

BRIEFING PAPER: Labour Rights in Global Value Chains

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Many of the human rights abuses found in global value chains are abuses of the labour rights of the people who work at different stages of the chain. Examples include children working in mines, forced labour in fishing, agricultural workers exposed to carcinogenic pesticides, home workers in the informal economy who are excluded from legal protection, sexual harassment of women working in sweatshops, and shipping crew who are abandoned without pay thousands of miles from home.

The rights of workers and the duties of employers vary from one country to another. This leads to a "race to the bottom" in labour standards within global value chains, as companies looking to source raw materials or products at the cheapest price fail to consider the ways that costs are kept down, including poverty wages and unsafe working conditions made possible by weak labour legislation and enforcement at national level.

Since 1919, labour rights have been predominantly defined at international level, then adopted - or not - by national governments. The International Labour Organisation (ILO) was created as part of the Treaty of Versailles at the end of World War I and it is the only tripartite agency within the UN - that is, it is the only agency where representatives of the workforce have a voice alongside representatives of government and of employers/business. The founders of the ILO recognized the importance of social justice in securing peace and understood the world's increasing economic interdependence. For example, the preamble to the ILO constitution states: *Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries*¹. In 2019, the ILO has 187 member states².

The ILO sets **international labour standards** through crafting then adopting Conventions and Recommendations. ILO Conventions (or Protocols) are legally binding international treaties that member states may then choose to ratify. There are 189 Conventions³, of which 79 are up to date and in force, that deal with a wide range of labour issues from fundamental rights, to cross cutting issues such as occupational health and safety or the treatment of migrant workers, to subjects that are specific to particular industries and sectors. Ratifying countries undertake to apply the Convention in national law and practice and to report on its application at regular intervals. Technical assistance may be provided by the ILO. ILO Recommendations are non-binding guidelines that in many cases support countries in understanding how to apply the principles established in the conventions.

Some labour standards are "fundamental" and all ILO member states are required to promote and respect them regardless of whether or not they have ratified the core conventions in which the rights are enshrined⁴. The **fundamental principles and rights at work** are:

1 History of the ILO. Accessed 26/11/2019. <https://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm>

2 The UN member states which are not members of the ILO are Andorra, Bhutan, Liechtenstein, Micronesia, Monaco, Nauru and North Korea.

3 November 2019

4 Since the adoption in 1998 of the Declaration on Fundamental Principles and Rights at Work.

freedom of association and the effective recognition of the right to collective bargaining (Conventions No. 87 and No. 98);
the elimination of all forms of forced or compulsory labour (Conventions No. 29 and No. 105);
the effective abolition of child labour Conventions No. 138 and No. 182;
the elimination of discrimination in respect of employment and occupation (Conventions No. 100 and No. 111).

COMMON LABOUR RIGHTS ABUSES

Note: this list is NOT exhaustive. Instead it gives an overview of some important issues to be aware of.

1. Freedom of association and the effective recognition of the right to collective bargaining

Human rights abuses happen when there is an imbalance of power. By standing together to resist exploitative and unsafe employment practices and demand fair treatment, organised workers have taken power and changed the course of history to create fairer and more equal societies. For this reason, freedom of association and effective recognition of the right to collective bargaining are fundamental to demanding, monitoring and protecting all labour rights. When it comes to labour rights, freedom of association most often means freedom to join a trade union. Collective bargaining means a regular process of negotiation between employer and elected representatives of the workforce in order to resolve problems and determine fair and safe treatment, that is, to ensure "decent work".

Common violations of the rights to freedom of association and effective recognition of the right to collective bargaining include:

- persecution/ blacklisting/ violent intimidation of individual workers who attempt to organise colleagues into a trade union and negotiate collectively on behalf of the workforce;
- companies refusing to enter into negotiation with trade union representatives;
- companies establishing management-led worker associations to negotiate with instead of negotiating with the independent worker-led trade union (see, for example, *Solidarismo* in Costa Rica).

2. Forced or compulsory labour

Forced or compulsory labour is the most extreme form of exploitation in the context of economic activity. The ILO's Forced Labour Convention, 1930 (no. 29), defines forced labour as: "Forced or compulsory labour is all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily."

Forced labour may mean that the person is forced to work through the use of violence or intimidation. However the ways that people are forced to work are often more complex and insidious, including accumulated debt from money lending at extortionate interest rates that the person will never be able to fully repay on their earnings, the retention of identity papers, or threats of denunciation to immigration authorities. Forced labour often affects

the most vulnerable and excluded groups with women and girls more at risk than boys and men. Children make up a quarter of people in forced labour⁵.

Forced labour is most common in under regulated industries and in countries where the national economy is dependent on cheap labour. Examples include agriculture and fishing; domestic work; mining and quarrying; manufacturing, processing and packaging.

3. Child labour

Not all work done by children is child labour in need of elimination. Helping around the home or participating in a family business can often be positive for the development of a child or young person. Child labour is a human and labour rights abuse when it is mentally, physically, socially or morally dangerous and harmful to children, and when it interferes with their school education - depriving them of the opportunity to attend school, obliging them to leave school prematurely or to combine school attendance with long and heavy hours of work. Child labour is often described as work that deprives children of their childhood.

The worst forms of child labour involve children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities. The definition includes work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, also termed hazardous child labour or hazardous work. Hazardous child labour includes:

- work which exposes children to physical, psychological or sexual abuse;
- work underground, under water, at dangerous heights or in confined spaces;
- work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
- work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

The ILO estimates that there are 152 million victims of child labour and almost half of them, 73 million, work in hazardous child labour. Of these, 19 million are children under 12 years old⁶.

A November 2019 ILO report on child labour in global supply chains finds that child labour is most prevalent in upstream industries, that is, industries serving as inputs to other industries that are then exporting. For all regions except Central and Southern Asia, child labour is disproportionately more likely to contribute indirectly to exports (and global value chains) than to national economic activity⁷. The same report identifies the top five exporting industries with risk of child labour in their supply chain by region (Figure 1).

⁵ www.antislavery.org/slavery-today/forced-labour/ Accessed 4/12/19

⁶ Global Estimates of Child Labour: Results and trends, 2012-2016. ILO, September 2017, Geneva.

⁷ Ending child labour, forced labour and human trafficking in global supply chains, ILO, November 2019, Geneva.

4. Discrimination in respect of employment and occupation

Discrimination in employment and occupation means treating people differently and less favourably because of characteristics that are not related to their merit (e.g. skills/ experience/ capacity) or the requirements of the job. As in other areas of life, discrimination at work can happen based on a wide range of personal attributes or characteristics including sex, gender/ sexual orientation, skin colour, ethnicity, indigenous identity, national extraction, social origin, age, religion, whether or not a person has a disability, HIV status, and political opinion (including political commitment to the rights of workers to organise into trade unions).

Figure 1:

TOP FIVE EXPORTING INDUSTRIES WITH RISK OF CHILD LABOUR IN THEIR SUPPLY CHAIN, DIRECT AND INDIRECT CONTRIBUTIONS, BY REGION (2015)¹⁵

Region	By DIRECT contributions	By INDIRECT contributions
Sub-Saharan Africa	Agriculture Wholesale and retail Transport and storage Textiles and apparel Food products	Food products Mining, non-energy Basic metals Transport and storage Wholesale and retail
Eastern and South-Eastern Asia	Agriculture Textiles and apparel Wholesale and retail Mining, energy Transport and storage	Food products Textiles and apparel Wood Mining, energy ICT and electronics
Central & Southern Asia	Textiles and apparel Agriculture Wholesale and retail Transport and storage Food products	Textiles and apparel Food products Wholesale and retail Transport and storage Other business services
Northern Africa and Western Asia	Agriculture Wholesale and retail Transport and storage Mining, energy Accommodation and food	Food products Mining, energy Textiles and apparel Wholesale and retail Agriculture
Latin America and the Caribbean	Agriculture Wholesale and retail Accommodation and food Transport and storage Textiles and apparel	Food products Motor vehicles Chemicals Basic metals Textiles and apparel

Forms of discrimination in employment and occupation include: harassment; unequal pay for the same work; unequal access to particular occupations and to promotions; unequal access to training and vocational opportunities; failure to safeguard the occupational health and safety of particular groups of workers; and different terms and conditions of employment such as hours of work, hours of rest, paid holiday and sick leave, and employment security.

The most common form of discrimination is against women. As well as unequal access to employment and terms of employment, discrimination is linked to women's sexual and reproductive rights. Women and children often live in desperate poverty in parts of the world where employers view pregnancy as an economic cost rather than a right, and discriminate against women in their recruitment processes or dismiss women who become pregnant. Many women have no redress against sexual harassment as part of their working day. The occupational health and safety needs of a woman who is pregnant or breast feeding are different to those of the rest of the workforce, however these needs may not be respected.

The ILO identifies the workplace as a "strategic entry point to free society from discrimination"⁸.

5. Occupational health and safety

People should be safe at work - they should be protected from physical and emotional harm including injury, disease, intimidation and harassment⁹. Around half of the ILO's instruments deal with some aspect of occupational health and safety.

Employers are responsible for identifying risks to the health and safety of their employees, and mitigating those risks. A hierarchy of response begins with elimination of the risk or hazard wherever possible, for example, ceasing use of an agrochemical known to have serious health risks. The next level of response is to adequately protect the workforce from risks and hazards that are unavoidable, for example through training, time-limited exposure to hazardous substances, and use of personal protective equipment.

With regard to agriculture, it is important to recognize the occupational health and safety implications of different production and farming methods. Large scale agro-industrial monoculture requires that workers (and surrounding communities) are exposed to toxic agrochemicals. Large scale production means repetitive work that may easily result in strain or injury. Small scale diverse organic production does not expose the workforce to these same risks, although there is still a need for health and safety education and management.

Occupational health and safety has an important gender dimension, including special measures that are required when women are pregnant or breastfeeding, and the need to eliminate gender-based violence and harassment in the workplace. Many factors can increase the vulnerability of young workers to health and safety risks, including their physical and psychological stage of development and lack of awareness of hazards.

Trade unions have an extremely important role to play in occupational health and safety - particularly through participation in joint employer/ worker safety committees where these exist.

6. Wages, working time and rest

Wages, hours of work and hours of rest - between shifts and as paid holiday and sick leave - have the most tangible impact on the day-to-day life of workers.

Wage levels should enable workers to meet the costs of living, raise a family, and build a degree of financial security to weather the risks of life, for example illness. Workers are dependent on the financial health of their employer for continued employment, making collective bargaining a fair and effective mechanism for regulating wage levels in a way that balances the financial needs of workers with the productivity of the company. ILO

⁸ Questions and Answers: What is discrimination? ILO Fact sheet, 2007

⁹ Article 9 of C190 Violence and Harassment Convention (2019) requires employers to take into account violence and harassment, including gender based violence and harassment, and associated psychosocial risks, in the management of occupational safety and health.

standards on wages provide for the regular payment of wages, the protection of wages in the event of the insolvency of the employer and the fixing of minimum wage levels. Other problems arise in cases where part of wages, and sometimes a large part, are paid in kind. Such situations push the workers concerned into poverty and may expose them to the risk of debt bondage or forced labour.

The concept of a minimum wage was first used as a policy tool for countries where there were no arrangements for "effective regulation of wages by collective agreement or otherwise and wages are exceptionally low"¹⁰. Coverage and usage of minimum wages is now far broader. Companies that fail to pay the nationally established minimum wage for their sector/ activity are breaking the law and violating the labour rights of the workforce.

Lack of binding regulation on social standards in global value chains has converted cheap labour - and therefore low production costs - into a comparative advantage for countries wishing to attract investment. This has led to the phenomena of national governments setting minimum wage levels at below the cost of living, meaning people in full time work earning the legal wage may still live in desperate poverty. In these places, the concept of the "living wage" is often used as an advocacy tool by workers and anti-poverty campaigners.

It is important to recognize also that national companies supplying global value chains often lack the bargaining power with international buyers that would enable them to receive a sustainable price for the materials or goods they produce. Distribution of value analysis is a tool that considers the complexity of global value chains, including pressures that drive down wage levels for workers upstream.

Working excessive hours poses a danger to workers' physical and mental health and to their families. ILO standards on working time provide the framework for regulated hours of work, daily and weekly rest periods, and annual holidays. They establish the principle of a 40 hour working week with a consecutive 24 hour rest period which may be ratified and enshrined in national law.

8. Access to rights for workers in the informal economy

Two billion (61 per cent) of the global employed population earn their living in the informal economy (ILO, 2018). In developing countries, 92% of women are informally employed, compared to 87% of men¹¹.

The term informal economy refers to economic activity and employment that falls outside the regulation and protection of the state, including one person or family businesses that are not legally registered, and workers selling their labour who have no formal employment relationship. The informal economy is integrally linked to the formal economy and many informal economy workers contribute to global value chains. Examples include: small scale family farms; agricultural day labourers; piece rate workers in sweatshops; workers in small workshops that tan leather, stitch shoes, weave, dye and print cloth; and workers who are subcontracted to embroider garments or assemble electronic parts from home. Home based workers are found around the world and are the least visible group of

¹⁰ ILO Minimum Wage Fixing Machinery Convention, 1928

¹¹ Women and Men in the Informal Economy: A Statistical Brief. Bonnet, Vanet & Chen, 2019. WIEGO.

informal workers; the vast majority of them are women. Evidence shows that most people work informally in the absence of other means of livelihood and that informal workers are usually poorer and more vulnerable than workers in formal employment¹².

Established mechanisms for protecting labour rights do not extend to workers who have no formal employment relationship. The formalisation of employment is essential to securing labour rights for workers upstream in global value chains. ILO Recommendation 204 (2015) provides guidance to national governments on developing and implementing an integrated policy framework on the transition from the informal to the formal economy as part of national development and poverty reduction strategies. Women in the Informal Economy Globalising and Organising (WIEGO) is a membership-based network that seeks to increase the voice, visibility and validity of the working poor in the informal economy, especially women.

THE ROLE OF TRADE UNIONS

Historically, the formalisation of work and the recognition of labour rights was achieved by workers who organised as trade unions to challenge exploitative work. Today and in the future, organised workers and trade unions continue to play an essential role in fighting human and labour rights abuses in the global economy. Trade unions:

- engage in collective bargaining with employers to secure decent work;
- engage in tripartite negotiation to define and defend labour rights and employment conditions at local, national and international level;
- participate in campaigns demanding social and environmental justice in their communities;
- expose labour rights abuses and demand justice from national governments;
- internationally expose national governments who fail to implement the fundamental principles and rights at work and other ratified labour standards, including to the ILO.

Essentially, **trade unions make the experience of the workforce visible to other actors**. Without them, there can be no transparency and due diligence in global value chains, and no effective remedy to human rights abuses.

The power resources approach is a useful analytical tool for considering the leverage that trade unions have in global value chains to successfully assert the rights of workers through the mobilisation of collective resources.

Workers have associational power through collective action -forming a trade union and entering into collective bargaining with an employer.

Workers have structural power to cause disruption to production processes and value chains. Strikes and go-slows are examples of workers using their structural power to require employers to enter into negotiation and/or respond to their demands. Some groups of workers have structural power because they are located at strategically important points in global value chains. For example, in 2013 a strike by dock workers at Hong Kong International Terminal, where a large volume of China exports to the US begin their journey, won significant improvements for the workforce¹³.

12 Women and Men in the Informal Economy: A Statistical Brief. Bonnet, Vanet & Chen, 2019. WIEGO.

Workers have institutional power based on the rights gained through past struggles which are enshrined in the international labour standards of the ILO and in national legislation, and drawn upon (selectively) in voluntary corporate responsibility initiatives. Trade unions educate workers about their rights, and actively defend them.

Workers have social power through building alliances with other groups around common goals, for example, formalising employment or demanding government action on important social and environment concerns.

13 Comparing Critical Capitalist Commodity Chains in the Early Twenty-first Century: Opportunities For and Constraints on Labor and Political Movements. Sowers, Ciccantell & Smith. 2014. American Sociological Association Volume 20.

ENFORCEMENT OF LABOUR RIGHTS

National governments are responsible for the creation of institutions and mechanisms to effectively enforce labour rights. Most governments have some form of Labour or Employment Ministry, with responsibility for formulating and implementing labour policy and law, including the essential function of conducting workplace inspections. However it is common in developing and transition countries for the Labour Ministry to be under-resourced and lack the capacity to effectively enforce compliance with national labour law. In countries where the national economy is dependent on cheap labour there may be very little political will to enforce labour standards and respect the rights of workers to use their collective power to demand better pay and conditions.

At national level, there may be no effective remedy for systematic abuses of labour rights.

Trade unions may bring a complaint to the ILO about the failure of a government to uphold the fundamental principles and rights at work or to implement labour standards in conventions that have been ratified at national level. Having received a complaint, the ILO Governing Body may appoint a Commission of Inquiry to carry out a detailed examination, provide proof, and formulate recommendations. If a State refuses to comply with the recommendations of the Commission of Inquiry, the Governing Body may use Article 33 of the ILO Constitution which recommends to the International Labour Conference "such action as it may deem wise and expedient to secure compliance". For example, the ILO has the power to recommend that governments and companies review their links to the offending country to ensure they are not complicit in the labour rights abuse.

Article 33 has been used only once in the history of the ILO, in 2000 against forced labour in Myanmar. Measures taken include a series of Memorandums of Understanding between the ILO and the Myanmar government to provide a complaints mechanism for victims, training for government and military personnel, and legal reform. A detailed look at the impact of the ILO decision to invoke article 33 is beyond the scope of this briefing. However in June 2019 the ILO's Committee on the Application of Standards expressed deep concern at the persistence of forced labour in Myanmar, including the continued sexual abuse of women labourers, and criticised the widespread failure to punish military personnel found guilty of involvement in line with the law¹⁴.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration, last revised 2017) provides direct guidance enterprises (multinational and national) on social policy and inclusive, responsible and sustainable workplace practices. It is neither a Convention nor a Recommendation.

At international level, weak enforcement mechanisms mean there may be no effective remedy for systematic abuses of labour rights.

The prevalence of labour rights abuses in global value chains demonstrates the need for binding regulation on corporations.

14 International Labour Conference, 108th Session, Geneva, June 2019. C.App./D.4/Add.1 Committee on the Application of Standards. List of Member States invited to appear before the Committee and texts of the individual cases.