

Addressing challenges to labour rights reporting on global value chains: social governance mechanisms as a way forward

Abstract

With the spread of globalisation, transnational companies (TNCs) face increasing challenges to uphold labour rights along their value chains, raising concerns over their ability to truly discharge their accountability to their wider workforce and thus contribute to Sustainable Development Goals. We provide two examples of workforce issues, migrant workers and wages, to illustrate the complexities and challenges that accountability for labour rights brings. We argue that existing governance mechanisms are not designed to capture the pressing workforce issues that TNCs are expected to deal with, and there is a need for further mechanisms to support and guide TNCs' efforts. We focus on three types of governance - private, public and social - and propose how changes can be made to help improve corporate accountability for labour rights.

Keywords: governance, value chains, labour rights, accountability, social dialogue, sustainable development

1. Challenges to corporate accountability

With neo-liberal logics mainstreaming how morality is inscribed in the global market, transnational companies (TNCs) face increasing challenges to uphold labour rights, undermining the notion of social justice, that is, the fair distribution of benefits and opportunities, by favouring investors (Michelon, et al. 2020) at the expense of workers (Sikka, 2015). A vast array of complexities and challenges undermine the protection of workers' rights throughout Global Value Chains (GVCs). More attention needs to be paid to labour rights in global systems so that companies can set up systems and procedures by which they can take more meaningful steps towards discharging their accountability to their wider workforce, and thus contribute to the United Nation's Sustainable Development Goals (SDGs). The term 'wider workforce' encompasses all groups of workers employed in the entire GVC of a TNC, however, TNCs often find it challenging to report on workforce issues outside their national borders and beyond their first tier suppliers (Parsa, et al. 2018). The question of 'how' corporate accountability can be potentially discharged to the wider workforce in a way that it promotes social justice and sustainable development is the focus of debate in this chapter.

Within a neo-liberal global system, current labour rights reporting has limited potential to unravel the reality of labour rights challenges in practice (Chiapello, 2017) as reporting tends to be restricted to those labour issues that will not carry any reputational risks and hence, has hardly any adverse impact on share prices (Pucker, 2021). Thus, unless labour rights are viewed from the perspective of workers, any efforts that TNCs make to discharge their accountability to their workforce is likely to be for the benefit of financial stakeholders only. Central to viewing labour rights from workers' perspectives lies dialogic engagement (Bebbington, et al. 2007) with workforce representatives, ensuring active enquiry and engagement with them on continuous basis over a long period of time. In the absence of such 'intelligent accountability' (Roberts, 2009), managers will avoid obtaining and, hence, reporting information on controversial and sensitive workforce related aspects at the bottom end of their GVCs, a mode of behaviour termed 'functional stupidity' (Roberts, 2018). In the following section, we discuss some examples of the complex challenges that managers would face if they were to engage

in-depth with GVC workforce issues. This will be followed by an overview of how different layers of governance mechanisms - private, public and social - interacting with one another can play a key role in helping companies discharge their accountability to their wider workforce and uphold labour rights along their GVCs, with a conclusion summarising the need for a much needed shift in how labour rights are reported to help create more socially just GVCs.

2. Complexities of global value chains

There are many labour rights related-issues along GVCs, some with their own complexities and challenges, which need to be systematically considered and addressed if TNCs are going to discharge their accountability to their wider workforce in a meaningful way. We will discuss the issues of migrant workers and wages as examples illustrating the complexities of workforce issues.

Migrant workers

With the rapid spread of globalisation and the unequal distribution of wealth, there is an increase in migrant workers' movements (Taran, 2001). Migrant workers, forming about 3.3% of the global population¹, contribute significantly to the economies of their host countries. In many instances, they enter their destination countries/regions with limited information about the jobs, working and living conditions in those destinations and, often, end up in poor working and living conditions. Migrant workers often have limited bargaining power and insecure contractual arrangements and/or have their visa status tied to a specific employer or do not hold a valid work permit (ILO, 2016d, para. 531). In most countries, migrant workers are denied the same rights as national workers; examples include Indian low skilled construction workers in Dubai and Qatar or Mexicans toiling in Californian tomato fields². The lack of transparency coupled with the absence of formal and reliable channels of communication lead many migrant workers to be at risk of exploitation and human trafficking, and of falling victim to modern slavery. Of these, female migrant workers, who form about 42% of the migrant workers, are at an even higher risk of exploitation, as they are exposed to harassment and sexual violence, especially when crossing borders where they have limited or no information about the dangers that may be involved en-route. In addition, female migrant workers usually get paid less (i.e., gender-pay gap), especially in low income countries (Rakotonarivo, 2020).

The above are only examples of some of the complexities related to migrant workers and can show why migrants remain a major challenge to social and economic policy makers in any country. ILO standards on migration (Instrument 16) covers countries of origin of workers as well as their destination countries so that the migration flows can be managed with adequate protection against exploitation and human trafficking³. According to the ILO s' decent work agenda, all workers are entitled to fundamental human rights at work, including the right to be protected against, for example, discrimination; protection against accidents, injuries and diseases at work; and social security, social inclusion and participation in social dialogue⁴. There are 18 International Conventions on migrant workers and their family members. The implementation of those conventions is

¹ <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang--en/index.htm>

² <https://www.ethicaltrade.org/issues/migrant-workers>

³ <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO::>

⁴ <https://www.ilo.org/beijing/areas-of-work/labour-migration/lang--en/index.htm>

monitored by the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) that operates under the Office of the High Commissioner for Human Rights (UN Human Rights). The committee holds dialogues with social organisations and government representatives to provide support and guidance in different countries⁵. In addition, migrant workers' issues are supported by the UN 2030 SDG8⁶ (Decent Work and Economic Growth), SDG10⁷ (Reduce inequality within and among countries) and some aspects of SDG16⁸ (Peace, justice and strong institutions).

Wages

An issue of controversy and contestation has been the pay of workers in GVCs, in particular in captive value chains⁹, producing garments, electronics and toys, among others (Schrage & Gilbert, 2021). The wages paid to workers are perceived to be way too low to enable them to have a decent standard of living; they are forced to work long hours and still struggle to survive. Such practices go against Article 23(3) of the Universal Declaration of Human Rights, which states that: "... everyone who works has the right to just and favourable remuneration ensuring ... an existence worthy of human dignity" and Article 25, which outlines that: "... everyone has the right to a standard of living adequate for [their] health and well-being ..., including food, clothing, housing and medical care". The issue of too low wages arises because TNCs are not only thought to take advantage of lower labour costs in developing economies, they are also thought to actively exacerbate the issue through their contracts and pricing policies forcing suppliers to produce goods at ever lower costs and shorter turn-around times (Ford & Gillan, 2017; Schrage & Gilbert, 2021).

Not all developing economies have legally mandated minimum wages to counteract exploitative pay. But even where minimum wage laws exist, they still are ineffective in addressing the issue as: a) they are often not enforced and b) generally set too low by governments in order not to jeopardise the competitiveness of their economy. It has been estimated that, for example, in the garment industry workers ought to earn between 100% and 300% more than the legally mandated minimum wage, to ensure a decent livelihood (Egels-Zandén, 2017; Ford & Gillan, 2017). This gulf between legal minimum wages, if they are paid at all, and the wages needed for workers to live – with wages being even more important in such contexts where a social welfare net provided by the state is next to absent - has led to campaigns around the idea of a 'living wage', a wage rate that would take into account the actual costs of living (Werner & Lim, 2016). As such, a living wage would go some way to help eradicate poverty (SDG1), promote inclusive economic growth (SDG8) and reduce inequalities (SDG10). The 'living wage' concept, however, is fraught with difficulty, due to the relative nature of living standards and costs around the world, and issues such as whether a living wage ought to cover the needs of one person or several and - if the latter - how many family members should be included

⁵ <https://www.ohchr.org/en/hrbodies/cmw/pages/cmwindex.aspx>

⁶ SD8 promotes sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Retrieved from <https://sdgs.un.org/goals/goal8>

⁷ SDG10 calls for reducing inequalities in income as well as those based on age, sex, disability, race, ethnicity, origin, religion or economic or other status within a country. It addresses inequalities among countries, including those related to representation, migration and development assistance. Retrieved from <https://www.unoosa.org/oosa/en/ourwork/space4sdgs/sdg10.html>

⁸ SDG16 promotes just, peaceful and inclusive societies. Conflict, insecurity, weak institutions and limited access to justice remain a great threat to sustainable development. Retrieved from <https://www.un.org/sustainabledevelopment/peace-justice/>

⁹ That is, GVCs where a small number of large buyers exert a high degree of control over smaller suppliers.

(ibid.). Nevertheless, the 'living wage' concept has gained traction, as in a number of countries, including the UK and New Zealand, civil society organisations publish hourly living wage rates which employers can and do voluntarily adopt (Werner & Lim, 2016), and we also increasingly witness references to 'living wages' in TNCs' suppliers code of conduct (Ashwin, et al. 2020).

However, more often than not, the intention to implement living wages in supply chains remains an aspiration on paper, even in the few instances where TNCs are keen to address the problem and engage with relevant NGOs and trade unions. The reasons for this include controversies as to how 'living wages' should be implemented: based on a 'cost of living' formula (Ford & Gillan, 2017) or as an outcome of 'collective bargaining' (Ashwin, et al. 2020). The former might face challenges as to whether the living wage is set too high or too low. The latter is favoured by trade unions, not least to give workers an active voice in the process, but at the same time, unions are often viewed sceptically by companies and national governments, and there might be government restrictions around union formation, impeding the fight for living wages (ibid). An additional difficulty is posed where a TNC committed to paying 'living wages' shares supplier factories with companies that are not committed to this in their GVCs (ibid). If of the several TNCs that source from the same supplier only one has a living wage policy, all workers might only receive a fractional 'living wage' supplement, and this may be too low to make a difference. Alternatively, if only a few workers in the factory receive a full living wage, this will be seen as unfair towards those workers who do not. As a result, TNCs argue that this is a collective action problem and only industry-wide agreements or government action on minimum wages can properly address the issue, and until this is in place, TNCs might be reduced to working with their suppliers on minimum wage compliance (ibid). In short, the journey to workers in GVCs receiving a living wage has barely begun¹⁰.

3. Governance of GVCs: strengthening accountability for labour rights

The way GVCs are governed can have a profound influence on the extent to which companies can be held accountable for their endeavours (or lack of it) to uphold labour standards, and this can be pivotal in how benefits and opportunities are distributed to the workforce across GVCs (Parsa, 2019). In GVCs, the way different governance mechanisms interact with one another can shape practices that uphold labour rights and reporting on them. Two types of governance mechanisms - private and public - are presented and discussed in the literature while limited attention has been paid to the need for social governance mechanism. In this section we consider all three.

Private governance mechanisms

Private governance mechanisms are voluntary forms of self-regulation, including corporate codes of ethics, CSR policies, as well as reporting guidelines/standards such as the Global Reporting Initiative (GRI) and the Sustainability Accounting Standards Board (SASB). In the absence of any mandatory assurance of sustainability reports, companies usually focus on reporting those aspects that serve their best interest. For example, when reporting on labour rights on GVCs, TNCs usually claim labour rights are respected in accordance with the national requirements and customs of the country in

¹⁰ An interesting case study is H&M's Fair Living Wage Initiative. It has been hailed as showing leadership in the industry on the issue of pay, but it still falls short of delivering living wages to supply chain workers (Banerji, et al. 2018).

which their supply chains end, without providing much detail on their endeavours to uphold labour rights in their GVCs, despite the GRI G4 reporting guidelines explicitly outlining the need for detailed reporting on their systems and procedures for the protection of labour rights along GVCs (Parsa, et al. 2018). This happens as TNCs tend to avoid meddling with what can be considered as either internal affairs of another country or carrying lots of cultural weight and political significance (ibid.). While TNCs' reporting is expected to promote social justice, that is, a fairer distribution of benefits and opportunities, in reality it is difficult for them to do so as they are expected to devise their own private governance mechanisms to uphold labour standards in areas that fall outside their national jurisdictions, and without any specific international law that sets out rules for practices (and hence reporting) in such circumstances.

Most private standards (commonly regarded as soft laws) have a tendency to view labour rights through a narrow perspective. Across the GVCs, (transnational) private governance mechanisms emerge to cover the gap between transnational economic activities and traditional regulatory requirements, often in developing countries (Bair, 2017). However, these private governance mechanisms tend to favour the property rights of owners over labour rights and are ineffective on their own (Islam, et al. 2021). For these mechanisms to work, they would need to be supported by (formal or informal) local and international laws and regulations, especially in developing countries, which are often afflicted with endemic corruption, and weak local political and legal frameworks (Uddin, et al. 2018). For example, while UN committees such as the CMW, engage in dialogue with migrant workers' representatives, no international guidelines support how migrant workers can access labour representations (Taran, 2001) or how special formal arrangements should be made for female migrant workers (Barrientos, et al. 2019) despite the support that has been internationally expressed for female workers in GVCs (see UNGP, 2011).

Public governance

Public governance mechanisms often cover a range of national government laws and policies as well as international standards/treaties devised through inter-governmental agreements and/or via international organisations such as the United Nations (UN), World Trade Organization (WTO), Organization for Economic Cooperation and Development (OECD) and International Labour Organization (ILO). At national levels, they are devised by governments to uphold labour standards within their national jurisdictions (e.g., the British Modern Slavery Act 2015 [MSA]) as well as in the GVCs of companies headquartered in their country (e.g., the German Supply Chain Due Diligence Act [SCDDA]). For example, the MSA requires the annual publication of a Modern Slavery Statement by large companies to demonstrate that they have taken steps to identify, prevent and remedy slavery and human trafficking in all parts of their operations. The MSA has enhanced awareness and many companies have taken favourable steps to improve reporting on issues related to labour rights. But as there are no liabilities attached to non-compliance, the MSA has been accused of being more akin to soft law and, effectively, a private governance tool (LeBaron & Ruhmkorf, 2017) that, apart from 'box-ticking', has not promoted detailed reporting that would lead to meaningful actions being taken against slavery (*The Home Office* 2019; Rogerson, et al. 2020). More recently, there have been

suggestions to improve labour rights by bringing together the three main UK enforcement bodies¹¹ into a single mechanism to utilise and harness various resources (Metcalf, 2019), however, the UK Government is yet to bring forward their post-Brexit Employment Bill that would be the likely vehicle to introduce this. By contrast, Germany will take a more hard law approach with their recently enacted SCDDA, which will come into force in 2023. Large German companies are required to take a systematic approach to identify, prevent and remedy human rights violations along their supply chain, and report on them annually. Unlike the MSA, however, compliance with the SCDDA is monitored by a government agency and non-compliance can result in litigation (BMAS, 2021)¹². Whilst this is moving companies away from mere voluntary CSR reporting, the SCDDA has been criticised for its focus on large companies only, and not requiring any systematic attention to the second tier suppliers and beyond (Initiative Lieferkettengesetz, 2021). Furthermore, workers' wages are only to be considered in relation to local minimum wage laws, not 'living wages', and there is no overt recognition of migrant workers' precarious status¹³.

In GVCs, public governance mechanisms interact with private governance mechanisms; most often having a favourable influence (Pasquali, et al. 2021) and may thus help overcome the latter's tendency for 'managerial capture' (Islam, et al. 2021). Support of national governments, including of officials and local politicians, is thus considered crucial for an efficiently functioning reporting framework (Antonini, et al. 2020; Christ, et al. 2019), but is still often lacking, especially in developing countries. While private governance approaches grant TNCs with the flexibility to remain responsive to labour rights issues as they arise, public governance mechanisms help TNCs to secure their legitimacy. However, public and private governance approaches alone are still considered ineffective without local level engagement with multi-stakeholder groups (Schrage & Gilbert, 2021) to reflect local culture and customs (Islam & Van Staden, 2018) as well as the changing nature of stakeholders' demands and expectations (Jackson et al., 2020). In other words, systematic interaction with social governance mechanisms represented by local civil society, for example, NGOs and trade union representatives (Schrage & Gilbert, 2021), is essential.

Social governance

Social governance mechanisms can be provided by non-state stakeholder groups, national and international civil society organisations such as national and international NGOs and trade unions and human rights watchdogs. It is essential that civil society organisations have the freedom and independence to raise labour related issues as they arise so that they can exert pressures on TNCs as well as on governments. Meaningful changes tend to take place when the integration of private and social governance approaches are supported formally via public governance mechanisms (binding agreements) at national and international levels (Barrientos, et al. 2019). The dynamics of relationships between actors from the three layers of governance (e.g., TNCs, NGOs, governments), and how they interact with each other, shape practices within GVCs and can therefore help pave the way for a more thorough and systematic approach to holding TNCs' accountable for labour rights. A

¹¹ The three bodies are: HM Revenue and Custom National Minimum Wage, HMRC NMW; the Gangmasters and Labour Abuse Authority, GLAA; and the Employment Agency Standards Inspectorate, EASI.

¹² Fines of up to €8,000,000, or up to 2% of their average annual global turnover as well as exclusion from winning public contracts in Germany for up to three years (BMAS, 2021).

¹³ The same criticisms holds true for the MSA.

systematic approach is adopted in the Better Work Programme (BWP) (Bair, 2017), for example, whereby pre-agreements to hold social dialogue and communication between different actors help with perception of issues (e.g., migrant workers, Posthuma & Rossi, 2017; living wage, Schrage & Gilbert, 2021) so that labour standards can be upheld in each country, taking into account each country's own national and political context (Pasquali, et al. 2021). Given the transnational nature of GVCs and their exposure to different national and political contexts (Pasquali, et al. 2021), the only way that labour standards can be upheld systematically is through civil society monitoring. While agreements such as the BWP have been successful by engendering transparency and engaging in dialogue, the key to their success lies in the willingness and engagement of both national as well as international public governance mechanisms (such as ILO instruments) to interact with private governance mechanisms (e.g. TNCs' reporting frameworks) while maintaining dialogue with civil society. The pressing issue here is whether or not national governments allow local civil society organisations to work freely and independently and follow relevant international guidelines (for NGOs, *fidh*, 2007¹⁴; or for trade union representatives, *ILO*, 1998¹⁵). To achieve this, more international initiatives are needed to strengthen (national and international) public governance approaches (Mayer et al. 2017) to fully address a range of labour rights issues in different countries but, more importantly, to empower civil society as a key representative of social governance mechanisms rather than just as individual stakeholders. While there are calls to divert the focus away from merely private governance mechanisms to public mechanisms in the power dynamics along GVCs (Mayer, et al., 2017), the formal recognition of social governance mechanisms at national and transnational levels can be a step in the right direction. A relevant example relates to the Accord, a legally binding agreement between global brands and retailers and global and national unions, which has focused on Fire and Building Safety in Bangladesh garment factories and has been successful in resolving workers' complaints and in requiring supplier factories to implement safety remediation actions (Anner, 2020; James, et al., 2019). Similar such agreements are needed to address the full range of labour rights issues across all countries that are part of GVCs. But, as pointed out by Siddiqui, et al. (2020), the genuine support of national governments is essential if such agreements are going to succeed in enhancing accountability in supply chains, and also to extend the coverage of such agreements¹⁶

4. Conclusion

In this chapter, we set out to address the question of 'how' corporate accountability can be potentially discharged to the wider workforce in a way that it promotes social justice and helps contribute to key sustainable development goals. Starting with the limitations of current labour rights reporting on GVCs, which arise from global market structures, we discussed some of the pressing issues related to migrant workers and wages in order to provide examples of the complexities and challenges of workforce issues in GVCs, which TNCs would need to engage with if they were to truly and fully discharge their accountability in relation to workers in their GVCs. We showed that existing governance mechanisms are not well equipped to deal with such complexities and challenges.

¹⁴ <https://www.fidh.org/en/issues/migrants-rights/Guide-for-NGOs-on-the>

¹⁵ The ILO Declaration on Fundamental Principles and Rights at Work (1998).

Retrieved from https://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_FOA_EN/lang-en/index.htm.

¹⁶ The Accord, for example, is not supported by all global brands sourcing from Bangladesh.

Therefore, we argued, there is a need for globally recognised social governance mechanisms provided by local civil society actors. Working hand in hand with, and supported by, national public governance mechanisms, these would enable a more systematic (and internationally agreed) approach to deal with existing as well as emerging labour rights issues. These mechanisms would facilitate and support the discharge of corporate accountability by engendering social dialogue and transparency along GVCs. Unless the need for such changes are formally acknowledged, there is always potential for ‘functional stupidity’ and this will un/intentionally undermine labour rights. This, however, is an unsustainable situation as only a fairer distribution of benefits and opportunities along GVCs providing better life chances for workers will, in the end, ensure peace and security in our global community.

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