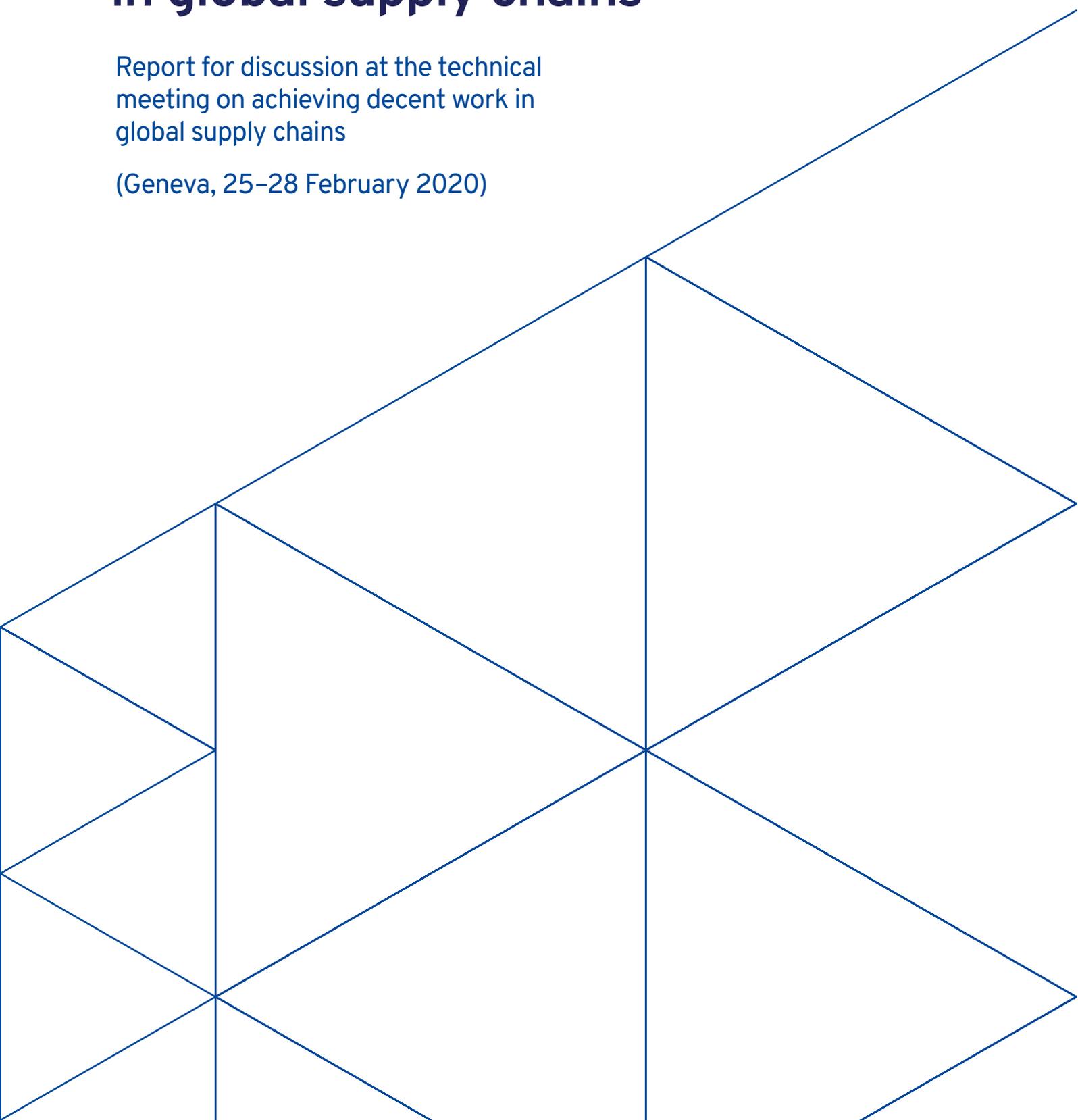




# ► Achieving decent work in global supply chains

Report for discussion at the technical  
meeting on achieving decent work in  
global supply chains

(Geneva, 25–28 February 2020)



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## Introduction

### Background

1. In recent years, the ILO has devoted increasing attention to the advancement of decent work in global supply chains (GSCs). The 105th Session (2016) of the International Labour Conference (the Conference) included a general discussion on GSCs.<sup>1</sup>
2. The 2016 Conference conclusions concerning decent work in global supply chains (2016 conclusions) noted that GSCs have made important contributions to economic growth and development and have had a positive impact on job creation.<sup>2</sup> They also recalled that failures at all levels of these complex, diverse and fragmented GSCs have contributed to decent work deficits. The 2016 conclusions noted that some governments may have limited capacity and resources to effectively monitor and enforce compliance with regulations. They further noted that the expansion of GSCs across borders has exacerbated governance gaps.<sup>3</sup>
3. The 2016 conclusions acknowledged that many stakeholders are taking action to ensure that decent work in GSCs goes hand in hand with economic development, but also that persistent decent work deficits and governance gaps must be addressed.<sup>4</sup> The 2016 conclusions thus identified roles for governments, business and the social partners.<sup>5</sup>
4. Having concluded that the ILO “is best placed to lead global action for decent work in global supply chains”,<sup>6</sup> an ILO programme of action 2017–21 was subsequently developed to coordinate all of the ILO’s work and to provide a focused “One ILO” approach to addressing

<sup>1</sup> ILO: *Decent work in global supply chains*, Report IV, International Labour Conference, 105th Session, Geneva, 2016.

<sup>2</sup> ILO: *Conclusions concerning decent work in global supply chains*, International Labour Conference, 105th Session, Geneva, 2016, para. 1.

<sup>3</sup> ILO: *Conclusions concerning decent work in global supply chains*, op. cit., para. 6.

<sup>4</sup> ILO: *Conclusions concerning decent work in global supply chains*, op. cit., para. 8.

<sup>5</sup> ILO: *Conclusions concerning decent work in global supply chains*, op. cit., paras 15–21. Among the action anticipated by governments is strengthening labour administration and inspection. This is consistent with the observation in the 2013 discussion on labour inspection and private compliance initiatives that “an efficient, robust, well-resourced and independent labour inspection mechanism is essential” – see ILO: *Final report: Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives*, Geneva, 2013, Appendix para. 12. See also Appendix, para. 14 of Governing Body document *Follow-up to the Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives*, Governing Body, 322nd Session, Geneva, October–November 2014, in which the Chairperson, in her summary and recommendations, expressed the hope that the results of the meeting would inform the Conference discussion on GSCs.

<sup>6</sup> ILO: *Conclusions concerning decent work in global supply chains*, op. cit., para. 14.

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decent work in GSCs.<sup>7</sup> Following the Conference discussion, the Governing Body decided that the Office should convene three further expert or technical meetings.<sup>8</sup>

5. A meeting of experts on promoting decent work and protecting fundamental principles and rights at work in export processing zones (EPZs) was held in November 2017.<sup>9</sup> The meeting's conclusions noted the positive contribution that export processing zones could make to economic and social development,<sup>10</sup> the links between EPZs and GSCs, and that company sourcing strategies could have an impact on the rights of workers in EPZs in significant ways. The conclusions further noted that all companies had a responsibility to respect workers' rights, to use their leverage to take steps to ensure that the rights of workers in their supply chains were also respected, and that workers had access to remedy when their rights are violated.<sup>11</sup> The conclusions called for a key focus of the multilateral system to be better coordination among actors at national and international levels, and noted the role that international labour standards could play in helping to foster multilateral policy coherence.<sup>12</sup>
6. A meeting of experts on cross-border social dialogue was held in February 2019.<sup>13</sup> The meeting conclusions noted the contribution of cross-border social dialogue among actors in supply chains to the effective implementation of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises (the MNE Declaration); the United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (the Guiding Principles on Business and Human Rights); and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (the OECD Guidelines).<sup>14</sup> They acknowledged the potential of transnational company agreements to improve working conditions in supply chains, subject

<sup>7</sup> ILO: [Follow-up to the resolution concerning decent work in global supply chains \(general discussion\)](#), Governing Body, 328th Session, Geneva, October–November 2016; ILO: [Mid-term report on the implementation of the ILO programme of action on decent work in global supply chains](#), Governing Body, 337th Session, Geneva, October–November 2019.

<sup>8</sup> ILO: *Mid-term report on the implementation of the ILO programme of action on decent work in global supply chains*, op. cit.

<sup>9</sup> ILO: [Promoting decent work and protecting fundamental principles and rights at work in export processing zones](#), Report for discussion at the Meeting of Experts to Promote Decent Work and Protection of Fundamental Principles and Rights at Work for Workers in Export Processing Zones, Geneva, 2017.

<sup>10</sup> ILO: [Conclusions to promote decent work and protection of fundamental principles and rights at work for workers in EPZs](#), Tripartite Meeting of Experts to Promote Decent Work and Protection of Fundamental Principles and Rights at Work for Workers in Export Processing Zones (EPZs), Geneva, 2017, para. 4.

<sup>11</sup> ILO: [Conclusions to promote decent work and protection of fundamental principles and rights at work for workers in EPZs](#), op. cit., para. 11, with reference to the Guiding Principles on Business and Human Rights and the MNE Declaration.

<sup>12</sup> ILO: [Conclusions to promote decent work and protection of fundamental principles and rights at work for workers in EPZs](#), op. cit., para 11, para. 17.

<sup>13</sup> ILO: [Cross-border social dialogue](#), Report for discussion at the Meeting of Experts on Cross-border Social Dialogue, Geneva, 2019.

<sup>14</sup> ILO: [Meeting of experts on cross-border social dialogue, Geneva, 12–15 February 2019, Conclusions](#), Geneva, 2019, para. 5.

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to the quality of labour administration.<sup>15</sup> They reiterated the important role of the ILO, not least in developing a compendium of good practices on cross-border social dialogue, including on how they could contribute to due diligence processes,<sup>16</sup> and in supporting and facilitating, upon joint request, the negotiation and follow-up of international framework agreements (IFAs), in keeping with paragraph 23(c) of the 2016 conclusions.<sup>17</sup>

7. The ILO has considered decent work in GSCs in other contexts. The conclusions of the 2017 second recurrent discussion on fundamental principles and rights at work called on the ILO to mainstream fundamental principles and rights at work into its activities related to GSCs.<sup>18</sup> The conclusions concerning the second recurrent discussion on social dialogue and tripartism in 2018 noted that GSCs could be an engine of development and increase opportunities for men and women to transition to formality. They also noted that failures within GSCs had contributed to decent work deficits.<sup>19</sup> The conclusions therefore called on member States to provide an enabling environment for and to promote, where appropriate, cross-border social dialogue to foster decent work, including for vulnerable groups of workers in GSCs.<sup>20</sup>
8. The ILO Centenary Declaration for the Future of Work (the Centenary Declaration) calls on the ILO to direct efforts to ensuring that diverse forms of work arrangements, production and business models, including in domestic and global supply chains, leverage opportunities for social and economic progress, provide for decent work and are conducive to full, productive and freely chosen employment.<sup>21</sup> The Centenary Declaration also notes that the ILO will assist its Members in the ratification and effective application of standards, and that all Members should work towards the ratification and implementation of the ILO fundamental Conventions.<sup>22</sup>
9. The work of the Office on GSCs subsequent to the 2016 Conference discussion has been coordinated under the ILO programme of action on global supply chains.

<sup>15</sup> ILO: Meeting of experts on cross-border social dialogue, Geneva, 12–15 February 2019, Conclusions, op. cit., para. 9.

<sup>16</sup> ILO: Meeting of experts on cross-border social dialogue, Geneva, 12–15 February 2019, Conclusions, op. cit., para. 14 B.i.

<sup>17</sup> ILO: Meeting of experts on cross-border social dialogue, Geneva, 12–15 February 2019, Conclusions, op. cit., para. 14 B.viii.

<sup>18</sup> ILO: [Reports of the Committee for Fundamental Principles and Rights at Work: Resolution and Conclusions submitted for adoption by the Conference](#), International Labour Conference, 106th Session, Geneva, 2017.

<sup>19</sup> ILO: [Reports of the Recurrent Discussion Committee: Social dialogue and tripartism: Resolution and conclusions submitted for adoption by the Conference](#), International Labour Conference, 107th Session, Geneva, 2018, “Guiding principles and context”, last paragraph on p. 4.

<sup>20</sup> ILO: Reports of the Recurrent Discussion Committee: Social dialogue and tripartism: Resolution and conclusions submitted for adoption by the Conference, op. cit., para. 3(o).

<sup>21</sup> ILO: [ILO Centenary Declaration for the Future of Work](#), International Labour Conference, 108th Session, Geneva, 2019, para. II A.(xii).

<sup>22</sup> ILO: [ILO Centenary Declaration for the Future of Work](#), op. cit., para. IV A. and B.

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## Purpose of this report

10. The purpose of this report is to facilitate discussion in the third meeting subsequent to the 2016 Conference discussion. In June 2019, the Governing Body determined that it should be a technical meeting. In November 2019, the Governing Body approved the title of the meeting as *Achieving Decent Work in Global Supply Chains*, on the understanding that the debate on the report submitted to the Conference in 2016 would not be reopened.<sup>23</sup>
11. The technical meeting is to be held pursuant to paragraph 25 of the 2016 conclusions. Paragraph 25 reads as follows:
  25. There is concern that current ILO standards may not be fit for purpose to achieve decent work in global supply chains. Therefore, the ILO should review this issue and convene, as soon as appropriate, by decision of the Governing Body, a technical tripartite meeting or a meeting of experts to:
    - (a) Assess the failures which lead to decent work deficits in global supply chains.
    - (b) Identify the salient challenges of governance to achieving decent work in global supply chains.
    - (c) Consider what guidance, programmes, measures, initiatives or standards are needed to promote decent work and/or facilitate reducing decent work deficits in global supply chains.
12. This report builds on previous ILO reports and discussions on the topic and incorporates as far as possible the most recent analysis and research. First, the report examines the evolution and variety of GSC trade flows around the world. It then considers the different ways that GSCs may be structured and the circumstances in which they are associated with decent work deficits. Second, it reviews the action taken by governments, business and the social partners to advance decent work in GSCs. Third, the report critically assesses frameworks for labour governance that encompass GSCs. The report concludes by considering the guidance, programmes, measures, initiatives and standards that may be needed to promote decent work and/or facilitate reducing decent work deficits in GSCs.
13. Notwithstanding the macro-level complexities of GSCs and international trade, international labour standards establish the framework for ensuring that relationships between employers and workers are grounded in the fundamental principles and rights at work. As the Centenary Declaration recognizes: “at a time of transformative change in the world of work, ... the setting, promotion, ratification and supervision of international labour standards is of fundamental importance to the ILO”.<sup>24</sup>

<sup>23</sup> ILO: [Composition, agenda and programme of standing bodies and meetings](#), Governing Body, 337th Session, Geneva, October–November 2019.

<sup>24</sup> ILO: *ILO Centenary Declaration for the Future of Work*, op. cit., paras I A. and IV A.

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# 1. Opportunities and challenges for decent work in global supply chains

## Recent trends and new challenges

14. As highlighted in the 2016 conclusions, the evolution of GSCs over the twentieth century and in recent decades has resulted in both positive and negative outcomes for decent work, depending on the nature of the supply chain (including location and sector). Positive effects on job creation need to be considered alongside potential decent work deficits, in addition to the negative impact of offshoring. In the case of labour-intensive sectors, such as garments, participation in GSCs has supported women’s entry into the workforce;<sup>25</sup> however, GSCs can also perpetuate gender inequalities insofar as women tend to be in lower value-added sectors than men, which have worse working conditions.

## Potential effects of GSCs on decent work

Positive	Negative
<ul style="list-style-type: none"><li>■ Job creation through direct and indirect impact (multiplier effects)</li><li>■ Support for women’s participation, particularly in labour-intensive sectors (for example garments)</li><li>■ Higher wages</li><li>■ Technology diffusion</li><li>■ Reduction in between-country inequalities</li></ul>	<ul style="list-style-type: none"><li>■ Job displacement due to offshoring</li><li>■ Poor working conditions/lack of workers’ rights</li><li>■ Perpetuation of gender inequalities</li><li>■ Wage pressures due to location decisions by foreign investors/export competition</li><li>■ Skill bias</li><li>■ Increased within-country inequalities</li></ul>

15. Overall, participation in GSCs, as found for trade in general, benefits certain groups more than others and, hence, can contribute to greater within-country inequalities (although it has also contributed to a reduction in between-country inequalities). Therefore, while, on average, GSCs can improve economic growth and propel incomes, there are real distributional concerns in both advanced and developing economies.
16. GSCs are evolving due to changes in the global economy, technological progress and other factors. Key trends since the 2016 Conference discussion on GSCs include: (1) further slowdown in the global economy and trade; (2) shifting trade patterns to more regionalization and greater South–South flows; and (3) increasing servicification of GSCs.
17. Hit by trade tensions, growth in world merchandise trade fell in 2018 to 3.0 per cent, down from a short-lived burst in 2017 when growth reached 4.6 per cent.<sup>26</sup> World Trade Organization forecasts that growth in global trade is likely to remain subdued in 2019 and 2020. From 2010 to 2017, growth of GSC participation<sup>27</sup> averaged just 1 per cent in

<sup>25</sup> World Bank Group: *World Development Report 2020: Trading for Development in the Age of Global Value Chains*, 2020, pp. 3–4.

<sup>26</sup> World Trade Organization: *World Trade Statistical Review 2019*.

<sup>27</sup> United Nations Conference on Trade and Development (UNCTAD): *World Investment Report 2018: Investment and New Industrial Policies*, New York and Geneva, 2018.

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developed economies and 3 per cent in developing countries, which is far lower than the expansion witnessed in 2000–10 when GSC participation grew at double-digit rates.

18. The fragmentation of production across the globe is a defining feature of GSCs, but participation in GSCs is not evenly distributed. The GSC participation rate in 2017 varied considerably across different regions, ranging from 34 per cent in the Caribbean to 61 per cent in East Asia. The growth in regional supply chains has propelled growth in South–South trade.<sup>28</sup> In 2017, South–South trade reached US\$4.9 trillion – not far off the amount of North–North trade.<sup>29</sup>
19. Since the mid-2000s, the majority of trade in most developing countries has flowed to other developing countries, rather than to the developed North. Thus trade has become “polycentric”.<sup>30</sup> In fact, demand from emerging economies will surpass demand in developed economies over the coming decades.<sup>31</sup> The regionalization of GSCs and the rise of South–South trade has been a positive force for economic growth and job creation in a number of countries, particularly for countries in Asian regional supply chains. However, it potentially poses challenges for social development, depending on adherence to international labour standards,<sup>32</sup> and national capacities to enforce labour regulation protecting workers in enterprises participating in GSCs.
20. At the same time, trade in services has increased over recent decades with its share in value-added in trade increasing from 31 per cent in 1980 to 43 per cent in 2009.<sup>33</sup> Digitalization is fundamentally transforming the global services architecture. While digital labour platforms have created new flexible job opportunities for workers with access to a stable internet connection, they have simultaneously created more cross-border governance challenges for governments.<sup>34</sup>
21. The export of services and the servicification of the manufacturing sector offer considerable opportunities for participation in GSCs. However, services exports tend to be skill-biased and will, therefore, offer fewer opportunities for lower-skilled workers.<sup>35</sup>

<sup>28</sup> J. Lee: *Global supply chain dynamics and labour governance: Implications for social upgrading*, ILO Research Paper No. 14, Geneva, 2016.

<sup>29</sup> UNCTAD: *Key Statistics and Trends in International Trade 2018: International Trade Rebounds*, Geneva, 2019.

<sup>30</sup> R. Horner and K. Nadvi: “Global value chains and the rise of the Global South: Unpacking twenty-first century polycentric trade” in *Global Networks*, 2018, Vol. 18, No. 2, p. 213.

<sup>31</sup> McKinsey Global Institute: *Globalization in Transition: The Future of Trade and Value Chains*, 2019.

<sup>32</sup> Lee, op. cit.

<sup>33</sup> D. Dollar: *How global value chains open opportunities for developing countries*, Brookings, 15 April 2019.

<sup>34</sup> J. Berg, M. Cherry and U. Rani: “Digital labour platforms: A need for international regulation?”, in *Revista de Economía Laboral*, 2020 (forthcoming).

<sup>35</sup> D. Rodrik: *New Technologies, Global Value Chains, and Developing Economies*, NBER Working Paper No. 25164, 2018.

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22. Changes in GSCs and the volume of trade flows through them are significant beyond their economic and geographic impact. They raise important questions about how properly to assess the failures that lead to decent work deficits in GSCs, and how to identify the salient governance challenges. In particular, these shifts have major implications for established models of regulation to advance decent work in GSCs: it cannot be assumed that member States or multinational enterprises from the Global South can or will act in the future as those in the Global North have done in the past.

## National governance and global supply chains

23. There are many possible definitions for GSCs. Much of the literature refers to global production networks and to global value chains.
24. One definition of a global value chain is “the series of stages in the production of a product or service for sale to consumers.” This definition focuses on the process of production: it does not cover the various economic structures that a global value chain may take.<sup>36</sup> Another definition is “the full range of activities that firms, farmers and workers carry out to bring a product or service from its conception to its end use, recycling or reuse.”<sup>37</sup> Again, this definition focuses on the process of production, and is neutral about the economic structures that a global value chain may take.
25. The ILO has used several different definitions of a GSC:
- “demand-supply relationships that arise from the fragmentation of production across borders, where different tasks of a production process are performed in two or more countries;”<sup>38</sup>
  - “the cross-border organization of the activities required to produce goods or services and bring them to consumers through inputs and various phases of development, production and delivery” which “includes the increasingly predominant model of international sourcing where the engagement of lead firms is defined by the terms and conditions of contractual or sometimes tacit arrangements with their suppliers and subcontracted firms for specific goods, inputs and services;”<sup>39</sup> and
  - “goods and services that cross international borders for consumption or as inputs for further production.”<sup>40</sup>

<sup>36</sup> World Bank Group: *World Development Report 2020*, op. cit., p. 17.

<sup>37</sup> S. Ponte, G. Gereffi and G. Raj-Reichert: “[Introduction to the Handbook on Global Value Chains](#)”, in S. Ponte, G. Gereffi and G. Raj-Reichert (eds): *Handbook on Global Value Chains*, Edward Elgar Publishing, 2019, pp. 1–2.

<sup>38</sup> ILO: *World Employment and Social Outlook 2015: The changing nature of jobs*, ILO Research Department, Geneva, 2015, p. 132.

<sup>39</sup> ILO: *Decent work in global supply chains*, op. cit., para. 5.

<sup>40</sup> ILO, Organisation for Economic Co-operation and Development (OECD), International Organization for Migration (IOM), and UNICEF: *Ending child labour, forced labour and human trafficking in global supply chains*, 2019, p. 2, box 1.

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26. All these definitions emphasize the fragmentation of production processes; this, however, is not unique to GSCs – it is also characteristic of domestic supply chains. They also focus on fragmented production that crosses international borders.
27. The fragmentation of production involves networks of business units. Within these networks, relationships may be of a commercial and arms-length nature. A network may also be coordinated or structured by a firm, involving some or all of its subsidiaries, subcontractors, joint-venture partners and franchisees. This kind of fragmentation – or “fissuring” – is associated with increased competition for services and downward pressure on wages and working conditions. Responsibility for the employment relationship is itself fragmented.<sup>41</sup> Fragmentation, taken together with the limited liability of separate corporate entities, can pose significant challenges for ensuring accountability for employment-related rights. That is to say, fragmentation of production creates challenges for effective governance in the labour market. Transnational fragmentation poses even greater challenges in this respect.
28. Decent work deficits tend to be more acute where governments already lack the capacity to ensure compliance with laws and regulations. As noted in the 2016 conclusions:
- Governments may have limited capacity and resources to effectively monitor and enforce compliance with laws and regulations. The expansion of global supply chains across borders has exacerbated these governance gaps.<sup>42</sup>
29. Not surprisingly, the vast majority of the available literature on decent work and GSCs is largely concerned with this context.<sup>43</sup> As not all work in production for GSCs is known for acute decent work deficits, care must be taken in generalizing about GSCs as a category. However, the predominant focus of the available literature is on contexts where the ILO does and should focus most of its energy.

## Global supply chain structures

30. GSCs vary widely in their economic organization, and also in the distribution of economic and competitive power within them. This is central to their impact on governance gaps at the national level.
31. Some GSCs involve large numbers of buying and supplying firms in competitive markets, where participants rarely have ongoing relationships. In others, it may be suppliers that have significant leverage, because their product or service is unique. In still others, a small number

<sup>41</sup> D. Weil: *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*, Harvard Press, 2014; J. Prassel: *The Concept of the Employer*, Oxford University Press, 2015.

<sup>42</sup> ILO: Conclusions concerning decent work in global supply chains, op. cit., para. 6.

<sup>43</sup> Lee, op. cit, pp. 1–2. The ILO’s own research has been highly concentrated on a small number of labour-intensive industries, such as the garment and textile and the agriculture and agri-food industries; G. Delautre: *Decent work in global supply chains: An internal research review*, Research Department Working Paper No. 47, Geneva, ILO, October 2019, p. 11; ILO: *Mid-term report on the implementation of the ILO programme of action on decent work in global supply chains*, op. cit.

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of buyers may exert significant leverage over a large number of suppliers, and so have considerable potential to influence working conditions.<sup>44</sup>

32. In principle, the narrower and more shallow a supply chain, the greater the capacity of lead firms to exercise leverage over suppliers. But neither is this guaranteed, particularly in lower tiers of supply chains in developing economies, where work is frequently informal. An extreme example is mining for cobalt: while the supply chain is narrow, there are very few locations for the global supply, and they may be under the control of militant groups.<sup>45</sup> Similar challenges may arise where the rule of law is tenuous, and/or the quality of public governance is reduced through corruption.
33. The quantity and quality of work available are always shaped by national labour market conditions (including labour market institutions, prevailing wages and skill levels). If a firm is producing for a GSC, it is also shaped by the demands and requirements of international actors. These include both market aspects – commercial arrangements, product specifications and the like – and social aspects – the likelihood that a buying firm has a code of conduct or is otherwise engaged in some form of private compliance initiative (PCI).<sup>46</sup>
34. Different supply chain structures drive different patterns of employment relationships in supplying firms.<sup>47</sup> Depending on the type of product, and the structure of the supply chain, supplying firms make strategic decisions about workforce composition. They may restrict the number of permanent employees to those in higher skilled work. The use of more precarious forms of work, such as casual work and outsourcing, can enable a supplying firm to remain flexible and responsive to fluctuating buyer demands.<sup>48</sup> The drive for flexibility has also contributed to the growth of labour contracting,<sup>49</sup> which may take many forms, including recruitment for internal and international migration for work.<sup>50</sup>
35. GSCs that source from developing economies may bring together a mixture of large and small enterprises, commercial factories and farms, vendors, subcontractors, outworkers, smallholders and homeworkers. They are “constituted by a mix of activities that require

<sup>44</sup> G. Distelhorst and D. Fu: *Wages and working conditions in and out of global supply chains: A comparative empirical review*, ACT/EMP Research Note, Geneva, ILO, 2018, p. 2.; L. Mosley: “Workers’ rights in global value chains: possibilities for protection and for peril”, in *New Political Economy*, Vol. 22, No. 2, 2017, p. 162. See also R. Locke, M. Amengual and A. Mangla: “Virtue out of Necessity? Compliance, Commitment, and the Improvement of Labor Conditions in Global Supply Chains”, in *Politics & Society*, Vol. 37, No. 3, 2009, pp. 319–351.

<sup>45</sup> Mosley, op. cit., pp. 159–162.

<sup>46</sup> S. Barrientos, G. Gereffi and A. Rossi: “Economic and social upgrading in global production networks: A new paradigm for a changing world”, in *International Labour Review*, Geneva, ILO, Vol. 150, No. 3–4, 2011, pp. 319–340.

<sup>47</sup> T. Lakhanki, S. Kuruvilla and A. Avgar: “From the Firm to the Network: Global Value Chains and Employment Relations Theory”, in *British Journal of Industrial Relations*, Vol. 51, No. 3, 2013, pp. 440–472.

<sup>48</sup> Barrientos, Gereffi and Rossi, op. cit.

<sup>49</sup> Barrientos, Gereffi and Rossi, op. cit.; S. Barrientos: “Contract Labour: The ‘Achilles Heel’ of Corporate Codes in Commercial Value Chains”, in *Development and Change*, Vol. 39, No. 6, 2008, pp. 977–990.

<sup>50</sup> See further ILO: *Non-standard employment around the world – Understanding challenges, shaping prospects*, 2016, Geneva, pp. 157–184.

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combinations of labour-intensive, low-skilled activities with knowledge- and technology-intensive higher skilled activities.”<sup>51</sup> Especially in the garment industry, for example, informality is intermixed with formality at the lower tiers of supply chains.<sup>52</sup>

## Global supply chain structures and working conditions

36. Working conditions in production for GSCs vary significantly both across and within GSCs, and between GSCs and domestic employment. In general, in developing economies, workers in higher tiers are more likely to be in formal employment, and to enjoy and exercise rights at work. Workers’ rights are also more likely to be protected in firms participating in GSCs where lead firms are oriented to high value-added consumer markets, and are subject to consumer and shareholder pressure. Decent work deficits, and, at the extreme, child labour and forced labour, are of greatest concern in the lower tiers of supply chains, and in subcontracting for lower tiers.<sup>53</sup> As noted, it is here that supply chains in developing economies typically extend into, and interconnect with the informal economy. Thus there may be decent work deficits in connection with, GSCs in many different sectors, and regardless of how a GSC is structured.
37. Within supply chains where buyers exercise significant leverage over suppliers in developing economies, sourcing practices affect working conditions in supplying firms,<sup>54</sup> often with adverse effects, especially where regulations are already poorly enforced.<sup>55</sup> This has been described as “global supply networks” underpinned “by an unevenness of power relations”.<sup>56</sup> On this view, in the apparel industry, for example, enterprise-level failures to comply with national law are not merely a failure of governance, they are “a pervasive and predictable outcome” of a purchasing model that depends upon competition between suppliers both nationally and internationally.<sup>57</sup>
38. Purchasing in the electronics sector is characterized by price and time pressure on suppliers, and fragmentary, rushed and cancelled orders. Production is highly cyclical, including a

<sup>51</sup> S. Barrientos, G. Gereffi and A. Rossi, 2011: op. cit., p. 326.

<sup>52</sup> A. Mezzadri and F. Lulu: “‘Classes of Labour’ at the Margins of Global Commodity Chains in India and China”, in *Development and Change*, Vol. 49, No. 4, 2018, pp. 1034–1063.

<sup>53</sup> ILO, OECD, IOM and UNICEF, op. cit.

<sup>54</sup> M. Amengual, G. Distelhorst and D. Tobin: “Global Purchasing as Labor Regulation: The Missing Middle”, in *Industrial and Labor Relations Review* (forthcoming), available online at <http://bit.ly/2kH3EDe>, p. 3.

<sup>55</sup> Mosley, op. cit, pp. 153–168.; R. Locke and H. Samel: “Beyond the Workplace: ‘Upstream’ Business Practices and Labor Standards in the Global Electronics Industry”, in *Studies in Comparative International Development*, 2018, Vol. 53, No. 1, pp. 1–24; M. Anner: “Predatory purchasing practices in global apparel supply chains and the employment relations squeeze in the Indian garment export industry”, in *International Labour Review*, Geneva, ILO, Vol. 158, 2019, No. 4. (forthcoming).

<sup>56</sup> K. N. Ruwanpura and N. Wrigley: “The costs of compliance? Views of Sri Lankan apparel manufacturers in times of global economic crisis”, in *Journal of Economic Geography*, Vol. 11, No. 6, 2010, pp. 1031–1049.

<sup>57</sup> M. Anner, J. Bair and J. Blasi: “Towards Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks”, in *Comparative Labor Law and Policy Journal*, Vol. 35, No. 1, 2013, pp. 1–43.

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combination of new products and poor market forecasting. All of this puts downward pressure on working conditions in supplying firms.<sup>58</sup> Similar conclusions were reached across a range of sectors in a joint study by the ILO and the Ethical Trading Initiative.<sup>59</sup>

### ***Fundamental principles and rights at work***

39. Freedom of association and the effective recognition of the right to collective bargaining are core enabling rights for all workers, whether or not they work in production for GSCs, and irrespective of the form of their employment. Effective social dialogue in firms supplying for production within GSCs is positively associated with better outcomes for wages and for working hours.<sup>60</sup> These rights are typically respected more effectively in work in the formal economy. In countries with constrained national governance, the ability to enjoy these rights in production for GSCs may therefore be limited to first-tier supplying firms.<sup>61</sup> In general, workers face significant challenges in realizing their right to collective bargaining in GSCs.<sup>62</sup>
40. Restrictions on unionization in EPZs are common, either in law or in practice.<sup>63</sup> Government policy in many countries restricts freedom of association and effective recognition of the right to collective bargaining.<sup>64</sup> Employers in some countries actively oppose unionization in EPZs in order to limit the risk that unionization will lead to higher wage rates.<sup>65</sup> Unionization rates may, however, be higher in firms that operate in EPZs than in firms that do not. This may be due to the formal nature of work in EPZs and to greater attention from both national and international civil society.<sup>66</sup> More generally, unionization rates may be higher in export-oriented firms than in those focused on domestic markets.<sup>67</sup>

<sup>58</sup> R. McFalls: *The impact of procurement practices in the electronics sector on labour rights and temporary and other forms of employment*, Sectoral Policies Department, Working Paper No. 313, Geneva, ILO, 2016.

<sup>59</sup> ILO: *Purchasing practices and working conditions in global supply chains: Global Survey results*, INWORK Issue Brief No. 10, Geneva, ILO, 2017.

<sup>60</sup> ILO: *Purchasing practices and working conditions in global supply chains: Global Survey results*, op. cit.; see also *Better Work – Progress and potential*.

<sup>61</sup> Distelhorst and Fu, op. cit., p. 11.

<sup>62</sup> ILO: *Conclusions concerning decent work in global supply chains*, op. cit., para. 3.

<sup>63</sup> X. Cirera and R.W. D. Lakshman: “*The impact of export processing zones on employment, wages and labour conditions in developing countries: systematic review*“, in *Journal of Development Effectiveness*, Vol. 9, No. 3, 2017, p. 352; ILO: *Promoting decent work and protecting fundamental principles and rights at work in export processing zones*, op. cit., paras 57–66.

<sup>64</sup> R. Gopalakrishnan: *Freedom of association and collective bargaining in export processing zones: Role of the ILO supervisory mechanisms*, International Labour Standards Department Working Paper No. 1, Geneva, ILO, 2007.

<sup>65</sup> M. Anner: “*The Impact of International Outsourcing on Unionization and Wages: Evidence from the Apparel Export Sector in Central America*“, in *Industrial and Labor Relations Review*, Vol. 64, No. 2, 2011, pp. 305–322.

<sup>66</sup> Cirera and Lakshman, op. cit., p. 352.

<sup>67</sup> Distelhorst and Fu, op. cit., p. 12.

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41. A recent major study by the ILO, the Organisation for Economic Co-operation and Development (OECD), the International Organization for Migration (IOM) and the United Nations Children’s Fund (UNICEF) emphasized that data limitations and methodological challenges make it difficult to be definitive about the extent to which child labour, forced labour and human trafficking may be linked to GSCs. <sup>68</sup> It found that the limited available evidence suggests that a child in child labour is far more likely to be involved in production for the domestic economy. But because domestic economies and GSCs are interconnected, there is a non-negligible risk that this child will be contributing to a GSC.
42. Between 9 and 26 per cent of domestic child labour is estimated to contribute to exports to other regions. <sup>69</sup> Depending on the region, those contributions are most likely to be in the agriculture, textiles and apparel, transport and storage, or accommodation and food sectors. Between 28 and 43 per cent of the child labour that is estimated to contribute to exports does so indirectly, through lower tiers of supply chains. <sup>70</sup>
43. The available data suggest that if a person is trafficked into forced labour, and they contribute to a GSC, there is a significant risk that they will be doing so in lower tiers of the supply chain. Here, global and domestic supply chains connect, and risk may be more difficult to identify and to mitigate. The results of a preliminary global estimation exercise also point to the presence of human trafficking for forced labour in GSCs, with significant regional variation. <sup>71</sup>
44. Increased trade is often associated with increased female labour force participation, as export-oriented manufacturing tends to employ a disproportionately large number of women. <sup>72</sup> Notwithstanding the possibilities for a greater female share of employment, women may be segregated into lower-paid forms of work, have difficulty in advancing to more high-skilled work and be exposed to sexual harassment. <sup>73</sup> In supply chains producing for retail, for example, women are concentrated in lower categories of work and in lower tiers of value chains, reflecting gendered assumptions about the value of their work. <sup>74</sup> Increased employment opportunities for women in export firms and the higher wage levels in apparel exports can contribute to a fall in the overall gender wage gap. Nevertheless, there is some evidence of a gender wage gap in exporting firms, although it is not clear whether this is due to wage discrimination, as distinct from productivity levels. <sup>75</sup>

<sup>68</sup> ILO, OECD, IOM and UNICEF, op. cit.

<sup>69</sup> ILO, OECD, IOM and UNICEF, op. cit.

<sup>70</sup> ILO, OECD, IOM and UNICEF, op. cit.

<sup>71</sup> ILO, OECD, IOM and UNICEF, op. cit.

<sup>72</sup> World Bank Group, *World Development Report 2020*, op. cit., pp. 90–91.

<sup>73</sup> Distelhorst and Fu, op. cit., p. 15.

<sup>74</sup> S. Barrientos: “[Gender Patterns of Work in Global Retail Value Chains](#)”, in *Gender and Work in Global Value Chains: Capturing the Gains?*, Cambridge University Press, 2019, p. 78.

<sup>75</sup> One study found that discrimination may explain the gender wage gap in domestically oriented firms, but not in export-oriented firms – Z. Chen et al.: “[Globalization and Gender Wage Inequality in China](#)“, in *World Development*, Vol. 44, 2013, pp. 256–266. Other studies have found either no gender wage gap in firms located in EPZs or that the gender wage gap in those firms is lower than in general – Cirera and Lakshman, op. cit.

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## Wages

45. Export manufacturers in emerging markets generally pay higher wages than non-export-oriented manufacturers. There is evidence that they pay more than a worker may earn in agriculture or in the informal economy. But the evidence is not uniform. Further, both work in agriculture and in the informal economy may be linked to, or form part of, lower tiers of GSCs: a clear distinction cannot be made. As most research has focused on total wages per worker, rather than on hourly wages, higher wages may represent longer working hours.<sup>76</sup>
46. Neither is it clear what higher wages may signify in terms of economic and social development. First, causality is not clear: firms with higher skilled workers may be self-selecting for export-orientation, or export-orientation may be leading to upgrading within firms. Second, wages may be sensitive to shifts in foreign direct investment flows, and/or changes to export and trade regimes. Wages in the apparel sector, for example, fell in some countries following the end of the Multifibre Arrangement.<sup>77</sup> Third, the distribution of wages tends to favour non-production and higher skilled employees.<sup>78</sup> Fourth, while trade-oriented firms that participate in GSCs are likely to be more productive, this productivity gain is not fully reflected in wage levels.<sup>79</sup>

## Working time

47. Excessive working hours in firms producing for GSCs are both common and widespread. Longer working hours in supplying firms can be a direct result of unexpected orders and short time frames for delivery. These pressures can also lead to forced overtime and overtime that is not properly remunerated.<sup>80</sup> In countries with constrained national governance, these challenges occur more often in the subcontracted segments and lower tiers of supply chains operating in, or connected to, the informal economy. Working hours in export-oriented firms, including those in EPZs, tend to be longer than in the domestically oriented economy.<sup>81</sup>

<sup>76</sup> Distelhorst and Fu, op. cit.

<sup>77</sup> R. Robertson, G. Lopez-Acevedo and Y. Savchenko: “[Globalisation and the Gender Earnings Gap: Evidence from Sri Lanka and Cambodia](#)”, in *The Journal of Development Studies*, 2019 (2020, Vol. 56, No. 2, Jan.) pp. 1–19; R. Robertson et al. (eds): *Globalization, Wages, and the Quality of Jobs, Five Country Studies*, World Bank, 2009, p. 8.

<sup>78</sup> Distelhorst and Fu, op. cit.

<sup>79</sup> ILO: *World Employment and Social Outlook 2017: Sustainable enterprises and jobs. Formal enterprises and decent work*, Geneva, 2017. Similarly, there may be room within apparel industry buyer margins for greater redistribution of the benefits of adding value – D. Miller and K. Hohenegger: *Redistributing value added towards labour in apparel supply chains: Tackling low wages through purchasing practices*, Conditions of Work and Employment Series No. 83, ILO, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, Geneva, 2016.

<sup>80</sup> ILO: *Purchasing practices and working conditions in global supply chains: Global Survey results*, op. cit.

<sup>81</sup> Distelhorst and Fu, op. cit, p. 16.

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## Occupational safety and health

48. To date there is little robust empirical analysis of occupational safety and health (OSH) outcomes in firms supplying for GSCs, and few studies that compare OSH in and out of GSCs. There is some limited evidence to suggest that OSH conditions are better in export-oriented firms than in domestic firms,<sup>82</sup> but most studies have focused on conditions in upper tiers.<sup>83</sup> There is evidence that workers in lower tiers of supply chains are exposed to multiple context-specific occupational hazards, such as ergonomic and climatic risks.<sup>84</sup> They are less likely to be able to engage in social dialogue over their working conditions, including OSH.<sup>85</sup> The high level of informality in lower tiers of supply chains contributes to the low visibility of OSH violations, posing challenges for traditional methods of labour inspection and enforcement of the law.<sup>86</sup>

## 2. Action by governments, business and the social partners

49. National labour legislation and regulations are central to the governance of work. States are responsible for ensuring compliance with their laws. In turn, every firm must comply with labour legislation. When producing for GSCs, firms must also respond to the requirements of actors beyond the jurisdiction in which they are located, including standards established in PCIs. For their part, multilateral institutions, including the United Nations (UN) and the OECD, are increasingly promulgating guidance for the governance of work in GSCs.

50. In this context, the 2016 conclusions call for appropriate governance systems, noting that action is required to bridge governance gaps at the sectoral, national, regional and international levels. The 2016 conclusions identify specific actions that governments, business and the social partners should take. It is necessary to consider the effect of these actions in practice, to be able to identify the salient challenges of governance to achieving decent work in global supply chains.

<sup>82</sup> E. Verhoogen: “Trade, Quality Upgrading, and Wage Inequality in the Mexican Manufacturing Sector”, in *Quarterly Journal of Economics*, Vol. 123, No. 2, 2008, pp. 489–530.

<sup>83</sup> ILO: *Food and agriculture global value chains: Drivers and constraints for occupational safety and health improvement, Volume One: Perspectives from relevant research areas*, Governance and Tripartism Department, Geneva, 2017.

<sup>84</sup> For a detailed case study of OSH conditions in the agriculture sector in Colombia, Madagascar and Indonesia see ILO: *Food and agriculture global value chains: Drivers and constraints for occupational safety and health improvement, Volume Two: Three case studies*, Governance and Tripartism Department, Geneva, 2017.

<sup>85</sup> The Global Survey conducted by the ILO in 2016 has shown that 42 per cent of workers’ committees are engaged in consultations on health and safety. See ILO: *Purchasing practices and working conditions in global supply chains: Global Survey results*, op. cit., p. 12.

<sup>86</sup> ILO: “Key research findings”, in *Improving safety and health in global supply chains*, May 2017, Geneva, p. 4.

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## Public governance

### *Human rights due diligence laws*

51. Some member States have adopted laws that require enterprises to address the actual and potential adverse human rights risks that arise from their business activities and business relationships, applicable to both domestic and global supply chains. These laws are most often focused on the disclosure of risks in their operations and supply chains, such as forced labour or human trafficking, and the actions taken to address those risks. Public disclosure promotes a degree of transparency in the operation of private actors within supply chains.
52. Disclosure laws in Australia, California, and the United Kingdom apply to enterprises with an annual turnover above a specified threshold.<sup>87</sup> Enterprises must disclose the policies in place and actions undertaken to assess, prevent or eliminate the risks of human trafficking and slavery in their supply chains. They may be required to disclose information on measures to verify, audit and certify that suppliers comply with company and host-State standards on slavery and human trafficking.<sup>88</sup> They may have to disclose the specific parts of the supply chain where there are risks of slavery and human trafficking and the actions taken to address them.<sup>89</sup>
53. Some disclosure laws are sector specific. Section 1502 (provision on “conflict minerals”) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, for instance, establishes reporting and disclosure obligations concerning conflict minerals that originate in the Democratic Republic of the Congo or adjoining countries.<sup>90</sup>
54. More recently adopted laws require enterprises to undertake human rights due diligence (HRDD), including risk identification and action in response, and to report both on measures taken and their outcomes. In France, the Act on the corporate duty of care, adopted in March 2017, requires large multinational companies to adopt, publish and implement a vigilance plan to identify and prevent potential gross violations of human rights.<sup>91</sup> It must include procedures to regularly assess the situation in subsidiaries, subcontractors or suppliers with which the company maintains an established commercial relationship.
55. The European Union (EU) has spearheaded regional developments in HRDD legislation from both a policy and a regulatory perspective.<sup>92</sup> EU Directive 2014/95 on the disclosure of non-financial and diversity information by certain large undertakings and groups requires

<sup>87</sup> The laws are applicable to enterprises whose annual turnover meets the following thresholds: California – US\$100 million in annual worldwide gross receipts; United Kingdom – £36 million; and Australia –100 million Australian dollars.

<sup>88</sup> The California Transparency in Supply Chains Act, California Civil Code section 1714.43(c).

<sup>89</sup> Modern Slavery Act, United Kingdom, section 54(5)(d).

<sup>90</sup> Another example is the South African Mineral and Petroleum Resources Development Amendment Bill, 2013.

<sup>91</sup> See *loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*.

<sup>92</sup> For an overview of national initiatives for mandatory HRDD in Europe, see the [background note](#) by the European Coalition for Corporate Justice; and Business & Human Rights Resource Centre: *National movements for mandatory human rights due diligence in European countries*, May 2019.

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enterprises covered to report publicly on their policies, due diligence procedures, principal risks and management of those risks, including risks to human rights.<sup>93</sup> EU Regulation 2017/821 requires EU importers of raw materials and minerals to exercise HRDD in line with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>94</sup>

- 56.** Laws that require disclosure and/or HRDD also apply in Argentina,<sup>95</sup> Denmark,<sup>96</sup> Finland,<sup>97</sup> India,<sup>98</sup> Indonesia,<sup>99</sup> and Pakistan.<sup>100</sup> Proposals for similar laws are at different stages of development in Canada, Germany, the Netherlands and Switzerland.
- 57.** The efficacy of public disclosure depends on the quality of information disclosed and the use that external stakeholders make of it. Failure to disclose, or inadequate disclosure, may not attract a sanction in itself.<sup>101</sup> Some laws that impose HRDD obligations are, however, linked to existing corporate regulation and reporting frameworks, so that enterprises are exposed to civil liability for failure to act with due diligence.<sup>102</sup>
- 58.** The French Act on the corporate duty of care goes further again, providing for three judicial mechanisms to ensure the effective implementation of a vigilance plan. First, a competent court may request a company to comply through a formal notice. Second, any person with a demonstrable interest may seek an order for compliance if the company has not done so

<sup>93</sup> European Parliament and Council of the European Union: [Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups \(Text with EEA relevance\)](#), 22 October 2014.

<sup>94</sup> European Parliament and Council of the European Union: [Regulation \(EU\) 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas](#), 17 May 2017.

<sup>95</sup> See [Act No. 2594](#) on social and environmental responsibility, art. 12. Similar requirements are established in Spain in [Act No. 2/2011](#) on the sustainable economy.

<sup>96</sup> See the [2015 Amendment Act](#) (in Danish). For more information, see the [Danish Business Authority](#)' website.

<sup>97</sup> [Finnish Government Resolution on State Ownership Policy](#), 3 November 2011.

<sup>98</sup> [The Companies Act, 2013](#). Under this Act, companies are required to devote 2 per cent of their average net annual profit to corporate social responsibility.

<sup>99</sup> [Act No. 40/2007 on limited liability companies](#), art. 74.

<sup>100</sup> See [Companies \(CSR\) General Order: SRO 983\(I\), 2009](#).

<sup>101</sup> See the [United Kingdom's Modern Slavery Act](#) and the [California Transparency in Supply Chains Act](#). But note [section 16A of the Australian Modern Slavery Act](#), where a company's failure to comply may be published on a modern slavery register.

<sup>102</sup> This can be found in France and Switzerland, for example. See [Key Features of Mandatory Human Rights Due Diligence Legislation](#), European Coalition for Corporate Justice Position Paper, June 2018.

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within three months. Third, a court may find a company civilly liable, and award damages to any person with a legitimate interest in this regard.<sup>103</sup>

59. While not an HRDD law, under the United States Trade Facilitation and Trade Enforcement Act of 2015, the United States Customs and Border Protection Agency may issue a “withhold release order” to halt the import of any goods suspected to have been produced with forced labour (in whole or in part). Importers are advised to exercise HRDD over their supply chains,<sup>104</sup> to adopt comprehensive and transparent social compliance systems and to undertake audits to evaluate risks of forced labour in their supply chains.
60. Disclosure and HRDD laws are in essence forms of process-based company self-regulation.<sup>105</sup> Companies must have processes to identify possible adverse human rights impacts and, in some cases, to ensure access to remedy. Companies are not, however, required to achieve specific human rights outcomes, or to take positive actions to do so.<sup>106</sup>
61. Due diligence is a common method of business self-regulation, but it is generally oriented to internal company processes, to address business-related risks.<sup>107</sup> HRDD, by contrast, requires a company to focus outward, on the potential or real impact of business activities on rights-holders that are external to it. Thus, companies must use a process with which they are familiar, for a purpose with which they may not be.
62. Companies may neglect to engage in sufficient consultation with potentially affected groups, rights-holders, and stakeholders.<sup>108</sup> In this respect, the French Act on the corporate duty of care is one that does specifically require companies to consult and engage with external parties in the development and implementation of HRDD requirements.<sup>109</sup>
63. Some HRDD laws lack guidance on compliance with HRDD requirements and measures for assessing business performance. This leaves companies with wide discretion to determine

<sup>103</sup> For a discussion on the potential implications of the broad *locus standi* for stakeholders to bring a case before a court, see S. Brabant and E. Savourey: “French Law on the Corporate Duty of Vigilance: A Practical and Multidimensional Perspective”, in *Revue internationale de la compliance et de l'éthique des affaires, supplément à la semaine juridique entreprise et affaires*, 2017, No. 50.

<sup>104</sup> See section 910.

<sup>105</sup> J. Ruggie: *Just Business: Multinational Corporations and Human Rights*, W.W. Norton & Company, New York, 2013, p. 125.

<sup>106</sup> I. Landau: “Human Rights Due Diligence and the Risk of Cosmetic Compliance”, in the *Melbourne Journal of International Law*, 2019, Vol. 20, No. 1, p. 238. See also C. Parker: “Meta-regulation: legal accountability for corporate social responsibility”, in D. McBarnet, A. Voiculescu and T. Campbell (eds): *The New Corporate Accountability: Corporate Social Responsibility and the Law*, Cambridge University Press, 2007, p. 209.

<sup>107</sup> See also R. McCorquodale et al: “Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises”, in *Business and Human Rights Journal*, 2017, Vol. 2(2), p. 200.

<sup>108</sup> McCorquodale et al, op. cit., p. 200.

<sup>109</sup> The French Act on the corporate duty of care requires companies to draft vigilance plans in association with the company stakeholders involved and, where appropriate, within multi-party initiatives that exist in the subsidiaries or at territorial level.

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how to proceed,<sup>110</sup> and may pose the risk of companies adopting measures that exhibit the formal elements of HRDD but ultimately fail to achieve their intended outcomes.<sup>111</sup>

- 64.** HRDD laws impose obligations on enterprises that have control or leverage over other enterprises. Leverage is understood to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.<sup>112</sup> Not all HRDD laws elaborate on the concept of control in determining a firm’s duty of care.<sup>113</sup> In any event, the extent of a company’s leverage may vary significantly depending on the context. It may also be limited by practical, financial and legal constraints.<sup>114</sup>
- 65.** There is limited empirical evidence of the impact of HRDD laws on corporate behaviour.<sup>115</sup> Positive developments include increased levels of awareness of human rights among companies, consumers and investors.<sup>116</sup> HRDD laws may also stimulate discussion and action on the root causes of human rights violations, reveal difficulties faced by companies across GSCs and highlight innovations and good practices.<sup>117</sup> In some cases, by providing new information on and understanding of certain issues, disclosure legislation has triggered national discussions on potential developments for the adoption of more prescriptive laws.<sup>118</sup>

<sup>110</sup> J. Harrison: “Establishing a meaningful human rights due diligence process for corporations: Learning from experience of human rights impact assessment”, in *Impact Assessment and Project Appraisal*, 2013, Vol. 31(2), p. 109; and I. Landau, op. cit., p. 236.

<sup>111</sup> I. Landau, op. cit. pp. 223–238.

<sup>112</sup> See [UN Guiding Principles on Business and Human Rights](#), Principle 19 and Commentary.

<sup>113</sup> Art. 1 of the French Act on the corporate duty of care provides a number of bases to determine when a French-owned company has “control” over another company. This includes: holding majority voting rights; exercising dominant influence over by virtue of contractual or statutory clauses; and the maintenance of an established commercial relationship with subcontractors or suppliers.

<sup>114</sup> International Organisation of Employers (IOE): *IOE paper on State policy responses on human rights due diligence*, Geneva, 2018, p. 3. See also UN Guiding Principles on Business and Human Rights, op. cit., Principle 19 and Commentary.

<sup>115</sup> However, for an analysis of the effectiveness of each model of disclosure legislation, see N. Phillips, G. LeBaron and S. Wallin: [Mapping and measuring the effectiveness of labour-related disclosure requirements for global supply chains](#), Research Department Working Paper No. 32, International Labour Office, Geneva, June 2018; G. LeBaron and A. Rühmkorf: “Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance”, in *Global Policy*, 2017, Vol. 8, Supplement 3, pp. 15–28. See also: McCorquodale et al, op. cit.

<sup>116</sup> G. LeBaron and A. Rühmkorf: “The domestic politics of corporate accountability legislation: Struggles over the 2015 UK Modern Slavery Act”, in *Socio-Economic Review*, 2019, Vol. 17(3), pp. 709–743.

<sup>117</sup> R. Mares: “Corporate transparency laws: A hollow victory?”, in *Netherlands Quarterly of Human Rights*, 2018, Vol. 36(3), p. 212.

<sup>118</sup> Mares, op. cit., p. 206.

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66. At the same time, superficial compliance and reporting is common, negating the prospect of changes in corporate policies and practices.<sup>119</sup> The lack of clarity in some HRDD laws may be an obstacle in this respect. Many do not specify the nature of information required, nor determine whether, when or how companies should change practices.<sup>120</sup> More detail might improve reporting outcomes.<sup>121</sup> It would also assist in achieving the transparency that is the goal of disclosure requirements. Without sufficient detail, external stakeholders – including investors – are unable to assess a company’s performance and to respond accordingly.<sup>122</sup> From a different perspective, the lack of standardized metrics and indicators for reporting also create legal uncertainty and inconsistency for enterprises.<sup>123</sup>
67. The Australian Modern Slavery Act does prescribe the minimum amount, nature and scope of information that a company must disclose through a list of mandatory reporting criteria.<sup>124</sup> The European Commission has also developed guidelines on non-financial reporting, which elaborate on the concept of “materiality” with respect to information.<sup>125</sup>
68. HRDD laws may have limited impact in the face of complex and deep-rooted governance challenges.<sup>126</sup> They are also unlikely to be able to deal with high levels of informality and other systemic challenges at the root of decent work deficits in many countries.<sup>127</sup> HRDD laws may be more effective in this respect if accompanied by measures to strengthen national labour governance frameworks.<sup>128</sup>

<sup>119</sup> Ergon Associates: *Modern Slavery Reporting: Is there evidence of progress?*, London, 2018, p. 10.

<sup>120</sup> D. Weil et al: “The Effectiveness of Regulatory Disclosure Policies”, in *Journal of Policy Analysis and Management*, 2005, Vol. 25(1), p. 158.

<sup>121</sup> D. Doorey: “Who Made That?: Influencing Foreign Labour Practices through Reflexive Domestic Disclosure Regulation”, in *Osgoode Hall Law Journal*, 2005, Vol. 43(4), p. 399.

<sup>122</sup> Mares, op. cit., p. 193.

<sup>123</sup> An analysis of the impact of the California Transparency in Supply Chains Act indicated that company investors viewed increased disclosure as potentially costly in terms of firm value, while civil society sought richer information on companies’ efforts to address issues in their supply chains. See R. Mares, op. cit., p. 197; see also I. Landau and S. Marshall: “Should Australia be Embracing the Modern Slavery Model of Regulation”, in *Federal Law Review*, 2018, Vol. 46(2), pp. 313–339.

<sup>124</sup> The Australian Modern Slavery Act, 2018. For a commentary see, for example, A. Sinclair and J. Nolan: *The Australian Modern Slavery Act 2018 – Will it live up to expectations?*, Business & Human Rights Resource Centre, 2018.

<sup>125</sup> European Commission: [Communication from the Commission – Guidelines on non-financial reporting \(methodology for reporting non-financial information\)](#), 2017.

<sup>126</sup> IOE, op. cit., p. 11; see also Mares, op. cit., p. 212.

<sup>127</sup> IOE, op. cit., p. 25.

<sup>128</sup> K. Abbott and D. Snidal: “Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit”, in *Vanderbilt Journal of Transnational Law*, 2009, Vol. 42, pp. 501–578.

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## Labour provisions in trade agreements

- 69.** As of September 2019, one third of all regional trade agreements included labour provisions (see figure 2.1).<sup>129</sup> Some recent agreements require the parties to promote corporate social responsibility and responsible business conduct in supply chains.<sup>130</sup> EU trade agreements include provisions drawing on the MNE Declaration and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>131</sup> These provisions supplement obligations to adopt and effectively implement labour laws in line with the ILO Declaration on Fundamental Principles and Rights at Work, the fundamental and other ratified Conventions, and commitments on access to tribunals and procedural guarantees.<sup>132</sup>
- 70.** Labour provisions in trade agreements can promote the ratification of ILO Conventions.<sup>133</sup> They also support the strengthening of institutions to ensure compliance in supply chains through dialogue, cooperation and dispute settlement.<sup>134</sup> Nevertheless, the effects of labour provisions are mixed. In no case has the outcome of dispute resolution over the application of labour provisions resulted in the imposition of sanctions. Challenges remain where there are poor quality institutions, lack of political will and/or weak social partners, particularly workers' organizations.<sup>135</sup>
- 71.** The limited available evidence suggests that labour provisions have not resulted in States being able to address all issues along whole supply chains. In particular, they are ill-suited to respond to the challenges to decent work that flow from sourcing practices.<sup>136</sup> It has been

<sup>129</sup> Notified to the World Trade Organization and in force.

<sup>130</sup> For example: the Chile-Uruguay Free Trade Agreement from 4 October 2016 (Art. 11.8); the Free Trade Agreement between the EFTA States and the Central American States from 24 June 2013 (Preamble and Art. 9.7).

<sup>131</sup> See, for example, [Article 9 on Trade and Responsible Management of Supply Chains in the EU-Mexico Trade Agreement](#) (text available in October 2019, but not in force). See also R. Peels, et al: *Corporate social responsibility in international trade and investment agreements: Implications for states, business, and workers*, ILO Research Paper No. 13, Geneva, 2016.

<sup>132</sup> Mostly European Union and European Free Trade Association agreements refer to ILO Conventions.

<sup>133</sup> In July 2019, Viet Nam ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The ratification is linked to [implementing labour provisions in trade agreements](#). For ratification of ILO Conventions under unilateral trade preferences, see: J. Orbie and L. Tortell: "The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?", in *European Foreign Affairs Review*, 2009, Vol. 14(5), pp. 663–681.

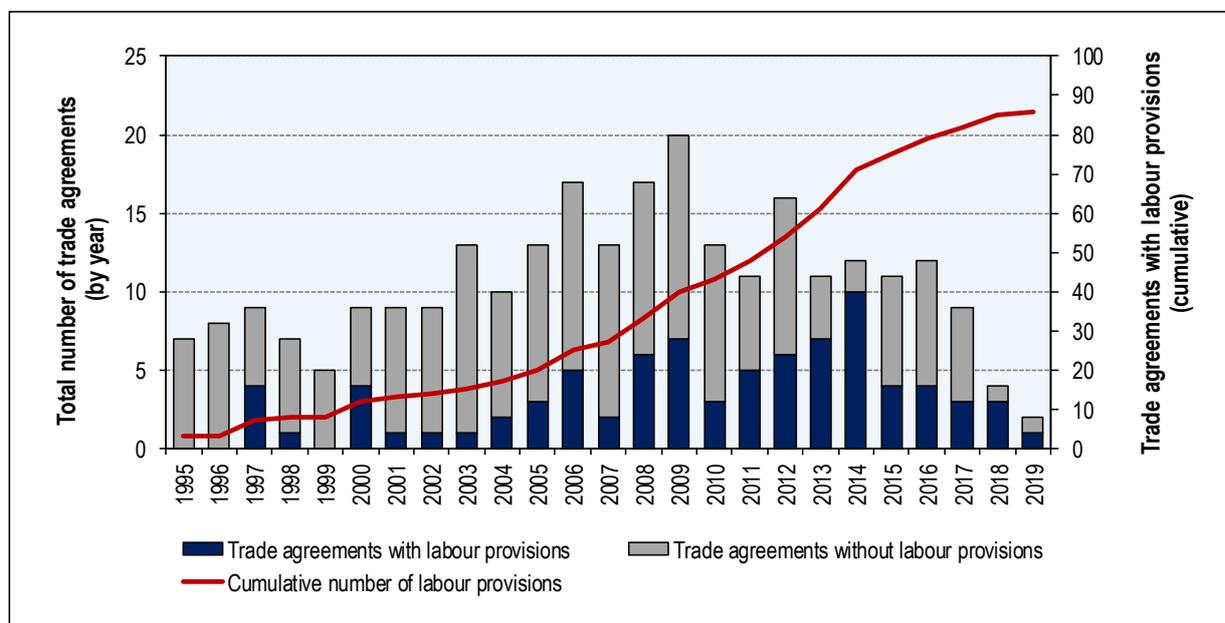
<sup>134</sup> Irrespective of the application of sanctions, almost all trade agreements with labour provisions include a mechanism to solve disputes arising from non-compliance with labour obligations.

<sup>135</sup> ILO: *Studies on Growth with Equity: Handbook on assessment of labour provisions in trade and investment arrangements*, Geneva, 2017; see also A. Gansemans et al: "Do Labour Rights Matter for Export? A Qualitative Comparative Analysis of Pineapple Trade to the EU", in *Politics and Governance*, 2017, Vol. 5(4), pp. 93–105.

<sup>136</sup> See, for example, A. Smith, et al: "Labor Regimes, Global Production Networks, and European Union Trade Policy: Labor Standards and Export Production in the Moldovan Clothing Industry", in *Economic Geography*, 2018, Vol. 94(5), pp. 550–574.

argued that changes to rules of origin,<sup>137</sup> government procurement and investment provisions might have more impact.<sup>138</sup> Or, sector-specific action plans to implement labour provisions could be established, with clear monitoring processes and the involvement of buyers.<sup>139</sup> Labour provisions could perhaps be more effective in supply chains if they took account of sectoral, context-specific challenges and aimed to coordinate private and public interventions so as to reinforce state capacity.<sup>140</sup>

**Figure 2.1 Total regional trade agreements with and without labour provisions**



Source: ILO Research Department, with data from the World Trade Organization regional trade agreement database.

## Public purchasing

72. Governments can leverage the scale of public spending to promote social goals, including environmental and labour standards. The need for sustainable public procurement is incorporated in the Sustainable Development Goals.<sup>141</sup> The state duty to protect against

<sup>137</sup> The US-Mexico-Canada Free Trade Agreement signed on 30 November 2018 – not in force – establishes some labour requirements in ch. 4 on Rules of Origin (Annex 4-B, Article 7): A “labor value content” (relying on the payment of average wages of US\$16 per hour) for vehicles (passengers and light and heavy trucks).

<sup>138</sup> A. Santos: “The New Frontier in Labor and Trade”, in A. Santos, C. Thomas, D. Trubek (eds): *World trade and Investment Law Reimagined: a Progressive Agenda for Inclusive Globalization*, London, UK; New York, NY, USA Anthem Press, 2019.

<sup>139</sup> A. Smith et al.: [Do Labour Provisions in EU Trade Agreements Improve Workers’ Lives and Working Conditions around the World?](#), August 2017.

<sup>140</sup> This approach would probably include expanding programmes with “strong track records”, such as the Better Work Programme, and harness the influence of consumers on lead firms. See K. Kolben: “A Supply Chain Approach to Trade and Labor Provisions”, in *Politics and Governance*, 2017, Vol. 5(4), pp. 60–68.

<sup>141</sup> United Nations: *Transforming Our World: The 2030 Agenda for Sustainable Development A/RES/70/1*, 2015. See indicator 12.7.

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business-related human rights abuses under the Guiding Principles on Business and Human Rights means States having to address their potential impact, including in the area of public procurement.<sup>142</sup>

73. With limited exceptions, government use of public procurement to improve labour conditions has not often tried to reach beyond domestic jurisdictions to GSCs. Moreover, there is limited evidence that public purchasing practices are accompanied by monitoring and enforcement of compliance with labour standard conditions in purchasing contracts.<sup>143</sup> Indeed, public officials responsible for procurement may simply lack the knowledge required to incorporate social requirements into purchasing practices, much less to monitor compliance.<sup>144</sup>
74. There is evidence of public procurement incorporating elements of PCIs, such as certification or labelling schemes.<sup>145</sup> Public purchasers may alternatively partner with a worker-driven compliance initiative.<sup>146</sup> In this way, a government may be able to increase the impact of its use of purchasing power, but this will depend on the effectiveness and legitimacy of any scheme with which the government partners.<sup>147</sup>

### Private compliance initiatives

75. Multinational enterprises conducting business in countries with constrained governance have increasingly implemented PCIs. These may include social auditing, certification initiatives or self-reporting mechanisms, as well as best-practice sharing, grievance mechanisms, peer learning, guidance and capacity-building. PCIs can help firms to fulfil their HRDD responsibilities, while managing reputational risk from participation in GSCs.

<sup>142</sup> UN Human Rights Council: [Protect, Respect and Remedy: A Framework for Business and Human Rights](#), A/HRC/8/5, 2008; and UN Human Rights Council: [Human rights and transnational corporations and other business enterprises](#), A/HRC/RES/17/4, 2011, para. 1, endorsing the Guiding Principles on Business and Human Rights, op. cit., as in A/HRC/RES/17/31, [Annex, para. I.A.2](#).

<sup>143</sup> C. Methven et al: [Public Procurement and Human Rights: A Survey of Twenty Jurisdictions](#), International Learning Lab on Public Procurement and Human Rights, 2016; W. Kahlenborn et al: [Strategic use of Public Procurement in Europe – Final Report to the European Commission](#), MARKT/2010/02/C, 2011; National Agency for Public Procurement: [Mapping Initiatives for Ethical Public Procurement in Europe](#), Report 2017:6 commissioned on behalf of the European Working Group on Ethical Public Procurement and the National Agency for Public Procurement, 2017.

<sup>144</sup> OECD: [Responsible business conduct in government procurement practices](#), 2017, p. 6.

<sup>145</sup> A. Marx: “Public procurement and human rights: current role and potential of voluntary sustainability standards”, in O. Martin-Ortega and C. Methven O’Brien (eds): [Public Procurement and Human Rights: Opportunities, Risks and Dilemmas for the State As Buyer](#), Edward Elgar Publishing, 2019, part II, pp. 132–149.

<sup>146</sup> J. Fine and T. Bartley: “Raising the floor: New directions in public and private enforcement of labor standards in the United States”, in [Journal of Industrial Relations](#), 2019, Vol. 61(2), pp. 252–276; M. Barenburg: “Towards a Democratic Model of Transnational Labour Monitoring?”, in B. Bercusson and C. Estlund (eds), [Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions](#), Oxford, Hart Publishing, 2007, pp. 37–65.

<sup>147</sup> M. A. Corvaglia: [Public Procurement and Labour Rights: Towards coherence in international instruments of procurement regulation](#), Hart Publishing/Bloomsbury, 2017, pp. 92–94.

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76. PCIs are neither designed nor able to substitute for adequate public labour enforcement regimes. Synergies have to be found where the aims of PCIs and labour inspection coincide, notably when considering the improvement of working conditions.<sup>148</sup>
77. The operation of PCIs is widely studied. This reflects the number and scale of PCIs globally, and their contribution to advancing decent work, especially where governance is weak. The literature suggests that PCIs may be unable to ensure long-term change in the behaviour of suppliers, and rarely interact with public governance. Further, while firms have leverage over upper-tier suppliers, this is not where the risk of decent work deficits is most significant. These occur in the lower tiers of supply chains, and in the subcontracted offshoots, operating in the informal economy.
78. Because PCIs are a function of risk management, they do usually provide scope for worker involvement. This may be limited to ad hoc interviews in the course of audits. PCIs may, however, have greater impact if accompanied by mechanisms that empower local and global stakeholders, such as complaints procedures and dispute settlement systems.
79. As PCIs operate in addition to public governance, some of the literature compares the two. This analysis highlights several key differences. PCIs necessarily lack public accountability and transparency mechanisms. Firms autonomously determine the issues that will be addressed and the remedies for non-compliance. Proliferation of PCIs leads to normative differences and overlap – between PCIs and public governance and between PCIs.
80. Some analysis considers how PCIs could interact with public governance. PCIs may reinforce state institutions, they may play a complementary role given the governance deficit<sup>149</sup> that may exist, or they may compete with state institutions and undermine standards. Much may depend on whether PCIs and national institutions interact with each other consciously and deliberately.<sup>150</sup>
81. PCIs may be more effective,<sup>151</sup> as well as more likely to reinforce state institutions where there is worker mobilization.<sup>152</sup> In turn, state support can enhance worker mobilization.<sup>153</sup> Reinforcement may be more likely where PCIs have state support to interpret contested rules

<sup>148</sup> ILO: *Final report: Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives*, op. cit., p. 24; ILO: *Conclusions concerning decent work in global supply chains*, op. cit., para 10.

<sup>149</sup> J. Bair: “Contextualising compliance: Hybrid governance in global value chains”, in *New Political Economy*, 2017, Vol. 22(2), pp. 169–185.

<sup>150</sup> J. Zenker: “Made in Misery: Mandating Supply Chain Labor Compliance”, in *Vanderbilt Journal of Transnational Law*, 2018, Vol. 51(1), pp. 318–319.

<sup>151</sup> Mosley, op. cit.

<sup>152</sup> M. Amengual and L. Chirot: “Reinforcing the State: Transnational and State Labor Regulation in Indonesia”, in *Industrial and Labor Relations Review*, 2016, Vol. 69(5), pp. 1059–1080. In the domestic context, see J. Fine: “Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Alone Has Failed?”, in *Politics & Society*, 2017, Vol. 45(3), pp. 379–380.

<sup>153</sup> Fine, op. cit.

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in ways that require firms to engage with state regulation.<sup>154</sup> Thus, reinforcement may occur if PCIs require engagement with state regulation. But this is subject to the effectiveness of that state regulation.

- 82.** Complementary interaction may be possible where PCIs and state regulation address different labour standards.<sup>155</sup> PCIs may have less impact in the area of freedom of association than, for example, OSH.<sup>156</sup> Government labour inspection by contrast may be far more significant in relation to other employment standards.<sup>157</sup>
- 83.** Competition between PCIs and state regulation may occur if labour issues are resolved independently of state regulation.<sup>158</sup> Moreover, firms may choose to operate in States where national governance is weak.<sup>159</sup> The concern is exacerbated by the fact that countries and regions compete to secure investment from multinational corporations, including on labour standards.<sup>160</sup> The risk is that PCIs may operate in ways that may conceal, rather than reveal, exploitative labour practices.<sup>161</sup>

## Social dialogue

### *Collective bargaining*

- 84.** Collective bargaining is a fundamental right. It depends in turn on effective respect for freedom of association. Where workers can exercise these rights effectively, collective bargaining may contribute to reducing decent work deficits. In many countries, collective bargaining remains crucial to the determination of wages and working conditions.<sup>162</sup> A

<sup>154</sup> Amengual and Chirot, op. cit., pp. 1060, 1077. See also G. Distelhorst et al.: “Production goes global, compliance stays local: Private regulation in the global electronics industry”, in *Regulation & Governance*, 2015, Vol. 9(3), pp. 224–242.

<sup>155</sup> T. Bartley and N. Egels-Zandén: “Responsibility and neglect in global production networks: The uneven significance of codes of conduct in Indonesian factories”, in *Global Networks: A Journal of Transnational Affairs*, 2015, Vol. 15(s1), p. 23.

<sup>156</sup> Bartley and Egels-Zandén, op. cit., pp. 37–38.

<sup>157</sup> Bartley and Egels-Zandén, op. cit.

<sup>158</sup> G. LeBaron, J. Lister and P. Dauvergne: “[Governing Global Supply Chain Sustainability through the Ethical Audit Regime](#)”, in *Globalizations*, 2017, Vol. 14(6), p. 959.

<sup>159</sup> P. Marginson: “[Governing Work and Employment Relations in an Internationalized Economy: The Institutional Challenge](#)”, in the *Industrial and Labor Relations Review*, 2016, Vol. 69(5), p. 1036.

<sup>160</sup> Marginson, op. cit., p. 1036.

<sup>161</sup> LeBaron, Lister and Dauvergne, op. cit., p. 964.

<sup>162</sup> ILO: [Factsheet no. 1 – Collective bargaining](#), Geneva, 2015.

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stronger link between pay and productivity growth holds great promise for economic and social upgrading within supply chains.<sup>163</sup>

- 85.** High levels of collective bargaining coverage are associated with reduced wage inequality,<sup>164</sup> both within firms and between them.<sup>165</sup> This is particularly important in terms of extending labour protection to the vulnerable categories of workers that are typically found in greater prevalence in lower tiers of GSCs.
- 86.** Collective bargaining coverage, however, is largely dependent on the structure and level of bargaining. With limited exceptions, countries with highly centralized systems of bargaining tend to be located in Northern and Western Europe. Multi-employer bargaining at sectoral or intersectoral levels is associated with collective bargaining rates of over 78 per cent. In Asia, the Americas, and Central and Eastern Europe, collective bargaining generally takes place at enterprise level. Where single-employer bargaining prevails, the average collective bargaining coverage rate is 14.9 per cent (26 countries).<sup>166</sup>
- 87.** Transnational collective bargaining that directly addresses the challenges that can arise in GSCs is rare.<sup>167</sup> One example is the Indonesia Freedom of Association Protocol, an agreement between five Indonesian unions, six global sportswear brands and four major Indonesian footwear manufacturers. It protects workers' rights to organize and bargain collectively; it also protects union organizers and members from discriminatory or retaliatory action. There have been a number of challenges in the implementation of the agreement related to the management and resolution of disputes, and the protocol is limited in its application to first-tier supplier factories.<sup>168</sup>

<sup>163</sup> D. Cooper and L. Mishel: "The Erosion of Collective Bargaining Has Widened the Gap between Productivity and Pay", Economic Policy Institute, 2015; ILO: *Global Wage Report 2016/17: Wage inequality in the workplace*, Geneva, 2016.

<sup>164</sup> Bargaining coverage is defined as the share of employees to whom a collective agreement applies. For collective bargaining coverage rates, see the ILO's industrial relations database (IRData); S. Hayter: "Unions and collective bargaining", in J. Berg (ed.): *Labour markets institutions and inequality: Building just societies in the 21st century*, ILO and Edward Elgar Publishing, ch. 4, pp. 95–122; D. Grimshaw, G. Bosch and J. Rubery: "Minimum Wages and Collective Bargaining: What Types of Pay Bargaining Can Foster Positive Pay Equity Outcomes?", in *British Journal of Industrial Relations*, 2014, Vol. 52(3), pp. 470–498; J. Visser: "What happened to collective bargaining during the great recession?", in *IZA Journal of Labour Policy*, 2016, Vol. 5(1), pp. 1–35; G. Bosch: "Shrinking collective bargaining coverage, increasing income inequality: A comparison of five EU countries", in ILO: *International Labour Review*, 2015, Vol. 154(1), pp. 57–66.

<sup>165</sup> ILO: *Global Wage Report 2016/17: Wage inequality in the workplace*, op. cit; see also ILO: *Social dialogue and tripartism: A recurrent discussion on the strategic objective of social dialogue and tripartism, under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report VI, International Labour Conference, 107th Session, Geneva, 2018, paras 110–116.

<sup>166</sup> ILO: *Social dialogue and tripartism: A recurrent discussion on the strategic objective of social dialogue and tripartism, under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008*, op. cit., para. 116.

<sup>167</sup> J. Blasi and J. Bair: *An analysis of multiparty bargaining models for global supply chains*, Conditions of Work and Employment Series No. 105, Inclusive Labour Markets, Labour Relations and Working Conditions Branch, ILO, Geneva, 2019.

<sup>168</sup> International Labor Rights Forum: *Future of Fashion: Worker-Led Strategies for Corporate Accountability in the Global Apparel Industry*, February 2019.

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88. In the shipping sector, the collective bargaining agreement between Maersk and the International Transport Workers' Federation requires Maersk to ensure that ships used by charter operators are also covered by a federation contract or similar agreement protecting the rights of the crews on ships, even when they fly flags of convenience.<sup>169</sup>

### ***International framework agreements***

89. Global union federations and more than 100 multinational companies have increased cross-border collaboration through IFAs.<sup>170</sup> The mechanisms and institutions created by IFAs can complement national laws and institutions and corporate social responsibility initiatives of enterprises.<sup>171</sup> IFAs have the potential to become a collaborative tool in HRDD processes under national laws, the MNE Declaration, the Guiding Principles on Business and Human Rights and the OECD Guidelines.<sup>172</sup>
90. IFAs usually apply to all operations of a multinational enterprise and its subsidiaries. Most IFAs contain provisions that apply to the suppliers of lead firms, thus creating an enabling environment for freedom of association and collective bargaining across GSCs.<sup>173</sup> In some cases, the content of IFAs is incorporated into supplier's guidelines and auditing checklists.<sup>174</sup>

### ***Multistakeholder initiatives***

91. The Bangladesh Accord on Fire and Building Safety is a legally binding agreement between global union federations and more than 200 clothing companies.<sup>175</sup> In the garment sector, the "Action, Collaboration, Transformation" initiative also goes beyond single companies and brands, and builds on labour relations to achieve living wages for the whole industry sector in a country.<sup>176</sup>

<sup>169</sup> Blasi and Bair, op. cit.

<sup>170</sup> ILO: *International Framework Agreements in the food retail, garment and chemicals sectors: Lessons learned from three case studies*, Geneva, 2018.

<sup>171</sup> The IFA between UNI and Carrefour, for example, has complemented Carrefour's corporate social responsibility framework. See ILO: *International Framework Agreements in the food retail, garment and chemicals sectors: Lessons learned from three case studies*, op. cit.

<sup>172</sup> ILO: Meeting of experts on cross-border social dialogue, Geneva, 12–15 February 2019, Conclusions, op. cit.

<sup>173</sup> F. Hadwiger: "Global framework agreements: Achieving decent work in global supply chains?", in *International Journal of Labour Research*, 2015, Vol. 7(1–2), pp. 75–94.

<sup>174</sup> I. Schömann, A. Sobczak, E. Voss and P. Wilke: *Codes of conduct and international framework agreements: New forms of governance at company level*, Dublin, the European Foundation for the Improvement of Living and Working Conditions, 2008.

<sup>175</sup> See the Accord on Fire and Building Safety website [here](#).

<sup>176</sup> J. Holdercroft: "Transforming supply chain industrial relations", in *International Journal of Labour Research*, 2015, Vol. 7(1–2).

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92. Launched in 1998, the Ethical Trading Initiative<sup>177</sup> includes global companies in different industries, international trade unions, labour rights organizations and non-governmental organizations. Corporate members must adopt the initiative's Base Code for labour practices, which is founded on the ILO Conventions, and report annually on their efforts to implement it in their supply chains. The Ethical Trading Initiative conducts audits, engages in resolving violations of workers' rights<sup>178</sup> and lobbies to secure labour standards.<sup>179</sup>
93. The Fair Wear Foundation works with 193 member brands in the garment industry.<sup>180</sup> It engages directly with factories, trade unions, non-governmental organizations and governments. The foundation's Code of Labour Practices incorporates core ILO Conventions and the UN Universal Declaration of Human Rights. Key initiatives include brand performance checks, factory audits, complaints' helplines and factory training sessions. The foundation supports living wages<sup>181</sup> and mediates workers' issues through the Fair Wear complaints process.
94. The Extractive Industries Transparency Initiative promotes transparency and accountability in the management of oil, gas and mineral resources. All companies operating in countries that are members of the initiative should comply with wide-ranging disclosure obligations along their extractive value chain. Local multistakeholder groups oversee implementation. They analyse the data supplied and communicate it to governments, local communities and civil society groups. The initiative's international board assesses progress by countries towards meeting its global standard.<sup>182</sup>

### ***Multi-party bargaining initiatives***

95. There are several examples of worker-driven, multi-party bargaining agreements between lead firms and unions or worker-based organizations. Although some examples grew out of initiatives focused on improving working conditions in domestic supply chains, they have also developed into effective mechanisms for addressing decent work deficits in GSCs.
96. The Coalition of Immokalee Workers developed the Fair Food Program to address poor working conditions for farmworkers in Florida. The coalition developed a campaign to mobilize consumers to pressure retail food companies to purchase produce exclusively from growers who comply with the Fair Food Code of Conduct. Specially trained farmworkers monitor compliance and educate workers about their rights. The legally enforceable agreement also includes a wage premium that supplements the farmworkers' income.<sup>183</sup>
97. Initiatives may be more effective if they have broad coverage, including groups of lead firms and/or suppliers organized into industry associations. Sectoral initiatives are stronger when a public sector client is involved, such as the Israeli Government in the cleaning and security

<sup>177</sup> See the Ethical Trading Initiative website [here](#).

<sup>178</sup> See the resolving violations web page [here](#).

<sup>179</sup> See the lobbying web page [here](#).

<sup>180</sup> See the Fair Wear Foundation website [here](#).

<sup>181</sup> A recent example is the [Fair Wear and ASN Bank's partnership on living wages](#).

<sup>182</sup> See website [here](#).

<sup>183</sup> See website [here](#).

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service sectors, or the British National Health Service and UNISON’s Ethical Care Charter.<sup>184</sup>

### **Workplace cooperation**

98. The ILO–International Finance Corporation Better Work Programme promotes the establishment of performance improvement consultative committees (PICCs) as a mechanism for workplace cooperation. When a PICC is in operation in a factory, workers often perceive improved working conditions and report, for example, less verbal abuse, dizziness and restlessness and improved availability and quality of water. PICCs are more positively perceived by workers and have more impact on the work environment where there is equal gender representation and where workers are free to choose their representatives. Factory management, however, does not always perceive the presence of a PICC or a trade union positively, consequently undervaluing their ability to help to solve problems.<sup>185</sup>

### **3. Overarching frameworks for labour governance**

99. Fragmentation of production – and of business structures into separate legal entities – can pose challenges for effective governance at the national level. As noted by the UN Committee on Economic, Social and Cultural Rights:

Because of how corporate groups are organized, business entities routinely escape liability by hiding behind the so-called corporate veil, as the parent company seeks to avoid liability for the acts of the subsidiary even when it would have been in a position to influence its conduct.<sup>186</sup>

Many States have taken steps to ensure effective governance within their territory, notwithstanding the fragmentation of production through separate legal entities.<sup>187</sup>

100. It is however necessarily more difficult to do this transnationally. It follows that victims of “transnational corporate abuses” may have particular problems in seeking redress for violations of rights.<sup>188</sup>

101. States are responsible for ensuring that private actors within their jurisdiction or territory comply with their legal obligations. Governments, however, have different levels of capacity and resources to effectively monitor and enforce compliance with applicable standards. While there are examples of governments taking steps to improve their capacity, many

<sup>184</sup> Blasi and Bair, op. cit.

<sup>185</sup> ILO and International Finance Corporation: *Better Work – Progress and Potential: How Better Work is improving garment workers’ lives and boosting factory competitiveness. A summary of an independent assessment of the Better Work programme*, Geneva, 2016, para. 5.2.

<sup>186</sup> UN Committee on Economic, Social and Cultural Rights: *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, August 2017, E/C.12/GC/24, para. 42.

<sup>187</sup> See for example S. Marshall: “*Australian textile clothing and footwear supply chain regulation*“, in C. Fenwick and T. Novitz (eds): *Human Rights at Work: Perspectives on Law and Regulation*, Hart Publishing, 2010, pp. 555–583.

<sup>188</sup> UN Committee on Economic, Social and Cultural Rights, 2017, op. cit., para. 43.

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challenges remain. As noted, the expansion of GSCs across borders has exacerbated these governance gaps.<sup>189</sup>

102. A failure or inability to enforce compliance with the law implies in turn a failure to ensure access to justice and to remedy. This is significant beyond the implicit right to redress in connection with a specific breach of labour regulation. The Sustainable Development Goals include access to justice as an indicator of building effective, accountable and inclusive institutions to ensure the rule of law at national and international levels.<sup>190</sup> In turn, pillar three of the Guiding Principles on Business and Human Rights requires States to provide access to remedy for those who have suffered business-related human rights abuses.
103. Non-compliance with national law by a firm supplying to a GSC may not be an outcome only of the firm's decisions at the national level. Nor is non-compliance necessarily a consequence only of weak governance. In the GSC context, an actor beyond the borders of the host State exercises leverage that influences the actions of the supplying firm.<sup>191</sup> The degree of leverage may vary, but it is being exercised by an actor beyond the jurisdiction of the second State. From a legal perspective, however, only the firm that breaches standards remains responsible. And the State in which the firm is operating has little if any jurisdiction to set standards to regulate the conduct of an actor in another State.<sup>192</sup>
104. Transnational litigation to seek redress for harm suffered in one jurisdiction, from a corporate actor in another jurisdiction, has led to mixed results. Different legal arguments are available, but it is necessary to demonstrate that the foreign actor had legal control and/or responsibility for the actions of a separate legal entity in the jurisdiction where the harm occurred.<sup>193</sup>
105. In the *Loblaws* case, a court in Canada rejected a class action by surviving garment workers and relatives of workers who died in the 2013 Rana Plaza building collapse, brought against a parent company of one of the responsible subsidiary companies.<sup>194</sup> The court found that the parent company had no control over the circumstances that were dangerous, nor control over the employers or employees or other occupants of Rana Plaza.<sup>195</sup>

<sup>189</sup> ILO: Conclusions concerning decent work in global supply chains, op. cit., para. 6.

<sup>190</sup> United Nations: [Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1](#), target 16.3.

<sup>191</sup> O. De Schutter: [Extraterritorial Jurisdiction as a tool for improving the Human Rights Accountability of Transnational Corporations](#), 2006.

<sup>192</sup> J. Zerk: *Extraterritorial jurisdiction: Lessons for the business and human rights sphere from six regulatory areas*, Working Paper No. 59, Harvard Corporate Social Responsibility Initiative, Harvard University, 2010.

<sup>193</sup> L. Knöpfel: "CSR Communication in Transnational Human Rights Litigations against Parent Companies", in A Dickson Poon: *Transnational Law Institute, King's College London Research Paper Series*, 2019, p. 4. See also D. J. Doorey: *Lost in Translation: Rana Plaza, Loblaws, and the Disconnect between Legal Formality and Corporate Social Responsibility*, 2018.

<sup>194</sup> *Das v. George Weston Limited* [2017] ONSC 4129 (CanLII) [*Loblaws Decision*].

<sup>195</sup> *Das v. George Weston Limited*, op. cit., para. 457.

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- 106.** In the *Okpabi* case, 42,500 Nigerian residents claimed compensation in the United Kingdom for the negligence of an energy company whose subsidiary caused pollution and environmental damage in the Niger Delta. The court rejected the claim because the parent company’s corporate social responsibility policies on the health and safety of local communities did not amount to control over the subsidiary in regard to issues of corporate social responsibility.<sup>196</sup>
- 107.** In the *Choc v. Hudbay Minerals Inc.* case, however, a court in Ontario, Canada held a mining parent company liable for the harm suffered by indigenous groups at the hands of security personnel employed by a subsidiary in Guatemala. The company’s public statements committing to implement detailed standards of conduct in its supply chain were found to establish a sufficient duty of care and basis for liability. Furthermore, the company was found to have exercised “on-the-ground management and control”.<sup>197</sup>
- 108.** In the *Vedanta* case before the United Kingdom Supreme Court, a group of Zambian villagers received compensation from a mining parent company for harm caused by a subsidiary through pollution of local waterways. The parent company owed a duty of care, considering that it provided environmental training across its group companies, made public commitments to address environmental risks and technical shortcomings in the subsidiary, and exercised control over the subsidiary.<sup>198</sup> The court assessed the liability of the parent company under Zambian laws, exercising jurisdiction even though Zambia would ordinarily be the best place for the proceedings,<sup>199</sup> because various practical factors resulted in the denial of access to justice for the claimants.<sup>200</sup>
- 109.** The question then arises as to whether the home State of the actor exercising leverage has the legal capacity, and/or any obligation, to exercise jurisdiction over conduct that takes place in another State. This depends on rules governing state jurisdiction, and on the scope of obligations under international human rights law.

<sup>196</sup> *Okpabi and others v. Royal Dutch Shell Plc and another* [2018] EWCA Civ 191. This judgment went against the reasoning applied in the earlier case of *Chandler v. Cape Plc* [2012] EWCA Civ 525.

<sup>197</sup> *Choc v Hudbay Minerals Inc.* [2013] ONSC 1414. However, see the case of Joe Fresh and Loblaw’s in *Das v. George Weston Limited*, op. cit.

<sup>198</sup> *Vedanta Resources Plc and Konkola Copper Mines Plc (Appellants) v. Lungowe and Ors (Respondents)* [2019] UKSC 20. See also Norton Rose Fulbright: *Recent Trends Related to Human Rights Statements: Emerging trends underlying decisions on the scope of reporting*, February 10, 2016.

<sup>199</sup> Based on the location of the place where the alleged harm took place, the claimants, and evidence of such harm.

<sup>200</sup> Norton Rose Fulbright: *UK Supreme Court clarifies issues on parent company liability in Lungowe v Vedanta*, April 2019.

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## Extraterritorial jurisdiction

110. The exercise of extraterritorial jurisdiction is not uncontroversial,<sup>201</sup> not least because of the doctrine of non-interference in the domestic affairs of another State.<sup>202</sup> A number of customary international law doctrines establish limited instances where extraterritoriality is justified. The doctrine of territoriality provides that a State has jurisdiction over all actors and activities that take place within its territory.
111. A State may exercise jurisdiction over its own nationals, regardless of where their conduct occurs. Thus a home State may directly regulate conduct by a firm that takes place in another State, provided the firm is operating through a foreign branch, not a legally separate affiliate or subsidiary.<sup>203</sup>
112. For the most part, however, GSCs involve separate legal entities. This makes it more challenging for a home State to exercise direct extraterritorial jurisdiction. Draft laws to prescribe corporate conduct for overseas subsidiaries were rejected in Australia and Canada.<sup>204</sup>
113. HRDD laws have extraterritorial effects, sometimes called indirect extraterritorial jurisdiction. The jurisdictional basis of the law is the nationality of the company and the fact that it is registered in a State's territory. The effect of the law is extraterritorial, as the company must take action in its supply chain in other States.
114. States may also exercise extraterritorial jurisdiction through the use of State-based judicial measures to resolve disputes and/or grant remedy to aggrieved parties in cases involving foreign actors or conduct carried out in a foreign jurisdiction. The exercise of judicial authority with extraterritorial elements is governed by private international law.

## Obligations under international human rights law

115. States must protect the rights in international human rights treaties by which they are bound, including extraterritorially.<sup>205</sup> This is particularly relevant to the intersectionality of labour

<sup>201</sup> D. Augenstein and D. Kinley: "When Human Rights 'Responsibilities' become 'Duties': The Extra-Territorial Obligations of States that Bind Corporations", in D. Bilchitz and S. Deva (eds): *Human rights obligations of business: Beyond the corporate responsibility to respect?*, Cambridge University Press, 2013, Sydney Law School Research Paper No. 12/71. See also R. Chambers: "An Evaluation of Two Key Extraterritorial Techniques to Bring Human Rights Standards to Bear on Corporate Misconduct Jurisdictional dilemma raised/created by the use of the extraterritorial techniques", in *Utrecht Law Review*, Vol. 14, No. 2, 2018.

<sup>202</sup> O. De Schutter: *Sovereignty-Plus in the Era of Interdependence: Towards an International Convention on Combating Human Rights Violations by Transnational Corporations*, CRIDHO Working Paper No. 2010/5.

<sup>203</sup> Chambers, op. cit. p. 30.

<sup>204</sup> See Chambers, op. cit., for discussion on the rejection of the draft Corporate Code of Conduct Bill (Australia), and Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries (Canada).

<sup>205</sup> Chambers, op. cit., p. 29. The Guiding Principles on Business and Human Rights, for example, provide that while there is currently no international human rights instrument requiring States to regulate the extraterritorial activities of businesses domiciled within their territory or jurisdiction,

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and human rights, and the acceptance of the ILO's fundamental principles and rights at work as internationally recognized human rights.<sup>206</sup> The UN Committee on Economic, Social and Cultural Rights has closely considered the obligations of States to protect human rights in the context of business activities.<sup>207</sup>

The state duty to protect human rights in the context of business activities entails a positive duty to adopt a legal framework that requires business entities to exercise human rights due diligence in order to identify, prevent and mitigate the risks of violations of human rights, to avoid such rights being abused, and to account for the negative impacts caused or contributed to by their decisions and operations and those of entities they control.<sup>208</sup>

These measures should apply to an enterprise's supply chain and subcontractors, its suppliers, franchisees and other business partners.<sup>209</sup>

**116.** State duties to protect human rights beyond their national territory have strengthened in recent years, including their duty to regulate the activities of corporations whose conduct they can influence.<sup>210</sup> UN human rights treaty bodies have explicitly affirmed the state obligation to control the conduct of non-state actors where their conduct may lead to human rights violations outside their territory.<sup>211</sup> An extraterritorial obligation arises "especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable or ineffective."<sup>212</sup>

**117.** To discharge this obligation a State should:

require corporations to deploy their best efforts to ensure that entities whose conduct those corporations may influence, such as subsidiaries (including all business entities in which they have invested, whether registered under the State party's laws or under the laws of another State) or business partners (including suppliers, franchisees and subcontractors), respect Covenant rights. Corporations domiciled in the territory and/or jurisdiction of States parties should be required to act with due diligence to identify, prevent and address abuses to Covenant rights by such subsidiaries and business partners, wherever they may be located.<sup>213</sup>

there is no general prohibition. Furthermore, there are "strong policy reasons" in favour of the exercise of extraterritorial jurisdiction. See Commentary to [UN Guiding Principle 2](#).

<sup>206</sup> [UN Guiding Principle 12](#).

<sup>207</sup> UN Committee on Economic, Social and Cultural Rights, 2017, op. cit.

<sup>208</sup> UN Committee on Economic, Social and Cultural Rights, 2017, op. cit., para. 16.

<sup>209</sup> UN Committee on Economic, Social and Cultural Rights, 2017, op. cit., para. 16.

<sup>210</sup> Office of the High Commissioner for Human Rights: *Regulating Transnational Corporations: A Duty under International Human Rights Law*, 2014.

<sup>211</sup> UN HRC: *Business and human rights: Mapping international standards of responsibility and accountability for corporate acts*, A/HRC/4/35, February 2007.

<sup>212</sup> UN Committee on Economic, Social and Cultural Rights, 2017, op. cit., para. 30.

<sup>213</sup> UN Committee on Economic, Social and Cultural Rights, 2017, op. cit., para. 33. The same obligations arise under the International Covenant on Civil and Political Rights – see UN Human Rights Committee: *Concluding observations on the sixth periodic report of Germany, adopted by the Committee at its 106th Session (15 October–2 November 2012)*, CCPR/C/DEU/CO/6, para. 16.

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- 118.** States should adopt such measures particularly in the context of the right to just and favourable conditions of work. Indeed, according to the UN Committee on Economic, Social and Cultural Rights:

This responsibility is particularly important in States with advanced labour law systems as home-country enterprises can help to improve standards for working conditions in host countries.

States should therefore introduce appropriate measures to ensure that non-State actors domiciled in their jurisdiction “are accountable for violations of the right to just and favourable conditions of work extraterritorially and that victims have access to remedy”. States should also provide guidance on how employers and enterprises can respect the right extraterritorially.<sup>214</sup>

- 119.** States also have a duty to cooperate in transnational situations that lead to human rights violations, in order to ensure that victims have access to justice and effective remedies.<sup>215 216</sup> Accountability and access to remedy in transnational cases might be improved by the adoption of an international instrument to strengthen the duty to cooperate. The Maritime Labour Convention, 2006, as amended, and the Domestic Workers Convention, 2011 (No. 189), and Recommendation, 2011 (No. 201), may serve as examples in this respect.<sup>217</sup>
- 120.** International cooperation could also assist in reducing conflicts of jurisdiction.<sup>218</sup> The MNE Declaration provides that both “host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either”.<sup>219</sup> Two environmental conventions of the UN Economic Commission for Europe require States parties to give early notice to other States of domestic projects that may have environmental implications beyond their own borders and to consult on areas of concern.<sup>220</sup>
- 121.** The exercise of extraterritorial jurisdiction may give rise to fewer difficulties were it based on an international consensus on the existence of certain rights that States have a duty to

<sup>214</sup> UN Committee on Economic, Social and Cultural Rights: *General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights)*, April 2016, E/C.12/GC/23, para. 70.

<sup>215</sup> Office of the High Commissioner for Human Rights, op. cit.

<sup>216</sup> O. De Schutter et.al.: “Commentary to the Maastricht principles on extraterritorial obligations of states in the area of economic, social and cultural rights”, in: *Human Rights Quarterly*, 34(4), 2012, pp. 1084–1169; Office of the High Commissioner for Human Rights, op. cit.; ETO Consortium: *Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, Principle 27, 2013.

<sup>217</sup> UN Committee on Economic, Social and Cultural Rights, 2017, op. cit., para. 35.

<sup>218</sup> While important in its own right, this would also reduce legal uncertainty and unpredictability for business. See UN Special Representative of the Secretary-General (SRSG) on the Issue of Human Rights and Transnational Corporations and other Business Enterprises: *Exploring Extraterritoriality in Business and Human Rights: Summary Note of Expert Meeting*, 2010; Zerk, op. cit., p. 216.

<sup>219</sup> Paragraph 12 of the [MNE Declaration](#).

<sup>220</sup> United Nations: [Convention on environmental impact assessment in a transboundary context](#), 1991; [Convention on access to information, public participation in decision-making and access to justice in environmental matters](#), Aarhus, Denmark, 1998.

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protect – and enterprises a duty to respect – rather than on domestic standards.<sup>221</sup> International consensus might also extend to identifying the wrongfulness of activities that infringe on these rights.

## The ILO policy framework

### *International labour standards*

- 122.** Paragraph 25 of the 2016 conclusions notes that “There is concern that current ILO standards may not be fit for purpose to achieve decent work in global supply chains”. Whether this is so depends on the character and content of ILO international labour standards, considered in light of the salient challenges of governance to achieving decent work in GSCs. As noted, the challenges include:
- (a) fragmentation of production across international borders, which can shape whether workers enjoy the effective protection of the employment relationship;
  - (b) business practices by private actors in one State that can influence compliance with national laws and regulations in another; and
  - (c) limits to State jurisdiction and the operation of limited liability, which together can limit effective access to remedy for those whose rights have been violated.
- 123.** Consideration should also be given to current responses to the challenges and to developments in both national and international law. These include:
- (a) growing support nationally and internationally for business to carry out HRDD throughout their supply chains; and
  - (b) the strengthening of state responsibility to protect human rights in the context of business activities, including extraterritorially.
- 124.** International labour standards are normative instruments in the public international legal order, directed to member States. It is the nation State – and thus government – that bears the main responsibility for giving effect to international labour standards, and so for realizing social justice. To give effect to international labour standards, governments, particularly in market economies, allocate rights and responsibilities to employers and workers. Thus, international labour standards exert their governing influence primarily through national labour law. Those laws apply generally to work in any jurisdiction from which a good or service is sourced.
- 125.** International labour standards cover all aspects of work – whether in production for GSCs or not. The eight fundamental Conventions<sup>222</sup> and the four governance (or priority)

<sup>221</sup> Zerk, op. cit., p. 12; Chambers, op. cit., p. 37.

<sup>222</sup> The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Protocol of 2014 to the Forced Labour Convention, 1930, the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

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Conventions<sup>223</sup> all apply to work. The same is true of standards relating to wages, working time, OSH and social security – all areas where challenges have been identified in the context of production for GSCs. While all standards are meant to apply in practice to employers and workers, including those engaged in production for GSCs, they are not designed specifically for that context.

- 126.** International labour standards represent a global consensus on what is needed to pursue social justice. They are intended to promote convergence of national systems, even if the pace of convergence is subject to national circumstances. They are also intended to establish a level playing field across economies. As such, and also because most international labour standards give more precise expression to human rights, they are generally applicable.
- 127.** For the most part, international labour standards do not regulate particular working arrangements or types and models of business. The Employment Relationship Recommendation, 2006 (No. 198), does, however, acknowledge the impact that changes in business models may have on the protection of workers' rights. It calls on member States to have a national policy and regularly to review laws and regulations as may be needed "to guarantee effective protection for workers who perform work in the context of an employment relationship" (Paragraph 1).
- 128.** The provisions of certain international labour standards acknowledge the need for international or cross-border cooperation. Some concern subjects that are by nature international in scope, such as migration for employment and decent work in cross-border transport; others concern the cross-border dimension of effective governance of the topic addressed, such as the trafficking of persons.
- (a) The Protocol of 2014 to the Forced Labour Convention, 1930, requires member States to "cooperate with each other to ensure the prevention and elimination of all forms of forced or compulsory labour" (Article 5).
  - (b) The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), accords trade unions and employers' organizations "the right to affiliate with international organisations of workers and employers" (Article 5).
  - (c) Convention No. 189 requires that domestic workers who are recruited abroad "receive a written job offer, or contract of employment" before crossing a national border (Article 8).
  - (d) The Private Employment Agencies Convention, 1997 (No. 181), provides that where workers are recruited in one country for work in another, member States should consider bilateral agreements to prevent abuses and fraudulent practices (Article 8(2)).
  - (e) Under the Maritime Labour Convention, 2006, as amended, only a ship flying the flag of a ratifying State may carry a maritime labour certificate. Complemented by a declaration of maritime labour compliance, the certificate is prima facie evidence that the ship has been duly inspected by the member State whose flag it flies, and that the requirements of the Convention have been met to the extent so certified. This obviates the need for systematic port State inspections. It operates to establish a level international playing field and creates a strong incentive to place ships under the flag of a ratifying State, which is then subject to supervision by the ILO supervisory bodies.

<sup>223</sup> The Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Protocol of 1995 to the Labour Inspection Convention, 1947, the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Employment Policy Convention, 1964 (No. 122).

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This is supported by an obligation not to give more favourable treatment to a ship that does not fly the flag of a ratifying State, than to a ship that does (Article V(7)).

- (f) Under the Work in Fishing Convention, 2007 (No. 188), a State may take measures necessary to rectify conditions that are clearly hazardous to safety or health on a vessel from another State (Article 43).
- (g) The Migration for Employment Convention (Revised), 1949 (No. 97), requires ratifying States to make certain information available on request to the Office and “to other Members” (Article 1). Ratifying States undertake that their employment service and other services connected with migration will cooperate in appropriate cases with the corresponding services of other member States (Article 7(1)). Where there are sufficiently large numbers of migrants going between territories, the competent authorities shall enter into agreements for the purpose of regulating matters of common concern (Article 10).
- (h) The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), requires member States to take national and international measures “for systematic contact and exchange of information” with other States, in consultation with representative organizations of employers and workers (Article 4). The Convention “does not prevent” the conclusion of “multilateral or bilateral agreements with a view to resolving problems arising from its application” (Article 15).

**129.** Whether international labour standards are fit for purpose to achieve decent work in GSCs depends on how they are implemented by ratifying States. The supervisory mechanisms have considered the application of standards in the context of production for GSCs.

**130.** The Committee of Experts on the Application of Conventions and Recommendations (CEACR) welcomed a measure to combine traditional inspection functions with developmental approaches, incentivizing compliance through tripartite certification in supply chains and EPZs. It also requested further information on measures to strengthen protection against anti-union discrimination “with special emphasis on EPZs and special economic zones”.<sup>224</sup>

**131.** The Labour Clauses (Public Contracts) Convention, 1949 (No. 94), requires that all bidders respect as a minimum certain locally established standards. It also requires a standard clause to be included in the public contract whereby workers should receive wages and enjoy working conditions not less favourable than those established for the same work in the area where the work is being done (Article 2(1)).

**132.** The supervisory bodies have addressed the question of cross-border procurement and GSCs in the context of Convention No. 94. Although the Convention is silent on this point, this was not understood to mean that all contracts with a transnational dimension are excluded from its coverage. In the case of contracts involving the use of foreign workers brought in for the purpose of the contract, labour clauses would apply. On the other hand, work done outside the contracting State is, in principle, not covered by the provisions of the Convention. However, should a member State wish to do so, contractual labour clause obligations could be applied across borders. As such, Convention No. 94 offers a normative platform with a view to building a comprehensive standard for the promotion of decent labour conditions in public contracts.<sup>225</sup>

<sup>224</sup> [Observation \(CEACR\) – adopted 2012, published at the 102nd Session \(2013\) of the Conference.](#)

<sup>225</sup> [Direct Request \(CEACR\) - adopted 2008, published at the 98th \(2009\) Session of the Conference.](#)

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**133.** International labour standards are also relevant in other contexts. They benchmark responsible and often contractually required market behaviour nationally and internationally in areas such as finance, trade and infrastructure development. Many PCIs and multistakeholder initiatives incorporate elements of international labour standards. In this form, their content and application are understood in isolation from the entire body of standards - thus sometimes failing to address the social complexity of the situation that they are governing.

### ***The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy***

**134.** The MNE Declaration aims to encourage the positive contribution of multinational enterprises to economic and social progress and decent work for all, and to mitigate and resolve difficulties to which their operations may give rise. The MNE Declaration is an expression of tripartite, global consensus on how to address the global challenges that arise from the prominent role of multinational enterprises in globalization, including in the context of GSCs.<sup>226</sup>

**135.** It covers five broad thematic areas: general policies, employment, training, conditions of work and life, and industrial relations. As revised in March 2017,<sup>227</sup> the MNE Declaration refers to and echoes the “protect, respect and remedy” framework implemented by the Guiding Principles on Business and Human Rights, distinguishing roles and responsibilities for different actors in the area of business and human rights.<sup>228</sup>

**136.** The MNE Declaration places equal responsibility on States to promote good social practices by business, whether they are the home or the host government.<sup>229</sup> In doing so, it recognizes that the rule of law is critical to achieving its aims and that governments play a role by adopting appropriate laws, policies, measures and actions, including in the fields of labour administration and public labour inspection.<sup>230</sup> Governments should also ensure that affected workers within their territory or jurisdiction have access to effective remedy through judicial, administrative, legislative or other appropriate means.<sup>231</sup>

**137.** In line with the Guiding Principles on Business and Human Rights, the MNE Declaration makes clear that enterprises should carry out due diligence to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts on internationally recognized human rights.<sup>232</sup> The MNE Declaration provides that HRDD processes should

<sup>226</sup> Introduction to the [MNE Declaration](#).

<sup>227</sup> ILO: [Recommendations of the tripartite ad hoc working group concerning the review of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy text, annex and addenda and the interpretation procedure](#), Governing Body, 329th Session, Geneva, March 2017, GB.329/POL/7.

<sup>228</sup> Paragraph 10(a) of the [MNE Declaration](#).

<sup>229</sup> Paragraph 12 of the [MNE Declaration](#).

<sup>230</sup> Paragraph 3 of the [MNE Declaration](#).

<sup>231</sup> Paragraph 64 of the [MNE Declaration](#).

<sup>232</sup> Internationally recognized human rights “understood, at a minimum as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the

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entail meaningful consultation with potentially affected groups and relevant stakeholders, including workers' organizations. Multinational enterprises should also use their leverage to encourage their business partners to provide effective means of enabling remediation for abuses of internationally recognized human rights.<sup>233</sup>

- 138.** The 2017 revision of the MNE Declaration introduced a new Annex II with operational tools to stimulate the uptake of its principles by all parties. The MNE Declaration also provides for a confidential company–union dialogue facilitation service, where a company and a union may jointly request ILO assistance to engage in dialogue on the application of the principles of the MNE Declaration.

## Other multilateral guidance instruments

### ***The United Nations Guiding Principles on Business and Human Rights***

- 139.** The Guiding Principles on Business and Human Rights embody the three-pillar “protect, respect and remedy” framework. States have a duty to protect internationally recognized human rights; business has a responsibility to respect human rights; and the victims of business-related human rights abuses should have access to effective remedy.<sup>234</sup> Internationally recognized human rights, for the purposes of the Guiding Principles on Business and Human Rights, are understood to include, at a minimum, the rights enshrined in the International Bill of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.<sup>235</sup>
- 140.** The UN Human Rights Council established a UN working group on the issue of human rights and transnational corporations and other business enterprises to encourage uptake and implementation of the Guiding Principles on Business and Human Rights by, inter alia, disseminating and promoting the implementation of the Guiding Principles, best practice identification, capacity-building, country visits, developing recommendations on access to remedy and engaging in dialogue and cooperation with relevant actors.<sup>236</sup> It has called on governments to legislate to create incentives to exercise due diligence, including through mandatory requirements, while taking into account elements to drive effective implementation by businesses and to promote level playing fields.<sup>237</sup>

ILO Declaration on Fundamental Principles and Rights at Work” – para. 10(d) of the [MNE Declaration](#).

<sup>233</sup> Paragraph 65 of the [MNE Declaration](#).

<sup>234</sup> See UN Working Group on Business and Human Rights: *The UN Guiding Principles on Business and Human Rights: An Introduction*, 2013, p. 2.

<sup>235</sup> [UN Guiding Principle 12](#).

<sup>236</sup> See Office of the UN High Commissioner for Human Rights: [Working Group on the issue of human rights and transnational corporations and other business enterprises](#).

<sup>237</sup> UN General Assembly: [Working Group on the issue of human rights and transnational corporations and other business enterprises: Note by the Secretary-General](#), 73th session, 16 July 2018, A/73/163, p. 24.

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- 141.** The Human Rights Council has also called on all member States to develop national action plans to promote implementation within respective national contexts.<sup>238</sup> National action plans are government-led policy strategies outlining strategic orientation and concrete activities to address specific policy issues.
- 142.** Awareness and the uptake of the Guiding Principles on Business and Human Rights by business enterprises is steadily increasing. A growing number of enterprises are carrying out HRDD in their business operations in keeping with the Guiding Principles on Business and Human Rights. Some adopt a specific HRDD process, while others incorporate it into existing systems;<sup>239</sup> some develop their own guidelines and tools, while others draw on industry-wide standards and guidance promulgated by business organizations and industry associations.<sup>240</sup>

### ***The Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises***

- 143.** The OECD Guidelines are non-binding principles and standards to encourage responsible business conduct by multinational enterprises. Adopted by governments, the OECD Guidelines establish a global framework for responsible business conduct in areas including disclosure, human rights, employment and industrial relations, the environment, anti-corruption, competition and taxation.<sup>241</sup>
- 144.** While there are increasing examples of positive outcomes in specific instances,<sup>242</sup> it remains largely unclear from the available documentation whether complainants receive actual remedy, or whether there are changes in company policies and practices.<sup>243</sup> Many specific instances result in agreements that include commitments to improve corporate responsibility in multinational business operations. The question arises, however, as to whether such a commitment is sufficient in response to a case of serious human rights or labour violations.<sup>244</sup> Moreover, the implementation of outcomes is not well documented.
- 145.** The revision of the OECD Guidelines in 2011 introduced the Proactive agenda on responsible business conduct. It aims to promote the effective observance of the OECD Guidelines by enterprises, through a multistakeholder process to foster collaboration with

<sup>238</sup> UN Human Rights Council: [Resolution concerning human rights and transnational corporations and other business enterprises](#), A/HRC/26/L.1, June 2014.

<sup>239</sup> IOE, op. cit., p. 3.

<sup>240</sup> IOE, op. cit., p. 23.

<sup>241</sup> OECD: *OECD Guidelines for Multinational Enterprises: 2011 edition*.

<sup>242</sup> In one instance, 168 unjustly dismissed workers were compensated. See OECD: *Progress Report on National Contact Points for Responsible Business Conduct*, Meeting of the OECD Council at Ministerial Level, May 2019, p. 8.

<sup>243</sup> J. Ruggie and T. Nelson: *Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges*, Working Paper No. 66, Corporate Social Responsibility Initiative, Harvard University, 2015, p. 20.

<sup>244</sup> See also OECD Watch: *Remedy Remains Rare: An analysis of 15 years of NCP cases and their contribution to improve access to remedy for victims of corporate misconduct*, 2015, p. 17.

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enterprises to develop strategies to avoid risks of adverse impact.<sup>245</sup> The agenda provides guidance on how to carry out due diligence throughout supply chains in specific sectors.

### **The United Nations Global Compact**

- 146.** The UN Global Compact is a voluntary initiative of the UN Secretary-General, inviting business enterprises to align their company policies and practices with “Ten Principles”<sup>246</sup> covering human rights, labour, the environment and anti-corruption.<sup>247</sup> The labour principles incorporate fundamental principles and rights at work as enshrined in the ILO Declaration on Fundamental Principles and Rights at Work.
- 147.** Global Compact signatory companies have identified supply chain practices as the biggest challenge to improving their overall sustainability performance.<sup>248</sup> The Global Compact has promulgated practical tools on the implementation of its principles throughout supply chains<sup>249</sup> and on successful traceability schemes, including in the mineral sector.<sup>250</sup>
- 148.** The Global Compact Action Platform on decent work in global supply chains is one of eight Action Platforms that were established to promote responsible business conduct in light of the Sustainable Development Goals.<sup>251</sup> Participating companies commit to leveraging their supply chains and taking collective action to address decent work deficits.<sup>252</sup> Signatory companies commit to supply chain transparency and engagement with suppliers to promote positive outcomes in line with the MNE Declaration.<sup>253</sup>

### **Human Rights Council resolution 26/9 concerning the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights**

- 149.** In June 2014, the UN Human Rights Council adopted resolution 26/9, establishing an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. Its mandate is “to elaborate an international legally

<sup>245</sup> OECD Proactive agenda on responsible business conduct.

<sup>246</sup> Ten Principles of the UN Global Compact.

<sup>247</sup> Derived from the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

<sup>248</sup> UN Global Compact: *Supply Chain Sustainability*.

<sup>249</sup> UN Global Compact and BSR: *Supply Chain Sustainability: A Practical Guide for Continuous Improvement*, Second Edition, 2015, p. 4.

<sup>250</sup> UN Global Compact and BSR: *A Guide to Traceability. A Practical Approach to Advance Sustainability in Global Supply Chains*, 2014.

<sup>251</sup> UN Global Compact: *Action Platforms*.

<sup>252</sup> UN Global Compact: *Decent Work in Global Supply Chains*.

<sup>253</sup> UN Global Compact: *Decent Work in Global Supply Chains Action Platform: Commitment to Action*.

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binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.”<sup>254</sup>

- 150.** The working group has developed a draft legally binding instrument.<sup>255</sup> It emphasizes that States have a primary obligation to protect against human rights abuse by third parties, including business enterprises. State responsibilities apply with regard to businesses operating within their territory, or otherwise within their jurisdiction or control.<sup>256</sup>
- 151.** While the draft instrument outlines that businesses have a responsibility to undertake HRDD,<sup>257</sup> States have a correlative obligation to ensure that their domestic laws provide for an adequate system of legal liability for human rights violations or abuses within their territory, or otherwise under their jurisdiction or control. The draft requires States to ensure legal liability where businesses fail to prevent harm caused to third parties by natural or legal persons they have a contractual relationship with, on two possible bases. First, when the business sufficiently controls or supervises the relevant activity that caused the harm. Second, when a business should foresee or have foreseen risks of human rights violations or abuses in the conduct of its activities, including those of transnational character, regardless of where the activity takes place.<sup>258</sup>
- 152.** The working group is still discussing how the proposed bases for liability and jurisdiction might be established. Organized business and a number of States have communicated their reservations and concerns regarding the feasibility of a binding treaty of this nature.<sup>259</sup> Nevertheless, the draft instrument could presage a significant evolution in international legal regulation of business responsibility to respect human rights.<sup>260</sup>

### ***Initiatives by regional and interregional organizations***

- 153.** The EU “Trade for All” trade and investment strategy underlines that EU trade policy should ensure that economic growth goes hand in hand with social justice, respect for human rights, high labour standards, and safety and health protection. The strategy prioritizes international regulatory cooperation to address the challenges posed by regulatory fragmentation in

<sup>254</sup> UN Human Rights Council: *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, UN General Assembly, A/HRC/RES/26/9, 2014.

<sup>255</sup> OEIGWG Chairmanship Revised Draft, 16 July 2019.

<sup>256</sup> OEIGWG Chairmanship Revised Draft, 16 July 2019, preamble.

<sup>257</sup> OEIGWG Chairmanship Revised Draft, 16 July 2019, Art. 5.

<sup>258</sup> OEIGWG Chairmanship Revised Draft, 16 July 2019, Art. 6, para. 6.

<sup>259</sup> See UN Human Rights Council: *Report on the fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, A/HRC/40/48, Jan. 2019, Agenda item 3.

<sup>260</sup> See IOE: *UN Treaty Process on Business and Human Rights: Initial Observations by the International Business Community on a Way Forward*, 2015; and International Trade Union Confederation: *Written Submission to the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 2015.

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GSCs.<sup>261</sup> This has resulted in the inclusion of commitments to respect core labour standards in binding sustainable development provisions in EU free trade agreements signed with Canada and Viet Nam, for example.

- 154.** The Council of the EU adopted “Conclusions on Responsible Global Value Chains” in May 2016, encouraging the European Commission to further advance due diligence as well as to foster dialogue and cooperation. In June 2016, the Council adopted “Conclusions on Business and Human Rights”,<sup>262</sup> which called on the European Commission to launch an EU Action Plan on Responsible Business Conduct to address due diligence and access to remedy, including, if considered necessary, at EU legislative level.<sup>263</sup>
- 155.** The Association of Southeast Asian Nations (ASEAN), through its Intergovernmental Commission on Human Rights, has developed a regional strategy for business and human rights.<sup>264</sup> The ASEAN Guidelines for Corporate Social Responsibility on Labour offer guidance for the tripartite partners on improving business practices.<sup>265</sup>
- 156.** The Economic Community of West African States (ECOWAS) Vision 2020 identifies the need for ECOWAS regulations and directives pertaining to human rights to be updated in order to attain internationally acceptable benchmarks.<sup>266</sup>
- 157.** The Group of Twenty (G20) has acknowledged that respect for human rights and ILO labour standards, together with complementary social and labour market policies, are necessary to foster positive effects of economic integration through global value chains. In September 2019, the G20 reiterated its commitment to promoting decent work for sustainable GSCs.<sup>267</sup>
- 158.** The Group of Seven (G7) is committed to the promotion of “labour rights, decent working conditions and environmental protection in global supply chains”, including through the application of international labour standards.<sup>268</sup> The 2019 meeting of G7 Labour and Employment Ministers noted the crucial role of engaging all actors to work towards achieving sustainability, inclusiveness and decent work in GSCs. The Ministers called upon

<sup>261</sup> European Commission: *Trade for All: Towards a more responsible trade and investment policy*, Luxembourg, Publications Office of the European Union, 2014, p. 13.

<sup>262</sup> Council of the European Union: *Council Conclusions on Business and Human Rights*, Foreign Affairs Council, 20 June 2016.

<sup>263</sup> The [Shadow EU Action Plan on the Implementation of the UN Guiding Principles on Business and Human Rights within the EU](#) was developed in 2019 by the Responsible Business Conduct Working Group (RBC Group) of the European Parliament to urge the European Commission and the Council of the EU to put systematic and effective measures in place implementing the Guiding Principles on Business and Human Rights.

<sup>264</sup> See ASEAN CSR Network: [Business & Human Rights](#).

<sup>265</sup> ASEAN CSR Network: [ASEAN Guidelines for Corporate Social Responsibility on Labour](#).

<sup>266</sup> ECOWAS: [Vision 2020](#).

<sup>267</sup> G20: [Shaping a Human-Centered Future of Work](#), Ministerial Declaration, G20 Labour and Employment Ministers’ Meeting 2019, September 2019.

<sup>268</sup> This should be achieved through striving for “better application of internationally recognized labour, social and environmental standards, principles and commitments (in particular UN, OECD, ILO and applicable environmental agreements) in global supply chains”, see [Leaders’ Declaration](#), G7 Summit, 7–8 June 2015, p. 6.

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businesses operating in and from G7 countries to identify, address and mitigate any adverse effects of their operations on human rights, and reiterated the importance of the MNE Declaration, the OECD Guidelines and the Guiding Principles on Business and Human Rights for achieving this.<sup>269</sup>

#### **4. Guidance, programmes, measures, initiatives and standards to promote decent work in global supply chains**

**159.** Building on the 2016 conclusions and subsequent tripartite discussions, and drawing on recent developments and literature, this report has presented a brief overview of failures that lead to decent work deficits in GSCs, and the salient challenges of governance to achieving decent work in global supply chains. The challenges include:

- (a) How fragmentation of production across borders shapes whether workers enjoy the effective protection of the employment relationship;
- (b) The influence of private actors in one State on compliance with national laws and regulations in another; and
- (c) Lack of effective access to remedy, flowing from the combination of limited corporate liability, limits on state jurisdiction and, in some cases, weak national governance.

**160.** The report surveyed some of the key national and international responses to the identified challenges. To this end it addressed:

- (a) The growth in support both nationally and internationally for business to carry out HRDD throughout their supply chains, also identifying criticisms of this approach in principle and in practice;
- (b) Other direct regulatory action by member States. This suggested that trade and labour provisions could perhaps be better designed to promote state action to advance decent work in GSCs, and that the use of public purchasing power might be more effective if accompanied by more rigorous enforcement and monitoring of compliance;
- (c) The limits of PCIs, which are not designed to – and cannot – substitute for effective national governance and action to enforce compliance with laws and regulations. At the same time, there is evidence that they can have positive effects on reinforcing national governance;
- (d) The role and impact of social dialogue, whether through workplace cooperation, collective bargaining, or IFAs;
- (e) The extent to which international labour standards are designed to advance decent work in GSCs and are capable of doing so in practice; and
- (f) The character of action by other multilateral actors to develop policy frameworks and/or implement programmes designed to advance decent work in GSCs.

**161.** In March 2017, the Governing Body approved a five-year Office programme of action on decent work in GSCs, in response to the 2016 conclusions. The programme comprises five action areas that touch on all of the ILO's technical specialities: (i) knowledge generation

<sup>269</sup> [G7 Social Communiqué, 2019.](#)

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and dissemination; (ii) capacity-building; (iii) effective advocacy for decent work in global supply chains; (iv) policy advice and technical assistance; and (v) partnerships and policy coherence.

- 162.** A mid-term progress report on implementation of the programme was submitted to the Governing Body in October 2019. <sup>270</sup> Some programme deliverables fall under the programme of promotion of the MNE Declaration, and are included in the Office’s annual reporting on the MNE Declaration to the Governing Body. <sup>271</sup>
- 163.** Delivering the programme has helped the Office identify key strategies and strengths to help advance decent work in GSCs, as well as areas in which additional investment is necessary. As noted in the mid-term report, the implementation of the programme of action has also highlighted the significance of supply chains as a key domain for the ILO to achieve outcomes in many areas of its work. The Office can better develop interventions that recognize the interrelated nature of decent work deficits through improved coordination across the policy portfolio, and through “One ILO” collaborations that bring multiple departments into the design of development cooperation projects.
- 164.** Increasingly, the Office is implementing the sectoral-level approach highlighted in the programme of action. Through development cooperation projects and other experiences, it is clear that supply chains can be an effective entry point to improve working conditions if interventions can productively engage the tripartite constituents, as well as multinational buyers and lead firms. The Office has elaborated further the deliverables in the programme of action, beginning with a mapping and diagnostic process that supports evidence-based interventions to address decent work deficits and promote social and economic upgrading at each tier. With this approach, the Office would bring increased transparency and actionable information for a collective response by stakeholders.
- 165.** When the Governing Body approved the title of the meeting as *Achieving Decent Work in Global Supply Chains*, it did so on the following understanding:
- while points (a), (b), and (c) of paragraph 25 of the 2016 conclusions will be covered, they will be addressed in light of the chapeau of paragraph 25, which states that there is concern that current ILO standards may not be fit for purpose to achieve decent work in global supply chains. <sup>272</sup>
- 166.** This requires consideration of options to ensure that international labour standards are “fit for purpose”, in the current and future context of GSCs. It equally requires identifying actions that could strengthen the application of international labour standards related to work in production for GSCs, as well as to prioritize social dialogue and tripartite cooperation as essential elements in achieving decent work in all business models.
- 167.** Overall, it would appear that a mix of interrelated actions, both in terms of the form taken and the approach adopted, would best ensure a practical and sustainable impact. Building on the existing strengths of the current ILO regulatory approach, body of standards and supervisory system would increase the effectiveness and efficiency of any new actions taken. The optimal mix of standards-related actions would improve consistency in the application

<sup>270</sup> ILO: *Mid-term report on the implementation of the ILO programme of action on decent work in global supply chains*, op. cit.

<sup>271</sup> ILO: [Promotional activities concerning the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy and related developments outside of the ILO](#), Governing Body, 337th Session, October–November 2019.

<sup>272</sup> ILO: *Composition, agenda and programme of standing bodies and meetings*, op. cit.

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of international labour standards through GSCs by maximizing the impact of government action on respect for human and labour rights by business.

- 168.** Consideration should be given to the form of any standards-related action, to ensure that it would be most likely to advance decent work in GSCs. Possible non-normative action could involve the development and publication of technical guidelines or a code of conduct on how to make the implementation of international labour standards in GSCs more effective in practice. Such guidance could be general, sectoral, or focused on specific issues in relation to which challenges have been identified in some countries, such as working conditions or access to justice in GSCs. Other non-normative action could involve the development of a technical cooperation programme to promote decent work in GSCs, for example through the promotion of ratification of international labour standards and their effective implementation in the GSC context. This could build on the successes of the Better Work Programme.
- 169.** Other possible standards-related measures could involve a review of the way in which the body of standards currently applies to GSCs, including the identification of any gaps in coverage.<sup>273</sup> A further non-normative initiative could include Governing Body consideration of a proposal for a thematically defined General Survey under article 19 of the ILO Constitution that examines national law and practice in relation to GSCs through the implementation of selected instruments in member States.
- 170.** Initiatives with regulatory impact could include the adoption of a new declaration on GSCs by the Conference or Governing Body, or the further amendment of the MNE Declaration in this regard. Standard-setting initiatives could include the adoption of a new international labour standard, or standards that address GSCs in general or particular challenges. Such an instrument could build on the lessons learned from the implementation of the Maritime Labour Convention, 2006, as amended, in particular the significance of the maritime labour certificate regime.
- 171.** Consideration should also be given to the approach that standards-related action might take to advance decent work in GSCs. It could take many forms: it could be thematic, or focused on one or more particular challenges. Arguments have been made in favour of the adoption of an instrument that would require member States to take legislative action to encourage businesses to respect international labour standards and carry out HRDD in their supply chains. Other suggestions focus around standards-related action in the particularly challenging context of GSCs. This could be through, for example, minimum working conditions, or addressing specific issues such as the fundamental principles and rights at work, wages, working time or OSH. Yet other possible approaches could involve standards-related action to address key issues such as conflict of law in cases of fundamental labour rights violations, or labour dispute prevention and resolution in GSCs. The emerging workplace-based challenges presented by digital labour platforms and e-commerce could be addressed through international regulation specifically targeting those contexts.<sup>274</sup>
- 172.** In some cases, international labour standards require international cooperation in the fulfilment of their social justice objective. Convention No. 94, in particular, provides for a normative platform governing contractual practices potentially extending beyond national borders. On the whole, however, the body of standards follows a statist model based on the democratic legitimacy of nation-states, and the assumption of capacity to deliver social

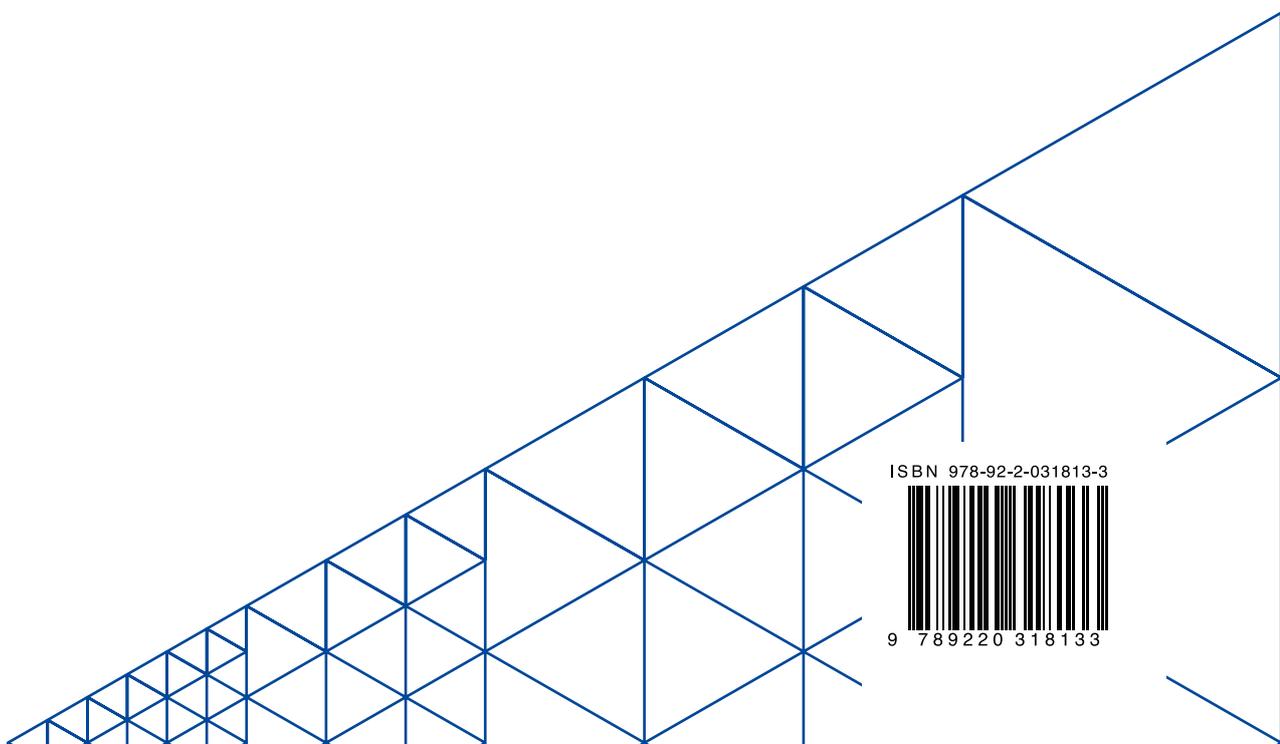
<sup>273</sup> The Governing Body could decide that such a review could be carried out by the Standards Review Mechanism Tripartite Working Group. See ILO: *The standards initiative: Terms of reference of the Standards Review Mechanism Tripartite Working Group*, Governing Body, 325th Session, Geneva, October–November 2015, Appendix, para 12.

<sup>274</sup> ILO: *Work for a brighter future. Global Commission on the future of work*, Geneva, 2019, p. 44.

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justice through legal means. In the global economy, the relative power of corporations or networks has risen to the extent that this assumption no longer holds for all nation-states.

- 173.** This raises the question of whether there is a need to explore forms of shared responsibility in pursuit of social justice. Care would need to be taken not to reduce state responsibility, to account for the diversity of GSCs and the regional shift in trade flows within GSCs, and to avoid normative confusion through the exercise of extraterritorial jurisdiction. At the same time, it remains the case that non-normative, voluntary action is not succeeding in tackling even the most significant decent work deficits. Elements that could be explored in the context of normative action include due diligence requirements commensurate with capacity and extraterritorial remedies based on internationally recognized and understood standards.



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