CHAPTER 8

Labour Rights

Introduction

Any sustained progress towards distributive justice depends crucially on reconfiguring power relations in ways that (i) enhance the capacity of employees to exert claims on management, and (ii) transform patterns of corporate political influence that currently foster a disabling policy environment for sustainable development. This chapter addresses the former dimension, examining labour rights related to collective bargaining and freedom of association. Chapter 9 addresses corporate political influence.

Of course, labour rights have long been recognized in international norms of decent work established and promoted by organizations such as the ILO, and institutionalized in codes such as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977) and the OECD Guidelines for Multinational Enterprises (1976). More recently, these rights have been reaffirmed in numerous ESG standards and initiatives referred to in Part 1 of this report (see Table 1.1), including the SA8000 Standard, the Fair Labor Association's Workplace Code of Conduct, the UN Global Compact Principles, the UN Guiding Principles on Business and Human Rights, and ISO 26000.

As also noted in Part 1, different strands of social science analysis concerning the causes of, and solutions to, the so-called wicked problems of distributive justice, inequality and precarious employment in the 21st century place considerable store in the role of labour rights and workplace democracy to improve the human condition.[202]

Yet despite this normative and analytical backing for labour rights, real-world trends have tended to move in the opposite direction, notably in the context of global and technological changes in labour markets (Visser 2019), reinforced by public policy agendas and corporate strategies favouring labour market flexibilization and outsourcing. The two conventional indicators associated with core labour rights—namely, trade union density (percentage of workers belonging to a trade union) and collective bargaining coverage (percentage of workers covered by collective bargaining agreements)—reveal a declining trend over several decades. Despite the wide recognition of freedom of association and collective bargaining within mainstream ESG discourse and reporting guidelines, this trend shows no sign of reversal. Indeed, as Visser et al. note:

> collective bargaining has come under pressure in many countries since the financial crisis of 2008. This followed a longer-term decline in union membership rates… Data on changes in bargaining coverage rates from 2008 to 2013 for 48 countries shows that, on average, there has been a drop in bargaining coverage of 4.6 percent, compared with an average decline in union density in the same period and for the same group of countries of 2.3 percent (2017:1).

There is ample room for corporations to act within their sphere of influence to alter the current trajectory of labour rights erosion. While bargaining at the level of enterprises is only one of several levels where collective bargaining occurs, corporations have the chance to modify this trajectory of change, most directly when collective bargaining occurs at the sectoral level as well—in particular when the corporation in question is a dominant industry player—and nationally, through participation and influence in employers' associations.[203]

This chapter examines indicators that can demonstrate whether corporations are facilitating the necessary reconfiguration of power relations within corporate governance regimes through actions that strengthen core labour rights. It outlines several concerns related to underreporting on labour rights and inconsistency in the type of data disclosed, and goes on to emphasize the need for transnational corporations to provide disaggregated data that reveal variations in labour rights by country where major affiliates and suppliers are located, rather than a general group-wide figure. This in turn requires transparency regarding the location of suppliers. The chapter ends by calling attention to what are often blind spots within reporting that are key for assessing corporate sustainability performance in relation to labour standards and labour rights. They include the scale of reliance on temporary labour and subcontracting via labour brokers, and the extent to which a company's pricing and procurement policy or practices contradict—or align with—the sustainability objectives of both lead corporations and suppliers.

Sustainability disclosure as if labour rights mattered

A critical first step within sustainability accounting is to reassert the importance of labour rights by correcting a bias that often characterizes disclosure related to labour standards. Both public policy and corporate policy tend to focus more on management systems and performance related to social protection or working conditions, than on the realization of labour rights. Referring to public policies, Bosch and Lehndorff (citing Sengenberger 1994) point to the emphasis on "protective" versus "participative" standards that promote workers' empowerment within governance systems via collective bargaining, freedom of association, and giving workers a voice and vote in decision-making forums such as pay committees and company boards: "Participative standards confer consultation or co-determination rights on employees or their representatives and organisations" (2017:37). Exercising these rights is key to addressing those aspects of inequality associated with both discrimination and income distribution.[204]

[202] See Piketty 2014; Stiglitz 2018; Reich 2007; Jackson 2009; Standing 2011.

[203] Beyond the micro level of the enterprise or plant, collective bargaining negotiations between independent unions and employers, and their respective associations, can also take place via forms of coordinated bargaining at national and industry (or sector-wide) levels. Each type of bargaining has its advantages and disadvantages, but industry-wide or economy-wide bargaining tends to be more inclusive of a wider range of workers. Under enterprise-level bargaining, skilled workers often benefit more than unskilled workers (Visser et al. 2017). It has also been found that a hybrid system, involving "vertical coordination, or 'articulation', between levels is critical for flexibility, sustainability and performance" (Koukiadaki and Grimshaw 2016:26).

[204] See also ILO 2017a.

Similarly, in their assessment of the impact of the Ethical Trading Initiative's (ETI) code of labour practice in worksites in India, South Africa and Viet Nam, Barrientos and Smith (2012) observe some progress related to "outcome standards" such as health and safety, child labour, payment of minimum wages, working hours and the social wage (for example, health insurance and pensions). Far less had been achieved in relation to "process rights" associated with the empowerment of workers to exert claims on management through collective bargaining and freedom of association.

Additionally, where workplace scandals and disasters have forced corporations to ratchet up their sustainability performance, the focus of attention is often on the immediate imperative of "fixing" occupational health and safety (OHS) problems rather than a key structural condition that underpins lack of safety—namely weak or non-existent unionization and collective bargaining. This narrow focus has been evident, for example, in the follow-up to the Rana Plaza factory collapse in Bangladesh that killed and injured well over 3,000 people in 2013. While many companies and investors responded with necessary interventions, albeit slowly, the focus was very much on protective measures associated with OHS. This prompted a group of more than 200 investors who are signatories to the Principles for Responsible Investment (PRI) to recommend "broaden[ing] the current accord to include a focus on freedom of association and collective bargaining and integrat[ing] this into the complaints mechanism process and additional parts of the supply chain where similar risks exist" (PRI 2017:7).

Recent research by the Alliance for Corporate Transparency[205] points to concerns within corporate sustainability reporting related not only to labour rights, but also to other key performance issues and indicators addressed in this report. Among 105 large corporations in 10 EU countries, the study notes that:

- "Very few … include outsourced workers in their perspective: only 25% inform about how many there are in the workforce, but less than 5% include them in their reporting on equal opportunities, collective bargaining or salaries.
- "[O]nly 10% of companies report on the living wage, and very few disclose country-by-country information on region-sensitive issues such equal opportunities (6%) and freedom of association (10%), even though a majority of companies included in the research have operations outside Europe (80%).
- "While 80% of companies provide information on anti-discrimination or equal opportunities policies, only 36% report on the effects of these policies" (Alliance for Corporate Transparency 2019).[206]

In an assessment of how 119 companies in three high-risk sectors[207] are responding to norms and regulations aimed at eliminating the use of forced labour in their supply chains, the KnowTheChain initiative[208] notes that of seven actionable areas,[209] the weakest responses related to recruitment practices and "worker voice":[210] "Yet", the study notes, "these are the two areas assessed by the benchmark that have the most direct impact on workers' lives". Indeed, only 13 percent of the companies disclosed engaging with global or local trade unions to support freedom of association in their supply chains (KnowTheChain 2019:15).

The importance of disaggregated and time series data

While reporting frameworks such as the GRI and SASB (see Annex 8) generally call on companies to disclose the percentage of employees covered by collective bargaining agreements, few appear to do so. Poor disclosure related to labour rights is reflected not only in organization-wide percentage metrics, but also in (i) lack of data disaggregated by region or country where a corporation operates, (ii) absence of supply chain mapping, and (iii) the presentation of annual data snapshots as opposed to time-series data.

Even corporations that might be expected to be leaders in reporting on labour rights show a very mixed record. This reporting weakness emerges from an examination of the sustainability or integrated annual

[205] Involving civil society organizations and experts, the Alliance for Corporate Transparency is a three-year research project that aims to provide guidance to companies and regulators via an assessment of whether the 1,000 largest companies in the European Union are providing the type of information required by the EU Directive on non-financial reporting (see Part 1 and Annex 4).

[206] See https://allianceforcorporatetransparency.org/news/companies-failing.html

[207] These are information and communications technology (ICT), food and beverage, and apparel and footwear.

[208] KnowTheChain is a partnership of Humanity United, the Business & Human Rights Resource Centre, Sustainalytics, and Verité aimed at benchmarking progress, promoting transparency and providing guidance related to forced labour abuses within supply chains. See https://knowthechain.org/about-us/

[209] These are:
(i) commitment and governance;
(ii) traceability and risk assessment;
(iii) purchasing practices;
(iv) recruitment;
(v) worker voice;
(vi) monitoring; and
(vii) remedy.

[210] "Worker voice" is understood in terms of "enabling workers to understand and fully exercise their rights [which] is critical for vulnerable workers such as migrant workers, who may not be familiar with their rights and unable to exercise them. In practice, companies can improve labor rights practices by supporting an enabling environment for independent unions and worker associations" (KnowTheChain 2019:15).

reports of 10 companies[211] that (i) report "in accordance" with the GRI framework, and (ii) have committed to supporting labour rights by signing international framework agreements (IFAs) with global union federations such as IndustriALL, UNI, IBFWW and IUF.[212]

The results of this examination not only reveal limitations regarding the usefulness of disclosure and reporting on collective bargaining coverage, but also underscore considerable inconsistency in what is reported and the metrics and formats used. Of the companies reviewed, only two—Electrolux and Total—provided time series data (as opposed to an annual snapshot) that make it easy to identify trends and assess progress over several years (see Table 8.1). In one case we see that the trend was positive; in the other, negative, but the main point for this discussion is that users of the data can at least gauge the trend.

PUMA (2017) provided an annual snapshot, reporting that "the employment of over 30 percent of our employees was covered by a collective bargaining agreement." Usefully, however, it also provided a breakdown by countries and regions where selected suppliers are located.[213] Recognizing the need to move beyond "'yes/no'-type audit questions", in 2015 the company began to systematically collect data on selected social key performance indicators that "will help us and our suppliers to track performance improvements over time and also benchmark suppliers among themselves." In 2016, reporting extended beyond China to all major sourcing countries (see Table 8.2).

Three of the 10 companies met the basic GRI guidance, but offered no time series data or much, if anything, by way of data disaggregated by country or region:

Inditex notes: "Regarding collective bargaining by country, the percentage of employees covered by local agreements in Europe is about 70%. Due to opening new markets (especially in Asia) this percentage with regard to local collective bargaining agreements is slightly lowered to 60% at a global level."[214]

Daimler reported relatively high rates of collective bargaining coverage worldwide and in Germany: "Our employees have the right to organize themselves in labor unions. We also ensure this right in countries in which the freedom of association is not protected. More than 95 percent of our employees in Germany and more than 80 percent of our employees worldwide are covered by collective bargaining agreements".[215]

Table 8.1. Total and Electrolux: Collective bargaining coverage

Total*	2014	2015	2016	2017	2018
% of companies with employee representation	75.6	76.9	78.5	78.9	80.5
% of employees covered by collective agreements	67.8	65.5	68.9	73.1	71.5
Electrolux**	2013	2014	2015	2016	2017
% of employees covered by collective bargaining	63	63	59	57	58

* Total's integrated report provides data for three consecutive years (Total 2019:188). It's easily accessible "Social Indicators" database covers five years. Accessed 20 December 2019. https://www.sustainable-performance.total.com/en/social-indicators

** Electrolux. 2018. *For the Better: Electrolux Sustainability Report 2017*:93. Accessed 20 December 2019. https://www.electroluxgroup.com/en/electrolux-sustainability-report-2017-24501/

Recent **Petrobras** reports note that all of its employees are covered by collective bargaining agreements. This appears to refer, however, only to Brazil where the company is headquartered. Previous reports (such as those referring to activities in 2006 and 2011) noted collective bargaining coverage beyond Brazil either with one broad figure (27 percent in 2011) or with reference to specific countries. The 2006 report, for example, notes coverage of 41 percent in Argentina, Libya 26 percent and Bolivia zero given that unionization was just beginning.

Four other companies did not report the GRI indicator for collective bargaining coverage:

H&M provided considerable information regarding labour rights policy, projects,

[211] The companies include Electrolux AB (Swedish home appliance manufacturer), Total S.A. (French energy producer), PUMA (German sportswear manufacturer), Inditex (Spanish apparel retailer), Daimler (German auto manufacturer), Petrobras (Brazilian petroleum company), H&M (Swedish apparel company), Danone (French food manufacturer), Ford Motor Company (United States auto manufacturer) and Skanska AB (Swedish construction firm).

[212] For more on IFAs, see ILO 2018b and Hammer 2012.

[213] PUMA. 2017. *Momentum: 2016 Annual Report.* Accessed 20 December 2019. http://report2016.puma-annual-report.com/en/company-overview/sustainability/

[214] Inditex. 2019. *Inditex Annual Report 2018* (p.81). Accessed 20 December 2019. https://static.inditex.com/annual_report_2018/pdfs/en/Inditex%20Annual%20Report%202018.pdf

[215] Daimler. 2017. *Sustainability Report 2016* (p.76). Accessed 20 December 2019. https://www.daimler.com/documents/sustainability/other/daimler-nachhaltigkeitsbericht-2016-de.pdf

education, training, grievances procedures and so forth, but not the recommended quantitative data. As regards whether labour rights goals were being met, goal attainment was generally described as "on track".[216]

Danone provided no quantitative collective bargaining coverage data, apart from the percentage of entities (79 percent) having implemented regular collective labour agreement negotiations with social partners.[217]

Ford Motor Company provided considerable quantitative data on such aspects as environmental performance and gender equality, but information regarding freedom of association and collective bargaining was absent in both data and narrative reporting, apart from restating the principle that "we respect employees' right to freedom of association and to collectively bargain".[218]

Skanska did not reference collective bargaining, noting only the UN Global Compact Principal that businesses should uphold freedom of association and the right to collective bargaining, and that it does not report on collective bargaining coverage at the Group level.[219]

Country-by-country and supply chain reporting

The challenge related to reporting on core labour rights involves not only compliance with the basic indicators recommended by standard setters, but also greater transparency regarding performance along the supply chain. Presenting one aggregate global figure for trade union density and collective bargaining coverage may mask the wide variation in labour rights that can exist by region and country. This points to the need for CbC reporting, at least for countries where key suppliers are located.

Data provided by PUMA from its first global assessment of social key performance indicators in selected suppliers reveal significant variations in collective bargaining coverage by country (see Table 8.2).

Table 8.2. PUMA: Supply chain workers covered by a collective bargaining agreement

Latin America (average of 9 suppliers)	
Argentina	97
Brazil	100
El Salvador	0
Mexico	44
South Asia (average of 14 suppliers)	
Bangladesh	0
India	0
Pakistan	0
East and Southeast Asia (average of 39 suppliers)	
China	80
Cambodia	36
Indonesia	67
Malaysia	0
Viet Nam	92
Europe, Middle East, Africa (EMEA) (average of 8 suppliers)	
Georgia	0
Madagascar	0
Mauritius	43
Turkey	11

Source: PUMA 2016

And as noted in PUMA's narrative reporting, this assessment has drawn the company's attention to "a clear need to promote collective bargaining on the Indian subcontinent and some additional countries" (PUMA 2016).

Public disclosure of suppliers

Disasters, such as the Rana Plaza factory collapse in Bangladesh, have served to reveal situations where brands do not even know where their products are being produced. Such high profile supply chain events and exposés have led corporations in sectors such as ICT, toys, apparel, footwear, food and supermarkets to pay far greater attention to labour standards and environmental conditions in their supply chains. Regulatory pressures have also built up considerably in recent years.[220] Several laws

[216] For example: "Our goal is for all of our strategic supplier factories to have democratically elected and functional workplace representation in place by 2018 at the latest" (H&M 2016. *Conscious Actions: Sustainability Report 2015*:54). Accessed 15 December 2019. https://about.hm.com/content/dam/hmgroup/groupsite/documents/masterlanguage/CSR/reports/2015%20Sustainability%20report/HM_SustainabilityReport_2015_final_FullReport.pdf

[217] Danone. 2019. *Danone Registration Document 2018, Annual Financial Report* (p.199). Accessed 20 June 2020. https://www.danone.com/content/dam/danone-corp/danone-com/investors/en-all-publications/2018/registrationdocuments/Danone%20-%20Registration%20Document%202018.pdf

[218] Ford. 2020. *Our Future Is in Motion: What Drives Us? Sustainability Report 2020* (p.23). Accessed 15 June 2020. https://corporate.ford.com/microsites/sustainability-report-2020/assets/files/sr20.pdf

[219] Skanska. 2019. *Annual and Sustainability Report 2018*. Accessed 20 June 2020. https://group.skanska.com/499a5b/siteassets/investors/reports-publications/annual-reports/2018/annual-and-sustainability-report-2018.pdf

[220] See ECCJ 2018; Marshall et al. 2016; Mares 2018.

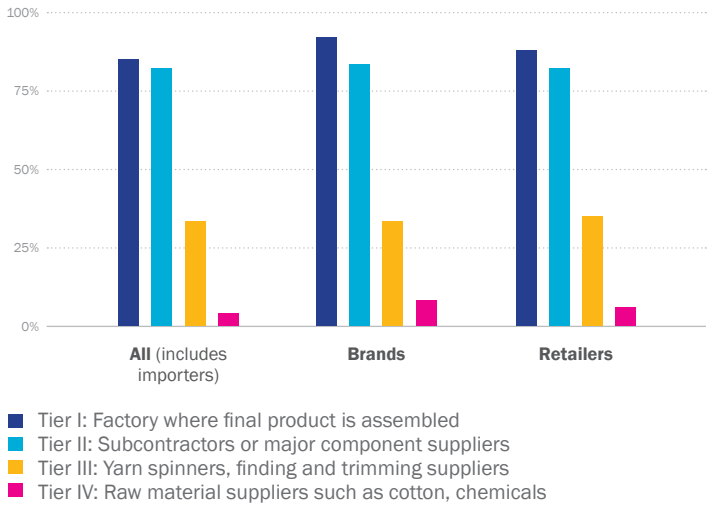
have come into effect requiring or promoting supply chain disclosure in particular sectors, such as "conflict minerals" (see the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act), on key performance issues such as forced labour and human trafficking (see the United Kingdom's 2015 Modern Slavery Act, and the 2010 California Transparency in Supply Chains Act), or in relation to ESG performance more generally (see the 2014 EU Directive on Non-Financial Reporting).

But supply chain mapping often takes place behind closed doors. Large corporations are increasingly aware of the need to identify risks within their supply chains but generally prefer to keep such information to themselves. This is the case even in industries, such as fashion, that are under considerable pressure from consumers and NGOs as regards transparency and accountability. In April 2019, H&M claimed to have become the first global fashion company to provide detailed supply chain information for its garments and home interior products sold online. Its "transparency layer" initiative reveals country of production, supplier names, factory names and addresses, the number of factory workers, as well as information about materials used in manufacturing.[221]

There is growing recognition that public disclosure of basic information related to name, location and numbers of employees in supplier factories is a first step. It facilitates due diligence on the part of brands or lead companies in global value chains, and enables trade unions and NGOs to monitor performance and work with global companies to deal with complaints.

Various standard setters and corporations are finally following in the footsteps of colleges and universities in the United States, which over 20 years ago began a movement that required their apparel licensees to disclose the names and location of supplier factories. Contemporary stakeholder and regulatory pressures are obliging some corporations to opt for public disclosure. Certain sectors such as electronics (for example Apple, Dell, HP), toys (such as Lego) and, notably, apparel and footwear discussed below, have taken the lead due to pressure from trade unions, NGOs, consumers and investors.

Figure 8.1. Supply chain mapping in the United States fashion industry (%)



Source: Based on Raghuwanshi 2019. Reproduced with permission.

While emerging laws do not mandate public disclosure of suppliers, this approach is now urged by various standard-setting, certification and ratings entities, as well as professional services firms. An EY and UN Global Compact study on building responsible supply chains, for example, emphasizes the need for transparency and traceability beyond Tier I suppliers, and considers this as one of the defining features of companies that are leaders in operationalizing sustainability in the supply chain (EY 2016).

The Fashion Transparency Index found that 70 (35 percent) of the 200 brands studied were publishing first-tier supplier lists, and 38 (19 percent) provided lists of their processing facilities. A new development, involving 10 brands (5 percent), related to transparency regarding raw material suppliers. Brands that stood out in relation to traceability included Reebok, adidas, G-Star Raw, C&A and ASOS (with a 51 to 60 percent rating), Nike, Jordan, Converse, Wrangler, Vans, Timberland, The North Face (61 to 70 percent), with top spots going to Esprit (73 percent) and Patagonia (78 percent) (Fashion Revolution 2019).

As noted in Figure 8.1, while most United States buyers in the fashion industry map top-tier factories and suppliers, this is not the case for suppliers of components (Tier III) and raw materials (Tier IV) (Raghuwanshi 2019).

[221] See Bizcommunity. "H&M introduces product transparency for all garments sold online". 25 April 2019. Accessed 15 June 2020. https://www.bizcommunity.com/Article/196/462/190114.html

While the Fashion Transparency Index has noted some progress in the depth and breadth of transparency since it was first published in 2016, very few brands disclose information related to labour rights. While 77 percent of brands publish a policy on freedom of association and collective bargaining in their supplier code of conduct, just 9 percent disclose the number of workers in the supply chain covered by collective bargaining agreements. Just 4 percent disclose the number of supplier facilities with independent democratically elected trade unions.

Some multistakeholder standard setters have recently placed far more emphasis on public disclosure of factory information. In early 2019, the Board of the Fair Labor Association (FLA) voted to oblige its 59 affiliated companies[222] in the garment industry to publish factory lists. While the scope of disclosure (in terms of type of information and the different tiers of suppliers) remains to be decided, trade union organizations and NGOs that are members of the Transparency Pledge Coalition[223] will monitor implementation.

The Ethical Trading Initiative[224] has also emphasized the need for public disclosure not only in garments but also other industries and sectors such as food, agriculture, fishing and supermarkets where its approximately 100 affiliated companies operate. Recognizing that considerable change was needed in its approach to transparency, in 2017 the ETI laid out a comprehensive business case for public disclosure and positioned transparency as a priority element of its strategy to 2020 (ETI 2017).

From a sustainability perspective, public disclosure of such information is critical. Not only do various standard setters increasingly demand such reporting, but withholding such information undermines some of the most important drivers of transformative change, namely monitoring, advocacy, dialogue and bargaining involving NGOs, trade unions and civil society networks. As noted by the Assistant Secretary General of the IndustriALL Global Union, Jenny Holdcroft, "knowing the names of major buyers from factories gives workers and their unions a stronger leverage, crucial for a timely solution when resolving conflicts, whether it be refusal to recognize the union, or unlawful sackings for demanding their rights. It also provides the possibility to create a link from the worker back to the customer and possibly media to bring attention to their issues" (Fashion Revolution 2019:11).

Subcontracting via labour brokers

The disclosure challenge associated with labour rights within the supply chain does not end here. While attention to labour rights issues in the supply chain is growing, it is mainly limited to fixed-contract employees engaged directly by the enterprise in question. Subcontracted labour provided through brokers is often ignored in this process of ratcheting up disclosure related to labour rights and supply chain mapping.

Subcontracting constitutes one of the key structural drivers underpinning the deterioration of labour rights. Shamir (2016:229) sums up the concern as follows:

> Subcontracting—the practice of using intermediaries to contract workers, whether through temp agencies, manpower agencies, franchise, or other multilayered contracting—is an increasingly popular pattern of employment worldwide. Whether justified from a business perspective or not, subcontracting has dire implications for workers' rights: it insulates the beneficiary of their labor from direct legal obligations to the workers' wages and working conditions and drastically reduces their ability to effectively unionize.

Yet disclosure on this aspect is minimal. If corporations are to facilitate the "revitalization of collective representation" and, more specifically, the transition to formalization and inclusion of informal economy workers called for by the Global Commission on the Future of Work (2019:41), then it is crucial for them to be transparent about employment in supply chains and the use of subcontracted labour. As illustrated by the case of Unilever, this is an emerging issue within sustainability accounting (see Box 8.1).

[222] See https://www.fairlabor.org/affiliates/participating-companies?page=3

[223] Members include: Clean Clothes Campaign, Human Rights Watch, IndustriALL, International Corporate Accountability Roundtable, International Labor Rights Forum, International Trade Union Confederation, Maquila Solidarity Network, UNI Global Union, and Worker Rights Consortium.

[224] The ETI promotes human rights due diligence and collaborative multistakeholder best practice learning, and assesses "continuous improvement" among member companies according to its internationally recognized Base Code of labour standards.

This discussion suggests that if corporate sustainability performance metrics related to labour rights and decent work are to be meaningful, the focus of attention needs to broaden beyond employees on fixed-term contracts issued by headquarters and affiliates. Sustainability accounting also requires public disclosure of a lead company's suppliers, and metrics to assess the trend regarding (i) outsourcing to formal enterprises, and (ii) the use of subcontracted labour.

In lieu of hard data related to outsourcing and subcontracting, the potential scale of the issue can be assessed by mapping and contrasting trends in company growth and fixed-term employment. Rising turnover and profits along with falling employment may signal undesirable practices from a sustainability and decent

Box 8.1. Ratcheting up labour rights in Unilever

Unilever has come under considerable scrutiny from NGOs and trade unions for its use of subcontracted labour.* A study conducted by Oxfam on labour rights in Unilever's supply chain in Viet Nam found that:

> Just over half of the workers in the factory (748 out of 1,385) were sub-contracted to a labour provider, Thang Loi, rather than directly employed. These workers had lower wages and benefits than [Unilever Viet Nam] employees; their average basic wages were still comfortably in excess of the legal minimum wage and the international poverty line, but less than half the [Asia Floor Wage] benchmark and Oxfam's estimate of workers' expenses (VND 5.4 million). Some workers complained of unfair treatment and repeat temporary contracts ... Thirty-two of the 48 suppliers surveyed by phone said they use temporary or sub-contracted workers (Wilshaw 2013:11).

The company had implemented, however, a Contingent Labour Reduction Roadmap to reduce the ratio of subcontracted to directly employed workers, where needed. And as part of Unilever's response to the findings of the study, then CEO Paul Polman noted the need to

> mitigate the 'casualization' of labour within our workforce wherever possible. We are taking steps to review our use of temporary workers to ensure that wherever possible we can offer permanent employment opportunities for skilled and semiskilled workers in our supply chain operations. As a result, over the last three years Unilever has already reduced its use of contingent labour in Asia and Africa by more than 40% (Wilshaw 2013:95).

This approach led to an agreement between Unilever and the global union federations IndustriALL and IUF, signed in May 2019, to limit the use of temporary workers and protect permanent jobs in over 300 Unilever factories in 69 countries, whether employed directly by Unilever or through a third-party provider. The Joint Commitment on Sustainable Employment in Unilever Manufacturing:**

- sets out principles and procedures to prevent potential harm to fundamental workers' rights caused by non-permanent employment;
- restricts the hiring of temporary workers to short-term and non-recurring tasks in Unilever factories, and prevents temporary contracts being used to avoid regular employment;
- informs temporary workers of their work schedules with sufficient notice, and prohibits them being retained on call without pay;
- requires temporary workers to be given priority when filling permanent positions; and
- promotes: equal pay for equal work; a safe work environment and safety training; and the right of workers to freely form or join a union of their choice without fear of intimidation or harassment.

* See, for example, van der Wal 2011, Wilshaw 2013 and IUF 2013.

** See text of the agreement: http://www.industriall-union.org/unilever-and-global-unions-sign-agreement-to-restrict-temporary-jobs

work perspective. An exercise conducted for this project found that since the turn of the millennium in 2000, Unilever's turnover (in euros) had increased by roughly 10 percent, and net profits by approximately 500 percent, while the number of employees had declined roughly by half.[225] In the 10 years from 2009 to 2018, turnover increased 28 percent and profits increased 150 percent while employment declined 3 percent.

While increased labour productivity (increasing revenues or profits per unit of labour) is generally considered positive from the perspective of efficiency, its implications for sustainable development are less clear. From a sustainability perspective, rapidly falling rates of full-time employees contracted directly by the corporation could signal a red flag that merits further inquiry. Furthermore, such a decline appears to run counter to guidance by standard setters such as the Ethical Trading Initiative and SA8000 that call for a commitment to regular or stable employment (Wilshaw et al. 2013).

Responsible purchasing practices

Beyond the potential for further outsourcing and subcontracting in contexts where labour rights, working conditions and wages are improved for some workers, there is another red flag or contradiction that needs to be highlighted. Power imbalances within global value chains, as well as corporate culture and incentives associated with short-termism and the single bottom line, can easily result in a situation where suppliers find themselves incurring additional costs as a result of so-called sustainability measures adopted by lead companies (Blasi and Bair 2019) and/or purchasing practices that result in short lead times or unplanned changes in orders. As Lee notes:

> global buyers' supply chain strategies, especially sourcing and purchasing practices, have drawn considerable attention as the underlying causes of many labour violations in supplier factories, and the differentiation of labour conditions between regular and temporary workers. Post-crisis [global supply chains (GSCs)] have intensified the possibility of segmented social upgrading and the wider use of informal work in GSCs (Lee 2016:22).

Any discussion of the sustainability performance of large corporations, therefore, needs to go hand in hand with that of responsible sourcing and purchasing practices (Blasi and Bair 2019; Merk 2005). Concerns related to responsible sourcing have escalated in recent years in part because of in-depth studies on the social and environmental upgrading of value chains[226] and surveys to better understand the situation and perspectives of suppliers. Important in this regard is the work of the ILO (2017b) and the Better Buying initiative (2018).

The central issue relates to the disconnect between commercial and sustainability policy within corporate strategy—more specifically, the failure of lead companies to recognize that commercial policies and practices can place suppliers in a straitjacket, in terms of their ability to improve labour standards. Suppliers are often subject to pressures related to (i) aggressive pricing that may constrict wages and benefits; (ii) product development and short production lead times, which can result in excessive and unplanned overtime; and (iii) short-term or insecure contractual relationships between affiliates and suppliers. Summing up the findings of its Global Survey of purchasing practices and working conditions in global supply chains, the ILO notes:

> We saw, for instance, that agreeing on prices that are below production costs puts the suppliers in a difficult situation with regard to paying wages, improving working conditions, and use of only declared work, and can thus even put them at high risk of bankruptcy. A low willingness—and in any case after weeks of delay—to incorporate recent increases in the legal minimum wage into the prices agreed with their suppliers may also reduce the possible margins for suppliers, and thus also impact wages and working conditions, and extend informal work. Similarly, … insufficient lead times and inaccurate technical specifications provided by the brands directly lead to lower wages and an increased number of

[225] Actual data for the 2000-2017 period derived from Unilever Annual Reports: turnover (+) 11.75 percent; net profit (+) 487 percent; employment (-) 44 percent.

[226] See, for example, the Capturing the Gains programme: http://www.capturingthegains.org/

> overtime hours. In other cases, suppliers may have recourse to outsourcing, with wages and working conditions also further deteriorating along this extended chain of sub-contractors (ILO 2017b:20).

The same study found that the proportion of temporary workers hired by suppliers increases significantly when they are more dependent on one buyer, as well as in contexts of aggressive (below cost) pricing and increased outsourcing (ILO 2017b).

These are the kinds of issues that adidas addresses in its responsible purchasing policy:

> Responsible sourcing and purchasing practices … shall support decision making and processes that are aligned with: • Contractual and financial terms that do not adversely impact compliance with the adidas Workplace Standards, including the safeguarding of legally mandated wages, benefits & compensation; • Product development, order placement/purchasing, and production lead times that reduce the risk of excessive overtime, unauthorized subcontracting, or other negative supply chain impacts; and • A commitment to long term partnerships with suppliers, which recognise those suppliers delivering sustainable compliance, in accordance with the Workplace Standards, a track record in reducing environmental impacts and maintaining and achieving product safety standards (adidas 2017).

As the ILO study also notes, while buyers may pressure suppliers to improve working conditions, "we also found that buyers do not always accompany such standards with support and financial assistance, adding further pressure—on top of the purchasing practices mentioned above—to the suppliers' margins" (2017b:20).

As is evident in the FLA Principle concerning responsible sourcing, disclosure related to the alignment of commercial practices with workplace standards is heavily centred on efforts associated with due diligence and management systems, in other words the existence of policies and clearly defined responsibilities, training, ongoing dialogue between purchasing and labour compliance personnel, grievance mechanisms, monitoring, remediation, and so forth. Also important is the restructuring of bonus and incentive systems to better acknowledge and reward sustainability performance. Such measures aim to align commercial practice with sustainability policy and goals, or as adidas notes, ensure that "[a]ll relevant employees engaged in development, planning, costing, sourcing, and purchasing activities … conduct their work consistently with the principles of this policy" (adidas 2017:3).

The assessment of responsible sourcing practices does not lend itself easily to quantitative performance indicators. For this reason, disclosure related to the due diligence or process dimension is important. But given the ease with which evidence regarding due diligence can be fudged, it is important to emphasize two indicators that directly address the problematic issues outlined in this chapter. These are, first, the capacity of workers to contest conditions in value chains and shape their upgrading, not only through individualized complaints mechanisms but also through strengthening labour rights that facilitate collective action and bargaining.[227] And second, the levels of financial support and incentives provided to suppliers in their efforts to upgrade labour standards. The Global Survey of suppliers conducted by the ILO and the joint Ethical Trading Initiatives (ETIs) in 2016 found that:

> nearly half of the suppliers (49 percent) that are expected to follow a code of conduct receive no help from their buyers in achieving the demanded social standards. The remaining 51 percent were found to receive some assistance such as staff training or a joint identification of breaches. Only 17 percent, however, were found to enjoy shared audit costs and even less (9 percent) to receive financial assistance (ILO 2017b:10).

Of the various benchmarks identified by the FLA to gauge performance related to responsible sourcing, one stands out in this regard: the percentage of suppliers and/or facilities receiving incentives. Knowing the types and amounts involved would also be useful.

[227] Regarding women workers in global value chains, see Barrientos 2019.

Concluding remarks

To sum up, the above analysis of disclosure and reporting on labour rights underscores the following actions companies can take to ratchet up sustainability disclosure and reporting.

Disclosure related to labour standards remains heavily skewed towards basic working conditions. It is important to correct the inherent bias within disclosure and action by placing far greater emphasis on the labour rights (freedom of association and collective bargaining) component of standards. But even companies that emphasize labour rights in their social responsibility agenda often fail to comply with the minimum guidance of the GRI and other standard setters regarding quantitative data on collective bargaining coverage.

Annual data snapshots related to collective bargaining coverage can do more to obfuscate than clarify. It is important that metrics facilitate trend analysis via time series data spanning, say, a minimum of five years, as noted in the case of Total and Electrolux. It is also crucial to provide CbC data to reflect and detect variations in countries where key affiliates and suppliers operate, as noted in the case of PUMA. As regards suppliers, it is important to follow the lead of corporations that are disclosing information beyond Tier I to other tiers in the supply chain, including raw materials suppliers.

The above discussion suggests that high sustainability performance would be assessed on the basis of high rates of unionization and collective bargaining coverage, ongoing improvements through time, and the extent to which significant regional or country deficits are corrected.

As regards normative targets related to labour rights, both international soft law associated with ILO conventions and ethical obligations associated with the corporate social responsibility agenda would seem to suggest that all workers in large corporations should be unionized and covered by collective bargaining. In practice, restrictive labour laws in various countries and jurisdictions prevent unionization, making such a target impossible at the enterprise level. The same does not apply, however, to collective bargaining given the possibilities for companies operating in restrictive legal settings to enter into alternative modes of social dialogue that, to some extent at least, involve a degree of collective bargaining. This observation also suggests that corporate responsibility should go beyond enterprise-level efforts to facilitate collective bargaining and extend to forms of corporate lobbying and political influence that promote rather than resist progressive labour market policy reforms.

It is important to contextualize data on labour rights. Positive trends in freedom of association and collective bargaining coverage among full-time employees may mask regressive trends related to a significant decline in permanent or fixed-term employment and/or increased reliance on subcontracted labour, which is often associated with weak labour rights. It is useful, therefore, to (i) provide time-series data on permanent and fixed-term employment and to compare it with that on revenues and profits, and (ii) disclose data on the percentage of the workforce of affiliates employed part time or subcontracted.

The efforts of corporations to support labour rights within their supply chain are often contradicted by aggressive commercial policies and practices that constrain the capacity of suppliers to respond to enhanced sustainability norms through improvement in labour rights and working conditions. To assess the relevance of this situation it would be useful for corporations to disclose the scale of financial support and incentives provided for suppliers engaged in social or sustainability upgrading.