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Master's Thesis

THE POLITICS OF ENFORCING HUMAN RIGHTS PROVISIONS  
IN THE EUROPEAN UNION'S TRADE RELATIONS: A CASE  
STUDY OF CAMBODIA AND BANGLADESH

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***Authorship Declaration***

I have prepared this thesis independently. All the views of other authors, as well as data from literary sources and elsewhere, have been cited.

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*Anna-Lisa Aavik, 16.05.2022*

## **Abstract**

Human rights promotion in the European Union's external policy, specifically through its Generalized Scheme of Preferences (GSP) and Free Trade Agreements (FTA), has been an attractive research topic for decades. In principle, all new generation EU trade agreements include human rights conditionality in the form of the 'essential elements' clause. Yet we see it enforced only in a few cases despite grave human rights violations, both civil and political, and economic, social, and cultural. This leads to the observation of selective enforcement of the human rights provisions in the EU's trade agreements, which undermines the EU's role as a global human rights actor. Typically, selectiveness is tied to interests, but even in cases where both the gravity of human rights violations and the EU's interests are comparable, variation can be observed where the nature of human rights violations is different. Hence, this Master thesis aims to answer the question of what effect the type of human rights violation has on whether the EU enforces the human rights provisions as enshrined in trade agreements. To answer this question, the study conducts a comparative study of EU enforcement of human rights provisions in its GSP programme in its trade relations with Bangladesh and Cambodia. The results are based on the qualitative analysis of more than 50 reports published by the EU, NGOs, and other relevant international organizations on the human rights situation in Bangladesh and Cambodia – the two biggest GSP beneficiaries. The findings suggest that from 2017 to 2020, the EU only enforced human rights provisions in its trade relations, where the country violated civil and political rights, while violations of economic, social, and cultural were given less emphasis, albeit not triggering enforcement. This concludes that the type of human rights violation indeed plays a role in whether the EU decides to act upon it. This finding is highly relevant as it suggests that by being less insistent on adherence to economic, social, and cultural rights, the EU is neglecting an array of human rights, which are written in the Universal Declaration of Human Rights and, according to the declared commitment of the EU itself, should be promoted in its external relations.

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## Introduction

Human rights are an integral part of the European Union's values. The European Union (EU) has made a solid commitment to conducting its relations with the stated purpose of promoting those values beyond its borders. This evolution was made official by the Treaty of Lisbon Article 21(1) (Hachez, 2015: 4). Among other things, the article states that all agreements signed by the EU with non-EU countries need to be compliant with human rights as defined by the European Union Charter and other corresponding international treaties, such as the Universal Declaration of Human Rights (UDHR) (European Council, 2020a). Within this framework, the EU has adopted Action Plans, which set out the Union's priorities in the field of human rights in its relations with third countries, with one of them being a commitment to further advance universal values for all, no human right ignored (*Ibid.*). Thence, affirming the EU's commitment to promote and enforce human rights provisions in its external relations through courses of action and founding treaties.

Trade policy is one instrument through which the EU promotes human rights in its external relations. It has been argued that the EU's trade policy is one of the principal instruments of its foreign policy (Borchert et al., 2020: 2, in reference to Sapir 1998), which contributes to the EU's influence and actorness in the world. Over the last three decades, a relative change has occurred in the EU's trade agreements, which no longer contain provisions pointing only to strict economic relations between partner countries (Hafner-Burton, 2009: 974). Objectives set out in these 'new generation' agreements contain provisions and conditions which should foster a better adherence to universal human rights standards. Further, the promise of free trade – economic growth, rising living standards, etc. – produces social circumstances conducive to human rights and democratization (Ibrahim, 2013: 332). Recently, the Commission's approach to the nexus of human rights and trade assumes that once adopted; the trade agreement will open up more effective channels for dialogue on human rights and democracy as well as increased economic contact, which would encourage further progress in third countries (Zamfir, 2019: 6).

Furthermore, as the European Union and the International Labour Organizations are the most prominent rule-makers in social policy, including human rights, beyond the nation-state, the explorations of their powers to ensure the implementation of those values is highly relevant (Kahn-Nisser, 2014: 384). Additionally, the EU seeks to exert some degree of economic and

political influence over third countries as the failure to export its standards developed within its internal market would put European firms at a comparative disadvantage (Velluti, 2016: 47). As a global regulator, the EU can defend its social preferences without compromising the competitiveness of its industries (*Ibid.*). Hence, the EU's trade relations have become a way to promote human rights worldwide and looking into how the EU promotes human rights in its trade relations is significant – both for its external and internal relations.

A way to assure that the EU safeguards the human rights provisions in its external relations is human rights conditionality enshrined in trade agreements in the form of an 'essential elements' clause (see Horng, 2004 & Bartels, 2013). Since 1995, the EU has inserted the clause into all political agreements with third countries, most significantly into Free Trade Agreements (FTA) and Generalised Scheme of Preferences (GSP). The 'essential elements' clause provides the "legal basis for positive measures, such as human rights dialogues, as well as for restrictive measures in case of serious and persistent violations of human rights" (DG-trade, 2012). This means that these clauses contain human rights provisions referencing international human rights conventions, which need to be implemented in the partner country to maintain trade relations with the EU. However, upon violations of these provisions, the EU may decide to act using positive or negative measures. In other words, the clause provides the EU with a tool to enforce or not to enforce human rights provisions. Henceforth, such clauses should foster a better implementation of human rights in third countries and provide the EU with meaningful ways of action should the country display human rights violations. This is specifically relevant for GSP programmes, as this scheme is also part of development cooperation.

In recent years, the EU has emphasized significant human rights conditionality in their bilateral and regional trade agreements, including in its GSP programmes, as these clauses create a range of opportunities for the EU to monitor and enforce human rights provisions in partner countries. However, the EU's credibility and overall impact as a human rights promotor in its external trade policies have been questioned due to these human rights provisions' selective and uneven enforcement (Velluti, 2016: 41). In principle, all EU trade agreements include human rights conditionality, yet we see the provisions enforced only in select cases. Since 1996, the human rights provisions have been enforced multiple times as the basis for consultations or other measures, such as the withdrawal of trade preferences (Miller, 2004: 28). For example, Nigeria had the conditionality enforced due to the deteriorating civil and political human rights

situation in the country; whereas, in the case of Egypt's human rights violation, the EU decided not to enforce the human rights provisions (Saltnes, 2018: 278). Further, due date, many countries have problematic human rights records among the parties to the EU's trade agreements where the EU has decided not to enforce the human rights provision set out in the 'essential elements' clause (Zamfir, 2019: 7-8). This leads to the observation of selective enforcement of the human rights conditionality in the EU's trade agreements.

The body of research has emphasized several reasons for the inconsistency of enforcing human rights provisions in trade agreements. Firstly, the Member States and the EU may have specific human rights priorities or may have a 'special relationship' with certain countries, which prevents them from accusing these partner countries of human rights violations (Prickartz & Staudinger, 2019: 22). For example, the EU wishes to expand its reach in the African region and is more reluctant to pursue negative rhetoric against a partner country. Further, Saltnes (2018) highlights the importance of economic and security interests for the variance in the consistency of enforcing human rights conditionality as an external policy objective. For example, the EU has not taken action against Ethiopia and Kenya regardless of their poor human rights record as these countries play a vital role in the fight against terrorism and are strategic partners for the West (Saltnes, 2018: 281). Lastly, Meissner & McKenzie (2019: 1277) argue that the EU institutions, specifically the European Parliament, tend to select only strategic issues to forge united, organizational action to promote human rights, whereby the magnitude of action depends on the categorisation of the issue as a threat or an opportunity.

However, even when the interests are comparable, there is variation in the enforcement of human rights provisions. This can be explained by the EU's internal priorities. For example, due to diverging understanding of specific human rights among the EU institutions during human rights dialogues (Prickartz & Staudinger, 2019: 21). There has been a significant focus on civil and political rights, whereas economic, social, and cultural rights are given less attention (*Ibid.*). This is further illustrated by the fact that in the recent EU annual report on human rights and democracy in the world (EEAS, 2020), only two out of nineteen issues were devoted to economic, social, and cultural rights. Harrison (2019: 713) argues that labour issues are often not a priority due to their complexity and relevant officials' lack of detailed knowledge— both in the EU and in trade partners. This means that despite the EU's commitments to promote all human rights, violations of economic and social rights in partner countries are often not a sufficient reason for the EU to enforce human rights provisions as

enshrined in a trade agreement. As a deduction, this body of literature has pointed to ideological preferences inside the EU, reflecting the differentiated concerns over the various types of human rights, mainly the focus on civil and political rights, resulting in the selectivity of enforcement of human rights provisions.

Therefore, while the effect of factors such as the tension between security and economic interests on the EU's enforcement of human rights provisions have been extensively studied – both by case and institution comparison – there has not been much research done on the variation across cases where the EU's interests are fairly comparable; and how the perceived differentiated concerns over the types of human rights determine whether the EU enforces the human rights provisions laid down in the trade agreements. Here, the types of human rights violations are understood as following into two clusters, either violation of civil and political human rights (CPR) or economic, social, and cultural rights (ESCR).

Hence, this Master thesis aims to determine the role of the type of human rights violation in the EU's enforcement of the human rights provisions enshrined in trade agreements. This study will answer this question by relying on existing literature on the EU's enforcement of human rights provisions in its trade relations, which emphasises the EU's focus on promoting civil and political rights. This literature derives the hypothesis that if human rights violations in a country are predominantly civil and political, the EU enforces its human rights provisions. In turn, if the human rights violations are predominantly economic, social, and cultural, the EU does not enforce its human rights provisions. To test this hypothesis and, therefore, to establish whether the type of human rights violation determines the EU's enforcement of human rights provisions in trade agreements, the master's thesis conducts a comparative study of Cambodia and Bangladesh – the two biggest GSP beneficiaries. This research uses the qualitative content analysis method to identify and analyse the predominant human rights violations in the country and how the EU responds to these violations via enforcement of human rights provisions in its trade agreements. Data is collected from more than 50 reports published by the EU, NGOs, and other relevant international organizations on the human rights situation in both countries. The time period for research is 2017 to 2020.

The remainder of this study is structured as follows. First, it provides a review of existing literature on the phenomenon to establish an understanding of how the EU promotes and enforces human rights provisions in its trade relations. This section introduces the types of

human rights violations, which are part of the EU's human rights promotion, instruments of promotion through trade, and finally, explanations of enforcement. Secondly, it gives an overview of the methodology used to answer whether the specific type – civil and political, or economic, social, and cultural – of human rights violation predominant in the country determines the EU's enforcement of these provisions in its trade agreements. Thirdly, the analysis empirically demonstrates the effect of predominant human rights violations in Bangladesh and Cambodia on how the EU enforced the human rights provisions in trade agreements from 2017 to 2020. Then, provide some concluding remarks on the results of the analysis.

# **1 The European Union's promotion of human rights in its external trade relations**

This chapter lays the foundation for the analysis as it gives an overview of the EU's promotion of human rights – both CPR and ESCR – in its external relations, namely in trade. It does that by including human rights provisions in the form of the 'essential elements' clause in trade agreements such as FTAs and GSP programmes. This clause gives the EU legal instruments to monitor the implementation of international human rights conventions in beneficiary countries and apply specific measures – either positive or negative – should the government fail to sufficiently uphold human rights standards. Further, this chapter explains how the EU enforces the human rights provisions in trade agreements, specifically in GSP programmes. It does that by using the conditionality principle. The country's progress in implementing human rights conventions is rewarded with positive measures such as increasing financial aid, whereas regress is met with negative actions such as suspending trade preferences. This notion has led to observation in which the EU seemingly focuses primarily on CPRs in its global human rights promotion, albeit enforcing human rights provisions in trade agreements only if human rights violations are civil and political. In contrast, ESCRs are given less attention, thus not triggering a response in terms of non-enforcement of human rights provisions.

## **1.1 The EU as a global human rights promoter**

The EU's global social role in promoting human rights is often discussed in the academic literature. Since its creation, the EU has committed itself to promoting the social dimensions of globalization and emphasized its capacity to export various elements of the European values, including social and economic aims, into agreements with third parties and other external actions (Orbie et al., 2009: 99). The promotion of human rights in partner countries was one of the first topics on the European Political Community's agenda in the 1970s, albeit the explicit declaration of the objective did not occur until 1986 by signing the Single European Act (Smith, 2014: 95). The importance of human rights in the EU's external policy has not been contested among the Member States; however, the agreement on promoting and enforcing those rights has been a legitimate question (*Ibid.*). Which policies are the most effective in promoting human rights and whether the EU should prioritize these rights in a particular case (*Ibid.*)? Nonetheless, this shared belief that the EU must promote human rights internationally has been at the core of the EU's external and internal action. In June 1991, the European Council

affirmed that the EC and its Member States seek universal respect for all human rights and indicated that human rights conditionality in agreements with partner countries was a way of promoting those values (Smith, 2014: 103). Since 1995, the EU has inserted this conditionality clause into all political agreements with third countries, which provide various measures to enforce human rights provisions, such as international human rights conventions. Over the years, the EU has shown a substantial commitment to promoting and enhancing human rights beyond its borders.

The EU's guiding principles of its external policies come from the Universal Declaration of Human Rights (UDHR), which sets standards in the EU's internal legislation and international agreements (Zamfir, 2018a: 2). The UDHR is not linked to any specific philosophical or religious foundation but is instead based on the 'common understanding,' which recognizes all human beings' equal and inalienable rights (Zamfir, 2018a: 1). The UDHR includes CPRs, such as the right to life, and ESCRs, for example, the right to work and free choice of employment. The Declaration upholds ESCRs as being equally crucial as CPRs and contributes to the latter's recognition and enjoyment (*Ibid.*). In December 1998, by the time of the 50th anniversary of the Universal Declaration of Human Rights, the EU declared that both externally and internally, the respect for human rights as proclaimed in the UDHR is one of the essential components of the activities of the Union (Smith, 2014: 103). Today, the Declaration is believed to be a valuable reference for how the EU conceives and conceptualizes fundamental human rights (Zamfir, 2018a: 2). This notion was made official by signing the Treaty of Lisbon in 2009, more specifically Article 21(1):

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, rule of law, **the universality and indivisibility of human rights** and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

While some scholars (see Velluti & Tzevelekos, 2018) remain sceptical about the EU's legal capabilities to enforce human rights laws in its external relations, the EU's primary and secondary law is consistent with the notion of promoting all human rights both internally and externally. Further, enabling the core human rights principles – indivisibility and universality – as enshrined in the UDHR. The Court of Justice of the European Union confirms this notion

by arguing that Article 3(5) TEU establishes a positive duty for the EU to observe international law in its entirety, yet these provisions do not formally bind the EU to pursue any human rights objectives in a specific way (Velluti, 2020: 48). However, the goals and provisions set out in TEU of the EU's relationship with third partners, as per Article 3(5), establish that pursuit of these general principles is a legally binding obligation for the EU and its institutional bodies (*Ibid.*). Further, the EU must consider them when implementing and formulating its external policy (*Ibid.*). Since Common Commercial Policy is part of the EU's external action, all objectives, principles, and obligations under TEU Article 21(1) and Article 3(5) must apply to trade policies and agreements (Micara, 2019: 1449). For example, the 'essential elements clause' in the EU's agreements refers to the respect for human rights without making any specific reference to their content and emphasises the universality of human rights (Martines, 2020: 124). Hence, the clause extends to CPRs and ESCRs, labour, and minority rights, often referring to legally and non-legally binding international law instruments such as the UDHR.

Furthermore, Koch (2006: 7) argues that the EU must interpret any Union-specific convention according to the best possible harmony or coherence between the individual norm and the whole system – in this case, the entire human rights regime deriving from the UDHR, which consists of both CPR and ESCR. Interpreting human rights in any other way might have implications for the whole hermeneutic circle, which diminishes the concept of these rights being indivisible and universal. While the European Convention of Human Rights mainly consists of CPRs, many assume the realisation of ESCRs. Therefore, the European Commission, along with the European Court of Human Rights, considers that the interpretation of the Convention should extend to the sphere of ESCRs (Koch, 2006: 8). This interpretation is aligned with the hermeneutic interpretative principles of the Vienna Convention of Law of Treaties 1969 (*Ibid.*). Besides, since the UDHR has acquired customary nature, therefore binding for all States and international actors, the EU feels obliged and engaged to respect these generally understood human rights (Micara, 2019: 1451). Further, the 'essential elements' clause in trade agreements gives the possibility to take appropriate measures in the event of violations of these UDHR provisions (Micara, 2019: 1451). Hence, as the UDHR contains both CPR and ESCR, the EU should enforce and promote the core principles of human rights – universality, indivisibility, and interdependence of all human rights. However, in practice, the EU's human rights policies emphasize CPRs rather than ESCRs (Smith, 2014:106). Nevertheless, the European Union has both legal and moral duty to upkeep the promotion and implementation of human rights in its external relations, regardless of their nature or type.

### 1.1.1 The EU's promotion of civil and political rights

CPRs are understood as a cluster of rights emphasizing the protection of individuals' freedom and ensuring one's ability to participate in society's political and civil life without any infringement by the government (Wikipedia, 2022). Civil rights include ensuring peoples' physical and mental integrity, while political rights include ensuring natural justice and procedural fairness in law and rightful political activity, e.g., voting (*Ibid.*). These rights are thought of as negative rights, ergo prohibiting the countries from doing a certain thing, e.g., cannot torture or use inhumane treatment. Violations of CPR are typically understood as the government's violations of these human rights, which belong to the abovementioned cluster, either directly or indirectly. For example, a breach of Article 5 of the UDHR prohibiting torture could manifest in a country as reported incidents of torture by any government official, such as the police.

The promotion of human rights in the EU's practice emphasizes civil rights, while political rights to a lesser extent. Civil rights protect and guarantee specific individuals' freedoms and ban discrimination, whereas political rights concern individuals' rights to participate in civil society. The apparent emphasis on civil rights is explainable as these rights promote individual freedom and emphasize equality, which are cornerstones of EU's values. This notion is evident from the Charter of Fundamental Rights of the European Union (2012), where most chapters contain articles mentioning the protection of CPR. Additionally, the prominence of CPRs dominates the list of various thematic issues, which are concluded in the EU's annual human rights reports and human rights guidelines (Smith, 2014: 107). For example, the EU's guidelines on human rights, which the EU adopted in 1998, indicate that the EU will pursue particular human rights objectives: (a) elimination of the death penalty; (b) elimination of torture and other cruel, inhuman treatment or punishment; (c) enhancing human rights dialogues; (d) protection of children in armed conflicts; (e) violence against women and girls; (e) rights of LGBTQ+ people; (g) freedom of religion or belief (*Ibid.*).

Further, as CPRs are considered negative rights, albeit the country must abstain from an action rather than an obligation to provide some benefit; hence upholding and promoting these values is 'easier' and less costly. While ESCRs require programmes of effort and resources, CPR involves abstention and non-intervention practices; thus, the performance of obligation becomes easily accomplished judicially (Sâmboan, 2014: 139). Nevertheless, these negative

and positive rights characteristics are considered a myth since the progressive achievement of CPR covers obligations under ESCR (Sâmboan, 2014: 140). For example, people who work 14 hours a day on election day cannot exercise their right to participate in the government of their country. Hence, the adequate protection and implementation of CPRs should go along with the progressive focus on ESCRs.

### **1.1.2 The EU's promotion of economic, social, and cultural rights**

ESCRs are understood as a cluster of rights emphasizing the protection of individuals' socio-economic freedoms and ensuring one's ability to enjoy "the protection of people as full persons, based on a perspective in which people can enjoy rights, freedoms, and social justice simultaneously" (United Nations, 1991). The ESCRs include ensuring rightful work and living practices for people, while cultural rights emphasize peoples' right to the full enjoyment of their cultural background (*Ibid.*). These rights are thought of as positive rights, ergo obliging countries to do something, e.g., providing people with annual periods of leave from work. Violations of ESCR are typically understood as the government's violations of these human rights, which belong to the abovementioned cluster, either directly or indirectly. For example, a breach of Article 23 of the UDHR stating peoples' right to just and favourable work conditions could manifest in a country as reported incidents where people have died due to fire outbreaks in factories due to lack of government regulations or insufficient control.

The conceptualization of ESCRs in the EU's rhetoric is varied based on a policy field or programme. The Charter of Fundamental Rights (2012) emphasizes some ESCRs, which are mainly listed under the chapter 'Solidarity.' More specifically, the Charter (2012) recognises ESCRs such as Article 28, the right to collective bargaining and action; and Article 31 fair and just working conditions, in particular paragraph 2, which specifies (a) a right to a limitation of maximum working hours; (b) a right to daily and weekly rest periods; (c) a right to an annual period of leave. However, the EU also addresses the ESC rights through relevant international treaties. For example, in GSP programmes through the International Labour Organization (ILO) conventions, which concern the freedom of association, the protection of the right to organize and bargain collectively, and the convention pertaining to the minimum age for employment (Borchert et al., 2020: 15). In terms of trade agreements, the EU recognizes the importance of Core Labour Standards, which are written by the ILO. These include (a) the elimination of forced or compulsory labour, (b) the abolition of child labour, and (c) the

freedom of association and the effective recognition of collective bargaining (Harrison, 2019: 711). Hence, when conceptualizing ESCRs in the EU's rhetoric, one must consider specific policy fields and relevant international conventions.

The EU's lack of focus on ESCRs is apparent from numerous practices in specific policy areas and written documents. For example, in the recent EU annual report on human rights and democracy in the world (EEAS, 2020), only two out of nineteen issues were devoted to economic, social, and cultural rights. Furthermore, the EU's human rights guidelines, which provide EU Delegations and Member State diplomatic Missions with practical tools and information, do not mention ESCRs (Wouters & Hermez, 2016: 18). Moreover, the EU often enlists ESCRs under development or sustainability issues, which implies that such rights are not as fundamental as CPRs. Additionally, positioning economic, social, and cultural rights under the Charter's chapter 'Solidarity' suggests that the EU does not see those rights as cornerstones for chapters such as 'Dignity' or 'Freedom,' where most CPRs are emphasized.

Further, the apparent lack of focus on ESCR may be influenced by how these rights are understood. Firstly, the critical discourse challenging the effective implementation and protection of ESCR is the distinction between duties generated by these rights – onerous positive obligations, which creates pejorative of a 'rights-claim' (Sâmboan, 2014:138). CPRs, which correlate to freedom rights, are more comfortable obligations for the state. Secondly, Majtenyi, Sosa & Timmer (2016: 24) argue that the EU's excessive focus on CPRs comes from the predominant Western perception of human social rights, where issues such as poverty and working conditions are a development rather than a 'human rights' problem. Thirdly, Wouters & Hermez (2016) claim that the hierarchy of human rights in the EU's rhetoric could result from decision-making processes in the Council. Finding common ground on issues related to ESCR might be challenging due to the nature of these rights. For example, the consensus in cases such as prohibiting the death penalty is more remarkable than finding agreement on issues such as migration or ESCR, where conflicting interests and visions of Member States depend on their national agenda (Wouters & Hermez, 2016: 18). Nevertheless, as emphasised above, the effective realization of human rights depends on the progressive protection and implementation of both types of human rights, regardless of their nature.

## **1.2 Human rights promotion through trade**

Human rights are protected in the EU external relations by various tools available to improve the adherence to human rights standards in third countries, one of them being its international trade policy. The EU's two main instruments for linking human rights issues to trade policy are Free Trade Agreements (FTA) and Generalised Scheme of Preferences (GSP). While both instruments assume the safeguarding of universal human rights by third-party countries via necessary Conventions listed in the 'essential elements' clauses, these provisions are implemented and reinforced in the distinct conditionality-based policy. This subchapter describes how the EU's trade policy, namely FTAs and GSP programmes, facilitates human rights protection in its external relations.

### **1.2.1 Free Trade Agreements**

Over the last two decades, the EU has become one of the most prominent promoters of FTAs with objectives set out to facilitate development in social policy and the environment. Since 2010, the EU has concluded 'new generation' FTAs whose provisions go beyond the World Trade Organization's (WTO) standards with countries such as Singapore, South Korea, Ukraine, Canada, Vietnam, and Japan (Micara, 2019: 1447). Essentially, this means that the EU's new FTAs are more comprehensive as they deal with trade in goods and trade in services and other trade-related areas, for example, intellectual property (*Ibid.*). Moreover, these trade agreements no longer contain strictly pure free trade elements but seek to advance non-trade objectives such as enhancing political dialogue, promoting human rights and poverty reduction, and supporting sustainable development with third countries. For example, the EU signed an FTA with Vietnam under the Partnership and Cooperation Agreements' (PCAs) framework to strengthen political dialogue and support the transition to a market economy of the counterpart (*Ibid.*). Hence, FTAs have become an essential instrument for the EU as they accommodate a stronger diplomatic relationship and facilitate political and economic cooperation in various policy fields with third countries.

When concluding an FTA with a partner country, the EU promotes human rights during the negotiation process and after the ratification of said agreement. All new FTAs signed after 1995 include the 'essential elements' clause, which is divided into two parts: (a) scope of the clause, which usually features cooperation on human rights, democracy, and the rule of law; and (b) enables to take 'appropriate measures' when one party violates the scope of the clause

(Borchert et al., 2020: 8). Therefore, the ‘essential elements’ clause envisages enhanced cooperation on human rights. However, the effective promotion of human rights happens during the negotiation process rather than after said agreement is in force.

Nevertheless, it is essential to note that many of these FTAs envisage cooperation on human rights referencing the UDHR and other relevant UN Conventions and instruments – all of which need to be agreed upon during the FTA negotiation process. For example, the EU signed the EU-Japan FTA in 2018 under the economic partnership agreement, and EU-Korea FTA in 2011, which included an ‘essential elements’ clause (Micara, 2019: 1447). However, in practice, this cooperation after the ratification of the FTA is limited to mainly CPRs (Borchert et al., 2020: 8). This notion is evident in various human rights dialogues (HRD), which intend to map partner countries’ current human rights situations. The EU defines priority issues put on HRDs agenda per each Action Plan on Human Rights and Democracy set out for a specific period. Often, these include primarily CPRs. For example, in EU Action Plan 2015-2019 (Council of the European Union, 2015), seven out of eight human rights challenges listed name CPRs as the main issues: promoting freedom of expression, abolishing the death penalty, promoting gender equality, etc. Hence, even though FTAs should foster adherence to universally established human rights, including provisions of ESCRs, in practice, priority is given to CPRs.

### **1.2.2 Generalised Scheme of Preferences**

The EU’s GSP programme is recognised as the most progressive mechanism in terms of benefits and coverage to help developing countries integrate into the world economy, as agreed upon at the United Nations Conference on Trade and Development in the late 1960s (European Commission, 2021). This programme removes all import duties from various products coming into the EU market, thus helping developing countries to create job opportunities and mitigate poverty based on international values and principles, including human and labour rights (*Ibid.*). The EU’s GSP could be considered the most relevant trade tool to promote human rights. All programme beneficiary countries must respect and ratify the principles of fifteen core United Nations and International Labour Organisation conventions on human and labour rights, which are additional conventions to the UDHR. These are listed in Annex VIII of GSP regulations as per ‘European Council regulation no 978/2012’ (2012) and include, among others, the International Covenant on Civil and Political Rights, the International Covenant on Economic,

Social, and Cultural Rights, the Convention concerning the Abolition of Forced Labour, No 105, etc. Furthermore, Article 9 of the GSP regulation enshrines that the beneficiary country must “accept without reservation the reporting requirements imposed by each convention and gives a binding undertaking to accept regular monitoring and review of its implementation (...) and cooperate with the monitoring procedure” (EC no 978/2012). Hence, the EU’s GSP programme lays a solid foundation and monitoring process for applicant countries to respect and uphold human rights.

The EU’s GSP programme and its benefits are based on specific criteria, which foresee realizing human rights on a particular level and different accession levels to the EU’s market. The EU’s GSP mechanism is granted based on countries’ classification per income/development level by the World Bank and on the presumption that the beneficiary does not benefit from any other arrangement such as FTA, which grants them preferential access to the EU’s market (European Commission, 2021). Essentially this means that programmes recipients are divided into three schemes: (a) ‘Everything but Arms’ (EBA) arrangement for least developed countries; (b) standard GSP for low and lower-middle-income countries; (c) GSP+ as a special incentive arrangement (*Ibid.*). As mentioned above, all GSP recipients must adhere to predetermined human rights conventions. However, the GSP+ beneficiaries must effectively implement twelve additional international conventions on human and labor rights, good governance, and environmental protection and accept enhanced monitoring processes such as visits, dialogues, and information exchanges with relevant stakeholders and civil society organizations (*Ibid.*). Nonetheless, all GSP mechanism beneficiaries are constantly monitored for progress and ‘graduated’ when the country becomes eligible for higher access to the EU’s market. For example, the Philippines have been GSP+ beneficiaries for several years and are currently negotiating an FTA with the EU. Overall, the GSP programme facilitates the effective implementation of international human rights conventions and supports the development of the beneficiary country.

### **1.3 Explaining the EU's enforcement of human rights provisions in trade agreements**

The EU enforces human rights provisions in its external trade policies through the 'essential elements clause,' which provides for the principles of political conditionality, primarily used in GSP programmes and FTAs. Political conditionality is defined as "the granting of an advantage, or the withdrawal of a benefit, by an international subject made contingent upon a pre-defined behaviour by another state" (Martines, 2020: 99). This conditionality assumes a guided relationship between a donor (the EU) and the recipient or beneficiary (third country partner), facilitated by a leverage mechanism to orientate behaviour. Therefore, conditionality requires (a) two subjects; (b) a benefit (financial aid or trade advantage) or a disadvantage (withdrawal of a benefit, for example, suspension of trade preferences); (c) all factors connected to pre-defined required behaviour, defined by mutual agreement between two subjects (d) monitoring mechanisms to trigger the conditionality (*Ibid.*). This conditionality-based trade relation is specifically crucial in GSP programmes, as this scheme is connected to development cooperation and should facilitate the beneficiary's developmental progress.

Political conditionality is founded on the presumption of cost-benefit calculation for both donor and the recipient entity. For the beneficiary country, a benefit derived from the incentive (e.g., trade preference) is balanced with the cost of complying with pre-defined behaviour (e.g., labour standards); conversely, the cost of punishment (e.g., suspension of benefits) is balanced with the cost of compliance (*Ibid.*). However, the donor country is motivated by the benefit-cost calculation for the recipient country to adopt certain conduct, change its behaviour or maintain the status quo (Martines, 2020: 101). As a deduction, for the EU, this conditionality-based relationship with partners contributes to the EU's self-definition as a normative actor (*Ibid.*). It assures that the EU's internal values are upheld while conducting business externally. For the donor country, conditionality helps to facilitate better adherence to human rights as they get rewarded for pro-social behaviour through trade preferences and ensures quicker development.

As mentioned above, conditionality requires a benefit and a disadvantage. These provisions are continuously encouraged by action or policy of incentives taken by the donor country, described as positive or negative conditionality, respectively. Positive conditionality is defined as "providing incentives or rewards when the benefit is received or increased in exchange for

a previously defined action or behaviour to be encouraged” (Martines, 2020: 103). These are usually a list of various commitments made by the EU to assist the partner country in establishing new frameworks or carrying out reforms to facilitate pro-social behaviour. For example, financial aid or enhanced political dialogue on the related issues. However, negative conditionality refers to “when a previously enjoyed benefit is withdrawn if the recipient fails to comply with the required behaviour or the defined criteria” (*Ibid.*). Negative conditionality is usually coercive measures the EU takes to facilitate partner countries’ compliance with pre-defined conditions in bilateral agreements. For instance, this negative conditionality may include reducing trade preferences, imposing embargoes, or condemnation in international fora (Fierro, 2021: 100-101). It is important to note that negative conditionality in practice has turned out to be limited. To some extent, negative conditionality ignores ESCRs both as a reason to act and as a consequence of action, which means that actors tend to react solely to violation of CPRs, which often has additional effects on populations’ ESCRs, yet are disregarded in the process (*Ibid.*). Therefore, one would expect negative conditionality used in cases of CPRs violations.

In theory, conditionality concerning human rights applies to all EU agreements with partner countries; however, it is most prominently and effectively used in GSP programmes. Namely, GSP arrangements offer incentives for countries to comply with human rights conventions for increased preferential access to the EU’s market or financial aid; hence beneficiaries are more inclined to make progress in said area. For example, country A in the standard GSP programme may decide to ratify additional conventions and make policy reforms to better access the EU’s market under the GSP+ arrangement. Orbie et al. (2009: 19) lists other deliberative instruments of social policy export for positive incentives, such as enhanced political and social dialogue, people-to-people exchanges, and ILO and EU social standards benchmarking.

Trade preferences in GSP arrangements are withdrawn on several grounds, such as severe and systemic violation of human rights as listed in Annex VIII of the GSP regulation (Council of the European Union, 2012). In case of any violation under-listed convention, the country risks the potential loss of trade preferences. If the violation is reported, the EU Commission carries through an investigation and consults with the government to eventually decide whether to suspend the GSP preference (Borchert et al., 2020: 26). Suspension can initially last for up to six months, followed by a review process of any progress made by the country in the said policy area, after which the EU may decide to either terminate or extend the suspension (*Ibid.*).

If the violation is persistent, the EU can end trade relations under GSP arrangements with the beneficiary country. In addition to the suspension of trade preferences, the EU might use other instruments such as ‘naming and shaming, peer pressure, suspension of political dialogue, or withdrawal of expert assistance to respond beneficiary’s systemic violation of human rights and to enforce human rights provisions (Orbie et al., 2009: 109). However, these do not pass the threshold of enforcement. All in all, enforcement of human rights provisions due to serious violations of human rights is understood as withdrawal of trade preferences. In contrast, non-enforcement of human rights provisions does not necessarily mean ‘no action’ but can consist of other milder response forms, such as naming and shaming, yet do not pass the enforcement threshold.

The enforcement of human rights in the EU’s trade relations is based upon serious and systemic human rights violations; however, what constitutes ‘serious and systemic’ is relatively unclear. Within European jurisprudence, the judicial bodies have examined various serious human rights breaches in individual cases and correspondence with the European Convention on Human Rights. Thematically these include torture or ill-treatment of humans, disappearances, and conditions for detentions (Karimova, 2014: 22). Many cases in which a severe breach of international human rights law has occurred are deemed as ‘serious’ only by individual court cases, which suggests that there is no general understanding or terminology of a serious violation of human rights. Yet, the European Court of Human Rights case law indicates that a ‘serious’ violation of human rights needs to be systematic in character, where breaches are identical or analogous, sufficiently numerous and inter-connected, and show a pattern or system (Karimova, 2014: 22).

Nevertheless, the international practice of interpreting ‘serious violations’ gives even more insight into the broad concept. For example, the idea of ‘gross’ violations has been developed by United Nations (UN) human rights bodies, which provide a more precise explanation for the term (Karimova, 2014: 10). In 1967 the UN Commission on Human Rights agreed that serious violations of human rights are “situations which reveal a consistent pattern of violations of human rights over a period of time”; however, the definition is not accepted by all countries (*Ibid.*). Yet, the international practice of interpreting such violations has established a particular criterion which refers to several indicators to measure ‘serious’ violation: (a) the impact of the violations, (b) the nature of obligations engaged, (c) the magnitude of the violations, (d) the status of victims (Karimova, 2014: 10). Additionally, when analysing said indicators, one must

consider the context of a country and situation. This international practice has generated a list of violations that competent authorities have deemed serious. Most of these concern violations of CPR such as arbitrary arrest and degrading treatment; however, violations of ESCR such as forced labour and inadequate living standards are highlighted as serious (*Ibid.*).

The usual expectation is that when the partner country displays systemic and serious human rights violations, the EU enforces the human rights provisions set out in the ‘essential elements’ clause, either by a positive or a negative measure. However, scholars have observed relative inconsistency when enforcing human rights provisions due to beneficiary country’s human rights violations. For example, Saltnes (2018) and Prickartz & Staudinger (2019) have argued that when economic or security interests are at stake, the EU might not choose to enforce human rights provisions as rational interest outweigh values. Yet, in addition to interest, Harrison (2019) and Fierro (2021) highlight the more subtle dynamics of the EU’s prioritization of specific types of human rights over others, namely CPR over ESCR. Further, Fierro (2021: 101) emphasizes the EU’s enforcement of human rights provisions might include harsher negative conditionality, e.g., suspension of trade preferences, when the beneficiary country’s violations of CPR, while violations of ESCR are met with milder versions of negative conditionality, below the threshold of enforcement of human rights provisions, albeit falling short of an invocation of the ‘essential elements clause in trade agreements, e.g., naming and shaming. Following the latter argument, variation in the EU’s enforcement of human rights provisions, economic and security interests being equal, can be explained by the variation in the country’s predominant type of human rights – either CPR or ESCR – violation.

This argument leads to the hypothesis that if human rights violations in a country are predominantly CPRs, then the EU enforces its human rights provisions. In turn, if the human rights violations are predominantly ESCRs, the EU does not enforce its human rights provisions. To determine which explanation holds, namely whether the type of human rights violation – CPR or ESCR – affects the EU’s enforcement of human rights provisions as enshrined in trade agreements, the study conducts a comparative study of Cambodia and Bangladesh – the two biggest GSP beneficiaries. For this purpose, the following chapter lays out the methodological considerations for the analysis.

## 2 Methodology

The following chapter explains how the EU's promotion of human rights in its external trade relations, specifically the EU's emphasis on the specific type of human rights as visible in the EU's enforcement of human rights provisions, will be empirically studied. To identify how the type of human rights violations predominant in the country affects the EU's response to enforcing human rights provisions, a comparative study will be conducted on two most similar cases with varying outcomes while controlling potential alternative explanations.

### 2.1 Research design & case selection

To research this topic, I will conduct a few-N comparative most similar systems design (MSSD) study as the object of interest is on which factors facilitate the difference in the EU's human rights practices in trade relations with third countries. More precisely, this type of research allows to make solid inferences and identify the factor that explains variation in the outcome while controlling for alternative explanations. Using MSSD research design means that "the most plausible explanatory factors are automatically constant and should not intervene in the relation between independent and dependent variables" (Anckar, 2008: 394). This means MSSD here allows to identify the predominance of the type of human rights violation in a country and observe its effect on the EU's trade relations with the country and whether the EU enforces the human rights provisions. At the same time, MSSD controls for any other possible explanations deriving from alternative explanatory factors. Controlling factors include the EU's economy and security interests in both countries. Furthermore, the country's development level is controlled by focusing on a set of countries that the EU categorises as per the countries' level of economic development in a specific trade programme – the GSP.

Additionally, MSSD enables to provide extensive coverage of the cases and search for possible differences in variables – the type of human rights violations, CPRs, or ESCRs – and outcome – enforcement of human rights provisions in the trade agreements by the EU, for example, withdrawing trade preferences from the partner country. The two cases were chosen based on objectives for identifying the universe of cases. Firstly, cases must provide a representative sample and show a functional variation on the dimensions of theoretical interest (Seawright & Gerring, 2008: 296). Hence, case selection is driven by "the way a case is situated along these dimensions within the population of interest" (*Ibid.*). In this research, the population of interest

is countries with extensive trade relations with the EU, benefit from a GSP programme, and show signs of grave human rights violations. Furthermore, using cases that are similar in specified controlled variables, showing variation in both independent and dependent variables, and are broadly representative of the population, will provide the most substantial basis for generalization of the phenomenon (Seawright & Gerring, 2008: 298). Thus, choosing MSSD for this research helps to make generalized assumptions about the EU's enforcement of human rights provisions regarding specific types of human rights violations.

To study the impact of the predominant type of human rights violations on the enforcement of human rights provisions in EU's trade agreements, one must define the universe of cases with specific criteria of what these cases need to display to see the variance in variables and outcome. The case selection should be based on countries that (a) have a trade agreement of some form with the EU, so the EU could use its trade tools to promote and enforce human rights provisions, and (b) have human rights issues and violations of CPRs and ESCRs. Furthermore, cases display relatively the same level of development and economic and security ties with the EU to control for other possible explanations for the outcome.

This Master's thesis focuses on two countries in the EU's GSP programme: Cambodia and Bangladesh, from 2017 to 2020. Both cases are representative of the criteria outlined above yet show necessary variation in terms of the independent and dependent variables. Both countries benefit from the "Everything but Arms" (EBA) arrangement for the least developed countries (GSP hub, 2021a & GSP hub, 2021b). Since 2017, the EU has stepped up its engagement with these beneficiary countries, including Myanmar, "due to the gravity of alleged shortcomings in respecting core human and labour rights standards" (European Commission, 2021). Essentially this means an investigation period for countries and enhanced dialogues regarding violations. This investigation should end with a decision to either temporarily suspend trade preferences or other instruments to facilitate further cooperation, most serious cases relationship between the beneficiary and donor is terminated. Hence, the timeframe from 2017 to 2020 is suitable for this research. It is a period of enhanced engagement between the EU and the beneficiary country, which should display an array of human rights violations and the EU's enforcement of human rights provisions – withdrawal of trade preferences – accordingly.

Additionally, Bangladesh and Cambodia, together with Myanmar, account for about 87.3% of preferential imports from all EBA beneficiaries, thereby being the largest beneficiaries of GSP

programmes with 13bn (€), three bn (€), and 2.4bn (€) – respectively (GSP hub, 2021b). Hence analysing the two largest beneficiaries of the EU’s GSP trade preferences, who have been under investigation for their severe violations of human rights since 2017, provides a meaningful ground for comparison. Myanmar is excluded from the comparison based on a violent Burmese military coup d’état, which could have been construed as an intervening variable.

Cambodia is a suitable case for comparison since the country has trade ties with the EU and displays a record of grave human rights violations. The EU has close trade ties with Cambodia as they cooperate under the framework of the EU-ASEAN Cooperation Agreement, and since 2004 Cambodia has benefited from the EU’s EBA scheme under the GSP programme (European Commission, 2022a). In 2020, the total trade in goods among the two partners equalled close to 4,3 billion euros (*Ibid.*). In terms of CPRs, Cambodia ranks a 25/100 in the Freedom House Index (2020, a), with a civil liberties score of 20/60 and a political rights score of 5/40. When the EU started its investigation into Cambodia, the Freedom House Index (2017, a) ranked 31, with a civil liberties score of 20 and the political rights score of 11. These scores suggest that the country has issues predominantly with deteriorating political rights such as the electoral process and political participation. In terms of ESCRs, Cambodia ranks a 5 (no guarantee of rights) in the International Trade Union Confederation’s (ITUC) global rights index (2020). In 2017, Cambodia was ranked among the top 10 worst countries to work in (ITUC, 2017). However, it has not been classified as such ever since. Hence, Cambodia fits the criteria for case selection as it displays violations of CPRs predominantly and has close trade ties with the EU, and therefore is suitable for this study. According to our theory, one would expect that in this case, where the human rights violations are predominantly CPRs, the EU would enforce the human rights provisions by withdrawing trade preferences.

Furthermore, Cambodia displays a relatively high level of EU interests – both economic and security – in the country, which serves as a controlling variable across the two cases as higher interest would suggest that the EU does not react to any human rights violations. Firstly, in the last 20 years, Cambodia’s economic growth rate has averaged 8% annually, making the country’s economy one of the fastest-growing economies globally (GSP hub, 2021a). Hence analysing Cambodia in the context of trade relations is vital as the country is on its way to becoming a more influential player in the Asian region. Secondly, the EU has tried to expand its reach in the Asian region by signing FTAs with countries such as Singapore and Vietnam in recent years. These commercial deals with both countries contribute to the finalization of

the EU's more comprehensive trade with the Association of Southeast Asian Nations (ASEAN) (Scimia, 2019). Additionally, the EU mentions in its Global Strategy for the European Union's Foreign and Security Policy (EEAS, 2016: 41) that deepening economic diplomacy with ASEAN countries and other building blocks of global trade is a priority. Hence, building a solid economic relationship with one of the ASEAN countries is important for realizing the trade deal with the organization. Thirdly, Cambodia as an ASEAN country serves as a strategic security interest for the EU as it aims to gain more power to combat Chinese influences in the Asian region. This means that Cambodia plays a substantial role in the EU's economy and security interests in the area.

Like Cambodia, Bangladesh is a suitable case for comparison as it has close trade ties with the EU and displays a variety of human rights violations. Bangladesh has enjoyed benefits from the EU's GSP programme since 1995, and the two entities work closely through the framework of the EU-Bangladesh Co-operation Agreement concluded in 2001 (European Commission, 2022b). Between 2017 and 2022, the EU imported nearly 15 billion euros worth of goods from Bangladesh (*Ibid.*). Further, similar to Cambodia, Bangladesh has a long record of deteriorating human rights records, specifically in terms of ESCRs; however, the country still struggles with upholding CPRs. The country ranks 39/100 in the Freedom House Index (2020, b), therewith political rights score of 15/40 and civil liberties 24/60. When the EU launched its investigation, Bangladesh ranked 47 in the Freedom House Index (2017, b), with a political rights score of 20 and civil liberties of 27. In terms of ESCRs, Bangladesh ranks a 5 (no guarantee of rights) in the ITUC global rights index (2020). Furthermore, the country is consistently listed in the top 10 worst countries for workers (*Ibid.*). In 2017, the situation was the same – no guarantee of rights (ITUC, 2017). Hence, Bangladesh fits the criteria for case selection as it has GSP status with the EU and displays human rights violations, predominantly violations of ESCRs. According to our theory, one would expect that in this case, where the human rights violations are predominantly ESCRs, the EU does not enforce human rights provisions in its trade agreements.

Like Cambodia, the EU has a substantial economic and security interest in Bangladesh as the country is one of the largest beneficiaries of GSP programmes. The economic structure in the country relies predominantly on the industrial sector, of which the garment industry is the most vital pillar, and the agricultural industry (GSP hub, 2021b). While the latter only contributes around 15% to the GDP, it employs the majority of the country's workforce (*Ibid.*). In terms

of security, Bangladesh is a strategic partner to the EU due to the country’s geographic location in the Bay of Bengal. Furthermore, as the EU has a growing interest in combating Chinese power in the Asian region, Bangladesh, as a South Asian country, plays a substantial role in the EU’s aims of being a global actor. Hence, Bangladesh is a suitable case as it falls within the universe of cases: i.e., countries with a trade agreement with the EU and display human rights violations. Further, a suitable case for a structured comparison, following the MSSD logic, with Cambodia as it is similar regarding all potentially relevant factors, but the one of interest.

	Bangladesh	Cambodia
Trade agreement	Everything but Arms	Everything but Arms
Economic interest	Important	Important
Security interest	Not vital	Not vital
Predominant type of human rights violations	Economic, social, and cultural rights	Civil and political rights
Enforcement of human rights provisions	None or naming and shaming	GSP preferences withdrawn

*Table 1. MSSD research design.*

Therefore, while both countries included in the EU’s GSP programme display different types of human rights violations and differ in terms of the predominant type of the violation, the EU’s economic and geopolitical interests in both cases are similar. Both Cambodia and Bangladesh play a vital role in the EU’s trade and account for the two largest GSP programme beneficiaries while facilitating the EU’s geopolitical interests in the region. Hence, any variation in the EU’s enforcement of human rights provisions would suggest that the explanatory factor is indeed the predominant type of human rights violation, not the variation in the EU’s interest. Furthermore, these cases show a difference in the predominant type of human rights violations in the country, which helps to explain the perceived outcome of the EU’s enforcement of human rights provisions, such as withdrawing trade preferences. Or, in return, no enforcement, which is understood as action below the threshold of enforcement, for example, naming and shaming. Bangladesh displays higher volumes of ESCRs violations,

while Cambodia predominantly violates CPRs. Yet, the EU decided to withdraw GSP preferences only from Cambodia. Hence, these cases are suitable for comparison to explain the phenomenon of selectivity in the EU's enforcement of human rights provisions in its trade agreements. According to theoretical expectations, one would expect that the EU displays enforcement of human rights provisions if the country predominantly violates CPRs. At the same time, violations of ESCRs are disregarded and receive no enforcement of human rights provisions.

## **2.2 Operationalization & Data**

The independent variable of 'predominant type of human rights violation' is measured on a nominal scale. It can take the value of 'type 1', where CPRs violations are predominant, or 'type 2', where ESCRs are predominant. Each type is identified by evaluating the gravity or level of human rights violations in the country based on a predetermined set of human rights. The value of the independent variable is established by comparing the gravity of either type of human rights violation between 2017 to 2020 in a specific country. Further, human rights violations are understood as human rights practices of governments and/or all of their agents, such as the police or paramilitary forces happening inside the country's borders, affecting its citizens (CIRI, 2014: 4).

Type 1 or violation of CPRs in this study are operationalized by considering the EU's internal human rights regime, its guidelines for human rights strategy, and the UDHR (1948). Violations of CPRs are predominant in a given setting when instances of deprivation of these rights listed below can be observed. For example, if any of these human rights, or all of these, are violated systematically and widespread by state actors, then this suggests violations of CPRs in the country:

- a) the elimination of torture and cruel, inhuman, or degrading treatment or punishment (corresponds with UDHR Article 5);
- b) the freedom of religion and belief (corresponds with UDHR Article 18);
- c) the right to freedom of opinion (corresponds with UDHR Article 19);
- d) the elimination of discrimination based on particular distinctions such as race, colour, sex, language, political or other opinions, etc. (corresponds with UDHR Article 2).

Type 2 or violations of ESCRs in this study are operationalized by considering the EU's internal human rights regime, for example, the Charter of Fundamental Rights, the EU's particular importance of labour standards in trade agreements, and ILO standards for work. As this study mainly focuses on trade agreements, it is essential to concentrate on ESCR, which concerns the working environment; however, this does not mean that other ESCR issues in the country are disregarded in the analysis; instead, the focus is on these specific rights. The abovementioned theory confirms the UDHR (1948) as the basis for all EU human rights policies as confirmed by the TEU; hence this study suggests indicators for ESCRs through provisions described in the UDHR Articles. Indicators for the type of violation of ESCRs are systematic and widespread violations by the state actors on the following premise. If any of these, or all of these, are violated, then this suggests violations of ESCRs in the country:

- a) the right to work, to free choice of employment, just and favourable conditions of work, and protection against unemployment (corresponds with UDHR Article 23);
- b) the right to freedom of association and the right to freedom of peaceful assembly (corresponds with UDHR Article 20);
- c) the right to daily and weekly rests periods and the right to an annual period of leave (corresponds with UDHR Article 24).

To assess the gravity of violations, some key dimensions are considered, which stem from the abovementioned theory and human rights research on appropriate indicators for measuring human rights violations. Firstly, prominent human rights scholars suggest three general relevance to any human rights measurement to accurately assess the gravity of the violations: scope, intensity, and range (Stohl et al., 1986: 600). Firstly, intensity is, as described, "human rights violations which refers to the frequency of occurrence of the various types of state violations during a given time period" (Stohl et al., 1986: 601). Secondly, the scope is described as "the quality of human rights abuses," explicitly identifying different means for human rights violations and how these manifest in the country (Stohl et al., 1986: 600). For example, the right to freedom of opinion is limited in print and broadcast. Thirdly, the range is described as "the size of the population targeted for human rights abuses" (Stohl et al., 1986: 602). Additionally, it recognizes the difference between two similar regimes, which might utilize a similar scope or intensity of human rights violations (*Ibid.*). One threatens vast segments of society while the other only a small minority (*Ibid.*).

Furthermore, as grounds for enforcement of human rights violations in the EU's practice stem from a serious and systemic violation of human rights, it is only reasonable to use a criterion based on what has been interpreted by the international community as serious. For example, the magnitude of the violations and the systematic patterns of violations. Hence, when evaluating the gravity of human rights violations in the country, these prerequisites are considered to describe the human rights violations in Bangladesh and Cambodia accurately.

When it comes to the sources for measuring the independent variable of the 'predominant type of human rights violations,' it is measured by combining statistical data and reports from relevant stakeholders. Whereas the statistics serve to see numerical data on various instances of human rights violations, such as the number of people affected, the analysis of reports provides more qualitative data on the description of human rights violations. It offers further and richer context to numbers that allow drawing conclusions regarding the scope, intensity, and range of these human rights violations, hence contributing to assessing the gravity of human rights violations in a country. To measure the human rights violations in Cambodia and Bangladesh from 2017 to 2020 and to establish which type of human rights violations were predominant in either case, the study relies on reports and statistical data from country-specific reporting on human rights violations from relevant stakeholders such as human rights groups and international organizations. The reports were selected based on:

1. Most prominent human rights groups in the country.
2. Most prominent international human rights non-governmental organizations and stakeholders.
3. United Nations Human Rights Council Universal Periodical Review reports on the human rights situation in the country.

The local human rights groups give the most accurate qualitative picture of the situation on the ground, while international organizations provide a more comparative view. The UN reports combine statements from the countries' governments and relevant NGOs and an overview of the human rights situation. If possible, two reports were chosen from each category for each country in the time frame of 2017 to 2020. This choice resulted in a total of 30 reports. Including reports made by prominent international human rights non-governmental organizations and stakeholders such as the Human Rights Watch and the International Trade Union Confederation. Reports made by main human rights groups in the country, such as Odhikar and Ain o Salish Kendra (ASK) in Bangladesh and the Cambodian Centre for Human

Rights (CCHR), and the Centre for Alliance of Labour and Human Rights (CENTRAL) in Cambodia. Further, this study analyses official Universal Periodical Review reports made for and by the United Nations to assess the human rights situation in both Cambodia and Bangladesh, reports from 2018, respectively.

In those reports, the human rights situation in the country is depicted most accurately, thus allowing to measure the level of human rights violations and determine the predominant type. Further, reliance on such reports for this analysis is suitable since the EU itself uses stakeholders' reporting to measure the extent of human rights violations in the country to make decisions under GSP programmes. The Commission monitors the compliance of the human rights conventions listed under GSP by examining conclusions and reports made by relevant international monitoring bodies, most often third-party civil society organizations (Zamfir, 2018b: 4). Hence, following the same data collection mode adopted by the EU for assessing the human rights situation allows this study to establish the necessary ground for analysis and results. This type of data collection is helpful as it ensures that the assessment of human rights violations does not deviate too much from the EU's way of evaluation. If a serious breach of specific human rights is observed, one should expect an EU enforcement of human rights provisions.

The outcome or dependent variable of 'the EU's enforcement of human rights provisions' is measured on a nominal scale and can take up the value of 'enforcement' or 'non-enforcement.' The EU's enforcement can be observed when it enforces human rights provisions in its trade agreements by invoking the 'essential elements' clause, resulting in the withdrawal of trade preferences. In contrast, 'non-enforcement' means that the EU does not invoke the 'essential elements' clause, albeit not withdrawing trade preferences. Instead, it either does not respond to human rights violations at all or responds in 'milder' ways. Such as (a) decrease of financial aid; (b) suspension of political dialogue; (c) withdrawal of expert assistance to the beneficiary country; d) rhetorical action, e.g., naming and shaming. Crucially, 'enforcement' may also include milder forms of response as listed above (a-d), but centrally, it includes the withdrawal of trade preferences. The 'non-enforcement' includes the EU's response below the enforcement threshold, meaning no withdrawal of trade preferences, and instead manifests as milder forms of response listed above, such as rhetoric action or no response. The centrality of the threshold of withdrawal of trade preferences is based on the fact that the EU enforces human rights provisions based on the serious and systematic violations of human rights, which should result

in the withdrawal of trade preferences. Hence, determining whether the EU enforced human rights provisions or not allows one to conclude whether the EU enforced the human rights provisions in response to a specific type of observed human rights violations, namely CPRs, and with non-enforcement to ESCRs violations.

To measure the outcome or dependent variable, defined as 'the EU's enforcement of human rights provisions,' this study focuses on the EU's official statements, press releases, conclusions, and resolutions concerning the EU's trade relations and human rights with either Bangladesh or Cambodia made from 2017 to 2020, with the emphasis on statements made by the Commission, the Council, and the Parliament. Most important were documents related to the consideration of withdrawing trade preferences. Documentation regarding the EU's enforcement of human rights provisions in Bangladesh and Cambodia was selected based on the time frame, country-specific news, and relevance to GSP programmes or trade relations. In total, 21 documents were assessed and analysed.

### **2.3 Method of analysis**

The above-described sources are analysed by applying the method of qualitative content analysis (QCA). This method is predominantly used to analyse qualitative data, focus on context, and subject, and emphasize variations across different parts of the text (Graneheim, Lindgren & Lundman, 2017: 29). Further, QCA allows seeking patterns in the data for more than once occurring events or conflicting accounts of events or processes. The basic ideas of QCA include a) fitting the material into a model of communication, e.g., the situation of text production; b) material is analysed following rules of procedure, thereby devising data into analytical units; c) the data is interpreted based on research questions and revised within the process of analysis (Mayring, 2000: 3). QCA could be combined with other qualitative procedures, whereby the characteristics of the material used and the research question should prioritize the decision about adapted methods (Mayring, 2000: 8). Hence, as this research deals with a large amount of information-rich data, it is necessary to use a technique for analysis, that helps to reduce the available data into smaller sections to systematically assess and evaluate only essential data to answer the research question.

The QCA used in this research is based on the approach presented by Gläser & Laudel (2013), in which the information is extracted from the original text to stepwise reduce the data material

and process it according to the knowledge retrieved from the theory. This approach does not aim to construct a specific coding tree or use coding in general to analyse the data (Gläser & Laudel, 2013: 24). Instead, it focuses on predetermined categories, variables, or sets of criteria as a tool for extraction (*Ibid.*). Characteristically, extractions mean to identify relevant information from the data available, identify the category to which the information belongs, rephrase the extracted information to short, concise statements about the value of the data, and assign these statements to other relevant dimensions of the existing categories, whereby a link to the original text is kept to interpret the context of data (Gläser & Laudel, 2013: 27). For example, in the context of the present study, this means, by using the method of extraction, one replaces the descriptions of relevant information displayed by the authors of the text with the reformulation of that same information in a shorter, more concise, analytic language, which helps to manage rich descriptive data (Gläser & Laudel, 2013: 31). While processing the data, information is structured by chronological order or by subject matter, in which scattered information is summarized, information with the same meaning is aggregated, and contradictory information is corrected or marked as such (Gläser & Laudel, 2013: 29). Therefore, this method aims to systematically reduce the amount of information in each subsequent step of the analysis and structure it according to the aim of the research, albeit fitting for this given research.

Following this logic, to analyse the independent variable, the study uses the Cingranelli-Richards (CIRI, 2014) Human Rights Data Project Coding Manual, a measurement model for human rights violations to accurately represent the content of human rights reports published by international organizations. The CIRI coding manual is often used to identify, analyse, and measure human rights violations in a country (see Schnakenberg & Fariss, 2014, Clark & Sikkink, 2013). Important to note that the codes presented in the said manual provide for the categories referred to above, according to which the material is analysed. The CIRI manual (2014) contains specific human rights and provides the definition, scope, and criteria to accurately assess violations of these rights while giving examples of what does not qualify as a violation. For example, the right to freedom of religion is defined as "the extent to which the freedom of citizens to exercise and practice their religious beliefs is subject to actual government restrictions. Citizens of whatever religious beliefs should be able to worship free from government interference," and detention, physical violence, or official government harassment of religious authorities is a human rights violation, while restrictions on the activities of foreign missionaries are not (CIRI, 2014: 31-32). These types of explicit

descriptions in the CIRI manual are present for most of the violations written in the UDHR. Hence, the first phase of analysis contains extracting information of relevant descriptions of the events in the reports based on the identified human rights listed above and evaluating the content of these possible violations.

In the second phase of the analysis, all extracted information is further assessed to establish the gravity of each human rights violation, which will be evaluated based on the CIRI (2014) coding scheme while considering the scope and range of said violation:

- a) level 0 (the most): 50 or more occurrences
- b) level 1 (intermediate): 1 to 49 occurrences
- c) level 2 (the least or unreported): 0 occurrences.

Furthermore, when numerical data is absent from the reports, the following guidelines on the language of the reports, based on the CIRI coding manual (2014), are used:

- a) instances where human rights violations are described by various adjectives such as "systematic," "gross," "widespread," "epidemic," "extensive," and "wholesale," regularly or likewise, are to be construed as a level 0 violations, hence have occurred frequently.
- b) instances where violations are described using wording such as "numerous," "many," or "various," the level of violations will be given based on the context and pattern of similar violations, either as level 1 or 0. (CIRI, 2014).

All the reports from the research's time frame will be evaluated based on the gravity of individual human rights violations, along with the characteristics of scope and range of said violation, to establish whether the type 1 'violations of CPRs' or type 2' violations of ESCRs' are predominant in the country. I will assess the country's overall situation should there be any volatility during the time period. For example, if violations of a particular human right are evaluated on level 0 for 2017, yet the country has made progress, and from 2018 to 2020, violations are lower or not reported to the same extent, the country is awarded a level 1 indicating intermediate volumes of violations. Here, the violation's range, scope, and context come into play. Further, suppose any of the reports do not account for any violations as operationalized above. In that case, the country is evaluated on level 2, indicating that human rights violations are practically absent or not reported. To establish the 'the predominant type of human rights violations,' all the scores of individual human rights are evaluated against each

other. Higher values (level 0) indicating severe or widespread human rights violations will be assessed against lower values (level 1 or 2) of intermediate or non-existent violations, whereby higher values prevail and thus be concluded as the country's predominant type of human rights violations.

To analyse the dependent variable of the EU's enforcement or non-enforcement of human rights provisions, relevant information from the data is extracted to illustrate how the EU's institutions reacted to human rights violations in Bangladesh and Cambodia. The extraction is based on the operationalization of (non-) enforcement of human rights provisions in the EU's trade agreements from 2017 to 2020.

### **3 The EU's enforcement of human rights provisions in its trade relations with Cambodia and Bangladesh, 2017-2020**

In the following chapter, the Master's thesis will empirically test whether the type of human rights violation affects the EU's enforcement of the human rights provisions by studying the EU's response to human rights violations in Bangladesh and Cambodia from the time period 2017 to 2020. Firstly, the human rights situation, or rather the violations, in both countries are portrayed and analysed with the focus on establishing the predominant type of human rights violation – either CPR or ESCR – in the country. Secondly, the chapter presents the EU's enforcement or non-enforcement of the human rights provisions in trade agreements to human rights violations in either of the countries. Based on the analysis, the chapter seeks to conclude whether the type of human right affects the selectivity in the EU's enforcement of human rights provisions as enshrined in trade agreements, specifically in GSP programmes.

#### **3.1 The predominant type of human rights violation in Cambodia**

When it comes to violations of CPRs, since 2017, the Royal Government of Cambodia has severely violated the right of freedom of opinion and expression by limiting people's access to free media. It is a common practice by Cambodian law enforcement agencies to use attacks to suppress peoples' opinions with opposing views either by restricting objective media or using violence in peaceful protests. In 2017, the Cambodian law authorities banned over 100 people from political activity, the main opposition party was dissolved, and the leaders were arrested and tortured (Human Rights Watch, 2018a). Further, the government closed multiple independent news outlets on the pretences of unpaid taxes, for example, the Cambodian Daily Newspaper, Radio Free Asia, and Voice of America (*Ibid.*). International organizations have estimated that by 2017 almost all domestic broadcast media was under the control of the government of Cambodia (Human Rights Watch, 2018a). In 2017, the Cambodian Centre for Human Rights (CCHR) (2019: 4) reported that 81% of civil society organizations expressed the need to self-censor their opinions when speaking in public. From 2017 to 2018, around 432 incidents were recorded where the government severely restricted the right to freedom of thought, and the public's perception of their ability to exercise their right sharply decreased (CCHR, 2018: 2, 12). Further, violations of this kind were mainly carried out by local and national authorities in nearly every province of Cambodia (CCHR, 2018: 26).

From 2018 to 2020, the Cambodian government violated the right to freedom of opinion and expression, severely restricting citizens' ability to exercise their fundamental freedom. The government systematically and arbitrarily applied various laws governing the freedom of opinion and made amendments to a legislative framework to further suppress opposing views (CCHR, 2019: 1). For example, amendments to Cambodia's Law on Political Parties allow the arbitrary dissolution of opposition political parties (Human Rights Watch, 2019a). In 2019, Cambodian authorities significantly continued to curtail media freedom as many independent news outlets in English and Khmer were shut down or forced to be sold to owners with ties to the Royal Government (Human Rights Watch, 2020a). Further, the government announced a new cybersecurity bill allowing the authorities to surveillance all types of communication (Human Rights Watch, 2020a). Additionally, from 2018 to 2019, the CCHR (2019: 1-2) recorded more than 554 unique incidents related to violation of freedom of opinion, and among those, 241 were described as 'severe.' Additionally, in 2019, the Cambodian government authorities arrested and detained over 60 opposition supporters and charged over 100 people on false allegations (Human Rights Watch, 2020a; HRC 2018a: 4). CCHR (2019: 4) reported during 2018 to 2019, 87% of civil society organizations and trade union leaders said that they needed to self-censor their opinions when speaking in public.

From 2019 to 2020, CCHR (2020a: 1) recorded 656 incidents where the Cambodian government deprived citizens' right to freedom of opinion. People cannot voice their opinions online as CCHR (2020a: 26) reported 104 restrictions, 50 violations, and 48 arrests of citizens who exercised their fundamental rights. In 2020, the Cambodian government often used violence against peaceful protestors. It arrested or attacked journalists, human rights defenders, opposition party members or leaders, and even ordinary people for exercising their right to freedom of opinion (Human Rights Watch, 2021a). Further, the government adopted multiple repressive laws, depriving people of their rights to freedom of opinion. For example, new regulations grant the prime minister of Cambodia extensive powers, allowing government officials to ban the distribution of objective information, introduce intrusive surveillance of telecommunication channels, and restrict demonstrations against government decisions (Human Rights Watch, 2021a). For example, public order laws envisage more control over Cambodia's civilized society by prohibiting a vast array of public and private behaviour (*Ibid.*). Effectively, this means that the Cambodian government has complete control of print and online media. For example, in the first months of 2020, the government shut down multiple independent media outlets such as TVFB, Rithysen radio station, and CKV TV Online (*Ibid.*).

Additionally, many independent news outlets' owners were arrested due to politically motivated allegations – a common tactic by law enforcement agencies. Hence, the violations of the right to freedom of opinion belonging to a cluster of CPR are evaluated on a level 0, indicating high volumes of violations, which affect multiple areas of the society and are widespread throughout the entire country. During the time period under investigation, the Royal Government of Cambodia had close to complete control of the independent media, both online and print.

The right to elimination of torture and the right to freedom of religion belonging to a cluster of CPR are seldom violated. The freedom of religion is somewhat an issue in Cambodia as religious minorities experience numerous attacks or discrimination based on their religion. In 2019, the Human Rights Committee (HRC, 2018a) noted increased violence and discriminatory actions against ethnic Vietnamese people, who are deprived of their right to exercise Buddhism. Further, in 2020, the government used the COVID-19 pandemic as a pretext to reinforce discrimination against Cambodia's minority Muslim communities by mentioning their religion when reporting on people who contracted the virus (Human Rights Watch, 2021a). Considering the wording of reports indicating numerous attacks on religious minorities, who belong to various groups, not just a single minority, the violations of the right to freedom of religion are evaluated on a level 1, indicating intermediate volumes of violations in the country.

The elimination of discrimination against sex, language, race, etc., is seldom violated in Cambodia. In 2018, it was reported that LGBTQ+ communities in Cambodia face multiple forms of discrimination and are often denied their right to equality before the law, and there is a lack of legal protection against any discrimination or violence against this community (HRC, 2018b). From 2017 to 2020, women were the most discriminated against, as numerous attacks were reported. For example, CCHR (2020b: 24) reported that in 2019, 43% of assemblies organized by women experienced state violence against them, while men experienced fewer infringements by the government. Additionally, in 2020, the Cambodian government adopted public order laws, which predominantly violate the rights of women and persons with actual or perceived developmental or mental disabilities, which constitutes a violation of the right to elimination of discrimination against sex, language, and race (Human Rights Watch, 2021a). Hence, considering the wording of the reports, indicating numerous attacks on women and multiple forms of discrimination against the LGBTQ+ community, the violation of the right to

elimination of discrimination based on characteristics is evaluated on a level 1, indicating an intermediate volume of violations, which affect primarily minority groups such as women.

All in all, the violations of specific human rights belonging to a cluster of civil and political rights were primarily evaluated on a level 1, indicating an intermediate volume of violations, or level 0, indicating high volumes of violations. These findings suggest that during the time period of 2017 to 2020, Cambodia displayed a significant number of violations of CPR. However, to assess whether this type of CPRs or the type of ESCRs were predominant, the following paragraphs will evaluate the level of violations of specific human rights belonging to the cluster of ESCRs.

From 2017 to 2020, the Royal Government of Cambodia mainly violated the right to freedom of association and peaceful assembly belonging to a cluster of ESCR. The reports analysed seldom mentioned other rights such as the right to work, adequate working conditions, and the right to daily rest periods in any of the reports analysed. For example, the lack of adequate working conditions was mentioned only by CENTRAL (2017) as the RMG factories barely ensured the legal minimum standards for adequate working requirements under Cambodian national law. Further, the Human Rights Committee (HRC, 2018a: 5) noted that Cambodia had made progress since 2017 by introducing bills for annual periods of leave for pregnant women and raising the minimum wage for workers. Therefore, this concludes that the latter rights are not of primary concern in terms of ESCR. Further, reports seldom mention violations of ESCR by the Royal Government of Cambodia. For example, in 2017, the ITUC branded Cambodia as one of the top ten worst countries to work in; however, in other years in question, from 2018 to 2020, the ITUC just claimed the situation in the country to be ‘concerning’ (ITUC, 2018-2020). Hence, violation of the right to work, adequate working conditions, and daily rest periods belonging to a cluster of ESCR are evaluated on a level 2. This level indicates no violations in the country since the violations of these specific rights falling under ESCR are not mentioned by the reports, albeit allowing a conclusion that these either do not occur or are not necessary in terms of violations of ESCR.

As several of the reports (Human Rights Watch, CCHR) mention, the right to freedom of association and peaceful assembly belonging to a cluster of ESCR were often violated in the country. Similarly, ITUC (2017: 71) reported that even the Cambodian Labour Minister has threatened workers against protesting and called his officials in all ministries across Cambodia

to take legal actions against people who have protested or demonstrated; however, this threat did not realise in action. In 2017, the Cambodian government drafted a Wage Law, which allegedly aimed to potentially criminalise the work of unions and labour activists (ITUC, 2018: 23). Yet, the Cambodian government never put this into the legal framework. Nonetheless, a theme that surfaces recurrently throughout the reports (ITUC, Human Rights Watch) is that workers are still harassed and attacked due to their affiliation with unions. In 2017, the factory authorities dismissed around 588 workers after protests in a ready-made garment (RMG) factory called Gawon Apparel (ITUC, 2018: 23). Further, the authorities of Cambodia carried out investigations into trade unions under Cambodia's Trade Union Law, which has prevented unions from legal registration (Human Rights Watch, 2018a).

As reflected in the reports, from 2018 to 2020, the Cambodian government continued to violate the right to freedom of association. In December 2018, the Cambodian court convicted six prominent union leaders on baseless charges, yet the appeals court overturned these in May 2019 (Human Rights Watch, 2020a). Further, in December 2018, the Cambodian authorities issued a directive on Facilitating Procedures and Formalities for Union Registration, which makes registration for a union extremely difficult; for example, it is required to provide information about a union leader's family (CCHR, 2019: 10). This notion is illustrated by the fact that in 2018, 81% of the 72 trade unions that registered noted that the registration form was unnecessarily complicated to fill out; hence only 33 unions were successfully registered, while only two had their applications rejected by the government (CCHR, 2018: 4). In 2019, 44% of those questioned by trade unionists and civil society organizations responded that their organizations faced government restrictions or threats when asked to form a coalition or union (CCHR, 2019: 22). This is an increase from 2017, which recorded 38% (*Ibid.*). Nonetheless, of the 46 trade unions that attempted to register, 83% were successful (CCHR, 2019: 25; CENTRAL, 2019).

From 2019 to 2020, CCHR (2020a: 20) recorded around 114 incidents where the Cambodian government directly targeted the right of freedom of association of a trade union or civil society organization (CSO). Further, of 185 assemblies where people demonstrated land rights or adequate working conditions, a total of 74 restrictions or violations by the Royal Government of Cambodia were cited, including five assemblies, which were directly prohibited (CCHR, 2020a: 6). However, I must note that these numbers include both CSOs and trade unions; hence one cannot say for a certainty what is the intensity of this violation. Despite these violations,

the Cambodian government shows a willingness to interfere when its citizens' economic, social, and cultural rights are deprived due to factories' authorities. This notion is reported by CCHR (2019: 34) as in January 2019, the factory authorities dismissed over 1000 RMG workers after a long dispute between the factory authorities and its workers, yet after the intervention of the Cambodian government, the majority of the workers were reinstated. Assessment done based on the given information provided in the reports, the right to freedom of association and peaceful assembly belonging to a cluster of ESCR is evaluated on a level of 1, indicating intermediate volumes of violation as the wording of the reports suggests numerous government actions, which violate ESCR.

As the evidence presented above suggests, in the case of Cambodia, the predominant type of human rights violation is type 1, indicating violations of CPR. While the analysis shows human rights violations of both types in Cambodia, the gravity of violations of CPR are more severe and frequent when assessed according to the criteria of gravity, along with scope and range, and is therefore considered to be predominant in Cambodia. While violations of human rights belonging to the cluster of ESCRs are primarily evaluated on either low levels or intermediate levels, violations belonging to a cluster of CPRs are assessed on a high level of violations, indicating severe and systemic human rights violations or on an intermediate level. Taking all evidence into account, along with reports emphasising mostly violations of CPR, this allows a conclusion that during the time period of 2017 to 2020, the predominant type of human rights violated in Cambodia was the type 1: violations of CPRs.

### **3.2 The predominant type of human rights violation in Bangladesh**

When it comes to violations of CPRs, since 2017, the Bangladeshi government has limited the right of freedom of opinion and expression by adopting restrictive laws, which prohibit objective media outlets in-country and propose harsher penalties for views expressed in the online environment. The government controls most of the free media, specifically the electronic media, and has closed down many pro-opposition news outlets (Odhikar, 2018: 41). Many are forced to self-censorship due to increased pressures from the authorities (*Ibid.*). For example, the government closed Diganta TV, Islamic TV, and the daily Amar Desh print publication (*Ibid.*). Suppressing free media has resulted in constant attacks on journalists, who have come under extensive scrutiny by the government authorities. Around 30 journalists were

injured or assaulted, and approximately two were killed while reporting on political unrest in the country (Human Rights Watch, 2018b; Odhikar, 2018: 44).

Further, the Bangladeshi government has exercised extensive control over online media. In 2013 the government adopted the Information and Communications Technology Act (ICTA), which aims to punish critics of the government, primarily journalists, for reporting various issues both in the digital and in the conventional media (Human Rights Watch, 2018b). This legislative act punishes people for expressing their opinions against the officials of the Bangladeshi government or their supporters. This notion has become increasingly problematic as in August 2017, a journalist called Abdul Latif Morol was arrested for a satirical reporting of the death of a random goat on Facebook (Human Rights Watch, 2018b). According to Odhikar (2018: 42), around 32 people were arrested under ICTA because of their posts against the government. However, due to the pressures from human rights defenders and journalists, the Bangladeshi government removed some of the law's restriction sections, which were deemed the most concerning (Odhikar, 2018: 42-43).

From 2018 to 2020, the situation with violations of the right to freedom of expression in Bangladesh remained relatively the same – highly problematic. Ahead of the 2018 national elections, Bangladesh authorities jailed or detained many opposition party members and lodged politically motivated cases against thousands of opposition supporters and journalists (Human Rights Watch, 2019b). Around 40 people were arrested under Digital Security Act (DSA), and approximately 71 journalists were injured and 22 assaulted while carrying out their professional duty (Odhikar, 2019: 27-29). For example, in August 2018, journalists became victims of attacks by the ruling party men with sticks, rods, and machetes, while collecting evidence on the scene (Odhikar, 2019: 29). Further, the government continued to censor mass media by filing criminal cases against journalists to disrupt objective reporting and publish unbiased news. In 2019, 45 journalists were injured and 49 either threatened, sued, or arrested while carrying out their duties, and 42 people were detained under DSA (Odhikar, 2020: 39-41).

Additionally, the government closed more than 20 000 websites under the pretence of an 'anti-pornography' sweep, but instead, this induced number of well-known blogging sites reporting on issues regarding elections (Human Rights Watch, 2020b). In 2020, the Bangladeshi government used COVID-19 as a pretext to further censor the media and free speech; however,

this was a common practice of semi-authoritarian governments during the pandemic. For example, in 2020, 150 journalists were injured, assaulted, or attacked, and the Bangladeshi government made 142 arrests under the DSA and 13 under ICTA (Odhikar, 2021: 11, 37). Hence, the right to freedom of opinion and expression is evaluated on a level 0, indicating a high volume of violations. There are no freedoms to speak freely and print any opposing views without the fear of getting arrested.

In 2017, the elimination of torture belonging to a cluster of CPRs was an issue in Bangladesh. Despite the advancement of some anti-torture laws in the country's legislative framework, there is no apparent change on the ground as a section of law enforcement agencies continue to practice inhumane treatment, and many arrested people are being tortured in the police stations (Odhikar, 2018: 32-34). Torture usually occurs when police officers need a confessional statement on specific issues to prosecute people for false claims. In 2017, 13 people were tortured to death by law enforcement agencies (Odhikar, 2018:11). Further, women are most prone to severe torture by their spouses or other men; however, it is unclear how many women are affected (ASK, 2018: 12). Some reports account for more than 300 women (*Ibid.*), yet this is unconfirmed or not in line with other statistics presented in other reports from the same year.

From 2018 to 2020, the Bangladeshi government made steps toward the elimination of torture by enacting the first-ever conviction under the 2013 Torture Act, which some activists hoped would help to pave the way for launching investigations for dozens of documented reports of torture by security forces and hold these people accountable (Human Rights Watch, 2021b). However, this continued to be a concerning issue as six people were tortured to death in 2018 (Odhikar, 2019: 9; ASK, 2019: 3). Additionally, several people alleged being tortured while in the custody of the police. For example, in September 2018, the police arrested 32 students, and upon release, 26 of them claimed to have been tortured by the Detective Branch of the Police Office (Odhikar, 2019: 21). In 2019, around six people were tortured to death, and there were numerous reports of torture by law enforcement officers (Odhikar, 2020: 16). The year 2020 saw a spike in the number of people being tortured. Around nineteen were tortured to death, among them 17 killed by the police or law enforcement agencies, and dozens of reports of incidents involving torture of citizens (Odhikar, 2021: 22). Hence, the elimination of torture is rated on a level 1, indicating an intermediate volume of violations, as torture is practiced occasionally in the country.

The right to freedom of religion, belonging to a cluster of CPRs, is rarely violated in the country. Bangladeshi government practically does not have any restrictions on religion. However, there are few instances where citizens of an ethnic or religious minority have experienced violence or attacks initiated by law enforcement agencies or ruling party leaders and activists. For example, in 2017, at least three effigies in different temples were vandalized by the ruling party Awami League activists, yet none of them were prosecuted by the police (Odhikar, 2018: 57). According to ASK (2018: 14) statistics, around 21 business organizations and 45 houses of religious minorities were attacked, destroyed, or looted in various parts of Bangladesh. However, these assaults do not account for a restriction on religion as the government of Bangladesh has not imposed any legal or unofficial restrictions on the freedom of religion, and citizens can enjoy the freedom of religion.

From 2018 to 2020, the government did not impose any known restrictions on religion. In 2018, there were a few attacks on houses and places of worship of the citizens belonging to a religious minority (Odhikar, 2019: 36). The prominent Bangladeshi NGO Odhikar (2019: 36) claims that these attacks result from a lack of legal framework or prosecution of similar attacks and politicization of these events. According to ASK (2019: 11-12) statistics, around 29 houses belonging to religious communities were attacked, 97 incidents of demolishing idols, and one member of the Hindu minority was killed; however, this is not confirmed by any other reports from the same year. Yet, these incidents were noted by the Human Rights Committee as ‘concerning’ as most of those who experience violence are women from Hindu and Dalit communities (HRC, 2018d: 9). In 2019, three people from the Santal community were killed allegedly by the ruling party Awami League activist, yet they were not prosecuted (Odhikar, 2020: 61-62). In 2020, the High Court of Bangladesh ruled that Hindu widows will have legal rights over their deceased husbands’ farming lands, which is a ground-breaking verdict hoped to alleviate the economic and religious discrimination faced by Hindu Widows (ASK, 2021: 11). Further, the UPR review of Bangladesh does not mention any restriction on religion (HRC, 2018c). Hence, the right to freedom of religion is rated on a level 2, indicating a low volume of violations. This means that government restrictions on freedom of religion are practically absent, and this issue is not prominent, yet there are some instances of attacks on the religious minority.

In 2017, Bangladesh advanced on making progress in eliminating discrimination based on race, colour, sex, or language, which belong to the cluster of CPRs. The Bangladeshi government officially and legally recognised a third gender category for hijras, who represent primarily eunuchs, asexual or intersexual, or transgender people (Human Rights Watch, 2018b), yet this has not been fully realised on the ground as many genders and sexual minorities remained under pressure from the government authorities such as the Rapid Action Battalion (RAB). Further, Bangladesh has yet to repeal the law forbidding same-sex conduct, which has caused multiple public attacks on homosexuals in 2017, as 28 men were arrested by the RAB and publicly accused of homosexuality and flouting privacy rights (Human Rights Watch, 2018b).

From 2018 to 2020, this situation remained relatively the same as reports account for some instances of minorities being discriminated against due to their sexual orientation or experiencing gender-based violence (HRC, 2018d: 3; Human Rights Watch, 2019). For example, hijras fear being targeted by various groups and fear that they would be disregarded by the authorities (Human Rights Watch, 2019b). However, there are no data on this being the case, yet hijras continue to face threats as the police fail to enforce policies protecting them appropriately. Despite this, in 2019, the Bangladeshi government made relative progress with eliminating discrimination as the High Court of Bangladesh removed the requirement that Muslim women must declare in official documentation such as a marriage certificate whether they were virgins (Human Rights Watch, 2020b). Further, in 2020, the National Human Rights Commission formed a committee to address issues for marginalized groups such as transgender people, and the National Curriculum and Textbook Board of Bangladesh agreed to start addressing third gender issues in the secondary school curriculum (Human Rights Watch, 2021b). Hence, the elimination of discrimination is evaluated on a level 1, indicating an intermediate volume of violations since there are still some government restrictions based on race, colour, or sex. Still, the government has made progress since 2017.

All in all, the violations of specific human rights belonging to the cluster of CPRs were primarily evaluated on level 1, indicating an intermediate volume of violations, or level 0, indicating high volumes of violations. These findings suggest that during the time frame from 2017 to 2020, Bangladesh displayed a significant number of breaches of CPRs. However, to assess whether this type of CPRs or the type of ESCRs were predominant, the following paragraphs will evaluate the level of violations of specific human rights belonging to the cluster of ESCRs.

The ESCRs in Bangladesh were severely violated from 2017 to 2020 throughout the entire country and affected multiple work areas. In general, workers endure attacks, threats, and retaliation by the factory or government officials based on the draconian Special Powers Act of 1974 (Human Rights Watch, 2018b). The Act “provides for special measures for the prevention of certain prejudicial activities, for more speedy trial and effective punishment of certain grave offences and for matters connected therewith” (Government of the People’s Republic of Bangladesh, 2019). Due to their participation in unions and assemblies for demanding higher wages or better working conditions, many workers and union leaders are arrested based on this vague law for offenses. Such peaceful strike actions are often brutally repressed and severely punished by the Bangladeshi government, union-busting measures are frequent, and many workers’ attempts at forming a union are systematically dismissed (ITUC, 2019: 15). Furthermore, the government and factory authorities suppress workers, close factories, terminate workers without notice or compelling reasons, and do not pay for work (Odhikar, 2018: 58). The grave negligence of adequate working conditions often results in deaths and injuries, and people are deprived of sufficient periods of (maternity) leave (*Ibid.*). Hence, working in Bangladesh has become increasingly dangerous and challenging for people, thus violating people’s fundamental human rights as enshrined in the UDHR. According to ITUC, during the time frame of this research, Bangladesh was described as one of the top 10 worst countries to work in (ITUC 2017-2020).

Human rights such as the right to work, free choice of employment, just and favourable work conditions, and protection against unemployment belonging to a cluster of ESCRs were systematically violated by the Bangladeshi government. In 2017, around 13 ready-made garments (RMG) workers were killed and more than 362 injured due to the negligence of factories’ authorities across the country (Odhikar, 2018: 11). The same tactics are used in the informal sector of work due to the absence of concrete policies or legal framework; hence, many people are deprived of their fundamental rights or discriminated against based on their occupation (Odhikar, 2018: 59). For example, in 2017, 82 workers were killed and 80 workers injured in the informal sector (Odhikar, 2018: 61). Further, these workers come from various lines of work, such as construction workers, rice mill workers, etc., hence illustrating that these violations are widespread in the working sector. Often this right is violated by the government as there is a limited legal framework in the country to address these issues, and factory authorities disregard workers’ fundamental rights to work in favourable conditions.

From 2018 to 2020, the Bangladeshi government continued to violate these human rights. According to ASK (2019: 14) data, in 2018, 592 workers in the country died in 484 incidents recorded at various workplaces. Among them, in the informal sector, 86 workers died, and more than 55 were severely injured (Odhikar, 2019: 35). In 2019, 97 workers died, and more than 354 people were wounded in both the formal and informal sectors of work (Odhikar, 2020: 50). Further, several incidents of harassment and sudden closure of factories or not paying wages were reported by NGOs; for example, more than 31 600 workers were terminated due to the closure of 61 RMG factories while not getting paid for their work (Odhikar, 2020: 50). In 2020, 48 RMG workers were injured due to violence in the workplace, and 37 workers were injured due to incidents inside factories (Odhikar, 2021: 47) and 84 workers from informal workers were killed and 49 injured due to accidents at work (Odhikar, 2021: 49). During the pandemic, factory authorities forced people to work. Since all public transport was closed, many workers could not join work or had to walk more than hundreds of kilometres to attend (Odhikar, 2021: 46-47). Due to this mismanagement, it has been estimated that around 70 000 workers were affected or terminated (Odhikar, 2021: 47; ASK, 2021: 20). Human Rights Watch (2021) estimates that more than 1 million workers were released or did not receive payments of owed wages during the pandemic. Hence the right to work, free choice of employment, just and favourable conditions of work, and protection against unemployment are evaluated on a level 0, indicating high volumes of violations, which affect multiple areas of work across the entire country.

The Bangladeshi government often violates the right to daily and weekly rest periods and an annual leave period as factory authorities do not allow workers to rest during the workday, week, or year. For example, in 2017, many employees were forced to work from 6 AM to 10 PM during Ramadan (ITUC, 2017: 71). In 2019, many informal sector workers were forced to work without annual breaks or toilets, safe water, or food (Odhikar, 2020: 53). Further, dozens of pregnant women were terminated from more than 30 factories (*Ibid.*) instead of providing an annual leave period as per their human rights. Further, in 2020, many workers across the country had to work more than 10 hours a day, and, in some factories, the workday was more than 13 hours long without breaks for food or bathroom (Odhikar, 2021: 47). Consequently, due to pressures from retailers, workers were forced to return to work without sick leave and endured extended hours of work (Human Rights Watch, 2021b). Hence, the violation of this right is rated as 0, indicating high volumes of violations, which affect multiple areas of work – such as informal and formal – across the entire country.

The law authorities severely violate the right to freedom of association and peaceful assembly belonging to a cluster of ESCRs as many protests are met with police brutality, and workers are harassed due to their affiliation with trade unions. In Bangladesh, it is common to arrest trade unionists and people protesting for better working conditions. In 2017, many workers from different backgrounds gathered to demand higher wages and just working conditions and to protest the closure of government-owned factories; however, approximately 209 workers were injured due to a police crackdown on the event (Odhikar, 2018: 59-60; ITUC, 2017: 71). This action deprives citizens of the right to protest and exercise their freedom of assembly peacefully. The Awami League government often uses law enforcement agencies and its party activists to ‘maintain order’ at the gatherings and even at bar meetings (Odhikar, 2019: 14-15). Trade Unionists and their affiliates are often disregarded in the workplace and can experience increased retaliation by the government or factory affiliates. For example, many workers are forced to resign after attending protests, and factory authorities take away workers’ identification cards, thus restraining people’s ability to work in other factories (Odhikar, 2021: 47).

Furthermore, the Bangladeshi government displays discriminatory actions against trade unions and people affiliated with them, thus restricting the employees’ right to freedom of assembly. The government has adopted strict laws, making forming a trade union unnecessarily tricky. For example, about 30% of workers have to agree to form a union, and the law mandates an excessive registration process (ITUC, 2017: 30-31). This is further illustrated by the fact that only 10% of more than 4500 RGM factories have a registered union, and most local trade union offices are vandalized by law enforcement agencies or shut down by the government (ITUC, 2017: 71). Additionally, it is common in Bangladesh to harass people due to their affiliation with those unions. In January 2017, more than 1600 workers were suspended or terminated from work due to their association with unions, which displays systematic anti-union discrimination by the authorities (ITUC, 2017: 30-31). This discrimination based on their affiliation in unions is prevalent among people working in factory settings or informal lines of work; however, it does not affect people working in ‘higher’ lines of work. An example of discriminatory actions against trade union affiliates where an RMG worker Anisa Begum recalls her experience being in a trade union in Bangladesh:

“In 2017, the factory was established, and I become an executive member. After we formed the union, management fired the union leaders or forced them to resign and declared a ban on trade union activities in the factory premises. If anyone gets involved with the trade union, they are given the work of two people. They do not even allow us to go to the washroom or take breaks for meals” (ITUC, 2022: 10).

This discriminatory behavior towards workers continued from 2018 to 2020, while the overall situation remained the same or worsened. In February 2018, around 12 Garments Workers’ Trade Union Centre leaders were charged with false allegations of attempted murder after they were arrested for participating in peaceful protests (ITUC, 2019: 23). Around 272 RMG workers were injured by law enforcement and 58 by factory authorities during protests (Odhikar, 2019: 34). In 2019, a significant number of trade unionists and workers were arrested and faced charges for their participation in peaceful protests or strikes (ITUC, 2019: 47). In March 2019, following multiple strikes in which more than 50 000 workers demanded higher wages, at least 7500 RMG workers were unlawfully dismissed and blacklisted from work at other factories (Human Rights Watch, 2020b). This retaliation from the government and factory authorities is widespread in the country and affects multiple work areas.

Further, 11 000 workers of 99 factories across the country were terminated, and law authorities falsely arrested 3500 of them due to their involvement in the labour movement (Odhikar, 2020: 51). Many workers protested unjust working conditions during the pandemic, primarily due to health hazards. In 2020, around 25 RMG workers died from the violence of law enforcement agencies (Odhikar, 2021: 47). Additionally, about 3000 Bangladeshi workers were dismissed due to their affiliation in unions from three factories Saybolt Tex, Tanaz Fashion, and Wind, Wet & Dry Process (ITUC, 2020: 27). Further, it has been estimated that over half a million workers employed in Export Processing Zones were not allowed to form or join unions (ITUC, 2020: 24), which deprives them of their right to freedom of assembly and collective bargaining. Hence, violations of the right to freedom of association and peaceful assembly are evaluated to level 0, indicating high volumes of systematic violations affecting multiple work areas across the entire country.

As the evidence presented above suggests, in the case of Bangladesh, the predominant type of human rights violation is type 2, indicating violations of ESCR. While the analysis shows human rights violations of both types in Bangladesh, the gravity of violations of ESCR are

more severe when assessed according to the criteria of gravity, along with scope and range, and is therefore considered to be predominant in Bangladesh. While human rights belonging to a cluster of CPRs are mainly evaluated on an intermediate level of violations, violations of human rights belonging to a cluster of ESCRs are assessed on a high level of violations, indicating severe and systemic violations across the entire country. Considering all the evidence presented above, this allows a conclusion that during the time period of 2017 to 2020, the predominant type of human rights violated in Bangladesh was the type 2: violations of ESCRs.

### **3.3 The EU's enforcement of human rights provisions in Cambodia**

The first institution to point out Cambodia's deteriorating human rights situation was the European Parliament in April 2017. The Parliament voted on a resolution regarding garment sector supply chains and called out Cambodia for its violation of labour rights, such as the denial of workers' fundamental rights to join or form a union (European Parliament, 2017e). Further, the institution emphasised that workers must be able to enjoy their fundamental rights in the workplace, as the lack of these has led to widespread labour rights violations, mentioning unsafe workplaces and precarious working conditions (*Ibid.*). Interestingly, it reduced a fundamental human right written in UDHR to a labour right violation instead. Later in the year, the Parliament made a resolution regarding the severe violations of CPRs in Cambodia, mentioned an increasing number of arrests of political opposition and other CSOs representatives, and condemned all acts of violence (European Parliament, 2017b). A few months later, in December, the EP passed a second resolution now emphasizing the state of civil and political rights in the country, which had been deteriorating drastically (European Parliament, 2017c). Further, the EP called on the High Representative and Commissioner for Trade Cecilia Malmström to immediately review Cambodia's obligations under Article 19 of the EBA regulations while stressing that respect for fundamental rights is a prerequisite for all GSP programmes (*Ibid.*). This notion directly referred to human rights provisions in the 'essential elements clause' in the EU's trade agreements with third countries.

At the same time, the European Council published its conclusion on EU priorities at UN Human Rights Fora. It emphasized that "the EU restates the importance it attached to the International Covenant of Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights and will continue to call for their universal ratification and application"

(European Council, 2017a); thus, reaffirming the EU's commitments to protecting all human rights regardless of the scope. Further, in 2017, the Council called for a stronger focus on the efforts to advance the protection and promotion of ESCRs to address issues such as decent work, health, and social safety (*Ibid.*). This wording by the European Council allows a conclusion that in 2017, the EU seemed to emphasize protecting ESCRs in its external relations.

In late 2017, based on reporting from the previous year, the European Commission decided to enhance its engagement with Cambodia citing the declining human and labour rights situation related to land disputes, particularly in sugarcane plantations (European Commission, 2018a). Ultimately, this enhanced engagement envisages active dialogue between the partners involving relevant stakeholders such as NGOs and CSOs. This engagement is primarily based on the available information, for example, conclusions and recommendations of the UN monitoring bodies and ILO and envisages an investigation into countries' human rights violations (European Commission, 2018a). However, interestingly, the European Commission does not mention specific violations of CPRs, which were predominant in the year 2017. Instead, the European Commission focuses on land disputes and the lack of transparency in the sector (*Ibid.*) despite concerning reports made by EP. Yet, the Commission explicitly mentions its willingness to launch a GSP withdrawal procedure if it does not see encouraging progress from Cambodia (European Commission, 2018a). All in all, the Commission's actions are in line with the Council's notions for more robust protection of ESCRs in its external relations, as the Commission references land disputes as a reason for the investigation and decided to investigate Cambodia's human rights situation further.

In early 2018, the European Council was the first institution to urge the Royal Government of Cambodia to cease using various political tools such as the judiciary to harass and intimidate civil society, political opponents, labour rights activists, and human rights defenders (European Council, 2018b). Further, the Council called upon the Commission to enhance the monitoring of the situation on the ground and step-up engagement with Cambodia while recalling that respect for fundamental human rights, including labour rights, is a crucial part of EU's trade principles and underpins the granting of EU trade preferences (*Ibid.*). This illustrates the Council's concerns for the EU's human rights policies and emphasises the need to enforce human rights provisions in trade agreements. Additionally, the Council expressed its willingness to impose targeted sanctions against Cambodia should not change the situation on

the ground drastically improve (*Ibid.*). Almost six months later, the Commission finally started treating the issue as a priority and asked for written submissions from the Cambodian government, reports from the ILO, and recommendations from NGOs to address the deteriorating human rights situation in Cambodia (European Commission, 2018b). The Commissioner for Trade C. Malmström mentioned the violations of CPRs and deficiencies in Cambodia's land dispute resolution mechanism as a prime reason and further emphasised the EU's commitments in trade policy to promote the respect for human rights, fundamental freedoms, and labour standards (*Ibid.*).

In February 2019, the Council once again emphasised the importance of human rights in its conclusion on the EU's priorities in the UN human rights fora. It reaffirmed that "all human rights are to be realized worldwide, whether they are civil and political rights or economic, social, and cultural rights, and that there is no hierarchy of human rights" (European Council, 2019). Further, the Council reinstated that the EU is committed to engaging with all partner countries to promote the protection and progressive fulfilment of ESCRs while mentioning the indivisibility, interdependence, universality, and inalienability of all human rights (*Ibid.*). Thus, the Council's willingness to address all human rights violations regardless of other interests and step-up engagement. Further, the Council gives an example of Cambodia and Bangladesh, where the EU needs to step up its engagement in terms of ESCR (*Ibid.*). On 11th February 2019, the European Commission launched a procedure to temporarily suspend trade preferences with Cambodia referencing severe and systematic violations of core human rights, in particular the right to political participation as well as the freedom of association and the right to freedom of opinion (European Commission, 2019a).

Further, the Commission (2019a) also references "longstanding EU concerns about the lack of workers' rights and disputes linked to economic land concessions" in Cambodia. The Commissioner for Trade C. Malmström also noted that while the Cambodian government had taken few positive steps, the repressive action against civil society is widespread without any conclusive action by the Royal Government of Cambodia (*Ibid.*). It is also important to note that suspending trade preferences does not include the immediate removal of tariff preferences but instead envisages thorough investigations made by the Commission (2019b). In March 2019, the European Parliament welcomed the Commission's decision to launch the process of withdrawal of EBA preferences for Cambodia (European Parliament, 2019). In November 2019, the Commission submitted a report on Cambodia, which mainly concerned serious and

systematic violations of crucial principles of the International Covenant on Civil and Political Rights linked to political participation, freedom of association, and the freedom of opinion, and labour rights, notably freedom of association (European Commission, 2020a). This notion illustrates how the Commission labels the right to freedom of association and peaceful assembly, a fundamental human right in the UDHR, under labour rights when concerning workers, albeit minimizing the value and meaning of the violated human right.

In February 2020, the European Council published conclusions on the EU's priorities in the human rights fora. It once again reaffirmed that the EU would continue to uphold the principles of the UN Charter while reasserting that all human rights are universal, independent, and indivisible (European Council, 2020b). Additionally, the Council confirmed that the EU would continue to closely monitor the serious situation of human rights in Cambodia regarding violations of CPRs, most notably the right to freedom of association, and peaceful assembly, and the right to freedom of opinion (*Ibid.*). On 10th February, the Commission issued a report that Cambodia indeed had with labour rights, most notably the freedom of association, which have been highlighted by the ILO; yet recent reports show progress in the welfare of garment and factory workers (European Commission, 2020b). Hence, on 12th February 2020, the Commission decided to partially withdraw the tariff preferences granted to Cambodia under the GSP scheme due to "systematic and serious violations of human rights written in the International Covenant on Civil and Political Rights" (European Commission, 2020c). The Commission decided to withdraw all of Cambodia's duty-free access to the EU market on 12th August 2020. It emphasized that the Cambodian government needed to take steps to restore the fundamental freedoms in the country and show significant progress, particularly on CPRs, for the Commission to reinstate the EBA arrangements (European Commission, 2020a).

As visible from several statements made by the European Parliament and the Council condemning the grave human rights violations in Cambodia, especially regarding CPRs, and the repeated signalling of potential consequences by the Commission and the Council, the Commission finally decided to withdraw GSP trade preferences from Cambodia. It withdrew trade preferences based on the 'essential elements' clause referencing Cambodia's poor record with complying with its obligations under Article 19 of EBA. Therefore, in this case, the EU uses the 'essential elements' clause in trade agreements and enforces the human rights provisions by withdrawing trade preferences.

### **3.4 The EU's enforcement of human rights provisions in Bangladesh**

In April 2017, as with Cambodia, the European Parliament was the first institution to mention human rights violations in Bangladesh and focused mainly on the issue of child marriages (European Parliament, 2017a). In May 2017, the Council highlighted the importance of garment value chains as the potential driver for development sectors. It acknowledged the deeply rooted economic and social challenges, such as the lack of enforcement of labour rights, including the right to freedom of association and peaceful assembly (European Council, 2017b). Once again, the Council conceptualises the freedom of association and peaceful assembly, a fundamental human right in the UDHR, as a labour right, which may diminish the value of this right when concerning workers. Further, the Council explicitly mentions the Rana Plaza factory collapse in Bangladesh as a critical driver for this 'new' approach and encourages the Commission to step up its dialogues and cooperation with EBA beneficiaries who continue to seriously and systematically violate human rights and core labour rights while giving an example of Bangladesh (*Ibid.*). Hence, as with Cambodia, the Council urged the Commission to act upon human rights violations.

In June 2017, the EP passed a resolution regarding sustainability issues in Bangladesh. The Parliament cited problems such as gender equality in the workforce and labour rights, notably the right to freedom of association (European Parliament, 2017f). Further, the EP mentioned the possibility of temporarily withdrawing trade preferences from Bangladesh based on the 'essential elements' clause (*Ibid.*). Hence, in late 2017, based on reports from the previous year, the European Commission decided to enhance its engagement with Bangladesh citing the declining human and labour rights situation in the country related, while citing labour rights such as the right to freedom of association (European Commission, 2018a). Further, the Commission emphasised that Bangladesh needs to align its Labour Act and the Export Processing Zone Act with ILO labour rights conventions and calls it one of the priority issues (*Ibid.*).

In February 2018, the Council published its conclusion on the EU's priorities in the human rights fora. It reaffirmed the EU's commitments to upholding civil and political rights, notably the freedom of opinion, fight against torture, enforced disappearances, and other political freedoms (European Council, 2018a). Further, the Council names and shames, among other countries, Bangladesh as one of the primary violators of human rights in those issues and calls

to remind the country to upkeep its obligations under international agreements (*Ibid.*). In late 2018, the Parliament passed a resolution on Bangladesh, shaming the country's deteriorating human rights situation regarding violations of fundamental freedoms and human rights, most notably mentioning the crackdown on the right to freedom of opinion and the violence against journalists and bloggers under the ICT Act (European Parliament, 2018). The Parliament called for Bangladesh to quickly adopt reforms to its political and legal framework to combat violations of human rights and labour rights (*Ibid.*) yet does not mention any specific violations.

In 2019, the Parliament released another resolution on the implementation of GSP regulations in the EU's trade relations. It mentions Bangladesh's Export Processing Zones as a concern since they are often excluded from national legislation and prevent workers from exercising their right to freedom of association (European Parliament, 2019). According to the Parliament, this constitutes a violation of core ILO standards and could negatively impact human rights (*Ibid.*). This is particularly relevant as Bangladesh has issues with Export Processing Zones, where peoples' fundamental human rights are violated. As an observation, since the Parliament in its resolutions mentions the right to freedom of association and peaceful assembly, a human right under the UDHR, as an ILO standard when concerning workers, one could assume that this could be the reason why violation of ESCRs in Bangladesh are given less emphasis, albeit not triggering the EU's enforcement of human rights provisions.

As mentioned in the previous section of the analysis, in February 2019, the Council once again emphasised the importance of human rights in its conclusion on the EU's priorities in the UN human rights fora. It reaffirmed that "all human rights are to be realized worldwide, whether they are civil and political rights or economic, social, and cultural rights, and that there is no hierarchy of human rights" (European Council, 2019). Further, the Council reinstated that the EU is committed to engaging with all partner countries to promote the protection and progressive fulfilment of ESCRs, thus, illustrating the Council's willingness to address all human rights violations regardless of other interests and to step up engagement. As with Cambodia, the Council gives an example of Bangladesh, where the EU needs to step up its engagement in terms of ESCR (European Council, 2019).

The Commission report on the EU's enhanced engagement with EBA beneficiaries in early 2020 concluded that even though Bangladesh had issues with labour rights and had been under investigation by the ILO, the country had made some progress and thus was excluded from

further investigations (European Commission, 2020b). For example, the Commission argued that the EBA dialogue established that there were still restrictions on peaceful assembly, registration of trade unions, and working conditions, which do not comply with ILO standards, and during meetings, these “fundamental labour rights” were discussed (*Ibid.*). Yet, “with regard to human rights, the EU continues to engage with Bangladesh” on issues such as torture, freedom of expression, and freedom of assembly (*Ibid.*).

Henceforth, this allows an observation that the Commission does not see violations of ESCRs as a part of the ‘essential elements’ clause. Viewing these rights as merely labour rights or standards treats the violations of ESCRs differently. This notion means giving violations of ESCRs less weight in the overall conclusions on whether to enforce or not to enforce the human rights provisions in the trade agreements. Essentially this means that ESCRs are not considered to be on the same level as CPRs; thus, the Commission does not find violations of ESCRs to be significant enough to trigger the EU’s enforcement of human rights provisions. Regardless of both being included in the UDHR, to which the EU has made a legal and moral obligation to adhere to by including the convention in both founding treaties and the ‘essential elements’ clause in trade agreements.

Further, in 2020, the European Council reaffirmed that the EU would closely monitor the severe situation of Bangladesh regarding violations of CPRs, most notably the right to participate in public affairs, the freedom of peaceful assembly and association, and the right to freedom of opinion (European Council, 2020b). Hence, once again emphasising only one type of violation despite, as was shown above, them not being the predominant one in the country. Violations of ESCRs in Bangladesh are much graver in terms of gravity, along with scope and range, yet the EU’s focus is primarily on CPRs. However, at the end of 2020, the Council released a conclusion on human rights and decent work. This document mentioned that violations of fundamental rights at work, such as poor working conditions, working time, discrimination, and lack of safety – referencing labour standards – must be tackled by a global approach (European Council, 2020c). Further, the Council called for more robust monitoring and enforcement mechanisms to ensure the adherence to international human rights and labour standards by countries that benefit from the EU’s tariff preferences, such as the GSP programme (*Ibid.*). Yet, at the time of writing, no action has followed regarding violations of ESCRs by the Bangladeshi Government.

In conclusion, in the case of Bangladesh, the EU decided not to enforce the human rights provisions and opted for a milder response, such as naming and shaming, despite the grave ESCRs violation in the country. Specifically, the EU did not use the ‘essential elements’ clause in trade agreements despite Bangladesh’s poor compliance with its obligations under Article 19 of EBA regulation – protecting human rights under select international conventions. As evidence suggests, this could be explained by how the EU sees certain human rights and what matters the most for the EU’s decision to enforce or not to enforce human rights provisions. Since ESCRs were viewed merely as labour standards or rights, not as human rights as stated in the UDHR, violations of ESCRs did not meet the threshold for enforcing human rights provisions.

### **3.5 The EU’s selectivity of enforcing human rights provisions in its trade agreements with Cambodia and Bangladesh**

To conclude, with a view on the role of type of human rights violation for the EU’s enforcement, these findings suggest that in the case of Cambodia, from 2017 to 2020, the predominant type of human rights violated in the country belonged to a cluster of CPR. This finding was visible from assessing the gravity of human rights violations across the two types as violations of CPR were evaluated on a higher level, indicating a high number of infringements affecting all people across the country. In contrast, violations of ESCRs in Cambodia mainly were assessed on the lowest level, indicating low volumes of violations of human rights. Notably, the overall level of human rights violations was high in Cambodia, but in this case, the predominant type of human rights violation were CPRs. Turning to the EU’s enforcement of human rights provisions, in 2020, the EU decided to enforce the human rights provisions in its trade agreements with Cambodia by invoking the ‘essential elements clause’ to withdraw all trade preferences while referencing the country’s obligations under Article 19 of EBA regulations – protecting human rights. Noteworthy, in the EU’s response to Cambodia’s human rights violations from 2017 to 2020, as visible from analysed documents, the EU primarily highlighted violations of CPRs, which were later cited as a reason for its eventual enforcement of human rights provisions. Hence, this finding suggests that the EU enforced human rights provisions in this case, in which CPRs are the predominant form of human rights violations. This finding is consistent with the theoretical expectation. It confirms the hypothesis that if the predominant violation is CPRs, the EU will enforce the human rights provisions by withdrawing trade preferences.

Turning to a comparative picture, the findings suggest that in the case of Bangladesh, from 2017 to 2020, the Bangladeshi government predominantly violated ESCRs, as indicated by the assessment of the gravity of violations. Violations of ESCRs were evaluated on the highest level, indicating a severe or high volume of human rights violations affecting all people across the country from different occupations and social statuses. In contrast, violations of CPRs mainly were evaluated on an intermediate level, indicating a moderate volume of restrictions or violations of human rights. Importantly, the overall level of human rights violations in Bangladesh was high, but in this case, the predominant type of human rights violation were ESCRs. In contrast to the EU's response to Cambodia, the EU decided **not to enforce** the human rights provisions in its trade agreements by invoking the 'essential elements' clause but opted for a milder response such as rhetorical action by naming and shaming Bangladesh's practices regarding human rights. Noteworthy, in the EU's response to Bangladesh's human rights violations from 2017 to 2020, as visible from analysed documents, the EU primarily highlighted violations of CPRs. The EU institutions described violations of ESCRs as concerning issues of labour standards. These findings suggest that the EU's response to human rights violations varies with the predominance of the type of violation. According to the hypothesis, when a violation is predominantly ESCRs, the EU does not enforce the human rights provisions in its trade agreements. The empirical analysis confirmed the hypothesis. Further, this research confirmed the theoretical expectations – the type of violation does determine the EU's enforcement of human rights provisions.

The results of this study are consistent with previous research, which emphasises the EU's lack of focus on ESCR (see Prickartz & Staudinger, 2019 and Wouters & Hermez, 2016), which in return does not trigger a response from the EU (see Fierro, 2021). In both cases, – Cambodia and Bangladesh – the EU's documentation often focused on violations of CPRs and mentioned violations of ESCRs in terms of labour rights or standards. This notion is consistent with findings from Majtenyi, Sosa & Timmer (2016: 24), who argue that this could be due to the Western perception of human rights, which does not focus on the social aspect of human rights, hence issues such as working conditions are conceptualized as part of developmental issues or merely standards to adhere to, rather than addressing these as fundamental human rights – as they should be. For example, in 2017, the Council (2017b) highlighted the garment value chains in Bangladesh have deeply rooted social challenges such as a lack of enforcement of labour rights, including the right to freedom of association. This finding offers a question of why a universally recognized human right is mentioned in the context of labour rights and

social challenges instead of a fundamental human right. Why is the right to freedom of association and peaceful assembly usually fundamental freedom when talking about political opposition and journalists, yet merely a labour standard if it is violated amongst workers?

This type of view of human rights in the EU's rhetoric creates a problem in which ESCRs are given less value in terms of terminology and reporting, thus minimizing the severity of these violations in the eyes of the public and the EU's officials. Hence, producing an environment where discussions of human rights violations only consist of CPRs, albeit facilitating decisions of enforcement of human rights provisions in trade agreements based on this narrow approach. Since violations of ESCRs are considered to be just poor labour standards, the EU only reacts to these based on resolutions or conclusions, calling the situation 'concerning' instead of responding to these as violations of fundamental human rights. For example, if a Member State were to violate a common EU standard of table heights in school, the country would receive a notion to fix the problem, but it would not be emphasized in the media or the EU's press releases. However, if a Member State violated a human right, this would be an issue of grave concern, albeit getting increased attention. Conceptualizing ESCR as labour standards or rights implies that these human rights are just quality norms, not obligations. Further, countries violating ESCRs continue to benefit from the EU's trade preferences and fuel our internal markets with products created in conditions of severe violations of human rights. The principle of protecting human rights – regardless of the type – should be the cornerstone of the European Union and its values. Yet, this research has shown that the type of human rights violation determines the variation in the enforcement of human rights provisions in trade agreements.

## Conclusion

The objective of this study was to answer the question of what effect the type of human rights violation has on whether the EU enforced the human rights provisions in its trade agreements by invoking the ‘essential elements’ clause. The study answered this question by relying on existing literature on the EU’s enforcement of human rights provisions in its trade relations. The EU’s focus seems to be on promoting civil and political rights, albeit violations of this nature trigger the EU’s enforcement. From this literature it derived the hypothesis that if human rights violations in the country are predominantly civil and political rights, then the EU enforces its human rights provisions. In turn, if the human rights violations are predominantly economic, social, and cultural rights, the EU does not enforce the human rights provision in its trade agreements.

The empirical analysis confirmed the hypothesis that the EU enforced human rights provisions by withdrawing trade preferences in instances where the predominant type of violations were civil and political rights. However, in cases where the predominant type of violations were economic, social, and cultural rights, the EU did not enforce the human rights provisions. In both countries analysed – Cambodia and Bangladesh – the governments seriously violated fundamental human rights as written in the UDHR, yet the EU decided to enforce human rights provisions only in Cambodia, where violations were predominantly civil and political in nature. Whereas in Bangladesh, whose government predominantly violates economic, social, and cultural rights, the EU opted for non-enforcement of the human rights provisions. Despite the EU’s legal and moral duty to promote all human rights – regardless of their type – and the principles of the UDHR, which explicitly emphasise the universality, indivisibility, and interdependence of human rights, the evidence presented in this study suggests that the EU primarily focused on violations of civil and political rights in its trade relations with Cambodia and Bangladesh. Consequently, violations of civil and political rights serve as a ground for enforcement of human rights provisions, albeit not triggering the enforcement in Bangladesh. Therefore, by doing this research, I established the connection between the type of human rights violation and the EU’s enforcement of human rights provisions in trade agreements by invoking the ‘essential elements’ clause. Further, I answered the research question: yes, while economic and security interests are equal, the type of human rights violations does affect whether the EU enforces its human rights provisions.

The findings from this study suggest that there is a problem with the EU's promotion of human rights as the focus remains solely on civil and political rights, which violations often serve as a ground for enforcement. Meanwhile, severe violations of economic, social, and cultural rights are neglected, used in the context of labour standards, and do not constitute a ground for enforcement of human rights provisions in trade agreements. This research showed that not just interests but the type of human rights violations should be considered when talking about selectivity in the EU's promotion of human rights. Therefore, this research contributed to the gap in the literature, which sought to confirm this hypothesis by displaying variation across cases where the EU's interests are reasonably comparable, and therefore showing how the differentiated concerns over different types of human rights determine whether the EU enforces the human rights provisions by invoking the 'essential elements clause.'

Further, as presented by the evidence, the meaning and conceptualization of human rights in the EU's rhetoric may contribute to the selectivity of the EU's enforcement of human rights, adverting to ideological preferences inside the EU. Therefore, as a broader implication, this research contributed to the debates about the relationship between civil and political and economic, social, and cultural rights in the EU's external relations. In addition, how the EU protects the universality and indivisibility of human rights as envisaged in the UDHR. As a practical implication, knowledge obtained from this research could help the EU improve its human rights instruments regarding its trade policies, which protects the EU's internal market and the EU's position as a global human rights actor.

As with any research, there are some limitations to this study. While this Master thesis could demonstrate that variation in the EU's enforcement of human rights provisions in its trade agreements is linked to the type of human rights violation, it did not fully account for the mechanism – e.g., how one assumption leads to another – as this would require a study of the EU's internal decision-making process. Yet, the goal of this study was to establish that there is such a link, and this was achieved. Further, while the effects of perceived ideological preferences inside the EU are visible in the difference in the EU's response to human rights violations, the ideological preferences are not fully demonstrated and require additional study of the EU actors. However, while this could not be entirely determined, the findings of this study strongly suggest this is one of the factors contributing to the selectivity of the EU's enforcement of human rights provisions. Lastly, due to the nature of human rights violations, it is challenging to accurately assess whether a certain amount of x type of human rights

violations equals y type of violations. Nevertheless, based on the criteria presented, the study provided a sufficient measurement to make this comparison. Thereupon, all these limitations are subjected to further study in the future.

To conclude, the enjoyment of human rights is an integral part of people's everyday lives as this guides a fulfilling and joyful life. The Universal Declaration of Human Rights (UDHR), signed in 1948, has become the beacon of values, which regulates and serves as a basis for all policies and their implementation worldwide. The Declaration contains civil, political, economic, cultural, and social rights. Among other things, the Declaration emphasizes the main principles of human rights – the universality and indivisibility of human rights. This means that all human rights, regardless of their type, should be promoted and sustained equally. Nonetheless, this notion has slowly subdued in policy development and human rights promotion over the years since civil and political rights are given more priority and value than economic, social, and cultural rights. Civil and political rights violations are regularly monitored and often form the basis for international condemnation. In contrast, economic, social, and cultural rights are only mentioned in the context of labour rights or standards and are deemed a concerning situation rather than a grave violation of human rights. This conceptualization of economic, social, and cultural rights has led policymakers to disregard violations of this type even though these may be predominant and widespread in the country. The principle of protecting human rights – regardless of the type – should be the cornerstone of the European Union and its values. Yet, this research has shown that the type of human rights violation determines the variation in the enforcement of human rights provisions in trade agreements. This must change.

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