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Office

Workplace Compliance in Global Supply Chains



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Sectoral Policies Department (SECTOR)
INTERNATIONAL LABOUR OFFICE – GENEVA

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Workplace compliance in global supply chains

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Preface

The International Labour Organization (ILO) is the United Nations specialized agency devoted to advancing opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The ILO Sectoral Policies Department (SECTOR) promotes decent work by supporting the Organization's tripartite constituents to address social and labour issues in different economic sectors at the global, regional and national levels.

In June 2016, the International Labour Conference (ILC) adopted a resolution and action-oriented conclusions concerning decent work in global supply chains. The tripartite constituents agreed that global supply chains are complex, diverse and fragmented and acknowledged their contribution to economic growth and job creation. They also acknowledged that failures within global supply chains contribute to decent work deficits and to the undermining of rights at work. The conclusions further stated that governments may have limited capacity and resources to effectively monitor and enforce compliance with laws and regulations. The expansion of global supply chains across borders has exacerbated these governance gaps.

The aim of the study on workplace compliance is to map and analyse some of the governance mechanisms engaged in global supply chains, and to encourage collaboration between stakeholders to develop a culture of compliance. As the first version of the paper was drafted prior to the 2016 ILC discussion on Decent Work in Global Supply Chains, it was used to inform the conference paper (ILO, 2016a). New insights resulting from the ILC discussion have been incorporated in this final version.

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Abbreviations and acronyms

ABVTEX	Brazilian Association of Textile Retailers
BEPZA	Bangladesh Export Processing Zones Authority
BWI	Building and Wood Workers' International
CB	collective bargaining
CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)
CIWA	Coalition of Immigrant Worker Advocates (United States)
CONATRAE	Comissão Nacional para a Erradicação do Trabalho Escravo (Commission for the Eradication of Slave Labour, Brazil)
CSR	corporate social responsibility
DIFE	Department of Inspections of Factories and Establishments (Bangladesh)
EPZ	export processing zone
ETUC	European Trade Union Confederation
EU	European Union
FDI	foreign direct investment
FIFA	International Federation of Association Football
GEFM	Grupo Especial de Fiscalização Móvel (Special Mobile Inspection Group, Brazil)
GERTRAF	Grupo Executivo de Repressão ao Trabalho Forçado (Executive Group for the Repression of Forced Labour, Brazil)
GFA	global framework agreement
GUF	global union federation
IFA	international framework agreement
IFC	International Finance Corporation
ILC	International Labour Conference
IMF	International Metalworkers Federation
ITC	industrial tripartite committee
ITUC	International Trade Union Confederation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

MNE	multinational enterprise
MOMT	Ministry of Manpower and Transmigration (Indonesia)
NGO	non-governmental organization
NTP	National Tripartite Plan of Action on Building and Fire Safety (Bangladesh)
OLWI	Office of Low Wage Industries (United States)
OSH	occupational safety and health
PCI	private compliance initiative
RMG	ready-made garment
SAI	Social Accountability International
SASEWA	South African Self-Employed Women's Association
SCCI	Sialkot Chamber of Commerce and Industry (Pakistan)
SEDH	Secretaria Especial de Direitos Humanos (Special Secretariat on Human Rights, Brazil)
SER	Sociaal-Economische Raad (Social and Economic Council, Netherlands)
SQP	Supplier Qualification Programme
UAW	United Automobile Workers
UNCTAD	United Nations Conference on Trade and Development
UNICEF	United Nations Children's Fund
WFSGI	World Federation of Sporting Goods Industries

Abstract

Workplace compliance with national labour laws and international labour standards is challenging for all countries. The added complexities of a globalized economy with large and influential lead and first-tier firms utilizing sophisticated and diverse supply chains further complicates the enforcement of labour legislation. This paper seeks to map and analyse some of the governance mechanisms engaged in compliance in global supply chains. First, it describes the characteristics of effective workplace compliance in the context of international labour standards, and analyses whether three traditional approaches to labour relations governance satisfy these characteristics. Effective compliance should be both sustainable in the long term, and inclusive of as many workplaces and workers as possible. The last section discusses the growing support for complementary forms of governance to address the governance gaps found in global supply chains.

1. Introduction

Governments, employers and workers each face the challenge of ensuring that workplaces comply with labour laws and protect workers' rights. Because the scope of labour legislation, regulation and jurisdiction is at the national level, cross-border sourcing of goods and services creates difficulties in the achievement of workplace compliance. Regulatory structures are established and enforced by government authorities that may not have the resources or the expertise to monitor compliance in all or most workplaces. Not all governments have been able to cope with the rapid transformation brought about by exposure to the global economy, which has created governance gaps.

At the same time, private corporate laws have evolved to limit the corporate liability, insulating holding companies from legal violations committed by subsidiaries or subcontractors. In both civil and common-law systems, corporations enjoy significant freedom in the way they organize themselves and their business structures (within and across borders), and in how they can distribute risk among different entities related to the same corporate enterprise (Muchlinski, 2010). States' legal authority is primarily limited to persons and conduct within their own territories. At the international level, international trade agreements are negotiated between governments, not enterprises, and may not have an impact on enforcement at the workplace level. There are therefore several legal obstacles preventing States from exercising legal authority over transnational business conduct.

Scholars have described the challenge of regulating transnational corporations as a global "governance deficit". Neither national nor international institutions have been able to adapt quickly enough to regulate the global economy (Gereffi and Mayer, 2006). Transnational institutions such as private compliance initiatives do not lead to long-term sustainable workplace compliance when used alone (Locke, 2013), while the lack of capacity of the labour inspectorate at the national level handicaps the effective functioning of public governance (ILO, 2011). The divide between layers of different types of governance has contributed to "regulatory enclaves" where only a handful of workers benefit from the protection of public enforcement (Posthuma, 2010). The different types of governance will be introduced in the next section with a view to generating understanding of their limitations as well as the opportunities they offer for closing governance gaps in global supply chains.

Given the current regulatory limitations, to "level the playing field" in global supply chains the bar of workplace compliance would need to be raised in countries where supplier and buyer firms operate. The Director-General of the ILO, in his report entitled *The future of work centenary initiative* to the 2015 International Labour Conference, explained that:

the need to establish a level playing field between member States on the basis of common standards; the shared objective of establishing universal respect for fundamental principles and rights at work as set out in the 1998 ILO Declaration on Fundamental Principles and Rights at Work; and the idea that international labour standards – including non-binding Recommendations – should provide a framework of guidance for member States as they seek to marry economic growth with social progress. (ILO, 2015a, p. 15)

By developing state capacity to enforce labour legislation, and by involving local and transnational social partners in workplace compliance in global supply chains, national governments would be able to better enforce international labour standards and create a level playing field for economic and social upgrading.

2. Analysis of governance approaches to workplace compliance

This paper focuses on the promotion of working conditions which satisfy the requirements of national laws and regulations, ratified international labour standards and applicable collective agreements at the workplace level. Effective workplace compliance requires a legal enabling environment consistent with international labour standards, the engagement of workers at all levels of the organization, and firms that comply with national legislation and regulation.

Labour norms and institutions are the legal enabling environment for workplace compliance defined by domestic labour legislation, ratified ILO Conventions, and enforced by labour administration mechanisms such as workplace inspection, dispute resolution and other mechanisms. Some countries are also bound by international agreements that include labour provisions, such as trade agreements.

Legitimacy characterizes mechanisms which enable stakeholders to participate in policy-making to ensure that labour and human rights are protected. This concept includes transparency of information and decision-making, as well as participation by the tripartite constituents and other stakeholders in mechanisms which allow for holding parties accountable for failures to fulfil their responsibilities.

Capacity describes the ability of stakeholders to enforce workplace compliance. This includes the political willingness of actors to enforce or comply with labour standards, expertise in what the standards are and how to comply, and the sufficiency of human and financial resources to enforce or comply with labour law on a continuous basis.

These characteristics provide a framework for analysis in this section of different types of governance – public, private or social – with a view to ascertaining which approaches to global supply chain and workplace governance are most likely to be sustainable and promote decent work.

Public governance describes the State's duty to promote compliance and enforce national labour laws and regulations, and ratified international labour Conventions. Typically, this includes labour administration and inspection functions, dispute resolution and prosecution of violators.

Private governance is led by enterprises, employer organizations or industry associations. Corporate social responsibility (CSR) programmes or private compliance initiatives (PCIs) may utilize corporate codes of conduct, audits, monitoring, certifications and other initiatives. These may be adopted at the national or transnational level.

*Social governance*¹ describes the interaction between the social partners at enterprise, sector, national or international levels. Examples of social governance include social dialogue, collective bargaining, international framework agreements (IFAs) and labour/management committees. It exists in both formal and informal workplaces, some unionized, others not. In some multilateral stakeholder initiatives, non-governmental

¹ For the purposes of this paper, the definition of “social governance” has been adapted from Gereffi and Lee (2016).

organizations (NGOs) also play a role in promoting worker, consumer or public interests in regulatory programmes, which often target global supply chains for specific sectors.

A variety of international instruments address labour rights in global supply chains, including the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises (MNE Declaration), the OECD Guidelines for MNEs, and the United Nations Guiding Principles on Business and Human Rights. They have achieved various degrees of success in shaping the culture of corporate accountability and due diligence with the support of international institutions. Noting the importance of such multilateral initiatives, they fall beyond the scope of analysis of this paper.

Governance mechanisms are categorized primarily by the actors driving each approach. There are many different mechanisms and tools within each category, and there is growing recognition that the regulatory space is becoming crowded and confusing. The various layers of governance initiatives may not be coherent or coordinated, which also may affect governments' ability to implement them (Amengual and Chirot, 2016). Governance initiatives should encourage strategic and efficient use of limited public resources.

2.1. Public governance

Public governance describes the State's duty to enforce national labour laws and regulations and to implement ratified international labour Conventions. This includes labour administration, inspection and enforcement functions, such as dispute resolution and prosecution of violators. Governments promote workplace compliance based on their unique national legal, economic and historical context. The ILO has historically seen public governance as the central means of enforcing workplace compliance (ILO, 2013a). It defines "labour administration" as public administration activities in the field of national labour policy in the Labour Administration Convention, 1978 (No. 150). Labour inspection is a core function of the system of labour administration, and its recommended usage is detailed in the Labour Inspection Convention, 1947 (No. 81), and Recommendation, 1947 (No. 81). The 2008 ILO Declaration on Social Justice for a Fair Globalization emphasizes Conventions No. 81 and the Labour Inspection (Agriculture) Convention, 1969 (No. 129) as key governance Conventions, encouraging ILO member States to ratify and implement them. State agencies have the legal authority to investigate, execute and enforce the rule of law at the national, regional and often international levels. Labour legislation, administration, inspection and enforcement functions are central to ensure workplace compliance.

The challenges and limitations of traditional public governance in ensuring workplace compliance have been well researched and were discussed in depth during the general discussion on labour administration and inspection at the International Labour Conference in 2011 (ILO, 2011). Governments promote workplace compliance based on their unique national context. Deficiencies in public governance may be the result of the failure of legislation to meet the minimum requirements of international labour standards, the lack of measures to ensure legitimacy and accountability among social partners, or the weakness of the capacity of the public labour administration institutions (ILO, 2013a).

2.1.1. Labour norms and institutions

Governments have the authority to define and implement labour laws consistent with international labour standards and to ensure that labour laws apply to vulnerable workers. Global supply chains complicate the efforts of governments to fulfil this responsibility. First, labour administration may not be effective due to many different social, political, historical and economic factors; in the context of global supply chains, legal responsibility can be hard to determine and enforce. Secondly, competing priorities between promoting social development and economic growth may undermine commitment to ensuring labour rights. Policies that undercut workplace compliance may include legal exemptions for export processing zones (EPZs), or limited jurisdiction over particular workplaces or groups of workers. Lastly, limited liability within corporate structures is complex given the globalized nature of production.

Adequate labour legislation. Domestic laws vary between countries, and this diversity reflects the specificity of each country's legal framework, culture and history. In 1998, the International Labour Conference, by a large majority, adopted the Declaration on Fundamental Principles and Rights at Work and its Follow-up, committing member States to respect and promote principles and rights in the following four categories: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation. The Declaration provides a mandate for ILO member States to fulfil these goals, even if they have not yet ratified all the eight fundamental Conventions that are considered prerequisites for social justice in all countries.²

States should endeavour to enact, and if necessary reform, labour legislation so that it both protects workers' rights and clearly spells out employers' responsibilities. At lower tiers of the supply chain, enterprises may not have the capacity to comply with complex or ambiguous labour legislation (ILO, 2014). For example, in India, a study of labour laws in the state of Uttar Pradesh found that employers had to follow a large number of conflicting labour laws and that within a particular labour Act the same words may carry different meanings (Fenwick et al., 2007).

Conflicting priorities. Governments enact policies to promote economic development, but some economic policies may undermine social development goals. Many governments have enacted policies to encourage foreign investment and expand export markets. Among policies that undercut workplace compliance are allowing EPZs to operate outside the requirements of national labour laws (Milberg and Amengual, 2008); and turning a blind eye to non-compliance to labour laws in competitive industries (Ronconi, 2012). Such policies enable situations where workers face precarious conditions of work.

The complex relationship between economic development policies and compliance with domestic labour laws has been extensively debated. Research has shown a positive correlation between labour rights and foreign direct investment flows, going against the general perceptions of a "race to the bottom" in the relationships between foreign direct investment (FDI) and labour rights (Mosley and Uno, 2007; Kucera, 2002).

² Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Minimum Age Convention, 1973 (No. 138), Worst Forms of Child Labour Convention, 1999 (No. 182), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Focus on supply chains. A number of legal obstacles limit a government's ability to enforce legislation in the global supply chain context. Due to legal principles such as corporate separateness and limited liability and the doctrine of extraterritoriality, national labour administration and inspection processes have been largely unable to hold multinational firms liable for violations of labour law that occur at lower tiers of their supply chains.

In addition to the difficulty of holding firms liable, national authorities have found it difficult to protect all categories of workers. Suppliers may have traditional employment contracts with core workers who regularly participate in the production of goods and services for the enterprise at a high level of quality. However, when the supplier receives additional contracts, causing a surge in demand, it may resort to hiring temporary or peripheral workers who may have different and often worse terms and conditions of employment (Rossi, 2013a). In this environment, companies may take advantage of such a system in order to further limit legal liabilities. Weil (2014) provides the example of a mining company located in the United States which set up shell companies that hired temporary workers to avoid penalties under the Mining Safety and Health Act. In general, miners working for subcontractors face a 40 per cent higher exposure to fatality risks, while companies increasingly subcontract the most hazardous jobs to escape employer liability. Research was unable to find examples where the national inspectorate has successfully implemented programmes targeting informal workers (ILO, 2011).

2.1.2. Legitimacy

Public engagement is essential for good governance. Labour administration systems should include mechanisms where the participation of the social partners and other stakeholders enhances the legitimacy and accountability of democratic institutions. Three types of legitimacy measures are analysed in this section: transparency initiatives to publish information related to workplace compliance; inclusive engagement with social partners and broader civil society; and government's initiation and promotion of social dialogue and other mechanisms to hold parties accountable for failing to fulfil their agreements.

Transparency. Governments have the ability and the discretion to publish information related to workplace compliance for the purpose of promoting public accountability and transparency. Transparency policies for public information enables both situations that increase deterrence incentives for employers prone to non-compliance, and situations where information is spread widely amongst workers and their networks (Weil, 2010).

For example, in 2008 the central bank of Bangladesh announced that it would monitor the adoption of CSR guidelines by banks and financial institutions in the country. Through the mainstreaming of CSR performance reports in annual reports, this information was accessible to the general public, which meant that banking corporations were under increasing pressure to embrace CSR principles in their operations (Rahim, 2011). In labour administration functions, transparency policies can help governments open an opportunity for engagement of the public in the monitoring and disclosure of workplace issues.

Inclusive engagement. Government authorities engage with the public by publishing policy documents and eliciting public comment, establishing consultative bodies, or through meetings with the public.

In the United States, the active public action taken by an NGO, the Coalition of Immigrant Worker Advocates (CIWA) in California, blocked the reduction of the budget for the enforcement division of the state Department of Industrial Relations. This action prompted further cooperation, such as the state secretary of labor's establishment of a low-wage advisory board, and subsequently an Office of Low Wage Industries (OLWI). The advisory board met quarterly with the secretary, with input on enforcement issues for immigrant workers which included specific issues such as risks faced by undocumented workers, language barriers, and increasing the presence of enforcement in low-wage industries. Such specificity in advice was only possible through inclusive engagement. The OLWI was subsequently able to apply new monitoring strategies that increased the number of penalty assessments and collections by leading targeted inspections of low-wage industries, while utilizing methods that did not put undocumented workers in jeopardy (Fine, 2006). This example clearly shows how the engagement of civil society not only leads to more fine-tuned policy strategies, but can also boost the legitimacy and effectiveness of the labour inspectorate.

Social dialogue. Governments also initiate or provide an enabling environment for social dialogue. They can support opportunities for collective bargaining and institutionalize platforms for multi-stakeholder engagement. The sound functioning of social dialogue not only enables peaceful industrial relations, but also plays a practical role in enforcing compliance with legislation on occupational safety and health (OSH) at the enterprise level.

The ILO Occupational Safety and Health Convention, 1981 (No. 155) stipulates in Article 4.1: "Each Member shall, in the light of national conditions and practice, and in consultation with the most representative organisations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment." Following the guidelines of this Convention, many countries have established tripartite committees that are involved in the formulation, implementation and review of national OSH policy. In many countries, social partners are involved in an advisory capacity at the national level and within workplace OSH committees at the enterprise level. The specific organizational structures are varied but generally seek to establish social dialogue between different stakeholders in the national OSH system (ILO, 2009).

A survey amongst national social partners in European Union (EU) Member States revealed that the outcomes of EU-level social dialogue had positively influenced employment and labour-related issues at national and local levels. Many interviewees stated that the framework agreements on parental leave³ and part-time work⁴ in particular had directly contributed to improved working conditions. In Spain a law on "promoting the reconciliation of work and family life of employed persons" came into force in 1999, based on the agreement on parental leave (Voss et al., 2011). Besides the framework agreements that are transposed into Directives, agreements that are implemented by national social partners autonomously are also considered to play an important role. The autonomous agreement on telework from 2002, for example,

³ Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and ETUC. In 2009, the European social partners agreed on a revision of the parental leave agreement, transposed into Directive 2010/18/EC EU of 8 March 2010.

⁴ Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and ETUC.

enabled the Belgian social partners to conclude a cross-industry collective agreement on the issue, applicable to all private sector workers.

2.1.3. Capacity

The ability of governments to effectively implement and enforce their labour legislation and labour administration policies requires sufficient human and financial resources, political commitment to maintain consistent pressure, and the technical expertise to adequately fulfil the government's responsibilities.

Resources. The most common capacity deficit for public governance is the limited human and financial resources allocated to enforce national labour legislation. Many labour administration systems and labour inspection systems are understaffed, and resources such as transportation and computers are not available to the inspectorate. In developing countries, labour ministries' budgets are often among the smallest compared to other government departments (ILO, 2011). In many of these countries, national labour administration sometimes receives less than 1 per cent of the national budget, with labour inspection systems receiving a fraction of that sum (Richthofen, 2002). Even in high-income countries such as Australia, Sweden and the United Kingdom, inspectorate resources have stagnated or declined (ILO, 2015b).

Strategic enforcement strategies help governments to stretch scarce resources. Technology has improved the internal management systems of labour administration. For example, in Bangladesh a new computerized database for inspection reports of the Department of Inspections of Factories and Establishments has facilitated more transparency and information sharing. However, most labour administration and inspection systems in developing countries lack appropriate material equipment, which hinders their access to reliable information (ILO, 2011).

Political will. The effective management of labour administration departments requires professional civil servants who are insulated from electoral politics. Policy coherence and continuity may be adversely affected when senior managers are political appointees that change when the government changes (ILO, 2011). Government labour policies may also be undermined by conflicting policies intended to promote economic development or attract foreign investment, and which fail to consider the implications for labour law and the promotion of workers' rights.

For example, in some countries EPZs are not covered by the same regulations as other workplaces. EPZs have been a recommended economic development policy tool for countries seeking to develop manufacturing skills and a competitive industrial labour force (UNCTAD, 2013). In 2007 the International Trade Union Confederation (ITUC) raised the issue of obstacles to freedom of association in EPZs in Bangladesh to the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). The ITUC pointed out that the Bangladesh Export Processing Zones Authority (BEPZA) had been impeding the implementation of the law by means of various bureaucratic, legal and practical restrictions. Subsequent comments by the CEACR mention that provisions of the EPZ Workers' Welfare Associations and Industrial Relations Act 2010 (EWWAIRA) were not in conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) because the EWWAIRA excessively regulated the formation of Workers' Welfare Associations in Bangladesh.⁵ Similar complaints were lodged in many countries that

⁵ See NORMLEX: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Bangladesh, CEACR Observations 1998, 2000, 2007, 2008, 2009, 2011, 2012, 2013, 2015.

have EPZs, such as India (Special Economic Zones),⁶ Mauritius,⁷ Honduras⁸ and Guatemala.⁹

In countries where labour issues are not high political priorities, the resources and authority of the Ministry of Labour and its enforcement mechanisms may be inadequate and lack significant influence. For example, in the United States labour union political influence has declined, as union membership and the ability to influence voter turn-out has weakened (Weil, 2008). The resulting lack of political support for policies also has an impact on the authority and effectiveness of labour inspectors and their morale and professionalism (Richthofen, 2002).

Unfortunately, it is large-scale disasters that tend to galvanize political support to prioritize worker safety (Richthofen, 2002). For example, the 1984 Bhopal chemical disaster in India not only spurred the Indian Government to upgrade its national legislative system of handling industrial hazards, but also directed international attention to chemical hazards in the workplace. The ILO adopted the Convention that addresses safety at work, the Convention on Safety in the Use of Chemicals at Work (Chemicals Convention), 1990 (No. 170) in reaction to this disaster. In Turkey, the Soma mine disaster in 2014 prompted the government to engage in a tripartite process together with the ILO that comprised a review of existing OSH laws and practices, ratification of the Safety and Health in Mines Convention, 1995 (No.176) and further steps to address shortcomings. Reactive measures to enforce workplace compliance may focus immediate attention on adopting new safety measures, but a long-term commitment to OSH prevention requires sustained political commitment and allocation of resources.

Expertise. Technical competence and a tailored approach to labour inspection and labour law enforcement are essential to ensure compliance with international labour standards in workplaces involved with global supply chains. Relevant personnel must be trained in technical expertise on labour law, OSH, and other technical issues that are unique to different sectors, in addition to the skills required for effective investigations. Ministries of labour also require officials with the competence to design and implement strategic compliance strategies, to collaborate with stakeholders and other social partners, and to coordinate with other government departments. In particular, in the case of dispute resolution and the prosecution of violators, labour inspectors must work closely with the judiciary to ensure efficient and final adjudication of labour disputes (ILO, 2011).

Numerous methods of enhancing the effectiveness and efficiency of public governance in labour compliance have been researched and implemented. Strategies that utilize a combination of punitive and collaborative approaches encourage more sustainable behavioural changes towards compliance in the workplace culture of the enterprise (Weil, 2014; Pires, 2008; Piore and Schrank, 2008). For example, in a case study of the Brazilian labour inspectorate, Pires (2008) found that labour inspectors used strategic sanctions as a means of making the enterprise more receptive to changing practices

⁶ See NORMLEX: Labour Inspection Convention, 1947 (No. 81) – India, CEACR Observations 2010, 2014, 2015.

⁷ See NORMLEX: Right to Organise and Collective Bargaining Convention, 1949 (No.98) – Mauritius, CEACR Observations 2008, 2010.

⁸ See NORMLEX: Employment Policy Convention, 1964 (No.122) – Honduras, CEACR Observations 2010, 2011.

⁹ See NORMLEX: Employment Policy Convention, 1964 (No.122) – Guatemala, CEACR Observation 2008.

that violated labour rights, and further provided technical assistance to help develop solutions that were consistent with labour laws.

2.2. Private governance

Enterprises, employers' organizations and industry associations drive private governance approaches to workplace compliance schemes in domestic and global supply chains. Corporate social responsibility (CSR) is commonly used as the broader term for firms voluntarily self-regulating social, environmental, or economic issues, while private compliance initiatives (PCIs) more narrowly focus on auditing and capacity building for the purpose of workplace compliance. PCIs may include codes of conduct,¹⁰ auditing, certification schemes or other self-reporting mechanisms such as the UN Global Compact or the Global Reporting Initiative (ILO, 2013a). Many lead firms and large first-tier suppliers have elected to adopt these risk management schemes in response to public pressure which could threaten their reputation as good corporate citizens.¹¹ Companies specifically vulnerable to public campaigns, especially large multinational corporations, have adopted CSR standards and PCIs such as reporting mechanisms, audits, a dedicated CSR staff, and periodic reports on their social and environmental practices (Vogel, 2008). For this reason, PCIs may be tailored to narrowly address the concerns raised by civil society activists, such as campaigns against child or forced labour (Seidman, 2007). Many PCI standards include ILO's Fundamental Principles and Rights at Work as a baseline (ILO, 2013a).

2.2.1. Labour norms and institutions

PCIs aim at displaying transparency, externality to the enterprise, consistency with national law, and advisory services. While PCIs have proliferated, doubts have been cast on their effectiveness and the underlying justification for their existence. Legal prosecution against private firms only occurs in exceptional situations, particularly in supplier countries, since prosecutions are resource-intensive and may deter foreign investment or future business. The fundamental limitation on the effectiveness of PCIs to promote workers' rights is that they are voluntary, unlike public enforcement of legislation. Lead firms choose which issues to address, who is covered, and the remedy for violations, thus confining the scheme within the limits of corporate interests. PCIs are not a substitute for national legislation, since they are limited in scope and can be discontinued at any time.

Lack of coordination with domestic labour laws. Lead firms frequently develop private codes at the global level, and may include a general clause about complying with national legislation without specific reference to the specific national context or consultation with national authorities in the countries where their suppliers operate.

10 A code of conduct is often a contractual agreement between the buyer and supplier setting specific requirements that are often based on ILO standards and go beyond national legislation on how a given supplier should operate. Codes often are accompanied by a threat of economic sanctions such as the termination of a contract, or other means to ensure compliance. For many US and European firms, increasing numbers of multinational corporations have adopted voluntary codes, often under pressure from labour and human rights groups (O'Rourke, 2003).

11 PCIs are particularly common in those industries where international brand image is important. In the garment, sportswear, food and electronic sectors, companies have championed the idea of CSR to expand their responsible sourcing practices along their whole supply chain, particularly where public regulatory systems are weak. Major name brands with the loudest campaigns tend to have evolved the furthest in their PCI implementation (Mamic, 2004).

When PCIs refer to international labour standards, these recommendations are even more general and difficult to specifically monitor, implement or evaluate. PCIs are not designed to support national labour administrations, nor to complement the labour norms and institutions or build the capacity of the public labour inspectorate (Posthuma, 2010).¹² Therefore, PCIs are rarely enforceable by local courts in jurisdictions where the suppliers operate.¹³ This lack of coordination with national law can undermine the effectiveness of public governance mechanisms (Amengual and Chiot, 2015).

Narrow scope. PCIs have been most effective among first-tier suppliers, creating “regulatory enclaves” in which “most improvements are concentrated among the group of employees with formal contracts in larger and first-tier supplier firms” (Posthuma, 2010). Partially due to the limited scope of PCIs and the limited resources of national labour administrations, some subcontracted workplaces are unmonitored. In some cases, the most dangerous aspects of production have been subcontracted out to other enterprises in order to avoid regulation and limit liability should accidents occur (O’Rourke, 2003; Knorringa, 2011; Liubicic, 1998). Lead firms have less control over specific terms of subcontracts as the relationships become more remote. Subcontracts for products and services may not mention any minimum standards for working conditions. Workers in the lower tiers of supply chains may therefore be at greater risk of poor working conditions and are less likely to be included within the reach of PCIs. These are the workers who require greater protection from public institutions that promote workplace compliance.

Some PCIs are also limited to particular categories of workers. For instance, in her study of a Moroccan garment supplier factory, Rossi (2013a) found that a buyer firm’s requirements of compliance to labour standards for supplier firms did not improve the working conditions of workers employed in processes that were peripheral to the core of the business practices. Such workers are those involved in distribution processes such as packaging, storage and loading.

Voluntary. Unlike compliance with national legislation, compliance with PCIs is dependent upon the interests of the firms that promote the scheme. They are voluntary in the sense that they are agreed to by the contracting parties. Suppliers may be obliged to comply with the terms to maintain the contract, but the enforcement mechanisms are initiated by the lead firms, not the State.

Furthermore, these schemes may be discontinued whenever the lead firms determine that they are no longer good investments. PCIs are not necessarily designed to encourage long-term behavioural changes in supplier firms’ business practices. Although some industries may foster longer-term relationships between buyers and supplier firms, many industries are characterized by flexible, short-term contracts which cause uncertainty for the supplier firms. Supplier firms are less likely to invest in compliance with lead firms’ schemes when the relationship is indefinite and the scheme is not closely tied to national enforcement mechanisms.

For example, the voluntary self-regulation programme “Responsible Care” has been criticized for its lack of enforceability. Responsible Care is the most prominent industry-led initiative operating in the chemical industry, designed to monitor processes

¹² As Posthuma (2010) notes, ILO Convention No. 81 encourages information sharing gathered on private audits, and recommends that public labour inspectorate should cooperate with private institutions engaged in similar activities.

¹³ See Vogel (2008) for an overview of literature on the blurring between “soft” and “hard” laws.

regarding workplace safety, transportation, product stewardship and environmental protection. In the early 1990s, membership of the scheme was extended beyond chemical manufacturing companies to include distributors and other companies in the chemical supply chain. While national associations of chemical distributors in Belgium, the Netherlands and the United Kingdom require their members to sign up to Responsible Care, this is not the case in other countries. The varied rate of implementation is also indicative of the different ways in which national associations have interpreted the guiding principles, suggesting that greater harmonization is an area for potential improvement (ILO, 2013c). Recent reforms in the program include third party certifications and the encouragement of stakeholder engagement that may positively affect compliance levels in the future (Coons, 2014).

2.2.2. Legitimacy

Many PCIs were developed in reaction to criticism from civil society activists and campaigns, but often without consultations with workers and their representatives. PCIs generally fail to provide sufficient worker participation or the transparency found in effective workplace compliance strategies. This lack of inclusiveness limits opportunities for the public to hold those involved with PCIs accountable for lack of effectiveness, and undermines democratic legitimacy.

Worker participation. The participation of stakeholders, especially workers, is limited to what specific PCIs choose to permit. Frequently, workers have limited participation in PCI monitoring, little or no access to auditing reports and no opportunity to comment on the reports' findings and recommendations. This exclusion poses an obstacle to worker voice, particularly in the lower tiers of supply chains. Although civil society campaigns may have instigated the adoption of private compliance, the purpose and design of the particular PCI may not be consistent with the goals of relevant trade unions or the interests of the workers.

PCIs generally lack worker participation during the design and implementation phases. They may reference human and or labour rights as aspirational goals, but they rarely prioritize enabling rights such as freedom of association and collective bargaining, or specific protective rights such as wages, hours of work and occupational safety and health (Barrientos and Smith, 2007; Anner, 2012; Rossi, 2013b; Egels-Zandén and Merk, 2014; Yu, 2015). Private audits have been less able to detect violations of freedom of association and collective bargaining rights. Frequently, workers have been treated as recipients or bystanders excluded from decision-making processes (Egels-Zandén and Merk, 2014). For example, certification schemes such as the Social Accountability International (SAI)'s SA8000 standard is used by around 3,000 factories in 66 countries.¹⁴ Audit firms are accredited to apply the SA8000 standard in factories, and may conduct the audits or contract another auditing firm to conduct their audits for the factory to be certified. SA8000 auditors are required to audit all subcontractors as well. The certification is usually linked to securing orders from buyer companies. NGOs and stakeholders argue that audits are insufficient; issues such as harassment, discrimination or freedom of association require more comprehensive and thorough investigations (Locke, 2013; Pruett, 2005; O'Rourke, 2002).

Transparency and accountability mechanisms. Lead firms decide the scope of PCIs; they also self-report compliance and control the scope of disclosure of the results. Although some firms have disclosed their supplier lists, few have released

¹⁴ See <http://www.sa-intl.org/>.

publicly available data on individual factory compliance reports. Some lead firms may not even be aware of the reach and depth of their supply chains. Even PCIs that contract with third-party auditors can tightly control the disclosure of information and are under no obligation to notify the relevant public authorities. In addition, firms have no incentive to engage with public processes in holding subcontractors accountable for violations of national legislation that they discover while monitoring compliance with codes of conduct.

2.2.3. Capacity

Capacity for effective compliance includes three dimensions: human and financial resources, political will, and expertise.

Resources. The greatest advantage of private compliance initiatives comes from the potential to invest both financial and human resources in PCIs, as compared to constrained public budgets allocated to labour inspection and administration. Multinational brands deploy resources for PCIs for those portions of their supply chains that are more visible to the public eye. Lead firms and some first-tier firms have sufficient resources to deploy for the implementation of compliance schemes. For example, Nike alone has spent millions of dollars on its PCI, including for audits, compliance staff and protocols (Locke, Qin and Brause, 2007). First-tier firms such as Hon Hai Precision Industry Group (trading as Foxconn Technology Group), the largest supplier of electronic devices, maintains its own CSR department which provides training for personnel, 12,000 occupational hazard monitoring sites, employee physical examinations, and other supply-chain related initiatives such as its policies and guidelines on conflict minerals (Foxconn, 2014). On the other hand, small and medium-sized firms have limited human and financial resources to promote workplace compliance (Fenwick et al., 2007). Smaller firms further down the supply chain often have the greatest need to improve capacity to comply with national laws and lead firms' codes of conduct.

Political will. The political will of private governance can be either a strength or a weakness for providing decent work to workers in global supply chains. Although buyer requirements incite the action of suppliers in lead-firm driven supply chains, particularly in low value-added manufactured goods, PCIs select which issues and workplaces to monitor. Moreover, the complexity of different supply chains results in distinct points of influence unique to the power relationships within any given chain. In some supply chains, contract manufacturers or sourcing agents may be the suppliers that directly engage with the lead and first-tier firms, and may receive some scrutiny from PCIs. Supply chains related to extractive industries may have very different points of influence, related to refining processes. Situated in the middle of the gold supply chain, refiners can have an impact on social and economic upgrading in, for example, global gold supply chains. The small-scale informal gold mining sector is characterized by a lack of traceability, but converges with the large-scale gold mining industry before the refining stage. At this stage, enterprises and industrial associations are nowadays expected to be more vigilant about their sourcing practices (ILO, 2016b).

PCIs are more common in industries where international brand image is susceptible to consumer pressure. They are far less common in business-to-business supply chains. Furthermore, consumer-driven campaigns usually do not target non-brand name goods. Contractors that supply less recognizable parts, materials and services, particularly in business-to-business transactions, rarely attract consumer activism or pressure to improve workplace compliance (Elliott and Freeman, 2003).

When the issue is particularly compelling, such as child labour, lead-firms have demonstrated their capacity to have a significant impact on labour practices within the supply chain (Gereffi, 1994). For example, a study of the soccer ball manufacturing cluster in Sialkot, Pakistan that utilized child labour found that private governance was effective in reducing it. When media coverage revealed the extent of child labour in Sialkot, companies were mobilized to tackle the problem through various international, national and local means because of the impact on the lead firm's brand image (Nadvi, 2008). Similarly, a case study in Better Work Cambodia found that factories producing for reputation-conscious buyers are associated with better compliance levels than other factories (Oka, 2010a). These isolated cases illustrate that when the lead firm has the political will to commit the necessary resources, the labour policies of specific suppliers may change, at least for the purposes of these contracts. However, there is little evidence to suggest that these policies result in long-term behavioural change in small-scale suppliers that could overcome market pressures and local hiring practices that exploit vulnerable workers. Even independent verification systems may only be monitoring for a limited scope of issues, and may be inadequate due to budgetary and political constraints (O'Rourke, 2003).

Furthermore, conflicts of interests in PCIs may hinder effective compliance. Esbenshade (2004, p. 97) highlights this paradox in her assessment of private monitoring in the Los Angeles garment industry:

Every party involved in the monitoring system has interests that militate against open and thorough investigations. Manufacturers have an interest in keeping the prices they give contractors low; contractors must appear to comply with the law without necessarily having the resources to do so; workers may be fired or lose income if the contractor is found in violation; and monitors are not neutral but working for the manufacturer and, in some cases, strongly tied to the contractor community, as well.

Her analysis has been further confirmed by a recent quantitative study of 44,838 social audits in 12 industries and 47 countries: Toffel, Short and Ouellet (2015) find that audits paid by the buyer or a third-party agent reported significantly more violations than audits paid by the supplier itself. Other factors that result in audits reporting fewer violations include: individual auditors having been in the factory previously; inexperience or limited training of the audit teams; lack of female auditors in the team; and audits being paid for by the supplier firm undergoing the audit, as opposed to the buyer requiring the audit (Short, Toffel and Hugill, 2016).

When promoting the effectiveness of CSR campaigns generally, lead firms indicate that they have sufficient influence over suppliers to address concerns of exploitative workplace practices. However, in the context of legal liability for failure to comply with workplace standards, lead firms argue that they are unable to control or influence employment practices throughout the supply chain (Campos, van Huijstee and Theuvs, 2015). Similarly, lead firms take great care to maintain the quality of the goods and services they provide through their supply chains or franchisees; however:

While deftly crafting franchise manuals, delivery standards and systems, and monitoring arrangements, these lead companies often profess a lack of knowledge about the work conditions that flow from the very same standards. Or they absent themselves from some coordination functions that might compromise their arm's-length status. And the social consequences of these actions are significant with respect to compliance with labor standards, impacts

on worker health and safety, and more generally the distributions of income overall. (Weil, 2014, p. 193)

These contradictions point to the fundamental differences between the consequences of criticism from public opinion versus actual legal liability. Lead firms would take swift action to protect the quality of the goods or services produced with their brand if the terms of contracts were not strictly followed. If public campaigns threaten the firms' reputation, CSR or PCI policies may encourage contractors to "do the right thing". However, similar action is less common when their suppliers or franchisees are less visible and suspected of violating labour standards for which the lead firms are not legally liable.

Expertise. Lead firms are able to obtain extensive in-house expertise and training capacity to ensure that their managers maintain the firm's code of ethics and its commitment to comply with national regulations. Private auditing or self-reporting programmes may monitor levels of compliance, but are only the first step towards improving suppliers' capacity to comply with codes of conduct and national legislation.

There are many operational limitations to auditing mechanisms. A social audit typically includes document reviews, site inspections and interviews. Document reviews are conducted to check if wages have been paid, whether working hours have been respected, and that no worker is below the minimum age requirement. Site inspections evaluate safety, including that emergency exits are not blocked, fire extinguishers are in place, ventilation is kept open, and safety equipment is worn. Interviews reveal the conditions of workers, including their pay and overtime rates. Interviews also reveal insights about whether the right to organize is respected, or whether workers are harassed by management in some way. Brief social audits, lasting two to three days, may be insufficient to capture the true nature of the workplace. For instance, workplace managers may be keeping double accounting ledgers to bypass document reviews, clearing up the aisles for the day and hiding their child workers. Workers may be coached and interviewed along with management, which may distort the realities of the workplace (Pruett, 2005). Studies have confirmed that PCIs are more effective in cases where codes of conduct are integrated into management structures and complemented by effective enforcement of national laws and workplace unions (Locke, Qin and Brause, 2007; Locke, 2013).

Another weakness of PCIs is their lack of coordination. It might be beneficial for private governance actors to coordinate their practices and establish a level playing field for competition. Lack of coordination has resulted in overlapping layers of multiple PCIs overcrowding the field of CSR. A study of PCIs in the garment industry found resistance to collaboration, due to competition and the perception that the enterprises pursue separate political agendas (Fransen, 2011). Intra-firm relationships emphasizing cooperation, mutual respect and diffusion of good practices promote more sustainable workplace compliance (Distelhorst, Hainmueller and Locke, 2014; Locke, Amengual and Mangla, 2009; Oka, 2010b).

2.3. Social governance

In social governance, unions, employers' organizations and other civil society organizations engage in a process to define and implement joint governance schemes, such as social dialogue. The promotion of collaboration amongst stakeholders has been reaffirmed in several ILO instruments including the Declaration on Social Justice

for a Fair Globalization, adopted by the International Labour Conference in 2008. It recognizes social dialogue and tripartism “as the most appropriate methods for making labour law and institutions effective, including in respect of the recognition of the employment relationship, the promotion of good industrial relations and the building of effective labour inspection systems”.

In contrast to voluntary private compliance initiatives, social partners yield some degree of authority and control to the social governance mechanism. In formal unionized workplaces, unions act as the collective representation of worker voice during collective bargaining. For workplaces that are not covered by unions and are not covered by collective bargaining, workers’ interests may be voiced by NGO advocates. At the global level, international framework agreements (IFAs) are examples of transnational social governance mechanisms.

Collective bargaining. Collective bargaining is a traditional governance tool for social partners to set mutually beneficial terms and conditions of employment. The Collective Bargaining Convention, 1981 (No. 154) defines collective bargaining (CB) as:

all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for:

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations.

This Convention has been ratified by 46 countries, while 164 countries have ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); both Conventions are among the eight fundamental ILO Conventions. The nature and coverage of collective bargaining agreements vary widely across countries. In some, collective bargaining agreements reinforce national law by supplementing and improving upon legislative standards. In others, collective bargaining agreements serve as the law itself. In many Nordic countries, national laws are less extensive, creating a system where sectoral collective bargaining agreements have statutory effect and high coverage of workers, sometimes regardless of union membership. In these countries, the social partners determine the terms and conditions of work and collective agreements take the status of law that is enforceable. Collective bargaining coverage in Austria is amongst the highest in Europe, ranging from 95 to 97 per cent, as labour legislation obliges employers to join the Austrian Chamber of Economy. This means that industrial relations are regulated through sectoral determinations that arise from the participation of social partners in multi-employer bargaining. In other countries, notably in Asia, the lack of sectoral collective bargaining mechanisms induces the law to be a more important basis of regulation, with enterprise-level bargaining taking place to improve on statutory minimums. Industrial relations in Cambodia, Japan and the Republic of Korea, for example, are characterized by low coverage of sectoral agreements, higher dependence on statutory minimums and high levels of enterprise bargaining for issues not fully covered in legislation.

Industrial action, or the right to strike, is among others a means for workers to hold employers accountable for perceived violations of collective agreements, or in some cases, to improve their leverage in the collective bargaining process. In some countries, the labour inspectorate enforces collective agreements and statutory minimums, while in other countries union or other workplace representatives may

enforce compliance (Grabosky, 1995). Depending on the legal system, dispute resolution or the enforcement of workers' rights may be carried out through the judicial system by labour courts and tribunals, independent labour commissions and/or competent governmental ministries.

International framework agreements. IFAs, or global framework agreements (GFAs) are “negotiated agreements between multinational enterprises (MNEs) and global union federations (GUFs) representing workers at the global level by sector of activity” (Papadakis, 2011, p. 2). GUFs are associations of national trade unions that share common interests, goals, industrial sectors and/or occupations. IFAs are a direct response to the challenges of enforcing workplace compliance measures in global supply chains, where national unions have limited capacity and opportunity to negotiate directly with lead firms. IFAs enable transnational social dialogue between MNEs and GUFs to set minimum standards to improve working conditions at the global level (Helfen and Fichter, 2013). Recent IFAs have begun to refer to supply chain dynamics, and to include compliance as a basis for continued business relations with suppliers and subcontractors (Hadwiger, 2015).

The first IFA was signed in 1988 between Danone, a French food products corporation and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). The number of IFAs and the diversity of sectors covered have increased over the last 15 years (Hadwiger, 2015). In addition to increasing in quantity, IFAs have improved qualitatively by utilizing ILO Conventions, the MNE Declaration and other international instruments such as the OECD Guidelines for Multinational Enterprises (Hadwiger, 2015). Virtually all of them reference the eight core labour Conventions of the ILO.

Some argue that although not legally binding, IFAs have been effective in their capacity to regulate workplace compliance and can provide mechanisms to support capacity development in SMEs, using a top-down approach through networks of MNEs and GUFs. For example, IFAs may complement local collective bargaining practices, such as that between Accor Hotels and the IUF. One study notes the importance of the IFA and the involvement of the IUF in supporting local trade union organizing in Australia, Indonesia and North America (Wills, 2002). In the South African construction sector, the IFA between Lafarge and BWI (Building and Wood Workers' International) has demonstrated promising opportunities for labour standards to be promoted throughout the supply chain, including suppliers and contractors (Williams, Davies and Chinguno, 2015).

2.3.1. Labour norms and institutions

The social partners are crucial to the effective implementation and enforcement of national labour laws. Trade unions support labour inspection and dispute resolution by filing claims, representing workers, and collaborating with the inspectorate in investigations. Employers' organizations provide training and assistance to enterprises about their legal responsibilities and effective workplace compliance policies. When the rule of law is not appropriately enforced by public institutions, the social partners can utilize social governance mechanisms to address the regulatory deficit.

Supporting labour inspectorate services. Social governance mechanisms can support the functioning of labour administration and inspection services. In many European countries, tripartite consultative bodies have been set up to deal with labour inspection issues, ranging from safety and health-related inspections to awareness

campaigns. In South Africa, the labour inspectorate cooperates with the social partners in the Advisory Council for Occupational Health and Safety in order to promote education and training in OSH (ILO, 2011).

Some informal workplaces, common in lower levels of global supply chains, are practically or jurisdictionally beyond the reach of the labour inspectorate. In some cases, workers must resort to filing legal cases when there are no other mechanisms to raise complaints in enterprises exempted from the scope of traditional labour law enforcement (Daza, 2005).

2.3.2. Legitimacy

Social governance promotes greater legitimacy through the inclusion of workers and employers in the process, and the development of mechanisms to set standards for workplace compliance and mechanisms for dispute resolution.

Inclusiveness. The participation of social partners or other worker representatives provides an opportunity for worker voice. However, adequate worker and employer representation can be contentious in global supply chains. Inclusiveness may be limited by lack of participation on opposite ends of the supply chain. On the employer side, lead firms may not engage at the national level where their suppliers operate, and SMEs may not be engaged in social governance at the local level. On the side of the workers, it may be difficult to engage non-unionized, informal, home-based or piece-rate workers. These two distinct problems undermine the extent to which stakeholders can engage in meaningful social dialogue and cooperate to ensure effective workplace compliance.

Collective bargaining is a traditional governance tool for social partners to set mutually beneficial terms and conditions of employment. Collective agreements have been weakened by a number of trends, including subcontracting employers found in global supply chains, fragmenting of workplaces, and informal work relationships.¹⁵ First, lead firms are often not present at the negotiating table at the national or local level, and suppliers' contracts' profit margins and delivery dates are often too narrow to provide either the opportunity or capacity for suppliers to offer decent working conditions. Second, workplaces at the lower end of the supply chains are smaller and more isolated, putting them beyond the reach of traditional union organizing and representation. Third, some collective bargaining agreements may not apply to non-union members, a particular problem for informal and self-employed workers. To address this limitation some jurisdictions have implemented "tripartite-plus" social dialogue. In South Africa, community constituencies are represented in national social dialogue on labour market policy. In the Netherlands, an organization of self-employed workers participates in the Social and Economic Council, a national tripartite-plus advisory body (Ebisui, 2012).

Largely because of the deficiencies in representation of social dialogue in the national level, there has been increasing interest in social dialogue at the sectoral and international levels (Gernigon, Odero and Guido, 2000). While there are an increasing number of IFAs, they are generally not legally binding. IFAs are not enforceable through the ILO supervisory system, which is limited to complaints directed at States, and national courts have limited or no jurisdiction to address disputes based on IFAs

¹⁵ Workers echoed this sentiment in the ILO in 2013: "Globalization and the organization of production along supply chains posed major challenges to social dialogue and collective bargaining. Effective ways to promote cross-border dialogue and bargaining should be an aim of the discussion" (ILO, 2013b, p. 5).

(Ewing, 2007). The effectiveness and enforcement of IFAs largely depend on the scope and structure of the IFA.

IFAs have been criticized for the dominance of international agendas determined by trade union elites rather than incorporating local and national interests (Donaghey et al., 2014). The extent to which IFAs are applied and are relevant to specific workplaces is still unclear. For example, a case study of the local effect of the IFA between the International Metalworkers Federation (IMF)¹⁶ and Daimler (at the time, DaimlerChrysler) showed that IFAs may not encourage social dialogue at the local level. In the United States, the United Automobile Workers (UAW) launched an organizing drive in Tuscaloosa, Alabama, at a logistic supply chain company that contracts to Mercedes-Benz. Mercedes-Benz is owned by Daimler, and the UAW relied on the IFA, which included provisions on neutrality during organization campaigns, assuming that management would remain neutral during their organizing drive. However, local opposition showed that the managerial culture at the workplace in Alabama overshadowed the IFA's provisions. Difficulties arise in regions where anti-union attitudes are culturally embedded (Fichter and Helfen, 2011). Asian lead firms and first-tier suppliers have been less interested in engaging with GUFs in IFAs. This lack of engagement has resulted in them being targeted by highly visible global campaigns (ITUC and IndustriALL 2016).

Transparency. Equal access to information is a prerequisite for effective social dialogue. Information asymmetry may be a particular problem where subcontracted firms and their union counterparts do not have access to the full terms and conditions of contracts between lead firms and first-tier suppliers. Furthermore, the level of transparency is usually controlled by participants. Social partners may agree to keep negotiations confidential, or to limit public disclosure regarding the process and its outcomes. As discussed earlier, the limitations in the representativeness of the parties to social dialogue also have an impact on the level of transparency to broader stakeholders, including government authorities, non-unionized workers, and interested lead firms or subcontractors.

2.3.3. Capacity

Capacity issues are particularly difficult to generalize in social governance, which not only depends upon a case-by-case basis, but is also dependent upon who actually participates in social dialogue on any given day. The process, the substantive issues and the outcomes of social dialogue reflect the capacity of the members of the negotiating teams representing the social partners.

Resources. Human and financial resources for social governance are entirely dependent on the parties. In some countries, resources are available when a strong institutionalized form of social dialogue is established. In other cases, resources are harder to ascertain. In addition, unforeseen expenses can also undermine the success of the process. In lower-tier supplier workplaces or home-based worksites, resources to support social dialogue are scarce.

Political will. The political will of the social partners may be related to whether there is a tradition of social dialogue in the country or industry where they are operating. In some countries, social dialogue has been institutionalized as a tripartite consultative body at the national or sectoral levels. For example, in India, industrial tripartite

¹⁶ On 19 June 2012, affiliates of the IMF and other former global union federations were brought together in a new organization: IndustriALL Global Union.

committees (ITCs) are established in the plantation, road transport, cotton textile, jute, electricity generation and distribution, engineering, and sales promotion industries.¹⁷ In other cases, the government encourages the social partners to engage in social dialogue by establishing mechanisms to regulate the labour market, including hours of work and the minimum wage at the national or sectoral level.

Another factor influencing the effectiveness of social dialogue is the scope of the issues under discussion. Where issues require labour and management interaction, and have practical benefits for both parties, there may be greater willingness to engage in social dialogue even in situations with little political support for traditional collective bargaining. One example is social dialogue on occupational safety and health (OSH) issues. National and workplace OSH councils are established in many countries. In Austria and Spain, tripartite social dialogue and consultation on OSH is prescribed in law. In the Republic of Moldova, trade unions have the legal mandate to participate in national OSH actions (ILO, 2009). However, other issues such as overtime payments and hours of work may be more difficult to negotiate, particularly when subcontracted suppliers are under significant and constant pressure to deliver finished goods within strict deadlines. Similarly, there may be little political will to discuss enabling rights such as freedom of association and the right to strike unless public labour administration institutions are focused on promoting those rights.

Expertise. Expertise is dependent on the parties involved. Some of the enabling skills that social partners should develop are negotiating, organizing and communication skills. A comprehensive knowledge of the applicable labour law and labour administration functions are also important for social partners and their constituents in pursuing their rights and engaging in meaningful debate. Other relevant areas of technical knowledge may include OSH or social protection. In cases where NGOs represent non-unionized workers, they may serve as advocates regarding a wide variety of issues. For example, the South African Self-Employed Women's Association (SASEWA) registers women who are homeworkers. The organization assists workers not only to find contracts for their work, but also sets up insurance for its members through pooling contributions. In addition to these activities, SASEWA provides training to workers about their rights and, through alliances with other civil society groups, negotiates with the municipality for benefits (Tilly et al., 2013). The empowerment of workers to give voice increases the legitimacy of the formal rules and democratizes the informal norms of adhering to labour standards.

2.4. Governance deficits

This section has analysed the different approaches to governance based on the characteristics of effective workplace compliance: labour norms and institutions, accountability and capacity. All the three governance approaches – public, private and social – tend to fall short of effective long-term workplace compliance when they are functioning independently of the others. Governance deficits can be identified in each of the three characteristics of effective workplace compliance.

Labour norms and institutions. Public governance is closely related to the State's authority to draft and enforce labour legislation through labour inspection and administration. Governments should adopt adequate labour legislation that respects the Fundamental Principles and Rights at Work and promotes labour protection

¹⁷ See <http://labour.gov.in/industrialrelations/industrial-tripartite-committees>.

measures. Only the government is in the position to define labour legislation consistent with public policy goals to protect workers' rights. Meanwhile, private governance does not necessarily align with the law, when rules are based on the global interests of the lead firm rather than national laws and local standards. The narrow scope of private schemes and their voluntary nature are not conducive to long-term behavioural change consistent with effective governance. Most PCIs were not designed to support the effectiveness of public governance structures, and do not promote broader social development goals, since they apply only to certain workplaces and categories of workers. Social governance can offer some support to the labour inspectorate and to dispute resolution processes at both the national and transnational levels by assisting with investigations, filing complaints, and other political means. However social governance is weak when it comes to filing private causes of action to enforce labour legislation against either suppliers or lead firms, due to the limitations on jurisdiction and liability at both the national and transnational levels.

Legitimacy. Upholding legitimacy and accountability in public governance is a vital part of democratic legitimacy. Governments have the duty to implement transparent processes, to publish information to support compliance and to ensure that their compliance strategies are broadly inclusive, in order to promote labour protection measures to the largest number of workers. However, there are instances where public authorities fail to enact these policies, a failure that undermines their authority and effectiveness. Private governance frequently fails to meet the standards of accountability, failing to encourage worker participation and tightly controlling information. This is especially problematic because PCI programmes may be terminated as soon as other business interests outweigh the economic and social motivations that inspired their adoption, especially when consumer advocacy campaigns die down. Social governance promotes legitimacy insofar as the participants allow for inclusive processes and choose to disclose information to each other, to the government and to the general public.

Capacity. Capacity is fundamental to effective implementation. Three aspects of capacity are explored in this paper: resources, political will and expertise. In public governance systems where human and financial resources are limited, political will may change according to electoral politics or shifts in political priorities. The expertise of the labour inspectorate may also be insufficient to provide competent and professional inspection services. In private governance, lead firms have the potential to invest financial and human resources to ensure compliance. However, this potential capacity tends not to reach smaller firms at the lower tiers of the supply chain. Auditing and tick-the-box methods of private governance also fail to encourage long-term compliance. Social governance can mobilize sufficient resources and expertise, and may have a commitment to long-lasting social dialogue processes. However, these resources greatly depend on the parties and their input. If there are neither the legal mechanisms to encourage social dialogue nor a history of collaborative labour relations, then social governance is most likely unable to overcome these challenges. To effectively implement social governance mechanisms in global supply chains may require a long-term commitment to building the trust and expertise necessary.

3. Complementary forms of governance

Complementary forms of governance occur where elements of the three different governance mechanisms discussed in the previous section are coordinated to improve compliance. In some countries, particularly in northern Europe, and in some industrial sectors such as the maritime sector, these collaborative and more holistic approaches to labour relations are well developed. This section reviews some of the academic literature analysing complementary forms of governance and provides examples where initiatives have addressed particular dimensions of effective workplace compliance.

For example, researchers found that suppliers adhere to private compliance initiatives in States that have stringent labour laws in place, have ratified ILO Conventions, and have high levels of press freedom (Toffel, Short and Ouellet, 2015). A comparative case study of Hewlett Packard (HP) suppliers in Mexico and the Czech Republic has also found that their PCI complemented the public compliance institutions where public authorities engaged in regular enforcement of its national labour legislation, as in the Czech Republic. However, in Mexico the PCI substituted the absence of public enforcement (Locke, 2013). While private governance complements public authorities where there already exists a culture of compliance, private governance tends to substitute weak government enforcement, compromising its sustainability in the long term.

Several cases analysed in the literature support the use of complementary forms of governance, utilizing a broad range of actors and tools for better regulation in many different country contexts.¹⁸ Neil Gunningham describes it as “an emerging form of regulatory pluralism that embraces flexible, imaginative and innovative forms of social control, and which seeks to harness not just governments, but also businesses and third parties” (Gunningham, 2011, p. 207). Others have called it “meta-regulation” in which the approach integrates responsive¹⁹ and reflexive²⁰ legal approaches and enforcement strategies. Governments use a mix of deterrence and persuasion to link corporate social values to economic incentives in order to promote self-regulation of businesses. This allows for a fuller participation of firms in internalizing process-oriented rules for workplace compliance, while the external regulation of firms by governments ensures their compliance (Parker, 2007).

The literature on complementary forms of workplace governance also examines the interaction of public–private governance strategies, in order to identify examples where different governance schemes may be layering, reinforcing, or filling the void left by weak public institutions.²¹ An example of layered regulation comes from a study in the

¹⁸ Ideas about this approach to workplace compliance have been voiced by academics using different terms: “synergistic governance” (Mayer, 2014; Gereffi and Lee, 2014); “integrative approach” (Kolben, 2011), and “complementary regulation” (Amengual, 2010), to list a few.

¹⁹ Responsive law focuses on how to promote values inherent in the law to enterprises and how to encourage its assimilation. It emphasizes this by first applying less punitive and more educational techniques at the start and escalating to punitive sanctions and suits if compliance is not achieved.

²⁰ Reflexive law emphasizes that specific solutions should be given to specific problems and that the people should be granted the right to do so by means of not only collective bargaining under the law, but also to frame self-regulation with the law. The law emphasizes procedures rather than specific duties.

²¹ Bartley (2005) notes that in the instance in which it may occur, private codes derail legislative campaigns that increase enterprises legal liability to their suppliers. However, the same codes were used by civil society groups to increase liability over their supply chains, showing the complexity behind such interactions.

Dominican Republic that highlights the benefit of unintentional collaboration between the public and private inspectorates. Private MNE auditors operating within their jurisdiction have focused on health and safety standards, while public inspectors have focused on freedom of association violations. Also, because private MNE auditors were most active in EPZs, more resources were available for the inspectorate to free up their resources to focus on workplaces outside EPZs (Amengual, 2010).

A legal scholar in Bangladesh has further argued that meta-regulation is particularly relevant for developing countries without strong regulatory capacity and the lack of strong civil society, and that NGO presence that could promote a more risk-based regulation (Rahim, 2011).

One recent and often-cited governance approach offered by Kevin Kolben is known as the “integrative approach”. Kolben’s analysis points to the limitations of some transnational labour governance theories due to their focus on developed economies. The integrative approach

as applied to developing countries has a different starting assumption and at least one additional central objective – to develop the labor regulatory capacity of states and to achieve important development goals such as democracy and rule of law in the realm of labor. It recognizes that labor is not merely an economic sphere of regulation, but rather a social and political arena that is deeply related to and integrated with broader political, social, and developmental issues. (Kolben, 2011, p. 433)

He also develops a framework for analysis of the interaction between private and public governance systems which identifies intentional and unintentional interactions in formal and informal settings that could strengthen or undermine public compliance. Kolben’s scholarship on labour regulation (2011, 2015) explores instances in which transnational private governance cooperates with and thus develops state capacity, rather than overlooking dysfunctional public labour administration by strengthening private inspection processes. He argues that the role of state capacity is central, and recommends that private governance should operate dynamically alongside public institutions (Kolben, 2011). The present paper builds on Kolben’s integrative approach to argue that although complementary forms of governance may unintentionally support the regulatory capacity of government, to better address the governance gaps in global supply chains regulatory approaches should be designed to intentionally reinforce the State’s capacity to enforce labour laws to ensure sustainable and inclusive compliance.

Working towards synergistic governance. This paper uses the term “synergistic governance” to describe situations where public, private and social governance strategies are not merely layers of regulation, but are mutually reinforcing for effective compliance, and establish a level playing field for fair competition. Mayer uses this phrase to describe instances of collaboration of the State, civil society and institutions of private governance in which “rather than replacing social and private governance, governments appear to be finding ways to leverage those institutions for public purposes” (Mayer, 2014). Similarly, Gereffi and Lee (2014) have also referred to this concept to describe governance where multiple stakeholders are involved.

Complementary forms of governance already exist in national contexts, particularly where there is a strong commitment to social dialogue. This paper suggests that integrative or synergistic forms of governance could be implemented as a more comprehensive strategy to address the governance gaps in global supply chains.

Among the acknowledged challenges are the complexity of the current governance landscape, and consequently understanding the relationships among the different layers of public and private standards. It is also possible that governance structures are complementary but not reinforcing. For example, a case study in Indonesia that examines the work of multiple transnational actors and labour norms in the garment sector finds “a messy intermingling of multiple (albeit ultimately partial and incomplete) sets of standards” rather than a collaborative environment (Bartley, 2011, p. 541).

3.1. Labour norms and institutions

The enforcement of labour norms and institutions is the foundation of successful enforcement of workplace compliance both nationally and in global supply chains. To strengthen public governance, governments should establish an enabling environment for social dialogue. Creative incentives to encourage compliant behaviours, and narrowly tailored sanctions to penalize outliers unwilling to change, could be designed in consultation with the social partners. Additionally, a system of functional, transparent and accountable social dialogue has been long institutionalized in many countries and has been instrumental in serving not only a political but also an institutional purpose in framing and executing policy practices (Grabosky, 1995).

An example is the Social and Economic Council of the Netherlands (Social-Economische Raad – SER), a tripartite body comprised of representatives of employers’ and employees’ organizations and Crown members appointed by the Government. The SER advises the Dutch Government and parliament on social and economic policy, as well as carrying out other administrative tasks such as establishing commodity and industrial boards. Its decisions affect issues such as work, income levels, social security, taxes, professional education, town planning and environmental affairs. The SER was established by the 1950 Industrial Organisation Act, which defines its roles and responsibilities. This institutionalized platform embodies many of the principles of social dialogue such as cooperation and consultation. The SER has the ability to determine whether collective agreements between employers’ and workers’ organizations are binding on a whole sector, regardless of whether or not an employee is a member of the union. Although only about 20 per cent of workers in the Netherlands are union members, more than 80 per cent of the workforce is covered by one of 900 collective agreements (SER, 2013). Mainly due to its consultative nature, the SER’s recommendations are highly relevant in the policy-making practices of the Netherlands, and go beyond its borders to influence international supply chains.

In 2008, the SER published a statement that called on trade and industry to actively pursue responsible supply chain practices. It advocated the expansion of CSR practices in respect of international standards including the ILO 2008 Declaration on Fundamental Principles and Rights at Work, social dialogue and the pursuit of transparency, and established an annual reporting system to publish monitoring activities of Dutch companies. In reaction to this push, companies and trade associations initiated voluntary regulations. For example, the Task Force Sustainable Palm Oil, a collaboration of eight food and feed associations, committed in 2010 to using only sustainable palm oil for the Dutch market by the end of 2015. As a result, the total share of sustainable palm oil used in the Dutch food industry increased from 30 per cent in 2011 to 84 per cent in 2015 (Task Force Sustainable Palm Oil, 2016).

3.2. Legitimacy

Legitimacy addresses the need for governance systems to encourage transparency and public engagement, and to establish mechanisms for holding non-compliant actors accountable for their actions. In global supply chains, governments and workers' groups do not have access to much information on the relationships between the lead firms, the first-tier firms and their subcontractors. This makes it difficult to ascertain who should be involved in complementary forms of regulation. Core and peripheral workers may be producing the same goods side by side, but be covered by different types of contract with different terms and conditions of work. Those at the lower tiers of the supply chains may work for SMEs or under more informal arrangements that fall outside the coverage of national labour legislation.

An example of a synergistic governance approach which has improved legitimacy and accountability in supply chain governance can be found in Brazil's policies to eliminate forced labour. In 1995, the Brazilian Government recognized the existence of slave labour in the country and established the Executive Group for the Repression of Forced Labour (Grupo Executivo de Repressão ao Trabalho Forçado – GERTRAF) and its Special Mobile Inspection Group (Grupo Especial de Fiscalização Móvel – GEFM). Between 1995 and 2015, 49,816 workers were rescued from conditions “analogous to slavery” by the Ministry of Labour and Employment (Repórter Brasil, 2016). Brazil's fight against forced labour has been internationally recognized for the success of its innovative and comprehensive campaign.

A defining characteristic of Brazil's experience is the mobilization of multiple stakeholders. The Ministry of Labour and Employment was able to bring together actors at the public, private and worker levels in order to coordinate action and to promote social dialogue. The action plan of the National Commission for the Eradication of Slave Labour (Comissão Nacional para a Erradicação do Trabalho Escravo – CONATRAE) was launched in 2003. CONATRAE was tied to the Special Secretariat on Human Rights (Secretaria Especial de Direitos Humanos – SEDH). Members of the Commission include government officials, worker and employer representatives, and civil society organizations. Through these coordinated efforts, the Commission built trust with companies and designed strategies tailored to the different sectors involved (ILO, 2010).

As momentum against forced labour grew, enterprises adopted policies to punish their non-compliant peers. In 2004, Resolution No. 540 passed by the Ministry of Labour and Employment instituted the “dirty list”, a public database maintained by the Ministry and SEDH, which exposed companies investigated by the labour inspectorate for their use of slave labour (ILO, 2010). Once a company was placed on the list it remained there for two years, and the list was updated every six months. The Ministry did not take any action to prosecute or sanction companies on the list, but they were punished by market forces through losses in stock market shares and damaged public reputation. Additional private initiatives also emerged alongside the dirty list to punish companies with forced labour in their supply chains. For example, some steel companies that operate in Carajás signed a public commitment to stop buying vegetable coal, an industry with a high incidence of forced labour.

In 2005, the National Pact for the Eradication of Slave Labour (National Pact) was launched by the Ethos Institute and the ILO. The Pact is an innovative tool that was able to penalize companies that used slave labour more efficiently and quickly than action through the national courts. By promoting shared responsibilities, companies

voluntarily acknowledged accountability over unacceptable labour practices in their supply chains. As of 2016, around 250 companies which account for 30 per cent of the Brazilian GDP have joined the pact (Ethos Institute, 2016). National banks agreed to discontinue granting business loans to companies on the dirty list. An addendum in 2011 allowed international companies to also sign the pact, in relation only to suppliers located in Brazil. The Pact is also represented in CONATRAE, participates in its meetings and is supportive of its initiatives. Many signatory companies have altered their contracts to insert clauses of commercial restriction against sourcing from those that make use of slave labour (ILO, 2010). Companies such as Wal-Mart, Carrefour and Ipiranga have broken contracts with suppliers that do not adhere to the law.

Brazil's fight against "labour analogous to slavery" is an important case that highlights how the Government, in synergistic collaboration with stakeholders, strategically designed to hold companies accountable for the actions of their suppliers. Their approach in utilizing transparent supply chain dynamics through the dirty list and the National Pact not only tackled the problem of inclusiveness, which is often found in single-actor governance structures, but also instilled a culture of compliance focused on the abolition of forced labour in Brazil.

3.3. Capacity

Complementary forms of governance can greatly improve capacity for labour law enforcement and workplace compliance. A variety of methods may be utilized to boost capacity for compliance, but even governments with developed economies find it difficult to maintain enforcement capacity reaching all workplaces and workers. Attempting to extend compliance to global supply chains is even more difficult. Thus, many scholars have advocated the use of strategic enforcement techniques (Pires, 2008; Piore and Schrank, 2008). This idea has been explored in depth by David Weil (2008), highlighting the need to boost capacity through strategic enforcement.

Weil's version of strategic enforcement includes four principles: prioritization, deterrence, sustainability and achieving systemic effects. *Prioritization* includes the ranking of industries from the worst to the best, based on the severity of problems facing an industry, and also on the likelihood that interaction will be effective. *Deterrence* is the threat of sanctions, so that the effect of inspection efforts is magnified: it influences behaviour even among those who have not been inspected but who think they might be. *Sustainability* includes factors such as fostering a preventive culture so that non-compliant actors become compliant even after a first inspection. *Systemic effects* capture inspectors' understanding of the organizational policies and practices of enterprises in order to impact the system, rather than merely the locale (Weil, 2008).

Further on, Weil's four principles each possess five components. The inspectorate is to: map the regulatory terrain to address where government intervention is the most effective, collaborate with third parties to ensure complementary effects; remain responsive to worker problems (for example, by complaints from unions) but use the investigations to be proactive on such problems; develop approaches based on sector-specific dynamics such as leveraging top industry forces (such as using private incentives to achieve public ends); and combine central evaluation with decentralized implementation (ibid.).

On a more normative level, Weil's reading of global supply chains calls for increased responsibility given to the lead firms:

Modern supply chains often represent an intermediate organizational form between arm's-length market transactions and vertical integration. Lead companies at the top of supply chains are deeply integrated with their network of orbiting companies. When Apple specifies the technical standards for Foxconn and hundreds of other core suppliers to exquisite length and operates as a supervisory agent inside the walls of its suppliers, we come back to the same question posed by the practice of franchisors prescribing minute day-to-day activities for franchisees, or AT&T demanding such strict adherence to performance standards by its subcontractors that it virtually drives their business models... But given their deep integration with the supply base and the essential strategic need to carefully prescribe, certify, and conduct ongoing monitoring of adherence to technical, quality, and delivery standards, it seems arbitrary to absolve those lead companies from responsibility for, at the very least, seeing that those suppliers adhere to the labor standards of their home country. (Weil, 2014, pp.176–177)

Weil's "strategic enforcement" emphasizes elements of synergy through collaboration with non-governmental actors, and with buyer companies. The following pages list some examples and instances in which synergies boost the capacity of actors, both in informal and formal interactions of public, private, and social governance.

Resources. Both human and financial resources could be better allocated and more widely distributed when social partners are also mobilized.

In Argentina, a case study (Amengual, 2014) shows that the labour inspectorate was more effective at finding violations and providing remedies when there was an established linkage between inspectors and pro-enforcement societal groups such as NGOs and trade unions. Labour unions supported labour inspectors with transportation and information about violations in particular workplaces, which led to higher compliance levels.

Better Work²² Indonesia and its capacity-building programmes paints a similar picture. At the factory level, Better Work assesses factory compliance grounded in international standards, representing one of the ILO's most stringent monitoring mechanisms. Better Work also contributes human resources to help remedy decent work deficiencies in the operation of an enterprise. For example, "enterprise advisors" are locally recruited and trained, and conduct their duties based on a strict ethical code of integrity, transparency, diplomacy and respect, combatting some of the common criticisms of private-led monitoring regimes (Rossi, 2015).

²² Better Work is a partnership between the ILO and the International Finance Corporation (IFC) and is specifically tasked with improving labour standards and competitiveness in global supply chains. The programme assists enterprises improve practices based on core ILO labour standards and national labour law. It does this with a strong emphasis on improving worker–management cooperation, working conditions and social dialogue and, importantly, freedom of association is built into its work. Better Work engages directly with global buyers bringing together lead firms and their suppliers to help improve operational issues which may hamper decent work. Enhancing respect for labour standards helps enterprises meet the social compliance demands of global buyers, improves conditions for workers and helps firms become more competitive by increasing productivity and quality.

In particular, studies conducted on Better Work Indonesia analyse how Better Work reinforces state capacity. Amengual and Chirot (2015) find that, under the conditions of active unions and adequate expertise of Better Work, synergies emerge. In their case study, they outline a scenario in which the mobilization of unions around minimum wage rules created new rules, which were then actively enforced and promulgated by Better Work staff through pushing for the application of rules that facilitated the functioning of the Ministry of Manpower and Transmigration (MOMT). In another study, Dupper, Fenwick and Hardy (2016) find that Better Work has facilitated the introduction of “labour norms cadres” in enterprises and enhanced the interaction between the central and district levels of the Indonesian labour inspectorate, which had previously been limited. The existence of Better Work’s human resources, and its political leverage within the MOMT, were crucial in improving the formal capacity of the Indonesian public authorities.

Political will. Political will can gain momentum when partners monitor and support each other and build consensus on needed interventions. When separate initiatives enhance activities and tasks towards a common goal, the motivation for effective compliance can form a positive feedback loop. Commitment is bolstered through checks and balances of complementary roles and tasks assigned to each party.

In Pakistan, the Agreement on the removal of child labour from the Sialkot football manufacturing cluster serves as an example of how motivation and commitment was shaped by external pressure and multi-stakeholder engagement. The Agreement was signed in 1997 by the Government of Pakistan, the ILO, the International Federation of Association Football (FIFA), United Nations Children’s Fund (UNICEF), World Federation of Sporting Goods Industries (WFSGI), and the Sialkot Chamber of Commerce and Industry (SCCI). It was supported and financed by international donors, and outlined a programme to prevent child labour and implement social protection programmes to address the root causes of child labour through poverty alleviation and education (Nadvi, 2008). International stakeholders, NGOs and international trade associations used their political leverage to push the Sialkot cluster to remove child labour from the football supply chain.

In Brazil, the interaction between public and private actors has resulted in complementary roles which have persuaded lead firms to participate in promoting compliance. In light of the labour inspectorate’s uncovering of slave labour in the São Paulo apparel factories, the São Paulo City Council created a Commission which decided that apparel retailers were legally liable for working conditions in their supply chain. In response to this decision, the Brazilian Association of Textile Retailers (ABVTEX) members initiated PCIs that monitored their own supply chains. In 2013, the State of São Paulo Legislature further built upon the private sector’s resolve by approving legislation that allowed the suspension of a firm’s licence for ten years if slave labour was identified along the supply chain of the given enterprise. With this legal background, private actors could be mobilized in order to design a collective Supplier Qualification Programme (SQP) to map, audit and certify all suppliers of ABVTEX (Posthuma and Bignami, 2014). The industry association and the Government were able to achieve synergies by reinforcing the political commitment of each other.

Expertise. Expertise is strengthened by mobilizing all key players. This dynamic has also been increasingly observed by academics in their empirical investigation of the relationships between PCIs, social actors and public labour administrations. The most obvious examples are found in cases in which government offices contract out inspection functions to private enterprises, usually for special technical functions such

as those commonly in the area of OSH (ILO, 2011). In other examples, the government promotes self-diagnosis by enterprises, which creates a learning effect to be embodied within those enterprises.

One example of an effort to build knowledge and raise awareness among key players is the development of the *CSR sector risk assessment*, facilitated by the Government of the Netherlands, in close collaboration with business and civil society. This practical tool, aimed at shaping due diligence processes in Dutch enterprises, identifies the main risks related to, inter alia, human and labour rights in 86 different sectoral supply chains. The findings have also functioned as a starting point for multi-stakeholder dialogue, both outside and within the sectors (KPMG, 2014).

A particularly striking example comes from Bangladesh. As a result of the factory fire in Tazreen Fashions and the building collapse of Rana Plaza in 2013, three initiatives were established to promote building and fire safety in the Bangladeshi ready-made garment (RMG) sector – the National Tripartite Plan of Action on Building and Fire Safety, the Accord for Fire and Building Safety in Bangladesh and the Alliance for Bangladesh Worker Safety.

The National Tripartite Plan of Action on Building and Fire Safety (NTP) was established to ensure the implementation of legislative, administrative and practical improvements to labour norms and institutions. The NTP enabled union registration to be easier, equalized payments into a welfare fund, and provided for the hiring of new factory inspectors. Meanwhile, most important has been the increase in technical quality and frequency of labour, fire and building inspections for participating firms. New inspectors have been hired and the fire service has also appointed more inspectors. Inspections for fire and building safety have been conducted jointly by the national Department of Inspections of Factories and Establishments (DIFE) in the Ministry of Labour, as well as two private multi-stakeholder initiatives, namely, the Accord for Building and Fire Safety in Bangladesh (“the Accord”) and the Alliance for Bangladesh Worker Safety (“the Alliance”).

The Accord and the Alliance complement the DIFE in the inspections of RMG factories by providing complementary building inspections and trainings. A common reporting template has been developed for consistency among the three initiatives, while constant communication between the private and public forms of governance prevents any overlaps. Furthermore, professional engineers and fire-safety experts hired through the Accord and Alliance have been instrumental in producing a world-class template for inspections as well as leading mutual trainings, facilitated by the ILO. The synergistic, intentional framework for collaboration has enabled a more reliable and practical way of redoubling the efforts of the labour inspectorate through a strengthening of expertise.

These efforts have been furthered through the participation of the social partners, exemplified in the negotiations of the Accord, a legally binding agreement amongst multinational brands, unions and NGOs. Civil society organizations and global union federations drew on existing relationships with buyer companies to negotiate the terms of the Accord and increase the participation of global brands. The GUFs, IndustriALL and UNI Global have built upon their standing relationships with multinationals Inditex and H&M, while civil society groups, Clean Clothes Campaign and the Worker Rights Consortium have provided research and campaigns to convince retail brands to sign the Accord (Reinecke and Donaghey, 2015).

4. Conclusions

What each of the examples in the former chapter have in common is that there is a unifying theme that narrows the objective of the compliance strategy. In Bangladesh the mechanisms focused on improving OSH. In Brazil and Pakistan the focus has been to eliminate forced labour and child labour. Even in the Dutch SER model and the broader EU social dialogue, committees utilize a sectoral focus to identify and resolve common decent work challenges. A critical mass of lead firms, trade unions and government institutions at the transnational level can combine their efforts to collectively design and implement synergistic strategies if they share common goals such as the elimination of forced labour, or common practices as has been the case in the garment sector.

4.1. A need to level the playing field

In the context of global supply chains, compliance should be seen in a new light. Current strategies to promote labour standards have been insufficient to address the complexities of relationships both within and among companies that operate in a cross-border context. In order to eliminate the possibility of a race to the bottom in labour rights, a level playing field must be established. When governments fail to protect workers' rights, their domestic social peace may be disrupted and their international reputation and foreign direct investments jeopardized. Workers should be able to voice their concerns and negotiate solutions when problems arise. Enterprises should be able to compete on the quality of their goods and services rather than on their ability to minimize labour costs.

4.2. The ideal of synergistic governance

This paper has argued that in many countries workplace compliance consists of layers of governance schemes that may have complex interactions but are not necessarily complementary or reinforcing. Complementary forms of governance function best in countries that have a history of social dialogue and a culture of regulatory compliance, which is uncommon in many countries. These traditions create an expectation of compliance.

The limitations of traditional governance approaches to labour law enforcement in the context of global supply chains require a comprehensive and intentional approach to compliance. Synergistic governance is based on the aspirational premise that the stakeholders will intentionally collaborate to build the transnational structures necessary to develop a culture of compliance and establish a level playing field where global supply chains compete.

One rare example of this case is the Maritime Labour Convention, 2006. Seafarers, shipowners and governments recognized that there was no national regulation effective in protecting their interests on the high seas. The only way to punish lawless outliers and establish a level playing field was to combine all the piecemeal regulations that had evolved over time (the 40+ maritime Conventions negotiated at the ILO) into one over-arching regulatory system, now known as the MLC. It has built a system of checks and

balances for the monitoring, reporting and certification that shipowners and flag States are fulfilling their responsibilities to provide decent working conditions to seafarers. Each of the three groups has some authority and space to collaborate within the system to make the whole governance scheme stronger than the sum of its parts.

Many would argue that the current web of global supply chains function as though they exist on the high seas. There is no transnational culture of compliance holding the separate layers of governance together. Currently there is no single governance approach, or sufficient legal authority at the national level, or financial influence powerful enough to force the parties to engage in complementary governance.

It would require a critical mass of lead firms – from a particular industrial sector, or geographic region, or engaged on a particular topic such as the elimination of forced or child labour or the promotion of OSH – to mobilize their influence and resources. Along with their government and worker counterparts, synergistic governance strategies could be designed to establish a level playing field for competition in the global economy that enjoys effective workplace compliance.

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