶¹³ Interview with civil society representative A5.

⁶¹⁴ Interview with civil society representative A1.

⁶¹⁵ Interviews with civil society representatives A3 and A7.

⁶¹⁶ Interview with civil society representative A3.

⁶¹⁷ Interview with civil society representative A6.

⁶¹⁸ ILO Convention C012, 'Workmen's Compensation (Agriculture) Convention', 1921.

⁶¹⁹ ILO Convention C019, 'Equality of Treatment (Accident Compensation) Convention', 1925.

injury or condition, and to persons suffering from the loss of income as result of the work-related death of the breadwinner. In order to implement Convention C121⁶²⁰, the Workers Compensation Act was enacted by the Tanzanian Parliament in 2008, establishing the Workers' Compensation Fund [WCF] to ensure that *all* workers (seasonal *and* permanent employees) would be compensated for injuries and death resulting from work accidents – unless the injury is attributable to the misconduct of the employee and does not result in death or permanent total disablement⁶²¹. The WCF is paid for by compulsory employers' contributions⁶²², amounting to 1% of their annual tax bill for private sector employers and 0.5% for public sector employers⁶²³.

However, LRHC reported that corporations did not always provide compensation for work-related injuries⁶²⁴, which is one of the main business and human rights issue in the Mufindi region⁶²⁵. Even though employers are legally required to do so⁶²⁶, work accidents and diseases are not usually communicated to all the relevant authorities: while it is mainly communicated to the Labour Commissioner, information is not shared with Occupational Safety and Health Administration [OSHA] investigators⁶²⁷, which means that no investigation into the accident will be conducted.

4.1.2.3.1.5. Right to a safe working environment

The ILO has adopted several health and safety conventions, mainly the 1981 Occupational Health and Safety Convention, which Tanzania has never ratified. The main piece of legislation regulating health and safety in Tanzania is the Occupational Health and Safety Act enacted in 2003. The national authority in charge of health and safety regulation and implementation is OSHA, although experts denounce issues of capacity and implementation encountered by the Administration⁶²⁸, as will be covered below in section 4.1.2.3.3. Across the country, numerous companies generally fail to

⁶²⁰ LHRC (n. 207), 8.

⁶²¹ Workers Compensation Act (No. 20 of 2008) (Cap. 263) (hereinafter 'Workers Compensation Act'), 2008, Articles 4 and 19(2).

⁶²² Workers Compensation Act, Article 5.

⁶²³ LHRC (n. 207), 11.

⁶²⁴ Ibid, 51.

⁶²⁵ Interview with trade union representative F2.

⁶²⁶ Workers Compensation Act, Article 34; and Occupational Health and Safety Act (No. 5 of 2003) (Cap. 297) (hereinafter 'Occupational Health and Safety Act'), 2003, Article 90(1)(d).

⁶²⁷ ILO (n. 573), 39.

⁶²⁸ Interview with civil society representative A5.

provide safety gear to their employees⁶²⁹, including to employees handling chemicals⁶³⁰, resulting in poor working conditions⁶³¹ and injuries⁶³². There are also recorded cases of workers having to pay for health and safety gear themselves⁶³³, especially seasonal workers⁶³⁴.

4.1.2.3.1.6. Working conditions of seasonal workers

As mentioned throughout this chapter, seasonal workers in Tanzania are commonly treated differently from permanent employees. Indeed, they may be denied access to trade unions⁶³⁵, which is illegal under the Employment and Labour Relations Act⁶³⁶. Moreover, they may be asked to pay for their own protective gear⁶³⁷, which goes against the provisions of the Occupational Health and Safety Act⁶³⁸. Finally, they may have their legal notice before termination of employment illegally shortened⁶³⁹ ⁶⁴⁰. Civil society explained that the abusive reliance on seasonal contracts was motivated by the fact that it allowed employers to keep employees from making demands⁶⁴¹, and so to exploit cheap labour⁶⁴². Consequently, the LHRC called on the government to reform the Employment and Labour Relations Act to protect ‘short-term’ workers⁶⁴³, although stronger enforcement of the current law should also be a priority.

4.1.2.3.1.7. Other key issues

Other key issues cover working time, paid leave, education on workers’ rights, and outsourcing.

⁶²⁹ LHRC (n. 207), 57.

⁶³⁰ Interview with civil society representative A7.

⁶³¹ Interview with civil society representative A7.

⁶³² Interview with civil society representative A5.

⁶³³ LHRC (n. 207), 57.

⁶³⁴ Interview with civil society representative A1.

⁶³⁵ LHRC (n. 207), 30.

⁶³⁶ Employment and Labour Relations Act, Article 9(1).

⁶³⁷ Interview with civil society representative A1.

⁶³⁸ Occupational Health and Safety Act, Sections 62, 63, and 65.

⁶³⁹ LHRC (n. 207), 30.

⁶⁴⁰ This violates Section 41 of the Employment and Labour Relations Act.

⁶⁴¹ Interview with civil society representative A3.

⁶⁴² LHRC (n. 207), 31.

⁶⁴³ Ibid, 33.

First, the ILO has adopted several conventions regulating working time, none of which Tanzania ratified apart from ILO Convention C148 on Paid Educational Leave⁶⁴⁴. National legislation abides by most of the basic principles enshrined in the ILO conventions, such as the 6-day working week⁶⁴⁵, the 45-hour week⁶⁴⁶, and overtime (paid extra⁶⁴⁷) capped to 3 hours per day⁶⁴⁸ and to 50 hours in a four-week cycle⁶⁴⁹. The Employment and Labour Relations Act also provides for 60-minute breaks every 5 hours⁶⁵⁰, and daily rest of at least twelve consecutive hours in between two shifts⁶⁵¹. However, employers regularly breach the legally defined working hours and fail to pay any extra overtime⁶⁵².

Second, national legislation requires employers to grant employees at least 28 consecutive days of annual paid leave⁶⁵³, 126 days of paid sick leave (63 days with full pay, and 63 more days with half pay, as long as the employee has a medical certificate)⁶⁵⁴, 84 days of paid maternity leave⁶⁵⁵, 3 days of paternity leave⁶⁵⁶, and 4 days of compassionate leave⁶⁵⁷. Whilst the majority of companies offers leaves, it was reported that a majority of workers do not take any kind of leaves, often for fear of losing their job⁶⁵⁸. This may be the reason behind the recent legislative amendment requiring employers to ensure that employees apply for the annual leave every year⁶⁵⁹.

Third, experts generally agree that labour rights problems stem from stakeholders' lack of education about workers' rights⁶⁶⁰ and that, despite improvements in recent years⁶⁶¹, a lot of work remains to be done at local and national level⁶⁶². Indeed, 80% of LRHC's

⁶⁴⁴ ILO Convention C148, 'Paid Educational Leave Convention', 1974.

⁶⁴⁵ Employment and Labour Relations Act, Article 19(2)(a).

⁶⁴⁶ Employment and Labour Relations Act, Article 19(2)(b).

⁶⁴⁷ Employment and Labour Relations Act, Article 19(5).

⁶⁴⁸ Employment and Labour Relations Act, Article 19(1).

⁶⁴⁹ Employment and Labour Relations Act, Article 19(3)(b).

⁶⁵⁰ Employment and Labour Relations Act, Article 21(1).

⁶⁵¹ Employment and Labour Relations Act, Article 24(1)(a).

⁶⁵² LHRC (n. 207), 61.

⁶⁵³ Employment and Labour Relations Act, Article 31.

⁶⁵⁴ Employment and Labour Relations Act, Article 32.

⁶⁵⁵ Employment and Labour Relations Act, Article 33.

⁶⁵⁶ Employment and Labour Relations Act, Article 34(1)(a).

⁶⁵⁷ Employment and Labour Relations Act, Article 34(1)(b).

⁶⁵⁸ LHRC (n. 207), 46.

⁶⁵⁹ Employment and Labour Relations (General) Regulations (G.N. No. 47 of 2017), 2017, Regulation 14(2); although the same regulation adds that this is "notwithstanding an agreement to work for payment in lieu of annual leave".

⁶⁶⁰ Interview with civil society representative A3.

⁶⁶¹ Interview with civil society representative A2.

⁶⁶² Interview with civil society representative A7.

respondents had no basic knowledge of Tanzanian labour laws and related obligations⁶⁶³.

Finally, outsourcing is a big problem in Tanzania, as many corporations use the services of external providers without taking responsibility for their labour practices⁶⁶⁴. As a remedy, the ILO encourages unions to push for the inclusion into CBAs⁶⁶⁵ of a clause making corporations responsible for the conduct of their contractors – although, to my knowledge, it has yet to happen. In order to regulate such conduct at national level, the legislation was amended in 2017 to require firms to take responsibility for the behaviour of their service providers and make sure that they respect national legislation, including by writing a clause into their contract to that effect⁶⁶⁶. The new legislation states that any differences in treatment between regular and outsourced workers must be considered discrimination⁶⁶⁷.

Now that I have investigated issues related to labour rights, I will explore common issues related to discriminatory practices within corporations in the country.

4.1.2.3.2. Discrimination

The ILO adopted Convention C111 in 1958, which Tanzania ratified in 2002, prohibiting discrimination in respect of employment and occupation made on the basis of “race, colour, sex, religion, political opinion, national extraction or social origin”⁶⁶⁸. In addition, the ICESCR specifically requires “equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence”⁶⁶⁹. Accordingly, Tanzanian legislation prohibits discrimination at the workplace⁶⁷⁰ on the same grounds as included in ILO Convention C111, as well as on the basis of gender, pregnancy, tribe or place of origin, marital status or family responsibility, disability, HIV/AIDS

⁶⁶³ LHRC (n. 207), 73.

⁶⁶⁴ Interview with civil society representative A3.

⁶⁶⁵ Interview with civil society representative A1.

⁶⁶⁶ Labour Institutions (General) Regulations (G.N. No. 45 of 2017) (hereinafter ‘Labour Institutions (General) Regulations’), 2017, Article 9.

⁶⁶⁷ Labour Institutions (General) Regulations, Article 9(3).

⁶⁶⁸ ILO Convention C111, Article 1.

⁶⁶⁹ ICESCR, Article 7(c).

⁶⁷⁰ Employment and Labour Relations Act, Article 7.

status, age, or station of life⁶⁷¹. In particular, Tanzania has committed to the principle of ‘equal pay for equal work’. The ICESCR requires that all workers receive, as a minimum, “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work”. The principle of equal pay for equal work is also enshrined in the Universal Declaration of Human Rights⁶⁷², ILO Convention C100⁶⁷³, as well as in the African Charter of Human and Peoples’ Rights⁶⁷⁴. Accordingly, Tanzanian legislation prohibits discrimination in remuneration⁶⁷⁵.

Despite the safeguards provided by international and national law, there have been reports of discriminatory practices at workplaces. This section will first cover gender-based discrimination and secondly any other types of discriminatory practices.

4.1.2.3.2.1. Gender-based discrimination

There is legislation in place prohibiting any kind of sexual harassment or gender-based discrimination at work⁶⁷⁶, reinforced by recent amendments to the penal code⁶⁷⁷. As a women’s rights expert explained, “everything is designed to guarantee a safe working environment”⁶⁷⁸, but the issue comes with the implementation of these laws.

In practice, there are conflicting reports about discrimination faced by women at the workplace. On the one hand, most participants (79%) to LHRC’s study have never faced any kind of discrimination at the workplace⁶⁷⁹. There are also reports of general improvement of behaviour⁶⁸⁰, although some participants said that women were still barred from performing certain jobs as they were considered as not fitting for women⁶⁸¹. On the other hand, experts say that gender discrimination is still a problem

⁶⁷¹ Employment and Labour Relations Act, Article 7(4).

⁶⁷² Universal Declaration of Human Rights, Article 23(2).

⁶⁷³ ILO Convention C100, Article 2(1).

⁶⁷⁴ African Charter on Human and Peoples’ Rights, Article 15.

⁶⁷⁵ Employment and Labour Relations Act, Article 7(1) and (7)(9)(c).

⁶⁷⁶ Penal Code, Chapter 16 of the Laws (Revised) 1998, Article 138D, and especially Article 138D(3); and Employment and Labour Relations Act, Article 4(4).

⁶⁷⁷ Interview with civil society representative A2.

⁶⁷⁸ Interview with civil society representative A2.

⁶⁷⁹ LHRC (n. 207), 77.

⁶⁸⁰ Interview with trade union representative F1.

⁶⁸¹ LHRC (n. 207), 78.

in Tanzania⁶⁸², including at the hiring stage⁶⁸³. For instance, women are more likely to be employed on a temporary basis⁶⁸⁴. Moreover, discrimination against pregnant women during the hiring process is a reality in the country⁶⁸⁵. Finally, some women also face issues when they come back to work after giving birth, as some employers deny them time to breastfeed⁶⁸⁶.

4.1.2.3.2.2. Other types of discrimination

This section will cover discriminatory practices first against people living with HIV/AIDS, second against people living with a disability, third against people coming from certain tribes, and finally based on nationality or origin.

First, the rate of people living with HIV/AIDS across the country is 4.7%⁶⁸⁷, as was explained in section 4.1.2.1.2.2. In the Iringa region, where my case study is located, the rate is 9%, which makes it the second-highest region in the whole country, with a higher prevalence in the employed population than in the unemployed population⁶⁸⁸. Although it is illegal to discriminate against people living with HIV⁶⁸⁹, some cases of such corporate discrimination were brought before the Commission for Mediation and Arbitration⁶⁹⁰. Second, despite legislation prohibiting discrimination against people living with a disability⁶⁹¹, LHRC found that 46% of respondents had witnessed discriminatory practices in the workplace⁶⁹². There is also an issue of discrimination against workers who become disabled as a result of work-related injuries⁶⁹³. Third, LHRC reported that 19% of respondents said that there was an issue of tribal discrimination⁶⁹⁴ despite express legislative prohibition⁶⁹⁵. Finally, although opinions

⁶⁸² Interviews with civil society representatives A1 and A2.

⁶⁸³ Interview with civil society representative A7.

⁶⁸⁴ Interview with civil society representative A5.

⁶⁸⁵ Interviews with civil society representatives A1 and A2.

⁶⁸⁶ Interviews with civil society representative A1.

⁶⁸⁷ UNAIDS (n. 544).

⁶⁸⁸ LHRC (n. 207), 192.

⁶⁸⁹ Employment and Labour Relations Act, Article 4(4).

⁶⁹⁰ Interview with civil society representative A3.

⁶⁹¹ Employment and Labour Relations Act, Article 4(4).

⁶⁹² LHRC (n. 207), xxix.

⁶⁹³ Interview with civil society representative A3.

⁶⁹⁴ LHRC (n. 207), 165.

⁶⁹⁵ Employment and Labour Relations Act, Article 4(4).

are not unanimous on the issue of discrimination based on nationality⁶⁹⁶, there are reports⁶⁹⁷ of discrimination against Tanzanians of foreign descent, especially in the transportation sector, and against Tanzanians working for foreign corporations or alongside foreigners⁶⁹⁸.

Now that I have explored common business-related human rights issues, I will investigate the performance of Tanzanian labour regulatory authorities with the aim of determining the extent to which they monitor and regulate corporate behaviour across the country.

4.1.2.3.3. Performance of labour regulatory authorities

Tanzania ratified the ILO Convention C081 on labour inspections in 1962 (and later its 1995 Protocol⁶⁹⁹) requiring signatory States to maintain a system of labour inspections in industrial workplaces. The system shall, among others, secure the “enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work” and “bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions”⁷⁰⁰. Moreover, the Convention requires that “the number of labour inspectors [be] sufficient to secure the effective discharge of the duties of the inspectorate”⁷⁰¹ and that inspectors have appropriate “material means”⁷⁰². Finally, “workplaces shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions”⁷⁰³.

Labour inspections are mainly the responsibility of the Ministry of Labour, Youth and Employment Development [MoLEYD] in mainland Tanzania, and of the Ministry of Labour, Youth, Women and Children Development in Zanzibar⁷⁰⁴. Mainland Tanzania

⁶⁹⁶ Civil society representative A5 said that nationality-based discrimination was uncommon in the country.

⁶⁹⁷ Interview with civil society representative A3.

⁶⁹⁸ LHRC (n. 207), 29.

⁶⁹⁹ ILO (n. 574).

⁷⁰⁰ ILO Convention C081, ‘Labour Inspection Convention’, 1947, Article 1(a) and (c).

⁷⁰¹ ILO Convention C081, Article 10.

⁷⁰² ILO Convention C081, Article 10(a)(ii).

⁷⁰³ ILO Convention C081, Article 16.

⁷⁰⁴ ILO (n. 574).

is divided into 32 labour ‘area offices’, 20 of which are regional offices and 12 are district offices. Unless the inspection was triggered by workers’ complaint, the corporation will be informed of the visit ahead of time⁷⁰⁵. Labour inspectors may prosecute employers but not fine or sanction them⁷⁰⁶.

Even though labour inspections are “the bedrock of the implementation of labour standards”⁷⁰⁷, responsible authorities lack the human and financial resources necessary to plan and carry out regular and effective inspections. Indeed, there is a shortage of labour inspectors⁷⁰⁸, almost two-thirds of regulatory authorities feel that they do not have the capacity to execute all mandated activities to the expected standard⁷⁰⁹ (perhaps because of the lack of available training resources⁷¹⁰), and 74% say that they do not have sufficient monitoring capacity to cover all businesses across the country⁷¹¹. In 2016, only 53% of regulatory authorities knew the exact number of corporations which they were supposed to oversee⁷¹².

It is difficult to obtain specific figures as to how many labour inspections are carried out every year; however, it was reported that, in 2008, only 20 inspections were conducted by the head office in Dar es Salaam⁷¹³. This figure is made even smaller considering the ever-expanding informal sector⁷¹⁴: it is estimated that between 27.500⁷¹⁵ and 50.000⁷¹⁶ workplaces operate in mainland Tanzania, of which only 6.599 were registered in 2013⁷¹⁷. Offices generally plan out more inspections (12-16 inspections per month), but they are not all carried out due to lack of resources⁷¹⁸.

In the Mufindi region, no regular inspection has reportedly taken place in the past three years, despite requests from local trade unions⁷¹⁹. This gives corporations little

⁷⁰⁵ ILO (n. 574); and ILO (n. 573), 39.

⁷⁰⁶ Labour Institutions Act (No. 7 of 2004) (Cap. 300), 2004, Section 45 and 46.

⁷⁰⁷ Interview with civil society representative A1.

⁷⁰⁸ ILO (n. 563), 64.

⁷⁰⁹ LHRC (n. 207), xxix; and interview with trade union representative F1.

⁷¹⁰ ILO (n. 574).

⁷¹¹ LHRC (n. 207), 263.

⁷¹² Ibid, 262.

⁷¹³ ILO (n. 573), 33.

⁷¹⁴ Interview with trade union representative F1.

⁷¹⁵ Ministry of Labour and Employment and the Occupational Safety and Health Authority, ‘Performance Audit Report On The Management Of Occupational Health And Safety In Tanzania’, National Audit Office, 2013, xi.

⁷¹⁶ ILO (n. 573), 38.

⁷¹⁷ Ministry of Labour and Employment and the Occupational Safety and Health Authority (n. 715), xi.

⁷¹⁸ ILO (n. 573), 33.

⁷¹⁹ Interview with trade union representative F2.

incentive to respect the law – even though experts agree that, when labour inspections happen, they are effective⁷²⁰. Beyond the issue of resources, the requirement that labour inspectors seek a special certification from the Directorate of Public Prosecutions before bringing a case to court⁷²¹ is a hindrance to effective prosecution of illegal labour practices⁷²².

Specific issues related to occupational health and safety are devolved to OSHA in mainland Tanzania, and to the Occupational Safety and Health Directorate in Zanzibar⁷²³, such as industrial hygiene surveys, medical health examinations, training and awareness raising programmes, and investigation of accidents⁷²⁴. OSHA's services also cover the registration of new workplaces, the gathering of data, and the monitoring of workplaces⁷²⁵. For the purpose of OSHA's mission, mainland Tanzania is divided into six zones, with only five inspectors per zone⁷²⁶. 90% of inspections are routine or planned visits, with the remaining 10% of inspections being triggered by workers' complaints⁷²⁷. OSHA conducted 3.500 inspections in 2008⁷²⁸. OSHA inspectors may prohibit employers from behaving dangerously and take specific steps to improve the situation within a defined period of time⁷²⁹, and enforce it by blocking, barring, barricading or fencing off that part of the factory or workplace, plant or machinery to which the prohibition applies⁷³⁰. OSHA inspectors may levy a fine ("compounds"), but only if the employer officially admits to an infraction⁷³¹.

In practice, the quality of OSHA inspection plans is considered "inadequate"⁷³² by the Labour Ministry's Controller and Auditor General. Indeed, "one of the key issues considered [by OSHA] when planning inspection is the cost to be incurred against the revenue expected to be collected from the conducted inspection", resulting in the rare inspections of workplaces located in remote areas⁷³³. Another problem is the fact that

⁷²⁰ Interview with civil society representatives A1, A2, and A7, and trade union representative F1.

⁷²¹ ILO (n. 573), 75.

⁷²² Ibid.

⁷²³ ILO (n. 574).

⁷²⁴ Ibid.

⁷²⁵ Ibid.

⁷²⁶ Ibid.

⁷²⁷ Ibid.

⁷²⁸ Ibid.

⁷²⁹ Occupational Health and Safety Act, Section 51(1), (2), and (3).

⁷³⁰ Occupational Health and Safety Act, Section 51(5).

⁷³¹ Occupational Health and Safety Act, Section 88; also see the ILO recommendation that this requirement be discontinued (ILO (n. 573), 75).

⁷³² Ministry of Labour and Employment and the Occupational Safety and Health Authority (n. 715), xi.

⁷³³ Ibid, xi.

inspectors are not trained or provided with details as to how inspections are to be conducted⁷³⁴.

Most of the difficulties encountered by OSHA are due to the lack of resources allocated to it by MoLEYD⁷³⁵, but also to the absence of a centralised registry of corporations (or of frequent communication between the central and regional offices), hindering the planning and regular monitoring of labour and OSHA inspections⁷³⁶. Out of the estimated 27.500-50.000 workplaces in the country, only 4.000 are registered with OSHA⁷³⁷.

In conclusion, the Tanzanian legislation extensively protects workers' rights, including regarding corporate discriminatory practices. However, it is evident that in many cases the law is not adequately implemented, partly because of the weak performance of labour regulatory authorities, leaving gaps in state protection and allowing corporations to commit human rights violations on a regular basis across the country. Tanzania is therefore a good location to test out the effects of corporate self-regulation and whether it could help improve firms' human rights performance. I have now explained why I selected the tea industry and Tanzania for my case study. Next, I will look into the characteristics of the Tanzanian tea industry, first at national level and second at the regional level where the case study will specifically take place. This will explain why the Mufindi region is particularly well suited for this thesis's case study and will set the context for the selection of the study's corporations: Unilever, MTC, and Chai Bora, as based on their self-regulatory mechanisms and implementation processes.

4.1.3. Characteristics of the tea industry in Tanzania

This section will first cover the characteristics of the tea industry at national level before investigating the tea industry in Mufindi specifically. This will include a brief

⁷³⁴ Ibid; and ILO (n. 573), 74.

⁷³⁵ Ministry of Labour and Employment and the Occupational Safety and Health Authority (n. 715), xiii.

⁷³⁶ ILO (n. 574); and Ministry of Labour and Employment and the Occupational Safety and Health Authority (n. 715), xi.

⁷³⁷ Ministry of Labour and Employment and the Occupational Safety and Health Authority (n. 715), xi.

introduction of the industry in the region and secondly a detailed study of three of the main tea corporations operating in Mufindi: Unilever, MTC, and Chai Bora.

4.1.3.1. Description of the tea industry at national level

Tanzania is the 4th African producer of tea and produces about 1% of the global tea output⁷³⁸. Tea is also one of the country's largest crop export although the country's tea production declined by 26% between financial year [FY] 2014-2015⁷³⁹ and FY 2016-2017, dropping to an annual production of 26.975 tons⁷⁴⁰. However, the production seems to have stabilised, with 13.575 tons⁷⁴¹ produced nationwide between July and December 2017. This worldwide phenomenon has been linked to climate change⁷⁴², and the Tanzanian fall was explained by the prolonged dry spell particularly in Rungwe District and unreliable rainfall distribution in Mufindi district⁷⁴³. Conversely, the portion of Tanzanian tea exported has been increasing, albeit impeded by the production shortfall in the last two years: 82% of the national production was exported between July 2014 and June 2015⁷⁴⁴, 92% in FY 2015/2016⁷⁴⁵, and 85% in FY 2016/2017⁷⁴⁶. As the average price per kilogram also increased from US\$1.56 in FY 2014/2015 to US\$1.77 in FY 2016/2017⁷⁴⁷, exports earned a total of US\$40.3 million in FY 2016/2017⁷⁴⁸.

The tea industry supports about 50.000 families in Tanzania⁷⁴⁹. Half of the land used to produce tea is farmed by big estates, and half by smallholders, for a total of 22.721

⁷³⁸ Chang (n. 478), 4.

⁷³⁹ Intergovernmental Group on Tea of the Committee on Commodity Problems, 'Report of the Tea Industry in Tanzania', *Food and Agriculture Organisation of the UN*, 25-27 May 2016, 1.

⁷⁴⁰ Tea Board of Tanzania, 'National Made Tea Production By District From July 2016 To June 2017', 2017.

⁷⁴¹ Tea Board of Tanzania, 'National Made Tea Production By District From July To December 2017', 2017.

⁷⁴² Brouder, Billing and Uren (n. 486), 11; and Biswas (n. 478).

⁷⁴³ Tea Board of Tanzania, 'An Overview Of Tea Production For The Financial Year 2015/2016 Compared To The Previous Season', 2016, 1.

⁷⁴⁴ Food and Agriculture Organisation of the UN (n. 739), 1.

⁷⁴⁵ Tea Board of Tanzania (n.743) 1, 6.

⁷⁴⁶ Tea Board of Tanzania, 'National Tea Export By Country Of Destination July 2016 -June 2017', 2017.

⁷⁴⁷ Tea Board of Tanzania, 'National Tea Exports By Country Of Destination From July To December 2017', 2017.

⁷⁴⁸ Tea Board of Tanzania (n. 746).

⁷⁴⁹ John Baffes, 'Tanzania's Tea Sector Constraints and Challenges', World Bank, 2003, 1.

hectares⁷⁵⁰. Two trade unions have tea workers as members: the Tanzania Plantation and Agricultural Workers Union [TPAWU] and the Tanzanian Union of Industrial and Commercial Workers [TUICO]. On the one hand, TPAWU is the trade union for tea plantation workers (although factory workers employed at a company where the majority of employees are plantation workers also have access to TPAWU membership), with 47.861 members registered nationally, including 10.900 members in the Mufindi region alone⁷⁵¹. Every two years, TPAWU negotiates the content of CBAs⁷⁵² at the national level with the Tea Association of Tanzania [TAT], which represents the main employers in the tea industry in the country. TPAWU first collect workers' opinions on the different issues covered by CBAs, and then will meet with TAT. On the other hand, TUICO is the trade union for tea factory workers, and had 84.889 members registered nationally in 2016^{753 754}. They have 22 regional offices and 865 field branches⁷⁵⁵, and negotiate CBAs at the national level⁷⁵⁶. Both trade unions are responsible for dealing with labour rights issues, which are rife in the tea industry, as explored at the beginning of this chapter.

I will now explore the tea industry in the region of Mufindi, introducing three of the main tea corporations operating in the area and exploring their activities and human rights self-regulatory mechanisms in detail, with the aim to determine the efforts – as publicly disclosed – which they make to address their human rights issues globally (if relevant) and locally.

⁷⁵⁰ Dan Bolton, 'Tanzania Bets Big on Tea with Plans for In-country Auction' (*World Tea News*, 30 October 2018) <<https://worldteanews.com/tea-industry-news-and-features/tanzania-bets-big-on-tea-with-plans-for-in-country-auction>> (accessed 21 October 2019); and Apolinari Tairo, 'Tanzania targets five regions to boost tea yields and sales' (*The East African*, 15 October 2018), <<https://www.theeastafrican.co.ke/business/Tanzania-targets-five-regions-to-boost-tea-yields-and-sales/2560-4804830-a69rkrz/index.html>> (accessed 21 October 2019)

⁷⁵¹ LHRC (n. 207), 44; and interview with trade union representative F2.

⁷⁵² Interview with trade union representative F2.

⁷⁵³ TUICO's General Secretaries Service, 'Union Profile', *TUICO*, 2018, 7.

⁷⁵⁴ I have tried to get in touch with the branch of TUICO operating in Iringa to find out how many registered members the union had in the region but did not receive a reply.

⁷⁵⁵ TUICO, 'About TUICO' <<https://www.tuico.or.tz/about.php>> (accessed 21 October 2019)

⁷⁵⁶ Interview with trade union representative F3.

4.1.3.2. Description of the tea industry at local level (Mufindi)

Mufindi is one of the four districts of Iringa, with a population of 246,090⁷⁵⁷. The district has 149 primary schools, 43 secondary schools, one hospital, eight health centres, and 60 dispensaries⁷⁵⁸. It is mostly known for its production of tea and timber. It is one of the highest and coolest regions in the country, rising 1,884 meters above sea level⁷⁵⁹, making it ideal for tea crops⁷⁶⁰. Mufindi contributes heavily towards the country's tea industry: it produced 43% of the national tea production in FY 2016/2017⁷⁶¹. This intensive output makes it the ideal place for my case study as the working and living conditions in and around tea firms in the region will therefore affect many workers and community members.

Moreover, there are a number of business-related human rights issues in Mufindi: low wages⁷⁶², lack of compensation for work-related injuries⁷⁶³, and low frequency of labour inspections – despite calls from trade unions⁷⁶⁴. Another important problem in Mufindi is the difference in treatment between permanent and seasonal workers. A trade union representative said that equal treatment would be one area which unions will push forward during the next round of CBA negotiation with companies, who have been resisting any changes⁷⁶⁵. Relatedly, it was reported that some corporations regularly ask employees to change their names so that businesses may keep them as casual employees, so as not provide them with benefits (e.g. annual leave) reserved for permanent employees⁷⁶⁶ and seasonal workers employed for at least six months⁷⁶⁷. Mufindi is therefore a good setting for my case study, where the potential effectiveness of self-regulation for improving corporate human rights performance may be significantly tested. In this context, I will now introduce three of the main tea corporations operating in Mufindi: Unilever, MTC, and Chai Bora.

⁷⁵⁷ Official Website of the Mufindi District, 'Statistics' <<http://mufindidc.go.tz/>> (accessed 21 October 2019)

⁷⁵⁸ Ibid.

⁷⁵⁹ Geoview, 'Mufindi District' <http://tz.geoview.info/mufindi_district,152698> (accessed on 21 October 2019)

⁷⁶⁰ John Sutton and Donath Olomi, *An Enterprise Map of Tanzania Vol. 3*, International Growth Centre in association with the London Publishing Partnership, 2012, 36.

⁷⁶¹ Tea Board of Tanzania (n. 740).

⁷⁶² Interview with trade union representative F2.

⁷⁶³ Interview with trade union representative F2.

⁷⁶⁴ Interview with trade union representative F2.

⁷⁶⁵ Interview with trade union representative F2.

⁷⁶⁶ Interview with civil society representative A8.

⁷⁶⁷ Employment and Labour Relations Act, Article 29(2)(a).

4.1.3.2.1. Introduction to the main tea corporations operating in Mufindi

My study will look at the influence of self-regulation on corporate behaviour, and I therefore need to limit the influence of state regulation on business operations. It follows that I chose to study companies in one country to make sure that differences in corporate impacts on human rights would not stem from national legislation. Given that all corporations must abide by the same set of rules and regulations, their performance will be similarly influenced by national legislation. Moreover, I chose three corporations operating in the same area and producing the same kind of product, again to limit influences of factors external to self-regulatory mechanisms on corporate behaviour (i.e. social and environmental environment; industry-specific constraints). For the reasons exposed in the previous section, I identified the Mufindi tea industry as the right setting for my case study, and selected three businesses (one multinational firm, one regional corporation, and one national company) operating in the region: Unilever, MTC, and Chai Bora, respectively. All three corporations operate tea-manufacturing factories, and Unilever and MTC also grow tea. These two corporations are the main tea growers in Mufindi and produced 96% of the tea which came out of Mufindi between July and December 2017⁷⁶⁸. Chai Bora blends and packages tea bought mainly from Unilever and MTC.

These three corporations operate side by side in Mufindi, but all offer very different approaches to human rights⁷⁶⁹. As I outlined above, this case study is designed so that limited variables come into play beyond the firms' self-regulatory mechanisms. Although it is acknowledged that it is impossible to eliminate *all* external interference, this study therefore allowed me to analyse their human rights performance with as little interference from outside causes as possible.

I will now briefly describe their activities before exploring their self-regulatory mechanisms.

⁷⁶⁸ Tea Board of Tanzania (n. 741).

⁷⁶⁹ Please see Annex 3 for a table summarising the differences between the companies in this regard.

4.1.3.2.2. Description of firms' activities

4.1.3.2.2.1. Unilever

Unilever is a multinational corporation headquartered in the Netherlands and in the UK, employing 161.000 people worldwide⁷⁷⁰. Owning over 400 brands, it is the world's largest consumer goods company with €53.7 billion in turnover in 2017⁷⁷¹ and products available in 190 countries⁷⁷². The company is also the world's biggest tea company⁷⁷³, and own leading tea brands such as Lipton and PG Tips⁷⁷⁴. All Lipton tea has been certified with the Rainforest Alliance since 2015, and Unilever aims to have all its tea certified by 2020⁷⁷⁵.

In Tanzania, Unilever bought in 1984 Brooke Bond Liebig⁷⁷⁶, the company which has owned tea estates in the region since 1940, when German settlers, who owned the estates prior to Brooke Bond acquiring them, lost their property⁷⁷⁷. Unilever's branch producing tea in the country is registered as Unilever Tanzania Tea Limited and employs over 4.000 permanent workers and up to 3.000 temporary workers⁷⁷⁸ on tea estates and factories in the Mufindi region and more recently in Njombe, a neighbouring region in the south of Mufindi. Unilever's Tanzanian subsidiary has a 99-year land lease arrangement with the government for 19.682 hectares⁷⁷⁹, including 3.418 hectares of plantations⁷⁸⁰, for the most part irrigated⁷⁸¹, 7.000 hectares of natural

⁷⁷⁰ Unilever, 'About Unilever' <<https://www.unilever.com/about/who-we-are/about-Unilever/>> (accessed on 21 October 2019)

⁷⁷¹ Ibid.

⁷⁷² Unilever, 'Operational highlights - At a glance', <<https://web.archive.org/web/20140402110549/http://unilever.com/sustainable-living/ourapproach/ourbusinessataglance/>> (accessed on 21 October 2019)

⁷⁷³ Groosman (n. 491), 1.

⁷⁷⁴ Unilever, 'Sustainable tea – leading the industry' <<https://www.unilever.com/sustainable-living/reducing-environmental-impact/sustainable-sourcing/sustainable-tea-leading-the-industry/>> (accessed on 21 October 2019)

⁷⁷⁵ Ibid.

⁷⁷⁶ Sutton and Olomi (n. 760), 35; and Loconto 'Sustainabilitea: Shaping Sustainability in Tanzanian Tea Production' (n. 209), 176.

⁷⁷⁷ Sutton and Olomi (n. 760), 35.

⁷⁷⁸ Temporary workers are employed during the high season, which runs between November and April (interview with manager D1; and 'Tanzania: Unilever Tanzania Impresses Magufuli' (*Daily News*, 11 April 2019) <<https://dailynews.co.tz/news/2019-04-115caf074ab588a.aspx>> (accessed on 21 October 2019))

⁷⁷⁹ Baffes (n. 749), 13.

⁷⁸⁰ AfriCERT, 'Public Summary of Audit Report – Unilever Tea Tanzania Limited', Rainforest Alliance, 2018, 3.

⁷⁸¹ Sutton and Olomi (n. 760), 36.

forest⁷⁸², and over 1.400 hectares of eucalyptus trees⁷⁸³ which the firm uses as firewood for the factories⁷⁸⁴. The firm's annual production is between 6.670⁷⁸⁵ and 10.000⁷⁸⁶ metric ton of tea, which accounts for 33% of the country's tea output. 70% of Unilever's tea production is exported⁷⁸⁷, and the firm's turnover from its tea activities in Tanzania was US\$16 million in 2010⁷⁸⁸. In 2013, the company committed to doubling its business in the country by 2020 "whilst reducing [its] environmental footprint and increasing [its] positive social impact"⁷⁸⁹. According to a Unilever manager, the company is set to deliver on their commitment⁷⁹⁰ as they have since purchased 1.300 hectares in Njombe. Most of the new estate, including the newly built factory, became operational mid-2018.

Unilever has also started a 'Mufindi Outgrowers Project'⁷⁹¹: the company provides smallholding farmers with agricultural training, zero-interest loans to buy supplies, and general support. About 1.400 farmers are now involved in the project, including 1.276 who are now certified with the Rainforest Alliance, spanning 1.200 hectares of tea plantations. Unilever also buys tea from the smallholders involved in the project.

4.1.3.2.2.2. MTC

MTC is owned by Rift Valley Tea, a company incorporated in Mauritius and operating in Zimbabwe, Mozambique, and Tanzania. Rift Valley Tea produces tobacco, agricultural products (tea, coffee, bananas, maize, soybeans, wheat, macadamias, avocados), forestry, and renewable energy⁷⁹². The company employs over 7.800 people across East and Southern Africa and had a turnover of US\$192 million in

⁷⁸² Interview with manager D1.

⁷⁸³ Sutton and Olomi (n. 760), 36.

⁷⁸⁴ Interview with manager D7; and *ibid*.

⁷⁸⁵ Tea Board of Tanzania (n. 741); and Tea Board of Tanzania (n. 740).

⁷⁸⁶ Unilever 'Unilever and government of Tanzania sign agreement on tea' (2 September 2013) <<https://www.unilever.com/news/press-releases/2013/13-09-02-Unilever-and-government-of-Tanzania-sign-agreement-to-accelerate-sustainable-agriculture-growth-for-tea.html>> (accessed on 21 October 2019)

⁷⁸⁷ Interview with manager D1, although John Sutton and Donath Olomi reported in 2012 that 98% of the production was exported (Sutton and Olomi (n. 760), 36).

⁷⁸⁸ *Ibid*, 35. This is the most recent figure which I could find.

⁷⁸⁹ Unilever (n. 786).

⁷⁹⁰ Interview with manager D1.

⁷⁹¹ Interview with manager D1.

⁷⁹² Interview with manager D2; and Rift Valley Tea, 'Agriculture' <<http://www.riftvalley.com/agriculture/#1466153186667-d02648f1-4fa1>> (accessed on 21 October 2019)

2015⁷⁹³. Rift Valley Tea has four companies registered in Tanzania: MTC (Mufindi), Kibena (Njombe), Ikanga (Njombe), and Rift Valley Tea Solutions (Dar es Salaam). My case study focuses on MTC – which was established in 1954⁷⁹⁴ – and more specifically on MTC’s main estate, located in Mufindi (Itona), where the MTC’s head office is. MTC also have four other estates⁷⁹⁵: Stoning Valley, Makanga, Itambo, and Luponde – the latter being itself divided into five estates⁷⁹⁶. MTC uses 2.583 hectares of land⁷⁹⁷, of which 901 hectares are tea plantations, and produces a little over 2.000 metric tons of tea annually, which accounts for 8.1% of the country’s total output⁷⁹⁸. In addition to its plantations, MTC has a factory where it processes its tea leaves. With 800 permanent employees and up to 400 seasonal workers⁷⁹⁹, MTC’s operations are on average seven times smaller than Unilever’s operations. After facing financial difficulties, MTC was recently taken over by a Kenyan investor⁸⁰⁰.

MTC are also part of the Mufindi Outgrower Project and support smallholding farmers⁸⁰¹, from whom the company buys 30% of the tea which it processes at its Itona factory⁸⁰².

4.1.3.2.2.3. Chai Bora

Chai Bora is a Tanzanian company which started out in 1994 in Dar es Salaam as a brand of Tanzania tea company Tatepa and moved to Mafinga in 1998 to be closer to tea plantations⁸⁰³. The company was incorporated in Tanzania as a standalone firm in 2006⁸⁰⁴. It is now part of Catalyst Principal Partners, an Eastern Africa-focused private equity fund⁸⁰⁵. Its annual turnover is Tsh 20 billion⁸⁰⁶ (£6.7 million⁸⁰⁷).

⁷⁹³ Rift Valley Tea, ‘Sustainability Report’, 2015, 3, 4.

⁷⁹⁴ Loconto ‘Sustainabilitea: Shaping Sustainability in Tanzanian Tea Production’ (n. 209), 193.

⁷⁹⁵ Interview with manager D2.

⁷⁹⁶ This last estate is in Njombe, about 200 km away from the Mufindi estates (interview with manager D2).

⁷⁹⁷ NEPCo Kenya, ‘Public Summary of Audit Report – MTC’, Rainforest Alliance, 2019, 3.

⁷⁹⁸ Tea Board of Tanzania (n. 740); and Tea Board of Tanzania (n. 741).

⁷⁹⁹ Interview with manager D2.

⁸⁰⁰ Interviews with manager D2 and community member C62.

⁸⁰¹ Interview with manager D2.

⁸⁰² Rift Valley Tea, ‘Tea’ <<http://www.riftvalley.com/tea-2/#1466409040758-02cad734-24705ec3-9757>> (accessed 21 October 2019)

⁸⁰³ Interview with manager D4.

⁸⁰⁴ Chai Bora, ‘About Us’ <<http://chaibora.com/about-us/>> (accessed 21 October 2019)

⁸⁰⁵ Catalyst Principal Partners, ‘Our Fund’ <<https://www.catalystprincipal.com/fund/>> (accessed on 21 October 2019)

⁸⁰⁶ Catalyst Principal Partners, ‘Creating Jobs in Tanzania’ <<https://www.cdcgroup.com/en/impact-investing/creating-jobs-tanzania/>> (accessed on 21 October 2019)

⁸⁰⁷ As of 21 October 2019.

Chai Bora specialises in the blending and packaging of tea⁸⁰⁸; the company does not have any plantations as it does not grow its own tea but buys it from nearby estates, including Unilever and MTC, and employs 300 people in the country, including 120 permanent workers at its factory, located in Mafinga⁸⁰⁹. The firm may also employ up to 80 seasonal workers⁸¹⁰, but the company did not reportedly employ any seasonal workers at the time when the fieldwork was conducted⁸¹¹. Moreover, a few interviewees stated that Chai Bora had not hired any new permanent workers in years⁸¹². Most current workers come from Iringa and Njombe⁸¹³.

Now that I have explored the activities of the three corporations, I will outline the self-regulatory mechanisms which they have adopted.

4.1.3.2.3. Firms' publicly available human rights self-regulatory mechanisms

This section introduces the self-regulatory mechanisms (if any) of each company. Using the typology developed in Chapter 2, it will briefly analyse the different mechanisms used by each company. I will focus on those ones which companies have publicly adopted. Indeed, as explained in Chapter 1, firms tend to mention their mechanism(s) as part of a broader strategy to ensure that their operations do not impact negatively workers, community members, and the environment, and it is important to hold firms to account for the declarations which they publicly make, and check whether they are fully implementing their commitments. Building on Chapter 3, I will then briefly examine whether the main processes which scholars have identified as important for ensuring that self-regulatory mechanisms are effective are *theoretically* in place in each company.

Building on these considerations, I will assess in Chapters 5-7 the kind of effect which self-regulatory mechanisms have on corporate human rights performance, including by using the 'key features' which were explored in Chapter 3: drafting of mechanism (where applicable); embedding of standards into everyday operations; monitoring and

⁸⁰⁸ Chai Bora (n. 804).

⁸⁰⁹ Interview with manager D3.

⁸¹⁰ Interview with manager D3.

⁸¹¹ Interview with manager D3.

⁸¹² Interviews with trade union representative F3 and worker B13.

⁸¹³ Interview with manager D4.

reporting; setting up of a complaints mechanism; and sanctions. This will help analyse the three companies' human rights performance and the overall effectiveness of the various mechanisms which were adopted by the firms.

I will now examine the self-regulatory mechanisms adopted first by Unilever, second by MTC, and third by Chai Bora.

4.1.3.2.3.1. Unilever

Unilever, which has been generally recognised as a human rights leader globally⁸¹⁴, is the company with the broadest range of mechanisms: in the context of its Tanzanian tea operations, the firm has adopted most types of standards included in the typology outlined in Chapter 2 and, perhaps as a result, the company has made the most extensive range of commitments of all the corporations. I will first explore Unilever's company-level mechanisms, and then product-level mechanisms which the firm has adopted for its tea production in Tanzania.

Firstly, Unilever has adopted a human rights policy outlining standards to uphold in all its business activities across the world. In this policy, the firm commits to respecting the following intergovernmental instruments: the International Bill of Human Rights, ILO's Declaration on Fundamental Principles and Rights at Work, as well as the OECD Guidelines. In addition, Unilever has adopted a Code of Business Principles, policies on Responsible Business Partner and Responsible Sourcing, a Sustainable Agriculture Code, as well as a Framework for Fair Compensation and 'Fairness in the Workplace' and 'Opportunities for Women' strategies. The company has also committed to the UNGPs, which means (among others) that it must adopt a human rights policy, conduct human rights due diligence throughout its operations, and set up processes for the remediation of its human rights violations⁸¹⁵. I will further outline the place and role played by each instrument in Chapter 5.

Second, the company has had the tea which they produce on their Mufindi tea estate certified with the Rainforest Alliance.

⁸¹⁴ For instance, Wilshaw (n. 210); and Morrison (n. 210).

⁸¹⁵ UNGPs, Principle 15.

Overall, Unilever makes use of internal and external company-based mechanisms, and product-level mechanisms, and commits to the following standards: fair pay progressively reaching towards living wage levels; freedom of association and collective bargaining; provision of employment documentation; occupational health and safety (including regular medical exams); right to compensation for work-related injuries and death; no temporary workers employed when nature of work is permanent; business integrity, and so prohibition of corruption; respect of data confidentiality; respect of land rights; principle of free, prior, and informed consent; reasonable working hours and no compulsory overtime; right to annual, sick, and maternity leave; promotion of the rights of women; respect of human dignity; access to potable water for workers and their families; right to an adequate standard of living; freedom of housing; engagement with, and support of, the local community; prohibition of discrimination (on the grounds of race, age, role, gender, gender identity, colour, religion, country of origin, sexual orientation, marital status, dependants, disability, social class or political views), forced and child labour, and harassment; rights of migrant workers; right to a clean environment; right to health; right to education; fair complaints procedures; and effective remedy. Unilever does not have a comprehensive list of human rights they have committed to respecting but the firm makes reference to rights in different sections of their website⁸¹⁶, and in reports. It is therefore clear that Unilever has not only made commitments to labour rights but also to community rights and education- and health-related rights. I have included as an annex to this thesis a comprehensive list of all human rights covered by the different self-regulatory mechanisms adopted by Unilever⁸¹⁷.

I will now review what Unilever says that it is doing to implement its commitments at the global level. Informed by scholars' suggestions from Chapter 3, I will look at the development of standards, the general embedding of its commitments in its activities,

⁸¹⁶ For instance, Unilever, 'Sustainable Sourcing' < <https://www.unilever.com/sustainable-living/the-sustainable-living-plan/reducing-environmental-impact/sustainable-sourcing/> > (accessed on 21 October 2019); 'Enhancing Livelihoods' <https://www.unilever.com/sustainable-living/the-sustainable-living-plan/enhancing-livelihoods/fairness-in-the-workplace/> > (accessed on 21 October); and 'Human Rights' <<https://www.unilever.com/sustainable-living/the-sustainable-living-plan/enhancing-livelihoods/fairness-in-the-workplace/advancing-human-rights-in-our-own-operations/>> (accessed on 21 October 2019)

⁸¹⁷ See Annex 3.

its monitoring and reporting processes, its complaints mechanism(s), and finally its sanctions.

First, the development and update of product-level mechanisms such as the Rainforest Alliance is the responsibility of labelling organisations, and therefore sits outside the scope of this thesis – I will therefore not review it. It follows that this section will only focus on the development of standards included in Unilever’s internal company-level mechanisms. Drawing from the (sub-)key features identified in Section 3.2.1.1., I will review the extent to which Unilever’s drafting process was inclusive and open (1), and the extent to which the firm’s codes and policies include a comprehensive set of internationally-recognised human rights (2), clear and reasonable targets (3), and are regularly updated (4). First, Unilever developed its Human Rights Policy in consultation with “key external stakeholders, colleagues in [the firm’s] legal, human resources, advocacy and communications teams, and approved by members of the Unilever Leadership Executive”⁸¹⁸. The company’s Responsible Sourcing Policy was finalised after “consultation with NGO partners and other experts”⁸¹⁹. Moreover, the firm updated its Sustainable Agriculture Code in 2015 based on feedback from suppliers and civil society⁸²⁰. The company therefore seems to have developed its standards in an inclusive manner, as scholars suggested. However, I could not find any information about the drafting process of the Code of Business Principles (or of its updates). Second, the firm’s Human Rights policy refers to a number of international human rights conventions, as mentioned above, and Unilever operationalises the implementation of this policy in the rest of its internally developed instruments (e.g. Framework for Fair Compensation, Sustainable Agriculture Code) – which I have mentioned above. The company therefore includes a broad range of internationally recognised human rights, as is suggested by scholars. Third, this translation of abstract human rights goals – as defined in the company’s Human Rights Policy – into concrete practice and targets in the firm’s various codes and strategies means that Unilever workers have guides about which behaviours they must adopt or avoid⁸²¹. For instance, Unilever’s commitment to respecting their employees’ “right to freedom of association

⁸¹⁸ Unilever, ‘Human Rights Report’, 2015, 15.

⁸¹⁹ Ibid.

⁸²⁰ Ibid.

⁸²¹ The most concrete example is Unilever’s Code of Business Principles (available at this address: <https://www.unilever.com/Images/code-of-business-principles-and-code-policies_tcm244-409220_en.pdf> (accessed on 21 October 2019)), which is supported by 24 internal Code Policies.

and collective bargaining”⁸²² was made concrete by explaining that the firm would “respect employees’ rights to join or not to join a legally recognised trade union, or any other body representing their collective interests, and establish constructive dialogue and bargain in good faith with trade unions or representative bodies on employment conditions, labour management relations and matters of mutual concern, to the extent practicable taking national laws into consideration”⁸²³. Finally, Unilever’s Code of Business Principles was first adopted in 1995 and has since been regularly updated; the latest update took place in April 2019⁸²⁴. The firm’s Responsible Business Partner Policy was piloted in 2015 and updated in 2017⁸²⁵. The company’s Responsible Sourcing Policy was last updated in 2017⁸²⁶. The firm’s Sustainable Agriculture Code was first published in 2010 and was last updated in 2017⁸²⁷. ‘Fairness in the Workplace’⁸²⁸ and ‘Opportunities for Women’⁸²⁹ strategies are regularly updated, including with new targets and the firm’s performance assessed against targets. In conclusion, with the exception of Unilever’s Human Rights Policy – which has not been updated since its adoption in 2014⁸³⁰ –, the firm regularly updates its standards, as is suggested by scholars.

Second, as covered in Chapter 3, scholars point to the importance of embedding standards into everyday activities, with the main measures covering internal and external publicity, and training of management and employees. Unilever’s Code of Business Principles requires managers to ensure that all their team members have read and understood the Code and completed any mandatory training⁸³¹, and is the only internal company instrument which has such a requirement. In 2017, Unilever said that all their employees were “trained on respect for human rights every three years” and that this training was supported by their “new internal ‘Integrated Social Sustainability’ online hub which contains [the company’s] key policy publications and

⁸²² Unilever ‘Human Rights Policy’ (n. 144), 2.

⁸²³ Unilever, ‘Code of Business Principles’, 2019, 24.

⁸²⁴ Ibid, 2.

⁸²⁵ Unilever, ‘Human Rights Progress Report: Compliance and Beyond’, 2017, 2.

⁸²⁶ Unilever, ‘Responsible Sourcing Policy’, 2017, 3.

⁸²⁷ Unilever, ‘Sustainable Agriculture Code’, 2017.

⁸²⁸ Unilever, ‘Fairness in the Workplace’ <<https://www.unilever.com/sustainable-living/enhancing-livelihoods/fairness-in-the-workplace/>> (accessed on 21 October 2019)

⁸²⁹ Unilever, ‘Opportunities for Workplace’ <<https://www.unilever.com/sustainable-living/enhancing-livelihoods/opportunities-for-women/>> (accessed on 21 October 2019)

⁸³⁰ Unilever ‘Human Rights Progress Report: Compliance and Beyond’ (n. 825), 2.

⁸³¹ Unilever ‘Code of Business Principles’ (n. 823), 9.

reports, and best practice guidance documents”⁸³². Further, Unilever said they had developed a specific training for managers, testing “participants’ knowledge of Unilever’s policies, and international labour standards, and build[ing] their ability to analyse complex situations under pressure”⁸³³. Moreover, the Rainforest Alliance requires Unilever to train their workers on the skills required to carry out their work in compliance with the certification’s standards⁸³⁴.

Third, Unilever’s compliance with its commitments is monitored (and reported) internally and externally. In its Human Rights Policy, the firm commits to conducting “human rights due diligence”⁸³⁵, which they recognise is an “ongoing process” which may have to be adapted depending on the risk-level of the countries where they operate. In particular, they acknowledge that there are particularly high, systemic risks of human rights abuses in certain countries, which means that they “must put in place additional due diligence to assess these risks and address them effectively, where appropriate, using [their] leverage to work either in one-to-one relationships or in broad-based partnerships”. In addition, the company’s Sustainable Agricultural Code requires the evaluation of the situation on farms and take practical and reasonable measures to reduce hazards and risks, with the aim of minimising workplace fatalities, injuries and disease and also impacts on bystanders and local community⁸³⁶. The Code also requires workers or workers’ representatives to be involved in this risk assessment process and help identify priorities⁸³⁷. In their 2017 Human Rights Report, the company explain how they address salient human rights issues⁸³⁸, and state that they have conducted “human rights impact assessments” in Myanmar and that they would conduct similar assessments with a particular focus on Africa and Asia – but the company did not offer more detail⁸³⁹. They also outline their methodology for risk mapping and auditing of suppliers, based on Unilever’s Responsible Sourcing Policy⁸⁴⁰, and state that 2,084 sites were audited in 2015/2016, although they did not specify whether that figure included sites in Tanzania. Tanzanian consulting firm

⁸³² Unilever ‘Human Rights Progress Report: Compliance and Beyond’ (n. 825), 71.

⁸³³ Ibid.

⁸³⁴ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous Improvement Criterion 1.8.

⁸³⁵ Unilever ‘Human Rights Policy’ (n. 144), 3.

⁸³⁶ Unilever ‘Sustainable Agriculture Code’ (n. 827), Standard F101.

⁸³⁷ Ibid, Standard F102.

⁸³⁸ Unilever ‘Human Rights Progress Report: Compliance and Beyond’ (n. 825), 6.

⁸³⁹ Ibid, 71.

⁸⁴⁰ Unilever ‘Human Rights Progress Report: Compliance and Beyond’ (n. 825), 18.

TRES Consult has also conducted 11 studies and environmental impact assessments between 2014 and 2016⁸⁴¹ for Unilever, although these assessments are not publicly available⁸⁴². Moreover, the company regularly publishes human rights reports since 2015, which Unilever says is part of the firm's implementation of the UNGPs⁸⁴³ ⁸⁴⁴. In its 2017 report, Unilever outlines the tracking tools it has developed to monitor its own compliance as well as its suppliers'⁸⁴⁵, and its position on external scrutiny and stakeholder engagement: it says that they "track reported issues through code breaches, grievances reporting and engagement with worker representatives, supported by regular training and monitoring"⁸⁴⁶. Furthermore, the company states in its Code of Business Principles that any breaches "must be reported" and that "assurance of compliance" is annually monitored and reviewed by Unilever's Board of Directors⁸⁴⁷. Finally, Unilever's tea activities in Tanzania and the firm's compliance with certification standards are also monitored by the Rainforest Alliance, and the certification is renewed every three years by AfriCERT after a social and environmental assessment of the plantations and factories⁸⁴⁸. However, the Rainforest Alliance may conduct additional (on-site or desk-based) audits in-between renewal audits for specific sites which have been deemed at an enhanced risk of non-compliance with their respective standards or when a complaint has been made or an incident reported⁸⁴⁹. Auditing reports are published on the label's website⁸⁵⁰.

Fourth, Unilever appears to have the most extensive complaints mechanism network of the three companies. The company's Human Rights Policy states that they have complaints mechanisms in place, and that they encourage their employees to "speak up, without retribution, about any concerns they may have, including through [their]

⁸⁴¹ TRES Consult, 'Projects' <<http://tresconsult-tz.com/2019-projects>> (accessed 21 October 2019)

⁸⁴² I have contacted Unilever and the organisation who conducted the assessments in an effort to get access to the content of the assessments but, after multiple email exchanges, it became clear that difficulties were too great and that I would not be able to gain access.

⁸⁴³ Unilever 'Human Rights Progress Report: Compliance and Beyond' (n. 825), 1.

⁸⁴⁴ The company uses the UN Guiding Principles Reporting Framework; more details about the Framework may be found on this webpage: <<http://www.ungpreporting.org/>> (accessed on 21 October 2019)

⁸⁴⁵ Unilever 'Human Rights Progress Report: Compliance and Beyond' (n. 825), 72.

⁸⁴⁶ Ibid.

⁸⁴⁷ Unilever 'Code of Business Principles' (n. 823), 7.

⁸⁴⁸ For latest audit report, see AfriCERT (n. 780).

⁸⁴⁹ Rainforest Alliance 'Certification Rules' (n. 305), 11-12.

⁸⁵⁰ Public auditing reports may be found on this webpage: <<https://www.rainforest-alliance.org/business/solutions/certification/agriculture/certificate-search-public-summaries/>> (accessed on 13 October 2019)

grievance channels”⁸⁵¹. They also promote the provision of effective complaints mechanisms by their suppliers⁸⁵². Moreover, Unilever’s website states that employees can raise issues with union representatives, line manager, and human resources representatives. The firm also has set up a complaints platform online⁸⁵³. In 2017, the firm reported 1.654 cases of reported integrity concerns across all areas of their Code and Code policies – of which 47% were breaches of Code policies on respect, dignity, and fair treatment, and occupational health and safety –, with 709 confirmed breaches⁸⁵⁴. The same year, the company said that they monitored pay structures in every country in which they operate to ensure that they remain compliant with the principles of ‘equal pay for equal work’⁸⁵⁵. They also stated that they conducted audits to check compliance with their commitment to pay workers a living wage, which in 2017 allowed for the identification of 7.252 employees below the living wage in 37 different countries⁸⁵⁶ – although the firm did not say whether Tanzania was one of those countries. Moreover, Unilever said that they began in 2016 a survey to assess (among others) the terms and working conditions of seasonal workers⁸⁵⁷. Other areas of monitoring are land rights⁸⁵⁸, palm oil production⁸⁵⁹, and suppliers’ respect of human rights⁸⁶⁰. In plantations, welfare officers are also available, although no information is specifically available on the firm’s operations in Tanzania. Moreover, the Rainforest Alliance requires the company to implement complaints mechanisms and to inform workers of their right to access external complaints mechanisms (including through the label’s certification bodies)⁸⁶¹.

Finally, of all the company-level mechanisms which the company uses, Unilever’s Code of Business Principles is their only instrument with sanctions, which include dismissal and/or legal action⁸⁶². Indeed, there are also no sanctions for non-compliance

⁸⁵¹ Unilever ‘Human Rights Policy’ (n. 144), 3.

⁸⁵² Ibid, and Unilever, ‘Responsible Business Partner Policy’, 2017, 8.

⁸⁵³ The Platform may be accessed at this address: <<https://app.convercent.com/en-us/LandingPage/99b958aa-55a1-e611-80d3-000d3ab1117e>> (accessed on 21 October 2019)

⁸⁵⁴ Unilever, ‘Business Integrity’ <<https://www.unilever.com/about/who-we-are/our-values-and-principles/business-integrity/>> (accessed on 21 October 2019)

⁸⁵⁵ Unilever ‘Human Rights Progress Report: Compliance and Beyond’ (n. 825), 21.

⁸⁵⁶ Unilever, ‘Fair Compensation’ <<https://www.unilever.com/sustainable-living/enhancing-livelihoods/fairness-in-the-workplace/fair-compensation/>> (accessed on 21 October 2019)

⁸⁵⁷ Unilever ‘Human Rights Progress Report: Compliance and Beyond’ (n. 825), 43.

⁸⁵⁸ Ibid, 53.

⁸⁵⁹ Ibid, 63.

⁸⁶⁰ Ibid, 2017, 59, 62, 70, 71.

⁸⁶¹ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.9.

⁸⁶² Unilever ‘Code of Business Principles’ (n. 823), 8.

with external company-based mechanisms to which the firm has committed, such as the UNGPs. On the other hand, the main sanction for non-compliance with the standards of their product-level mechanism, the Rainforest Alliance, is non-renewal of the certification label for Unilever's tea plantations in Tanzania.

In conclusion, Unilever has made extensive commitments using most human rights self-regulatory mechanisms covered by the typology outlined in Chapter 2. The firm has also published a broad range of information about the implementation of its commitments. As far as I can gather from the company's public declarations, Unilever *in theory* implements most of the key features identified by scholars for effective self-regulation. In order to verify these claims, and thereby testing the importance of the key features identified in Chapter 3 and answering this thesis's research questions, I will go over the standards covered by each mechanism in more detail and study their implementation on the ground in Chapter 5.

I will now explore the self-regulatory mechanisms adopted by MTC and the extent to which the firm, as publicly disclosed, implements the key features identified in Chapter 3.

4.1.3.2.3.2. MTC

MTC makes human rights commitments using only two types of self-regulatory mechanisms: an external company-based mechanism and several product-level mechanisms. On the one hand, the company has publicly stated that it would respect ILO Conventions C100 and C111, respectively guaranteeing equal remuneration and prohibiting discrimination, as well as to Conventions C138 and C182 on child labour. The company does not have any publicly available codes of conduct or human rights policies. On the other hand, MTC's estates are all certified by Fairtrade and the Rainforest Alliance, and the company is also a member of ETP.

Overall, MTC makes commitments to the following principles across its different human rights self-regulatory mechanisms: prohibition of discrimination and child labour; fair pay progressively reaching towards living wage levels; health and safety; occupational health with free occupational healthcare; reasonable working time and

leaves; freedom of association and collective bargaining; decent housing conditions for workers; prohibition of sexual harassment; equitable working conditions for seasonal and permanent workers; environmental protection; access to potable water for workers and their families; land rights; right to health; engagement with, and support of, the local community; and anonymous complaints mechanism. As for Unilever, MTC does not have a comprehensive list of human rights which they have committed to respecting but all these rights are mainly covered by Fairtrade, the Rainforest Alliance, and ETP, as well as by the various ILO conventions to which MTC has individual committed. It is therefore clear that, similarly to Unilever, MTC has not only made commitments to labour rights but also to community rights and education- and health-related rights. I have included as an annex to this thesis a comprehensive list of all human rights covered by the different self-regulatory mechanisms adopted by MTC⁸⁶³.

As I did for Unilever above, I will now review what MTC says that it is doing to implement its commitments. Informed by scholars' suggestions from Chapter 3, I will look at the development of standards, the general embedding of its commitments in its activities, its monitoring and reporting processes, its complaints mechanism(s), and finally its sanctions.

First, as MTC did not write their own standards, the firm was not in control of the development process: ILO Conventions C100, C111 C138, and C182 were written and adopted by signatory states and, as was mentioned in the previous section, labelling organisations (Fairtrade, the Rainforest Alliance, and ETP) developed their own standards. The writing process of the self-regulatory mechanisms used by MTC therefore sits outside the scope of this thesis.

Second, regarding embedding of standards, MTC has not publicly disclosed any communication to, or training of, the workforce or management about the ILO conventions to which it has committed. Regarding its product-level mechanisms, the Rainforest Alliance requires that MTC train its workers on the label's standards, and Fairtrade requires that management be trained on the certification's standards⁸⁶⁴. The latter also requires MTC to communicate, in the workers' own language, about certain

⁸⁶³ See Annex 3.

⁸⁶⁴ Fairtrade 'Hired Labour Standard', Standards 1.2.3. and 2.2.1.

standards such as health and safety⁸⁶⁵, the right to unionise⁸⁶⁶, or the existence of a complaints mechanism⁸⁶⁷.

Third, MTC's activities are monitored internally (to some extent) and externally. I will first investigate the firm's internal monitoring. MTC has not publicly stated that it conducted human rights due diligence, and perhaps the closest processes would be the firm's Environmental and Social Management System [ESMS] and the Biodiversity Risk and Opportunities Assessment tool, but the company does not give out any details as to what these processes look like⁸⁶⁸. Moreover, the only impact assessment publicly mentioned is the environmental impact assessment conducted for the Mwenga Hydro Power Project⁸⁶⁹, which will provide the tea company's plantations in electricity. However, the firm did not conduct this assessment itself, and the results are not publicly available. Furthermore, MTC reportedly conducts "internal audit review processes"⁸⁷⁰ (and perhaps this includes the Fairtrade officer who is supposed to oversee monitoring compliance with the label's standards, as required by the certification itself⁸⁷¹), but no more detail is given. Moreover, the "Head of Corporate Affairs report[s] to the CEO and [the] Sustainability Steering Committee any critical concerns on sustainability issues and constraints on non-financial capitals"⁸⁷². As for external monitoring of the firm's human rights performance, MTC have had all their estates certified by Fairtrade, Rainforest Alliance, and ETP, and so will have official third-party assessors from the respective organisations check the company's compliance with the certifications' standards⁸⁷³. Certificates issued by both Fairtrade and the Rainforest Alliance are valid for three years, and both bodies therefore conduct certification renewal audits every three years. However, both Fairtrade and the Rainforest Alliance may conduct additional (on-site or desk-based) audits in-between renewal audits for specific sites which have been deemed at an enhanced risk of non-

⁸⁶⁵ Ibid, Standards 3.6.1. and 3.6.3.

⁸⁶⁶ Ibid, Standard 3.4.4.

⁸⁶⁷ Ibid, Standard 3.5.27.

⁸⁶⁸ The only way to get more information on this Biodiversity Risk and Opportunities Assessment tool is to visit the following dedicated website: ><http://www.businessandbiodiversity.org/>> (accessed on 21 October 2019)

⁸⁶⁹ European Commission, 'Delivering results in the Decade of Sustainable Energy for All', 2014, 17.

⁸⁷⁰ Rift Valley Tea 'Sustainability Report' (n. 793), 7.

⁸⁷¹ Fairtrade 'Hired Labour Standard', Standard 1.2.1.

⁸⁷² Rift Valley Tea 'Sustainability Report' (n. 793), 7.

⁸⁷³ Rainforest Alliance, 'Chain of Custody Certification' <<https://www.rainforest-alliance.org/business/solutions/certification/agriculture/how-certification-works/chain-of-custody/>> (accessed on 21 October 2019); and FLOcert, 'Audits: Standard Operating Procedure', 2017, 6.

compliance with their respective standards or when a complaint has been made or an incident reported⁸⁷⁴. As for ETP, the organisation used to conduct certification audits but has since decided to “phase out its independent audit programme”. Referring to Fairtrade, the Rainforest Alliance, and UTZ, ETP stated that “there is a large-scale certification in the tea sector”⁸⁷⁵ already, and therefore agreed not to duplicate audits. However, it still functions as a product-level mechanism, and I will then consider it as such. Moreover, the company stated that their performance would be analysed by “external rating agencies and research organisations”⁸⁷⁶, but there is no detail as to what the processes are. Finally, MTC reports on its efforts: in 2015, the firm publicly outlined how it manages and mitigates each of the following identified main risks⁸⁷⁷: political shifts and dynamics; land sensitivity and tenure issues; climate change; biohazard and disease; crop losses; community and labour dynamics; financing and cashflows; currency fluctuation; habitat loss; and decline in soil health. The Rainforest Alliance also publishes audit reports⁸⁷⁸, but not Fairtrade.

Fourth, MTC say that they have various complaints mechanisms, depending on each business operation and circumstance. They also mention their newly drafted ESMS as allowing for the identification and remedy of any gaps in this area⁸⁷⁹. However, no further details as to how they operate in any particular site are available. As mentioned above, Fairtrade⁸⁸⁰ and the Rainforest Alliance⁸⁸¹ require that, respectively, the firm have a complaints mechanism in place, and that workers have access to the labelling bodies’ complaints mechanisms.

Finally, there are no sanctions for non-compliance with the external company-based mechanisms to which the firm has committed. Fairtrade and the Rainforest Alliance certification labels would mainly sanction MTC for non-compliance with their respective standards by not renewing MTC’s tea certification.

⁸⁷⁴ Rainforest Alliance ‘Certification Rules’ (n. 305), 11-12.

⁸⁷⁵ Ethical Tea Partnership, ‘History’ <<http://www.ethicalteapartnership.org/about-us/history/>> (accessed on 21 October 2019)

⁸⁷⁶ Rift Valley Tea ‘Sustainability Report’ (n. 793), 7.

⁸⁷⁷ Ibid.

⁸⁷⁸ Public auditing reports may be found on this webpage: <<https://www.rainforest-alliance.org/business/solutions/certification/agriculture/certificate-search-public-summaries/>> (accessed on 13 October 2019)

⁸⁷⁹ Rift Valley Tea ‘Sustainability Report’ (n. 793), 2.

⁸⁸⁰ Fairtrade ‘Hired Labour Standard’, Standard 3.5.27.

⁸⁸¹ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.9.

In conclusion, MTC's commitments stem mainly from product-level mechanisms, and the firm's implementation of these standards is mostly based on certification labels' requirements. The company does not publish as much information about its processes as Unilever does and, as far as I can gather from the information which the firm has made public, not as many key features identified by scholars are implemented in the context of MTC's activities as was the case in Unilever's Tanzanian tea operations. However, MTC does make a certain number of claims about its human rights performance and it is necessary to verify them on the ground. Accordingly, I will study in Chapter 6 all individual standards made by MTC across the two types of mechanisms which the firm uses, look into their implementation on the ground, and test out the (relevant) features identified as important by authors in Chapter 3.

4.1.3.2.3.3. Chai Bora

Chai Bora is the only company which has not made any commitment to do business in a sustainable manner and has not adopted any self-regulatory mechanism to that effect. It is interesting to note that the company's website⁸⁸² is up-to-date and includes extensive information about their products – and even recipes –, but that it does not say anything about the human rights impact of their operations.

The investigation into the human rights performance of this company in Chapter 7 allows for the analysis of the performance of a company which has not adopted any self-regulatory mechanism and therefore helps to strengthen my conclusions about the impact of voluntary self-regulation when they are made by the other companies.

4.1.3.2.4. Expectations as to the firms' human rights performance

Informed by the main scholars' hypotheses as outlined in Chapter 3, this preliminary assessment of the three companies anticipates that the situation in the plantations and factories will greatly differ from one corporation to the other.

⁸⁸² The company's website is accessible at this address: <<http://chaibora.com/>> (accessed on 21 October 2019)

Because of its standards, embedding processes, internal and external monitoring and reporting, complaints mechanisms, and sanctions, I could expect Unilever to take more steps to prevent human rights violations, and therefore have a better human rights performance. To the contrary, the absence of all these features in Chai Bora's operations leads me to expect that the company does not see the human rights impact of its activities as a priority.

Somewhere in between sits MTC, whose commitments, embedding processes, internal and external monitoring and reporting processes, complaints mechanism, and sanctions leads me to expect the company to be aware of the impact that its activities may have on stakeholders and make efforts to mitigate human rights risks – and in particular risks that may affect its certified product(s). Moreover, MTC is relying heavily on product-level mechanisms and has adopted more of this type of mechanism than Unilever – it therefore allows me to compare and contrast the effects which company- and product-level mechanisms have on corporate human rights performance.

In conclusion, these three companies, operating in the same area and industry, have very distinct levels of commitments, but also of implementation processes. If corporate self-regulation is effective – and if its effectiveness depends on scholars' suggestions as outlined in Chapter 3 –, it is therefore expected that different levels of human rights performance would follow and that substantial differences in the impact of each firm's activity on human rights would materialise, with Unilever on the 'best' end of the spectrum and Chai Bora on the 'worst' end. As the empirical research is based on linked case studies, my overall aim was not to directly compare and contrast corporate performance in each case. Rather it was to have a rich and diverse range of mechanisms and standards adopted by the three companies which, as a result, strengthens my ability to draw conclusions about why and how self-regulation might be having effects, and what other factors might also be important to the human rights performance of the studied corporations. However, it is acknowledged that further research will be needed to reach more general conclusions, especially in other industries and regions.

Now that I have set the context for my case study and given an overview of its subjects, I will outline how I designed the data collection and interpreted my findings.

4.2.Data collection design

Once the object of my case study was selected, I determined that organising two trips to collect the data was most appropriate. The first trip would scope out the corporations and my access to the relevant stakeholders, after which I would analyse the collected data and identify the most important issues to be pressed further during the second trip. The second trip would then investigate these issues in more detail, involving both new and old interviewees.

I determined that two months in the field was sufficient to thoroughly collect my data; three weeks for the first trip, and five weeks for the second trip. This gave me enough time to interview relevant stakeholders in Mufindi: managers of Unilever, MTC, and Chai Bora, workers and trade union representatives for each of the companies, community members (including staff members of public and company schools and of public and company health centres) and local government representatives (including local government leaders and council chairmen), as well as civil society representatives from, among others, the following organisations: Legal Rights Enlightenment Organisation, Youth Development and Empowerment, Tanzania Health and Social Welfare Foundation, Afya Women Group, and Mufindi Outgrowers' Organisation. It was necessary to spend some time in Dar es Salaam in addition to Mufindi, to interview stakeholders and paint a picture of the situation at national level. In Dar es Salaam, I therefore met with civil society representatives from the following organisations: CHRAGG, the Tanzania Human Rights Defenders Coalition, LHRC, the Tanganyika Law Society [TLS], the Tanzania Women Lawyers Association [TAWLA], ILO Regional Office, and academics from the Dar es Salaam University.

High season for tea is from November until April, so I decided to organise the first trip so that I would arrive in Mufindi late October until early November, and the second trip so that I would be in the tea plantations from late March until mid-April. The first trip therefore took place in October-November 2017, and the second trip in March-April 2018. Overall, I spent my time as follows:

- In Dar es Salaam: 8 days (scoping trip); 12 days (second trip);
- In Mufindi:
 - In Mafinga: 6 days (scoping trip) + 9 days (second trip);
 - In tea plantations: 4 days (scoping trip, including 1 day in Kibao; 1 day in Lugoda; and 2 days in Itona) + 10 days (second trip, including 2 days

in Sawala; 1 day in Mtwango; 2 days in Kibao, 1 day in Lugoda; 3 days in Itona; and 1 day in Mtili);

- 8 days travelling (2 days travelling between the UK and Tanzania for each trip; 2 days travelling between Dar es Salaam and Mafinga for each trip).

As illustrations, I include the following maps:

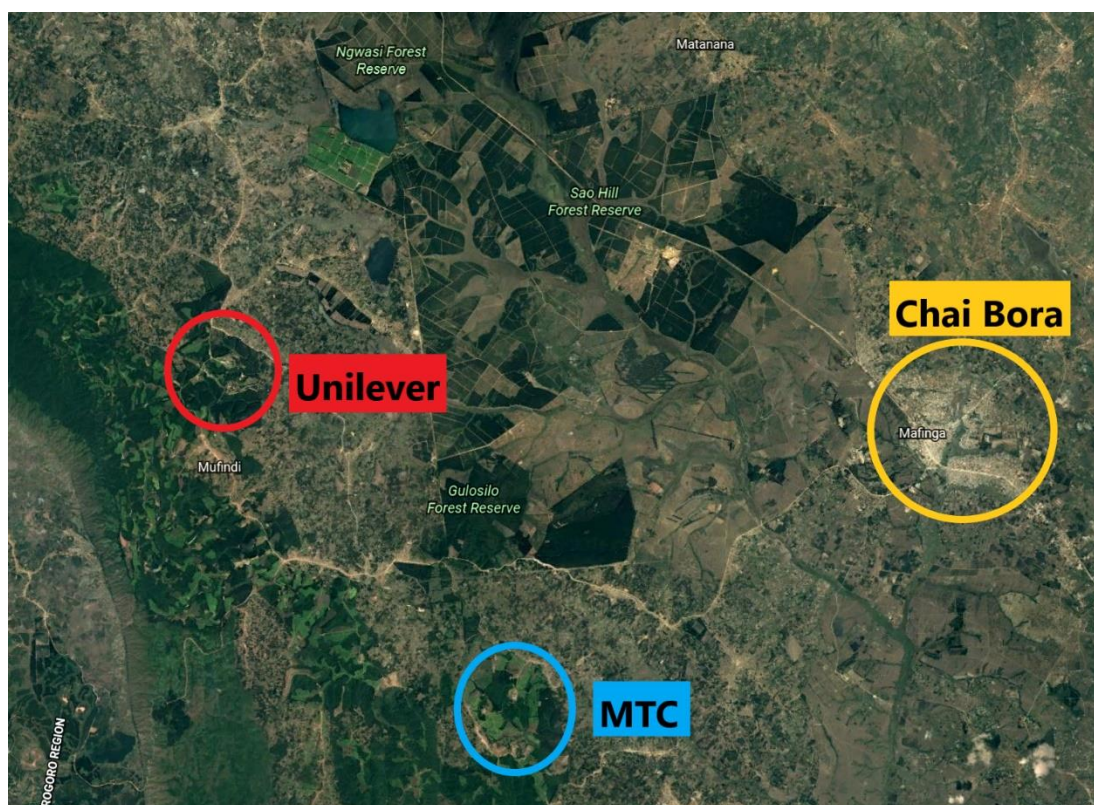
- Map of Tanzania (*including localisation of Mafinga (Mufindi region)*);
- Aerial view of Unilever, MTC, and Chai Bora's sites in Mufindi;
- Aerial view of Unilever's plantations and factory;
- Aerial view of MTC's plantations and factory;
- Aerial view of Mafinga, with Chai Bora's factory in the city centre.

Picture 1 – Map of Tanzania



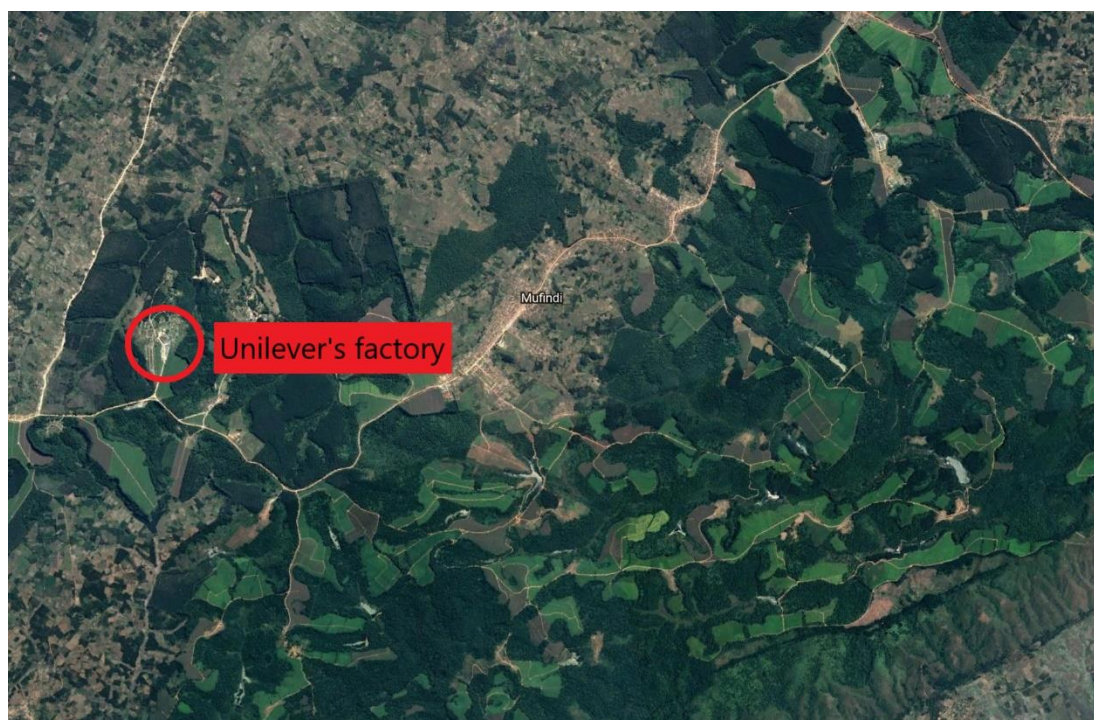
(Source: Tanzania Orphan's Upendo Community, accessible here: <http://www.touco.org/about/upendo-family-centers/>) (accessed 21 October 2019))

Picture 2 – Aerial view of Unilever, MTC, and Chai Bora’s sites (Mufindi)



(source: Google Earth)

Picture 3 – Unilever’s tea plantations and factory



(Source: Google Earth)

Picture 4 – MTC's tea plantations and factory



(Source: Google Earth)

Picture 5 – Mafinga



(Source: Google Earth)

The collection of data was carried out via interviews, observation, and document review, as follows.

4.2.1. Interviews

As it is acknowledged that collecting reliable data in an environment where perpetrators are likely to hide abuses is challenging⁸⁸³, interviewing a wide range of stakeholders first-hand was the best method to find out accurate information. I therefore identified six main groups of stakeholders who were likely to be most familiar with the situation on the ground⁸⁸⁴, as well as (if relevant) with the impact of self-regulatory mechanisms on working and living conditions in and around firms: workers, trade union representatives, corporate managers, community members, local government representatives, and civil society representatives. It was important to interview workers to collect first-hand testimony about working conditions in each of the company as well as awareness of corporate standards (if relevant) and of their implementation⁸⁸⁵. Moreover, speaking with trade union representatives allowed for the understanding of the relationship between company and union, the process of collective bargaining and the general protection of workers and union rights – as assessed against each firm’s standards. It was equally important to interview managers to understand how corporate standards are communicated from head office to the ground, the impact that they have on everyday business operations, as well as another perspective (in addition to the workers’) on working conditions and the firms’ human rights efforts. Moreover, community members had valuable insight about the impact of the relevant firm on living conditions around the plantations and/or factories. It was also important to interview local government representatives to understand the company’s engagement with the local community and potential broader human rights issues resulting from their activities, always as assessed against their standards (if

⁸⁸³ Harrison and Sekalala (n. 10), 927.

⁸⁸⁴ Andrew Pettigrew, ‘Longitudinal field research on change: Theory and practice’, *Organization Science* 1(3), 1990, 267, 277.

⁸⁸⁵ Christine Benedicte Meyer, ‘A case in case study methodology’, *Field methods* 13(4), 2001, 329, 337.

relevant). Finally, civil society representatives had insight about specific issues which may be relevant to corporate activities in the area.

Within each group, I started with individuals who were likely to be most informed, and then used the “snowballing” technique⁸⁸⁶ to interview as many individuals in these six categories as possible. I also made sure that workers whom I interviewed had different roles within the company, so as to have a thorough understanding of how the company functions across all its operations. Finally, interviewees were balanced along gender lines.

Overall, I interviewed 161 individuals, of which:

- 53 workers⁸⁸⁷;
- 9 managers (from all 3 companies);
- 7 local government representatives;
- 3 trade union representatives (from TUICO, TPAWU, and TUCTA⁸⁸⁸);
- 13 civil society organisations representatives (national and local level);
- 76 community members (including doctors and teachers).

All qualitative research interviews seek to uncover information on both a factual and a meaning level, investigating the signification of central themes in the life world of the subject⁸⁸⁹. Interviews can be structured, semi-structured, or unstructured. I chose to conduct semi-structured interviews, which meant that the questions were predetermined, but their order could be modified based upon the interviewer’s perception of what seemed most appropriate⁸⁹⁰. Moreover, the wording of the questions could be changed and explanations given, inappropriate questions for a particular interviewee could be omitted, and additional ones included.⁸⁹¹ This type of

⁸⁸⁶ The snowballing technique “identifies cases of interest from people who know people who know what cases are information-rich” (Matthew Miles and Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook*, Sage, 1994, 28).

⁸⁸⁷ 10 workers for Chai Bora; 22 workers for Unilever; and 22 workers for MTC. It was difficult to interview Chai Bora workers as most of them were too scared of potential consequences if they agreed to be interviewed.

⁸⁸⁸ TUCTA is the only Tanzanian trade union federation.

⁸⁸⁹ Steinar Kvale, *Doing Interviews*, Sage, 2008, 12.

⁸⁹⁰ Edwin van Teijlingen, ‘Semi-structured interviews’, *Bournemouth University Graduate School*, 2014, 17.

⁸⁹¹ Ibid.

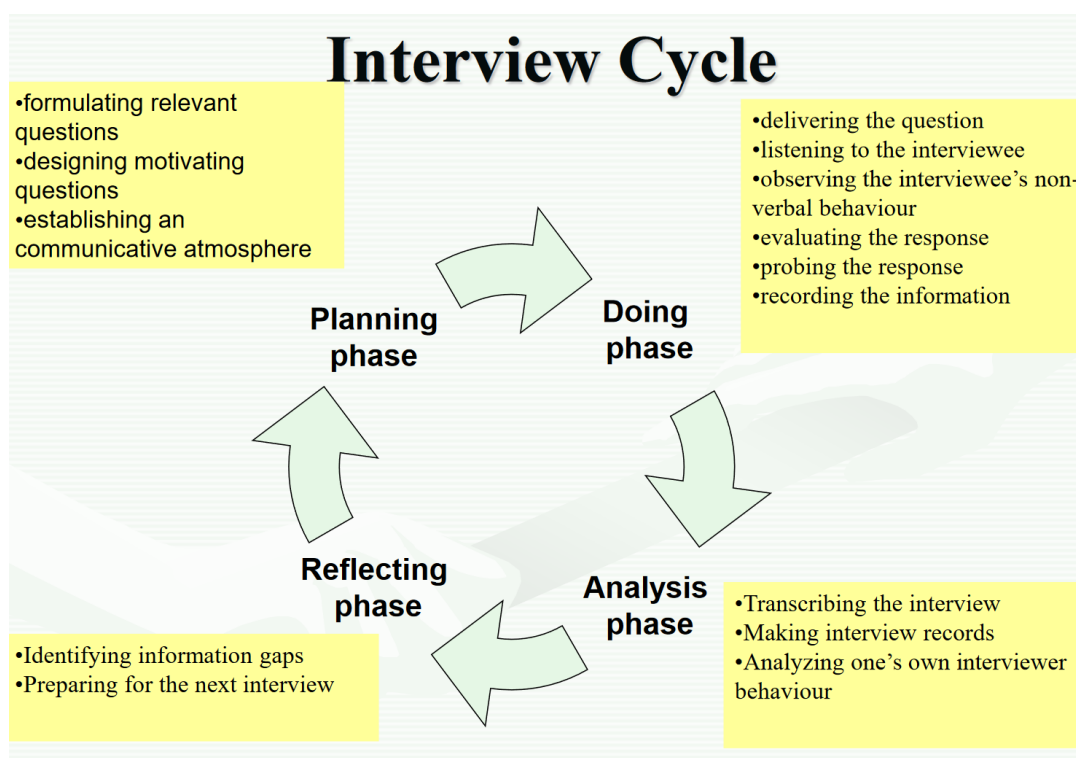
interview is a conversation with a purpose⁸⁹², allowing researchers to focus on the same themes and issues throughout the study while giving interviewees the possibility to raise any issues which they think are important⁸⁹³, and to express themselves most comfortably.

The objective of my interview schedules was first to determine whether behaviour of the corporations was in line with human rights and (if relevant) with their commitments. Secondly, and where relevant, whether there was evidence that self-regulatory mechanisms had had an impact on firms' compliance. Third, whether the key features identified in Chapter 3 played a role in corporate human rights performance and (if relevant) in corporate compliance with their self-regulatory commitments. It follows that I designed the set of questions by first focusing on internationally recognised human rights as included in the main human rights instruments (i.e. International Bill of Human Rights) as well as ILO conventions to which companies have committed, with the aim of determining whether corporate activities were respectful of these rights. I also made sure that important issues included in the LHRC reports (mainly see Section 4.1.2.3., in this chapter) were covered. Once this was done, I included any other standard covered by relevant self-regulatory mechanisms as to ensure that corporate performance would be comprehensively assessed against all applicable standards. Moreover, I consistently asked interviewees for each issue whether they knew whether (where relevant) self-regulatory mechanisms had had an impact on the way which the firm approached the issue in question. This aimed to uncover the influence which mechanisms had on corporate behaviour. However, it is acknowledged that causality may be hard to pin down and that interviewees' ignorance does not necessarily mean that there has been no influence. If interviewees were not aware of any impact, I simply interpreted it as the absence of positive evidence of impact. Finally, it is important to note that each interview was informed by the previous one, i.e. by the information and patterns discovered within earlier interviews, as is recommended in the literature on semi-structured interviews⁸⁹⁴ and as illustrated below.

⁸⁹² Ibid.

⁸⁹³ Kvale (n. 889), 12.

⁸⁹⁴ Van Teijlingen (n. 890), 17.

Figure 3 – Semi-structured interview cycle

(Source: Edwin van Teijlingen, 'Semi-structured interviews', Bournemouth University Graduate School, 2014, 11)

I include at the end of this thesis⁸⁹⁵ the sets of questions which were specifically designed for workers, community members, and managers. I also include the schedule of the questions which were prepared for the interview with the civil society representative working at the ILO office in Dar es Salaam as an example of the bespoke questions prepared for civil society representatives based on their respective area of expertise^{896 897}. For these experts, I mainly focused on the topics about which they would be most informed (e.g. health, education, labour rights, women's rights) to benefit from their extensive knowledge as much as possible. If time allowed, I also covered other relevant subjects, which I selected depending on the interviewee and context (e.g. national, regional, or local level). For ease of reference, I used the following categorising system for the purpose of organising and analysing my interview data: 'A'-category interviewees are civil society representatives; 'B'-

⁸⁹⁵ See Annexes 5A-5C.

⁸⁹⁶ See Annex 5D.

⁸⁹⁷ The rest of the schedules are available upon request.

category interviewees are workers; ‘C’-category interviewees are community members; ‘D’-category interviewees are managers; ‘E’-category interviewees are local government representatives; and ‘F’-category interviewees are trade union representatives.

I slightly changed the sets of questions between my two trips to focus on the most relevant issues and answer my research question as accurately as possible. One of the aims of the scoping trip was to paint an overall picture of the most important human rights issues in the area and in the selected companies, so that I could focus on these issues during the second, longer, trip with the view of gaining a deeper understanding of these issues (locally and as it fits into the national picture) as well as any relevant causality links with corporate commitments. In particular, I gathered from interviews conducted during the scoping trip that there was wide agreement on the non-problematic nature of certain issues in the area, and that it was therefore unnecessary to spend time on these issues when I came back. For instance, I did not focus on land issues considering that the firms’ estates (and factories) have been tea plantations (and the companies’ property) for decades⁸⁹⁸, and that there was no report of land conflict during my first trip. For the same reason, I do not focus on these issues in Chapter 5, 6, and 7 (outlining the findings about each firm). However, this does not mean that the issues on which I did not concentrate are not at all relevant or important but, because of time and space constraints, it is necessary to home in on the most contentious issues. However, in an effort to ensure that this study is as rigorous as possible, I include a table (see Annex 6) covering all the issues which I have addressed in the course of both trips, including those which were deemed less important than others and were therefore not the focus of the second trip.

Moreover, I focused on groups of people who were most likely to see their rights violated as they were the lowest-earners, i.e. general workers and community members. The former were identified as particularly vulnerable because they were not in decision-making roles and were dependent on the company for their livelihood; the latter because, for the most part and on the one hand, they lacked the financial ability, the power, or the political influence to resist if the firm’s practice infringe upon their rights and, on the other hand, because most of them were related to the company’s

⁸⁹⁸ Interview with local government representatives E1 and E7, and community members C10, C11, C12, C13, C14, and C15.

employees, and so were also economically dependent on the firm. The most vulnerable stakeholders were most likely to see their human rights violated by corporate activities. It was therefore particularly important to assess the effect of human rights self-regulatory mechanisms on the impact which businesses have on these stakeholders. However, I also include any relevant information specifically related to other stakeholders (e.g. employees at management level) in the table in Annex 6. Finally, for ease of reading, I refer to anyone in a supervisory role within the firms as a “manager”.

Finally, some authors warn of the following difficulties inherent to semi-structured interviews: “equivalence of meaning”; “preferred social response”; non-response/particular groups being unrepresented; invasion of privacy; unique characteristics of interviewee; prejudices, stereotypes, appearances and/or perceptions of researcher may alter response⁸⁹⁹. I will now address each of these difficulties. First, the issue of “equivalence of meaning” is mitigated against by using simple – layman – terms and concepts as far as possible, by clearly explaining anything which is more complex, and by allowing interviewees to ask any question which they may have. Second, the issue of “preferred social response” is mitigated against by asking them for factual answers (e.g. position within the company, pay level, terms of work). Third, the issue of invasion of privacy is mitigated against by ensuring that I clearly explain the research, its aims, and its risks for interviewees, and that interviewees are aware that they may freely decide whether or not they are happy to take part⁹⁰⁰. Fourth, the issues of non-response, or particular groups being unrepresented, of unique characteristics of interviewee, as well as their prejudices, stereotypes and perception of the researcher are mitigated against by ensuring that I interview a significant number of people, from a wide range of backgrounds, thereby ensuring that a broad range of perspectives will be represented.

4.2.2. Other data collection methods

⁸⁹⁹ Van Teijlingen (n. 890), 22.

⁹⁰⁰ I include as an annex the information sheet and consent form which were given to participants to respectively read and sign before taking part in the study (see Annexes 4A and 4B).

In addition to interviews, five primary sources of evidence have been identified from the literature⁹⁰¹: direct observation, documentation, archival records, participant observation, and physical artefacts. I only used the first two sources. First, I endeavoured to conduct observation of business activities by touring plantations, factories, as well as housing sites, hospitals, and schools, at the best time to get the most accurate picture of the situation⁹⁰². This allowed me to understand how tea corporations function first-hand and to investigate the living conditions around plantations and factories. I kept a good record of events to provide precise and solid descriptions for further analysis⁹⁰³. Second, I reviewed some key documents, such as environmental studies, CBAs, work contracts, pay slips, and official letters to companies. This multiplicity of sources has helped ensure accuracy and reliable results⁹⁰⁴.

4.3. Interpretation of findings

This section will cover how I interpret findings: first, the practical method used to organise the data; second, the method used to assess firms' compliance with their self-regulatory mechanisms; third, the transparency efforts made throughout this process; fourth, how I will deal with the issue of causality; and finally, the linear-analytic structure used in this thesis.

First, after transcribing all the individual interviews, I compiled all the interviews relevant to the same company together, sorted into thematic categories (e.g. pay, working time, corporate contribution to community's health needs). This allowed me to analyse the data for each issue across all relevant interviews and assess the situation (and the impact of relevant self-regulatory mechanisms, where relevant) in each firm.

Second, in order to assess firms' compliance with their self-regulatory mechanisms (in Chapter 5-7), I take 'operational standards' into account to the extent possible. Indeed, as seen earlier in this chapter, firms have adopted mechanisms which include both high-level human rights principles and standards aiming to implement these high-level principles on the ground. The latter were therefore designed to guide managers and

⁹⁰¹ Yin (n. 169).

⁹⁰² Robert E. Stake, *The Art of Case Study Research*, Sage, 1995, 63.

⁹⁰³ Ibid, 62.

⁹⁰⁴ Yin (n. 169).

workers towards compliant behaviour, and it was possible to directly evaluate whether these concrete standards are followed on the ground. This is what I do in the following chapters. However, there were gaps in the translation of some high-level principles into ground-level standards. Where this is the case, I refer to the relevant high-level instrument and attempt to draw conclusions as to its implementation.

Third, I interpreted my case study's findings as follows: when the findings are straightforward and undoubtedly flow from the data, I clearly state so; however, when the findings are not as undisputable, I triangulated the data with observation findings or external documents to determine whether it is possible to reach an uncontested conclusion. If I was unable to do so, I clearly say so as I present my evidence, and let the reader make up their mind⁹⁰⁵. This data triangulation, drawing from multiple sources of evidence and relying on a broad range of stakeholders and perspectives, helped mitigate against potential interviewee bias, and ensure reliable results⁹⁰⁶. I endeavour to be as transparent as possible throughout the writing up of the findings of my research.

Fourth, as explained above, it is acknowledged that causality (between self-regulatory mechanisms and corporate practices) may be hard to pin down and that the fact that interviewees did not know about any impact of mechanisms did not necessarily mean that there was no impact. It follows that, in that case, I simply interpreted it as the absence of positive evidence of impact.

Finally, a linear-analytic structure⁹⁰⁷ is used in this thesis to present and analyse the findings of my case study and answer the research questions: in Chapters 1, 2, and 3, I outlined the problem under scrutiny, reviewed the relevant literature, and set up my theoretical framework, and then proceeded in Chapter 4 to cover the case-study methodology and specific methods used. I now analyse in Chapters 5, 6, and 7 the data collected, and finally I present in Chapter 8 my conclusions and their implications for the original problem under study.

4.4. Conclusion

⁹⁰⁵ Stake (n. 902), 62.

⁹⁰⁶ Yin (n. 169).

⁹⁰⁷ Yin (n. 169).

This chapter opened with general background information first about the tea industry, including common human rights issues encountered in the sector, and second about Tanzania's social and labour context, including business and human rights problems frequently reported at national level. I then investigated the Tanzanian tea industry, first at national level and then specifically in the Mufindi region. This allowed me to understand the broader context of the industry both nationally and locally, and therefore to determine that the tea business in Mufindi was a good environment for my case study: on the one hand, a number of human rights issues are ordinarily recorded in the tea industry and, on the other hand, gaps in state protection are commonly reported in Tanzania and more specifically in Mufindi, reportedly allowing corporations to regularly commit human rights violations in the region. The tea industry in Mufindi was therefore a good setting to test out the effects of corporate self-regulation and whether it could help improve firms' human rights performance. Once this was established, I reviewed three corporations operating in the Mufindi and explained why they were good candidates for this case study, including because of the differences in the self-regulatory mechanisms which they used, in the standards which they have adopted as well as in the implementation processes which they have set up. Informed by the key features from Chapter 3, I have three different levels of expectation as to the three firms' human rights performance, which I tested out on the ground following the data collection design outlined in the last part of this chapter. Finally, I reviewed how I interpreted my findings.

In conclusion, this chapter laid out the broader context of my case study, reviewed the characteristics of each company, and outlined the design of my data collection. I am now familiar with the environment in which companies have to operate (and of the most important risks associated with their industry and location), of the self-regulatory mechanisms used by each company (if at all), and of the processes which they have in theory put in place to ensure that their adopted standards would translate into concrete action on the ground. It is now important to review the human rights performance of each corporation in practice and study the impact of self-regulation on firms' actual behaviour. In the next three chapters I therefore present and analyse the data collected for each company on the ground, thereby investigating whether Unilever's and MTC's mechanisms help them implement their respective standards and whether Chai Bora's activities are respectful of human rights. This helps me draw conclusions as to the effects which corporate self-regulation may have in the context of this case study and

the extent to which mechanisms may help tea firms in Tanzania respect human rights in practice – and why.

Chapter 5 – Unilever

5.1. Introduction

As outlined in Chapter 4, Unilever has made an extensive range of human rights commitments, using different types of self-regulatory mechanisms. The most comprehensive instrument which the firm has adopted is the UNGPs. As explained in Sections 1.2.3. and 2.2.1.2.1., the Guiding Principles were endorsed in 2011 by the UN Human Rights Council and build upon the ‘Protect, Respect, Remedy’ Framework adopted three years earlier. The UNGPs are currently the most authoritative instrument on corporate human rights responsibilities. By committing to the UNGPs, Unilever therefore generally acknowledges its responsibility to respect human rights. The UNGPs also require corporations to adopt, among others, a policy commitment to meet that responsibility, which Unilever has done with its Human Rights Policy. This policy also includes commitments to the International Bill of Human Rights and ILO conventions. All of these instruments cover high-level principles, such as the right to safe working conditions, or the right to family life. In order to operationalise these principles, the firm has also developed policies with concrete standards directly applicable on the ground. To that end, Unilever has adopted several instruments, of which the most important is its Code of Business Principles which contains concrete standards guiding the behaviour of workers and suppliers. The firm has also developed more specific policies: the firm’s Responsible Business Partner Policy focuses on the prescribed behaviour of Unilever’s suppliers, its Sustainable Agriculture Code was designed specifically for the company’s agricultural activities, and its Framework for Fair Compensation helps the firm define and assess how elements of its compensation packages deliver “open, fair, consistent and explainable” compensation to employees. Furthermore, ‘Fairness in the Workplace’ and ‘Opportunities for Women’ are strategies to ensure that, respectively, Unilever’s employees and suppliers are treated (and compensated) fairly, and that women are empowered and offered economic opportunities across the firm’s operations. Moreover, Unilever has committed to following the OECD Guidelines for Multinational Enterprises, which also help implement human rights on the ground. Finally, Unilever has had its Tanzanian tea plantations and factories certified with the Rainforest Alliance, whose standards are

directly applicable and may help the firm operationalise the high-level principles to which it has committed. It is important to note that the Rainforest Alliance adopted new standards in July 2017, which I will take into account to assess Unilever's performance where relevant⁹⁰⁸. In addition to the discussion in Section 4.1.3.2.3.1., please see Annex 3 for more details about the human rights standards to which Unilever has committed.

This chapter is divided into two main sections. The first section will review the human rights performance of Unilever's Tanzanian tea operations as assessed against the firm's own human rights commitments, first focusing on human rights relevant to workers and second on those relevant to community members. The second section of this chapter will investigate whether Unilever implements in its Tanzanian tea operations the key features which have been identified by scholars as helping corporate self-regulation be effective, with the aim to evaluate the extent to which the features are important in determining the effectiveness of self-regulatory mechanisms.

The company's human rights performance will now be assessed. For each section, I will do so by outlining the situation on the ground before laying out Unilever's relevant commitments and specific standards and explaining whether the firm's practice is consistent with its standards and, if relevant, whether evidence was found to link practice to commitment(s).

⁹⁰⁸ The standards are divided into four different gradual categories: 'Critical Criteria', which the firm must meet in order to be (and remain) certified, and three gradual 'Continuous Improvement Criteria C, B, and A', building on the Critical Criteria and respectively entering into force at the time of certification, three years, and six years after the firm first got certified. The certification label has published rules saying that 2017 standards are binding on all certified firms from the 1st of July 2017 (Rainforest Alliance 'Sustainable Agriculture Standard', 6), although they must comply with only critical criteria when they get audited for the first time after that date (Rainforest Alliance, 'Transition Rules for Farms and Group Administrators from the 2010/11 Standards to the 2017 Sustainable Agriculture Standard', 2017, 3). When the case study took place, Unilever therefore only had to comply with the critical criteria and 50% of continuous improvement criteria (category C) from the 2017 set of standards. However, the company has been certified since 2004; until 2017 the firm therefore had to implement the previous Rainforest Alliance set of standards, which was last revised in 2010. Moreover, a significant number of new standards (from 2017) are similar to the old standards (from 2010). Consequently, I will assess Unilever's performance against the 2017 Critical Criteria but will take the 2010 set of standards into account for the purpose of assessing the firm's performance regarding the continuous improvement criteria which were already standards in force since 2010. I will also take the 2017 continuous improvement criteria into account to the extent that firms must prepare for the implementation of those criteria which will become applicable in the future. For ease of reading, I will refer to both sets of standards as 'Rainforest Alliance standards', unless it is important to make a distinction between the old and new standards.

5.2. Worker-related rights

This section assesses the extent to which the right to just, equitable, and safe working conditions of Unilever's workers is respected, and will therefore cover the following issues: child labour, contractual terms offered to workers, health and safety, freedom of association and collective bargaining, the working conditions specific to seasonal workers, and finally discrimination issues.

5.2.1. Child labour

As mentioned in Section 4.1.1.2., child labour is a big issue in agriculture, including in tea production. This is also the case in the Mufindi region⁹⁰⁹, but there does not seem to be any child labour issues in Unilever plantations⁹¹⁰, consistently with its various commitments. Considering the availability of the workforce, it may not be difficult for Unilever to steer clear from child labour, although having a clear policy on it sends the message to managers who are in charge of interviewing tea pluckers⁹¹¹ that the company will not consider applications from underage workers: a manager from the company's Tanzanian operations stated that they had a policy prohibiting the recruitment of workers under 18 years old and that they would always implement it, although they did not specify to which policy they were referring⁹¹². The company committed to not using child labour in its human rights policy⁹¹³ and its Sourcing Policy⁹¹⁴. In its Sustainable Agriculture Code⁹¹⁵ and its Code of Business Principles⁹¹⁶, the firm specifically commits to refraining from employing individuals under the age of 15 or under the local legal minimum working age or mandatory schooling age (whichever is higher) – in the case of Tanzania, it is 15 years old⁹¹⁷. The Rainforest Alliance prohibits the worst forms of child labour⁹¹⁸ as well, which follows the guidelines outlined in ILO Convention C182, to which Unilever has also committed.

⁹⁰⁹ Interview with civil society representatives A11 and A12.

⁹¹⁰ Interviews with worker B2, and community members C23, C24, C25, C26, C27, C28, C29, and C30.

⁹¹¹ Interview with manager D8.

⁹¹² Interview with manager D9.

⁹¹³ Unilever 'Human Rights Policy' (n. 144), 2.

⁹¹⁴ Unilever 'Responsible Sourcing Policy' (n. 826), Standards 5.1.-5.6.

⁹¹⁵ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F172.

⁹¹⁶ Unilever 'Code of Business Principles' (n. 823), 24.

⁹¹⁷ Caroline Dennis and Katie Stahley, 'Universal Primary Education in Tanzania: The Role of School Expenses and Opportunity Costs', *Evans School Review* 2(1), 2012, 1.

⁹¹⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.6.

Moreover, the Rainforest Alliance prohibits any type of work for children under the age of 15 years old⁹¹⁹, going further than Tanzanian legislation, which sets the minimum age for light work at 14 years old⁹²⁰ consistently with ILO Convention C138, to which Unilever has committed as well. The Rainforest Alliance allows work for minors aged 15-18 years old only under certain conditions – such as outside legally compulsory school hours⁹²¹ – and requires that records with specific information be kept by the company⁹²², as ILO Convention C138 requires. These conditions are generally aligned with legal requirements in Tanzania, except for working time⁹²³. The ICESCR (and the Committee’s General Comment of the Covenant) also protects children from economic exploitation, to enable them to pursue their full development and acquire technical and vocational education⁹²⁴. Finally, the OECD Guidelines says that enterprises should “[c]ontribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”⁹²⁵. In conclusion, Unilever seems to consistently implement its commitments to not employ children, although it is unclear which instrument is specifically used by the company to train its recruiters about this general policy.

5.2.2. Contractual terms

This subsection covers all contractual terms offered to Unilever’s permanent and seasonal workers: presence of contracts, pay, working time, and leaves.

⁹¹⁹ Except for “tasks that are traditional for children in the location and are undertaken for the purpose of encouraging the family’s or local culture” (Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.6.(b)).

⁹²⁰ Law of the Child Act (No. 21 of 2009) (Cap. 13), 2009, Article 77(2).

⁹²¹ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.6.(c).

⁹²² Ibid, Critical criterion 4.7.

⁹²³ The Rainforest Alliance (critical criterion 4.6.(d)) requires that young workers work no more than eight hours a day, whereas national legislation (Law of the Child Act, Article 78(3)(b)) sets the maximum at six daily hours. Conversely, the Rainforest Alliance (critical criterion 4.6.(e)) requires that young workers rest overnight for at least twelve consecutive hours in between shifts, and one full day for every six consecutive days worked, whereas national legislation (Law of the Child Act, Article 79(1)) only prohibits night work.

⁹²⁴ ICESCR, Article 10 and General Comment 18, Committee on Economic, Social, and Cultural Rights, 2006, 7-6.

⁹²⁵ OECD Guidelines, Guideline V.1.c.

5.2.2.1. Contracts

Unilever offers contracts to all its permanent and seasonal employees, and in that regard the firm performs better than other companies operating in Mufindi, as will be explained below. However, the company's practice may clash with some of its commitments to its own Code of Business Principles, the ICESCR, and the Rainforest Alliance.

On the one hand, Unilever has improved its practice and systematically offers contracts to its employees. Indeed, it used to be common practice for Unilever's seasonal workers to work without a contract⁹²⁶, as is still the case in other firms in Mufindi nowadays⁹²⁷, but the situation for Unilever seasonal workers has changed and they are now systematically given contracts, usually for a duration of nine months, which may only be renewed once every twelve months⁹²⁸. Permanent workers also have contracts, and it was indeed the case for all employees whom I interviewed. Management also confirmed that they request all employees to sign a contract before starting work⁹²⁹. This positive change is consistent with the Rainforest Alliance standards requiring that workers have a written or oral labour agreement⁹³⁰, informing them of "all terms of work", covering labour policies, procedures, rules and conditions as, where relevant, is stated in their CBA. This change also helps uphold the ICESCR's guarantee of just and favourable conditions of work⁹³¹. However, there is no evidence that the adoption of the Rainforest Alliance standards or Unilever's commitment to the ICESCR were responsible for Unilever's change in practice.

Unilever has also improved its practice by systematically translating all its contracts into Swahili. A worker (who does not speak English) said that their contract was only in English when they signed it a few years ago⁹³², but the rest of the employees, most

⁹²⁶ Interviews with workers B17 and B18.

⁹²⁷ Interviews with civil society representatives A8 and A10; it is frequent for workers in Mufindi to work without a contract and, since the law prohibits seasonal workers from doing permanent work, it is usual for companies to demand that workers change their names regularly.

⁹²⁸ This means that, if a worker wants to renew their nine-month contract, they must wait three months before being able to do so; interview with manager D9.

⁹²⁹ Interview with manager D1.

⁹³⁰ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.22, which states that management must "inform all workers offered employment in their native language about all terms of work, covering labor policies, procedures, rules and conditions either as stated in a collective bargaining agreement (where implemented) or as contained in the employer's proposed labor agreement."

⁹³¹ ICESCR, Article 7.

⁹³² Interview with worker B29.

of whom have worked for Unilever for a shorter time, confirmed that their own contracts were all in Swahili. This is an improvement which follows the Rainforest Alliance's requirement that contracts be in the workers' native language⁹³³, and the Code of Business Principles requiring that the firm ensure that "all employees' work is conducted on the basis of freely agreed and documented terms of employment, clearly understood by [...] relevant employees and others working for Unilever"⁹³⁴. Nevertheless, I was unable to find any evidence of influence of the Rainforest Alliance's or the Code of Business Principles over the company's change of policy.

On the other hand, it is alleged that some workers were not given enough time to read the terms before signing their contract⁹³⁵, which may conflict with the Code of Business Principles' above-mentioned requirement that all employees must understand their terms of employment. Another issue is the fact that workers are not provided with copies of their contracts, which a manager justified by saying that there were too many workers⁹³⁶. Not offering copies of their contracts to workers means that employees may not check the terms of their employment if necessary. It compromises the "just and favourable conditions of work" to which Unilever has committed and may be in conflict with the Rainforest Alliance standard mentioned above. It may also be at odds with the Code of Business principles' requirement that "terms of employment [be] made available to relevant employees and others working for Unilever"⁹³⁷, with the company's Sustainable Agriculture Code and Responsible Sourcing Policy that "all workers, both permanent and casual, [be] provided with employment documents that are freely agreed and which respect their legal rights"⁹³⁸.

In conclusion, some important improvements have been made to Unilever's contract practice, thereby fulfilling most of the firm's relevant commitments, although some aspects of the firm's practice are still problematic. However, I have found no positive evidence that improvements and current practice were linked to the adoption of standards.

⁹³³ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.22.

⁹³⁴ Unilever 'Code of Business Principles' (n. 823), 23.

⁹³⁵ Interview with worker B34, who said that it was generally done this way.

⁹³⁶ Interview with manager D8.

⁹³⁷ Unilever 'Code of Business Principles' (n. 823), 23.

⁹³⁸ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F168; and Unilever 'Responsible Sourcing Policy' (n. 826), Standard 2.

5.2.2.2. Pay

As the issue of pay is complex, I will divide this section into three parts: first, I will outline the situation on the ground; second, I will quickly review relevant Unilever's commitments; I will then draw a conclusion as to the level of implementation of the company's commitments in practice. For ease of reading, I will include specific considerations about overtime at the very end of this section.

First, levels of pay, not counting overtime, differ depending on the categories of workers. General workers⁹³⁹, be they permanent or seasonal employees, are on average paid Tsh 154.000⁹⁴⁰ monthly, up from Tsh 145.000 from the previous year⁹⁴¹. It is important to underline that tea pickers are paid by the kilo, and that the minimum amount mentioned above will be paid to workers who will have picked the average amount of tea set for that specific month⁹⁴². The average amount of tea expected to be picked is adjusted regularly via negotiations between trade union representatives and the company⁹⁴³. At the time of the interview, the daily average was 48 kilos; if workers pick more than that, they will be entitled to a bonus^{944 945}, up to a maximum of twice the average daily amount as the firm does not reportedly want to give up quality for quantity⁹⁴⁶. This is true for all tea picked: if the quality of the tea is considered below expectations, workers will not get paid⁹⁴⁷. General workers with good attendance will also receive an attendance bonus⁹⁴⁸. The bonus system is available to managers too if they reach their targets, and to factory workers for quality work⁹⁴⁹.

Second, Unilever has made a significant number of commitments about their employees' salaries. Similarly to the firm's Sustainable Agriculture Code⁹⁵⁰ and

⁹³⁹ This includes plantation and factory workers.

⁹⁴⁰ Interview with manager D1.

⁹⁴¹ Interview with manager D1.

⁹⁴² Interview with manager D1.

⁹⁴³ Interview with manager D1.

⁹⁴⁴ The bonuses were set as follows: between 49 and 58 kilos, workers would receive a 10% bonus; between 59 and 60 kilos, they would receive a 15% bonus.

⁹⁴⁵ Interview with manager D1.

⁹⁴⁶ Interview with manager D1.

⁹⁴⁷ Interview with managers D1 and D9.

⁹⁴⁸ Interview with manager D1.

⁹⁴⁹ Interview with manager D1.

⁹⁵⁰ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F173.

Responsible Sourcing Policy⁹⁵¹, the Code of Business Principles requires the firm to ensure that “all employees are provided with fair wages including a total remuneration package that meets or exceeds legal minimum standards or appropriate prevailing industry standards, and that remuneration terms established by legally binding collective agreements are implemented and adhered to”⁹⁵². In the same vein, the Rainforest Alliance requires Unilever to offer employees minimum wage⁹⁵³, with complete and timely payment to workers of all of their wages due, including for overtime work, in the place and with the frequency specified by collectively negotiated agreements or worker contracts⁹⁵⁴. The Rainforest Alliance also requires salaries to be adjusted according to inflation^{955 956}. Moreover, through its Rainforest Alliance certification⁹⁵⁷ and its own Framework for Fair Compensation⁹⁵⁸, the company committed not only to meeting the minimum wage requirements with no discrimination between men and women, but to progress towards living wage levels. Certified companies are expected, if a living wage benchmark is provided, to “document and implement a living wage plan, to progress towards payment of living wage”⁹⁵⁹. In absence of a living wage benchmark, management “assess current access of workers and their families to health care and basic education and develop and implement a plan for providing access to these services.”⁹⁶⁰ The Rainforest Alliance defined living wage as:

“Remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and provision for

⁹⁵¹ Unilever ‘Responsible Sourcing Policy’ (n. 826), Standard 6.

⁹⁵² Unilever ‘Code of Business Principles’ (n. 823), 24.

⁹⁵³ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.5.

⁹⁵⁴ Ibid, Continuous improvement criterion 4.21.

⁹⁵⁵ Ibid, Continuous improvement criterion 4.27.

⁹⁵⁶ It is notable that Unilever did not have to comply with that requirement at the time when the fieldwork was conducted.

⁹⁵⁷ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.3.

⁹⁵⁸ This framework is underpinned by five principles: Fair and liveable compensation; Market-based compensation; No discrimination in compensation; Performance-focused compensation providing alignment to our business; Open and explainable compensation.

⁹⁵⁹ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criterion 4.29.

⁹⁶⁰ Ibid.

unexpected events. Fulfilment of these eight “essential needs” together constitutes a decent standard of living.”⁹⁶¹

Interestingly, under Unilever’s own definition of “living wage”, workers’ wages should be high enough to cover not only essential needs but also to allow them allow them discretionary income which would allow them to have access to non-essential goods and activities⁹⁶².

Finally, the last stage of Rainforest Alliance continuous improvement criteria requires the implementation of the living wage plan, but not before firms have been certified for at least six years⁹⁶³. As this new set of standards came into force in 2017, Unilever will not be expected to comply with this obligation until 2023. However, the firm has committed to implementing its living wage goals before then in its internal mechanisms: its Framework for Fair Compensation’s target for implementation was 2018⁹⁶⁴, and the OECD Guidelines requires pay levels to be “at least adequate to satisfy the basic needs of the workers and their families”⁹⁶⁵. Moreover, the Universal Declaration of Human Rights⁹⁶⁶, which guarantees the right of workers to a just and favourable conditions of work and to an adequate standard of living, including adequate housing, clothing, and food, and ILO Convention C100 covers the right to a fair wage. Finally, the Economic, Social, and Cultural Committee specified that the right to food (as outlined in the ICESCR⁹⁶⁷) had two core dimensions: first, food must be available “in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”⁹⁶⁸; second, food must be accessible “in ways that are sustainable and that do not interfere with the enjoyment of other human rights”, which means that “personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised”⁹⁶⁹. It is therefore important to assess wage levels by

⁹⁶¹ Rainforest Alliance Sustainable Agriculture Standard, 2017, 44.

⁹⁶² Unilever ‘Fair compensation’ (n. 856).

⁹⁶³ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criterion 4.33.

⁹⁶⁴ Unilever ‘Fair compensation’ (n. 856).

⁹⁶⁵ OECD Guidelines, Guideline V.4.b.

⁹⁶⁶ Universal Declaration of Human Rights, Articles 23 and 25.

⁹⁶⁷ ICESCR, Article 11.

⁹⁶⁸ Committee on Economic, Social and Cultural Rights, General Comment 12, 1999, §4

⁹⁶⁹ Ibid, §8.

taking into account the extent to which workers can afford all other basic necessities (beside food).

It is safe to say that Unilever has made a substantial amount of commitments to paying their workers decent salaries, including at living wage levels, both with the internal and external company-level mechanisms which they have adopted, and through the Rainforest Alliance certification label. However, it does not immediately translate into a decent standard of living for workers and their families on the ground, even though the firm says on its website that it conducts audits to ensure that workers are paid a living wage⁹⁷⁰. It is true that, as will be covered in Section 5.4.4.2., strikes have had an impact on the level of pay and bonuses, but despite these recent improvements and important in-kind benefits such as access to free healthcare at Unilever's private hospital, free housing with free water and electricity⁹⁷¹ (for onsite families), as will be covered in Section 5.3.1., even full-time workers tend to struggle to make enough money for themselves and their families⁹⁷². Some reported having to farm⁹⁷³ and/or have a second job to be able to make a living⁹⁷⁴. As breakfast would cost on average Tsh2.000, lunch Tsh4.000, and dinner Tsh4.000 for two parents with two children, the bare minimum for a family to survive in Mufindi would be Tsh10.000 per day, solely for food⁹⁷⁵, and not taking into account other basic necessities. Salaries are re-evaluated every year⁹⁷⁶, but no living wage plan has been adopted by management who, when asked about it, stated that in-kind benefits should be taken into account when evaluating pay levels. However, a worker – who is therefore a recipient of these benefits – still identified the issue of low salaries as “the priority”⁹⁷⁷, and low wages are generally acknowledged as a problem in the Mufindi region⁹⁷⁸. In conclusion, Unilever does not entirely meet its commitments in terms of pay levels and of working towards offering a living wage. Yet, it is acknowledged that, consistently with their commitments, the firm does offer its workers higher wages than the minimum amount

⁹⁷⁰ Unilever ‘Fair compensation’ (n. 856).

⁹⁷¹ Although there is no running water and electricity is not available in all houses, as will be covered in Section 5.3.1.

⁹⁷² Interview with workers B2, B7, B20, B21, and B35.

⁹⁷³ Interview with worker B7 and community member C27.

⁹⁷⁴ Interview with worker B24.

⁹⁷⁵ Interviews with community members C12 and C15.

⁹⁷⁶ Worker B2 for instance stated that the average monthly pay in 2009 was Tsh3.000.

⁹⁷⁷ Interview with worker B2.

⁹⁷⁸ Interviews with civil society representatives A11 and A12.

set by the government – Tsh100.000⁹⁷⁹ – and important in-kind benefits. However, most of these measures came out of the collective bargaining process, and I have not been able to link them to Unilever’s self-regulatory mechanisms⁹⁸⁰.

Finally, overtime, which is 1.5 times regular pay⁹⁸¹, as is required in the CBA⁹⁸², is reserved in the plantations for workers who wait for trucks at the end of the day⁹⁸³ – which only men are allowed to do. Overtime is available⁹⁸⁴ for factory workers during high season, although there were reports of overtime payments not paid at the correct rate in a few months⁹⁸⁵. Unless the latter is true, Unilever’s practice seems to be in line with the Rainforest Alliance requirement that the payment of overtime be set at 1.5 times the regular wage level in the absence of applicable law or collectively negotiated agreement⁹⁸⁶. However, I have found no evidence that the firm’s practice has been influenced by certification standards.

5.2.2.3. Working time

Employees all have different schedules. During low season, tea pickers work from 7am until 2pm, six days a week⁹⁸⁷. During high season, workers work until 5pm⁹⁸⁸. No overtime is available⁹⁸⁹ except for some male workers who must stay onsite and wait for trucks to pick up tea leaves at the end of the workday⁹⁹⁰, which may take up to four hours⁹⁹¹. Tea pickers are given one-hour lunch breaks⁹⁹². This means that, during high season, some plantation workers (those who wait for the trucks) work for longer than

⁹⁷⁹ Gazette of the United Republic of Tanzania (n. 583).

⁹⁸⁰ However, it is notable that strong collective bargaining processes is a standard which is included in most of Unilever’s mechanisms.

⁹⁸¹ Interview with manager D1.

⁹⁸² TAT-TPAWU, ‘Collective Bargaining Agreement’ (hereinafter ‘TAT-TPAWU CBA’), 2016, 19.

⁹⁸³ Interviews with manager D1 and worker B34.

⁹⁸⁴ Interviews with worker B49.

⁹⁸⁵ Interviews with worker B28.

⁹⁸⁶ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.11.

⁹⁸⁷ Interviews with workers B7, B17, B18, B19, and B22.

⁹⁸⁸ Interviews with managers D1 and D9 and workers B7, B20, B21, B24, B26, B28, B31, and B34.

⁹⁸⁹ Interviews with manager D1, and workers B17, B18, and B19.

⁹⁹⁰ Interviews with manager D1, and workers B17, B18, B19, B20, B21, B24, B26, and B28.

⁹⁹¹ Interview with manager D1.

⁹⁹² Interviews with managers D1 and D9 and workers B7, and B32.

what is allowed by law⁹⁹³, or by Rainforest Alliance standards⁹⁹⁴. As Unilever's Code of Business Principles⁹⁹⁵ and Sustainable Agriculture Code⁹⁹⁶ prohibits employees from working more than the regular and overtime hours allowed by the laws of the country where they are employed, Unilever's practice appears to also be in conflict with its own codes.

Plantation managers work six days a week from 7am until 6pm, with a lunch break⁹⁹⁷. However, they may be asked to work longer hours as they also have to wait for trucks picking up tea leaves, which sometimes do not come until 10pm⁹⁹⁸ during raining season⁹⁹⁹. This means that plantation managers work 60 regular hours a week and may work up to 84 hours a week if they must wait for trucks for four additional hours every day, which is significantly above the limit fixed by national law *and* by the Rainforest Alliance. Unilever and companies in the area must redo the dirt roads twice a year as they deteriorate quickly¹⁰⁰⁰. When roads are in a bad state, tea trucks take longer to reach all estates, which means that workers and managers must wait longer hours for trucks to come and pick up tea leaves¹⁰⁰¹.

Security workers have 12-hour shifts, which include overtime, seven days a week¹⁰⁰². This means that security staff work over 80 hours per week, clashing with the Rainforest Alliance, Unilever's Code of Business Principles, and national legislation.

The factory is open 24 hours. Work schedules were changed because of Rainforest Alliance's working time requirements¹⁰⁰³, and there are now three 8-hour daily shifts instead of two 12-hour daily shifts. Factory workers work six days a week, and may work overtime during high season¹⁰⁰⁴, for up to four daily hours¹⁰⁰⁵, which contravenes

⁹⁹³ As mentioned in Chapter 4, national legislation limits the regular working week to 45 hours, with overtime capped at 15 weekly hours.

⁹⁹⁴ The Rainforest Alliance limits the regular working week to 48 hours (Critical criterion 4.10.) with no more than 12 additional hours as *voluntary* overtime, except under exceptional circumstances (Critical criterion 4.11.).

⁹⁹⁵ Unilever 'Code of Business Principles' (n. 823), 24.

⁹⁹⁶ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F174.

⁹⁹⁷ Interviews with managers D8 and D9.

⁹⁹⁸ Interviews with managers D8 and D9.

⁹⁹⁹ Interview with manager D1.

¹⁰⁰⁰ Interview with manager D1.

¹⁰⁰¹ Interview with manager D1.

¹⁰⁰² Interview with workers B27, 29, and 32.

¹⁰⁰³ Interview with manager D1.

¹⁰⁰⁴ Interview with worker B49.

¹⁰⁰⁵ Interview with worker B49.

a manager's statement that factory workers did not have any overtime¹⁰⁰⁶, and Unilever's commitments which requires all overtime to remain voluntary. This issue is related to the current CBA, which contains a provision which makes certain overtime compulsory: any employee who refuses to report for work without reasonable cause will be considered as having breached the disciplinary code on absence¹⁰⁰⁷. This goes against the Rainforest Alliance standards¹⁰⁰⁸, Unilever's Code of Business Principles¹⁰⁰⁹, its Sustainable Agriculture Code¹⁰¹⁰, and its Responsible Sourcing Policy¹⁰¹¹, all requiring that overtime remain voluntary.

In conclusion, there is a gap between plantation and factory workers when it comes to working time arrangements. On the one hand, Unilever seems to meet its standards for factory employees, and there is a clear link between the practice and Rainforest Alliance requirements. On the other hand, the firm seems to regularly breach its standards in terms of working time for plantation workers, and potentially in terms of overtime for all workers.

5.2.2.4. Leaves

Workers are allowed to take different leaves depending on their permanent or seasonal status, although all workers need to have been employed for at least six months before they can claim any paid leave¹⁰¹², as is legally allowed¹⁰¹³. I will review leaves arrangements first for permanent workers, and secondly for seasonal workers.

Permanent workers are entitled to sick leave as long as they can produce a medical certificate¹⁰¹⁴, although workers did not specify whether there was a time limit to the sick leave which they were allowed to take. Sick leave is calculated pro rata of the basic monthly wage¹⁰¹⁵. This seems to be consistent with national legislation

¹⁰⁰⁶ Interview with manager D1.

¹⁰⁰⁷ TAT-TPAWU CBA, 18-19.

¹⁰⁰⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criteria 4.10. and 4.11.

¹⁰⁰⁹ Unilever 'Code of Business Principles' (n. 823), 24.

¹⁰¹⁰ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F174.

¹⁰¹¹ Unilever 'Responsible Sourcing Policy' (n. 826), Standard 7.

¹⁰¹² Interview with manager D1, although management may discretionally decide to offer paid sick leave to employees who have been with Unilever for less than six months.

¹⁰¹³ Employment and Labour Relations Act, Article 29.

¹⁰¹⁴ Interviews with manager D1, and workers B27, B28, and B32.

¹⁰¹⁵ Interview with manager D1.

provisions¹⁰¹⁶ requiring that sick workers be paid their full wages for 63 days and half their wages for another 63 days, as long as they can produce a medical certificate¹⁰¹⁷. It also seems to be in line with the Rainforest Alliance requirement that contracts include a provision protecting workers from loss of pay in case of illness, disability, or accident¹⁰¹⁸, and with Unilever's Sustainable Agriculture Code which requires workers to have access to paid leave which at least meets the minimal legal provisions¹⁰¹⁹.

Permanent workers are also entitled to three months of maternity leave¹⁰²⁰, with a lump sum payment in addition to their regular salary¹⁰²¹ (although some workers said that they did not receive additional payment¹⁰²²). Unilever's practice seems to be consistent the Rainforest Alliance standard of providing employees with a minimum of 12 weeks for maternity leave¹⁰²³, which is the same requirements as national legislation¹⁰²⁴. It follows that the practice is also consistent with the firm's Sustainable Agriculture Code which, as indicated above, states that workers are entitled to a paid leave package which meets or exceed the legal minimum standards¹⁰²⁵. However, one permanent worker said that employees must wait six months before they can get pregnant, or they may get terminated¹⁰²⁶. It may be so because it is Unilever's policy not to offer paid leave until workers have been employed for at least six months¹⁰²⁷.

¹⁰¹⁶ Employment and Labour Relations Act, Article 32(1) and (2).

¹⁰¹⁷ A "medical certificate" is defined in the Employment and Labour Relations Act, Article 32(4), as a "certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld".

¹⁰¹⁸ Rainforest Alliance 'Sustainable Agriculture Standard', 20.

¹⁰¹⁹ Unilever 'Sustainable Agriculture Code' (n. 827), F173.

¹⁰²⁰ Interviews with managers D1 and D8 and workers B2, B20, B21, B23, B25, B27, B28, and B32.

¹⁰²¹ The amount of the lumpsum is unclear; one worker said that it was of Tsh 400.000 (B25), another that it was three times the worker's salary (B2).

¹⁰²² Interviews with workers B20 and B21.

¹⁰²³ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.25. The Rainforest Alliance Sustainable Agriculture Standard also specifies that maternity leave terms should be included in the workers' contracts (Rainforest Alliance 'Sustainable Agriculture Standard', 20).

¹⁰²⁴ Although national legislation adds another 16 days if a woman has more than one child at a time (Employment and Labour Relations Act, Article 33(6)).

¹⁰²⁵ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F173.

¹⁰²⁶ Interview with worker B32.

¹⁰²⁷ Interview with manager D1, although management may discretionally decide to offer paid sick leave to employees who have been with Unilever for less than six months, as explained above.

New fathers are entitled to paternity leave¹⁰²⁸, although accounts differ as to how many days are allowed¹⁰²⁹ and whether an additional lump sum is paid¹⁰³⁰. It is therefore difficult to assess whether Unilever's practice is consistent with national legislation, which requires three days' leave for new fathers¹⁰³¹, and therefore whether it meets the firm's Sustainable Agriculture Code¹⁰³². No other self-regulatory mechanism which Unilever has adopted includes standards about paternity leave.

Finally, permanent workers are entitled to 28 days of annual leave^{1033 1034}, with a potential additional lump sum, although there are conflicting reports on this issue¹⁰³⁵. This is consistent with national legislation¹⁰³⁶, and therefore with Unilever's Sustainable Agriculture Code¹⁰³⁷. Moreover, the company goes further than the Rainforest Alliance requirement that all workers receive two weeks' paid vacation every year with pro-rata for seasonal and part-time workers¹⁰³⁸, as should be included in their contract¹⁰³⁹.

Despite the fact that Unilever seems to implement all its standards in terms of leaves for permanent workers, no positive evidence of a link between the firm's mechanisms and its practice could be found.

As for seasonal workers' leaves, there have been contrasting reports. Most workers said that they were not allowed any sick leave¹⁰⁴⁰, while one said that they were (although only limited to two days, with a medical certificate)¹⁰⁴¹. However, workers

¹⁰²⁸ Interviews with manager D8, and workers B2, B25, B27, B28, and B32.

¹⁰²⁹ A manager (D8) said that new fathers are entitled to three days of paid paternity leave, while a worker said that it was one month (B25), and another seven days (B2).

¹⁰³⁰ Only two workers said that an additional payment was made to new fathers: one worker did not know how much this payment was (B28), and another (B25) said that Tsh 100.000 was added to new fathers' salary.

¹⁰³¹ Employment and Labour Relations Act, Article 34(a).

¹⁰³² Unilever 'Sustainable Agriculture Code' (n. 827), Standard F173.

¹⁰³³ Interviews with manager D8, and workers B20, B21, B23, B25, B27, B28, B29, and B32.

¹⁰³⁴ Only a manager (D8) and a worker (B28) said that annual leave was for 28 consecutive days.

¹⁰³⁵ Two permanent workers (B25 and B28) said that they received Tsh 135.000, while security workers (B27 and B29) mentioned Tsh 200.000-250.000. A worker (B23) said that they did receive additional payment but did not specify the amount. Finally, two other workers said that they did not receive any additional payment (B20 and B21).

¹⁰³⁶ Employment and Labour Relations Act, Article 31(1).

¹⁰³⁷ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F173.

¹⁰³⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.23. This criterion was also included in the previous standard (criterion 5.6.).

¹⁰³⁹ Rainforest Alliance 'Sustainable Agriculture Standard', 20.

¹⁰⁴⁰ Interviews with manager D8, and workers B7 (who said that there used to be sick pay for all workers but not anymore), B24, B26, B31, B32, B33, B34 and B35.

¹⁰⁴¹ Interview with worker B49.

may think that seasonal employees cannot get sick leave because of the firm's general policy that no paid leaves shall be available for the first six months of employment, as explained above. And indeed, a manager said that seasonal workers did have access to sick leave, but only after six months of work¹⁰⁴². However, the practice seems to clash with the above-mentioned Rainforest Alliance¹⁰⁴³ and Sustainable Agriculture Code¹⁰⁴⁴ requirements, and may also be inconsistent with national legislation provisions if seasonal workers who have worked for Unilever for at least six months do not have access to sick leave¹⁰⁴⁵.

Moreover, seasonal workers said that they did not have access to maternity or paternity leave¹⁰⁴⁶, although it may be because of the same "six months" rule. This practice would seem to be inconsistent with the Rainforest Alliance standard of providing employees with a minimum of 12 weeks for maternity leave¹⁰⁴⁷. As for national legislation about maternity and paternity leaves¹⁰⁴⁸, it would seem to be legal for seasonal workers in the first six months of their employment, but not for the last three months (for those seasonal workers on a 9-month contract)¹⁰⁴⁹. The situation would be similar regarding the Sustainable Agriculture Code, which follows the national legislation on this issue¹⁰⁵⁰.

Finally, seasonal workers said that they were not offered annual leave¹⁰⁵¹. The practice seems to contrast with the above-mentioned Rainforest Alliance requirement that that all workers receive two weeks' paid vacation every year with pro-rata for seasonal workers¹⁰⁵². It also seems to clash with national legislation – which also states that

¹⁰⁴² Interview with manager D1.

¹⁰⁴³ Rainforest Alliance 'Sustainable Agriculture Standard', 20.

¹⁰⁴⁴ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F173.

¹⁰⁴⁵ Employment and Labour Relations Act, Article 32(1) and (2).

¹⁰⁴⁶ Interviews with manager D8, and workers B24, B26, B27, B31, B32, B33, B34, and B49.

¹⁰⁴⁷ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.25. It also specifies that maternity leave terms should be included in the workers' contracts.

¹⁰⁴⁸ Although national legislation adds another 16 days if a woman has more than one child at a time (Employment and Labour Relations Act, Article 33(6)). For paternity leave, see Article 34(a) of the same Act.

¹⁰⁴⁹ Employment and Labour Relations Act, Article 29.

¹⁰⁵⁰ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F173.

¹⁰⁵¹ Interviews with manager D8, and workers B7, B24, B26, B27, B31, B32, B33, B34, and B49.

¹⁰⁵² Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.23. This criterion was also included in the previous standard (criterion 5.6.).

seasonal workers are to be offered paid annual leave calculated on a pro-rata basis¹⁰⁵³ –, and therefore with the Sustainable Agriculture Code¹⁰⁵⁴, as explained above.

In conclusion, Unilever does not meet its various standards regarding leaves for seasonal workers, mainly because of the company's rule – albeit consistent with national law – that no leave is allowed for workers who have been employed for less than six months.

I will now review Unilever's health and safety practice.

5.2.3. Health and safety

This section will first provide a general assessment of Unilever's health and safety practice, second its specific practice regarding medical check-ups, and finally its record on accidents and compensation.

5.2.3.1. General considerations

Unilever has a department dedicated to Occupational Health and Safety [OHS], with a specific safety manager whose role is to tour the facilities and check that all is in order¹⁰⁵⁵. This follows national legislation¹⁰⁵⁶ and is consistent with the Rainforest Alliance requirement that Unilever have an OHS committee in charge of implementing the company's OHS policy¹⁰⁵⁷ and of conducting health and safety reviews¹⁰⁵⁸, and that management document and implement procedures for emergency scenarios, provide training and maintain equipment¹⁰⁵⁹. It is also respectful of the provisions in the OECD Guidelines requiring that companies take adequate steps to ensure occupational health and safety in their operations¹⁰⁶⁰ and of Unilever's Code of Business Principles on OHS¹⁰⁶¹, implementing the ICESCR, which recognises the

¹⁰⁵³ Employment and Labour Relations Act, Article 31(8).

¹⁰⁵⁴ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F173.

¹⁰⁵⁵ Interview with manager D1.

¹⁰⁵⁶ Occupational Health and Safety Act, Section 11.

¹⁰⁵⁷ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.14.

¹⁰⁵⁸ Ibid, Continuous improvement criterion 4.34.

¹⁰⁵⁹ Ibid, Continuous improvement criterion 4.44. This criterion was also included in the previous standard (criterion 6.18.).

¹⁰⁶⁰ OECD Guidelines, Guideline V.4.c. and §57.

¹⁰⁶¹ Unilever 'Code of Business Principles' (n. 823), 22.

right to safe and healthy working conditions¹⁰⁶². Specifically, the Economic, Social, and Cultural Committee stated that the implementation of this right required appropriate monitoring and enforcement measures¹⁰⁶³. Finally, it follows the standards of the company's Sustainable Agriculture Code on safe machinery, buildings, electrical installations, as well as mitigation measures against explosions risks as well as fire, dust, and noise hazards^{1064 1065}, although it is acknowledged that I had limited capacity to assess the technical aspects of these measures. However, I could not establish any link between Unilever's mechanisms and the firm's practice.

I will now review the personal protective equipment [PPE] provided to workers. Employees are provided with different types of safety equipment, depending on their role, as outlined below.

Mandatory equipment for tea plantation workers¹⁰⁶⁶ consists of gun boots and aprons, in addition to the basket which they wear on their backs to collect tea leaves. Plantation workers operating machines must wear gun boots, ear and eye protection, gloves, and overalls¹⁰⁶⁷. Raincoats are optional¹⁰⁶⁸, and workers do not wear gloves¹⁰⁶⁹. Permanent workers are provided with all the necessary equipment. Seasonal workers must buy their own equipment themselves^{1070 1071}. The company said that they are provided with aprons¹⁰⁷², but acknowledge that they do not provide workers with anything else, although all workers and another manager said that they had to buy *all* their equipment themselves. Similarly, one community member stated that Unilever did not provide chemical sprayers with proper equipment for free^{1073 1074}, and it was reported that security officers are only provided with gun boots and must provide the rest of their

¹⁰⁶² ICESCR, Article 7(b).

¹⁰⁶³ Committee on Economic, Social and Cultural Rights, General Comment 23, 2016, §29.

¹⁰⁶⁴ Unilever 'Sustainable Agriculture Code' (n. 827), Standards F91, F94, F95, F96, F97, F98, and F154.

¹⁰⁶⁵ However, one worker (B2) mentioned noise pollution.

¹⁰⁶⁶ Interview with manager D8, workers B17, B18, B19, B24, B25, B28, B31, B32, and B49.

¹⁰⁶⁷ Interview with manager D8.

¹⁰⁶⁸ Interview with manager D1,

¹⁰⁶⁹ Interview with worker B17, and my observation.

¹⁰⁷⁰ Interviews with managers D1 and D8, workers B7, B25, B26, B31, B49, and community member C51.

¹⁰⁷¹ One worker (B7) said that this policy was introduced in 2015, and that seasonal workers used to be provided with all necessary equipment.

¹⁰⁷² Interview with manager D1.

¹⁰⁷³ Proper equipment includes gun boots, masks, and eye protection.

¹⁰⁷⁴ Interview with community member C51.

equipment themselves¹⁰⁷⁵. This seems to be in conflict with the Rainforest Alliance¹⁰⁷⁶ and the company's Sustainable Agriculture Code¹⁰⁷⁷ requirements that employers do not charge or deduct pay to cover the cost of tools, equipment or gear required for performance of worker duties. It may also be inconsistent with the Rainforest Alliance specific requirements concerning workers handling pesticides¹⁰⁷⁸, and with national legislation¹⁰⁷⁹. Unilever justified their decision not to provide seasonal workers with proper equipment by stating that seasonal workers are not reliable and may leave with the company's material¹⁰⁸⁰.

Unilever also organises training sessions, although there have been different reports as to whether health and safety training takes places daily¹⁰⁸¹ or weekly¹⁰⁸². This is consistent with Unilever's Code of Business Principles requiring that all employees and contractors receive proper OHS training¹⁰⁸³, although I could not link the firm's practice to this commitment. This practice is also consistent with national legislation¹⁰⁸⁴.

Despite training and protective safety equipment, workers say that it is a difficult job, especially tea picking and boiler duty. One worker explicitly said that if they could find another job, they would take it¹⁰⁸⁵.

From the evidence collected, it appears that Unilever does take health and safety seriously, and a manager claimed that the Rainforest Alliance had had a positive influence by strengthening applicable rules¹⁰⁸⁶. For instance, it seems that Unilever's policy is (mostly) implemented as employees are not allowed to work if they are not

¹⁰⁷⁵ Interview with workers B27 and B29.

¹⁰⁷⁶ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.5.

¹⁰⁷⁷ Unilever 'Sustainable Agriculture Code' (n. 827), Standards F100 and 154.

¹⁰⁷⁸ The Rainforest Alliance includes some criteria specifically for workers handling pesticides, covering training (critical criteria 3.3. and 4.16.), correct handling of substances and contaminated clothes (critical criterion 4.17.), and the provision of free and adapted Personal Protective Equipment (PPE) to workers (critical criterion 4.15.). Special medical tests must be carried out (continuous improvement criterion 4.36.) as seen below, and only authorised personnel have access to the storage areas adapted to the type of chemicals used (continuous improvement criterion 4.38 and 4.39.). Finally, emergency showers and eye-washing facilities must be available close to the sites where chemicals are used.

¹⁰⁷⁹ Occupational Health and Safety Act, Section 62.

¹⁰⁸⁰ Interview with manager D1.

¹⁰⁸¹ Interview with manager D1.

¹⁰⁸² Interview with worker B29.

¹⁰⁸³ Unilever 'Code of Business Principles' (n. 823), 22.

¹⁰⁸⁴ Occupational Health and Safety Act, Section 34.

¹⁰⁸⁵ Interview with worker B7.

¹⁰⁸⁶ Interview with manager D1.

wearing the necessary equipment¹⁰⁸⁷, are sent home with no pay¹⁰⁸⁸, and may be ultimately terminated¹⁰⁸⁹ – although a few workers said that there was no control from the company, and that it was up to the workers to ensure that they were wearing the proper equipment¹⁰⁹⁰. However, the fact that the corporation does not provide seasonal workers with safety equipment appears to be in conflict with Rainforest Alliance standards and the OECD Guidelines. It is also in conflict with the ICESCR which, according to the Covenant itself and to the Economic, Social, and Cultural Committee, applies to all workers in all settings¹⁰⁹¹. Similarly, one interviewee stated that chemical sprayers were not provided with equipment for free, as mentioned above. It is difficult to assess the extent of this issue but, if the practice was confirmed to be widespread, this would be a serious problem and may breach Unilever’s self-regulatory standards outlined above.

5.2.3.2. Medical check-ups

Unilever conducts medical check-ups for all prospective employees before signing contracts¹⁰⁹². Permanent workers then go through check-ups every two months¹⁰⁹³, consistently with the Rainforest Alliance’s standards¹⁰⁹⁴ – although I could not establish any link between these self-regulatory requirements and the firm’s practice – and with national legislation¹⁰⁹⁵. However, seasonal workers said that they did not have regular check-ups, or an exit check-up¹⁰⁹⁶, which seems to be in conflict with the above-mentioned Rainforest Alliance requirements and with national legislation¹⁰⁹⁷.

5.2.3.3. Accidents and compensation

¹⁰⁸⁷ Interview with civil society representative A10, workers B23, B24, B25, and B26.

¹⁰⁸⁸ Interview with manager D1.

¹⁰⁸⁹ Interviews with manager D1, civil society representative A10, and workers B23, B24, and B33.

¹⁰⁹⁰ Interviews with workers B17, B18, and B19.

¹⁰⁹¹ ICESCR, Article 2(2), and Committee on Economic, Social and Cultural Rights, General Comment 23, 2016, §5.

¹⁰⁹² Interviews with workers B25, B31, B32, B34, and B49.

¹⁰⁹³ Interviews with workers B24, B26, B27, and B29; although worker B23 said that medical check-ups were conducted every three months.

¹⁰⁹⁴ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criterion 4.41.

¹⁰⁹⁵ Occupational Health and Safety Act, Section 24.

¹⁰⁹⁶ Interview with workers B31, B32, B34, and B49.

¹⁰⁹⁷ Occupational Health and Safety Act, Section 24.

Accidents are reportedly rare¹⁰⁹⁸, and mostly occur in the factory because workers use machines¹⁰⁹⁹. Yet when they do happen, it is important to consider two things: whether employees get free medical treatment, and whether they are offered compensation.

Firstly, permanent and seasonal employees have access to free medical treatment at Unilever's hospital after work-related accidents¹¹⁰⁰. However, there were reports that only first aid was provided to seasonal workers¹¹⁰¹. This practice may conflict with the Rainforest Alliance, which requires that all workers are offered access to healthcare¹¹⁰², and with Tanzanian law, which requires employers to bear the costs of medical aid, including transportation to hospital, after a work-related accident¹¹⁰³.

Secondly, permanent employees are in theory offered compensation for work-related accidents¹¹⁰⁴, although a few workers complained that the company usually says that it is the worker's fault and so refuses to offer compensation¹¹⁰⁵. It is difficult to assess whether this is true or not. As for seasonal workers, Unilever says that they are entitled to compensation through the WCF¹¹⁰⁶, but workers and a manager said that they are not¹¹⁰⁷. If the latter is true, it would conflict with national legislation, as was mentioned in Chapter 4. Private employers in Tanzania must contribute 1% of their tax bill to the WCF, which is used to compensate (permanent and seasonal) workers for work-related injuries and death unless the injury is attributable to the misconduct of the employee and does not result in death or permanent total disablement¹¹⁰⁸. The fact that compensation is rarely offered to workers may also conflict with the OECD Guidelines, which require employment and industrial relations standards to include compensation arrangements¹¹⁰⁹, following the spirit of the right to safe and healthy working conditions as recognised by the ICESCR¹¹¹⁰.

¹⁰⁹⁸ A doctor (C20) said there had been a couple of accidents that year.

¹⁰⁹⁹ Interview with manager D1, who also said that a factory worker had almost lost their leg in March 2018.

¹¹⁰⁰ Interviews with workers B2, B20 and B21.

¹¹⁰¹ Interviews with manager D8, and worker B26.

¹¹⁰² Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.31. This criterion was also included in the previous standard (criterion 5.16.).

¹¹⁰³ Workers Compensation Act, Articles 61 and 62.

¹¹⁰⁴ Interviews with managers D1 and D8 and workers B2, B7, B20, B21, B23, and B25.

¹¹⁰⁵ Interviews with workers B32 and B33.

¹¹⁰⁶ Interview with manager D1.

¹¹⁰⁷ Interviews with manager D8, and workers B24, B25, B26, B27, B31, B32, B33, B34, and B49.

¹¹⁰⁸ Workers Compensation Act, Articles 4 and 19(2).

¹¹⁰⁹ OECD Guidelines, §57.

¹¹¹⁰ ICESCR, Article 7(b).

5.2.4. Freedom of association and collective bargaining

This section will first provide a general assessment of Unilever's practice regarding freedom of association and collective bargaining, and second of the firm's specific practice regarding strikes.

5.2.4.1. General considerations

TPAWU is the trade union used by Unilever workers, with representatives chosen among workers¹¹¹¹. TPAWU representatives negotiate the price of the kilo of tea with human resources managers regularly¹¹¹² and report to management any issues raised by workers¹¹¹³. Once the CBA is signed, the union trains workers on the content of the agreement¹¹¹⁴, as well as on general labour rights and related issues. However, there were reports of issues with regard to TPAWU's Unilever branch. First, some (permanent and seasonal) workers stated that seasonal workers could not join TPAWU¹¹¹⁵, which would be in conflict with all the standards mentioned in the previous paragraph – although other (permanent and seasonal) employees said that all workers were members¹¹¹⁶. Most workers also said that that it was compulsory for permanent workers to join the union and have their membership fee taken out of their monthly paycheck¹¹¹⁷. Compulsory membership would also run counter to the provisions of all the commitments cited above. Second, Mufindi civil society representatives said that TPAWU representatives were not properly trained on labour issues and so could not adequately defend workers' rights¹¹¹⁸. Third, a local civil society representative said that TPAWU leaders did not adequately protect women¹¹¹⁹. Fourth, there were concerns about the political bias of TPAWU as some union

¹¹¹¹ Interviews with workers B7 and B23.

¹¹¹² Interview with manager D1. Negotiations run every month during dry season, and every three or four months during raining season.

¹¹¹³ Interview with manager D1 and worker B2.

¹¹¹⁴ Interview with managers D1 and D8.

¹¹¹⁵ Interviews with workers B23 and B24.

¹¹¹⁶ Interviews with workers B7, B20, and B21.

¹¹¹⁷ Interviews with managers D1 and D8 and workers B23, B27, B29, and B32. There are conflicting accounts as to how much it costs to be a member, with estimates ranging from Tsh 2.000 – Tsh 5.000 monthly, although a worker said that the fee was 1% of salary, which would explain the differences in estimates.

¹¹¹⁸ Interviews with civil society representatives A11 and A12.

¹¹¹⁹ Interview with civil society representative A13.

representatives were alleged to be members of the ruling party¹¹²⁰, although I could not verify this piece of information myself. Relatedly, the efficacy of TPAWU as a trade union representing workers' interests is disputed by some workers. Indeed, several interviewees said that TPAWU representatives had the interests of the company, and not of the workers, at heart¹¹²¹, and one said that they were bribed¹¹²², although, again, it is difficult to verify the accuracy of this allegation. Moreover, some workers question TPAWU's efficacy as the union's complaints to the company had reportedly not led to any changes in working conditions¹¹²³. A worker said that employees used to go to TPAWU when they wanted to raise complaints with management, but that the union was not active anymore¹¹²⁴. Another worker said that TPAWU representatives were successful in their actions of defending workers' rights only about half the time¹¹²⁵. On the other hand, one worker said that they would go to TPAWU leaders if they want to report a problem¹¹²⁶.

Having a trade union representing workers and negotiating working conditions on their behalf is consistent with the Rainforest Alliance requirements¹¹²⁷, the Code of Business Principles¹¹²⁸, the Sustainable Agriculture Code¹¹²⁹, the Responsible

¹¹²⁰ Interviews with civil society representatives A11 and A12.

¹¹²¹ Interview with workers B20 and B21.

¹¹²² Interview with worker B25.

¹¹²³ Interview with workers B20 and B21.

¹¹²⁴ Interview with worker B29.

¹¹²⁵ Interview with worker B7.

¹¹²⁶ Interview with worker B31.

¹¹²⁷ The Rainforest Alliance states that workers have the right to establish and join worker organisations of their own free choice without influence or interference by management (Critical criterion 4.4.), and that worker organisations operate without interference or influence by management (ibid). Workers also have the right to collectively negotiate the elements of their employment conditions into a collective bargaining agreement (ibid) and are fully protected against acts of discrimination or retaliation for reasons of affiliation (ibid). The certification standards refer to ILO Conventions C087 and C098, to which Unilever has also committed in its Human Rights Policy (Unilever 'Human Rights Policy' (n. 144), 1).

¹¹²⁸ The Code of Business Principles states that the company must "respect employees' rights to join or not to join a legally recognised trade union, or any other body representing their collective interests, and establish constructive dialogue and bargain in good faith with trade unions or representative bodies on employment conditions, labour management relations and matters of mutual concern, to the extent practicable taking national laws into consideration" (page 24). The Code also requires Unilever to "maintain a clear and transparent system of employee and management communication that enables employees to consult and have an effective dialogue with management" (ibid).

¹¹²⁹ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F175.

Sourcing Policy¹¹³⁰, the OECD Guidelines¹¹³¹, the ICESCR¹¹³², the Universal Declaration of Human Rights¹¹³³, and national legislation¹¹³⁴. However, I have found no positive evidence of a link between Unilever's mechanisms and the firm's practice, and the numerous issues which I have outlined in this section may compromise the implementation of Unilever's commitments in terms of freedom of association and collective bargaining.

5.2.4.2. Strikes

Workers have organised several strikes¹¹³⁵ in the past few years to protest against alleged poor working conditions and low wages¹¹³⁶, but they were mostly unsuccessful because Unilever management usually call the Field Force Unit [FFU], a division of the national police, to scatter the workers¹¹³⁷. The latest strike happened in 2016¹¹³⁸ over low wages¹¹⁴⁰. The FFU were indeed called¹¹⁴¹ and drove workers away. A manager admitted that the strike was bad and violent, that it destroyed property, and that it almost led to deaths¹¹⁴². Although the ILO Convention 087, on which relevant Rainforest Alliance standards are based, does not explicitly mention the right to strike, the ILO Committee on Freedom of Association and the ILO Committee of Experts on the Application of Conventions and Recommendations have frequently stated that the right to strike is a fundamental right of workers and of their organisations based on

¹¹³⁰ Unilever 'Responsible Sourcing Policy' (n. 826), Standard 8.

¹¹³¹ The OECD Guidelines requires firms to respect the right of workers to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations (Guideline V.1.b.).

¹¹³² The ICESCR states the right of everyone to form trade unions and join the trade union of their choice (Article 8(1)(a)), which are to function freely (Article 8(1)(b)), for the promotion and protection of their economic and social interests.

¹¹³³ Universal Declaration of Human Rights, Article 23(4).

¹¹³⁴ National legislation guarantees the right of every employee to form and join a trade union, to participate in the lawful activities of the union (Employment and Labour Relations Act, Article 9(1)), and to do so without fearing to be terminated (Article 37(3)(a)(v)) or discriminated against by their employer (Article 9(3)).

¹¹³⁵ Interviews with managers D1 and D8, local government representative E2, and workers B17, B18, B19, B26, B27, B28, B29, B31, B32, B33, and B34.

¹¹³⁶ Interviews with workers B17, B18, B19, B26, B28, and B32.

¹¹³⁷ Interviews with manager D8, and workers B17, B18, B19, B26, B27, B28, B29, B31, B32, B33, and B34.

¹¹³⁸ As of April 2018.

¹¹³⁹ Interviews with manager D1, and workers B27, B28, and B29.

¹¹⁴⁰ Interview with worker B28.

¹¹⁴¹ Interviews with manager D1, and workers B27 and B29.

¹¹⁴² Interview with manager D1.

ILO C087's provisions¹¹⁴³. The ICESCR also guarantees the right to strike¹¹⁴⁴. This way of handling strikes therefore conflicts with Unilever's commitments.

Since 2016, Unilever has therefore taken steps to prevent such violent strikes from happening again¹¹⁴⁵: management have intensified their relationship with TPAWU with more regular meetings to discuss issues and negotiate tea rates¹¹⁴⁶, and have introduced bonuses to keep workers happy¹¹⁴⁷, as mentioned above in Section 5.2.2.2. The local government acknowledged that the situation has improved under new management and that there have been no recent strikes¹¹⁴⁸. A manager reported that the Rainforest Alliance had had a positive impact in the relationship between the company and the trade union following the 2016 strikes, although no more details were provided¹¹⁴⁹.

I will now investigate the working conditions of Unilever's seasonal workers, especially as compared with permanent workers.

5.2.5. Working conditions of seasonal workers

Unilever hires up to 3.000 seasonal workers every year during high season, in addition to the 4.000 permanent workers employed all year round¹¹⁵⁰. However, as is common in the area¹¹⁵¹, seasonal workers do not have the same rights as permanent employees¹¹⁵², and are generally treated very differently¹¹⁵³ even though they have the same role. They are not offered compensation for work-related accidents¹¹⁵⁴ or sick leave, contrary to permanent workers. Neither are they given safety equipment and must therefore buy it themselves before starting their assignment¹¹⁵⁵. This difference

¹¹⁴³ Bernard Gernigon, Alberto Otero And Horacio Guido, 'ILO Principles Concerning the Right to Strike', *International Labour Reviews* 137(4), 1998, 9.

¹¹⁴⁴ ICESCR, Article 8(1)(d).

¹¹⁴⁵ Interview with manager D1.

¹¹⁴⁶ Management (D1) said that they have changed their approach to these negotiations and are more flexible: human resources officers are ready to go back to their hierarchical superiors to discuss TPAWU's requests instead of simply presenting workers' representatives with an immutable offer.

¹¹⁴⁷ Interview with manager D1.

¹¹⁴⁸ Interview with local government representative E2.

¹¹⁴⁹ Interview with manager D1.

¹¹⁵⁰ Interview with manager D1.

¹¹⁵¹ Interview with local government representative E2.

¹¹⁵² Interview with workers B17, B18, B19, B25, and B33.

¹¹⁵³ Interview with workers B34.

¹¹⁵⁴ See Section 5.2.3.3.

¹¹⁵⁵ See Section 5.2.3.1.

in treatment clashes with the Rainforest Alliance standards which do not differentiate between seasonal and permanent workers. It also clashes with the Universal Declaration of Human Rights¹¹⁵⁶ and the ICESCR¹¹⁵⁷ which guarantees the right to just and favourable conditions of work for all workers as well as with Unilever's Code of Business Principles which states that the firm must comply with legal requirements "in relation to short-term, casual, or agency workers"¹¹⁵⁸.

5.2.6. Right to non-discrimination

This section will be divided between discrimination at the hiring stage and during employment, and will be mainly focused on gender.

5.2.6.1. Hiring stage

Most interviewees reported common instances of discrimination against pregnant women, for both temporary and permanent positions¹¹⁵⁹, although a manager said that the firm did hire pregnant women¹¹⁶⁰. If this discriminatory practice did take place, it would clash with the OECD Guidelines, which specifically require firms to "prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood"¹¹⁶¹, and the Rainforest Alliance criteria prohibiting discrimination against pregnant women at the hiring stage¹¹⁶². It would also conflict with ILO Convention C111 and national legislation¹¹⁶³. On the other hand, the company says that it has permitted temporary women who were pregnant to go on unpaid leave¹¹⁶⁴ and come back later to finish their contracts¹¹⁶⁵, instead of terminating them.

However, there were no reports of any other type of discrimination. In a region with such a high HIV/AIDS rate, it is important to note that the company does seem to

¹¹⁵⁶ Universal Declaration of Human Rights, Article 23(1).

¹¹⁵⁷ ICESCR, Article 7.

¹¹⁵⁸ Unilever 'Code of Business Principles' (n. 823), 24.

¹¹⁵⁹ Interviews with workers B7, B25, B26, B29, B31, B33, B34, B49.

¹¹⁶⁰ Interview with manager D1.

¹¹⁶¹ OECD Guidelines, §54.

¹¹⁶² Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.3.

¹¹⁶³ See Section 4.1.2.3.2.1.

¹¹⁶⁴ Leave would be unpaid as the worker will have been working for Unilever for less than six months.

¹¹⁶⁵ Interview with manager D1.

implement its equal opportunity policy¹¹⁶⁶ regarding HIV/AIDS status¹¹⁶⁷ – although no positive evidence of a link between policy and practice was found.

5.2.6.2. *Employment stage*

Discrimination also takes place once workers are hired, mostly based on gender. Generally, many gender-based issues such as sexual harassment and rape have been reported in Mufindi, and especially in tea plantations¹¹⁶⁸. These issues have been linked to low levels of education, low wages, and the fact that most plantation managers are men¹¹⁶⁹. It is therefore not surprising that Unilever's female workers face similar issues: firstly, they may be victims of sexual harassment and abuse; secondly, they may be discriminated against because of their gender.

Firstly, despite the fact that there are slightly more women (52%) than men (48%) working in Unilever's tea operations in Tanzania¹¹⁷⁰, there have been cases of rape, sexual violence and harassment on company's premises¹¹⁷¹, as well as alleged sexual exploitation of women¹¹⁷², although I did not witness any such behaviour first-hand. Unilever has taken action to fight against gender-based violence by starting a welfare department in 2014, where a female manager is available to discuss any issues with workers and their families¹¹⁷³, in person or over the phone via the complaint hotline¹¹⁷⁴. They have also set up seminars about sexual harassment and women's rights, which are also used to talk out any potential issues¹¹⁷⁵. Seminars used to be held daily but are now organised weekly since the firm has seen some improvement in employees' behaviour¹¹⁷⁶ and workers now reportedly take these issues seriously¹¹⁷⁷. TPAWU leaders also reportedly train workers on gender-related issues¹¹⁷⁸. Most

¹¹⁶⁶ Unilever, 'HIV/AIDS Report: 25 years of experience', 2014, 11.

¹¹⁶⁷ Interview with manager D1 and worker B7.

¹¹⁶⁸ Interviews with civil society representatives A10 and A13.

¹¹⁶⁹ Interviews with civil society representatives A10 and A13.

¹¹⁷⁰ Interview with manager D1.

¹¹⁷¹ Interviews with managers D1 and D8 and doctor C20.

¹¹⁷² Interviews with worker B25.

¹¹⁷³ Interview with managers D1, D5, and D6.

¹¹⁷⁴ Interview with managers D5 and D6.

¹¹⁷⁵ Interview with manager D1.

¹¹⁷⁶ Interview with manager D1, and local doctor C20.

¹¹⁷⁷ Interview with managers D5 and D6.

¹¹⁷⁸ Interview with trade union representative F2.

workers said that there was no gender-based violence or harassment¹¹⁷⁹, although others say that it is still an issue¹¹⁸⁰, particularly in the plantations¹¹⁸¹. Unilever has committed in the following self-regulatory instruments to the prevention sexual harassment in its operations¹¹⁸²: the company's Human Rights Policy¹¹⁸³, its Code of Business Practices¹¹⁸⁴, its Sustainable Agriculture Code¹¹⁸⁵, its Responsible Sourcing Policy¹¹⁸⁶, and the Rainforest Alliance¹¹⁸⁷. On its website, Unilever has also reported running a programme targeting 6.000 plantation workers and their children and 1.000 women smallholder farmers (as well as managers, village elders, and medical professionals) with training on how to address and report all forms of violence, including gender-based violence and sexual harassment¹¹⁸⁸. However, the only instrument which the firm has acknowledged generally implementing and 'pushing for' at the time of the fieldwork was the Code of Business Principles, which prohibits direct or indirect behaviour that "could be construed as sexual or other harassment or bullying, such as making offensive or sexually explicit jokes or insults, displaying, emailing, texting, or otherwise distributing, offensive material or material of a sexually explicitly nature, misusing personal information, creating a hostile or intimidating environment, isolating or not co-operating with a colleague, or spreading malicious or insulting rumours."¹¹⁸⁹ A manager confirmed that it includes sanctions for the violation of the standards¹¹⁹⁰. However, a manager explicitly stated that they did not take action to meet the Rainforest Alliance requirements¹¹⁹¹. As for the rest of the instruments listed above, no positive evidence of a link was found between the firm's mechanisms and its practice.

¹¹⁷⁹ Interviews with workers B17, B18, B19, B26, B27, B29, B31, B32, B33, B34, and B49.

¹¹⁸⁰ Interview with doctor C20,

¹¹⁸¹ Interview with manager D8.

¹¹⁸² Unilever also reiterated its commitment to prevent sexual harassment in 2015 (Unilever 'Human Rights Report' (n. 836), 35).

¹¹⁸³ Unilever 'Human Rights Policy' (n. 144), 3.

¹¹⁸⁴ Unilever 'Code of Business Principles' (n. 823), 24.

¹¹⁸⁵ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F103; the Code also prohibits sexual harassment (standard F168).

¹¹⁸⁶ Unilever 'Responsible Sourcing Policy' (n. 826), Standards 3 and 10.9.

¹¹⁸⁷ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.2.

¹¹⁸⁸ Unilever, 'Understanding Our Human Rights Impact' <<https://www.unilever.com/sustainable-living/enhancing-livelihoods/fairness-in-the-workplace/understanding-our-human-rights-impacts/>> (accessed on 21 October 2019); and UN and Unilever, 'A Global Women's Safety Framework in Rural Spaces: Informed By Experience In The Tea Sector', *UN Women*, 2018, III.

¹¹⁸⁹ Unilever 'Code of Business Principles' (n. 823), 24.

¹¹⁹⁰ Interview with manager D1.

¹¹⁹¹ Interviews with managers D5 and D6.

Secondly, female plantation workers are not allowed to stay in the plantations at the end of the day once plucking is over to wait for the trucks¹¹⁹², which means that they miss out on any overtime opportunities. It is acknowledged that this comes from a concern for the women's safety, but it denies them economic opportunities and is in conflict with the Rainforest Alliance standards¹¹⁹³ as well as with Unilever's Code of Business Principles¹¹⁹⁴, the firm's Human Rights Policy¹¹⁹⁵, ILO Convention C111, the Universal Declaration of Human Rights¹¹⁹⁶, and the ICESCR¹¹⁹⁷. Instead of a blanket prohibition, measures could be taken to protect women in plantations and allow them to work overtime if they wish to do so.

Finally, a nursery is available and free for all workers¹¹⁹⁸, which seems to be in line with Unilever's human rights commitments to women's opportunities, although no positive evidence that they are connected was found.

Overall, Unilever has taken action to address the widespread issue of sexual harassment and abuse in the firm's plantations and factories, although no link could be made with the firm's self-regulatory mechanisms despite the firm's adoption of multiple relevant standards. However, the situation is still problematic, and women still can, to some extent, be discriminated against when they apply for employment and later at work.

Now that I have evaluated Unilever's performance regarding worker-related rights, I will do so regarding community-related rights.

5.3. Community-related rights

In this section, I will review Unilever's performance as set against community-related human rights standards, which will be relevant to workers and the broader community living around Unilever's plantations. I will therefore investigate living conditions offsite and onsite, Unilever's contribution to the health and education needs of the

¹¹⁹² Interview with worker B24.

¹¹⁹³ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.3.

¹¹⁹⁴ Unilever 'Code of Business Principles' (n. 823), 23.

¹¹⁹⁵ Unilever 'Human Rights Policy' (n. 144), 2.

¹¹⁹⁶ Universal Declaration of Human Rights, Article 23(1) and (3).

¹¹⁹⁷ ICESCR, Articles 2(2) and 7.

¹¹⁹⁸ Interview with manager D8.

population (and any other contribution) in the area, and the company's impact on the environment.

5.3.1. Housing and living conditions

In the villages around Unilever's plantations, houses have no running water¹¹⁹⁹ or electricity¹²⁰⁰, apart from a minority who have solar panels¹²⁰¹. In this context, most workers live onsite, in around 2.000 houses¹²⁰². There are different categories of houses, allocated to workers depending on their hierarchic position¹²⁰³ (e.g. managers' houses are bigger than those of factory workers). The company offers housing to all employees, with free – although not running – drinking water¹²⁰⁴. This is consistent with the Rainforest Alliance requirement that workers and their families have access to drinking water¹²⁰⁵. The company did not specify whether the provision of water to employees had been influenced by the adoption of the label's standards, although the Rainforest Alliance's auditors told Unilever in 2017 that there were issues with water maintenance and purification on the Kibwele estate, and that the firm had to finish the water purification project which they had started two years before to get their certification renewed in 2018¹²⁰⁶. It is therefore highly likely that the label had an impact on the firm's water provision.

Houses are one or two rooms, depending on the size of the family, and only houses near the main factory have (solar) electricity. When fieldwork was conducted, the firm had recently installed a stove in each house, starting with the houses which did not have electricity. Once the firm has enough funding, they will reportedly install stoves in the rest of the houses. Taken in the context of average living conditions in Mufindi in 2018, the lack of electricity (and stoves in some houses) cannot be interpreted as clashing with the commitment made by Unilever to respect the right to an adequate

¹¹⁹⁹ Interviews with local government representatives E2 and E3, and community members C50, C52, C53, C54, C55, and C56.

¹²⁰⁰ Interviews with local government representative E3, and community members C52, C53, C54, C55, and C56.

¹²⁰¹ Interviews with local government representative E2, and community members C50 and C56.

¹²⁰² Interview with manager D1.

¹²⁰³ Interviews with managers D1, D5, and D6.

¹²⁰⁴ Interviews with manager D8 and workers B20, B21, B23, B24, B25, B29, B31, B32, B33, and B34, and community member C47.

¹²⁰⁵ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.12.

¹²⁰⁶ Interview with manager D1.

standard of living, including adequate housing, as guaranteed by the Universal Declaration of Human Rights¹²⁰⁷ and the ICESCR¹²⁰⁸. Indeed, the UN Committee on Economic, Social, and Cultural Rights interprets adequate shelter as offering “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost”¹²⁰⁹. However, it is important to note that what is considered “adequate basic infrastructure” in Mufindi may change over the years, and that Unilever may need to ensure that all houses have electricity if most households in the area become equipped.

Moreover, Unilever said that the few workers who lived offsite did so because they were from the area¹²¹⁰, but most offsite workers said that they chose to live in the villages around the plantations because the housing conditions onsite were not adequate¹²¹¹. I observed that houses for whole families were indeed small with, in most houses, only one room separated with a piece of fabric into the kitchen area on one side and the bedroom area on the other. The lack of space in Unilever’s housing may be in conflict with the Rainforest Alliance housing requirements¹²¹². Moreover, Unilever has committed to the right to a family life as guaranteed by the Universal Declaration of Human Rights¹²¹³ and the ICCPR¹²¹⁴, and the right to an adequate standard of living, including adequate housing, by the Universal Declaration of Human Rights¹²¹⁵ and the ICESCR¹²¹⁶. However, and similarly to the lack of concrete policies on electricity in workers’ housing mentioned above, the firm has not translated these

¹²⁰⁷ Universal Declaration of Human Rights, Article 25.

¹²⁰⁸ ICESCR, Article 11.

¹²⁰⁹ UN Committee on Economic, Social, and Cultural Rights, General Comment 4, 1991, §7.

¹²¹⁰ Interview with manager D1.

¹²¹¹ Interviews with manager D8, local government representative E2, and workers B7, B17, B18, B19, B27, B31, and B33.

¹²¹² The Rainforest Alliance has rules around sanitation, sleeping space, floors, beds, windows, doors, roofs, headroom, toilets, washing and laundry facilities, light, ventilation, cooking facilities, firewood smoke evacuation, fire extinguishers, safety exits, and locking mechanisms. Unilever must also provide areas for drying clothes (Critical and continuous improvement criteria 4.13., 4.28. and 4.30., and continuous improvement criterion 4.32). These criteria were also included in the previous standard (criterion 5.14.).

¹²¹³ Universal Declaration of Human Rights, Article 16.

¹²¹⁴ UN General Assembly, International Covenant on Civil and Political Rights (hereinafter ‘ICCPR’), 16 December 1966, Article 23.

¹²¹⁵ Universal Declaration of Human Rights, Article 25.

¹²¹⁶ ICESCR, Article 11.

high-level rights into concrete standards, leaving a gap in the operationalisation of the company's human rights commitments.

Finally, there are privately-run shops and social halls with a television where workers and their families may go to relax in the evening¹²¹⁷. This is consistent with the Rainforest Alliance requirement that Unilever must also provide areas for recreation¹²¹⁸, although no positive evidence was found linking the label to the presence of these relaxation areas on the company's compound.

In conclusion, Unilever is improving the living conditions for workers living onsite, but no link was found between the firm's mechanisms and its practice. Moreover, not all of the firm's standards were implemented when the fieldwork was conducted.

5.3.2. Right to a clean environment

This section will first provide a general assessment of Unilever's environmental impact, and second an evaluation of the firm's specific practice around waste management.

5.3.2.1. General considerations

Unilever lost their Rainforest Alliance certification in 2014 because of environmental issues around natural forests and water, and the firm has since hired an environmental manager and made improvements to make the necessary improvements and regain its certification¹²¹⁹. Unilever has also set up a department dedicated to the preservation of the environment, with anti-poaching patrols to stop tree-cutting and -burning, in partnership with the local government¹²²⁰. A manager reported that the certification had helped turn the firm's agricultural business into a conversation activity¹²²¹. Perhaps as a result, most workers, community members, and local government

¹²¹⁷ Interview with manager D5; although there was no television on the day I visited one of the social halls.

¹²¹⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.32. This criterion was also included in the previous standard (criterion 5.14.).

¹²¹⁹ Interview with manager D1.

¹²²⁰ Interview with manager D1.

¹²²¹ Interview with manager D7.

representatives stated that Unilever's activities had no negative environmental impact¹²²².

However, there was a report of water pollution due to dangerous chemicals which Unilever uses annually on crops for fertilisation purposes¹²²³. This clashes with the Rainforest Alliance requirement that Unilever efficiently manage its pesticide use¹²²⁴, with enforcement of non-applications zones, establishment of vegetative barriers, or employment of other effective mechanisms to reduce spray drift and separate application zones from areas of human activities¹²²⁵ and natural ecosystems¹²²⁶. Potential affected persons or communities must also be identified, alerted, warned in advance about pesticide applications, and prevented from access to pesticide application areas¹²²⁷. Unilever's practice is also in conflict with the OECD Guidelines¹²²⁸ which require Unilever to assess and mitigate foreseeable environmental, health, and safety-related impact associated with their activities. The firm must also maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations. Furthermore, this pollution clashes with Unilever's Sustainable Agriculture Code, which requires the firm to protect water bodies from pollution by agricultural bodies¹²²⁹. The local government reportedly discussed the issue with the company in 2017, and Unilever said that they would take precautions from then on as they marked up places where water would run so as to avoid spraying there during the fertilisation process¹²³⁰. If the situation does improve, it will therefore be because of the local government's intervention, and not because the relevant standards prescribed a certain behaviour.

Moreover, a local government representative also said that the company polluted by releasing smoke¹²³¹, which would be in conflict with the Rainforest Alliance, the OECD Guidelines, and Unilever's Sustainable Agriculture Code, as mentioned above.

¹²²² Interviews with manager D8 and workers B17, B18, B19, B23, B24, B25, B27, B28, B31, B32, B33, and B49, and community members C52, C53, C54, C55, and C56.

¹²²³ Interviews with community member C51, and local government representative E3.

¹²²⁴ The Rainforest Alliance also requires Unilever to reduce water and wind erosion, including by minimising herbicide use (Continuous improvement criterion 3.8.).

¹²²⁵ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 3.28.

¹²²⁶ Ibid, Continuous improvement criterion 3.27.

¹²²⁷ Ibid, Continuous improvement criterion 3.32.

¹²²⁸ OECD Guidelines, Guideline VI.5.

¹²²⁹ Unilever 'Sustainable Agriculture Code' (n. 827), F43.

¹²³⁰ Interview with local government representative E3.

¹²³¹ Interview with local government representative E1.

Finally, Unilever uses eucalyptus trees for firewood¹²³², which grow on 1.405 hectares – leased from the government alongside the tea plantations – and are cut on an eight-year rotation¹²³³. This practice seems to be in line with Unilever’s Sustainable Agriculture Code¹²³⁴, although I could not identify any impact of the Code’s standards on Unilever’s practice.

As mentioned above in Section 4.1.3.2.3.1., Unilever has gone through environmental impact assessments, as the OECD Guidelines recommend¹²³⁵. However, I cannot analyse the findings of these assessments as I was unable to get access to them¹²³⁶.

In conclusion, becoming certified with the Rainforest Alliance has substantially improved Unilever’s environmental impact, although the impact of the rest of the firm’s self-regulatory instruments could not be positively established.

5.3.2.2. Waste disposal

Unilever’s waste disposal management does not seem to be an issue¹²³⁷. The company has specific mechanisms in place, using waste segregation, dumping sites with compartmentalisation, and recycling¹²³⁸. They follow the Rainforest Alliance’s Integrated Waste Management protocols¹²³⁹, which complement the company’s environmental guidelines¹²⁴⁰. The Rainforest Alliance includes criteria related to the

¹²³² Interview with manager D7.

¹²³³ Baffes (n. 749), 13.

¹²³⁴ Unilever ‘Sustainable Agriculture Code’ (n. 827), Standard F137.

¹²³⁵ OECD Guidelines, Guideline VI.3.

¹²³⁶ As explained in Chapter 4, I have contacted Unilever and the organisation who conducted the assessments in an effort to get access to the content of the assessments but, after multiple email exchanges, it became clear that difficulties were too great and that I would not be able to gain access.

¹²³⁷ Interviews with manager D8 and workers B7, B24, B25, B27, B28, B29, B31, B32, B33, B34, and B49.

¹²³⁸ Interview with manager D7.

¹²³⁹ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criteria 3.37.-3.43. These criteria were also included in the previous standard (criteria 10.1-10.6.).

¹²⁴⁰ Interview with manager D7.

management and treatment of wastewater^{1241 1242}, which Unilever seems to follow and to have been directly influenced by the certification's requirements. However, it is acknowledged that I had limited capacity to assess the technical aspects of these measures.

5.3.3. Right to health

This section will first cover the main health issues reported around Unilever's operations, and second the health services available to workers and community members.

5.3.3.1. Health issues

The main health issues around Unilever's plantations are poor access to water and sexually transmitted diseases [STDs] (and especially HIV/AIDS).

First, access to water is a big issue in the Mufindi region and more specifically around Unilever's plantations¹²⁴³. There is no running water in the area¹²⁴⁴, so the population mostly uses pumps from the Danish International Development Agency^{1245 1246} and natural wells¹²⁴⁷, which do not provide the population with drinking water¹²⁴⁸. There

¹²⁴¹ Unilever must ensure that no untreated water is discharged into aquatic ecosystems or certain types of soil. The company must also manage pit latrines and sewage disposal sites to minimise risk to aquatic ecosystems and to drinking water supplies (Continuous Improvement Criteria 3.20.-22.). The Rainforest Alliance also requires Unilever to follow certain procedures for the disposal of general waste, starting with adopting a waste management plan (Continuous Improvement Criterion 3.38.). Waste is to be segregated (Continuous Improvement Criterion 3.40.), and waste burning is prohibited, except in certain circumstances (Continuous Improvement Criterion 3.39.). Finally, waste minimisation and use of recycled products is to be taken into account by Unilever when the firm selects its product providers (Continuous Improvement Criterion 3.42.), and the company must check that service providers in charge of waste disposal do not pose risks to natural ecosystems, drinking water supplies, or the health and safety of people living near the disposal sites (Continuous Improvement Criterion 3.43.). All these criteria were also included in the previous standard (criteria 10.1-10.6.).

¹²⁴² Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criteria 3.1 and 3.2.

¹²⁴³ Interviews with manager D8, local government representatives E2 and E3, workers B7, B17, B18, B19, B27, B32, B33, B34, B49, and community members C24, C25, C26, C27, C29, C30, C43, C44, C51, C52, C53, C54, C55, and C56.

¹²⁴⁴ Interview with worker B24.

¹²⁴⁵ These pumps are from the Danish International Development Agency.

¹²⁴⁶ Interview with workers B7, B24, and community members C47, C49, C51, and C56.

¹²⁴⁷ Interviews with local government representatives E2 and E3 and community members C24, C25, C26, C27, C43, C44, C47, C49, C50, C51, C53, C54, C55, C56, workers B32 and B49.

¹²⁴⁸ Interview with local government representative E2, community members C27, C29, and C30 (who said that people catch typhoid fever from drinking water from some wells), and worker B32.

are only two wells in Kibao for over 5.000 people. When wells are dry, community members must buy bottled water¹²⁴⁹, which is expensive¹²⁵⁰. As a consequence, some people drink from the river or rainwater and get sick¹²⁵¹. Moreover, as mentioned above in Section 5.3.2.1., there were reports that the fertilisation chemicals used by Unilever ended up in the water, making the local population ill¹²⁵². There is a current project¹²⁵³ to provide water to four villages – Sawala, Mtwango, Lufuna, Kibao – by installing pumps which will purify the water and bring it to a big tank to be built in each village. This will supply water to taps which will be installed in houses in all four villages. However, two community members¹²⁵⁴ said that the project was suspended because the supplier had not been paid – although the project coordinator only said that the project would take a year to complete and did not mention any suspension¹²⁵⁵. It is therefore unclear when the pumps will be operational.

Faced with this situation, the local government has reportedly asked Unilever to help¹²⁵⁶, but the company had yet to contribute when the fieldwork took place¹²⁵⁷. This failure to help clashes with the Rainforest Alliance requirement that Unilever's management implement and document activities to support identified needs and priorities of the community¹²⁵⁸. The silence of the company on this issue also clashes with Unilever's own report from 2015 that they had "taken significant steps forward, [including in respect to their] commitment to recognise and respect the human right to water"¹²⁵⁹. Finally, it conflicts with the OECD Guideline stating that "[stakeholder] engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of [...] water, which could significantly affect local communities"¹²⁶⁰. An important question

¹²⁴⁹ Interviews with community members C24, C25, C26,

¹²⁵⁰ Each bottle costs Tsh 400.

¹²⁵¹ Interviews with worker B7, and community members C29, and C30.

¹²⁵² Interview with local government representative E2.

¹²⁵³ Interview with project coordinator C48.

¹²⁵⁴ Interviews with community members C53 and C54.

¹²⁵⁵ Interview with project coordinator C48.

¹²⁵⁶ Interview with local government representative E3.

¹²⁵⁷ Interview with local government representatives E2 and E3, and manager D1 (who acknowledged that the company did not contribute, but not that they had received requests from the community).

¹²⁵⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms for the first six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

¹²⁵⁹ Unilever 'Human Rights Report' (n. 836), 1.

¹²⁶⁰ OECD Guidelines, Commentary on the policies, §25, Guideline VI.3.

would therefore be whether water use by Unilever uses up resources which the community needs. The company has a water abstraction permit, delivered by government authorities¹²⁶¹, and may only extract a certain amount of water. Unilever uses man-made dams and pumps¹²⁶², and water use is managed according to the company's water resources management policy. Water use is also monitored and recorded for the purpose of certification with the Rainforest Alliance¹²⁶³, and a manager said that being certified has helped the company with documenting their own water use¹²⁶⁴. However, it is unclear whether, despite these precautions, Unilever's water use leads to shortages for the community living around the firm's plantation, and further investigation would be required.

Second, the main diseases reported around Unilever's plantations are STDs, and especially HIV/AIDS¹²⁶⁵. Iringa, where Mufindi is, has the second highest rate of HIV/AIDS nationally, with 11.3% of the population living with the disease¹²⁶⁶. The national average is 4.7%¹²⁶⁷. This high rate has been linked by the local government and a doctor to the high number of migrant workers, and especially seasonal workers, living in the area and interacting with the locals¹²⁶⁸. As tea companies are responsible for the existence of Kibao¹²⁶⁹, Unilever has a particular responsibility to mitigate any negative impact which the large number of workers employed by the corporation may have on the local community. This argument is also supported by the various commitments about HIV/AIDS prevention and treatment which Unilever has made. These commitments, which I outline below, seem to (mostly) be fulfilled: in accordance with their CBA¹²⁷⁰, Unilever runs a weekly prevention programme¹²⁷¹ in partnership with local NGOs¹²⁷² to raise awareness about the disease – although one

¹²⁶¹ Interview with manager D7.

¹²⁶² Interview with manager D1.

¹²⁶³ Interview with manager D7.

¹²⁶⁴ Interview with manager D7.

¹²⁶⁵ Interviews with civil society representative A13, doctors C20, C45, and C46, and community member C27.

¹²⁶⁶ For adults aged 15-64 years old (Tanzania HIV/AIDS Indicator Survey, 2016-2017, in US President's Emergency Plan for AIDS Relief, 'Tanzania Country Operational Plan COP 2018 Strategic Direction Summary', 2018, 6).

¹²⁶⁷ Ibid, 5.

¹²⁶⁸ Interviews with doctor C20 and local government E2.

¹²⁶⁹ Interview with local government representative E2.

¹²⁷⁰ TAT-TPAWU CBA, Article 18(1) and 18(3).

¹²⁷¹ Interviews with managers D1 and D8, doctor C20, and workers B23, B26, B29, B31, B32, and B33.

¹²⁷² Interview with civil society representative A14.

worker said that the programme had not run in four months¹²⁷³. The company also offers free HIV/AIDS testing, treatment, and counselling¹²⁷⁴, and a union representative said that TPAWU leaders provide training on HIV¹²⁷⁵. Local government said that Unilever provides significant help with HIV/AIDS prevention and treatment, including by educating the youth about the disease and how to prevent it from spreading, and that the situation would be worse without the company's contribution¹²⁷⁶. Unilever's hospital also partners with a local hospital to circumcise men so as to thwart the spread of diseases¹²⁷⁷. These activities are in line with Unilever's Sustainable Agriculture Code¹²⁷⁸ and with the company's 2015 Report, where the company writes that they are "committed to deploying effective programmes on health education (using [their] skills in communication) and to securing access to appropriate treatment for [their] employees at all stages of HIV/AIDS"¹²⁷⁹. They also outline in the report their "comprehensive framework to manage the HIV/AIDS programme in Sub-Saharan Africa, which addresses the needs of individuals at key stages of prevention and treatment"¹²⁸⁰. It includes awareness through educational programmes for all employees, prevention, including prevention and treatment of occupational exposures, and distribution of condoms, acceptance of status by encouraging HIV/AIDS-positive individuals to seek treatment, and treatment and care, including access to anti-retroviral therapy¹²⁸¹. They offer "free HIV/AIDS testing, as well as education programmes to raise awareness, teach safe practices and prevent discrimination"¹²⁸², and support the "de-stigmatisation of HIV/AIDS through voluntary confidential testing by healthcare providers"¹²⁸³. Finally, they "help with treatment to prevent mother-to-child transmission"¹²⁸⁴. These policies are "aligned with the key principles of the International Labour Organization Code of Practice on HIV/AIDS"¹²⁸⁵, and is (mostly) fulfilled in the context of their Tanzanian tea

¹²⁷³ Interview with worker B49.

¹²⁷⁴ Interviews with manager D1, local government representative E2, and doctor C49; although community member C55 said that the HIV/AIDS programme was only for workers.

¹²⁷⁵ Interview with trade union representative F2.

¹²⁷⁶ Interview with local government representative E2.

¹²⁷⁷ Interview with local government representative E2.

¹²⁷⁸ Unilever 'Sustainable Agriculture Code' (n. 827), Standard F79.

¹²⁷⁹ Unilever 'Human Rights Report' (n. 836), 41.

¹²⁸⁰ Ibid.

¹²⁸¹ Ibid.

¹²⁸² Ibid.

¹²⁸³ Ibid.

¹²⁸⁴ Ibid.

¹²⁸⁵ Ibid.

operations. Unilever's Tanzanian practice also helps implement the firm's commitment to the right to health as guaranteed by the Universal Declaration of Human Rights¹²⁸⁶ and the ICESCR¹²⁸⁷. Finally, it follows the OECD Guidelines recommending that companies "assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them"¹²⁸⁸. However, no positive evidence of a link could be established between Unilever's mechanisms and the firm's HIV/AIDS programme.

5.3.3.2. *Health services*

The community mainly uses dispensaries in Sawala and Kibao¹²⁸⁹, although no doctor works there. Only two nurses work in each dispensary¹²⁹⁰ which reportedly lack adequate tools¹²⁹¹; nurses can only provide first aid, check-ups for malaria, and maternity services¹²⁹². This includes deliveries if no surgeon is needed, although one community member said that women avoid delivering there because they know that they offer poor services¹²⁹³. For serious issues, including for testing for anything but malaria¹²⁹⁴, community members who cannot afford private care must go to Mafinga's hospital¹²⁹⁵, which is reportedly crowded. The government provides health insurance for a monthly amount of Tsh10.000 covering two adults and up to four children; insured citizens get treated for free in government health facilities¹²⁹⁶. However, medication is in short supply in government-run hospitals¹²⁹⁷, and most patients must buy it from privately-run pharmacies, which are not covered by health insurance¹²⁹⁸. One civil society representative and two community members complained that there

¹²⁸⁶ Universal Declaration of Human Rights, Article 25.

¹²⁸⁷ ICESCR, Article 12(1).

¹²⁸⁸ OECD Guidelines, Guideline VI.3.

¹²⁸⁹ Interviews with civil society representative A14, local government representatives E2 and E3, and community members C24, C25, C26, C43, C44, C45, C46, C50, C51, C52, C53, C54, C55, and C56,.

¹²⁹⁰ Interviews with community members C27, C29, C30, C43, C44, C45, and C46, doctor C49.

¹²⁹¹ Interviews with community members C45 and C46.

¹²⁹² Interview with doctor C49.

¹²⁹³ Interview with community member C51.

¹²⁹⁴ Interview with community member C27.

¹²⁹⁵ Interviews with community members C24, C25, C26, and C27.

¹²⁹⁶ Interviews with community members C71, C72, C74, and C76.

¹²⁹⁷ Interviews with community members C27, C28, and worker B7.

¹²⁹⁸ Interviews with community member C27, and worker B7.

were not enough dispensaries as most of the population in the area is poor and cannot afford to travel to the existing centres in Sawala and Kibao¹²⁹⁹. Some also complained that there were not enough dispensaries for the whole population living in the area¹³⁰⁰. Although some disagree¹³⁰¹, most interviewees state that Unilever's hospital offered good services¹³⁰², but only if one can access its services for free as a worker (or as a worker's dependent) since it is otherwise too expensive^{1303 1304}. The company's hospital has 83 beds, an operational theatre and a maternity ward with adequate equipment¹³⁰⁵, and provides most services which are found in regular hospitals¹³⁰⁶. It also provides family-planning counselling¹³⁰⁷, and delivers free medication¹³⁰⁸ and services, including occupational health check-ups¹³⁰⁹, to all workers and up to four dependants. This includes seasonal employees¹³¹⁰ – although until recently dependants of seasonal workers did not have access to free treatment¹³¹¹. A worker with a serious medical condition said they mainly wanted to keep working for Unilever because of the free surgery and treatment available at the company's hospital¹³¹². Unilever's provision of free healthcare to its workers and their dependents is in line with the Rainforest Alliance standards¹³¹³. It also respects the right to health as guaranteed by the Universal Declaration of Human Rights¹³¹⁴, although Unilever has not, once again, translated this high-level principle into concrete standards for direct implementation

¹²⁹⁹ Interview with civil society representative A14 and community members C43 and C44.

¹³⁰⁰ Interviews with community members C45 and C46.

¹³⁰¹ Interviews with community members C23, C29, C30, and workers B2. The latter said that services were good only for upper management, and that workers preferred to go to government-run hospitals or private clinics.

¹³⁰² Interviews with community members C24, C25, C26, C27, C28, and workers B7.

¹³⁰³ Services reportedly cost Tsh100.000/day for a bed (C51); Tsh60.000 for a consultation (C24, C25, and C26); and Tsh150.000 for delivery (C24, C25, and C26).

¹³⁰⁴ Interviews with local government representative E2, community members C27, C28, C29, C30, C47, C50, C51, C53, C54, C55, and C56, doctor C49, and workers B32; manager D1 and local doctor C20 confirmed that community members who were not workers or workers' dependents had to pay for services.

¹³⁰⁵ Interview with manager D1.

¹³⁰⁶ Interview with doctors C20, C45 and C46.

¹³⁰⁷ Interview with doctors C45 and C46.

¹³⁰⁸ Interview with manager D1.

¹³⁰⁹ Interview with doctor C20.

¹³¹⁰ Interviews with workers B7 and B23.

¹³¹¹ Interview with manager D1.

¹³¹² Interview with manager D9.

¹³¹³ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous Improvement Criterion 4.31. This criterion was also included in the previous standard (criterion 5.16.).

¹³¹⁴ Universal Declaration of Human Rights, Article 25.

on the ground. In any case, no positive evidence linking the firm's mechanisms and Unilever's contribution to the health of its employees was found.

However, contrary to workers who can access Unilever's health services for free, community members must pay high fees to be treated at Unilever's hospital¹³¹⁵ and therefore do not benefit from living near the company's hospital apart from HIV/AIDS-related services¹³¹⁶. This is in conflict with the Rainforest Alliance requirement that management implement and document activities to support identified needs and priorities of the community¹³¹⁷, and with the right to health as guaranteed by the Universal Declaration of Human Rights¹³¹⁸.

5.3.4. Right to education

There are a dozen primary and secondary schools in the villages around Unilever. The firm's school was founded in 1994, originally for managers' children (although enrolment is no longer restricted) and is still currently run by the corporation. Although Unilever partially subsidises enrolment for their employees¹³¹⁹, annual fees are too high for most workers except for management^{1320 1321}. Consequently, only 30% of the 125 pupils enrolled are Unilever employees' children¹³²². Most workers send their children to government-run schools¹³²³, which are in need of refurbishment¹³²⁴ and of housing facilities for teachers¹³²⁵. There were reports of complaints to Unilever about it¹³²⁶, although I could not independently verify these allegations. Moreover, there

¹³¹⁵ For detail of prices, see (n. 1303).

¹³¹⁶ See the section above.

¹³¹⁷ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

¹³¹⁸ Universal Declaration of Human Rights, Article 25.

¹³¹⁹ The company subsidises 40% of the fees (interview with community member C21). Manager D1 only said that the company offered subsidies.

¹³²⁰ Annual school fees are: full secondary boarders: Tsh3 million; primary full boarders: Tsh2.7 million; day primary pupils: Tsh1.4 million (interview with community member C21).

¹³²¹ Interviews with manager D8, local government representative E3, workers B7, B17, B18, B19, B23, B26, B29, B32, B33, and B34, and community members C27, C47, C52, C53, C54, C55, and C78.

¹³²² Interview with community member C21.

¹³²³ Interviews with manager D8, local government representative E3, workers B26, B29, B32, B33, and B34, and community members C47, C55, and C51.

¹³²⁴ Interviews with local government representative E2, and community members C28, C29 and C30.

¹³²⁵ Interview with schoolteacher C28.

¹³²⁶ Interviews with community members C29 and C30.

were reports of a lack of teachers in public schools¹³²⁷, especially science teachers¹³²⁸, although other community members disagree¹³²⁹. It was usually acknowledged that there were enough schools¹³³⁰, however there were conflicting reports concerning attendance¹³³¹ and one report of poor performance¹³³² and of difficulties encountered by parents to provide their children with all necessities¹³³³. The fact that Unilever's school is so expensive means that workers and community members alike cannot benefit from it, which clashes with the Rainforest Alliance requirement that the firm provides all workers with access to basic education¹³³⁴, as well as with the (already mentioned) label's requirement that management implement and document activities to support identified needs and priorities of the community¹³³⁵. Finally, it fails to fulfil Unilever's commitment to the right to education as guaranteed by the Universal Declaration of Human Rights¹³³⁶ and the ICESCR¹³³⁷. Indeed, the UN Committee on Economic, Social, and Cultural Rights interprets the right to education to include "affordability"¹³³⁸.

However, it is important to note that Unilever built the Lugoda primary school, which is now run by the government¹³³⁹, and that the company still materially contributes to it¹³⁴⁰. They have also provided funds for a biology laboratory for a secondary school in Kibao¹³⁴¹ and have built some dormitories for secondary students¹³⁴². It is usually acknowledged by the local government, community members, and the firm itself, that

¹³²⁷ Interviews with civil society representative A14, worker B7, and community members C24, C25, C26, and C56.

¹³²⁸ Interview with civil society representative A14.

¹³²⁹ Interviews with local government representative E2, and community member C23.

¹³³⁰ Interviews with local government representative E2, and community members C27, C28, C43, C44, and C50.

¹³³¹ Community member C27 said that attendance was poor while community member C47 said that all children were going to school.

¹³³² Interview with community member C27.

¹³³³ Interview with community member C50.

¹³³⁴ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.31. This criterion was also included in the previous standard (criterion 5.17.).

¹³³⁵ Ibid, Continuous improvement criterion 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

¹³³⁶ Universal Declaration of Human Rights, Article 26.

¹³³⁷ ICESCR, Article 13.

¹³³⁸ UN Committee on Economic, Social, and Cultural Rights, General Comment 13, 1999, §6.

¹³³⁹ Interviews with managers D5 and D6.

¹³⁴⁰ Interviews with managers D5 and D6.

¹³⁴¹ Interview with local government representative E2.

¹³⁴² Interview with manager D1.

the company contributes to the needs of schools in the area¹³⁴³, which helps Unilever fulfil the commitments it made to the different instruments mentioned above – although no positive evidence linking the company’s mechanisms to the firm’s support for schools in the area was found. To the contrary, a representative from the local government linked the contributions made by Unilever to the needs of the community in the past few years to the influence of the current government¹³⁴⁴; another representative of the local government confirmed this by explaining that the firm had contributed desks following President Magufuli’s call to the private sector for desks to be provided to schools¹³⁴⁵.

Now that I have assessed Unilever’s human rights performance against the firm’s standards and attempted to link practice on the ground to commitments on paper, I will use the framework of ‘key features’ developed in Chapter 3 to investigate the effectiveness of Unilever’s self-regulatory mechanisms.

5.4.Preliminary investigation into the effectiveness of Unilever’s self-regulatory mechanisms

In Chapter 4, I outlined what Unilever publicly states it is doing to implement its commitments. In this chapter, I have investigated what the company is doing *in practice*, focusing on its tea operations in the Tanzanian region of Mufindi. It is now important to assess the effectiveness of the firm’s self-regulatory mechanisms using the framework of ‘key features’ developed in Chapter 3: Unilever’s standards drafting (and the potential impact of Mufindi’s stakeholders), the embedding of its standards into its everyday tea operations in Mufindi, the monitoring and reporting of the compliance of its Mufindi tea operations with its standards, the firm’s complaints mechanism, and the potential sanctions for breaches of standards by its workers and contractors in Mufindi.

¹³⁴³ Interviews with managers D5 and D6, local government representative E2, and community members C24, C25, and C26.

¹³⁴⁴ Interview with local government representative E3.

¹³⁴⁵ Interview with local government representative E2.

First, workers or community members are not involved in the drafting or updating of global policies¹³⁴⁶. Locally, the only contribution which workers make is at the level of the negotiation of CBAs through their trade union representatives¹³⁴⁷. This may explain why so few workers – and no community members – are aware that Unilever has made human rights commitments or adopted self-regulatory mechanisms, and why there is no feeling of standards ownership: workers are trained on certain standards, but that is the end of it. Another issue is the fact that some of Unilever’s high-level commitments – mainly made using company-level mechanisms – have no translation into concrete behaviour on the ground. In this case, it is unclear how the firm expects its employees (and subcontractors) to behave so that these commitments are met, which makes their implementation difficult. For instance, for lack of more specific guidelines, it is difficult to determine whether the right to a family life as guaranteed by the Universal Declaration of Human Rights¹³⁴⁸ and the ICCPR¹³⁴⁹, and the right to an adequate standard of living, including adequate housing, as guaranteed by the Universal Declaration of Human Rights¹³⁵⁰ and the ICESCR¹³⁵¹ are upheld by Unilever when the firm provides small houses to its workers with (for most of them) no electricity. Even though the Rainforest Alliance sets specific standards on minimum size for housing, the fact that workers must share their one-room house with their children and no electricity, and sleep in the same room as they cook and eat may lead to the violation of their rights under the different instruments mentioned above – but whether it is actually the case is unclear, in the absence of detailed standards using ‘means’-type command. In the same vein, the lack of specific requirement that all workers be compensated for work-related injuries means that it may be difficult to determine whether or not the fact that seasonal workers are not entitled to compensation violates the ICESCR guaranteeing the right to “the enjoyment of just and favourable conditions of work”¹³⁵². This leaves an important potential gap in the human rights protection afforded to workers. Finally, even the most ground-level instruments have gaps. Indeed, the Rainforest Alliance, despite its set of 119

¹³⁴⁶ Interviews with local government representative E2, workers B17, B18, B19, B23, B24, B27, B28, and B34, and community members C53, C54, C55, and C56.

¹³⁴⁷ Interviews with manager D8 and workers B31, B32, B33, and B34.

¹³⁴⁸ Universal Declaration of Human Rights, Article 16.

¹³⁴⁹ ICCPR, Article 23.

¹³⁵⁰ Universal Declaration of Human Rights, Article 25.

¹³⁵¹ ICESCR, Article 11.

¹³⁵² ICESCR, Article 7.

criteria¹³⁵³, fails to cover some issues, which may lead to important human rights consequences.

Second, as covered in Chapter 3, the embedding of standards into everyday activities include external and internal communication of standards, training of workers and managers, reward systems for standard implementation and whistleblowing, and establishing special units to implement policies affecting the well-being of employees. In Unilever's tea operations in Mufindi, communication about the firm's policies mainly takes place during training. External and internal communication seems to focus on the Code of Business Principles as it appears to be the main instrument about which workers and subcontractors are trained by Unilever¹³⁵⁴. Indeed, a manager said that they had started a "huge drive" on the Code of Business Principles because it was not being implemented; the firm therefore says that it has trained all its employees (and subcontractors) on the Code's standards to ensure that the latter would be cascading down to the workers. This demonstrates that the firm itself does not consider that the mere adoption of a code automatically guarantees its implementation – the embedding of an instrument, most importantly carried out through regular training of all concerned, is considered by the firm to be required if that instrument is to be effective. However, it is important to note that, beyond the general statement of a general "drive" towards training of workers and subcontractors, no positive evidence of a link was found between the Code (or any other of Unilever's self-regulatory instruments) and the specific training courses mentioned by interviewees. It is therefore difficult to find evidence of any real impact of this "drive", despite management's motivation to implement the Code's standards.

These trainings are conducted by the workers' union or by the corporation, and mainly focus on health and safety, HIV/AIDS, sexual harassment, and general provisions of CBAs¹³⁵⁵. These are issues where the firm performs particularly well and where its practice is mostly respectful of human rights. This tends to confirm that, even though self-regulatory instruments may not trigger training courses and though it is not explained to workers that the rules may come from certain human rights policies¹³⁵⁶,

¹³⁵³ Rainforest Alliance 'Sustainable Agriculture Standard', 8.

¹³⁵⁴ Interview with manager D1.

¹³⁵⁵ Interviews with manager D8 and workers B24, B27, B28, B29, B32, B33, B34, and B49.

¹³⁵⁶ Interviews with workers B17, B18, B19, and B24. Also, interview with worker B49, who specifically said that they were never trained about the label's standards.

training stakeholders on human rights standards may have a positive impact on whether Unilever respects (relevant) human rights. It would therefore appear that the training offered to workers helped change their behaviour¹³⁵⁷ – and consolidate it. Moreover, managers are trained by the human resources department on the provisions contained in CBAs¹³⁵⁸ but no mention of further training was made. This may explain why certain standards included in the Code of Business Principles which are relevant to management are not followed, such as anti-discriminatory policies protecting pregnant women, and requirements that contracts be made available to workers, that all overtime remain voluntary, and that workers have access to a confidential, fair, and transparent complaints mechanism. Overall, this shows that the mere presence of a code is not as important as the content of the code (and the training offered to individuals who should implement it), contrary to some scholars' view¹³⁵⁹.

Moreover, no reward system for implementation of standards or whistleblowing seems to be in place. In conclusion, the embedding of Unilever's standards in its Tanzanian tea operations partially include the key characteristics identified as important to ensure that corporate self-regulatory mechanisms are effective, and those human rights issues where embedding has been actively and consistently implemented do appear to have improved.

Finally, an important feature would be 'establishing special units to implement policies affecting the well-being of employees', as suggested by Philip Selznick¹³⁶⁰. Indeed, Unilever has improved its record in terms of gender-related issues after setting up its Welfare Office, which helped embed respect for women into the firm's practice and structure. However, it is interesting to see that the firm did not do so in order to implement its standards. This 'feature' may therefore help firms respect human rights even in the absence of self-regulatory mechanisms – however, it is acknowledged that the importance of this 'feature' is linked to the financial health of the company, which is one of the external factors covered in Chapter 8. Indeed, only companies which are financially healthy can afford to set up specific departments and hire employees dedicated to these issues.

¹³⁵⁷ Dean (n. 405), 285; Maclagan (n. 405), 415; Kearney (n. 363), 211; Rodríguez-Garavito (n. 166), 228; and Schwartz (n. 320), 258; and Sims (n. 395), 504.

¹³⁵⁸ Interview with manager D1.

¹³⁵⁹ Adams, Tashchian, and Shore (n. 387), 208.

¹³⁶⁰ Selznick (n. 351), 101.

Third, monitoring of Unilever's compliance in Mufindi with standards takes place internally (through impact assessments, the firm's relationship with the community, and reports by health and safety officer) and externally (third-party audits). Tanzanian consulting firm TRES Consult has conducted 11 studies and environmental impact assessments between 2014 and 2016¹³⁶¹ for Unilever Tea Tanzania Limited. Although these assessments are not publicly available, it is stated on their website that the firm has conducted assessments of environmental impact of the tea plantations specifically¹³⁶², but that the most recent ones were mostly conducted in preparation for the construction of small irrigation dams and for the expansion of smallholder farms in nearby villages¹³⁶³. This practice seems to be in line with the OECD Guidelines recommend¹³⁶⁴ and may have contributed to the generally good environmental record of Unilever's tea activities. However, I could not find trace of any other impact assessment carried out by Unilever's Mufindi tea operations, whether human rights-focused or not, and no positive evidence of the conduct of human rights due diligence was found. Carrying out such due diligence may have helped with identifying priority issues for workers such as higher wages and equal working conditions for permanent and seasonal workers, and for community members such as access to water and to affordable and adequate health services. Moreover, internal monitoring also takes place through the firm's relationship with the local community and its health and safety officer. The local government stated that they had a strong relationship with Unilever¹³⁶⁵ – although their complaints have been met with mixed success. On the one hand, the firm has not responded to calls from local government representatives to help with access to water¹³⁶⁶, and a manager acknowledged that the company did not help with this issue¹³⁶⁷. On the other hand, the same government representatives stated that, following a meeting with corporate representatives in 2017, the company had taken measures to ensure that their fertiliser would no longer pollute water sources¹³⁶⁸. Furthermore, Unilever monitors its compliance with health and safety standards by having a dedicated officer regularly tour the facilities and plantations to ensure that all

¹³⁶¹ TRES Consult (n. 841).

¹³⁶² TRES Consult, 'Clients' <<http://www.tresconsult-tz.com/clients>> (accessed on 21 October 2019)

¹³⁶³ TRES Consult (n. 841).

¹³⁶⁴ OECD Guidelines, Guideline VI.3.

¹³⁶⁵ Interview with local government representative E3.

¹³⁶⁶ Interview with local government representative E3.

¹³⁶⁷ Interview with manager D1.

¹³⁶⁸ Interview with local government representative E3.

relevant policies are implemented¹³⁶⁹. As I have seen in this chapter, health and safety is an issue which Unilever seems to take particularly seriously, and this compliance with relevant OHS standards may be explained by the fact that the firm has a dedicated officer monitor the situation. This shows that internal compliance monitoring plays a role in the effectiveness of self-regulatory standards.

External monitoring is done via Rainforest Alliance audits, conducted every three years to check that all the label's standards are implemented. The latest audit took place in August 2018 and Unilever's renewed certificate is now valid until 2021. Added to the clearly-defined threat of non-renewal of certification, audits seem to play an essential role in Unilever's compliance with product-level standards: in 2014, after losing its Rainforest Alliance certification, the firm modified its behaviour to meet the criteria and earn the certification back. However, it is notable that some issues which were flagged up as inconsistent with the label's standards during my own fieldwork (e.g. denial of free PPE to seasonal workers) do not appear to have been identified during the certification audits. Third-party monitoring of performance was overall found to be crucial for the effective implementation of standards, but also showed important limitations inherent to the audit process and problematic for the firms' human rights performance.

Furthermore, a feature identified as important regarding monitoring and reporting of corporate behaviour is, as outlined in Chapter 3, transparency, and it is notable that the Rainforest Alliance organisation publishes summaries of all its audits, and therefore ensures that the process is, to some extent, transparent¹³⁷⁰, allowing for a higher level of scrutiny and accountability of firms, but also of organisations in charge of product-level mechanisms. However, the rest of Unilever's monitoring is unreported: even though Unilever covers the 'human rights' performance of some of its factories and plantations around the globe, its Mufindi tea operations were not one of those sites about which the firm did its reporting. The only reporting which I have found was about sexual harassment in the tea plantations¹³⁷¹, which is an issue where Unilever performs fairly well and has shown improvement. However, it is difficult to determine whether Unilever performs well *because* they chose to be transparent about it, or

¹³⁶⁹ Interview with manager D1.

¹³⁷⁰ AfriCERT (n. 780).

¹³⁷¹ Unilever 'Human Rights Report' (n. 836), 35.

whether they reported on this issue *because* they were performing well. Moreover, another key feature (which was found to be important) may have played a role in this good performance: Unilever organises training sessions on sexual harassment and broader gender-related issues. This may suggest that transparency does play an important role in the implementation of standards and in corporate respect of human rights, but that it is particularly effective when combined with other factors.

In conclusion, it is difficult to assess Unilever's *internal* monitoring as different accounts have been collected about the firm's complaints mechanism and relationship with the community, and the various processes offer limited transparency. However, *external* monitoring of the company's operations is more firmly established and is regularly conducted in a fairly transparent manner – although more systematic reporting by the company about its own operations is desirable to ensure that all sites are covered, and some important limitations of the auditing process were uncovered. Overall, Unilever's self-regulatory mechanisms therefore implement, to some extent, the suggestions of scholars as outlined in Chapter 3, which was shown to help (to some extent) with the implementation of standards and the firm's respect of human rights.

Fourth, there seem to be recent efforts on the part of Unilever to set up a free phone complaint mechanism¹³⁷², which is linked to the firm's Mufindi welfare office. Managers stated that they could identify three phases since the phoneline was set up¹³⁷³: first, workers were wary and therefore did not much use the phone number; second, as they became used to it, Unilever started receiving a significant number of complaints and the welfare department was reportedly kept significantly busy for a couple of years; and third, the department no longer receives as many complaints since many grievances have now been resolved. Managers also said that they used to receive threats, and that a significant number of complaints concerned private matters such as child abuse or domestic violence¹³⁷⁴. It follows that this complaints hotline seems to have been successful in helping not only workers but also the community, in line with Unilever's commitments. However, the majority of workers whom I interviewed did not know about the phone complaints mechanism¹³⁷⁵, and the two workers who knew

¹³⁷² I have seen signs on Unilever's premises advertising a phone number which workers may call if they want to make a report.

¹³⁷³ Interviews with managers D5 and D6.

¹³⁷⁴ Interviews with managers D5 and D6.

¹³⁷⁵ Interviews with workers B7, B17, B18, B19, B23, B25, B26, B28, B31, B33, and B49.

about it said that it was not anonymous¹³⁷⁶. Moreover, no worker knew about their right to contact the Rainforest Alliance or the label's certification bodies. This situation conflicts with Rainforest Alliance requirements¹³⁷⁷, Unilever's Code of Business Principles^{1378 1379}, and the firm's Human Rights Policy¹³⁸⁰, Sustainable Agriculture Code¹³⁸¹, and Responsible Sourcing Policy¹³⁸². It also clashes with Unilever's own report of existing "internal and external channels for raising concerns, anonymously if required" and of "an external channel to third parties"¹³⁸³. In particular, the fact that workers do not know about their right to access certification bodies for grievance purposes is surprising since Unilever stated that effective complaints mechanisms in certification programmes were very important and an area of focus for the firm since they "provide a channel for workers to address and seek remedy to non-conformance issues that may also initially go undetected or develop over time"¹³⁸⁴. As a result, workers do not know about these channels of communication and only rely on their trade union representatives to let management know of any concerns¹³⁸⁵, which is not an anonymous process and may contribute to the fact some human rights issues are still taking place in Unilever's operations, such as the inadequate working conditions of seasonal workers or issues with freedom of association and TPAWU's representation of workers. Moreover, community members do not have access to it or any other complaints mechanism¹³⁸⁶ and may only call on to their local government representatives and district commissioner¹³⁸⁷ – which does not allow for anonymity. A few interviewees said that it would be useful to have access to such a free and anonymous mechanism¹³⁸⁸ to bring certain issues to the attention of the company. Indeed, a formal complaints mechanism open to community members could have

¹³⁷⁶ Interviews with workers B24 and B29.

¹³⁷⁷ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.9.

¹³⁷⁸ Unilever 'Code of Business Principles' (n. 823), 6, 24.

¹³⁷⁹ The Code of Business Principles makes reference to a "Code Support Line" using EthicsPoint.

¹³⁸⁰ Unilever 'Human Rights Policy' (n. 144), 3.

¹³⁸¹ Unilever 'Sustainable Agriculture Code' (n. 827), Standards F103, 108, and 176. However, the Code's mechanism is soft: it only requires farms to have "mechanisms in place to take up ideas and suggestions from the workers and provide regular opportunities for two-way dialogue".

¹³⁸² Unilever 'Responsible Sourcing Policy' (n. 826), Standard 10.

¹³⁸³ Unilever 'Human Rights Report' (n. 836), 58.

¹³⁸⁴ Ibid.

¹³⁸⁵ Interviews with workers B23, B25, B28, B29, B31, B33, and B49.

¹³⁸⁶ Interviews with local government representative E2, and community members C47, C50, C52, C53, and C56.

¹³⁸⁷ Interviews with local government representative E2, civil society representative A14, and community members C53 and C56.

¹³⁸⁸ Interviews with worker B26, and community members C52 and C53.

allowed for the direct communication of important grievances affecting community members to the company, such as access to water, water pollution, and access to healthcare. This is especially important considering that, as explained above, their complaints have until now been met with mixed success. It is uncertain whether a formal complaints mechanism – which Unilever has committed to set up and which was identified by some scholars as important for effective implementation of human rights standards – would have more success in addressing community's concerns but it would certainly offer one more avenue for redressing negative human rights impacts of the firm's activities. It follows that it is difficult to assess the actual added value which such mechanisms may have if they were set up, although they could play a role in ensuring that stakeholders' voices are heard and taken into account¹³⁸⁹, along with other members of the local community, and therefore would contribute to the effective implementation of Unilever's standards.

Finally, I will address the issue of sanctioning practices by covering first individual sanctions for non-compliance and secondly collective sanctions. First, when policies are breached by workers, the general consensus (with one exception) among interviewees was that Unilever does give out sanctions: workers will first be issued a warning (or two), and will ultimately be terminated if they do not change their behaviour¹³⁹⁰. In particular, management is pushing for the implementation of the Code of Business Principles, with the aim of educating workers about it and making sure that the principles are respected, and sanctions are included¹³⁹¹ to ensure that the code is enforced¹³⁹² – let me recall that, of all of Unilever's company-level mechanisms, only the Code includes sanctions. However, this chapter has shown that not all of the standards included in the Code are implemented, and that sanctions are not necessarily given every time there is a breach: while sanctions for failing to uphold the relevant health and safety standards are provided and mostly enforced¹³⁹³, a few workers reported that there was no control from the company, and that it was up to the workers to ensure that they were wearing the proper equipment¹³⁹⁴. Since it is widely

¹³⁸⁹ Rodríguez-Garavito (n. 166), 228.

¹³⁹⁰ Interviews with manager D1 and D8, and workers B23, B27, B28, B29, B31, B32, B33, and B34.

¹³⁹¹ Unilever 'Code of Business Principles' (n. 823), 8.

¹³⁹² Interview with manager D1.

¹³⁹³ Employees are not allowed to work if they are not wearing the necessary equipment, are sent home with no pay (interviews with manager D1, civil society representative A10, and workers B23, B24, B25, and B26.)

¹³⁹⁴ Interviews with workers B17, B18, and B19.

considered that health and safety standards are taken seriously in Unilever's Tanzanian tea operations, as is outlined in Section 5.2.3. above, this tends to show that sanctions are only one of a range of incentives behind the implementation of standards. Second, the collective sanction of (Rainforest Alliance) certification non-renewal has forced Unilever to change its behaviour on environmental issues¹³⁹⁵. Moreover, the fact that non-renewal is clearly outlined as the direct consequence for non-compliance sends the clear message that Unilever must comply if they want to keep their certification: clear sanctioning guidelines therefore help¹³⁹⁶. However, these sanctions may be insufficient: when, as was explored above, audits are not reliable, the need for sanctions *for upper management* for violations of standards is particularly important. Indeed, if non-compliance with (product-level) standards is not necessarily detected during audits and therefore punished with non-renewal of the certification, another enforcement mechanism would be helpful to ensure that workers' human rights are respected. In a country such as Tanzania where, as explained in Chapter 4, labour inspections are rare, enforcement mechanisms for breach of self-regulatory standards would be particularly important. It follows that, overall, sanctioning seems to play an important role in the effectiveness of Unilever's self-regulatory mechanisms.

5.5. Conclusion

This chapter had a double aim: first, to determine whether Unilever's operations were in line with the firm's self-regulatory standards; and second, to identify any impact which the firm's self-regulatory mechanisms may have had on the way which the company carries out its activities.

On the first point, Unilever's human rights performance is mixed. In some respects, the company fulfils (or even exceeds) its human rights commitments; it is the case regarding the right to freedom from exploitative child labour, to a clean environment, and to health. However, the firm fails to implement its own standards – and may even breach Tanzanian law – on some issues, such as certain workers' rights (because of the firm's practice in respect to leaves and seasonal workers' working conditions), and community members' right to water. For most human rights, Unilever's performance

¹³⁹⁵ Interview with manager D1.

¹³⁹⁶ Sims (n. 395), 504; Jenkins (n. 379), 26; and see (n.78), 56.

is mixed as parts of its practice is in line with its own commitments, while others are not. For example, on the issue of contracts, Unilever now offers all its employees a written contract – which is consistent with the different self-regulatory mechanisms to which the firm has adhered – but the company does not provide its workers with a copy of their contract – which clashes with its own standards. Other issues on which Unilever’s practice is mixed are pay, working time, health and safety, accidents and compensation, handling of strikes, discrimination issues, onsite housing, and finally health and education services.

On the second point, only one of Unilever’s self-regulatory instruments was identified as having had some discernible impact on the way which the company carries out its activities: the Rainforest Alliance certification – although its influence remain focused on a few issues. It is notable that, apart from a general statement from Unilever about the “huge drive” on the company’s Code of Business Principles currently underway¹³⁹⁷, I could not identify any concrete impact which the Code has had on Unilever’s human rights performance. However, I could determine that the Rainforest Alliance has had a positive influence on working time for factory workers, on health and safety, and on the relationship between the union and management. A local government representative also said that the relationship between the company and the community had improved when Unilever got certified, although no more detail was provided¹³⁹⁸. However, the label’s main influence has been on the environmental impact of Unilever’s operations. This is perhaps not surprising considering that the label has historically been environmentally focused.

It is also important to note that factors outside of self-regulatory mechanisms have also led to improvements in Unilever’s human rights performance: bottom-up action from workers, management’s cooperation with trade unions, the adoption of a collective agreement, and the set-up of a welfare department. I will explore these external factors in more detail in Chapter 8.

In conclusion, Unilever does meet its human rights responsibilities in certain respects but (sometimes severe) issues with the firm’s operations and what could be construed as violations of the firm’s standards (and possibly of national legislation) were also

¹³⁹⁷ Interview with manager D1.

¹³⁹⁸ Interview with local government representative E3.

uncovered. And, even when the situation on the ground seemed to be in line with Unilever's commitments, only rarely could I find positive evidence linking the firm's practice with its standards (and other factors were found to also play a role). Overall, the self-regulatory mechanisms which Unilever has adopted seem to have had a limited impact on the firm's operations and respect of human rights. I will build upon these findings in Chapter 8 to understand the effects which corporate self-regulatory mechanisms have had on the behaviour of Tanzanian tea corporations, and to determine the extent to which such mechanisms may harness other influential factors with the aim to improve corporate human rights performance.

I will now investigate the human rights performance of MTC, the second company of this case study. Chapter 6 will therefore bring more evidence to this case study and will allow for a better-informed assessment of the value of corporate self-regulation in helping Tanzanian tea businesses improve their human rights performance.

Chapter 6 – Mufindi Tea and Coffee

6.1. Introduction

Unlike Unilever, MTC does not have an overarching human rights framework. While Unilever has committed to the UNGPs and adopted a Human Rights Policy outlining the high-level human rights principles which the firm has committed to respecting throughout its operations, MTC's main self-regulatory mechanisms are product-based: MTC's tea has been certified with the Rainforest Alliance since 2013¹³⁹⁹, with Fairtrade since 1994¹⁴⁰⁰, and the firm is also a member of ETP. However, the company has also adopted company-level instruments; Rift Valley, the corporate group which owned MTC until recently, has committed to four ILO conventions¹⁴⁰¹: ILO Convention C100 on equal remuneration, C111 on non-discrimination, and C138 and C182 on child labour. Although these four ILO conventions contain high-level principles, they also contain operational standards which aim to explain *how* to implement these principles on the ground. Both the Rainforest Alliance and Fairtrade¹⁴⁰² also require the implementation of these four ILO conventions by certified farms. For more details about the detailed human rights and standards to which MTC has committed, please see Annex 3.

In this chapter, I will assess MTC's human rights performance as set against the firm's various self-regulatory mechanisms: ILO Conventions C100, C111, C138, and C182, the Rainforest Alliance and Fairtrade sets of standards. Most importantly, I will attempt to determine whether practice on the ground can be linked to these mechanisms¹⁴⁰³.

¹³⁹⁹ Interview with manager D2.

¹⁴⁰⁰ Loconto 'Sustainability: Shaping Sustainability in Tanzanian Tea Production' (n. 209), 193.

¹⁴⁰¹ Rift Valley Tea 'Sustainability Report' (n. 793).

¹⁴⁰² Rainforest Alliance 'Sustainable Agriculture Standard', 44; Rainforest Alliance, 'Sustainable Agriculture Standard', 2010, 6 and 9; and Fairtrade 'Hired Labour Standard', 19, 21, 26.

¹⁴⁰³ As explained in Chapter 5, the Rainforest Alliance has adopted a new set of standards in 2017. However, MTC has been certified since 2013 and until 2017 therefore had to implement the previous Rainforest Alliance set of standards, whose last version came into force in 2010. Moreover, a significant number of new standards (from 2017) are similar to the old standards (from 2010). Consequently, I will assess MTC's performance against the 2017 critical criteria but will take the 2010 set of standards into account for the purpose of assessing the firm's performance regarding the continuous improvement

Once I have assessed MTC's human rights performance and the impact of the firm's standards, I will build on these findings to assess the effectiveness of MTC's self-regulatory mechanisms using the framework of 'key features' developed in Chapter 3. This chapter is therefore divided into two main parts. The first section will review MTC's human rights performance as assessed against the firm's own self-regulatory standards, first focusing on human rights relevant to workers and second on those relevant to community members. The second section of this chapter will investigate whether MTC implements in its Tanzanian tea operations the key features which have been identified by scholars as helping corporate self-regulation be effective, with the aim to evaluate the extent to which they are helpful in reality.

The company's human rights performance will now be assessed. As I did for Unilever, I will do so for each section by outlining the situation on the ground before laying out MTC's relevant commitments and specific standards and explaining whether the firm's practice is consistent with its standards and, if relevant, whether evidence was found to link practice to mechanism(s).

6.2. Worker-related rights

This section assesses the extent to which the right to just, equitable, and safe working conditions of MTC's workers is respected, and will therefore cover the following issues: contractual terms offered to workers, health and safety, freedom of association and collective bargaining, the working conditions specific to seasonal workers, and finally discrimination issues.

6.2.1. Contractual terms

This subsection covers all contractual terms offered to MTC's permanent and seasonal workers: presence of contracts, pay, working time, and leaves.

criteria which were already standards with which the firm had to comply since 2013. I will also take the 2017 continuous improvement criteria into account to the extent that firms must prepare for the implementation of those criteria which will become applicable in the future. For ease of reading, I will refer to both sets of standards as 'Rainforest Alliance standards', unless it is important to make a distinction between the old and new standards.

6.2.1.1. Contracts

All seasonal and permanent workers have a contract¹⁴⁰⁴, and in that regard the firm performs better than some companies operating in Mufindi, as was outlined in Chapter 5. This practice is also in line with – if not motivated by – Fairtrade¹⁴⁰⁵ and ETP¹⁴⁰⁶ standards. However, not all workers are provided with copies of their contract¹⁴⁰⁷ which, combined with the fact that some workers were not given enough time to read the terms before signing¹⁴⁰⁸, clashes with Fairtrade requirement that workers be made aware of employment terms¹⁴⁰⁹ and with ETP standards that all workers should be provided with a copy of their contract¹⁴¹⁰. Contracts are in Swahili¹⁴¹¹, which is in line with Fairtrade¹⁴¹² and ETP¹⁴¹³ requirements that contracts be in a language understood by workers, although a worker said that contracts used to be in English and that MTC changed their practice after workers complained about it¹⁴¹⁴. Seasonal workers are offered three-, six-, or nine-month contracts¹⁴¹⁵. A worker on a nine-month contract may only start working again once three months have passed after the end of their contract, so that they only work nine months for every twelve-month cycle¹⁴¹⁶. Back in the 1960s, there used to be a probation period of three months with no contract, after which workers would get a contract¹⁴¹⁷. However, no changes in MTC's practices were linked to the firm's standards.

¹⁴⁰⁴ Interviews with manager D2, and workers B3, B4, B5, B6, B37, B38, B39, B40, B41, B42, B43, B44, B46, B47, B48, B50, B51, B52, B53, B54, B55, and B56.

¹⁴⁰⁵ Fairtrade 'Hired Labour Standard', Standard 3.5.6. and 3.5.7.

¹⁴⁰⁶ ETP 'Global Standard', Standard 8.1.

¹⁴⁰⁷ Workers B37, B39, B40, B47, B48, B52 and B54 did not have a copy.

¹⁴⁰⁸ Workers B37, B38, B39, B46, and B52 were not given enough time to read their contract before signing it, whereas workers B41, B42, B43, B47, B48, B51, B53, B54, and B56 did have time to read it.

¹⁴⁰⁹ Fairtrade 'Hired Labour Standard', Standard 3.5.8.

¹⁴¹⁰ ETP 'Global Standard', Standard 8.1.

¹⁴¹¹ Interviews with workers B3, B4, B5, B6, B37, B38, B39, B40, B41, B42, B43, B44, B46, B47, B48, B50, B51, B52, B53, B54, B55, and B56.

¹⁴¹² Fairtrade 'Hired Labour Standard', Standard 3.5.8.

¹⁴¹³ ETP 'Global Standard', Standard 8.1.

¹⁴¹⁴ Interview with worker B55.

¹⁴¹⁵ Interview with manager D2.

¹⁴¹⁶ Interview with worker B56.

¹⁴¹⁷ Interview with a former worker, who is now a community member, C62.

6.2.1.2. Pay

Considering that Unilever and MTC are bound by the same CBA signed by TPAWU and TAT, they offer the same basic levels of pay to their workers: Tsh154.000 monthly for plantation and factory workers¹⁴¹⁸, up from Tsh145.000 last year¹⁴¹⁹. However, a few workers¹⁴²⁰ said that they were paid less (Tsh130.000 monthly), although this figure may come from the previous year's minimum wage minus deductions¹⁴²¹. A worker who has been working for the company for over two decades said that they receive Tsh175.000 monthly after deductions¹⁴²², and other workers said that they were paid up to Tsh250.000 during high season¹⁴²³. The salary of Tsh154.000 corresponds to the average harvest expected of workers since, similarly to Unilever, plantation workers are paid by the kilo. However, MTC has introduced machines in all its estates¹⁴²⁴ and decreased the price per kilo of tea to Tsh33¹⁴²⁵, so that workers receive the same monthly salary despite a much higher tea picking rate (with the firm keeping the difference). A manager explained that, every year, salaries are indexed to inflation, and that the cost of living is taken into account when calculating the increase¹⁴²⁶. In-kind benefits, such as housing, are also considered. Moreover, in line with the CBA, MTC offers free onsite housing to workers and provides Tsh30.000 monthly to cover the rent of workers living offsite¹⁴²⁷, although there were mixed reports as to whether the firm does implement this provision and provide (even permanent) workers with an additional offsite rent allowance¹⁴²⁸. However, if the company cannot offer seasonal workers accommodation because of a shortage of houses – as it sometimes happens –, they do not offer them any financial help for

¹⁴¹⁸ Interviews with manager D2, and workers B3, B4, B40, B41, B42, B43, B44, B46, B54, and B56.

¹⁴¹⁹ Interview with manager D2.

¹⁴²⁰ Interviews with workers B6, B51, B52, and B53.

¹⁴²¹ Deductions, which may include a contribution to the National Social Security Fund, retirement, TPAWU fees, funeral services as well as potential loan payback, amount to Tsh15.000 monthly on average (worker B50), which is in line with Fairtrade (Standard 3.5.2.) and ETP (Standard 5.4.) requirements as deduction of TPAWU fees from salary is included in the CBA (Article 4(3)).

¹⁴²² Interview with worker B50.

¹⁴²³ Interviews with workers B37, B47, and B48.

¹⁴²⁴ Interview with worker B40.

¹⁴²⁵ Interviews with workers B37, B39, B40, B47, and B48.

¹⁴²⁶ Interview with manager D2, who explained that in 2010-11, salaries had increased by 20% because of high inflation levels.

¹⁴²⁷ Interview with manager D2.

¹⁴²⁸ Worker B3 said they did, whereas worker B4 said that they did not.

rent¹⁴²⁹. This clashes with Fairtrade standards which requires that all workers living offsite be compensated if the company offers free housing onsite¹⁴³⁰.

Payment of wages higher than minimum wage – Tsh100.000¹⁴³¹ – is in line with ETP standards¹⁴³², and the collective negotiation and yearly review of wages seems to be in line with Rainforest Alliance standards¹⁴³³ ¹⁴³⁴ and with Fairtrade requirements¹⁴³⁵, although no positive evidence linking the labels to the practice was found. Moreover, there does not seem to be any discriminatory practices in the payment of wages between male and female workers, which is in line with the Rainforest Alliance¹⁴³⁶, ETP¹⁴³⁷, and the ILO Convention C100¹⁴³⁸.

However, as for Unilever, MTC's practice does not take living wage levels into account when negotiating workers' salaries. A manager – to whom I explained the concept of 'living wage' as they were not familiar with it – said that it would be difficult to determine living wage levels¹⁴³⁹. Yet, as I have outlined in Chapter 5, the Rainforest Alliance requires wages to progress towards living wage levels¹⁴⁴⁰. Fairtrade also requires wage levels to increase every year to close the gap with living wage¹⁴⁴¹. It was reported that wages are too low, and that workers must farm or conduct other business on the side to survive¹⁴⁴², despite the fact that they are entitled to important in-kind benefits such as free housing and healthcare for themselves and their dependents. A worker reported that work in the boiler room – which was reported to be especially hard and sometimes lethal¹⁴⁴³ – was made particularly dangerous because workers cannot reportedly afford a balanced diet on their salaries and their health

¹⁴²⁹ Interview with manager D2.

¹⁴³⁰ Fairtrade 'Hired Labour Standard', Standard 3.5.28.

¹⁴³¹ Gazette of the United Republic of Tanzania (n. 583).

¹⁴³² ETP 'Global Standard', Standard 5.1.

¹⁴³³ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.5 and continuous improvement criterion 4.27.

¹⁴³⁴ It is notable that MTC did not have to comply with that requirement at the time when the fieldwork was conducted.

¹⁴³⁵ Fairtrade 'Hired Labour Standard', Standards 3.5.1. and 3.5.3.

¹⁴³⁶ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.3.

¹⁴³⁷ ETP 'Global Standard', Standard 7.1.

¹⁴³⁸ ILO Convention C100, Article 2.

¹⁴³⁹ Interview with manager D2.

¹⁴⁴⁰ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criteria 4.29. and 4.33.

¹⁴⁴¹ Fairtrade 'Hired Labour Standard', Standard 3.5.4.

¹⁴⁴² Interviews with workers B3 and B4.

¹⁴⁴³ Interviews with workers B42 and B50.

therefore fails faster than it would otherwise¹⁴⁴⁴. It follows that MTC's employees do not receive a living wage – although it is acknowledged that the firm does provide important in-kind benefits – and that the firm's practice therefore clashes with its standards.

Finally, one tea plucker complained that they had not been paid for four months and that, even though MTC had reportedly acknowledged that it was a mistake, nothing had been done¹⁴⁴⁵. This clashes with Fairtrade¹⁴⁴⁶, Rainforest Alliance¹⁴⁴⁷, and ETP¹⁴⁴⁸ standards stating that pay should be made at regularly scheduled intervals. Some local civil society representatives said that disputes over underpayment of wages are common in the area¹⁴⁴⁹.

6.2.1.3. Working time

Working time is different depending on the categories of workers: I will first review MTC's practice regarding tea pluckers; second, factory workers; and third, security workers. Finally, I will investigate the firm's practice regarding overtime.

First, tea pluckers work six days a week, between 7am and 5pm or 6pm during high season, and from 7am until 2pm during low season¹⁴⁵⁰. Working time during high season therefore clashes with the Rainforest Alliance¹⁴⁵¹, Fairtrade¹⁴⁵², and ETP¹⁴⁵³ requirements that employees do not work more than 48 regular hours per week. There is no overtime for plantation workers¹⁴⁵⁴ except for the workers who pack tea into trucks at the end of the day¹⁴⁵⁵ – although one worker said that the extra hours were not paid at the overtime rate, despite the fact that it means that those workers can work up to 12 hours a day during high season¹⁴⁵⁶. Beyond the potential clash regarding working hours, Fairtrade requires that all overtime be paid at least 1.5 times the regular

¹⁴⁴⁴ Interview with worker B42

¹⁴⁴⁵ Interview with worker B51.

¹⁴⁴⁶ Fairtrade 'Hired Labour Standard', Standard 3.5.5.

¹⁴⁴⁷ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.21.

¹⁴⁴⁸ ETP 'Global Standard', Standard 5.2.

¹⁴⁴⁹ Interviews with civil society representatives A11 and A12.

¹⁴⁵⁰ Interviews with workers B6, B37, B39, B40, B47, B48, B51, B52, and B53.

¹⁴⁵¹ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.10.

¹⁴⁵² Fairtrade 'Hired Labour Standard', Standard 3.5.9.

¹⁴⁵³ ETP 'Global Standard', Standard 6.1.

¹⁴⁵⁴ Interview with workers B37, B51, B52, and B53

¹⁴⁵⁵ Interview with worker B51.

¹⁴⁵⁶ Interview with worker B51.

rate¹⁴⁵⁷, which is the level of overtime pay fixed by the CBA¹⁴⁵⁸ – although I have no information about whether this premium rate was really offered to MTC workers. Finally, all plantation workers are given one hour for lunch¹⁴⁵⁹, which is in line with the Rainforest Alliance¹⁴⁶⁰ and Fairtrade¹⁴⁶¹ requirements, although there is no evidence that MTC’s practice was motivated by the labels.

Second, factory workers work for eight hours a day, six days a week¹⁴⁶², which is consistent with the Rainforest Alliance¹⁴⁶³, Fairtrade¹⁴⁶⁴, and ETP¹⁴⁶⁵ requirements. One employee said that workers had complained in 2012 about long working hours as they worked 12 hours a day. As a result, the company changed practice and decided to schedule three 8-hour daily shifts instead of two 12-hour shifts¹⁴⁶⁶. No overtime is allowed¹⁴⁶⁷, although one worker said that sometimes overtime is permitted in the factory and paid double the usual rate¹⁴⁶⁸, which would be consistent with Fairtrade¹⁴⁶⁹ and ETP¹⁴⁷⁰ standards. Factory workers are also given one hour for lunch¹⁴⁷¹, which is in line with both labels’ standards as outlined above.

Third, security workers work eight hours a day, six days a week¹⁴⁷², which is, again, consistent with the Rainforest Alliance¹⁴⁷³, Fairtrade¹⁴⁷⁴, and ETP¹⁴⁷⁵ requirements, although no positive evidence linking the firm’s mechanisms and its practice was found.

Finally, I will review MTC’s practice on overtime. There are conflicting reports about whether security workers must do four hours of compulsory weekly overtime¹⁴⁷⁶.

¹⁴⁵⁷ Fairtrade ‘Hired Labour Standard’, Standard 3.5.12.

¹⁴⁵⁸ TAT-TPAWU CBA, Article 17(2).

¹⁴⁵⁹ Interviews with manager D2 and workers B6, B37, B47, B48, B52, and B53.

¹⁴⁶⁰ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.10.

¹⁴⁶¹ Fairtrade ‘Hired Labour Standard’, Standard 3.5.14.

¹⁴⁶² Interviews with workers B41, B42, B43, B46, B54, and B55.

¹⁴⁶³ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.10.

¹⁴⁶⁴ Fairtrade ‘Hired Labour Standard’, Standards 3.5.9. and 3.5.10.

¹⁴⁶⁵ ETP ‘Global Standard’, Standard 6.1.

¹⁴⁶⁶ Interview with worker B55.

¹⁴⁶⁷ Interviews with workers B41, B43, B46, and B54.

¹⁴⁶⁸ Interview with worker B56.

¹⁴⁶⁹ Fairtrade ‘Hired Labour Standard’, Standard 3.5.12.

¹⁴⁷⁰ ETP ‘Global Standard’, Standard 6.2.

¹⁴⁷¹ Interviews with manager D2 and workers B54 and B55.

¹⁴⁷² Interviews with workers B3, B4, B38, and B50.

¹⁴⁷³ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.10.

¹⁴⁷⁴ Fairtrade ‘Hired Labour Standard’, Standards 3.5.9. and 3.5.10.

¹⁴⁷⁵ ETP ‘Global Standard’, Standard 6.1.

¹⁴⁷⁶ Workers B3 and B4 said that there was weekly compulsory overtime, while workers B38 and B50 said that there was no overtime.

Moreover, one worker said that no overtime was available for plantation or factory workers¹⁴⁷⁷ but, according to a manager, overtime is generally allowed and some overtime, when it is approved by a manager, is compulsory, although limited so that workers do not work for no more than 54 weekly hours¹⁴⁷⁸. This practice, which seems to follow the CBA's provisions¹⁴⁷⁹ as already mentioned in Chapter 5, clashes with the Rainforest Alliance¹⁴⁸⁰, Fairtrade¹⁴⁸¹, and ETP¹⁴⁸² standards.

6.2.1.4. Leaves

Permanent and seasonal workers are not entitled to the same leaves.

On the one hand, permanent workers are entitled to 28 days of annual leave¹⁴⁸³ (although a few workers said 26 days¹⁴⁸⁴), with a travel allowance amounting to 65% of their salary¹⁴⁸⁵ in addition to their regular wages. This exceeds the two-week annual vacation required by both the Rainforest Alliance¹⁴⁸⁶ and Fairtrade¹⁴⁸⁷, and is in line with ETP standards¹⁴⁸⁸ requiring that firms' practice regarding annual leave follow national legislation¹⁴⁸⁹. In line with national legislation, permanent workers are also in theory also entitled to 63 days of sick leave with full pay and another 63 days with half-pay^{1490 1491}. However, most workers said that they were only entitled to two days^{1492 1493}, although some specified that an extension was allowed if the illness is

¹⁴⁷⁷ Interview with worker B42.

¹⁴⁷⁸ Interview with manager D2.

¹⁴⁷⁹ TAT-TPAWU CBA, Article 17(1).

¹⁴⁸⁰ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criteria 4.10. and 4.11.

¹⁴⁸¹ Fairtrade 'Hired Labour Standard', Standard 3.5.11.

¹⁴⁸² ETP 'Global Standard', Standard 6.2.

¹⁴⁸³ Interviews with manager D2, and workers B4, B38, B41, B42, B43, B46, B50, B51, B53, B54, B55, and B56.

¹⁴⁸⁴ Interviews with workers B3, B5, and B6.

¹⁴⁸⁵ Interview with manager D2. A few workers (B38, B50, B55) also said that they had an additional payment on top of their salary for their annual leave, although there were conflicting reports as to the amount.

¹⁴⁸⁶ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.23.

¹⁴⁸⁷ Fairtrade 'Hired Labour Standard', Standard 3.5.13.

¹⁴⁸⁸ ETP 'Global Standard', Standard 6.3.

¹⁴⁸⁹ Employment and Labour Relations Act, Article 31(1).

¹⁴⁹⁰ Interview with manager D2.

¹⁴⁹¹ All workers need a medical certificate to get sick pay (for details of the relevant legal provision, see (n. 1010)).

¹⁴⁹² Interviews with workers B3, B38, B41, and B43, although worker B42 said that workers were entitled to 63 days with full pay, and another 63 days with half pay. Workers B50, B51, B54, and B55 did not specify how long workers were allowed to take sick leave.

¹⁴⁹³ Worker B6 said that permanent workers were entitled to three days a week, depending on how serious the illness is.

serious¹⁴⁹⁴ – for instance, a worker fell sick and was reportedly given five days of sick leave after spraying (and inhaling) chemicals¹⁴⁹⁵. However, if it is true that MTC generally limits its sick leave policy to two days, the practice would clash with Fairtrade standards protecting sick workers from termination and loss of income¹⁴⁹⁶, and with the ETP requirement that workers be offered sick leave as legally defined by national legislation¹⁴⁹⁷. Moreover, workers seem to be offered the statutory 84 days of maternity leave to which they are entitled by law with full pay¹⁴⁹⁸. One worker also said that she had received Tsh300.000 on top of her salary as part of her maternity leave¹⁴⁹⁹. This maternity leave policy is in line with Rainforest Alliance¹⁵⁰⁰, Fairtrade¹⁵⁰¹, and ETP¹⁵⁰² standards. For the first six months after they return to work, nursing mothers are allowed to take two (paid) hours off every day to breastfeed their new-born¹⁵⁰³, which is consistent with Fairtrade requirements¹⁵⁰⁴. Finally, a manager said that permanent workers may take up to four days of paternity leave with full pay¹⁵⁰⁵, although workers said that it was only three days¹⁵⁰⁶.

On the other hand, seasonal workers stated that they do not have access to maternity leave¹⁵⁰⁷. This clashes with Rainforest Alliance¹⁵⁰⁸, Fairtrade¹⁵⁰⁹, and ETP¹⁵¹⁰ standards. A seasonal worker stated that she was fired when the company found out that she was pregnant, and that it was more difficult for her to get hired again after the birth of her child than it was for her seasonal colleagues¹⁵¹¹ – although I could not verify this information myself. This is at odds with Rainforest Alliance¹⁵¹²,

¹⁴⁹⁴ Interviews with workers B4, B5, and B47.

¹⁴⁹⁵ Interview with worker B51.

¹⁴⁹⁶ Fairtrade ‘Hired Labour Standard’, Standard 3.5.15.

¹⁴⁹⁷ ETP ‘Global Standard’, Standard 6.3.

¹⁴⁹⁸ Interviews with manager D2, and workers B3, B4, B5, B6, B38, B41, B42, B43, B46, B50, B51, B53, B54, and B56.

¹⁴⁹⁹ Interview with worker B54.

¹⁵⁰⁰ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criterion 4.25.

¹⁵⁰¹ Fairtrade ‘Hired Labour Standard’, Standard 3.5.17.

¹⁵⁰² ETP ‘Global Standard’, Standard 6.6.

¹⁵⁰³ Interview with manager D2.

¹⁵⁰⁴ Fairtrade ‘Hired Labour Standard’, Standard 3.5.18.

¹⁵⁰⁵ Interview with manager D2.

¹⁵⁰⁶ Interviews with workers B6, B38, and B46.

¹⁵⁰⁷ Interviews with workers B37, B39, B40, B47, B48, B52, and B56.

¹⁵⁰⁸ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criterion 4.25.

¹⁵⁰⁹ Fairtrade ‘Hired Labour Standard’, Standard 3.5.13.

¹⁵¹⁰ ETP ‘Global Standard’, Standards 6.3. and 6.6.

¹⁵¹¹ Interview with worker B43.

¹⁵¹² Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.3.

Fairtrade¹⁵¹³, and ETP¹⁵¹⁴ standards. Moreover, seasonal workers say that they are not entitled to paternity leave¹⁵¹⁵, which is at odds with national legislation¹⁵¹⁶ – but none of MTC’s self-regulatory instrument include requirements for paternity leave. Furthermore, the absence of annual leave for seasonal workers¹⁵¹⁷ clashes with the Rainforest Alliance standards requiring a pro-rata of the two-week annual vacation time to which permanent workers are entitled¹⁵¹⁸, and with ETP standards¹⁵¹⁹. Finally, despite what a manager said¹⁵²⁰, most seasonal workers said that they could only take one or two days of sick leave¹⁵²¹, and a few stated that it was unpaid¹⁵²² (workers therefore go to work even if they were sick). This is at odds with Fairtrade¹⁵²³ and ETP¹⁵²⁴ requirements as mentioned above.

6.2.2. Health and safety

This section will first provide a general assessment of MTC’s health and safety practice, second its specific practice regarding medical check-ups, and finally its record on accidents and compensation.

6.2.2.1. General considerations

MTC have a health and safety committee which oversees all relevant policies and measures¹⁵²⁵, and a compliance officer conducts checks on a regular basis. This is consistent with the Rainforest Alliance¹⁵²⁶, Fairtrade¹⁵²⁷, and ETP¹⁵²⁸ standards,

¹⁵¹³ Fairtrade ‘Hired Labour Standard’, Standard 3.5.16.

¹⁵¹⁴ ETP ‘Global Standard’, Standards 6.6. and 7.3.

¹⁵¹⁵ Interviews with workers B37, B39, B40, B47, B48, B52, and B56.

¹⁵¹⁶ Employment and Labour Relations Act, Article 34(a).

¹⁵¹⁷ Interviews with workers B37, B39, B40, B47, B48, B52, and B56.

¹⁵¹⁸ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criterion 4.23. This criterion was also included in the previous standard (criterion 5.6.).

¹⁵¹⁹ ETP ‘Global Standard’, Standard 6.3.

¹⁵²⁰ Interview with manager D2.

¹⁵²¹ Interviews with workers B37, B40, B47, and B48.

¹⁵²² Interviews with workers B37 (said that beyond one day, it was unpaid), B39, and B40.

¹⁵²³ Fairtrade ‘Hired Labour Standard’, Standard 3.5.15.

¹⁵²⁴ ETP ‘Global Standard’, Standard 6.3.

¹⁵²⁵ Interview with D2.

¹⁵²⁶ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.14.

¹⁵²⁷ Fairtrade ‘Hired Labour Standard’, Standards 3.6.2., 3.6.3., and 3.6.4.

¹⁵²⁸ ETP ‘Global Standard’, Standards 3.2. and 3.8.

although it is unclear whether these checks are conducted jointly with workers' representations, as the latter require¹⁵²⁹.

Workers have different safety equipment depending on their position. Tea pluckers' equipment consists of an overall, coat, hat, and of boots^{1530 1531}, whereas chemical sprayers must wear masks, gloves, helmet, glasses, and an overall¹⁵³². They also have access to a special room for storing and mixing chemicals, and of changing rooms for workers¹⁵³³, which seems to be consistent with Rainforest Alliance¹⁵³⁴ and Fairtrade¹⁵³⁵ requirements. Factory workers, depending on the department, may have to wear gloves, mask, helmet, ear protection, eye and ear protection, and safety boots¹⁵³⁶. However, workers are not always provided with gear¹⁵³⁷, and therefore must buy it themselves^{1538 1539}. This is also true for workers in dangerous jobs (e.g. boiler, where workers have reportedly died from work-related illnesses¹⁵⁴⁰). A manager admitted that the company does not always provide safety gear despite the fact that they are supposed to do so¹⁵⁴¹ as they say that they are not at full capacity because of late deliveries and the fact that equipment wears out faster than anticipated^{1542 1543}. Workers said that they are not allowed on company premises if they are not wearing adequate equipment¹⁵⁴⁴, or if they are intoxicated¹⁵⁴⁵, but a manager stated that, because of the lack of safety gear, they sometimes work without the appropriate gear¹⁵⁴⁶. The same manager also explained there were no sanctions for not wearing

¹⁵²⁹ Fairtrade 'Hired Labour Standard', Standard 3.6.4.; and *ibid*, Standard 3.8.

¹⁵³⁰ Interviews with workers B6, B47 and B48.

¹⁵³¹ However, it would seem that only the boots and aprons are compulsory (interviews with workers B47 and B48).

¹⁵³² Interviews with workers B51 and B52.

¹⁵³³ Interview with manager D2 and researcher's observation.

¹⁵³⁴ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.17. and continuous improvement criterion 4.38.

¹⁵³⁵ Fairtrade 'Hired Labour Standard', Standard 3.6.1.

¹⁵³⁶ Interviews with workers B5, B41, B43, B46, B50, B55, and B56.

¹⁵³⁷ Interviews with workers B39, B40, B41, B42, B43, B44, B46, B47, B48, B50, B51, B53, B54, B55, and B56.

¹⁵³⁸ Interviews with workers B40, B46, B51, B52, and B55.

¹⁵³⁹ Worker B40 said that boots cost Tsh13.000 and aprons Tsh15.000.

¹⁵⁴⁰ Interviews with workers B42 and B50.

¹⁵⁴¹ Interview with manager D2.

¹⁵⁴² Interview with manager D2.

¹⁵⁴³ However, a worker (B44) said that it was mainly because the company was in a financial crisis – although they now have a new investor.

¹⁵⁴⁴ Interviews with workers B6, B46, B51, B53, B54, B55, B56,

¹⁵⁴⁵ Interview with worker B5.

¹⁵⁴⁶ Interview with manager D2.

safety gear as the company was opting for education for the moment^{1547 1548}. Overall, MTC's practice may clash with Rainforest Alliance¹⁵⁴⁹, Fairtrade¹⁵⁵⁰, and ETP¹⁵⁵¹ requirements that all protective gear be provided to workers free of charge. Finally, security workers must wear boots and raincoats but are only provided with clothes¹⁵⁵² and torches¹⁵⁵³, so they must purchase the rest themselves¹⁵⁵⁴. This means that they do not reportedly wear adequate boots as they are too expensive to buy on a worker's salary¹⁵⁵⁵. This poses the same problem as for general workers and may clash with afore-mentioned standards.

Finally, workers are trained about health and safety, including relevant Fairtrade and Rainforest Alliance standards¹⁵⁵⁶. A manager added that workers were trained in how to use and maintain machines, as well as in labour law¹⁵⁵⁷. This general training seems to be in line with Fairtrade¹⁵⁵⁸ and ETP¹⁵⁵⁹ standards.

6.2.2.2. Medical check-ups

A medical examination is conducted when workers are hired¹⁵⁶⁰. Management said that there were supposed to be an exit check-up, to verify how the work has affected workers and to adapt policies accordingly¹⁵⁶¹, although all workers but one said that there was no such thing¹⁵⁶². No regular medical check-ups during employment and no

¹⁵⁴⁷ Interview with manager D2.

¹⁵⁴⁸ However, worker B39 said that they would be terminated if they do not wear appropriate gear.

¹⁵⁴⁹ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criteria 4.5 and 4.15.

¹⁵⁵⁰ Fairtrade 'Hired Labour Standard', Standards 3.6.1. and 3.6.24.

¹⁵⁵¹ ETP 'Global Standard', Standard 3.4.

¹⁵⁵² Interview with worker B3.

¹⁵⁵³ Interview with worker B38.

¹⁵⁵⁴ Interviews with workers B3 and B38.

¹⁵⁵⁵ Interview with worker B3.

¹⁵⁵⁶ Interviews with workers B46 and B55.

¹⁵⁵⁷ Interview with manager D2.

¹⁵⁵⁸ Fairtrade 'Hired Labour Standard', Standards 3.6.1., 3.6.6., and 3.6.7.

¹⁵⁵⁹ ETP 'Global Standard', Standard 3.3.

¹⁵⁶⁰ Interviews with workers B37, B38, B39, B40, B41, B42, B43, B46, B47, B48, B51, B53, B54, B55, and B56.

¹⁵⁶¹ Interview with manager D2.

¹⁵⁶² Interviews with workers B37, B38, B39, B40, B41, B43, B46, B47, B48, B51, B53, B54, B55, and B56.

exit examination are reportedly conducted, which is at odds with Fairtrade¹⁵⁶³, the Rainforest Alliance¹⁵⁶⁴, and ETP¹⁵⁶⁵ standards, and with national legislation¹⁵⁶⁶.

6.2.2.3. Accidents and compensation

Although work-related accidents are reportedly rare¹⁵⁶⁷, it is important to investigate whether injured workers have access to free medical treatment and whether they are compensated. Here again, permanent and seasonal workers are treated differently.

On the one hand, permanent employees have access to free medical treatment in case of a work-related injury¹⁵⁶⁸, which is consistent with Fairtrade¹⁵⁶⁹ and ETP¹⁵⁷⁰ requirements, although there is no evidence that standards drove MTC's adoption of this practice. Moreover, they have access to compensation after a work-related accident¹⁵⁷¹, although a few employees complained that MTC usually says that it is the injured worker's fault and so denies them compensation¹⁵⁷². A worker stated that employees had been complaining about this practice, but that there had been no changes¹⁵⁷³. This practice is at odds with ETP standards¹⁵⁷⁴, but neither the Rainforest Alliance nor Fairtrade require compensation.

On the other hand, seasonal workers only have access to free medical treatment until their contract expires¹⁵⁷⁵, which clashes with the Fairtrade requirement that MTC provide access to appropriate healthcare in case of work-related illness or injury¹⁵⁷⁶. Furthermore, seasonal workers do not have access to compensation¹⁵⁷⁷. Some employees stated that they have been complaining about the situation, but that there

¹⁵⁶³ Fairtrade 'Hired Labour Standard', Standard 3.6.20.

¹⁵⁶⁴ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.41.

¹⁵⁶⁵ ETP 'Global Standard', Standard 3.12. (although this standard is specifically for workers who come into contact with hazardous chemicals).

¹⁵⁶⁶ Occupational Health and Safety Act, Section 24.

¹⁵⁶⁷ Interviews with workers B5, B6, B53, B54, B55, and B56.

¹⁵⁶⁸ Interviews with manager D2, and workers B51, B52, and B56.

¹⁵⁶⁹ Fairtrade 'Hired Labour Standard', Standard 3.6.18.

¹⁵⁷⁰ ETP 'Global Standard', Standard 3.12.

¹⁵⁷¹ Interview with manager D2, and workers B5, B6, B37, B38, B39, B41, B42, B46, B50, B54, and B55.

¹⁵⁷² Interviews with workers B37, B38, B42, and B50.

¹⁵⁷³ Interview with worker B50.

¹⁵⁷⁴ ETP 'Global Standard', Standard 3.12.

¹⁵⁷⁵ Interviews with workers B39, B40, B44, and B51.

¹⁵⁷⁶ Fairtrade 'Hired Labour Standard', Standard 3.6.18.

¹⁵⁷⁷ Interviews with workers B38, B39, B40, B42, B44, B47, and B48.

had been no changes¹⁵⁷⁸. It is notable that, again, ETP is the only self-regulatory mechanism adopted by MTC which includes standards about compensation for workers in case of work-related injury¹⁵⁷⁹. This gap in the rest of the instruments negatively impacts the right of workers to the enjoyment of just and favourable conditions of work – especially considering that ETP no longer carries out audits to check compliance with their standards –, which I will discuss further in the conclusion to this chapter.

6.2.3. Freedom of association and collective bargaining

This section will first provide a general assessment of MTC's practice regarding freedom of association and collective bargaining, and second of the firm's specific practice regarding strikes.

6.2.3.1. General considerations

TPAWU is the trade union for MTC workers¹⁵⁸⁰. Registration appears to be compulsory for all workers, with a fee taken out of their monthly wage¹⁵⁸¹, which clashes with the right to *free* association as required by the Rainforest Alliance¹⁵⁸², Fairtrade¹⁵⁸³, and ETP¹⁵⁸⁴.

Trade union representatives are workers elected by their peers¹⁵⁸⁵, who regularly meet with the company to discuss potential issues¹⁵⁸⁶, which is consistent with Fairtrade requirements¹⁵⁸⁷. At national level, TPAWU leaders negotiate CBAs with TAT on a biannual basis¹⁵⁸⁸. Such activities are consistent with Rainforest Alliance¹⁵⁸⁹,

¹⁵⁷⁸ Interviews with workers B47 and B48.

¹⁵⁷⁹ ETP 'Global Standard', Standard 3.12.

¹⁵⁸⁰ Interviews with manager D2, and workers B3, B4, B5, B6, B37, B38, B39, B40, B41, B42, B43, B46, B47, B48, B51, B52, B53, B54, B55, and B56.

¹⁵⁸¹ The monthly fee is Tsh3.900; interviews with workers B6, B37, B38, B39, B40, B41, B42, B43, B46, B47, B48, B51, B52, B53, B54, B55 and B56.

¹⁵⁸² Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.4.

¹⁵⁸³ Fairtrade 'Hired Labour Standard', Standard 3.4.2.

¹⁵⁸⁴ ETP 'Global Standard', Standard 2.1.

¹⁵⁸⁵ Interviews with workers B38, B46, B51, and B53.

¹⁵⁸⁶ Interviews with workers B3, B4, and B6.

¹⁵⁸⁷ Fairtrade 'Hired Labour Standard', Standard 3.4.8.

¹⁵⁸⁸ Interview with manager D2.

¹⁵⁸⁹ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.4.

Fairtrade¹⁵⁹⁰, and ETP¹⁵⁹¹ standards. A worker stated that TPAWU also trained them about CBAs¹⁵⁹² and a trade union representative stated that TPAWU leaders trained workers on relevant issues¹⁵⁹³, but others said that they did not know anything about CBAs¹⁵⁹⁴, so it is difficult to assess the extent to which workers are trained by TPAWU leaders. Civil society representatives stated that TPAWU representatives were not properly trained in labour laws and related issues, and so cannot defend workers' rights appropriately¹⁵⁹⁵. This clashes with Fairtrade standards¹⁵⁹⁶.

There are conflicting reports about the effectiveness of TPAWU as a trade union defending workers' interests: some workers said that it was effective¹⁵⁹⁷, while others stated that representatives had the interests of the company at heart¹⁵⁹⁸. If the union is indeed influenced by management, it would be at odds with the Rainforest Alliance requirement that the right to free association be guaranteed by MTC¹⁵⁹⁹. Moreover, there were concerns about the political bias of TPAWU as the union representatives were alleged to be members of the ruling party¹⁶⁰⁰, although I could not verify this piece of information myself.

Finally, there was no report of discrimination against trade union representatives, or of attempts by the company to stop representatives from meeting with workers, which is in line with Fairtrade¹⁶⁰¹ and ETP¹⁶⁰² requirements, although there is no indication that the standards impacted MTC's practice.

¹⁵⁹⁰ Fairtrade 'Hired Labour Standard', Standard 3.4.10.

¹⁵⁹¹ ETP 'Global Standard', Standard 2.2.

¹⁵⁹² Interview with worker B55.

¹⁵⁹³ Interview with trade union representative F2.

¹⁵⁹⁴ Interviews with workers B51, B52, and B56.

¹⁵⁹⁵ Interviews with civil society representatives A11 and A12.

¹⁵⁹⁶ Fairtrade 'Hired Labour Standard', Standard 2.4.4.

¹⁵⁹⁷ Interviews with workers B4, B5, and B6.

¹⁵⁹⁸ Interviews with workers B41, B51, and B54.

¹⁵⁹⁹ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.4.

¹⁶⁰⁰ Interviews with civil society representatives A11 and A12.

¹⁶⁰¹ Fairtrade 'Hired Labour Standard', Standards 3.4.1. and 3.4.5.

¹⁶⁰² ETP 'Global Standard', Standard 2.4.

6.2.3.2. Strikes

In 2014¹⁶⁰³, a strike organised by workers turned violent¹⁶⁰⁴. Workers started striking to protest against low wages paid late¹⁶⁰⁵, and against a specific manager¹⁶⁰⁶. A manager said that the company called the police because the strike was illegal and admitted that some striking workers were arrested and/or terminated^{1607 1608}. As mentioned in Section 5.2.4.2. about Unilever, the ILO Committee on Freedom of Association and the ILO Committee of Experts on the Application of Conventions and Recommendations have frequently stated that the right to strike is a fundamental right of workers and of their organisations based on ILO C087's provisions¹⁶⁰⁹. The Committee on Freedom of Association has also emphasised that responsibility for declaring a strike illegal should lie with an independent body which has the confidence of the parties involved¹⁶¹⁰ – which was not the case here. It follows that MTC did not implement its standards in this instance.

Another important point to make is the fact that, as will be investigated later in this chapter¹⁶¹¹, no free and anonymous complaints mechanism is available to workers; yet having access to such a mechanism could perhaps ensure that complaints are peacefully resolved.

I will now investigate the working conditions of MTC's seasonal workers, especially as compared with permanent workers.

¹⁶⁰³ Interviews with manager D2 and workers B37, B38, B39, B40, B41, B42, B43, B46, B47, B48, B51, B52, B53, B54, B55, and B56.

¹⁶⁰⁴ Interviews with workers B38, B39, B41, B46, B47, B48, B51, and B55.

¹⁶⁰⁵ Interviews with manager D2 and workers B4, B5, B37, B38, and B51.

¹⁶⁰⁶ Interview with manager D2.

¹⁶⁰⁷ Interviews with manager D2 and workers B37, B38, B39, B40, and B42.

¹⁶⁰⁸ According to trade union representative F2, the strike did not follow proper procedure which requires 28 days' notice to given to the company (during which negotiations occur) because workers were too angry to wait before starting the strike.

¹⁶⁰⁹ Bernard Gernigon, Alberto Otero And Horacio Guido, 'ILO Principles Concerning the Right to Strike', *International Labour Reviews* 137(4), 1998, 9.

¹⁶¹⁰ Ibid, 32.

¹⁶¹¹ See Section 6.4.

6.2.4. Working conditions of seasonal workers

MTC's permanent and seasonal workers are treated differently, based on their employment status. Seasonal workers do not have access to leaves – although it is unclear whether this includes paid sick leave or not, as explained in Section 6.2.1.4. Moreover, as will be explained in the section below, pregnant women are reportedly discriminated against when they apply for seasonal contracts, and a seasonal worker said that she had been fired when the company found out that she was pregnant (although I could not verify this information myself). Another discriminatory practice is the reported fact that seasonal workers only have access to free healthcare after a work-related accident until their contract expires, and that they are not entitled to compensation. Finally, MTC does not provide financial help to seasonal workers whom they cannot accommodate onsite, while permanent workers are given a rent allowance, as explained above in section 6.2.1.2. This differentiation in treatment of MTC's workers based on their employment status is at odds with multiple certification standards, as is outlined in each relevant section.

6.2.5. Right to non-discrimination

This section will be divided between discrimination at the hiring stage and during employment, and will be mainly focused on gender.

6.2.5.1. Hiring stage

There have been reports of cases of discrimination, mainly based on gender, at the hiring stage. There were multiple reports of discrimination against pregnant women¹⁶¹², for seasonal and permanent jobs¹⁶¹³. A manager admitted that pregnant workers would only be hired for seasonal jobs if they were deemed fit enough to perform their duties for the entirety of their contract, so that their recruitment remains financially coherent for the company¹⁶¹⁴. Moreover, as explained in the section above, a worker stated that her seasonal contract had been terminated when her manager

¹⁶¹² Interviews with workers B38, B39, B40, B41, B44, B46, B50, B51, and B56.

¹⁶¹³ Interview with worker B46.

¹⁶¹⁴ Interview with manager D2.

found out that she was pregnant, and that it had been difficult to get rehired after she gave birth¹⁶¹⁵ – although I could not verify this information myself. However, a corporate manager stated that pregnant women were hired for permanent positions¹⁶¹⁶, although there were multiple reports of discrimination also for permanent positions¹⁶¹⁷. As was the case with Unilever, this practice clashes with Rainforest Alliance requirement that there be no discrimination against pregnant women¹⁶¹⁸, as well as with ILO Convention C111 as seen above and with ETP standards¹⁶¹⁹. However, it is notable that the company does not seem to require that women take pregnancy tests before offering them employment¹⁶²⁰, which would be in line with Fairtrade¹⁶²¹ and ETP¹⁶²² standards.

However, as was the case with Unilever, it is notable that there is no discrimination against people living with HIV/AIDS¹⁶²³. Although it is consistent with Rainforest Alliance¹⁶²⁴, Fairtrade¹⁶²⁵, and ETP¹⁶²⁶ standards, there was no indication from interviewees that the company's practice was driven by it.

6.2.5.2. Employment stage

MTC's performance in terms of gender-based discrimination is mixed. On the one hand, most workers said that there was gender equality¹⁶²⁷ and the company paid male and female workers the same rate for the same work, which is consistent with the Rainforest Alliance¹⁶²⁸ and ETP¹⁶²⁹ requirements and with ILO Convention C100. Moreover, a manager stated pregnant workers are given light factory jobs¹⁶³⁰, although

¹⁶¹⁵ Interview with worker B43.

¹⁶¹⁶ Interview with manager D2.

¹⁶¹⁷ Interviews with workers B38, B39, B40, B41, B46, B50, B51, and B56.

¹⁶¹⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.3.

¹⁶¹⁹ ETP 'Global Standard', Standards 7.1. and 7.3.

¹⁶²⁰ Interview with worker B43.

¹⁶²¹ Fairtrade 'Hired Labour Standard', Standard 3.3.2.

¹⁶²² ETP 'Global Standard', Standard 7.3.

¹⁶²³ There were no reports from workers, community members, local government or civil society representatives of such discrimination, and a manager said that they hired people living with HIV/AIDS.

¹⁶²⁴ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.3.

¹⁶²⁵ Fairtrade 'Hired Labour Standard', Standard 3.1.1. Fairtrade standards refer specifically to "HIV/AIDS status" as a prohibited ground for discrimination.

¹⁶²⁶ ETP 'Global Standard', Standard 7.1.

¹⁶²⁷ Interviews with workers B37, B38, B39, B40, B42, B46, B47, B48, B50, B52, B53, B54, B55, and B56.

¹⁶²⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.3.

¹⁶²⁹ ETP 'Global Standard', Standard 7.2.

¹⁶³⁰ Interview with manager D2.

I could not verify this claim. If it is true, it would be in line with Rainforest Alliance requirements¹⁶³¹— however, no link has been established by the company between this policy and the certification standards. On the other hand, there are reports of gender-based discrimination. For instance, some positions are reserved for men (although it is acknowledged that this practice aims to guarantee women’s safety). Indeed, women are not allowed to operate machines in the plantations¹⁶³² – although workers do say that it does not affect their level of pay¹⁶³³. It was also reported that women are not allowed to do chemical spraying¹⁶³⁴, and that easy jobs in the factory are for women¹⁶³⁵. This practice may clash with Rainforest Alliance standards¹⁶³⁶ as well as the ILO Discrimination (Employment and Occupation) Convention No 111, the Universal Declaration of Human Rights¹⁶³⁷, and the ICESCR¹⁶³⁸. Finally, night security shifts are also reserved for men¹⁶³⁹, which is in line with ILO Night Work (Women) Convention No 89¹⁶⁴⁰ but may clash with the instruments mentioned before. Finally, there were no reports of crèche facilities offered to workers, which may be inconsistent with Fairtrade¹⁶⁴¹ and ETP¹⁶⁴² requirements and with the firm’s own report¹⁶⁴³.

Furthermore, as explained in Chapter 5, a particularly problematic issue in tea plantations in Mufindi is sexual harassment¹⁶⁴⁴. A manager stated that MTC had adopted a relevant policy following their zero-tolerance approach¹⁶⁴⁵, which is in line with ETP standards¹⁶⁴⁶ (although no positive evidence of a link was found): women can reportedly go to women representatives if they need to speak about any gender-

¹⁶³¹ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical criterion 4.18.

¹⁶³² Interviews with workers B47 and B48.

¹⁶³³ Interviews with workers B47 and B48.

¹⁶³⁴ Interview with worker B52.

¹⁶³⁵ Interview with manager D2.

¹⁶³⁶ Rainforest Alliance ‘Sustainable Agriculture Standard’, Critical Criterion 4.3.

¹⁶³⁷ Universal Declaration of Human Rights, Article 23(1) and (3).

¹⁶³⁸ ICESCR, Articles 2(2) and 7.

¹⁶³⁹ Interview with manager D2.

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¹⁶⁴¹ Fairtrade ‘Hired Labour Standard’, Standard 3.5.28.

¹⁶⁴² ETP ‘Global Standard’, Standard 3.13.

¹⁶⁴³ On its website, the company says that it provide “creches for staff to provide care for their children during working hours” (Rift Valley Tea, ‘The future and the edification of societies that will determine tomorrows’ Africa’ <<http://www.riftvalley.com/education/#1466502267340-4fff5b5b-62b3fe77-89b5>> (accessed on 21 October 2019)).

¹⁶⁴⁴ Interviews with civil society representatives A10 and A13.

¹⁶⁴⁵ Interview with manager D2.

¹⁶⁴⁶ ETP ‘Global Standard’, Standard 9.1.

related issues, which will lead to an investigation and potential severe consequences. Indeed, following a complaint and an investigation, a manager was reportedly terminated for sexual harassment¹⁶⁴⁷. This procedure for sexual harassment with potential sanctions if found guilty is in line with Rainforest Alliance¹⁶⁴⁸, Fairtrade¹⁶⁴⁹, and ETP standards¹⁶⁵⁰, although no evidence linking the standards and the practice was found. The company was also looking to hire a gender activist to train workers because there is a gap to fill, according to a manager¹⁶⁵¹; this would be in line with Fairtrade requirements¹⁶⁵². Although the project is now on hold because of the change of investors¹⁶⁵³, TPAWU leaders reportedly give seminars about gender-related issues independently from the company¹⁶⁵⁴ – although a civil society representative said that trade union representatives did not always manage to protect women adequately¹⁶⁵⁵. A manager stated that certification with Fairtrade and the Rainforest Alliance had helped by putting an emphasis on the implementation of the firm's policies on gender-related issues¹⁶⁵⁶. Certification audits are also reportedly used to educate workers about the policies¹⁶⁵⁷. In conclusion, even though the firm's practice is not entirely compliant with its standards, MTC takes this issue seriously, and certification mechanisms have reportedly had a positive impact on the firm's practice.

6.3. Community-related rights

In this section, I will review MTC's performance as set against community-related human rights standards, which will be relevant to workers and the broader community living around MTC's plantations. I will therefore investigate living conditions onsite, MTC's contribution to the health and education needs of the population (and any other contribution) in the area, and the company's impact on the environment.

¹⁶⁴⁷ Interview with manager D2.

¹⁶⁴⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criterion 4.2.

¹⁶⁴⁹ Fairtrade 'Hired Labour Standard', Standards 3.1.5., 3.1.6., and 3.5.27.

¹⁶⁵⁰ ETP 'Global Standard', Standard 9.2.

¹⁶⁵¹ Interview with manager D2.

¹⁶⁵² Fairtrade 'Hired Labour Standard', Standard 2.2.6.

¹⁶⁵³ Interview with manager D2.

¹⁶⁵⁴ Interview with trade union representative F2 and worker B56.

¹⁶⁵⁵ Interview with civil society representative A13.

¹⁶⁵⁶ Interview with manager D2.

¹⁶⁵⁷ Interview with manager D2.

6.3.1. Housing and living conditions

Although I could not access the houses, workers reported that they were too small for families¹⁶⁵⁸, and that there was no running water¹⁶⁵⁹ apart from communal taps outside. A manager said that water testing was done onsite annually to verify that water was safe¹⁶⁶⁰ – although workers must still boil it before they can drink it. This clashes with the Rainforest Alliance¹⁶⁶¹, Fairtrade¹⁶⁶², and ETP¹⁶⁶³ requirements that the firm provide potable water to its workers onsite, although it is important to keep MTC's environment in mind; running water remains rare in the area¹⁶⁶⁴, and the population makes sure that water is drinkable by boiling it or using special pills. Community members also stated that, in contrast to the situation in the village, access to water was easy on MTC's premises¹⁶⁶⁵. Moreover, electricity is available in some of the houses but not all^{1666 1667}, which is consistent with the living conditions in the region, considering that only about 60% of houses have electricity in the area¹⁶⁶⁸. However, none of MTC's mechanisms includes standards about the availability of electricity in workers' housing.

Some workers also complained that onsite housing was overcrowded, and that houses for general labour were in bad conditions with stoves and beds in the same room¹⁶⁶⁹, whereas houses for managers were in adequate condition¹⁶⁷⁰. As a result, some workers decided to move offsite¹⁶⁷¹. This clashes with Rainforest Alliance¹⁶⁷², Fairtrade¹⁶⁷³, and ETP¹⁶⁷⁴ requirements about reasonable levels of decency, privacy, and hygiene in

¹⁶⁵⁸ Interviews with workers B4, B5, B39, B51, and B53.

¹⁶⁵⁹ Interviews with workers B4, B5, B37, B40, B41, B54, and B56.

¹⁶⁶⁰ Interview with manager D2.

¹⁶⁶¹ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.12.

¹⁶⁶² Fairtrade 'Hired Labour Standard', Standard 2.2.10.

¹⁶⁶³ ETP 'Global Standard', Standard 3.14.

¹⁶⁶⁴ Interviews with community members C61, C63, C67, and C68.

¹⁶⁶⁵ Interviews with workers B42, B43, B46, B47, B48, B52, B53, B54, and B55, and community member C74.

¹⁶⁶⁶ Interviews with manager D2 and workers B4, B5, B37, B39, B40, B41, B46, B54, and B56.

¹⁶⁶⁷ Manager D2 said that the company intended to install electricity in more houses when they have the funds.

¹⁶⁶⁸ Interviews with local government representatives E4 and E5.

¹⁶⁶⁹ Interviews with workers B38, B39, B40, B41, B42, and B53.

¹⁶⁷⁰ Interview with worker B41.

¹⁶⁷¹ Interviews with workers B38, B40, B42, B51, and B53.

¹⁶⁷² Rainforest Alliance 'Sustainable Agriculture Standard', Continuous Improvement Criterion 4.30. This criterion was also included in the previous standard (criterion 5.14.).

¹⁶⁷³ Fairtrade 'Hired Labour Standard', Standard 3.5.28.

¹⁶⁷⁴ ETP 'Global Standard', Standard 3.14.

company housing. A community member also said that workers moved offsite because it was too difficult to farm or raise cattle as a business onsite¹⁶⁷⁵.

6.3.2. Right to health

This section will first cover the main health issues reported around MTC's operations, and second the health services available to workers and community members.

6.3.2.1. Health issues

The main health issues around MTC's operations are poor access to water and STDs (and in particular HIV/AIDS).

First, as discussed in the previous section, there is no running water in the area, and access to water in general is difficult¹⁶⁷⁶. Unless community members own a pump or are wealthy enough to afford to pay for water in the village¹⁶⁷⁷, they may have to walk for an hour to reach wells¹⁶⁷⁸. The local government said that there was a project of water supply, but that it was only still at the first stage – although it will reportedly involve MTC at a later stage¹⁶⁷⁹. Even though a manager said that shallow wells were built in the village as part of Fairtrade¹⁶⁸⁰, many community members and local government representatives said that MTC had never contributed to improving access to water in Itona¹⁶⁸¹. MTC have reportedly built dams, but villagers are not allowed to fetch water there¹⁶⁸². As noted in Section 5.3.3.1., Rainforest Alliance requires firms to “implement and document activities to support identified needs and priorities of the community”¹⁶⁸³. By not contributing – or not in a way which substantially helps the

¹⁶⁷⁵ Interview with community member C62.

¹⁶⁷⁶ Interviews with local government representatives E4, E5, and E6, workers B3, B4, B5, B38, B42, B43, B44, B46, B50, B51, B52, B53, B54, B55, B56, and community members C61, C62, C63, C64, C65, C66, C67, C68, C70, C71, C72, C73, C74, C75, C76, C77.

¹⁶⁷⁷ Interviews with community members C58, C59, C60, and C69.

¹⁶⁷⁸ Interviews with community members C68, C75, C76, and C77.

¹⁶⁷⁹ Interview with local government representative E6.

¹⁶⁸⁰ Interview with manager D2.

¹⁶⁸¹ Interviews with local government representatives E4 and E5, workers B37, B38, and B55, and community members C58, C59, C60, C61, C62, C63, C64, C65, C67, C68, C69, C70, and C76.

¹⁶⁸² Interview with community member C61.

¹⁶⁸³ Rainforest Alliance ‘Sustainable Agriculture Standard’, Continuous improvement criterion 4.47. Although this criterion is a ‘continuous improvement criterion A’ which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

community – to the urgent needs of the community in terms of access to water, MTC fails to meet the Rainforest Alliance requirements.

Second, one of the main health issues in Mufindi, as outlined in the previous chapter, is STDs, and specifically HIV/AIDS. The fact that many migrant workers live in the area¹⁶⁸⁴ and work for tea corporations (including MTC) has been identified as one of the causes of this phenomenon. Immigration due to tea activities has been so high in the last few decades that Itona, the local village, would not reportedly exist if it was not for MTC¹⁶⁸⁵. A few community members estimated that 90% of Itona inhabitants were migrant tea workers¹⁶⁸⁶. Because HIV/AIDS is so widespread in the area, TPAWU leaders reportedly train workers about HIV/AIDS¹⁶⁸⁷, and MTC provides an HIV/AIDS-prevention programme to workers from time to time. However, most workers agree that the programme has not run in some months¹⁶⁸⁸, which means that they must go to the dispensary to get support. A manager stated that the company's clinic operates the programme monthly and that the firm's doctor goes around the area and provides support to workers and community members¹⁶⁸⁹. However, it is unclear whether this is the same programme as the one described by workers. Indeed, no community members was aware of an MTC's programme open to community members¹⁶⁹⁰, and local government representatives said that there was no company-sponsored HIV/AIDS programme for community members¹⁶⁹¹. The clinic also provides Community-based Therapeutic Care, which is conducted as part of a national programme which was started a few years ago and is run in partnership with USAID¹⁶⁹². An HIV/AIDS-positive worker said that they get all medicine and support for free¹⁶⁹³. It is therefore unclear if MTC's practice is consistent with Fairtrade¹⁶⁹⁴ and ETP¹⁶⁹⁵ standards requiring MTC to adopt and implement a policy to prevent and

¹⁶⁸⁴ Interviews with local government representatives E4 and E5, and community members C22, C58, C59, C60, C61, C62, C63, C64, C65, C66, C67, C68, C69, C70, C71, C72, C73, C74, C75, C76, and C77.

¹⁶⁸⁵ Interviews with local government representatives E4 and E5.

¹⁶⁸⁶ Interviews with community members C62, C67, and C68.

¹⁶⁸⁷ Interview with union representative F2.

¹⁶⁸⁸ Interviews with workers B37, B38, B39, B41, B43, B46, B47, B48, B51, B52, and B53.

¹⁶⁸⁹ Interview with manager D2.

¹⁶⁹⁰ Community members C58 and C59 denied having ever heard of an HIV/AIDS programme run by MTC and open to community members.

¹⁶⁹¹ Interviews with local government representatives E4 and E5.

¹⁶⁹² Interview with manager D2.

¹⁶⁹³ Interview with worker B50.

¹⁶⁹⁴ Fairtrade 'Hired Labour Standard', Standard 3.6.30.

¹⁶⁹⁵ ETP 'Global Standard', Standard 3.12.

deal with contagious diseases such as HIV/AIDS, with the Rainforest Alliance requirement that the company contributes to the specific needs of the community¹⁶⁹⁶, or with the firm's report that they pursue "vigorous wellness programmes focusing on preventative healthcare and HIV/AIDS awareness"¹⁶⁹⁷.

6.3.2.2. *Health services*

MTC has one dispensary in each estate^{1698 1699}; treatment is free for workers, their spouse, and up to four of their children until they turn 18 years old¹⁷⁰⁰. This is consistent with Fairtrade's requirements that workers be provided with free healthcare¹⁷⁰¹, although there is no evidence that the label has influenced MTC's practice. There was no report of a shortage of doctors or medicines in MTC's dispensaries.

Community members may use MTC's health centres but must pay for treatment^{1702 1703}, which many cannot afford¹⁷⁰⁴. Community members therefore go to local government's dispensary¹⁷⁰⁵, where only two nurses work and there is no doctor¹⁷⁰⁶. There is also no family planning service¹⁷⁰⁷, so women must go to Mafinga for deliveries¹⁷⁰⁸, and there were multiple reports of a lack of medicines in local dispensaries¹⁷⁰⁹. The fact that MTC's health centre is expensive for community

¹⁶⁹⁶ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

¹⁶⁹⁷ Rift Valley, 'Social Impact' < <http://www.riftvalley.com/#impact> > (accessed on 21 October 2019).

¹⁶⁹⁸ Apart from the estate in Ikanga and the Head Office in Dar es Salaam.

¹⁶⁹⁹ Interview with manager D2.

¹⁷⁰⁰ Interviews with manager D2, and workers B4, B5, B6, and B50.

¹⁷⁰¹ Fairtrade 'Hired Labour Standard', Standard 3.6.29.

¹⁷⁰² Treatment usually costs Tsh 5.000, and Tsh 15.000 per bed per day.

¹⁷⁰³ Interviews with community members C22, C61, C62, C64, and C65.

¹⁷⁰⁴ Interviews with community members C64, C65, and C76.

¹⁷⁰⁵ Interviews with local government representatives E4, E5, and E6, and community members C58, C59, C60, C61, C62, C63, C64, C65, C66, C67, C68, C69, C70, C71, C72, C73, C74, C75, C76, and C77.

¹⁷⁰⁶ Interviews with local government representatives E4, E5, and E6, and community members C61, C63, C68, and C69.

¹⁷⁰⁷ Interview with community member C60.

¹⁷⁰⁸ Interviews with community members C58, C59, and C60.

¹⁷⁰⁹ Interviews with community members C60, C70, C73, C74, and C75.

members despite the lack of full health facilities in the area may be at odds with Rainforest Alliance standards¹⁷¹⁰.

6.3.3. Right to education

Most interviewees said there were enough schools and teachers in the area^{1711 1712}, although a few disagreed¹⁷¹³ and stated specifically that more science teachers were needed¹⁷¹⁴. There were generally no reported issues, although the local government said that infrastructures were poor¹⁷¹⁵, and other interviewees said that performance was poor¹⁷¹⁶ (which one interviewee linked to overcrowded classrooms¹⁷¹⁷). Some community members complained that schools were very far and that children had to walk a long distance every day¹⁷¹⁸, and I indeed observed children walking down long roads between Itona and Mtili (where one of the schools is).

MTC has made significant contributions to the education needs of the community: the firm built a school in the area¹⁷¹⁹ and, although the firm does not run it anymore¹⁷²⁰, it still contributes to its activities by donating its old electronics and paying for the school's water and electricity bills¹⁷²¹. MTC also used to provide security staff to the school but can no longer afford to do so¹⁷²². Teachers are provided with free water and electricity¹⁷²³, and the Fairtrade premium was used to build houses for secondary

¹⁷¹⁰ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

¹⁷¹¹ There are two primary and one secondary schools in the area (interviews with local government representatives E4, E5, and E6).

¹⁷¹² Interviews with local government representatives E4 and E5, workers B5, B6, B37, B40, B41, B43, B46, B47, B48, B51, B52, and B55, and community members C58, C59, C61, C62, C63, C64, C65, C66, C67, C68, C71, C72, C73, C76, and C77.

¹⁷¹³ Interviews with worker B54 and community member C74.

¹⁷¹⁴ Interviews with workers B38, community members C22, C69, and C75.

¹⁷¹⁵ Interviews with local government representatives E4 and E5.

¹⁷¹⁶ Interviews with worker B51 and community member C61.

¹⁷¹⁷ Interview with worker B51.

¹⁷¹⁸ Interviews with community members C58 and C59.

¹⁷¹⁹ Interviews with manager D2, local government representatives E4 and E5, workers B3 and B6, and community members C62, C64, C65, C68, and C69.

¹⁷²⁰ Interviews with manager D2, local government representatives E4 and E5, worker B3, and community member C62.

¹⁷²¹ Interviews with manager D2 and worker B6.

¹⁷²² Interview with manager D2.

¹⁷²³ Interview with manager D2.

teachers¹⁷²⁴ ¹⁷²⁵. Local government representatives also stated that Fairtrade had improved its relationship with the firm and that MTC now contributed more, for instance by building a laboratory for science classes in addition to Itona school¹⁷²⁶. However, it is unclear whether the funds came directly from MTC or from the Fairtrade Premium Fund. MTC's efforts to provide children with education are in line with the Fairtrade standard requiring the firm to ensure access to primary education for the children of all workers¹⁷²⁷. It is also consistent with the above-mentioned Rainforest Alliance requirement to ensure that important needs of the community are met¹⁷²⁸. Finally, it is consistent with the firm's own report that they provide "schools for employees' children, including kindergarten, and primary schools up to the age of 14 years old"¹⁷²⁹ ¹⁷³⁰.

6.3.4. Other contributions to the community

The company also contributes to other needs of the community. First, a manager said that the firm contributed towards road maintenance when they had the funds¹⁷³¹, although some workers complained that the roads were not safe¹⁷³². Second, the company reportedly contributes towards funeral expenses for community members¹⁷³³, although it is unclear whether the company's contribution is made through the Fairtrade premium or not. Third, a manager from the company said that MTC makes a monthly contribution towards the district council's social responsibility fund¹⁷³⁴, although I could not independently verify this information.

¹⁷²⁴ Interview with manager D2.

¹⁷²⁵ The Fairtrade logo was painted on the houses.

¹⁷²⁶ Interview with local government representatives E4 and E5.

¹⁷²⁷ Fairtrade 'Hired Labour Standard', Standards 2.2.8. and 2.2.9.

¹⁷²⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

¹⁷²⁹ Rift Valley Tea 'The future and the edification of societies that will determine tomorrows' Africa' (n. 1639).

¹⁷³⁰ However, MTC also says the following: "The primary schools have over the years provided a good quality of education for its students and have performed highly in the national league tables." (see *ibid*), which contrasts with reports that performance was poor.

¹⁷³¹ Interview with manager D2.

¹⁷³² Interviews with workers B38 and B41.

¹⁷³³ Interviews with worker B53, and community members C64, C65, and C67.

¹⁷³⁴ Interview with manager D2.

In general, there were mixed opinions about the overall relationship between the company and the community. On the one hand, some interviewees stated that the relationship was good¹⁷³⁵, with some specifying that it took place through local government representatives¹⁷³⁶ and others stating that it was because the company provided local employment opportunities¹⁷³⁷. A couple of workers added that MTC was increasingly contributing to the needs of the community¹⁷³⁸, and a few community members made reference to Fairtrade's contributions¹⁷³⁹. On the other hand, a few said that there was no relationship between the community and the company¹⁷⁴⁰, or that the relationship was bad¹⁷⁴¹. Overall, and despite the complaints, the company's engagement with, and contribution to, the community is in line with Fairtrade¹⁷⁴² and the Rainforest Alliance¹⁷⁴³ requirements. However, it is important to note that one of the main priorities of the community – access to water – has not been addressed by the firm, as was outlined above in section 6.3.2.1.

6.3.5. Right to a clean environment

Almost all interviewees stated that the firm's operations had no impact on the environment¹⁷⁴⁴, which is consistent with the Rainforest Alliance¹⁷⁴⁵, Fairtrade¹⁷⁴⁶, and ETP¹⁷⁴⁷ standards. In particular, there has been no report of pesticide or chemicals spraying near zones of human activities¹⁷⁴⁸. A manager stated that the Rainforest

¹⁷³⁵ Interview with workers B37, B39, B40, B42, B46, B47, B48, B51, B53, B55, and B56, and community members C62, C63, C64, C55, C66, C67, C68, C69, C70, C71, C72, C73, C74, and C77.

¹⁷³⁶ Interviews with community members C75 and C76.

¹⁷³⁷ Interviews with worker B44 and community member C61.

¹⁷³⁸ Interviews with workers B53 and B55.

¹⁷³⁹ Interviews with worker B42, and community members C63, C64, C65, and C66.

¹⁷⁴⁰ Interviews with workers B43, and community members C22, C58, C59, and C60.

¹⁷⁴¹ Interviews with workers B38, and B41.

¹⁷⁴² Fairtrade 'Hired Labour Standard', Standards 2.2.8. and 2.2.9.

¹⁷⁴³ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criteria 4.46. and 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

¹⁷⁴⁴ Interviews with local government representatives E4, E5, and E6, workers B37, B38, B39, B40, B41, B43, B44, B46, B47, B48, B51, B52, B53, B55, and B56, and community members C58, C59, C60, C61, C62, C63, C64, C65, C66, C67, C68, C69, C70, C71, C72, C73, C75, C76, and C77.

¹⁷⁴⁵ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criteria 2.1.-2.4., 3.8, 3.9.

¹⁷⁴⁶ Fairtrade 'Hired Labour Standard', Standards 4.2.6., 4.2.7., and 4.2.9.

¹⁷⁴⁷ ETP 'Global Standard', Standards 10.1.-10.7.

¹⁷⁴⁸ Both the Rainforest Alliance (Continuous improvement criteria 3.27. and 3.28.) and Fairtrade (Standards 4.2.6. and 4.2.7.) require that there be buffer zones or barriers between areas sprayed with chemicals and natural ecosystems and areas of human activities.

Alliance and Fairtrade standards helped the company with its environmental impact, although no more detail was provided¹⁷⁴⁹.

Moreover, regarding specifically the firm's waste management, a manager stated that the firm had special dumping places and a specific system to ensure that nothing ends up in the water¹⁷⁵⁰, which is in line with Rainforest Alliance¹⁷⁵¹, Fairtrade¹⁷⁵², and ETP¹⁷⁵³ standards. They also have latrines for the use of workers living onsite, which is consistent with Rainforest Alliance requirements¹⁷⁵⁴, and MTC collect employees' plastic and glass waste¹⁷⁵⁵, in line with ETP's standards¹⁷⁵⁶. Apart from a worker and a community member¹⁷⁵⁷, all interviewees agreed that MTC's waste management was good¹⁷⁵⁸. A manager stated that certification had helped the company improve its waste management¹⁷⁵⁹; in particular, MTC changed its water waste policy to comply with the labels' standard^{1760 1761}, although it is unclear which label in particular is concerned. However, it is acknowledged that I had limited capacity to assess such technical processes, and that the Rainforest Alliance audit reports from 2016 and 2019 state that the company does not comply with the relevant standards regarding their waste management¹⁷⁶².

Now that I have assessed MTC's human rights performance against the firm's standards and attempted to link practice on the ground to commitments on paper, I will use the framework of 'key features' developed in Chapter 3 to investigate the effectiveness of MTC's self-regulatory mechanisms.

¹⁷⁴⁹ Interview with manager D2.

¹⁷⁵⁰ Interview with manager D2.

¹⁷⁵¹ Rainforest Alliance 'Sustainable Agriculture Standard', Critical and continuous improvement criteria 3.2., 3.37., 3.40., and 3.41. The last two criteria were also included in the previous standard (criteria 10.1.-10.6.)

¹⁷⁵² Fairtrade 'Hired Labour Standard', Standards 4.2.10. and 4.4.2.

¹⁷⁵³ ETP 'Global Standard', Standard 10.7.

¹⁷⁵⁴ Rainforest Alliance 'Sustainable Agriculture Standard', Continuous improvement criterion 3.21.

¹⁷⁵⁵ Interview with manager D2.

¹⁷⁵⁶ ETP 'Global Standard', Standard 3.14.

¹⁷⁵⁷ Interviews with worker B54 and community member C74.

¹⁷⁵⁸ Interviews with local government representative E6, workers B37, B38, B41, B46, B51, and B52, and community member C61.

¹⁷⁵⁹ Interview with manager D2.

¹⁷⁶⁰ Interview with manager D2.

¹⁷⁶¹ Rainforest Alliance 'Sustainable Agriculture Standard', Critical criteria 3.1., 3.2., and 3.21.; and Fairtrade 'Hired Labour Standard', Standard 4.3.13.

¹⁷⁶² NEPCo Kenya (n. 797), 5-6; and Rainforest Alliance, 'Public Summary of Audit Report – MTC', Rainforest Alliance, 2016, 6.

6.4. Preliminary investigation into the effectiveness of MTC's self-regulatory mechanisms

In Chapter 4, I outlined what MTC publicly states it is doing to implement its commitments. In this chapter, I have investigated what the company is doing *in practice*. It is now important to assess the effectiveness of the firm's self-regulatory mechanisms using the framework of 'key features' developed in Chapter 3. However, as explained in the same chapter, MTC has no control over the substantial development of the standards included in the self-regulatory mechanisms which it uses; investigating the drafting process of MTC's mechanisms is therefore outside the scope of this thesis. I will therefore focus on the following features: the embedding of its standards into its everyday activities, the monitoring and reporting of the compliance of its operations with its standards, the setting up of a complaints mechanism, and the potential sanctions for breaches of standards in Mufindi.

First, the embedding of a firm's commitments into its everyday activities was identified in Chapter 3 as important to ensure that corporate self-regulation is effectively implemented. It includes communication to workers about the content of policies and training of workers and managers on standards, as well as reward systems for upholding the standards and for whistleblowing. In the case of MTC, workers whom I interviewed only knew that the company had adopted policies, but not their specific content¹⁷⁶³. However, as for Unilever, it would appear that communication of some MTC's policies *does* take place¹⁷⁶⁴, albeit only as part of training on the specific issue of health and safety¹⁷⁶⁵. Training on CBAs is also supposed to take place, although it is unclear whether it does take place or whether it is conducted in a satisfactory way¹⁷⁶⁶, as was explained above in section 6.3.2.1. Training on HIV/AIDS prevention is also supposed to be offered to workers – although, when the interviews took place, it did not seem to be running¹⁷⁶⁷, and community members are in any case

¹⁷⁶³ Interviews with workers B4, B5, and B6.

¹⁷⁶⁴ I focus here on *internal* communication because MTC does not reportedly have subcontractors and the firm's policies do not apply to its suppliers.

¹⁷⁶⁵ Interviews with manager D2 and workers B46 and B55.

¹⁷⁶⁶ Interviews with civil society representatives A11 and A12 and workers B51, B52, B55, and B56.

¹⁷⁶⁷ Interviews with workers B37, B38, B39, B41, B43, B46, B47, B48, B51, B52, and B53.

excluded¹⁷⁶⁸. Moreover, a training programme on gender-related issues was supposed to start, but plans were derailed when the company was taken over, as was mentioned above in section 6.2.5.2. This failure on the part of the company to provide education on gender-related issues may explain why a worker reported that TPAWU have started running their own seminars, leading to behavioural improvement. It therefore appears that the training offered to workers helped change their behaviour, as suggested by some authors¹⁷⁶⁹ – and consolidate it. Finally, no reward system for upholding MTC's policies is in place as the company does not review the performance of low-skilled labour¹⁷⁷⁰. No evidence of a reward system for whistleblowing was found either, and it is therefore difficult to assess the difference such a system would have on the effective implementation of MTC's standards.

Second, the monitoring of MTC's compliance with its own commitments takes place internally and externally. Internal monitoring is conducted by the company's compliance manager, who reportedly inspects all estates on a rolling basis¹⁷⁷¹. However, even though it is required by ETP¹⁷⁷², I could not find any due diligence or human rights impact assessment which MTC has conducted, and no evidence was found of the implementation of the firm's ESMS. If such assessments had been conducted, it could have helped identify and address the negative human rights impact and risks of MTC's operations, such as low pay, problematic health and safety practices and working conditions of seasonal workers, and poor access to water. This feature is therefore important in ensuring that standards are effectively implemented. Furthermore, external monitoring is done via Fairtrade and the Rainforest Alliance audits (there is no third-party monitoring of compliance conducted by ETP itself or with ILO conventions standards), conducted every three years to check that all the respective label's standards are implemented. The latest Rainforest Alliance audit took place in September 2017 and MTC's renewed certificate is now valid until 2020 – although they did undergo a surveillance audit in March 2019. As Fairtrade reports are not publicly available, I do not know when the latest audit took place. These audits

¹⁷⁶⁸ Community members C58 and C59 denied having ever heard of an HIV/AIDS programme run by MTC and open to community members.

¹⁷⁶⁹ Dean (n. 405), 285; Maclagan (n. 405), 415; Kearney (n. 363), 211; Rodríguez-Garavito (n. 166), 228; and Schwartz (n. 320), 258; and Sims (n. 395), 504.

¹⁷⁷⁰ Interview with manager D2.

¹⁷⁷¹ Interview with manager D2.

¹⁷⁷² ETP 'Global Standard', Standard 3.2., 3.7., 3.14., and 10.1. (although it focuses on health and safety, including in workers' housing, and environmental impact assessments).

have encouraged the company to implement the standards, and have had a surprising impact on MTC's performance for sexual harassment and gender-related issues: it is seen by management as a chance to *educate* workers about these issues¹⁷⁷³. Nevertheless, these findings suggest that third-party monitoring helps with the implementation of standards. However, it is notable that, as for Unilever, some issues which were flagged up as inconsistent with the label's standards during my own fieldwork (e.g. denial of free PPE to seasonal workers) do not appear to have been identified during the certification audits – this important limitation of auditing processes will be explored in more detail in Chapter 8. Moreover, it is notable that, in the event that the company loses its certification, workers and the community will lose the benefits associated with it – so the answers given by all employees during audits may be influenced by the need to retain said benefits. This was acknowledged by a manager¹⁷⁷⁴. It follows that third-party monitoring of performance was found to be crucial for the effective implementation of standards, but also showed important limitations inherent to the audit process and problematic for MTC's human rights performance. Furthermore, a feature identified as important regarding monitoring and reporting of corporate behaviour is, as outlined in Chapter 3, transparency, and it is notable that the Rainforest Alliance publish summaries of all its audits, and therefore ensures that the process is, to some extent, transparent¹⁷⁷⁵. However, Fairtrade audits are not publicly available¹⁷⁷⁶. It follows that, while I was able to assess the Rainforest Alliance's findings against my own (and found inconsistencies), I could not verify the results of audits conducted for the purpose of the Fairtrade certification since the certifying bodies choose to keep their reports confidential. This shows that transparent reporting allows for a higher level of scrutiny and accountability of firms, but also of organisations in charge of product-level mechanisms. Moreover, MTC's internal monitoring goes unreported: the company does not offer a detailed account of the implementation of its standards on the ground in its 'Sustainability Reports', which are not published on a regular basis – the latest one dating back to 2015. Solely relying

¹⁷⁷³ Interview with manager D2.

¹⁷⁷⁴ Interview with manager D2.

¹⁷⁷⁵ Public summaries of audits are available at this address: <<https://www.rainforest-alliance.org/business/solutions/certification/agriculture/certificate-search-public-summaries/>> (accessed on 21 October 2019)

¹⁷⁷⁶ When I contacted Fairtrade hoping to get access to reports, they replied the following: "Fairtrade audit reports as such are confidential, as our auditors gather very detailed commercial information that might be relevant in a competitive context".

on MTC's case study, it is therefore difficult to draw conclusions as to the importance of *internal* transparency as a key feature but, adding evidence from Unilever and Chai Bora's studies, I will draw a more robust conclusion in Chapter 8.

Third, regarding complaints mechanisms and as mentioned above in section 6.2.5.2., MTC has set up a specific procedure for sexual harassment via trade union women's representatives, although the process is not anonymised. More broadly, Rift Valley (MTC's parent company until early 2018) stated in its latest Sustainability Report that the firm had recently drafted and adopted its ESMS, which is supposed to help the firm to "determine if gaps exist in this area and thereafter ensure that both internal and external grievances have an appropriate method of review and resolution"¹⁷⁷⁷. However, no worker knew about any formal complaints mechanism; employees therefore only stated that they had to go to their trade union representatives or managers if they wanted to make a complaint^{1778 1779 1780}, or raise the issue during the daily assemblies attended by management and workers¹⁷⁸¹. This approach may be problematic since it does not guarantee anonymity, which may deter workers from raising issues. Workers may be particularly reluctant to speak up since TPAWU, as explained above in section 6.2.3.1., is perceived by some employees as having the company's interests at heart rather than their own¹⁷⁸². Community members use their local government¹⁷⁸³, who may contact the company with letters and organise meetings with corporate representatives^{1784 1785}. Overall, these practices may be at odds with Fairtrade¹⁷⁸⁶ and ETP¹⁷⁸⁷ standards requiring that MTC set up (and communicate about) a complaints mechanism allowing workers and third parties to lodge anonymous complaints. As the Rainforest Alliance only requires firms to "implement

¹⁷⁷⁷ Rift Valley Tea 'Sustainability Report' (n. 793), 2.

¹⁷⁷⁸ Manager D2 stated that plantation managers get together before shifts to discuss any issues raised by workers.

¹⁷⁷⁹ Interviews with manager D2, and workers B5, B38, B39, B40, B41, B42, B43, B46, B47, B48, B50, B51, B52, B53, B54, B55, and B56.

¹⁷⁸⁰ Manager D2 stated that workers may go to female representatives if they wish to speak with a woman.

¹⁷⁸¹ Interviews with workers B42, B43, B44, B46, B53, and B54.

¹⁷⁸² Interviews with workers B41, B51, and B54.

¹⁷⁸³ Interviews with community members C68, C69, C71, C72, C74, and C77.

¹⁷⁸⁴ Interview with local government representative E6.

¹⁷⁸⁵ Local government representative E6 stated that the company usually responds to their letters and takes complaints on board.

¹⁷⁸⁶ Fairtrade 'Hired Labour Standard', Standard 3.5.27.

¹⁷⁸⁷ ETP 'Global Standard', Standard 9.1.

complaints or grievance mechanisms to protect workers' rights"¹⁷⁸⁸, MTC's mechanisms is in line with the certification label's standards¹⁷⁸⁹. Furthermore, no worker or community members knew about their right to reach out to the Rainforest Alliance or the label's certification bodies to lodge a complaint, which may be in conflict with Rainforest Alliance standards¹⁷⁹⁰. The fact that workers and community members do not have access – or do not know that they have access – to a free and anonymous complaints mechanism means that breaches of MTC's standards may not be reported, and the situation not redressed. Indeed, several interviewees reported that they would use such complaints mechanisms to bring MTC's attention to certain problems such as working conditions, poor access to water or health services, or the firms' employment practices¹⁷⁹¹. However, it is important to note that a local government representative said that the company usually responded to letters and took complaints on board¹⁷⁹². Moreover, some workers' complaints have reportedly been taken into account in the past and the situation redressed¹⁷⁹³, although others have been ignored by the company¹⁷⁹⁴. In conclusion, setting up official complaints mechanisms could play an important role in ensuring that stakeholders' voices are heard and taken into account¹⁷⁹⁵, along with other members of the local community – however, it is unclear what the exact added value of these mechanisms would be in a context where stakeholders' grievances are already, to some extent, addressed by the company.

Finally, MTC does not always enforce sanctions for breaches of standards by its managers and workers in Mufindi. On the one hand, as outlined in section 6.2.5.2., a manager stated that another manager was reportedly terminated after an internal investigation found that they had been engaged in sexual harassment¹⁷⁹⁶ and that, on this issue, the company had a 'zero-tolerance' approach. As I have explained in this

¹⁷⁸⁸ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.9.

¹⁷⁸⁹ The audit conducted by the Rainforest Alliance in 2017 states that MTC does comply with the relevant criterion as "the workers are effectively utilising the complaints and grievance procedure to protect their rights" (page 7 of the public summary)

¹⁷⁹⁰ Rainforest Alliance 'Sustainable Agriculture Standard', Critical Criterion 4.9.

¹⁷⁹¹ Interviews with workers B13 and B16 and community member C32, C33, C34, C35, C36, C37, C38, C39, C40, and C41.

¹⁷⁹² Interview with local government representative E6.

¹⁷⁹³ As mentioned above in Section 6.2.1.1., the change of language on contracts from English to Swahili was reportedly driven by workers' complaints instead of by Fairtrade requirements, and the reduction of working hours in the factory from 12-hour to 8-hour shifts.

¹⁷⁹⁴ As mentioned above in Section 6.2.3.3, some workers have been complaining about the lack of compensation for work-related accidents.

¹⁷⁹⁵ Rodríguez-Garavito (n. 166), 228.

¹⁷⁹⁶ Interview with manager D2.

chapter, sexual harassment seems to be an issue which MTC does take seriously and on which the firm performs well, which may be partially explained by the implementation of sanctions for non-compliance. On the other hand, the same manager explained that MTC did not give sanctions to workers who did not follow the health and safety standards, because the firm focused on educating employees on this issue¹⁷⁹⁷. The company's record in terms of sanctions is therefore mixed and is driven by the priorities of the firm, and what management thinks will be most effective in making workers implement standards – thus, it is difficult to assess the role which individual sanctions against workers could play in the effective implementation of MTC's standards. Finally, the firm has improved its human rights performance in a number of areas, as explained above, because it needed to comply with the Rainforest Alliance and Fairtrade standards. This tends to show that the pressure felt by the firm when the whole structure is in danger of being sanctioned (i.e. loss of certification) is effective in incentivising compliance and improving human rights performance. Moreover, the fact that non-renewal is clearly outlined as the direct consequence for non-compliance sends the clear message that the firm must comply if they want to keep their certification: clear sanctioning guidelines therefore help¹⁷⁹⁸.

6.5. Conclusion

Similarly to Chapter 5, this chapter had a double aim: first, to determine whether MTC's operations were in line with the firm's standards; and second, to identify any impact which the firm's mechanisms may have had on the way which the company carries out its activities.

On the first point, as was the case for Unilever, MTC's performance is mixed. The company fulfils its human rights commitments in some respects, for instance regarding the right to freedom from exploitative child labour, to a clean environment, and to education. However, the firm fails to implement its own standards – and may even breach Tanzanian law – on other rights, such as certain workers' rights (because of the firm's practice in respect to strikes, discrimination against pregnant women at the hiring stage, and seasonal workers' working conditions), and community members'

¹⁷⁹⁷ Interview with manager D2.

¹⁷⁹⁸ Sims (n. 395), 504; Jenkins (n. 379), 26; and see (n.78), 56.

right to water and to health. For most issues, MTC's performance is mixed as parts of its practice comply with its own commitments, while others do not. For example, on the issue of contracts, all workers sign a contract – which is consistent with the different self-regulatory mechanisms which the firm has adopted –, but they are not systematically given enough time to read it or offered a copy for their own records – which clashes with the firm's standards. Another example is gender-related issues: while it is generally acknowledged that there is gender equality, issues of sexual harassment and discrimination against employed pregnant women are at odds with MTC's various self-regulatory instruments. Other areas where the firm's practice is mixed are pay, working time, leaves, health and safety¹⁷⁹⁹, medical check-ups, accidents and compensation, freedom of association, onsite housing, and health issues. It is acknowledged that the corporation has been facing important financial problems, which may affect its operations and its implementation of those standards which may require investments. However, MTC has a responsibility to ensure that its activities do not negatively impact working and living conditions in and around its factory and plantations, and therefore to make the necessary investments to that effect. This is especially the case considering that the company has voluntarily decided to adopt self-regulatory instruments, and that it uses three of these instruments (Fairtrade, Rainforest Alliance, and ETP) in its communication and marketing strategy¹⁸⁰⁰.

On the second point, only the product-level mechanisms have been reported as having some impact on MTC's practice – although not ETP –, while the ILO conventions to which the firm has committed do not seem to have been influential. Fairtrade has been singled out by members of the community (including local government representatives) as having had a positive impact on MTC's relationship with, and contribution to, the community. In particular, the use of the Fairtrade Premium Fund to pay for education structures in the area was widely acknowledged by community members and workers – although it is notable that the use of Fairtrade Fund is decided not by the company but by the community themselves. This is the only issue for which one certification label has been individually named as having had some kind of impact. For the rest, it was generally reported that both labels had an impact. All the same, I

¹⁷⁹⁹ Trade union representative F2 stated that the company has been struggling with health and safety, and that they were hoping that the situation would improve with the new investor.

¹⁸⁰⁰ Interview with manager D2.

was able to link both certification mechanisms to MTC's practice in the following areas: health and safety, sexual harassment, and the company's environmental footprint, and especially its waste disposal practice. However, these are the only issues for which I have been able to find positive evidence of the impact of MTC's self-regulatory instruments.

It is also important to note that factors outside of self-regulatory mechanisms have also led to changes in MTC's human rights performance: bottom-up action from workers, the adoption of a collective agreement, and the firm's financial health. I will explore these external factors in more detail in Chapter 8.

In conclusion, similarly to Unilever, MTC does meet its human rights responsibilities in certain respects but (sometimes severe) issues with the firm's operations and what could be construed as violations of the firm's standards (and possibly of national legislation) were also uncovered. And, even when the situation on the ground seemed to be in line with MTC's commitments, only rarely could I link the firm's practice with its standards (and other factors were found to also play a role). Overall, the self-regulatory mechanisms which MTC has adopted seem to have had a limited impact on the firm's operations and respect of human rights. I will build upon these findings in Chapter 8 to understand the effects which corporate self-regulatory mechanisms have had on the behaviour of Tanzanian tea corporations, and to determine the extent to which such mechanisms may harness other influential factors with the aim to improve corporate human rights performance.

I will now investigate the human rights performance of Chai Bora, the third company of this case study. This assessment will allow for the analysis of the performance of a company which has not adopted any self-regulatory mechanism and will help to strengthen the conclusions made in Chapter 8 about the impact of voluntary self-regulation when they are made by the other companies.

Chapter 7 – Chai Bora

7.1.Introduction

As explained in Chapter 4, Chai Bora has not adopted any self-regulatory human rights mechanisms. However, the UNGPs state that the “responsibility to respect human rights is a global standard of expected conduct for all business enterprises”, and specify that that responsibility covers “internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work”¹⁸⁰¹. It follows that the fact that Chai Bora has not explicitly adopted human rights self-regulatory mechanisms – including the UNGPs – does not mean that the firm does not have any human rights responsibilities. It is therefore relevant to assess Chai Bora’s performance against the international human rights standards cited above. I will also evaluate it against national law as this may be an important influential factor on the firm’s behaviour, and the firm may behave a certain way because it must, according to national legislation.

Once I have assessed Chai Bora’s human rights performance, I will build on these findings to determine whether some of the key characteristics identified by scholars as important may play a role in the firm’s human rights performance even in the absence of formally adopted standards. This will help determine the role played by these key features in helping corporations respect human rights, even outside of formal self-regulatory mechanisms. This chapter is therefore divided into two main parts: first, the assessment of Chai Bora’s human rights performance; second, the investigation into the effectiveness of key characteristics outside of formal self-regulatory instruments.

As explained in Chapter 1, including Chai Bora as one of my case studies helps strengthen my findings. This is especially true, as will be covered in this chapter and

¹⁸⁰¹ UNGPs, Principles 11 and 12.

in Chapter 8, of the assessment of the human rights performance and impact of self-regulation (if relevant) across the three companies for the following issues: wage-related issues (pay levels and payment regularity), gender-related issues (sexual harassment), discrimination issues (specifically against people living with HIV/AIDS), and health issues (HIV/AIDS prevention programmes). On all these issues, data collected from Chai Bora has put the data collected at Unilever and MTC in perspective and allowed me to confirm or reject the explanations for firms' good human rights performance which are considered as 'rivals'¹⁸⁰² of the adoption of self-regulation (e.g. bottom-up action from stakeholders).

7.2. Worker-related rights

This section assesses the extent to which the right to just, equitable, and safe working conditions of Chai Bora's workers is respected, and will therefore cover the following issues: contractual terms offered to workers, health and safety, freedom of association and collective bargaining, the working conditions specific to seasonal workers, and finally discrimination issues.

7.2.1. Contractual terms

This subsection covers all contractual terms offered to Chai Bora's permanent and seasonal workers: presence of contracts, pay, working time, and leaves.

7.2.1.1. Contracts

Chai Bora's practice on the issue of contracts differs depending on the category of workers (permanent or seasonal). First, all permanent workers have a contract¹⁸⁰³, although one worker said that the terms of employees' contracts were not implemented¹⁸⁰⁴. Second, all interviewees said that seasonal employees only have a one-day contract¹⁸⁰⁵, which reportedly runs out after the first day and is never officially

¹⁸⁰² Yin (n.169).

¹⁸⁰³ Interviews with corporate manager D3, trade union representative F3, and workers B1, B8, B14, and B15.

¹⁸⁰⁴ Interview with worker B14.

¹⁸⁰⁵ Interviews with workers B13, B14, B15, and B16.

renewed¹⁸⁰⁶. However, a manager said that casual labour had a contract and were paid daily¹⁸⁰⁷ – so it is unclear whether the company considers that seasonal employees are tacitly bound by this daily contract, or not, and whether the practice is therefore legal or not¹⁸⁰⁸. Indeed, as mentioned in Section 4.1.2.3.1.2., Section 15 of the Employment and Labour Relations Act requires employers to provide employees with, among others, a job description, date of commencement, form and duration of contract, place of work, working hours, and remuneration. However, the contract *must* be in writing only for employees stationed outside of Tanzania. As for international human rights obligations, the ICESCR requires the guarantee of just and favourable conditions of work¹⁸⁰⁹ but no more precisions are given – it is therefore difficult to assess whether Chai Bora’s practice is in line with the Covenant’s principle.

7.2.1.2. Pay

Employees receive different levels of pay depending on their position: I will first review permanent workers’ pay; secondly, seasonal workers’ salary; thirdly, security workers’ wages.

First, permanent factory workers earn between Tsh230.000 and Tsh300.000¹⁸¹⁰ monthly, and permanent employees from the printing department receive Tsh270.000¹⁸¹¹. Permanent workers therefore receive higher wages than Unilever’s and MTC’s workers. Wage levels offered by Chai Bora to permanent workers highlights the possibility for companies to perform better on certain human rights issues, even in the absence of self-regulatory mechanisms. I will look into the reasons why (including the role played by key features outside formal self-regulation) in Section 7.4.

¹⁸⁰⁶ Interview with worker B16.

¹⁸⁰⁷ Interview with manager D3.

¹⁸⁰⁸ As mentioned in Section 4.1.2.3.1.2., Section 15 of the Employment and Labour Relations Act requires employers to provide employees with, among others, a job description, date of commencement, form and duration of contract, place of work, working hours, and remuneration. However, the contract *must* be in writing only for employees stationed outside of Tanzania.

¹⁸⁰⁹ ICESCR, Article 7.

¹⁸¹⁰ Interviews with manager D3, and workers B1, B8, and B14.

¹⁸¹¹ Interview with worker B15.

Second, seasonal workers earn Tsh5.500 per day worked¹⁸¹², except on Saturdays when they are paid Tsh6.000 (for the entire day) as the afternoon is considered overtime¹⁸¹³. This means that seasonal workers earn on average Tsh145.000 per month – counting overtime on Saturday. In contrast, managers reportedly receive between 12 and 15 times more¹⁸¹⁴. Employees may also work all day on Sunday, for which overtime is paid between Tsh19.000 and Tsh21.000 for the day to permanent workers^{1815 1816} but only Tsh6.000 to seasonal workers¹⁸¹⁷. It is important to note that seasonal workers used to be paid on a daily basis but the policy was changed after seasonal workers reportedly complained collectively and demanded to be paid weekly¹⁸¹⁸. Chai Bora's improved performance regarding wage payment regularity highlights the possibility for companies to better respect human rights, even in the absence of self-regulatory mechanisms. As mentioned above, I will look into the reasons why in Section 7.4.

Third, security officers are outsourced, and Chai Bora does not oversee their working terms and conditions¹⁸¹⁹. Perhaps as a result, they are paid Tsh99.000 monthly¹⁸²⁰, which is significantly less than Chai Bora's (direct) employees.

Moreover, permanent workers are provided with a rent allowance in addition to their regular salaries¹⁸²¹, but not seasonal employees¹⁸²². This lumpsum is scaled up to the worker's salaries¹⁸²³. Permanent employees working in the factory therefore receive Tsh25.000 monthly and those working in the printing department Tsh32.000, whereas managers receive Tsh80.000. Workers reported that renting a house in Mafinga would cost between Tsh40.000 and Tsh100.000 monthly, and so Tsh25.000 is insufficient to cover workers' rental needs¹⁸²⁴.

¹⁸¹² Interviews with manager D3, workers B13 and B16, and community member C13.

¹⁸¹³ Interviews with workers B13 and B16.

¹⁸¹⁴ Interview with manager D4.

¹⁸¹⁵ The exact amount is determined by the worker's position and salary.

¹⁸¹⁶ Interview with workers B14 and B15.

¹⁸¹⁷ Interviews with workers B13 and B16.

¹⁸¹⁸ Interviews with workers B8, B13, and B16. Seasonal workers used to be paid daily but, after they complained collectively to management, it was changed (interview with worker B8).

¹⁸¹⁹ Interview with manager D3.

¹⁸²⁰ Interview with worker B11.

¹⁸²¹ Interviews with managers D3 and D4, trade union representative F3, and workers B8, B14, and B15.

¹⁸²² Interviews with manager D3, and workers B13 and B16.

¹⁸²³ Interviews with manager D3 and worker B14.

¹⁸²⁴ Interviews with trade union representative F3, and workers B1 and B14.

It is therefore clear that, even though wages are higher than the national minimum set by the government for the tea sector – Tsh100.000¹⁸²⁵ –, general workers’ pay is low. This is especially true regarding seasonal workers’ wages, which a workers’ representative said was one of their main challenges¹⁸²⁶. Being paid below living wage levels means that workers must rely on farming or conduct other business on the side to survive¹⁸²⁷. Moreover, a local doctor stated that low levels of income also led to the spread of STDs and specifically of HIV/AIDS, to unplanned pregnancies due to the increase of paid sexual encounters^{1828 1829}, as well as to increased cases of waterborne diseases such as typhoid fever and cholera as some individuals, who are too poor to buy water, drink from unsafe sources such as rainwater or the river outside Mafinga¹⁸³⁰.

Low levels of pay clash with several international human rights standards: the Universal Declaration of Human Rights¹⁸³¹, which guarantees the right of workers to a just and favourable conditions of work and to an adequate standard of living, including adequate housing, clothing, and food, ILO Convention C100 covers the right to a fair wage, and the Economic and Social Council specified that the right to food (as outlined in the ICESCR¹⁸³²) had two core dimensions: first, food must be available “in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture”¹⁸³³; second, food must be accessible “in ways that are sustainable and that do not interfere with the enjoyment of other human rights”, which means that “personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised”¹⁸³⁴. It is therefore important to assess wage levels by taking into account the extent to which workers can afford all other basic necessities (beside food). As explained in Section 5.2.2.2., a family of two parents with two children would need – as the bare minimum – Tsh10.000 per day, solely for food, to survive in Mufindi.

¹⁸²⁵ Gazette of the United Republic of Tanzania (n. 578).

¹⁸²⁶ Interview with trade union representative F3.

¹⁸²⁷ Interviews with trade union representative F3, and workers B8, B9, B10, and B16.

¹⁸²⁸ Interviews with civil society representative A8 and doctor C7.

¹⁸²⁹ Low income reportedly leads some women to seek additional income by engaging in sex work.

¹⁸³⁰ Interview with local doctor C7.

¹⁸³¹ Universal Declaration of Human Rights, Articles 23 and 25.

¹⁸³² ICESCR, Article 11.

¹⁸³³ Committee on Economic, Social and Cultural Rights, General Comment 12, 1999, §4

¹⁸³⁴ Ibid, §8.

Even if this amount is split two ways, it would leave next to nothing for seasonal workers and too little to permanent workers to make sure that their (and their family members') basic needs are not threatened. It follows that Chai Bora's pay levels are inconsistent with international human rights standards.

There also seems to be a recurring issue of delayed payment of wages¹⁸³⁵ – although two workers said that they were usually paid on time¹⁸³⁶ – and, when the interviews took place, some workers were not being paid¹⁸³⁷ and could not quit lest they never receive the payment which they were owed¹⁸³⁸. This practice may be interpreted as clashing with the ICESCR, which requires the guarantee of just and favourable conditions of work¹⁸³⁹. However, in the absence of relevant operational standards implementing this principle, it is difficult to assess whether Chai Bora's practice is in line with the Covenant's principle.

7.2.1.3. Working time

The factory is always in operation, so working time is divided into three 8-hour shifts¹⁸⁴⁰ ¹⁸⁴¹. Employees work eight hours a day, five days a week, and five hours on Saturday, with possibility of overtime on both Saturday (three hours) and Sunday (eight hours)¹⁸⁴². A manager said that overtime was negotiated with the workers¹⁸⁴³. The regular hours seem to follow national legislative provisions as outlined in Section 4.1.2.3.1.7.¹⁸⁴⁴ However, working hours will be over the legal limit if employees work the full 11 hours of possible weekend overtime more than once a month. Moreover, (outsourced) security staff work for 12 hours, seven days a week¹⁸⁴⁵, which is over the

¹⁸³⁵ Interviews with trade union representative F3 and worker B8.

¹⁸³⁶ Interview with workers B13 and B16.

¹⁸³⁷ Interviews with workers B8, B9, and B10.

¹⁸³⁸ Interview with worker B8.

¹⁸³⁹ ICESCR, Article 7.

¹⁸⁴⁰ Shifts are: 6:30am-2:30pm; 2:30pm-10:30pm; 10:30pm-6:30am (interview with worker B8).

¹⁸⁴¹ Interviews with manager D3 and worker B8.

¹⁸⁴² Interviews with managers D3 and D4, trade union representative F3, and workers B13, B14, B15, and B16.

¹⁸⁴³ Interview with manager D3.

¹⁸⁴⁴ National legislation provides for a maximum 45 hours a week, 6 days a week, and overtime capped to 3 hours per day and to 50 hours in a four-week cycle. The Employment and Labour Relations Act also provides for a 60-minute break every 5 hours, and a daily rest of at least 12 consecutive hours in between two shifts.

¹⁸⁴⁵ Interview with worker B11.

legal limit. The Universal Declaration of Human Rights¹⁸⁴⁶ and the ICESCR¹⁸⁴⁷ state that all workers be offered “reasonable limitation of working hours”. However, in the absence of relevant operational standards implementing this principle, it is difficult to assess whether Chai Bora’s practice is compliant.

7.2.1.4. Leaves

Permanent and seasonal workers do not have access to the same leaves.

First, permanent workers are offered between 28 and 31 days of annual leave – I understand that it is 28 days for general workers in the factory¹⁸⁴⁸, 30 days for skilled workers and some employees from the printing department¹⁸⁴⁹, and 31 days for managers¹⁸⁵⁰ –, with an additional lumpsum of Tsh120.000¹⁸⁵¹. They are also entitled to three months of maternity leave with full pay¹⁸⁵², and four days of paternity leave¹⁸⁵³, although there are conflicting reports as to whether workers on paternity leave are paid¹⁸⁵⁴. Finally, they may take up to 63 days of sick leave with full pay, and 63 more days with half pay, after which the worker will be terminated¹⁸⁵⁵. Chai Bora’s leave policy for permanent workers is therefore in line with Tanzanian legislation¹⁸⁵⁶, as well as with the Universal Declaration of Human Rights¹⁸⁵⁷ and the ICESCR¹⁸⁵⁸’s standard that all workers be given “periodic holidays with pay”.

Second, temporary workers have no leaves¹⁸⁵⁹; if they do not work, they are not paid. This is also reportedly the case for outsourced security staff¹⁸⁶⁰. This practice is at odds with Tanzanian legislation which does not differentiate between temporary and permanent employees for the purpose of determining to which leaves they are

¹⁸⁴⁶ Universal Declaration of Human Rights, Article 24.

¹⁸⁴⁷ ICESCR, Article 7(d).

¹⁸⁴⁸ Interviews with trade union representative F3 and workers B8, B9, B10, and B14.

¹⁸⁴⁹ Interviews with workers B1 and B15.

¹⁸⁵⁰ Interview with manager D4.

¹⁸⁵¹ Interviews with managers D3 and D4, trade union representative F3, and worker B14.

¹⁸⁵² Interviews with manager D4, trade union representative F3, and workers B1, B8, B9, B10, and B14.

¹⁸⁵³ Interviews with manager D4, trade union representative F3, and workers B8, B9, B10, and B15.

¹⁸⁵⁴ Manager D4 and workers B8 said that it was paid, whereas trade union representative F3 and worker B15 said that it was unpaid.

¹⁸⁵⁵ Interviews with manager D4, trade union representative F3, and workers B1, B8, B9, B10, and B14.

¹⁸⁵⁶ Employment and Labour Relations Act, Articles 29, 31, 32, 33, and 34.

¹⁸⁵⁷ Universal Declaration of Human Rights, Article 24.

¹⁸⁵⁸ ICESCR, Article 7(d).

¹⁸⁵⁹ Interviews with manager D3, trade union representative F3, and workers B13, B14, and B16.

¹⁸⁶⁰ Interview with worker B11.

entitled¹⁸⁶¹. The only differentiation made by legislation is between employees with less, or more, than six months service¹⁸⁶². Considering that all interviewees had more than six months service, the relevant legal provisions shall apply. The practice is also inconsistent with the above-mentioned Universal Declaration of Human Rights¹⁸⁶³ and ICESCR¹⁸⁶⁴ provision.

7.2.2. Health and safety

This section will first provide a general assessment of Chai Bora's health and safety practice, second its specific practice regarding medical check-ups, and finally its record on accidents and compensation.

7.2.2.1. General considerations

Workers have different equipment depending on their role. First, workers in the blending department wear glasses, masks, boots, and coats¹⁸⁶⁵. However, it was reported that the glasses provided by the company were not adequate as dust may get into the workers' eyes¹⁸⁶⁶. There was also one report of milk being provided to workers to mitigate against the effect of dust on their throats¹⁸⁶⁷. Second, workers in the production department wear masks and caps¹⁸⁶⁸. They are also required to wear closed shoes¹⁸⁶⁹, although they are not provided with them¹⁸⁷⁰. They reportedly also need eye protection because of the dust¹⁸⁷¹ but Chai Bora only provides the blending department with glasses¹⁸⁷². Finally, employees in charge of printing wear boots, glasses, masks, and gloves¹⁸⁷³, which are provided free of charge by Chai Bora¹⁸⁷⁴. Printing is

¹⁸⁶¹ Employment and Labour Relations Act, Articles 29, 31, 32, 33, and 34.

¹⁸⁶² Employment and Labour Relations Act, Article 29.

¹⁸⁶³ Universal Declaration of Human Rights, Article 24.

¹⁸⁶⁴ ICESCR, Article 7(d).

¹⁸⁶⁵ Interviews with manager D4 and worker B16.

¹⁸⁶⁶ Interview with trade union representative F3.

¹⁸⁶⁷ Interview with worker B8.

¹⁸⁶⁸ Interviews with workers B9, B10, B13, B14, and B16.

¹⁸⁶⁹ Interviews with workers B14 and B16.

¹⁸⁷⁰ Interviews with workers B13 and B14.

¹⁸⁷¹ Interviews with trade union representative F3 and worker B8 – although worker B14 stated that employees did not need glasses in the production department.

¹⁸⁷² Interviews with trade union representative F3 and workers B9 and B10.

¹⁸⁷³ Interview with manager D3.

¹⁸⁷⁴ Interview with worker B15.

reportedly very dangerous for the eyes, and workers can lose their eyesight if they do not wear glasses¹⁸⁷⁵.

A manager stated that workers were trained on health and safety¹⁸⁷⁶, and some interviewees said that it was safe to work for Chai Bora¹⁸⁷⁷, although most agreed that all protection measures were not taken¹⁸⁷⁸. A worker said that their medical condition got worse because the protective equipment was not adequate¹⁸⁷⁹. It was also reported by one interviewee that, because of the race for productivity, accidents happened regularly as workers were not allowed to stop operating faulty machines¹⁸⁸⁰. Moreover, a worker noted that workers sometimes must work without proper equipment as there is not always enough PPE available for all workers¹⁸⁸¹, and others stated that they had to buy part of their protection equipment themselves¹⁸⁸². Chai Bora's practice is therefore at odds with the Occupational Health and Safety Act requiring that, "where in any factory or workplace, workers are employed in any process involving exposure to any injurious or offensive substance or environment, effective protective equipment [...] be provided and maintained by employer for the use of the persons employed"¹⁸⁸³. It is also inconsistent with the ICESCR, which recognises all workers' right to safe and healthy working conditions¹⁸⁸⁴.

Furthermore, a manager said that the company does not sanction workers for not wearing gear and prefers to issue them a warning¹⁸⁸⁵ and educate them about the importance of wearing protective equipment¹⁸⁸⁶. Most workers confirmed that there was no sanction¹⁸⁸⁷. No worker has reportedly ever been terminated for not wearing their PPE¹⁸⁸⁸, although the same manager said that no one is allowed to work without protection¹⁸⁸⁹. However, workers said that whether or not workers wore protection did

¹⁸⁷⁵ Interview with worker B15.

¹⁸⁷⁶ Interview with manager D3.

¹⁸⁷⁷ Interview with community member C13.

¹⁸⁷⁸ Interviews with trade union representative F3 and workers B8, B13, B14, and B16.

¹⁸⁷⁹ Interview with worker B8.

¹⁸⁸⁰ Interview with worker B8.

¹⁸⁸¹ Interview with worker B8.

¹⁸⁸² Interviews with workers B13 and B14.

¹⁸⁸³ Occupational Health and Safety Act, Article 62.

¹⁸⁸⁴ ICESCR, Article 7(b).

¹⁸⁸⁵ Manager D4 said that management would issue an oral warning and two written warnings before terminating the worker.

¹⁸⁸⁶ Interview with manager D3.

¹⁸⁸⁷ Interviews with workers B8, B13, B15, and B16.

¹⁸⁸⁸ Interview with manager D3.

¹⁸⁸⁹ Interview with manager D3.

not matter to the company^{1890 1891}. This lack of sanctions may lead to poor health and safety performance.

7.2.2.2. Medical check-ups

Medical check-ups are conducted for all workers, although there are mixed accounts as to their regularity: monthly¹⁸⁹², bimonthly¹⁸⁹³, every three months¹⁸⁹⁴, twice a year¹⁸⁹⁵, and every two years¹⁸⁹⁶. Such differences in assessments come from the fact that different types of check-ups are conducted, by OSHA (as described by a manager) and by local doctors (as described by workers). All check-ups are paid for by Chai Bora¹⁸⁹⁷. Furthermore, medical tests are conducted before hiring new employees, and applicants with communicable diseases (except for HIV/AIDS) are not hired – or at least not before they are treated¹⁸⁹⁸. Chai Bora's practice is in line with Tanzanian legislation which requires employers to conduct medical examinations before hiring new employees (to check applicants' fitness for employment), periodic examinations during employment, and an exit check-up¹⁸⁹⁹, and to bear all related costs¹⁹⁰⁰. It may also be considered that the practice is consistent with the Universal Declaration of Human Rights¹⁹⁰¹ and the ICESCR recognising all workers' right to safe and healthy working conditions¹⁹⁰² (although, in the absence of operational standards implementing this principle, it is difficult to assess whether organising medical check-ups is a compliance requirement).

7.2.2.3. Accidents and compensation

¹⁸⁹⁰ Interviews with workers B8, B13, B15, and B16.

¹⁸⁹¹ Worker B13 said that, so long as workers meet their targets, Chai Bora does not care whether they wear PPE or not, although worker B14 said that workers were not allowed in if they were not wearing shoes.

¹⁸⁹² Interview with worker B13.

¹⁸⁹³ Interview with worker B1.

¹⁸⁹⁴ Interviews with workers B14 and B15.

¹⁸⁹⁵ Interview with manager D4.

¹⁸⁹⁶ Interview with manager D3, who said that check-ups take place every two years because of the high cost of OSHA examinations.

¹⁸⁹⁷ Interviews with manager D3, and workers B13, B14, B15, and B16.

¹⁸⁹⁸ Interview with manager D3.

¹⁸⁹⁹ Occupational Health and Safety Act, Article 24(1) and (2).

¹⁹⁰⁰ Occupational Health and Safety Act, Article 24(3).

¹⁹⁰¹ Universal Declaration of Human Rights, Article 23(1).

¹⁹⁰² ICESCR, Article 7(b).

A manager said that there had not been an accident in the company in two years¹⁹⁰³ but one worker said that accidents were frequent¹⁹⁰⁴. It is therefore important to investigate whether injured workers have access to free medical treatment and whether they are compensated. Here again, permanent and seasonal workers are treated differently.

First, Chai Bora reportedly pays for the hospital bills of permanent workers who get injured at work¹⁹⁰⁵, which is in line with Tanzanian legislation and presumably with the Universal Declaration of Human Rights¹⁹⁰⁶ and the ICESCR recognising all workers' right to safe and healthy working conditions¹⁹⁰⁷ (although, again, in the absence of operational standards implementing this principle, it is difficult to assess whether this is a compliance requirement). However, seasonal workers are not provided by the firm with health insurance¹⁹⁰⁸ and therefore cannot access free healthcare after work-related accidents. Moreover, Chai Bora does not reportedly pay for medical treatment for seasonal workers^{1909 1910}, which is unlawful. Indeed, an "employee" as defined in the Workers Compensation Act is "any person, including an apprentice but excluding an independent contractor, who works for another person and who receives, or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer"¹⁹¹¹. Chai Bora seasonal workers are therefore considered as "employees" of the firm under Tanzanian law¹⁹¹², whether or not they have a formal contract, and should have their medical treatment paid by their employer on the same basis as permanent workers¹⁹¹³. This practice may also be in conflict with the above-mentioned ICESCR and Universal Declaration of Human Rights provision.

¹⁹⁰³ Interview with manager D3.

¹⁹⁰⁴ Interview with worker B8.

¹⁹⁰⁵ Interviews with worker B1, and community members C8 and C9.

¹⁹⁰⁶ Universal Declaration of Human Rights, Article 23(1).

¹⁹⁰⁷ ICESCR, Article 7(b).

¹⁹⁰⁸ Interview with manager D3.

¹⁹⁰⁹ Interviews with community members C8 and C9.

¹⁹¹⁰ Two community members (C8 and C9) said that the company may take seasonal workers to the hospital right after the injury happens, but would do no more.

¹⁹¹¹ Workers Compensation Act, Article 4.

¹⁹¹² Moreover, under Section 61 of the Labour Institutions (General) Regulations, Chai Bora's seasonal workers would benefit from the 'presumption of employee status'.

¹⁹¹³ Workers Compensation Act, Articles 61 and 61.

Secondly, permanent workers are generally compensated for work-related injuries or death¹⁹¹⁴, although it may take time¹⁹¹⁵ and some interviewees said that it was difficult to get any compensation at all¹⁹¹⁶. As for seasonal workers, there are conflicting reports: a Chai Bora manager, while saying that the WCF does not cover seasonal workers¹⁹¹⁷, stated that the company itself steps in to compensate seasonal workers in case of work-related injuries or death. However, all workers (and another manager) said that they were never compensated for work-related accidents¹⁹¹⁸. In any case, it is important to note again that, under Tanzanian law, *all* workers are covered by the WCF and are therefore entitled to compensation for work-related injuries¹⁹¹⁹ – as explained above and in Chapter 4. Chai Bora's practice regarding compensation may therefore also be considered at odds with the ICESCR and Universal Declaration of Human Rights provision mentioned above.

7.2.3. Freedom of association and collective bargaining

This section will first provide a general assessment of Chai Bora's practice regarding freedom of association and collective bargaining, and second of the firm's specific practice regarding strikes.

7.2.3.1. General considerations

The local branch of TUICO is the union used by Chai Bora's workers. Although membership is not compulsory^{1920 1921}, most permanent workers are unionised¹⁹²². Monthly membership fee is Tsh2.000-5.000, depending on the worker's salary¹⁹²³. Seasonal workers are not allowed to join the union¹⁹²⁴ and therefore have nowhere to voice complaints¹⁹²⁵. This is in contradiction with the legal provisions of the

¹⁹¹⁴ Interviews with workers B1, B9, and B10, and community members C8 and C9.

¹⁹¹⁵ Interview with worker B14.

¹⁹¹⁶ Interview with worker B8.

¹⁹¹⁷ Interview with manager D3.

¹⁹¹⁸ Interviews with manager D4 and workers B13, B15, and B16.

¹⁹¹⁹ Workers Compensation Act, Articles 4 and 19(2).

¹⁹²⁰ Interviews with manager D3, and workers B14 and B15.

¹⁹²¹ However, manager D4 said that it was compulsory.

¹⁹²² Interviews with workers B14, B15.

¹⁹²³ Interviews with managers D3 and D4, workers B14 and B15.

¹⁹²⁴ Interviews with trade union representative F3 and workers B13, B14, and B16.

¹⁹²⁵ Interview with worker B16.

Employment and Labour Relations Act protecting the right of temporary and permanent employees to form and join trade unions¹⁹²⁶, as was covered in Chapter 4. TUICO representatives are elected by fellow workers¹⁹²⁷. According to a worker¹⁹²⁸, TUICO representatives are in charge of ensuring that labour standards are upheld, dealing with workers' work-related injuries and deaths, and offering legal assistance to workers if their rights are violated. TUICO district leaders also join the local TUICO leaders to negotiate a CBA with the company, which is valid for two years and applicable to all Chai Bora workers¹⁹²⁹. Chai Bora's TUICO representatives meet quarterly with management to discuss any issues raised by workers¹⁹³⁰, but their success in helping workers get positive change within the company is mixed. Indeed, some civil society representatives said that TUICO representatives were not properly trained and so could not defend workers' rights properly¹⁹³¹, and a local government representative confirmed that TUICO could not always help workers¹⁹³². Moreover, the independence of TUICO representatives was also questioned by some interviewees¹⁹³³.

It is notable that sexual harassment cases are handled by TUICO female representatives¹⁹³⁴ and that the handling of these cases has reportedly improved¹⁹³⁵, although a civil society representative stated that the union is not capable of adequately protecting women¹⁹³⁶.

As was the case for Unilever and MTC, it is therefore difficult to draw a general conclusion as to the effectiveness of the union in protecting workers' (and related) rights. However, the main problem from a human rights perspective is perhaps the fact that seasonal workers are barred from joining TUICO. This practice clashes with the Universal Declaration of Human Rights¹⁹³⁷, the ICESCR¹⁹³⁸, and ILO Conventions

¹⁹²⁶ Employment and Labour Relations Act, Articles 4, 9(1), and 9(3).

¹⁹²⁷ Interview with trade union representative F3.

¹⁹²⁸ Interview with worker B1.

¹⁹²⁹ Interviews with managers D3 and D4, and trade union representative F3.

¹⁹³⁰ Interviews with manager D3, trade union representative F3, and workers B1 and B15.

¹⁹³¹ Interviews with civil society representatives A11 and A12.

¹⁹³² Interview with local government representative A1.

¹⁹³³ Interviews with civil society representatives A8, A11, and A12.

¹⁹³⁴ Interview with trade union representative F3.

¹⁹³⁵ Interview with worker B8.

¹⁹³⁶ Interview with civil society representative A13.

¹⁹³⁷ Universal Declaration of Human Rights, Article 23(4).

¹⁹³⁸ ICESCR, Article 8.

C087 and C098 recognising all workers' freedom of association and right to organise and to engage in collective bargaining.

7.2.3.2. Strikes

Management stated that workers had to follow proper procedure if they decided to go on strike¹⁹³⁹. Although managers said that there had never been a strike¹⁹⁴⁰, and that workers confirmed that there had been no recent ones¹⁹⁴¹, I understand that one took place in 2006, over poor management, and was successful as a new manager reportedly came in¹⁹⁴². Chai Bora therefore respected its workers' right to strike, consistently with the ICESCR¹⁹⁴³ and with the interpretation of ILO C087's provisions by the ILO Committee on Freedom of Association and the ILO Committee of Experts on the Application of Conventions and Recommendations¹⁹⁴⁴.

However, seasonal workers said that there was such a gap between the working conditions of permanent and seasonal workers that seasonal workers would not strike and would prefer to keep on working as they need an income¹⁹⁴⁵.

7.2.4. Working conditions of seasonal workers

Seasonal employees, who only work during the high season, and permanent workers are treated differently. As outlined above in Section 7.2.1.4., seasonal workers are not allowed any leave (which, after six months of work, is illegal¹⁹⁴⁶), they are also not provided with health insurance or a rent allowance. They are also reportedly denied access to a trade union, payment of their medical bills, and any compensation after work-related accidents, which is illegal, as seen in relevant sections above. It also

¹⁹³⁹ Interview with manager D3.

¹⁹⁴⁰ Interview with managers D3 and D4.

¹⁹⁴¹ Interviews with workers B13, B14, B15, and B16.

¹⁹⁴² Interview with worker B13 and B14.

¹⁹⁴³ ICESCR, Article 8(1)(d).

¹⁹⁴⁴ Bernard Gernigon, Alberto Otero And Horacio Guido, 'ILO Principles Concerning the Right to Strike', *International Labour Reviews* 137(4), 1998, 9.

¹⁹⁴⁵ Interview with worker B13.

¹⁹⁴⁶ Employment and Labour Relations Act, Section 29.

clashes with the Universal Declaration of Human Rights¹⁹⁴⁷, the ICESCR¹⁹⁴⁸, and ILO Conventions C087 and C098, as seen above.

7.2.5. Right to non-discrimination

This section will be divided between discrimination at the hiring stage and during employment, and will be mainly focused on gender.

7.2.5.1. Hiring stage

At the hiring stage, there are reports of discrimination based on gender. Pregnant women are not hired, be it for permanent or seasonal positions¹⁹⁴⁹. A woman who did not tell Chai Bora that she was pregnant when she was hired was dismissed when the company found out¹⁹⁵⁰. This is in contradiction with national legislation prohibiting discrimination in employment policy or practice based on “pregnancy”¹⁹⁵¹ if the practice is not based on an inherent requirement of the job¹⁹⁵². It also conflicts with the Universal Declaration of Human Rights¹⁹⁵³, the ICESCR¹⁹⁵⁴, and ILO Convention C111.

However, as was the case with Unilever and MTC, it is notable that Chai Bora does not discriminate against people living with HIV/AIDS, and offers them the same employment opportunities as individuals who do not live with the disease¹⁹⁵⁵ as prescribed by Tanzanian law¹⁹⁵⁶. This is in line with the international conventions cited above and highlights the possibility for companies who have not adopted self-regulatory mechanisms to respect certain human rights as well as self-regulated firms, and suggests that the culture of the area where companies operate may play a (much more) important role in corporate behaviour on specific issues.

¹⁹⁴⁷ Universal Declaration of Human Rights, Article 23(1).

¹⁹⁴⁸ ICESCR, Article 7.

¹⁹⁴⁹ Interviews with manager D3, and workers B14 and B15.

¹⁹⁵⁰ Interview with manager D3.

¹⁹⁵¹ Employment and Labour Relations Act, Article 7(4)(j).

¹⁹⁵² Employment and Labour Relations Act, Article 7(6)(b).

¹⁹⁵³ Universal Declaration of Human Rights, Articles 7 and 23.

¹⁹⁵⁴ ICESCR, Articles 2(2) and 7.

¹⁹⁵⁵ Interviews with manager D3, and workers B13, B14

¹⁹⁵⁶ Employment and Labour Relations Act, Article 7(4)(m).

7.2.5.2. *Employment stage*

Equality of opportunities between men and women is a reality within the company¹⁹⁵⁷, as is required by law¹⁹⁵⁸. This is in line with Universal Declaration of Human Rights¹⁹⁵⁹, the ICESCR¹⁹⁶⁰, and ILO Convention C111, and was explained by some workers as perhaps resulting from the fact that more women than men work for Chai Bora¹⁹⁶¹ ¹⁹⁶². However, a few interviewees said that there used to be more cases of sexual harassment and gender discrimination¹⁹⁶³, and that the situation has improved thanks to workers' meetings – sometimes informally alongside management –, and education about women's rights¹⁹⁶⁴. Seminars are sometimes conducted by a company's representative¹⁹⁶⁵ or TUICO representatives¹⁹⁶⁶, although they would only be reserved for permanent workers. Seasonal workers have therefore reportedly organised their own education¹⁹⁶⁷. Training has also helped with domestic issues, which are reportedly commonplace in the area¹⁹⁶⁸. Finally, as mentioned above, women can go to female managers if they would like to report an issue, and a worker stated that women's complaints are now taken more seriously by management than they used to¹⁹⁶⁹.

Chai Bora's improved performance regarding issues of sexual harassment highlights the possibility for companies to better respect human rights, even in the absence of self-regulatory mechanisms. I will look into the reasons why (including the role played by key features outside formal self-regulation) in Section 7.4.

¹⁹⁵⁷ Interview with managers D3 and D4, local government representative E7, workers B1, B8, B13, B15, B16, and community members C8 and C9.

¹⁹⁵⁸ Employment and Labour Relations Act, Articles 7(4)(h) and (i), and 7(10).

¹⁹⁵⁹ Universal Declaration of Human Rights, Articles 7 and 23.

¹⁹⁶⁰ ICESCR, Articles 2(2) and 7.

¹⁹⁶¹ As of April 2018, Chai Bora employed 73 women and fewer than 50 men (interview with manager D3).

¹⁹⁶² Interviews with workers B13, B14, B15, and B16.

¹⁹⁶³ Interviews with workers B8, B14, B15, and B16.

¹⁹⁶⁴ Interviews with workers B8, B14, B15, and B16.

¹⁹⁶⁵ Interview with manager D3.

¹⁹⁶⁶ Interviews with workers B15 and B16.

¹⁹⁶⁷ Interview with worker B16.

¹⁹⁶⁸ Interview with manager D3.

¹⁹⁶⁹ Interview with worker B8.

7.2.6. Outsourcing

Chai Bora outsources its security staff and does not oversee the working conditions of the outsourced workers¹⁹⁷⁰. Perhaps as a result, security workers are paid Tsh99.000 monthly and work 12-hour shifts every day with no rest days or leaves¹⁹⁷¹, as seen above in Sections 7.2.1.2., 7.2.1.3., and 7.2.1.4. Such working conditions seem to be at odds with Tanzanian labour law^{1972 1973}. It also clashes with the recent government's circular requiring firms to take responsibility for the behaviour of their service providers, including by adopting a policy to that effect¹⁹⁷⁴. Finally, it is at odds with the Universal Declaration of Human Rights¹⁹⁷⁵ and the ICESCR¹⁹⁷⁶.

Now that I have reviewed Chai Bora's human rights performance regarding workers' rights, I will move on to community-related rights.

7.3. Community-related rights

It is notable that, contrary to Unilever and MTC, Chai Bora does not offer onsite housing to its workers, who therefore must find their own accommodation¹⁹⁷⁷. It follows that I will not in this chapter evaluate the housing situation onsite. However, this section will cover Chai Bora's impact on the environment, as well as the firm's contribution to two of the most important community members' rights: the right to health and to education. It is important to do so since the UNGPs require companies to avoid causing or contributing to adverse human rights impacts through their own activities and as a result of their business relationships, and address such impacts when they occur¹⁹⁷⁸. This includes impact on their employees but also local communities. Chai Bora has business relationships with both Unilever and MTC who supply it tea¹⁹⁷⁹ and who, as we have seen in Chapters 5 and 6, have significantly contributed to the

¹⁹⁷⁰ Interview with manager D3.

¹⁹⁷¹ Interview with worker B11.

¹⁹⁷² Employment and Labour Relations Act, Articles 19(1), 19(2)(a) and (b), 19(3)(b), 19(5).

¹⁹⁷³ Minimum wage for private security workers was set in 2013 at Tsh 150.000 monthly, or Tsh 100.000 for a small company (Gazette of the United Republic of Tanzania (n. 578), Second Schedule (e) (a) and (e)(b)).

¹⁹⁷⁴ Interview with civil society representative A3.

¹⁹⁷⁵ Universal Declaration of Human Rights, Article 23(1).

¹⁹⁷⁶ ICESCR, Article 7.

¹⁹⁷⁷ Interview with worker B1.

¹⁹⁷⁸ UNGPs, Article 13.

¹⁹⁷⁹ Interview with manager D3.

influx of tea workers to Mufindi, with resulting negative human rights impacts. It follows that it is important to investigate the extent to which Chai Bora addresses the adverse impacts of its activities on the local communities' right to health and education (as covered in the ICESCR¹⁹⁸⁰). Before I do so, I will briefly review Chai Bora's general relationship with the community.

Most interviewees said that there was no relationship between Chai Bora and the community¹⁹⁸¹, which some interviewees complained the firm does on purpose by excluding themselves¹⁹⁸². Two interviewees stated that Chai Bora does not attend local meetings with the community¹⁹⁸³, although a manager said that they sometimes do¹⁹⁸⁴. It is notable that a local government representative said that Chai Bora maintains a good relationship with the community by offering employment opportunities to the local population (but no more)¹⁹⁸⁵. A manager said that Chai Bora has contributed towards building laboratories for local schools, orphanages centres, football teams, as well as fuel for police cars¹⁹⁸⁶. However, a local government representative said that they did not reply to their letters asking the firm to contribute to the needs of the local population, including about education, and that they do not follow up on their promises to help, such as with access to water¹⁹⁸⁷. I was shown the letters sent to Chai Bora but was not able to independently verify either side's allegations.

I will now review the firm's impact on the environment.

7.3.1. Right to a clean environment

Although a few interviewees complained that Chai Bora was operating in the middle of town, where people live and work¹⁹⁸⁸, and therefore could negatively impact the health of the population with the factory's emissions, most agree that the company's

¹⁹⁸⁰ ICESCR, Articles 12 and 13.

¹⁹⁸¹ Interviews with workers B13, B14, B15, B16, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C11, C12, C13, C14, C15, C19, C32, C38, C39, C40, C41, and C42.

¹⁹⁸² Interviews with worker B14, and community members C38, C39, and C40.

¹⁹⁸³ Interviews with workers B15 and B16.

¹⁹⁸⁴ Interview with manager D4.

¹⁹⁸⁵ Interview with local government representative E7.

¹⁹⁸⁶ Interview with manager D3.

¹⁹⁸⁷ Interview with local government representative E1.

¹⁹⁸⁸ Interviews with local government representative E7 and community members C11 and C19.

operations do not have a negative impact on the environment¹⁹⁸⁹, be it on water¹⁹⁹⁰, air¹⁹⁹¹, soil¹⁹⁹², or nearby forests^{1993 1994}. However, a local doctor said that they were treating airborne diseases and that the air around the company was polluted¹⁹⁹⁵. It is therefore difficult to provide clear conclusions regarding the environmental impact of Chai Bora's activities is, or the potential human rights impact implications. If the firm's operations led to health problems for the population living around its factory, Chai Bora's practice would be inconsistent with the ICESCR¹⁹⁹⁶.

7.3.2. Right to health

This section will first cover the main health issues reported around Chai Bora's operations, and second the health services available to workers and community members.

7.3.2.1. Health issues

As was already outlined in Chapter 5 and 6, the main issues in the area are access to water, and STDs and related problems.

First, poor access to water is a big issue in Mafinga¹⁹⁹⁷, especially in the summer¹⁹⁹⁸, which leads to diseases such as typhoid fever and cholera¹⁹⁹⁹. Indeed, water resources do not cover the needs of the population, who mostly uses wells²⁰⁰⁰. Since salaries are

¹⁹⁸⁹ Interviews with managers D3 and D4, local government representatives E1 and E7, and workers B1, B13, B14, B15, and B16, and community members C19, C32, C33, C34, C35, C36, C37, C38, C39, C40, and C41.

¹⁹⁹⁰ Interviews with local government representative E7, workers B1, B9, B10, and B11, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C11, C12, C13, C14, and C15.

¹⁹⁹¹ Interviews with local government representative E7, workers B1, B9, B10, and B11, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C12, C13, C14, and C15.

¹⁹⁹² Interviews with local government representative E7, workers B1, B9, B10, and B11, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C11, C12, C13, C14, and C15.

¹⁹⁹³ Manager D3 said that the company does not use firewood for energy but fuel and electricity.

¹⁹⁹⁴ Interviews with manager D3, and community members C1, C2, C3, C4, C5, C6, C8, and C9.

¹⁹⁹⁵ Interview with doctor C7.

¹⁹⁹⁶ ICESCR, Article 12(1) and (2)(b).

¹⁹⁹⁷ Interviews with local government representative E1, civil society representative A9, community members C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, C13, C14, C15, C19, C32, C34, C35, C38, C39, C40, C41, C42, and worker B8.

¹⁹⁹⁸ Interviews with civil society representative A9, and community members C1, C2, C3, C4, C5, C12, C13, C14, and C15.

¹⁹⁹⁹ Interviews with doctor C7 and civil society representative A9.

²⁰⁰⁰ Interviews with community members C1, C2, C3, C4, C5, C8, C9, C10, C11, and C41.

generally below living wage levels, those who cannot afford to buy potable water may drink rain water during raining season²⁰⁰¹, and water from a small river nearby²⁰⁰² if wells dry up during the summer. A local government representative denied that there was a problem with the town's supply of water²⁰⁰³, but another local representative stated that the situation was bad and that it was difficult to improve it for lack of funds²⁰⁰⁴. The government financially supported the town so that a tank of 500.000 litres capacity could be purchased, and the local government are now are trying to find funding for a tank twice that capacity²⁰⁰⁵. Although the tank transports water from pumps and distributes it to taps around town, not all taps can be supplied with water at the same time²⁰⁰⁶. This means that taps work only two to three days a week²⁰⁰⁷ and that only a minority of people have constant access to water. A few inhabitants have private taps or wells, but others have to pay to use them²⁰⁰⁸. Finally, Mafinga's water infrastructure is old and has not been renovated since 1980²⁰⁰⁹. Added to the issue of Mafinga's poor sewage system, it means that waste easily contaminates water sources; the population however does not know about it and may therefore fall sick²⁰¹⁰. However, Chai Bora has not reportedly contributed to improving the community's access to water²⁰¹¹, which may be inconsistent with the ICESCR²⁰¹². The company told a local community representative that they would help, but they had yet to contribute when the fieldwork took place²⁰¹³.

Second, STDs, including HIV/AIDS²⁰¹⁴, and unplanned pregnancies^{2015 2016} are common in the area as most people have not received any reproductive health

²⁰⁰¹ Interviews with community members C32, C38, C39, and C40.

²⁰⁰² Interview with doctor C7 and community member C32.

²⁰⁰³ Interview with local government representative E7.

²⁰⁰⁴ Interview with local government representative E1.

²⁰⁰⁵ Interview with local government representative E1.

²⁰⁰⁶ Interview with local government representative E1.

²⁰⁰⁷ Interviews with local government representative E1 and workers B8 and B14.

²⁰⁰⁸ According to community members C36, C37, C38, C39, and C40, a bucketful of water costs Tsh100 from a private tap and Tsh150 from a private well.

²⁰⁰⁹ Interviews with local government representative E1 and community members C34 and C35.

²⁰¹⁰ Interview with civil society representative A9.

²⁰¹¹ Interviews with manager D3, workers B13, B14, and B16, and community members C12, C13, C14, C15, C32, C33, C34, C35, C36, and C37.

²⁰¹² ICESCR, Article 12(1) and (2)(b).

²⁰¹³ Interview with local government representative E1.

²⁰¹⁴ Interviews with community members C12, C13, C14, and C15.

²⁰¹⁵ Interviews with doctor C7.

²⁰¹⁶ STDs treatment and abortions are respectively 3rd and 10th on the list of the most common operations in one of Mafinga's dispensaries (interview with doctor C7).

education²⁰¹⁷. Two doctors at the local dispensaries started a programme to provide said education at the local market in town, but they had to discontinue the initiative because of a shortage of doctors in the area – although one doctor said that they would try to start the programme again²⁰¹⁸. Other local health centres²⁰¹⁹, NGOs²⁰²⁰, schools²⁰²¹, and the local government²⁰²² are also trying to help with education, and it was reported that secondary schools conducted tests to detect STDs²⁰²³.

As seen in previous chapters, Iringa has the highest HIV/AIDS rate in Tanzania after Njombe, and Mafinga is the most problematic area in Iringa in this regard²⁰²⁴. In addition to issues of education, a local doctor²⁰²⁵ and a local government representative²⁰²⁶ stated that the fact that Mafinga was a business centre, with over 100 trucks stopping by every day to load and unload goods and drivers sometimes spending the night in town, contributed to the spreading of STDs. The local doctor also pointed to the nearby army camps, and most importantly to tea plantations where high numbers of migrants work. This environment, added to the area's low levels of income, fosters risky sexual encounters, including paid and unprotected relations. Another interviewee also blamed alcohol and alcoholism in the rise of STDs and unwanted pregnancies²⁰²⁷. The important role played by migrant workers in the spread of STDs and in unplanned pregnancies has also been highlighted by a number of interviewees²⁰²⁸.

Facing these challenges, Chai Bora organises monthly HIV/AIDS-prevention programmes²⁰²⁹ – although not all workers are aware of them²⁰³⁰ –, run by other workers who are first sent away on training seminars²⁰³¹. A few interviewees also said

²⁰¹⁷ Interview with doctor C7.

²⁰¹⁸ Interview with doctor C7.

²⁰¹⁹ Interviews with community representatives C8 and C9.

²⁰²⁰ Interviews with civil society representative A13, and community members C8, C9, C32, C38, C39, and C40.

²⁰²¹ Local teachers C16 and C17 said that sexual health was in the syllabus, and that teachers have one-on-one sessions with pupils, especially when they reach puberty. They also reportedly meet with parents to explain the role they have to play in the sexual education of their own children.

²⁰²² Interviews with local government representative E7, and community members C12, C13, C14, and C15.

²⁰²³ Interview with civil society representative A9.

²⁰²⁴ Interview with civil society representative A9.

²⁰²⁵ Interview with doctor C7.

²⁰²⁶ Interview with local government representative E7.

²⁰²⁷ Interview with civil society representative A9.

²⁰²⁸ Interviews with local government representatives E1 and E7, civil society representative A9, and community members C12, C13, C14, C15, and C19.

²⁰²⁹ Interviews with managers D3 and D4, and workers B14, B15, and B16.

²⁰³⁰ Worker B13 did not know about the company's programme.

²⁰³¹ Interviews with manager D3, and workers B14, B15, and B16.

that the firm organises voluntary testing every year for workers, although one of them also reported that it did not happen in 2017²⁰³². Another stated that the company encouraged workers to get tested with free food and other incentives²⁰³³. Workers do not have to disclose their HIV/AIDS status to Chai Bora; however, if they are HIV/AIDS-positive and decide to tell Chai Bora, the company will give them an additional lump sum every month to cover some costs related to the disease²⁰³⁴. In conclusion, the company seems to try and contribute to the prevention of HIV/AIDS among its workers, consistently with the ICESCR²⁰³⁵. Here again, this highlights the possibility for companies who have not adopted self-regulatory mechanisms to respect certain human rights as well as self-regulated firms, and suggests that the culture of the area where companies operate may play a (much more) important role in corporate behaviour on specific issues. However, it is important to note that most interviewees said that Chai Bora does not help the community in this regard²⁰³⁶.

7.3.2.2. Health services

Chai Bora does not operate a health centre²⁰³⁷, although it was reported that they had plans to do so in the past²⁰³⁸. Permanent workers get health insurance²⁰³⁹ – although one worker said that it did not cover all diseases and conditions²⁰⁴⁰ –, but not seasonal workers²⁰⁴¹. Without health insurance, health services and medicines are expensive²⁰⁴²; it was reported that a doctor's appointment costs Tsh 10.000²⁰⁴³. Most people in Mafinga depend on the town's hospital²⁰⁴⁴, where access to medicines is

²⁰³² Interviews with worker B14 and community member C32.

²⁰³³ Interview with worker B15.

²⁰³⁴ Interviews with manager D4, and workers B14 and B15.

²⁰³⁵ ICESCR, Article 12(1) and (2)(b).

²⁰³⁶ Interviews with worker B13, and community members C8, C9, C32, C33, C34, C35, C36, C37, C38, C39, and C40.

²⁰³⁷ Interviews with local government representative E7, workers B8, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C11, C12, C13, C14, C15, and C19.

²⁰³⁸ Interview with doctor C7.

²⁰³⁹ Interviews with manager D3, doctor C7, and worker B14.

²⁰⁴⁰ Interview with worker B14.

²⁰⁴¹ Interviews with manager D3, and workers B13 and B16.

²⁰⁴² Interviews with community members C1, C2, C3, C4, C5, C6, C8, C9, and C42.

²⁰⁴³ Interviews with community members C1, C2, C3, C4, C5, C6, C8, and C9.

²⁰⁴⁴ Interviews with local government representative E7, local doctor C7, worker B8, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C11, C19, C33,

reportedly poor²⁰⁴⁵ and doctors and nurses are too few²⁰⁴⁶. The hospital was generally also reported to be crowded²⁰⁴⁷, although a local government representative disagreed²⁰⁴⁸. Some interviewees said that a significant part of the population visited private dispensaries because of the better services and access to medicines²⁰⁴⁹, even though they are expensive. Moreover, poor access to medicines at the local public hospital means that patients will have to buy medication privately and will therefore bear the expense as private medication is not covered by health insurance (as explained in Section 5.3.3.2.). The general lack of funding for Mafinga's hospital may be explained by the fact that, following a council restructuring, the government divided its contributions to the local hospital by almost seven – Tsh 32 million yearly from Tsh 220 million previously²⁰⁵⁰ – while, in a short amount of time, population coverage was almost multiplied by six – 400.000 people from 70.000 people previously²⁰⁵¹. Patients now come from Njombe, Mufindi, Mbeya, and Iringa generally²⁰⁵². In this context, Chai Bora reportedly does not contribute to the health needs of the community²⁰⁵³ even though the local government said that migrant tea workers put a strain on health services in the area²⁰⁵⁴. This practice could therefore be interpreted as being inconsistent with the ICESCR²⁰⁵⁵.

7.3.3. Right to education

It was reported that all children in the area go to school, although some must walk from quite far and therefore reach school tired²⁰⁵⁶. In a public school in Mafinga, girls

²⁰⁴⁵ Interviews with worker B8, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C11, and C42.

²⁰⁴⁶ Local government representative E1 said that hospital employee numbers were reduced when the town council was divided, and that there was therefore a shortage of nurses and doctors. Community members C8 and C9 also said that there was a shortage of doctors.

²⁰⁴⁷ Interviews with local government representative E1, civil society representative A9, and community members C1, C2, C3, C4, C5, C6, C19, and C33.

²⁰⁴⁸ Interview with local government representative E7.

²⁰⁴⁹ Interviews with community members C10, C11, C12, C13, C14, C15,

²⁰⁵⁰ Interview with local government representative E1.

²⁰⁵¹ Interview with local government representative E1.

²⁰⁵² Interview with local government representative E1.

²⁰⁵³ Interviews with trade union representative F3, and community members C12, C13, C14, C15, and C33.

²⁰⁵⁴ Interview with local government representative E1.

²⁰⁵⁵ ICESCR, Article 12(1) and (2)(b).

²⁰⁵⁶ Interviews with local teachers C16 and C17.

outnumber boys²⁰⁵⁷, but it was reported that the situation was not the same in villages surrounding the town, where girls – and children in general – tend to stay more at home²⁰⁵⁸. Most interviewees said that there were enough schools in the area²⁰⁵⁹ but not enough teachers^{2060 2061} or that infrastructure was poor²⁰⁶². Local teachers also said that they were lacking supplies²⁰⁶³. Moreover, even though a local government representative said that there was no issue²⁰⁶⁴, a local government representative reported that there were 130 pupils in one primary class²⁰⁶⁵, and local teachers said that they had between 60 and 80 pupils in class²⁰⁶⁶. A local government representative also reported that infrastructures were poor²⁰⁶⁷. For instance, some classrooms have no chairs and pupils must therefore sit on logs²⁰⁶⁸. Finally, a few interviewees said that migrant workers put a strain on education services in the area²⁰⁶⁹, and that it is difficult to help them as some migrant children have very low levels of education²⁰⁷⁰. This situation was made reportedly worse after President Magufuli publicly stated that, as government schools were free, parents no longer should help schools financially²⁰⁷¹ – but the government did not provide extra funding to compensate for the families' former contributions. Schools are now therefore in general need of help²⁰⁷².

In this context, Chai Bora offered chairs when they were asked to do so by the government after President Magufuli took power²⁰⁷³, but a local government representative said that the company otherwise does not contribute to the education

²⁰⁵⁷ 50 boys and 71 girls graduated last year, according to local teachers C16 and C17.

²⁰⁵⁸ Interviews with local teachers C16 and C17.

²⁰⁵⁹ Interviews with local government representative E7, community members C8, C9, C12, C13, C14, C15, C19, C32, C33, C36, C37, C38, C39, C40, and C41.

²⁰⁶⁰ Interviews with local teachers C16 and C17, workers B8, and community members C8, C9, C10, C19, C33, C34, C35, C38, C39, and C40.

²⁰⁶¹ According to local teachers C16 and C17 and community members C8 and C9, there was a shortage of teachers because President Magufuli dismissed those who were not qualified.

²⁰⁶² Interview with local government representative E1.

²⁰⁶³ Interviews with local teachers C16 and C17.

²⁰⁶⁴ Interview with local government representative E7.

²⁰⁶⁵ Interview with the local government representative E1.

²⁰⁶⁶ Interviews with local teachers C16 and C17.

²⁰⁶⁷ Interviews with local government representative E1 and community member C38, C39, and C40.

²⁰⁶⁸ Interview with local government representative E1.

²⁰⁶⁹ Interviews with local government representative E1, civil society representative A9, and community members C33, C38, C39, C40, and C41.

²⁰⁷⁰ Interviews with local teachers C16 and C17.

²⁰⁷¹ Interviews with local teachers C16 and C17.

²⁰⁷² Interviews with local teachers C16 and C17.

²⁰⁷³ Interviews with local government representative E7 and community members C12, C13, C14, C15,

needs of the community²⁰⁷⁴ even when they are contacted directly by schools²⁰⁷⁵. A local government representative has reportedly visited Chai Bora and subsequently tried to reach out again to the company, but the firm had yet to reply when the fieldwork took place²⁰⁷⁶. However, Chai Bora said that they had contributed towards the building of two school laboratories²⁰⁷⁷. Overall, it appears that the firm does not often contribute to the education needs of the community, which may be interpreted as being inconsistent with the Universal Declaration of Human Rights²⁰⁷⁸ and the ICESCR²⁰⁷⁹.

Now that I have assessed Chai Bora's human rights performance, I will use the framework of 'key features' developed in Chapter 3 to investigate the role played by these features in the firm's behaviour.

7.4. Impact of key features outside of formal self-regulatory mechanisms

Chai Bora has not adopted any human rights self-regulatory mechanisms. However, it would be important to see if the firm has set up processes, and in particular the 'key features' identified in Chapter 3, to minimise any negative human rights impact which its activities may have, even in the absence of formal self-regulatory mechanisms. This will help investigate whether the key features are also effective in helping a firm which has not adopted any self-regulatory mechanisms respect human rights, which would confirm (or not) the important role they (can) play in effective self-regulation. I will do so by using the framework of 'key features' developed in Chapter 3 – although only covering the features relevant to a firm which has not adopted any such mechanisms: the embedding of human rights-related rules into its everyday activities; the monitoring of the human rights impact of its operations; any complaints mechanisms

²⁰⁷⁴ Interviews with trade union representative F3, workers B13 and B14, and community members C1, C2, C3, C4, C5, C6, C8, C9, C10, C12, C13, C14, C15, C19, C32, C33, C34, C35, C36, C37, C41,

²⁰⁷⁵ Interviews with local teachers C16 and C17.

²⁰⁷⁶ Interview with local government representative E1.

²⁰⁷⁷ Interview with manager D3.

²⁰⁷⁸ Universal Declaration of Human Rights, Article 26.

²⁰⁷⁹ ICESCR, Article 13.

which the firm has set up; and the potential corporate sanctions for violations of human rights.

First, Chai Bora could embed human rights into their everyday activities by training of their workers and managers and setting up reward systems for the implementation of rules related to human rights and for whistleblowing. On the one hand, the only feature which is implemented is the training of workers, mainly on health and safety, HIV/AIDS, and sexual harassment, as mentioned throughout this chapter. However, the latter is only available for permanent workers, as explained in Section 7.2.5.2. above. Although health and safety is still problematic, the company does perform well regarding its treatment of people living with HIV/AIDS, and its handling of sexual harassment on company grounds. Similarly, the training organised by seasonal workers themselves was reported as improving behaviour. This would support the theory that the embedding of ‘values’ into the firm’s practice and structure – which may be done by training employees – is essential²⁰⁸⁰. The suggestion by interviewees that the fact that trade union representatives cannot defend workers’ rights correctly stems from their lack of training²⁰⁸¹ would also confirm this. On the other hand, as with Unilever and MTC, there is a general lack of training offered to Chai Bora managers, which could have contributed to the poor implementation of certain standards. This is particularly true regarding non-discrimination against pregnant women: while it is a human rights violation, Chai Bora managers do not see it as a problem.

Second, Chai Bora does not have any internal system in place to monitor the human rights impact of its activities. Apart from quarterly health and safety risk assessments²⁰⁸², Chai Bora does not seem to conduct any human rights-related risk assessment, due diligence, or related processes. As for external monitoring, no (non-governmental) third-party organisations carries out verifications: a local government representative said that they conducted regular environmental inspections²⁰⁸³ and OSHA reportedly carry out quarterly health and safety inspections²⁰⁸⁴ – although I

²⁰⁸⁰ Selznick (n. 351), 101.

²⁰⁸¹ Interviews with civil society representatives A11 and A12.

²⁰⁸² Interview with manager D3.

²⁰⁸³ Interview with local government representative E7.

²⁰⁸⁴ Interview with manager D3.

could not independently verify these claims –, but all these inspections would in any case remain government-led and would therefore sit outside the scope of this study.

Third, there is no free and anonymous complaints mechanism available to Chai Bora workers^{2085 2086}. If a permanent worker has a complaint, they need to go through the local branch of the TUICO. There is a separate process for sexual harassment cases: female TUICO representatives handle the complaints and pass it on to the TUICO chairman, who will then speak with management²⁰⁸⁷. It was reported that TUICO representatives did not always use to take women's complaints to management; however, the situation has reportedly improved, women's complaints are now taken more seriously²⁰⁸⁸, and Chai Bora's general performance on this issue was reported as having improved. However, it is a challenge to determine the extent to which complaints mechanisms have played a role in this improvement considering that training was also offered on this issue. Moreover, as TUICO is not open to seasonal workers²⁰⁸⁹, they may only complain to their manager, and do not have any other way to express concerns or complaints to management²⁰⁹⁰. One seasonal worker also said that their managers do not usually report their complaints to upper management²⁰⁹¹. Seasonal workers regretted that an official, free, and anonymous complaints mechanism was not in place, as they would reportedly use it²⁰⁹². Furthermore, there is no free and anonymous complaints mechanism available to community members²⁰⁹³, which a few interviewees regretted as they would have used it to express grievances about issues such as the poor access to water and to health services²⁰⁹⁴. Community members were especially concerned with the absence of such a mechanism since Chai Bora does not seem to engage with the community in other fora, as explained in this chapter. It follows that it is difficult to assess the actual added value which such mechanisms may have if they were set up, although they could play a role in ensuring that seasonal workers' and community members' voices are heard and taken into

²⁰⁸⁵ Interviews with trade union representative F3, and workers B13, B14, B15, and B16.

²⁰⁸⁶ Manager D3, when asked about any complaints mechanism which the company had, only mentioned the fact that anyone could talk about any issues they may have with the Human Resources department.

²⁰⁸⁷ Interviews with trade union representative F3.

²⁰⁸⁸ Interview with worker B8.

²⁰⁸⁹ See Section 7.2.3.1.

²⁰⁹⁰ Interview with worker B13.

²⁰⁹¹ Interview with worker B13.

²⁰⁹² Interviews with workers B13 and B16.

²⁰⁹³ Interview with community member C32, C33, C34, C35, C36, C37, C38, C39, C40, and C41.

²⁰⁹⁴ Interviews with community members C32, C34, C35, C38, C39, and C40.

account²⁰⁹⁵ which, in turn, is likely to lead to improvement in corporate human rights performance.

Finally, no sanctions are given for failing to implement health and safety regulations as the company favours education to penalties²⁰⁹⁶. No other positive evidence of sanctions for human rights-related breaches was found. Only looking at Chai Bora, it is therefore difficult to draw conclusions as to the effectiveness of individual sanctions for workers and for managers, but I will expand on the importance of sanctions for improving corporate human rights performance in Chapter 8 by drawing evidence from all three companies.

7.5. Conclusion

This chapter aimed first to determine the human rights impact of Chai Bora's activities, and second the effectiveness of some of the key features on a company's human rights impact in the absence of formal self-regulatory mechanisms.

First, Chai Bora's operations have a negative human rights impact in some areas: treatment of seasonal workers; health and safety; outsourcing of security staff; and discrimination against pregnant women. One of the most important areas of concerns are the working conditions of seasonal workers, especially as compared with those of permanent workers. Indeed, seasonal workers do not have access to a trade union, sick leave, annual leave, maternity or paternity leave, or healthcare and compensation in case of work-related accidents. They also have no access to health insurance or to a rent allowance, while the company provides it to its permanent workers. Another issue relates to health and safety, as Chai Bora may not take all necessary security measures. Moreover, another issue is the outsourcing of security staff with no effort to check on the employees' working terms and conditions, resulting in problematic practices as set against national and international standards. Finally, discrimination against pregnant women is also a problem within Chai Bora, in potential contradiction with international human rights law. However, Chai Bora meets its human rights responsibilities in some respects. This is the case for the right to freedom from exploitative child labour, permanent workers' rights, right to non-discrimination

²⁰⁹⁵ Rodríguez-Garavito (n. 166), 228.

²⁰⁹⁶ Interview with manager D3.

against people living with HIV/AIDS, right to equal pay between men and women, and to a clean environment.

Second, Chai Bora trains its workers – mainly on health and safety, HIV/AIDS, and sexual harassment – but does not give out sanctions for non-compliance. It is unclear whether the training provided on health and safety and HIV/AIDS has helped, but the sessions on sexual harassment have been reported as having improved individual (and therefore collective) behaviour. Moreover, considering that Chai Bora's activities are not internally or externally monitored, that no complaints mechanism has been set up, and that no sanctions are given out for non-compliance with specific (health and safety) standards, it is difficult to rigorously assess the extent to which these measures would help the firm improve its human rights performance, although they may have helped the firm become aware of some of the issues reported in this chapter. The only external audits which may take place within the company are conducted by the Ministry for Labour and OSHA. As they are both facing difficulties in terms of capacity, as mentioned in Chapter 4, Chai Bora may not be audited for years. Furthermore, even when government-sanctioned audits take place and end up in fines for companies in the area, practices reportedly only change for a few weeks before the situation returns to normal²⁰⁹⁷. Overall, considering the environment in which Chai Bora operates, having an internal or external mechanism for respecting human rights would mean adding another layer of oversight to the firm's activities – although not all mechanisms are equally efficient in that regard, as observed in Chapters 5 and 6.

Finally, it is important to note that two factors (which are not 'key features') have also led to changes in Chai Bora's human rights performance: bottom-up action from workers and the adoption of a collective agreement. I will explore these external factors in more detail in Chapter 8.

Informed by the theoretical discussions outlined in Chapters 1 to 4, and building on the findings of my case study laid out in Chapter 5 to 7, Chapter 8 will draw conclusions as to the kind of effect which corporate self-regulation has had on corporate practice and the extent to which it has helped Tanzanian tea corporations meet their international human rights obligations.

²⁰⁹⁷ Interview with local government representative E1.

Chapter 8 – Conclusion

8.1. Introduction

In this thesis I have explored the extent to which self-regulatory mechanisms were effective in helping corporations meet their international human rights responsibilities, with a focus on the Tanzanian tea industry. I have developed a typology of corporate human rights self-regulatory mechanisms and identified categories of ‘key features’ to help measure their effectiveness. I have come up with a methodology which allowed me to test out the kind of effect self-regulatory mechanisms had on corporate behaviour and investigate the features which made the different types mechanisms effective – if any. As was uncovered in Chapters 5, 6, and 7, none of the mechanisms are entirely effective. As I will explain in this chapter, this is because the adoption of corporate self-regulatory mechanisms does not automatically lead to standard implementation, because the design of some of the mechanisms is partially flawed, and because self-regulation is necessarily limited in the kind of human rights issues it can feasibly address. I will go over these different findings in more detail in the rest of this chapter. Another important finding is the fact that external factors also played a role in changing firms’ behaviour: as it was uncovered, factors such as bottom-up action from affected stakeholders and company’s financial resources may have a crucial impact on a company’s human rights performance, whether or not self-regulatory mechanisms are in place.

In order to reach these conclusions, this chapter will first build on Chapters 1 and 2 to answer the thesis’s first set of sub-questions (‘What are the self-regulatory mechanisms used by corporations to improve their human rights performance? Why should one analyse them collectively?’). To do so, I will recall the typology which was developed for this research. Secondly, this chapter will build on Chapters 3 and 4 to answer the thesis’s second set of sub-questions (‘What academic scholarship has been undertaken which evaluates the effectiveness of self-regulatory mechanisms from a human rights perspective? How does one develop a methodology for testing out their human rights effectiveness ‘on the ground’?’). To do so, I will recall the ‘key features’ which were identified as important for measuring the effectiveness of self-regulation across all mechanisms and used to design a methodology for testing them out. Next, I

will build on Chapters 5, 6, and 7 to answer the thesis's third set of sub-questions ('Testing out that methodology, what kind of effect do these mechanisms have on corporate human rights performance with regard to a particular industry in a particular geographical setting? To what extent are those findings generalisable to other industries and geographical settings?'²⁰⁹⁸). To do so, I will conduct a linked analysis of the three companies' human rights performance, which will inform my investigation into the impact which self-regulatory mechanisms (and key features) have had on the (relevant) companies' performance. This will in turn support my assessment of the role played by the various features identified by scholars as important to guarantee the effectiveness of self-regulation in the context of Tanzanian tea, as well as the identification of any other influential factors. At that point, it will be essential to answer this thesis's main research question ('To what extent is it possible to evaluate the effectiveness of voluntary corporate self-regulatory mechanisms in ensuring that companies meet their international human rights responsibilities?'). Drawing from this (although necessarily limited) piece of research, I will outline my conclusions as to the (potential) place and role of self-regulation in the process of regulating corporate behaviour. Finally, I will investigate the limitations of my methodology and propose areas for future research.

8.2. Answer to the thesis's first set of sub-questions

The first set of sub-questions which this thesis aims to answer was: What are the self-regulatory mechanisms used by corporations to improve their human rights performance? Why should one analyse them collectively?

As explained in Chapter 1, a key argument made in this thesis was that it is important to examine the different corporate human rights self-regulatory mechanisms collectively, in a way that has not been done in existing scholarship: first, because of their substantive content and objectives; second, because of the way which firms use them; and third because of the similar 'key features' potentially improving their effectiveness, as identified in Chapter 3. In order to understand the different types of mechanisms better, it was important to create a typology sorting them out based on

²⁰⁹⁸ The second question ('To what extent are those findings generalisable to other industries and geographical settings') will be fully addressed later in Section 8.5., once I have outlined my findings.

criteria which are relevant to the objectives of this thesis. Since the object of study of this research is the effectiveness of mechanisms on *corporate behaviour*, it was crucial to place corporations at the heart of the typology. I therefore broadly divided the different types of self-regulatory mechanisms into company- and product-level mechanisms, depending on whether the standards applied to the whole firm – requiring holistic compliance within the firm – or solely to one product – requiring compliance only as far as the making of the specific product is concerned. I then divided the company-level mechanisms into two categories, depending on whether the author of the standards was the firm itself (internal mechanisms) or external actors (external mechanisms). Finally, I sub-divided the latter into three sub-categories, depending on who the (external) author of the standards was: governments and/or intergovernmental organisations (intergovernmental mechanisms), industry actors (industry mechanisms), or multi-stakeholder organisations (multi-stakeholder initiatives).

This innovative typology allows for the assessment of the effectiveness of the different types of mechanisms informed by their own operational dynamic and by their role in corporate human rights strategy.

8.3. Answer to the thesis's second set of sub-questions

The second set of sub-questions which this thesis aims to answer was: What academic scholarship has been undertaken which evaluates the effectiveness of self-regulatory mechanisms from a human rights perspective? How does one develop a methodology for testing out their human rights effectiveness 'on the ground'?

In Chapter 3, I reviewed the literature on impact of the different types of corporate self-regulatory mechanisms and found that no study had yet empirically investigated the effectiveness of these different mechanisms together, and from a comprehensive human rights perspective. Yet it is crucial to examine the actual impact on the ground of these mechanisms to assess whether self-regulation mechanisms do help companies effectively implement their human rights standards. Once this was established, I identified 'key features' put forward by scholars as helping improve the effectiveness of corporate self-regulation, which I organised using the following different categories: drafting of standards; embedding of standards into everyday operations; monitoring and reporting of compliance; setting up of complaints mechanisms; and

sanctions for non-compliance. These ‘key features’ were tested out empirically to find out if they contribute to making human rights self-regulation effective.

In order to design my empirical research, I then built on my evaluation of the various empirical methods carried out in Chapter 1 which identified the case study as the most appropriate method: they may be used to illuminate why decisions were taken, how they were implemented, and with what result. They also help to explain the complexities of real-life situations which may not be captured through other means of research and may be used when a phenomenon and context cannot be separated. I then designed my case study, keeping in mind that I needed to focus on a particular location and industry where human rights issues are widespread and standards are common. Accordingly, I explained in Chapter 4 why the Tanzanian tea industry in general was an appropriate setting for this thesis’s case study, and three specific tea corporations operating in the Mufindi region in particular.

In the next four sections, I will provide an answer to the third sub-question of this thesis: when the methodology developed in this thesis is applied to a real-world scenario, what are the findings that are produced? I will dedicate most of this chapter to this question as I will need to pull together the work undertaken in Chapters 5, 6, and 7 in order to fully answer the question.

8.4. Answer to this thesis’s third set of sub-questions

In this section, I will first analyse the three firms’ human rights performance; second, the impact of mechanisms on the (relevant) firms’ human rights performance; third, the role played by the key features identified in Chapter 3 on the firms’ human rights performance *and* on the impact of mechanisms on the firms’ human rights performance; finally, I will analyse the role played by other factors on firms’ human rights performance.

8.4.1. Firms' human rights performance

This section will review the human rights performance of the three firms of this thesis's case study²⁰⁹⁹. I will in particular review the firms' impact on the following human rights: right to an adequate standard of living, right to just and favourable terms of work, right to healthy and safe conditions of work, freedom of association, right of seasonal workers to favourable working conditions, freedom from discrimination, right to housing, right to health, right to education, and right to a clean environment.

8.4.1.1. Right to adequate standard of living

One of the most important human rights problems which I have found across all three companies was low wages (even taking into account in-kind benefits), leading to the breach of the right to an adequate standard of living. Workers at Unilever, MTC, and Chai Bora earn less than a living wage and must commonly work several jobs to feed their families – although Chai Bora pays its permanent employees better than the other companies do. This may show the limitations of self-regulatory mechanisms – despite the fact that both companies have adopted several types of mechanisms (most of which include multiple standards regarding wage levels), they pay their employees less than Chai Bora pays its permanent workers. This is a very crucial problem because it has significant human rights consequences, impacting on a broad range of rights going beyond the right to an adequate standard and living. In the context of this case study, I have found that it had consequences on the right to an adequate supply of water, to food, to health, to education, and to rest and leisure, across all three companies.

8.4.1.2. Right to just and favourable terms of work

Unilever and MTC have both improved their practice regarding workers' contracts, as all their employees now sign a contract before starting work. All contracts are in Swahili, which did not used to be the case. However, both companies do not consistently ensure that all workers are given enough time to read through the contract before signing it, or to provide them all with copies of their contract. However, Chai

²⁰⁹⁹ I have also compiled all aspects of the three firms' human rights performance in a table (see Annex 6).

Bora's practice – while being adequate for permanent employees – is poor for seasonal workers, who are not provided with a contract after their first day of work. Such practice fails to uphold workers' right to just and favourable terms of work.

Another issue was working time, as some employees across all three companies work too many hours – although Rainforest Alliance standards have helped Unilever reduce their employees' working hours. However, Unilever and MTC's policy (implementing their CBA) on overtime is problematic as it obliges employees to work overtime.

The practice of all three companies regarding leaves greatly varies, depending on workers' status: permanent workers are generally offered all legally sanctioned leaves (with exceptions) whereas seasonal employees are either denied all leaves (for Chai Bora) or only allowed limited sick leave (for Unilever and MTC).

Finally, Chai Bora's practice regarding outsourced staff is poor, as they do not check these workers' working terms and conditions. As a result, outsourced employees work illegally long hours, seven days a week, and are not offered any leaves. Unilever's practice is very different as the firm checks that outsourced employees are offered the same working conditions as Unilever's (permanent) employees. There was no report of outsourced activities in MTC's operations.

Overall, Chai Bora fails to uphold their seasonal workers' right to just and favourable terms of work while guaranteeing it for their permanent workers. Unilever's and MTC's records are more mixed; while, for the most part, the practice in both companies guarantees their workers' right to just and favourable terms of work, improvements (especially concerning seasonal employees) are needed.

8.4.1.3. Right to healthy and safe conditions of work

In general, Chai Bora appears to have the worst record of the three firms: there were complaints from workers about accidents and reports of the company's potential carelessness regarding their health and safety practice – contrary to Unilever and MTC. However, Chai Bora organises medical check-ups for all its workers on a regular basis, whereas Unilever and MTC only have entry check-ups. MTC has regular follow-up check-ups but only for its permanent workers. Most importantly, there are problems with the provision of free protective equipment in all three companies, and no sanctions are given out for not wearing proper equipment in two companies. Moreover,

compensation for work-related accidents is a problem across all three companies, especially for seasonal workers who are never offered any compensation. This is so even though all workers are entitled to compensation by law. It follows that the practice of all three companies clashes with the right to healthy and safe conditions of work, albeit at different degrees – it is acknowledged that Unilever performs the best, and Chai Bora the worst.

8.4.1.4. Right to freedom of association and collective bargaining

Freedom of association was an issue across all three companies: Chai Bora's seasonal workers are denied access to a trade union, while there were multiple reports of failure of union representatives to defend workers' rights in Unilever and MTC – although the situation for Unilever has improved since the last strike. Indeed, Unilever's management decided to build a better relationship with trade union representatives to avoid violent strikes in the future. MTC has also faced violent strikes in recent years but did not seem to have changed its practice since. Only Chai Bora did not report any strikes in recent years – although seasonal workers reportedly do not dare go on strike lest they lose their employment. In general, workers' right to freedom of association and collective bargaining was only partially guaranteed in all three companies.

8.4.1.5. Right of seasonal workers to favourable working conditions

A major problem encountered with all three companies was their treatment of seasonal workers. Unilever obliges its seasonal workers to buy their own protective equipment and denies them sick leave or compensation for work-related accidents. MTC denies seasonal workers leaves, healthcare after a work-related accident once their contract expires, compensation for accidents, and a rent allowance if the firm cannot accommodate them onsite. However, of the three companies, Chai Bora performs the worst: seasonal workers do not have a contract, are paid (significantly) less than permanent workers, are not allowed any leave or access to a trade union, are not provided with health insurance or a rent allowance, or offered any compensation for work-related accidents. Although Chai Bora performs the worst of all firms, the practice of all three companies clashes with workers' right to favourable working

conditions and, for MTC and Chai Bora, also clashes with the workers' right to health, to housing, and to favourable working conditions. Finally, Chai Bora's practice also clashes with the workers' right to freedom of association and collective bargaining.

8.4.1.6. Right to non-discrimination

Corporate practices generally clashed with the right to non-discrimination based on gender. There have also been reports of discrimination against pregnant women by Unilever and MTC – although the companies denied it – and established discriminatory practices by Chai Bora, whose management admitted that the company did not hire pregnant women and had fired an employee who failed to disclose her pregnancy during the recruitment process. There were also multiple reports of gender-related issues, and in particular sexual harassment, in all three companies – although all have improved their record regarding gender-related issues. However, despite these recent improvements, the firms' practice clashes with workers' right to gender-based non-discrimination.

Finally, it is notable that in no company were there reports of discrimination against people living with HIV/AIDS.

8.4.1.7. Right to housing

Onsite housing is also a problem for Unilever and MTC, as houses only include one room and are too small, and most families are not provided with electricity. Chai Bora does not have onsite housing and most workers therefore live in Mafinga – but the amount which the firm offers to compensate is insufficient to cover workers' rent. It follows that all three firms' practice may clash with workers' (and their family members') right to housing and to adequate housing. However, it is notable that Unilever's provision of drinking water onsite is a significant contribution to its workers' right to adequate housing and to health.

8.4.1.8. Right to health

It is important to distinguish between the right to health of workers and that of community members.

First, Unilever and MTC have health centres which are freely available (including free medication) to workers and their families. In the Tanzanian context of poor access to healthcare, this significantly contributes to fulfilling workers' right to health. As for Chai Bora, the firm provides health insurance to its permanent workers but not its seasonal workers. This practice therefore helps fulfil permanent workers' right to health but clashes with that of seasonal workers. Moreover, Unilever has set up a weekly programme to train workers about HIV/AIDS prevention – although the firm had reportedly not run it for four months. Similarly, Chai Bora runs a monthly seminar. MTC has set up a similar programme, although there were multiple reports that it had not been run in months. Furthermore, MTC and Chai Bora financially support workers living with HIV/AIDS. All three firms' practice therefore helps fulfil the right to health of workers living with HIV/AIDS.

Second, all three companies fail to adequately contribute to the health needs of the community, in two ways. On the one hand, only workers (and their families) have free access to their health services. If community members wish to go to Unilever or MTC's health centres, they must pay – and it is very expensive. On the other hand, none of the firms contribute to the offsite community's most pressing health need: access to water. It follows that all three firms fail to contribute to fulfilling community members' right to health.

8.4.1.9. Right to education

Only Unilever has a school, but it is so expensive that it is only accessible to managers' children. Unilever and MTC have both built schools, which are now run by the government, and other facilities for local pupils such as biology laboratories or dormitories. However, Chai Bora has not participated beyond one recent action in response to a call by the Tanzanian President. It follows that Unilever and MTC partially contribute to fulfilling community members' right to education, and that Chai Bora fails to do so.

8.4.1.10. Right to a clean environment

The area where all three companies seem to perform best is their environment impact – although it is not perfect. There was no report of environmental degradation for MTC and Chai Bora, and Unilever has improved its environmental record since 2014. However, the latter’s practice of spraying chemicals near water sources infringe community members’ right to a clean environment. It is notable that for both Unilever and MTC, product-level mechanisms were identified as having had a positive impact – although Unilever’s pollution of water sources is a potentially grave human rights violation, and the firm’s Rainforest Alliance certification did not prevent or redress it.

8.4.1.11. Other rights

First, despite the high risk associated with running a tea operation in Mufindi, no company violated community members’ right to land. Second, and again despite the high risk associated with running a tea operation in Mufindi, no company violated the right to freedom from exploitative child labour.

8.4.1.12. Conclusion

For most of human rights issues evaluated above, the company with the worst record is Chai Bora – especially when it comes to the treatment of seasonal workers. Indeed, only in Chai Bora are seasonal employees not given a contract (beyond their first workday), denied a rent allowance, healthcare, and access to the trade union. Moreover, Chai Bora’s contribution to the community is the lowest of the three companies. However, it is interesting to see that Chai Bora performs well (and even better than the other two companies) regarding its permanent workers. Chai Bora’s permanent workers are paid (significantly) more than Unilever’s and MTC’s permanent workers and, contrary to the other two companies, are (usually) offered compensation for work-related accidents, and go through regular medical check-ups. Similarly to permanent employees at the other two firms, they are also offered contracts, leaves, healthcare, rent allowance, and HIV/AIDS programmes. However, Chai Bora’s permanent workers may still work too much (overtime) and may not be guaranteed the best health and safety standards. Overall, the company with the best human rights performance is Unilever, and the worst Chai Bora.

It is clear that the performance of all three companies – including the two firms which have adopted self-regulatory mechanisms – is problematic, and that some human rights issues are similar across all the companies, whether or not they have adopted mechanisms. It is now important to make a general analysis of the impact of the different types of self-regulatory mechanisms adopted by the (relevant) firms in my case study.

8.4.2. General analysis of the impact of corporate self-regulatory mechanisms

Now that I have analysed the three companies' human rights performance, I will review the impact of the various self-regulatory mechanisms on this performance. Since only Unilever and MTC have adopted self-regulatory mechanisms, I will here focus on these two companies.

First, as I have explained in Chapter 5, only the Rainforest Alliance was identified as having had some concrete impact on the way which Unilever carries out its activities – although its influence remains focused on a few issues. Similarly, only the Rainforest Alliance and Fairtrade have been reported as having some impact on MTC's practice. It follows that only product-level mechanisms have had an impact on firm's operations which was identifiable on the ground. It is important to note that the impact of these product-level mechanisms has been concentrated, for both companies, on the following two areas: health and safety, and the firms' environmental footprint. The latter is perhaps not surprising, considering that the Rainforest Alliance was first created to help protect the environment. Beyond this, the Rainforest Alliance made Unilever shorten its employees' working time, Fairtrade helped MTC contribute to the education needs of the community, and both certification systems have reportedly helped MTC improve its practice on gender-related issues. Moreover, it is true that, as mentioned in Chapter 5, there was a big 'push' to implement Unilever's Code of Business Principles, but I was unable to observe any concrete impact which the instrument may have had on the way which Unilever operates. Second, as the first section of this chapter has shown, both companies fail to entirely meet many of their human rights responsibilities. In these areas, it is therefore obvious that the impact of self-regulatory mechanisms on the firms' behaviour has been limited.

In conclusion, when companies performed well (and especially, better than the company without self-regulatory mechanism), only on certain areas have I been able to identify any impact which self-regulatory mechanisms may have had and, when the firms did not perform well, it is clear that the same mechanisms did not work. The most important question at this stage is: why is it so? What parts of the mechanisms worked? What parts did not work? What does that tell us about the potential of self-regulation as a way to control corporate behaviour and ensure that it is respectful of human rights? What could be done to ensure that this potential is fully realised?

In order to answer these questions, the rest of this chapter is structured as follows: first, I will summarise the role played by the ‘key features’ identified in Chapter 3 in the effectiveness of self-regulatory mechanisms. Second, I will recall the other factors which have influenced the effectiveness of the mechanisms. I will then, in the final section of this chapter (and of the thesis), summarise my findings, answer my main research question, and outline the limits of this study and areas for further research.

8.4.3. Role played by key features

This section will follow the structure which has been used throughout this thesis to analyse the ‘key features’, and will evaluate the role played by each feature in the following order: drafting of standards; embedding of standards into everyday operations; monitoring and reporting of implementation; setting up of a complaints mechanism; and sanctioning for non-compliance. To the extent possible, I will also address the role played by management’s motivation throughout the whole process.

8.4.3.1. Drafting of standards

It has become obvious that, at the drafting stage, it is crucial that a comprehensive set of high-level human rights principles be included *and* translated into operational standards. Committing to high-level human rights principles will define the direction taken by the firms to ensure that their operations do not negatively impact human rights. If they miss out on some rights, there may be important consequences on the ground, as is explained below. It is also important that mechanisms’ standards be detailed, as was recommended by some authors, who rightly warned that generalised instruments risk “being so open-ended that impartial and unambiguous application is

difficult”²¹⁰⁰. It is therefore crucial to adopt operational standards which adequately and thoroughly translate these high-level principles into ground-level actions. Using ‘means’-type command, these ‘operational’ standards aim to explain to the firm how to implement the high-level principles on the ground. For instance, Unilever has adopted different self-regulatory mechanisms with various levels of specificity and applicability. However, some high-level commitments – mainly made using company-level mechanisms – have no translation into concrete behaviour on the ground. In this case, it is unclear how the firm expects its employees (and subcontractors) to behave so that these commitments are met, which makes their implementation difficult. For instance, for lack of more specific guidelines, it is difficult to determine whether the right to a family life as guaranteed by the Universal Declaration of Human Rights²¹⁰¹ and the ICCPR²¹⁰², and the right to an adequate standard of living, including adequate housing, as guaranteed by the Universal Declaration of Human Rights²¹⁰³ and the ICESCR²¹⁰⁴ are upheld by Unilever when the firm provides small houses to its workers with (for most of them) no electricity. Even though the Rainforest Alliance sets specific standards on minimum size for housing, the fact that workers must share their one-room house with their children and no electricity, and sleep in the same room as they cook and eat may lead to the violation of their rights under the different instruments mentioned above – but whether it is actually the case is unclear, in the absence of detailed standards using ‘means’-type command. In the same vein, the lack of specific requirement that all workers be compensated for work-related injuries means that it may be difficult to determine whether or not the fact that seasonal workers are not entitled to compensation violates the ICESCR guaranteeing the right to “the enjoyment of just and favourable conditions of work”²¹⁰⁵. This leaves an important potential gap in the human rights protection afforded to workers. Finally, even the most ground-level instruments have gaps. Indeed, the Rainforest Alliance, despite its set of 119 criteria²¹⁰⁶, fails to cover some issues, which may lead to important human rights consequences. Fairtrade shows the same gaps: neither set of the standards covers healthcare after – or compensation for – work-related injuries, paternity leave, the

²¹⁰⁰ Weaver (n. 356), 367.

²¹⁰¹ Universal Declaration of Human Rights, Article 16.

²¹⁰² ICCPR, Article 23.

²¹⁰³ Universal Declaration of Human Rights, Article 25.

²¹⁰⁴ ICESCR, Article 11.

²¹⁰⁵ ICESCR, Article 7.

²¹⁰⁶ Rainforest Alliance ‘Sustainable Agriculture Standard’, 8.

handling of strikes, or the provision of electricity to workers' housing. These gaps may lead to important human rights consequences, as became obvious in this case study when corporations failed to uphold certain of these rights.

8.4.3.2. ***Embedding of standards***

From the evidence collected for Unilever and MTC, it appears that the training offered to workers helped change their behaviour²¹⁰⁷ – and consolidate it. It is interesting to see that firms themselves may acknowledge the importance of training on the implementation of their standards: when Unilever's management saw that the principles included in the firm's Code of Business Principles were not cascading down to the workers, they started training all their workers and contractors on the content of the Code (although it is acknowledged that no evidence of direct impact of the Code was found). This shows that the mere presence of a code is not as important as the content of the code, contrary to some scholars' view²¹⁰⁸. Moreover, it is interesting that Chai Bora also trained their workers on human rights-related issues: health and safety, HIV/AIDS, and sexual harassment (although the latter is only available for permanent workers). Although health and safety is still problematic, the company does perform well regarding its treatment of people living with HIV/AIDS, and its handling of sexual harassment on company grounds. Similarly, the training organised by seasonal workers themselves was reported as improving behaviour. This would support the theory that the embedding of 'values' into the firm's practice and structure – which may be done by training employees – is essential²¹⁰⁹. However, there is a general lack of training offered to managers in all companies, which could have contributed to the poor implementation of certain standards. This is particularly true regarding non-discrimination against pregnant women: while it is a human rights violation, Chai Bora managers do not see it as a problem. It also seems to be the case regarding workers' rights, which trade union representatives may be able to defend more effectively if they were (better) trained²¹¹⁰.

²¹⁰⁷ Dean (n. 405), 285; Maclagan (n. 405), 415; Kearney (n. 363), 211; Rodríguez-Garavito (n. 166), 228; and Schwartz (n. 320), 258; and Sims (n. 396), 504.

²¹⁰⁸ Adams, Tashchian, and Shore (n. 387), 208.

²¹⁰⁹ Selznick (n. 351), 101.

²¹¹⁰ Interviews with civil society representatives A11 and A12.

Finally, an important feature would be ‘establishing special units to implement policies affecting the well-being of employees’, as suggested by Philip Selznick²¹¹¹. Indeed, Unilever has improved its record in terms of gender-related issues after setting up its Welfare Office, which helped embed respect for women into the firm’s practice and structure. However, it is interesting to see that the firm did not do so in order to implement its standards. This ‘feature’ may therefore help firms respect human rights even in the absence of self-regulatory mechanisms – however, it is acknowledged that the importance of this ‘feature’ is linked to the financial health of the company, which is one of the external factors covered below. Indeed, only companies which are financially healthy can afford to set up specific departments and hire employees dedicated to these issues.

8.4.3.3. Monitoring and reporting of performance and compliance

This section covers the assessment of the role played by the following aspects of monitoring and reporting of performance: human rights impact assessments and due diligence, third-party monitoring, high compliance requirement, and reporting of performance (and compliance).

8.4.3.3.1. Human rights impact assessments and due diligence

First, only Unilever has conducted impact assessments, although they were restricted to the environmental impact of its activities. Second, no firm reported conducting human rights due diligence. However, carrying out human rights impact assessments and due diligence aims to prevent and/or identify any adverse human rights impact of business activities. It follows that implementing these features would have helped identify important issues – which I could identify during my own fieldwork –, such as low pay, problematic working conditions for seasonal and outsourced workers²¹¹², and poor access to water and to affordable and adequate health services.

²¹¹¹ Selznick (n. 351), 101.

²¹¹² Chai Bora did not conduct due diligence when making the decision to outsource their security staff and, perhaps as a result, these workers have (significantly) worse working conditions than the firm’s direct employees. If Chai Bora had conducted due diligence, the firm could have been made aware of

8.4.3.3.2. Third-party monitoring

Third-party monitoring of performance was found to be crucial for the effective implementation of standards, but also showed important limitations inherent to the audit process and problematic for the firms' human rights performance.

On the one hand, third party monitoring of compliance has had an impact on Unilever's and MTC's implementation of product-level standards – although focusing on certain areas. Added to the clearly-defined threat of non-renewal of certification, audits seem to play an essential role in firms' compliance with product-level standards: in 2014, after losing its Rainforest Alliance certification, Unilever modified its behaviour to meet the criteria and earn the certification back. However, the impact which they have had on MTC's performance in terms of sexual harassment and gender-related issues has been surprising: it is seen by management as a chance to educate workers about sexual harassment²¹¹³. Nevertheless, these findings suggest that third-party monitoring helps with the implementation of standards.

On the other hand, it may be difficult to check firms' everyday compliance with the product-level standards which they have adopted: the 2017 Rainforest Alliance audit (conducted before my fieldwork took place)²¹¹⁴ and the one conducted in 2018 (after my fieldwork)²¹¹⁵ both state that MTC complies with its obligation to provide workers with free PPE, but my interviews revealed that it was not the case^{2116 2117}. I have found the same situation with Unilever²¹¹⁸. This shows the limitations of the effectiveness of audits as instruments assessing firms' compliance with standards and throws into question the value which some scholars put into audits as best placed to guarantee the implementation of standards. It is difficult to determine why the findings were different: for MTC, it could have been because the firm faced temporary difficulties during the time where the fieldwork was carried out, or because it made sure during

the important human rights risks associated with their outsourcing decision and management could have taken steps to mitigate against these risks.

²¹¹³ Interview with manager D2.

²¹¹⁴ Rainforest Alliance, 'Public Summary – MTC', 2017, 7.

²¹¹⁵ Rainforest Alliance, 'Public Summary – MTC', 2019, 6.

²¹¹⁶ Interview with manager D2.

²¹¹⁷ As Fairtrade audits are not publicly available, I was unable to compare their findings with mine and with that of the Rainforest Alliance's auditors.

²¹¹⁸ Interview with manager D1; AFRICert, 'Public Summary – Unilever Tea Tanzania Limited', 2017, 6; and AfriCERT (n. 780), 7.

audits that all equipment was available to workers. It is even more difficult to hypothesise in Unilever's case, since the company was not in financial trouble. For both firms, another hypothesis is the fact that employees (and community members) have a stake in whether or not the product retains its certification and may therefore not be completely truthful in their answers to auditors²¹¹⁹. This is especially the case regarding Fairtrade, which allows for the allocation of a Premium Fund to the community – if the Fairtrade certification is withdrawn, so will be the Fund. In any case, this raises doubts about the reliability of audits and would seem to confirm, as some authors write, that their weakness comes from audit design, power relations, and implementation²¹²⁰. It also confirms the criticism that auditing may be more about legitimating “standards business aims and practice than driving environmental or social improvements”²¹²¹.

8.4.3.3.3. ***High compliance requirement***

The product-level mechanisms which I have studied in this thesis do not require compliance with 100% of their standards, which may become an issue. I will first review the Rainforest Alliance and secondly Fairtrade. First, the Rainforest Alliance does not require compliance with 100% of its standards before issuing firms the certification. It was already the case for the 2010 set of criteria, for which compliance with only 80% of criteria was necessary (although including 100% of critical criteria)²¹²². The 2017 set of criteria is better as it requires compliance with 100% of critical criteria and of continuous improvement criteria B and C – albeit after six full years of certification²¹²³ –, but only with 50% of the continuous improvement criteria A²¹²⁴. It follows that firms may pick and choose which criteria they would prefer to meet and ignore the rest. Considering that continuous improvement criteria A include issues such as increasing wages following inflation²¹²⁵, paying employees a living

²¹¹⁹ Interview with manager D2.

²¹²⁰ LeBaron and Lister (n. 442), 924.

²¹²¹ Ibid, 924.

²¹²² Rainforest Alliance ‘Sustainable Agriculture Standard’ (n. 1389), 8.

²¹²³ Level C criteria must be complied with at a rate of 50% in year 0, 65% in year 1, 80% in year 2, and 100% from year 3 onward. Level B criteria must be complied with at a rate of 50% in year 3, 65% in year 4, 80% in year 5, and 100% from year 6 onward.

²¹²⁴ Rainforest Alliance ‘Sustainable Agriculture Standard’, 8.

²¹²⁵ Ibid, Continuous Improvement Criterion 4.27.

wage²¹²⁶, or supporting identified needs and priorities of the community²¹²⁷, this may have important human rights consequences, as I have observed in the context of this case study. Secondly, Fairtrade follows the same system. Indeed, for each Fairtrade standard, there are five levels of compliance, called ranks; rank 1 and 2 indicate non-compliance and ranks 3 to 5 different compliance levels²¹²⁸. Fairtrade will issue certification if the firm fulfils all core requirements and reaches the minimum average score of 3.0 on the development requirements²¹²⁹. It follows that non-compliance with some non-core criteria will be tolerated as long as compliance with other criteria reaches a high score. Considering that Fairtrade non-core criteria include conducting health and safety risk assessments²¹³⁰, training of trade union representatives on labour legislation and negotiation skills²¹³¹, preventing the use of child labour²¹³², providing free occupational health and safety to workers²¹³³, providing workers with free healthcare²¹³⁴, prevention of contagious diseases and epidemics such as HIV/AIDS²¹³⁵, and making a sustainable use of water by keeping informed of the status of the water sources in the area and participating to finding solutions in case of depleted water sources²¹³⁶, this may have important consequences, and translate into human rights violations on the ground, as I have observed in the context of this case study.

8.4.3.3.4. Reporting of performance and compliance

It is unclear whether *internal* transparent reporting is important, as some authors argue²¹³⁷. Unilever performs well on the only issue about which they have transparently reported: sexual harassment. However, it is difficult to determine whether Unilever performs well *because* they chose to be transparent about it, or

²¹²⁶ Ibid, Continuous Improvement Criterion 4.33.

²¹²⁷ Ibid, Continuous Improvement Criterion 4.47. Although this criterion is a 'continuous improvement criterion A' which is not binding on firms until they have been certified for six years, and therefore will not become a requirement for Unilever before 2023, the previous standard already included a similar criterion (critical criterion 7.2.) – the firm therefore had to implement this criterion when the fieldwork took place.

²¹²⁸ FLOCert, 'Public Compliance Criteria List - Hired Labour', 2017, 1.

²¹²⁹ Fairtrade 'Hired Labour Standard', 4.

²¹³⁰ Ibid, Standard 3.6.4.

²¹³¹ Ibid, Standard 2.2.4.

²¹³² Ibid, Standard 3.3.5.

²¹³³ Ibid, Standard 3.6.25.

²¹³⁴ Ibid, Standard 3.6.29.

²¹³⁵ Ibid, Standard 3.6.30.

²¹³⁶ Ibid, Standard 4.3.11.

²¹³⁷ Fung, O'Rourke, and Sabel (n. 353), 19.

whether they reported on this issue *because* they were performing well. Moreover, another key feature (which was found to be important) may have played a role in this good performance: Unilever organises training sessions on sexual harassment and broader gender-related issues. In any case, transparently reporting about the results of audits allows for the verification of auditors' findings. While I was able to assess the Rainforest Alliance's findings against my own (and found inconsistencies), I could not verify the results of audits conducted for the purpose of the Fairtrade certification since the certifying bodies choose to keep their reports confidential. This shows that transparent reporting allows for a higher level of scrutiny and accountability of firms, but also of organisations in charge of product-level mechanisms.

8.4.3.4. *Complaints mechanisms*

Building on this research, it is difficult to draw conclusions as to the importance played by complaints mechanisms in the effectiveness of self-regulation, and the extent to which such mechanisms must be made free and anonymous. Unilever's welfare department (dealing with calls from the firm's complaints mechanism) was reportedly successful in helping workers and their families deal with (mostly) personal issues, and particularly gender-related issues. Although they do not have general complaints mechanisms in place, MTC and Chai Bora have set up a specific procedure for sexual harassment, and the performance of both companies was reported as having improved. However, as was already the case in the previous section, it is a challenge to determine the extent to which complaints mechanisms have played a role in this improvement considering that training was also offered on this issue by both firms. Moreover, the majority of interviewed workers were not aware of general complaints mechanisms (if relevant) or of complaints mechanisms linked to product-level mechanisms (if relevant). Furthermore, no complaints mechanism open to community members is in place in any of the companies. It follows that it is difficult to assess the actual added value which such mechanisms may have if they were set up, although they could play a role in ensuring that stakeholders' voices are heard and taken into account²¹³⁸, along with other members of the local community. Indeed, several interviewees across all companies reported that they would use such complaints mechanisms to bring the

²¹³⁸ Rodríguez-Garavito (n. 166), 228.

companies' attention to certain problems such as working conditions, poor access to water or health services, or the firms' employment practices²¹³⁹.

8.4.3.5. Sanctions

In the context of this research, sanctioning systems may be divided into three types: individual sanctions for workers, individual sanctions for management, and collective sanctions for product-making units (i.e. loss of certification). First, it is difficult to draw conclusions as to the effectiveness of individual sanctions for workers as two firms out of three did not issue sanctions for non-compliance and it was found that, for the third one, sanctions were not the only incentive motivating the implementation of standards. Second, in the one corporation where I found sanctions in place for managers for non-compliance, albeit in one specific issue (i.e. sexual harassment), it was reported as being effective in sending the message that the firm took its commitments seriously. Third, the threat of non-renewal of certification was an important reason for the change in corporate behaviour and for the implementation of standards by the two firms which are certified. Moreover, the fact that non-renewal is clearly outlined as the direct consequence for non-compliance sends the clear message that firms must comply if they want to keep their certification: clear sanctioning guidelines therefore help²¹⁴⁰. However, these sanctions may be insufficient: when, as was explored in Section 8.4.3.3.2. above, audits are not reliable, the need for sanctions *for upper management* for violations of standards is particularly important. Indeed, if non-compliance with (product-level) standards is not necessarily detected during audits and therefore punished with non-renewal of the certification, another enforcement mechanism would be helpful to ensure that workers' human rights are respected. In a country such as Tanzania where, as explained in Chapter 4, labour inspections are rare, enforcement mechanisms for breach of self-regulatory standards would be particularly important. It follows that, overall, sanctioning seems to play an important role in the effectiveness of self-regulatory mechanisms.

²¹³⁹ Interviews with workers B13 and B16 and community member C32, C33, C34, C35, C36, C37, C38, C39, C40, and C41.

²¹⁴⁰ Sims (n. 395), 504; Jenkins (n. 379), 26; and see (n.78), 56.

8.4.3.6. Management's genuine motivation

Finally, management's motivation to implement the standards does seem to play an important role²¹⁴¹. First, a Unilever's manager stated that they had been pushing for the implementation of the firm's Code of Business Principles because it was not happening, and management believed that it was important to ensure that standards would be implemented – although it is acknowledged that no positive impact of the Code was found. However, out of the three corporations, it is notable that Unilever has invested the most into the welfare of their employees: they created a whole department dedicated to it, which was linked to the improvement of certain aspects of the firm's human rights performance, as seen above. So, genuine motivation and personal commitment of management does seem to be playing an important role in the implementation of standards and in the improvement of corporate human rights performance (to some extent).

Second, MTC sought certification because it would open up new markets²¹⁴² – proving Ronen Shamir right when he wrote that corporations sought to invest in self-regulatory schemes that have the capacity to open up new market opportunities²¹⁴³. This may explain why MTC seems to be less motivated than Unilever by the opportunity that self-regulatory mechanisms offer to help improve human rights and why the firm has not invested as much to improve its behaviour. However, it is difficult to draw definitive conclusions as to the link which may exist between MTC's motivation driven by factors which are not related to the substantial standards (or what the mechanisms in question seek to achieve) and the fact that MTC performs less well than Unilever in terms of human rights record, especially considering the financial difficulties which the firm was facing at the time when the fieldwork took place.

²¹⁴¹ Coglianese and Mendelson (n. 70), 161; Turcotte, Reinecke, and Den Hond (n. 455), 154-155; Hepple, 'Equality and Empowerment for decent work' (n. 358), 16; Royle (n. 155), 263; Kearney (n. 368), 211; and Kaptein and Wempe (n. 355), 862.

²¹⁴² Interview with manager D2.

²¹⁴³ Ronen Shamir argues that it is important (Shamir, 'The age of Responsibilization: On Market-embedded Morality' (n. 99), 14).

8.4.3.7. Conclusion

Most of the features which were identified in Chapter 3 as potentially contributing to the effectiveness of corporate self-regulation do appear to help self-regulatory mechanisms be effective on the ground. At the drafting stage, the inclusion of a comprehensive set of human rights principles, *all* translated into operational standards for implementation on the ground, is paramount. At the embedding stage, the training of workers and managers is important. At the monitoring stage, third-party monitoring is crucial (with high compliance requirements), although it became obvious that audit processes have inherent flaws. As for complaints mechanisms, their setting up looks important – although there was insufficient evidence to draw credible conclusions about their importance in supporting the effectiveness of mechanisms. Moreover, sanctions play a crucial role in the implementation of standards – although the sanctions currently included in the various self-regulatory mechanisms may not be sufficient. Finally, the motivation of corporate managers looks important – although, as underlined in Chapter 3, it is difficult to rigorously evaluate it.

This shows that most features which I used in this study to help assess the effectiveness of mechanisms look relevant and important for both types of mechanisms. This allows me to reiterate that the scope commonly taken by scholars writing about product-level mechanisms is too narrow, and that it is important to investigate the rest of those features as well as audits. This is especially true considering that this research showed how unreliable audits could be on certain issues and that, in order to ensure that mechanisms are as effective as possible, behavioural change *and* consolidation of that change are required. Thorough drafting and embedding of standards are therefore necessary, as well as monitoring, addressing (and redressing) complaints, and sanctions. Third-party audits do have a crucial role to play in the implementation of standards – but only as part of a broader process. It is therefore paramount to look at the whole process when investigating the effectiveness of self-regulatory mechanisms in helping corporations meet their human rights responsibilities.

Now that I have explored the importance of the key features, I will investigate any other factors which may have played a role in the effectiveness of self-regulatory mechanisms and in corporate human rights performance.

8.4.4. Role played by other factors

In the context of this research, the following factors seem important: worker-led actions; cooperation with outside groups; firm's financial health; other regulatory sources; and the human rights approach taken by the mechanisms.

8.4.4.1. Worker-led actions

For all companies, actions carried out by workers themselves have led to changes. Unilever management decided to intensify their relationship with TPAWU following the violent strikes in 2016 with more regular meetings to discuss issues and negotiate tea rates²¹⁴⁴, and have introduced bonuses to keep workers happy²¹⁴⁵. This shows that workers' action led to improvements (although it is acknowledged that workers used violence), including higher wages and a better relationship with management, and that it contributed to the implementation of relevant standards as well as the firm's human rights responsibilities. Moreover, working hours for MTC's factory workers decreased in 2012 to levels complying with Fairtrade standards. However, it was workers' complaints which made management change its practice. Similarly, the change of language on MTC's contracts from English to Swahili was reportedly driven by workers' complaints instead of by Fairtrade requirements. Finally, Chai Bora's seasonal workers collectively (and successfully) demanded to be paid on a weekly basis instead of a daily basis. They have also organised themselves and set up educational sessions for themselves around issues of sexual harassment and gender discrimination because they were not allowed to take part in the firm's official sessions. Although there is still room for improvement, these initiatives seem to have been effective and to have changed some practices in and around Chai Bora. It follows that actions by workers beyond and outside the scope of self-regulatory mechanisms to enforce their own rights seem to play a crucial role in the improvement of corporate human rights performance.

²¹⁴⁴ Management said that they have changed their approach to these negotiations and are more flexible: human resources officers are ready to go back to their hierarchical superiors to discuss TPAWU's requests instead of simply presenting workers' representatives with an immutable offer.

²¹⁴⁵ Interview with manager D1.

8.4.4.2. Cooperation with external groups

Second, cooperation with relevant outside groups, such as trade unions²¹⁴⁶, seems to play an important role in improving firms' human rights performance. As mentioned above, Unilever's management decided in 2016 to build a stronger relationship with TPAWU, to meet more regularly and to negotiate in a more open way with the union. The situation seems to have improved following these measures, and to have helped with the implementation of the firm's mechanisms. This finding confirms one of the conclusions of César Rodríguez-Garavito, who suggested that a constitutive feature of initiatives should be to build the capacity of unions to ensure that their countervailing voices are considered²¹⁴⁷.

8.4.4.3. Firm's financial health

As explained in Chapter 1, one of the reasons why I selected these three companies was because of their size (and therefore financial resources), and because smaller corporations tended to be ignored in the business and human rights debate²¹⁴⁸. And indeed, the company's financial health – and size – is another factor which I have identified as influential. While Unilever could afford to set up a welfare department which contributed to the firm's implementation of some of their standards, it is likely that MTC (or Chai Bora) does not have the financial resources to do so because they are not major multinationals. I am not suggesting that this exempts companies from implementing their self-regulatory standards (if relevant) or generally respecting human rights. However, financial constraints may mean that MTC (or Chai Bora) may not be able to adopt the same measures as a bigger company with more resources, which may translate into a worse human rights performance. Moreover, it became apparent during the fieldwork that MTC had been facing significant financial issues and that a new investor had recently been brought in. This necessarily means that resources for improving the firm's human rights record are stretched thin; for instance, management put their search for an expert in gender issues on hold because of the

²¹⁴⁶ Selznick (n. 351), 101.

²¹⁴⁷ Rodríguez-Garavito (n. 166), 228.

²¹⁴⁸ Addo, 'Business and Human Rights and the Challenges for Small and Medium-Sized Enterprises' (n. 201), 313.

change in investors. It follows that a firm's financial health may impact its efforts to improve its human rights performance.

8.4.4.4. Focus on 'salient' issues

This section focuses on Unilever, as the only corporation which has publicly identified salient issues. Although the firm commits to respecting most internationally recognised human rights, it has identified eight salient human rights issues which it prioritises²¹⁴⁹: land rights; forced labour; harassment; health and safety; working hours; discrimination; fair wages; freedom of association. From the sole experience of Unilever, this section draws three findings: first, on some issues labelled 'salient', the firm does perform well, but I could not link this good performance to self-regulatory mechanisms or to the fact that these issues are considered particularly critical by Unilever's management. Second, some of the firm's 'salient' issues are still problematic. Third, this top-down 'salient issue' approach may not be effective and even become problematic for companies operating in a variety of social contexts, each with their own set of specific human rights challenges.

First, Unilever does perform well on some of its 'salient' issues. Indeed, there was no report of forced labour or land rights issues – although it is notable that MTC and Chai Bora also perform well on these issues. Moreover, the firm is addressing sexual harassment by training workers and is improving the situation, as was reported in 2015²¹⁵⁰. Health and safety standards also seem to be well enforced despite some non-conformities. The working hours system has changed to comply with the Rainforest Alliance criteria, although there are still some important issues with overtime. However, apart from working hours and a general statement about health and safety, I could not link this good performance to Unilever's self-regulatory instruments, or to the fact that these concerns were given priority across the firm's operations globally.

Second, some of the firm's salient issues are still problematic in Unilever's Mufindi tea plantations, such as fair wages, discrimination, and freedom of association. Even though Unilever has adopted different self-regulatory mechanisms which include

²¹⁴⁹ Unilever 'Human Rights Progress Report: Compliance and Beyond' (n. 825), 16-17.

²¹⁵⁰ Unilever 'Human Rights Report' (n. 836), 35.

standards on these issues, and has committed to making them a priority, there are still some problems with how the firm deals with them.

Third, this approach of focusing on ‘salient issues’, set at the highest level of the company, may not be consistent with a genuine human rights approach, and may become especially problematic for companies operating in a variety of social contexts, which may present very specific human rights challenges. For example, poor access to water is a very important problem around Unilever’s plantations, which may be overlooked because it is not one of the firm’s salient issues, set at global level. The same could be said of the generally problematic working conditions of seasonal workers.

8.4.4.5. Other regulatory sources

For all three companies, the influence of regulatory sources (other than self-regulation, for Unilever and MTC) has been acknowledged by various stakeholders, especially national legislation and CBAs. This is for example the case for leaves, working hours, housing allowance, and rates of pay²¹⁵¹.

8.4.4.6. Human rights approach

The human rights approach adopted by the self-regulatory mechanisms studied in this thesis is a factor which necessarily influences the effectiveness of self-regulatory mechanisms in helping firms improve their human rights impact. However, this approach shows limitations regarding some issues: the human rights lens will be inadequate to address certain important social and economic issues. In particular, this case study threw light on the issue of technological changes threatening livelihoods. It will be difficult to address (and redress) the crucial problem of mechanisation of tea work, which carries important human rights consequences, using a human rights lens. Both Unilever and MTC have started mechanising their estates, which comes at a heavy price for workers and community members. Although Unilever’s manager said that the firm had a responsibility towards the local community and therefore did not plan on mechanising further, it was also made clear that the estates which had not been

²¹⁵¹ Interviews with managers D1, D2, and D3.

mechanised were the ones which would have been very difficult to mechanise in any case²¹⁵². As for MTC, the firm has mechanised all its estates, cutting many jobs and slashing the price paid to workers per kilo of tea. The mechanisation of tea work is unlikely to stop and will become increasingly problematic, leading to unemployment and thus to enhanced job competition, lower wages, and worse working conditions. This phenomenon is however not adequately addressed and redressed by a human rights approach, and what human rights self-regulatory mechanisms can achieve regarding such issues will necessarily be limited.

8.5. General conclusion of the thesis

This final section will first provide an answer to the thesis's main question, before drawing from this research a perspective about the role and place of self-regulation in the broader regulation of corporate behaviour. It will then outline the generalisation of the findings and applicability of the methodology to other studies, as well as the limitations of the study and areas where further research is needed. Finally, it will provide a general conclusion to the thesis.

8.5.1. Answer to the thesis's main question

This thesis aimed to answer the following question: To what extent is it possible to evaluate the effectiveness of voluntary corporate self-regulatory mechanisms in ensuring that companies meet their international human rights responsibilities?

My case study allowed for the evaluation of: 1) the human rights performance of the three corporations; 2) the impact of the self-regulatory mechanisms used by two of the firms; 3) the role played by the 'key features' identified as potentially helping improve the effectiveness of self-regulatory mechanisms (and corporate human rights performance); and 4) the role played by any other factors in the effectiveness of these mechanisms (and in the improvement of corporate human rights performance). Although the methodology developed in this thesis shows limitations, as discussed below, it proved that it was possible to evaluate the effectiveness of the different types of self-regulatory mechanisms from a human rights perspective. The findings outlined

²¹⁵² Interview with manager D1.

in this chapter contribute evidence to the literature on the impact of corporate human rights self-regulation and to a better understanding of what helps make these mechanisms effective on the ground. I will now outline the general findings of this research, confined to the context of the Tanzanian tea industry as it would not be rigorous to draw definitive conclusions about the effectiveness of corporate self-regulation from this case study alone.

First, in the context of the Tanzanian tea industry, none of the different types of corporate self-regulatory mechanisms studied in this thesis were entirely effective in helping firms meet their human rights responsibilities. However, this case study showed that self-regulatory mechanisms did have some positive impact on corporate behaviour – albeit to a smaller degree than what firms claim. In particular, mechanisms have had an important impact on environmental rights, on gender-related issues, and on working time.

Second, my study was able to find more evidence of connection between human rights performance and product-level mechanisms than with company-level mechanisms. This could be because product-level mechanisms have built-in monitoring processes with more immediate – and visible – consequences for non-compliance. Consequences are also more collective: if standards are not implemented, the whole operation is de-certified. However, this may also backfire for a certification system such as Fairtrade, which provides community members – often including workers – with direct financial benefits. Indeed, as outlined in Section 6.4. above, workers and community members have a stake in whether or not the firm retains its certification and may therefore not be completely truthful in their answers to auditors. This is one of the reasons why the feature identified by authors as most likely to guarantee product-level mechanisms' effectiveness – audits – was shown to be much more fragile than expected.

Third, the most important feature overall to guarantee that standards are implemented everyday seems to be the same for both types of mechanisms: training of employees and of management.

Fourth, one of the weaknesses of self-regulation is the fact that it cannot address broader, systemic social issues such as entrenched poverty and the associated lack of agency of certain stakeholders. Indeed, issues of power and agency inequality have impeded the improvement of working conditions in Chai Bora: seasonal workers do not dare go on strike because they fear that they will lose their jobs. The extent to

which the adoption of self-regulatory mechanisms would help address this issue is limited. Similarly, some interviewees said that they were doing tea work only because they did not have a choice and that, given another employment opportunity, they would leave the tea industry because it is physically demanding and wages are too low. This shows that workers will accept bad working conditions because they need financial resources to feed themselves and their families. Such socio-economic power inequalities, which may negatively affect corporate human rights performance, will be difficult to redress with the adoption of self-regulatory mechanisms. Corporate self-regulation operates within a limited and defined system and is not equipped to change it – and nothing short of this would be able to address certain problems leading to important human rights issues. However, certain processes within self-regulatory mechanisms may help reduce these inequalities (to some extent), as I will now explain.

Indeed, it appears that mechanisms would be more effective if stakeholders (workers and community members first and foremost) were made more of a part of the process. As became obvious from this thesis's case study, bottom-up action, whether or not taking place within the context of self-regulatory mechanisms, is one of the strongest factors of change. It may arise spontaneously and informally or as part of formal groups such as trade unions. Informing and consulting the stakeholders which are primarily affected by corporate activities has an important impact – and, if mechanisms do not ensure that it happens, they will miss out on a significant resource. Tapping into this resource may make the rest of the implementation process much easier: even in a difficult social and political context such as Tanzania, with massive financial and 'power' inequalities, consultation and training may help ensure that the ones at the bottom of the ladder have opportunities to curb these inequalities by demanding better working and living conditions. It was observed that such demands happen in any case, whether or not firms have adopted self-regulation – although, either way, collective action will be much more limited in contexts where workers have no agency. By harnessing this collective agency, self-regulatory mechanisms will have a better chance at improving corporate human rights performance. This also suggests that a bottom-up approach is preferable to a top-down approach, for both company- and product-level mechanisms. However, it is acknowledged that this is not always easy to achieve, and that stakeholder consultation and training should not replace (top-down) minimum standards, which are needed in all circumstances. The point is that mechanisms – whose aim is to guarantee standard implementation – should ensure that

the voice of those which are targeted is given proper weight and consideration by self-regulating firms. Since stakeholders' complaints are often about matters covered by standards, it will help with their implementation.

Building on this, I will now explore the role and place of self-regulation in the broader regulation of corporate behaviour, especially by reflecting on scholars' opinions about the value of self-regulation.

8.5.2. The role and place of self-regulation in the broader regulation of corporate behaviour

As explored in Chapter 1, scholars writing about self-regulation have highly mixed opinions regarding its potential as an instrument for controlling corporate behaviour. Based on this thesis's findings, I will now briefly reflect on these authors' positions.

On the one hand of the spectrum, optimistic authors believe that the speedy and flexible nature of self-regulatory mechanisms could make them more effective than state regulation, especially in preventing and redressing infringements²¹⁵³. Indeed, this study showed that self-regulation does have the potential to improve aspects of a firm's human rights performance faster than formal regulatory mechanisms and processes, especially in a country where state resources are limited. Relatedly, another argument from the literature is that self-regulation allows for the regulation of business activities where the effectiveness of governmental authority is weak, limited, or non-existent²¹⁵⁴. This study found that, albeit in the restricted context of the Tanzanian tea industry, self-regulatory mechanisms with third-party monitoring and sanctioning processes have proved more effective – to some extent – in regulating aspects of corporate behaviour than Tanzanian state authorities.

On the other hand, some authors denounce the flexibility of self-regulation as allowing firms to avoid adopting substantive measures and genuinely changing their behaviour²¹⁵⁵. This study found that, on certain aspects, firms did favour superficial

²¹⁵³ Coglianese and Mendelson (n. 70), 152; Gunningham and Rees (n. 7), 366; and Ruhnka and Boerstler (n. 70), 314 and 316.

²¹⁵⁴ Vogel (n. 15), 73, also citing Koenig-Archibugi (n. 11), 235; and Short and Toffel (n. 82), 391.

²¹⁵⁵ Suchman (n. 102), 576.

commitments to deep-reaching change but, on other important issues, they did adopt transformative measures. Some sceptical scholars also believe that firms will only engage through self-regulation if it pays (e.g. by opening up new market opportunities), and that mechanisms will only stop violations which cost the company money²¹⁵⁶. While it is true that companies may adopt self-regulatory mechanisms because they will financially benefit from it, as became obvious with this research, real human rights benefits may also result from it. I also identified initiatives which firms took to improve their social impact even though it would be financially costly.

Some authors also criticise the discretion left to managers for the implementation of self-regulatory standards and say that it cannot work if there are no sanctions in case of non-compliance²¹⁵⁷. Part of the literature is also sceptical of the actual leeway afforded to managers in a broader context of a market economy²¹⁵⁸. This study found that managers may indeed decide to ignore self-regulatory standards, but it also showed that management may be the ones pushing for the implementation of mechanisms – although it became obvious that external sanctions greatly encouraged management to take action.

Finally, it is feared that voluntarism seeks to minimise the range of human rights responsibilities extendable to business²¹⁵⁹. This criticism did prove true in the context of this research, and this is why one of the first key features (‘inclusion of a comprehensive set of human rights’) was found to be so important. Relatedly, some authors argue that voluntarism has constrained progress on CSR by separating it from firms’ legal and economic responsibilities and privileging the economic case for corporate policy²¹⁶⁰. They also write that the wide discretion afforded to corporations by voluntarism, the lack of accountability of such corporate initiatives, and the challenges of implementation have all contributed to the credibility and effectiveness gaps in the field²¹⁶¹. This study found that, while voluntarism has not constrained progress in terms of setting principles and adopting standards – if anything, it has

²¹⁵⁶ Braithwaite (n. 93), 1468-69; Vogel (n. 15), 79-80; Jones (n. 98), 35; Shamir, ‘The age of Responsibilization: On Market-embedded Morality’ (n. 99), 14; and Banerjee (n. 101), 74.

²¹⁵⁷ Maitland (n. 77), 139; De Jong, DeJong, Mertens, and Wasley (n. 104), 500; Coglianese and Mendelson (n. 70), 161; Short and Toffel (n. 82), 366; Ayres and Braithwaite (n. 106), 490; Segerson and Miceli (n. 105), 119; and Olson (n. 105), 44.

²¹⁵⁸ Maitland (n. 77), 133.

²¹⁵⁹ Baxi (n. 34), 23.

²¹⁶⁰ Addo and Martin (n. 10), 356.

²¹⁶¹ Ibid, 349.

encouraged the proliferation of standards –, it is true that it means that not all available legal means will be harnessed with the objective of implementing these standards. Moreover, voluntarism necessarily means that only willing corporations will adopt self-regulatory mechanisms and implement the standards. And, as became clear with this research, the wide discretion afforded to corporations cannot always be curbed by internal and external processes, and the lack of accountability and challenges of implementation do lead to issues on the ground, and indeed to credibility and effectiveness gaps.

However, and even though it was restricted to the context of the tea industry in Tanzania, this study showed that these mechanisms may act as an extra regulatory layer in addition to state legislation and enforcement. It allows motivated managers to determine their company's human rights impact and its causes, to make adjustments to improve the situation if needed, and monitor it regularly. It is a tool which does not come with automatic implementation but rather with a guided approach to identifying, solving, and mitigating against potential human rights problems. Such a tool (in well-meaning and motivated hands) can have a real impact in a country like Tanzania where government inspections are irregular and corruption issues are rife. However, corporate self-regulation in the context of the Tanzanian tea industry has also shown too many limitations to be considered a credible *alternative* to formally enforced regulation. Such regulation, as advocated by some scholars²¹⁶², still seems necessary for real and thorough behavioural change.

This leads me to believe that, as some authors write²¹⁶³, self-regulation does have a role to play in the realisation of human rights – but complementarily to state-based regulation, as advocated by others²¹⁶⁴. Beyond state regulation, it is notable that governments are currently discussing the adoption of a binding international treaty on business and human rights, following a resolution of the UN Human Rights Council in 2014²¹⁶⁵. However, the most recent writings on the subject point to the political

²¹⁶² Royle (n. 155), 271; Koenig-Archibugi (n. 11), 259; and Kolk and Van Tulder (n. 157), 262 and 270.

²¹⁶³ Short and Toffel (n. 82), 391; Blackett (n. 163), 402; and Wettstein, 'CSR and the Debate on Business and Human Rights: Bridging the Great Divide' (n. 64), 757.

²¹⁶⁴ Rametsteiner and Simula (n. 158), 97; Gunningham and Rees (n. 7), 396; and Töller (n. 107), 507.

²¹⁶⁵ Human Rights Council, 'Elaboration of an internationally legally binding instrument on transnational corporations and other business enterprises with respect to human rights' A/HRC/26/L.22/Rev.1, 25 June 2014.

difficulties impeding such a project coming to fruition in the near future²¹⁶⁶. In this context, corporate self-regulation may be particularly worth pursuing, although it does present important limitations, as explored in this thesis.

I will now outline the extent to which this thesis's findings and methodology are generalisable and applicable to other settings.

8.5.3. General applicability of methodology and findings

I will first address the issue of the generalisation of this thesis's findings, and second the applicability to other settings of the methodology developed (and applied) for the purpose of this research.

First, this thesis's findings are confined to the Tanzanian tea industry. However, many of the issues which were identified in the context of this case study are likely to also appear in other settings (e.g. unfavourable working conditions for seasonal workers). Because entrenched inequalities are not restricted to the Tanzanian tea industry, it is probable that issues arising from these inequalities would also be found in other contexts. The inability of self-regulatory mechanisms to address these issues effectively, partly due to the structural limitations identified in this thesis, is also likely to replicate in other industry and geographical contexts. Moreover, this research allowed for the evaluation of the value of the 'key features' in the effectiveness of mechanisms, and it is likely that they would also play a role in the effective implementation of self-regulation in other industries or geographical regions (e.g. training will probably be necessary to ensure that standards are understood and implemented on the ground, be it in the tea industry or any other context). Although research in other contexts would be needed to gain empirical evidence supporting these assertions, entities developing self-regulatory mechanisms should be mindful of the

²¹⁶⁶ Doug Cassel, 'Building a Treaty on Business and Human Rights: Context and Contours ed. by Surya Deva & David Bilchitz', *Human Rights Quarterly* 41(2), 2019, 497, 497; Giorgia Papalia, 'Doing Business Right: The Case for a Business and Human Rights Treaty', *Perth International Law Journal* 3, 2018, 96, 104; and David Bilchitz, 'The Necessity for a Business and Human Rights Treaty', *Business and Human Rights Journal* 1(2), 2016, 203, 224.

issues and limitations found, albeit in a specific context, in this thesis, as they may be found in other industry and geographical environments.

Second, this thesis's methodology is not restricted to one type of mechanism, or to specific human rights. It is therefore transferable to other settings. Moreover, considering that they were drawn from literature which was not restricted to an industry or a region, the 'key features' will be relevant to (and important to investigate for) all types of self-regulatory settings, in any industry and anywhere in the world. Furthermore, the 'human rights' approach taken in this thesis is based on principles which are, by definition, universal and would therefore be applicable to any research environment. Finally, designing a linked case study as I did in this thesis is possible in other geographical regions and industries, and allows for in-depth analysis on the ground. Bringing in a broader range of evidence, it also strengthens the trustworthiness of findings over a single case study.

8.5.4. Limitations of the study and further research needed

Although this research was designed to best understand corporate human rights performance and the impact of self-regulatory mechanisms, it necessarily showed limitations. Firstly, the methodology adopted in this thesis meant that not all causal effects may be drawn out. As I mostly interviewed local managers and workers, I may have missed out on some causal links between corporate headquarters and the field. In order to try and remedy this, I contacted Unilever's headquarters (being the only company which had adopted internal company-level mechanisms) but it became clear that they were not interested in setting up an interview. It follows that some central policies may have translated into the practices of the local branch of Unilever in Mufindi but that no manager or worker knew that certain rules or programmes were adopted because of their company-level mechanisms, such as Unilever's Human Rights Policy. Secondly, and perhaps most importantly, this research was necessarily restricted by the limited scope of this case study. Although many of the same human rights issues are likely to be found in other settings, as explained above in Section 8.5.3., the tea industry is specific, and all issues encountered in this context may not be relevant to other agricultural fields or other industries. This is one of the main challenges when attempting to generalising this thesis's findings to other contexts.

It follows that further research is needed, especially in other industries and countries. It would allow for the collection of more evidence about the effectiveness of corporate human rights self-regulation and features and factors influencing its impact on the ground.

8.5.5. Conclusion to the thesis

In conclusion, corporate self-regulation may play a positive role in the control of corporate behaviour, but it shows important limitations, especially on two levels: first, the standards used in mechanisms do not always cover a comprehensive set of human rights, leaving gaps in the human rights policies and therefore practices of corporations. Second, the system which is supposed to be in place to ensure proper implementation of standards presents inherent flaws, thus undermining the effectiveness of compliance monitoring and therefore of self-regulation. These two problems may lead to an imperfect implementation of standards and limited effectiveness. The first flaw can be remedied outside of the state regulatory system; however, the second limitation may require state intervention. This leads me to believe that self-regulation is valuable to a certain extent, but that it must sit within a *state-based regulatory* system which would ensure that (at least) minimum human rights standards are effectively enforced.

In conclusion, while corporate human rights self-regulation is not an entirely effective solution to mitigate against business-related human rights violations, it offers a partial answer to the crucial question of the control of corporate behaviour in the context of globalisation and has a role to play in its regulation.

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Annex 1 – Self-regulatory mechanisms adopted by the ten biggest tea companies globally

The list was taken from Technavio, Global Tea Market 2019-2023, 2018, 1-121.

This list excludes Unilever (for details about Unilever's self-regulatory mechanisms, see Annex 3)

Barry's Tea

Company-level mechanisms:

- *No company-level mechanism publicly available.*

Product-level mechanisms:

- *Rainforest Alliance (black tea products)*

Celestial Seasonings

Company-level mechanisms:

- *No company-level mechanism publicly available.*

Product-level mechanisms:

- *Fairtrade (selected products)*

Dilmah

Company-level mechanisms:

- *Human Rights Policy;*
- *Code of Ethics;*
- *Environmental Policy;*
- *Health & Safety Policy;*
- *Payment Authority Policy;*
- *Sustainability Commitment;*
- *Bribery & Corruption Policy;*
- *Non-discrimination & Anti-harassment;*
- *Policy on Diversity, Inclusiveness and Equality;*
- *Responsible Marketing Policy;*
- *Sustainable Procurement Policy & Supplier guidelines;*
- *Whistleblowing Policy;*

- *UNGPs;*
- *ILO Conventions;*
- *UN Global Compact.*

Product-level mechanisms:

- *No product-level mechanism publicly available*

Harney and Sons

Company-level mechanisms:

- *No company-level mechanism publicly available.*

Product-level mechanisms:

- *Fairtrade (Organic Earl Grey Supreme; Organic Black Tea; and Korakundah Fop)*

ITO EN

Company-level mechanisms:

- *Corporate Social Responsibility Policy;*
- *Human right policy (in progress);*
- *Standards of Conduct;*
- *Code of Practice.*

Product-level mechanisms:

- *No product-level mechanism publicly available.*

Nestlé

Company-level mechanisms:

- *Corporate Business Principles;*
- *Code of Business Conduct;*
- *Responsible Sourcing Standard;*
- *Commitment on Child Labour in Agricultural Supply Chains;*
- *Commitment on Land and Land Rights in Agricultural Supply Chain;*
- *Supplier Code;*
- *Commitment on Labour Rights in Agricultural Supply Chains;*
- *UN Global Compact;*
- *UNGPs.*

Product-level mechanisms:

- *Rainforest Alliance (for Nestea)*

Tata Global Beverages

Company-level mechanism:

- *Sustainability policy*

Product-level mechanisms:

- *Rainforest Alliance (Tetley Green Tea – India)*
- *Ethical Tea Partnership (co-founders; certified in several countries, e.g. Kenya, Malawi and Uganda)*

The Republic of Tea

Company-level mechanisms:

- *No company-level mechanism publicly available.*

Product-level mechanisms:

- *ETP (activities in Sri Lanka)*
- *Fairtrade (specific products)*

Twinings (Associated British Foods)

The brand does not own plantations, and therefore sources all its tea from external suppliers.

Company-level mechanisms:

- *Supplier Code of Conduct*

Product-level mechanisms (*supplied tea is certified with the following mechanisms*):

- *Fairtrade (specific products)*
- *Rainforest Alliance (specific products)*
- *UTZ. (specific products)*

Annex 2 – Internal self-regulatory mechanisms adopted by the forty biggest companies globally

For each industry, the code(s) of conduct (if any) of the biggest companies was identified, as outlined below:

Food and drinks

- Coca-Cola:
 - *Human Rights Policy;*
 - *Code of Business Conduct;*
 - *Supplier Guiding Principles.*
- Associated British Foods (ABF):
 - *Anti-Bribery and Corruption Policy;*
 - *Anti-Fraud Policy;*
 - *Environment Policy;*
 - *Health and Safety Policy;*
 - *Payment Policy;*
 - *Primark Code of Conduct;*
 - *Supplier Code of Conduct;*
 - *Tax Strategy;*
 - *Whistleblowing Policy.*
- Danone:
 - *Code of Business Conduct;*
 - *Fundamental Social Principles for Business Partners.*
- General Mills:
 - *Policy on human rights;*
 - *Code of Conduct;*
 - *Supplier Code of Conduct;*
 - *Palm Oil statement.*
- Kellogg:
 - *Global Code of Ethics;*
 - *Global Supplier Code of Conduct.*

- Mars:
 - *Human right policy;*
 - *Supplier Code of Conduct.*
- Mondelez International:
 - *Code of Conduct;*
 - *Corporate Responsibility Expectations for Direct Suppliers and Supplier Contract Provisions;*
 - *Supply Chain Transparency and Labour Practices;*
 - *Palm oil position statement;*
 - *Cocoa Life approach;*
 - *Cocoa Life gender action plans.*
- Nestlé:
 - *Corporate Business Principles;*
 - *Code of Business Conduct;*
 - *Responsible Sourcing Standard;*
 - *Commitment on Child Labour in Agricultural Supply Chains;*
 - *Commitment on Land and Land Rights in Agricultural Supply Chain;*
 - *Supplier Code;*
 - *Commitment on Labour Rights in Agricultural Supply Chains;*
- PepsiCo:
 - *Human rights policy;*
 - *Supplier code of conduct;*
 - *Global Code of Conduct for employees.*
- Unilever: see Annex 3.

Pharmaceuticals

- Johnson & Johnson:
 - *Statement on human rights;*
 - *Policy on business conduct;*
- Statement on human rights to water.Pfizer:
 - *Human rights statement;*
 - *Business code of conduct;*
 - *Supplier Conduct Position Statement.*

- Novartis:
 - *Human rights guidelines;*
 - *Corporate social responsibility guideline;*
 - *Code of conduct;*
 - *Supplier code.*
- Roche:
 - *Code of conduct;*
 - *Supplier code of conduct;*
 - *Roche Group Employment Policy;*
 - *Policy on Safety, Security, Health and Environmental Protection.*
- Sanofi:
 - *Human rights policy;*
 - *Code of Ethics;*
 - *Social Charter;*
 - *Suppliers Code of Conduct.*
- Merck:
 - *Code of Conduct;*
 - *Environment, Health and Safety Policy;*
 - *Merck Responsible Sourcing Principles.*
- Sinopharm Group:
 - *'Social responsibility' statement.*
- GlaxoSmithKline:
 - *Human rights policy;*
 - *Code of conduct;*
 - *Third party code of conduct.*
- Gilead Sciences:
 - *Code of ethics;*
 - *Commitment to integrity.*
- Medipal Holdings:
 - *'Respect for human rights' statement.*

Automobile

- Toyota:
 - *Human rights policy.*
- Volkswagen:
 - *Code of conduct;*
 - *Group guiding principles;*
 - *Social charter.*
- Hyundai:
 - *Ethics Charter;*
 - *Employee Code of Conduct;*
 - *Ethical Business Practice Guidelines.*
- General Motors:
 - *Human rights policy;*
 - *Code of conduct;*
 - *Conflict minerals policy;*
 - *Global environmental policy;*
 - *Non-retaliation policy;*
 - *Supplier code of conduct.*
- Ford:
 - *Code of conduct.*

Commodities

- Vitol:
 - *Code of conduct.*
- Glencore:
 - *Human rights policy;*
 - *Code of conduct;*
- Trafigura:
 - *Business principles;*
 - *Code of business conduct;*
 - *Corporate responsibility policy.*
- Cargill:
 - *Human rights statement;*

- *Code of conduct;*
- *Supplier code of conduct;*
- Al-Salam Investment: no code is publicly available

Construction

- China State Construction Engineering Corporation: no code is publicly available (however the firm states on its website that they are drafting ‘CSR plans’).
- China Railway Construction Corporation Limited: no code is publicly available (the firm said in its 2016 Sustainability Report that it “insists on the equal rights, equal pay for equal work, non-discriminatory labor and labor policy, fair treatment of employees of different nationalities, races, sex, age, religion and cultural background, and fully protects the employees’ legitimate rights and interests. personal privacy, forbidding and resisting the use of child labor and all forms of forced labor.”)
- China Railway Engineering Corporation: the company’s 2010 report refers to a “Corporate Governance Code”, but no such code was found on the firm’s website.
- Vinci:
 - *Guide on human rights;*
 - *Code of ethics and conduct;*
 - *Manifesto.*
- China Communication Construction Corporation: no code is publicly available

Electronics

- Apple:
 - *Supplier code of conduct.*
- Samsung:
 - *Code of conduct;*
 - *Business conduct guidelines;*
 - *Business guidelines (for suppliers).*

- HP:
 - *Global human rights policy;*
 - *Standards of business conduct;*
 - *HP Supply chain social and environmental responsibility policy;*
 - *Non-discrimination policy;*
 - *Contingent Worker Code of Conduct;*
 - *HP Environment, Health, and Safety (EHS) Policy;*
 - *Partner code of conduct.*
- Microsoft:
 - *Global human rights statement;*
 - *Standards of business conduct;*
 - *Supplier code of conduct.*
- Hitachi:
 - *Human rights policy;*
 - *Code of conduct.*

Annex 3 – Self-regulatory mechanisms adopted by the corporations of the case study

Human rights issues	Human rights standards
WORKER-RELATED RIGHTS	
Child labour	<p><u>Unilever</u>: human rights policy + Rainforest Alliance (Critical Criteria 4.6 & 4.7); OECD Guidelines for Multinational Enterprises (V.1.c.); Code of Business Principles (“Unilever companies must not use child labour, i.e. individuals under the age of 15 or under the local legal minimum working age or mandatory schooling age, whichever is the higher.”); ILO Conventions C138 and C182; Sustainable Agriculture Convention (F172); Sourcing Policy (Standards 5.1.-5.6.)</p> <p><u>MTC</u>: ILO Conventions C138 and C182; Fairtrade (3.3.1, Y0: no children under 15 years old employed; 3.3.2, Y0: no dangerous or exploitative work for anyone under 18 years old; 3.3.3, Y0: child labour policy; 3.3.4, Y0: child labour remediation policy; 3.3.5, Y0: prevention of child labour via adequate procedures); Rainforest Alliance (Critical Criteria 4.6 & 4.7); ETP (4.1: child labour is prohibited (below the age of 15 years old))</p>
Forced labour	<p><u>Unilever</u>: Rainforest Alliance (Critical criterion 4.1.); Sustainable Agriculture Code (F171); Responsible Sourcing Policy (Standard 4); ETP (1.1/1.2./1.3); OECD Guidelines (V.1.d); Code of Business Principles (“Unilever companies must not use, or permit to be used, forced or compulsory or trafficked labour. We have a zero tolerance of forced labour.”); Universal Declaration of Human Rights (Article 23(1)); ICESCR (Article 7); ILO C029; and ILO C105.</p> <p><u>MTC</u>: Rainforest Alliance (Critical criterion 4.1.); Fairtrade (3.2.1., Y0: no forced labour; 3.2.2., Y0: freedom for spouses);</p>
Contractual terms	
Contracts	<p><u>Unilever</u>: Code of Business Principles (“Ensure all employees’ work is conducted on the basis of freely agreed and documented terms of employment, clearly understood by and made available to relevant employees and others working for Unilever”); Responsible Sourcing Policy (Standard 2: “All workers, both permanent and casual, are provided with employment documents that are freely agreed and which</p>

	<p>respect their legal and contractual rights”); ICESCR (Right to just and favourable conditions of work); Sustainable Agriculture Code (F168: “All workers, both permanent and casual, are provided with employment documents that are freely agreed and which respect their legal rights”); Rainforest Alliance (Continuous improvement criteria 4.22.).</p> <p><u>MTC</u>: Fairtrade (3.5.6, Y0: written contracts for all permanent workers with specific information; 3.5.7, Y1: written contracts for all temporary workers of 3 months or more; 3.5.8, Y0: workers’ awareness of employment terms; 3.5.23, Y0: direct contracting; 3.5.24, Y0: rules for subcontractors, only in special circumstances/non-regular work; 3.5.25: subcontracted workers records); Rainforest Alliance (Continuous improvement criteria 4.22.); ETP (8.1: written agreement with all workers (copy given to all workers, in a language they can understand); 8.2: valid reason for termination of contract; 8.3: probation period of no longer than 3 months).</p>
Pay	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.3: same pay for men and women; 4.5: payment of minimum wage + continuous improvement criteria 12, 4.29 & 4.33: living wage; 4.21; 4.27: inflation-adjusted salary); “Ensure all employees are provided with fair wages including a total remuneration package that meets or exceeds legal minimum standards or appropriate prevailing industry standards, and that remuneration terms established by legally binding collective agreements are implemented and adhered to.” (Code of Business Principles); OECD Guidelines for Multinational Enterprises (V.4.b. “pay [...] should be at least adequate to satisfy the basic needs of the workers and their families”); ICESCR (Right to just and favourable conditions of work; right to an adequate standard of living, including adequate housing, clothing, and food, article 11; right to food); ILO Convention C100 (right to a fair wage); Universal Declaration of Human Rights (right to an adequate standard of living, including adequate housing, clothing, and food, article 25; right to food); Sustainable Agriculture Code (F173); and Responsible Sourcing Policy (Standard 6).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.3: same pay for men and women; 4.5: payment of minimum wage + continuous improvement criteria 12, 4.29 & 4.33: living wage; 4.21; 4.27: inflation-adjusted salary); Fairtrade (3.5.1, F0: sets wages at the CBA level, with the intention of continually increasing pay; 3.5.2, F0: no deductions from salaries; 3.5.3, F0: pay is</p>

	<p>equivalent to minimum set hourly wage; 3.5.4, F1: wage level increase every year to close the gap with living wage, and negotiated with representatives; 3.5.5, Y0: documented pay, which is made at regularly scheduled intervals); ILO Convention C100; ETP (5.1: minimum wage (nationally or industry-set) for all workers; 5.2: monthly pay at least (accurate reporting of hours worked/kilos/overtime); 5.3: wage information for all workers (pay slips clearly show how wages are calculated + deductions); 5.4: fair, legal, and reasonable deductions (need to be permissible by law + written permission of workers); 5.5: social benefits/allowances (including pension fund, travel allowance, etc.)); 7.1: no discrimination in its labour policies and procedures (equal pay, training and promotion opportunities and benefits, irrespective of race, caste, national origin, religion, age, disability, gender, HIV/AIDS status, marital status, sexual orientation, union membership or political affiliation))).</p>
Working time	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.10 (weekly 48 hours + 1 meal period break for 6 hours worked) & 4.11 (regulation on overtime: all overtime is voluntary, no more than, overall, 60 hours/week)); Code of Business Principles (“Work more than the regular and overtime hours allowed by the laws of the country where they are employed. All overtime work will be on a voluntary basis.”); Responsible Sourcing Policy (Standard 7); OECD Guidelines for Multinational Enterprises (§57: “employment and industrial relations standards are understood to include [...] working-time arrangements.”); ICESCR (Right to just and favourable conditions of work); Universal Declaration of Human Rights (Right to a family life, article 16); ICCPR (Right to a family life, article 23); Sustainable Agriculture Code (F81: “Workers must have the right to time off work, for medical appointments and counselling for themselves and their dependants.”; F174: “Working hours for all workers are reasonable” + voluntary overtime).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.10 (weekly 48 hours + 1 meal period break for 6 hours worked) & 4.11 (regulation on overtime: all overtime is voluntary, no more than, overall, 60 hours/week)); Fairtrade (3.5.9, F0: no more than 48 hours/week on a regular basis, and no compulsory overtime; 3.5.10, F0: at 1 day of rest every 6 working days, exception: only 12 weeks per year; 3.5.11, F0: overtime only voluntary and no more than 12 hours per week, and no more</p>

	<p>than 3 consecutive months; 3.5.12, Y0: premium rates for overtime work [1.5 the rate on regular work days; twice the rate on rest days, unless defined by CBA]; 3.5.14: lunch breaks); ETP (6.1: standard time of no more than 48 hours per week; 6.2: overtime of no more than 12 hours per week (must be voluntary, paid at a premium in line with the law, irregular); 6.3: one day off every week + public holidays; 6.4: hours records; 6.5: no two consecutive full-time shifts should be performed at night + at least 11 hours between two shifts + meals and beverage for night workers).</p>
Leaves	<p><u>Unilever</u>: Rainforest Alliance (Continuous Improvement Criteria: 4.23 (2 weeks' paid vacation every year) & 4.25 (maternity leave: 12 weeks before/after birth); ICESCR (Right to just and favourable conditions of work); Universal Declaration of Human Rights (right to rest, leisure, and paid holidays).</p> <p><u>MTC</u>: Rainforest Alliance (Continuous Improvement Criteria: 4.23 (2 weeks' paid vacation every year) & 4.25 (maternity leave: 12 weeks before/after birth); Fairtrade (3.5.13, Y0: at least 2 weeks of annual leave; 3.5.15: regulations on sick leave [protection from termination of workers on sick leave + income]; 3.5.16, F0: minimum of 8 weeks of maternity leave with no less of 2/3 weeks, no termination; 3.5.17, Y3: increasing up to 12 weeks of maternity leave; 3.5.18, Y0: breaks or reduction of working time for nursing mothers); ETP (6.3: one day off every week + public holidays + annual and sick leave; 6.6: maternity leave: in line with the law (women shall not lose any labour rights (including annual leave) due to pregnancy and maternity leave + daily break(s) for breastfeeding)).</p>
Health and safety	
General considerations	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 3.3: training of pesticides handlers; 4.5: free equipment; 4.14: OHS plan; 4.15: PPE; 4.16, 4.17, & 4.18: working with pesticides; Continuous Improvement Criteria 4.34-4.45); Code of Business Principles (page 22); Responsible Sourcing Policy (Standard 9); OECD Guidelines for Multinational Enterprises (V.4.c. "Take adequate steps to ensure occupational health and safety in their operations"; §57); ICESCR (Right to just and favourable conditions of work); Sustainable Agricultural Code (F78/F155: first aid on-site; F81: no handling of pesticide by minors/nursing/pregnant women; F91: systems</p>

in place to minimise the risk of workers sustaining injuries from machinery; F94-98: safe transportation/buildings/electrical systems + mitigation against risks caused by fire/noise/dust/explosions; F100: PPEs; F101: risk assessment with workers' input; F144/145: continuous improvement on training plan and training records; F146: continuous improvement on training for pesticide handlers; F154: continuous improvement about health and safety measures).

MTC: Rainforest Alliance (Critical Criteria 3.3: training of pesticides handlers; 3.5: workers not present during aerial pesticides spraying; 4.5: free equipment; 4.14: OHS plan; 4.15: PPE; 4.16, 4.17, & 4.18: working with pesticides; Continuous Improvement Criteria 4.34-4.45); Fairtrade (3.6.1, Y0: workplace safety; 3.6.2, Y0: health and safety officer; 3.6.3, Y3: health and safety committee; 3.6.4, Y0: health and safety risk assessments, with workers H&S representatives; 3.6.5, Y0: H&S instructions visible; 3.6.6, Y0: annual recorded training on H&S; 3.6.7, Y0: training on hazardous work; 3.6.8, Y0: access to clean drinking water for workers; 3.6.9, Y0: access to toilets and hand washing facilities; 3.6.10, Y6: recreation and canteens; 3.6.11, Y0: maintenance of company premises; 3.6.12, Y0: all indoor places have adequate lightning, heating, and ventilation; 3.6.13, Y0: maintenance of electric system; 3.6.14: emergency exits marked; 3.6.15: evacuation training for staff; 3.6.16, Y0: first aid equipment and training; 3.6.19, Y0: cleaning and storing of PPE; 3.6.21, Y0: restrictions on conducting hazardous work; 3.6.22, Y0: safety measures for chemical handlers; 3.6.23, Y0: re-entry intervals after spraying; 3.6.24, Y0: providing workers with appropriate tools); ETP (3.1: safe, clean, and healthy environment (health and safety policy and management system to ensure effective implementation of the policy + noise at harmful levels must be reduced); 3.2: hazard minimisation (regular health and safety risk assessment must be completed with action plan for each identified risk + training of workers in contact with hazard + signposting of all hazards + all equipment should be in good condition); 3.3: regular training (free + in workers' language) on proper use of equipment/regular health and safety training, including of safe use of PPE (and specific training for handling hazardous chemicals + recording of training); 3.4: provision of free PPE to all workers (checks and balances in place to ensure that workers are wearing PPE at all times + PPE must be maintained and repaired by the estate); 3.5: adequate steps to

	prevent accidents and injury in the workplace; 3.6: fire safety; 3.7: chemical safety; 3.8: health and safety management and committee (senior management representative with responsibility for the health and safety of all workers + workers represented on committee); 3.9: sanitary facilities (safe and hygienic washing facilities + clean toilet facilities for all workers); 3.10: free and available drinking water (tested) for all employees; 3.11: hygienic storage of food + storage for personal belongings).
Medical check-ups	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.14: includes medical exams; Continuous Improvement Criteria 4.36 & 4.41); OECD Guidelines for Multinational Enterprises (V.4.c. “Take adequate steps to ensure occupational health and safety in their operations”; §57); ICESCR (Right to just and favourable conditions of work); ILO Conventions C155, C161, and C187.</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.14: includes medical exams; Continuous Improvement Criteria 4.36 & 4.41); Fairtrade (3.6.20: monitoring of workers health with annual medical examinations for workers handling hazardous chemicals; 3.6.25, Y3: free occupational healthcare; 3.6.26, Y0: appointment of a medical officer; 3.6.27, Y0: duties of the medical officer; 3.6.28, Y1: regular and confidential medical check-ups for all workers, at least every three years); ETP (3.12: health of workers who come into contact with hazardous chemicals shall be monitored).</p>
Accidents and compensation	<p><u>Unilever</u>: OECD Guidelines for Multinational Enterprises (§57: “employment and industrial relations standards are understood to include compensation [...] arrangements.”); ICESCR (Right to just and favourable conditions of work).</p> <p><u>MTC</u>: Fairtrade (3.6.17, Y0: H&S Officer reports accidents; 3.6.18, F0: access to healthcare in case of work-related accidents); ETP (3.12: measures to deal with emergencies and accidents (including first-aid arrangements (compensation for workers in case of injury or accidents in the workplace))).</p>
<i>Freedom of association</i>	
General considerations	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.4); Code of Business Principles (“Respect employees’ rights to join or not to join a legally recognised trade union, or any other body representing their collective interests, and establish constructive dialogue and bargain in good faith with trade</p>

	<p>unions or representative bodies on employment conditions, labour management relations and matters of mutual concern, to the extent practicable taking national laws into consideration” + “ Maintain a clear and transparent system of employee and management communication that enables employees to consult and have an effective dialogue with management”); Responsible Sourcing Policy (Standard 8); OECD Guidelines for Multinational Enterprises (V.1.b.: “Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations”); ICESCR (Right to just and favourable conditions of work); Universal Declaration of Human Rights (Right to belong to a trade union and freedom of association); ILO Conventions C087 and C098 (Right to belong to a trade union and freedom of association); Sustainable Agriculture Code (F175).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.4); Fairtrade (2.2.4, Y3: training of union representatives; 3.1.8, Y3: record of terminated contracts, including whether workers were union members or representatives; 3.4.1 Y0: no discrimination of union representatives; 3.4.2 Y0: generally respect labour rights by protecting union membership and related rights; 3.4.3, Y0: sign the Freedom of Association Protocol; 3.4.4, Y0: communicating Freedom of Association protocol to workers; 3.4.5, Y0: allowing union representatives to meet with workers; 3.4.6, Y0: workers’ association on site (with necessary support from management); 3.4.7, Y0: no interference, such as financial support, with worker’s right of association; 3.4.8, Y0: representatives may meet at least once a month among themselves during working hours and every three months with management; 3.4.9 Y0: meetings outcomes are documented and signed; 3.4.10, Y1: sign off on the national collective bargaining agreement); ETP (2.1: right to join trade unions; 2.2: right to collective bargaining + effective means for negotiations; 2.3.: employers shall adopt an open attitude towards the activities of unions and their organisational activities + facilities; 2.4: non-discrimination of union members).</p>
Strikes	<p><u>Unilever</u>: ICESCR (Right to just and favourable conditions of work); ILO Convention C105 (right to strike, article 1.d.).</p> <p><u>MTC</u>: ---</p>

<p><i>Working conditions of seasonal workers</i></p>	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.8: no seasonal workers employed when work is permanent); Code of Business Principles (“Comply with legal requirements in relation to short-term, casual or agency employees”); ICESCR (Right to just and favourable conditions of work).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.8: no seasonal workers employed when work is permanent); Fairtrade (3.5.21, Y1: equitable remuneration and benefits for permanent and temporary and migrant workers, with equitable/alternatives means if no equivalent benefits are possible; 3.5.22, Y0: time-limited contracts are permitted during peak periods, under special circumstances); ETP (7.1: no discrimination in its labour policies and procedures (equal pay, training and promotion opportunities and benefits, irrespective of race, caste, national origin, religion, age, disability, gender, HIV/AIDS status, marital status, sexual orientation, union membership or political affiliation)); 8.1: employees should not be given short-term contracts for long periods of time).</p>
<p><i>Right to non-discrimination</i></p>	
<p>Non-discrimination during the hiring process</p>	<p><u>Unilever</u>: Human Rights Policy; Rainforest Alliance (Critical criteria 4.3 about freedom from discrimination, including against pregnant women); Code of Business Principles (“Treat everyone fairly and equally, without discrimination on the grounds of race, age, role, gender, gender identity, colour, religion, country of origin, sexual orientation, marital status, dependants, disability, social class or political views. This includes consideration for recruitment, redundancy, promotion, reward and benefits, training or retirement which must be based on merit”); OECD Guidelines for Multinational Enterprises (§54: principle of non-discrimination, “prevent discrimination or dismissals on the grounds of marriage, pregnancy or parenthood”); Universal Declaration of Human Rights (discrimination + right to work); ICCPR (discrimination); ICESCR (discrimination + right to work); ILO Conventions C111; Sustainable Agriculture Code (F170).</p> <p><u>MTC</u>: ILO Convention C111; Fairtrade (3.5.26: recruitment practices [e.g. pay all fees]); Rainforest Alliance (Critical criteria 4.3 about freedom from discrimination, including against pregnant women); Fairtrade (2.2.7, Y3: equity in the workplace; 3.3.1 Y0: non-discrimination [although it is defined by difference in treatment “on grounds that are not related to ability or merit”]; 3.1.4, Y1: policy on disciplinary measures,</p>

	<p>which includes the prevents against discrimination; 3.3.2: no tests for pregnancy, HIV/AIDS, or genetic disorder); ETP (7.1: no discrimination in its hiring policies and procedures (race, caste, national origin, religion, age, disability, gender, HIV/AIDS status, marital status, sexual orientation, union membership or political affiliation))</p>
Non-discrimination during employment	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.2: sexual harassment); Code of Business Practices (p. 24, about sexual harassment); Responsible Sourcing Policy (Standards 3 and 10.9); 2015 Report (p. 35, about sexual harassment); Unilever's Human Rights Policy ("We seek to manage and grow socially responsible businesses where women participate on an equal basis. We believe that women's rights and economic inclusion are priorities to win long-term. Our approach starts with the respect of the rights of women and extends to their promotion as well as helping to develop skills and open up opportunities, both in our own operations and our value chain."); Sustainable Agriculture Code (F103: "Farms or plantations employing a large workforce are expected to have women's committees, that work with management, to resolve gender or other group-specific issues"; F168: "No worker should be subject to any physical, sexual, psychological or verbal harassment, abuse or other form of intimidation").</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.2: sexual harassment; 4.18: Women who are pregnant, nursing or have recently given birth are not assigned to activities that pose risk to the woman's, foetus's or infant's health. In cases of job reassignment, there is no reduction in remuneration); Fairtrade (2.2.6, Y3: empowerment of women; 2.2.10, Y6: creche facilities; 3.1.5 & 3.1.6, Y0: zero tolerance for sexual harassment with adoption of a specific policy); ETP (3.13: "Employers should provide welfare and social services that meet the needs of women workers, particularly those with family responsibilities and pregnant female workers. All measures compatible with national conditions and possibilities shall be taken (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and (b) to take account of their needs in terms and conditions of employment and in social security.": this includes childcare facilities such as crèches and or/private room for feeding children; 7.1: no discrimination in its labour policies and procedures (equal pay, training and promotion opportunities and benefits, irrespective of race, caste, national origin,</p>

	<p>religion, age, disability, gender, HIV/AIDS status, marital status, sexual orientation, union membership or political affiliation)): “all terms and conditions of employment should be based on an individual's ability to do the job”; 7.2: equal pay for equal work for men and women; 7.3: no hiring discrimination against pregnant women (no pregnancy tests/requirement of use of contraceptives + estate must allow women workers to return to their jobs after giving birth); 9.1: “Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited”).</p>
<i>Transportation to site</i>	<p><u>Unilever</u>: ICESCR (Right to just and favourable conditions of work); Sustainable Agriculture Code (F94).</p> <p><u>MTC</u>: ---</p>
<i>Migrant workers</i>	<p><u>Unilever</u>: OECD Guidelines for Multinational Enterprises (§40: “enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them [e.g.] migrant workers and their families”); ICESCR (Right to just and favourable conditions of work).</p> <p><u>MTC</u>: ---</p>
COMMUNITY-RELATED RIGHTS	
<i>Housing and living conditions</i>	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.12 (access to potable water) & 4.13 (decent housing conditions); Continued Improvement Criteria 4.28, 4.30 & 4.32); Universal Declaration of Human Rights (Right to a family life, article 16; Right to an adequate standard of living, including adequate housing, article 25; Freedom of housing, article 25); ICCPR (Right to a family life, article 23); ICESCR (Right to an adequate standard of living, including adequate housing, article 11; Freedom of housing, article 11).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.12 (access to potable water) & 4.13 (decent housing conditions); Continued Improvement Criteria 4.28, 4.30 & 4.32); Fairtrade (3.5.28, Y3: levels of decency, privacy, hygiene, safety, and security, and clean water/bathing facilities + compensate offsite workers if free rent); ETP (3.14: good condition, safe and hygienic housing (not overcrowded + toilet/washing facilities/access to</p>

	regularly tested drinking water/cooking facilities/organisation of domestic waste collection)).
<i>Right to a clean environment</i>	
General considerations	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 2.1 – 2.4: natural ecosystems & wildlife; Continuous Improvement Criteria: 3.8 & 3.9: soil conservation: 3.27-3.29, 3.32: pesticides); OECD Guidelines for Multinational Enterprises (VI.3.: impact mitigation; and VI.5.: “Maintain contingency plans for preventing, mitigating, and controlling serious environmental and health damage from their operations, including accidents and emergencies; and mechanisms for immediate reporting to the competent authorities.”).</p> <p><i>DEFORESTATION</i>: Sustainable Agriculture Code (F137: “Use fuel wood, firewood, wood crates and pallets from a sustainable source”); Rainforest Alliance (critical criteria: 2.2: “Farms conserve all natural ecosystems and have not destroyed forest or other natural ecosystems in the five-year period prior to the date of initial application for Rainforest Alliance certification or after January 1, 2014, whichever date is earlier”; 2.3: Production activities do not degrade any protected area.).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 2.1 – 2.4: natural ecosystems & wildlife; Continuous Improvement Criteria: 3.8 & 3.9: soil conservation: 3.27-3.29: pesticides); Fairtrade (4.2.6, Y0: buffer zones for application of hazardous chemicals, with no application near zones of human activity; 4.2.7, Y0: same for air application; 4.2.8, Y0: chemicals storage; 4.2.9, Y0: prevention of accidents and spills; 4.2.10, Y0: cleaning, storing, and disposal of hazardous waste; 4.3.4, Y0: fertiliser storage to minimise water pollution); ETP (10.1: “The estate should have an environmental management system (EMS) which includes policies, procedures and programmes aimed both at managing the environmental aspects of its operations and reducing its environmental impact.” + “The estate should carry out environmental impact assessments (EIA) at regular intervals”, including before new works + continual improvement programme; 10.2: agrochemicals (training + should strive to reduce the use of agrochemicals); 10.3: soil conservation; 10.4: ecosystem conservation; 10.5: water conservation; 10.6: energy use; 10.7: waste management).</p> <p><i>DEFORESTATION</i>: Rainforest Alliance (critical criteria: 2.2: “Farms conserve all natural ecosystems and have not destroyed forest or other natural ecosystems in the five-year period prior</p>

	to the date of initial application for Rainforest Alliance certification or after January 1, 2014, whichever date is earlier”; 2.3: Production activities do not degrade any protected area.).
Waste disposal	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 3.1 & 3.2: water; Continuous Improvement 3.20-3.22: water quality; 3.37-3.43: waste management).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 3.1 & 3.2: water; Continuous Improvement 3.20-3.22: water quality; 3.37-3.43: waste management); Fairtrade (4.2.10, Y0: cleaning, storing, and disposal of hazardous waste; 4.3.13, Y3: handling of waste water from processing facilities; 4.4.1, Y0: storage and disposal of hazardous waste; 4.4.2, Y1: waste management plan; 4.4.3, Y3: organic waste use and disposal); ETP (10.7: waste management (waste should be minimised/recycled)).</p>
<i>Right to health</i>	
Health issues	<p><u>GENERAL CONSIDERATIONS</u></p> <p><u>Unilever</u>: Rainforest Alliance (Continuous Improvement Criteria 3.32: warn communities potentially affected by pesticides); Code of Business Principles (“Unilever strives to be a trusted corporate citizen and, as an integral part of society, to fulfil our responsibilities to the societies and communities in which we operate.”); OECD Guidelines for Multinational Enterprises (VI.3.: “Assess, and address in decision-making, the foreseeable environmental, health, and safety-related impacts associated with the processes, goods and services of the enterprise over their full life cycle with a view to avoiding or, when unavoidable, mitigating them.”); 2015 Report (“We are committed to deploying effective programmes on health education (using our skills in communication) and to securing access to appropriate treatment for our employees at all stages of HIV/AIDS”); Universal Declaration of Human Rights (right to health); ICESCR (right to health) ; Sustainable Agricultural Code (F79: “Farms will promote a healthy lifestyle, and raise awareness of wider issues of health and safety (e.g. HIV/AIDS). These may extend into the wider community”).</p> <p><u>MTC</u>: Rainforest Alliance (Continuous Improvement Criteria 3.32: warn communities potentially affected by pesticides); Fairtrade (3.6.30, Y6: adoption and implementation of a policy for the prevention of contagious diseases and epidemics, including a reporting structure for the incidence of epidemics);</p>

	<p>2015 Report (“our intention is to extend the principle of 'prevention better than cure' to all Rift Valley Tea communities, especially Tea estates [...], in order to reduce absenteeism and the high cost of treatment through Wellness awareness principles”); ETP (3.12(d): “If relevant, the estate should have in place health awareness and prevention programmes and offer support for treatment (e.g. on HIV/AIDS, malaria, TB)”).</p> <p><u>ACCESS TO WATER</u></p> <p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.12 (access to potable water for workers and their families); Continuous Improvement Criteria 3.15, 3.16, 3.18 & 3.19: water use for irrigation purposes; 4.47: communication with the community); Code of Business Principles (“Unilever strives to be a trusted corporate citizen and, as an integral part of society, to fulfil our responsibilities to the societies and communities in which we operate.”); OECD Guidelines for Multinational Enterprises (Commentary on the policies, §25: “[stakeholder] engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of [...] water, which could significantly affect local communities”); 2015 Report (“we’ve taken significant steps forward, [including in respect to] our commitment to recognise and respect the human right to water”); Sustainable Agricultural Code (F77: access to water on-site + hand-washing facilities).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.12 (access to potable water for workers and their families); Continuous Improvement Criteria 3.15, 3.16, 3.18 & 3.19: water use for irrigation purposes; 4.47: communication with the community); Fairtrade (4.3.10, Y1: optimisation of water use; 4.3.11, Y3: sustainable use of water; 4.3.12, 6: optimising irrigation systems); ETP (10.5: water conservation: the estate should ensure the rational and sustainable use of all water resources + sustainable water procurement programme + waste water management programme.).</p>
Health services	<p><u>Unilever</u>: Rainforest Alliance (Continuous Improvement Criteria 4.47); Code of Business Principles (“Unilever strives to be a trusted corporate citizen and, as an integral part of society, to fulfil our responsibilities to the societies and communities in which we operate.”); Universal Declaration of Human Rights (right to health); ICESCR (right to health).</p>

	<p><u>MTC</u>: Rainforest Alliance (Continuous Improvement Criteria 4.47); Fairtrade (3.6.18, F0: access to healthcare in case of work-related accidents; 3.6.29, Y3: access to free medical care and advice at the workplace).</p>
<i>Right to education</i>	<p><u>Unilever</u>: Rainforest Alliance (Continuous Improvement Criteria 4.47); Code of Business Principles (“Unilever strives to be a trusted corporate citizen and, as an integral part of society, to fulfil our responsibilities to the societies and communities in which we operate.”); OECD Guidelines for Multinational Enterprises (§52: “it is important to acknowledge and encourage the role of multinational enterprises in contributing to the search for a lasting solution to the problem of child labour. In this regard, raising the standards of education of children living in host countries is especially noteworthy”); Universal Declaration of Human Rights (right to education); ICESCR (right to education).</p> <p><u>MTC</u>: Rainforest Alliance (Continuous Improvement Criteria 4.47); Fairtrade (2.2.8, Y1: all permanent workers; 2.2.9, Y3: all workers).</p>
<i>Engagement with the community</i>	<p><u>Unilever</u>: Rainforest Alliance (Continuous Improvement Criteria 4.46 & 4.47); Code of Business Principles (“Unilever strives to be a trusted corporate citizen and, as an integral part of society, to fulfil our responsibilities to the societies and communities in which we operate.”); OECD Guidelines for Multinational Enterprises (Commentary on the policies, §25: “[stakeholder] engagement can be particularly helpful in the planning and decision-making concerning projects or other activities [which] could significantly affect local communities”); Sustainable Agriculture Code (for suppliers: S39: “Suppliers are expected to work with farmers and farmer groups to generate opportunities for investment, loans and cost-saving.”).</p> <p><u>MTC</u>: Rainforest Alliance (Continuous Improvement Criteria 4.46 & 4.47).</p>
<i>Land rights</i>	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.19 & 4.20); OECD Guidelines for Multinational Enterprises (Commentary on the policies, §25: “[stakeholder] engagement can be particularly helpful in the planning and decision-making concerning projects or other activities involving, for example, the intensive use of land [...], which could significantly affect local communities”); Human Rights Policy (“We recognise the</p>

	<p>importance of land rights. We are committed to the principle of free, prior and informed consent, and support its implementation by national authorities.”); Sustainable Agriculture Code (F111-112 + F177); and Responsible Sourcing Policy (Standard 11).</p> <p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.19 & 4.20).</p>
OTHER ISSUES	
<i>Complaints mechanism</i>	<p><u>Unilever</u>: Rainforest Alliance (Critical Criteria 4.9); Code of Business Principles (“provide transparent, fair and confidential procedures for employees to raise relevant concerns. These must enable employees to discuss any situation where they believe they have been discriminated against or treated unfairly or without respect or dignity, with their line manager – or an independent manager – without fear of retaliation.”); Responsible Sourcing Policy (Standard 10); UNGPs (“business enterprises should have in place [...] processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute”, Principle 15); OECD Guidelines for Multinational Enterprises (Commentary on the Policies, §46: “operational-level grievance mechanisms for those potentially impacted by enterprises’ activities can be an effective means of providing for such processes when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions.”); “We offer both internal and external channels for raising concerns, anonymously if required. We also provide an external channel to third parties” (2015 Human Rights Report); Unilever’s Human Rights Policy (“We place importance on the provision of effective remedy wherever human rights impacts occur through company-based grievance mechanisms. We continue to build the awareness and knowledge of our employees and workers on human rights, including labour rights, encouraging them to speak up, without retribution, about any concerns they may have, including through our grievance channels. We are committed to continue increasing the capacity of our management to identify and respond to concerns. We also promote the provision of effective grievance mechanisms by our suppliers”); ICESCR (Right to just and favourable conditions of work); Sustainable Agriculture Code (F108, for complaints from community + F103 and F175 for workers).</p>

	<p><u>MTC</u>: Rainforest Alliance (Critical Criteria 4.9); Fairtrade (3.1.7, Y0: no repercussions for grievance procedures; 3.5.27, Y0: anonymous grievance procedure open to workers and third parties, which includes procedure for sexual harassment); 2015 Report (“The mechanism for grievance resolution currently varies within each business operation and circumstance. With the introduction of the newly drafted ESMS (Environmental and Social Management System), we will be able to determine if gaps exist in this area and thereafter ensure that both internal and external grievances have an appropriate method of review and resolution”); ETP (9.1: effective and confidential grievance and complaints procedures should be in place + be communicated to all levels of the workforce + managers should be trained in fair treatment of workers and on disciplinary and grievance procedures; 9.2: “The estate should have in place disciplinary measures to deal with incidents of harsh or inhumane treatment” + “Incidents of abuse and harassment should be dealt with promptly and effectively, leaving no doubt about the willingness of management to discipline perpetrators in a way that would deter future incidents”).</p>
<p><i>Other issues</i></p>	<p><u>Unilever</u>: In its Code of Business Principles, Unilever requires its “third-party business partners to adhere to business principles consistent with [their] own” (Code of Business Principles, 2016, 8). These expectations are set out in the firm’s Responsible Business Partner Policy, in which Unilever requires of its contractors that they comply with all applicable laws and regulations in the countries in which they operate, including relevant international laws and regulations. Moreover, contractors’ workers are to be provided with a total compensation package that includes wages, overtime pay, benefits and paid leave which meets or exceeds the legal minimum standards or appropriate prevailing industry standards, whichever is higher, and compensation terms established by legally binding collective bargaining agreements are to be implemented and adhered to (Responsible Business Partner Policy, 6). Workers will not be required to work more than the regular and overtime hours allowed by the law of the country where the workers are employed, and all overtime work by workers will be on a voluntary basis (Responsible Business Partner Policy, 6). Workers will be over 15 years old, and young workers will not perform any dangerous duties and will not be deprived of the opportunity to attend school (Responsible Business Partner Policy, 7). A</p>

	healthy and safe workplace will be provided to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the employer's operations (Responsible Business Partner Policy, 7). Finally, the legal right of workers to freedom of association and collective bargaining are recognised and respected (Responsible Business Partner Policy, 7).
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Annex 4 – Interview Consent Form and Participation Information Sheet

Annex 4A – Consent Form



WARWICK
THE UNIVERSITY OF WARWICK

CONSENT FORM

Participant ID:

Title of Project: *'An empirical assessment of the sustainability of tea companies in Tanzania'*

Name of researcher(s): *Marie Pillon (supervised by Dr James Harrison)*

Please initial box

1. I confirm that I have read and understood the information sheet provided for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason, without my medical, social care, education, or legal rights being affected.
3. I consent to audio record.
4. I consent to the use of anonymous quotations by the researcher.
5. I understand that my data will be securely stored in line with the University of Warwick's Research Data Management Policy, and destroyed upon publication of the researcher's PhD thesis.
6. I agree to take part in the above study.

☐
☐
☐
☐
☐
☐

Name of Participant

Date

Signature

Name of Researcher
taking consent

Date

Signature

Annex 4B – Participant Information Sheet

PARTICIPANT INFORMATION SHEET

Study Title: 'An empirical assessment of the sustainability of tea companies in Tanzania'

Investigator: Marie Pillon

Introduction

You are invited to take part in a research study. Before you decide, you need to understand why the research is being done and what it would involve for you. Please take the time to read the following information carefully. Talk to others about the study if you wish.

(Part 1 tells you the purpose of the study and what will happen to you if you take part. Part 2 gives you more detailed information about the conduct of the study)

Please ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

PART 1

What is the study about?

This study is about finding out how tea companies function in Tanzania including the relationship between the companies, the workers, and any neighbouring communities who are affected by what the company does.

Do I have to take part?

It is entirely up to you to decide. We will describe the study and go through this information sheet, which we will give you to keep. If you choose to participate, we will ask you to sign a consent form to confirm that you have agreed to take part. You will be free to withdraw at any time, without giving a reason and this will not affect you or your circumstances in any way.

What will happen to me if I take part?

If you take part, the researcher will ask you questions about your experience, and your working and living conditions. This will be recorded with an audio-tape recorder, if you are happy for this to happen. As the researcher only speaks English, a translator will also attend and translate the questions and your answers.

What are the possible disadvantages, side effects, risks, and/or discomforts of taking part in this study?

The research will involve discussion of sensitive topics, such as working and living conditions. Such discussions may require that you talk about difficult experiences and may be distressing. In order to mitigate your potential distress as much as possible, interviews will be conducted at a place of your choosing, in an environment where you feel most comfortable (i.e. one-on-one or group settings). Please also note that you are allowed to take breaks at any moment if you need it, and you may stop the interview at any point if you no longer wish to take part.

The information you provide will be processed anonymously and the results will be presented in such a way that no personal identifying or sensitive information about individual persons involved in the research will be disclosed.

What are the possible benefits of taking part in this study?

The results of this study will help the researcher understand how tea companies function in Tanzania, and especially the relationship between corporations, workers, and neighbouring communities. The study will be communicated to the relevant companies, which will be able to identify and remedy any issues arising from their activities in the area, thereby benefitting workers and communities.

Expenses and payments

No payment will be made to you for participating in this study.

What will happen when the study ends?

When the study ends, the researcher will leave Tanzania and go back to the United Kingdom, where she will analyse the data and publish her research.

Will my taking part be kept confidential?

Yes. We will follow strict ethical and legal practice and all information about you will be handled in confidence. Further details are included in Part 2.

What if there is a problem?

Any complaint about the way you have been dealt with during the study or any possible harm that you might suffer will be addressed. Detailed information is given in Part 2.

This concludes Part 1.

PART 2**Who is organising and funding the study?**

This study is conducted as part of the researcher's PhD thesis. It is funded by the Law School of the University of Warwick, the Centre for Human Rights in Practice, and the personal research allowance of the researcher's supervisor, Dr James Harrison.

What will happen if I don't want to carry on being part of the study?

Participation in this study is entirely voluntary. Refusal to participate will not affect you in any way. If you decide to take part in the study, you will need to sign a consent form, which states that you have given your consent to participate.

If you agree to participate, you may nevertheless withdraw from the study at any time without affecting you in any way.

You have the right to withdraw from the study completely and decline any further contact by study staff after you withdraw. Before the publication of the study, you are allowed to request that the information you have provided be permanently erased and not taken into account for the study.

Who should I contact if I wish to make a complaint?

Any complaint about the way you have been dealt with during the study or any possible harm you might have suffered will be addressed. Please address your complaint to the person below, who is a senior University of Warwick official entirely independent of this study:

Head of Research Governance

Research & Impact Services

University House

University of Warwick

Coventry

CV4 8UW

Email: researchgovernance@warwick.ac.uk

Tel: (+44) 24 76 522746

Will my taking part be kept confidential?

Yes. The information you provide will be kept on a password-protected computer, and only the researcher and her supervisor will have access to it.

What will happen to the results of the study?

The results of this study will be published as part of the researcher's thesis, and may be also submitted to relevant academic journals. You may request that a copy of the thesis and/or potential academic articles be provided to you.

Who has reviewed the study?

This study has been reviewed and given favourable opinion by the University of Warwick's Law School Ethics Officer.

What if I want more information about the study?

If you have any questions about any aspect of the study, or your participation in it, not answered by this participant information sheet, please contact:

Chief Investigator: Ms Marie Pillon (email: [REDACTED])

The researcher's supervisor: Dr James Harrison (email: [REDACTED] phone number: [REDACTED])

Thank you for taking the time to read this Participant Information Sheet.

Annex 5 – Schedules of interview

Annex 5A – Schedule of Questions for Unilever’s Management

This schedule of questions for Unilever’s managers is a typical schedule of questions which I used to interview managers for all three companies. However, I adapted the questions for each company, depending on their self-regulatory standards and circumstances. All interview schedules are available upon request.

GENERAL QUESTIONS – KEY FEATURES

DRAFTING

- What was the drafting process for the corporate codes and policies which you strive to implement here?
 - How did you draft your policies? Was the process inclusive? Whom did you consult? Did you follow their recommendations?
 - Did you take steps to ensure that the process was transparent and open? (What does such a process look like?)

EMBEDDING STANDARDS

- Did you embed your codes’ principles in your everyday decision-making? How?
- Did you give publicity, in a language that your employees understand, to your policies?
- Do you have reward systems?
- Do you take into account the respect of your policies when reviewing your employees’ performance?
- Do you offer training on your policies to your employees? Is it compulsory or voluntary? Does it include practical cases?

MONITORING

- Do you monitor your performance? If so, who does it, how is it done, and how regularly? If not, why not?
- Have there been any state inspections in recent years? If so, when was the last one? How regularly do you have state inspections? Have you ever been fined?

- Did adopting self-regulatory standards change your approach to performance monitoring?

COMPLAINTS MECHANISM

- Do you have a free and anonymous complaints mechanism, open to anyone?
 - If not, why not?
 - If so, do you communicate about it to workers and community members?
- Did adopting self-regulatory standards (Rainforest Alliance, 4.9.; Code of Business Principles; OECD Guidelines/Sustainable Agriculture Code) change your approach to complaints mechanism?

SANCTIONING

- Do you sanction employees (and providers?) who breach your principles?
- If so, how?
- Has it ever happened?

QUESTIONS ON SPECIFIC HUMAN RIGHTS ISSUES

ACCESS TO WATER

- Does Unilever contribute to the needs of the community?
- Do you pressure the government to accelerate borehole digging? If you irrigate, do you also truck in water to communities? What is the access to water in company housing?
- Are you doing anything to anticipate meeting the Rainforest Alliance continuous improvement criteria 4.47 (from speaking with the local community in Kibao, we have identified that access to water was a pressing priority)? Any impact of the adoption of the Code of Business Principles?

CONTRACTS

- Do all employees have access to their contract? Are they given time to read them before signing? Are all contracts in Swahili?
- Are there seasonal subcontractors? Who manages contracts with them?

- Did adopting self-regulatory standards (Code of Business Principles/Responsible Sourcing Policy/Sustainable Agriculture Code) change your approach to contracts?

PAY

- How much do you pay your workers? What is the minimum pay?
 - Is paying your employees a living wage on your agenda?
- Did adopting self-regulatory standards (Rainforest Alliance/Code of Business Principles/OECD Guidelines/ILO C100/Universal Declaration of Human Rights/Sustainable Agriculture Code/Responsible Sourcing Policy) change your approach to pay?

WORKING TIME

- What is the working time of factory workers?
- Is there any overtime for managers/engineers? How much is it paid?
- Details about overtime for plantation workers: is any allowed? Is it compulsory? How much is it paid?
- Do workers receive lunch? Do they have access to drinking water? Do they have access to toilets?
- Did workdays use to be longer? If so, what triggered the changes? (Did adopting self-regulatory standards (Rainforest Alliance/Code of Business Principles/Responsible Sourcing Policy/OECD Guidelines/ICESCR/ICCPR/Sustainable Agriculture Code) change your approach to working time?)

LEAVES

- Do temporary workers get leaves: sick leave (has the policy changed? Why?); annual leave; parental leave?
- How do you calculate “full pay” for tea pickers?
- Did adopting self-regulatory standards (Rainforest Alliance/ICESCR/Universal Declaration of Human Rights) change your approach to leaves?

GENDER RELATED ISSUES

- When is the last time a woman made a complaint? How was it resolved? How many sexual harassment complaints per year? Is retaliation a problem?
- Did adopting self-regulatory standards (Rainforest Alliance/Code of Business Principles/Responsible Sourcing Policy/Sustainable Agriculture Code) change your approach to gender-related issues?

HEALTH AND SAFETY

- Are seasonal workers really required to provide their own equipment?
- What kind of PPE is available for chemical sprayers? What is the purchasing schedule for boots?
- Have your policy and practice changed in recent years? (Did adopting self-regulatory standards (Rainforest Alliance/Code of Business Principles/Responsible Sourcing Policy/OECD Guidelines/ICESCR/Sustainable Agriculture Code) change your approach to health and safety?)

HIRING PROCESS

- For all employees: are there some diseases that will automatically exclude workers from employment?
- For permanent employees, are women required to be less than 3 months pregnant as well?
- Did adopting self-regulatory standards (Human rights policy/Rainforest Alliance/Code of Business Principles/Universal Declaration of Human Rights/ OECD Guidelines/ICESCR/ICCPR/Sustainable Agriculture Code) change your approach to your hiring process?

HEALTH

- Did you see any correlation between tea work and HIV/AIDS rates?
- Are HIV/AIDS prevention programmes effective?
- Is there TB in worker housing?
- Do you know when Unilever first committed to “deploying effective programmes on health education and to securing access to appropriate

treatment for our employees at all stages of HIV/AIDS”, as written in your 2015 report?

- Did adopting self-regulatory standards (Rainforest Alliance/Code of Business Principles/OECD Guidelines/ICESCR/Universal Declaration of Human Rights/Sustainable Agriculture Code) change your approach to workers’ and community members’ health issues?

SEASONAL WORKERS

- How do you hire seasonal workers? Directly or through contractors?
- Are there any differences in the working conditions of permanent and seasonal workers?
- Have you hired more permanent workers in recent years?
- Did adopting self-regulatory standards (Rainforest Alliance/Code of Business Principles/ICESCR) change the working conditions which you offer seasonal workers?

WORK INJURIES AND COMPENSATION

- Does the company compensate both permanent and temporary workers for work-related accidents and injuries?
- How many workers have you compensated in the past 10 years?
- Did adopting self-regulatory standards (OECD Guidelines/ICESCR) change your practice regarding workers’ accidents and compensation?

LAYOFFS

- I was told that there had been layoffs: why? Is the work getting mechanised? How long does the average worker stay?

MUFINDI OUTGROWERS PROJECT

- Does this project have any actual economic or skills impact? Do you monitor it?

TRADE UNIONS

- Are TPAWU representatives workers themselves?
- What percentage of the workforce is unionised?
- Did adopting self-regulatory standards (Rainforest Alliance/Code of Business Principles/OECD Guidelines/ICESCR/Sustainable Agriculture

Code/ILO C087 and 098/Universal Declaration of Human Rights) change your approach to freedom of association/collective bargaining?

STRIKE

- Has there ever been a successful strike action? Why/why not?
- Did adopting self-regulatory standards (ILO C105/ICESCR) change your approach to strikes?

HOUSING

- Do all houses have running water and electricity?
- Why are workers not allowed to farm onsite?
- Is housing permanent? If not, where do workers live after they retire?
- Did adopting self-regulatory standards (Rainforest Alliance/ICESCR/ICCPR/Universal Declaration of Human Rights) change your approach to housing?

ENVIRONMENT

- Are chemicals used on crops? If so, how do you make sure that they are not polluting soils and water, and do not endanger human life?
- Did adopting self-regulatory standards (Rainforest Alliance/OECD Guidelines/Sustainable Agriculture Code) change your approach to mitigating any negative environmental impact of your activities?

TRANSPORTATION

- Is transportation provided for off-site workers?
 - If so, is it safe? Do workers have seats, and is the vehicle safe on muddy roads in rainy season? Have there been any accidents?
- Did adopting self-regulatory standards (ICESCR/Sustainable Agriculture Code) change your approach to workers' transportation?

WASTE MANAGEMENT

- How do you manage waste? Do you have a specific place?
- Did adopting self-regulatory standards (Rainforest Alliance) change your approach to waste management?

Annex 5B – Schedule of Questions for Unilever’s Workers

This schedule of questions for Unilever’s workers is a typical schedule of questions which I used to interview community members for all three companies. However, I adapted the questions for each company, depending on their self-regulatory standards and circumstances. All interview schedules are available upon request.

GENERAL QUESTIONS – KEY FEATURES

DRAFTING

- Were you (or anyone you know, from work or the community) involved in the drafting of any of Unilever’s policies? Do you know anything about the drafting of these policies?

EMBEDDING STANDARDS

- Have you been made aware of the firm’s policies?
- Do you know whether respecting the firm’s standards will get you rewarded?
- Were you offered training on Unilever’s policies? Is it compulsory or voluntary? Does it include practical cases? How regularly does it take place?

COMPLAINTS MECHANISMS

- Do you have access to a free and anonymous complaints mechanism, open to anyone? If not, would it be helpful, in your opinion?

SANCTIONING

- Do employees get sanctioned if they breach Unilever’s principles?
- If so, how?
- Has it ever happened?

QUESTIONS ON SPECIFIC HUMAN RIGHTS ISSUES

ACCESS TO WATER

- Does Unilever contribute to the needs of the community?

- Does the company pressure the government to accelerate borehole digging?
If the company irrigates, do they also truck in water to communities?
- What is the access to water onsite and in company housing?

CONTRACTS

- Do you have access to your contract? It is in Swahili?
- Were you given time to read it before signing?

PAY

- How much are you paid? What is the minimum pay for Unilever workers?
- Is pay regularly re-evaluated?

WORKING TIME

- When do you work (days/times)?
- Details about overtime for plantation workers: is any allowed? Is it compulsory? How much is it paid?
- Do you receive lunch? Do you have access to drinking water onsite? Do you have access to toilets?

LEAVES

- Do temporary workers get leaves: sick leave (has the policy changed? Why?); annual leave; parental leave?

HIRING PROCESS

- Do you know whether there are some diseases that will automatically exclude workers from employment?
- Do you know whether Unilever requires candidates for temporary positions to be no more than 3 months pregnant when applying?
- If that is the case, do you know whether it is also true for permanent employees?

GENDER RELATED ISSUES

- Have employees been trained on gender-related issues (including about the company's policies)? Do you feel like the situation has improved in recent years?
- Are female employees able to reach out to a female staff member if needed?

- When is the last time a woman made a complaint? How was it resolved? Is retaliation a problem?

HEALTH AND SAFETY

- Are you/seasonal workers required to provide their own equipment?
- What kind of PPE is available for chemical sprayers?
- Are there many accidents in the plantations/factory?

EDUCATION

- If you have children, where do they go to school? If it is a private school, how much are the fees? (Is it Unilever's school?)

HEALTH

- Have you ever been on a Unilever HIV/AIDS prevention programme?
- Is there TB in worker housing?

OCCUPATIONAL HEALTH

- Do you have to go through medical check-ups? How regularly? Who conducts them? Do you have to pay?

TRADE UNIONS

- Are TPAWU representatives workers themselves?
- What percentage of the workforce is unionized? Are you unionised?

STRIKE

- When was the latest strike? How regularly are strikes organised?
- Has there ever been a successful strike action? Why/why not?

LAYOFFS

- I was told that there had been layoffs: why? Is the work getting mechanised? How long does the average worker work for Unilever?

MUFINDI OUTGROWERS PROJECT

- Do you know anyone participating in this project? What kind of economic and/or skills impact does it have locally?

SEASONAL WORKERS

- If you are a seasonal worker, do you work for Unilever directly or for another company? How did you find out about the job?

WORK INJURIES AND COMPENSATION

- Does the company compensate both permanent and temporary workers?
- Do you know whether it has ever happened?

HOUSING

- Do all houses onsite have running water and electricity?
- How big are the houses? Is it enough for a family?
- Have you been pressured to live onsite? Would you not have access to the same benefits if you were living offsite?
- Is housing permanent? If so, where do workers live after they retire?

TRANSPORTATION

- Is transportation provided for off-site workers?
- And is it safe? Do workers have seats, and is the vehicle safe on muddy roads in rainy season? Have there been any accidents?

ENVIRONMENT

- Do chemicals used on tea crops affect the environment (soil; water; air)?

WASTE MANAGEMENT

- How does the firm manage waste?

Annex 5C – Schedule of Questions for Unilever’s Community Members

This schedule of questions for community members living around Unilever’s plantations is a typical schedule of questions which I used to interview community members for all three companies. However, I adapted the questions for each company, depending on their self-regulatory standards and circumstances. I also adapted questions for community members with an expertise (e.g. doctors, teachers). All interview schedules are available upon request.

GENERAL QUESTIONS – KEY FEATURES

DRAFTING

- Were you (or anyone from the community) involved in the drafting of any of Unilever’s policies? Do you know anything about the drafting of these policies?

MONITORING

- Do you have access to a free and anonymous complaints mechanism, open to anyone? If not, would it be helpful, in your opinion?

QUESTIONS ON SPECIFIC HUMAN RIGHTS ISSUES

ACCESS TO WATER

- How do you get water? Is it difficult to get access to water in the area?
- Does Unilever contribute to the needs of the community?
- Does the company pressure the government to accelerate borehole digging?
If the company irrigates, do they also truck in water to communities?

EDUCATION

- Where do children go to school?
- Are there enough teachers? Appropriate facilities?

HEALTH

- Have you ever participated in a Unilever HIV/AIDS prevention programme?
- Do you go to Unilever's hospital? If not, why not, and where do you go?

MIGRANT WORKERS

- Does the migrant community (coming to work for tea companies, including Unilever) affect education and health services? (Same question for access to water.)

HOUSING

- Do all houses offsite have running water and electricity?

MUFINDI OUTGROWERS PROJECT

- Does this project have any actual economic or skills impact?

LAYOFFS

- I was told that there had been layoffs: why? Is the work getting mechanised? How long does the average worker stay?

ENVIRONMENT

- Do chemicals used on tea crops affect the environment (soil; water; air)?
- Do Unilever's activities affect the environment?

Annex 5D – Schedule of Questions for Civil Society Representatives

This schedule of questions for an employee of the International Labour Organisation's office in Dar es Salaam is a typical schedule of questions which I used to interview civil society representative. However, I adapted the questions for each civil society representative, depending on their field of expertise. All interview schedules are available upon request.

- What does the ILO do in Tanzania?
- What is your position?
- Has the ILO published any relevant reports?
- What are the human rights most at risk in the country?
 - What about human rights potentially affected by corporate activities?
 - Women's rights?
- Has the situation changed in the past few years?
- What's the implementation of labour laws and international conventions in the country? Especially regarding the following issues:
 - Health and safety?
 - Discrimination?
 - Gender
 - Nationality
 - Disability
 - Sexual orientation
 - Religion
 - Age
 - HIV/AIDS status
 - Wages?
 - Sick leave?
 - Working hours/rest/holidays?
 - Rights of association and to strike?
- What's the biggest challenge to effective implementation?
- Can you tell me more about the labour rights situation in the tea industry specifically (or agriculture, if does not know)?

- Do corporate self-regulatory mechanisms have any influence on the labour conditions on the ground?
 - If so, how so?
 - If not, why not?
- Does any of these elements seem important for effective implementation of laws and self-regulation?
 - Inclusive process at the stage of drafting corporate commitments, or at the stage of drawing up plans to implement them?
 - Training of employees and managers?
 - Independent monitoring of the situation?
 - Human rights due diligence/impact assessments?
 - Strong unions?
 - Regular and transparent reporting on the part of the company?
 - Free and anonymous complaints mechanism?
 - Sanctions?
- Do you usually find these in place within companies?
- How do you explain the corporate human rights issues commonly reported in the country?
- Do you know of cases related to corporate practices?
 - If yes, can you tell me more about these cases?

Annex 6 – Human rights performance of the three corporations of the case study

Human rights issues	Human rights standards
<i>WORKER-RELATED RIGHTS</i>	
Child labour	<u>All companies</u> : No child labour issues. All companies only hire individual aged 18 years old and above.
Forced labour	<u>All companies</u> : No forced labour issues.
<i>Contractual terms</i>	
Contracts	<p><u>Unilever</u>: All employees have a contract, be it seasonal and permanent workers. Workers are not provided with copies (a manager said that it was because there were too many workers). Some workers were not given enough time to read the terms before signing. Contracts are in Swahili (although one case of a worker whose contract was only in English, and so unintelligible to them). Seasonal workers are offered 9-month contracts, which may be renewed once a period of 3 months has passed (maximum of one contract per year). Seasonal workers used to work without a contract.</p> <p><u>MTC</u>: All employees have a contract, be it seasonal and permanent workers. Not all workers are provided with copies. Some workers were not given enough time to read the terms before signing. Contracts are in Swahili (although a worker said that, a few years ago, contracts were in English, and that they had to complain before they changed it). Seasonal workers are offered 9-month contracts, which may be renewed once a period of 3 months has passed (maximum of one contract per year). In the past, there used to be a probation period of 3 months with no contract, and only then workers would get a permanent contract.</p> <p><u>Chai Bora</u>: permanent workers have a contract. Seasonal workers have a one-day contract which is not formally renewed after their first day of work.</p>
Pay	<u>All companies</u> : low wages, to the point where workers must farm or conduct business on the side to survive. Low pay leads to:

- *HIV/AIDS, STDs, unplanned pregnancies*: as Mafinga and Mufindi in general are business hubs, a lot of men travel through the area and stay for short amounts of time. Because of low wages in the area, women are reportedly easily taken advantage of, in exchange for money. Because condom use is still low, the rate of HIV/AIDS, STDs, and unplanned pregnancies is high.
- *Diseases*: some individuals will have no choice but to drink water from the river near Mafinga, catching typhoid and other waterborne diseases.

Unilever: Average pay (not counting overtime):

- Factory workers: Tsh145.000-154.000 [minimum pay was 145.000 in 2016 and 154,000 in 2017];
- Tea pluckers: Tsh145.000;
- Plantation managers: 3 grades (Tsh186.000 > 210.000 > 297.000);
- Fixed-term engineers: Tsh300.000.
- Security officers: Tsh120.000-270.000.

Overtime for tea pluckers (with higher average pay) is reserved for workers who wait for trucks at the end of the day; overtime available for factory workers during high season. Although two workers complained that overtime had not been paid extra for some time (one said “a few months”, the other “3 years”). If the quality of tea is considered inadequate, workers are not paid.

Low pay, which means that they have to farm or do business on the side to feed their families. Tea pickers are paid by the kilo, whereas the rest of the workers are paid per day. Although they do have access to bonuses to encourage productivity (attendance/quality and quantity/managers/factory workers).

MTC: Tea pickers are paid by kilo. Estimations as to the average daily harvest differs greatly between workers (between 50 and 150 kilos per day). However, all agree that wages are too low, workers have to farm or conduct other business to survive.

Average pay (not counting overtime):

- Factory workers: Tsh154.000 [minimum pay was 145.000 in 2016 and 154.000 in 2017];
- Tea pluckers: Tsh145.000 – 200.000 (up to Tsh250.000 during high season)
 - o Tsh33/kg, since machines were introduced;
- Engineers: Tsh150.000-300.000;

	<ul style="list-style-type: none"> - Security officers: Tsh154.000 (minimum pay for 2017) - Tsh190.000 (for workers who have been working for many years; after deductions, they receive Tsh175.000). <p>Manager explained that, every year, salaries are indexed to inflation, and that the cost of life is taken into account when calculating the increase. Minimum wage is decided for various regions (e.g. Iringa, Tanga, Njombe). Also important to take other benefits into account (e.g. healthcare).</p> <p>One tea plucker complained that they had not been paid in four months; they company reportedly said that it was a mistake, but nothing has been done.</p> <p><u>Chai Bora:</u></p> <p>Low pay, which forces workers to rely on farming (or other business) to survive, despite being offered a rent allowance in addition to their salaries. Recurring issue of late payment of wages (especially currently, as workers are not being paid).</p> <p>Average pay:</p> <ul style="list-style-type: none"> - Factory workers: Tsh250.000-500.000 (factory managers), with Tsh300.000 on average, although seasonal workers said that they earnt 5.500/day, which means that they earn on average about Tsh145.000/month (counting overtime on Saturdays); - Printing department: Tsh270.000; managers: Tsh320.000; - Managers: Tsh1.5 million and above. - Seasonal workers are paid Tsh5.500/day (Tsh3.500 for half-day on Saturday; Tsh6.000 if worked a full day as “overtime”), paid for each day worked, weekly. - Security guards (outsourced workers): Tsh99.000/month. <p><i>Rent:</i> no rent for seasonal workers. Permanent factory workers receive Tsh25.000/month (which is the minimum); printing department: Tsh32.000/month; managers: Tsh70.000-90.000/month. Tsh25.000 is insufficient to cover renting needs of a family (a house would be Tsh100.000/month).</p>
Working time	<p><u>Unilever:</u></p> <ul style="list-style-type: none"> • <i>Tea pluckers:</i> during low season, they work from 7am until 2pm; during high season, can work until 5pm. Some (male) workers have to stay onsite to wait for

trucks (overtime available only for those workers). One hour for lunch (provided for);

- *Plantation managers*: 7am-6pm, but may have to work longer hours as they have to wait for the trucks as well (sometimes not until 9-10pm);
- *Factory workers*: 3 shifts, 8 hours each (used to have two 12-hour shifts, changed with the Rainforest Alliance); during high season, may have up to 4 hours' overtime;
- *Security*: 12-hour shifts (including overtime); 7 days a week.
- *Fixed-term qualified employees*: may work for 3 hours per day (overtime allowed);
- *Electricians*: 5 full days a week (8 hours, with 4 hours' overtime possible) + half-day on Saturday (with 3 hours' overtime possible)

MTC:

- *Tea pluckers*:
 - High season: 7am-5/6pm;
 - Low season: 7am-2pm;
 - 6 days/week; no overtime except for those who pack tea into trucks (can work up to 12 hours/day during high season); 1 hour for lunch (provided with *makande*);
- *Factory*: 8 hours/day; 6 days/week; no overtime (although one worker said that sometimes overtime is allowed in the factory); 1 hour for lunch (not provided with lunch, only breakfast for those who are working in the morning);
- *Security*: 8 hours/day; compulsory overtime of 4 hours/week.

Chai Bora:

- *General workers*: 8-hour shifts, 5 days a week + 4-hour shift on Saturday.
- Overtime allowed on weekend.
- *Security guards (outsourced workers)*: 12-hour shifts; 7 days a week.

Workers are reportedly provided lunch, breakfast, and tea, depending on their shifts.

Leaves	<p><u>Unilever:</u></p> <p><i>Permanent workers:</i></p> <ul style="list-style-type: none"> • Maternity leave: 3 months with full pay. • Paternity leave: 7 days, no pay. • No sure about annual leave or sick leave for permanent employees. <p><i>Temporary workers:</i></p> <ul style="list-style-type: none"> • No sick leave. • No annual leave. • No maternity leave. • No paternity leave. <p><u>MTC:</u></p> <p><i>Permanent workers:</i></p> <ul style="list-style-type: none"> • Annual leave: 28 days, with travel allowance of 65% of the salary, in addition to the regular salary. Same for management, although may be up to 75%. • Sick leave (with medical certificate): <ul style="list-style-type: none"> ○ In theory: up to 63 days with full pay, up to another 63 days with half pay, and beyond 126 days, will see how can let the worker go; ○ In practice: accounts of 2 days (one worker said that it is usually a couple of days but that, if it is serious, 63 days/63 days); • Maternity leave: 84 days with full pay for one baby; 100 days for twins; breastfeeding policy: allowed 2 hours every day with full pay for 6 months; <ul style="list-style-type: none"> ○ Three workers went on maternity leave once, were paid in full (one received Tsh300.000 on top of her salary); • Paternity leave: 4 days, with full pay. <p><i>Seasonal workers:</i></p> <ul style="list-style-type: none"> • Sick leave (with medical certificate): 1 or 2 days (some say that it is unpaid anyway – so that most workers still go to work while sick); <ul style="list-style-type: none"> ○ Manager said that seasonal workers also benefitted from 63 days/63 days. • No maternity leave: a seasonal worker was fired when the company found out that she was pregnant (and it was reportedly difficult for her to get hired again after birth);
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	<ul style="list-style-type: none"> • No paternity leave; • No annual leave. <p><u>Chai Bora:</u></p> <p><i>Permanent workers:</i></p> <ul style="list-style-type: none"> • Annual leave: 28 days + Tsh120.000. • Maternity leave: 3 months with pay; • Paternity leave: 4 days without pay; • Sick leave: up until 63 days with full pay; next 63 days with half pay; over 126 days: termination. <p><i>Temporary workers and outsourced security guards:</i></p> <ul style="list-style-type: none"> • No leaves.
Health and safety	
General considerations	<p><u>Unilever:</u> policies are generally enforced, adequate, although seasonal workers have to provide their own gear.</p> <p>Safety equipment:</p> <ul style="list-style-type: none"> - <i>Factory workers:</i> gloves, masks, ear protection, eye protection, and safety boots (depending on the position); - <i>Tea pluckers:</i> raincoats are optional; mandatory: gun boots and aprons. Apart from aprons, seasonal workers have to provide all safety equipment themselves; no gloves; - <i>Chemical sprayers:</i> boots; masks; eye protection; - <i>Security workers:</i> only provided with gun-boots. <p>Workers are reportedly not allowed to work if they are not wearing necessary equipment (sent home with no pay). It may lead to termination. Although one worker said that there was no control from the company.</p> <p>Monday is the day of training for health and safety.</p> <p><u>MTC:</u> Safety equipment:</p> <ul style="list-style-type: none"> - <i>Factory workers:</i> gloves, masks, ear protection, eye protection, and safety boots (depending on the department); - <i>Tea pluckers:</i> overall; boots; - <i>Chemical sprayers:</i> masks; gloves; helmet; glasses; overall + special room for storing and mixing chemicals + changing rooms for workers;

- *Security guards*: only provided with torches; have to purchase boots and raincoats;
- *Engineers (factory)*: overall; boots; gloves.

Management admitted that the company does not always provide safety gear because of late deliveries/equipment wears out faster than anticipated (although some workers said that it was mainly because the company was in a financial crisis). Workers are not allowed on company premises if they are not wearing adequate equipment, or if they are intoxicated. However, no sanctions are given out for not wearing safety gear as the firm's focus is on education – although one seasonal worker said that they would be terminated if they do not wear appropriate gear.

Permanent and seasonal workers said that they are not supposed to work without safety gear on, but are not provided with gear, so have to buy it themselves, including workers in dangerous jobs (e.g. boiler). Boots reportedly cost Tsh13.000 and aprons Tsh15.000.

A worker who used to work in the boiler room said that most of their former colleagues have since died because of the working conditions.

A worker fell sick after spraying (and inhaling) chemicals (chest problems), was reportedly given 5 days of sick leave.

Accidents do not happen often (mostly in the factory because of machines).

Workers are trained about health and safety (including relevant Fairtrade/Rainforest Alliance standards).

Chai Bora: Protective gear is overall insufficient (eye protection is not provided for production workers, even though they do need it; boots are not provided to everyone for free). Some said that it was safe to work there, although most agreed that all protection measures were not taken. A worker said that there were lots of accidents because of the race for productivity. No sanction for not wearing gear (apart from a warning), manager said that they preferred education to sanction.

Safety equipment:

- *Blending*: glasses (although not always adequate and the dust may still get into the workers' eyes), masks, boots, and coats.
- *Production*: masks; closed shoes.

	<ul style="list-style-type: none"> - <i>Printing</i>: boots, glasses (otherwise, will lose your eyesight), masks, gloves. Provided by the company. <p>Quarterly inspections by OSHA, who also conduct training on health and safety (every month). Management and worker representatives train workers (trainers are trained first). They have health and safety representatives.</p> <p>The firm reportedly accommodates its workers with health conditions.</p>
Medical check-ups	<p><u>Unilever</u>: Medical check-up is done before signing contracts, and then every 2 months for permanent workers, but not again for seasonal workers.</p> <p><u>MTC</u>: A medical examination is only conducted when workers are hired. Management said that there were supposed to be an exit check-up, to verify how the work has affected workers (and adapt policies accordingly), but all workers (except for one) said that there was no such thing. No regular medical check-up while on the job.</p> <p><u>Chai Bora</u>: Medical check-ups are conducted, although mixed accounts as to their regularity: some workers say every 2 months, some every 3 or 6 months, and a manager said every two years (because of the cost). This may come from the fact that different types of check-ups are conducted, by OSHA (as described by a manager) and by local doctors (as described by workers).</p>
Accidents and compensation	<p><u>Unilever</u>:</p> <p><i>Permanent workers</i>:</p> <ul style="list-style-type: none"> - Compensation offered in theory, although a few workers complained that the company usually says that it is the worker's fault and so refuses to offer compensation; - Free medical treatment. <p><i>Seasonal workers</i>:</p> <ul style="list-style-type: none"> - No compensation; - Free medical treatment until their contract expires. <p><u>MTC</u>:</p> <p><i>Permanent employees</i>:</p> <ul style="list-style-type: none"> - Compensation is offered in theory, although a few workers complained that the company usually says that it is the worker's fault and so refuses to offer compensation;

	<ul style="list-style-type: none"> - Free medical treatment. <p><i>Seasonal workers:</i></p> <ul style="list-style-type: none"> - No compensation; - Free medical treatment until their contract expires. <p><u>Chai Bora:</u></p> <p><i>Permanent workers:</i></p> <ul style="list-style-type: none"> - Compensation is offered, although it may take time; - Free medical treatment. <p><i>Seasonal workers:</i></p> <ul style="list-style-type: none"> - Manager said that they were offered compensation but workers said that they were not; - No access to free medical treatment. <p>Manager said that there had not been an accident in two years, although some workers said that accidents were frequent because of the company's race for productivity (and because safety gear is reportedly inadequate).</p>
<i>Freedom of association</i>	
General considerations	<p><u>All companies:</u> right of association and collective bargaining is usually well respected. Official unions in all three companies, which are local branches of national unions (TPAWU and TUICO) negotiating collective agreement at national level. However, Chai Bora does not always listen to TUICO, and seasonal workers do not have access to the union.</p> <p><u>Unilever:</u> TPAWU is the trade union for Unilever workers, with representatives chosen among workers. Representatives negotiate with the human resources department every month (or every few months) the price of tea, and report any issues raised by workers. They also train workers on labour rights and related issues (including CBAs). Although civil society representatives said that TPAWU representatives are not properly trained and so cannot defend workers' rights properly. Moreover, a few workers said that they had the interests of the company at heart, one said that they were bribed. Some workers said that there had been no changes despite complaints. Some workers said that only permanent employees are members of TPAWU, although others said that it was open to all employees. There were also reports of compulsory adhesion for permanent workers, with a monthly fee taken out of their monthly wage.</p>

	<p><u>MTC</u>: TPAWU is the trade union for MTC workers, with representatives chosen among workers. Representatives meet with the company every 3 months to discuss potential issues. They also train workers on labour rights and related issues (including CBAs, although a few workers said that they did not know anything about CBAs). Although civil society representatives said that TPAWU representatives are not properly trained and so cannot defend workers' rights properly. Moreover, a few workers said that they had the interests of the company at heart. Adhesion is reportedly compulsory for all workers, with a monthly fee, taken out of their monthly wage.</p> <p><u>Chai Bora</u>: Seasonal workers are not part of TUICO. Most permanent workers are unionised, although it is not compulsory (monthly fee: Tsh3.000). They meet quarterly with management to discuss any issues. Although civil society representatives said that TUICO representatives are not properly trained and so cannot defend workers' rights properly, and some workers say that they do not have workers' interests at heart. A union representative said that they present complaints to the company, but that Chai Bora does not do anything about them. TUICO district leaders join the local TUICO leaders to negotiate CBA, which is applicable to all Chai Bora workers.</p>
Strikes	<p><u>Unilever</u>: Latest strike happened in 2016, over low wages, and the police/FFU were called and so workers went away. Manager said that that strike was bad, with people almost getting killed, so they have tried to intensify their relationship with TPAWU and introduced bonuses to keep workers happy.</p> <p><u>MTC</u>: In 2014, there was a strike that, according to some interviewees, led to injuries. Management said that police were called because the strike was illegal (it was over the late payment of wages + low wages + issues with a specific manager). Management said that, as a result, some workers (<i>a few workers reported that it was about 10 workers</i>) were arrested and/or terminated.</p> <p><u>Chai Bora</u>: No recent strikes (latest one seems to have been in 2006, over poor management, and seems to have been successful). A seasonal worker said that there is such a gap between temporary and seasonal workers, seasonal workers will not strike (they need the work).</p>

<i>Right to non-discrimination</i>	
Non-discrimination during the hiring process	<p><u>Unilever:</u></p> <ul style="list-style-type: none"> - Reports of discrimination against pregnant women, for both temporary and permanent positions, although management deny it. - Discrimination against people with low immunity and people living with a disability. <p><u>MTC:</u></p> <ul style="list-style-type: none"> - Discrimination against pregnant women, for both temporary and permanent positions – although management deny discriminating against pregnant women for permanent positions. - Discrimination against people with low immunity, high blood pressure, and people living with a disability. Manager said that people who are sick (with the exception of people living with HIV/AIDS) or not physically fit will not be hired. <p><u>Chai Bora:</u></p> <ul style="list-style-type: none"> - Discrimination against pregnant women, for both temporary and permanent positions. - Discrimination against people with communicable diseases (with the exception of people living with HIV/AIDS), who will not be hired before they are cured.
Non-discrimination during employment	<p><u>Unilever:</u> Unilever has taken action to fight against gender-based violence by starting a welfare department, where complaints can be registered by a female employee. Training seminars about sexual harassment and women's rights take place every Monday. The situation has improved, and most workers said that there was no gender-based violence. Most workers said that pregnant women could not get hired, for permanent or seasonal positions, although the company denies it. Women are not allowed to do chemical spraying, or to stay behind to wait for the trucks (so no overtime) (practice is reportedly to guarantee women's safety).</p> <p><u>MTC:</u> The company was looking to hire a gender activist to train workers as there is a gap to fill but it is now on hold because of the change of investors. Workers said that pregnant women could not get hired, for permanent or seasonal positions, although the company denies it (although only not</p>

	<p>about seasonal workers). Women are not allowed to do chemical spraying or operate machines; night security shifts are for men; easy jobs in the factory are for women – although workers say that the fact that women cannot operate machines in the plantations does not affect their level of pay. Most workers say that there is gender equality, although a few workers say that women are not given time to breastfeed (including one worker speaking from personal experience). A worker also said that she was given night shifts after her baby was born despite the fact that this is not in line with corporate policy.</p> <p><u>Chai Bora</u>: Equality of opportunities (between men and women) seems to be a reality within the company, mostly because there are more women than men (73 women/fewer than 50 men). However, some interviewees mentioned issues of sexual harassment and related problems (e.g. sexual favours to get hired, or promoted, or paid more – all made worse because of poverty and working conditions) in the area. Situation has improved within Chai Bora because of (informal) meetings organised amongst women workers to inform them about their rights. TUICO and Chai Bora also train workers about them (although it is only for permanent workers). Training also helps with domestic issues. Women can go to female managers if they would like to report an issue.</p>
<i>Transportation to site</i>	<p><u>Unilever</u>: No transportation is available from villages to estates, although housing is made available so that workers do not have to walk far. Managers are provided with means of transportation.</p> <p><u>MTC</u>: The company does not offer transportation to the plantations or the factory.</p> <p><u>Chai Bora</u>: The firm offers free transportation for workers on night shifts. The bus was reportedly adequate and safe.</p>
<i>Migrant workers</i>	<p><u>Unilever</u>: Around the firm's operations, there are a lot of migrant workers. The fact that many workers move around the region (and the country) is associated by some interviewees with the following issues: high rates of HIV/AIDS, STDs, and unplanned pregnancies (and single mothers). This phenomenon is accentuated by the high number of seasonal workers, who come and go regularly. The recruitment of tea workers from outside Mufindi has been so important for decades that it is reportedly the reason for the existence of the</p>

	<p>villages around Unilever's plantations (and especially the biggest one, Kibao).</p> <p><u>MTC</u>: The company has reportedly brought in significant numbers of migrant workers. The existence of the village where MTC operates, Itona, was said to be linked to migrant tea workers (a few community members estimated that 90% of inhabitants were migrant tea workers). This migration is said to have led to high rates of HIV/AIDS and other STDs.</p> <p><u>Chai Bora</u>: There are reportedly a significant number of migrant workers in Mafinga. Migration has been associated with high rates of HIV/AIDS, STDs, unplanned pregnancies (which are all related to other issues such as prostitution). Another problem reported by some interviewees is the fact that children with low levels of education flow into local schools. Finally, overpopulation reportedly leads to strained education, health, and water services, in turn leading to poor economic development. Chai Bora does not seem to help with these issues.</p>
COMMUNITY-RELATED RIGHTS	
<p><i>Housing and living conditions</i></p>	<p><u>Unilever</u>: The company offers housing to all employees, with free (although not running) water and (for some) solar power. However, most workers complained that houses are small and in bad condition (which is why some workers prefer to live offsite, although it means walking to work). Upon observation, houses are indeed small, with only one room that is separated into the kitchen area and the bedroom area with a piece of fabric. Raising cattle and farming are allowed (although growing maize is, in theory, prohibited), for private use only. They also have social halls, and dispensaries/health centres, as well as privately-run shops onsite. In the villages around the firm, there is no running water, and most houses have no electricity. Community members who can afford it use solar power. In general, poor living conditions around Unilever's plantations.</p> <p><u>MTC</u>: The firm offers free onsite housing to workers (as per collective bargaining agreement). Houses are very small. There is no running water but electricity is available in some of the houses. Some workers complained that it was overcrowded, and that houses for general labour were in bad conditions (whereas houses for managers were good). Shared toilets and water points are available onsite. The company has</p>

	<p>rules on sanitation and reportedly sends a doctor around the houses regularly. Some workers have decided to move offsite because houses were too small or inadequate, or because it is difficult to farm, raise cattle, and/or run a business onsite. For permanent workers living offsite, the company provides an additional Tsh30.000 monthly for rent (15% of salary for managers). However, if the company cannot offer seasonal workers accommodation (as it sometimes happens, when there is a shortage of houses), they do not provide them with additional renting allowance. In the villages around the firm, there is no running water. About 60% of houses have electricity in the area.</p> <p><u>Chai Bora</u>: No housing provided onsite. The company helps with rent, however the amount is usually said to be insufficient to cover their renting needs. In Mafinga, there is no running water. Most houses have electricity.</p>
<i>Right to a clean environment</i>	
General considerations	<p><u>Unilever</u>: Most interviewees said that there was no environmental impact of Unilever's activities, although a few mentioned the fact that chemicals used annually on crops (for fertilisation purposes) ended up in the water. The local government said that they had a meeting with the company last year about it, and that Unilever said that they would take precautions this year. A local government representative said that they released smoke. Unilever lost their Rainforest Alliance certification in 2014 because of environmental issues and have since made improvements (and regained their certification).</p> <p>DEFORESTATION: The firm uses a lot of wood for its factory but, as they get it from their own forests in the area, there was no reported impact. The company reportedly maintains forests in the area.</p> <p><u>MTC</u>: Most interviewees (including local government) said that the firm's operations had no impact on the environment, although a local government representative said that they did produce smoke, and a worker and a community member said that their waste management was poor (no separation of different kinds of dust and waste and random dumping of waste).</p> <p>DEFORESTATION: MTC use their own forests for firewood; for instance, at the time of the interview, they were using trees</p>

	<p>from a 50-year-old forest, which provided enough wood to cover the company's needs. However, they sometimes must buy it from external sources when their forests cannot provide enough trees.</p> <p><u>Chai Bora</u>: While some interviewees complained that the company was operating in the middle of town, where people live and work, most agree that Chai Bora's operations do not have an impact on the environment.</p> <p><i>DEFORESTATION</i>: the firm does reportedly not use wood.</p>
Waste disposal	<p><u>Unilever</u>: No issue was reported with the firm's waste disposal. The firm has a specific place where they dispose of waste.</p> <p><u>MTC</u>: The firm has special waste disposal places and a system to ensure that nothing ends up in the water. They also have latrines onsite and a specific waste collection system for glass and plastic waste. However, a worker and a community member said that the firm's waste management was poor (no separation of different kinds of dust and waste and random dumping of waste).</p> <p><u>Chai Bora</u>: No issue was reported with the firm's waste disposal. Underground pipes are used to dispose of waste – which is mainly dust, paper, and nylon. Management reportedly ensures that no waste ends up in the water.</p>
<i>Right to health</i>	
Health issues	<p><u>GENERAL CONSIDERATIONS</u></p> <p><u>Unilever</u>: There were reports of STDs, of HIV/AIDS, and of waterborne diseases around the firm's operations.</p> <p><u>MTC</u>: There were reports of HIV/AIDS around the firm's operations.</p> <p><u>Chai Bora</u>: There were reports of water- and airborne diseases around the firm's operations. Moreover, HIV/AIDS, STDs, and unplanned pregnancies are big issues in the area, which were linked by some interviewees to the number of migrant workers and business activities around Mafinga.</p> <p><u>ACCESS TO WATER</u></p> <p><u>All companies</u>: big problem, and no company contributes. Communities in Mafinga, Kibao, and generally around corporate operations all complain of issues related to access to</p>

water. There are not enough wells, especially in the summer as they dry up. Communities must buy water, which is expensive and pushes some people to drink dirty rainwater or water from rivers in the area.

Unilever: Access to water is good onsite, where workers have access to drinking water. However, it is a big issue in all the villages surrounding Unilever's plantations. Community members use natural wells and pumps from the Danish International Development Agency (for instance, there are only 2 wells in Kibao, for over 5.000 people). Community members have to buy bottled water, which is expensive. As a consequence, some people drink rainwater, which may get them sick. Moreover, the water from some wells also carries diseases, which some people complained come from fertilisation chemicals used by Unilever. The local government has asked Unilever to help but the firm has done nothing so far. There were reports of an unknown donor and a local government representative asking the community in 2012 to financially contribute to the project which they had started to improve access to water in the area. However, it would seem that nothing came of it (despite financial contributions from a number of community members). Finally, there is a current project to provide water to 4 villages (Sawala; Mtwango; Lufuna; and Kibao). It would involve inserting a pump in a natural water resource, which would supply purified water to a big tank and, in turn, to taps which would be installed in houses in all four villages. A tank will be installed in every village. But two community members said that the project was suspended because the supplier had not been paid – although the project coordinator said nothing of this, and only stated that the project would take a year to complete.

MTC: In the area surrounding MTC's plantation, access to water in general is difficult. Unless community members own a pump or are wealthy enough to afford to pay for water in pumps in the village, they have to walk for over an hour to reach wells. The local government said that there was a project of water supply (which will involve MTC), but that it was only still at the first stage. Management said that, as part of Fairtrade, shallow wells were built. The firm have built dams, but villagers are not allowed to fetch water there. Onsite, water testing is done annually to check that the water is safe (although workers still just boil it before they can drink it).

	<p><u>Chai Bora</u>: Access to water is a big issue in Mafinga (where Chai Bora operates), leading to diseases: some community members drink rainwater during the raining season and water from the local river during the summer if wells dry up. Local government representatives acknowledge that the situation is bad, and that they have tried to improve it. Indeed, they received some money from the government to buy a tank (500.000 litres) for the people of the town, and they are now trying to get funding to buy a tank with twice that capacity. At the time when fieldwork was conducted, people had access to water two or three times a week as taps around town were not supplied with water every day. Moreover, the town's water infrastructure has reportedly not been renovated since the 1980s and is therefore in poor condition – including the sewage system, which means that water gets contaminated. There are some privately-owned taps and wells, but community members must pay to use them. It appears that Chai Bora has never contributed to improving access to water for community members. A local government representative went to see Chai Bora, who reportedly said they would help, but no contribution had been made at the time when fieldwork was conducted.</p>
Health services	<p><u>Unilever</u>:</p> <p><i>For workers</i>: Unilever's hospital (and medication) is free for workers and their spouse and up to four children and reportedly offer good services, including family planning, maternity services, and some surgical operations. Unilever's hospital delivers free HIV/AIDS treatment and Community-based Therapeutic Care, and HIV/AIDS-prevention programmes to workers every Monday.</p> <p><i>For community members</i>: Unilever's hospital is very expensive for the rest of the community (fees are six times higher than in government hospitals as it was reported that it cost Tsh100.000/day for a bed, Tsh60.000 for a consultation, and Tsh150.000 for a delivery), so the community does not benefit from having Unilever's hospital around apart from HIV/AIDS-related services. The community therefore uses dispensaries in Sawala and Kibao, although no doctor works there (only two nurses in each; dispensaries provide first aid, check-up for malaria, and maternity services – including baby deliveries if no surgeon is needed, although one community member said that women avoid delivering there because they know that they offer poor services). For serious issues, they</p>

must go to Tumahili or Mafinga's hospitals. However, local government representatives said that Unilever helps a lot regarding HIV/AIDS prevention and treatment. It was also reported that the company's hospital had a partnership with Tumahili government hospital to circumcise men so as to thwart the spread of diseases (Thursday and Saturday).

MTC:

For workers: MTC's dispensary is free for workers and their spouse and up to four children. No issue related to shortage of doctors or medicines was reported. Workers living with HIV/AIDS receive all HIV/AIDS-related medicine and support for free. MTC provides an HIV/AIDS-prevention programme from time to time, although most workers agree that the programme has not run in some months (they can still get support from the clinic, but they have to go there). The clinic also provides Community-based Therapeutic Care, conducted as part of a national programme which started a few years back (in partnership with USAID) and has built up gradually ever since. The manager said that the company's clinic operates the programme monthly, and that their doctor goes around the area and provides support to workers.

For community members: MTC's dispensary is expensive for community members as it reportedly costs Tsh15.000 per day. Community members go to local government's dispensary, although no doctor works there (only two nurses) and there is a lack of medicine and no family planning services, which means that must go to Mafinga for deliveries. There is government health insurance available, which some community members cannot afford. Finally, a manager said that the company's doctor goes around the area and provides HIV/AIDS support to community members as well as to workers. Similarly, they said that MTC's HIV/AIDS programme was also for community members, but no community members mentioned that they could go, and local government representatives said that there was no company-sponsored HIV/AIDS programme for community members.

Chai Bora: The firm does not operate a hospital, and does not provide health insurance, although workers may get insurance through the National Social Security Fund. Community members use government-run hospitals, where there is a lack of doctors and access to medicines. The company does not seem to contribute to the health needs of the community.

<p><i>Right to education</i></p>	<p><u>Unilever</u>: The company has a school but only subsidises 40% of fees, which means that only managers can afford to send their children there (<i>fees are very high</i>). Most children, of workers and community members, go to government-run schools where the level of education is lower, and which need refurbishment (and some say need more teachers). However, Unilever's nursery is free for all workers (children of age 3-5), and the company built the Lugoda primary school, which is now run by the government (although the company still materially contributes to it. The firm has also provided funds for a biology lab for a secondary school in Kibao and built dormitories for secondary students. Around Unilever's plantations, the following villages have schools: Sawala (3 primary schools and 2 secondary schools); Kibao (3 primary schools and 2 secondary schools; and Mtwango (2 primary schools and 1 secondary school).</p> <p><u>MTC</u>: The firm built a school, which is now run by the government, although the company still materially contribute. There reportedly an adequate number of schools and teachers in the area. However, infrastructures are in poor condition and schools can be very far for some pupils. Teachers have free water and electricity, and the Fairtrade premium fund was used to fund for secondary teachers' houses. In Itona (where MTC operates), one secondary school and two primary schools are open.</p> <p><u>Chai Bora</u>: The firm does not run a school. There are reportedly not enough schools are in operation in Mafinga, and the schools which are running need more funding, supplies, and (according to some reports) teachers. The situation has reportedly worsened since President Magufuli told Tanzanian parents in 2015 that government schools were free, and that parents should therefore no longer offer financial contribution to their children's schools. Following this announcement, families' average annual contribution of tsh25 million stopped, and was not replaced by government funding. Classes are overcrowded (60-80 pupils per class), which is partially explained by the fact that many people choose to migrate and settle in Mafinga. Chai Bora does not usually contribute to the education needs of the community. The firm only contributed chairs once, following a call from the national government. Local government representatives have reportedly tried to reach out to Chai Bora to request that they contribute more,</p>
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	but no response had yet been received at the time when fieldwork was conducted.
<i>Engagement with the community</i>	<p><u>Unilever</u>: There does not seem to be a strong relationship between the company and community members, who have reportedly tried to reach out to the company about the lack of access to water but were unsuccessful.</p> <p><u>MTC</u>: The firm seems to have a good relationship with community members, mostly through local government representatives. However, it was reported that the roads in the area were not safe, although a manager said that they contributed towards road maintenance when they had the funds. Local government representatives said that the company took complaints on board and that Fairtrade had improved their relationship as MTC now contributes more (e.g. Itona's secondary school and dispensary; laboratory for science classes; funeral expenses). The community seems to be highly aware of the Fairtrade certification (e.g. loans to community members were mentioned by interviewees). Manager said that they make a monthly contribution towards the district council's social responsibility fund. Local government representatives have regular meetings with the company, although at the time when fieldwork was conducted, no relationship had yet been established with MTC's new investor.</p> <p><u>Chai Bora</u>: There does not seem to be a relationship between the company and community members. A manager said that they contributed to community needs when asked, but local government representatives said that the firm did not reply to letters.</p>
<i>Land rights</i>	<u>All companies</u> : not a problem. All companies started operating decades ago and have not expanded since. There was no report of land issues at the time when companies started operating.
<i>OTHER ISSUES</i>	
<i>Security</i>	<p><u>Unilever</u>: There were no reported issues with the firm's security guards' behaviour. A small part of their services has been outsourced (control room with CCTV).</p> <p><u>MTC</u>: There were no reported issues with the firm's security guards.</p>

	<p><u>Chai Bora</u>: There were no reported issues with the firm's security guards' behaviour. The company's security services have been outsourced to an external company.</p>
Mechanisation of tea work	<p><u>Unilever</u>: Full mechanisation of one estate, which led to lay-offs; introduction of scissors in the rest of the firm's estates (only used by permanent workers), after which several workers complained of arm and chest pains.</p> <p><u>MTC</u>: Kibena Tea Limited (includes 2 estates: Itombe and Lukogosa) has been fully mechanised. The production on the rest of the estates is only about 5% mechanised (but the firm is moving towards greater mechanisation to save money on labour).</p> <p><u>Chai Bora</u>: There was no report of mechanisation of the firm's activities.</p>
Difficulties linked to the nature of tea work	<p><u>Unilever</u>: A worker said that tea work was a very hard job; it affects their hands, their back, their chest (including because the basket is heavy). If they find another source of income, they will take it and not work in tea plantations anymore.</p> <p><u>MTC</u>: A worker worked there for two years but did not renew their contract when it ended because picking tea is hard work and they wanted to get some rest.</p>