



► Gap analysis of ILO normative and non-normative measures to ensure decent work in supply chains

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► 1. Introduction

This document responds to the Governing Body decision, during its 341st Session, requesting the Office to “conduct an in-depth review to clearly identify if there are any gaps in the current body of normative and non-normative measures, including means of implementation and other measures.” The Office has prepared this report in order “to facilitate a discussion on options to ensure decent work in supply chains, including at sectoral level, where appropriate.”¹

As laid out in the Governing Body decision, this report is intended to provide the basis for a review by a tripartite working group that will, with the support of the Office, further develop building blocks for a comprehensive strategy on achieving decent work in supply chains. In turn, these building blocks will be presented in a report to the Governing Body for discussion at its 344th Session (March 2022) with a view to deciding on appropriate follow-up action. Thus, this paper reviews the normative and non-normative tools and measures available to the ILO and examines how and whether they meet the specific and rapidly evolving decent work challenges in supply chains.

The ILO has a *normative* function that is expressed through the setting, adoption, promotion, ratification, supervision and implementation of international labour standards (Conventions, Recommendations and Protocols). This along with its tripartite structure and social dialogue, is one of the ILO’s strongest assets and a comparative strength among all other international agencies.

The *non-normative* functions of the ILO relate to the range of activities – including programmes and projects, as well as dialogue, research, communication and coordination – which seek to promote the implementation of the Decent Work Agenda, grounded in international labour standards, assisting constituents to make this concept a reality.

The review is informed by the findings of the 2016 resolution concerning decent work in global supply chains; the 2019 Centenary Declaration for the Future of Work; the *Mid-term report on the implementation of the ILO programme of action on decent work in global supply chains* (2019); the *ILO Decent Work interventions in global supply chains: A synthesis review on lessons learned; what works and why, 2010–19* (2019); the Alliance 8.7 report on “*Ending child labour, forced labour and human trafficking in global supply chains* (2019); the “Decent work in global supply chains: An internal research review” (2019); the meetings of experts on export processing zones (EPZs) (2017) and on cross-border social dialogue (2018); the tripartite technical meeting on Decent Work in Global Supply Chains of 2020, and analysis relating to the broader development cooperation programmes and research, including more recent activities.

The identification and discussion of potential normative and non-normative gaps aims to support the ILO’s strategic orientation, particularly in light of new or revealed challenges by the COVID-19 pandemic. In so doing, this review does not make specific recommendations, but provides tripartite constituents with information relevant to their discussions of the way forward for addressing decent work deficits in supply chains.

¹ GB.341/INS/13/2; and GB.341/PV, para. 477.

1.1. Key findings

1.1.1. Normative gaps

On the normative front, this review finds that, broadly speaking, the ILO normative corpus addresses most of the decent work deficits that are associated with supply chains. This is subject to the caveat that this is so when such measures are ratified (in the case of Conventions and Protocols), fully implemented, and applied to all relevant segments of the workforce. ILO normative instruments establish clear substantive and procedural labour standards that correspond to many of the key decent work deficits that can be identified across a range of diverse supply chains. That is, if existing international labour standards were appropriately ratified and implemented, decent work deficits in supply chains would – in principle – be significantly reduced.

However, supply chains connect a range of enterprises and workers, either within or across national borders, and may link highly varying economic and regulatory contexts. In normative terms, a challenge derives from the situation where goods and materials and services involve several distinct and different employers and also may cross borders, given that labour governance structures are often confined to application to specific employee or worker–employer relationships and are principally restricted to application within the national jurisdiction where the act of work takes place.

In relation to the movement of labour between jurisdictions, compared to the movement of goods and services, a number of existing normative instruments address the cross-border movement of labour. These take up specific issues, for instance, cross-border recruitment and the functioning of employment agencies, or specific sectors (as in the Maritime Labour Convention, 2006, as amended (MLC, 2006) where the workplace itself is internationally mobile). In contrast, the cross-border movement of goods and services does not typically pertain to an employment relationship, but rather to business relationships. While international labour standards, and specifically the fundamental principles and rights at work, apply to workers regardless of employment status, they do not typically seek to regulate responsible business conduct, either within one jurisdiction or between jurisdictions.

Following the advent of the United Nations Guiding Principles on Business and Human Rights, due diligence – and the accompanying provision of remedy in defined circumstances relating to involvement – has emerged as a core procedural principle that can address responsibilities for labour and human rights in the context of business relationships both in domestic and in cross-border supply chains. The ILO has vitally contributed to this development in recent years, and it is reflected in recent amendments to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) and the adoption of the Protocol of 2014 to the Forced Labour Convention, 1930 and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). The elimination of all forms of forced or compulsory labour is the only one of the fundamental principles and rights at work that includes a reference to due diligence, through its inclusion in the Protocol of 2014 to the Forced Labour Convention, 1930. This may be partly explained by the fact that the concept of due diligence is a recent one, compared to the time period of adoption of ILO normative measures.

1.1.2. Non-normative gaps

Engagement through supply chains enables the ILO to better access some of the factors affecting decent work and to stimulate better alignment of businesses' supply chain commitments and responsibilities. Moreover, linking the ILO's national- and sector-level decent work interventions to supply chains potentially heightens their relevance and may serve to enhance their effectiveness. This is what it means to use supply chains as an "entry point." Such linkages are not systematically sought in the development of Decent Work Country Programmes (DWCPs), nor is there an established strategic calculus for determining which supply chains and circumstances provide a strong entry point to advance decent work.

ILO experience to date working in and through supply chains demonstrates the strength of harnessing the full capacities of the ILO, engaging the full range of key actors through the supply chain, and ensuring policy coherence. A coherent "supply chain" approach in relevant non-normative interventions – as opposed to piecemeal actions that touch various actors in the supply chain – depends on integration and coordination between different actors, and different tiers of the supply chain. Namely, effective ILO work on supply chains would be, to the extent possible, holistic and across tiers; recognize the high strategic potential of a sectoral entry point to promote decent work at the national level; utilize the measures available to the ILO; and emphasize the involvement of the tripartite constituents. As noted above and throughout, efforts to foster and promote decent work at the national level can bring dividends for workers in or out of supply chains.

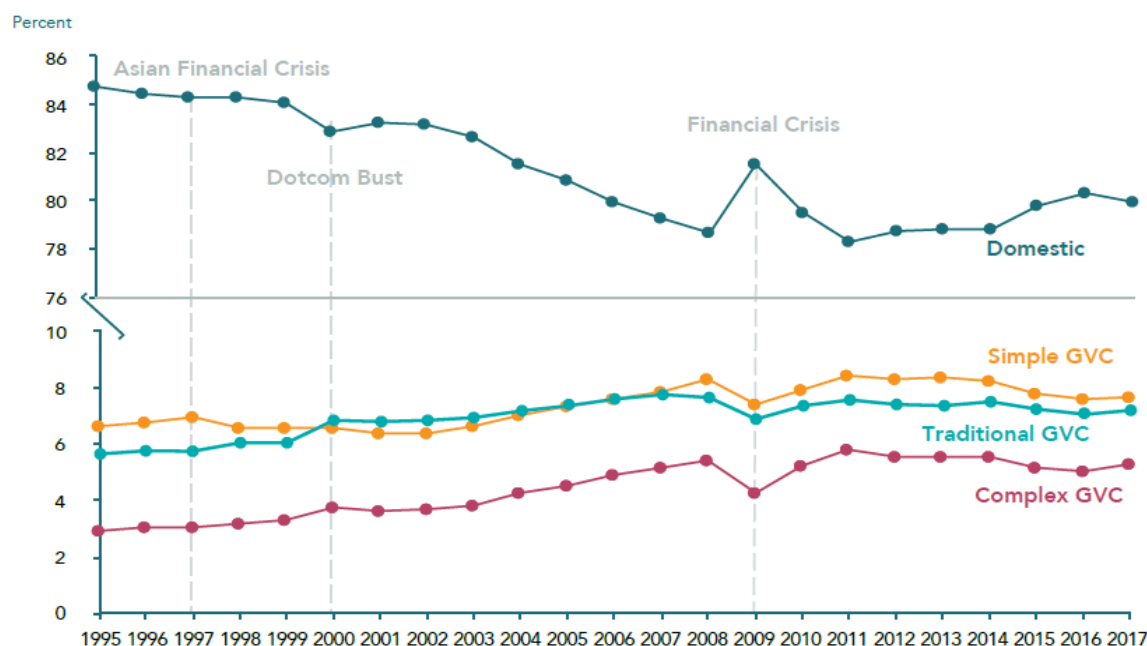
Also key is strong evidence and data. While important efforts are ongoing to enhance both the systematic research approach to supply chain analysis and the comprehensiveness of data relating to jobs and work in supply chains, there is scope to further improve and coordinate information and data gathering and sharing.

1.2. Supply chains: Relevant scope

Supply chains are a cornerstone of economic life. Production of a basic good invariably involves networks of companies, contractors, and suppliers, regardless of whether it ever crosses an international border. Research from the Organisation for Economic Co-operation and Development (OECD) indicates that about 70 per cent of international trade involves global supply chains, as services, raw materials, parts, and components cross borders – often numerous times.² However, as noted by the World Trade Organization (WTO) in 2019, domestic production – that is, economic activities that do not cross international borders from production to consumption – still accounts for the vast majority of global gross domestic product (GDP).

² OECD, *Global Value Chains and Trade*.

► Trends in production activities as a share of global GDP, by type of value-added creation activity, 1995–2017



Source: Global Value Chain Development Report 2019 (WTO, 2019). (1995–2009 are based on the University of International Business and Economics (UIBE) GVC indexes derived from the 2016 World Input-Output Table, and 2010–2017 are based on the UIBE GVC indexes derived from the Asian Development Bank (ADB) 2018 ICIO tables.) [GVC refers to “global value chain”.]

Supply chains are of specific interest to the ILO as they offer a strategic mechanism for the Organization and its constituents to advance decent work in an integrated way (as called for in the 2008 ILO Declaration on Social Justice for a Fair Globalization (Social Justice Declaration)), not only in the supply chain concerned, but as an entry point for advancing decent work in the broader sectoral and national context.

Constituents have discussed supply chains’ positive and negative aspects as seen from their respective points of view, though primarily with global supply chains as the explicit or implicit subject. The 2016 resolution concerning decent work in global supply chains, identified the potential for global supply chains to be key drivers of growth, job creation, and economic development. They have “contributed to economic growth, job creation, poverty reduction and entrepreneurship and can contribute to a transition from the informal to the formal economy. They can be an engine of development by promoting technology transfer, adopting new production practices and moving into higher value-added activities, which would enhance skills development, productivity and competitiveness.”³

The ongoing COVID-19 pandemic has highlighted many of the decent work deficits and vulnerabilities that persist in many economies – including in relation to the informal economy, inadequate social protection systems, and poor health and safety – many of which have implications for the relationships, governance structures, and activities linked to supply chains. Shocks generated by the pandemic have also challenged prevailing models of supply chain organization, particularly those premised on optimization, cost minimization, inventory reduction and lean coordinated production.

³ ILO, [Resolution concerning decent work in global supply chains](#), International Labour Conference, 105th Session, 2016.

However, the single phrase “supply chains” implies a homogeneity which does not accord with the reality of the wide variety of business relationships ⁴ that make up supply chains, both domestic and cross-border. ⁵ Decent work challenges and opportunities vary significantly from supply chain to supply chain and across the sectors and countries that constitute the chain. Further, supply chains are highly dynamic – in regional and structural characteristics – and this dynamism has only intensified in the wake of the COVID-19 crisis.

For policymakers, there is a risk of extrapolating from a single, visible model – be it the apparel supply chain, or multinational enterprise (MNE) foreign direct investment in subsidiaries or joint ventures, or an implicit North–South outlook – to the detriment of effective policy. This is a risk the ILO must also be alert to in order to ensure the relevance of Office assistance to Member States.

The 2019 Centenary Declaration recognized both “domestic and global supply chains” as sites for the ILO to “leverage opportunities for social and economic progress, provide for decent work and are conducive to full, productive and freely chosen employment”. ⁶ Thus this paper recognizes both domestic and global components of supply chains. For the purpose of this paper, the term *global* supply chain refers to “goods and services that cross international borders for consumption or as inputs for further production” and *domestic* supply chain refers to “goods and services for consumption or as inputs for further production”. ⁷ In practice, “global and domestic supply chains are both interwoven and overlapping in most countries,” ⁸ hence “supply chains” is used broadly and comprises both.

By including domestic supply chains, the scope of this paper is in principle extended to *all* economic activity which initiates, processes, mobilizes or adds value to goods or services. This has a number of significant implications.

First, it requires a differentiation in analysis between those non-normative and normative gaps which are applicable both to global and domestic supply chains, or only to one or the other.

- Specifically, in normative terms, key challenges relating to cross-border or extraterritorial jurisdiction and access to remedy are relevant only to those supply chains that entail cross-border movement of goods or services (including cross-border recruitment of labour). Given the generally national-level focus and responsibilities of ILO constituents, and that responsibility for the application of international labour standards occurs within national borders, the cross-border element of supply chains’ intersection with decent work is an additional challenging aspect. However, issues relating to third-party employment and supply chain “due diligence” are equally applicable to both global and domestic supply chains.

⁴ See for instance, the value chain typology developed in Gary Gereffi, John Humphrey and Timothy Sturgeon, 2005, “The Governance of Global Value Chains”.

⁵ The 2017 Governing Body’s call for criteria to select supply chains suggests that a strategic prioritization on global supply chains should focus on *those supply chain workers subject to the greatest decent work deficits*. The characteristics of these supply chains and workers, while not restricted to buyer-driven supply chains sourcing labour-intensive goods and products from lower-income, lower-governance sourcing countries, can be identified on the basis of direct ILO experience. There is no suggestion that the intention is to identify structural commonalities of *all* supply chains qua supply chains in terms of decent work outcomes.

⁶ ILO Centenary Declaration for the Future of Work.

⁷ Alliance 8.7.

⁸ ILO, *ACT/EMP Research Note, Wages and Working Conditions in and out of Global Supply Chains: A Comparative Empirical Review*. 2017

- In non-normative terms, the ILO's activities promoting decent work at national level are wholly relevant to both domestic and export-linked supply chains, and considerable focus is given to the national context as a determinant of decent work outcomes. Equally, the ILO's work to, where possible, harness international trade for decent work gains is by definition focused where workers are subject to the greatest decent work deficits, as specified in the 2017 Programme of Action on decent work in global supply chains.⁹

Second, many supply chains are not subject to decent work deficits: indeed, a range of high-value, high-productivity supply chains support decent and productive work. In terms of cross-border supply chains, many of the supply chains in which workers are subject to the greatest decent work deficits can be characterized as those sourcing labour-intensive goods and products from – and within – countries with systemic challenges in labour market governance and enforcement, and experiencing high levels of informality and working poverty. In other words, this may be correlated with significant decent work deficits in domestic supply chains and in the countries in question more broadly. Alliance 8.7 research suggests that “child labour is far more likely to be involved in production for the domestic economy”.¹⁰ Indeed, a key question is the means by which supporting the integration of “domestic activities” in developing countries into global supply chains can support greater opportunities for decent work through expanding access to higher-value markets, knowledge and skills transfer and concomitant sector upgrading. For that matter, domestic supply chains in industrialized nations may also give rise to decent work deficits, particularly where associated with the engagement of vulnerable groups of workers – including migrant workers – subject to abusive recruitment or human trafficking, in the context of low-paid work outsourced to third parties, and/or with limited purview of labour inspection.¹¹

Although supply chains can encompass a range of activities, the principal focus in this review is on supply chains of goods and commodities. However, it is recognized that “services supply chains” (to include the “servicification” of product supply) as well as “labour supply chains” play an important and growing role. Further, where relevant, the paper includes public procurement of goods alongside private sector supply chains.

1.3. Trends in supply chains

Supply chains are dynamic and are continuously shaped by evolving patterns of production and consumption, as examined by previous ILO reports. A series of global megatrends, including climate change, demographics, technological advances, a new phase of globalization and, most recently, the impact of COVID-19 have significant implications for ILO constituents, including:

- The COVID-19 pandemic and related recovery paths (discussed below).
- Climate change and broader sustainability concerns, including the carbon footprint of supply chains and global trade, effects of climate change on specific countries and sectors, as well as calls for a “circular economy”.¹²

⁹ GB.329/INS/3/2.

¹⁰ ILO et al, “*Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains*” 2019.

¹¹ See for example: EU Agency for Fundamental Rights, “*Protecting Migrant Workers from Exploitation in the EU: Boosting Workplace Inspections*”, 2018.

¹² In addition, there is the transition to investments in circularity and reverse supply chains, including re-use, repair, refurbishment and recycling of goods and materials. This has in many Member States moved to the enactment of legislation, regulation and introduction of policies to support transition to the circular economy.

- Supply chain diversification as a risk containment strategy, including the development of regional supply chains as well as localization and near-shoring (noting that near-shoring may entail production coming closer to end-markets in the global South), some of which may also be driven by other economic factors such as enduring container shortages and increasing freight rates.
- The increased shifting of end-markets to the global South and rise of emerging market MNEs, reflecting the growth of these countries and the shift in the share of global purchasing power toward the global South. These shifts also have important implications for existing structures/conceptions of governance of supply chains, particularly where consumption-market factors (such as consumer views, accountability to regulators and civil society, reputational drivers and intangible asset protection) have helped drive decent work.
- The development and implementation of regional trade agreements (such as the Regional Comprehensive Economic Partnership and African Continental Free Trade Area) and ongoing trade tensions between major economies, which may contribute to changes in production patterns of supply chains.
- Digitalization and automation of production and services, sometimes accompanied by upskilling and potentially bringing significant disruption to employment in labour-intensive sectors and supply sectors amenable to automation.
- Growth in services and “servicification” of product supply chains¹³ – tourism, travel, finance, healthcare, IT and other services are one of the fastest growing economic trends,¹⁴ and digitalization will lead to more purely services supply chains, which has major implications for the governance of labour markets and for the ILO’s approach to supply chains.

1.3.1. Impacts of the COVID-19 crisis on supply chains

The COVID-19 pandemic has introduced substantial disruption and uncertainty into the operations of many supply chains and has accelerated some of the trends and debates described above. In some instances, supply chains have relayed the jobs impact of the COVID-19 crisis,¹⁵ including through shifts in demand. Supply chain disruptions have prompted many companies and industries to rethink existing supply chain models, such as the value of scaling down segmentation to ensure security of supply and shifting (some) production closer to consumers.¹⁶ Some firms have refocused on resilience and sustainability, potentially accelerating trends of digitalization and “re-shoring” or “nearshoring”. Some sectors have experienced very specific

¹³ “Servicification” refers to the growing role of services as an input into manufacturing production. In addition to services bought as inputs, there are also services activities within manufacturing firms. Moreover, manufacturing companies increasingly produce and export services either as complements or substitutes to the goods they sell. See Sébastien Miroudot, *“The Servicification of Global Value Chains: Evidence and Policy Implications”*, (UNCTAD, 2017); and ILO, *“Global Supply Chain Related Jobs Go Well Beyond Those Related to Manufacturing”*.

¹⁴ Trade in services has been expanding rapidly, at a faster pace than trade in goods since 2011. Services currently account for around three quarters of GDP in developed economies, up from 40 per cent in 1950, and many developing economies are becoming increasingly services-based. In some cases, this is occurring even more rapidly than in developed economies. See WTO, *“World Trade Report 2019: The Future of Services Trade”*, 2019.

¹⁵ See ILO, Policy brief, June 2019, *“COVID-19 and Global Supply Chains: How the Jobs Crisis Propagates across orders”*.

¹⁶ However, the OECD (2021) notes that, while the COVID-19 crisis has revived discussions about the international segmentation of production (namely, whether the gains from international specialization in GVCs outweigh the associated risks of transmission of shocks), the economic case for policy-induced reshoring of GVCs is weak. There is nevertheless scope for international cooperation and governments to join efforts with businesses to improve risk preparedness.

vulnerabilities. For example, mobility restrictions as a response to the pandemic caused a maritime transport crisis, trapping seafarers at sea and disrupting supply chains.

The COVID-19 pandemic has also cast a stark light on the vulnerability of agri-food systems and food supply chains. For example, domestic food supply chains, typically dominated by small and medium-sized enterprises (SMEs) (which have been particularly vulnerable to pandemic-related impacts), are by far the most important for supplying food to consumers in developing countries.¹⁷

Indeed, in some cases disruptions caused by the pandemic appear to have changed the views of stakeholders on which sectors and supply chains are most critical to the functioning of economies and societies. An ILO analysis of pandemic policy responses in 188 countries and territories reveals an immense uptake of industrial or sectoral strategies to mitigate the impact of COVID-19 on businesses, jobs and the most vulnerable members of society.¹⁸ Almost all country responses and relief packages contain targeted support for strategic sectors and supply chains.

The COVID-19 crisis has also laid bare a range of gaps and weaknesses within labour markets and institutions, particularly reflected in sectors hardest hit by the pandemic – including but not limited to hospitality, tourism, transport, arts and recreation and some parts of retail, as well as workers in the informal economy. Gaps have spanned a wide range of areas and contexts, including the capacity and coverage of social protection systems, robustness of social dialogue, and adequacy of health and safety regimes.

The 2021 International Labour Conference (ILC) resolution concerning a global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, situates supply chains in the post-COVID context and emphasizes the need for greater inclusiveness, resilience and sustainability. In it, the Member States commit to “foster more resilient supply chains that contribute to”:

- (i) decent work;
- (ii) sustainability of enterprises along the supply chain, including micro, small and medium-sized enterprises;
- (iii) environmental sustainability; and
- (iv) protection of and respect for human rights in line with the three pillars of the UN Guiding Principles on Business and Human Rights and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; supported by sustainable international trade and investment.¹⁹

Highlighting the inter-connectedness of sustainable enterprises, environmental sustainability and supply chains, the resolution calls on the ILO to:

Coordinate decent work objectives and capacity-building assistance more closely with international trade and investment policies to widen the benefits of international trade and investment and promote decent work, environmental sustainability and sustainable

¹⁷ International Food Policy Research Institute (IFPRI) estimates suggest that, on average for South Asia and sub-Saharan Africa, domestic supply chains account for between 75 per cent and 90 per cent of food consumed, of which the vast majority comes through SME-dominated chains and up to 20 per cent through large-scale enterprises. See: Thomas Reardon and Johan Swinnen, “COVID-19 and Resilience Innovations in Food Supply Chains”, *IFPRI Blog*, 6 July 2020.

¹⁸ ILO, [COVID-19 and the World of Work: Sectoral Impact, Responses and Recommendations](#).

¹⁹ ILO, Resolution concerning a [Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient](#), para. 11(A)(i).

enterprises in supply chains, taking into account the strong, complex and crucial links between social, trade, financial, economic and environmental policies.

Overall, it has become clear that supply chain resilience, supported by good corporate governance and effective rule of law, remains a top priority for policymakers, enterprises and workers.

► 2. Normative and governance analysis

The following sections examine the broader context of decent work in supply chains, focusing on some of the key governance challenges which impact decent work outcomes. These governance challenges inform the subsequent analysis of normative gaps, which focuses on the extent to which ILO normative instruments address the rules, actors, and mechanisms which underlie these challenges.

2.1. Decent work in supply chains

The ILO has explored decent work deficits and opportunities associated with supply chains in other discussions and reports. The drivers of decent work deficits are varied. The section below explores potential determinants, influences and root causes within the context of supply chains.

An analysis of decent work deficits in supply chains identifies the interaction of factors at national, sectoral and individual enterprise levels. In some circumstances, existing deficits can be exacerbated by commercial and sourcing dynamics. Depending on the supply chain, and the national context, these factors apply to varying degrees and in differing ways. Specifically, the national context – relating to labour market governance and enforcement, the characteristics of the labour market (including the prevalence of informality), and transparency is a significant reason why businesses sourcing from and in countries with systemic governance challenges have been obliged to exercise greater responsibility through their supply chains.

2.2. Governance measures relevant to supply chains

The following section explores the governance challenges that can apply to supply chain actors, many of which draw direct linkages to the ILO's own normative instruments. This can include public, private, sectoral, social and increasingly hybrid forms of governance.

2.2.1. Public governance challenges

National labour law

Public governance encompasses the State's duty to implement ratified international labour Conventions and Protocols and enact and enforce national labour laws, social protection laws, and regulations that are in conformity with international labour standards. Key governance functions include labour administration, inspection, and enforcement including dispute resolution and prosecution of violations. The challenges and limitations within some systems of public governance – particularly in ensuring workplace compliance – were discussed in depth during the general discussion on labour administration and inspection at the International Labour Conference in 2011.

Compliance with applicable laws and regulations is the base requirement for all enterprises operating in a national jurisdiction, regardless of their involvement or position in a supply chain.

Within domestic labour law systems, challenges can exist and will invariably differ according to jurisdiction, sector and national context. From the ILO's normative perspective, issues may relate both to the ratification of core labour standards and the effective application of ratified Conventions and Protocols within national law.²⁰

Legislative gaps

Labour legislation may exclude some enterprises and/or workers from its scope of application. This can entail the exclusion of certain types of workers from labour laws or social protection, for instance migrant workers, workers in some sectors (for example, agriculture), workers in microenterprises or workers engaged in some forms of temporary employment, though this is not always inconsistent with international labour standards. Certain sectors, occupations or activities may also be excluded – whether wholly or in part – from labour laws, for instance in relation to agriculture or workers in EPZs.²¹

Enforcement gaps

Related to the above, the relative strength of labour administration, inspection and enforcement mechanisms can lead to decent work deficits. Typical challenges to labour law enforcement anywhere include constraints on human and financial resources, including training and overall capacity of inspectorates.

Grievance and access to remedy

Worker access to grievance, dispute resolution and remedy mechanisms, whether through judicial or non-judicial routes, can be a significant challenge in certain contexts. Access to judicial mechanisms can be impeded by, inter alia, costs, delays, lack of representation and lack of capacity within administrative or judicial bodies. In some cases, penalties may not be adequate to promote compliance and remedies may not be sufficient to compensate or otherwise make good harm suffered by victims.²²

At the enterprise level, forms of dispute resolution and redress (commonly via operational level grievance policies and procedures) may be underdeveloped or underutilized, particularly where systems of worker representation are weak. Certain groups such as migrants, women or informal economy workers, and occupations such as domestic or agricultural workers, may face additional barriers to accessing grievance mechanisms and remedy.²³

Extraterritorial jurisdiction and national regulation of cross-border labour

As domestic labour laws rarely impose obligations on third parties to the employment relationship and are usually limited to national jurisdictions, states have limited scope to regulate corporate activities that occur outside their national boundaries. States are responsible for ensuring that all actors within their jurisdiction or territory comply with their legal obligations. However, as noted above, governments have different levels of capacity and resources to effectively monitor and enforce compliance.

²⁰ ILO; *Ratifications of Fundamental Conventions by Number of Ratifications*.

²¹ On EPZs, see ILO–UNCTAD, *Enhancing the Contribution of Export Processing Zones to SDG 8 on Decent Work and Inclusive Economic Growth: A Review of 100 Zones*, 2020.

²² Note the Office of the High Commissioner for Human Rights (OHCHR) Accountability and Remedy Project was supported by the ILO and aims to strengthen implementation of the “Access to Remedy” pillar of the UNGPs.

²³ Benjamin Harkins and Meri Åhlberg, *Access to Justice for Migrant Workers in South-East Asia* (ILO, 2017).

According to the 2016 report from the ongoing project on accountability and access to remedy for victims of business-related human rights abuse by the UN High Commissioner for Human Rights:²⁴

While many domestic legal regimes focus primarily on within-territory business activities and impacts, the realities of global supply chains, cross-border trade, investment, communications and movement of people are placing new demands on domestic legal regimes and those responsible for enforcing them.

One approach to some of these challenges has been to enhance cooperation between state judicial and enforcement agencies across borders, drawing analogies from multi-jurisdiction criminal and customs investigations.

Issues such as cross-border labour migration highlight the challenges for domestic systems of regulation and enforcement. While domestic legislation may address fair recruitment of migrant workers – potentially aligned with ILO Conventions Nos 29, 88, 96, 97, 122, 143, 181, 189, and the Protocol of 2014 to the Forced Labour Convention, 1930 (along with the Fair Recruitment Guidelines), which all include provisions on international coordination – unethical recruitment practices that contribute to vulnerability and risk of exploitation may occur outside countries of destination, in jurisdictions where equivalent laws do not exist or where enforcement challenges are present.

2.2.2. Public governance pertaining to supply chains and procurement

Public governance has evolved beyond its traditional focus on enforceable rules, with failure to comply subject to sanction, directed to actors within national jurisdiction. Increasingly, states seek to have impact beyond their national territory as they look to shape the outcomes of business conduct in other countries. Instruments such as the ILO's MNE Declaration (paragraph 12) reflect this impetus:

Governments of host countries should promote good social practice in accordance with this Declaration among multinational enterprises operating in their territories. Governments of home countries should promote good social practice in accordance with this Declaration among their multinational enterprises operating abroad, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either.

These efforts often engage legislative and policy fields outside labour law, and include:

- The increasing inclusion of labour provisions in bilateral and regional trade agreements, and the growing number of international frameworks that refer to responsible business conduct in supply chains.
- Public procurement rules to promote improved labour practices in supply chains.
- The inclusion of labour provisions in performance standards for public lending, such as public development finance to the private sector in emerging and developing economies.

²⁴ UNHCR, "Improving accountability and access to remedy for victims of business-related human rights abuse, A/HRC/32/19".

- Modifications to civil and company law to incorporate legislative measures that require enterprises to publicly disclose information on specific aspects of business operations in their supply chains.
- Promotion of principles of good governance in corporate behaviour in line with the ILO MNE Declaration, the OECD MNE guidelines, and the UN Guiding Principles on Business and Human Rights (UNGPs) (including national action plans on business and human rights).
- Inclusion of dimensions of human rights and sustainability into public financing for trade, including export credit guarantees.
- Modifications to civil and company law to require enterprises to undertake human rights due diligence in relationship to their activities including relevant “business relationships” (involving, but not limited to, supply chains).

Labour provisions in trade agreements

Labour provisions in regional trade agreements (RTAs) are another mechanism for labour market governance at the international level which can impact different dimensions of the supply chain. Based on ILO research from 2019, approximately one third of RTAs have included labour provisions, with G7 countries as the greatest proponents.²⁵ Although national law and enforcement is the primary focus of these provisions (thus the main impact is on trading partners’ domestic labour law), some agreements allow for scrutiny of labour law compliance at enterprise level within specific firms or facilities.²⁶

The nature, scope, and operation of RTA labour provisions are varied, including on both procedural and substantive aspects. An overarching question relates to the nature and quality of social partner involvement in labour issues with respect to both trade policy and RTA administration.²⁷ Whereas institutionalized forms of tripartite engagement are a feature of certain agreements – for instance the “Domestic Advisory Groups” (DAGs) including businesses and trade unions in EU trade agreements – such structures are not widespread and social partners’ engagement in relation to labour issues can therefore be underdeveloped within certain agreements.

Core labour standards and the fundamental principles and rights at work are a common substantive reference under RTA labour provisions, although some RTAs have sought to incorporate a broader range of standards,²⁸ such as low wages, occupational safety and health (OSH), lack of social security, or weak labour administration capacity.²⁹ Corporate social responsibility (CSR) or Responsible Business Conduct (RBC) clauses have been integrated into some trade agreements (for example, the Comprehensive Economic and Trade Agreement between Canada and the EU, or the EU–Vietnam Free Trade Agreement (FTA))³⁰ which can directly or indirectly cross-reference international frameworks such as the UNGPs and the ILO MNE

²⁵ ILO, *Studies on Growth with Equity: Assessment of Labour Provisions in Trade and Investment Arrangements*, 2016.

²⁶ For instance the Facility-Specific Rapid Response Labor Mechanism (RRLM) in the Canada–United States–Mexico Agreement (CUSMA).

²⁷ Oliver Illott, Ines Stelk and Jill Rutter, *Taking Back Control of Trade Policy* (Institute for Government, 2017).

²⁸ For example, US trade agreements and reference to minimum wages.

²⁹ James Harrison et al., “Governing Labour Standards through Free Trade Agreements: Limits of the European Union’s Trade and Sustainable Development Chapters” *JCMS*, 57, No. 2 (2018).

³⁰ Noting that, in large part resulting from this FTA, Vietnam ratified Convention No. 98 in 2019, Convention No. 105 in 2020 and is scheduled to ratify Convention No. 87 in 2023.

Declaration.³¹ However, these provisions generally amount to “soft” obligations, and even with “hard” labour obligations, resort to labour-related enforcement or dispute resolution is rare.³²

Public procurement frameworks

Beyond labour legislation, public procurement frameworks have increasingly sought to incorporate labour standards and clauses, for instance through “sustainable procurement” approaches. While the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) addresses labour clauses in public contracts, adoption has not been widespread, and few Member States are “substantially implementing” the Convention.³³ Furthermore, in its 2008 report on the General Survey regarding Convention No. 94 and the related Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84), the effectiveness of the standards established in Convention No. 94 were called into question in light of several developments, including “the increasing importance of subcontracting, global sourcing and the complexities of supply chain management” as well as “the increasing availability and use of contractors that perform the work under the contract outside the borders of the country for which the work is being performed”.³⁴

The European Commission Directive on Public Procurement (2014/24/EU) establishes a clear framework for the incorporation of labour rights requirements into public contracts tendered by EU Member State authorities. This includes obliging Member States and contracting authorities to take relevant measures to ensure compliance with national and EU regulation in the field of labour law (including collective agreements). It is also specified that international agreements ratified by all EU Member States and listed in Annex X of the Directive (which includes core labour standards) should apply during contract performance. Other aspects of the directive address control and verification of labour standards, active measures to promote core labour standards compliance, and the application of compliance requirements to subcontractors.

Although the range of economic activity falling within public procurement may be limited, certain frameworks such as the US Federal Acquisition Regulation (FAR) do address cross-border aspects of supply chains. Contractors and subcontractors subject to FAR are required, among other things, to conduct due diligence on suppliers in order to identify and address forced labour/trafficking risk. As with mandatory human rights due diligence (MHRDD) legislation (discussed below), the objective is to spur forms of private compliance such as audits, due diligence and other assurance processes.

National and supranational approaches to supply chain transparency and human rights due diligence

A number of governments have recently either introduced legislation or have proposed draft legislation aimed at encouraging or requiring companies and corporate groups to carry out MHRDD. There appears to be particular momentum within the OECD, especially within the EU and EU Member States.³⁵

³¹ ILO, *Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements* 2017: 117–18.

³² For examples of notable enforcement and dispute resolution actions, see the [settled complaint](#) between Mexico and the US under CUSMA, as well as the [finding by a Panel of Experts](#), constituted under the EU–South Korea trade agreement, that the Republic of Korea breached labour commitments under the agreement.

³³ ILO, *Labour Clauses in Public Contracts: Integrating the Social Dimension into Procurement Policies and Practices* ILC.97/III(1B), 2008: xiii.

³⁴ ILO, *Labour Clauses in Public Contracts*, 2008.

³⁵ IOE, *Key Developments in Mandatory Human Rights Due Diligence and Supply Chain Law: Considerations for Employers*, 2021.

The emerging adoption of MHRDD and transparency laws reflects the interest of certain policymakers in implementing binding approaches that can address supply chain challenges. These legislative developments do not attempt to reflect any new substantive standards or obligations, but rather procedural obligations centred on due diligence. These reflect, and are closely informed by, the UNGPs (see box below).³⁶

Compliance obligations under the “new generation” of mandatory human rights due diligence legislation typically apply to domestically incorporated firms or firms “doing business” in a jurisdiction (and typically only firms of a certain size based on number of employees or profits).³⁷ Due diligence and transparency requirements theoretically spur forms of private compliance – such as conducting audits and incorporation of labour-related performance requirements into agreements – including across borders.

MHRDD approaches have also been considered for adoption at supranational level. The European Commission announced a proposal for a legislative initiative (possibly a directive) on Corporate Sustainable Governance which was scheduled for adoption by the College of Commissioners on 8 December 2021, however it has been postponed.³⁸

Finally, at the multilateral level, there have been parallel developments to move toward a binding instrument. The Human Rights Council established an open-ended intergovernmental working group (OEIGWG) on multinational enterprises and other business enterprises with respect to human rights in 2014, whose mandate is “to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises”. The OEIGWG continues its state-led negotiations of the draft text of the legally-binding instrument, with the third revised draft being discussed in the 7th Session of the OEIGWG (25–29 October 2021).³⁹

Although mandatory corporate due diligence laws signal a shift towards greater accountability for supply chain outcomes, current limitations include enforceability (whether through State enforcement or civil liability), the typically limited scope of enterprises covered, and the quality of private compliance measures which are theoretically encouraged by due diligence requirements (see below).

The UNGPs and the expansion of MHRDD

The UNGPs apply to all States and business enterprises (transnational or otherwise), regardless of their size, sector, location, ownership and structure. They are founded on three pillars: (1) the State duty to protect against human rights abuses by third parties, including business enterprises; (2) the independent responsibility of business enterprises to respect human rights, which means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved and (3) the need for those harmed by business-related activities to have access to effective remedy. The discussion here is primarily related to the UNGPs’ Pillar 2 and 3 expectations for businesses.⁴⁰

Beyond compliance with all applicable laws, in order to meet their responsibility to respect human rights, businesses should undertake due diligence to identify, prevent and mitigate their actual and

³⁶ For an overview of the three international instruments that serve as key reference points for responsible business conduct, see ILO et al., *Responsible Business: Key Messages from International Instruments*.

³⁷ See “[Comparative table: Corporate due diligence laws and legislative proposals in Europe](#)”, European Coalition for Corporate Justice (ECCJ) (2021).

³⁸ See also European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129 (INL)).

³⁹ The third revised draft and other information is available on the [website](#) of the OEIGWG.

⁴⁰ Adapted from ILO et al., *Responsible business*.

The UNGPs and the expansion of MHRDD

potential negative impacts and account for how those impacts are addressed. Responsible business covers not only impacts that a company may cause or contribute to through its own activities but also those impacts to which it is directly linked through its business relationships.

The UNGPs specify that HRDD should be ongoing and should be tailored to correspond with the size of the company, risks of significant impacts, the nature and context of operation, and should cover all human rights, although certain human rights may be prioritized over others based on severity of risks. It should also be built on meaningful dialogue with affected and representative stakeholders and rights-holders during both due diligence and monitoring.

The concept of due diligence is central to the UNGPs' expectations of businesses in relation to human rights. It has informed the development of private compliance standards (including the development of multi-stakeholder initiatives, and driven social auditing. In addition, it has been applied in the development of national due diligence laws such as the UK and Australian Modern Slavery Acts, the French *Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* and the new German legislation on mandatory due diligence. Due diligence measures have generally addressed:

- Requirements that organizations carry out an assessment of the way in which their activities or those of their partners might negatively impact, among other things, labour rights and decent work outcomes.
- Requirements to report on the findings of impact or risk assessment process.
- Requirements to engage meaningfully with other partners, including trade unions, employers' organizations, governments and others to better understand and respond to labour rights risks.
- Requirements to respond to potential or known negative impacts on human rights through mitigation, prevention or remediation (if the harm has already occurred and is caused or contributed to by the company).
- In some cases, impose some form of sanction or responsibility on those companies that have failed to carry out due diligence and this failure can be linked to harm (irrespective of jurisdiction).

Importantly, it has also played a central role in informing international law as a core standard of conduct against which to judge discharge of an obligation that can be linked to expectations of legal persons, including companies, under the concept of the law of negligence.⁴¹ With regard to the role of the State in relation to actions by private actors, The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights argues insofar as the conduct of private actors is not attributable to the State, the State is under an obligation to satisfy a certain standard of conduct – that of due diligence – in preventing and/or responding to the conduct of third parties. This type of analysis has been adopted by the UN Human Rights Committee, who described the obligations in the following way:

[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities. There may be circumstances in which a failure to ensure Covenant rights ... would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.⁴²

Taking this concept of due diligence further to consider the obligations which a State should apply on businesses to understand and respond to potential human rights risks to rights-holders, the UN

⁴¹ Jonathan Bonnitcha and Robert McCorquodale, "The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights", *European Journal of International Law (EJIL)*, 28, Issue 3, (2017), 899–919.

⁴² OHCHR, "General comment No. 31 (2004) on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant", *CCPR/C/21/Rev.1/Add. 13*.

The UNGPs and the expansion of MHRDD

Committee on Economic, Social and Cultural Rights has closely considered the obligations of States to protect human rights in the context of business activities. The Committee stated that:

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.

Expanding on this, the Committee stated that States should require corporations doing business in their territory:

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.

It is important to stress that the obligations referred to above apply to enterprises doing businesses in a State's territory, but the due diligence obligation can involve activities taking place anywhere. The expectation on governments is well summarized in a report developed and published through Alliance 8.7.⁴³ In further expanding the concept of due diligence, Ruggie and Sherman take the view that the concept in this context "is rooted in a transnational social norm, not an international legal norm." Looking at the transformative and new nature of the UNGPs, they go on to state that:

The Guiding Principles sought to be informed by related literatures and practices. But they establish their own scheme for corporate human rights due diligence, as any international instrument is entitled to do. Merriam-Webster Dictionary's first definition of due diligence is 'the care that a reasonable person exercises to avoid harm to other persons or their property'. The Guiding Principles change what we should now consider 'reasonable', in the common sense use of that term, when it comes to business responsibility for human rights impacts, including remediation.⁴⁴

At a State level, through the adoption of national legislation which either requires risk assessment, reporting or action either on defined human rights issues – such as the UK and Australian Modern Slavery Acts – or broader sustainability and human rights – such as the French *Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* or the proposed EU Directive – there is an increasing alignment with what Sherman and Ruggie have called the new "reasonable" in terms of expected behaviours of companies and public authorities in relation to supply chains.

Further, it is likely that there will be increasing references to the UNGPs, OECD Guidelines, OECD due diligence guidance documents and other related instruments by both national courts and international courts. This relates to both business conduct and State obligations to regulate businesses to ensure or promote respect for human rights. As part of a review 10 years after their adoption, a report assessing the impact of the UNGPs on courts and judicial mechanisms⁴⁵ cites a number of examples in support of this, including an Advisory Opinion on the American Convention of Human Rights by the Inter-American Court of Human Rights in which the court took the view that Colombia must follow the UNGPs in addressing adverse human rights impacts that might result from the environmental activities of private businesses. The report, by law firm Debevoise & Plimpton, further suggests that:

The current lack of references to the UNGPs will change, for a number of reasons. First, there are some recent, notable examples of legislation that make explicit reference to the UNGPs. For example, the Taxonomy Regulation of the European Union ("EU"), which entered into force in March 2021, mandates that a taxonomy-compliant investment must comply with minimum safeguards 'to ensure the alignment with the [OECD Guidelines] and the [UNGPs]', expressly incorporating the "nonbinding" UNGPs standards into binding legislation. As express references to the UNGPs in domestic legislation and regulation increase, it is inevitable that they will make more frequent appearances in the decisions of judicial and quasi-judicial bodies, too.

2.2.3. Private and hybrid forms of governance

In addition to the laws and regulations established by governments, private compliance initiatives have increasingly addressed labour standards between commercial partners, often as part of broader sustainability, CSR or responsible business agendas. In practice, these private forms of governance are mostly present in the context of purchasers in global North economies sourcing from global South economies, perhaps reflecting lack of uptake among global South MNEs. However, they can also be found in domestic contracting as well as North–North and South–South business relationships.

Private compliance initiatives can include a range of activities such as due diligence and impact assessments, auditing regimes and related corrective actions, certification, capacity-building, training, or labelling schemes.⁴⁶ Contractual standards and codes of conduct frequently reference ILO instruments (mainly the core labour standards and fundamental principles and rights at work), though other issues, such as living wage (which has gained prominence in recent years), may also feature.

These measures can create systems of obligations and enforcement – both domestic and cross-border. While they can contribute to improved working conditions, they do not substitute for effective public enforcement and governance mechanisms.

The limits of private compliance initiatives have encouraged debates on complementary or hybrid forms of governance involving public and private (often MNE-based) initiatives. The interaction between private (transnational) standards and domestic systems of regulation are complex. Research has shown that differences in state policy are linked to the uptake of voluntary standards, the extent to which firms will support more stringent standards, and the degree to which voluntary codes are impactful.⁴⁷ An important consideration is whether private compliance efforts are motivated by weak public regulation or enforcement in the first place, highlighting the need for the existence or creation of robust public institutions to work alongside private initiatives as a precondition to effective hybrid governance.

2.2.4. Social governance with cross-border aspects

Cross-border social dialogue includes transnational company agreements, multilateral and intergovernmental processes (including ILO processes, as well as the UNGPs, OECD and UN Global Compact), regional, subregional and interregional economic communities, bilateral and multilateral trade agreements, interregional arrangements, and multi-stakeholder initiatives on CSR/RBC.

Transnational company agreements (TCAs) – spanning both international framework agreements (IFAs) and regional agreements – are examples of cross-border social dialogue and global labour relations. Negotiated between Global Union Federations (GUFs) and MNEs, IFAs are voluntary agreements that can elaborate general principles, bargained terms and conditions, and

⁴³ ILO et al., *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains*, 2019.

⁴⁴ John Gerard Ruggie and John F. Sherman, “The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale” *EJIL*, 28, Issue 3 (2017).

⁴⁵ OHCHR, *UN Guiding Principles on Business and Human Rights at 10: The Impact of the UNGPs on Courts and Judicial Mechanisms*, 2021.

⁴⁶ ILO et al., *Promoting Workplace Compliance including in Global Supply Chains: The Role of Economic and Social Councils and Similar Social Dialogue Institutions* 2015, 6.

⁴⁷ Tim Bartley, “Transnational Governance as the Layering of Rules: Intersections of Public and Private Standards” (*Theoretical Inquiries in Law* 12, No. 2 (2011)).

mechanisms for dispute resolution and prevention. These agreements have increasingly included supply chains and subcontractors within their scope.⁴⁸ The majority of TCAs reference the ILO's fundamental principles and rights at work, and "in particular, TCAs focus on the promotion of freedom of association and the right to organize within MNE subsidiaries, but rarely their suppliers."⁴⁹ Recent agreements have incorporated other instruments, including the MNE Declaration, UNGPs, and OECD MNE Guidelines.⁵⁰ Over 85 per cent of IFAs have been concluded with European MNEs, concentrated in the metal, construction, chemicals, food and services sectors.⁵¹

Enforceability remains a key challenge, in particular to obligations aimed at entities that are legally distinct from the MNE and its subsidiaries, such as supply chain actors or subcontractors.⁵² In addition, the ability to monitor and implement agreements can be challenging due to the complex relationships that might be covered including potentially thousands of suppliers and contractors.⁵³ These challenges are particularly acute where relevant operations take place in contexts with underdeveloped labour administration or social dialogue.⁵⁴

2.2.5. Governance at sector level

The public administration of many countries is organized according to the most important sectors of the economy. However, policy coherence remains an issue today, as reflected in numerous sector-specific laws and regulations that fail to incorporate employment, labour rights or other aspects of the Decent Work Agenda and that do not sufficiently take into account the concerns and aspirations of employers and workers in the sector concerned.

At the national level, employers and workers have organized members in specific sectors of the economy for centuries. They have represented their interests and provided services according to the needs of their members and developments in the sector or supply chain. National union federations and employers' associations are often formed according to different branches or sectors of the economy.

Sectoral governance varies greatly from sector to sector which can be attributed to a number of factors. Sectoral labour standards may not exist or may not be implemented (both of which may vary based on the strategic importance of a sector and the existence of relevant industrial strategies). The capacity of sectoral constituents can differ between countries and sectors, which in certain cases reflects limitations on the right to freedom of association and collective bargaining. Sectoral mechanisms or institutions for dialogue may not exist or function.

The maritime sector offers one example of highly effective governance that has benefited from the MLC, 2006 (underpinned by innovative enforcement mechanisms and support structures), a sector-wide agreement and strong institutional relationships supported and fostered within the ILO. In other sectors where sectoral governance is weak, for instance in the case of smallholder farmers in remote rural areas in developing countries, there can be greater

⁴⁸ Stefania Marassi, "International Framework Agreements and Management of Global Supply Chain: Extra-judicial Mechanisms to Enforce International Labour Standards", *Questions of International Law*, (2020).

⁴⁹ ILO, *Cross-border social dialogue*, (2019), 47.

⁵⁰ ILO, *International Framework Agreements in the food retail, garment and chemicals sectors* (2018), ILO, *References made to the MNE Declaration in International Framework Agreements*.

⁵¹ ILO, *Cross-border social dialogue* (2019), 47.

⁵² Marassi, *International Framework Agreements and Management of Global Supply Chain* (2020).

⁵³ ILO, *Cross-border Social Dialogue*, 2019, 48.

⁵⁴ ILO, *Cross-border Social Dialogue*, 2019, 48.

risks of labour and rights violations. In many cases, attempts to address these challenges have relied on private or hybrid supply chain governance initiatives.

2.3. ILO normative measures and their application to supply chains

The normative agenda of the ILO encompasses the adoption, setting, promotion, ratification, implementation and supervision of international labour standards. As set out in the Social Justice Declaration 2008, ILO standards policy is a cornerstone of the Organization's mission and activities.⁵⁵ In this context, the tripartite constituents agree on the importance of the ILO having a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.⁵⁶ This section reviews the extent to which ILO normative measures reach out to end beneficiaries supply chains, with a view to providing information for a determination of the extent to which they are fit for purpose for ensuring decent work in supply chains.⁵⁷

To provide the information necessary to consider whether the standards are fit for purpose, four elements are examined. First, the *subject matter* of the body of standards, to determine whether the standards cover the topics most necessary to ensure decent work in supply chains. Second, relative *roles and responsibilities*, particularly in relation to indirect relationships and the ascription of responsibility to third-party actors for the breach of worker rights, involving a consideration of the notion of human rights due diligence. Multi-jurisdictional coverage is also addressed as the questions raised in this element are exacerbated in global, compared to domestic, supply chains. Third, *enforcement and remedies*, to assess how to ensure the standards are adequately implemented and applied, ensuring decent work in supply chains in practice. Finally, a consideration of the work of the ILO ILS *supervisory mechanisms* related to decent work in supply chains.

2.3.1. Thematic scope of the international labour standards

Few international labour standards expressly mention supply chains. Two exceptions are the recent Recommendations on HIV/AIDS and the transition from informality to the formal economy. The HIV and AIDS Recommendation, 2010 (No. 200) provides that enterprises should be supported to implement national policies and programmes "including through their supply chains and distribution networks, with the participation of organizations of employers and workers and ensure that enterprises operating in the export processing zones comply".⁵⁸ The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) applies to all workers and economic units – including enterprises, entrepreneurs and households – in the informal economy, in particular including "employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains".⁵⁹

⁵⁵ Social Justice Declaration 2008, preamble.

⁵⁶ GB.325/LILS/3, appendix, para. 8.

⁵⁷ ILO, [Resolution concerning decent work in global supply chains, 2016](#), para. 25: There is concern that current ILO standards may not be fit for purpose to achieve decent work in global supply chains.

⁵⁸ Recommendation No. 200, Para. 37(e).

⁵⁹ Recommendation No. 204, Para. 4(c).

ILO standards are pertinent to the call for supply chains “to fulfil their potential as ladders for development”⁶⁰ In the 2021 resolution concerning a global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, the ILO tripartite constituents have underlined their commitment to fostering resilient supply chains that contribute to the sustainability of enterprises (including micro, small and medium-sized enterprises)⁶¹. A number of ILO standards highlight the need for specific measures to assist small and medium-sized enterprises,⁶² including assistance to address OSH constraints.⁶³ The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) specifically calls for measures to promote the role that small and medium-sized enterprises can play as regards sustainable economic growth and the ability to react with flexibility to changes. The Recommendation calls for the provision of strong and effective assistance to small and medium-sized enterprises and their workers in times of economic difficulties, as well as international cooperation for the establishment of international partnerships and alliances of small and medium-sized enterprises, subcontracting arrangements and other commercial linkages.

All ILO standards with a general application cover workers and employers in supply chains to the same extent and in the same way as they cover any other workers and employers. A number of earlier studies and reports have identified decent work deficits common to many supply chains.⁶⁴ The thematic scope of international labour standards significantly correspond to these. Most notably, the fundamental principles and rights at work provide protections to all workers in relation to freedom of association and the effective recognition of the right to collective bargaining,⁶⁵ child labour,⁶⁶ forced labour⁶⁷ and equality and non-discrimination.⁶⁸ These are both rights and enabling conditions that are necessary for the full realization of all of the ILO strategic objectives⁶⁹ and apply to all workers regardless of employment status.⁷⁰ In addition, there are clear, robust and up-to-date standards on the crucially important subjects of

⁶⁰ ILO, [Resolution concerning decent work in global supply chains](#), 2016, para. 7.

⁶¹ ILO, Resolution concerning a global call to action, 2021.

⁶² For example: the [Employment Policy \(Supplementary Provisions\) Recommendation](#), 1984 (No. 169); the [Safety and Health in Mines Recommendation](#), 1995 (No. 183); and the [Employment and Decent Work for Peace and Resilience Recommendation](#), 2017 (No. 205).

⁶³ The [Promotional Framework for Occupational Safety and Health Convention](#), (No. 187) and [Recommendation \(No. 197\)](#), 2006.

⁶⁴ For example, Resolution concerning decent work in global supply chains, 2016, para. 3. For further details, see section above on supply chains and workers in supply chains.

⁶⁵ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

⁶⁶ Minimum Age Convention, (No. 138) and Recommendation (No.146), 1973, Worst Forms of Child Labour Convention, (No. 182) and Recommendation (No. 190), 1999.

⁶⁷ Forced Labour Convention, (No. 29), [Protocol of 2014 to the Forced Labour Convention, 1930](#), Abolition of Forced Labour Convention, 1957 (No. 105), Forced Labour (Indirect Compulsion) Recommendation, 1930 (No. 35), and [Forced Labour \(Supplementary Measures\) Recommendation](#), 2014 (No. 203).

⁶⁸ Equal Remuneration Convention, (No. 100) and Recommendation (No. 90), 1951, Discrimination (Employment and Occupation) Convention, (No. 111) and Recommendation (No. 111), 1958.

⁶⁹ Social Justice Declaration 2008, I(A)(iv).

⁷⁰ See, for example, ILO, [Promoting Employment and Decent Work in a Changing Landscape](#) ILC.109/III(B), 2020, para. 327.

occupational safety and health,⁷¹ wages⁷² and working time.⁷³ Other thematic areas key to many supply chains, such as the employment relationship,⁷⁴ informality,⁷⁵ non-standard forms of employment,⁷⁶ the use of third-party intermediaries,⁷⁷ migrant workers⁷⁸ and homeworkers,⁷⁹ are equally regulated by up-to-date international labour standards.

In other words, the ILO's existing normative measures address many of the key decent work deficits in supply chains raised previously. Some standards are specifically oriented to promoting the needs for sustainable enterprises in supply chains. As is the case in relation to the international labour standards in general, their impact in relation to supply chains relies on ratification, effective implementation and application to relevant segments of the workforce. ILO non-normative interventions (described in section 3 below) are an important contribution to ensuring the full capacity of state actors and social partners to support these steps. Ensuring that the instruments are effectively implemented in supply chains requires the specificities of supply chains to be addressed: how to enforce labour standards across all types of enterprises, provide appropriate remedies, and ascribe responsibilities. The following sections review the international labour standards in relation to these specificities.

2.3.2. Roles and responsibilities in respect of labour rights in supply chains

Relationships in supply chains are often complex and will differ from the structures of traditional labour law models on which many ILO instruments are based. Accordingly, while ILO normative measures are substantively relevant to the decent work deficits that exist in some supply chains, they may not address governance factors (including relevant actors and mechanisms) which characterize supply chains.

A key question concerns responsibility for decent work and employment practices in supply chains, when employers are distinct legal entities from other enterprises in the chain with which they do business. While some domestic and global supply chains are highly integrated, and are owned or controlled by a single entity, workers in other supply chains are employed by parties which are legally distinct from the buyers of the goods or services flowing through the supply chain. Who takes responsibility for labour rights in business relationships such as these, where decisions and actions made by one party may significantly impact the employment conditions of workers who are legally engaged by another party?

⁷¹ For example, Occupational Safety and Health Convention, (No. 155), Protocol of 2002 to the Occupational Safety and Health Convention, and Recommendation (No.164), 1981, Occupational Health Services Convention, 1985 (No. 161) and Recommendation (No. 171), 1985, Promotional Framework for Occupational Safety and Health Convention, (No. 187) and Recommendation (No. 197), 2006.

⁷² Protection of Wages Convention, (No. 95) and Recommendation (No. 85), 1949, Minimum Wage Fixing Convention, (No. 131) and Recommendation (No. 135), 1970, Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) and Recommendation (No. 180), 1992."

⁷³ For example, Weekly Rest (Industry) Convention, 1921 (No. 14), Weekly Rest (Commerce and Offices) Convention, (No. 106) and Recommendation (No. 103), 1957, Part-Time Work Convention, (No. 175) and Recommendation (No. 182), 1994, and Reduction of Hours of Work Recommendation, 1962 (No. 116).

⁷⁴ Employment Relationship Recommendation, 2006 (No. 198).

⁷⁵ [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#).

⁷⁶ Employment Relationship Recommendation, 2006 (No. 198).

⁷⁷ [Private Employment Agencies Convention](#), (No. 181) and Recommendation (No. 188), 1997.

⁷⁸ Migration for Employment Convention (Revised), (No. 97) and Recommendation (No. 86), 1949, Migrant Workers (Supplementary Provisions) Convention, (No. 143) and Recommendation (No. 151), 1975.

⁷⁹ Home Work Convention, (No. 177) and Recommendation (No. 184), 1996.

This part will provide information on the ILO normative measures with relevance to the question of the indirect employment relationship and third-party involvement that is common in supply chains, as well as the use of due diligence to apportion responsibility, all of which is relevant to both domestic and global supply chains. It will then provide information relevant to global supply chains in particular, by considering ILO normative measures with a multi-jurisdictional aspect.

(i) Indirect employment relationship and third-party responsibility

Most supply chains are characterized by varying degrees of segmentation, involving the interaction of different legal entities in production networks. These relationships are commercial in nature; they are business relationships which are not typically regulated by national labour legislation. In many cases supply chain actors are separate legal entities, with obvious implications for legal liability. Traditional national and international labour law does not place responsibilities on an enterprise (the ‘buyer’) in relation to labour practices at a third-party enterprise (the ‘supplier’) with which the enterprise does business.⁸⁰

ILO instruments generally operate on an expectation of a direct employment relationship between a worker and an employer. For example, the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) applies to all persons “employed”,⁸¹ the Minimum Wage Fixing Convention, 1970 (No. 131) covers “groups of wage earners”,⁸² and the Maternity Protection Convention, 2000 (No. 183) applies to “employed women”.⁸³ Some instruments have a wider application, including apprentices⁸⁴ or jobseekers,⁸⁵ regulating “service”,⁸⁶ or covering the self-employed⁸⁷ including tenants, sharecroppers or small owner-occupiers.⁸⁸ In a number of cases, the guarantees in international labour standards apply outside the employment relationship.⁸⁹

Some international labour standards recognize the existence of workplaces with multiple employers. Under the Employment Relationship Recommendation, 2006 (No. 198), a national policy on protection for workers in an employment relationship should include measures to “ensure standards applicable to all forms of contractual arrangements, including those involving

⁸⁰ Pursuant to the ILO instruments noted below this section, there are areas where national labour law may impose such obligations on a third party to the employment relationship – for instance relating to the health and safety of workers employed or provided by a third party – but these are typically within the workplace of the third-party “client”.

⁸¹ Convention No. 106, Art. 2.

⁸² Convention No. 131, Art. 1(1).

⁸³ Convention No. 183, Art. 2(1).

⁸⁴ Labour Inspection (Agriculture) Convention, 1969 (No. 129), Art. 4.

⁸⁵ Recommendation No. 205, Para. 4.

⁸⁶ Convention No. 29, Art. 2(1).

⁸⁷ For example, Working Environment (Air Pollution, Noise and Vibration) Recommendation, 1977 (No. 156), Para. 1(2); Safety and Health in Construction Convention, 1988 (No. 167), Art. 1(3); [Chemicals Recommendation, 1990 \(No. 177\)](#), Para. 4; Labour Administration Convention, 1978 (No. 150), Art. 7(b).

⁸⁸ For example, Rural Workers' Organisations Convention, 1975 (No. 141), Art. 2(1).

⁸⁹ For example, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) applies to tribal and indigenous “peoples” (Art. 1) and the [Violence and Harassment Convention, 2019 \(No. 190\)](#) protects “workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer” (Art. 2(1)). Pursuant to the Social Security (Minimum Standards) Convention, 1952 (No. 102), protected persons include variously the wives and children of employees or the economically active population, and residents (for example, Arts 9, 15, 21, 27, 33, 41, 48, 55, 61, 63).

multiple parties, so that employed workers have the protection they are due”.⁹⁰ In addition, some occupational safety and health instruments regulate the situation where “two or more employers undertake activities simultaneously at one workplace”.⁹¹ Other international labour standards refer to potential linkages between enterprises: Recommendation No. 189 recommends measures to promote cooperative linkages between SMEs and larger enterprises,⁹² as well as linkages between SMEs to encourage an exchange of experience and sharing of resources and risks;⁹³ and the Occupational Health Services Convention, 1985 (No. 161) provides that services may be organized “as a service common to a number of undertakings, as appropriate”.⁹⁴ Additionally, certain OSH Conventions have limited provisions regulating (for safety purposes) the distribution or transfer between enterprises of equipment or substances.⁹⁵

Other ILO instruments consider the role of third parties to the employment relationship. The Private Employment Agencies Convention, 1997 (No. 181), and its accompanying Recommendation No. 188, regulate the services of private employment agencies when “employing workers with a view to making them available to a third party, who may be a natural or legal person [...] which assigns their tasks and supervises the execution of these tasks”.⁹⁶ The Home Work Recommendation, 1996 (No. 184) defines “employer” to mean “a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity”⁹⁷ and Convention No. 94 applies to “work carried out by subcontractors or assignees of contracts”⁹⁸

In summary, the analysis shows that while international labour standards cover a range of workplace relationships, including some aspects particularly relevant to supply chains, they are largely focused on the relationship between the employer and worker.

(ii) Due diligence requirements in ILO normative measures

As discussed above, the ILO’s international labour standards are rarely oriented directly at the specific challenges raised by the multiple tiers of employers existing in many supply chains. Due diligence – whereby companies and others engaging in commercial purchasing activities assess the degree to which their practices and activities, through act or omission, positively or

⁹⁰ Recommendation No. 198, Para. 4(c).

⁹¹ Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), Art. 6(2). See also the [Safety and Health in Agriculture Convention, 2001 \(No. 184\)](#), Art. 6(2): “two or more employers undertake activities, or whenever one or more employers and one or more self-employed persons undertake activities”; Convention No. 155, Art. 17: “Whenever two or more undertakings engage in activities simultaneously at one workplace, they shall collaborate in applying the requirements of this Convention.”

⁹² Recommendation No. 189, Para. 16(2). See further the Employment Policy Recommendation, 1964 (No. 122), in relation to the creation of handicrafts and small-scale industries, recommends efforts to “establish a complementary relationship between small-scale and large-scale industry and to develop new outlets for the products of industry” (Para. 26(b)). Recommendation No. 169 equally recommends promotion of technological linkages between large-scale and small-scale undertakings (Para. 29) and complementary relationships between small undertakings and other undertakings (Para. 31).

⁹³ Recommendation No. 189, Para. 16(3).

⁹⁴ Convention No. 161, Art. 7(1). See also the Occupational Health Services Recommendation, 1985 (No. 171), Para. 34; the Convention No. 167, Art. 8; and the Safety and Health in Construction Recommendation, 1988 (No. 175), Para. 5(1).

⁹⁵ Arts 2–4 of the Guarding of Machinery Convention, 1963 (No. 119), Art. 12 of Convention No. 155, Art. 9 of the [Chemicals Convention, 1990 \(No. 170\)](#), and Paragraph 14 of the Radiation Protection Recommendation, 1960 (No. 114).

⁹⁶ Convention No. 181, Art. 1(1)(b).

⁹⁷ Recommendation No. 184, Para. 1(c).

⁹⁸ Convention No. 94, Art. 1(3). See also Convention No. 167, Art. 2(e)(ii): the employer means “as the context requires, the principal contractor, the contractor or the subcontractor”; Recommendation No. 175, Para. 2(f)(ii); and the Safety and Health in Mines Convention, 1995 (No. 176), Art. 1(2).

negatively impact on labour and human rights broadly – is pertinent both to domestic and cross-border supply chains. The following section considers the extent to which ILO normative instruments incorporate due diligence concepts and how the ILO's normative framework has supported or guided governments in developing due diligence approaches for businesses operating from or within their jurisdiction.

What is due diligence?

Due diligence – understood in its broadest sense to include identifying, preventing, and mitigating risks – has emerged as one important procedural mechanism that allows for a broader consideration of various challenges across a supply chain. This includes labour and human rights as well as other topics such as environmental sustainability and governance. It is an approach which is already undertaken by many businesses when analysing financial, legal, or other operational risks.⁹⁹ (For further information, see section above on national and supranational approaches to supply chain transparency and human rights due diligence).

The Protocol of 2014 to the Forced Labour Convention, 1930 is one of the few international labour standards that explicitly raises due diligence measures as a state obligation.¹⁰⁰ Article 2(e) states that:

The measures to be taken [by States] for the prevention of forced or compulsory labour shall include [...] supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour.

Within its supervision of the Protocol, the Committee of Experts has referred to Article 2(e) to seek information from governments on due diligence initiatives concerning forced labour. For example, a recent observation from the Committee in relation to the United Kingdom of Great Britain and Northern Ireland asked the Government to continue to provide information on the steps taken to support companies and public bodies to take measures to identify, prevent, mitigate and account for how they address the risks of forced labour in their operations or in products or services to which they may be directly linked.¹⁰¹

Although the United Kingdom legislation includes reference to corporate due diligence on forced labour in supply chains,¹⁰² the Committee has also asked countries without equivalent laws to provide information. For example, a direct request has been made to the Government of Norway wherein “the Committee requests the Government to indicate the measures to support due diligence by the private sector to prevent and respond to risks of forced labour”.¹⁰³ Similar requests have been made to the Governments of Panama¹⁰⁴ and Spain.¹⁰⁵

Requests from the Committee have not been limited to industrialized nations. In a direct request published in 2021 concerning Mali's application of the Protocol,¹⁰⁶ the Committee noted

⁹⁹ For more extensive definitions please see [Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#) (2017), paragraph 10, ILO as well as [Corporate human rights due diligence – identifying and leveraging emerging practices](#), OHCHR.

¹⁰⁰ Note that instruments such as the Night Work of Young Persons (Non-Industrial Occupations) Recommendation, 1946 (No. 80) address due diligence in the context of an employer being given an “opportunity to vindicate his good faith if he exercised all due diligence to prevent the violation”. However this might be understood as being more closely linked to tort liability or negligence concepts.

¹⁰¹ [Observation](#) of the CEACR concerning Convention No. 29 – United Kingdom (published 2021).

¹⁰² The Modern Slavery Act 2015.

¹⁰³ [Direct request](#) of the CEACR concerning Convention No. 29 – Norway (published 2021).

¹⁰⁴ [Direct request](#) of the CEACR concerning Convention No. 29 – Panama (published 2021).

¹⁰⁵ [Direct request](#) of the CEACR concerning Convention No. 29 – Spain (published 2021).

¹⁰⁶ [Direct request](#) of the CEACR concerning Convention No. 29 – Mali (published 2021).

the Government's reference to the project to combat child labour and forced labour in supply chains in the cotton, textile and apparel sectors between 2018 and 2022, developed with ILO support, and a project to support the development of the cotton sector in the "C-4" countries (Benin, Burkina Faso, Chad and Mali). The Committee requested the Government to continue providing information in this regard, particularly in relation to measures intended to provide support for due diligence by enterprises in the public and private sectors in relation to awareness-raising and the prevention of forced labour practices.

There are no similar requirements to support due diligence in the remaining core labour standards included in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. This is unsurprising, given the relative novelty of the due diligence concept and the time at which the core labour standards were adopted. The core labour standards are specifically referenced in the UNGPs as among the core human rights standards to which its due diligence principles should apply.

Recommendation No. 205 also specifically refers to due diligence. Member States should adopt inclusive measures in order to promote full, productive, freely chosen employment and decent work and income-generation opportunities through, inter alia, "creating incentives for multinational enterprises to cooperate with national enterprises in order to create productive, freely chosen employment and decent work and to undertake human rights due diligence with a view to ensuring respect for human and labour rights, taking into account the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy."¹⁰⁷

Other more recently adopted ILO non-binding principles and guidelines have incorporated due diligence. Most notably, the MNE Declaration, like the UNGPs, addresses the role of the State, elaborating that its key objectives should "be furthered by appropriate laws and policies, measures and actions adopted by the governments, including in the fields of labour administration and public labour inspection". The Declaration also reflects the primacy of national laws and sovereignty, explaining that "all the parties concerned by the MNE Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards". Its Annex 1 lists international labour standards that are directly relevant to the Declaration.

The MNE Declaration is unique insofar as it directly deals with business responsibilities, derived from ILO normative instruments and the UNGPs. It also clearly addresses corporate due diligence responsibilities, including potential cross-border considerations. The Declaration does not establish new substantive standards but rather focuses on procedural due diligence elements. Although it is a voluntary "soft law" instrument, it remains an important mechanism for promoting responsible supply chain practices of multinational companies operating in or sourcing from developing countries.

The key expectation in the Declaration in relation to due diligence is that:

Enterprises, including multinational enterprises, should carry out due diligence to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts that relate to 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 ILO Declaration on Fundamental Principles and Rights at Work.

In order to gauge human rights risks, enterprises – including multinational enterprises – should identify and assess any actual or potential adverse human rights impacts with

¹⁰⁷ Recommendation No. 205, Para. 11(h).

which they may be involved either through their own activities or as a result of their business relationships. This process should involve meaningful consultation with potentially affected groups and other relevant stakeholders including workers' organizations, as appropriate to the size of the enterprise and the nature and context of the operation. For the purpose of achieving the aim of the MNE Declaration, this process should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process.

In its 2017 revision, the Declaration builds on the 2014 Protocol to the Forced Labour Convention by stating that "[i]n order to suppress forced or compulsory labour, governments should provide guidance and support to employers and enterprises to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced and compulsory labour in their operations or in products, services or operations in which they may be directly linked"¹⁰⁸ and that "[m]ultinational as well as national enterprises should take immediate and effective measures within their own competence to secure the prohibition and elimination of forced or compulsory labour in their operations".¹⁰⁹

While emphasizing the importance and necessity of applying the MNE Declaration "in the context of [...] global supply chains," the MNE Declaration does not specify how it applies to third-party suppliers, beyond a recognition that "multinational enterprises often operate through relationships with other enterprises as part of their overall production process and, as such, can contribute to further the aim of this Declaration."¹¹⁰ The Declaration also specifies that "multinational and national enterprises, wherever the principles of the MNE Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular".

The Declaration references business relationships between enterprises and how multinational enterprises should use their leverage with business partners – especially in the context of grievance mechanisms,¹¹¹ stating that "multinational enterprises should use their leverage to encourage their business partners to provide effective means of enabling remediation for abuses of internationally recognized human rights".¹¹²

The Declaration also states that:

Multinational as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he or she has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure. This is particularly important whenever the multinational enterprises operate in countries with weak labour inspection systems and which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively, to discrimination, to child labour and to forced labour.¹¹³

¹⁰⁸ MNE Declaration, para. 24.

¹⁰⁹ MNE Declaration, para. 25.

¹¹⁰ MNE Declaration, para. 6.

¹¹¹ Note that the Examination of Grievances Recommendation, 1967 (No. 130) is another key source of guidance for enterprises on grievance.

¹¹² MNE Declaration, para. 65.

¹¹³ MNE Declaration, para. 66.

As discussed above, the Declaration's normative weight is limited by its voluntary nature, however, its coverage – incorporating a range of procedural and substantive standards in one instrument – as well as its tripartite development and endorsement have made it a useful overarching reference for governments, social partners and private sector actors, as well as for non-normative activities. Operational tools (including the Company–Union Dialogue procedure and Helpdesk for Business), country-level focal points, and follow-up mechanisms can support dispute resolution as well as enterprise due diligence (for instance through provision of information on context-specific labour risks and standards).

Beyond the MNE Declaration, there is recent ILO non-binding guidance that also addresses due diligence, particularly in the shadow of the forced labour standards. The Alliance 8.7 publication *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains* (2019) provides guidance on the development and operation of due diligence approaches in dealing with the often hidden and difficult to reach issues of child labour, forced labour and trafficking: “There is strong consensus that responsible business conduct, including due diligence through a comprehensive approach, is appropriate for businesses to tackle child labour, forced labour and human trafficking in their global supply chains. Much, however, remains to be done in terms of translating this consensus into practice.” Other examples of non-normative guidance include the *General Principles and Operational Guidelines for Fair Recruitment and Definition of Recruitment Fees and Related Costs* (2019), which sets out a clear definition of due diligence and recommends the adoption of a due diligence standard and process including by calling on governments to raise awareness of both public and private sectors and workers on the “need for human rights due diligence and good practices for recognizing, preventing and eliminating abusive and fraudulent recruitment practices”; enterprises and public employment services to respect human rights when recruiting workers, including through human rights due diligence assessments of recruitment procedures, and should address adverse human rights impacts with which they are involved; and labour recruiters should put in place policies and procedures, including due diligence, to ensure that their recruitment activities are conducted in a manner that treats workers with dignity and respect, free from harassment or any form of coercion or degrading or inhuman treatment.

(iii) ILO normative measures with a multi-jurisdictional aspect

All enterprises must comply with national law regardless of who their customers are or where they are located. Any complexity in apportioning responsibilities for labour rights between enterprises in domestic supply chains is exacerbated in global supply chains. International labour standards create obligations on Member States that are intended to be implemented in national law and practice. It is not, therefore, obvious that international labour standards would be consistently implemented and enforced throughout supply chains that stretch across jurisdictions. Ratification of a Convention or Protocol by one country could not impose obligations on another country that had not equally accepted those obligations, regardless of the existence of global supply chains between the two jurisdictions.

Nevertheless, many international labour standards contain specific provisions relating to international cooperation.¹¹⁴ It is commonplace for standards to refer to the value of enhanced

¹¹⁴ The following Recommendations, for example, include entire parts on international cooperation: Recommendation No. 205, Paras 42–48; Recommendation No. 189, Paras 19–20; Recommendation No. 169, Paras 36–38; Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), Para. 15; [Human Resources Development Recommendation, 2004 \(No. 195\)](#), Para. 21; Recommendation No. 200, Paras 46–50.

international cooperation or collaboration to support domestic implementation.¹¹⁵ Instruments may provide for the international exchange of knowledge, data and expertise,¹¹⁶ international training opportunities,¹¹⁷ or for the possibility of bilateral or multilateral international agreements to support implementation of the instrument.¹¹⁸ Recommendation No. 205 specifies that countries should “reinforce international cooperation and solidarity so as to provide predictable, sustainable and adequate humanitarian and development assistance to support the least developed and developing countries.”¹¹⁹

Other instruments emphasize the need to balance international collaborations with national measures. Early social security Conventions sometimes laid down a system of reciprocity between ratifying States;¹²⁰ the most recently adopted social security instrument, the Social Protection Floors Recommendation, 2012 (No. 202), stresses that while social protection floors should be financed by national resources, countries with insufficient economic and fiscal capacities “may seek international cooperation and support that complement their own efforts.”¹²¹

A number of instruments recognize the global aspect to many of the issues dealt with by standards, making increased international collaboration a necessary or sensible complement to national measures. For example, the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) provides that in view of increasing interdependence within the world economy, national level measures should be accompanied by strengthened international cooperation to “ensure the success of the fight against unemployment.”¹²² The Domestic Workers Convention, 2011 (No. 189) requires countries to adopt all measures within its jurisdiction and “in collaboration with other Members” to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies”.¹²³ Some occupational safety and health instruments regulate the obligations of exporting Member States, recognizing the global dimension to the issues addressed.¹²⁴ The Employment Policy Recommendation, 1964 (No. 122) provides for appropriate measures to encourage the inflow of financial resources from other countries “without prejudicing the national sovereignty or the economic independence of the recipient countries”; a rational use of resources would involve coordination of investments and efforts with those of other countries, especially in the same region.¹²⁵

¹¹⁵ For example, Convention No. 181, Art. 8(1).

¹¹⁶ For example, Convention No. 148, Art. 8(3); Prevention of Major Industrial Accidents Recommendation, 1993 (No. 181), Para. 2(1); Safety and Health in Mines Recommendation, 1995 (No. 183), Para. 5(a); Social Protection Floors Recommendation, 2012 (No. 202), Para. 24(1).

¹¹⁷ For example, Labour Administration Recommendation, 1978 (No. 158), Para. 24; Recommendation No. 195, Para. 5(f).

¹¹⁸ For example, Convention No. 181, Art. 8(2); Recommendation No. 169, Para. 44; Employment Relationship Recommendation, 2006 (No. 198), Para. 7; Social Security (Minimum Standards) Convention, 1952 (No. 102), Art. 68; Indigenous and Tribal Peoples Convention, 1989 (No. 169), Art. 32; Recommendation No. 200, Para. 46.

¹¹⁹ Recommendation No. 205, Para. 29.

¹²⁰ For example, Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) and the Unemployment Convention, 1919 (No. 2).

¹²¹ Social Protection Floors Recommendation, 2012 (No. 202), para. 12.

¹²² Recommendation No. 169, Para. 13.

¹²³ Convention No. 189, Art. 15(1)(c).

¹²⁴ For example, Convention No. 170, Art. 19 and Prevention of Major Industrial Accidents Convention, 1993 (No. 174), Art. 22.

¹²⁵ Recommendation No. 122, Para. 23.

The Forced Labour Protocol and several Conventions addressing migration for employment¹²⁶ promote the coordination of measures between sending and receiving countries in relation to labour migration. The Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) provides for strengthened cooperation between and among Members to suppress forced or compulsory labour. As activities contributing to forced labour may take place in a country other than the country of employment, a multi-jurisdictional response is necessary. Consequently, several countries have taken legislative measures based on the Protocol to address pre-recruitment issues such as fee limits, provision of pre-travel information, contractual requirements, and even guaranteed minimum wages for nationals of one state working in another.¹²⁷

Recommendation No. 189 recognizes the benefits to sustainable small and medium-sized enterprises in accessing international markets,¹²⁸ and creating linkages between national and international bodies and institutions, including organizations of employers and workers.¹²⁹ The MNE Declaration is referred to in a number of instruments, including a number of OSH standards recommending that multinational enterprises (with more than one establishment) provide safety measures or occupational health services to workers in all their establishments, without discrimination and regardless of the place or country in which they are situated.¹³⁰

Finally, some instruments recommend cross-border obligations. The Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), for example, requires Members to “ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to appropriate and effective remedies”.¹³¹ Measures under the Recommendation No. 203 include that all victims of forced or compulsory labour that occurred in one country can pursue remedies in that country, “irrespective of their presence or legal status in the State,” under simplified procedural requirements.¹³² The Worst Forms of Child Labour Recommendation, 1999 (No. 190) recommends that measures aimed at the prohibition and elimination of the worst forms of child labour might include “providing for the prosecution in their own country of the Member’s nationals who commit offences under its national provisions for the prohibition and immediate elimination of the worst forms of child labour even when these offences are committed in another country”.¹³³

Convention No. 94 has been applied in a manner that looks across employers, as well as beyond national jurisdiction. In 2008, in relation to the adoption by the Government of the Netherlands of a sustainable procurement approach incorporating due diligence principles, the CEACR considered extraterritorial application and, referring to its 2008 General Survey, recalled that:

... while the Convention is silent on this point, the dominant focus at the time of adoption was clearly work carried out within the borders of the State of the contracting entity. This does not mean, however, that all contracts with a transnational dimension are excluded from the coverage of the Convention; in the case of contracts involving the use

¹²⁶ Conventions Nos 118, 143, 157 and 189.

¹²⁷ ILO, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, 2015.

¹²⁸ Recommendation No. 189, Paras 2(k) and 16.

¹²⁹ Recommendation No. 189, Para. 19.

¹³⁰ For example, Recommendation No. 171, preamble and Paras 12(2) and 24(3 Recommendation No 181, Para. 6; and Safety and Health in Agriculture Recommendation, 2001 (No. 192), Para. 2.

¹³¹ Protocol No. 29, Art. 4(1).

¹³² Recommendation No. 203, Para. 12(e).

¹³³ Recommendation No. 190, Para. 15(d).

of foreign workers brought for the purpose of the contract, labour clauses would apply. On the contrary, work done outside the contracting State is, in principle, not covered by the provisions of the Convention. The Committee also noted that the issue of labour standards applied in transnational supply chains finally comes down to the understanding given by national authorities to the idea of subcontractors and that, should a Member State desire to do so, contractual labour clause obligations could be applied across borders. As regards the relationship between Convention No. 94 and the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the Committee suggested that the two sets of principles are complementary and stressed the importance of Convention No. 94 as a possible mechanism for promoting core labour standards. As indicated in paragraph 314 of the General Survey, at a time when the ILO core labour standards and the 1998 ILO Declaration are gaining prominence in the field of international human rights law and international trade law, Convention No. 94 offers a unique opportunity and a normative platform with a view to building a comprehensive standard for the promotion of decent labour conditions in public contracts. ¹³⁴

In summary, while international labour standards regulate the world of work in individual Member States, the instruments often include measures to ensure that countries can take full advantage of international cooperation. The global nature of many themes impacting the world of work at the national level, as well as the increasingly global linkages between businesses in countries, is recognized by some instruments.

2.3.3. Enforcement and remedies in supply chains

Workplaces where the employment relationship is difficult to identify, including in complex supply chains, can present a challenge for labour inspectors in ensuring labour law compliance. ¹³⁵ The CEACR recently examined, in particular, the difficulties faced by labour inspectorates in enforcing the application of laws where work is outsourced to homeworkers or informal labour contractors, which includes upstream tiers of some supply chains. ¹³⁶

Enforcement, as a key mechanism to promote compliance, is mainstreamed in a broad range of ILO instruments that aim to address decent work deficits identified in supply chains. The majority of international labour Conventions or Protocols on working conditions and the protection of workers (including up-to-date standards on OSH, working time and wages) ¹³⁷ contain provisions for the establishment of labour inspection, or particularly the appointment of authorities who will be responsible for ensuring the supervision of the application of relevant legislation. ¹³⁸ A number of ILO standards also emphasize the importance of access ¹³⁹ to adequate

¹³⁴ [Direct request](#) of the CEACR concerning Convention No. 94 – Netherlands (published 2009).

¹³⁵ ILO, [Resolutions and Conclusions on labour administration and inspection](#), International Labour Conference, 100th Session, 2011 (para. 17), state: “Labour inspectors face the challenge of ensuring labour law compliance in workplaces that are difficult to detect (e.g. in the agricultural and construction sectors), or where the employment relationship is particular (home-based work, domestic work), or is difficult to identify (new forms of employment, outsourcing and complex supply chains).”

¹³⁶ ILO; [Promoting Employment and Decent Work in a Changing Landscape](#) (2020), para. 329.

¹³⁷ [Overview Document: Background Information Applicable to the Examination of Instruments concerning Labour Inspection](#) (Fourth meeting of the Standards Review Mechanism Tripartite Working Group, 2018).

¹³⁸ ILO, *General Survey on Labour Inspection*, ILC.95/III(1B), 2006, para. 3.

¹³⁹ Art. 4(2)(e) of Convention No. 190.

remedies.¹⁴⁰ Certain ILO standards also include measures for ensuring access to justice¹⁴¹ and other appropriate and effective remedies, including appropriate compensation for damages.¹⁴²

In addition, the ILO standards that deal exclusively with labour inspection have been recognized for their importance for the operation of the whole system of international labour standards: Conventions Nos 81 and 129 have been specifically identified as governance Conventions¹⁴³ and their ratification and effective implementation promoted. These labour inspection Conventions underline the provision of adequate penalties for violations of the relevant legal provisions as an essential aspect for the credibility and effectiveness of a system of inspection.¹⁴⁴ This is most often implemented at the national level through laws and regulations establishing sanctions of fines and terms of imprisonment, depending on the gravity of the violation.¹⁴⁵ More recently, Recommendation No. 203 provided for penalties in addition to penal sanctions, such as the confiscation of profits of forced or compulsory labour and of other assets in accordance with national laws and regulations.¹⁴⁶

Private compliance initiatives, of particular relevance to the discussion on supply chains, are not dealt with extensively in ILO standards. Recent ILO standards have paid attention to the potential of complementary mechanisms for ensuring compliance with national laws and regulations¹⁴⁷ as part of an overall comprehensive compliance strategy, including the use of incentives.¹⁴⁸ Labour inspection standards specifically recognize the important role of effective cooperation between the inspection services and other public or private institutions engaged in similar activities.¹⁴⁹ With respect to supply chains, the ILO supervisory bodies have recognized the role that private compliance initiatives may play in *complementing* the public enforcement of safety and health standards, particularly in relation to the ability of lead firms to monitor supply chain practices, emphasizing that such initiatives do not constitute a substitute for public labour inspection.¹⁵⁰

The principal model of the ILO's international labour standards is based on ratifying states implementing and enforcing instruments within their own territories,¹⁵¹ and most Conventions contemplate protections or obligations that are implemented and enforced within a fixed

¹⁴⁰ Art. 9(2) of Convention No. 177 and Article 14(3) of Convention No. 181.

¹⁴¹ Para. 12 of Recommendation No. 203 and Para. 11(s) of Recommendation No. 204.

¹⁴² Para. 12 of Recommendation No. 203 and [Violence and Harassment Recommendation, 2019 \(No. 206\)](#).

¹⁴³ 2008 Declaration on Social Justice for a Fair Globalization.

¹⁴⁴ Art. 18 of the Labour Inspection Convention, 1947 (No. 81) and Art. 24 of Convention No. 129.

¹⁴⁵ ILO, *General Survey on Labour Inspection*, ILC.95/III(1B), 2006, para. 296. Certain Conventions make specific reference to criminal proceedings and/or sanctions, including Convention No. 182; the [Seafarers' Identity Documents Convention \(Revised\), 2003, as amended \(No. 185\)](#); Protocol of 2014 to the Forced Labour Convention, 1930; and Recommendation No. 206.

¹⁴⁶ Recommendation No. 203, Para 13(b).

¹⁴⁷ For example, with respect to OSH, the Convention No. 187 underlines the importance of "mechanisms for ensuring compliance with national laws and regulations, including systems of inspection" (Art. 4(2)(c)).

¹⁴⁸ For example: Recommendation No. 195; and Recommendation No. 204.

¹⁴⁹ Art. 5(a) of Convention No. 81 and 12(1) of Convention No. 129.

¹⁵⁰ ILO, *Working Together to Promote a Safe and Healthy Working Environment: General Survey on the Occupational Safety and Health Instruments concerning the Promotional Framework, Construction, Mines and Agriculture*, ILC.106/III(1B), 2017, para. 495. See also *Final report: Meeting of Experts on Labour Inspection and the Role of Private Compliance Initiatives*, MEPCI/2013/7, 2016, 24; ILO, *Conclusions concerning decent work in global supply chains*, International Labour Conference, 105th Session, 2016, para. 10.

¹⁵¹ Or, by virtue of art. 35 of the ILO Constitution, those non-metropolitan territories for whose international relations such states are responsible.

jurisdiction where an employment relationship takes place or the work takes place. In that context, cross-border supply chains could be expected to further complicate existing challenges for ILO standards in addressing third-party workforces. While the ILC affirmed, in the context of its 2011 general discussion on labour administration and inspection, “the urgent need to build, foster and maintain sound labour administration and inspection systems” and to expand their coverage to workers in “extended global supply chains”,¹⁵² the multi-jurisdictional dimension of global supply chains may generate certain challenges for efficient enforcement and sustained compliance. State powers to regulate companies outside their national boundaries can be limited. While states may, in some cases, resolve disputes or grant remedies in cases involving foreign actors or conduct in foreign jurisdictions, these examples are relatively limited and primarily governed by concepts of private international law.

Prevailing models of enforcement and remedy are often limited, with regulatory measures enforced by authorities lacking sufficient capacity or resources to monitor most workplaces. The scope of regulation is the national level, and is not focused on addressing questions of workplace compliance in the context of cross-border sourcing of goods and services.

There are several ways in which extraterritorial factors can impact labour rights and working conditions in supply chains. As the 2016 ILC Report on *Decent Work in Global Supply Chains* notes, the host State will not have jurisdiction to hold a foreign firm accountable and the home State may have a significant interest in promoting decent working conditions along global supply chains and ensuring the good conduct of its corporate citizens abroad.¹⁵³

The potential impact of the multi-jurisdictional dimension of global supply chains on enforcement, including in low or weak governance environments, is not specifically addressed in international labour standards. Nonetheless, although the vast majority of ILO normative instruments necessarily focus on implementation in a single jurisdiction, there are some that do incorporate approaches that have a multi-jurisdictional labour dimension as detailed in the section above on multi-jurisdictional aspects. The Recommendation No. 190 and Recommendation No. 203, for example, refer to mutual legal assistance in the context of international cooperation;¹⁵⁴ and Recommendation No. 203 specifically refers to strengthening international cooperation between labour law enforcement institutions, in addition to criminal law enforcement.¹⁵⁵ With respect to the cross-border movement of goods, a small number of OSH Conventions include obligations on importers related to compliance with machine and chemical safety standards.¹⁵⁶

The MLC, 2006 is another example that addresses cross-jurisdictional questions. The Convention is unique due to the specific nature of employment on ships wherein the workplace itself moves between jurisdictions, which is different to the flow of goods through supply chains. There is added complexity due to the “flagging” of ships wherein ships can fly a country’s flag, other than the country of ownership, with possible consequences for the laws regulating working conditions. Several devices within the MLC are used to deal with these challenges, including certification by flagging nations of labour conditions; inspection of ships when in port by whichever state controls the port; and declarations of compliance with labour standards by shipowners. Most of the principles that underpin the Convention are derived from a combination

¹⁵² ILO, [Resolution and Conclusions concerning labour administration and labour inspection](#) (2011).

¹⁵³ ILO, *Decent work in Global Supply Chains*, ILC.105/IV, 2016, para. 121.

¹⁵⁴ Recommendation No. 190, Para. 16(b) and Recommendation No. 203, Para. 14.

¹⁵⁵ Recommendation No. 203, Para. 14(a).

¹⁵⁶ Convention No. 155; Convention, No. 184; Convention No. 170 and Recommendation No. 177.

of ILO normative standards and existing maritime rules. However, the certificate, inspection, declaration, and enforcement mechanisms are novel.

In summary, existing ILO instruments address the challenges of effective enforcement in national contexts, and certain instruments contemplate cross-border implementation and remedy.

2.3.4. Supervisory mechanisms and decent work in supply chains

The ILO supervisory bodies have considered the issue of supply chains in their supervision of the international labour standards, in which some of the themes and questions addressed above have been raised.

The focus of the CEACR's supervision is the national level.¹⁵⁷ Given the relevance of ILO standards to many key decent work deficits in supply chains, it is not unexpected that, when reporting on efforts to apply ratified standards, Governments have provided information on implementing initiatives focused on supply chains, particularly in reports on Conventions on child labour,¹⁵⁸ forced labour,¹⁵⁹ employment policy,¹⁶⁰ home workers,¹⁶¹ collective bargaining,¹⁶² safety and health,¹⁶³ social policy,¹⁶⁴ and discrimination.¹⁶⁵ While sometimes requesting further information, the CEACR has not often included detailed recommendations to governments of action to be taken in relation to supply chains.

Moreover, the CEACR has had the opportunity to examine the issue of supply chains in a 2020 general observation on the application of the Employment Policy Convention, 1964 (No. 122). In the context of the COVID-19 pandemic, the Committee noted that certain key economic sectors had been devastated, such as tourism, aviation and others, including global supply chains, or had been severely disrupted, "in many cases leaving workers at the end of the chain with few options but to seek alternative employment as and where they can".¹⁶⁶

¹⁵⁷ As described in the mandate of the CEACR, published in the Committee's General Report, the CEACR's non-binding recommendations are intended to guide the action of *national* authorities: ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, ILC.109/III(A), 2020, para. 36.

¹⁵⁸ For example: Observation of the CEACR concerning Convention No. 182 – Democratic Republic of the Congo (published 2018); Direct request of the CEACR concerning Convention No. 182 – Kyrgyzstan (published 2021); Observation of the CEACR concerning Convention No. 182 – Malawi; Direct request of the CEACR concerning Convention No. 182 – Mexico; Observation of the CEACR concerning Convention No. 182 – Turkey (published 2018); Observation of the CEACR concerning Convention No. 138 – Mali (published 2019); Observation of the CEACR concerning Convention No. 138 – Mauritania (published 2021); Direct request of the CEACR concerning Convention No. 138 – Philippines (published 2008).

¹⁵⁹ For example: Observation of the CEACR concerning Convention No. 29 – Brazil (published 2016); Direct request of the CEACR concerning Convention No. 29 – Portugal (published 2021); Direct request of the CEACR concerning Convention No. 29 – Mali (published 2021).

¹⁶⁰ For example: Observation of the CEACR concerning Convention No. 122 – Thailand (published 2021); Direct request of the CEACR concerning Convention No. 122 – Viet Nam (published 2021); Direct request of the CEACR concerning Convention No. 122 – Zambia (published 2016).

¹⁶¹ For example: Observation of the CEACR concerning Convention No. 177 – Bulgaria (published 2019).

¹⁶² For example: Observation of the CEACR concerning Convention No. 98 – Philippines (published 2013).

¹⁶³ For example: Observation of the CEACR concerning Convention No. 127 – Peru (published 2015); Observation of the CEACR concerning Convention No. 187 – United Kingdom of Great Britain and Northern Ireland (published 2011).

¹⁶⁴ For example: Direct request of the CEACR concerning Convention No. 117 – Guatemala (published 2014); Direct request of the CEACR concerning Convention No. 117 – Senegal (published 2021).

¹⁶⁵ For example: Observation of the CEACR concerning Convention No. 100 – Honduras (published 2021).

¹⁶⁶ *General Observation (CEACR) – adopted 2020, published 109th ILC Session (2021) on the Employment Policy Convention, 1964 (No. 122).*

The CEACR has also considered the question of supply chains through its examination of unratified Conventions and Recommendations in its annual [General Survey](#). In the most recent General Survey,¹⁶⁷ adopted at the CEACR's sessions in 2019 and 2020, the Committee examined supply chains through the lens of ILO standards on home workers and the informal economy. With respect to the implementation of the [Home Work Convention, 1996 \(No. 177\)](#) and the [Home Work Recommendation, 1996 \(No. 184\)](#), the Committee noted that home work is “an important element in both domestic and global supply chains, and is prevalent at the lowest levels of subcontracting chains” and due to disruptions related to the pandemic in 2020 “homeworkers, who are often on the lower tiers of supply chains, have been particularly badly affected as their orders and supplies have been interrupted, with a consequent loss of income”.¹⁶⁸ On the application of the [Transition from the Informal to the Formal Economy Recommendation, 2015 \(No. 204\)](#), the CEACR noted that “[s]upply chains create opportunities for formal employment relationships that are compliant with international labour standards”.¹⁶⁹ It concluded that “multiple-party employment arrangements, especially in local and global supply chains, also have a clear impact on the development of informality. By seeking more work at lower prices in a shorter time, successive layers of subcontracting places excessive pressure on some tiers of supply chains. This pressure, combined with excessive competition between countries and enterprises to obtain the contracts, is also an element at the origins of informality.”

The CEACR concluded that further research was needed “on the influence of global supply chains on the formalization or informalization of national economies, as well as on the interlinkages between the increase in work arrangements other than the standard employment relationship and global supply chains”.¹⁷⁰ The Committee called “on governments and the social partners to strengthen dialogue across borders with a view to ensuring the adequate enforcement of national legislation in a context of full respect for the fundamental principles and rights at work of all workers at all levels of the supply chain”.¹⁷¹ In addition, the CEACR indicated that in the context of an ever-growing and increasingly integrated market, governments should adopt coordinated measures to foster decent work within supply chains at both national and global level. In this respect, Governments should encourage multinational enterprises to respect fundamental principles and rights at work; multinational enterprises play a fundamental role in the development of global supply chains and have a corresponding responsibility to exercise due diligence to identify, prevent, mitigate and redress rights violations.¹⁷²

The CEACR has further considered the impact of supply chains on the implementation of Conventions in its general surveys on [working time instruments](#)¹⁷³, [OSH instruments](#)¹⁷⁴ and [right of association and rural workers' organizations instruments](#).¹⁷⁵

Members of the tripartite Committee on the Application of Standards (CAS) have also referenced global supply chains in their interventions in Committee discussions of individual

¹⁶⁷ ILO, [Promoting Employment and Decent Work in a Changing Landscape](#) (2020) and its [addendum](#) (2021).

¹⁶⁸ ILO, [Promoting Employment and Decent Work](#) (2020), para. 482, and its addendum (2021), para. 179.

¹⁶⁹ ILO, [Promoting Employment and Decent Work](#) (2020), paras 329 and 473.

¹⁷⁰ ILO, [Promoting Employment and Decent Work](#) (2020), para. 990.

¹⁷¹ ILO, [Promoting Employment and Decent Work](#) (2020) para. 990.

¹⁷² ILO, [Promoting Employment and Decent Work](#) (2020) para. 1067(f).

¹⁷³ ILO, [Ensuring Decent Working Time for the Future: General Survey concerning Working-Time Instruments](#), ILC.107/III(B), 2018, para. 845.

¹⁷⁴ ILO, [Working Together to Promote a Safe and Healthy Working Environment](#), ILC.106/III(1B), 2017, para. 495.

¹⁷⁵ ILO, [Giving a Voice to Rural Workers: General Survey concerning the Right of Association and Rural Workers' Organizations Instruments](#), ILC.104/III(1B)2015, paras 46, 47 and 282.

cases.¹⁷⁶ The CAS has not, however, adopted any conclusions on the application of ratified Conventions by individual countries which specifically reference global supply chains. *The Committee has, however, adopted consensual outcomes in its consideration of General Surveys, which include the topic of supply chains. In particular, in 2015, the CAS noted that the right of association of agricultural workers was linked with issues currently being tackled by the ILO, including decent work in global supply chains, and that global supply chains had accentuated the challenges related to the lack of clarity in labour relationships.*¹⁷⁷ In 2017, the CAS emphasized the need to promote OSH in global supply chains.¹⁷⁸

The analyses of the supervisory mechanisms in relation to supply chains are an important point of reference for ILO non-normative work.

► 3. ILO non-normative measures in relation to supply chains

The Office assists Member States to realize “normative” outcomes described in international labour standards: Conventions, Recommendations or Protocols. Compliance with (ratified) standards is achieved through measures including regulatory reform, effective enforcement, sustained enterprise compliance and mature social dialogue based on freedom of association and collective bargaining rights. Office assistance to constituents may include providing information, building capacity and raising awareness, developing an evidence base or facilitating dialogue. In principle, *all* action by the Office is guided by international labour standards or directed toward their promotion.

In practice, there is significant overlap between normative and non-normative measures. For instance, the ILO Helpdesk for Business – which, as an operational tool of the MNE Declaration established by the Governing Body, is ostensibly “normative” – provides practical assistance to enterprises to understand international labour standards and apply principles of these standards in their business operations and supply chains.¹⁷⁹ Similarly, policy dialogue that results in legal reform, new labour market institutions or integration of decent work in binding strategies may be seen to have a hybrid normative/non-normative character.

Thus, the discussion of “non-normative” measures here is not intended to imply a strict distinction as, in fact, there is significant synergy and complementarity between normative and non-normative measures.

¹⁷⁶ For example: Individual Case (CAS) – Discussion: 2019, 108th ILC Session (2019), Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Philippines; Individual Case (CAS) – Discussion: 2017, 106th ILC Session (2017), Worst Forms of Child Labour Convention, 1999 (No. 182) – Afghanistan; Individual Case (CAS) – Discussion: 2017, 106th ILC Session (2017) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Bangladesh; Individual Case (CAS) – Discussion: 2017, 106th ILC Session (2017) Worst Forms of Child Labour Convention, 1999 (No. 182) – Democratic Republic of the Congo; and Individual Case (CAS) – Discussion: 2016, 105th ILC Session (2016), Abolition of Forced Labour Convention, 1957 (No. 105) – Turkmenistan.

¹⁷⁷ ILO, [Conference Committee on the Application of Standards – Extracts from the Record of Proceedings](#). ILC, 104th Session, (2015), para. 113 (sub-para. 3 and 10).

¹⁷⁸ ILO, [Conference Committee on the Application of Standards – Extracts from the Record of Proceedings](#). ILC, 106th Session, (2017), para. 138 (sub-para. 5).

¹⁷⁹ The Helpdesk responds to questions from any enterprise, but the large majority of the users are MNEs wishing to align their policies and practices with principles of international labour standards and the MNE Declaration because of their global operations, spanning different legal territories with potentially different legislation.

As approved by the Governing Body in 2017,¹⁸⁰ ILO non-normative interventions have prioritized actions in “sectoral [global supply chains] ... in countries where evidence suggests significant decent work deficits in the sector”.¹⁸¹ As a result, and stemming also from previous trends, ILO supply chain interventions are generally targeted in less-developed countries, rather than supply chains within or between countries with strong governance. Nonetheless, it should be noted that supply chain dynamics *can* also contribute to decent work deficits in countries in which governance is considered strong, i.e. influence working conditions in domestic supply chains. However, even though these deficits may be substantial, they do not tend to be found at a systemic level in other parts of the economy.

In assessing potential gaps in current non-normative measures pursued by the ILO, the review posed the following central questions:

1. To what extent do ILO non-normative interventions address the full range of drivers of decent work outcomes in supply chains?
2. To what extent do ILO non-normative interventions address the greatest deficits in and strengthen the capacity of Member States to pursue decent and productive work in supply chains, including through sectoral approaches?
3. Are there gaps in ILO use of supply chains as a strategic entry point to promote decent work with respect to specific decent work deficits and/or with respect to specific actors?

Essentially, ILO non-normative supply chain interventions are mostly rooted in a specific conception of supply chains that takes advantage of the economic weight or high profile of a given industry – due to its role in a local economy, for example – and the perceived leverage and sensitivities of key stakeholders within it, usually foreign-based MNEs, to incentivize improvements in working conditions. For the ILO, supply chains are a flexible “entry point,” and it treats them both as a domain and a tool.

A substantial portion (though certainly not all) of the ILO’s supply chain engagement has involved supply chains associated with large MNEs headquartered in the global North (and generally concentrated in the apparel, electronics, and fast-moving consumer goods and other industries) with direct supply chain partners in the global South. Some ILO programmes, for example in the cotton sector, use a supply chain angle to address specific decent work deficits and associated governance gaps further upstream, and where differentiating between “domestic” and “global” chains may be secondary.¹⁸²

3.1. National and sectoral-level drivers

The drivers of decent work deficits in supply chains, as noted above, reflect multiple dimensions, depending primarily on the national governance context, including: the social, environmental, economic, legal and labour market situation in the area or country in question, and variables including the characteristics of the sector; general and individual enterprise compliance; and supply chain structure and dynamics, specifically where these serve to exacerbate existing governance deficits.

Many of the fundamental, contextual drivers of decent work deficits in supply chains derive from systemic governance issues on which the ILO has traditionally offered support to

¹⁸⁰ GB.329/INS/3/2.

¹⁸¹ See, inter alia, ILO, [Revised ILO Programme of Action on Decent Work in Global Supply Chains, Annex I](#).

¹⁸² ILO, [Project ACCEL Africa: Accelerate action for the elimination of child labour in Africa](#).

constituents at the country level, which along with sectoral activities constitute much of the ILO's programmatic work. In other words, many ILO interventions at national and enterprise level, from guidance on the application of international labour standards to sustainable enterprise development, take place within supply chains, but as part of ILO's core means of action, rather than specific supply chains interventions. An assessment of the gaps in ILO's response to national decent work deficits would in many ways differ little from an analysis of "standard" ILO measures to promote its normative mandate, for example through Decent Work Country Programmes (DWCPs). DWCPs as well as other major ILO interventions and strategies at national, regional, and global/thematic level, are subject to regular review by the Governing Body, including through High-level evaluations.¹⁸³

This does not overlook the significant role in policy development and creation of an enabling environment for sustainable enterprise that the ILO can play through all levels of supply chains, through DWCPs and UN country frameworks. It is always important for the ILO to engage – upon request from Member States – with broader domestic policy development, including with a strong link to employment policies (particularly in light of the re-emergence of industrial policy as central element in many national responses to COVID-19).¹⁸⁴

As noted earlier, supply chains can be seen as a "domain" or tool for the ILO's work rather than a discrete category of activity. In support of its mandate to strengthen national institutional capacities in Member States with significant governance gaps, locating national- and sectoral-level interventions in the context of supply chains potentially heightens their relevance.¹⁸⁵ In such situations, in view of its convening power and normative mandate, ILO can promote policy responses that advance progress on the complex, contextual drivers through which supply chains – including intermediate, i.e., "domestic" supply chains – can be used to promote decent work.

3.1.1. Supply chain drivers

Unlike ILO normative measures, in practice, ILO non-normative measures are able to engage with supply chain actors who are not necessarily part of a direct employment relationship – i.e., with MNEs in various supply chains.

Depending on the local governance context and the capacity of individual employers, the same commercial practices may have different impacts at the workplace level. Recognizing this, some enterprises and governments are engaged in activities to understand and mitigate the potential consequences of business practices on both social and environmental outcomes.¹⁸⁶ In some cases, engagement with supply chains and supply chain actors enables ILO to support the commitments and responsibilities taken by buyers.

¹⁸³ ILO, [Annual evaluation report 2020–21](#).

¹⁸⁴ Hence also the importance of partnerships with other international organizations, such as the OECD, UNCTAD, UNIDO – this is particularly relevant in the joint EU–ILO–OECD project on Responsible Supply Chains in Asia where the OECD opened the door to other ministries than the traditional ILO counterparts, and the EU to Trade Ministries. Moreover, the ILO's partnership with UNCTAD and WAIPA has opened doors to ministries dealing with FDI.

¹⁸⁵ This may serve to enhance their effectiveness. The 2019 Synthesis Review notes that "the policy outcomes of other ILO development cooperation activities and projects might be enhanced by exploiting potential linkages with GSCs and building these into project design", which could suggest a supply chain perspective could be further integrated and mainstreamed in Country Diagnostics and DWCPs. Finally, though this study was concerned with global supply chains, in principle the concept would hold for domestic and intra-regional supply chains, if and where the upstream stakeholders' interest and leverage were similar.

¹⁸⁶ See for example the [Decent Work Toolkit for Sustainable Procurement](#) developed by the Decent Work in Global Supply Chains Action Platform, which consists of participating companies of the UN Global Compact and UN partners, ILO and UNICEF.

In fact, many ILO supply chain activities are centred on a specific dynamic: a cross-border supply chain in which actors are willing to contribute to decent work in supply chains and where there is national political commitment to work with the ILO to address governance deficits. In this dynamic, the drivers targeted by the ILO range from utilising the incentives that external enterprises (and regulators) can establish to foster compliance and sustainability where public enforcement is weak, to encouraging change in the actions of demand-side enterprises – including purchasing practices.

Other ILO development cooperation activities make use of supply chains – through engagement with large enterprises and MNEs – to attract participants. For instance, the SCORE programme has allied with firms at the consumer-facing end of a supply chain, finding this an effective means of recruiting businesses to the programme.¹⁸⁷

Likewise, the Vision Zero Fund takes engagement with the private sector as crucial in its efforts to improve safety and health. This includes engaging with global buyers or MNEs in support of the Fund's ultimate objective of eliminating severe and fatal accidents and diseases in global supply chains.¹⁸⁸ Notably, the Vision Zero Fund's comprehensive framework explicitly seeks to make an impact beyond its targeted supply chains: country-level supply chains are an entry point to promote change at the (national) institutional and policy levels, which have a domino effect on the economy as a whole.

Such approaches have brought successes. As a 2019 synthesis review of ILO interventions in global supply chains noted, *“the main factors found to influence the results of projects targeting both deficits and opportunities in [global supply chains] included: the active involvement of brands, international buyers and multinational enterprises in project implementation”*. Similarly, the 2019 Independent Evaluation of ILO's Public-Private Partnerships suggested that *“with respect to global supply chains, the ‘clout’ brought to bear by individual or multiple large buyers that serve as private sector partners can be brought to bear more frequently and systematically to achieve ILO's objectives throughout supply chains”*.

In garment and footwear supply chains, Better Work's basic model – engagement with tripartite constituents as well as global brands, retailers and manufacturers – allows the programme to deal with multiple linked root cause drivers of decent work deficits, for example dynamics and pressures in the supply chain in a weak governance context. Notably in the garment sector, new networks are emerging to give voice to supplier enterprises alongside buyers.¹⁸⁹

¹⁸⁷ See: High-level evaluation of ILO's strategy and action for promoting sustainable enterprises 2014–19, 57. In Turkey, for example, the ILO allied with some success with H&M to encourage participation by their suppliers; and Inditex paid for four of their supply chain firms to participate. A mid-term review of SCORE Global noted that one of two specific outcomes sought in Phase III was to encourage lead buyers to support SCORE through promoting to businesses in their supply chain. It further noted that while ILO had been successful to some extent in identifying and engaging lead buyers, the performance here was “much lower than anticipated”, 15.

¹⁸⁸ At country level, the Fund has engaged with local suppliers and representatives of global buyers since its inception. This has resulted in increased capacity of local business owners to improve OSH conditions at their workplace; promotion of social dialogue between tripartite constituents and private sector actors on OSH in GSCs within the framework of collective action; better access to private sector data, knowledge, expertise and/or experience in support of the project's objectives; and enhanced impact and reach of the Fund's various awareness-raising campaigns, to name a few. At global level, the Fund mobilized resources for its work through a public-private partnership (PPP) with Siemens, and is actively engaged in efforts to expand the list of private sector donors and partners. In addition, the Fund is placing increasing emphasis on engagement with industry associations or multi-stakeholder initiatives with broad private sector membership.

¹⁸⁹ In the garment sector, four major industry associations, the Indonesian Textile Association (API), the Turkish Clothing Manufacturers Association (TCMA), the Istanbul Ready-Made Garments Exporters' Association (IHKIB) and the Moroccan Association of Textile & Clothing Industries (AMITH) have joined the [STAR Network](#), a new initiative by Asian manufacturer associations to drive better purchasing practices in the textile and garment industry. This marks a joint global effort led

These issues are increasingly of interest to other stakeholders in responsible business conduct, such as the OECD, whose Garment Guidance incorporates the expectation that companies address their purchasing practices as part of their due diligence. Buyer engagement also allows Better Work to strengthen compliance behaviour at the supplier enterprise level by using incentives and commitments from buyers, including to support suppliers in remediation processes and, more recently, enhanced collaboration with Ministries of Labour.¹⁹⁰

The ILO is strongly positioned to act on challenges on both the supply and the demand sides of the labour market, however, there is scope for the ILO to further harness the efforts and responsibilities of enterprises of all sizes and types, state-owned enterprises, and other actors. Beyond Better Work, there are few examples¹⁹¹ of ILO direct engagement with supply chain dynamics – including business relationships, as factors affecting decent work outcomes in supply chains.

There remains, in the literature and practical application of the ILO and other institutions, a gap in the understanding of how, and under what circumstances, competitive pressures in a supply chain can influence decent work outcomes directly and indirectly, and how and to what extent different actors' leverage can best be put to use (e.g., within “domestic or global” supply chain tiers). This would help prioritize and introduce systemic application of those interventions that can most effectively complement other ILO efforts to drive sustainable improvements in working conditions and compliance, as well as those of constituents and stakeholders.¹⁹²

3.1.2. Enterprise-level drivers of decent work outcomes

It is notable that activities to support and enable enterprise compliance– for instance, through the development of HR management systems and industrial relations arrangements – are fewer than those focusing on national level enforcement, with the strongest examples of efforts to support enterprise compliance being ILO supply chain-focused programmes Better Work, SCORE and Vision Zero Fund.

Workforce and managerial skills are both important drivers of productivity growth at the enterprise level. Firm-level productivity is also a crucial factor in enabling enterprises to create and sustain decent, productive jobs and to harness the benefits of supply chain integration. As noted in a recent report on decent work and productivity, *“the wider the productivity gap between micro, small and medium-sized enterprises and large companies, the greater the wage differentials and income inequalities at national level, and the less the opportunity to participate in supply chains”*.

Evidence from nearly 6,000 enterprises in 16 countries shows a strong positive correlation between management practices and enterprise performance, suggesting that the better the quality of management, the greater the total factor productivity. This suggests a strong synergy – already identified by Better Work, SCORE and Vision Zero Fund – between enterprise management of labour compliance and efficient management of production and operations¹⁹³ (and the need to ensure these approaches respond to real needs, to facilitate appropriation by

by supplier-manufacturers to establish a common position on payment and delivery conditions in the industry. Further, in June 2021 a group of multi-stakeholder initiatives drafted a [Common Framework for Responsible Purchasing Practices](#) in the garments and textile sector.

¹⁹⁰ See [Our Partners: Brands and Retailers, Better Work](#).

¹⁹¹ ILO, [ILO Approach to Strategic Compliance Planning approach for Labour Inspectorates](#) seeks to incorporate assessment of mismatched powers, including in the context of supply chains, 2017.

¹⁹² As an example, see ILO, [Advancing decent work in Vietnam: strengthening dialogue along the electronics supply chains](#).

¹⁹³ Note: Better Work has the most extensive firm-level evidence base, given the nature of the programme.

employers and their organizations).¹⁹⁴ This complements the ILO's Strategic Compliance approach to labour inspection, which targets highest risk *and* seeks to enable sustained compliance.

3.1.3. Foregrounding social dialogue in supply chains

Social dialogue at all levels is crucial to promote effective and sound industrial relations and therefore social justice in the world of work. The ILO is the clearest global voice in advocating that constructive and effective social dialogue at the workplace, and positive industrial relations at the national and sectoral levels, can make a significant contribution in efforts to achieve workplace compliance in supply chains.

At the enterprise level, the presence of workers' organizations and the respect for the right to freedom of association and the effective recognition of the right to collective bargaining are critical in amplifying the impact of compliance efforts: Better Work notes that workplace unionization and collective bargaining are associated with lower non-compliance related to salaries and benefits, contracts, and occupational safety, health, and welfare standards.¹⁹⁵ Additionally, the 2019 synthesis review, observing that "workers' and employers' organizations also play vital roles in effectively supporting compliance with national legislation and international labour standards through social dialogue and sound industrial relations," highlighted that industrial relations systems "can be underestimated as means of addressing decent work deficits in [global supply chains]".¹⁹⁶

- At the sectoral level, social dialogue can help tailor regulations to sector-specific needs. In addition to enterprise-level bargaining, expanding the level of bargaining above the enterprise (at industry or branch level) can reduce workplace conflict, thereby enhancing management-worker cooperation and encouraging a focus on improving work organization and productivity.
- At the national level, collaboration between social partners is a key prerequisite for establishing policy frameworks and activities to promote decent work. Laws and regulations adopted with tripartite consensus are more likely to be implemented at the workplace level. Economic and Social Councils (and similar institutions) can play a key role in promoting workplace compliance, including in global supply chains.¹⁹⁷ Furthermore, as noted above, there is a key role for social dialogue in applying and monitoring trade-related instruments,¹⁹⁸ as well as ensuring access to justice and non-judicial grievance mechanisms.

¹⁹⁴ See also sector-specific projects targeting productivity as an enabler of decent work in supplier enterprises, for example, the Decent Work in the Garment Sector Supply Chains in Asia's [Framework For Enhancing Factory-Level Productivity](#).

¹⁹⁵ A recent High-Level Evaluation of ILO's Strategy and Action For Promoting Sustainable Enterprises noted "*the potential that SCORE, in dealing with non-unionized SMEs, might be "sending the wrong signals" or even inadvertently undermining standards and workers' rights. This a difficult issue for the ILO to navigate. While promotion of social dialogue is at the heart of the SCORE approach, the low union coverage of the SME sector means that the programme is often engaging with workers, but not with unions. Workers' representatives interviewed in the evaluation were especially uneasy about this. As one said, there is a danger in focusing too much on "delivering on the project document, but not adhering to the ILO mandate" in the process. On the other hand, there is potential for programmes such as SCORE to improve social dialogue and industrial relations in enterprises that would otherwise remain in the shadows.*"

¹⁹⁶ ILO, *ILO Decent Work Interventions in Global Supply Chains: A Synthesis Review on Lessons Learned; What Works and Why, 2010–2019*, 2019

¹⁹⁷ ILO, *Multinational Enterprises and Inclusive Development: Harnessing National Social Dialogue Institutions to Address the Governance Gap*, 2017.

¹⁹⁸ Labour-related clauses in some bilateral and multilateral trade agreements envisage consultations with national employers' and workers' organizations on the implementation of their labour provisions. They also allow any concerned

- The 2016 ILC Conclusions concerning decent work in global supply chains call on the Office to “[p]romote effective national and cross-border social dialogue, thereby respecting the autonomy of the social partners”. Particularly relevant to the cross-border context, the Conclusions add that “[w]hen social partners decide to negotiate international framework agreements, the ILO could support and facilitate the process, on joint request, and assist in the follow-up process, including monitoring, mediation and dispute settlement where appropriate”. The 2018 ILC Conclusions concerning the second recurrent discussion on social dialogue and tripartism also call on the Office to enhance the capacity of constituents and social dialogue institutions to “play a stronger role in an international context, in particular through cross-border social dialogue based on knowledge and research provided by the ILO”.
- The 2019 Meeting of Experts on Cross-border Social Dialogue¹⁹⁹ confirmed that “Cross-border social dialogue (CBSD) is an essential aspect of ILO governance and fundamental for carrying out its mandate,” further recognizing that “spaces for cross-border social dialogue have multiplied in response to deepening globalization, regional integration and digitization. It has created opportunities for promoting international labour standards (ILS) in particular FPRW; establishing a level playing field; coordinating social policies in more interconnected economies; and addressing decent work deficits.”

The guidelines contained in the MNE Declaration can speak to all of the above levels. It clarifies that the “meaningful consultation” with potentially affected stakeholders that should be part of any due diligence process, should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue in the ongoing processes to achieve the Declaration’s aims.²⁰⁰ The Declaration contains a specific section on industrial relations with recommendations addressed to governments, social partners and (multinational and national) enterprises in the areas of freedom of association, collective bargaining, consultation, access to remedy and examination of grievances, and settlement of industrial disputes. The Declaration also paves the way for cross-border dialogue by encouraging the host and home country governments of MNEs to engage in consultations to promote good social practice by MNEs operating in their territories, or their MNEs operating abroad, and to be prepared to have consultations with each other. It also provides for a company–union dialogue procedure involving MNEs and representatives of the workers affected.²⁰¹ All ILO member States are also encouraged to appoint on a tripartite basis national focal points for the promotion of the MNE Declaration taking guidance from Convention No. 144. Among the activities that these national focal points may wish to consider, feature the organization of tripartite-plus dialogue platforms for the tripartite constituents and multinational enterprises to discuss opportunities and identify challenges presented by operations of multinational enterprises in the national

entity, including workers’ and employers’ organizations, to submit concerns about the failure of the parties to the agreements to honour their labour commitments. However, the operationalization of social dialogue provisions has room for improvement. A lack of capacity of institutions and social partners in certain countries, limited transparency and the allocation of insufficient resources to facilitate cross-border dialogue are among the possible constraints (see [Cross-border Social Dialogue](#), 2019).

¹⁹⁹ ILO, [Tripartite Meeting of Experts on Cross-border Social Dialogue](#).

²⁰⁰ ILO, [Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy](#) (2017), para.10.

²⁰¹ ILO, [Company-Union Dialogue](#). The procedure has recently gained additional visibility outside the ILO. See for example [Finland’s Agenda For Action On Business And Human Rights](#).

context. Such dialogues could build on past experiences, lessons learned and best practices; and they could also encompass dialogues between home and host countries.²⁰²

It can be helpful in developing partnerships to address many of the challenges which neither governments nor companies can address on their own, including multi-stakeholder partnerships and international cooperation initiatives.

3.2. To what extent do ILO non-normative interventions address the greatest and most current decent work deficits?

3.2.1. Reaching enterprises and workers upstream

Many of the most vulnerable workers in any country are those in the rural economy and informal economy workers. In a supply chain context, this usually means workers in upstream, non-export workplaces. The ILO's rural and informal economy activities are therefore pertinent to make decent work a reality for these workers.

While a considerable number of ILO supply chain projects and programmes focus on "upstream" vulnerable workers in various commodities (usually in developing economies) these programmes are seldom linked up to final "downstream" actors.

As noted in the 2019 Mid-term report to the Governing Body on the global supply chain programme of action, *"the commitment to focus 'across entire supply', chains would require more coherence and coordination"*.²⁰³ There are insufficient linkages between *"activities that address national-level capacities to strengthen compliance with international labour standards"*, and *"activities directly targeting supply chain actors"*, which *"have tended to concentrate on the top and bottom tiers of supply chains, to cover specific decent work deficits or to focus on employment generation, skills, or preparedness for supply chain participation"*.

Further, *"very little research has addressed the issue of intermediate or lower tier suppliers, especially homeworkers or informal workers (or workers in informal enterprises) ... most ILO research does not examine the growing interconnections generated by GSCs between industries as well as the interconnections between manufacturing and services"*.²⁰⁴

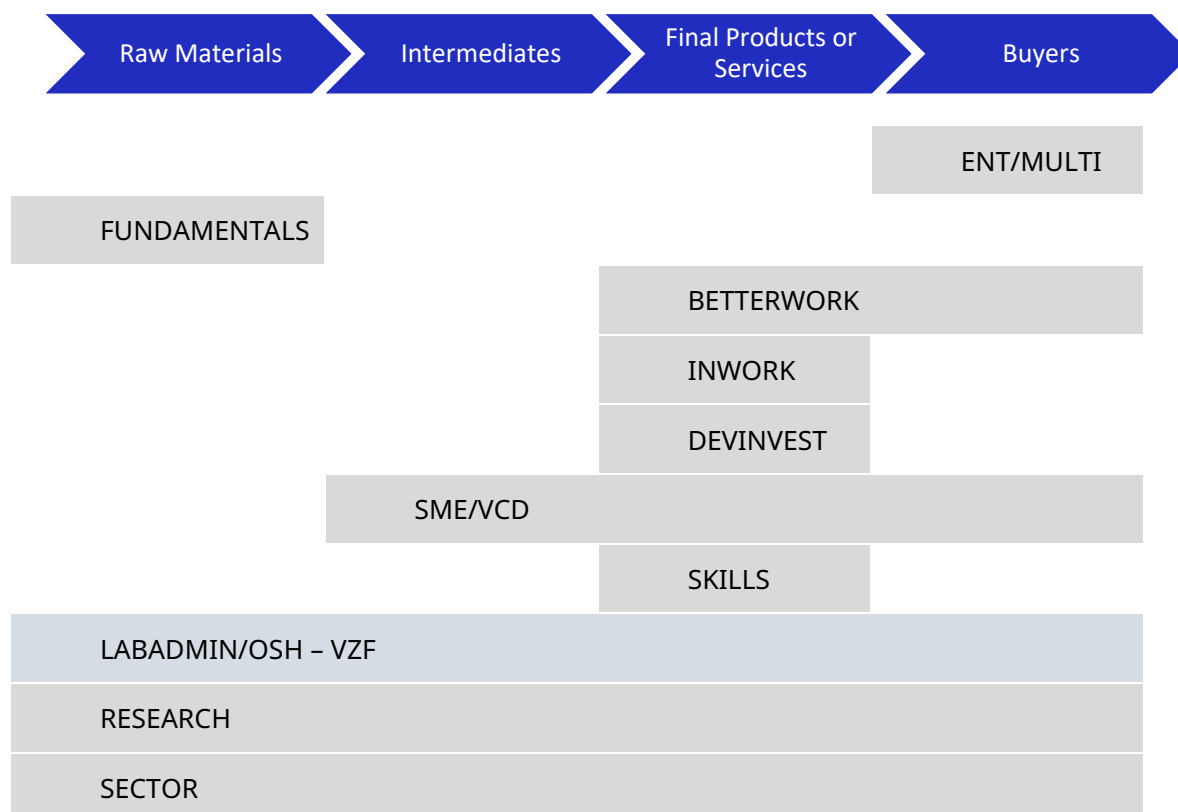
²⁰² "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy" (2017), Annex II, Operational tools – tripartite appointed national focal points.

²⁰³ Though the Programme of Action focuses explicitly on "global" supply chains, an "entire supply chain approach" would, by definition, comprise both domestic and global supply chains.

²⁰⁴ Note: The table is limited to interventions in working conditions, and omits the social protection dimension of decent work.

This reflects in part a general division of tasks and focus between different departments, outlined in an internal mapping exercise commissioned by the Office in 2020:

Supply chain stages and focus areas of ILO departments



Adapted from: Frederick 2020 (unpublished).

A gap may also be noted in the lack of significant linkages, even in otherwise coordinated interventions, to “upstream” supply chains (for example, in the “One-ILO project on Decent Work and Inclusive Industrialization in Ethiopia”, ²⁰⁵ there are limited linkages made to “upstream” supply chain workers in domestic cotton cultivation (though this is currently under consideration)). ²⁰⁶ However, this is increasingly being addressed. For example, the new Better Work strategy indicates that, in selected countries, the programme will expand its work both with domestic manufacturers in order to reach workers further upstream in the supply chain, including in the informal economy. The project Towards Fair and Sustainable Global Supply Chains: Promoting Decent Work for Invisible Workers in South Asia, focuses on upstream supply chain workers, including home-based workers, informal economy workers and subcontractors. ²⁰⁷ Another project in the Rajasthan stone sector also connects the global and domestic dimensions. ²⁰⁸

²⁰⁵ ILO, *Advancing Decent Work and Inclusive Industrialization in Ethiopia*.

²⁰⁶ The 2022–27 Strategy for Better Work also proposes to expand its efforts to upstream supply chains tiers, including in the informal economy.

²⁰⁷ ILO, *National Capacity Building and Planning Workshop: For Central Trade Unions and Membership Based Organizations Working with Homebased and Informal Workers in Lower Tiers of Supply Chains, 30–31 January 2019, New Delhi: a Brief Report*, 2019.

²⁰⁸ ILO, *Challenges and Opportunities for Productive Employment and Decent Work in the Natural Stone Mining Industry Supply Chain in Rajasthan*, 2021.

Some other ILO programmes also go beyond tier one and try to work across certain tiers, but this approach is not widespread.²⁰⁹

There are a range of emerging activities undertaken by constituents – and outside the ILO – which aim to coordinate actors through the length of whole supply chains, in order to address more structural issues relating to supply chain equity and distribution of value through the chain.²¹⁰

Harnessing the positive potential of supply chain integration to generate jobs and foster and sustain productive and decent work is also key to ILO activities – especially where Member States wish to develop specific industries or strengthen backward trade linkages. However, while MNEs and global buyers are key actors in supply chain interventions, they are not necessarily the starting point. SME-focused programmes, for example, are delivering important results: a recent evaluation found that *“the implementation of both SCORE and the Responsible Supply Chains in Asia (RSCA) project were found to be highly relevant to Viet Nam. A total of 98 per cent of enterprises are SMEs and, as the Government seeks to increase the domestic sector’s contribution to exports, the ILO’s work has supported the goal of integrating SMEs with global supply chains.”*

A better understanding of the characteristics and dynamics of supply chains will also expose barriers and bottlenecks. This can help target ILO interventions to create an enabling environment for sustainable enterprises to the specific needs of employers in specific sectors, hence complementing the policy focus mentioned above. In turn this would support constituents on targets for export and employment growth, and how to invest in the necessary infrastructure, systems and skills.

As economic upgrading does not necessarily lead to improvements for workers, activities to support enterprises’ – and particularly SMEs’ – integration into supply chains should be accompanied by support for enterprise compliance capacity. The increasing attention to the UNGPs and the processes of due diligence increases the demand from enterprises of all size for support from the ILO.

3.2.2. Responding to the new realities of supply chains – regional shifts, resilience responses, technology

The global economy’s impact on the world of work is ever-changing, shaped by multilateral and bilateral trade agreements, national policies, technology, and shifts in global demand. Demand from emerging economies will surpass demand in developed economies over the coming decades, further deepening the regionalization of supply chains and the rise of South–South trade.

Supply chains are being reshaped by rising demand and new industry capabilities in the developing world as well as a wave of new technologies. As MGI (2019) note *“Policy agendas shaped by old assumptions may not be effective in the next phase of globalization, which demands more attention to digital infrastructure, service capabilities, and workforce skills.”*²¹¹ With services as the fastest growing component of global trade, the ILO will in general need to focus more sharply on the supply of services – including business process outsourcing, travel and tourism to ensure its

²⁰⁹ ILO, *Getting Beyond Tier 1: Using a Systems Approach to Improve Working Conditions in Global Supply Chains*, 2020.

²¹⁰ For instance, IndustriALL and affiliates have started developing a strategy for workers along the length of the battery supply chain, which is likely to expand rapidly over the next years. This initiative corresponds to the efforts of the World Economic Forum’s efforts to convene companies and other stakeholders in the Global Battery Alliance.

²¹¹ McKinsey Global Institute (MGI), *Globalization in Transition: The Future of Trade and Value Chains*, 2019.

ability to assist Member States. A better understanding of megatrends and drivers and the dynamics of supply chains is key to support the ILO's constituents with the development of national sectoral strategies and industrial policies with a sound understanding of skills gaps and future opportunities for sustainable enterprises.

To date, ILO has focused its supply chain efforts principally on those supply chains between the global North and global South, as well as focus on domestic and national contexts. Less attention has been paid to (intra-)regional supply chains. However, new projects such as METI – Mainstreaming Employment into Trade and Investment in the Southern Neighbourhood – are taking an explicitly regional approach.²¹² METI aims to better enable policymakers in the Middle East and North Africa to incorporate an employment perspective into trade and investment policies so as to optimize the quantity and quality of employment creation in the region. These objectives are all the more urgent in the context of post-COVID-19 pandemic recovery.

The changing dynamics in the structure of supply chains have significant implications for ILO outreach and engagement with stakeholders in the global South or middle-income countries. Companies in the global South may be subject to different consumption-market factors (consumer views, accountability to regulators and civil society, reputational drivers and intangible asset protection). Likewise, more and more SMEs may be affected by emerging human rights due diligence requirements, even where they are not directly targeted, as well as by public procurement contracting requirements, which may – especially in categories such as food – entail domestic supply chains due diligence. These are areas in which the ILO has been less active.

3.3. To what extent do ILO non-normative interventions use supply chains as a strategic entry point to promote decent work?

What is different about a “supply chain focus” is the implication of a broader group of actors – vitally including but not limited to “customer” enterprises – whose engagement, in line with the UNGPs and increasingly, regulations, could be crucial to driving change *through* supply chains. By extension, and with variation between sector and supply chain, a “supply chain” approach enables the ILO to harness and aggregate positive “market signals” (e.g. consumer views and shifting public perceptions, some buyers’ adoption of responsible business conduct concepts beyond the UNGP, national and international regulatory shifts, structural shifts in trade) to the service of decent work promotion. Supply chains, then, offer a strategic entry point for effective promotion of decent work, leveraging and integrating resources and capacity beyond the ILO itself.

²¹² ILO, [Mainstreaming Employment into Trade and Investment in the Southern Neighbourhood \(METI\)](#).

Supply chains as an entry point to decent work promotion: some examples from ILO non-normative activities

Several ILO development cooperation experiences suggest that supply chains can indeed provide a valuable entry point for a number of strategic objectives:

Establishing the centrality of social dialogue founded on freedom of association and the effective recognition of the right to collective bargaining in all efforts to promote workplace compliance, business due diligence and access to remedy, as well as efforts to pursue new opportunities for decent and productive work.

Developing a knowledge and evidence base to demonstrate to enterprises and policymakers that sustained competitiveness – including export competitiveness – can and must be based on respect for international labour standards.

Ensuring that constituents' voices are heard in emerging debates on human rights due diligence in all business relationships, and that labour rights are effectively and properly integrated – in line with ILO's normative mandate – in these efforts.

Harnessing the efforts of a broader range of actors – e.g. the ILO's national constituents, global union federations, international sectoral associations, MNEs and other enterprises, as well as international institutions and investors – to address structural and entrenched impediments to decent work in specific countries and sectors.

Coordinating with – and amplifying – the efforts of a range of other multilateral institutions to integrate, and monitor, decent work in trade and investment arrangements.

Promote the normative mandate of the ILO by making information from the ILO Supervisory system more readily accessible to all actors.

Especially in responses to the pandemic, assuring a central position for the Decent Work Agenda in national, sectoral and industrial policies, particularly in the hardest hit sectors and industries, to build resilient supply chains and promote a just transition to a green economy.

However, there are constraints on the ILO's capacity to deploy non-normative interventions in supply chains as a strategic entry point to promote decent work, including:

- data gaps and limits on information relating to work in supply chains;
- scope for a more integrated approach;
- how, when, and where to intervene in supply chains;
- identifying how to scale up impacts of ILO supply chain interventions, including through partnership and coordination.

3.3.1. Gaps in data and information

The ILO conducts various research on domestic sectors/supply chains as well as on global supply chains. For example, sectoral research across a range of topics under the Decent Work Agenda such as on construction and rural has included the construction and rural industries at country level, in response to requests from constituents. Other research addressed global supply chains, decent work and trade. Increasingly, supply-chain-oriented development cooperation projects are adopting in a number of instances a strategic approach to link knowledge generation and technical assistance, using applied research to pilot replicable and scalable intervention

models in global supply chains.^{213 214} However, as noted in the internal research review, that was conducted as part of the programme of action on GSCs, ILO supply chain activities have not been grounded in a consolidated, systematic research framework, leaving ample space for increased coordination between research projects (and project-related research) in the future.²¹⁵

Enhanced coordination, including through co-conception of activities, would not only allow cross-fertilization of expertise, it would also help improving coverage (in terms of geography, sector and supply chain tier) of the ILO's research, including its understanding of domestic and global tiers. Efforts could also be directed towards wider dissemination of findings to internal and external researchers, as well as to regulators and businesses.

An internal review by the Office identified at least two areas for enhanced internal data coordination, including introducing a standard template to cover multiple topics in one survey. Another major recommendation was to better connect the work and wealth of information produced by the Research and Statistics Departments with that of the policy departments to generate a deeper understanding of supply chain dynamics and promote evidence-based policy advice and technical assistance.

Notably, the ILO has developed different quantitative methodologies, to map and survey all steps in a supply chain within a country, producing a detailed picture of all linkages and social and economic conditions across tiers in the chain. These approaches, which are replicable across sectors, would greatly enhance understanding and transparency of supply chains, including on the quantity and quality of the jobs within them. This would serve as an important resource to the efforts of all stakeholders.²¹⁶

A further data gap relates to the prevalence of informality in supply chains. Understanding the level of informality would provide a first proxy of the prevalence of decent work deficits and distribution across a country's sectors, and where linkages to supply chains might offer incentives for formalization and opportunities to advance decent work.²¹⁷

3.3.2. How, when and where to intervene in supply chains

Though the 2017 Governing Body call for criteria to select supply chains suggests a focus on *those supply chain workers subject to the greatest decent work deficits*, as mentioned previously, there is a gap in addressing decent work deficits across an entire supply chain in an integrated manner. Moreover, though efforts are being made, ILO supply chain interventions do not

²¹³ For a project example see the Vision Zero Fund. In research see, for example, ILO, [The Effects of COVID-19 on Trade and Global Supply Chains](#).

²¹⁴ The strongest example of data-driven, evidence-based ILO programming is Better Work. Better Work's unique quality data about compliance, working conditions, and enterprise performance in the garment sector, is highly valuable to inform sustainable change and empower national constituents to develop informed evidence-based policy in the garment sector. There is potential for Better Work and relevant ILO technical units to improve the analysis and communication of the data collected by the programme.

²¹⁵ A 2020 [High-level Independent Evaluation of ILO's Research and Knowledge Management Strategies and Approaches](#) found that "RS&KM [research and knowledge management] of supply chains [...] is scattered across the Office and not streamlined. Each branch or global programme uses its own interpretation and frameworks instead of adopting the same typologies, terminologies, and definitions. RS&KM is also absent in logframes and TORs of global programmes, such as SCORE, so that programme managers have to find ways to best produce and disseminate RS&KM."

²¹⁶ This point is also noted in the 2019 mid-term Review: "Introducing new levels of knowledge and transparency across the entire supply chain aligns with the programme of action's calls to promote statistical coherence and to build the capacity of national statistical offices to generate relevant data. Among other things, providing robust and credible data at this level would benefit a wide range of other actors and initiatives, including due diligence processes."

²¹⁷ ILO, [Transforming EBMOs into Data-Driven Organizations](#).

necessarily impact both domestic and global sectors or strategically coalesce into the broader Decent Work Agenda at country level.

While recognizing the importance of supply chains, including as an “entry point,” recent ILO experience suggests that a strategic and systematic approach starting with a firm understanding of the supply chain in question can improve tailor-made responses to support constituents and key actors at various levels (local, national, sectoral, regional and global) to seize opportunities and address challenges in an integrated and coordinated way across the various levels.

3.3.3. Gaps in coordination and scale

The preceding analysis strongly implies the need for a coordinated approach in order to effectively address the full range of root cause drivers of decent outcomes in supply chains. Indeed, there are, strong and emerging examples of internal coordination in the current ILO supply chain portfolio. A number of insights can be drawn from these:

- Enterprise-level performance can be strongly affected by sectoral and national factors – including broader investments and policy development in industrial strategy, infrastructure, skills and labour market governance.²¹⁸ There is a gap in coordinating activities at these different levels. Evidently, the ILO has long addressed a range of decent work deficits at national, sectoral and enterprise levels. Strengthening linkages between work with constituents at sector and national level, between buyers and suppliers, between peer-enterprises, and between factory-level employers and workers and their representative organizations and national policymakers would enable the ILO to further capitalize on supply chains as an “entry point”. For instance, Better Work’s factory-level work has been a testing ground for new approaches that have contributed to changes in national labour laws and increased the ability of national governments, employers’ and workers’ organizations to regulate labour markets. This tallies with the view of the 2019 Synthesis Review which noted that *“the policy outcomes of other ILO development cooperation activities and projects might be enhanced by exploiting potential linkages with GSCs and building these into project design”*.²¹⁹
- As in coordination across supply chain interventions, there is a specific gap in coordination of efforts around resource mobilization that would allow for a more sustained and holistic approach to address the root causes of decent work deficits. (It is noteworthy that the longer time-span of Better Work activities has enabled a greater continuity – and evidence-gathering – of impact than typical project durations might permit.) This is not just the case in supply chain interventions, but true of development coordination in general. Given this, the ILO has had limited opportunities to develop and mobilize resources for the kinds of large-scale and sustained interventions that would support and contribute to all stakeholders’ efforts to address the root causes of systemic decent work deficits. In contrast to signature programmes such as Better Work or the Vision Zero Fund, many ILO supply chains interventions are *“one-off projects including some that ended without apparent follow-up”*.²²⁰
- Other constraints relate to scalability. For example, while Better Work is demonstrably effective and has created a compelling evidence base, the programme is limited in terms of scalability, with implications for the geographic and sectoral expansion of ILO supply chains activities. However, a number of Better Work’s techniques and approaches could be applied by other

²¹⁸ GB.341/POL/2.

²¹⁹ ILO, *ILO Decent Work Interventions in Global Supply Chains*, 2019.

²²⁰ ILO, *ILO Decent Work Interventions in Global Supply Chains*, 2019.

organizations to achieve similar results in other supply chains and sectors, in particular in sub-tiers of apparel production or other light manufacturing.²²¹ Therefore, a realistic approach may be to create and share tools to empower stakeholders.

- The mid-term progress report to the Governing Body on the programme of action, highlighted a sector orientation to decent work in supply chains. To develop integrated, holistic and comprehensive approaches along supply chains, the Office has sought to focus research and coordinate supply-chain-related activities of the different technical fields with the aim of facilitating more sectoral/supply chain interventions within a country that would complement the DWCP and/or country-level efforts.²²²

3.3.4. Coordinating and partnering with other key institutions and actors in the trade-investment nexus

In 2016, the constituents concluded that the ILO *“is best placed to lead global action for decent work in global supply chains”* (ILO 2016c, paragraph 14). The field of supply chains is densely populated by a range of actors and initiatives – from international and multilateral activities to grassroots efforts to support supply chain workers to realize their rights under international standards.

While the focus of this document is to ascertain “gaps” in ILO’s current measures in supply chains, it may be that in some instances the response to these gaps entails action beyond the institution itself, finding strategic partnerships where the ILO can best deploy its comparative advantage – most notably its normative mandate, its tripartite composition and its convening power – and work with the many other institutions, agencies and initiatives whose supply chain approaches are forged in light of the international labour standards of which the ILO is guardian.²²³

Engagement with broader international trade architecture

The Social Justice Declaration states that, upon request, the Organization should assist Members who wish to promote international labour standards “within the framework of bilateral or multilateral agreements” in ensuring their compatibility with ILO obligations (ILO, 2008, Article II.A(iv)). In this respect, the ILO has a number of complementary roles to perform in assisting its Members. The first is in providing advice and technical expertise on labour issues, a role it has carried out on an ongoing basis. This entails giving direct assistance, upon request from Members who are parties to an agreement, from the design phase to the implementation phase of labour provisions in RTAs. In Canada, the EU and the United States of America, the ILO’s role is expressly recognized with respect to monitoring, dialogue and/or dispute settlement.

²²¹ It is further noted that previous studies – looking at the applicability and transferability of the Better Work to other supply chains, agribusiness and electronics – have not concluded that the programme is directly transferable to other sectors and supply chains.

²²² See the discussion in the *Mid-term Report on the Implementation of the ILO Programme of Action on Decent Work in Global Supply Chains*, GB.337/INS/4. In brief, the One ILO model in Ethiopia brings together key programmes Better Work, VZF, SCORE, as well as LAB/ADMIN, INWORK, and SOCPRO.

²²³ Though the 2030 Agenda does not refer to global supply chains directly, as the shared blueprint for global development, the SDGs both incorporate or are incorporated in many supply chain-related initiatives, both old (for example, SDG 8.a targets growth of Aid for Trade) and new (for example, Alliance 8.7). In addition, several targets address specific issues relevant to supply chains, as for example SDG 9.3 on integration of SMEs into global value chains; SDG 16.3 on rule of law at the international level; or SDG 17.11 on boosting exports by developing countries.

Building capacity of constituents to engage with and strengthen existing processes

The Working Group on Business and Human Rights has called on States to develop and adopt National Action Plans (NAPs) on Business and Human Rights, with the purpose of strengthening coordination and coherence within government on the range of public policy areas that relate to business and human rights, and of which the protection of labour rights are an integral part, as highlighted under Pillar 1 of the UNGPs.²²⁴

The engagement of ministries of labour as well as employers' and workers' organizations in this process is crucial to reinforce the labour dimension of the business and human rights agenda, identify priorities at the national level and concrete policy measures and actions to protect and respect labour rights in business operations, and ensure effective access to remedy to victims of corporate-related human rights abuses. A critical issue both in the development and effective implementation of the NAP, to ensure meaningful dialogue and protection of those most at risk, concerns protection of human rights defenders, including trade union representatives.

ILO supports the involvement of Ministries of Labour, and of national employers' and workers' organizations in the NAP process by providing capacity-building and technical assistance, and making available relevant ILO expertise, products and services during the development, implementation and review stages of the NAP. This has been the case in Chile, Colombia and Japan among other countries.

Similarly, in the context of the OECD Guidelines, the ILO already conducts training for OECD NCPs on international labour standards and the MNE Declaration and seeks closer collaboration between the OECD NCPs on RBC and the national focal points for the promotion of the MNE Declaration that all ILO member States are encouraged to establish.

However, a stronger connection and involvement of constituents in practice could make a significant contribution to addressing major current challenges.

Engaging businesses

Topical business networks and platforms established by the ILO have been among the primary channels for ILO direct engagement with the private sector. For example, the Child Labour Platform includes a specific supply chain lens, and members of the Global Business Network on Forced Labour and Human Trafficking commit to supporting the eradication of forced labour in their supply chains.²²⁵

A key function of these platforms and networks is to facilitate dialogue on dedicated topics between and among private sector companies and to link companies to governmental and non-governmental actors. On the other hand, other important decent work deficits within the ILO's remit may not be sufficiently integrated into these engagements.

²²⁴ ILO, *The Linkages Between International Labour Standards, the United Nations Guiding Principles on Business and Human Rights, and National Action Plans on Business and Human Rights*, 2021.

²²⁵ The forced labour and child labour networks are aligned with, and contribute to, Alliance 8.7.