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Slavery Still Exists and May Have Produced Your Hairdryer

Katherine Pratty

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COMMENTS

SLAVERY STILL EXISTS, AND MAY HAVE PRODUCED YOUR HAIRDRYER

KATHERINE PRATTY*

In 2020, the International Labour Organization (“ILO”) estimated that forced labor generated \$51 billion USD. Many profiteers are not individual bad actors, but rather, corporations. Recently it came to light that one corporate profiteer is the multinational technology manufacturing company, creator of the most awarded hair care device in 2021: Dyson Limited. While Dyson has received praise for its products, Malaysia charged Dyson’s main production factory, ATA IMS, with labor law violations. Shortly thereafter, in February 2022, UK law firm Leigh Day publicly announced its suit against Dyson on behalf of the workers in Dyson’s Malaysia factory.

This Comment analyzes the United Kingdom’s and Malaysia’s international obligations and their respective adherence to those obligations. Ultimately, this Comment finds Malaysia in compliance with its obligations and finds that the United Kingdom is in violation

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of the Protocol of 2014 to the Forced Labour Convention, 1930 for its failure to sanction Dyson. This Comment recommends the United Kingdom sanction Dyson and work with Malaysia to investigate whether corruption facilitated forced labor. Finally, this comment recommends that anti-slavery practitioners employ follow the money techniques to better discover and sanction corporate perpetrators of slavery.

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I. INTRODUCTION

Slavery still exists today.¹ It takes many forms and is called many names, including, human trafficking, debt bondage, and forced labor.² However, each of these terms refers to the enslavement of real people being forced to work for little to no pay under the threat of force, fraud, or coercion.³ Tragically, there are more people enslaved right now than there were at the height of the transatlantic slave trade.⁴ Today, nearly all electronics are manufactured using slave labor at some point in the supply chain, usually at the mining level.⁵ Despite the clear

1. See *What Is Modern Day Slavery?*, VOICES4FREEDOM, <https://www.voices4freedom.org/what-is-modern-day-slavery/> (last visited Feb. 10, 2023) (explaining that not only does slavery still exist, but that there are more slaves today than ever before) [hereinafter VOICES4FREEDOM].

2. See *id.* (explaining that modern-day slavery consists of, among other things, forced labor and human trafficking).

3. See *id.* (explaining that the international definition of human trafficking includes any act where the trafficker uses force, fraud, or coercion to exploit another person for their labor or for sex).

4. See Thomas Lewis, *Transatlantic Slave Trade*, ENCYCLOPEDIA BRITANNICA (July 7, 2023) <https://www.britannica.com/topic/transatlantic-slave-trade> (estimating that 10 to 12 million African people were transported and enslaved during the transatlantic slave trade from the 16th to the 19th centuries); see also Int’l Lab. Org. [ILO] et al., *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, at 2 (Sept. 2022), [hereinafter *Global Estimates of Modern Slavery*] (estimating that approximately 49.6 million people worldwide are in situations of modern slavery right now).

5. Cf. Sebastian Klovig Skelton, *Tech Sector Efforts to Root Out Forced*

reality that slavery remains a critical component of the modern economy,⁶ only a small majority of nation states have made significant anti-slavery efforts by criminalizing slavery in their respective domestic legislatures.⁷ However, ninety-four nations have yet to criminalize slavery; in these countries, slavery is still legal.⁸ In recognition of the shocking reality that slavery still exists in 2023, this paper employs the term “modern slavery” to refer to what many others call human trafficking, though the terms are largely interchangeable.⁹

The United Kingdom (“UK”) is one nation that has been a leader in the anti-modern slavery movement, having implemented the highest quantity of anti-slavery legislation.¹⁰ The UK has explicitly professed its intention to “lead the charge in eradicating modern slavery,” and has largely carried out this intention.¹¹ In 2015, the UK’s legislature

Labour Are Failing, COMPUTERWEEKLY.COM (July 1, 2022), <https://www.computerweekly.com/feature/Tech-sector-efforts-to-root-out-forced-labour-are-failing> (explaining the prevalence of slavery in the production of technology products).

6. See Chandran Nair, *The Developed World Is Missing the Point About Modern Slavery*, TIME MAG. (June 20, 2016), <https://time.com/4374377/slavery-developed-developing-world-index-slave-labor/> (last visited Mar. 10, 2023) (“What needs to be remembered is that the global economic order demands cheap goods and services . . . However, goods and services cannot be provided cheaply without cheap labor . . . Multinational companies make their money [by, for example,] paying a Chinese migrant worker \$3 per hour to make a \$750 iPhone . . . Such is the nature of the global economy and the part it plays in modern-day slavery”).

7. See *Domestic Law: Slavery and the Slave Trade*, ANTISLAVERY IN DOMESTIC LEGIS., <https://antislaverylaw.ac.uk/map/> (select “Domestic Law” under first drop down and select “Domestic Law: Slavery and the Slave Trade” on the next) [hereinafter “Status of Antislavery in Domestic Legislation”] (demonstrating that many nation states do not have provisions addressing slavery).

8. Sonia Elks, *Slavery is Still Legal in 94 Countries - How Can We Change That?* WORLD ECON. F. (Feb. 19, 2020) <https://www.weforum.org/agenda/2020/02/slavery-not-a-crime-in-half-the-countries-of-world-new-research/> (last visited Mar. 10, 2023).

9. U.S. DEP’T OF STATE, *What Is Modern Slavery?* <https://www.state.gov/what-is-modern-slavery/> (last visited Aug. 12, 2023) (explaining that the terms “trafficking in persons,” “human trafficking,” and “modern slavery” are umbrella terms for sex trafficking and forced labor).

10. See generally JENNY S. MARTINEZ, *THE SLAVE TRADE AND THE ORIGINS OF INTERNATIONAL HUMAN RIGHTS LAW* 14–15 (2012).

11. See Press Release, U.K. Foreign & Commonwealth Office, *UK Leads the Charge in Eradicating Modern Slavery*, (Oct. 3, 2018) (claiming that the United Kingdom has been a leader in fighting against modern slavery and highlighting some

enacted the first domestic policy of its kind requiring corporate reporting and accountability compliance in support of modern slavery-free businesses and supply chains: the Modern Slavery Act 2015.¹² In the international policy space, the UK has demonstrated its commitment to developing and effectuating anti-slavery laws through its historic participation in international anti-slavery treaties; the UK is party to ten.¹³ In addition to the Modern Slavery Act 2015, the UK has enacted six other domestic legislative provisions against slavery.¹⁴

Despite the appearance that the UK is committed to ending modern slavery through quantifiable international obligations and domestic legislature, its response to allegations against one corporation clearly under the UK's jurisdiction reveals otherwise.¹⁵ In February of 2022, UK law firm Leigh Day publicly announced its suit against Dyson Limited ("Dyson") on behalf of workers in Dyson's Malaysia factory.¹⁶ The underlying crime alleged in the suit is the perpetration of forced labor.¹⁷ These allegations against Dyson (which is incorporated in Singapore,¹⁸ has a UK subsidiary, conducts extensive

of the UK's efforts in this regard).

12. Raj Panasar, *The Modern Slavery Act 2015: Next Steps for Businesses*, HARV. L. SCH. F. ON CORP. GOVERNANCE (March 10, 2017), <https://corpgov.law.harvard.edu/2017/03/10/the-modern-slavery-act-2015-next-steps-for-businesses/> (last visited Feb. 10, 2023) (explaining that under the Modern Slavery Act, the UK requires large companies to publish annual reports explaining their efforts to combat slavery).

13. See *United Kingdom of Great Britain and Northern Ireland*, ANTISLAVERY IN DOMESTIC LEGIS., <https://antislaverylaw.ac.uk/country/united-kingdom-of-great-britain-and-northern-ireland/> [hereinafter "UK Domestic Legislation"] (stating that the UK is party to the 1926 Slavery Convention, the 1953 Protocol to the Slavery Convention, the 1956 Supplementary Slavery Convention, the International Covenant on Civil and Political Rights, the 1930 Forced Labour Convention, the 2014 Protocol to the 1930 Forced Labour Convention, the 1957 Abolition of Forced Labour Convention, the Worst Forms of Child Labour Convention, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, and the Rome Statute of the International Criminal Court).

14. *Id.* (listing the six statutes the UK has passed to combat modern slavery).

15. See *infra* Part III.A.i.

16. *Dyson Accused of Forced Labour and Dangerous Conditions by Migrant Workers in Malaysian Factory*, LEIGH DAY (Feb. 10, 2022) <https://www.leighday.co.uk/news/news/2022-news/dyson-accused-of-forced-labour-and-dangerous-conditions-by-migrant-workers-in-malaysian-factory/>.

17. *Id.*

18. *Dyson to Move Global HQ to Historic Singapore Building*, BBC (Nov. 29,

business in the UK where it was previously incorporated,¹⁹ and manufactures all of its products primarily in Malaysia)²⁰ implicate the company's violation of international forced labor regulations.²¹ Additionally, the UK's failure to file sanctions against Dyson implicates the UK as in violation of its international law commitments.²²

This Comment argues that, if the allegations against Dyson and their long-term manufacturer in Malaysia are true, then the United Kingdom is in violation of the Protocol of 2014 to the Forced Labour Convention, 1930 because the UK has not sanctioned Dyson's UK subsidiaries. Part II of this Comment provides a brief historical background of the United Kingdom's stance against slavery and modern slavery.²³ Additionally, Part II introduces the Forced Labour Convention, 1930 and its 2014 amendment.²⁴ After establishing an understanding of the key provisions of the Protocol that require signatories to act, Part III discusses whether and how the allegations require the United Kingdom to act.²⁵ Additionally, Part III analyzes two of the United Kingdom's legal instruments that could be used to remedy the its breach of the Protocol: the Modern Slavery Act and the UK Bribery Act ("UKBA").²⁶ Because modern slavery frequently intersects with corruption,²⁷ the allegations of forced labor in Dyson's factory in Malaysia support the inference that Dyson is likely also in

2019) <https://www.bbc.com/news/business-50596775> [hereinafter BBC] (stating that Dyson announced in January 2019 that it would move its headquarters to Singapore).

19. *Id.*

20. David Gow, *Dyson Profits from Malaysian Move*, THE GUARDIAN (Nov. 7, 2003) <https://www.theguardian.com/business/2003/nov/08/4> (last visited Mar. 10, 2023) ("Dyson, the domestic appliance maker, is on course to double its profits this year after its contentious decision to shift production of its bagless vacuum cleaners and 800 jobs to low-cost Malaysia").

21. *See infra* Part III.

22. *See infra* Part III.C.

23. *See infra* Part II.A.

24. *See infra* Part II.B.

25. *See infra* Part III.A.

26. *See infra* Part III.B.

27. *See Corruption & Labor Trafficking in Global Supply Chains*, VERITÉ (2013), <https://www.verite.org/wp-content/uploads/2016/11/WhitePaperCorruptionLaborTrafficking.pdf> [hereinafter *Corruption and Labor*] (explaining how human trafficking is often tied to corruption).

violation of the UKBA.²⁸ Extraterritorial jurisdiction under the UKBA would apply to any corrupt acts made in furtherance of keeping the illegal labor practices in Dyson's factory in Malaysia in operation.²⁹ Therefore, this Comment argues that the UK is obligated to prosecute Dyson via the UKBA in order to satisfy its obligations under the Forced Labour Convention, 1930 and its Protocol introduced in 2014.³⁰ In recognition of the scale of modern slavery and the global commitment to ending modern slavery,³¹ Part IV recommends that the UK make better use of the UKBA to sanction corporations for corrupt acts made in furtherance of the corporation's continued benefit of forced labor in their supply chains.³² Additionally, Part IV recommends that more countries adopt anti-corruption legislature like the UKBA the United States' counterpart, the Foreign Corrupt Practices Act.³³

II. BACKGROUND

A. THE UNITED KINGDOM'S HISTORICAL ROLE IN CHAMPIONING INTERNATIONAL TREATIES AGAINST FORCED LABOR: A STRONG START FOR ENGLAND

This section discusses the history of the codification and the UK's role in enacting anti-slavery international treaties. The first international anti-slavery treaty came with the end of the transatlantic slave trade in the nineteenth century.³⁴ This began the UK's longstanding role as leader of the charge against slavery.³⁵ Despite the fact that abolitionist policies impose significant economic costs,³⁶

28. See *infra* Part III.A.i.

29. Bribery Act 2010, c. 23 §§ 1(4), 3(6)(a)–(b) (U.K.) [hereinafter "UKBA"].

30. See *infra* Part III.B.ii.

31. See generally *UN and Partners Launch Initiative to End 'Modern Slavery' of Human Trafficking*, UN NEWS (Mar. 26, 2007), <https://news.un.org/en/story/2007/03/213492> (explaining how in 2007, the U.N. and international NGOs launched an initiative to combat human trafficking).

32. See *infra* Part IV.A.

33. See *infra* Part IV.B.

34. Claude E. Welch Jr., *Defining Contemporary Forms of Slavery Updating a Venerable NGO*, 31 HUM. RTS. Q. 70, 83 (2009) (explaining how the Brussels Act of 1890 was the first comprehensive anti-slavery treaty).

35. Cf. MARTINEZ, *supra* note 10, at 14.

36. *Id.* (explaining that there was evidence that the UK's decision to embrace a

Great Britain initiated a series of anti-slavery treaties to begin the end of the transatlantic slave trade.³⁷ Its status as the greatest naval power at the time empowered enforcement of the treaties against slavery; when slave vessels passed through British waters, Great Britain would seize the ship and prosecute the ship owners in British courts.³⁸

By 1900, traditional forms of slavery were illegal in every country in the Western Hemisphere.³⁹ In 1927, the Convention to Suppress the Slave Trade and Slavery entered into force, which was ratified by 45 States, of which Malaysia was not one.⁴⁰ Three years later, the Forced Labour Convention, 1930 (“C029”) was adopted at the fourteenth International Law Commission in Geneva.⁴¹ C029 required ratifying States to take measures to suppress the use of forced labor by, among other measures, “adequately” making it a strictly enforced penal offense.⁴² Notably, C029 did not define “adequately” besides providing the example of enforcing strict liability.⁴³ Ten years after its entering into force, only sixteen States had ratified C029.⁴⁴ The United Kingdom was the first to ratify the treaty.⁴⁵ Today there are 180 ratifications, meaning only seven States abstained.⁴⁶

B. THE FORCED LABOUR CONVENTION, 1930, AND THE 2014 PROTOCOL TO THE CONVENTION

The next advances in international instruments against slavery after C029 came in the 1950's.⁴⁷ In 1953, the United Nations introduced the

policy of abolition imposed economic costs).

37. UK Domestic Legislation, *supra* note 13.

38. MARTINEZ, *supra* note 10, at 14.

39. *Id.*, at 13.

40. Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1927, 60 L.N.T.S. 253 [hereinafter CSSTS].

41. Forced Labour Convention, 1930 (No. 29), May 1, 1932, 1444 UNTS 612, [hereinafter “C029”].

42. *Id.* art. 1, 25.

43. C029, *supra* note 41 art. 1, 25.

44. *Ratifications of C029 - Forced Labour Convention, 1930 (No. 29)*, INT'L LAB. ORG., https://ilo.org/dyn/normlex/enf?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312174 (last visited Feb. 11, 2023) [hereinafter *Ratifications of C029*].

45. *Id.*

46. *Id.*

47. G.A. Res. 794 (VIII), Protocol to the Slavery Convention, 1927, pmbli., art.

Protocol to the Slavery Convention, 1927, amending the Convention to substitute the international agencies in place at the time of introduction, during the era of the League of Nations, for the newly created United Nations and international courts.⁴⁸

Two other treaties, the Supplementary Convention on the Abolition of Slavery and the Abolition of Forced Labour Convention came next, entering into force in 1957 and 1959, respectively.⁴⁹ Largely without specifying the means, the Supplementary Convention on the Abolition of Slavery, in acknowledgment of the preceding international instruments' failure to eliminate the practice of slavery, imposed another undefined and vague "requirement" that signatories take "effective" means to abolish slavery.⁵⁰ The Abolition of Forced Labour Convention, enacted by the ILO, introduced a new requirement that signatories themselves not use forced labor.⁵¹

The next international treaty to address modern slavery came in 1966 with the International Covenant on Civil and Political Rights ("ICCPR").⁵² The ICCPR included an article that simply prohibited slavery "in all their forms," one of which was explicitly identified as "forced or compulsory labor."⁵³ After the ICCPR came the Rome Statute of the International Criminal Court ("ICC") in 1998, which listed slavery as a crime against humanity.⁵⁴ One of the most successful international treaties in history, the Worst Forms of Child Labour Convention, was adopted in 1999.⁵⁵ By 2020, all member

V ¶ 5–11 (Dec. 7, 1953); Economic and Social Council Res. 608 (XXI), The Abolition of Forced Labour Convention (Apr. 30, 1956); Convention Concerning the Abolition of Forced Labour, Jan. 17, 1959, 40 ILO.

48. Protocol to the Slavery Convention, *supra* note 47, at pmbl., art. V ¶ 5–11.

49. See The Abolition of Forced Labour Convention, *supra* note 47; see also Convention Concerning the Abolition of Forced Labour, *supra* note 47.

50. The Abolition of Forced Labour Convention, *supra* note 47, art. 3(2).

51. *Id.*

52. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 571 [hereinafter ICCPR].

53. *Id.* at art. 8

54. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 38544, art. 7(1)(c).

55. Worst Forms of Child Labour Convention, 1999 (No. 182), June 17, 1999, 87 ILC, <https://www.ohchr.org/sites/default/files/childlabour.pdf> (last visited Mar. 10, 2023) [hereinafter "C182"].

states party to the ILO had ratified the Convention,⁵⁶ which requires signatories to criminalize child labor and to design, implement, and monitor programs to address the root causes of child labor including poverty and education.⁵⁷

The next treaty was the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, often referenced in anti-modern slavery communities as the “Palermo Protocol.”⁵⁸ Interestingly, possibly due to the high number of signatories to the Palermo Protocol,⁵⁹ the treaty has increasingly been the subject of practitioner and advocate frustration, inciting the question of why slavery still exists twenty years since the enactment of the Palermo Protocol.⁶⁰

Fourteen years since the introduction of the Palermo Protocol, the International Labour Organization amended the Forced Labour Convention, 1930.⁶¹ Despite the amendment’s preamble professing the purpose of amending the Convention C029 being to account for gaps in the implementation of C029 and C105 (the Abolition of Forced Labour Convention), it is important to note that the Palermo Protocol, which came after C029 and C105, also failed to address enforcement gaps.⁶² Unsurprisingly, considering the UK’s longstanding commitment to anti-slavery treaties, the UK was among the first to

56. *Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)*, INT’L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 (last visited Mar. 10, 2023) [hereinafter *Ratifications of C182*].

57. C182, *supra* note 62, art. 5–7.

58. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter “Palermo Protocol”].

59. *See id.*

60. *See, e.g.,* Soumya Silver, *Twenty Years After the Passage of the Palermo Protocol: Identifying Common Flaws in Defining Trafficking through the First Global Study of Domestic Anti-Trafficking Laws*, 40 YALE L. & POL’Y REV. 336 (2021); *see also* Laura L. Shoaps, *Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act*, 17 LEWIS & CLARK L. REV. 931 (2013).

61. Protocol of 2014 to the Forced Labour Convention, 1930, pmbl., Nov. 9, 2016, 103 ILO [hereinafter “P029”].

62. *See id.*

ratify C029, C105, and P029.⁶³

One year after the enactment of P029, the United Kingdom passed the Modern Slavery Act, an internationally unprecedented piece of domestic legislation that, among other things, requires businesses with requisite connections to the UK and that generate at least £36 million per year implement and publish their efforts to keep modern slavery out of their supply chains (“transparency obligations”).⁶⁴ Interestingly, the UK Modern Slavery Act does not impose financial penalties on corporations that fail to comply with the it.⁶⁵ The UK Modern Slavery Act could be seen as satisfying the “effective measures to prevent and eliminate [the] use [of forced labor]” element and the “provide to victims protection and access to appropriate and effective remedies” element of P029 Article 1.⁶⁶ However, as will be further explored in Part III of this Comment, the absence of financial sanctions from the UK Modern Slavery Act is a critical flaw making the UK in violation of P029.⁶⁷ In contrast, Malaysia is party to C029, was party to C105, but denounced C105 in 1990 and joined P029 on March 21, 2022, meaning that P029 will enter into force for Malaysia on March 21, 2023.⁶⁸ Uniquely, P029 is the only treaty to require signatories to

63. Ratifications of C029, *supra* note 44; INTERNATIONAL LABOUR ORGANIZATION, *Ratifications of C105 - Abolition of Forced Labour Convention, 1957 (No. 105)* https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312250:NO (last visited Feb. 12, 2023); INTERNATIONAL LABOUR ORGANIZATION, *Ratifications of P029 - Protocol of 2014 to the Forced Labour Convention, 1930* https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672 (last visited Mar. 10, 2023).

64. Modern Slavery Act 2015, UK Pub. Gen. Acts 2015 c. 30 (U.K.).

65. *See id.*; Sean Elson, *Modern Slavery Transparency Failings to Lead to UK Fines*, PINSENT MASONS (Jan. 20, 2021) <https://www.pinsentmasons.com/out-law/news/modern-slavery-transparency-failings-to-lead-to-uk-fines> (stating that U.K. foreign secretary Dominic Raab confirmed “the UK government’s intentions to ‘introduce fines for businesses that do not comply with their transparency obligations’” under the Modern Slavery Act).

66. *See* Modern Slavery Act 2015, *supra* note 64, §§ 8, 14–22, 45–53 (creating reparations for victims of trafficking, prevention orders to keep perpetrators from trafficking others again, and protection mechanisms for victims of trafficking in civil and criminal proceedings); P029, *supra* note 61, arts. 1(1), 3, 4.

67. *See infra* Part III.A.

68. *Ratifications of C029, supra* note 44; *Ratifications of C105, supra* note 63; *Ratifications of P029, supra* note 63.

impose sanctions for slavery.⁶⁹

Clearly the UK has more anti-slavery legislation and international commitments than Malaysia, which is party to only four international treaties⁷⁰ and has a longstanding history of corruption which often renders its domestic laws ineffective against preventing and prosecuting crime.⁷¹ But despite the UK's greater demonstrated commitment to ending modern slavery in quantifiable international obligations and domestic legislature than Malaysia,⁷² recent allegations brought against Dyson reveal another story.⁷³

Despite the historic and modern contrasts between Malaysia's and the UK's public efforts to address slavery and modern slavery, Part III of this Comment will argue that Malaysia is already in compliance with P029 before it has even come into effect there. Part III of this Comment will also argue that the United Kingdom is in violation of P029, despite being equipped with a legal mechanism that, if utilized, would make the UK compliant with P029.⁷⁴

69. P029, *supra* note 61.

70. *Compare* UK Domestic Legislation, *supra* note 13 (explaining that the UK is party to nine anti-slavery treaties), *with* Malaysia, ANTISLAVERY IN DOMESTIC LEGIS., <https://antislaverylaw.ac.uk/country/malaysia/> (last visited Feb. 10, 2023) [hereinafter "Malaysia Domestic Legislation"] (listing that Malaysia is party to four anti-slavery treaties: the 1956 Supplementary Slavery Convention, the 1930 Forced Labour Convention, the Worst Forms of Child Labour Convention, and the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons).

71. *Country Data: Malaysia*, TRANSPARENCY INT'L <https://www.transparency.org/en/countries/malaysia> (last visited Feb. 11, 2023) (finding that 71% of people think government corruption is a big problem in Malaysia according to the most recent publication of the Global Corruption Barometer in 2020).

72. *Compare* Malaysia Domestic Legislation, *supra* note 70, *with* UK Domestic Legislation, *supra* note 13.

73. *See* A. Ananthalakshmi, *Malaysia Charges Dyson Supplier ATA with Labour Law Violations* REUTERS (Dec. 11, 2021), <https://www.reuters.com/world/asia-pacific/malaysia-probes-dyson-supplier-ata-over-labour-complaints-2021-12-11/>; *see also* Aruna Kashyap, *Workers Sue Dyson on Allegations of Forced Labor in Malaysian Supplier: Case Should Drive Scrutiny of Social Audits Industry*, *Transparency Long Overdue*, HUM. RTS. WATCH (Feb. 14, 2022), <https://www.hrw.org/news/2022/02/14/workers-sue-dyson-allegations-forced-labor-malaysian-supplier> (revealing the failures of Dyson's Modern Slavery and Human Trafficking Statement from 2020, a social audit policy means to comply with the UK's Modern Slavery Act).

74. *See supra* Part III.

III. ANALYSIS

A. BECAUSE MALAYSIA SANCTIONED ATA IMS FOR VIOLATING MALAYSIAN LABOR LAWS PROBATIVE OF FORCED LABOR, MALAYSIA IS IN COMPLIANCE WITH P029

1. The Allegations Against ATA IMS Contain Facts Probative of Forced Labor

Leigh Day, a UK law firm, is representing twenty four Bangladeshi and Nepalese migrants in an action against Dyson for negligence, false imprisonment, and unjust enrichment of the forced labor the laborers performed at the intimidation of their former “employer,” ATA IMS, a long-term supplier of parts for Dyson, a formerly UK-based houseware appliance manufacturer.⁷⁵ The former workers allege that their claims arose out of the working conditions they were subjected to, which amount to forced labor.⁷⁶

One ATA IMS employee tried for years to get help, sending letters and photographs to a British human and labor rights activist, Andy Hall.⁷⁷ Mr. Hall understood the information he received to be evidence of illegal recruitment fees and debt bondage, a form of forced labor.⁷⁸ The materials sent to Andy Hall demonstrated that the illegal debt imposed on the ATA IMS migrant workers was deducted from their wages.⁷⁹ In addition to the imposition of an illegal debt, the ATA IMS workers were forced to work for no less than twelve hours a day, in

75. Matt Oliver, *Dyson to Fight Lawsuit Alleging Use of Forced Labour at Malaysian Supplier's Factory: Tech Company Insists Ex-Contractor is Responsible for any Abuses Following Concerning Audit*, THE TELEGRAPH (Oct. 10, 2022) <https://www.telegraph.co.uk/business/2022/10/10/dyson-fight-lawsuit-alleging-use-forced-labour-malaysian-factory/> (reporting that “a High Court claim by 24 Bangladeshi and Nepalese migrants who worked for one of the company’s ex-contractors seeks compensation for alleged negligence, false imprisonment and unjust enrichment”).

76. *Id.*

77. *Id.*

78. *Id.*; *Business and Forced Labour*, INT’L LAB. ORG. <https://www.ilo.org/empent/areas/business-helpdesk/WCMSDOCENTHLPFLEN/langen/index.htm> (last visited Mar. 10, 2023) (reporting that debt bondage, one kind of modern slavery, “is another way many workers end up in a situation of forced labour”).

79. Oliver, *supra* note 75.

violation of Malaysian labor law.⁸⁰

One of the workers party to the suit against Dyson told Channel 4 News that the local police in Malaysia tortured him in 2019 for whistleblowing on the illegal working conditions.⁸¹ He claimed that he raised issue of the unlawful working conditions that he and his fellow workers were subjected to in the factory.⁸² Another former employee was apparently beaten after being taken into custody,⁸³ raising the already very high possibility that corruption enabled the forced labor scheme at ATA IMS to continue.⁸⁴

2. *Actions Taken by Malaysia and Statistical Evidence Both Support Claims of Forced Labor at ATA IMS*

In 2021, Malaysia began investigating ATA IMS after receiving numerous complaints of forced labor.⁸⁵ Malaysia charged ATA IMS with four violations of labor laws as a result of the investigations.⁸⁶ Dyson claims to have conducted its own independent audit due to accusations brought to it by a whistleblower.⁸⁷ Dyson claims to have launched the audits immediately after receiving the allegations from the whistleblower.⁸⁸ Because of the independent investigation's findings, Dyson announced that it would be ending its contract with

80. *Id.*; The Employment (Amendment) Act (2022) (Malay.) (imposing an eight-hour work day limit).

81. Darshna Soni, *Exclusive: Dyson Faces Legal Action Over 'Forced Labour' and Exploitation*, BUS. & HUM. RTS. RES. CTR. (Feb. 14, 2022) <https://www.business-humanrights.org/en/latest-news/exclusive-dyson-faces-legal-action-over-forced-labour-and-exploitation/>.

82. *Id.* (stating that, according to a Leigh Day partner, the workers "lived in unsanitary and crowded accommodation, and they lived under the constant threat of punishment and persecution by the factory management if they didn't adhere to what they wanted them to do").

83. Oliver, *supra* note 75.

84. Corruption and Labor, *supra* note 27 (demonstrating the correlation between corruption and slavery).

85. Ananthalakshmi, *supra* note 73 (reporting that the department that inspected ATA IMS in February, May, and July charged the factory with "violations of minimum standards for worker accommodation").

86. *Id.*

87. *See id.* (stating that the company severed ties with ATA following an independent audit and whistleblower accusations).

88. *Id.*

ATA.⁸⁹ The timing suggests that Dyson might have only severed their ties with ATA IMS because Malaysia cited the factory for labor law violations.⁹⁰ Malaysia launched its own investigation on forced labor and found four labor law violations.⁹¹

In addition to the facts specific to the exploitation of these twenty-four migrant workers, statistical and qualitative research supports the likelihood that exploitation and corruption were afoot in the alleged conditions.⁹² ATA's workforce was mostly comprised of migrant workers, whom Malaysia found worked illegally excessive overtime.⁹³ The twenty-four workers bringing the suit against Dyson are all Bangladeshi and Nepalese migrant workers.⁹⁴

A study from 2010 by Manandhar and Adhikar, a pair of researchers from the World Bank, provides further evidence suggesting that the ATA IMS workers were not only exploited once "employed" in the factory, but also might have been trafficked into Malaysia through methods of bribery and corruption.⁹⁵ A more recent report by the World Bank estimated that between 2018 and 2020, the Malaysian government hosted 1.4 to 2 million documented migrants and an estimated 1.2 to 3.5 million additional undocumented migrants.⁹⁶ These figures make Malaysia "one of the largest migrant-receiving country (sic) in Southeast Asia."⁹⁷ Unfortunately, substantial data exists to suggest that Malaysia engages in corrupt migration practices.

Malaysia is the second-biggest destination for Nepali workers.⁹⁸ Corruption in Nepal's foreign employment industry is estimated to amount to over \$194.7 million USD per year.⁹⁹ The large scale of

89. *Id.*

90. *See id.*

91. *Id.*

92. *See* Corruption and Labor, *supra* note 27 (finding that there is a direct correlation between corrupt labor practices and human trafficking).

93. Ananthalakshmi, *supra* note 73.

94. Oliver, *supra* note 75.

95. *See* Corruption and Labor, *supra* note 27.

96. *See* Malaysia, <https://www.iom.int/countries/malaysia> (last visited Feb. 12, 2023) (reporting these figures against a population of 32.4 million people, making international migrants 8.2% of Malaysia's total population).

97. *Id.*

98. Corruption and Labor, *supra* note 27.

99. *Id.*

corruption in Nepal is largely credited to the many procedural requirements that domestic recruitment agencies must meet to send workers abroad legally.¹⁰⁰ For example, an agency must first deliver a demand letter to the Department of Foreign Employment from the receiving country employer.¹⁰¹ The agency also must supply power of attorney, a guarantee letter, a valid employment contract and a service contract, and proof of life insurance for the employee.¹⁰² The Labor Department must verify these documents before granting permission for migration by stamping the worker's passport.¹⁰³ These regulations set forth in Nepal's Foreign Employment Act of 2007 overcentralize the document approval process and create many opportunities for bribery and corruption.¹⁰⁴

Since the World Bank exposed the corruption found in Nepal's Labor Department, Nepal moved the document verification process to its Department of Foreign Employment, which was the party that created the regulation scheme that enabled corruption in the first place.¹⁰⁵ Under the new regulatory scheme, documents must be verified by the receiving country's chamber of commerce.¹⁰⁶ Malaysia, the second-biggest destination for Nepali workers, "introduced a 'calling visa' for incoming migrant workers," which in effect requires companies to seek permission from the Malaysian Ministry of Home Affairs in order to receive a visa for a foreign contract worker.¹⁰⁷

Researchers Manandhar and Adhikar found that Nepalese workers are often deceived by Nepalese recruiters in the migration process and then exploited and abused by their Malaysian employers and brokers

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Verité, *supra* note 27.

107. *See id.* at 5 (noting that investigations are finding that "[f]raudulent demand letters—purportedly from employers in Malaysia—are used to secure calling visas, permission to migrate and ultimately work permits. The fake documents are frequently of such poor quality that they could only have been accepted if accompanied by a bribe or inducement.").

upon arrival to Malaysia.¹⁰⁸ Apparently to “mitigate the risk of fraudulent documentation and corrupt payments,[. . .] Malaysia introduced a ‘calling’ visa for incoming migrant workers—companies must seek permission from the Malaysian Ministry of Home Affairs to provide visas to proposed foreign contract workers.”¹⁰⁹ It is highly unfortunate that these reforms have in fact created further opportunities for corrupt practices.

The World Bank report found that fraudulent demand letters, purportedly from employers in Malaysia, are used to secure calling visas, documentation for permission to migrate, and work permits.¹¹⁰ The fake documents are frequently of such poor quality that they could only have been accepted if accompanied by a bribe or inducement.¹¹¹ This study demonstrates the likely connection between corruption and the forced labor at the ATA IMS factory. However, Malaysia only charged ATA IMS with labor law violations, not corruption charges.¹¹²

Regardless of Malaysia’s lack of action on the likely corruption that enabled the labor law violations for which it cited ATA IMS, Malaysia’s actions are probative of determining that forced labor was afoot at the ATA IMS factory.¹¹³ The important question that follows is whether Dyson should be held liable for the forced labor, which would require the UK to impose sanctions on Dyson.¹¹⁴ After determining in the following section that Dyson should be categorized

108. *See id.* at 4 (reporting that the study conservatively estimated corruption in the foreign employment industry in Nepal to amount to over \$194.7 million per year).

109. *See id.* at 5 (noting that, after Qatar, Malaysia is the top destination for Nepali migrant workers who are then ripe for exploitation and abuse by their Malaysian employers and brokers).

110. *See id.* (showing that these fraudulent documents are, unfortunately, the result of Nepal’s attempt to decrease fraudulent broker activities and discourage corruption).

111. *See id.* (noting that Nepal is not alone in turning a blind eye to brokers’ operations as, for example, government officials in the Philippines were recently charged with violations of the Anti-Graft and Corrupt Practices Act for similar acts).

112. *See Ananthalakshmi, supra* note 73 (stating that the four labor law violations had to do with “accommodation for workers” following complaints of forced labor).

113. *See id.* (quoting an email from Malaysia’s labor department, which clarified that, “[t]he complaints were mainly on allegations of appalling working and living conditions and foreign workers being forced to work excessive overtime hours.”).

114. *See, infra* Part III.B.

as a perpetrator of forced labor, this Comment will argue how the UK can and should sanction Dyson pursuant to P029.¹¹⁵

B. THE UNITED KINGDOM IS IN VIOLATION OF P029

1. The Facts Available Are Indicative of Dyson's Knowledge of, or at Least Willful Blindness to, the Illegal Working Conditions at ATA IMS

Dyson's billionaire chairman and founder, Sir James Dyson, decided to move its manufacturing base from the UK to Malaysia in 2002.¹¹⁶ Within the next year, Dyson doubled its profits.¹¹⁷ According to the Business & Human Rights Resource Centre, "[t]he ATA IMS group produces millions of parts and products each year for Dyson – including components for the Dyson Cool and Hot+Cool devices, Dyson Pure Cool devices, Dyson cordless vacuum cleaners, including the V7, V8, V10 and V11 models, Dyson lighting products, and Dyson electronic haircare products."¹¹⁸ The quantity of parts and products made at ATA IMS for Dyson each year,¹¹⁹ the huge increase in profits which Dyson enjoyed after sourcing its labor from ATA IMS,¹²⁰ and the proximity of Dyson's Malaysia office to the factory¹²¹ are all factors that provide huge incentives for Dyson to closely monitor the ATA IMS factory.

Leigh Day, the law firm representing the twenty-four former migrant workers at ATA IMS in Malaysia, alleges that Dyson has known about the forced labor conditions at ATA IMS since 2019.¹²²

115. Part III.B.

116. See Gow, *supra* note 20 (referencing the founder-owner's statement that "the surge in earnings and sales justified his decision" to shift production to Malaysia).

117. See *id.* ("Mr Dyson said his company expected to make about £40m profits this year compared with £18m in 2002 and £17m in 2001.").

118. See Soni, *supra* note 81 (noting that both Dyson and ATA categorically deny any wrongdoing).

119. See *id.* (approximating the number to be millions of parts and products each year since 2002).

120. See Gow, *supra* note 20 (anticipating that Dyson would double its profits after shifting production to Malaysia).

121. See Oliver, *supra* note 75 (stating that ATA's Johor Bahru Factory was one kilometer from Dyson's Malaysia office).

122. See *id.* (stating that Leigh Day relied on the emails from a British human rights activists to demonstrate Dyson's prior knowledge).

Andy Hall, the human rights activist who received letters and photographs from a whistleblower at ATA IMS, claims he “expressly warned” Dyson after he received the information.¹²³ Another proverbial brick in the wall of Dyson’s knowledge of the forced labor conditions is the location of the factory. ATA IMS was located only slightly over half a mile from Dyson’s office in Malaysia, and the High Court claim brought by the migrant workers alleges that “representatives were able to and did in fact regularly visit and observe the conditions at the factory.”¹²⁴

However, Dyson claims that it only learned of the illegal labor conditions at ATA IMS in October 2021, coincidentally directly after Malaysia’s audit and investigation of the factory produced four charges against ATA IMS for labor law violations.¹²⁵ Dyson’s stance is that it terminated its contracts with ATA IMS after its own independent audit of the factory.¹²⁶ Most importantly, Dyson claims that it cannot be held liable for the working conditions at ATA IMS.¹²⁷

i. Dyson’s Knowledge, or at least Willful Blindness, to the Forced Labor, and Dyson’s benefit from the Forced Labor Make Dyson Liable Under UK’s Modern Slavery Act and Likely the UK Bribery Act

Article 2 of the Forced Labour Convention, 1930 covers forced labor in all its forms, including debt bondage,¹²⁸ as was likely the form of forced labor to which the twenty four migrant workers in the suit

123. See *id.* (noting that Dyson has referred to the workers’ lawsuit as an “opportunistic claim . . . [that] should be brought against their employer, ATA . . .”).

124. See *id.*

125. See *id.* (stating that Dyson “terminated its supplier deal with ATA in November 2021, one month after it had received the audit findings.”); see Ananthalakshmi, *supra* note 73 (reporting that “Malaysia has charged Dyson supplier ATA IMS (ATAI.KL) with four violations of labour law on accommodation for workers as it investigates complaints of forced labour, authorities said on Saturday.”).

126. See Oliver, *supra* note 75 (noting that this investigation occurred in September 2021, approximately two months prior to Dyson’s receipt of the audit findings).

127. See *id.* (citing a Dyson spokesperson who urged the ATA employers to bring claims against their employer, which “manufactures products for a variety of brands in its Malaysian factories, not just Dyson.”)

128. See C029, *supra* note 41.

against Dyson were subjected, if Leigh Day's allegations are taken to be true.¹²⁹ The UK's Modern Slavery Act similarly applies "forced or compulsory labour and the circumstances are such that the [perpetrator] knows or ought to know that the [victim] is being required to perform forced or compulsory labour," which the Act requires be determined by the totality of the circumstances.¹³⁰ The totality of the circumstances test is a common method of legal analysis which requires examining the facts "in the light of all known and conceivable circumstances, excluding nothing and giving no one fact, action, or condition a controlling influence upon the assessment."¹³¹

Here, with regards to the allegations against Dyson, the circumstances include that the workers were subjected to illegally excessive overtime, were forced to work in unsanitary conditions, had their wages deducted to account for an illegal debt incurred by a fraudulent recruitment fee, and experienced threats of violence for whistleblowing or attempting to leave.¹³² These facts follow class debt bondage schemes common in many parts of the world¹³³ and are demonstrative of forced labor, satisfying the definitions provided by P029 and the Modern Slavery Act.¹³⁴

129. See Oliver, *supra* note 75 (noting that these claims were based on evidence that ATA workers faced demands for recruitment fees from the agencies who hired them).

130. Modern Slavery Act, *supra* note 64, § 1(b), 3 (making the test for slavery one that "[i]n determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances").

131. *Totality of the Circumstances*, BOUVIER LAW DICTIONARY (The Wolters Kluwer Bouvier Law Dictionary Desk Ed. 2012).

132. See Oliver, *supra* note 75 (stating that the complaint's allegations included claims that agencies who hired workers demanded recruitment fees, which were extracted through forced labor, in addition to the housing of workers in dirty and overcrowded accommodations); see also Soni, *supra* note 81 (quoting Leigh Day's claim that their clients "lived under the constant threat of punishment and persecution by the factory management if they didn't adhere to what they wanted them to do.").

133. See, e.g., VOICES4FREEDOM, *supra* note 1 (providing India's granite production as an example of one region where bonded labor slavery is used to meet economic demand).

134. See C029, *supra* note 41; P029, *supra* note 61, pmbl. ("Recalling that the definition of forced or compulsory labour under Article 2 of the Convention covers forced or compulsory labour in all its forms."); Modern Slavery Act, *supra* note 64, § 1(b), 3.

2. *The United Kingdom's Mandate as Member: Imposing Sanctions*

Because the United Kingdom has signed and ratified P029,¹³⁵ it is obligated to abide by the mandatory provisions of the Protocol.¹³⁶ The first Article of the Protocol states three requirements that all Members are obligated to perform:

Each Member shall take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.¹³⁷

The first requirement set forth in Article 1(1) is that each Member “take effective measures to prevent and eliminate” the use of forced labor.¹³⁸ It could be argued that the UK, and all other parties to P029, are in violation of P029 because forced labor has not been effectively prevented and eliminated,¹³⁹ but rather has grown according to recent estimates by the ILO.¹⁴⁰ Forced labor still exists even in the UK, with incident rates as high as in the thousands.¹⁴¹ This estimation pales in comparison to the estimated number of instances of forced labor in other parts of the world, but it should go without saying that all countries should work to eliminate forced labor and other forms of slavery from their own soil.¹⁴²

Nevertheless, this incident of forced labor in Dyson’s supply chain in Malaysia demonstrates the importance of examining the law of the

135. *See Ratifications of P029, supra* note 63.

136. *See* P029, *supra* note 61.

137. *Id.*, art. 1(1).

138. *Id.*

139. *Id.* (requiring that all signatories take effective measures to eliminate the use of forced labor, even though forced labor has not effectively been eliminated).

140. *See* Global Estimates of Modern Slavery, *supra* note 4 (finding that “[f]orced labour has grown by 2.7 million compared to findings from 2016, which is an increased prevalence of 3.4 to 3.5 per thousand people in the world.”).

141. *See* Alistair Geddes, *Forced Labour in the UK*, JOSEPH ROWNTREE FOUND. (June 27, 2013), <https://www.jrf.org.uk/report/forced-labour-uk> (reporting that “[a]vailable evidence suggests the number of people in the UK experiencing forced labour may run into thousands.”).

142. *See id.* (recommending “an effective multi-agency, cross-departmental strategy, to include measures against forced labour linked to trafficking and labour exploitation generally, concentrating on prevention and better awareness.”).

country of incorporation and other places of business.¹⁴³ Global trends demonstrate that businesses are moving their labor forces overseas, utilizing forced labor to cut costs,¹⁴⁴ or, in the case of Dyson, double their profits.¹⁴⁵ Besides the UK's violation of P029 for failing to eradicate forced labor, the allegations against Dyson demonstrate how the UK is in violation of P029 for failure to utilize the mechanisms available to sanction Dyson's UK subsidiary.¹⁴⁶

The second requirement set forth in P029 Article 1(1) is that members take effective measures "to provide to victims protection and access to appropriate and effective remedies."¹⁴⁷ The UK is likely in compliance with this requirement due to provisions set forth in Part 5 of the UK's Modern Slavery Act.¹⁴⁸

The last requirement listed in P029 Article 1(1) is the most specific, as it transcends the innocuous requirement that signatories "eliminate" forced labor through "effective measures" and provide access to "effective remedies" and protection for victims.¹⁴⁹ Rather, this last requirement requires signatories to "sanction the perpetrators of forced or compulsory labour."¹⁵⁰

In response to accusations of being in violation of P029 for failure to sanction Dyson, the UK would likely argue that the sanctions introduced in Article 1(1) are permissive recommendations, not a mandatory requirement.¹⁵¹ The UK could argue this because the sanctions clause employs the language "such as," and sanctions are

143. See P029, *supra* note 61, art. 5 ("Members shall cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour.").

144. See *Bus. & Forced Labour*, *supra* note 78 ("Eighty-six per cent of forced labour cases are imposed by private actors – 63 per cent in the private economy in sections other than commercial sexual exploitation.").

145. See Gow, *supra* note 20 (anticipating that Dyson would double its profits after shifting production to Malaysia).

146. See P029, *supra* note 61, art. 1(1).

147. *Id.*

148. Modern Slavery Act, *supra* note 64, §§ 45–53 (allowing victims of slavery various defenses against crimes committed while in servitude and creating special witness protections and civil legal services for asylum seeking victims of slavery).

149. See P029, *supra* note 61, art. 1.

150. *Id.*

151. *Id.*

clearly one of the means that the Protocol is recommending Members to the Protocol utilize to provide “protection and access to appropriate and effective remedies,” just as compensation is listed as a suggestion for effective remedies.¹⁵²

However, a close reading of Article 1(1) reveals otherwise. The phrase “each Member shall” implicates that what follows is mandatory for members.¹⁵³ Furthermore, the separation of “such as” from “and to sanction” places sanctions as the last of the four elements of the conjunctive, mandatory rule detailed in Article 1(1).¹⁵⁴ The rule reads that Members shall: (1) implement effective measures to eradicate forced labor; (2) create means of protection for victims of forced labor; (3) create accessible remedies for victims of forced labor, such as compensation; and (4) sanction perpetrators of forced labor.¹⁵⁵

Under P029, Members are required to sanction perpetrators of forced labor over whom they have jurisdiction.¹⁵⁶ P029 Article 6 states that “[t]he measures taken to apply the provisions of this Protocol and of the Convention shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned.”¹⁵⁷ The UK has domestic legislation that imposes extraterritorial jurisdiction over corporations that perpetrate slavery, including forced labor and related crimes.¹⁵⁸ The combined reading of Article 1(1), an article that requires Members sanction perpetrators of forced labor, and Article 6, an article that requires Members define perpetrators of forced labor and scope of jurisdiction by their own domestic laws, supports the following conclusion: the UK is required to utilize its mechanisms of imposing sanctions on Dyson for perpetrating forced labor in its supply chain in Malaysia.¹⁵⁹

152. *Id.*

153. *Id.*

154. *Id.*

155. *See id.*

156. *Id.* arts. 1, 6.

157. P029, *supra* note 61, art. 6.

158. *See* Modern Slavery Act, *supra* note 64; UKBA, *supra* note 29.

159. *See* P029, *supra* note 61, arts. 1, 6; Modern Slavery Act, *supra* note 64; UKBA, *supra* note 29.

i. *The Viability of Utilizing the Modern Slavery Act to Impose Sanctions*

The Modern Slavery Act, enacted by the UK in 2015, applies to corporations generating more than £36 million per year and conducting business in the United Kingdom.¹⁶⁰ The Act requires these corporations to “publish a transparency statement describing the steps they have taken in the last financial year to ensure their business and supply chains are free from modern slavery and human trafficking.”¹⁶¹ In 2022, Dyson generated £6.5 billion in revenue¹⁶² and conducted business in the UK¹⁶³ (in fact, Dyson used to be headquartered and incorporated in the UK before relocating to Singapore),¹⁶⁴ putting Dyson under the jurisdiction of the Modern Slavery Act.¹⁶⁵ In compliance with the Act’s transparency requirement, which was created to require corporations to audit their supply chains to ensure the non-use of slavery,¹⁶⁶ Dyson has a transparency statement published on its website.¹⁶⁷ However, Dyson’s published commitment to transparency in its supply chains is clearly insufficient in terms of preventing the use of forced labor.¹⁶⁸

On a macro level, many critics of the Modern Slavery Act argue that, as it currently stands, the Act hardly imposes adequate sanctions

160. Modern Slavery Act, *supra* note 64, § 54.

161. *Id.*

162. *2022: Dyson Grows Revenue and Increases Investment by 63%, Despite Significant Headwinds*, DYSON (Mar. 7, 2023) <https://www.dyson.co.uk/newsroom/overview/news/march-2023/Dyson-grows-revenue-and-increases-investment-despite-significant-headwinds> [hereinafter “Dyson 2022”].

163. *See Homepage*, DYSON, <https://www.dyson.co.uk/en> (last visited Mar. 12, 2023) (defaulting site country to the United Kingdom) [hereinafter “Dyson Homepage”].

164. BBC, *supra* note 18.

165. Modern Slavery Act, *supra* note 64.

166. *What is the Modern Slavery Act*, POLITICS.CO.UK <https://www.politics.co.uk/reference/modern-slavery-act/> (last visited Feb. 12, 2023) (stating that “firms must provide details on how they manage their supply chain relationships and any supplier code; the company’s modern slavery policy; their approach to risk assessment with an existing supplier; their policy in relation to vetting prospective suppliers; and any training they offer relating to efforts to tackle forced labour” through transparency statements).

167. *See* DYSON, DYSON MODERN SLAVERY STATEMENT 2021 (2021).

168. *See* Ananthalakshmi, *supra* note 73.

to deter corporations who use forced labor in their supply chains.¹⁶⁹ Though the UK Foreign Secretary, Dominic Raab, has indicated that the UK intends to “introduce fines for businesses that do not comply with their transparency obligations” in the future, under the Modern Slavery Act, the penalties and sentencing provisions only include the confiscation of assets to make slavery and trafficking reparations.¹⁷⁰

ii. The Viability of Using the UK Bribery Act to Impose Sanctions

The penalty provisions of the UKBA are far harsher and more frequently enforced than the reparations provision of the Modern Slavery Act.¹⁷¹ The UKBA defines “bribery acts” as either “case 1” or “case 2” situations.¹⁷² Both “case 1” and “case 2” offenses require as a first element that an offer, promise, or financial advantage be given to another person.¹⁷³ The second element for “case 1” offenses is that the advantage provided be given either as a reward for the “improper performance” of an act or as incentive or payment for the recipient to “improperly perform” an action.¹⁷⁴ The second element for “case 2” offenses is that the advantage be given with the knowledge or belief that the recipient’s acceptance of the advantage would be an improper performance itself.¹⁷⁵ “Case 2” also implies third party liability, extends extraterritorially, and is defined as when a person “offers, promises or gives a financial or other advantage to another person, and[. . .] knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.”¹⁷⁶

169. Elson, *supra* note 65.

170. Modern Slavery Act, *supra* note 64.

171. Compare UKBA, *supra* note 29, § 11 (imposing unlimited financial sanctions), and *Largest U.S. Monetary Sanctions by Entity Group* STAN. L. SCH. FOREIGN CORRUPT PRACS. ACT CLEARINGHOUSE (2023), <https://fcpa.stanford.edu/statistics-top-ten.html> (last visited Feb. 12, 2023) (providing that financial sanctions under the FCPA reach as high as \$3 billion USD), with Modern Slavery Act 2015, *supra* note 64, §§ 5, 7, 8 (imposing penalties in the primary form of individual criminal convictions and imprisonment and confiscation of property).

172. UKBA, *supra* note 29, § 1.

173. *Id.* § 1(1).

174. *Id.* § 1(2).

175. *Id.* § 1(3)(b).

176. *Id.* § 1(5).

Though the UKBA has proven to be a less lucrative legislation than the United States' Foreign Corrupt Practices Act, which includes penalties reaching as high as \$3.5 billion¹⁷⁷ and has rendered \$13,414,657,337 in fines,¹⁷⁸ the UKBA has the power to impose unlimited monetary penalties and up to 10 years in prison.¹⁷⁹ In response to a Freedom of Information Act request for more information on how the United Kingdom's Serious Fraud Office ("UKSFO") oversees and enforces the UKBA, the UKSFO published some key data: between 2010, when the UKBA was introduced, and 2020,¹⁸⁰ the UKSFO took five cases to court; secured five convictions under sections 1, 2, 6 and 7; reached five deferred prosecution agreements; and issued £9,979,9076.66 in financial penalties excluding Deferred Prosecution Agreements, the largest of which totaled €991m.¹⁸¹

Comparing the sanction provisions of the Modern Slavery Act with the UKBA reveals that the UKBA might be the best method for the UK to remedy its breach of P029.¹⁸² To utilize the UKBA to comply with P029 in response to the allegations against Dyson, the UK must work with Malaysia to audit ATA IMS and employ "follow the money" techniques to determine whether corruption existed at ATA IMS.¹⁸³ It is critical to recall that corruption is not only closely tied

177. *Largest U.S. Monetary Sanctions by Entity Group*, STAN. L. SCH. FOREIGN CORRUPT PRACS. ACT CLEARINGHOUSE (2023), <https://fcpa.stanford.edu/statistics-top-ten.html> (last visited Feb. 12, 2023) (listing that Odebrecht S.A. was sanctioned \$3,557,626,137).

178. *Key Statistics from 1977 to Present*, STAN. L. SCH. FOREIGN CORRUPT PRACS. ACT CLEARINGHOUSE (2023), <https://fcpa.stanford.edu/statistics-keys.html> (last visited Feb. 12, 2023).

179. Kevin Braine, *FCPA vs. UK Bribery Act – Comparing Two of the World's Largest Anti-Bribery and Corruption Laws* KROLL (Aug. 6, 2019), <https://www.kroll.com/en/insights/publications/compliance-risk/comparing-fcpa-uk-bribery-act>.

180. UKBA, *supra* note 29.

181. *2020-040 – Bribery Act 2010* SERIOUS FRAUD OFFICE (Mar. 1, 2020), <https://www.sfo.gov.uk/foi-request/2020-040-bribery-act-2010>.

182. *Compare UKBA, supra* note 29, § 11 and *Key Statistics from 1977 to Present, supra* note 178 with *Modern Slavery Act, supra* note 64, §§ 5, 7, 8.

183. See Chainalysis Team, *Making Cryptocurrency Part of the Solution to Human Trafficking*, CHAINALYSIS (Apr. 21, 2020), <https://blog.chainalysis.com/reports/cryptocurrency-human-trafficking-2020> ("In 2019, [Chainalysis] tracked just under \$930,000 worth of Bitcoin and Ethereum payments to addresses

with forced labor generally, but with the migration (or “trafficking”) of Nepalese workers into Malaysia.¹⁸⁴ In addition to statistical support for the likelihood of corruption supporting the operation of the ATA Factory’s forced labor, some of the former workers allege recruitment officers asked them to pay illegal recruitment fees.¹⁸⁵

Procedurally, the key similarity between the Modern Slavery Act and the UKBA that enables the UK to penalize Dyson through either is their respective applicability to “commercial organisations” and extraterritorial jurisdictions.¹⁸⁶ The Modern Slavery Act’s jurisdictional provision regarding corporate liability focuses on corporate activities, holding corporations accountable even when incorporated in jurisdictions outside of UK territories so long as substantial business is conducted in the United Kingdom.¹⁸⁷ However, the Modern Slavery Act does not have a financial penalty provision whereas the UKBA does.¹⁸⁸ Therefore, in order for the UK to remedy its violation of P029, it must issue sanctions on Dyson under the UKBA.¹⁸⁹

IV. RECOMMENDATIONS

A. THE UNITED KINGDOM SHOULD MAKE USE OF THE UK BRIBERY ACT AS A MEANS OF SANCTIONING PERPETRATORS OF FORCED LABOR, INCLUDING DYSON BUT ALSO ALL OTHER CORPORATE PERPETRATORS

Because the Modern Slavery Act does not currently allow the imposition of corporate fines,¹⁹⁰ prosecuting Dyson under the Modern

associated with CSAM [Child Sexual Abuse Material] providers.”).

184. Corruption & Labor, *supra* note 27.

185. Oliver, *supra* note 75.

186. Ryan J. Turner, *Transnational Supply Chain Regulation: Extraterritorial Regulation as Corporate Law’s New Frontier*, 17 MELBOURNE J. INT’L L. 188, 192–193 (drawing similarities between the definition of ‘commercial organisation’ in the Modern Slavery Act and ‘relevant commercial organisation’ in § 7 of the Bribery Act at and explaining “[t]he regulatory nexus between the subject and the state under both § 54(1) of the [Modern Slavery] Act and § 7 of the Bribery Act”).

187. *Id.*

188. *See supra* Part III.B.

189. *Id.*

190. *See Modern Slavery Act, supra* note 64; Elson, *supra* note 65.

Slavery Act arguably would not remedy the UK's breach of P029 Article 1(1)'s sanctions requirement.¹⁹¹ In order to remedy its breach of the sanctions requirement,¹⁹² the UK should launch an investigation into Dyson and ATA IMS with the help of Malaysia to find Dyson liable for corruption and thereby issue sanctions.¹⁹³

Because these events occurred entirely outside of the UK, it is also advisable that the UK utilize the UKBA over the Modern Slavery Act.¹⁹⁴ The UKBA is the UK's most aggressive domestic legislation against international crime.¹⁹⁵ The UKBA could be a viable mechanism of deterring the use of forced labor in supply chains due to the connection between corruption and slavery.¹⁹⁶ For the UK to bring corruption charges against Dyson, practitioners should employ "follow the money" techniques to root out corrupt acts which are usually committed by third parties, and to turn a blind eye forced labor practices.¹⁹⁷

B. MORE COUNTRIES SHOULD ADOPT ANTI-CORRUPTION LEGISLATURE THAT MIRRORS THE UNITED KINGDOM'S AND THE UNITED STATES' FOREIGN CORRUPT PRACTICES ACT

In 2011, The United Nations Office of Drugs and Crime (UNODC) affirmed that "there are consistent indications that corruption does

191. P029, *supra* note 55, art. 1.

192. *See supra* Part III.B.

193. *See* UKBA, *supra* note 29, § 11; *Key Statistics from 1977 to Present*, *supra* note 178.

194. *Compare* Modern Slavery Act, *supra* note 64 (extending extraterritorial reach only as far as the transparency supply chain requirement), *with* UKBA, *supra* note 29 (imposing criminal liability on "case 2" incidents, which require an advantage be given with the knowledge or belief that the recipient's acceptance of the advantage would be an improper performance itself).

195. *See* Turner, *supra* note 186, at 192–193.

196. U.N. OFFICE ON DRUGS & CRIME, THE ROLE OF CORRUPTION IN TRAFFICKING IN PERSONS 4 (2001), https://www.unodc.org/documents/human-trafficking/2011/Issue_Paper_-_The_Role_of_Corruption_in_Trafficking_in_Persons.pdf (last visited Jan. 11, 2023).

197. *See Follow the Money: How Financial Investigations Aid in the Fight Against Trafficking in Human Beings*, ORG. FOR SEC. & COOP. IN EUR., (Mar. 3, 2020), <https://www.osce.org/magazine/447688>; *ILO Panel on "Supply Chain Management – Eliminating the Risks of Forced Labour and Trafficking"*, INT'L L. ORG. (Jan. 28, 2008), https://www.ilo.org/global/topics/forced-labour/WCMS_090160/lang--en/index.htm.

play an important role in facilitating and fostering the crime of trafficking in persons.”¹⁹⁸ One study from 2008 found that not only is there a statistically significant correlation between the presence of corruption and the prevalence of modern slavery in a country, but also that corruption is the only significant correlative cause of slavery compared with poverty-related causes.¹⁹⁹

The United States’ Foreign Corrupt Practices Act has proven an effective method of addressing internal corruption in corporations, enabling the Department of Justice (DOJ) actions to bring a total of and the Securities and Exchange Commission (“SEC”) 257 since the Act’s enactment in 1977.²⁰⁰ Despite aggressive government actions brought against corporate giants reaping individual penalties as high as \$3.5 billion²⁰¹ and \$13,414,657,337 collectively,²⁰² corruption remains an international issue. Transparency International’s Corruption Perceptions Index from 2021 revealed that, “[d]espite multiple commitments, 131 countries have made no significant progress against corruption in the last decade. Two-thirds of countries score below 50, indicating that they have serious corruption problems, while 27 countries are at their lowest score ever.”²⁰³ Similarly, modern slavery continues to grow.²⁰⁴ In recognition of the intersection and causal relationship between corruption and modern slavery,²⁰⁵ and in recognition of how modern slavery impacts the competitive economy,²⁰⁶ it is wise that more States implement domestic legislature to mirror the UKBA and FCPA in order to root out corruption

198. U.N. OFFICE ON DRUGS & CRIME, *supra* note 196.

199. See generally Sheldon X. Zhang & Samuel L. Pineda, *Corruption as a Causal Factor in Human Trafficking*, in 7 ORGANIZED CRIME: CULTURE, MARKETS AND POLICIES, STUDIES IN ORGANIZED CRIME (Dina Siegel ed., 2008).

200. *DOJ and SEC Enforcement Actions per Year*, STAN. L. SCH. FOREIGN CORRUPT PRACS. ACT CLEARINGHOUSE <https://fcpa.stanford.edu/statistics-analytics.html> (last visited Mar. 12, 2023).

201. *Largest U.S. Monetary Sanctions By Entity Group*, *supra* note 171.

202. *Key Statistics from 1977 to Present*, *supra* note 178.

203. *Corruption Perceptions Index*, TRANSPARENCY INT’L (2021) <https://www.transparency.org/en/cpi/2021/> (last visited Mar. 12, 2023).

204. *Global Estimates of Modern Slavery*, *supra* note 4.

205. *Corruption & Labor*, *supra* note 27.

206. See generally Geetha A. Rubasundram, *Disrupting Corruption using Education: A “Prisoner’s Dilemma” Approach*, 59 INT’L ANNALS CRIMINOLOGY 119 (2022).

internationally.

Without enforceable regulations requiring corporations to report on their third-party suppliers' practices and accounting,²⁰⁷ the competitive nature of the capitalist market forces corporations into essentially a prisoner's dilemma.²⁰⁸ The corporate prisoner may choose to source their products from legal labor sources, but because legal labor invariably costs more than illegal labor, if other corporations choose to source from illegal labor, the corporations that pay more for labor are competing in an unequal playing field.²⁰⁹ Without at least a large percentage of corporations choosing legal labor, corporations that choose legal labor are forced into marketing their products to the upper class that can afford to pay the surcharge for products made from legal labor.²¹⁰ Because only twenty-six countries have no domestic legislature against forced labor,²¹¹ most corporations that use forced labor must engage in some form of corruption to operate. New legislation should hold corporations liable for any bribes or other corrupt practices carried out by third parties that lower the costs of labor for the corporation.

V. CONCLUSION

The United Kingdom could and should utilize the UKBA to impose high sanctions on Dyson to remedy the UK's breach of P029.²¹² However, this conclusion reveals how little current anti-slavery legislature can effectively deter corporate use of slavery in their supply chains. Anti-slavery laws must exist for an anti-corruption approach to work as proposed here: as a tool to close the loop that effectively allows corporations even in the wealthiest parts of the world to benefit from cutting costs with illegally cheap and coerced labor and by using cheaper practices that are illegally destroying our environment. Due to capitalist competition, paying off public officials to turn a blind eye to

207. *See supra* Part III.B.

208. *See generally*, Rubasundram, *supra* note 206.

209. *Id.*

210. *Id.*

211. *See Domestic Law: Forced Labour*, ANTISLAVERY IN DOMESTIC LEGIS., <https://antislaverylaw.ac.uk/map/> (select "Domestic Law" under first drop down and select "Forced Labour" on the next) (last visited Feb. 10, 2023).

212. *See, supra* Part. III.B.

illegal labor practices is very cost-effective and compelling for suppliers and corporations. Without innate incentive to end forced labor practices, or rather with every incentive to utilize forced labor in their supply chains, corporations, starting with Dyson, need to be hugely deterred from these practices by governments if slavery is ever going to be ended.

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