

DECENT WORK IN AN AGE OF
GLOBALISATION: GOVERNING
PRODUCTION NETWORKS AND THE
CHANGING ROLE OF THE INTERNATIONAL
LABOUR ORGANIZATION (ILO)

Huw David Thomas

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*Employment Research Unit
Management, Employment and Organisation Section
Cardiff Business School
Cardiff University*

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Abstract

The International Labour Organization (ILO) is often regarded as ineffective in the face of the ‘Global Transformation’, ‘adrift’ and in a ‘state of crisis’. In particular, the ILO’s role in the governance of global production networks (GPNs) is typically neglected or simply dismissed as unsuccessful. This is understandable as the organisation of production and distribution through GPNs has undermined the traditional nation-State (horizontal) paradigm of global labour governance, most notably the international Conventions agreed by the tripartite constituents (governments, employers and workers’ representatives from 187 member States) of the ILO.

An important question for the ILO, and indeed the wider international community, is whether, and if so how the Organization can transform the system of global labour governance to address and include the (vertical) GPNs that all too often fail to deliver ‘decent for all’. Drawing upon GPN and global labour governance theory, this research addresses the question of how and under what conditions the ILO can (re)establish labour standards (voice, equity and efficiency) under the ‘Global Transformation’ (in general) and GPNs (in particular).

Based on 2 years of participant observation at the ILO’s headquarters in Geneva and field work (questionnaire surveys and focus group discussions) in the Indonesian palm oil and Sri Lankan tea sector, it becomes clear that the ILO must extend its responsibility vertically to address governance gaps and ‘spaces of exception’ and ultimately to promote and protect decent work in GPNs. At the International Labour Conference (ILC) in 2016 the ILO asserted that its labour standards were not ‘fit for purpose’ and a new approach to labour governance in GPNs was needed. An innovative approach to the (re)establishment of labour standards is ‘in the making’ at the ILO with the potential to improve working conditions and rights at work for millions across the globe.

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Table of Contents

| | |
|---|-----------|
| 1. The International Labour Organization (ILO) and International Labour Standards | 1 |
| 1.1. Introduction | 1 |
| 1.2. From the ‘Great’ to the ‘Global’ Transformation | 4 |
| 1.3. Research question..... | 10 |
| 1.4. From the old (horizontal) world of labour regulation to the new (vertical) world of labour exploitation..... | 12 |
| 1.5. The structure of the thesis | 15 |
| 2. Understanding Global Labour Governance in an Age of Global Transformation | 19 |
| 2.1. Introduction | 19 |
| 2.2. Decent work during the Great Transformation | 22 |
| 2.3. The age of Global Transformation | 24 |
| 2.4. From chains to networks | 32 |
| 2.5. Theorising global labour governance..... | 38 |
| 2.6. Forms of global labour governance..... | 42 |
| 2.6.1. Public governance | 43 |
| 2.6.2. Private governance..... | 44 |
| 2.6.3. Social governance | 46 |
| 2.7. Promoting decent work and the ‘rules of the game’ | 48 |
| 2.7.1. Vertical governance | 49 |
| 2.7.2. Horizontal governance | 52 |
| 2.7.3. The role of the ILO?..... | 56 |
| 2.8. Conclusion | 59 |
| 3. Researching Decent Work | 61 |
| 3.1. Introduction | 61 |
| 3.2. The challenges of researching decent work | 63 |
| 3.3. Epistemology, ontology and process methods | 65 |
| 3.4. Researching decent work ‘from the inside’ | 70 |
| 3.5. (In)decent work cases..... | 83 |
| 3.5.1. Selecting the (in)decent work cases | 86 |
| 3.6. Surveying (in)decent work | 88 |
| 3.7. Getting to the heart of (in)decent work | 92 |

| | |
|--|------------|
| 3.8. Data analysis | 96 |
| 3.9. Conclusion | 97 |
| 4. ILO as a Standard-Setting Organisation..... | 99 |
| 4.1. Introduction | 99 |
| 4.2. Standard-setting during the Great Transformation | 102 |
| 4.2.1. The ILO's enforcement mechanisms | 115 |
| 4.2.2. Sector-level Conventions: The case of the Plantations Convention, 1958 (C.110) | 118 |
| 4.3. Standard-setting during the Global Transformation | 125 |
| 4.3.1. The Fundamental Principles and Rights at Work | 126 |
| 4.3.2. Decent Work | 133 |
| 4.3.3. A fair globalisation for all | 137 |
| 4.3.4. The Future of Work..... | 139 |
| 4.4. Conclusion | 151 |
| 5. (In)Decent Work on Indonesia's Palm Oil Plantations..... | 153 |
| 5.1. Introduction | 153 |
| 5.2. The palm oil production network | 155 |
| 5.3. Palm oil production in Indonesia | 162 |
| 5.4. Indonesia and the ILO | 167 |
| 5.5. Working in the field | 171 |
| 5.5.1. Contracts and wages..... | 173 |
| 5.5.2. Forced labour | 178 |
| 5.5.3. Child labour | 179 |
| 5.5.4. Labour inspection..... | 180 |
| 5.5.5. Freedom of association and collective bargaining | 182 |
| 5.5.6. Living conditions | 185 |
| 5.5.7. Discrimination..... | 185 |
| 5.5.8. Conditions of work..... | 186 |
| 5.6. Horizontal and vertical governance and indecent work | 189 |
| 5.6.1. Horizontal governance | 191 |
| 5.6.2. Vertical governance | 196 |
| 5.7. Conclusion | 200 |
| 6. Decent Work on Sri Lanka's Tea Plantations | 202 |
| 6.1. Introduction | 202 |
| 6.2. The tea global production network | 204 |

| | |
|--|------------|
| 6.3. Tea production in Sri Lanka..... | 212 |
| 6.4. Sri Lanka and the ILO..... | 218 |
| 6.5. Working in the field | 221 |
| 6.5.1. Contracts and wages..... | 223 |
| 6.5.2. Forced labour | 227 |
| 6.5.3. Child labour | 229 |
| 6.5.4. Labour inspection..... | 231 |
| 6.5.5. Freedom of association and collective bargaining | 232 |
| 6.5.6. Living conditions | 233 |
| 6.5.7. Discrimination..... | 236 |
| 6.5.8. Conditions of work..... | 237 |
| 6.6. Horizontal and vertical governance and decent work..... | 239 |
| 6.6.1. Horizontal governance | 242 |
| 6.6.2. Vertical governance | 247 |
| 6.7. Conclusion | 254 |
| 7. The Promise, Potential and Limits of International Labour Standards | 256 |
| 7.1. Introduction | 256 |
| 7.2. Decent work in the field..... | 259 |
| 7.2.1. The promise, potential and limits of horizontal governance..... | 262 |
| 7.2.2. The promise, potential and limits of vertical governance | 264 |
| 7.3. The ILO: A horizontal player in a vertical world?..... | 268 |
| 7.3.1. Labour governance in an age of global transformation | 269 |
| 7.3.2. The ‘first step’ towards decent work in global production networks..... | 275 |
| 7.3.3. From horizontal to vertical governance | 280 |
| 7.4. Conclusion | 289 |
| 8. Conclusion | 292 |
| 9. Reflections on the Research Limitations and Future Research Challenges | 296 |
| 9.1. Case selection..... | 296 |
| 9.2. Data collection and analysis..... | 297 |
| 9.3. Future Research..... | 298 |
| Appendix 1: How the ILO Works | 301 |
| Appendix 2: Plantations Questionnaire | 306 |

| | |
|---|------------|
| Appendix 3: Focus Group Moderation Guide for Trade Union Officials | 323 |
| Appendix 4: A (Brief) History of the ILO | 328 |
| Appendix 5: ‘Up-to-date’ ILO Conventions and Ratifications | 335 |
| Bibliography | 338 |

Figures, Tables and Images

Figures

| | |
|--|-----|
| Figure 1.1: No longer in the game? The ILO and the global economy | 5 |
| Figure 2.1: Horizontal and vertical governance of global production networks..... | 21 |
| Figure 2.2: Objectives of the employment relationship and global governance..... | 31 |
| Figure 2.3: Five global value chain governance configurations | 35 |
| Figure 3.1: Taxonomy of field roles | 72 |
| Figure 3.2: Phases and activities of ILO work in the field..... | 85 |
| Figure 4.1: Horizontal and vertical governance of global production networks and the ILO's sphere of responsibility..... | 100 |
| Figure 4.2: How an international labour standard is adopted | 105 |
| Figure 4.3: Number of Conventions adopted and number of ratifications (average over 5-year intervals) (1950-2014) | 107 |
| Figure 4.4: Number of ratifications of Conventions adopted since 2000 | 110 |
| Figure 4.5: Voting outcomes at the International Labour Conference (1996-2016) | 114 |
| Figure 4.6: Number of ILO member States over time | 120 |
| Figure 4.7: Visual mapping of the Director-General's initiatives..... | 126 |
| Figure 4.8: Percentage of member States that have ratified the core Conventions.. | 132 |
| Figure 4.9: Ratification of core Conventions over time..... | 132 |
| Figure 4.10: Number of times the expression 'decent work' appears in the Director-General's strategic reports to the International Labour Conference (per 1,000 words) | 134 |
| Figure 4.11: Number of times the word 'chain(s)' appears in the Director-General's strategic reports to the International Labour Conference (per 1,000 words) | 151 |
| Figure 5.1: Horizontal and vertical governance in the Indonesian palm oil sector.. | 154 |
| Figure 5.2: Palm oil consumption over time..... | 156 |
| Figure 5.3: Palm oil production network configuration..... | 158 |
| Figure 5.4: Palm oil production chain..... | 159 |
| Figure 5.5: Palm oil production in Indonesia and Malaysia (1970-2014) | 165 |
| Figure 5.6: Destination countries for Indonesian palm oil (2013)..... | 166 |
| Figure 5.7: Location of questionnaire surveys with palm oil plantation workers and smallholders | 173 |

| | |
|--|-----|
| Figure 5.8: Wages per month (all workers) (IDR)..... | 177 |
| Figure 5.9: Indonesia and the objectives of the employment relationship under the Global Transformation..... | 190 |
| Figure 6.1: Horizontal and vertical governance in the Sri Lankan tea sector..... | 203 |
| Figure 6.2: Location of tea producing countries..... | 205 |
| Figure 6.3: Changes in Sri Lankan tea prices between July 2006 and July 2017.... | 206 |
| Figure 6.4: Tea production chain..... | 207 |
| Figure 6.5: Tea production network configuration..... | 211 |
| Figure 6.6: Tea production in Sri Lanka (1970-2013)..... | 213 |
| Figure 6.7: Destination countries for Sri Lankan tea (2013)..... | 215 |
| Figure 6.8: Location of questionnaire surveys with tea plantation workers and smallholders..... | 223 |
| Figure 6.9: Wages per month (all workers) (LKR)..... | 227 |
| Figure 6.10: Sri Lanka and the objectives of the employment relationship under the Global Transformation..... | 241 |
| Figure 7.1: Timeline of decent work in global supply chains..... | 276 |

Tables

| | |
|--|-----|
| Table 2.1: Measures of voice, equity and efficiency..... | 30 |
| Table 2.2: Horizontal and vertical labour governance by actor..... | 43 |
| Table 2.3: Capital and labour mobility..... | 49 |
| Table 3.1: Research timeline..... | 62 |
| Table 3.2: Timeline of period working for and with the ILO..... | 71 |
| Table 4.1: Director-Generals during the Global Transformation (1989-present).... | 101 |
| Table 4.2: Member States that have ratified the Plantations Convention and their percentage of world production of crops included under the Convention..... | 123 |
| Table 4.3: The Declaration on Fundamental Principles and Rights at Work (1998) | 127 |
| Table 5.1: Dominant transnational corporations (vertical private governance actors) in the palm oil global production network..... | 157 |
| Table 5.2: Types of labour governance in the Indonesian palm oil sector..... | 161 |
| Table 5.3: Ratified ('in force') ILO Conventions in Indonesia..... | 168 |
| Table 5.4: Complaints made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2015..... | 170 |

| | |
|--|-----|
| Table 5.5: Decent work deficits on Indonesian palm oil plantations..... | 172 |
| Table 5.6: Work status and gender of surveyed palm oil workers..... | 175 |
| Table 5.7: Cases of forced labour in Indonesia’s palm oil sector | 178 |
| Table 6.1: Top five exporters of tea (2013) | 205 |
| Table 6.2: Top five importers of tea (2013)..... | 205 |
| Table 6.3: Dominant transnational corporations (vertical private governance actors) in the tea global production network..... | 210 |
| Table 6.4: Types of labour governance in the Sri Lankan tea sector..... | 212 |
| Table 6.5: Ratified (‘in force’) ILO Conventions in Sri Lanka | 219 |
| Table 6.6: Complaints made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2015..... | 220 |
| Table 6.7: Decent work on Sri Lankan tea plantations | 221 |
| Table 6.8: Work status and gender of surveyed tea workers | 225 |
| Table 6.9: Cases of forced labour in Sri Lanka’s tea sector..... | 228 |
| Table 6.10: International labour standards and certification schemes in the Sri Lankan tea sector..... | 248 |
| Table 7.1: (In)decent work in Sri Lanka and Indonesia..... | 261 |
| Table 7.2: The ILO and global labour governance | 271 |
| Table 7.3: Normative scope of a global production network standard | 287 |

Images

| | |
|---|-----|
| Image 3.1: A questionnaire survey taking place in Sri Lanka | 91 |
| Image 3.2: A focus group discussion taking place in Sri Lanka..... | 93 |
| Image 5.1: A palm oil refinery in North Sumatra, Indonesia..... | 161 |
| Image 5.2: Worker carrying an ‘egrek’ used for harvesting palm oil..... | 187 |
| Image 6.1: A tea processing centre in Sri Lanka | 208 |
| Image 6.2: Tea pickers waiting to weigh their harvest | 226 |
| Image 6.3: No child labour sign..... | 230 |
| Image 6.4: Management ‘bungalows’ | 235 |
| Image 6.5: Sri Lankan worker ‘line houses’ | 235 |
| Image 6.6: Chemical free zone..... | 239 |

List of Acronyms

| | |
|---------|--|
| ACI | Area of Critical Importance |
| ACT/EMP | Bureau for Employers' Activities |
| ACTRAV | Bureau for Workers' Activities |
| CAS | Conference Committee on the Application of Standards |
| CEACR | Committee of Experts on the Application of Conventions and Recommendations |
| CFA | Committee on Freedom of Association |
| CSO | Civil Society Organisation |
| CSR | Corporate Social Responsibility |
| CWC | Ceylon Workers' Congress |
| D-G | Director-General |
| DWCP | Decent Work Country Programme |
| EFC | Employers' Federation of Ceylon |
| EPZ | Export Processing Zones |
| EU | European Union |
| FAO | Food and Agriculture Organization of the United Nations |
| FDI | Foreign Direct Investment |
| FPRW | Fundamental Principles and Rights at Work |
| GDP | Gross Domestic Product |
| GPN | Global Production Network |
| GSC | Global Supply Chain |
| GUF | Global Union Federation |
| GVC | Global Value Chain |
| IDR | Indonesian Rupiah |
| IFA | International Framework Agreement |
| ILC | International Labour Conference |
| ILO | International Labour Organization |
| IMF | International Monetary Fund |
| IOE | International Organization of Employers |
| ITC-ILO | International Training Centre of the ILO |
| ITF | International Transport Workers' Federation |
| ITUC | International Trade Union Confederation |
| IUF | The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations |
| JPTUC | Joint Plantation Trade Union Centre |
| KSBSI | Indonesian Prosperous Labor Union Confederation |
| KSPI | Confederation of Indonesian Workers |
| KSPSI | All-Indonesia Workers Union Confederation |
| LJEWU | Lanka Jathika Estate Workers Union |
| LKR | Sri Lanka Rupees |
| MDG | Millennium Development Goals |
| MLC | Maritime Labour Convention, 2006 |
| MNE | Multinational Enterprise |
| MYR | Malaysian Ringgit |
| NGO | Non-Governmental Organisation |
| OECD | The Organization for Economic Co-operation and Development |
| PAO | Participant-as-observer |

| | |
|--------|--|
| PHDT | Plantation Human Development Trust |
| PKI | Indonesian Communist Party |
| PPE | Personal Protective Equipment |
| RSPO | Roundtable on Sustainable Palm Oil |
| SDG | Sustainable Development Goals |
| SECTOR | Sectoral Policies Department |
| SME | Small and Medium Sized Enterprise |
| SOBSI | Central All-Indonesian Workers Organization |
| SPSI | All Indonesia Workers' Union |
| TGB | Tata Global Beverages |
| TNC | Transnational Corporation |
| UN | United Nations |
| UNCTAD | United Nations Conference on Trade and Development |
| USD | United States Dollars |
| WTO | World Trade Organization |

1. The International Labour Organization (ILO) and International Labour Standards

‘The state-based system of global governance has struggled for more than a generation to adjust to the expanding reach and growing influence of transnational corporations.’

John Ruggie (2007 p.2)

1.1. Introduction

In the palm oil sector in Indonesia, child labourers are employed, workers are abused, they work in hazardous conditions and are exposed to chemicals and toxins, labour rights are violently suppressed and internationally recognised labour standards are violated. Government regulation and enforcement is ineffective for its citizens and employers are openly hostile towards their employees and their representatives. Trade unions are weak, suppressed and, in some cases activists and officials are murdered (ITUC 2015). Even in sectors such as tea in Sri Lanka, where the ratification of international labour standards is high, poverty is rife and the transversal (vertical) nature of global production networks (GPNs) has undermined the traditional nation-State (horizontal) paradigm of global labour governance, most notably the international Conventions agreed by the tripartite constituents (governments, employers and workers’ representatives from 187 member States) of the International Labour Organization (ILO).¹

International attempts to improve labour conditions date back to 1919, when the ILO was established to develop labour standards and norms on a range of labour-related issues. The founders of the ILO recognised from its inception the importance of global labour governance and the principles of social justice as an ‘indispensable condition for universal and lasting peace’, stating in the ILO’s preamble that ‘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 counties’ (ILO 1919). Since then the ILO has established a vast corpus of internationally agreed labour

¹ The International Labour Organization (ILO) uses the American spelling of ‘organisation’ but the British spelling of ‘labour’.

standards² that national governments can ratify, aimed at ‘promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity’ (ILO 1999). However, ‘outside of the international legal field, the world has not shown much interest in the ILO’s standards’ (Baccaro and Mele 2012 p.198). In fact, ‘most reasonably informed people have little idea what the letters I-L-O stand for’ (Elliott and Freeman 2003 p.93). Scholars of industrial relations, of course, know not only what the letters I-L-O stand for, but what the Organization itself stands for, because the founding principle of the ILO – that ‘labour is not a commodity’ (ILO, 1919) – is the foundation upon which the field of industrial relations, in both its positive and normative aspects, is based (Budd 2004 p.2; Kaufman 2010 p.72). Informed opinion within the industrial relations community is that the ILO appears to be ‘adrift’ (Marginson 2016 p.1051) and has ‘lost its way’ along the (dependent) path to globalisation (Baccaro and Mele 2012), an organisation ‘whose only tools of influence are the sunshine of public scrutiny and the shame of public censure, and whose feeble enforcement mechanisms render all but nugatory its efforts to improve global labor conditions’ (Helfer 2006 p.652). In short, in the eyes of many commentators, including the current Director-General (D-G) of the ILO, the Organization is in a state of crisis (Alston 2004 p.475; Standing 2008; Ryder 2015a). However, is it too soon to sound the death knell for the ILO and its standards?

At the ILO’s International Labour Conference (ILC), the so-called ‘parliament of labour’ (Morse 1969a), in 2016 the ILO professed that its existing standards were not ‘fit for purpose’ to promote decent work in GPNs (ILC.105/PR/14-1 para.25).³ The ILO, and most historical institutionalists, are well-aware of the ‘path-dependent’ challenges of the ILO’s horizontal (within national borders) approach to (global) labour governance (Baccaro and Mele 2012). However, the new D-G, Guy Ryder, since assuming office (2012-present) has proposed a need to extend the ILO’s standards (Conventions) vertically (across borders) to ensure ‘decent work for all’ and

² 189 ILO Conventions and 204 Recommendations have been adopted.

³ References to the Provisional Record (PR) or Director-General’s (D-G) report of the International Labour Conference (ILC) are reported as ILC with the relevant session (e.g. 105), the number of the document (e.g. 14-1) or the section (e.g. Institutional or ‘INS’) and paragraph (e.g. 25) or page number. References to the Governing Body of the ILO are reported as GB and follow the same nomenclature. Any subsequent reference to the written report or proceedings is denoted by the abbreviation ‘PV’ (procès-verbaux).

has identified the plantations sector in particular as an ‘area of critical importance’ for the ILO and its potential for vertical governance.

Analytically, the most effective way to understand the implications of horizontal and vertical governance is through GPN theory, which places labour at the forefront of any in-depth analysis and incorporates both the territorial and organisational dynamics within multi-scalar governance (Coe and Yeung 2015). To understand, and to ultimately reinvent, the role of the ILO in an age of Global Transformation requires research at the global level, where standards are discussed and adopted (or not), the national level where standards are ratified (or not), the sectoral level (where the dynamics of GPNs play out) and the workplace (where workers experience (in)decent work). To be sure, the establishment of new labour standards that might extend the ILO’s responsibility is a long and protracted process (Maupain 2013), thus the first step was to ‘get inside’ the ILO as a ‘participant-as-observer’ (Gill and Johnson 2010 p.167) with access to data from ‘behind the scenes’ as well as the ‘public record’. The next step was to ‘get along’ the production network within specific national sectors. Consequently, I worked on, with, and for the ILO on the plantations sector (an ‘area of critical importance’ for the ILO)⁴ and conducted questionnaire surveys and focus group discussions in the field in Sri Lanka (tea sector) and Indonesia (palm oil sector) to understand the potential for vertical governance (across borders) and more generally how decent work, as defined by the ILO, works on the ground. The aim is to not just to increase understanding of the role of the ILO, as one of the central nodes of a global multi-scalar governance network of public, social and private labour regulation, but also to commit to the principles of action research and partisan scholarship in giving a voice to the marginalised and accepting responsibility for conducting research towards social action and emancipation (Brook and Darlington 2013).

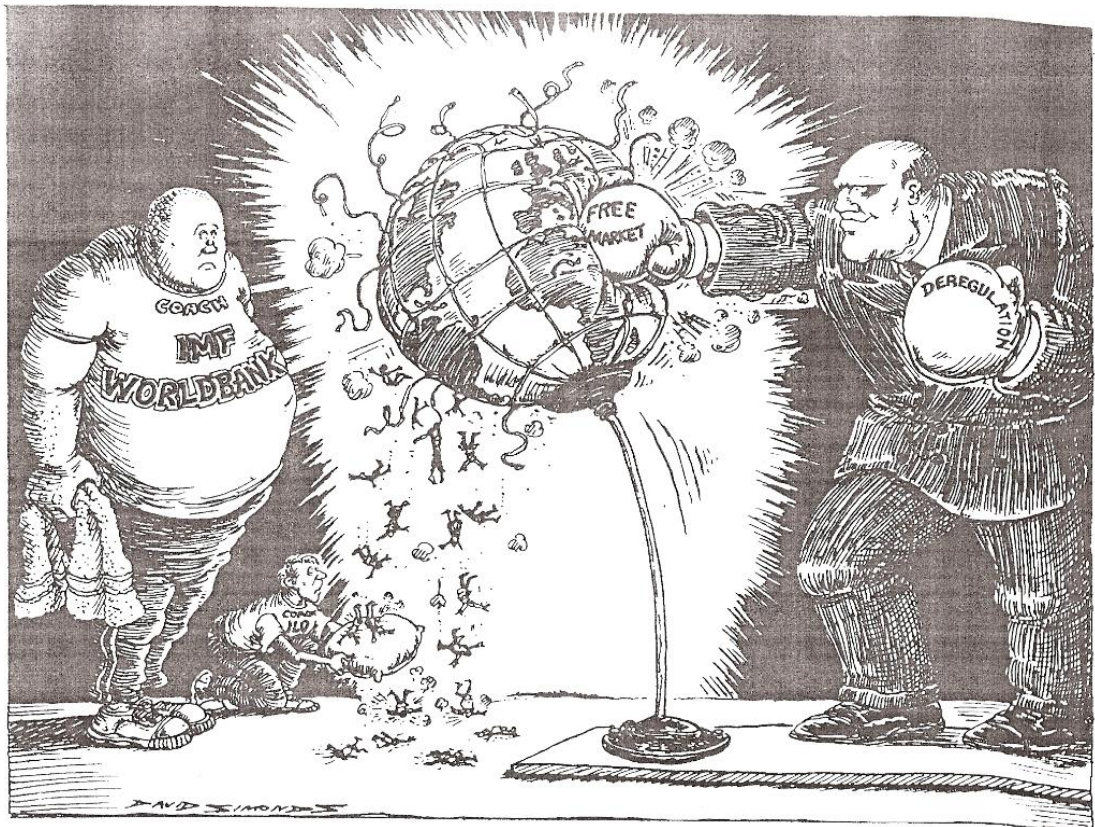
⁴ Guy Ryder has identified eight areas of critical importance (ACIs) for priority action at the ILO. These include: (1) promoting more and better jobs for inclusive jobs; (2) jobs and skills for youth; (3) creating and extending social protection floors; (4) productivity and working conditions in small and medium-sized enterprises (SMEs); (5) decent work in the rural economy; (6) formalisation of the informal economy; (7) strengthening workplace compliance through labour inspection; and (8) protection of workers from unacceptable forms of work.

1.2. From the ‘Great’ to the ‘Global’ Transformation

In the former days of the ‘Great Transformation’ (Polanyi 1944), the ILO played a central role in setting the ‘rules of the game’ for (inter)national labour governance.⁵ According to Karl Polanyi (1944 pp.27–28), the ILO was set up: ‘to equalize conditions of competition among the nations so that trade might be liberated without danger to standards of living’. ILO Conventions and Recommendations provided a ‘social floor’ for national labour markets in Western Europe and North America under the Keynesian social democratic model. But that was all in the past. In the present days of the ‘Global Transformation’ (Standing 2010b), trans-national corporations (TNCs) ‘have gone global and function in near real time, leaving behind the slower moving, state-mediated *inter-national* world of arm’s-length economic transactions and traditional international legal mechanisms, even as they depend on that world for their licences to operate and to protect their property rights’ (Ruggie 2004 p.503 original emphasis). As part of the ‘state-mediated *inter-national* world’, the ILO has also been left behind, no longer ‘setting the rules of the game’ but instead no more than a ‘coach’ that tries to provide a safety net or ‘cushion’ for the victims of free markets and deregulation, as depicted in Figure 1.1.

⁵ The ‘game’ metaphor does not imply a trivialising of the stakes at issue, particularly when millions of workers across the globe still endure indecent work. The ‘rules of the game’ metaphor, with its obvious connection to the world of sport rather than the world of work, is taken from the ILO’s own publication: *Rules of the Game: A Brief Introduction to International Labour Standards* (ILO 2014a).

Figure 1.1: No longer in the game? The ILO and the global economy



Source: Eaton (2000 p.172)

While the ILO is much more than a standard-setting organisation, it is this role, in particular, that is increasingly questioned in an age of ‘Global Transformation’. Although the eight ‘fundamental Conventions’⁶ of the ILO are now widely ratified (with the exception of freedom of association and collective bargaining), especially after the recognition of these rights as ‘human rights’ by the international community,⁷ the ILO’s strategy of prioritising these fundamental principles has arguably relegated other Conventions to ‘second-class’ status (Alston 2004). As Locke (2013 p.11) states, this initiative ‘lacked enforcement powers and thus offered little more than moral guidance for already committed governments and corporations’. To be sure, the implementation of the fundamental Conventions might ‘enable’ national social actors

⁶ These cover: (1) freedom of association and the effective recognition of the right to collective bargaining (C.87 and C.98); (2) elimination of all forms of forced or compulsory labour (C.29 and C.105); (3) effective abolition of child labour (C.138 and C.182); and (4) elimination of discrimination and respect for employment and occupation (C.100 and C.111).

⁷ These Fundamental Principles and Rights at Work are enshrined in the *Universal Declaration of Human Rights* and in several core United Nations human rights treaties, including the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, as well as a series of regional instruments (e.g. *Charter of Fundamental Rights of the European Union*).

to then secure other rights reflected in the other 181 general and sector-specific ILO Conventions. However, the ratification of many Conventions is still disappointingly low and many recent Conventions designed to reflect the changing world of work have seen very limited uptake and even less impact for the workers or industrial sectors concerned. Even when Conventions have been ratified by the 187 member States of the ILO, conditions of work often remain unchanged (Mosley 2011). Critics argue that Conventions and Recommendations are ‘toothless instruments’ (Tsogas 2001) that no longer ‘equalise competition’ (Standing 2010a p.308) or ensure decent work and social justice for workers in either developed or developing nations. Under the voluntarist framework for implementing ILO labour standards, governments are ‘at liberty’ to ratify Conventions they agree with, ignore those they do not care for, and de-ratify those they dislike, limiting the ILO’s standard-setting role and impairing its supervisory mechanisms (Standing 2008 p.356). As Maupain (2013 p.126) argues, ‘the [ILO] now has to face a sobering reality ... these ostensibly universal rules of the game remain far from universally enforceable’. In fact, some critics suggest that the ILO is no more than ‘an agency *for* globalisation’ (Standing 2008 emphasis added), not only playing by the new ‘rules of the game’ determined by trans-national capital but facilitating the global dominance of conglomerates who orchestrate GPNs that ‘cut across’ both national employment regulations and international labour standards.

The expansion of GPNs, ‘an organizational arrangement comprising interconnected economic and noneconomic actors coordinated by a global lead firm and producing goods or services across multiple geographic locations for worldwide markets’ (Yeung and Coe 2015 p.52), influence the structure of labour markets across the world and have led to significant changes in the international division of labour (Rainnie et al. 2011). The ILO and its constituents – the (tripartite) social partners in member States – were ill-prepared for these changes. In short, the ILO was ‘late into the game’ and, according to the current D-G, the ILO is once again ‘catching up, catching up on supply chains. The ILO needs to take an accelerated course in understanding supply chains and their operations and implication for public policy’ (Ryder 2015a).

Policy entrepreneurs in the International Labour Office (hereafter the ‘Office’) – a permanent secretariat of approximately 2,800 international civil servants – are well aware of the challenges faced by the ILO, the deficiencies of its standard-setting role and the powerlessness of its constituents, most notably labour (Hughes and Haworth 2011). In 2012, Guy Ryder was appointed as the new D-G of the ILO, the first D-G to come from outside the Government Group.⁸ In his first report to the ILC in 2013, Ryder declared the need to reform and renew the structure, strategy and mandate of the ILO. In particular, his report acknowledged the ILO’s deficiencies in attending to the contemporary realities of the world of work and stressed that the ILO has been the ‘object of pointed criticism for failing to take up its own responsibilities’ in this regard (ILC.102/DG/1A p.24). The need to address decent work in global supply chains has become a defining feature of the ILO’s activities since the election of Ryder. Reflecting on the contemporary relevance of the ILO, the D-G concluded that ‘it makes less sense to think in terms of national products exchanged between two Nation States and more and more to think in terms of value added ... through complex interactions of global non-State actors’ (ILC.102/DG/1A p.2). The most pressing task for the ILO is ‘to be engaging with the companies involved and their workers’ in order to make global supply chains “chains of decent work” (ILC.102/DG/1A p.12). To this end, the ILC of the ILO discussed ‘decent work in global supply chains’ in 2016 and concluded the need to move beyond the traditional horizontal paradigm of labour governance (tripartite action within the sovereign borders of member States) to encompass the entire range of local, national and global actors and their impact on decent work across the production network.

To determine whether the ILO can adapt to the ‘new game’ of labour governance demands a detailed consideration of the conditions of work in the twenty-first century, most notably in developing countries, and whether, and under what conditions the ILO can (re)establish the ‘rules of the game’ for effective labour governance. To this end, it is necessary to examine both the standard-setting role of the Organization and the (un)successful application of standards ‘in the field’. Thus,

⁸ Guy Ryder was General Secretary of the International Trade Union Confederation (ITUC) (previously called International Confederation of Free Trade Unions [ICFTU]) between 2002 and 2010. He also held posts in the ILO, including the Director of the Office of the Director-General (1999-2002) and the Director for the Bureau for Workers’ Activities (ACTRAV) (1998-1999).

there are two elements to the research, first participant observation at the ILO's headquarters (Geneva) and secondly, research in the field (Indonesian palm oil plantations and Sri Lankan tea plantations). As the official record of the ILO's meetings and reports is invariably 'understated' (e.g. the Office avoids direct criticism of member States), the most effective way to research the ILO is as a 'participant-as-observer' (Gill and Johnson 2010 p.167), with the researcher at the heart of the 'meaning context' where ideas make sense and where formal arrangements affect the what, how, when and where of policy-making. For example, if employers suggest that discussion of a particular issue is 'premature', this is interpreted by the Office as the employers 'adamantly opposed' to any discussion (Baccaro and Mele 2012 p.214); if the ILC records 'with concern' or 'with regret' the behaviour of a member State, this is understood to mean 'serious reservations'. As Helfer (2006 p.702) notes, such 'exquisitely enigmatic condemnation of states may have been intelligible to old ILO hands, but [was] hardly comprehensible to those outside the organization'.

The timing of Guy Ryder's appointment as D-G serendipitously coincided with a 6-month internship (January-June 2013) followed by an 18-month (fixed-term) contract under the standard terms of a UN international civil servant at the ILO's headquarters in Geneva (July 2013 to December 2014).⁹ The purpose of the 'participant-as-observer' research at the ILO was to assess how the ILO has begun to address GPNs in particular and the relevance of its labour standards and their impact on the world of work, in general. The 'insider' research data therefore was designed to determine whether the standard-setting role of the ILO was 'fit for purpose' to promote decent work in GPNs. My placement was fortuitous, as I worked for the Sectoral Policies Department (SECTOR),¹⁰ which was given greater prominence following the restructuring of the Organization in 2013 (see Chapters 3 and 4). The work of SECTOR is almost entirely financed from the ILO's regular budget allocated by the Governing Body (see Appendix 1 on how the ILO works). In this respect, SECTOR's work is 'ILO work', unlike the technical cooperation programmes in various member

⁹ Standards of conduct for the international civil service can be found at: <http://icsc.un.org/resources/pdfs/general/standardsE.pdf> [Accessed: 15 October 2016]. These standards place some restrictions on the reporting of participant observation data, which is discussed in Chapter 3.

¹⁰ The Sectoral Policies Department (SECTOR) promotes decent work in specific economic sectors, giving greater insight into the inner-workings of the ILO.

States that are essentially ‘Office work’ financed (predominantly) by Western donors reflecting their priorities rather the tripartite constituents. As part of the ILO’s focus on global supply chains and its efforts to increase the ILO’s relevance, the rural economy in general, and the plantation sector in particular, was singled out as an ‘area of critical importance’ (ACI) for the ILO and its constituents, and SECTOR became the lead Department on this subject. The purpose of the ILO’s action ‘in the field’ was to understand the conditions of work in several GPNs¹¹ and the implications for the ILO’s traditional standard-setting role. The Plantations Convention, 1958 (C.110) was identified as an instrument with potential relevance to the world of work and as part of the SECTOR team I was tasked with undertaking a study for the Department to determine its contemporary relevancy and effectiveness, notwithstanding the limited ratifications of the Convention.¹² My placement within SECTOR was ideal in viewing changes not only within the ILO, and its departure on a different path to labour governance, but also the (un)successful implementation of labour standards in the ‘field’.

The second phase of the research draws on ‘fieldwork in the field’, quite literally, combining questionnaire surveys and focus group discussions to analyse the conditions of work in two plantation sectors (tea and palm oil) in two countries (Sri Lanka and Indonesia respectively). Whereas Sri Lanka has ratified the Plantations Convention (C.110), Indonesia has not. Thus, the key purpose of the sectoral research was to analyse how standards work in practice, whether they actually support the tripartite constituents, especially labour, to determine whether the ILO can still set rules that affirm the fact that ‘labour is embodied in human beings’, and under what conditions labour standards are most effective at meeting ‘the simple and legitimate aspirations [of women and men] for decent jobs and a better future for their children’ (ILO 2004 p.x).

¹¹ In total, the ILO focussed on six countries and three sectors: tea in Sri Lanka and Malawi; palm oil in Indonesia and Ghana; and bananas in the Dominican Republic and Panama.

¹² Only 12 countries have ratified the Plantations Convention, with two denouncements. Today, therefore, the Convention is ‘in force’ in only 10 countries.

1.3. Research question

The ILO defines ‘decent work’ as involving: ‘opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men’ (ILO 1999 p.3). The achievement of decent work is based on four main strategies – achieving fundamental workplace rights, creating better employment opportunities for all workers, providing for social protection, and creating social dialogue (ILO 1999 p.1). These strategies mirror the founding principle of the ILO that ‘labour is not a commodity’ (ILO 1919; ILO 1944), as well as the objectives of the employment relationship: voice, equity and efficiency (Budd 2004 p.2). The promotion of the Decent Work Agenda means that: ‘employment needs to be embraced as a social as well as economic activity with psychological as well as material rewards undertaken by human beings in democratic societies’ (Budd 2004 p.2).

The ‘Decent Work Agenda’ was initiated by Juan Somavía, the previous D-G (1999-2012) and under his directorship the ILO promoted a ‘non-confrontational’ agenda relying on ‘social dialogue’ rather than industrial relations, placing efficiency, equity and voice on equal footing and defined labour rights ‘in terms of consumer choices and the market, in effect a privatization of employees and citizens’ political rights’ (Royle 2010 p.264). The challenge created by GPNs is that efficiency now trumps both equity and voice, and as Guy Standing, former Director of the Socio-Economic Security Programme at the ILO, states: ‘Like it or not, in the early twenty-first century, labour *is* a commodity. And the ILO cannot do much about it’ (Standing 2008 p.382 original emphasis). The key question is therefore how and under what conditions is the ILO able to (re)establish effective labour standards (voice, equity and efficiency) under the ‘Global Transformation’ (in general) and GPNs (in particular)?

In order to address the implications of the ‘old world’ vs. the ‘new world’ of labour governance it is essential to understand the standard-setting role of the ILO in an age of ‘Global Transformation’. Although there has been lively debate on the direction of the ILO (e.g. Alston 2004; Alston and Heenan 2004; Langille 2005;

Maupain 2005; Standing 2008; Maupain 2013), the structure of the Organization (Cooney 1999; Hagan 2003) and the ILO's role in the framework of global governance (Haworth and Hughes 2003; Hassel 2008; Royle 2010), more than a decade has passed since the last major assessment of the ILO's standard setting role (Tsogas 2001). In that time, the world of work has been transformed by the rise of GPNs.

The ILO's standard-setting role, through the promotion of Conventions, is undoubtedly one 'layer' of global labour governance (Locke 2013; Gereffi and Lee 2016). In fact, many firm and non-firm actors seek to improve the credibility of their governance mechanisms by linking them to the fundamental Conventions of the ILO. In the absence of a strong system of global social justice (Cohen and Sabel 2006) and given the capacity or (un)willingness of national governments to enforce labour standards (Levi et al. 2013), a global labour governance 'regime' that prioritises soft-law over hard-law combined with a shift from the national to the supranational level has emerged (Hassel 2008). As Meardi and Marginson (2014 p.655) state: 'Recent disasters in Bangladeshi garment factories supplying Western brands highlight the weakness of national regulations, the responsibility of multinational companies and the complexity of the challenges to be surmounted to improve the situation'. As there is evidently a gap in labour governance, are the traditional forms of labour governance sufficient to close these gaps and protect workers' terms and conditions of employment?

There is a widespread assumption, or maybe an expectation, that the ILO still lies at the heart of global labour governance (Hassel 2008; Anner and Caraway 2010), but there is a dearth of research on the implementation of ILO labour standards at the national level, and in particular a neglect of the (un)successful implementation of labour standards at the workplace. Recent studies have demonstrated that positive changes in conditions of work are realised when the interests of key actors are aligned to improve labour standards (Berliner et al. 2015b) and that private voluntary regulation can best succeed when 'layered on' and 'interacting with' public regulation (Locke 2013 p.11; Donaghey et al. 2014). Although ILO Conventions represent an important 'layer' in the new system of global labour governance, studies on the standard-setting role of the ILO have focussed on the number of adoptions and

ratifications of Conventions (e.g. Tsogas 2001; Hepple 2005; Ewing 2013) and less analytical attention is concentrated on the impact of these ratification on conditions of work and the process of improving the rights and entitlements of workers.

Through my involvement with the new strategy in Geneva, to the plantations of two ILO member States, I combine novel research methods and insight on the role of the ILO as seen through the lens of global labour governance and the activities of GPNs. Specifically, I focus on the standard-setting role as the Organization's 'core activity' and the current period under Guy Ryder (2012-2016) when at last the ILO appears to understand, and has begun to address, the limitations of this role in the global economy.

1.4. From the old (horizontal) world of labour regulation to the new (vertical) world of labour exploitation

It is clear that the increase in cross-border movement of labour, goods, services and TNCs, and the emergence of new forms of vertical global labour governance (public, private and social), based predominantly on voluntary and self-regulatory standards, with a focus on compliance by business (rather than governments) via the market mechanism (rather than hierarchical authority) has challenged the traditional role of the ILO (tripartite action at the national level). At stake is the ILO losing its relevancy in the global economy. GPN theory is effective in understanding the new world of vertical exploitation as it facilitates analysis of multi-scalar interactions between various actors. In fact, it has been used to examine the dynamics of actors outside of the firm for example the state and civil society organisations (CSOs) and their impact on decent work. Similarly, the GPN literature has begun to explore the role of workers more closely and view labour as an 'active participant'. However, with rare exceptions (e.g. Posthuma and Rossi 2017), there has been little attention paid to the role of the ILO as a key actor in the governance of GPNs.

By placing strategic actors in the centre of the analysis the national institutional context is considered to be an important but not determining influence on decent work, and the exact strength and nature of that influence are ultimately an empirical question. The notion of horizontal labour governance (the territorial embedding of economic

and social relations between capital, labour and the state) and vertical labour governance (the vertical organisation and flow of value activity across multiple scales from the global to the local) is an effective framework for analysing decent work in the global value chain (GVC) literature (Gereffi and Lee 2016), the most recent iteration of the GPN framework (GPN, '2.0') (Coe and Yeung 2015), and in industrial relations research on the agricultural sector (Tampe 2016). In other words, the organisational scales (vertical governance) of GPN actors and their territorial embedding (horizontal governance) is a necessary starting point for analysing the effectiveness of the ILO's labour standards (cf. Coe and Yeung 2015 p.68). In addition, as Nathan (2013 p.3) points out, a comprehensive approach to industrial relations rests on 'bring[ing] together both vertical and horizontal relations that together constitute the functioning of GPNs and affect labour outcomes' (see also Lakhani et al. 2013).

For the ILO, GPNs present a particular challenge, not simply because there are estimated to be well over 450 million workers employed in these chains (ILO 2015b p.132), but more importantly because the multilevel governance structure of ILO Conventions (international labour standards ratified by member States) do not follow the (convoluted) vertical lines of GPNs but the horizontal (sovereign) space of member States' jurisdiction. In this age of Global Transformation, the governance capacity of horizontal-level institutions has been corroded and 'governance gaps' have become increasingly apparent (Marginson 2016). A global labour governance regime to promote and protect decent work (voice and equity for labour and efficiency for capital) in GPNs demands vertical and not simply horizontal regulation of labour standards, as the current D-G, has been at pains to point out:

'National governments ratify [Conventions] and are responsible for answering to the ILO for their observance. *It's a nation state based approach to international labour behaviour.* There has been a growing feeling, an accumulation of feelings, that the advent of globalization, the development of supply chains and production networks, has led to a risk ... that this *purely nation state approach to the behaviour of the globalized economy risked missing the dimension that was the transversal integration of production networks across countries.* I think we knew it and I don't think we knew what to do about it' (Ryder 2015a emphasis added).

In other words, the problem for the ILO and its standards is that it promotes decent work and implements labour standards *horizontally* (through its national tripartite constituents within the borders of sovereign states), whereas TNCs orchestrate their production networks *vertically* (across borders) often seeking out ‘spaces of exception’, namely ‘a condition in which the normal rule does not apply’, that facilitate the (hyper) exploitation of labour (Lillie 2010 p.684). The principal mechanism through which ILO Conventions are implemented is national government legislation and enforcement of labour market regulations. The employment decisions of domestic suppliers are increasingly controlled by the requirements of large overseas TNCs. Yet these TNCs are not themselves employers and operate beyond the control of national governments in their sourcing countries. This provides an important challenge for promoting and protecting decent work in GPNs. National channels for achieving quality employment, ensuring workers’ rights, providing social protection and facilitating social dialogue are undermined. This mismatch between the ILO’s standard-setting role, which is rooted in the ‘old world’ (Great Transformation), and the needs of workers in the ‘new world’ (Global Transformation) has meant that the ILO has failed to establish the *new* ‘rules of the game’ of global labour governance. The challenge for the ILO in the twenty-first century is therefore to create a new ‘policy paradigm’ for global labour governance, a ‘framework of ideas and standards that specifies not only the goals of policy and kind of instruments that can be used to attain them, but also the very nature of the problems they are meant to be addressing’ (Hall 1993 p.279).

In order to establish labour standards in GPNs and create a new ‘policy paradigm’ requires a comprehensive reform of the ILO’s approach to its member States, private actors, GPNs and TNCs’ responsibilities to uphold workers’ rights. Effective horizontal governance (worker power, collective action by the social partners and governmental enforcement and implementation of labour standards) is a *necessary* but not *sufficient* condition for the establishment of ‘decent work for all’. What is needed is vertical regulation along these production networks (vertical *public* governance), providing tripartite (horizontal) actors at the national level with greater leverage to protect and promote decent work. Most importantly, if multilevel (public) forms of labour regulation are needed to close global governance gaps, then the ILO

is the only international organisation with the constitutional mandate to bring capital, labour and the state together to promote decent work in GPNs.

1.5. The structure of the thesis

The context of the research is set out in Chapter 2, as well as the key knowledge gaps that led to the formulation of the primary research question. Building on the empirical and theoretical debates that exist on GPNs and global labour governance I set out how the thesis contributes to the body of knowledge within the field. As TNCs now orchestrate vast networks of production, the GPN theoretical approach gives further insight into the dynamics of global labour governance and the factors that account for the (un)successful implementation of labour standards, whilst considering multi-scalar global, regional and national embeddedness. Within GPNs, the focus is on ‘the way that different social actors interact in the process of value creation and capture and how this shapes geographical outcomes’ (Cumbers et al. 2008 p.371). GPN theory facilitates the analysis of a range of strategic actors including states, TNCs, unions, consumers and CSOs, as well as international organisations, such as the ILO. Furthermore, it places labour at the centre of the analysis and recognises the importance of workers as human beings with rights and entitlements, rather than as a factor of production. Of particular importance is the ‘spatial-juridical fix’ of global capital (Lillie 2010) and the ‘regulatory enclaves’ where public, social and private regulation ‘misses out’ many groups of workers engaged in less visible and less protected forms of work linked to global production (Posthuma 2010).

Chapter 3 presents the research methodology. As noted above, addressing the main research question requires research at the global level, where standards are discussed and adopted (or not), the national level where standards are ratified (or not), the sectoral level (where the dynamics of GPNs play out) and the workplace (where workers experience (in)decent work). To this end, Chapter 3 details three distinct research phases: 1) participant-as-observer research at the ILO headquarters, 2) conducting the fieldwork and gathering primary data in the Sri Lanka tea sector and Indonesia palm oil sector, and 3) follow-up observation research at the ILC discussion on ‘decent work in global supply chains’. Empirically, the protracted policy-making process of the ILO lends itself to process rather than variance analysis (i.e. an

exploration of the temporal structure of social practices and the uncertainties and urgencies that are inherently involved in such practices) (Langley et al. 2013 p.4). In addition, I outline the rationale for the case study selection as well as the data collection methods. As a result of the plantation sector being identified by Guy Ryder as a priority area for the ILO, I undertook a six country review (Indonesia, Sri Lanka, Malawi, Ghana, Dominican Republic and Panama) of three agricultural sectors (palm oil, tea and bananas). From this initial review, I selected two cases: the tea sector in Sri Lanka and the palm oil sector in Indonesia. Whilst Sri Lanka has ratified the Plantations Convention (C.110), Indonesia has not and so on a binary scale (0,1) they are ‘polar opposites’. The advantages of this selection arises from the fact that ‘processes of interest’ are more likely to be ‘transparently observable’ with ‘polar opposites’ (Eisenhardt 1989). The results from the questionnaire surveys and focus group discussions corroborated the ‘polar opposite’ nature of the cases.

The subsequent chapters are then dedicated to an assessment of the establishment of international labour standards. Chapter 4 assesses the ILO as a standard-setting organisation and analyses the recent structural and political changes in the Organization. This chapter is based on the participant-as-observer action research and document analysis. To reiterate, the standard-setting role of the ILO has received significant criticism in recent years. Hence, I conducted an assessment of the Plantations Convention, 1958 (C.110) in the context of the recent changes instigated by the current D-G, who has initiated a significant policy reform of the ILO’s activities towards vertical governance along the GPN.

Chapters 5 and 6 are dedicated to the data collected during the fieldwork and action research in Indonesia and Sri Lanka. I set out in detail the conditions of work, as well as the horizontal and vertical governance dynamics that impact the respective sector’s (in)decent work outcomes. Chapter 5 examines the factors that account for Indonesia’s *indecent* work. The starting point is that the Indonesian government has pursued a strategy of greater efficiency and foreign exchange earning capacity at the expense of its adverse impact on its citizens in terms of labour rights. Examples of forced and child labour were readily discovered during the fieldwork, which is hardly surprising in the context of hostile business interests, weak and fragmented trade

unions, and the weak incorporation and enforcement of labour rights. In addition, a lack of consumer pressure or awareness of the conditions of work on palm oil plantations has enabled TNCs to avoid establishing effective vertical private governance for ensuring labour rights.

Chapter 6 discusses the *decent* work in the Sri Lankan tea sector. Using original quantitative data on the conditions of work of tea plantation workers and focus group discussions with employers, workers and governments, I document both the conditions of work in the sector and the governance mechanisms that have been put in place to ensure labour rights are protected. The Sri Lankan case illustrates how domestic labour rights have a long tradition in the sector and these have been maintained despite international competition. Democratic unions are sufficiently strong to bargain effectively for their members and the sector has one of the most stringent collective bargaining agreements in the global tea industry. In addition, a rise in consumer awareness has led to the establishment of certification schemes that have increased monitoring of labour rights. However, these forms of vertical governance did not result in any changes in conditions of work. These chapters (5 and 6) investigate how the ratification of ILO Conventions, strength of the tripartite constituents, and vertical governance has had an impact on the conditions of work in both sectors. Furthermore, the chapters provide insight into how ILO standards are implemented on the ground in specific national contexts that are intimately engaged with the global economy.

Chapter 7 draws out the empirical evidence and examines the situations in which labour standards have been (un)successfully implemented and the conditions that need to be in place for effective labour governance, drawing together the different aspects of the research on the ILO and the empirical examples into a broader picture of global labour governance in GPNs. In particular, this chapter focuses on the ‘rules of the game’ of global labour governance and to what extent and with what effect the ILO can reframe this system. The research in the plantations sector and other SECTOR studies provided the ‘expert legitimacy’ for the Office to press ahead with the idea of a ‘standard’ (Convention) on global supply chains, which represents a new role for the ILO in the global economy. Hence, the ILC discussion (and its outcomes) in June 2016 on ‘decent work in global supply chains’ is analysed; the first decisive step the ILO

has taken towards vertical governance of GPNs. This chapter also assesses the challenge of improving conditions of work for those workers engaged in GPNs when the conditions for effective implementation are not in place, and what this means for the ILO's traditional form of labour governance. Whilst a GPN 'standard' is 'in the making' it will no doubt be some time before 'decent work for all' is realised.

Chapter 8 concludes the thesis. In this chapter, I reflect on my role as a researcher working on, for and with the ILO and more broadly the future role of the Organization. In addition to this, a set of policy recommendations and suggestions for further research, for both academics and the ILO, are discussed. Simply stated, for the ILO to (re)establish labour standards in an age of Global Transformation requires vertical, not only horizontal governance, and the ILO is the only international organisation with a mandate to close existing governance gaps through public as opposed to private or social regulation.

2. Understanding Global Labour Governance in an Age of Global Transformation

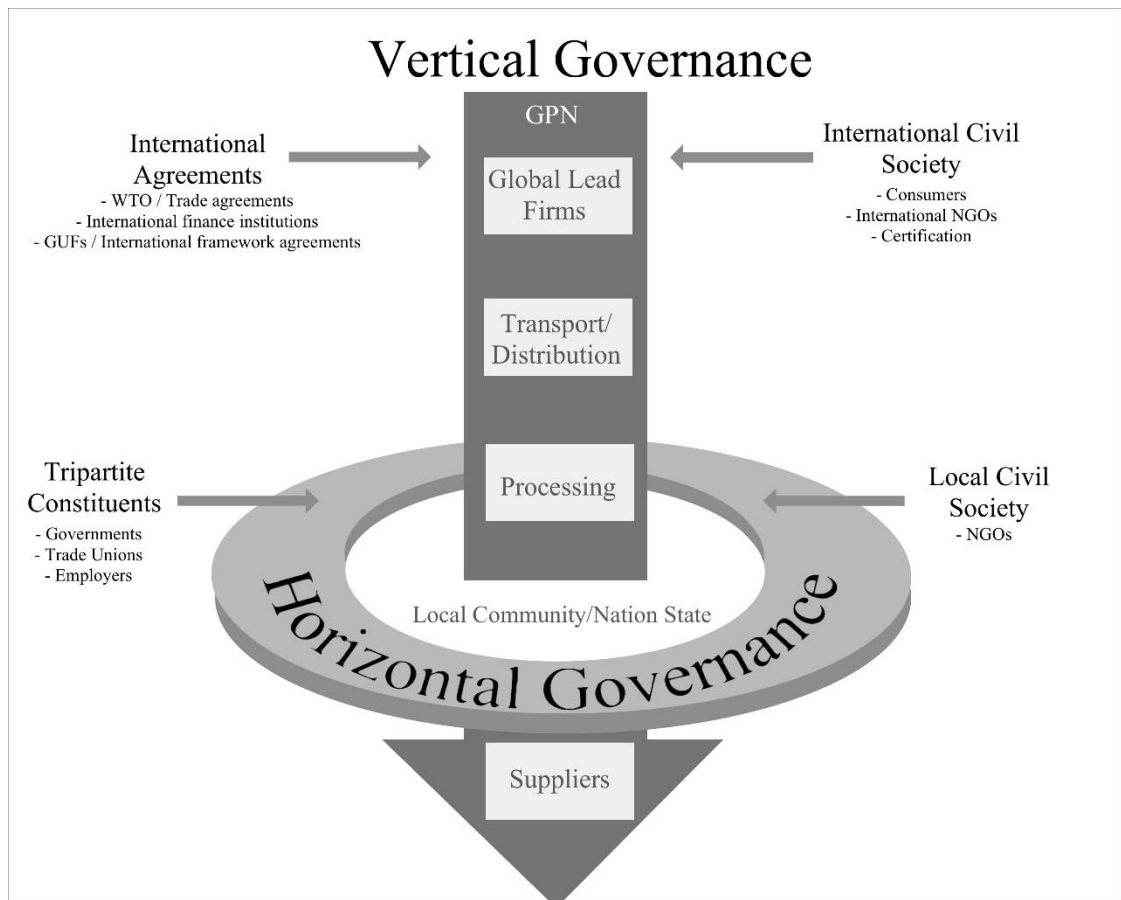
2.1. Introduction

Global production networks (GPNs) and the international outsourcing of production and services from developed to developing nations has become one of the defining features of the global economy. Numerous studies have documented the problem of promoting and protecting decent work in GPNs (Barrientos 2007; Barrientos et al. 2011; Mosley 2011; Coe and Hess 2013; Rossi 2013; Marx et al. 2015) most notably in the textile sector (Hurley and Miller 2005; Locke et al. 2007; Lane and Probert 2009; Hess 2013; Rossi et al. 2014; Pickles and Smith 2016; Ruwanpura 2016), but scant attention has been paid to the role of the ILO and the wider implications for workers across a range of industries. Consequently, there are both empirical and theoretical issues to address. This chapter elaborates in greater detail the academic debates that are pertinent to a broader understanding of the topic of promoting decent work in GPNs, and outlines the ways in which the research will contribute to the body of knowledge in the field, namely on theorising the role of the ILO and its labour standards in the Global Transformation. Accordingly, the chapter has two main foci. First, an outline of the analytical and theoretical framework that is developed on the basis of a review of the existing literature and a justification for the use of GPN theory, summarising the body of theoretical work that exists on GPNs, global labour governance, the role of the ILO, and the Decent Work Agenda. Secondly, existing empirical work within the field of enquiry is mapped out in order to justify the claim to contribute to the body of knowledge within the chosen subject area. Namely that the ILO and its standards remain an important aspect in global labour governance that has yet to be addressed.

The analytical framework that will be used for this research is depicted in Figure 2.1. The literature on global labour governance normally distinguishes between ‘private’ or ‘public’ forms of governance (i.e. is actor centred) (Hassel 2008; Locke 2013). What this often overlooks is the ‘multi-scalar’ connections between the (vertical) governance arrangements of production networks, and the (horizontal) dynamics of place-based action. The actions of firms in particular national contexts

are not just driven by territorial dimensions, or their more or less embeddedness, but also governed by relationships with GPN actors in other national economies, be they consumers, labour, the state, international organisations or indeed capital (Coe and Yeung 2015 p.208). Global labour governance has three main forms. On one end of the spectrum is public labour governance (e.g. employment laws and labour inspection), and on the other, private governance – the lamentable corporate social responsibility (CSR) compliance model that has proven incapable of properly protecting workers’ rights (Locke 2013; Gereffi and Lee 2016). In addition, civil society actors (such as trade unions, non-governmental organisations and civil society organisations) engage in social governance to promote decent work in GPNs. Conditions of work are typically shaped by a combination of public, private and social (multi-stakeholder) forms of governance across the horizontal (territorial) and the vertical (organisational) dimensions (Coe and Yeung 2015; Gereffi and Lee 2016). This points to the need for a multi-scalar and multi-actor approach to understanding the role of the ILO. As Coe and Yeung (2015 p.208) note, adopting the vertical (organisational) and horizontal (territorial) approach ‘allows for a more sophisticated appreciation of the territoriality of economic systems, in terms of both the networks of actors involved, and the territorial outcomes of their interactions’. The territorial outcomes that are of interest to the ILO (and this research) are respect of labour standards and the promotion and protection of decent work (voice, equity and efficiency) for all.

Figure 2.1: Horizontal and vertical governance of global production networks



Source: adapted from Gereffi and Lee (2016 p.31)

Following the theory of GPN developed by Henderson et al. (2002) and updated ('GPN 2.0') by Coe and Yeung (2015), the analytical framework depicted in Figure 2.1 includes all the strategic actors (non-governmental organisations, civil society organisations, consumers, labour, the state, international organisations and capital) involved in vertical and horizontal governance, and how different types of governance operate along the vertical and horizontal dimensions. During the Great Transformation labour standards were promoted through horizontal labour governance mechanisms (i.e. within borders) as detailed in Section 2.2. With the advent of a Global Transformation (Section 2.3) the traditional forms of horizontal labour governance were 'dissected' by the rise of production networks, which has led to an erosion of labour rights. Numerous theories have emerged, which share the same purpose, namely to equip researchers with the tools they need to understand the global economy. However, unlike the global value chain (GVC) and global commodity chain (GCC) theories, which give short shrift to the role of labour, the GPN theoretical approach,

which is developed in the subsequent section (2.4), takes into account not just the role of labour but the whole range of strategic actors (including international organisations such as the ILO). This is followed by a review of the theoretical and empirical work on global labour governance and the employment relationship (Section 2.5) and the various forms of horizontal and vertical labour governance (private, public and social) (Section 2.6). Then the existing literature on the factors that account for (in)decent work are outlined and subsequently, the existing empirical and theoretical work on the role of the ILO is reviewed (Section 2.7). Finally, the chapter is concluded by revisiting the research question and how this chapter's content will allow, in the following chapters, an assessment of the standard-setting role of the ILO in an age of Global Transformation.

2.2. Decent work during the Great Transformation

In the former days of the 'Great Transformation' decent work was secured and maintained on a national basis within the boundaries of sovereign states (horizontal governance), through a mixture of laws, collective bargaining between unions and management, and company policies (Dunlop 1958), with vertically integrated firms operating primarily *within* specific national institutional boundaries (Kochan et al. 1986). This is depicted in Figure 2.1 as the main 'ring'. As Standing (2010a p.308 original emphasis) argues 'the key point was that the Great Transformation taking place was about shaping and regulating *national* markets'. Governments decided the boundary between state and market and state and society during this period (Crouch 1993 p.298) and the ILO played a central role in setting what it calls the 'rules of the game' for (inter)national labour governance (ILO 2014a).

The establishment of the ILO in 1919 was driven by the need to resolve trans-border 'collective action problems' (Helfer 2006 p.650; Lane and Probert 2009 p.276), steering member States to improve non-wage conditions of work, such as creating social protection systems, to put a 'limit' on exploitation and ultimately to ensure competition between countries was not based on undercutting labour standards. Internationally agreed (and nationally implemented and enforced) ILO standards provided a source of moral authority and worked to 'equalize conditions of competition among the nations so that trade might be liberated without danger to

standards of living’ (Polanyi 1944 pp.57–58). With an agreed ‘social floor’ between the major industrialised economies, who were keen to protect their national welfare systems and particular class compromise, there was less likelihood of any nation failing to adopt ‘humane conditions of labour’, which as the original Preamble to the Constitution of the ILO clearly stated would constitute: ‘an obstacle in the way of other nations which desire to improve the conditions in their own countries’ (ILO, 1919).

Economic growth brought about by the Great Transformation occurred in the context of what Ruggie (1982) describes as ‘embedded liberalism’, which reconciled a trading system between states with the requirement of maintaining national socio-political stability. For Albert Thomas, the first D-G of the ILO (1919-1932), the role of the ILO was to ‘lessen the tension *within* nations and, second, to lessen the tension *between* nations’ (Hughes and Haworth 2011 p.7 original emphasis). Thus, embedded liberalism constituted a protection of ‘national class compromises from global market uncertainties’ (Lillie 2010 p.686). As Ruggie (1982 p.399) writes:

‘The essence of embedded liberalism ... is to devise a form of multilateralism that is compatible with the requirements of domestic stability ... governments so committed would seek to encourage an international division of labour which ... promised to minimize socially disruptive domestic adjustment costs as well as any national economic and political vulnerabilities that might accrue from international functional differentiation.’

Although embedded liberalism was unevenly embedded across developing countries (Lillie 2010), during the onset of the Great Transformation many developing countries were still in captive colonial relationships with Western economies and produced and exported primary goods, while developed economies traded industrial goods between themselves. Thus, developed countries were able to manage their domestic economies and consequently could ‘enforce domestic labor standards, control capital movement, restrict market access by firms, products or migrant labor, and even nationalize firms’ (Lillie 2010 p.687). This post-war Keynesian period of embedded liberalism facilitated the ILO’s mandate and its normative power. Building on the burgeoning discourse on human rights and the emergence of the welfare state, this ensured support for international labour standards, particularly freedom of

association and the right to collective bargaining.¹³ It was during the Great Transformation that the ILO experienced its ‘zenith’ of standard-setting, with the largest number of Conventions ratified per member State, as the ILO expanded its technical capacity to persuade recently de-colonised nations to ratify international standards.¹⁴

The dominant employment relationship of the Great Transformation was based on an institutionalised compromise between capital and labour within national economies, forged by strong organisations representing their respective interests (labour and capital), mediated by the Keynesian welfare state (Hauf 2017 p.91). The social democratic idea(l) was that workers and employers were best seen as ‘social partners’ within national economies. This ‘idea’ had strong backing within the ILO because of its unique tripartite decision-making structure of workers, employers and governments (Maupain 2013). However in the present days of the Global Transformation, transnational corporations (TNCs) ‘have gone global and function in near real time, leaving behind the slower moving, state-mediated inter-*national* world of arm’s-length economic transactions and traditional international legal mechanisms, even as they depend on that world for their licences to operate and to protect their property rights’ (Ruggie 2004 p.503 original emphasis).

2.3. The age of Global Transformation

The emergence of GPNs, arguably one of the ‘defining features’ of the Global Transformation – in which old systems of regulation, redistribution and social protection have broken down, resulting in mass inequalities and insecurities (Standing 2010b) – has rendered conventional national and international strategies impotent because authority is dispersed not only across national regimes but among global actors and their myriad relationships (indicated in Figure 2.1 by the vertical arrow that ‘dissects’ the horizontal ring). Cases of abuse by TNCs in their supply chains periodically hit the headlines, which signify that understanding production networks is essential for theorising the contemporary nature of employment relations. For

¹³ Two of the ILO’s most rigorous and important Conventions were adopted during this time: Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) and Right to Organise and Collective Bargaining Convention, 1949 (C.98).

¹⁴ The ILO established no fewer than 43 Conventions between 1946 and 1951, nearly three times as many per year as in its first 20 years.

example, to meet the high consumer demand of its products, commercial pressure from Apple for short lead times at Foxconn, its largest component manufacturer, led to the attempted suicides of 18 workers in 2010 (Locke 2013 p.7), and the ineffectiveness of government regulation and private forms of monitoring were laid bare following the Rana Plaza building collapse in Bangladesh, which killed more than 1,100 workers (Reinecke and Donaghey 2015).

As capital sought out cheap labour in developing countries in the 1970s this resulted in the emergence of GPNs, which now account for an estimated 80 per cent of global trade (UNCTAD 2013). Globalisation, understood as ‘a process (or set of processes) which embodies a transformation in the spatial organisation of social relations and transactions ... generating transcontinental or interregional flows and networks of activity, interaction, and the exercise of power’ (Held 1999 p.16) has created a fragmentation of production impacting work organisation and labour conditions in both the more and less developed world (Weil 2014). As Ruggie (2013 p.6) notes, production networks ‘are now ubiquitous in the global economy, found in every industry and on every continent’. Countries compete over the most favourable conditions for foreign direct investment (FDI) by TNCs, and since low wages and poor labour standards are often the only comparative advantage of most developing countries this has resulted in a ‘race-to-the-bottom’ (Mosley 2011). As Hauf (2017 p.98) argues, ‘in trying to attract foreign capital, labour markets were increasingly restructured according to the neoliberal dogma of “flexibility”, thereby eroding labour standards and working conditions’. This was ‘encouraged’ by policy-making at the national and international levels, particularly through the World Trade Organization (WTO), World Bank and International Monetary Fund (IMF), who advocated economic prosperity and efficiency through free-markets (top-left of Figure 2.1).

Persistent human and labour rights violations by TNCs have been widely represented as products of a ‘governance gap’ (depicted in Figure 2.1 by the ‘open space’ inside the horizontal ring, where the vertical arrow dissects tripartite regulation) whereby the capacity of national governments to steer and constrain transnational business activity has diminished and the power and capabilities of TNCs has expanded. The Human Rights Council (2008 p.3) states that:

‘the root cause of the business and human rights predicament today lies in the governance gaps created by globalization – between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.’

As Lillie (2010 p.687) argues, ‘regulation within sovereign states ... is increasingly constraining as capital globalizes, causing it to seek out and exploit the cracks in the inter-state system’. Of particular importance is the ‘spatial-juridical fix’ of global capital (Rainnie et al. 2011) and the exploitation of ‘spaces of exception’, in which certain workers are stripped of their decency and the normal rule of law does not apply, as well as the proliferation of ‘regulatory enclaves’ where public, private and social governance excludes many groups of workers engaged in less visible and less protected forms of work (Posthuma 2010). By moving spatially, capital is able to ‘dis-embed’ itself from (or dissect) particular national (horizontal) regulations and established class compromises. In effect, ‘capital removes specific work spaces, contexts and categories of people from the protection they would normally enjoy within sovereign states’ (Lillie 2010 p.688). Export processing zones (EPZs), conservatively estimated to employ at least 66 million workers worldwide (ILO 2014b p.4), are the most blatant example of a spatial-juridical fix in which territorial sovereignty is ‘little more than a convenient fiction’ (Lillie 2010 p.683), with many workers denied comparable rights to their fellow citizens within the same nation state (Milberg and Amengual 2008). Such ‘spaces of exception’ now extend well beyond EPZs and certainly reach into the lower echelons of GPNs.

Hurley and Miller (2005) use the metaphor of an iceberg to visualise the complexity of GPNs and the intricate web of contracting, sub-contracting and sub-subcontracting that occurs. At the ‘tip’ (or the top of the arrow in Figure 2.1) are the lead firms, typically large TNCs that originate from developed nations but a growing number are headquartered in emerging and developing economies such as China, India and Brazil. Beneath this (and above the waterline) are the ‘tier 1’ suppliers who have been contracted by the lead firm. Below this (and invisible) are the extensive networks

of sub-contractors and sub-subcontractors where monitoring labour conditions is difficult, but easy for TNCs to avoid responsibility. Downward pressures from TNCs to their tier 1 suppliers (such as for quick turnarounds or cheaper costs) can create a 'bullwhip' effect to those workers under the waterline resulting in extensive sub-subcontracting and a proliferation of temporary contracts to contend with demand (Selwyn 2008).

GPNs, defined as 'an organizational arrangement comprising interconnected economic and noneconomic actors coordinated by a global lead firm and producing goods or services across multiple geographic locations for worldwide markets' (Yeung and Coe 2015 p.52) link thousands of firms (small and medium-sized enterprises as well as TNCs) and millions of workers and other actors across multiple political, territorial and cultural boundaries. There is now a growing consensus that the strategic decisions of one organisation will influence outcomes at the workplaces of other organisations in its production network. In other words, 'no workplace is an island. Rather production and service provision are increasingly organised on a network or supply chain basis' (Buchanan et al. 2006 p.188). It is a rich tapestry of interwoven, sometimes fragmented, but almost always coordinated relationships.

The logic behind this organisation of production is to reduce costs and increase competitiveness through what Nathan and Kaplana (2007 p.1) call 'the global cutting up of parts of the value chain'. TNCs control vast networks of production, ensuring the retention of the highest value-added activities whilst outsourcing any activities not deemed 'core competencies', ensuring that developing nations capture only the lowest value-added activities. This is not just in manufacturing activities, such as garments and electronics, or even in primary production such as agriculture, but has extended to other sectors such as telecommunications, typified by the exodus of call centre work to developing countries (Taylor 2015). Although lead firms elicit significant control over their supply chains, particularly in setting the 'what, when, how many', and most importantly 'at what price', of production, in an age of Global Transformation there often exists no formal or direct relationship between lead firm and worker (Weil 2014) as value creation and distribution has evolved beyond the state. These new 'non-territorial spaces and management' (Ruggie 2004 p.503) have led to uneven

consequences for workers (Barrientos et al. 2011), a fragmentation (or ‘fissuring’) of the traditional employment relationship (Lakhani et al. 2013; Donaghey et al. 2014; Weil 2014) and begs the question: ‘what is the role of the ILO and its standards?’ At stake is not just the prospects for decent work for the approximately 450 million workers employed in GPNs but the future of the ILO (ILO 2015b p.132).¹⁵

The ILO’s initial response to what Standing (2008) calls the ‘first phase’ of the Global Transformation was to revitalise the primary goal of the ILO, namely: ‘securing decent work for women and men everywhere’ (ILO 1999). Decent work is ‘a productive and efficient employment relationship that also fulfils the standards of human rights’ whereby the objectives of the employment relationship, as endorsed by the ILO, are voice, equity and efficiency (Budd 2004 p.2). The term decent work – defined as work performed ‘in conditions of freedom, equity, security and human dignity’ (ILO 1999) – encapsulates both *de jure* and *de facto* rights including freedom of association and collective bargaining and other conditions of work such as child and forced labour as well as wages, hours and health and safety coupled with the existence of monitoring and enforcement. The Decent Work Agenda is the ILO’s umbrella strategy for improving the conditions of the working poor and those in vulnerable employment. More broadly, for all workers, it means a ‘fairer globalisation’ (ILO 2008). The Decent Work Agenda posits ‘work’ as central to people’s wellbeing and as a human endeavour (Vosko 2002; Budd 2004). It recognises that work is not just about providing income but rather that it contributes to broader social and economic development. The establishment of the Decent Work Agenda was ground-breaking for the ILO in that it recognised all ‘types’ of work, whether informal or formal, in the domestic economy or self-employed (Vosko 2002; Hauf 2015). Empirically, the term ‘decent’ refers to work that complies with four main principles: no child labour, forced labour or discrimination and the right to collective bargaining and freedom of association. Decent work also refers to the four main principles of the ILO (with gender as a cross-cutting objective) (ILO, 1999), namely:

¹⁵ This figure should be treated with caution given the difficulties of estimating the number of jobs tied to GPNs, particularly among subcontractors, sub-subcontractors and workers in the informal or domestic economy. It also focuses on a select number of countries (40), which represent approximately two-thirds of the global labour force.

- Promoting jobs – an economy that generates opportunities for investment, entrepreneurship, skills development, job creation and sustainable livelihoods.
- Guaranteeing rights at work – to obtain recognition and respect for the rights of all workers. All workers, and in particular disadvantaged or poor workers, need representation, participation and laws that work for their interests.
- Extending social protection – to promote both inclusion and productivity by ensuring that women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare.
- Promoting social dialogue – involving strong and independent workers’ and employers’ organisations is central to increasing productivity, avoiding disputes at work, and building cohesive societies.

The theoretical understanding of the Decent Work Agenda acknowledges that labour is not a commodity (ILO 1919), whereby ‘labour is a human factor and the employment relationship is a human relationship’ (Budd 2004 p.2). The ILO’s promotion of decent work recognises that the objectives of the employment relationship must not prioritise equity, voice or efficiency at the expense of one of the other objectives as illustrated in Table 2.1 (Budd 2004). However, equity and voice – both collective and individual – are important objectives of the employment relationship in their own right even if they do not increase organisational efficiency (Budd 2004). Although equity and voice may clash with collective or individual responses, the more telling conflicts are between efficiency on the one hand, and equity and voice on the other. A central aspect of a study of the ILO therefore should be the analysis of its contribution towards voice, equity and efficiency and an analysis of the conflicts that occur.

Table 2.1: Measures of voice, equity and efficiency¹⁶

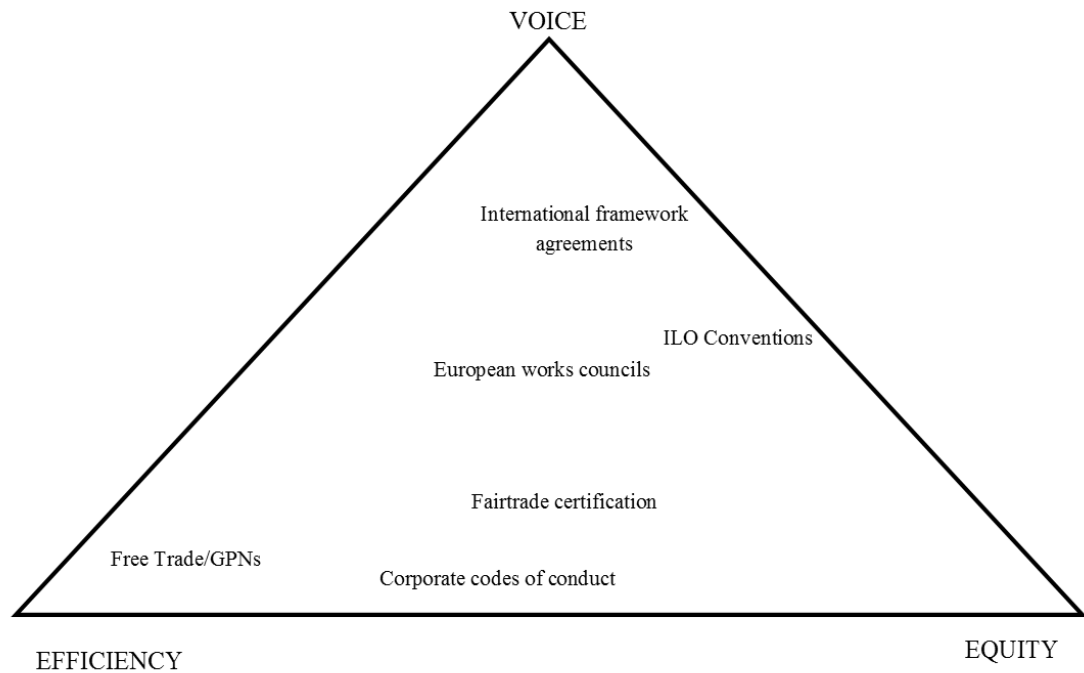
| | Voice | Equity | Efficiency |
|-------------------------------|--|---|--|
| Description | The ability to have meaningful employee input into decisions both individually and collectively. | Fairness in both the distribution of economic rewards and the administration of employment policies. | The effective use of scarce resources, well-defined property rights, freedom to enter into contracts and protections against property damage and infringement. |
| Decent Work 'Measures' | Free speech, unfair dismissal protections, grievance procedures, freedom of association and collective bargaining rights, works councils and consultation committees or similar. | Minimum wages, maximum hours, minimum safety standards, protections against arbitrary discharge, restrictions on child and forced labour as well as discrimination. | Cost of production, productivity and training. |

Figure 2.2 summarises the extent to which several mechanisms for global governance fulfil the objectives of voice, equity and efficiency. Free trade, as promoted through the WTO (and other international finance institutions), emphasises efficiency above equity and voice (bottom-left corner of Figure 2.2). In a similar vein, the establishment of GPNs is also founded on the desire of TNCs to maximise efficiency and reduce costs. Corporate codes of conduct and Fairtrade certification maintain a balance between efficiency (through higher productivity from suppliers) and equity (through provisions on child labour, for example, although they typically exclude freedom of association). International institutions for providing employee voice include European Works Councils as well as transnational union activity through the establishment of international framework agreements (IFAs) (top of Figure 2.2). International labour standards established by the ILO typically combine both an equity (restrictions on child and forced labour) and voice (tripartite consultation) mechanism rather than promote the demand for organisational efficiency. However, in an age of Global Transformation, efficiency is strong and equity and voice are weak, and this represents a major challenge to the current mission of the ILO of ‘decent work for all’

¹⁶ All tables, figures and images reported in the text are the work of the author unless referenced.

(Budd 2004). Unions and government regulation is increasingly viewed as unnecessary or intrusive because decent (and productive) work is consistent with corporate self-interest for efficiency.

Figure 2.2: Objectives of the employment relationship and global governance



Source: adapted from Budd (2004 p. 6)

Whilst historically the ILO played a significant role in the ‘equalisation’ of (labour cost) competition (Polanyi 1944), in more recent years, the ILO appears to be ‘adrift’ (Marginson 2016 p.1051) and unable to depart from its (path dependent) past and the ‘particular constellation of interests and power resources prevailing at the time of its foundation’ (Baccaro and Mele 2012 p.218; see also Royle 2010; Standing 2008). The ILO has been criticised for establishing international labour standards that are ‘simply not responding to the needs of the world’ (Smyth 1994 p.50), advocating and legitimising a ‘model based on formal employment and a male breadwinner’ (Standing 2008 p.358) with the result that there is little difference in labour conditions where states have ratified or not ratified particular Conventions (Mosley 2011). Furthermore, many ratifications of ILO Conventions are simply ‘false positives’ (i.e. the member State in question has no intention of actively enforcing the relevant labour standards) (Levi et al. 2013 p.13). As a result, the ILO is often viewed as irrelevant as its ‘only tools of influence are the sunshine of public scrutiny and the shame of public censure,

and whose feeble enforcement mechanisms render all but nugatory its efforts to improve global labor conditions' (Helfer 2006 p.652). However, it cannot be denied that the ILO has always been an important advocate for workers' rights, and the need for laws, regulations, labour unions and other institutional 'checks and balances' in the labour market cannot be 'assumed away' by the advent of the Global Transformation. However, the question that arises is whether the ILO can be revived to deal with the current challenges in the world of work, particularly as it is the only international organisation with the constitutional mandate to bring capital, labour and the state together to promote and protect decent work (voice, equity and efficiency) in GPNs.

Previous studies have highlighted that GPNs typically have a negative impact on the conditions of work and lives of workers across the globe (e.g. Anner 2011; Lakhani et al. 2013; Donaghey et al. 2014; Meardi and Marginson 2014), but this research has yet to develop the analytical tools to explain the role of the ILO and its standards. As Lakhani et al. (2013 p.440) stress, 'the profound effects of globalization on the strategies and structures of organizations have called into question the adequacy of existing theoretical frameworks for understanding and analysing employment relations'.

2.4. From chains to networks

Since the early 1990s an extensive literature has evolved to help explain how the world economy is organised and governed and how relationships between actors has impacted the development and upgrading opportunities of regions, nation states, firms and labour. This has attracted the attention of a range of academics including the fields of business, economics, development studies, international political economy, law, geography and industrial relations. From this multi-disciplinary field of enquiry, three key theories have emerged, namely: Global Commodity Chains (GCCs) (Gereffi 1994), Global Value Chains (GVCs) (Gereffi et al. 2005) and Global Production Networks (GPNs) (Coe and Yeung 2015). Each theory shares the same purpose, which is to provide researchers with the analytical tools to connect a multitude of actors along the same chain even though they are geographically dispersed.

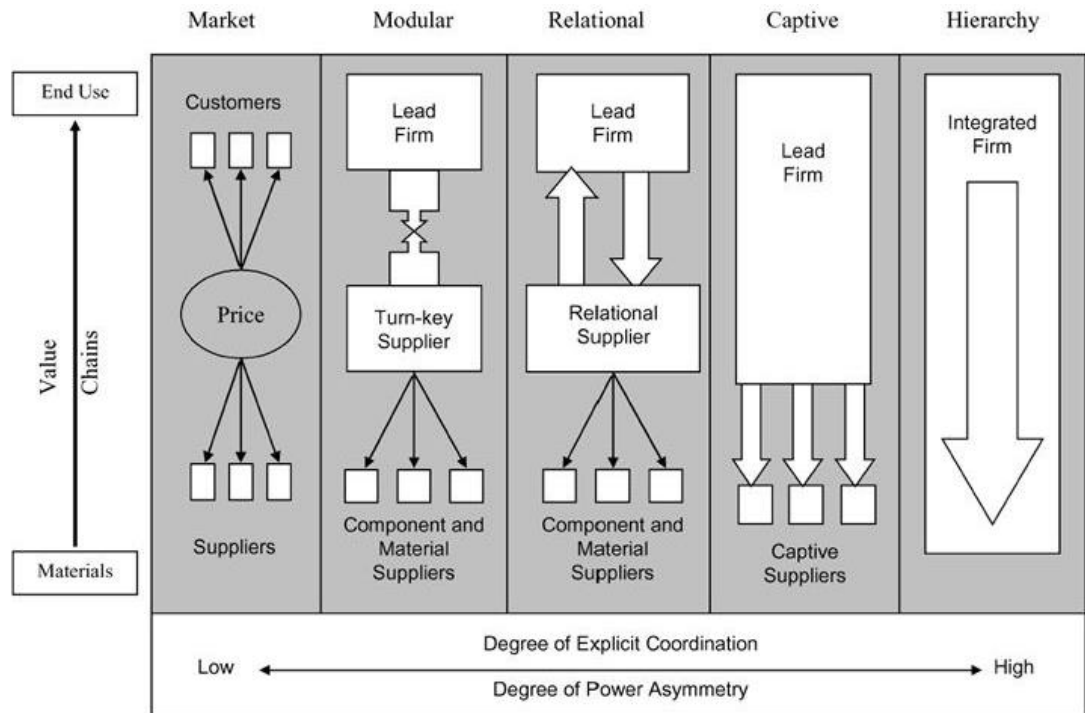
The emergence of the 'commodity chain' framework originated in the seminal works of Hopkins and Wallerstein where they defined these chains as 'a network of labor and production processes whose end result is a finished commodity' (Hopkins and Wallerstein 1994 p.16). They argued that these chains, linking production, multiple actors and labour (as a commodity), were part of the cyclical function of globalisation and were in fact nothing new but rather a by-product of capitalism. At the same time, in an altogether different sphere, the value chain approach was developed. Porter (1985) famously proposed the value chain approach for business and management circles, to analyse the internal relationships within an individual organisation. This recognised both the inter-firm 'backward' linkages and relationships between firms and suppliers and 'forward' linkages to distributional channels. Porter's framework became an essential tool for managing organisations but overlooked labour, apart from the assumption of labour as a factor of production that can facilitate the increased efficiency of each activity in the chain.

The purpose of these GCCs, according to Gereffi (1994), is to add value to the final product by taking advantage of less restrictive institutional, structural and political factors. GCC theory included three analytical dimensions: an input-output structure that illustrates the transformation of raw materials into a finished product/commodity; a territoriality aspect that ties them to a particular geographical location; and a governance structure that defines power relationships among different actors across the chain, most notably that with the 'lead firm' (Gereffi 1994). Originally there was a duality between producer and buyer driven chains. Buyer-driven chains are those best represented by large retailers and brand companies such as Nike and Walmart who own few, if any factories: their 'producers' are reliant upon the decisions made by the brand (buyer) in terms of design, marketing, and customer demand. Producer-driven chains operate in the opposite way with large TNCs, such as IBM or General Motors, 'driving' the supply chain. As these companies rely on technology and research and design they control the design of the products as well as its assembly, which is sourced from a number of countries. These two categories help identify the position of powerful lead firms along the chain, as well as their capacity to control production.

Despite its dichotomous simplicity, the GCC approach attracted criticism, particularly with respect to the complexity of how value is generated and distributed and therefore its neglect of the social dimension of production (Rainnie et al. 2011). Furthermore, like many typologies, the dichotomy of producer and buyer driven chains could not adequately encompass the wide range of relationships that existed in these chains. As Berliner et al. (2015b p.9) argue: ‘if Gereffi’s distinction was once useful, it no longer is. Today almost all supply chains are buyer driven, or in the language of economist and logistic engineers, demand driven’. Finally, and most importantly, the GCC framework conceptualises chains as linear and therefore pays scant attention to the horizontal dynamics that occur in specific places and spaces and the impact of local/national labour regimes on the conditions of work in the network.

In order to capture the complexity of supply chains, Gereffi et al. (2005) developed a five-fold typology and focussed on value creation, distribution, and capture and a broader institutional context (Sturgeon 2009). This typology focussed specifically on the complexity of transaction, the codifiability of information and the capability of suppliers to influence the forms of governance within a chain. With a specific focus on inter-firm governance, Gereffi et al. (2005) identified five configurations: market based, modular networks, relational networks, captive networks and hierarchical structures, as depicted in Figure 2.3. These value chain configurations vary in their degree of explicit coordination and power asymmetry. In the market-based governance there is a low level of explicit coordination and power asymmetry, whereas there are high levels in vertically integrated hierarchical configurations. In modular, relational and captive configurations there are moderate to high levels of explicit coordination and power asymmetry. As Lakhani et al. (2013 p.445) note, ‘at the heart of GVC theory then is a configurational approach to global production that recognizes fundamentally different lead and supplier firm modes of coordination, inter-action and interdependence’.

Figure 2.3: Five global value chain governance configurations



Source: Gereffi et al. (2005 p.80)

GVC theory provided an effective elaboration on the previous GCC framework and addressed many of its weaknesses. In particular, the different value chain configurations – market, modular, relational captive and hierarchy – broadened the scope of GVCs and allowed the examination of the dynamics of globalisation and its effects on employment relations in firms at different levels in the chain and in different countries (Lakhani et al. 2013 p.447; see also Riisgaard and Hammer 2011). However, the various forms of inter-firm governance still proved to be limited. As Lakhani et al. (2013 p.466) note ‘the GVC framework accounts for the characteristics that are likely to give rise to different patterns of GVC governance, absent other influences. If a pattern of governance does not fit the theory, then another factor may be at work’. Whilst the chain metaphor helps to identify the specificities of lead firm governance of inter-firm relationships, the concept of a network broadens analysis to a more comprehensive set of actors, such as the state, civil society organisations (CSOs), consumers, workers and their unions. Nonetheless, GVC theory pays insufficient attention to the social-institutional, spatial, territorial and geographical influences, as well as the agency of labour within these complex chains. In short, if labour did appear

in the script, it was more often as a commodity (a cost to be controlled and flexibly deployed) rather than (sentient) human beings with rights, entitlements and free will. Thus, while both GCC and GVC theories highlighted the role of multiple actors along the commodity/value chain, an important drawback was the relative neglect of labour as a social actor. Instead of conceptualising labour as an ‘active participant’ in the global economy, all too often workers were cast in the role of ‘passive victims’ of restructuring processes (Cumbers et al. 2008 p.369). With relationships between firms at centre stage, ‘labour [was] largely written out of the script’ (Cumbers et al. 2008 p.370).

GPN theory, in contrast embraces not only inter-firm relationships between lead firms and suppliers, but also the extended range of strategic actors who can influence and shape global production, to a greater or lesser extent (e.g. national governments, international organisations, national and international trade unions, consumers, CSOs and non-governmental organisations) (Barrientos et al. 2011 p.321). Coe et al. (2008 p.272), note that the greatest divergence between GCC/GVC and GPN theory was that the former are conceptualised as ‘essentially linear structures’ (typified by Figure 2.3) and the ‘focus [was] narrowly on ... governance and inter-firm transactions’. The ‘network’ approach integrates the geographical dimension, in particular that of the space that shapes the territorial configuration of networks (in this respect it is more akin to a spider’s web than a chain), which enable the incorporation of international governance regimes, such as the ILO’s core labour standards. In particular, the GPN framework acknowledges and includes workers as social actors, a significant extension of the GCC/GVC frameworks that was often criticised for stopping at the factory door.

The three main conceptual elements that ‘drive’ GPN research are value (to estimate where value is captured), power (how power is used in capturing this value), and embeddedness (the degree to which the network is territorially and consequently, socially and institutionally embedded) (Henderson et al. 2002). The focus of GPN theory is on ‘the way that different social actors interact in the process of value creation and capture and how this shapes geographical outcomes’ (Cumbers et al. 2008 p.371). As Lane and Probert (2009 p.17) state, ‘global production networks therefore

constitute a more radical process of dis-embedding from the home nation, with a potentially more destructive impact on institutional coherence'. Thus, the characteristics of 'GPN trade' – as 'trade in tasks' rather than simply 'trade in goods' – captures a multitude of relationships and actors (Nathan 2013).

The internationalisation of production and services has raised questions about the impact of workers and their ability to organise. As a result, labour agency has become an increasingly important aspect of GPN theory and research has shown that the potential of workers to exercise agency is uneven across GPNs (Coe and Hess 2013). On the one hand, Rainnie et al. (2011) rightfully suggest that GPNs offer both opportunities for workers to advance their position and also that labour can have a significant impact on the structure of GPNs. On the other hand, many workers are weakly organised, replaceable and are not covered by any sort of local or national legislation and make relatively few gains from being employed within a GPN (Levi et al. 2013). As Rainnie et al. (2011 p.161) point out, GPNs are ultimately made up of communities and structures of 'real, living people who are more than simply abstract economic categories, people whose lives are shaped by the spatial contexts within which they live'. The importance of the GPN approach is that both labour agency and the impact of GPNs on labour is, 'heavily shaped by local institutional and regulatory conditions, and so will vary considerably between regional economies: place matters, to a powerful degree, when it comes to labour' (Coe and Yeung 2015 p.192).

In recent years there has been something of a 'blurring' of these different theoretical approaches, with conceptual borrowing and integration (Barrientos et al. 2011; Neilson et al. 2014). For example, GPN analysis has benefitted from GVC theory in gaining a greater understanding of how inter-firm governance can impact value, power and embeddedness in GPNs (Coe and Yeung 2015). Equally important, GVC theory has begun to incorporate space and place in assessing the impact of governance on economic and social upgrading (Barrientos et al. 2016). In particular, GVC theory has been useful for explaining employment relations in firms linked across the global economy, with each vertical value chain configuration having different implications for employment relations processes and outcomes (Lakhani et al. 2013 p.466). Nonetheless, while some GVC scholars have incorporated a range of

strategic actors involved in the value chain and have taken a less firm-centric, ‘linear’ approach, governance and inter-firm transactions are still at the heart of this approach and continue to drive the analytical focus (Gereffi and Lee 2016). To be sure, GVC theory is an effective way of analysing the inter-firm relationships that exist in GPNs (indicated in Figure 2.1 by the vertical arrow), but lacks the ‘recognition that institutional-cum-territorial logics matter for global production network actors’, in particular labour (Coe and Yeung 2015 p.14).

In sum, GPN analysis builds on the GVC approach, which focuses mainly on inter-firm commercial relations coordinated globally by lead firms. GPN complements this by highlighting the societal, institutional and territorial embeddedness of commercial activity as well as the asymmetry of power relations across actors. Thus, GPN theory serves to ‘reveal the *variegated landscape for agency potential* across different sectors’ (Coe and Jordhus-Lier 2011 p.221 original emphasis). In essence, what is key here is the focus needs to be on the whole range of strategic actors (multi-actor) that are embedded in multi-scalar production networks, all of which are affected by both territorial (horizontal) and organisational (vertical) governance forms, which ‘allows for more nuanced readings of the multi-scalarity of global production and institutional change’ (Coe and Yeung 2015 p.208). . GPN theory includes a wider spectrum of analysis than previous theories and includes much of the early analysis on commercial dynamics and inter-firm governance (Barrientos et al. 2016), whilst adding social embeddedness, which is particularly important considering ‘the only thing we have to fear [when researching GPNs] is looking too narrowly’ (Wallerstein 2009 p.89). Most importantly, adopting a GPN approach allows labour to be placed ‘front and centre’ in any in-depth analysis of global labour governance.

2.5. Theorising global labour governance

The increasing proliferation of GPNs has raised questions about what, where, why and how governance matters for the promotion and protection of decent work. One of the key developments of the GVC framework was the inclusion of the governance dynamic, defined as ‘the parameters that precondition the terms under which actors elsewhere in the chain must operate’ (Neilson and Pritchard 2009 p.39). Different GVC and GPN scholars have examined governance in relation to the asymmetric

power of lead firms over suppliers (Henderson et al. 2002; Nathan and Kalpana 2007; Bair 2008). Whilst, GVC analysis focuses attention on inter-firm governance by global firms (Gereffi et al. 2005), GPN analysis helps unpack multi-scalar global, regional and national embeddedness (Coe et al. 2008). Of particular importance is the understanding of global *labour* governance in GPNs. Any theory of global labour governance must incorporate the role of the ILO and in particular international Conventions, which are conceptualised as residing at the heart of a ‘global labour governance regime’ (Haworth and Hughes 2003; Hassel 2008). Global labour governance has gained particular resonance over the last 20 years in debates over globalisation and labour standards, principally as a result of the move from ‘government’ to ‘governance’ (Rosenau 1997), from ‘hard’ to ‘soft’ regulation (Hassel 2008), and the emergence of various forms of private and corporate governance, in particular CSR (Crouch 2006). The term ‘global governance’ originates in politics and it has come to find application in industrial relations, particularly as it provides a step forward from the previous concept of ‘regulation’ as it ‘emphasise[s] that the employment relationship involves “managerial” as much as it does “market” relations’ (Sisson 2007 p.60). Governance refers to reflexive self-organisation (networks, negotiation, negative coordination, positive concerted action) and ‘managing functional interdependencies rather than with activities occurring in a defined and delineated territory’ (Jessop 2004 p.56). According to Meardi and Marginson (2014 p.654), the main added value of the concept of global labour governance is its multi-level aspect, attention to networks, and its focus on the growth of new forms of reflexive regulation.

Global labour governance in its simplest form ‘assumes the existence of a global labour problem that requires governance’ (Meardi and Marginson 2014 p.655). As Hess (2013 p.9) states: ‘Under conditions of globalisation and neoliberalisation, some authors argue that a “global governance deficit” has emerged as markets and market actors like firms attempt to dis-embed themselves from social control while states and societies try to fill this gap with new governance capacities’. The early GVC/GPN literature resisted this assumption and devoted much of its attention to the economic outcomes of developing countries participation in these chains/networks. It was assumed that if firms could successfully move to higher value-added activities

then workers would ‘automatically’ benefit. In addition, if a country could participate in a GPN then the economic benefits would outweigh the social costs. In other words, these chains were ‘ladders for development’. There is, however, by now a sufficient consensus, both institutionally and academically, that this is not the case – economic upgrading (whereby enterprises move from low-value to relatively high-value activities) does not lead to social upgrading (decent work) in all cases (Barrientos et al. 2011).

Labour governance in GPNs is multifaceted and complex and involves multiple scales from local and regional to sectoral, national and international (Gereffi and Lee 2016), where the state’s ‘retreat’ is an empirical problem, rather than an assumption (Meardi and Marginson 2014 p.654). The idea that traditional forms of global labour governance such as state regulation and collective bargaining are ineffective in ensuring decent work in GPNs has given rise to a significant number of alternative governance mechanisms (Locke 2013; Donaghey et al. 2014; Gereffi and Lee 2016). Governance can take the form of public regulation through laws, international labour standards, inspection, enforcement and sanctions as well as private sector initiatives such as CSR. Along with these forms of governance, other actors can play a decisive role in promoting social governance (multi-stakeholder), influencing both states and the private sector, shaping outcomes for workers. Most notably, this includes unions operating at the horizontal and vertical but also non-governmental organisation (NGOs), CSOs and not least labour itself. These forms of governance can either complement (layer) or substitute (displace) the traditional methods of labour regulation (Locke 2013; Marginson 2016). While TNCs seek to avoid national regulations, this is not to gainsay that national forms of public governance are irrelevant (Meardi and Marginson 2014). However, labour governance no longer follows the horizontal space of member States’ jurisdiction but rather the convoluted (vertical) lines of GPNs.

To understand how and when decent work may (or may not) be established and maintained, an analytical framework of governance is needed that integrates and acknowledges and, most significantly, helps in understanding the local, national, sectoral and global dynamics of GPNs. To this end this research draws on Gereffi and

Lee's (2016) analytical framework (adapted in Figure 2.1) linking both horizontal and vertical governance and theorises how these can affect the promotion and protection of decent work. The combination of horizontal and vertical governance is important considering 'labour scholars have already pointed to how recent top-down initiatives intersect with local organising campaigns in contested ways, signalling the diverse outcomes associated with efforts to drive up labour standards' (Ruwanpura 2016 p.3). Gereffi and Lee's (2016) framework is useful for highlighting the multi-scalar relations in which governance occurs. In addition, it places labour action in the forefront of analysis and not secondary to institutional arrangements between capital and the state (Selwyn 2013). A critical deficiency, however, is that it misrepresents and misclassifies the role of the ILO as a form of 'vertical public governance' (Gereffi and Lee 2016 p.35). Although clearly a public (multi-level) form of governance – member States decide whether or not to ratify international Conventions – the implementation and enforcement of labour standards does not follow the vertical (cross-border) lines of GPNs but the horizontal (territorial) space of member States' jurisdiction.. Regardless of this, the concept of horizontal and vertical governance is essential to an understanding of multi-actor and multi-scalar labour governance.

Horizontal governance, defined as the territorial embedding of economic and social relations between capital, labour and the state, occurs in a specific territory within the borders of the sovereign state. International borders are physical (e.g. a river or a wall), social (e.g. visa regulations) and cognitive (e.g. the idea that a TNC from country X cannot be held responsible for the employment practices of its supplier in country Y). Horizontal governance is not just confined to the supplier level but occurs at many localities, for example in raw material extraction, retailing, as well as in the maritime sector when shipping vessels dock. Horizontal governance incorporates the territoriality of economic and social systems and takes into account the networks of actors involved and the territorial outcomes (decent work or otherwise) of their interactions (Coe and Yeung 2015). The social and economic systems of horizontal governance are particularly influenced by past institutional configurations that 'constrain and refract' but do not determine the territorial outcomes (Steinmo et al. 1992 p.3). Once institutions are created they depend on mechanisms of reproduction, adaptation, or support from powerful actors, or all three, to be sustained (Thelen 1999).

This is especially so for decolonised countries (such as Sri Lanka and Indonesia) who are transplanted into a very different environment from their past in which they were previously sustained. These path-dependencies, ‘act like a lamp that illuminates some pathways while leaving others darkened, or a trail along which some walkways are steeper or more slippery and therefore less inviting than others’ (Caraway et al. 2015 p.9).

Vertical governance, on the other hand, is defined as the vertical organisation and flow of value activity across multiple scales from the global to the local. It includes the regulations, rules and relationships that cut through place (the particular locales within a landscape which are imbued with meaning) and space (the generalised production of social forces) (Taylor 1999). This is beyond simple national-global dichotomies as actors interwoven into GPNs will have a wide range of spatial remit from the local to the global. Vertical governance is typically orchestrated through lead firms – TNCs – and other global actors through a top-down process. But vertical governance can also be affected by labour agency, stemming from the local or national, which impacts actors across space and place. In this way, vertical governance is spatial as well as organisational as it interweaves and intersects through horizontal governance dynamics (depicted by the arrow dissecting the horizontal ‘ring’ in Figure 2.1). The decent work outcomes (voice, equity and efficiency) of these interactions are not just shaped by the nations in which actors are embedded, or the characteristics of the GPNs in which they are involved, but an interplay between the two. In other words, vertical and horizontal governance dynamics are not mutually exclusive and both have significant implications for decent work outcomes, particularly as no national economy, following the Global Transformation, operates in a vacuum and every TNC must at some point create a ‘spatial fix’ (Harvey 2006). While even the most ‘flighty’ of capital must ‘come to ground’ at some point and ‘re-embed’ itself in a particular place (Herod et al. 2007 p.253), production systems and social relations will be reconfigured in the process, potentially enhancing the control of capital over labour.

2.6. Forms of global labour governance

Global labour governance can be broken down into three forms – public, private and social – that are dependent upon the scope of the actor – horizontal or vertical – as

detailed in Table 2.2. At one end of the spectrum is nation state labour regulation (bottom row of Table 2.2) (e.g. employment laws), and on the other, private initiatives (top row of Table 2.2) (Locke 2013; Gereffi and Lee 2016). Conditions of work are typically shaped by a combination of public, private and social (multi-stakeholder) (middle row of Table 2.2) forms of governance (Gereffi and Lee 2016).

Table 2.2: Horizontal and vertical labour governance by actor

| Actor | Horizontal Governance | Vertical Governance |
|--|---|--|
| Private Governance | Collective efficiency (e.g. industrial associations, cooperatives). | Lead firm governance (e.g. codes of conduct). Production specificities. |
| Social Governance (Multi-stakeholder) | Local civil society pressures (e.g. workers, labour unions, NGOs for civil, workers, and environmental rights: gender-equity advocates) | Global civil society pressures on lead firms and major suppliers (e.g. Fair Labor Association), certification schemes (e.g. Rainforest Alliance and Fairtrade) and multi-stakeholder initiatives (e.g. Ethical Trading Initiative). International framework agreements and pressure by Global Union Federations (GUFs)*. |
| Public Governance | Local, regional, national government regulations (e.g. labour laws and environmental legislation). ILO Conventions. | International organisations (e.g. WTO) and international trade agreements (e.g. North American Free Trade Agreement [NAFTA], African Growth and Opportunity Act [AGO]). |

*Note: * Global Union Federations (GUFs) represent national sectoral federations but are distinct from national and local unions in that they have, ‘an identifiable mandate to think, act and represent workers on a transnational basis’ (Ford and Gillan 2015 p.458). The GUFs include Building and Wood Worker’s International (BWI); Education International (EI); IndustriALL; the International Transport Workers’ Federation (ITF); the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF); Public Services International (PSI); International Arts and Entertainment Alliance (IAEA); the International Federation of Journalists (IFJ); and UNI Global Union (UNI).*

Source: adapted from Gereffi and Lee (2016 p. 30)

2.6.1. Public governance

Public governance refers to the rules and regulations established by states at the local, national and international level. It also includes labour inspection and administration.

Public governance is typically aimed at, and applied to, specific geographical territories and its reach along GPNs is limited (i.e. it is essentially horizontal, rather than vertical, and is effectively limited to relationships along the vertical chain within the sovereign territory of the state, for example firms in domestic supply chains). This form of governance is influenced by international norms such as the ILO's international labour standards and, in principle, these laws and standards should ensure that workers have the opportunity to secure decent work. However, questions relating to the capacity or *will* of states to regulate and enforce labour conditions across borders have been raised (Donaghey et al. 2014) irrespective of the benefits of improving labour rights (Kucera 2002). As Levi et al. (2013 p.12) note: 'the simple fact that violations remain so widespread, and compliance with the ILO's core labour standards so uneven, suggests that costs of protection and benefits of violation often dominate'. First, member States may lack the capacity to implement, let alone enforce labour rights. Secondly, as low-cost is the only comparative advantage of many countries in the Global South they often adopt a 'low-road' approach to labour standards (Davies and Vadlamannati 2013). As Hess and Jones (2014 p.4) note, 'this is an especially pertinent problem in an era of neoliberal social and economic policies that advocate the retreat and "roll back" of the state while propagating private sector and market solutions to governance problems'. Weak labour regulation becomes a form of competitive advantage, thus downgrading the relevancy of public governance. In other words, 'the idea that workers' rights and labour standards impair employment and slow down economic growth ... now verges on regulatory common sense in the international order' (Rittich 2015 p.86).

2.6.2. Private governance

Today it is TNCs, not states, who drive a Global Transformation of the world economy. As Ruggie (2007 p.838) argues: 'The state-based system of global governance has struggled for more than a generation to adjust to the expanding reach and growing influence of transnational corporations.' As a result of this 'struggle', new actors and forms of governance have filled the regulatory gap. The emergence of these new forms has resulted in a global labour governance regime that has favoured soft norms, encouraging 'self-regulation' rather than hard law that demands compliance (Hassel 2008). Private governance is typically aimed at and applied to specific production networks or sectors (cross-cutting different territorial boundaries)

although it can also target specific regions, states or even workplaces. These private forms of governance are typically based on unitarist principles and use voluntary standards to evaluate supplier practices and performance. Therefore, they attempt to improve a TNC's organisational efficiency whilst including provisions for equity. The most prominent form of private governance, with its most common expression, CSR, is defined by the ILO as:

‘a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law’ (GB.295/MNE/2 p.1).

Whilst the ILO stresses the importance of CSR going above and beyond national laws, there is growing evidence that CSR has been ineffective given the continued violations of ILO core labour standards such as child and forced labour and the right to freedom of association (Locke 2013; Lund-Thomsen and Lindgreen 2014). The current D-G of the ILO, describes CSR as ‘the unwanted child of globalization, born of the inability or unwillingness of governments to subject enterprises to effective binding regulation’ (Ryder 2014 p.12). Crucially, despite (oblique) references to the ILO's core labour standards often found in CSR codes, freedom of association and collective bargaining is typically absent (Anner 2012). For example, the ILO reported that only 15 per cent of corporate codes of conduct acknowledge freedom of association and the right to collective bargaining (GB.273/WP p.1), both of which are enabling rights, providing ‘the capacity [of workers] to achieve more favourable outcomes with respect to pay, overtime, and working conditions’ (Mosley 2011 p.106). Locke (2013) illustrates how governance mechanisms that have emerged to fill the regulatory gap left by ineffective government regulation are not effective on their own, but layer on public governance: ‘private and public regulation complement one another not simply by increasing the reach of regulation throughout the country but also by building off one another and enhancing the respective effectiveness of each for regulation’ (Locke 2013 p.172). However, when private and public governance coexist and interact another possible outcome is displacement – i.e., ‘when one type of governance can pre-empt, displace, or crowd out other forms’ (Gereffi and Lee 2016

p.34). For instance, private governance may ‘displace’ public governance and weaken local labour unions (O’Rourke 2003; Bartley 2005).

A relatively important but under-researched area in the GPN literature is the role of horizontal collective action by employers. Private governance is not just a vertical affair, as collective associations of employers can play a role in compliance with international labour standards and codes of conduct at the national and local level in the developing world (Nadvi 2008). As Lund-Thomsen and Nadvi (2010 p.2) argue ‘local collective action [by industrial associations] could potentially lower costs of compliance for local producers, improve collective monitoring of codes and more effectively embed the social and environmental goals associated with CSR codes into local practices and norms’. Horizontal private governance, through these associations, can also facilitate a deeper local embeddedness of social governance mechanisms such as multi-stakeholder initiatives that bring together public, private and social actors in the GPN (Dolan and Opondo 2005).

2.6.3. Social governance

It is useful to distinguish between governance by public and private actors and those established by social actors, such as CSOs, NGOs and labour unions, particularly as these governance forms often provide a more explicit means of regulating workers’ rights and labour conditions compared to private governance (Gereffi and Lee 2016). Social governance either follows a ‘labourism’ path, such as those articulated by trade unions, or a ‘multi-stakeholder’ approach (rights-based) involving coalitions between TNCs, employers, NGOs and CSOs and, although less common, unions and the state (Gereffi and Lee 2016). Trade unions were the primary mechanism to enforce workers’ rights in the West during the Great Transformation, but globalisation and the proliferation of GPNs has arguable stalled their development in developing countries where unions are traditionally weak(er). Labour organisations in particular are increasingly important in the GPN landscape as firms and their suppliers are made up of the collective value of labour, and labour organisations can be effective in facilitating or disrupting GPNs (Coe and Yeung 2015). To be sure, workers in developing countries do not have the associational power of their counterparts in Western countries such as Germany, but their (structural) power in a tightly integrated

GPN means they can still disrupt the activities of TNCs (Sub-section 2.7.2) (Riisgaard and Hammer 2011).

Much has been written on the impact of globalisation on trade unions' ability to represent and bargain for their members. The response of trade unions to the proliferation of GPNs is best captured by the number (albeit small) of IFAs that have been signed in recent years (Papadakis 2011). As Turnbull (2010) argues, when capital goes global, labour must follow and 'if workers are to enjoy collective rights in the new world order, they will have to invent new strategies at the scale of international capital' (Tilly 1995 p.5). However, a lack of formality and security in many of the jobs within GPNs has undermined trade union membership, power and recognition. As Coe and Jordhus-Lier (2011) demonstrate, GPNs are often reliant upon extensive outsourcing and subcontracting, leading to a fragmentation of work. This is not just fragmentation through space, but also administratively, contractually and temporally, typified by the rise of the 'precariat' (Standing 2016). These factors have posed significant challenges for trade unionism, traditional methods of recruitment and retention of members and for voice (both individual and collective).

The assumption is that trade unions must find new, innovative and flexible responses to internationalisation as the 'traditional' national (horizontal) employment relations model has broken down. As Anderson et al. (2010 p.394) describe, 'in order to navigate the increasingly complex catacombs of employer power, unions need creative new strategies that fundamentally reconstitute the geography of their practices'. In fact, current analysis of trade union organisation and worker power now incorporates multi-scalarity, from workplace activism to transnational organisation (e.g. Herod et al. 2007; Anderson et al. 2010; Rainnie et al. 2011). In essence, this highlights the benefits in the horizontal/vertical framework in terms of its application of multi-scalarity and acknowledgement of the various governance forms.

Social governance (multi-stakeholder) also includes actors such as CSOs and NGOs who can improve labour standards for workers through information, training, and by coordinating global and domestic campaigns (Levi et al. 2013). They are often grouped under several different categories. For example, labelling or certification

agencies such as Fairtrade and Rainforest Alliance seek to harness the power of consumer pressure and ‘consumer relations’ (Donaghey et al. 2014). Others are industry-led initiatives such as the Electronics Industry Citizenship Coalition (EICC) (Raj-Reichert 2011) or multi-stakeholder initiatives such as the Fair Labor Association (Anner 2012). Labour rights campaigns are most effective when they involve a broad coalition of actors (Tarrow 2005) however corporations are not always responsive to such initiatives. Frequently, workers are not involved in the establishment of multi-stakeholder mechanisms, and may lack an opportunity to validate or comment on reports, or influence decision making processes (Egels-Zandén and Merk 2014). Another significant challenge is that private auditing usually takes place at the upper tier suppliers in GPNs, but much less often in the lower tier firms (beneath the ‘waterline’) where cases of non-compliance have been frequently documented (Barrientos 2013). Similar to private forms of governance, social (multi-stakeholder) governance can ‘crowd out’ existing public governance and tends to ‘supplant traditional regulatory formations anchored in the national state’ (Neilson and Pritchard 2010 p.1847). Social governance actors might choose to address labour standards in a specific production network (e.g. IFAs) while others may focus on working conditions and labour rights in a select number of sectors, challenging global governance deficits in many national contexts (e.g. certification schemes such as Fairtrade). However, ‘no private code of conduct can duplicate an entire body of national labor legislation, and no monitoring program can successfully re-create a ministry of labor with its department of workplace inspection’ (Anner 2011 p.169). The question that arises is what governance mechanisms ‘work’ for promoting and protecting decent work and what conditions need to be in place both horizontally and vertically.

2.7. Promoting decent work and the ‘rules of the game’

Much GPN employment is insecure and unprotected, falling well short of what the ILO defines as ‘decent work’ (ILC.105/6 p.2). Researchers have questioned whether, and under what conditions economic upgrading leads to an improvement in labour conditions in GPNs (Barrientos et al. 2011). Whilst GPNs can create jobs (one of the four pillars of the Decent Work Agenda) and bring organisational efficiency, they systematically fail to guarantee the other three pillars (Barrientos 2007). Employment opportunities and conditions of work will vary systematically according not only to

the particular configuration of the value chain (e.g. employment stability and security is generally stronger under ‘relational’ and ‘hierarchical’ modes of governance compared to ‘market’ or ‘captive’ relationships between lead firms and suppliers) (Lakhani et al. 2013 p.449), the characteristics of horizontal level factors (Distelhorst et al. 2015), but also according to industrial sector wherein capital and/or labour might be ‘localised’ or ‘mobile’ as depicted in Table 2.3 (Levi and Ahlquist 2004). For example, labour is mobile and firms are localised (top-right quadrant in Table 2.3) on Swedish berry plantations where migrant workers from Thailand, who are contracted on a seasonal basis to harvest the raw material, endure long hours and poor wages (Hedberg 2013). Both capital and labour are mobile in the international transport industries (bottom-right quadrant in Table 2.3), most notably shipping and civil aviation, which might allow some workers (e.g. airline pilots) to ‘play the market’ in some regions of the world, (e.g. the Gulf states where there is high demand for experienced pilots) (Chowdhury 2014) but leaves others particularly vulnerable (e.g. seafarers on-board a vessel flying a flag of convenience) (Lillie 2006). It is those sectors where capital is highly mobile that ‘regulatory gaps’ in the system of labour governance are most systematically exploited to the detriment of workers. Decent work in GPNs is governed by both horizontal mechanisms (tripartite actors) and vertical (e.g. CSR, IFAs and certification schemes) initiatives, but what constitutes effective horizontal and vertical governance?

Table 2.3: Capital and labour mobility

| | | Labour | |
|--------------|-----------|---|---|
| | | Localised | Mobile |
| Firms | Localised | site-specific services (e.g. government; private sector; raw material extraction) | domestic transport and distribution; migrant labour |
| | Mobile | Non-site-specific services (e.g. manufacturing; literate services) | knowledge industries; international transport |

Source: adapted from Levi and Ahlquist (2004)

2.7.1. Vertical governance

There is a consensus that vertical forms of governance are important for workers because they help regulate standards across national boundaries and provide a new form of governance for globalised business (Niforou 2014). Given the challenges that

these regulatory gaps or ‘spaces of exception’ pose, much of the scholarship on GPNs has been on the operation and attempted regulation of production networks at both the global and transnational levels (Anner and Caraway 2010; Riisgaard and Hammer 2011; Donaghey et al. 2014; Meardi and Marginson 2014), and the various regulatory innovations that have emerged to address this gap, albeit with limited success (O’Rourke 2006; Locke 2013). Vertical private governance is driven by TNCs’ explicit commitment to CSR, often referred to as the ‘compliance paradigm’ (Locke et al. 2009), which comes from pressure from national media, NGOs and CSOs. In addition, some authors draw attention to the critical role of consumers in mobilising pressure against TNCs to promote and protect decent work (Riisgaard and Hammer 2011; Donaghey et al. 2014). However, by way of example, following the Rana Plaza collapse, the garment TNCs involved did not experience a drop in their turnover or profits. In addition, vertical private governance initiatives only exist in sectors that are consumer facing, such as garments, electronics and some agricultural commodities such as tea, coffee and cocoa, whereas they do not extend to other less ‘visible’ sectors such as coal mining and palm oil. As Budd (2004 p.11) notes, the media ‘frequently portrays labour issues through the eyes of consumers rather than workers’.

Independent monitoring is considered a necessary condition of effective vertical private governance (Lim and Tsutsui 2012) and workers or their representatives are typically the most successful (decent work) monitors on the ground (O’Rourke 2006). However, trade unions have largely been left out of most company’s CSR mechanisms. More effective vertical private governance mechanisms incorporate the fundamental ILO Conventions and compliance with other forms of public governance; however, many are less specific and are weak in ensuring enabling rights, such as freedom of association, collective bargaining and non-discrimination (Barrientos and Smith 2007; Anner 2012). Many codes of conduct also set limits which contradict ILO standards. For example, the Hours of Work Convention (C.1) sets a limit of 48 hours of work per week whereas many private governance mechanisms set a much higher limit at 60 hours per week (Mamic 2005). The inclusion of ILO fundamental Conventions in private governance is typically viewed as a first step towards effectiveness, but these initiatives rarely go ‘above’ and ‘beyond’ the national law (or exclude many other important ILO Conventions) (Zandvliet and Van der

Heijden 2015). Vertical public forms of governance such as bilateral or regional free trade agreements may have the potential to improve workers' rights in GPNs and increase compliance with ILO labour standards (Siroën 2013). However, similar to private forms, they typically focus solely on the ILO fundamental Conventions, are often non-binding, symbolic, and do not reference the role of the ILO in the implementation of their labour commitments (Peels and Fino 2015).

Social vertical governance (multi-stakeholder) initiatives such as Fairtrade certification are often seen as the most effective way to promote decent work in GPNs (Wright and Kaine 2015), particular when 'lead firms have more control and leverage over suppliers' (Lakhani et al. 2013 p.2). First, social vertical governance is more effective *ceteris paribus* than private governance when it includes a broad range of stakeholders (O'Rourke 2006), although trade unions are rarely brought to the table. Secondly, decent work is more likely when these initiatives include compliance-monitoring along with capability-building such that suppliers can learn to address labour issues on their own, building relationships of mutual respect and trust (Locke et al. 2009). In fact, information sharing and a collaborative approach between suppliers and TNCs has led to better workplace compliance with ILO fundamental standards (Mamic 2005; Locke 2013). However, like codes of conduct, these multi-stakeholder initiatives and certification schemes rarely include ILO Conventions other than the eight fundamentals and lack the individual and collective voice of workers (ILC.105/6 p.47).

Another example of vertical social governance are IFAs that have been used by TNCs and Global Union Federations (GUFs) to improve labour relations in GPNs. Although not legally binding, IFAs have been effective in promoting and protecting decent work and can support capacity development in small and medium-sized enterprises (SMEs). IFAs often support local trade union organising (Wills 2002) along the whole production network, including with suppliers and subcontractors (Williams et al. 2015). Although they have led to some improvements in conditions of work in a select number of sectors (Niforou 2014), they exist as an indulgence by TNCs (Ewing 2013). The limitation of all these vertical governance mechanisms is that they rarely hold TNCs accountable, are market-orientated and thus are restricted

to a few consumer-facing sectors, seldom go above and beyond the national law, and ignore and exclude many key horizontal actors, in particular labour.

2.7.2. Horizontal governance

Public forms of governance that rely on inter-state enforcement mechanisms have always been secondary to national regulations. Indeed, by protecting national class compromises from global market uncertainties, embedded liberalism effectively avoided the need for a global class compromise, albeit by shifting adjustment costs onto particular groups within the industrialised economies (e.g. the less skilled) and/or externalising such costs on other societies (e.g. the less developed countries). Whilst some stress the importance of a complementary relationship between private, social and public forms of governance (e.g. Locke 2013) others point to the importance of horizontal over vertical factors (Hough 2012; Distelhorst et al. 2015). The ILO maintains that public horizontal governance is the foundation of workplace compliance in GPNs (ILO 2013c) and that ‘national legislation is a prerequisite for decent work’ (ILC.105/6 p.39). Horizontal public governance, through the ratification of ILO Conventions is important because it can make the most far-reaching impact in terms of improving labour conditions involving all the suppliers under their jurisdiction, regardless of whether they are inside or out of a GPN (Mayer and Gereffi 2010). Following the logic of varieties of capitalism (Hall and Soskice 2001) other studies point to horizontal systems of governance that have greater potential to improve labour standards, for example left-wing political parties (Berliner et al. 2015b), democratisation (Caraway 2010), civil society (Kang 2012) and public labour inspections (Schrank 2013). In comparison to vertical governance, which monitor compliance as part of risk management, public governance institutions are motivated by broader policy goals. In fact, the role of the state in enforcing the law is particularly important, preventing defections by individual firms, and resolving collective action problems among the various stakeholders (Amengual 2010). In the Dominican Republic, for example, labour inspectors not only enforced the law but educated workers about their rights and served as a mediator between employers and workers (Amengual 2010). The ILO recommends a benchmark for the number of labour inspectors in relation to workers for decent work: 1/10,000 in industrial market economies; 1/15,000 in industrialising economies; 1/20,000 in transition economies;

and 1/40,000 in less developed countries. However, most developing countries do not reach these benchmarks (GB.297/ESP/3).

The role of trade unions as a key horizontal social governance actor is also viewed as an important vehicle in which decent work in GPNs is achieved. Whilst workers have been viewed as the cheap, undisciplined and passive victims of the restructuring process, labour action has been able to alter the exploitative practices inherent in GPNs. As Padmanabhan's (2012 p.21) study of garment workers in Kerala, India, demonstrates, 'organizing locally can, in fact, be an effective strategy for use in case of confrontation with social actors who are organized at the global and other extra-local scales'. Riisgaard and Hammer (2011) demonstrate that the scale of labour action and engagement in 'power analyses' can identify the most effective location and method of strategic action. These studies, among others (e.g. Coe and Jordhus-Lier 2011; Selwyn 2013), highlight the importance of workers' structural and associational power in GPNs (Wright 2000; Silver 2003; Donaghey et al. 2014). Structural power refers to the workers' position in the production process and the ability to disrupt it. According to Donaghey et al. (2014 p.238) three factors shape labour's structural power in GPNs. First, when workers are not substitutable they gain leverage with suppliers; however, many of the jobs created by GPNs are low-skilled and thus workers are often easily replaceable (ILC.105/6 p.12). Second, when they can have 'immediate' effects on other parts of the network, 'where a localised work stoppage in a key node can cause disruptions on a much wider scale than the stoppage itself' (Silver 2003 p.13). For example, workers in logistic firms typically have higher structural power compared to assembly line workers as they possess information regarding the whole of the production network (Quan 2008). In addition, Selwyn (2008) illustrates how just-in-time production used by TNCs allows workers to disrupt the production network by targeting specific 'choke points'. Third, workers gain leverage when the production network is 'highly driven', i.e. when a TNC governs the production network in a hands-on manner, most associated with relational and hierarchical forms of governance (Riisgaard and Hammer 2011; see also Lakhani et al. 2013). Associational power comprises 'the various forms of power that result from the formation of collective organization of workers' (Wright 2000 p.962), such as through trade unions at the horizontal level and through GUFs vertically. Donaghey and

colleagues (2014 p.238) argue that three factors lead to high associational power. First, the relationship between supplier-firm unions and lead-firm unions. However, as Niforou (2012) demonstrates, affiliation of a local union to a GUF does not necessarily translate into compliance. Secondly, the degree of unity among unions at the national level. Thirdly, the ability of unions across a supply chain to coordinate action. For example, the monitoring of ‘flags of convenience’ vessels in port states coordinated by the International Transport Workers’ Federation (ITF) (Lillie 2006). Historically, associational power was embedded in national legislation, which guaranteed freedom of association and collective bargaining. However, the weakening of public horizontal governance has undermined the associational power of workers. To be sure, workers’ structural power is never automatically transformed into associational power. However, it is important here to be able to conceptually and empirically identify sources of workers’ structural power, how this is mobilised through associational power and how, ‘this is utilised to realise spatio-temporal fixes, which in turn shape local socio-spatial environments and development processes, in ways (more) favourable to labour’ (Selwyn 2012 p.36). This suggests that labour and trade unions in particular, are not inherently side-lined by GPNs but instead our understanding benefits from greater theoretical engagement by including these actors in our analysis.

Local employer associations (horizontal private governance), as one of the ILO tripartite constituents, can also assist in promoting and protecting decent work. As an example, in the Pakistan soccer ball industry, the Sialkot Chamber of Commerce and Industry (SCCI)¹⁷ played a key role in the establishment of the Atlanta Agreement¹⁸ and also financed part of the ILO’s monitoring mechanism in the area. Whilst horizontal private governance is more likely in ‘visible chains’ it can be effective where there is little vertical pressure (Lund-Thomsen and Nadvi 2010). For example, the tannery sector in India, which produced leather goods primarily for the domestic market, was forced to comply with two German bans on azo-dyes in the mid-1990s as a result of horizontal pressure by NGOs and trade unions who petitioned the courts to

¹⁷ The town of Sialkot in Pakistan was home to the leading global manufacturers of premium quality footballs for the major sports brands such as Nike and Adidas. In 1995, allegations were raised regarding prolific numbers of child labourers who stitched these footballs.

¹⁸ The Atlanta Agreement established an industry-wide monitoring mechanism that took children out of the factories and into schools and created social safety nets for their families to make up for the income lost (Nadvi 2008).

enforce compliance with national environmental standards (Tewari and Pillai 2005). The local employer association established and financed several common effluent treatment plants (CETPs) and took collective responsibility for running these plants (Lund-Thomsen and Nadvi 2010).

However, employer associations are not always amenable to horizontal and vertical pressure. In Cambodia, for example, the well-organised employer association is openly hostile to both the independent trade unions and also the ILO's technical cooperation work through the Better Work Programme (Arnold 2014). In addition, employer associations are also not always well established and have experienced declining membership density (i.e. the ratio of actual to potential members) and employer coverage and whilst associations may be able to maintain member support despite unfavourable economic conditions, this is determined by horizontal dynamics such as: extension practices, union density, the associational system of employers and the degree of centralisation of the principle employer federation (Traxler et al. 2001). In fact, what the literature has less to say about is the role of industrial associations as a 'target' for independent trade unions who want to engage in collective bargaining at the sectoral or national level through structural and associational power. Strong unions at the horizontal level may compel employers to associate because protection against labour's collective action is a key function of employer associations (Traxler 2004). However, unions face a significant difficulty in finding a social partner on the employers' side for cross-border (vertical) collective bargaining as employers' associations with a mandate for collective bargaining do not exist beyond the national (horizontal) level (Fichter and Sydow 2002 p.372). The presence of national employer associations in GPNs, who are 'labour-friendly' (whether by choice or compelled by national law) and act collectively, will *ceteris paribus* improve the prevalence of decent work.

Commentators have argued that the alignment of interests between horizontal and vertical governance actors leads to improved conditions of work in GPNs (Berliner et al. 2015b). However, the alignment of these interests are few and far between and do not automatically result in improved conditions of work. As Lincoln (2010 p.67) states: 'Where a workforce – typically workers in a country of the global South –

occupies a position in a global value chain and participates in the global division of labour on the basis of its comparatively low cost or ease of control, reform can mean reducing these “comparative advantages”. In fact, the rise of these new vertical forms of governance can create tensions with their horizontal counterparts and ‘siphon off the support of key constituencies’ from the old one (Streeck and Thelen 2005 p.23) and critics have argued that states have effectively ceded power to vertical governance, causing actors to stop investing in horizontal governance (Seidman 2007). In 2011, the ILO concluded that ‘there is a risk that some types of private initiatives could undermine public labour inspection’ (ILC.100/PR p.6). In sum, it is apparent from the preceding analysis that no private governance mechanism is able to solve the prevalence of decent work deficits. What is needed is a ‘new strong fix’ for the global economy based on ‘hard’ horizontal and vertical governance – labour standards agreed by states, enforced by government agencies and supported by trade unions and employers (or at least complied with by employers), combined with governance that links all the actors in the GPN.

2.7.3. The role of the ILO?

As stated by leading commentators on the impact of GPNs on the employment relationship, ‘future research ... [should] examine and incorporate the implications of other institutional influences, such as the ... International Labour Organization’ (Lakhani et al. 2013 p.466). Whilst, economic growth and prosperity and employment and job creation in GPNs have been discussed in many international forums over the past decade and much of the academic research has focussed on ‘new’ governance actors in GPNs: ‘no other international organisation [other than the ILO] has the appropriate mandate, expertise and experience in the world of work, or the tripartite structure, to consider the implications for decent work in global supply chains’ (ILC.105/6 p.65).

International organisations such as the ILO shape labour governance by serving two key functions. First, they define abusive and unacceptable practices, such as forced and child labour and what constitutes discrimination (e.g. gender, age, race, religion etc.). Second, they serve as an institution in which struggles between workers and employers occur, moving contestation out of informal and individualised arenas. International organisations play a necessary role in the Global Transformation, ‘given

the need for strengthened governance at the supranational level, in situations where individual nations are limited in their scope to address the transnational dynamics that can drive downgrading for workers' (Posthuma and Rossi 2017 p.2). International initiatives encouraging firms to adopt core labour standards in relation to their GPNs are imperative in an age of Global Transformation, particularly as the WTO never came close to agreeing on a 'social clause' in trade agreements (Elliott and Freeman 2003). International organisations and initiatives such as the *UN Global Compact*, the *UN Guiding Principles on Business and Human Rights*, and the *Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises* have been considered in the literature on GPNs and global labour governance (Ewing 2013; Donaghey et al. 2014; Gereffi and Lee 2016). Whilst these international organisations have a role to play specifically as concerns the governance of GPNs, the ILO is the only organisation whose mandate explicitly addresses the implications of global *labour* governance.

Whilst the ILO is *the* global labour governance institution (Meardi and Marginson 2014), with its Conventions referred to in many forms of global labour governance (Hassel 2008; Anner and Caraway 2010) and by a wide ranging of actors who use these standards (e.g. trade unions, CSOs, TNCs and NGOs), it is surprising that the ILO is noticeable absent from any in-depth research on global labour governance or GPNs. If labour was 'written out of the script' (Cumbers et al. 2008) in the early GVC/GPN literature, the ILO failed even to appear on the page. The literature has even less to say on how the ILO can (re)establish labour standards – scholars have focussed more on characterising interactions between the social partners and the state than on explaining why they occur and when they do explain interactions, the focus is more on the number of standards adopted and ratified rather than the processes leading to their implementation. The parlous state of global labour governance has meant that hopes for fundamental human rights to freedom of association and collective bargaining, non-discrimination in respect of employment and occupation, and the elimination of child and forced labour are now pinned on consumers and civil society, rather than the ILO.

There are four main reasons for why the ILO is ‘absent from the script’ or its actions are misinterpreted. First, critics argue that the ILO is hopelessly trapped by its antiquated tripartite governance structure (Baccaro and Mele 2012), is ‘in a state of crisis’ (Alston 2004) and unable to stop the (re)commodification of labour (Standing 2008). Second, that it has no influence on the world of work because of its ‘toothless’ standards (Tsogas 2001), leading one former UN official to remark that ‘if the ILO were to close down tomorrow, nobody would notice the difference, except its employees’ (Rufford et al. 1993). Third, many misinterpret how the ILO works. Even though a shift from rights to principles is associated with the drift from public to private governance (Donaghey et al. 2014 p.230) the onus is still on governments (horizontal governance) rather than private actors (vertical governance) to respect ILO Conventions. Although the ILO’s core labour standards are sometimes grouped together with the *UN Global Compact*, *OECD Guidelines for Multinational Enterprises (MNEs)* and *International Organization for Standardization (ISO) 26000 Guide on Social Responsibility*, the former are treaties ratified by governments whereas the latter are guidance for TNCs. While these are all examples of ‘transnational institution-led, multi-stakeholder standards’, ILO Conventions are not ‘examples of private governance’ or ‘vertical governance’ and TNCs stand ‘above’ and ‘outside’ the ILO’s ‘sphere of responsibility’¹⁹ (cf. Donaghey et al. 2014 p.235). Fourth, although the ILO is not inaccessible, it is ‘inward looking, preoccupied with procedure, relatively slow in response, and [has] a style of expression that deters all but the most enthusiastic from discovering [its] ideas’ (Somavía 2004 p.53).

As the ILO notes itself: ‘the ILO has the convening power to bring together the main actors and stakeholders responsible to bridge governance gaps at the sectoral, national, regional or global levels of global supply chains’ (ILC.105/6 p.65). Whilst the ILO cannot ‘fix’ the Global Transformation by involving CSOs, NGOs and TNCs in its decision-making structure (Baccaro and Mele 2012; Baccaro 2015) it is a pivotal labour governance actor and can work through its tripartite constituents (horizontally) in embedding vertical actors in a new horizontal governance paradigm. By adopting a multi-scalar (horizontal and vertical) and multi-actor (private, public and social)

¹⁹ The term ‘sphere of responsibility’ originates from the United Nations Guiding Principles on Business and Human Rights (UNGPs) drafted by John Ruggie. The UNGPs reject the notion of capacity playing a role in determining corporate responsibility for human rights (Macdonald 2011).

approach, placing labour and labour governance ‘front and centre’ in the analysis, the purpose of the research that follows – in Geneva and ‘in the field’ – is to address how the ILO can (re)establish labour standards in an age of Global Transformation.

2.8. Conclusion

The proliferation of GPNs and their impact on the world of work is an emerging field of scholarship. Although competitive pressures have always existed in some sectors, they are now pervasive across a broad range of industries that span traditional horizontal forms of governance. This development has major implications for conventional understandings of employment relations, especially the role of institutions and the effectiveness of traditional forms of regulation. Institutions and actors matter and one of the main overriding benefits of the GPN approach is its inclusion of all the strategic actors at multiple scales. What is crucial here is the interaction of these different actors through space and place, which have led to (in)decent work outcomes. This is where the horizontal/vertical governance framework comes into play in addressing the concepts of organisational and territorial dynamics, illustrating the various nodes at which multiple actors interact. In particular, this framework is not restricted to the global or the national but instead acknowledges that governance dynamics and actors interact, whether directly or indirectly, irrespective of their territorial embeddedness.

There is a need to assess the impact of international coordinated trade on decent work as much of the literature by international organisations and some academic spheres fails to grasp the reality of participation in GPNs. On the other hand, the literature on working conditions in developing countries by CSOs and advocacy groups fails to address the role of labour in production within GPNs and often does not stand up to academic rigour. As a result, the need for academic research on (in)decent work (voice, equity and efficiency) in GPNs is paramount. Furthermore, even the more sophisticated analyses of GPNs and prospects for social and economic upgrading have paid scant attention to the ILO or misinterpreted its standards and/or role, often coming to the conclusion that the ILO is an ineffective organisation that no longer warrants scholarly investigation. As a result, it is imperative to analyse both the outcomes of labour standards *and* the processes that lead to them. There is therefore a significant gap in the analytical and theoretical understanding of the role of the ILO in

global labour governance of GPNs. In order to develop a clearer analysis of whether GPNs can be brought into the international ‘game’ of labour governance under the auspices of the ILO, the following analytical research question will be addressed:

- How and under what conditions is the ILO able to (re)establish effective labour standards (voice, equity and efficiency) under the ‘Global Transformation’ (in general) and GPNs (in particular)?

To address this research question requires an innovative methodological approach and research at the global level, where standards are discussed and adopted (or not), the national level where standards are ratified (or not), the sectoral level (where the dynamics of GPNs play out) and the workplace (where workers experience (in)decent work). This is the focus of the next chapter.

3. Researching Decent Work

3.1. Introduction

The primary research question outlined in Chapter 2 creates challenges to be addressed in analytical, methodological and empirical terms. The research methods and methodology employed to explain how the research addressed these challenges are elaborated in this chapter. This involves discussing the research methods that were used and a justification of the case selection process, before detailing the actual process of conducting the fieldwork and explaining the methods used to analyse the data collected over an extended period of research at the ILO in Geneva (participant observation) and fieldwork in Sri Lanka (tea plantations) and Indonesia (palm oil plantations). The latter involved both quantitative data collection (questionnaire surveys of plantation workers) and qualitative data (focus groups with key stakeholders, specifically worker, employer and government representatives). Table 3.1 details the timeline of the research and the research methods that were employed. Data collection was a very ‘personal affair’, working initially at the ILO’s headquarters as an intern and then a ‘technical officer’ (international civil servant), followed by research in the field with plantation workers whose conditions of employment would be considered ‘indecent’ by Western standards and, in the case of Indonesia, ‘indecent’ by ILO standards. Rather than pretend that I was able to objectively extricate myself and ‘stand back’ from the research, I have reflexively deployed multiple dialogues to reach the explanations of empirical phenomena (cf. Burawoy 1998 p.5). Objectivity was not measured by the procedures that assured an accurate mapping of the world but rather ‘by the growth of knowledge; that is, the imaginative and parsimonious reconstruction of theory to accommodate anomalies’ (Burawoy 1998 p.5). Throughout this chapter, I use the first person to reflect my intimate involvement in the work with, of, and for the ILO as well as the workers whose lives the ILO is committed to improving.

Table 3.1: Research timeline

| Case study | Position | Date | Research methods employed |
|-------------------------|-----------------------------|-----------------------------|--|
| ILO (Geneva) | Internship | January 2013– June 2013 | Participant-as-observer action research. |
| | International civil servant | July 2013– December 2014 | |
| Indonesia (palm oil) | Consultant | March 2015 | Questionnaire survey of plantation workers, focus group discussions (workers, employers and government). |
| Sri Lanka (tea) | Consultant | September 2015 | Questionnaire survey of plantation workers, focus group discussions (workers, employers and government). |

The theoretical and analytical model outlined in Chapter 2 was operationalised using action research, combining participant observation, questionnaire surveys, focus group discussions and document analysis. Although I was but a small ‘cog’ in a massive international ‘machine’ I was personally involved and committed to the guiding principle of the ILO – ‘labour should not be regarded merely as a commodity’ (ILO 1919; ILO 1944) and its mission of ‘decent work for all’ (ILO 1999). The use of these methods is driven by the need to address the research question and therefore I combined different forms of empirical research to understand the role of the ILO, how horizontal and vertical governance dynamics impact the promotion of decent work, and what this means for the ILO as a standard-setting organisation.

This chapter is structured in nine sections. First it outlines the challenges with researching decent work in global production networks (GPNs) as access to reliable data on working conditions is difficult for several reasons (Section 3.1). Following this, the chapter outlines the epistemological and ontological approaches and how they inform the (process) methodology of the research (Section 3.2). A critical realist philosophical approach was adopted to help in analysing the various underlying mechanisms that result in (in)decent work. Empirically, the protracted policy-making process of the ILO lends itself to process rather than variance analysis (i.e. an exploration of the temporal structure of social practices and the uncertainties and urgencies that are inherently involved in such practices) (Langley et al. 2013 p.4), which is explained in this section. Then, the participant observation research at the

ILO (Section 3.4) is detailed, where a case study of the inner workings of the organisation was developed in order to understand how the ILO can improve conditions of work in an age of Global Transformation and whether the ILO is really a ‘failed’ (Standing 2008 p.355) or ‘path-dependent’ organisation (Baccaro and Mele 2012). Participant observation is particularly useful as it enables access to data from ‘behind the scenes’ as well as the ‘public record’. Subsequently, I describe the process of conducting case study research of two examples of GPNs (Section 3.5), which the ILO has identified as critical to its future work, in order to test the analytical framework and understand the effectiveness of international labour standards in the field. Then, the chapter details the process of surveying decent work and the focus group discussions and questionnaires that were completed in the field to understand how GPNs affect the decent working conditions of those who toil in these networks (Section 3.6 and 3.7). In the penultimate section, the methods of data analysis are outlined (Section 3.8) followed by a conclusion in Section 3.9.

3.2. The challenges of researching decent work

Previous research on conditions of work in GPNs has typically relied on limited data to answer a broad array of questions. Access to accurate, complete and unbiased data is difficult to come by because of the complexity and commercial confidentiality of GPNs, which hinders the ability to collect strong quantitative data that fully represents the ‘reality’ of decent work (Berliner et al. 2015a). Furthermore, research at the horizontal level (i.e. the national level) does not capture vertical work processes in particular sectors which are linked to GPNs, and can create barriers to understanding and acknowledging the range of strategic actors and institutions that are involved in promoting and protecting decent work. The challenges to researching decent work are threefold: lack of metrics, sensitivity of the subject matter, and causality.

First, decent work is difficult to measure, particularly when the vast majority of production network workers are located in developing countries that often have poor infrastructure, weak labour inspection and a lack of capacity for collecting reliable (and unbiased) labour statistics. In addition, the ILO has not effectively created any ‘official’ or ‘institutional’ indicators for decent work instead merely agreeing that it was an interesting area of debate (Standing 2008 p.370). Work is also often ‘hidden’,

especially in the informal economy where access to reliable data is often impossible. Furthermore, although the ILO engages in some monitoring of workplace practices in its member States (e.g. under the Better Work Programme) this is dependent on their cooperation and thus the ILO's ability to collect systematic cross-national data is inherently limited, especially in member States where the conditions of work are likely to be indecent the member State in question is unlikely to 'invite' the ILO to gather data on their practices.²⁰

Secondly, access to empirical evidence on the conditions of work in a specific country and sector is difficult considering the sensitivities of identifying poor conditions of work that are not in line with government legislation or ratified ILO Conventions. Given the widespread hostility to organised labour and worker activists in many countries, the reporting, monitoring and documentation of workplace abuses is often curtailed (Berliner et al. 2015a). In other words, the sensitive nature of the research subject would have been considered threatening if the research had been conducted independently rather than with the backing of the ILO's reputation as a UN agency. However, writing on the effectiveness of the ILO is also problematic considering it rarely invites any external or independent evaluations of its performance, although trenchant critiques are readily available (e.g. Alston 2005; Standing 2008).²¹

The third issue is to do with causality. Previous research that harnesses quantitative analysis might give us insight into some of the factors that account for different labour rights but often do not give us insight into why. For example, Mosley (2011) collects violations of labour rights from three sources, which shows that foreign direct investment (FDI) related trade is associated with better labour rights than outsourcing. Greenhill et al. (2009) identify a 'California effect' demonstrating that companies exporting to high-labour rights countries will experience better conditions

²⁰ Any interventions by the ILO in a member State are typically agreed by the tripartite constituents.

²¹ Ethical approval was sought for the initial 6-month internship at the ILO. Following my status change within the Organization I was accountable to the standard terms of an international civil servant. Go to: <http://icsc.un.org/resources/pdfs/general/standardsE.pdf> [Accessed: 15 October 2016]. Some of the data collected during the period of participant observation is extremely sensitive and any reporting of this data would violate the terms of my contract with the ILO as an international civil servant consequently I have 'treaded carefully' when trying to convey to the reader the significance of some of the political struggles taking place.

of work in order to meet the demands of consumers in those markets. This analysis can tell us a great deal about comparative labour rights however, '[Mosley's] data cannot, by design, tell us anything at all about day-to-day employment practices and experiences – or legislation – protecting workers from forced labor, child labor, unsafe or unsanitary working conditions, lack of overtime pay, or a host of other labor rights issues in law or in practice' (Berliner et al. 2015a p.197). To address this, research must focus on specific country case studies that carefully connect the political and economic incentives for change with the specific policy instruments employed by public, private and social actors, and their ultimate effects (Berliner et al. 2015a). Research must also be 'action orientated', with a commitment to giving marginalised workers a voice, solving a particular problem (GPNs) or to improve the way organisations (the ILO) addresses and redresses these challenges. Furthermore, relying purely on statistical measures 'from outside' does not capture the complexity of political, social and economic relations that occur 'inside' specific GPNs. Although these challenges to data collection exist, it is better to 'directly acknowledge and critically discuss, rather than sweep under the rug' (Berliner et al. 2015a p.199). The limitations of previous studies point to the need to get 'inside' the ILO as a participant observer, 'along' the production network and 'within' specific national systems of industrial relations.

3.3. Epistemology, ontology and process methods

As outlined in Chapter 2 I combine insights from GPN theory with global labour governance analysis. The adoption of the GPN theoretical approach raises subsequent questions as to the most appropriate philosophical and methodological position. I follow a critical realist ontology and epistemology because of its focus on material conditions and social structures taking shape in contemporary capitalist economies (Edwards 2006 p.3; Brook and Darlington 2013; Edwards 2015; Ram et al. 2015). Critical realism has been employed in industrial relations research and has been systematically employed to analysis of the impact of globalisation on the employment relationship (Edwards 2006). In addition, contemporary critical realism is focussed on inequalities, power relations and processes of domination and resistance existing in real social and economic structures (Cunliffe 2011 p.655), and my aim, in common with other critical realists, is emancipation (Raelin 2008). Critical realism stresses that

an objective world independent of people's perceptions, language or imagination exists but part of that world consists of subjective interpretations, which influences the ways in which it is perceived and experienced (O'Mahoney and Vincent 2014).

Epistemologically, the argument is that the world is socially constructed, but 'critical realism construe[s] rather than construct[s]. Reality kicks in at some point' (Easton 2010 p.122). These structures, which impact events and regularities, can then be brought to the forefront for analysis. Critical realism's epistemology concerns the production of theory that accurately identifies causal mechanisms in social change. In other words, critical realism 'understands that good knowledge has to be both meaningful to actors and provide understanding of their active impact in social relations and on structures, such as workplaces and labour markets' (Brook and Darlington 2013 p.239).

Fleetwood (1999 p.473) argues that if the traditional empirical ontology is forgotten in favour of the stratified ontology of critical realism then the analysis instinctively turns to the structures and mechanisms that might be unobservable, but will help in the explanation of social phenomena. This implies that social reality is 'real', but only in an imperfect and probabilistic manner. Ontologically the assumption is that the 'the world exists independently of our knowledge of it' (Sayer 1992 p.5). Hence, meaning has to be understood rather than relying on testing or measuring it. Any results collected will be probabilistically true and any generalisations, which may be adopted, will be open to scrutiny from scholars (Corbetta 2003). Ultimately, critical realism stresses that the test of 'knowledge' is its practical adequacy as explanation and as a guide to social change (Fleetwood and Ackroyd 2004).

Critical realism recognises that there exists a reality independent of individuals, thus 'critical realism research can and should usually incorporate data of different sorts, quantitative and qualitative, historical and current – anything that the researcher (or their research subjects) have good reason to think "makes a difference"' (O'Mahoney and Vincent 2014 p.15). In addition, a number of 'how to' GVC/GPN research manuals recognise the importance of multi-method research (e.g. Kaplinsky and Morris 2011). Methodological pluralism is defined as 'the combination of

methodologies in the study of the same phenomena' (Denzin 1970 p.291). Thus, the ontological and epistemological approach also demands both quantitative and qualitative methods. However, critical realism stresses that due to quantitative research's ontological stance its role should be limited to supportive, descriptive statistics (Ackroyd 2009). In other words, 'quantitative research on its own is unable to capture the dynamic and contingent interplay of structure and agency, particularly the significance of the relationship between agents' meaning, their activity and social change' (Brook and Darlington 2013 p.240). Thus, quantitative analysis was used to understand 'what's going on here?', whilst the qualitative research was used to understand 'what is this a case of?' (Tsoukas 2009 p.298). As O'Mahoney and Vincent (2014 p.16) state: 'as critical realists hold that context can often trigger or retard the actualization of causal mechanisms, methods should also be sensitive to the empirical context at a variety of levels'.

Whilst the philosophical approach is one of critical realism, the methodological approach draws upon process analysis to understand the changes happening within the ILO. Langley et al. (2013 p.1) define process research as focussing 'empirically on evolving phenomena, [which] draws on theorizing that explicitly incorporates temporal progressions of activities as elements of explanation and understanding'. Process methodology is ideally suited for the study of change in the ILO – there is a clear sequence of events (formal and informal meetings), focal actors (protagonists and antagonists), an identifiable voice reflecting the viewpoint of the (tripartite) constituents, both from outside²² and inside the ILO,²³ an evaluative frame of reference of what is 'right' (appropriate) and 'wrong' (inappropriate) (i.e. labour is not a commodity and must not be treated as such), and other indicators of context over time and place (e.g. political opportunities that arise when indecent work hits the headlines) (cf. Pentland 1999). For example, the International Labour Conference (ILC) discussion on decent work in global supply chains is an input to the next stage of a

²² The International Organization of Employers (IOE) represents employers while the International Trade Union Confederation (ITUC) represents the workers' side. States speak for themselves but are also organised into regional groupings (e.g. the African, Asia-Pacific, Latin American and Caribbean, European Union, and industrialised and market economy countries groups).

²³ Within the Office, the Bureau for Employers' Activities (ACT/EMP) represents and voices the concerns of employers' organisations while the Bureau for Workers' Activities (ACTRAV) mirrors ACT/EMP for the workers.

process for the ILO (promoting decent work is never concluded) and thus lends itself to a methodology which aims to address questions about how and why things emerge, develop, grow or terminate over time, rather than dealing with the covariation among dependent and independent variables (Langley et al. 2013 p.1). By recognising the centrality of time, this process methodology can provide significant insights into the role of the ILO. The aim of my research is ‘process generalisation’, an understanding of how the ILO ‘really works’ and an assessment of its potential role for establishing labour standards in an age of Global Transformation. Hence, to reiterate, the key question is ‘not what’s going on here?’ but ‘what is this a case of?’ (Tsoukas 2009 p.298). To move from concrete (surface) observation (description) to more abstract process theory (explanation), different sense-making strategies were employed (Langley 1999).

First, a narrative strategy is used to tell the story of the ILO and the recent initiatives instigated by the current D-G, as the leadership of the ILO has put forward bold policy programmes (Hughes and Haworth 2011 p.2), which was only made possible by studying the ILO from ‘the inside’ and ‘as it happened’. This is not just an idiosyncratic tale as these stories carry important theoretical messages. All process research involves some narrative element, a more or less detailed story based on the raw data allowing us to ‘not only give meaningful form to experiences we have already lived through but also provide us a forward glance, helping us anticipate situations before we encounter them, allowing us to envision alternative futures’ (Flyvbjerg 2006 p.240). As one of several sense-making strategies for process data analysis (Langley 1999), the narrative strategy was used both as a preliminary step to prepare a chronology of subsequent (interconnected) events (i.e. the ILC discussion on global supply chains) and to ‘get on top’ of the data.

Secondly, visual mapping is used to depict processes within the ILO, which is paramount considering that ILO action passes (or fails) from meeting to meeting (e.g. from the Governing Body to the ILC).²⁴ Visual mapping is a strategy used by organisations themselves, most notably in the form of an organogram depicting lines of communication and control (see Appendix 1, which depicts the current

²⁴ A visual mapping of the process of adopting an ILO Convention is depicted in Chapter 4 (Figure 4.2).

organisational structure). Following any major restructuring, the revised organogram often provides a clear (visual) indication of the organisation's strategic (re)direction. A visual mapping strategy allows for simultaneous depiction of a large number of dimensions (e.g. the hierarchy of decision-making, the involvement of different actors, the impact of external events, and the passage of time), albeit only a 'surface representation' that requires other methods to dig beneath the surface (Langley 1999 pp.700–703).

Thirdly, the principal method to determine why events happened in the ILO was 'temporal bracketing' (Langley 1999 pp.703–704) or 'process decomposition' (Langley et al. 2013 p.13), analysing the progression of events separated by identifiable discontinuities in the temporal flow, albeit rarely a neat sequence where $A \rightarrow B \rightarrow C \rightarrow D$. The data were 'bracketed' in two ways: over time ('what has happened' and 'what is likely to happen next') and between the tripartite constituents (e.g. asking how workers' representatives reacted, and why, given the stated position of employers and government representatives, and then thinking about and predicting what they might do next). The focus is on a specific period (Guy Ryder's Directorship between 2012-2016) and timing was determined largely by the sequence of official meetings of the Governing Body and ILC, punctuated by a critical moment (the Rana Plaza disaster) that was seized upon by the D-G to amplify the norms and values of the ILO and to highlight the plight of workers in GPNs. The temporal bracketing strategy involves looking at specific time periods, how change in one period affects change in the next (the process of temporal decomposition), which allows for a certain degree of prediction and the examination of 'recurrence and accumulation of progressions' (Langley et al. 2013 p.7). Again, temporality matters in the ILO as all ILO action must go through a set of processes involving contestation and debate (by the tripartite constituents) before it has a chance to make a change to the world of work. The question here is not 'what works' based on comparisons between countries but rather 'how' to produce the changes that the evidence suggests are desirable (Langley et al. 2013 p.4). Knowing that a particular condition in country A is less effective for establishing decent work than a condition in country B reveals almost nothing about how to move over time from A to B. As a result, 'if variance theorizing generates *know-that* type of knowledge, process theorizing produces *know-how* knowledge'

(Langley et al. 2013 p.4 original emphasis). The first step to understanding the processes happening within the ILO was therefore to get ‘inside’, as it happened.

3.4. Researching decent work ‘from the inside’

The initial phase of the research involved a 2-year position (first as an intern and then as an international civil servant) at the ILO’s headquarters. Once I left the ILO I completed several consultancy contracts as documented in Table 3.2. This prolonged involvement in the processes being studied developed my ‘interactional expertise’ and provided close access to events and practices (Langley et al. 2013 p.6). I initially began working at the ILO as an ‘observer-as-participant’ but progressed to ‘participant-as-observer’ (PAO) (i.e. from a spectator to a fully-fledged participant) (Gill and Johnson 2010 p.167), as one of the key researchers working on two projects prioritised by the ILO on global supply chains and the plantations sector. The internship within the ILO was made possible by the signing of a cooperation agreement between the ILO and Cardiff Business School, ‘to collaborate in the promotion and advancement of the social and labour dimension in the industrial, services and maritime sectors’ (ILO 2011b), which provided an unprecedented opportunity to study the ILO ‘from the inside’. During this period, a detailed case study of the organisation and inner workings of the ILO was undertaken, which followed Burawoy’s (1998) extended case method. This method ‘applies reflexive science to ethnography in order to extract the general from the unique, to move from the “micro” to the “macro”, and to connect the present to the past in anticipation of the future, all by building on pre-existing theory’ (Burawoy 1998 p.5). In addition, as Watson (2011 p.212) states: ‘reflexivity is necessary because the researcher can never be “free” of culture, discourse or existing theory. This is true when they are making sense of the research experience as it happens. It is equally true when they subsequently write about it’. Several studies on the ILO have been produced by former ILO officials (e.g. Langille 2005; Standing 2008; Maupain 2013) however, regardless of their contribution to our understanding of the role of the ILO (elaborated in Chapter 4), past research has not combined both field and headquarters experience. A diary of events was kept whilst working for the ILO and in the text that follows, ‘PAO Notes’ refer to events that took place, direct quotes from ILO officials or consensus points in the Office.

Table 3.2: Timeline of period working for and with the ILO

| Period | Position | Outcomes and sectoral focus |
|-----------------------|---|--|
| January–June 2013 | Intern (Maritime and Transport) | Promoting the employment of women in the transport sector. Preparation for the Maritime Labour Convention (MLC) coming ‘into force’. |
| July–December 2013 | Special Short Term (Under direct supervision of the Director) | Global supply chains and plantations. |
| January–June 2014 | Consultant (Rural Economy) | Drafted six country studies (plantation sector). |
| July–December 2014 | Special Short Term (Manufacturing, Mining and Energy) | Research on global supply chains and work on the plantations diagnostic process. |
| February–April 2015 | Consultant (Global Supply Chains) | Good practices by multinational enterprises in the promotion of decent work in the global tea supply chain (Thomas 2016). |
| August–September 2015 | Consultant (Rural Economy) | Data collection in Sri Lanka and data analysis. |
| January 2016 | Consultant (Global Supply Chains) | Drafting the ILC discussion report (ILC.105/6). |
| February 2016 | Consultant (Rural Economy) | Drafting policy guidelines on the agro-food sector (ILO 2016a). |
| May–June 2016 | Special Short Term (Global Supply Chains) | Note-taking and assisting the drafting of Conclusions at the ILC (ILC.105/PR/14-1). |

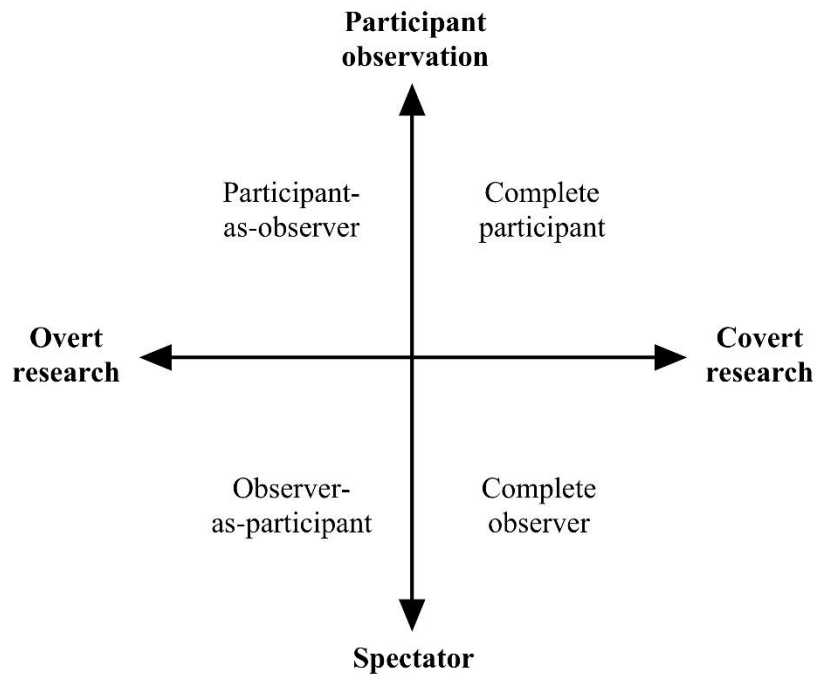
Using participant observation enables ‘the researcher to share their experiences by not merely observing what is happening but also feeling it’ (Gill and Johnson 2010 p.161). As Watson (2011 p.204) stresses: ‘we cannot really learn a lot about what “actually happens” or about “how things work” in organizations without doing the intensive type of close-observational or participative research that is central to ethnographic endeavour’ (see also Béland and Orenstein 2013 p.137), and ‘nobody can really understand the meanings of the words in that domain who does not understand the social institutions or the structures of experience which they presuppose’ (Fillmore 1982 p.31). Being an ‘insider’ is especially important for understanding the ‘meaning context’ of a UN agency such as the ILO where language is often ‘understated’. For example, if employers suggest that discussion of a particular issue is ‘premature’, this is interpreted by ILO officials as the employers being

‘adamantly opposed’ to any discussion (Baccaro and Mele 2012 p.214). If the ILC records ‘with concern’ or ‘with regret’ the behaviour of a member State, this is understood to mean ‘serious reservations’. As Helfer (2006 p.702) notes, such ‘exquisitely enigmatic condemnation of states may have been intelligible to old ILO hands, but [was] hardly comprehensible to those outside the organization’.

As a participant observer, I became ‘well versed’ in ILO speak. In fact, one of my tasks was to ‘translate’ the verbatim record of ILO meetings into acceptable (tripartite approved) text. As a result, I took on the role of a ‘participant-as-observer’ (top-left quadrant as depicted in Figure 3.1). However, as Douglas (1976 p.57) states:

‘all competent adults are assumed to know that there are at least four major problems lying in the way of getting at social reality by asking people what is going on and that these problems must be dealt with if one is to avoid being taken in, duped, deceived, used, put on, fooled, suckered, made the patsy, left holding the bag, fronted out and so on. These four problems are (1) misinformation, (2) evasions, (3) lies, and (4) fronts.’

Figure 3.1: Taxonomy of field roles



Source: Gill and Johnson (2010 p.167)

Participant observation can be used to penetrate these complex problems. According to Goffman (1969) participant observation allows the researcher to gain access to the ‘back stage’, shedding light on the organisational realities that are hidden ‘behind the curtain’. However, as Gill and Johnson (2010 p.164) state, ‘there is also imminent danger that, by becoming embroiled in the everyday lives of members, the researcher internalises members’ culture and becomes unable to take a dispassionate view of events and unintentionally discards the researcher elements of the field role’. Hence, I was conscious of the need to retain a ‘social and intellectual distance’ from the ILO, maintaining my status as a Cardiff University researcher and throughout this period the research was overt. This was less problematic than an ‘outsider’ might assume as the ILO Office is staffed by representatives from academia, trade unions, employers and governments and they often retain some ‘allegiance’ to their previous roles and do not necessarily identify themselves fully within the ILO (PAO Notes). In addition, throughout the period of participant observation, the interpretation of myself ‘on the inside’ was ‘tested’ against the perspective of my supervisor ‘on the outside’,²⁵ generating an iterative process of reflection and abduction (i.e. empirical observations were connected to extant theoretical ideas to generate novel conceptual insight).

Participant observation was conducted by first taking on the role of an intern in the Sectoral Policies Department (SECTOR)²⁶ and later as a consultant and ‘special short-term’ staff member.²⁷ I participated in many of the meetings on the plantations sector and the emergence of global supply chains and their impact on the world of work. I had innumerable informal interactions/meetings with ILO officials that

²⁵ My supervisor was a Visiting Academic Fellow at the ILO in 2011 and is the author of numerous reports, discussion papers, social dialogue manuals and training guidelines for the ILO (e.g. Turnbull 1999; Turnbull 2006; Turnbull 2013).

²⁶ The Sectoral Policies Department (SECTOR) is one of six policy Departments of the ILO and is home to more than 30 international civil servants specialising in specific economic sectors. The Department has a rich history dating back to the 1970s and was originally charged with organising industrial committees for the tripartite constituents to debate matters of importance. As a result of significant research needs, the Department evolved into a home for sector specialists and has broadened its mandate to include a multitude of technical cooperation projects whilst still organising numerous sectoral meetings (Weisband 1996). SECTOR’s objective is to promote social dialogue at the sectoral level and to facilitate the exchange of information among the ILO’s constituents on labour and social developments concerning particular economic sectors. SECTOR covers 22 economic sectors organised into four units, namely: Maritime and Transport; Food, Agriculture, Construction and Tourism; Services; and Manufacturing, Mining and Energy.

²⁷ Under special short-term assignments I was employed as an International Civil Servant with the ILO. Consultants sign a different contract that does not require a statement of allegiance to the Organization.

contributed to my PAO Notes. The first six months (January-June 2013) were spent employed as an intern by the Maritime and Transport Unit.²⁸ The work focussed on research on promoting the employment of women in the transport sector, which involved input into two publications (Turnbull 2013; Turnbull et al. 2013). In addition, I was involved in note-taking and meeting preparations, including the design of two presentations for two global dialogue forums²⁹ on *The Effects of the Global Economic Crisis on the Civil Aviation Industry* (20-22 February 2013) and *The Promotion of the Work in Fishing Convention, 2007 (C.188)* (15-17 May 2013) both held at the ILO headquarters in Geneva. These meetings have been defined as ‘industrial relations in action’ (PAO Notes) and enabled observation of how each of the ILO’s tripartite constituents, in particular the International Organization of Employers (IOE) and International Trade Union Confederation (ITUC), engaged with each other on the global level on a set of politically sensitive issues.

Following the period as an intern in the Maritime and Transport Unit, six months (July-December 2013) were spent as a special short-term official (international civil servant) under direct supervision of the Director of SECTOR. Work was split evenly between the newly adopted Area of Critical Importance (ACI)³⁰ on Decent Work in the Rural Economy and preparation for the ILC discussion item in 2016 on Decent Work in Global Supply Chains. In addition, I participated in three sectoral meetings: *Meeting of Experts to Adopt Guidelines on the Training of Ship’s Cooks* (23-27 September 2013);³¹ *Meeting of Experts on Policy Guidelines on the Promotion of*

²⁸ My MSc thesis was on the Maritime Labour Convention and hence I originally worked for the maritime and transport unit who were preparing for the Convention coming into force in August 2013.

²⁹ Sectoral meetings take on many forms. The most common is the global dialogue forum that invites ILO tripartite constituents to engage with an agenda of pertinent discussion points on the sector in question. The outcome of global dialogue forums is typically a list of consensus points that includes recommendations for future action by the ILO and its constituents.

³⁰ The ACIs, along with the restructuring of the Organization, were the newly appointed D-Gs first actions upon taking office. Eight ACIs were adopted by the ILO’s tripartite constituents, specifically: (1) promoting more and better jobs for inclusive jobs, (2) jobs and skills for youth, (3) creating and extending social protection floors, (4) productivity and working conditions in small and medium-sized enterprises (SMEs), (5) decent work in the rural economy, (6) formalisation of the informal economy, (7) strengthening workplace compliance through labour inspection, and (8) protection of workers from unacceptable forms of work. Each ACI included representatives from each Department and Regional Office of the ILO and were an attempt to break down the ‘silos’ of work previously established by the former D-G. The ACIs were awarded significant resources to be employed and were led under the auspices of a policy Department Director (in the case of the rural economy, the Director of SECTOR headed up the activities).

³¹ I also contributed to the draft guidelines that were submitted to this meeting. The earlier draft was produced by a group of Danish consultants who used Google Translate to translate the document (from

Decent Work for Early Childhood Personnel (12-15 November 2013); and *Global Dialogue Forum on Initiatives to Promote Decent and Productive Work in the Chemical Industry* (26-28 November 2013).³²

The ACI on the rural economy was split into three thematic areas: vulnerable and disadvantaged populations; supply chains; and plantations. As a short-term official, I worked on the plantations thematic area. This included writing policy documents and country studies. In addition, two retreats were organised under the remit of the ACI, one in the ILO's International Training Centre (ITC-ILO) in Turin (July 2013) and an off-site week-long meeting in Chiang Rai, Thailand (December 2013) both of which I attended. The two meetings were for ILO staff only and included representatives of every Department and Regional Office of the ILO. The focus of discussions was on the policy direction of the ACI and funding opportunities. These meetings provided an insight into the way in which policies and activities were coordinated and established within the ILO's headquarters and field operations.

For the ILC 2016 agenda item on decent work in global supply chains, I contributed to several policy documents that were submitted to the ILO's Governing Body, including the text that provided the substance and structure of the discussion following its adoption (GB.319/INS/2 and GB.320/INS/2). The discussion item for the ILC 2016 was adopted in October 2013, thus I was extensively involved in providing the necessary background research to help SECTOR prepare for the ILC discussion. This included several background documents and papers on such topics as actions by other international agencies and good practices by multinational enterprises (MNEs) in a select number of sectors (e.g. ILO 2016d). I was requested to attend (special short-term contract) the ILC discussion in June 2016 and was tasked with transcribing delegate speeches as well as assisting in drafting the Conclusions of the discussion for the plenary.

Danish to English) and thus significant time was spent correcting the consultants' syntax and 'mistakes'. In one section of the draft guidelines it noted that ships cooks should have an understanding of how to cook pets (PAO Notes)!

³² I was the principal report writer during this meeting.

The transition from intern to international civil servant involved a move away from a ‘observer-as-participant’ to a ‘participant-as-observer’ (Gill and Johnson 2010 p.167, a move from the bottom-left quadrant to the top-left quadrant in Figure 3.1) and action researcher, with the potential to influence decisions that impacted the ILO reflecting my commitment to the observation of Huzzard and Björkman (2012 p.132) that ‘it is not enough to understand the world, there is also a responsibility to change the world’. The ‘participant-as-observer’ is much better placed to understand ‘what is said’ and ‘how things work’ when employed alongside other social actors who are evidently ‘not automata acting out the parts the theorist has set for them’ (Crouch 2005 p.37). I was employed by the ILO as a member of staff who played a significant role in several ‘ground breaking’ initiatives that required the ILO to work outside its traditional mandate. This meant that instead of research *on* the ILO or research *for* the ILO, I was in fact researching *with* the Organization on topics not previously considered within its remit (Denis and Lehoux 2009). I acted as a ‘change agent’ (Huzzard and Björkman 2012) on several occasions, including ‘nudging’ the way the ILO approached the issue of supply chains.³³ In addition, for the work on the plantation sector I took primary responsibility for designing the questionnaire, facilitated its collection, led several of the focus group discussions and produced the final national action plan that was debated by the tripartite constituents. The link between action research and critical realism is an effective strategy as ‘there is concordance between critical realist premises and action research with its cyclical inquiry and advancement of social change’ (Houston 2010 p.73; see also Brook and Darlington 2013; Ram et al. 2015), where the overall validity of the research rests upon the extent to which it is ‘practically adequate’ (Sayer 2000).

I engaged in action research by seeking ‘to create participative communities of inquiry ... [through] ... a practice of participation, engaging those who might

³³ A clear example of this was encouraging the ILO to adopt language that was common in the academic community but rarely used within the ILO. The term ‘economic and social upgrading’, which is significant to GPN theory, was an easy way to conceptualise the role of the ILO in promoting decent work in global supply chains. Some authors have gone as far to suggest that the term decent work is best understood as the process of mutually reinforcing social and economic upgrading (Selwyn 2013). I regularly used this term in both meetings and background documents that I had produced for the ILO. By the time I left the ILO, the term ‘economic and social upgrading’ became part of the ILO’s discourse and sections on both forms of upgrading were in the final discussion report to the ILC in 2016 (ILC.105/6 p.27)

otherwise be subjects of research or recipients of interventions to a greater or lesser extent as co-researchers' (Reason and Bradbury 2008 p.1). The aim was not just to draw theoretical insight from 'naturally occurring' data, but also to change the way that participants think about or act in the situation on a matter that is a genuine concern to the organisational participants over which they need to act (Eden and Huxham 2013 p.393), with a 'much stronger emphasis on both action and collaboration' (Huzzard and Björkman 2012 p.163). Most importantly, by engaging in action research I was committed to advancing the research on labour standards in a manner that has some significant implications for the ILO and its methods of action, whilst being 'overtly partisan and active on the side of the marginalized and labour' (Brook and Darlington 2013 p.233).

While not a direct function of position, ideational power is heavily based on position *qua* position. Not surprisingly, my ideas more often fell on 'stony ground' and it was not within my remit to steer the path of the ILO's decision-making, although I regularly offered suggestions and advice on potential compromises, and while some were embraced many more were ignored. At times I felt 'in charge' of my encounters with ILO officials, but in others I felt out of control and forced to adopt the role of an international civil servant, hence I was 'forced out of the comfortable habitus of the university and into a new world' (Gilmore and Kenny 2015 p.72).

Between January and June 2014, I took on the role of a consultant³⁴ and produced several research-related papers. This included sector/country studies on tea (Malawi and Sri Lanka), palm oil (Ghana and Indonesia) and bananas (Panama and the Dominican Republic). These studies were produced in preparation for the interventions in the field that would take place in 2015 (under the ACI on the rural economy). In addition, I produced an analytical background document³⁵ on decent

³⁴ There were several reasons for changing roles to a consultant. First, was the desire to dedicate more time to my PhD research, working for the ILO only 75 per cent of my time. Secondly, ILO employment contracts stipulated that following a special short-term contract the individual must take a six-month break. To circumvent this practice a consultancy contract was agreed during this six-month break.

³⁵ The final document – a desk-review relying on academic sources – was never published for external or internal use due to its 'sensitivities'. Unfortunately, the final document was perceived to involve too much 'finger pointing' in the direction of the employers and hence was not shared (PAO Notes).

work in global supply chains to assist the task team's preparation.³⁶ To grasp the extensive literature on supply chains (both inside and out of academia) an annotated bibliography was produced including reviews of over 100 academic texts. This particular document was widely circulated within the Office and was an effective way to keep up-to-date with the literature on GPNs whilst working for the ILO. I also participated in two sectoral meetings: *Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service* (2-3 April 2014); and *Global Dialogue Forum on Employment Relationships in the Media and Culture Sector* (14-15 May 2014).

From July to December 2014, I again took on the responsibility of a special short-term official and international civil servant under supervision of the task team leader for the ILC agenda item on decent work in global supply chains. During this period, a 'trends and developments' report on the plantations sector was produced.³⁷ Most importantly, it was during this period that the diagnostic process³⁸ (the questionnaires and focus group discussions), which would be implemented in Sri Lanka and Indonesia, were designed. In addition, meetings were held with a multitude of international organisations working on the topic of supply/value chains including the World Economic Forum, United Nations Conference on Trade and Development (UNCTAD) and the European Commission. Policy documents were written to secure funds from several governments and meetings were held with both the Norwegian and Dutch Missions in Geneva. Three sectoral meetings were attended: *Global Dialogue Forum on Wages and Working Hours in the Textiles, Clothing, Leather and Footwear Industries* (23-25 September 2014); *Meeting on Experts on Maritime Occupational Safety and Health* (13-17 October 2014);³⁹ and *Global Dialogue Forum on the Adaptability of Companies to Deal with Fluctuating Demands and the Incidence of*

³⁶ A global task team was established for the ILC discussion in 2016 at the request of the tripartite constituents. This high-level team included representatives from all Departments and each Regional Office.

³⁷ Similar to the problems outlined in relation to the background document for the supply chain discussion (see footnote 35), this trends and developments paper was never published because of the sensitivity of the information and reluctance on the part of the employers to agree to publication of a document that relied heavily on advocacy reports (the primary source of research).

³⁸ The ILO refers to action in the field as a 'diagnostic process'. This is in relation to not simply describing the prevalence of (in)decent work but to 'diagnose' and ultimately 'remedy' the conditions of work.

³⁹ I was one of the principal report writers for the duration of this meeting.

Temporary and Other Forms of Employment in Electronics (9-11 December 2014).⁴⁰

In December 2014, I left the ILO in Geneva and returned to the UK to complete work on my PhD.

SECTOR proved to be an ideal site for in-depth research on the ILO, connecting both with the global priorities of the Organization and its constituents, as well as the varied policies and practices found in different industrial sectors. As the work of SECTOR is almost entirely financed from the ILO's regular budget allocated by the Governing Body, the Department reflects the priorities of the tripartite constituents.⁴¹ However, although the plethora of sectoral meetings have been described as 'industrial relations in action' (PAO Notes) and constituents bargain over a number of 'points of consensus', this is not bargaining that leads to a collective agreement. The points agreed are not legally binding or enforceable but rather a list that each constituent can throw out of the window once the meeting is closed, illustrated by the significant number of 'dormant' (literally sleeping at times) government representatives during the meetings (PAO Notes). As one ILO official noted, these meetings are like 'professional wrestling' (PAO Notes). Specific words are debated on an almost pedantic level and the outcome is closer to, as one ILO official put it, 'points of common sense' as much as consensus (PAO Notes).⁴² Conflict is not just solely between workers and employers though. Employer representatives have clashed with each other especially when their members go against the 'party line' and are willing to listen to the workers rather than ensure their bosses (the secretariat of the IOE) are suitably pleased with the result.⁴³ In addition, the employers that do attend are, as expressed by one of their members, the 'good guys' (PAO Notes) and typically represent the (decent) exception rather than the (indecent) rule.

⁴⁰ I contributed to the 'issues paper' that was submitted to this meeting (ILO 2014c).

⁴¹ As opposed to technical cooperation undertaken by the ILO, which reflects the priorities of donors and particular member States (see Appendix 1 on funding in the ILO).

⁴² For example, in the 2014 global dialogue forum on the textile, clothing, leather and footwear (TCLF) sector at the ILO one particular point of consensus – 'production in the TCLF sector is truly globalized and therefore social dialogue can profit from participation of international actors, such as buyers' – was hailed as a significant step for tripartite consensus (PAO Notes).

⁴³ For example, it was something of a shock to one of the employer representative from IOE when one of the national employer associations voiced their support for working with their trade union counterpart (PAO Notes).

Following my departure from Geneva, I continued to work on several projects for the ILO (see Table 3.2). The final part of the research was conducted in Sri Lanka (22 August to 5 September 2015). During this time, I was an external collaborator (consultant) assisting in the diagnostic process in the field, participating in the focus group discussions. In addition, I took responsibility for analysing the data and compiling the report and national action plan that was discussed in Colombo, Sri Lanka in December 2015. In this respect, I had a (minor) role in policy formulation in the sector.

The foremost advantage of the participant-as-observer research was that I gained first-hand experience of the way in which policy was formulated at the ILO, as those inside would experience it. In other words, participant observation helped gain insight into the complexities of groups that would otherwise have remained invisible. As Ackroyd (2005 p.158) states, ‘the aim is to bring to light evidence of the way people – especially groups – understand their situation and act on these understandings’. Furthermore, working at the ILO shed light on the causal and generative mechanisms of the ILO informed by politics, personal interests, and the plethora of meetings with ILO officials and tripartite constituents, which I would have been blind to from the outside. In particular, when working at the ILO and later as a consultant I was exposed to, and on occasion challenged by the divergent interests of the tripartite constituents, particularly during the ILC discussion on supply chains (see Chapters 4 and 7).

A permanent record of all email correspondence to my official ILO address was maintained throughout the period of observation and after every meeting I attended, and following any other significant interaction with colleagues and tripartite constituents, reflective notes were recorded in a journal to highlight ‘who said what, to who, and why’, as well as any potential or actual impact on ideas, discourse and subsequent policy change. In addition, working ‘on the inside’ gave me access to the typescript of delegates’ speeches and the verbatim record of the ILC and other tripartite meetings.

Although the participant observation was overt, I was treated as a colleague rather than a researcher in all interactions with Office staff. As a result, connections

and networks were established which greatly facilitated the identification of the two country/sector case studies. However, even being inside the ILO did not give complete insight to the myriad of informal meetings, lunch-time and ‘water-cooler conversations’, telephone calls and email exchanges that take place and influence events and policy content (cf. Deacon 2013). As other academics working ‘inside’ the ILO have noted, ‘researchers are impossibly outside the loops and those in the loops do not see from inside one loop other equally significant loops and rarely have the time to reflect on their own role’ (Deacon 2013 p.6). Although I had time to reflect on my role I was certainly outside some of the important loops, in particular the closed-door meetings between employers and workers.⁴⁴

Whilst emotion is typically downplayed in extensive ethnographic research (Brannan 2011), my emotions were an intrinsically valuable part of the research process (see also Gilmore and Kenny 2015), especially in relation to the work undertaken in the field. My experience in the ILO was infused with a strong sense of attachment, warmth and belonging to the Organization and a shared sense of commitment to its goals. This coincided with feelings of guilt upon my departure and a sense of longing to return and consequently a challenge to my own identity (and ultimately test my future career plans) as an academic researcher. I experienced pleasure when attending to the work of the ILO when policies were adopted and implemented, coupled with significant frustration when ideas were not adopted. In being an academic researcher, I felt pulled in different ways in relation to how I was compelled to write my findings. Whilst there is a demand to write in an objective and detached manner, with my own involvement in the research remaining ‘unspoken’, this led to feelings of conflict, which were never fully solved. The importance of testing my insights from the ‘inside’ with my supervisor on the ‘outside’ was instrumental in engaging in self-reflexivity and finding a middle ground between objective and subjective reporting of the data.

To confirm and triangulate the ethnographic research, document analysis was used in relation to the evaluation of the ILO’s standard-setting role and its role within

⁴⁴ During the supply chain ILC discussion, for example, workers and employers had closed group meetings where they discussed their respective positions, which ILO staff were not allowed to attend.

the global economy. During the 2 years I was at the ILO I had access to some papers that I would not have been able to access from the outside. The ILO keeps most of its internal meetings ‘unrecorded’, particularly those between employers’ and workers’ organisations, which typically took place outside of the decision-making structures of the ILO. Whilst documents are concept dependent and have to be interpreted by the researcher, by and large they exist regardless of researchers’ interpretation of them (Sayer 1992 p.5). The importance of document analysis is that much of the ILO’s work is achieved through the creation of reports, recommendations, policy briefs and guidelines. As Garcia (2010 p.477) demonstrates, a simple Google search of the ‘ILO’ produces thousands of examples of governments, trade unions and employer associations that use these reports to enhance their claims. Whilst actors may not “‘mean what they say” in the sense that discursive output does not flow directly from cognition’ (Schneiberg and Clemens 2006 p.211), the official reports of discussion give significant insight into the framing of particular issues through thematic content analysis of the occurrence of certain key words (for example supply chains) or expressions in discourse (whether something is framed as ‘unjust’ or ‘business as usual’) produced by key actors (such as the D-G and the Office) (Cornelissen and Werner 2014). Consequently, these reports provide an unrivalled source of information for the determined researcher who delves into the historical and well-documented record.

Although the focus of my research is on the words in these documents, the meaning of these words only become fully comprehensible to those ‘inside’ the Organization. As Mosse (2011 p.12) notes: ‘Documents are not to be analysed as dead artefacts; they are alive with the social processes that produced them ... Documents contain hidden relational baggage; statements that are best understood as bargaining positions in ongoing disputes over policy within or between professional teams or as negotiating positions for future disagreements’. In the ILO, Conclusions of meetings and points of consensus become discursive ‘anchors’ for subsequent discussions, a record of what was agreed and recommendations for future action. As all official meetings at the ILO must have a record of proceedings, these documents provided an excellent source of insight into the ongoing disputes and compromises occurring within the Organization. They are also necessary to create an historical record of how

these processes evolved over time (who said what, to who, where and why). The first step for any new process in the ILO, whether a revitalised policy focus (for example the ACI on the rural economy) or a new agenda item not previously considered within its remit (for example the ILC on global supply chains) is the formation of ‘expert legitimacy’ of the Office to find out ‘how and why what works’.

3.5. (In)decent work cases

It is not merely enough to conduct participant observation at the ILO’s headquarters to understand the processes of how decent work is promoted and protected via international standards but to also analyse the effects of these standards in the field (the process of ILO action). Case studies of two specific GPNs were selected for this task. According to Wallerstein (2009 p.89), ‘studying commodity chains is ... like observing the operations of the human body by means of multiple tests for the physician ... We are measuring indirectly and imperfectly a total phenomenon that we cannot see directly no matter what we do’. In order to underline the importance of the social and institutional context, and in order to cover the highly pertinent contextual conditions, my research harnessed case studies as ‘an empirical enquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident’ (Yin 1994 p.13).

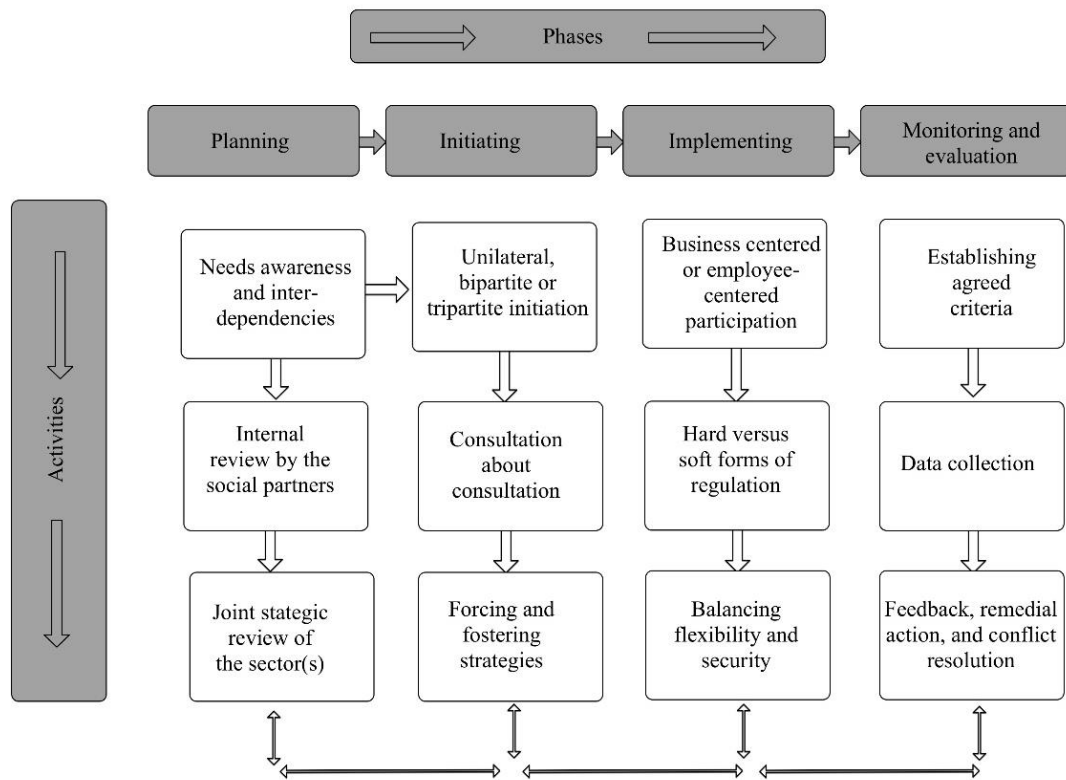
In order to address the research question, the research utilised the empirical case studies of Sri Lanka’s tea sector and Indonesia’s palm oil sector. Both sectors were prioritised following the restructuring of the ILO by the new D-G, Guy Ryder (see Chapter 4). Whilst at the ILO’s headquarters in Geneva I was involved in a global project on promoting ‘decent work in the plantation sector’, which included producing country studies of six countries (Ghana, Indonesia, Sri Lanka, Dominican Republic, Malawi, and Panama) and three commodities (tea, palm oil and bananas). While some agro-food supply chains have been extensively researched, most notably bananas (e.g. Robinson 2010; Riisgaard and Hammer 2011), flowers (e.g. Riisgaard 2009) and coffee (e.g. Neilson 2008), palm oil has been neglected. Thus, I carefully selected two country/sector cases, which current academic research has largely overlooked. I developed a questionnaire and topics for focus groups for application in Sri Lanka and

Indonesia, to be administered to the tripartite constituents as well as individual workers. In both countries, students with language skills administered the questionnaire survey. In the case of Sri Lanka, I was able to visit the country and participate directly in the data collection field research.

The reasons for the choice of these two case studies is outlined below (Sub-section 3.5.1). The purpose of this action research was to identify opportunities and challenges for promoting decent work in two plantation sectors as the basis for a national action plan for follow up by the ILO and the national constituents. Most ILO work in the field follows a process of action research. Figure 3.2 depicts this process in the case of situations of private-public sector partnership and industrial restructuring in ports, which encapsulates the ILO's generic approach to action research and by definition includes all the tripartite constituents. In the plantations sector fieldwork, constituents were involved in the process by offering suggestions on the questions that should be asked.⁴⁵ The diagnostic process involved conducting a quantitative questionnaire of plantation workers and focus group discussions with the tripartite constituents (workers, employers and governments) to highlight the challenges and opportunities for the promotion of decent work, which was then fed back several months later to the constituents who adopted an action plan. The questionnaire and focus group discussions were based on the Articles in the ILO's Plantations Convention, 1958 (C.110). The primary purpose (for the thesis) was to not necessarily explain why each sector experiences these decent work outcomes but rather to understand what this means for the ILO and its standard-setting role towards 'creating better knowledge to theorize and inform practice' (Coghlan and Brydon-Miller 2014 p.21).

⁴⁵ ILO staff tried to stop the constituents from being involved too heavily as this would undermine the effectiveness of the research to get to the 'heart of the problem' (i.e. the employers stressed the importance of asking questions regarding efficiency of the workers rather than their conditions of work, PAO Notes).

Figure 3.2: Phases and activities of ILO work in the field



Source: Turnbull (2006)

The case studies of Indonesia (palm oil) and Sri Lanka (tea) were chosen for a number of reasons. Harrison and Easton (2004 p.195) explain that the case study approach allows researchers ‘to attempt to tease out ever-deepening layers of reality’ where ‘the metaphor of peeling an onion comes to mind’. Case study research also enables the freedom to employ a range of methods and due to the cross-national nature of the research, case studies provide a sophisticated and embedded view of existing social realities and social actors’ responsibilities. However, the case study approach has received criticism, which includes: vague methods of data collection, research bias and the ‘impossibility of replication’ (Thomas 2010 p.131). Despite this, I draw upon empirical evidence of two countries in two sectors at one point in time and therefore, replication is not the purpose of this research but rather a ‘contextualised comparison’ between two cases (Locke and Thelen 1995). In fact, careful consideration is required when comparing a multitude of sectors within different national contexts, in particular *what* to compare and *how* (Turnbull and Sapsford 2001). As Turnbull and Sapsford (2001 p.135) state, ‘it is not sufficient to compare “apples and apples” as the process of eating fruit may be more important’. The focus is not on drawing comparisons

between the same practices or developments in different countries but rather the implications of different labour governance forms on the (in)decent work outcomes and ultimately privileging the voice of the marginalised in these sectors (Brook and Darlington 2013). These case studies are not supposed to be representative of their own sectors as a whole or even of all tea/palm oil plantations or in fact, representative of all ILO work in the field. Critical realist researchers seek to ‘generalize, not about populations, but about theoretical propositions’ (Montano and Szmigin 2005 p.367).

3.5.1. Selecting the (in)decent work cases

Yin’s (1994 pp.46–53) case study selection criteria was used to identify the cases where ‘any use of multiple-case designs should follow a replication, not a sampling logic ... The case should serve in a manner similar to multiple experiments, with similar results or contrasting results predicted explicitly at the outset of the investigation’. The case study is the specific commodity in the country in question, although nationally available data was used to establish the context and extent of any ‘decent work deficits’. There were several rationales for the choice of countries/sectors. First, and most practical, was that under the ACI on decent work in the rural economy, plantations had been targeted as a sector of increasing importance for the ILO’s work, both in terms of the number of workers employed and also their intimate connection to the global economy and potential for vertical governance. Plantations as an area of focus was first identified by The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Association (IUF) and as a show of ‘good faith’, SECTOR ensured that this topic became a thematic area under the newly established ACI.⁴⁶ The six countries and three commodities that were chosen by the ILO emerged through extensive negotiation and consultation with social partners and ILO Field Offices.⁴⁷ As Flyvbjerg (2006 p.229) states ‘when the objective is to achieve the greatest possible amount of information on a given problem or phenomenon, a representative case or a random sample may not be

⁴⁶ This is predominantly down to SECTOR’s close relationship with the global union federations (GUFs), who have in the past been instrumental in both promoting the importance of SECTOR’s work and helping to ensure certain items are put onto the policy agenda. It is no coincidence that SECTOR became one of the six policy Departments of the ILO in 2013 during the restructuring initiated by Guy Ryder, which was backed by significant support from the GUFs.

⁴⁷ Initially, the countries selected were based upon the importance of the commodity to the economy and the number of workers it employed. However, within the ILO, certain countries were ‘flavour of the month’ and others were ‘out of fashion’ (PAO Notes).

the most appropriate strategy'. Thus, Sri Lanka and Indonesia were chosen as priority cases over the others because, first, they are 'polar opposites' in terms of ratifications and enforcement of labour standards, the power of social partners, and initial perceptions of the 'decency' of work. With such polar opposites, the processes of interest are more likely to be 'transparently observable' (Eisenhardt 1989) and will 'reveal more information because they activate more actors and more basic mechanisms in the situation studied' (Flyvbjerg 2006 p.229). The 'polar opposite' nature of Sri Lanka and Indonesia was also one of the primary reasons behind the ILO's selection of these two countries/sectors. To ensure the satisfaction of all constituents, certain countries were chosen that constituted 'good' or 'bad' examples of the promotion of decent work to ensure balance throughout the project. Thus, regardless of the role of the commodity in the country, certain countries were chosen to showcase how decent work can be promoted effectively even within the rural economy, Sri Lanka being one such example (PAO Notes). Whilst the causal effect of the ILO (in)action in Indonesia was easy to identify (indecent work), in Sri Lanka the ILO's role was less transparent. However, the choice of Sri Lanka as a 'good case' by the ILO was expected to reveal 'best practice' in terms of effective horizontal and vertical governance.

In comparing two very different cases – acknowledging their differences in labour conditions, context and governance structures – I examined the common patterns to understand how labour governance is (un)successfully implemented and to draw lessons for the ILO's role. These cases are particularly well suited to provide insights on global labour governance and the various public, private and social forms of regulation that exist because of their connection to the global economy. Both countries are heavily reliant on their respective commodities and are in a competitive relationship with many other exporting countries to attract foreign investment. In addition, they provide appropriate test cases for the implementation of horizontal and vertical governance on the ground as they have been prioritised under the new D-G and from an action-research perspective, 'it is often more important to clarify the deeper causes behind a given problem and its consequences than to describe the symptoms of the problem and how frequently they occur' (Flyvbjerg 2006 p.229).

3.6. Surveying (in)decent work

Critical realism argues for a wide range of methods drawing on multiple forms of data (both quantitative and qualitative), through case studies (Brook and Darlington 2013). Thus, the case studies of decent work in Sri Lanka and Indonesia combined both quantitative and qualitative research techniques. I personally jointly directed the field work in Sri Lanka which lasted two weeks (22 August - 5 September 2015). The Indonesia mission (which I was unable to attend) was conducted in March 2015 (6 – 19) and was the first study using the methodology developed for the wider project of six countries and three commodities. In total, five questionnaires, which I designed in collaboration with other ILO staff in SECTOR, were administered, targeting all of the ILO's tripartite constituents as well as workers on plantations and smallholders. References to the questionnaires are reported as Q with the respective countries (SL = Sri Lanka, I = Indonesia) and the respondent (E = Employer, G = Government representative, TU = Trade Union member, WS = Worker Smallholder and WP = Worker Plantation). The five specific questionnaires were targeted at:

1. Workers in the plantation sector – Those engaged in picking palm oil fruit or plucking tea but also those engaged in processing. These are typically those workers at the lowest echelons of the GPN and the data are reported as QWP.
2. Workers in the smallholder sector – Smallholder farmers who typically employ workers on a casual basis or rely on their family's labour. Agricultural producers typically own less than five acres of land. These data are reported as QWS.
3. Trade unions – Individuals who are representatives of trade unions at either the national, regional or local level. These data are reported as QTU.
4. Employers – Individuals who are either employers such as plantation owners or members or representatives of employer organisations at the local/national level These data are reported as QE.
5. Governments – Either representatives of government ministries, labour inspectors or other civil servants acting on behalf of the government. These data are reported as QG.

In total, there were 165 questions, but because of the filtering out of non-relevant questions, each questionnaire had typically 30 questions to answer and took

approximately 15 minutes to administer (Appendix 2 details the questionnaire used for plantations workers in Sri Lanka, QSLWP). Each questionnaire was designed to be applicable to each of the countries and sectors in question, which allowed for closer comparisons between the countries and sectors. The survey questionnaires used predominantly closed questions, which were administered by students (see below) using Android tablets for direct data input. The questionnaire software ‘Survey To Go’,⁴⁸ allowed the use of tablets to capture the data, which could later be uploaded and synced to an online database for analysis at a later stage. The use of tablets significantly reduced the amount of time dedicated to data analysis. In addition, as the questionnaires were often administered in different languages in the same country (for example Sri Lanka has two official languages, Sinhalese and Tamil), it allowed the user to quickly switch between the desired languages. Finally, tablets were used as they automatically skipped questions that were not applicable.

The questionnaire covered demographic questions as well as specific questions on labour rights and was based on the Articles of the ILO’s Plantation Convention, 1958 (C.110). Although this is an historic Convention, much of its content is still relevant to this day (as demonstrated in Chapter 4). The questionnaires were based on the Articles of the Convention but also included two new sections on forced and child labour, which were not covered in the original Convention, to allow greater insight into the conditions of work.

The Plantations Convention, 1958 (C.110) includes 12 substantive Articles:

1. Engagement and recruitment of migrant workers;
2. Contracts of employment and penal sanctions;
3. Wages;
4. Annual holidays with pay;
5. Weekly rest;
6. Maternity protection;
7. Workmen’s compensation;
8. Right to organise and collective bargaining;

⁴⁸ ‘Survey To Go’ (<http://www.dooblo.net/>) is an application that allows the design of mobile surveys for Android or Windows Mobile. It includes cloud services to store the surveys.

9. Freedom of association;
10. Labour inspection;
11. Housing; and
12. Medical care;

These Articles were transposed into 11 questionnaire sections:

1. The engagement and recruitment of workers;⁴⁹
2. Contracts and working conditions;
3. Maternity protection;
4. Medical care and worker's compensation;
5. Housing;
6. Labour inspection;
7. Forced labour;
8. Discrimination;
9. Child labour;
10. Freedom of association and collective bargaining; and
11. Migrant workers

The questionnaires for workers on plantations and smallholders (QWP and QWS) were administered by approximately fifteen students from a local university in the host country.⁵⁰ Image 3.1 depicts this process on a tea plantation in Sri Lanka. Although students administered the questionnaire, ILO staff were able to oversee the process and the direct input of data on the tablets allowed immediate verification, to ensure that the students were not recording strange or inconsistent answers or if they were missing out questions. To ensure the quality of the questionnaires a two-day workshop was held in each country for the students where myself (in the case of Sri Lanka), another consultant and a representative from the ILO in Geneva trained the students on the ILO its values and Conventions, technical cooperation projects and the like, along with how to administer questionnaires and use the tablets. I took personal charge of soft skills training for the students and how to use the tablets. This included

⁴⁹ The Plantations Convention (C.110) includes several provisions tackling the transport of migrant workers. However, in the questionnaire survey these questions were not applicable as, in both Sri Lanka and Indonesia, workers were recruited at or near the place of employment (e.g. in the same province where they normally live) and did not require transport to work.

⁵⁰ In the case of Sri Lanka, the students were recruited from the Sabaragamuwa University of Sri Lanka.

teaching the students conflict resolution and team working skills, whilst ensuring they understood the importance of their work and contribution to their country's economy. An important aspect was that the students were told to be as objective as possible in administering the questionnaires and remain impassive if workers expressed emotion regarding the questions. As an example, in Indonesia, one of the students conducted a survey with a 12-year-old palm oil plantation worker but was inexpressive and continued to finish the questionnaire, giving valuable insights into the conditions of work of child labourers.

Image 3.1: A questionnaire survey taking place in Sri Lanka



The students were typically taken to the plantations where they would interview the workers, using the tablets to record responses, during the worker's lunch-time or other breaks. The tablets were later synced with the master database after each working day. The fifteen students conducted approximately 100 questionnaires per day between them. In total, 831 questionnaire responses were collected with workers and smallholders in Sri Lanka. In Indonesia, the final total was 983 questionnaires completed with workers and smallholders.

The ‘diagnostic’ process involved finding willing employers and trade unions who would allow access to the ILO. This was achieved through the use of the ILO’s Field Offices (Colombo and Jakarta respectively) and their contacts with employer and worker organisations. As the plantation selection process was agreed with the tripartite constituents, and most importantly was reliant on employers granting access to their plantation workers, it can reasonably be assumed that permission was only granted in a ‘best case scenario’ (i.e. where working conditions were most likely to be ‘decent’).

3.7. Getting to the heart of (in)decent work

Whilst the students conducted the questionnaire research, myself and a representative from the ILO Office in Geneva conducted focus group discussions, as conversations between participants requires some skill and time was a limiting factor as the field work in each country was only set to last two weeks in total. These discussions took place with employers, trade unions and government representatives as depicted in Image 3.2. Focus group discussions rely on ‘interaction with the group based on topics supplied by the researcher’ and the distinguishing feature of this research method is the insight and data produced by the interaction between participants (Morgan 1997 p.12). Focus group discussions were particularly useful for exploring the degree of consensus on a given topic and were used to triangulate the findings of the questionnaire surveys and to ‘diagnose’ the extent of (in)decent work. However, it should not be assumed that the individuals in a focus group are expressing their definitive individual view. They are speaking in a specific context, within a specific culture, and sometimes it was difficult to clearly identify an individual message.

Image 3.2: A focus group discussion taking place in Sri Lanka⁵¹



The focus groups had on average 15 participants and although the recommended number of people per group is typically six to ten (MacIntosh 1993), some researchers have used up to 15 people (Goss and Leinbach 1996). The focus group discussions were conducted in the local language(s)⁵² with real time interpretation and thus full transcription was not possible. While I am aware that this solution may have created an additional filter between the discussants and researcher, it certainly helped the participants to feel more comfortable, not only for the fact they could speak in their mother tongue but also because of the advantage of having an intermediary who is used to the local customs and knows how to address sensitive subjects in a polite and appropriate way. An important challenge that I faced was related to the need to establish a trusting relationship with the interviewees, given the highly sensitive nature of the topics on the agenda. By way of illustration, the taping of focus groups was abandoned early on because it clearly made the interviewees

⁵¹ Although focus group discussions are best conducted around an oval or round table this was not possible in the field.

⁵² In Sri Lanka, the two main languages that were used were Sinhalese and Tamil. In Indonesia, the local language is Bahasa.

uncomfortable – they talked much more freely ‘off record’. During the focus group discussions I sat and listened and made verbatim notes, which were immediately written up after the meeting.⁵³ The focus groups with employers were predominantly conducted on the plantations (in the manager’s office), the government group discussions were conducted at the local labour office whilst the focus group discussions with workers were conducted in local trade union meeting buildings (away from the plantation).

The purpose of these focus group discussions was to understand the perceptions of the ILO’s constituents, especially in terms of the tripartite constituents’ perception of plantation workers’ conditions of work and the sources of any decent work deficits. To this end, a scenario, story or ‘vignette’ was read out with a fictitious worker, employer or government official in the lead role (dependent on the participants) with an essential ‘story-line’ with minor differences of detail to fit the specific context (e.g. reference to tea picker rather than palm oil worker). Appendix 3 lists an example of the vignettes and follow up questions used for trade union officials in Sri Lanka. Each vignette was preceded by a scenario that the participants would answer based on their perceptions. An excerpt is included below of a vignette for trade union officials:

[Worker’s name] got a new job. She/he will work on a (commodity) plantation on the other border of the country. Her/him cousin got the job for her/him. [Worker’s name] was told to meet someone called [Employer’s name] for details about the journey, as they should cross the border during the night. [Worker’s name] was afraid but she/he didn’t have a choice; she/he needed to be strong for her family. ‘They need me’, he/she thought!

The follow-on questions were as follows:

1. Is this realistic?
2. How do plantations workers usually look for jobs?

⁵³ A colleague from the ILO and I conducted, on average, three focus group discussions per day and a significant period of time was spent travelling (because of the remoteness of the rural locations), which allowed for ample time to type up the notes in the car.

3. What should [Worker's name] do to prepare him/herself for the journey and new work?

Note: With this discussion, we want to know trade union officials' perceptions about (1) how workers find jobs (2) the process of recruitment for migrant workers.

Finch (1987 p.105) describes vignettes as 'short stories about hypothetical characters in specified circumstances, to whose situation the interviewee is invited to respond'. Vignettes were useful for the plantation research as they helped provide substance and 'thickness' (Sergi and Hallin 2011) to the research especially when considering power (Reed 2012). Furthermore, their selective and focussed nature is useful in unpacking *how* things happen as well as developing conceptual frameworks (e.g. Mantere and Vaara 2008). In the plantations sector the vignettes proved to be a less personal and therefore less threatening way of exploring sensitive topics, particularly as 'hypothetical third parties ha[ve] the effect of distancing the issues from the respondent and his or her own relationships' (Finch 1987 p.110). However, they are not necessarily a good predictor of actual behaviour: a vignette is not 'a means of predicting what a respondent actually would do in a similar situation' (Finch 1987 p.113).

The focus groups proved very useful in understanding the situation of plantation workers in the two countries in question and the perceptions of the social partners. In particular, they offered 'the opportunity to explore normative issues in a way which approximates to the complexities with which such issues are surrounded in reality, or, at least, comes closer to reflecting those complexities than other techniques commonly used in surveys' (Finch 1987 p.110). Often the scenarios enabled the constituents to discuss matters that would have been too sensitive if they had been asked direct questions. Each focus group discussion was then followed by asking the participants to fill in a short questionnaire with closed-ended questions (QTU, QE and QG). These paper-based questionnaires were then inputted into the same database as the worker questionnaires (QWP and QWS) captured by the students using the tablets.

In Sri Lanka, I personally conducted or contributed to 26 focus group discussions. Four of these were at the national level in Colombo with the national

employer organisations, the trade union leaders and representatives from the Ministry of Plantation Industries and Ministry of Plantation Infrastructure and Development. The remaining 22 focus groups were at the provincial or district level in selected locations in Colombo, Kandy, Kegalle, Nuwara Eliya and Ratnapura. Eight were with trade union representatives from the three major trade unions on the plantations, namely the Ceylon Workers Congress (CWC); the Lanka Jathika Estate Workers Union (LJEWU); and the Joint Plantation Trade Union Centre (JPTUC). Seven focus group discussions were with employers, typically the plantation owners who were members of the regional plantation companies. The focus group discussions with employers were typically conducted on the same plantation as where the students were administering the questionnaire to the workforce. One focus group discussion was with tea smallholder employers. The remaining seven were with government representatives who were predominantly labour inspectors but also included the executives of the Plantation Human Development Trust (PHDT).⁵⁴ In Indonesia, 13 focus group discussions were conducted. At the national level, three separate meetings were held with government officials, representatives of employers' and workers' organisations in Jakarta; three at the provincial level and seven at the local level in Aceh Tamiang, Langkat, Mandailing Natal and Serdang Bedagai. The typed notes from all the focus group discussions were made available for the analysis, as detailed in Chapter 5.

3.8. Data analysis

The robust analysis of data is a crucial part of any research that includes both quantitative and qualitative methods. The focus group discussions were analysed through the data analysis software NVivo to code the responses of the participants. The use of this package is consistent with the epistemological and ontological basis of the study, and is also used extensively by other qualitative researchers within the field of industrial relations (e.g. Taylor et al. 2003; Ross and Bamber 2009; Pulignano et al. 2015; Reinecke and Donaghey 2015). Further, the manner in which NVivo critically filters empirical data in line with the researcher's preferences is consistent with the

⁵⁴ Although not a government institution as such, the PHDT operates with government money to improve the infrastructure on the plantations. The PHDT is a tripartite organisation consisting of the government of Sri Lanka, the regional plantation companies and the plantation trade unions, overseen by the government to implement social development programmes to enhance the living conditions of the workers working on the plantations managed by the regional plantation companies.

choice of critical realism as a philosophical stance. The focus group discussions were not recorded or fully transcribed due to the language barrier but notes were typed based on real-time interpretation and later reviewed, elaborated and reflected upon. For the questionnaire surveys, the results were analysed using IBM SPSS. The questionnaire software (Survey To Go) enabled results to be exported directly to SPSS and coded accordingly, allowing basic descriptive statistics to be generated and subsequent regression analysis to be undertaken.⁵⁵

3.9. Conclusion

In summary, I used a combination of quantitative and qualitative methods including participant observation, questionnaires, focus group discussions and document analysis. The rural economy was identified as an area of critical importance to the ILO for its standard setting role as well as an input to the ILC discussion on global supply chains. Whilst the Plantations Convention C.110 was recognised as a relevant standard, it is not widely ratified, and thus I negotiated access to two ‘polar opposite’ cases that were selected from the possible six plantation sectors to address: how and under what conditions is the ILO able to (re)establish labour standards under the ‘Global Transformation’?

The following chapters discuss the data collected during the research. In the next chapter (4) I address the standard-setting role of the ILO informed by the 2 years of ‘insider’ research conducted at the global level at the ILO’s headquarters. Serendipitously this coincided with the appointment of Guy Ryder, which enabled an unprecedented insight into the changes taking place within the Organization. The case study of Indonesia’s palm oil sector (Chapter 5) establishes the challenges that exist when labour standards are not effectively enforced and the (in)decent work that exists in GPNs. In contrast, Sri Lanka’s tea sector (Chapter 6) illustrates the potential of labour standards in promoting and protecting decent work. In order not to look ‘too narrowly’ (Wallerstein 2009 p.89), especially when ‘measuring indirectly and imperfectly a total phenomenon that we cannot see directly no matter what we do’ (Wallerstein 2009 p.89), multiple tests were employed and the data were triangulated

⁵⁵ Given the predominance of nominal data produced by the questionnaire, the Chi-Square (χ^2) test was used to establish statistical significance (Bryman and Bell 2015 p.136).

in both Chapter 5 and 6. Whilst challenges to the data collection exist, I had unique access to the prevalence of (in)decent work in these two sectors under the umbrella of the ILO action in the field, which is significantly more extensive than an independent researcher would achieve.

4. ILO as a Standard-Setting Organisation

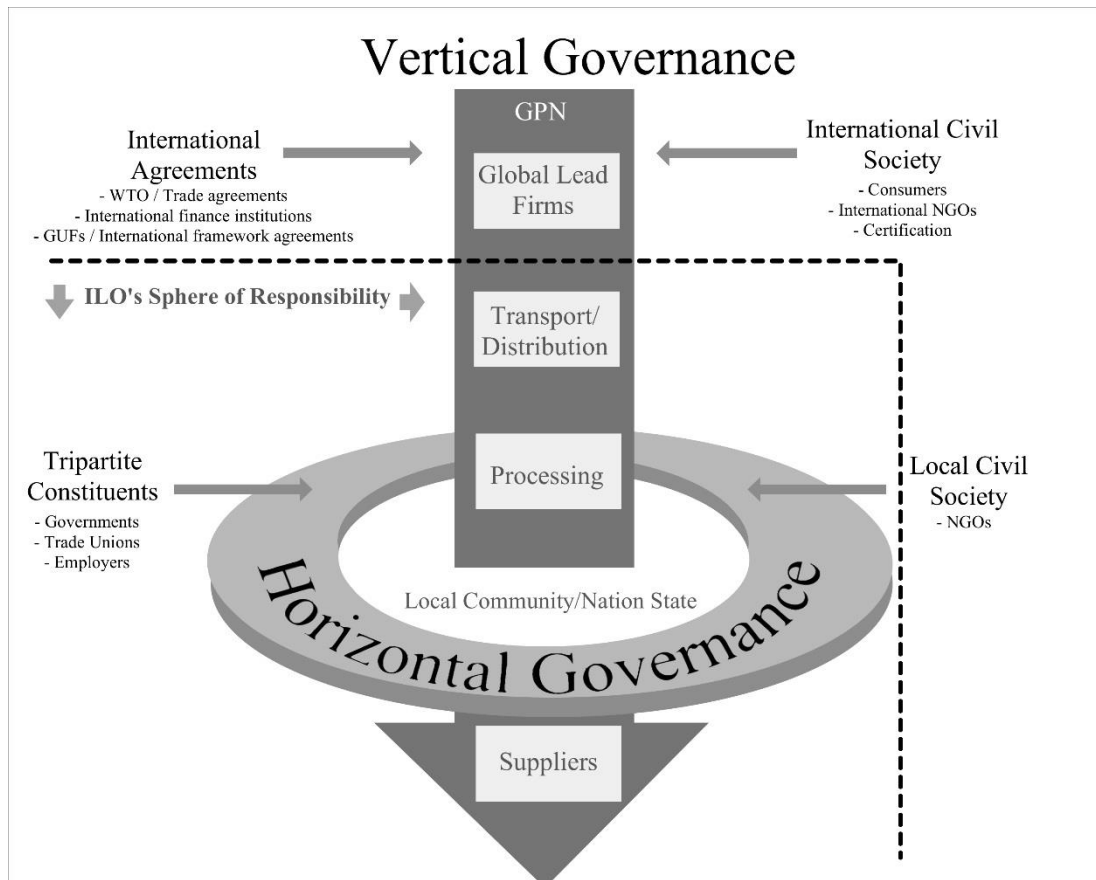
The ILO ‘is a testament to the past century of labourism trying to protect employees in the standard employment relationship ... in the early twenty-first century, labour *is* a commodity. And the ILO cannot do much about it’.

Guy Standing (2008 p.382 original emphasis).

4.1. Introduction

The role of the ILO as a standard-setting agency is investigated in this chapter based on the 2 years of ‘participant-as-observer’ action research at the ILO’s headquarters. While the ILO is much more than an international standard-setting organisation, it is this role, in particular, that is increasingly questioned in an age of ‘Global Transformation’. In fact, some critics suggest that the ILO is no more than ‘an agency *for* globalisation’ – not only playing by the new rules determined by trans-national capital, but facilitating the global dominance of conglomerates who orchestrate production networks that ‘dissect’ both national regulations of employment and international labour standards (Standing 2008). As demonstrated in Chapter 2, labour standards were regulated on a national basis throughout most of the twentieth century, however these national strategies have been undermined because of the expansion of global production networks (GPNs). The ILO essentially works through and bolsters horizontal governance (within sovereign borders) whereas the convoluted lines of vertical governance (across borders) have rendered the Organization’s current strategies largely impotent. To revisit Figure 2.1 from Chapter 2, the dotted line in Figure 4.1 delineates the ILO’s sphere of responsibility. The ILO works through its tripartite constituents (the left-hand side of the visual map, Figure 4.1) and cannot fully engage with civil society organisations (CSOs) and non-governmental organisations (NGOs) (Baccaro and Mele 2012) (the right-hand side of the visual map, Figure 4.1) while transnational corporations (TNCs) stand ‘above and beyond’ the ILO’s sphere of responsibility.

Figure 4.1: Horizontal and vertical governance of global production networks and the ILO's sphere of responsibility



In the context of the Global Transformation, the ILO's standard-setting role must be considered in relation to:

- recent trends in adoption, ratification, and coverage of international labour standards, as well as enforcement of these standards;
- the impact of the *Declaration on Fundamental Principles and Rights at Work* (1998) and the *Decent Work Agenda* (1999) in terms of how, and to what extent, this shifted the strategic orientation and direction of the ILO, and to what effect; and
- the impact of the most recent reorganisation of the ILO towards a response to GPNs under the new Director-General (D-G).

Although history casts its shadow forward (Helfer 2006 p.694; Baccaro and Mele 2012 p.218) the focus of this chapter is on the most recent period in the ILO's history from 1998 to 2016. This period has been particularly tumultuous, with three

new D-Gs, and a shifting agenda from civil society to decent work to global supply chains, as mapped in Table 4.1. A brief history of the Organization and a simple timeline, from 1919 to present, is provided in Appendix 4.

Table 4.1: Director-Generals during the Global Transformation (1989-present)

| Director-General, period in office and previous position(s) | Policy initiatives |
|--|--|
| Michelle Hansenne (1989-1998). Previously Minister for French Culture (1979-1981), Employment and Labour (1981-1988) and Civil Service (1988-1999) in Belgium. | The Declaration on Fundamental Principles and Rights at work (1998). |
| Juan Somavía (1998-2012). Previously Permanent Representative of Chile to the United Nations (1990-1998). | Decent Work Agenda (1999); Declaration on Social Justice for a Fair Globalization (2008). |
| Guy Ryder (2012-present). Previously General Secretary of the International Confederation of Free Trade Unions (2002-2006) and General Secretary of the International Trade Union Confederation (2006-2010). | Areas of Critical Importance (ACIs) and restructuring of the Organization (2013); Enterprise initiative (2014); global supply chain discussion (ILC 2016). |

The focus here is on standard-setting, but it is difficult (in theory and in practice) to separate this activity from the ILO’s role as a ‘knowledge agency’ (the research necessary to determine appropriate standards) and a development agency (the implementation of standards and their role in social and economic upgrading). In particular, these roles have been prioritised over standard-setting in recent years (Standing 2008). However, standard-setting is the traditional role of the ILO, involving the negotiation of international Conventions that become part of national law (and thereby public horizontal governance) once a member State has ratified. A central question is whether this role is still relevant to, and effective in, an age of Global Transformation. To address this question, the following section (4.2) considers the traditional role of the ILO and the standards established during the Great Transformation, assessing the ILO’s enforcement mechanisms and identifying the factors that explain the diminution of the ILO’s standard-setting role. Attention is drawn to a particular sectoral standard – the Plantations Convention, 1958 (C.110) – which was established during the Great Transformation but still relevant to the current world of work. This is followed by an analysis of the ILO’s standards in an age of

Global Transformation (Section 4.3) with a focus on the most recent changes within the Organization temporally bracketed by the tenure of the two former D-Gs and the current D-G. This includes a ‘rich’ narrative on the adoption of the *Declaration on the Fundamental Principles and Rights at Work* (1998) and the *Decent Work Agenda* (1999). This chapter draws primarily on document analysis and ‘participant-as-observer’ research at the ILO between January 2013 and December 2014. The latter, in particular, informs the analysis of the most recent reorganisation of the ILO under the Directorship of Guy Ryder, which is covered in the final sub-section (4.3.4). The focus of this chapter is on international labour standards, global labour governance and how the emergence of GPNs has changed the agenda in the ILO.

4.2. Standard-setting during the Great Transformation

‘Regulation extends and restricts freedom; only the balance of the freedoms that are lost and won are significant.’

Karl Polanyi (1944 p.262)

At the Singapore Ministerial meeting in 1996, the WTO stated that: ‘We renew our commitment to the observance of internationally recognised labor standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards and we affirm our support of its work in promoting them’ (WTO 1996), knowing full well that the ILO has no effective power of enforcement. Whilst the ILO’s enforcement power may be lacking (Sub-section 4.2.1), since 1919 the Organization has produced an impressive body of 189 Conventions and 204 Recommendations with the aim to increase equity and collective voice for workers. At the International Labour Conference (ILC) in 2001, an assessment was carried out as to whether the Conventions adopted by the ILO were still relevant. This led to 77 Conventions and 84 Recommendations being classified as ‘up-to date’ instruments.

Traditionally, the ILO’s role has been the adoption of Conventions and Recommendations on a range of pertinent employment and industrial relations issues such as maternity leave, working time, forced labour, discrimination, hours of rest, occupational safety and health and collective bargaining, as well as sector-specific instruments such as the Plantations Convention, 1958 (C.110), Safety and Health in

Agriculture, 2001 (C.184), the Maritime Labour Convention, 2006 and the Domestic Workers Convention, 2011 (C.189) (a full list of ‘up-to-date’ ILO Conventions and the number of ratifications can be found in Appendix 5). ILO Conventions are legally binding instruments that member States can ratify, whereas Recommendations serve as non-binding guidelines and are merely ‘communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise’ (ILO 1919). Generally, Conventions are accompanied by a supporting Recommendation but can also deal with subjects that are not (yet) suited to or appropriate for a Convention. These Conventions constitute what is broadly termed the International Labour Code, or according to the ILO, the ‘rules of the game’ (ILO 2014a), a system of labour governance based on universality (of membership), flexibility (of Conventions) and centralisation (of monitoring) (Helfer 2006 p.694). In other words, it is ‘a system which relies purely and solely on country by country national obligation [and] horizontal acceptance of responsibility state by state’ (Ryder 2014). The ILO’s standard-setting regime is considered exemplary in the field of international law and a model for other human rights regimes (Alston 2004 p.448). The adoption of international labour standards remains the *raison d’être* of the ILO, despite the sharp decline in the number of Conventions adopted in recent years.

The adoption of Conventions and Recommendations is a lengthy process as demonstrated in the visual map of Figure 4.2 and is readily recognisable as a process of action research (problem identification and joint diagnosis) involving the Office and the tripartite constituents. Every June, over 5,000 delegates⁵⁶ representing the ILO’s three constituents encamp in Geneva for the annual International Labour Conference (ILC) where Conventions and Recommendations are adopted and key social and labour questions are discussed. This annual Conference was described by early pioneers as the ‘parliament of labour’ (Morse 1969a), a view reiterated by Guy Ryder at the ILC in 2015 (Ryder 2015b). Typically, draft Conventions and Recommendations are submitted to the ILC for the constituents to discuss. Preceding the adoption of a Convention, consensus is built over several years. Initially a request for a standard-setting item is put on the agenda of the ILO’s Governing Body, which may debate the item for some time (sometimes years) before the item appears on the agenda of the

⁵⁶ The ILC in June 2016 had 5,982 delegates attending from all 187 ILO member States.

ILC. Although the power to issue regulatory instruments rests solely with the ILC, the Governing Body of the ILO, a much more restricted group of 28 governments, 14 employer and 14 worker representatives, decides the agenda of the conference.⁵⁷ Once consensus is established, the item is placed on the agenda of the ILC, which is typically set 2-3 years in advance. Conventions and Recommendations are drafted by the Office following an extensive discussion with the social partners, informed by research and analysis conducted by the Office (the ‘knowledge agency’ role of the Organization). Proposals for a new standard are then discussed at length by the constituents who debate and suggest amendments over two successive sessions of the ILC, and only then is it expected to result in a Convention or Recommendation (for example, the MLC took a total of 6 years from its initial proposal to the Governing Body to its adoption in 2006).⁵⁸ Even when agreement is reached on the text of a Convention, it is then put to a vote to determine whether it should be adopted.⁵⁹ Voting at the ILC follows the principles of tripartism with workers and employers taking 25 per cent of the votes each while governments have the remaining 50 per cent. The employers and workers are likely to vote as a group, however governments either vote as part of their region⁶⁰ or in their individual capacity. Albert Thomas, the ILO’s first D-G (1919-1932), likened the Organization to a car in which the workers acted as the engine, governments as the steering wheel, and employers as the brakes (quoted by Maupain 2013 pp.123–214). In effect, therefore, the adoption of a new standard can rely on the votes of the workers (25 per cent), can assume the (initial) opposition of employers (25 per cent), and needs a ‘critical mass’ of governments to support its adoption (50 per cent).

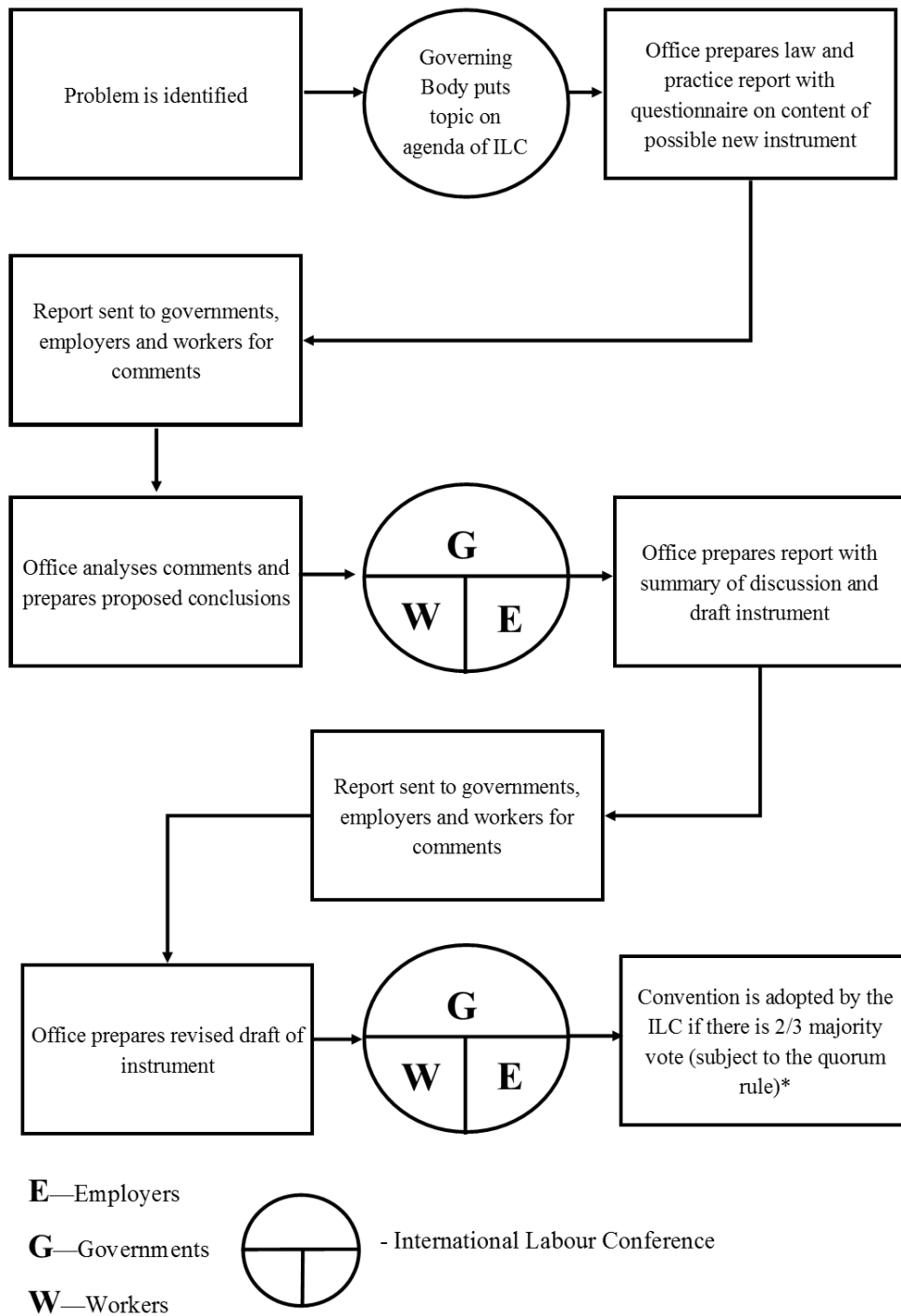
⁵⁷ In 1986 an amendment to the ILO’s Constitution suggested increasing the number of members of the Governing Body under the Constitution from 56 to 112. The reason for this was to increase the representativeness of the group to take into account the various geographic, economic and social interests of its constituent groups. To enter into force two-thirds of the ILO’s member States (124/187) must accept or ratify the amendment. As of March 2015, only 103 acceptances have been received.

⁵⁸ It then took a further 7 years for the MLC to be adopted as final endorsement was based on a minimum number of member States having ratified the Convention and a predetermined percentage of the world’s gross tonnage (Thomas 2012).

⁵⁹ To date, only one Convention (the Contract Labour Convention) has ever been rejected at the ILC (Standing 2008).

⁶⁰ The African, Asia-Pacific, Latin American and Caribbean, European Union, and industrialised and market economy countries groups.

Figure 4.2: How an international labour standard is adopted



*Note: * The 'quorum rule' states that a Convention is not adopted if the number of votes cast for and against is less than half the number of delegates attending the Conference*

The approach to setting labour standards is based on a voluntary model and has been the subject of much recent controversy (Alston 2004; Langille 2005; Standing 2008). Once Conventions are approved they are adopted by the ILC but will only come

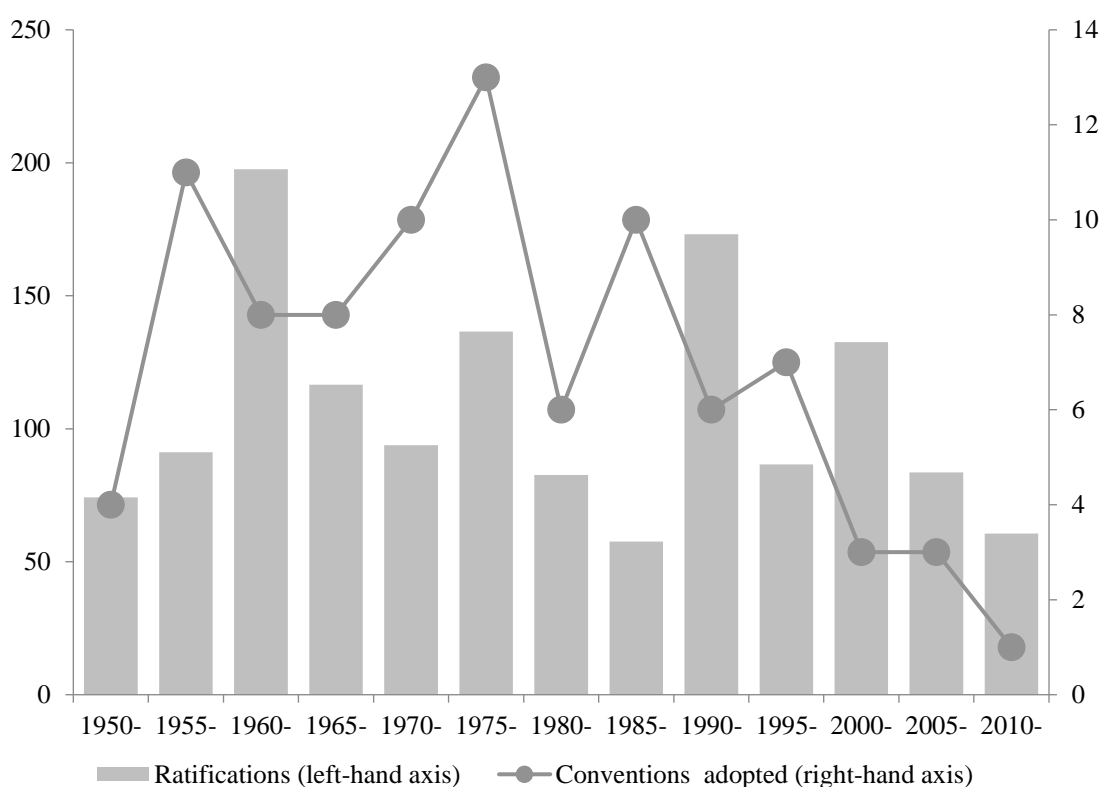
‘into force’ when they have received a minimum number of ratifications (typically two).⁶¹ In addition, Conventions only become legally binding once a member State has ratified the Convention. Once a Convention is adopted, each member State is required to bring the instrument ‘before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action’ (ILO 1919). When ratified, this commits the member States in question to respect its terms, to submit regular reports demonstrating compliance to the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR), and to accept investigation of any allegations of breaches by the social partners or the ILO itself. The voluntary principles of the system have been highlighted by Ewing (2013 p.428), who notes that: ‘There is no duty on the part of a government to ratify a Convention, even though it may have voted for it at the [ILC]; and there is no duty on the part of a national Parliament to introduce implementing legislation, even where the government of the country in question has ratified the Convention.’ Hence, despite having the force of an international treaty (Alston 2004), and as such a key role in the multilateral system, the non-mandatory model of ILO standard-setting has meant that ‘governments have been able to ratify Conventions they liked, not ratify those they have not liked, and “denounce” (“deratify”) those they have come to dislike’ (Standing 2008 p.356) and suffer no penalties when Conventions are violated.

The number of Conventions adopted at the ILC has significantly declined in the last decade (as depicted in Figure 4.3 on the right-hand axis) and those Conventions that have been adopted have focussed on specific sectors. When Conventions have been adopted by the ILC in recent years they were only endorsed ‘by close voting margins, indicating a lack of consensus even on these non-collective topics’ (Hepple 2005 p.39). As Hepple (2005) highlights, the period following the *Declaration of Philadelphia* in 1944 up until 1981 was focussed on freedom of association, collective bargaining and tripartism. The golden age of ‘embedded liberalism’ also included what many regarded as far less important, if not obscure Conventions, such as the Certification of Ships’ Cooks Convention, 1946 (C.69) and the Fishermen’s

⁶¹ There are two exceptions to this rule. The Maritime Labour Convention, 2006 only came ‘into force’ once 30 member States, registering ships totalling at least 33 per cent of world gross tonnage, had ratified the Convention. The Work in Fishing Convention (C.188) will come ‘into force’ once 10 member States, 8 of which are coastal, have ratified the Convention.

Competency Certificates Convention, 1966 (C.125). Between 1960 and the late 1980s, each successive ILC passed an average of approximately two Conventions per year. Since this ‘heyday’ of substantive Conventions, of the 33 new Conventions adopted between 1982-2016, nine have related to health and safety, nine to individual employment protection and nine to seafarers. In total, 16 have been sectoral Conventions. Sector-specific Conventions have become the most common and easily adopted Conventions, especially in those sectors where the social partners are well organised along industrial lines (PAO Notes).

Figure 4.3: Number of Conventions adopted and number of ratifications (average over 5-year intervals) (1950-2014)



Source: ILO, Normlex (www.ilo.org/normlex), author calculations

The record of member States’ ratifications is, and has always been, less than impressive. Ratification rates remain dispersed and, as illustrated in Figure 4.3, ratifications have declined dramatically since 2005 (left-hand axis of Figure 4.3). If all the Conventions were ratified by all 187 member States, there would be 35,343 ratifications, whereas at present there have been just over 8,000 (23 per cent) with several countries ratifying very few, such as the US (14) and China (26). Therefore,

workers in two of the largest economies in the world are not covered by many of the ILO's most important Conventions.⁶² Overall, three-fifths (60.2 per cent) of the member States have ratified less than one-quarter of all Conventions, and more than one-fifth (21 per cent) have ratified fewer than 20. The vast majority of member States (95 per cent) have ratified less than half of ILO Conventions. On average across the 187 member States, there have been 43 ratifications per country. Spain has ratified the highest number (133) and Palau and Tuvalu have just 1 ratification each (both have ratified the MLC, 2006).⁶³

The unfortunate truth of the matter is that universality has always been the ILO's 'Achilles heel'. Some Conventions, such as the Maintenance of Social Security Rights Convention, 1982 (C.57), have received very few ratifications (four), even when deemed to be an 'up-to-date' instrument. This is highly significant considering the time and investment behind every Convention. For this reason, the ILO has sought to reduce the number of Conventions adopted and to instead focus on a select number of core Conventions (analysed in Sub-section 4.3.1), or what Standing (2010a) calls the 'low hanging fruit'. Child labour, for example, is considered to be a 'low hanging fruit' as 'nobody could oppose the abolition of abusive forms of child labour' (Standing 2010a p.6). This led to the unanimous adoption of the Worst Forms of Child Labour Convention, 1999 (C.182), which has received 180 ratifications (96.8 per cent of ILO member States) and is, by this measure, the most 'successful' ILO Convention ever. Based on a different measure – the number of children known to be in work (168 million), including those in hazardous work (85 million) – C.182 has evidently failed to eliminate the worst forms of child labour (ILO 2013d).

In general, the ratification of Conventions adopted in the 1990s and 2000s remains low. The six Conventions adopted since 2000 in particular have experienced

⁶² The United States has had an interesting relationship with the ILO and the whole story cannot be told here. It became a member in 1934 although since then has ratified very few Conventions (the same number as Iran, Sudan and Equatorial Guinea). This is often attributed to the federal system (e.g. some US states have right to work laws whereas others are more favourably disposed towards trade unions). However, other federal systems have ratified significant number of Conventions such as Switzerland (60), Australia (58) and India (45). The USA still remains the largest donor to the ILO and its citizens occupy some of the highest positions in the Organisation (Royle 2010). For example, the Deputy-Director for Policy is 'reserved' for US citizens. The impact of the Trump administration has yet to be determined.

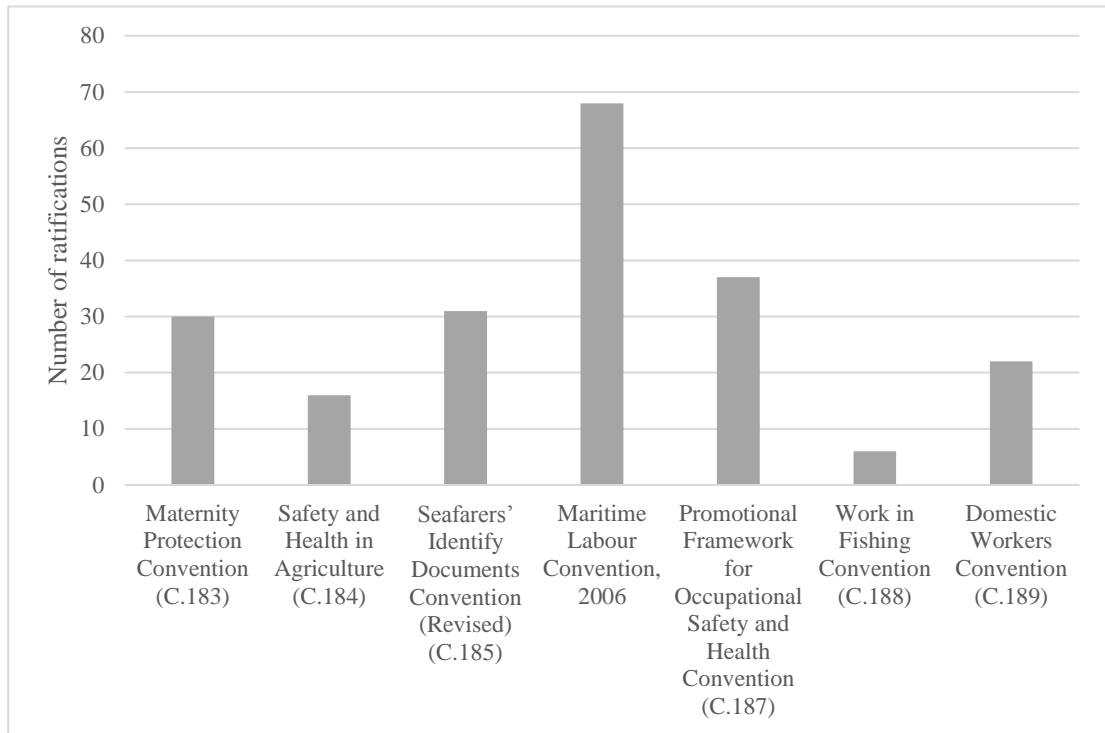
⁶³ Tonga has ratified no Conventions but only became a member State in February 2016.

poor ratification rates as illustrated in Figure 4.4. For example, the average number of member States that have ratified a Convention adopted after 2000, 5 years after its adoption by the ILC, is less than 13. As Baccaro and Mele (2012 p.198) point out, ‘this number seems much too low for an organisation that seeks to regulate working conditions uniformly across the world’. The Work in Fishing Convention (C.187) is a prime example as it has only received six ratifications since it was adopted in 2007, when the ILC voted by 437 for and 2 against its adoption. Rather surprisingly, two countries, Bosnia and Herzegovina and the Democratic Republic of Congo have ratified this Convention irrespective of their insignificant ocean border and small fishing fleet. This is one of the most prominent criticisms of ILO sectoral Conventions, namely that the countries that often ratify them do not constitute a large percentage of the workers employed in the sector in question,⁶⁴ whereas workers in some of the countries with the largest fishing harvests (e.g. China, Peru, India and Indonesia) are untouched by Convention C.187.⁶⁵ The level of ratification also means that the Convention is not ‘in force’, as it requires a minimum of 10 ratifications, so at present is essentially a ‘dead letter’.

⁶⁴ This point is discussed further in relation to the Plantations Convention (C.110) in Sub-section 4.2.2.

⁶⁵ 68 per cent of the world’s fishing fleet in 2012 was in Asia and none of the signatories are from that region ((FAO 2012)

Figure 4.4: Number of ratifications of Conventions adopted since 2000



Source: ILO, Normlex (www.ilo.org/normlex)

Simple statistics on the number of Conventions ratified can, of course, be misleading especially when the ratification rate is relatively high. The need for ‘flexibility’ has become an important aspect of ILO Conventions, so that they can be applied to both developing and developed countries. Within the Preamble or first Articles of ILO Conventions there are often flexibility mechanisms that allow member States to ratify the Convention whilst excluding certain provisions. For example, the Safety and Health in Agriculture Convention, 2001 (C.184) allows countries to exclude ‘certain agricultural undertakings or limited categories of workers from the application of this Convention or certain provisions thereof’ (Article 3). As a result, it is possible to ratify the Convention without applying it to the majority of the agricultural produce harvested in the country. Moreover, although developing countries might argue for flexibility provisions, they often then fail to ratify the Convention in question (e.g. only 16 member States have ratified the Safety and Health in Agriculture Convention), which simply dilutes labour standards. In practice, therefore, ratification does not mean the same thing when comparing across member States.

Conventions are typically accompanied by a supporting Recommendation. However, in recent years this too has changed. The last four out of five Recommendations adopted by the ILC have not accompanied a substantive Convention.⁶⁶ In fact, since the adoption of the last substantive Convention, three ILC's have been devoted to adopting Recommendations. These cover topics such as social protection floors, forced labour and informality, and illustrates the on-going shift (or drift) (Marginson 2016) from hard to soft law occurring at the ILO and the lack of consensus in the Organization when it comes to the adoption of legally-binding Conventions.

Another criticism of ILO Conventions is that they typically assume a male breadwinner model that was prevalent at the ILO's inception. During its first 50 years, 'the ILO became a mechanism for advancing an agenda of labour-based security, overwhelmingly for those in what was to be called the Standard Employment Relationship, in full-time, stable, unionised wage jobs' (Standing 2010a p.3). For example, the Social Security (Minimum Standards) Convention, 1952 (C.102) advocates social protection based on formal employment and the male bread-winner model. In the Articles of the Convention, the 'standard' beneficiaries are defined as 'a man with wife and two children', and — in case of any doubt — in Article 1 of the Convention we are told, 'the term "wife" means a wife who is maintained by her husband', and 'the term "widow" means a woman who was maintained by her husband at the time of his death'. This Convention, which is clearly founded on a patriarchal household, was deemed an 'up-to-date instrument' at the ILC in 2001.

The ILO has attempted to move away from this male bread-winner model and has adopted Conventions that apply to workers 'outside' or 'beyond' the tripartite constituencies (e.g. workers who are not members of trade unions or employed in the formal economy), but with limited effect. The Home Work Convention, 1996 (C.177) sought to extend the principles of labour rights to workers labouring to the order of someone else. The Convention was particularly significant in that the vast majority of home workers are women. It was not a revolutionary Convention, but rather extended

⁶⁶ The only Recommendation that was issued during this period accompanies the Domestic Workers Convention, 2011 (C.189)

the protection of existing and recognised international labour standards to a category of workers previously ignored and excluded. Although it was adopted (246 in favour, four against, with 111 abstentions)⁶⁷ it provoked a significant backlash from the Employers' Group (who in this case even withdrew from the discussions about the instrument). As the D-G at the time stated, it was 'the first time in the history of the Organization that a group had decided not to participate in the drafting text of an instrument which, by unanimous agreement of the groups, had been placed on the agenda of the Conference' (ILC.85/PR p.221). Although it has been over 20 years since its adoption, it has seen a minimal number of ratifications (10). Consensus has also been difficult to reach on several other instruments including the Convention on Part Time Work (C.175) (which the employers overwhelmingly rejected); the Recommendation on the Employment Relationship (R.198) (all the 94 negative votes were from employers); the Contract Labour Convention (the employers rejected the Convention and the Convention was not adopted);⁶⁸ and the now core Convention on Equal Remuneration C.100 (out of the 33 negative votes, 31 were from employers). The problem therefore is not simply achieving consensus within the Organization but stopping the employers from 'applying the brakes'.

Whilst the employers have attempted to halt ILO advances into new areas of work, with some success, the ILO's most recent Convention – the Domestic Workers Convention, 2011 (C.189) – has highlighted the way in which the Organization can effectively approach topics outside of its traditional tripartite structure. It was adopted at the symbolic hundredth session of the ILC, with 396 votes in favour, 16 against and 63 abstentions (the majority of the abstentions and votes against were similarly from the employers). To date it has received 22 ratifications and has become one of the fastest ratified ILO Conventions in history. However, the flexibility clauses in the Convention are again troubling. In Article 2 it states that exclusions of the Convention may apply to 'limited categories of workers in respect of which special problems of a substantial nature arise'. Thus, although this Convention has been specifically drafted

⁶⁷ For a Convention to be adopted two-thirds of the constituents must vote in favour of its adoption. In this case, the Convention was adopted by just six votes.

⁶⁸ This was the first time in the ILO's history that a draft Convention was not adopted at the ILC (Standing 2008 p.366).

to protect domestic workers, the exclusion of some of them from its scope is incompatible with the ILO's sectoral focus.

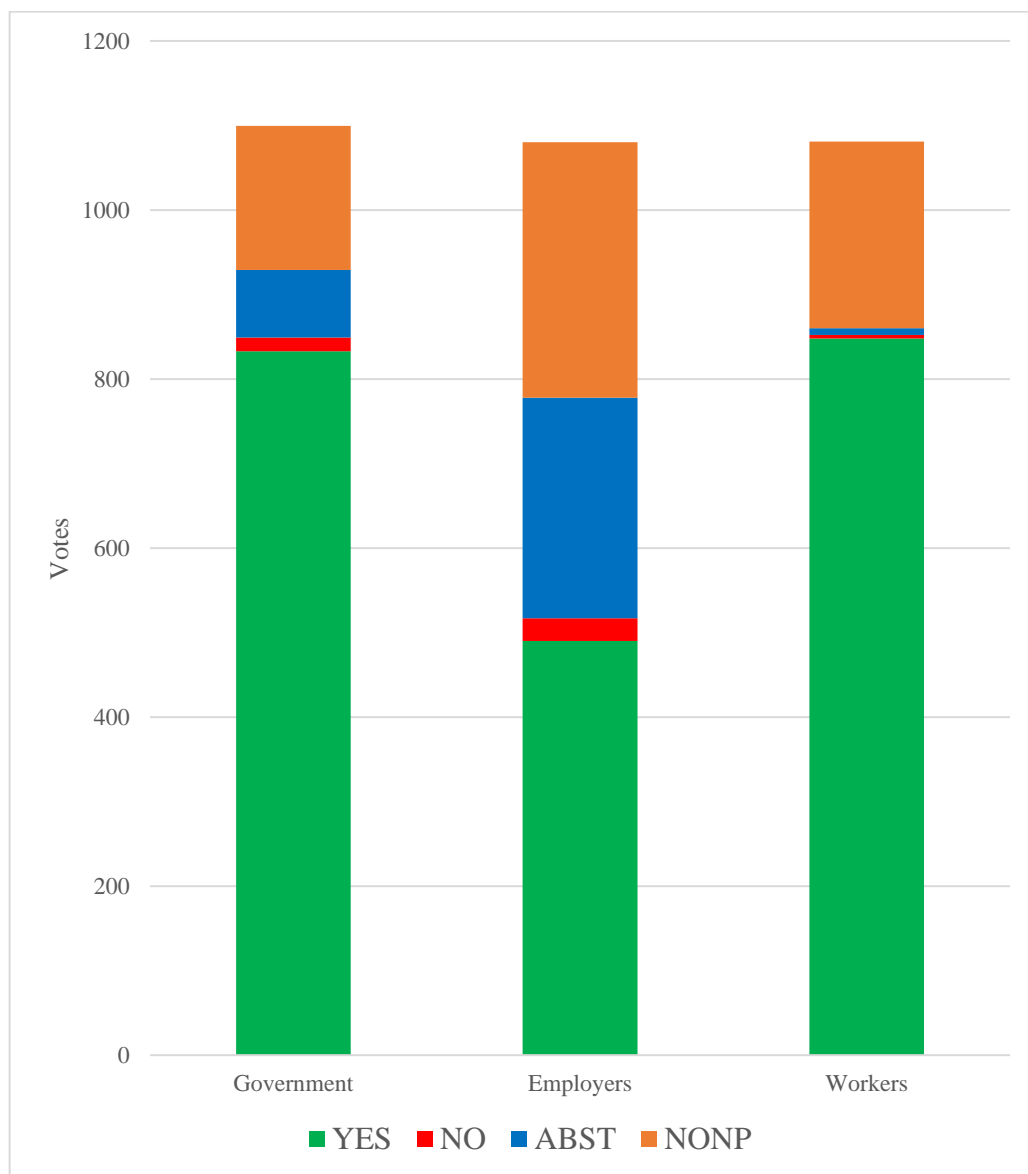
When analysing the voting outcomes and behaviour at the ILC over the last 10 years the employers' opposition to standard-setting is apparently obvious. Boockmann (2003 p.12) demonstrates that, between 1975 and 1995, while 'no' votes were few in number (with the exception of 1990-1995), and 'abstentions' were fairly constant as a proportion of all votes, there was a significant increase in 'non-participation' over time. A Convention is not adopted if the number of votes cast for and against is less than half the number of delegates attending the Conference (the quorum rule), and as non-participants rarely report their absence from the voting session their non-participation is effectively 'equivalent' to abstention and 'abstentions become a real weapon, more effective than negative votes for blocking a decision considered politically inexpedient' (Maupain 1987).

Figure 4.5 shows the voting behaviour (yes, no, abstentions, and non-participation) of the three constituents at the ILC since 1996.⁶⁹ Although fewer Conventions have been passed during this period, abstentions and non-participation remain high. Workers rarely vote against a Convention or abstain (less than 1 per cent of the total votes cast by worker delegates between 1996 and 2016) although non-participation is over 20 per cent. Non-participation by government delegates is lower (15.5 per cent) but the proportion of abstentions (over 7 per cent) is higher (as are 'no' votes, 1.5 per cent compared to 0.4 per cent). Employers, in contrast, while only marginally more likely to vote 'no' (2.5 per cent) were much more likely to abstain (over 24 per cent) or not participate (28 per cent) in Convention votes over this period – in other words, employers do not vote against Conventions to stop their adoption through the majority rule but rather abstain or simply fail to participate to exploit the quorum rule. While negative (majority 'no') votes are rare, failure to reach quorum is not an infrequent result at the ILC. For their part, member States tend to support Conventions when workers and employers are in agreement, which is hardly surprising as by this stage – formal adoption of a new international labour standard – any

⁶⁹ This calculation excludes votes on maritime Conventions (C.178, C.179, C.180 and C.186) over this period as these were adopted by special maritime sessions of the ILC.

‘disagreements’ between the parties, ranging from points of principle to the wording of the official text, have been ‘ironed out’ (PAO Notes). However, even if a Convention is comprehensive, achieves tripartite consensus and is widely ratified, there is still the problem of enforcement, this often goes beyond a ‘false positive’ scenario – member States which commit to treaties even though they have no intention of upholding the principles involved (Levi et al. 2013 p.15). As documented in the follow sub-section, the ILO’s enforcement mechanisms are ultimately ‘feeble’ in holding member States, who violate ratified Conventions, accountable (Helfer 2006 p.652).

Figure 4.5: Voting outcomes at the International Labour Conference (1996-2016)



4.2.1. The ILO's enforcement mechanisms

The most commonly cited criticism of the ILO and its standard-setting role is its lack of enforcement – the proverbial ‘toothless tiger’ (Breman and van der Linden 2014 p.935). ILO member States have several reporting obligations. Under the Constitution of the ILO (Article 22) a member State that has ratified a particular Convention must periodically detail the measures taken to implement the provisions of the Convention in question. Each member State must produce a report for each Convention and these are read and commented upon by the ILO's Committee of Experts on the Application of Conventions and Recommendation (CEACR) who monitor compliance. This group of 20 jurists then decide whether national legislation and practice are ‘in line’ with the provisions of the Convention. In this capacity, the CEACR has the ability to make recommendations to those member States to bring them in line with the Conventions that they have ratified. Every year, about twenty cases are discussed at the ILC by the Conference Committee on the Application of Standards (CAS), where member States face public scrutiny over (alleged) instances of non-compliance. In addition to this ‘regular’ form of supervision, the ILO has three complaint procedures. First, employers’ or workers’ organisations may file a ‘representation’ against a member State. A Tripartite Committee of the Governing Body will investigate the matter and may adopt recommendations to bring the member State's practice into line with international obligations. Secondly, the ILO Constitution provides for a more severe procedure of ‘complaints’. These may be brought by a member State, ILC delegate or the Governing Body, and will be investigated by a Commission of Inquiry, consisting of three independent member States.⁷⁰ Thirdly, the ILO has a tripartite Committee on Freedom of Association (CFA) dealing specifically with complaints on this issue, which was established in 1951. The CFA is by far the most productive complaints mechanism, and has dealt with more than 3,000 cases since it was founded. The CFA is unique in international law as its jurisdiction to handle complaints is based on membership of the ILO, rather than ratification of Conventions 87 and 98 (Hepple 2005 p.52).

Ultimately, these complaint mechanisms may lead to the invocation of Article 33 of the ILO's Constitution, which states that: ‘In the event of any Member failing to

⁷⁰ To date, only 11 Commissions have been established.

carry out within the time specified the recommendations ... the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.' The Article 33 procedure is often regarded as the 'teeth' of a system that otherwise relies on 'naming and shaming'. However, the only time the ILO has initiated the conditions under Article 33 was in response to growing concern (and evidence) of Myanmar's use of forced labour. Although Myanmar was found guilty of forced labour in the 1990s, despite having ratified the Forced Labour Convention, 1930 (C.29) in 1955, it was not until June 2000 that the ILO called out to its member States to 'readdress their relations with Myanmar' (GB.88/INS). As a result of this resolution, the European Union (EU) adopted economic sanctions and the United States passed the 'Burmese Freedom and Democracy Act', which led to an embargo on trade with Myanmar (Maupain, 2013). At the same time, however, China and India strengthened their relationship with Myanmar and extended bilateral trade agreements (Horsey 2011). As Garcia (2010 pp.462–463) states this was a prime example of how 'offending nations do not face ILO punishment beyond moral censure'.

Although Article 33 has only been invoked in the case of Myanmar it is not the only country that systematically violates ratified ILO Conventions. Many cases of non-compliance by member States are never publicly declared (PAO Notes). For example, numerous ILO missions to Uzbekistan revealed a government sponsored programme of child and forced labour in the country's cotton industry (PAO Notes). In addition, violations of Conventions are not just common in developing countries, but also developed countries. In the UK for example, recently proposed changes in the form of the Trade Union Bill have been identified as in violation of ILO Conventions C.87 and C.98 and the UK has a history of being brought in front of the CFA (ILO 2011c). While the number of murders of trade unionists may be an extreme indicator, the International Trade Union Confederation (ITUC) in 2011 documented 11 deaths, two attempted murders, 11 threats and 896 arrests of union activists in Asia and the Pacific; six of the murders were in Bangladesh (ITUC 2011). In Africa, there were three murders, 39 threats, and 561 arrests. In its report on the Americas there were 75 murders, of which 45 were in Colombia and ten were in Guatemala. These cases of

extreme violence against trade union leaders and workers' representatives have largely been overlooked by the ILO or reported in typical 'ILO speak' at the ILC.⁷¹

What is apparent is that even when Conventions are ratified, the ILO has no power of enforcement and in only extreme cases will it resort to naming and shaming. As Langille (2005 p.413) points out: 'all of this is a game of moral persuasion and, at most, public shaming. It is a decidedly soft law system. There are in fact no sanctions.' As the current D-G Guy Ryder notes, 'people disagree as to whether the ILO does or does not have teeth and how sharp they are and they disagree about what to do about it' (Ryder 2014 p.8). As a whole, although the ILO does have the capacity to strongly denounce violations of Conventions, in its almost 100-year history it has very rarely exercised this capacity and, in this respect, the ILO is 'all bark and very little bite' (PAO Notes).

Standard-setting is what sets the ILO apart from other multilateral institutions. In the field of international law, hard law is a rare occurrence and the ILO's standard-setting role is about as close as the international community comes to a hard law regime (excluding the actions available to the WTO). Although Conventions are rarely ratified by the majority of member States, as Garcia (2010 p.477) notes, the ILO 'use[s] the promise of financial or technical cooperation as a persuasive measure for the ratification of or compliance with labour standards'. But considerable investment is often needed to secure ratification. For example, SECTOR developed a significant number of 'capacity building' exercises with Bosnia and Herzegovina, preceding their ratification of the Work in Fishing Convention C.187, irrespective of their small and somewhat insignificant fishing sector (PAO Notes). The development of sectoral Conventions in recent years is in direct response to the lack of consensus reached on difficult topics such as the informal economy. Sectoral Conventions are often the easiest to adopt as the tripartite constituents are mainly organised along sectoral lines. However, when these Conventions are adopted and ratified, they often exclude many, if not most, of the workforce in that particular sector (i.e. they are ineffective at closing

⁷¹ For example although Guatemala was ranked in the top ten 'worst countries' in the world for workers in 2015 (ITUC 2015), the ILO's CEACR noted in 2017 that it '*regrets* that for a number of years, in the same way as the Committee on Freedom of Association, it has been examining allegations of serious acts of violence against trade union leaders and members, including numerous murders and the related situation of impunity' (emphasis added).

spaces of exception in all member States). For example, the Plantations Convention, 1958 (C.110) is one of the ILO's most stringent Conventions but has had a limited impact on the group of workers it was designed for.

4.2.2. Sector-level Conventions: The case of the Plantations Convention, 1958 (C.110)

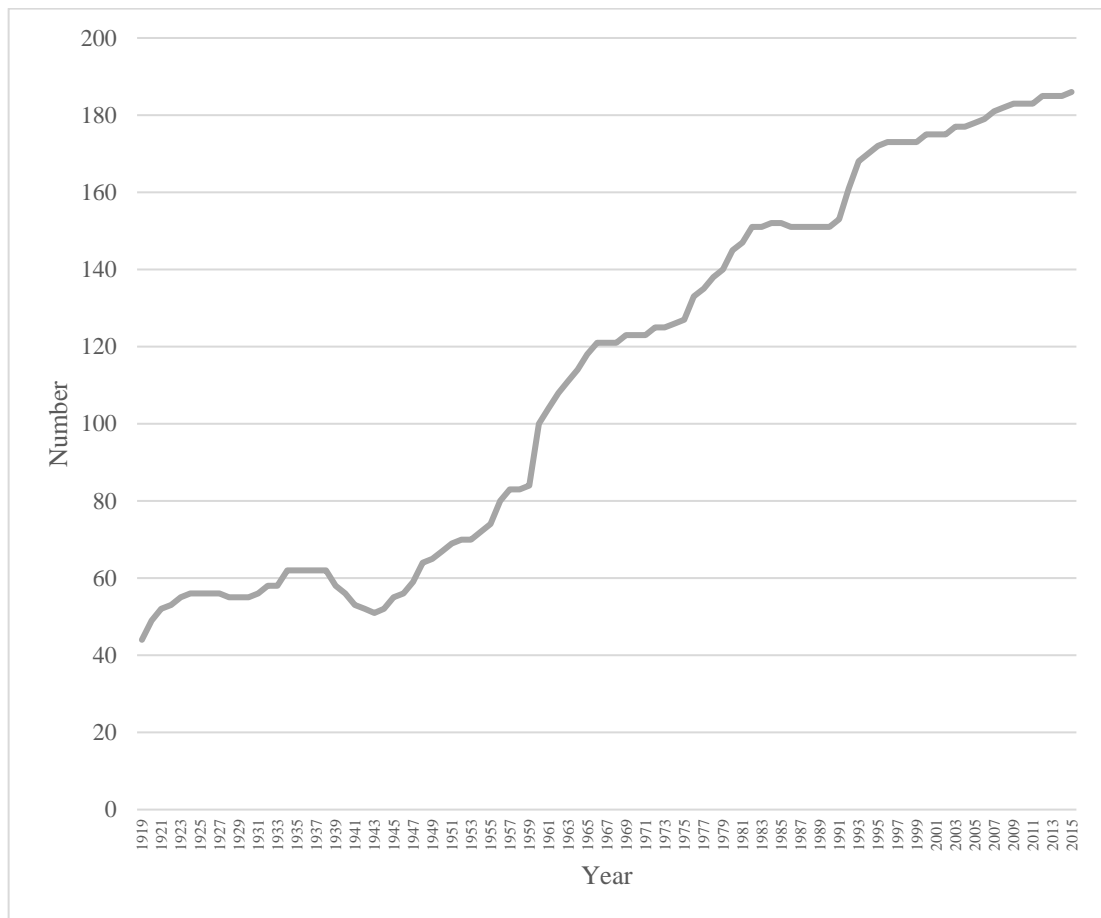
To assess the standard-setting role of the ILO during the Great Transformation it is imperative to look at the processes and outcomes that led to the adoption of a Convention and subsequent implementation in the field following ratification. One of the most ground-breaking Conventions that the ILO adopted was the Plantations Convention, 1958 (C.110) and its accompanying Plantations Recommendation, 1958 (R.110). This Convention was established in the 'golden age' of embedded liberalism (see Appendix 4 for a brief history of the ILO) and offered a way to protect the working and living conditions of those workers in the global South who were recently experiencing independence but still typically exported their agricultural products to industrialised economies.

Convention 110 was ground-breaking for several reasons. First, in terms of when it was adopted. Leading up to 1958 the world was experiencing a period of decolonisation where newly independent states were increasingly 'affected by the intensified competition in the post-war period as most aspects of production, prices and markets – other than labour – moved rapidly beyond their national control' (Lincoln 2010 p.52). For newly independent states, economic growth was important and as Jacoby (1961 p.73) contends in the case of Indonesia: 'greater efficiency and foreign exchange earning capacity of the plantations [were] more than outweighed by their unfortunate impact on the social and political life of the nation'. As a result, plantations became increasingly important for international institutions in their pursuit of development and promotion of labour standards. The emergence of GPNs was the final and most dramatic change, which saw the emergence of TNCs as the dominant actors in restructuring nationally based plantation systems into global and regional inter-firm networks (Riisgaard and Hammer 2011).

For the ILO, the Plantations Convention recognised the importance of the plantation system as a distinct locus of industrial relations. In particular, the employer

was also a landlord as plantation employers typically provide housing for their workers. As a result, the ILO was concerned with both working *and* living conditions. Secondly, it was the first ILO Convention that distinguished between agricultural workers, who typically produce for subsistence, and plantation workers, who typically produce for export and thus connected to GPNs. It was in fact the first ILO Convention that dealt with a specific agricultural category of labour. Thirdly, it was an extensive Convention covering many other aspects of other ILO's standards such as freedom of association and collective bargaining, whilst also incorporating other important Articles on housing and transport. Within the ILO, the number of newly independent member States joining the Organization had dramatically increased (from 73 member States in 1950 to 124 member States by 1970), as illustrated in Figure 4.6. The Plantations Convention was therefore a sector-specific instrument designed to improve labour conditions in those countries that had previously been supplying their primary agricultural products in a captive relationship to industrialised economies.

Figure 4.6: Number of ILO member States over time



Source: ILO, Normlex (www.ilo.org/normlex), author calculations

The process of adoption of the Plantations Convention, like most ILO Conventions, was an arduous exercise. The ILO's Committee on Work on Plantations held its first session in Bandung, Indonesia at the start of 1950 and held nine further sessions between 1950 and 1994.⁷² The Committee, much like the Convention, focussed on any agricultural undertaking employing hired workers in the tropical or subtropical regions concerned with the cultivation and production of a list of crops for commercial purposes. The Committee adopted 95 Conclusions and resolutions dealing with virtually all aspects of labour and social conditions on plantations. However, in 1994 the Committee was disbanded, along with other ILO industrial committees, and ushered in a period of institutional neglect of the plantations sector. The Plantations Convention was not adopted until the 42nd ILC in 1958 with 118 votes to 32, with 16 abstentions (all the votes against and four of the abstentions were from the

⁷² ILO industrial committees were established in 1945 to provide a sectoral approach to the ILO's technical and standard-setting work.

employers).⁷³ It was later revised in 1982 under the Protocol of 1982 to the Plantations Convention, 1958.⁷⁴

The Plantations Convention gives detailed guidance on employment contracts, minimum wages, holidays with pay, weekly rest, maternity protection, workmen's compensation, the right to organise and collective bargaining, labour inspection, housing and medical care. In particular, it was one of the first ILO Conventions to deal with migrant workers, who were typical on plantations as a result of colonialism.⁷⁵ The definition of a plantation includes:

‘any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers.’

This ‘typical’ ILO definition (standard employment relationship) excluded many plantation systems that were not situated in the tropical or subtropical regions such as cotton picking in Uzbekistan. As Lincoln (2010 p.57) demonstrates, ‘geographically, Australia shares the same subtropical sunshine with the likes of Burkina Faso, and some of the crops in the ILO’s definition are as likely to be cultivated in the United States as in Mozambique.’ Regardless, whilst the Convention sought to protect workers in a score of tropical and subtropical countries, and even though the ILO invested significant time focussing on the plight of plantations workers, only 12 member States have ever ratified the Convention: Brazil 1965, Cuba 1958, Cote d’Ivoire 1961, Ecuador 1969, Guatemala 1961, Liberia 1959, Mexico 1960, Nicaragua 1981, Panama 1971, Philippines 1968, Sri Lanka 1995, and Uruguay 1973, with no

⁷³ The remaining abstentions (12) were from the government group.

⁷⁴ This revision included the flexibility to allow ratifying member States to ‘exclude from the application of the Convention undertakings the area of which covers not more than 12.5 acres (5 hectares) and which employ not more than 10 workers at any time during a calendar year’. This protocol was only ratified by two member States: Cuba and Uruguay.

⁷⁵ For example, under British Colonial rule workers from Southern India (the Tamils) were brought over to Sri Lanka to work on the tea plantations.

ratifications in the last 21 years and two denunciations (Brazil denounced its ratification of the Convention in 1970, followed by Liberia in 1971).⁷⁶

The limited number of ratifications was partly due to low levels of organised worker representation in agriculture and developing countries' heavy dependence on agricultural export earnings. Those countries that possess a significant plantation sector therefore neither have the density of trade unions nor governmental interest to uphold high levels of labour standards. Even when trade unions are present they often lack the leverage and organisation needed to engage their partners in collective bargaining and social dialogue (Riisgaard and Hammer 2011). Table 4.2 documents the present 'coverage' of the Convention based on several agricultural crops included in the Convention.

⁷⁶ Liberia denounced its ratification due to the wide definition of the term 'plantation', as contained in the Convention, which 'made its application difficult in view of the limited resources available to a developing country such as Liberia' (PAO Notes). There was no internal information available as to why Brazil denounced the Convention.

Table 4.2: Member States that have ratified the Plantations Convention and their percentage of world production of crops included under the Convention

| Signatory | Palm Oil | Tea | Bananas | Tobacco | Sugar cane | Rubber | Coffee | Cocoa | Coconuts | Groundnuts | Cotton | Fibres | Citrus | Pineapples |
|----------------------|----------|------|---------|---------|------------|--------|--------|-------|----------|------------|--------|--------|--------|------------|
| Cuba | n.d. | n.d. | <1% | <1% | <1% | n.d. | <1% | <1% | <1% | <1% | n.d. | <1% | <1% | <1% |
| Cote d'Ivoire | <1% | n.d. | <1% | <1% | <1% | 2.2% | 1.3% | 32% | <1% | <1% | <1% | <1% | <1% | <1% |
| Ecuador | 1% | <1% | 6.7% | <1% | <1% | <1% | <1% | 2.9% | <1% | <1% | <1% | <1% | <1% | <1% |
| Guatemala | <1% | <1% | 2.9% | <1% | 1.3% | <1% | 3% | <1% | <1% | <1% | <1% | <1% | <1% | 1% |
| Mexico | <1% | n.d. | 2.1% | <1% | 2.8% | <1% | 2.7% | 1.8% | 1.8% | <1% | <1% | <1% | 5.15% | 3.1% |
| Nicaragua | <1% | n.d. | <1% | <1% | <1% | n.d. | <1% | <1% | <1% | <1% | <1% | <1% | <1% | <1% |
| Panama | <1% | <1% | <1% | <1% | <1% | n.d. | <1% | <1% | <1% | n.d. | n.d. | n.d. | <1% | <1% |
| Philippines | <1% | n.d. | 8.8% | <1% | 1.7% | <1% | <1% | <1% | 25.6% | <1% | <1% | <1% | <1% | 9.9% |
| Sri Lanka | n.d. | 6.5% | n.d. | <1% | <1% | 1.3% | <1% | <1% | 3.6% | <1% | 0% | 0% | <1% | <1% |
| Uruguay | n.d. | n.d. | n.d. | <1% | <1% | n.d. | n.d. | n.d. | n.d. | <1% | n.d. | 0% | <1% | n.d. |
| Total | 2.8% | 6.6% | 21.3% | 1.9% | 7.7% | 6% | 9.2% | 37% | 31.4% | 1.1% | 1.3% | 1.6% | 6.3% | 16% |

Note: Data may include official, semi-official, estimated or calculated data. Data on fibres and citrus are aggregates. There was no available data on cinchona. No data is marked as 'n.d.'

Source: FAOSTAT (2013).

As illustrated in Table 4.2, for the most part, the combined production of the Convention's signatories has been of minor and quite varied proportions. If we assume a direct correlation between product market share and the number of workers required to produce this share, then apart from the production of cocoa, no more than a third of workers producing any of the other commodities included under the Convention are covered by its provisions. Most notably, less than three per cent of workers working in cultivating palm oil, tobacco, groundnuts, cotton and fibres are covered by the Convention. Table 4.2 shows that the provisions included in the Plantations Convention have had very little impact on the majority of plantation workers across the globe.

The Plantations Convention remains one of the most comprehensive ILO instruments but also one of the least effective in terms of ensuring decent working conditions for those working on plantations due its poor rate of ratifications and consequently its lack of coverage. Even though it has received a poor number of ratifications (one of the least ratified ILO Conventions) it was deemed 'up-to-date' at the ILC in 2001. The ILO conducted its first survey of plantation workers in 1966, which concluded that conditions of work on plantations were 'often very poor' (ILO 1966 p.262). More recently, conditions of work on plantations such as tea (ILO 2016d), bananas (Robinson 2010), palm oil (Accenture 2013) and cotton (Bhat 2015) have been found to be poor (i.e. 'indecent'). As a result, even though 'the survival of the plantation seemed dependent on conditions that the Plantations Convention was aimed at reforming' (Lincoln 2010 p.57) the problems facing plantation workers are still as pervasive as they were in 1958.

As with other ILO Conventions, the Plantations Convention has not left a lasting impact on the sector but this is not to deny its relevancy in the twenty-first century as a result of the Global Transformation. In 2013, the plantations sector became part of an 'area of critical importance' for the ILO, as designated by the new D-G (Section 4.3.4), and the Plantations Convention was 'taken off the shelf' (PAO Notes). Just how relevant, and how critical to the future of the ILO and how and whether it can (re)establish labour standards, is the topic of Chapters 5 (palm oil in Indonesia) and 6 (tea in Sri Lanka).

4.3. Standard-setting during the Global Transformation

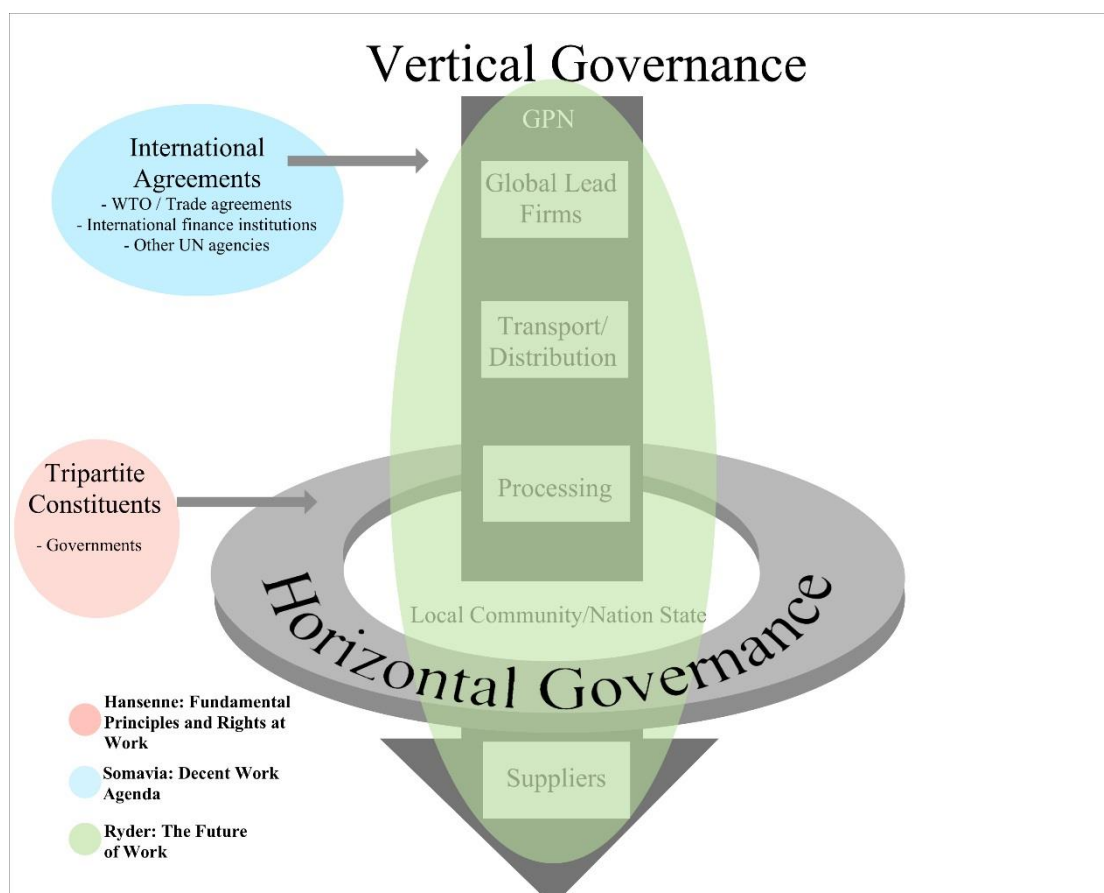
‘We live in a period where traditional roles and strategies of labour market and labour relations policy are viewed by many as equally disreputable. The “command and control” mentality of traditional labour standards enactment and enforcement is being challenged not only within advanced industrialized countries of the European Community, North America and Japan, but is increasingly seen as an unenforceable model for promoting the twin goals of democracy and economic development in the newly industrialising countries as well.’

Thomas Kochan (1996 pp.259–260).

The following sub-sections include a narrative account, informed by historical institutionalism, on the ILO’s most recent period between 1998 and 2011, which has witnessed the adoption of two Declarations and a new mantra for the ILO. These initiatives can be best described as a new governance model for international regulation – ‘an expression usually used to designate a set of interrelated developments taking place at the national and subnational levels that have profoundly altered the way in which state authorities exercise sovereign control’ (Baccaro and Mele 2012 p.200). In the ILO’s case, this ‘new governance’ model took the form of ‘soft law’, which relies on goals, commitments and principles rather than detailed enforceable regulatory norms. This period (1998-2011) saw the ILO first respond to the failure of international attempts to link trade and labour standards, a realigning of the purpose of the Organization, and finally to issue a response to the advance of globalisation.

The ILO D-Gs have always been instrumental in driving the course of the ILO, quietly pushing research into new areas and aspects of the world of work. As Hughes and Haworth (2011 p.2) argue: ‘Each successive director-general, from 1919 to the present date has left an indelible stamp not only on the operation of the Organization, but also on how we perceive the ILO and how the ILO perceives itself’ (see also Cox 1973; Helfer 2006). The visual map depicted in Figure 4.7 brackets the initiatives by the three most recent D-G’s and their role in global labour governance, in particular the actors that were targeted by those initiatives. These will now be assessed in turn.

Figure 4.7: Visual mapping of the Director-General's initiatives



Note: Although this figure indicates the main 'targets' of the three initiatives, adoption of the Fundamental Principles and Rights at Work was welcomed by civil society.

4.3.1. The Fundamental Principles and Rights at Work

As the former D-G Michel Hansenne proclaimed in 1994, 'it is not enough to merely produce standards, for standards must be ratified and applied. While national labour legislation directly applies to relationships between the State and workers and employers, the ILO's international standards can have the same effect only with the assent of the member States, as signified through ratification of the instrument' (ILC.81/DG/1A p. 43). Hansenne acknowledged both the lack of ratifications and lack of consensus on a wide-range of topics and thus sought to identify a 'package' of Conventions that are fundamental *human* rights that must be 'respected, promoted and realised', rather than 'ratified', as summarised in Table 4.3.

Table 4.3: The Declaration on Fundamental Principles and Rights at Work (1998)

| The 1998 <i>Declaration on Fundamental Principles and Rights at Work</i> states that: ‘all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions’. | |
|---|--|
| Fundamental rights | Core Conventions |
| Freedom of association and the effective recognition of the right to collective bargaining | - Freedom of Association and Protection of the Right to Organize Convention, (C.87) - Right to Organize and Collective Bargaining Convention (C.98) |
| The elimination of all forms of forced or compulsory labour | - Forced Labour Convention (C.29) - Abolition of Forced Labour Convention (C.105) |
| The effective abolition of child labour | - Minimum Age Convention (C.138) - Worst Forms of Child Labour Convention (C.182) |
| The elimination of discrimination in respect of employment and occupation | - Equal Remuneration Convention (C.100) - Discrimination (Employment and Occupation) Convention (C.111) |

Source: ILO (1998)

In Hansenne’s report to the ILC in 1997 he argued that ‘globalization cannot be left to its own devices,’ but that ‘today, nobody can claim that developing countries are not entitled to the advantages they derive from their wages and levels of social protection which are comparatively lower’ but if this is done it must be done by respecting fundamental human rights (ILC.85/DG/1A p.1). The use of the term ‘human rights’ here is important as it was his argument that the ILO needed to ‘propose a list of priorities among its objectives’ if it was to ‘retain any credibility or relevance’ (ILC.81/DG/1A p.4). A focus purely on labour rights (hard governance) for Hansenne was seen as a threat to the ILO’s relevancy. According to Hansenne’s analysis, internal consensus was increasingly difficult to build and in many cases Conventions were ignored by member States when it came to ratification.⁷⁷ A focus on core ‘human rights’ was also a direct response to the failure of the inclusion of a ‘social clause’ in WTO trade agreements that would have expanded the role of the ILO vertically. Even

⁷⁷ The contentiousness of the Home Work Convention (C.177), which was narrowly adopted in 1996, was obviously still on his mind.

though this topic was hotly debated during the signing of the Singapore Declaration in 1996 the WTO concluded that labour standards would not be used for protectionist purposes (Elliott and Freeman 2003).

Consistent with Hansenne's arguments, the *Declaration on the Fundamental Principles and Rights at Work* (FPRW) (depicted in the visual map of Figure 4.7 as the pink 'bubble') was approved by the ILC in 1998.⁷⁸ This was Hansenne's 'swansong' and the Declaration recognised eight fundamental ILO Conventions (also referred to as 'core Conventions') that all member States should 'realise' regardless of whether they had 'ratified' them or not (Hughes and Haworth 2011 p.73).⁷⁹ As a result, by virtue of membership to the ILO, member States were bound to uphold these standards. As Standing (2008 p.367) argues, 'it took the heat out of the debate on standards, and helped give the ILO a more legitimate role in global forums; it gave the impression that it was a charter against "sweatshops" and "free riders", and was thus to be welcomed by multinational capital, which found such "fundamental" principles rather easy to apply, and by civil society groups who saw the Declaration in isolation.' All eight of these Conventions (typically grouped into four fundamental rights)⁸⁰ are essential for ensuring a minimum floor for workers' rights but they vary in their effect on productivity, living standards, and social cohesion. The first two principles promote equity and basic protections of vulnerable workers,⁸¹ the third ensures that a country makes the most efficient use of its work force,⁸² and the fourth has more to do with collective voice to help workers protect the other three rights,⁸³ as well as bargain for the rights under the other 181 Conventions of the ILO (Levi et al. 2013). The Declaration was complemented by a follow-up mechanism that, *inter alia*, comprises an annual report compiled of reports from member States that have not ratified the

⁷⁸ It was not a unanimous decision as the unions argued it was nothing new and some developing countries were opposed, fearing that at some point the WTO would use these principles as a form of protectionism. In total there were 43 abstentions, 30 from governments, eight from the workers and five from employers.

⁷⁹ A distinction between core and non-core Conventions was first mentioned in the World Summit for Social Development in 1995.

⁸⁰ Forced labour, child labour, discrimination and freedom of association.

⁸¹ Forced Labour Convention, 1930 (C.29); Abolition of Forced Labour Convention, 1957 (C.105); Minimum Age Convention, 1973 (C.138) and the Worst Forms of Child Labour Convention, 1999 (C.182).

⁸² Equal Remuneration Convention, 1951 (C.100) and Discrimination (Employment and Occupation) Convention, 1958 (C.111)

⁸³ Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) and Right to Organise and Collective Bargaining Convention, 1949 (C.98)

underlying Conventions, on the steps they have taken towards realisation of the Declaration. These statements are often very general. The United States, which has not ratified the Conventions on non-discrimination, reports that: ‘The United States pursues the elimination of discrimination in respect of employment and occupation through a combination of law enforcement, administrative action and public outreach’ (GB.317/INS/3 para. 121).

There is an important distinction here between *rights* and *principles*: ‘unlike rights, principles indicate a goal and a direction but leave member states free to go about implementation as they see fit’ (Baccaro and Mele 2012 p.204). As a result, ‘realising’ the ‘principles’ did not assume ratification and implementation and this meant that member States were no longer required to abide by the definitions and obligations in the Conventions that the Principles were referring to (Alston 2004). In particular, the notion that these ‘core standards’ could only be monitored by promotional means (if not ratified), resulted in a downgrading of the ILO’s monitoring mechanism and the ILO could only offer technical assistance to help with implementation (Standing 2008).

Many commentators stressed that the FPRW also represented an attempt by the ILO to combat ‘regime shopping’ by TNCs, promote vertical governance and normative convergence, and marked a shift from minimum standards to prevent an international ‘race-to-the-bottom’ to the guarantee of fundamental rights for everyone (Baccaro and Mele 2012 p.204). These core labour standards sought to establish decent work along GPNs (Barrientos et al. 2003) and their inclusion in codes of conduct, albeit references to their principles rather than the actual Conventions, has improved their visibility but not their viability (Lerche 2012). The growing number of private form of governance indicates that standards, where they might have been applicable for public actors only, can serve others such as CSOs who wish to press their claims, and TNCs as a form of ‘social legitimacy’ (Maupain 2013; Donaghey et al. 2014). However, the onus is still on national governments (horizontal governance) rather than private transnational actors (vertical governance) to respect the FPRW. The result is that these rights are prioritised, leaving other rights ‘inevitably relegated to second-class status’ (Alston 2004 p.42) and thus excluded from many private vertical

initiatives, erecting a social ceiling that workers ‘bang their heads on’ (PAO Notes) rather than a social floor that lifts them out of poverty. Consequently, the ILO’s mandate was effectively reduced to a list of eight (or more accurately, six)⁸⁴ Conventions, often footnoted in codes of conduct, international covenants and international trade agreements, but designated by some as ‘cheap talk’ (Aaronson and Zimmerman 2008; Lafer 2011) whereby ‘some even contain language that could be interpreted as undermining international labour standards’ (GB.295/MNE/2 p.2). The consensus on eight core labour standards essentially accelerated the appropriation of ILO references in soft-law instruments outside the ILO, creating a form of normative diffusion (Alston 2004) and the creation of a global labour governance regime prioritising soft over hard law (Hassel 2008). The FPRW also ignored many ‘economic rights’ such as occupational safety and health, social security, maternity protection, and pensions and disability benefits (Alston and Heenan 2004). As a result, even though these principles may have increased the visibility of the ILO, they accelerated a reductionist and ‘non-confrontational’ agenda that ‘formally embraced the voluntary private corporate codes of MNCs and its associated [corporate social responsibility] CSR agenda’ (Royle 2010 p.260).

The establishment of the FPRW did not assume ratification, as members States had to adhere to the principles by virtue of membership, however the D-G set the goal of universal ratification by 2015 (1,488 ratifications).⁸⁵ The adoption of the Declaration consequently led to a flood of ratifications, primarily from developing countries as they sought ‘social camouflage’ in order to avoid criticism from the international community (Levi et al. 2013 p.15) (as illustrated in Figure 4.8 and Figure 4.9, which depict the percentage of member States who have ratified the Convention and the number of ratifications over time, respectively). The advantage of this is that it has strengthened the role of CEACR supervision following the significant number of ratifications. Whilst the number of pages is not a decisive measure of ‘strength’ it is indicative. For example, in 2013, the CEACR published a 947-page report on the observations concerning particular countries. In comparison, the last report before the

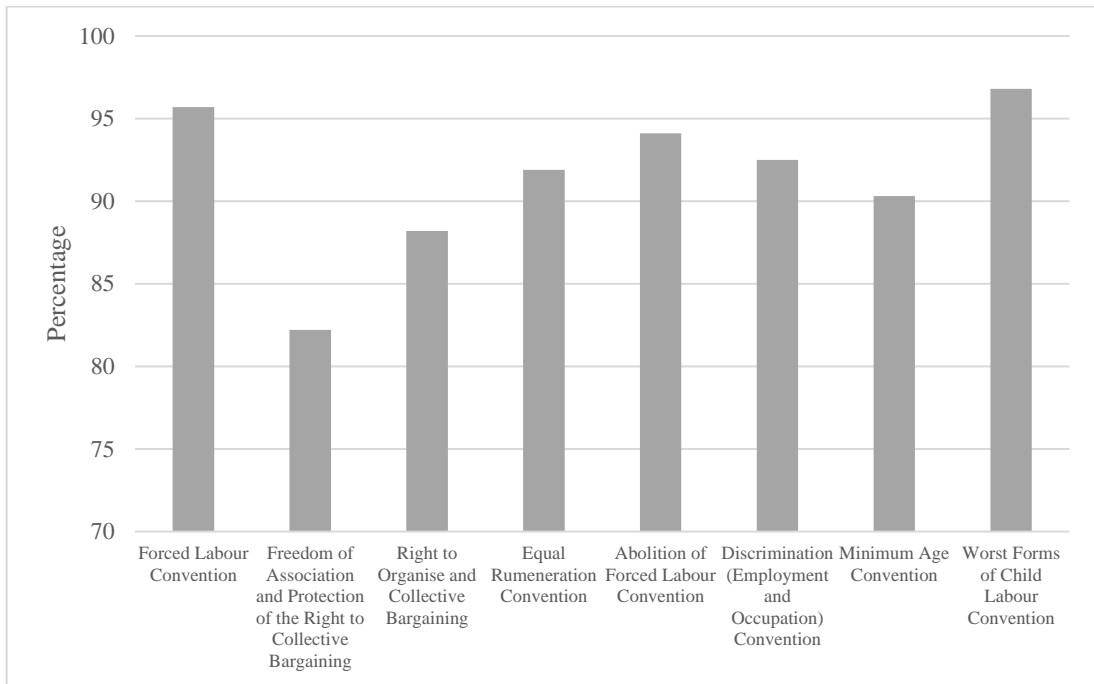
⁸⁴ The principles and rights of freedom of association and collective bargaining are often left out of CSR practices and codes of conduct (Anner 2012) and ratification lags behind the other six fundamental Conventions.

⁸⁵ 186 member States at the time.

1998 Declaration consisted of only 26 pages. By 2016, the ILO was 127 ratifications short of its goal of universal ratification of the eight core Conventions. However, if the focus changes from the number of ratifying countries to the actual population benefitting from an internationally enforceable guarantee of the rights provided by ratification, the picture is not as comprehensive. Considering Brazil, the United States, China and India have still not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87), the ratification rate by population in relation to freedom of association falls to 50 per cent (ILC.101/6 p.18).⁸⁶ Effectiveness is clearly more important than comprehensiveness, and while the eight fundamental Conventions in principle create a minimum floor for workers' rights, in practice violations occur on an all too frequent basis (e.g. the cases of Myanmar and Uzbekistan previously discussed). The ILO recently concluded that there are at least 168 million child labourers and 21 million victims of forced labour irrespective of these 'employment practices' being reclassified as a violation of human rights (ILC.104/DG/1A). As Maupain (2013 p.126) states, 'the organisation now has to face a sobering reality: after [19] years these ostensibly universal rules of the game remain far from universally enforceable'. Put differently, there are still universal decent work deficits.

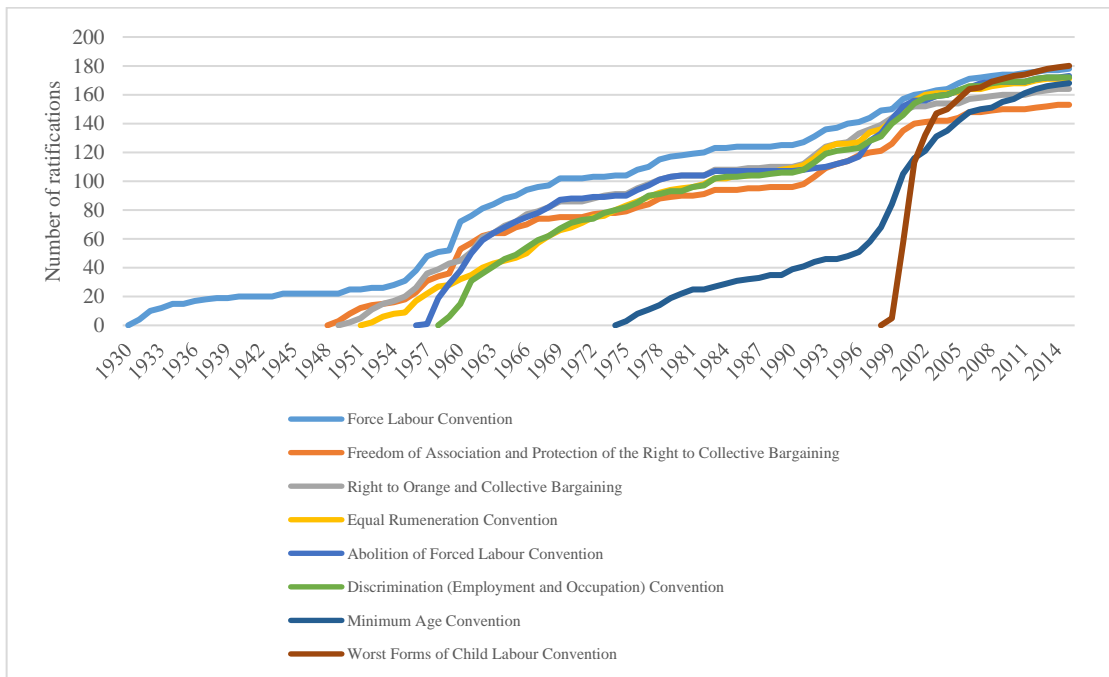
⁸⁶ The Right to Organise and Collective Bargaining Convention, 1949 (C.98) shares a similar fate, with only 49.6 per cent of the population covered by the Convention (ILC.101/6 p.18).

Figure 4.8: Percentage of member States that have ratified the core Conventions



Source: ILO, Normlex (www.ilo.org/normlex), author calculations

Figure 4.9: Ratification of core Conventions over time



Source: ILO, Normlex (www.ilo.org/normlex), author calculations

Box 1: Observing the Fundamental Principles and Rights at Work

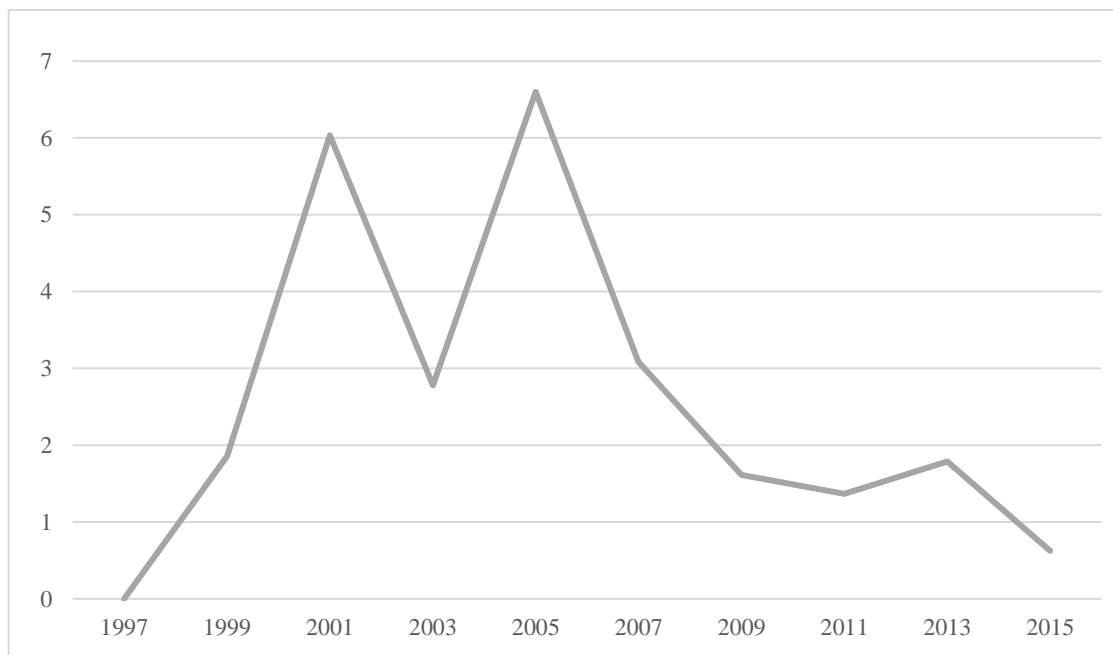
Not only did the FPRW reduce the number of ILO Conventions to the ‘outside’ world to eight, it also reduced the number of mentions of other Conventions ‘inside’ the ILO. During my time at the ILO, apart from the aforementioned Plantations Convention, 1958 (C.110), SECTOR typically did not refer to any other Conventions outside of the eight in major policy documents. This is particularly surprising considering that SECTOR had been in charge of establishing several specific sectoral Conventions (e.g. the Maritime Labour Convention and Safety and Health in Agriculture Convention, C.184). The view within the Department was that because the FPRW were well established and enjoyed a unique amicable status (particularly from the employers), this allowed the Department to remain ‘passive’. As one ILO official remarked during a budgetary meeting, ‘this biennium we need to go for the low-hanging fruits’, referring specifically to a sole focus on the FPRW (PAO Notes). Shortly after I left the ILO, the Employers’ Group launched an attack on the standard-setting role of the ILO through the Standards Review Mechanism, which officially aims to consolidate tripartite consensus on Conventions but unofficially is a way to review whether the majority of ILO Conventions should be ‘binned’ (PAO Notes). My experience within the ILO was that the FPRW were often used as a ‘double-edged sword’ by employers. Whilst they voiced their commitment to these standards they also stressed that if governments effectively implemented these principles all forced and child labour etc. would be eradicated and hence no further standard-setting by the ILO was needed (including the ratification of the other 181 Conventions), thereby curtailing any discussion on new and innovative ideas regarding the role of the ILO (i.e. they stressed the importance of horizontal over vertical governance), such as the ILC discussion on supply chains (covered in detail in Chapter 7).

4.3.2. Decent Work

The Decent Work Agenda ‘represent[ed] the ILO’s “fightback” in the 1990s’ (Lerche 2012 p.18). Juan Somavía, Michel Hansenne’s successor, sought to bring the world’s attention to the ILO in establishing the Decent Work Agenda and it ‘reflected an overwhelming desire to reassert the Organisation’s relevance in ... “the international community”’ (Standing 2008 p.370). In Somavía’s report to the ILC in 1999 he proclaimed that: ‘The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom,

equity, security and human dignity’ (ILO 1999). In addition, to reach this goal the ILO shifted its focus to four strategic objectives: the promotion of rights at work; employment; social protection; and social dialogue. These four strategic objectives were later translated into four ILO policy Departments. The decent work ‘idea’ quickly became the new lexicon of global labour governance, as ‘everybody, everywhere, has a sense of what decent work means in terms of their own lives, and in relation to their own society’ (Somavía 2000). In particular, decent work was targeted at vertical public governance actors (depicted in Figure 4.7 as the blue ‘bubble’) such as the International Financial Institutions (IFIs) as an easily communicable way to summarise the priorities of the ILO. In this respect, the Decent Work Agenda was a great success, although ILO officials often (wryly) remarked that the only time the word ‘decent’ was spoken at the World Bank was in the context of ‘*decentralisation*’ (PAO Notes). It also became the new lexicon for the ILO, appearing 169 times in the D-G’s biennial strategic reports to the ILC in 2001. Thereafter, and not without good reason, the term declined precipitously (mentioned only five times in the D-G’s report to the ILC in 2009) as illustrated in Figure 4.10.

Figure 4.10: Number of times the expression ‘decent work’ appears in the Director-General’s strategic reports to the International Labour Conference (per 1,000 words)



Although decent work became the *lingua franca* of the ILO and other international institutions (Lerche 2012 p.20), at its heart the ‘vagueness of the discourse allow[ed] ... all stakeholders to subscribe to their own decent work imaginary, while leaving open the question of which practical routes are to be taken towards the realisation of decent work’ (Hauf 2015 p.141). Decent work implies the lowest denomination of labour standards and although member States might not disagree with the idea, workers’ rights and labour standards are often viewed as impairing economic growth (Rittich 2015), which has challenged the ILO’s mandate. As Alston (2004 p.521) declares, ‘a façade of labour rights protections is being painstakingly constructed in order to defuse the pressure from those concerned about the erosion of workers’ rights as a result of some aspects of globalization.’

By way of example, the Decent Work Agenda finally recognised the feminist discourse on social reproduction, which constituted a ‘symbolic success of feminism in the discursive economy of representation’ (Hauf 2015 p.471). However, it proved far more difficult to translate this recognition into material improvements for women in many industrial sectors such as textiles (Fontana and Silberman 2013), transport (Turnbull 2013) and tourism (Baum 2013). Under the Decent Work Agenda, the market was now acknowledged as a primary mechanism for economic and social upgrading, despite no automatic line of causality between the former and the latter (Barrientos et al. 2011 p.336), or in the words of the D-G: ‘making markets work for all’ with the ‘invisible hand ... guided by a careful eye’ (Somavía 2000). In a GPN, of course, there is no ‘invisible hand’ making markets ‘work for all’, but rather the firm hands of TNCs making the market work for global capital. A ‘guiding eye’, no matter how ‘careful’, is indexical of very ‘light touch’ (soft) regulation.⁸⁷

The impact on the policy agenda of the ILO since the adoption of the Decent Work Agenda has been dramatic. As illustrated in Figure 4.10, the term has become widely used in ILO publications and reports as a simple way of summing up the aspirations of the Organization. Decent work has since been incorporated in the Millennium Development Goals and the eighth goal of the Sustainable Development

⁸⁷ Kari Tapiola, former Executive Director of the ILO and special advisor to the D-G, subsequently admitted that: ‘It took us some years to realize that the new universal market did not by itself deliver growth and happiness for all’ (Tapiola 2006).

Goals is to ‘promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all’ (to be realised by 2030). Hughes and Haworth (2011 p.94) note with approval that the ILO was now at the ‘top table’ of global institutions, but while the ILO ‘talked up’ decent work, both governments and employers expressed growing concern about the ILO’s work to develop a decent work index as any concrete measure or index would allow comparison over time and between industries, countries, and possibly supply chains. Employers, in particular, insisted on ‘decent *and productive* work’ – i.e. they were unwilling to sacrifice efficiency for equity and/or voice – and they were ‘determined that nothing concrete or effective should come out of the decent work agenda’ (Baccaro and Mele 2012 p.220). It also meant that the ILO was no longer the sole guardian of labour standards and was just one actor among many (O’Rourke 2006) – ‘the Organization now finds itself in open competition, with regard to labour market governance issues, with institutions pursuing independent, and sometimes conflicting, agendas and objectives’ (Rittich 2015 p.85). For example, the Food and Agricultural Organization of the United Nations (FAO) established its own Decent Rural Employment team, mimicking the work performed by the ILO, which has led to inter-agency conflicts. By way of illustration, the Indonesian government questioned the relevancy of an ILO mission in 2013 as two weeks previously the FAO’s team had initiated ‘decent work strategies’ for the country’s rural sector, leading one Indonesian official to ask: ‘weren’t you guys here two weeks ago?’ (PAO Notes).

Box 2: Observing the Decent Work Agenda

Whilst decent work was the *lingua franca* of the ILO during most of the 2000s, by the time I arrived at the ILO it was fading into obscurity. This was partly due to the reorganisation of the ILO away from the four pillars to six policy Departments initiated by the current D-G, Guy Ryder. The introduction of the eight areas of critical importance (ACIs) meant a shift in the ILO’s focus away from the four pillars of decent work, which did not mirror the latter. In particular, ILO officials in the Social Dialogue Unit (formally a Department) were dismayed at the lack of mention of social dialogue (one of four principles of the Decent Work Agenda) in any of the eight ACIs (PAO Notes). As one ILO official noted, ‘the term decent work is dying out’ while another added with surprise that the ILC discussion on ‘decent work in global supply chains’

actually included the term ‘decent work’ (PAO Notes). The official later joked, that this observation was a sign of its age and tenure with the ILO as the proposal for a discussion on decent work in global supply chains was originally proposed in 2006 when the term was still in vogue. The inclusion of ‘decent work’ in goal eight of the Sustainable Development Goals (SDGs) has undoubtedly led to a revitalisation of its usage but more as a tick box exercise when writing policy documents: ‘make sure you mention the SDGs and goal eight’ was a common refrain when working at the ILO (PAO Notes). In short, decent work was typically used as no more than a short hand for what the ILO does, rather than a significant change in the *modus operandi* of the Organization.

4.3.3. A fair globalisation for all

In 2008, the ILO unanimously adopted the *Declaration on Social Justice for a Fair Globalization* (hereafter the ‘Social Justice Declaration’).⁸⁸ The objective of the Declaration was first to restate the ILO’s mandate and priorities, to highlight their relevance to the current context and to combat the strain placed on the ILO’s core normative functions by globalisation (Maupain 2009). It was noteworthy for two reasons. First, it stressed that four other ‘governance’ Conventions (alongside the previous eight ‘core’ Conventions) should also be prioritised.⁸⁹ However, these Conventions did not receive the same ‘universal’ ratification as the eight core Conventions (particularly as member States were not expected to ‘realise’ them by virtue of their membership).⁹⁰ More troubling was the lack of ratifications of the Tripartite Consultation Convention C.144, which is fundamental considering the reliance on tripartism in the ILO.⁹¹ Secondly, the Declaration was striking as it failed to acknowledge both the mobility of capital and labour, and the existence or rise of TNCs or multinational enterprises (MNEs). In fact, the Declaration makes no reference to MNEs⁹² or of their production networks, supply chains or value chains.

⁸⁸ The Social Justice Declaration was passed unanimously, unlike the FPRW.

⁸⁹ The four ‘governance Conventions’ are Labour Inspection Convention, 1947 (C.81); Employment Policy Convention, 1964 (C.122); Labour Inspection (Agriculture) Convention, 1969 (C.129); and Tripartite Consultation (International Labour Standards) Convention, 1976 (C.144).

⁹⁰ C.81 has received 145 ratifications, C.122 has received 111, C.129 has received 53 and C.144 has received 139.

⁹¹ The usual culprits (United States, China and India) have not ratified this Convention, thus a majority of the world’s population are not covered by this Convention.

⁹² According to the ILO, an MNE is the name given to enterprises that operate across borders.

Box 3: Observing the social justice declaration

The Social Justice Declaration was an unusual addition to the ILO's burgeoning arsenal of Declarations for several reasons. First, in comparison to decent work and the FPRW it was hardly ever used or in fact read by ILO officials. One example of this was during an internal meeting on global supply chains when an ILO official gave us all a copy of the Declaration and remarked that they had acquired this and found it 'very useful', which was surprising considering that the Declaration was supposed to represent the contemporary vision of the ILO's mandate in the era of globalisation (PAO Notes). It was perhaps more surprising that several of the other ILO officials had not even read the Declaration, particularly as it was only 12 pages in length. Secondly, although it had introduced the notion of 'governance Conventions' these were not given the same weight as the eight core Conventions and were hardly referred to. Similar to the FPRW it also allowed ILO Departments to avoid confrontation with the employers. For example, when writing policy documents that dealt with partnerships with other actors (international organisations, civil society organisations or similar) it typically included the footnote, 'in line with the ILO Social Justice Declaration', which explicitly states that: 'This will be done in consultation with representative national and international organizations of workers and employers' (ILO 2008 p.13). In fact, compared to decent work and the FPRW, this Declaration has made no difference to either the language or action of the ILO.

Taken as a whole, the three initiatives developed between 1998 and 2008 represent a significant shift in the ILO's locus of attention. In 78 years (1919-1997) the ILO adopted only two Declarations (alongside 181 Conventions), whereas in just 10 years the Organization adopted two Declarations (1998-2008) (when only seven Conventions have been adopted).⁹³ Even a self-professed sympathiser of the ILO proclaimed that the ILO was suffering from 'declaratory incontinence' (Maupain 2009 p.1), although the more important, and less amusing point is that the Declarations focussed on projecting the activities of the ILO towards the international community (see Figure 4.7), while simultaneously failing to address both the impasse that was occurring inside the Organization and the convoluted lines of vertical governance in GPNs beyond the reach of the ILO.

⁹³ As part of its centenary the ILO is likely to adopt another Declaration in 2019.

4.3.4. The Future of Work⁹⁴

‘I think we have entered into perhaps the most difficult period of the ILO’s history.’

Guy Ryder (2015c p.3)

In 2012, Guy Ryder was appointed as the tenth D-G of the ILO and immediately instigated a policy of internal reorganisation and initiated a new discourse on the need for new forms of horizontal and vertical governance of global supply chains.⁹⁵ His appointment has particular significance as he was the first D-G to come from outside the government group of the ILO, having alternated between international trade union confederations and the ILO over a career of more than 20 years.⁹⁶ Ryder was appointed on a slim majority at the May 2012 Governing Body with just 30 votes (one more than the required majority of 29).⁹⁷ He received strong backing from the Workers’ Group and the Global Union Federations (GUFs), as well as some industrialised countries. The employers’ preference was Gilles de Robien, the former French Minister for Education, who had worked in the private sector for 25 years.⁹⁸ Since Ryder’s appointment he has adopted a frank attitude to the problems facing the ILO: ‘I think it is appropriate to speak of crisis when the rate of change is such as the ILO is required to think very deeply about its future relevance and future effectiveness’ (Ryder 2015c p.1). For Ryder, the ILO faces four crises, namely jobs (in terms of the number), social

⁹⁴ The Future of Work is the ‘centrepiece’ of the ILO’s centenary initiatives to be discussed at the ILC in 2019. Similar to the World Commission on the Social Dimension of Globalization in 2004, the Future of Work initiative invites all member States to have ‘Centenary Conversations’ on: work and society; decent jobs for all; the organisation of work and production; and the governance of work. These ‘conversations’ will feed into a Centenary Declaration that will likely be adopted in 2019 at the ILC.

⁹⁵ The ILO is unique among other international organisations in referring to global supply chains. A request was made to the Governing Body of the ILO to change the wording of the ILC discussion in 2016 to decent work in global *value* chains. However, the employers rejected the new wording as global value chains, in their view, implied a broader discussion than global supply chains.

⁹⁶ Ryder was Assistant Director of the Geneva Office of the International Confederation of Free Trade Unions (1988-1993); Director of the Geneva Office of the International Confederation of Free Trade Unions (1993-1998); Director, Bureau for Workers’ Activities, International Labour Office, Geneva (1998-1999); Director of the Office of the Director-General, International Labour Office, Geneva (1999-2002); General Secretary of the International Confederation of Free Trade Unions (ICFTU), Brussels (2002-2006); General Secretary of the International Trade Union Confederation (ITUC), Brussels (2006-2010); and Executive Director, International Labour Office, Geneva (2010-2012).

⁹⁷ D-Gs must receive a majority of the votes of the Governing Body to be appointed. Votes are done in secret.

⁹⁸ Gilles de Robien was seen as the likely candidate to succeed Ryder in October 2016 but he was charged with manslaughter in 2015 and this took his name ‘off the ticket’ (PAO Notes).

justice (in terms of inequality), values (i.e. the demise of social market capitalism), and multilateralism (i.e. difficulty in reaching consensus).

Within the ILO, Ryder's appointment was met with some degree of scepticism, both in terms of the D-G's language and his reform of the Organization. On the former, an ILO official stated: 'I like him [Ryder], he speaks his mind ... but if he keeps speaking his mind, he might not be around for long' (PAO Notes). With respect to the more significant changes introduced by the D-G – internal reorganisation and the eight ACIs – there is considerable disquiet if not outright scepticism. One of the first priorities of the D-G was to restructure the ILO headquarters and adopt a new Programme and Budget for 2013-2014. The previous structure focussed on the four objectives (pillars) of the ILO supporting decent work, namely: social dialogue, rights at work, social protection and employment. These 'silos', as one ILO official put it, were useful, 'as silos are an excellent way to control the rats' (PAO Notes). ILO programmes were reorganised around a limited number of ACIs.⁹⁹ These were later proposed as 'outcomes' for the 2016-2017 Programme and Budget.¹⁰⁰

Whereas decent work relied on the market to 'work for all', and was held accountable by the market, Ryder refocussed the ILO on social justice (workers' inalienable rights). The restructuring of the Organization has involved upgrading ILO analytical capacities to make it a centre of technical excellence for the world of work and to ensure a revitalisation of its mechanisms to deliver high quality services to member States. For example, Ryder identified the need for the ILO to become 'the recognized authority in all matters to do with work' (Ryder 2012), strengthening the research capacity of the ILO by creating a new Research Department staffed by officials and researchers 'harvested' from other policy Departments (PAO Notes). In no small measure, this element of the ILO's internal reorganisation was designed to counter the delaying tactics of constituents who might claim that any discussion on a

⁹⁹ The ACIs are: promoting more and better jobs for inclusive growth; jobs and skills for youth; creating and extending social protection floors; productivity and working conditions in SMEs; decent work in the rural economy; formalization of the informal economy; strengthening workplace compliance through labour inspection; and protection of workers from unacceptable forms of work.

¹⁰⁰ The outcomes mirror the ACIs, with 'more and better jobs' combined with 'improved youth employment prospects', the focus on SMEs extended to 'promoting sustainable enterprises', and the addition of 'ratification and application of international labour standards', 'promoting fair and effective labour migration policies', and 'strong and representative employers' and workers' organizations'.

contentious issue is ‘premature’, at least until the Office had undertaken systematic background research on the topic. However, according to one ILO official, the new Research Department is a failure both in terms of its focus (econometrics and statistical research rather than qualitative/normative research) and instead of producing research for Departments in the ILO to help combat the delaying tactics of the employers, it has decided to pursue its own agenda, particularly in producing research similar to that of the World Bank, with several ‘flagship’ publications. Unlike the previous International Institute for Labour Studies (IILS), famously established by Robert Cox, which was largely independent from the social partners, the new Research Department became exposed to tripartite consensus damaging the extent to which they can produce anything truly ‘contentious’ or, more specifically, the extent to which they can reveal indecent work in ILO member States (PAO Notes).

In Ryder’s first report to the ILC in 2013, *Realities, Renewal and Tripartite Commitment*, he confronted some of the most sensitive topics facing the ILO, including some that were ignored by previous D-Gs. These include the implications of the goal of ‘decent of work for all’ when ‘a-typical’ forms of employment are becoming the norm, the issue of constituents’ representativeness, the threat of internationalised production and supply chains to the ‘standard’ employment relationship, and the need to work with other actors in civil society. If the D-G was talking to Figure 4.7, the ILO needed to extend its horizontal reach and engage local civil society, and engage all actors depicted along the vertical chain of labour governance (depicted as the green ‘bubble’ in Figure 4.7). As Ryder (ILC.102/DG/1A p.3) reflected:

‘The ILO is criticized as being ill-adapted to the rapidly evolving realities which it must address. Such criticism is not confined to matters of detail, but extends to fundamental aspects of the ILO, such as its body of international labour standards and the system for their supervision; the real legitimacy of its tripartite representative structures; and its ability to make a difference in meeting some of the major challenges of the world of work.’

Similarly, in his second strategic report to the ILC in 2015, *The Future of Work Centenary Initiative*, he was again frank about the challenges facing the ILO and its constituents and the need for the Organization to expand its reach by extending outside

its traditional tripartite structure. Ryder's reports to the ILC have been viewed inside the Organization as a 'blessing' due to their frank nature and brevity (PAO Notes). As one official in the ILO with 15 years' experience remarked, 'this is the first time I have actually read a D-G's report to the ILC' (PAO Notes).¹⁰¹

For Ryder, the ILO has three main comparative advantages that set it apart from other organisations in similar fields: its mandate for social justice, its tripartite structure and its means of action (i.e. the setting and the supervision of international labour standards). However, 'this mandate in itself is no guarantee of the relevance, success and future of the Organization' (ILC.102/DG/1A p.15). He has acknowledged several aspects of the tripartite structure that deserve criticism, even though 'no ILO Director-General can say anything other than that tripartism is a good thing' (Ryder 2014 p.5). In particular, that 'a more serious challenge to tripartism, at least as practised in the ILO, comes from the issue of "representative legitimacy"' (Ryder 2014 p.6). His strategic report to the ILC in 2015 made clear that tripartism resulted in compromises that 'may be seen not to go far enough or quickly enough', and that 'the positions taken by social partners may be characterised as special pleading by vested interests to the detriment of the common good' (ILC.104/DG/1A p.17).

The engagement of civil society and other non-public governance actors has also been a defining feature of Ryder's initial period in office. Although he preaches the importance of tripartism (horizontal governance) he acknowledges that this is 'not enough' (Ryder 2014 p.12). In particular, the traditional interaction with the ILO's member States and their responsibilities can no longer be relied upon. In a speech that can be regarded as implicit recognition of Figure 4.7, Ryder acknowledges: 'it makes less sense to think in terms of national products exchanged between two Nation States and more and more to think in terms of value-added along extended supply chains through complex interactions of global non-State actors' (Ryder 2014 p.16). This focus on private actors is a reflection of the fact that the 'ILO missed the boat of the CSR explosion' (Ryder 2015a) and that 'the ILO has found it difficult to define its role in respect of CSR, even though its standards are frequently cited in the voluntary arrangements that companies are putting in place' (ILC.104/DG/1A p.16). The need

¹⁰¹ Guy Ryder's D-G reports have been less than half the typical length of Juan Somavía's D-G reports.

to engage enterprises that exist outside the ILO's tripartite structure is imperative for its values to be realised. The essence of Figure 4.1 is that a combination of vertical and horizontal governance mechanisms is more likely to result in greater and more sustainable improvements in decent work, but the ILO's sphere of responsibility does not match the contemporary realities of the Global Transformation. Ryder has emphasised this 'mismatch':

‘National governments ratify [Conventions] and are responsible for answering to the ILO for their observance. It's a nation state based approach to international labour behaviour. There has been a growing feeling, an accumulation of feelings, that the advent of globalization, the development of supply chains and production networks, has led to a risk at least – I put it no more strongly than that – that this purely nation state approach to the behaviour of the globalized economy risked missing the dimension that was the transversal integration of production networks across countries. I think we knew it and I don't think we knew what to do about it (Ryder 2015a).’

As a result, Ryder attempted to extend the ILO's work into vertical governance by engaging with the private sector. This work in particular aimed to ‘promote sustainable and responsible practices in the operations of enterprises, affiliates and partners and in supply chains in a context marked by the fragmentation of production processes along increasingly complex and dispersed chains’ (GB.319/INS/5 p.1). Unfortunately, the *Strategy for wider ILO engagement with the Private Sector* adopted in May 2014 included significant bureaucratic hurdles and procedures, effectively blocking ILO Departments engaging with enterprises unless agreed upon by employers (ACT/EMP) or workers (ACTRAV).¹⁰² In this case, it did not adhere to the principles of ‘efficiency, agility and pragmatism’ as described in the report (GB.321/INS/6 p.2). Thus, these two Departments hold the key to whether enterprises can be included. In the case of ACT/EMP, it is unlikely that engagement with any enterprises that are not official members of the International Organization of

¹⁰² The Bureau for Employers' Activities (ACT/EMP) coordinates all the activities of the ILO related to employers and their organisations. The Bureau for Workers' Activities (ACTRAV) similarly coordinates all the activities of the ILO related to workers and their organisations. Both Departments are made up of ex-employer association/trade union officials and thus have close ties with their respective international associations. ACT/EMP and ACTRAV have direct access to the office of the D-G of the ILO (see Appendix 1, which details the ILO's organisational structure).

Employers (IOE) will be accepted. It is ACT/EMP's *raison d'être* to block or act against any initiative that is not beneficial towards IOE.¹⁰³ For ACTRAV, any TNCs that do not engage with trade unions will be blocked. It is ironic that one of the only common interests between the employers and workers is that 'both have wanted to retain their exclusive, monopolistic position and control the agenda with which they are most comfortable' (Standing 2008 p.380). In fact, the privileged role for employer and worker organisations makes it harder to open the ILO to significant participation by relevant vertical governance actors such as TNCs and NGOs. Noting the composition of the Employers' Group at the Governing Body and the ILC, it is easy to appreciate the dearth of representation from important TNCs. As Standing (2008 p.380) notes, 'it is doubtful whether most "employers" around the world even know that the IOE exists, let alone belong to it or subscribe to its self-appointed mission'.

This was not the first time that Ryder found himself at the mercy of the tripartite constituents (mainly the employers), which crystallised in a unique institutional crisis in 2012. The disagreement between the Employers' and Workers' Groups was concerned with the right to strike, and was partly legal but predominantly political. It is extremely telling that just 2 weeks after Ryder was appointed (even though he had not yet assumed office) the Employers' Group launched an attack on the very heart of the ILO's supervisory mechanism. They insisted that a disclaimer be added to the CEACR's annual report indicating that its work was not 'an agreed or determinative text of the ILO tripartite constituents' (Hovary 2015 p.21). Moreover, the Employers' Group also refused to include any case that dealt with the right to strike in the list of labour standard violation cases discussed each year within the CAS if such a disclaimer were not added. This paralysed the work of the CAS for the first time since its establishment in 1927. Similarly, in 2013 and 2014 no Conclusions were adopted in the cases dealing with the right to strike at the CAS. This impasse was finely resolved when a special tripartite meeting was held in February 2015, and the workers and employers issued a joint statement on the way forward, which was agreed by the Government Group (PAO Notes). Although the crisis over the right to strike was

¹⁰³ Members of the ILO's Governing Body must be a member of either the ITUC or IOE. It is essentially a 'closed shop' to employers or workers who are not a member of these two institutions, thereby excluding a large proportion of those workers who work in the informal economy and are not members of trade unions.

finally resolved, it reflected a deep breakdown of trust between employers and workers within the ILO and illustrated how, despite member States formally having more power than workers and employers within the ILO, the latter two actually have the necessary leverage to influence and even change the course of the ILO (Hovary 2015).

A further criticism of the ILO that Ryder articulates in several policy documents is the changing character of employment, ‘the supposedly “atypical” has become typical; the “standard” has become the exception’ (ILC.102/DG/1A p.13). He points directly to the lack of consensus between the tripartite constituents as a reason for the ILO’s primary focus on the traditional employment relationship stating that there is ‘a risk that the ILO will inevitably be seen as irrelevant in areas where it absolutely must be present’ (ILC.102/DG/1A p.13). In particular, he identifies three Conventions that were adopted in the 1990s – Part-Time Work Convention, 1994 (C.75), Home Work Convention, 1996 (C.177), and Private Employment Agencies Convention, 1997 (C.81) – that have only received on average 15 ratifications each, showcasing the inability of the ILO’s constituents to move forward from firmly held and long-standing positions rooted in the standard employment relationship (ILC.102/DG/1A p.15).

During Guy Ryder’s first four ILCs (2013-2016) no new Conventions were adopted. However, during his initial period in office he oversaw the adoption of the Protocol of 2014 to the Forced Labour Convention, which addressed implementation gaps in the Forced Labour Convention, 1930 (C.29). A Protocol is different from a Recommendation in that it partially modifies a Convention and thus is open to ratification. Unlike the original Forced Labour Convention (C.29), its ratification rate is dismal – only five countries have ratified the Protocol.¹⁰⁴ However, the Protocol was noteworthy as it (in ‘ILO speak’) establishes a close relationship between ILO standards and GPNs stating in Article 2 that governments should support ‘due diligence by both the public and private sectors to prevent and respond to the risks of forced or compulsory labour’ (ILC.105/6 p.41). The second traditional ILO standard-setting initiative that Ryder has overseen is the Transition from the Informal to the

¹⁰⁴ Mali, Mauritania, Niger, Norway and the United Kingdom had ratified the Protocol as of 23 May 2016.

Formal Economy Recommendation, 2015 (R.204). Considering that the informal economy comprises half of employment in developing countries, it is surprising – albeit understandable considering the ILO’s tripartite structure is largely based in the formal economy – this important topic did not result in a Convention.

The culmination of Ryder’s initiatives, in steering the ILO towards forming a response to the convoluted lines of vertical governance, was the ILC discussion on decent work in global supply chains, which took place in June 2016. In his first strategic D-G report to the ILC, Guy Ryder noted that: ‘Proposals for a Conference [ILC] discussion on decent work in global supply chains have yet to meet with the support of the Governing Body, which will, nevertheless, have an early opportunity to return to the matter’ (ILC.102/DG/1A para.76). This is ‘ILO speak’ for ‘the Governing Body needs to urgently address this matter’. To reinforce the point, the D-G subsequently noted that: ‘The Governing Body has in fact examined, but not so far acted on, the option of including the question of global supply chains in the agenda of a Conference session. It may wish to give further consideration to this in the future’ (ILC.102/DG/1A para.142). The ‘future’, in this context, is ‘ILO speak’ for ASAP. In addition, Ryder stressed that:

‘the labour issues related to supply chains periodically hit the headlines when a case of serious abuse is brought to public attention or when a tragedy occurs at a workplace, causing appalling loss of life. When that happens, the inadequacy of existing arrangements are laid bare, consumers make clear that they have no wish to purchase goods produced in conditions of abuse of, or danger to, workers, enterprise reputation is damaged, the government concerned is put under pressure to effect change and, incidentally, the ILO is the object of pointed criticism for having failed to take up its own responsibilities’ (ILC.102/DG/1A p.24).

The Workers’ Group within the ILO first raised concerns about global supply chains during the ILO’s Governing Body in March 2006 but the Employers’ Group and governments of several developing and emerging economies rejected any discussion on the topic. The Office subsequently wrote up a proposal for the next Governing Body in November 2006, to ‘focus on structural changes taking place in key sectors of the global economy and the impact on the quantity, quality and

distribution of employment ... Preparation of the technical report might involve a range of units in the Office including ENTERPRISES, SECTOR, INTEGRATION, IILS, NORMES, DIALOGUE and others' (GB.297/2 para.70).¹⁰⁵ In selecting which proposals (from a list of six) to consider in greater detail at the 298th Session of the Governing Body, only the workers and a handful of governments (Argentina, Czech Republic, Germany and the UK) supported the proposal on decent work in global supply chains. The Employers' Group, while not explicitly rejecting the proposal, highlighted the importance of horizontal as opposed to vertical regulation, noting that ILO standards 'covered almost all possible situations and relationships in the world of work. The important thing was therefore not so much to develop new general standards, but rather to ensure that existing standards were applied more effectively' (GB.297/PV para.5).

Proposals before the Governing Body 'rarely die', they simply remain as an item for discussion and 'move up and down in the priorities of the tripartite constituents, as interpreted by the Office' (PAO notes). The Workers' Group continued to support the proposal for an agenda item on decent work in global supply chains at every subsequent meeting of the Governing Body between 2007 and 2013. Employers' opposition was unyielding if not always explicit – on most occasions they simply supported other proposals and said little or nothing about global supply chains. A minority of member States consistently supported the proposal,¹⁰⁶ but even when a window of opportunity was seemingly ajar – focussing on global supply chains as 'an opportunity to further explore ways of dealing with the financial crisis' (Workers' spokesperson, GB.303/PV para.69) and a 'very timely [proposal] in the current context, characterized by structural adjustments taking place in the global economy' (US government representative, GB.307/PV para.22) – the opposition of employers

¹⁰⁵ INTEGRATION (now-defunct) coordinated the ILO's involvement in the UN system. The International Institute for Labour Studies (IILS), now the ILO's RESEARCH Department, promotes research, public debate and knowledge sharing on emerging issues of concern to the ILO and its constituents. NORMES is the ILO's international labour standards Department.

¹⁰⁶ Among the permanent member States of 'chief industrial importance' (see Appendix 1 on the structure of the ILO) there was consistent support from France, Germany, Italy, the UK and USA. Other European States elected to the Governing Body for a 3-year term also supported the proposal (e.g. Austria, Belgium, Greece, Hungary, Netherlands, the Nordic countries and Poland), as did Australia and Canada. The Africa Group (Congo, Egypt, Niger, Tanzania, Togo and Zambia) elected in 2011 also supported the proposal.

and a lack of support from a sufficient number of government representatives was enough to close the window.

Opposition was no longer sustainable following the Rana Plaza disaster in Bangladesh (April 2013). In the D-G's own words: 'it's worth confessing that without Rana Plaza we would not be having that discussion [on global supply chains]. I think that the force of circumstance led us into a discussion, which we were not prepared politically to have' (Ryder 2015a). The Rana Plaza disaster created an opportunity for the D-G and the Workers' Group in the ILO to link global supply chains to a recurrent discussion at the ILC on social dialogue. As one of the four pillars of decent work, social dialogue appears on the agenda of the ILC every 4 years and the (fortuitous) focus of the discussion in June 2013 was on 'cross-border social dialogue'. Prior to this point, the employers and several governments, including China and India, had frustrated workers' attempts to put global supply chains on the agenda and it was no coincidence that the Workers' Group, with strong backing from the GUFs, had nominated Guy Ryder for the Directorship of the ILO. Even in the immediate aftermath of Rana Plaza, the Employers' Group in the ILO maintained that any discussion on global supply chains was still 'premature' (PAO Notes). Their main objections, elaborated at that year's ILC and subsequent internal meetings, were fourfold: (i) the problem in Bangladesh was building regulations, not labour standards; (ii) most of the garment industry in Bangladesh was producing for the domestic market and responsibility therefore fell to national political authorities, not enterprises (multi-national or otherwise), to legislate for and enforce human rights and fundamental social standards; (iii) multi-national enterprises were not a 'fourth constituency' of the ILO and the Office should work with and respect the roles of the IOE and ACT/EMP; and (iv) any attempt by the ILO to integrate public and private, horizontal and vertical labour governance would be futile, as 'relationships within global supply chains were more like affairs than marriages' (ILC.102/PR/11 p.6) and rather than 'pearls on a string ... it would be more accurate to compare them to a dish of spaghetti. If you tried to pull them apart, it was unclear where the other end was' (ILC.102/PR/11 p.5). In effect, the employers argued that Rana Plaza was a failure of horizontal governance and they sought to foreclose any attempt by the ILO to establish a system of vertical governance.

Not to be deterred, the Workers' Group pressed the issue once again at the next meeting of the Governing Body. Crucially, during the inevitable standoff that followed, the workers were better armed as the D-G had assigned decent work in global supply chains to SECTOR rather than ENTERPRISES.¹⁰⁷ With the support of governments from Africa, Latin America and many industrialised economies, it was agreed to create a multi-departmental Task Team to undertake the necessary research in preparation for a discussion at the ILC in 2016. To quote the D-G once again, the ILO faces 'a difficulty in working out how to combine classic public policy action with private initiatives and engagement with the private sector, we simply did not know how to do that. We weren't alone as this was also felt in our tripartite constituency and this created a great deal of nervousness. Slowly we are learning to move on' (Ryder 2015a). As part of the movement forward the ILC was asked to discuss:

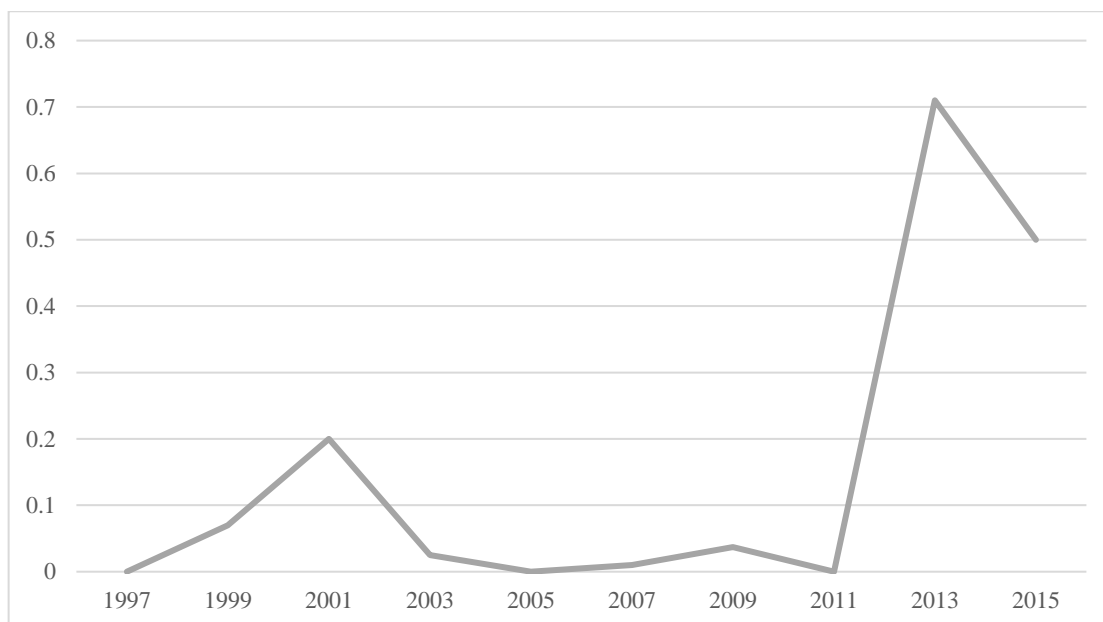
- key structural changes, trends and drivers, as well as the economic dimension of GSCs and their interlinkages, including their contributions to national and local economic development;
- the implications of GSCs (including gender-specific effects) on job creation, skills development, distribution of employment, and working conditions, including wages, working time and occupational safety and health;
- the effects of GSCs on the nature of the employment relationship, as well as on collective bargaining and social dialogue;
- policies and good practices to promote backward and forward linkages, the integration of local SMEs, cooperatives and other companies into GSCs, and transitions to formality;
- strategies to accelerate skills upgrading, improve organizational procedures and increase productivity and sustainability;
- the role of international labour standards and, in particular, fundamental principles and rights at work;

¹⁰⁷ Just as the workers had lobbied for the elevation of SECTOR, the employers lobbied for the elevation of ENTERPRISES (previously under Employment), which is now also a freestanding policy Department.

- strategies that build on multiple, complementary approaches to achieving workplace compliance
- the distinct roles and responsibilities of employers and workers at the national and international levels as well as of governments, including government's role in law enforcement
- the role of organizations representing workers and employers at the global level, including by sector, in view of the opportunities for cross-border social dialogue; and
- the role of multinational enterprises in the promotion of decent work in global supply chains.

Taken together, these discussion points implied the need for a complementary system of horizontal and vertical labour governance (as per Figure 4.7), which was precisely the point of this ILC discussion. Just as decent work became the lexicon of the D-G in the 2000s, supply chains became the *lingua franca* for Ryder as illustrated in Figure 4.11. As part of this discussion the ILO Office was requested to provide additional guidance on the conditions of work in global supply chains. The plantations sector (a sector intimately connected to GPNs) was chosen as part of the ACI on the rural economy to investigate the potential for vertical governance.

Figure 4.11: Number of times the word ‘chain(s)’ appears in the Director-General’s strategic reports to the International Labour Conference (per 1,000 words)



Guy Ryder was re-elected for another 4-year term in October 2016, with 54 of the 56 titular members voting for his re-election (he was in fact the only candidate). In his vision statement drafted in May 2016, he identified two major problems which the ILO must address, namely migration and supply chains. As he notes: ‘Supply chains – will be discussed at this year’s Conference [2016] and are an increasingly important part of the world of work. Without anticipating what the Conference will decide, it is likely that new scope will be opened for ILO action. Again, the ILO must be responsive to new opportunities and demands’ (Ryder 2016b).

4.4. Conclusion

In a world dominated by GPNs, the public (horizontal) system of global labour governance that relied on the tripartite social partners (capital, labour and the state), overseen and supported by the ILO, has been supplanted by a private (vertical) system. The relevancy of the ILO’s standard-setting role (horizontal governance), which was fundamental to *inter*-national trade during the Great Transformation, has diminished during the Global Transformation. The ILO’s standard-setting role has indeed ‘faltered’ (Standing 2008), illustrated by the recent dearth of Conventions adopted (none for the past 5 years) and falling rates of ratification. The ILO’s move from a

hard-law institution that promoted the ratification of Conventions that are then adopted into national law, to the ‘realisation’ of a select number of ‘fundamental’ principles has challenged the ILO’s ‘hard’ standard-setting role. The Decent Work Agenda, whilst moving away from the traditional male employment relationship model and increasing the visibility of the Organization within the international community, has become a hollow platitude and no more than a slogan or buzzword both within and outside the Organization. While some commentators are ready to sound the death knell for the ILO’s labour standards (Standing 2008), Ryder has other ideas.

The current D-G is well aware of the ‘mismatch’ between public/private/social and horizontal/vertical governance, as well as the ‘gaps’ that appear in this (uncoordinated) system, and although his initiatives have been restricted by the tripartite structure, bureaucracy and internal tensions that play out within the ILO’s headquarters, the ILC discussion in 2016 demonstrates the capacity for innovation. The following chapters (5 and 6) focus on the application of the ILO’s standards and decent work on the ground in two countries that were prioritised under the ACI on the plantations sector. This is an important distinction considering that although standard-setting occurs at the global level, standards are implemented and enforced at the national (horizontal) level. Furthermore, data on the conditions of work in GPNs was needed to feed into the discussion/research reports submitted to the ILC in 2016 as the Office sought to establish ‘expert legitimacy’. It is to this next stage in the process that we now turn.

5. (In)Decent Work on Indonesia's Palm Oil Plantations

‘There are frequent reports of denial of rights at work, poor quality employment, high level of unemployment, unsafe working conditions and lack of income security, and inadequate representation of agricultural plantation workers in social dialogue. Women in particular, suffer even greater poverty. They are often powerless in exercising their basic rights, despite high levels of labour force participation.’

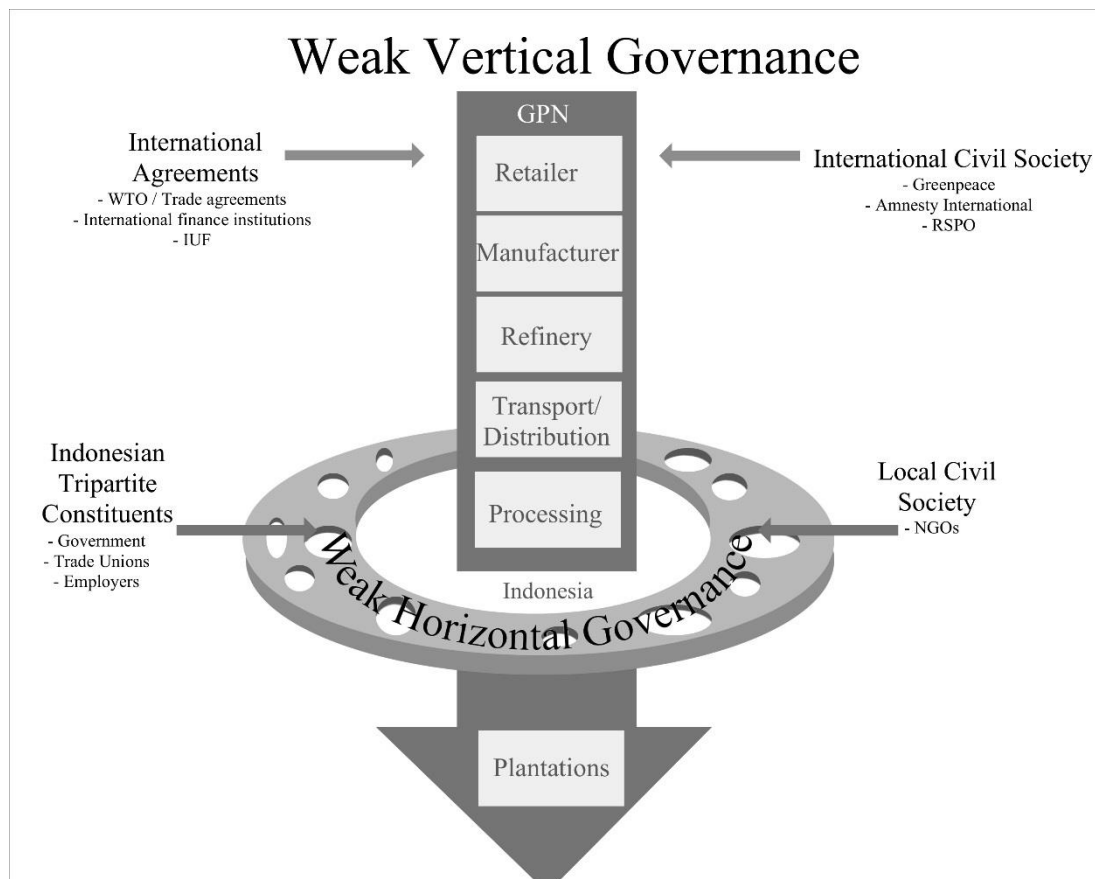
Indonesian Plantation Workers Still Face Lack of Labour Rights, ILO
Press Release, Jakarta, Friday, 26 August 2005.

5.1. Introduction

The purpose of this first of two empirical chapters is to analyse the prevalence of (in)decent work (voice, equity and efficiency) in Indonesia's palm oil plantations and to assess whether they are in compliance with their ratified labour standards. The data collected in this chapter constitutes an important input to the on-going process happening within the ILO on the plantations sector and supply chains (ILO 2016d). The findings reveal that workers experience or, more accurately, endure ‘(in)decent work’ namely: ‘work under conditions so odious or harmful that it would be better for people not to work at all than to work under such damaging conditions’ (Fields 2006 p.67). Palm oil plantation workers are often excluded from national and local labour law, enforcement of these laws, in any event, is weak, anti-trade union discrimination is rife, and Indonesia was found to be in violation of several ratified ILO Conventions. These ‘uncovered’ decent work deficits, namely the ‘absence of sufficient employment opportunities, inadequate social protection, the denial of rights at work and shortcomings in social dialogue’ (ILC.89/DG/1A), can only be comprehended in relation to not just immediate conditions on the plantations or exploitative buyer-supplier relations but also weak unions and a historically authoritarian government. In other words, the presence of indecent work can be attributed to weak horizontal governance that leaves spaces of exceptions that are exploited by transnational suppliers and buyers. These spaces are depicted as ‘holes’ in the horizontal ring in Figure 5.1, which resembles a ‘swiss cheese’. In addition, the only attempt to govern labour conditions across the palm oil product network vertically (the Roundtable on

Sustainable Palm Oil)¹⁰⁸ has made very little difference to the lives and working conditions of the millions of workers who toil on the palm oil plantations.

Figure 5.1: Horizontal and vertical governance in the Indonesian palm oil sector



Following the analytical framework developed in Chapter 2, first, in order to establish the dynamics of vertical governance, an assessment of the palm oil production network is undertaken, which identifies the main actors engaged in the sector, the structure of the industry and the ‘configuration’ of the network (Section 5.2). This is followed by an analysis of the horizontal governance dynamics in Indonesia (Section 5.3), a ‘rich’ narrative on the history of palm oil production in the country and the contemporary realities of work, because the history of national industrial relations, especially in countries that have previously suffered under an authoritarian regime, influences its present situation (Caraway et al. 2015). Thirdly in Section 5.4, an overview of the institutional relationship between Indonesia and the

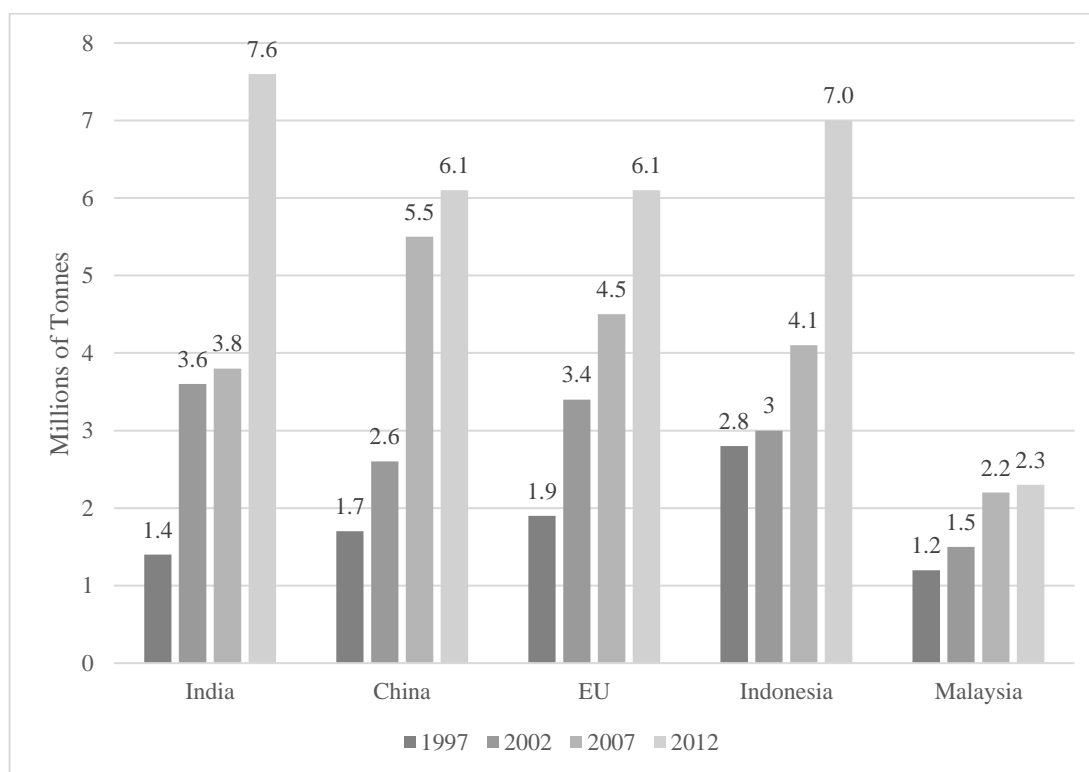
¹⁰⁸ The Roundtable on Sustainable Palm Oil (RSPO) is a non-governmental organisation (NGO) established in 2004 by several transnational corporations (TNCs) to promote the growth and use of ‘sustainable’ palm oil. RSPO is discussed in detail in Sub-section 5.6.2.

ILO is provided, including a summary of ILO Conventions (horizontal public governance) that the country has ratified and an outline of the complaints made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). These three sections lead to the expectation that decent work in the sector will be in deficit. The fourth section (5.5) of this chapter details the results of the ‘diagnostic process’ and action research that was undertaken in the palm oil sector drawing on the results of the focus group discussions with the tripartite constituents and questionnaires of workers on the plantations. The indecent outcomes are then compared and contrasted with other empirical research. In the penultimate section (5.6), conclusions are drawn on the reasons why the Indonesian palm oil sector experiences indecent work drawing on the analytical framework introduced in Chapter 2. Simply stated, horizontal governance in Indonesia is incapable of embedding vertical actors, leaving ‘holes’ or spaces of exception that TNCs exploit. This chapter helps inform the question of how the ILO can (re)establish labour standards in an age of Global Transformation in a country/case that has weak vertical and weak horizontal governance. Section 5.6 is followed by a conclusion (5.7) summarising the main findings of the chapter.

5.2. The palm oil production network

As food habits changed, standards of living improved and the use of biofuels became more commonplace, palm oil emerged as an increasingly important globalised commodity that is likely to continue to be the key component of the world’s supply of vegetable oil. The meteoric rise in palm oil production, from 1.93 million tonnes in 1970 to 57.33 million tonnes in 2014 (FAOSTAT 2013), is especially pronounced in just a couple of major producers, with production in Malaysia and Indonesia expected to increase by up to 40 per cent by 2020 (OECD and FAO 2011 p.111). Palm oil consumption increased by 70 per cent between 1995 and 2004 (van Gelder 2004) and since then has experienced an even more dramatic rise as illustrated in Figure 5.2.

Figure 5.2: Palm oil consumption over time



Source: *European Palm Oil Alliance (2012)*

The major consumers (countries) driving this production boom are, in no particular order, India, Malaysia, China, the European Union (EU), and Indonesia. Today, palm oil is found in 50 per cent of all products in Western supermarkets, (Accenture 2013) such as Magnum ice-cream, Colgate toothpaste, Dove soap, KitKats, Pantene Shampoo, Ariel detergent, Pot Noodle and Vaseline. In developing countries, palm oil is predominantly used for food purposes such as household cooking oil. In developed economies, palm oil is primarily used as an industrial good and is sold by large (transnational) producers, commercial refiners and traders to other large (transnational) commercial businesses. In consumer products, palm oil is labelled as a generic vegetable oil, or not even identified, and few Western companies openly report on their use of palm oil. As demonstrated in Table 5.1, large Western companies that use palm oil include Unilever, Nestlé, Proctor & Gamble, Kraft, Mars, Danone, Mondelez, Heinz, Johnson & Johnson and Ikea, the latter in its production of tea lights (Accenture 2013). However, the production network is predominantly ‘driven’ (i.e. the power of firms to shape rules along a value chain) by the transnational producers, in particular Singapore-based agribusiness Wilmar International, which is the world’s

largest palm oil grower (it owns both plantations, through a complex system of subsidiaries, as well as processing facilities) and has been the source of international campaigns against human rights abuses in their palm oil plantations in Indonesia (Amnesty International 2016).¹⁰⁹

Table 5.1: Dominant transnational corporations (vertical private governance actors) in the palm oil global production network

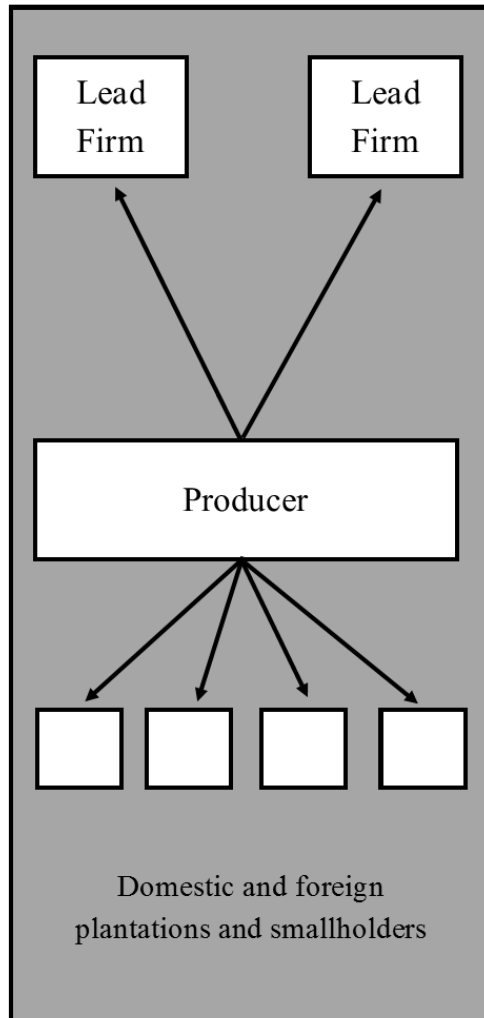
| Producers | Manufacturers | Buyers | Retailers |
|------------------------|------------------------|------------------|---|
| Wilmar International | Wilmar International | Unilever | All major supermarkets (Tesco, Walmart, Carrefour, Lidl, Coop etc.), pharmacies (Boots, Superdrug, Lloyds Pharmacy etc.), and retailers who sell foodstuffs |
| IOI Corporation Berhad | Archer Daniels Midland | Nestlé | |
| Golden Agri Resources | Golden Agri Resources | Procter & Gamble | |
| Sinar Mas | Cargill | Henkel | |
| | | Ikea | |
| | | L'Oréal | |
| | | PepsiCo | |

The palm oil production network shares many similarities with a market value chain configuration (Gereffi et al. 2005), as illustrated in Figure 5.3. There is a low task complexity (i.e. the complexity of information and knowledge transfer required to sustain a particular transaction) as palm oil does not require any product differentiation and it is typically sold to lead firms as a raw commodity, rather than a finished good. There is high task codifiability as although the palm oil global production network (GPN) is complex, there is little explicit coordination between suppliers and lead firms. Lastly, there is high supplier capability (i.e. the requirements of the transaction) with low power asymmetry between lead firms and suppliers who can produce palm oil without input from buyers. However, in the palm oil GPN, large producers/suppliers, who own plantations and processing facilities, are the main private governance actors, not brands. In fact, although the industry is fragmented at the upstream end (in terms of the number of plantations and smallholders) the network is dominated by large agricultural producers (domestic and international) who own subsidiary companies in Malaysia and Indonesia. Hence, the production network is

¹⁰⁹ Wilmar International is also one of the largest palm oil plantation owners in Malaysia: 24 per cent of their plantations are in East Malaysia, 69 per cent are in Indonesia, and 7 per cent in Africa. Go to: <http://www.wilmar-international.com/our-business/tropical-oils/plantations/> [Accessed 4 July 2017].

influenced by lead firms in different functional positions (in this case, production and branding).

Figure 5.3: Palm oil production network configuration



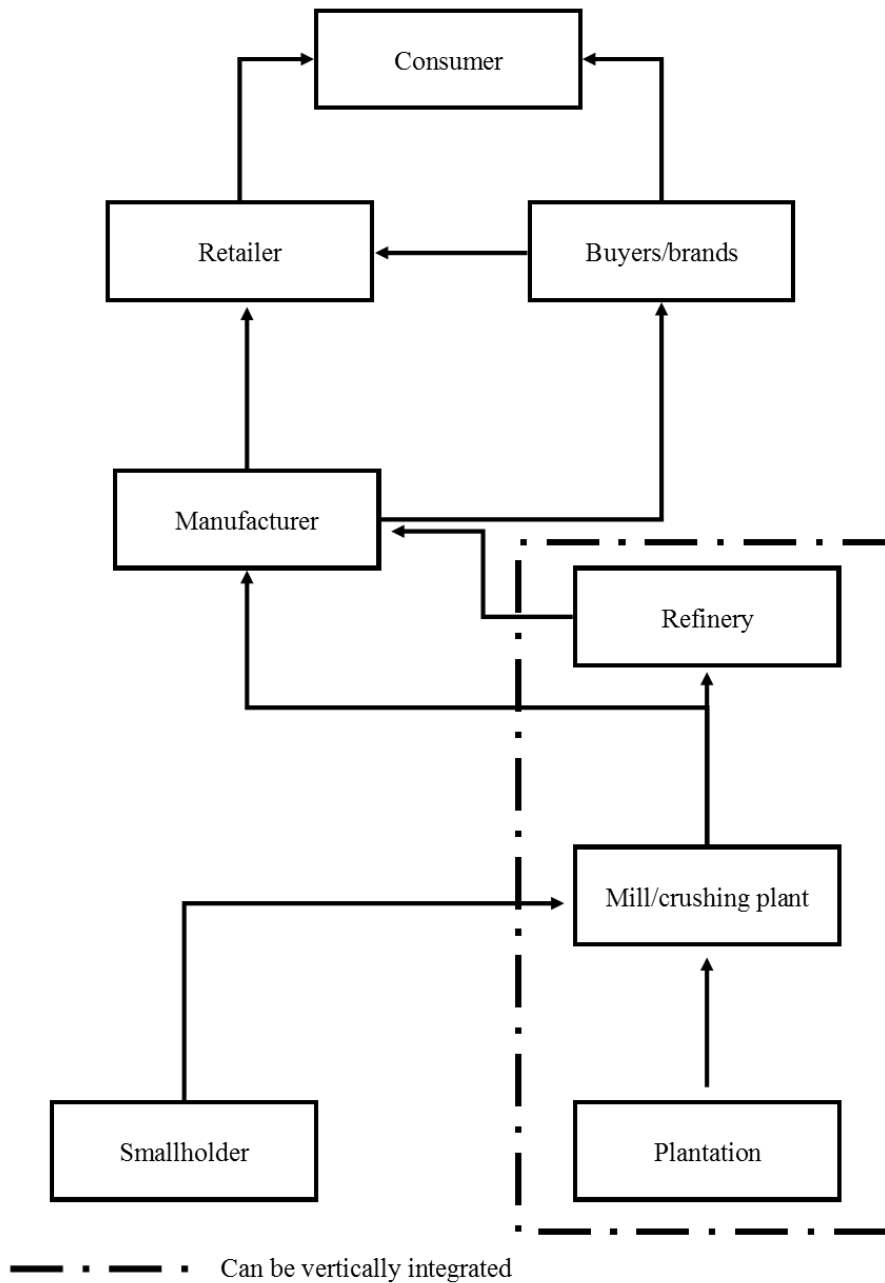
Note: Lead firms are summarised in Table 5.1 as the 'buyers' and 'retailers'.

Before it reaches consumers, palm oil moves through a series of production activities. Figure 5.4 illustrates a simplified palm oil production chain (depicted as the vertical arrow in Figure 5.1) from the picking of the fruit¹¹⁰ to consumption in a range of products. The production and trade of palm oil is highly concentrated with around fifty large-scale producers accounting for 75 per cent of global production (Skinner 2013). The refining segment of the chain is also horizontally integrated with fifteen agricultural business groups accounting for 75 per cent of the global market (Skinner

¹¹⁰ Palm oil is derived from the pulp of the fruit of oil palms.

2013). Unilever is the largest buyer of palm oil, purchasing 4 per cent of the world's supply (Skinner 2013), and therefore occupies a lead firm position in the network.

Figure 5.4: Palm oil production chain



The palm oil GPN, because of the multitude of products that rely on its usage, is incredibly complex and involves a plethora of actors and relationships from growers to millers, refiners, traders, chemical processors, manufacturers, and finally to brand-name products on supermarket shelves, as depicted in Figure 5.4. The palm oil GPN

may be complex but the production of palm oil is relatively simple and every plantation follows the same three stages. The first stage involves preparatory activities such as land clearing, seedling preparation and planting. The second phase starts after seedlings are planted, which includes maintenance before harvesting or picking. The third phase, after the palm oil fruit have been harvested, involves replanting. Palm oil production is a labour-intensive process and there are a number of work tasks to be performed during the production cycle, with each activity involving a discrete, low-skilled and large group of workers. The work is intense and fast moving, and the tropical climate needed for the production of palm oil means it can be particularly hot (temperatures in Sumatra, Indonesia are 30°C all year round) and humid (70-90 per cent humidity). Once the palm oil fruit are harvested they are transported to a mill (as shown in Image 5.1) to be refined into crude palm oil and then taken to a refinery, which turns this into refined, bleached and deodorised palm oil. From there the process diverges depending on the end user, such as the food, detergent or cosmetic industry (van Gelder 2004). The sector has long been affected by environmental and social problems such as deforestation, environmental degradation, land use and grabbing, land pricing, low wages and deplorable working conditions for those who pick palm oil fruit (e.g. Accenture 2013; Amnesty International 2016). However, unlike other agricultural commodities (e.g. tea) that reach supermarket shelves, palm oil does not include any comprehensive vertical global *labour* governance initiatives as summarised in Table 5.2. More accurately, the labour governance (horizontal and vertical) that does exist in the sector is ‘ineffective’, ‘hostile’ or ‘weak’. Palm oil in Indonesia is a case that exemplifies the decent work deficits that plague the sector across the globe.

Image 5.1: A palm oil refinery in North Sumatra, Indonesia



Table 5.2: Types of labour governance in the Indonesian palm oil sector

| Actor | Horizontal governance | Vertical governance |
|---------------------------|--|---|
| Private governance | Employer associations (hostile). | Codes of conduct (neglect labour), sourcing mechanisms, pricing (competitive/market based). |
| Social governance | Trade unions (weak), NGOs (neglect labour). | Roundtable on Sustainable Palm Oil (RSPO) (ineffective). |
| Public governance | Government regulation (weak), ILO labour standards (unratified). | World Trade Organization (WTO), World Bank, International Monetary Fund (IMF) (free markets and privatisation). |

5.3. Palm oil production in Indonesia

Indonesia is the largest producer and exporter of palm oil in the world, producing 55 per cent of all palm oil in 2014 (FAOSTAT 2014). The country's palm oil plantations stretch over nine million hectares (more than the size of Ireland) and the Indonesian palm oil industry is the fastest-growing non-oil and gas sector, contributing significantly to the country's economic growth (Johnson 2015). Despite Indonesia being the world's second largest producer of rubber, and exporting significant quantities of coffee and cocoa beans, the country is highly dependent on the production of palm oil, both to generate foreign currencies and domestic employment (FAOSTAT 2013). Palm oil is Indonesia's second largest export (after coal briquettes) and accounts for 8.85 per cent of its total exports (MIT [no date][a]).¹¹¹ The rapid expansion of the Indonesian palm oil sector is based on the work of an ever-expanding waged labour force. In the mid-1970s around 300,000 workers were employed in the palm oil sector. It is now estimated that between two and three million workers are currently directly employed on Indonesia's palm oil plantations (IFC and World Bank 2011). However, this number is difficult to estimate due to the number of casual labourers working in the sector. Poverty is a widespread problem in many rural parts of Indonesia and although GDP per capita is United States Dollar (USD) 3,475 (making Indonesia a lower middle income country), the agricultural sector's share of the country's GDP has declined markedly during the last five decades and poverty remains concentrated, with 13.8 per cent of rural people classified as poor (IFAD [no date]).

Indonesia has struggled over the last four decades to balance economic growth against environmental and social degradation and has prioritised efficiency and growth over the voice and equity of the millions of palm oil plantation workers. The first commercial palm oil plantation was not established until 1911 but by 1938 the country became the world's largest exporter of palm oil (Rasiah and Shahrin 2005). Following independence from the Netherlands in 1949, Indonesia pursued a policy of 'greater efficiency and foreign exchange earning capacity', which was 'more than outweighed by their unfortunate impact on the social and political life of the nation' (Jacoby 1961 p.73).

¹¹¹ Palm oil is a product with a 'revealed comparative advantage' (meaning that its share of global exports is larger than what would be expected from the size of its export economy and from the size of a product's global market) (MIT [no date][a]).

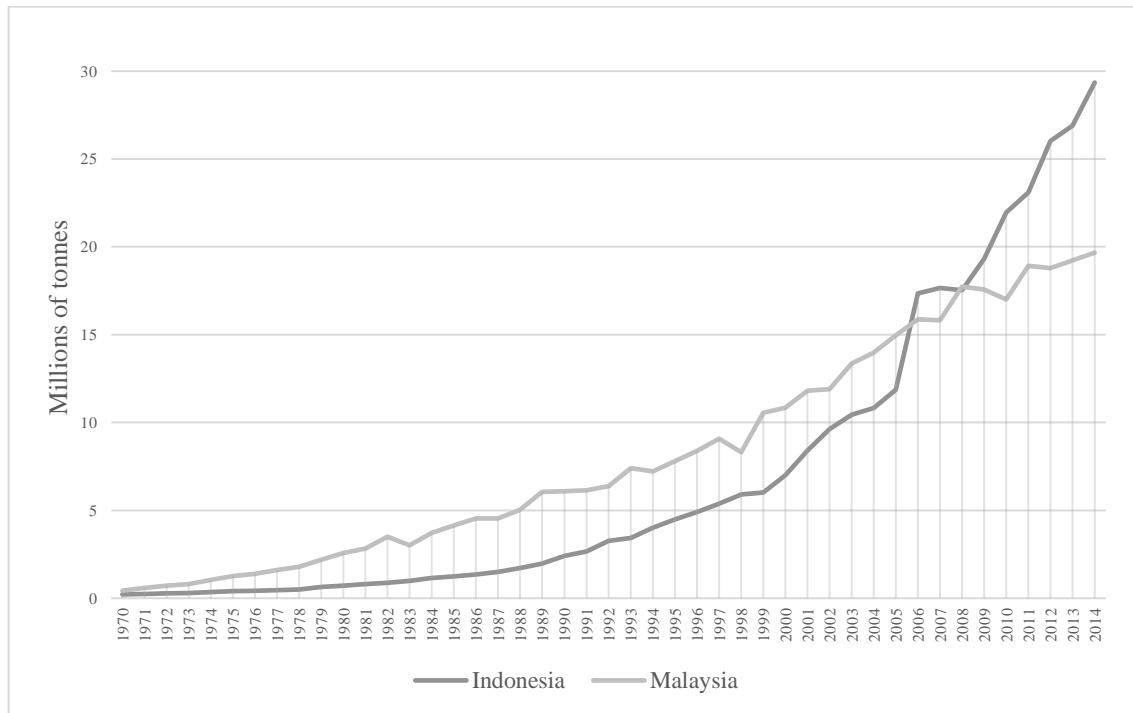
The first president of Indonesia, Sukarno (elected in 1945), established an autocracy called ‘Guided Democracy’ in 1957 and provided support to the Left and the Indonesian Community Party (PKI). The Indonesian government intervened in wage determination and instigated a labour code whereby the working day was limited to 7 hours and the working week to 44 hours; there was to be an annual review of payments in kind in line with inflation; child labour was to be limited; and maternity leave was introduced (Barral 2014). The national labour law also mandated employers to play a role in the provision of housing, medical care, and access to education for plantation workers (Barral 2014). In 1965, an attempted *coup d’état* by the PKI was countered by the army led by Suharto, one of Sukarno’s generals.¹¹² Subsequently the army managed a systematic eradication of the Left and a violent purge of the PKI with up to a million alleged communists murdered in one of the biggest democides following World War II (Ford 2009 p.30). Indonesia’s largest trade union, the Central All-Indonesian Workers Organization (Sentral Organisasi Buruh Seluruh Indonesia, SOBSI) had links to the PKI and its leaders were massacred following the failed coup (Roosa 2006).¹¹³ General Suharto became *de facto* president in 1966 and was elected the following year. He established a totalitarian regime supported by the U.S. under his ‘New Order’ administration and erected a potent system of labour control (Caraway 2006b). He abolished independent trade union freedom and consolidated the surviving non-communist unions into a state-controlled federation, the All-Indonesia Workers’ Union (Serikat Pekerja Seluruh, SPSI). The SPSI, which became the only legal labour organisation, was dominated by the state, permeated by the military and aligned with the employers (Hauf 2017 p.117). The state also repressed protests and strikes, and strike leaders faced dismissal, intimidation and often physical violence (Hadiz 1997). Industrial relations in the plantation sector in particular has been adversarial and many trade unionists have been fired or abused (ITUC 2015). This has been compounded by a decline in union membership since the early transition years as a consequence of shifts in employment, an increased number of casual workers and multiple cases of union busting (Caraway 2015).

¹¹² What exactly happened on 1 October 1965 remains subject to debate.

¹¹³ SOBSI claimed some 2.7 million members in 1960, which made it the biggest communist mass movement outside of the Soviet union (Hauf 2017).

It was not until the mid-1990s that the palm oil sector really took off in Indonesia. By the 1980s, Malaysia's palm oil production far exceeded that of Indonesia. Driven by competition from its neighbour and the authoritarian domestic 'New Order', the Indonesian government opened up large expanses of forested land for purchase at low prices, which resulted in an explosion of large private plantations (van Gelder 2004) that were later bought by transnational agribusinesses such as Wilmar International and Sinar Mas. Public-private partnerships were developed and certain regions, such as the eastern islands, witnessed a significant surge in foreign direct investment (FDI). In 1995, when Indonesia joined the World Trade Organization (WTO), it began to liberalise its economy to target export markets and decentralise its industrial policy. After the Asian financial crisis and several policy recommendations insisted upon by International Monetary Fund (IMF), Indonesia dismantled many barriers to foreign investment in palm oil, including privatising the smallholder schemes that had previously been run by the national government (Casson 1999). As illustrated in Figure 5.5, the palm oil industry since then has grown significantly and Indonesia overtook Malaysia as the world's largest producer of palm oil in 2005 (FAOSTAT 2013). Malaysia currently serves as both a competitor and destination country for Indonesia's palm oil exports due to the growing Malaysian oil processing (downstream) industry (Sinaga 2013). However, Indonesia has the advantage in upstream activities because of both its access to vast areas of land and cheap(er) labour.

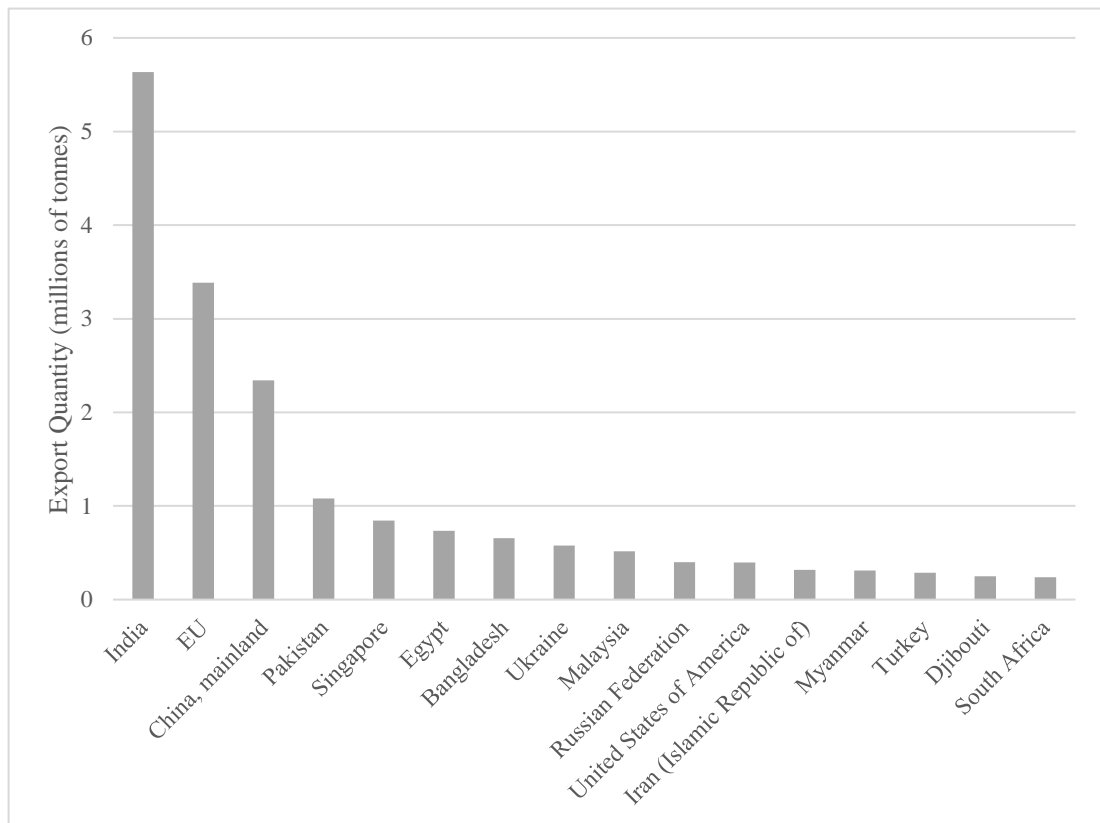
Figure 5.5: Palm oil production in Indonesia and Malaysia (1970-2014)



Source: FAOSTAT (2014)

Indonesia's comparative advantage in the global palm oil market is based on low labour costs and high yields. Indonesia has the highest crude palm oil yield of all the producer countries and has the lowest minimum wages in the major palm oil producing countries. Palm oil is traded in Malaysian Ringgit (MYR) and whilst the minimum wage in Malaysia is 1,000 MYR per month in the two Indonesian provinces where the questionnaires were administered, the wage varied from 560-640 MYR per month. This crude comparison is indicative of Indonesia's low-cost competitive advantage. The palm oil sector is labour-intensive and low-skilled, particularly in Indonesia where the focus is on the primary stages of the GPN, namely harvesting (Sinaga 2013). As Figure 5.6 illustrates, the clear majority of palm oil in Indonesia is exported to India where it is processed and then exported to principally European markets.

Figure 5.6: Destination countries for Indonesian palm oil (2013)



Source: FAOSTAT (2013)

When Suharto fell in May 1998,¹¹⁴ newly democratic Indonesia inherited a failed system of horizontal labour governance, in particular a weak state-backed worker federation. However, since Suharto's resignation and the major political and economic upheavals triggered by the Asian financial crisis, the country has strengthened its democratic processes and although political and economic instability, social unrest, corruption and terrorism has slowed progress, in the last 5 years the economy has performed strongly, with a growth of 5.2 per cent in 2014 (ILO 2015a). In addition, the new Habibie administration made important strides in improving labour rights in the agricultural sector and adopted several employment Acts to improve conditions of work under the democratisation process (Hauf 2017 p.118).¹¹⁵ However, complaints made by the ILO's CEACR have demonstrated that these Acts are rarely enforced (see Section 5.4. and Table 5.4). Joko Widodo was elected in 2014,

¹¹⁴ According to Hauf (2017 pp.123–124) there were three crucial factors in the defeat of the Suharto regime: the Asian financial crisis, the decline in support for Suharto from those in his inner-circle, and increasingly militant mass protests by students and workers backed by Western NGOs.

¹¹⁵ The principal statutory measures are: Act No.13 of 2003 concerning Manpower, Act No.21 of 2000 concerning Trade Unions, Act No.2 of 2004 concerning Industrial Disputes Settlements, as well as Act No.40 of 2004 concerning National Social Security System.

the first president to come from outside the political elite or military, and he has further strengthened the democratic processes within the country, leading to a period of socio-economic stability. Since then independent unions have begun to emerge but are fragmented and have not replaced the old authoritarian state unions, leading to conflict between the ‘new’ and ‘old’ worker representatives (Hauf 2017).

Indonesia’s heavy dependency on cheap labour makes palm oil production a potential route to addressing the problems of poverty, unemployment, and infrastructural under-development that continue to plague the country, particularly in rural areas (Sinaga 2013). The government of Indonesia has embraced palm oil as an engine for economic development and job opportunities (one of the four pillars of the Decent Work Agenda), particularly for those at or near the poverty line (Accenture 2013). However, the plantation sector has been detrimental to social relations in rural areas and the absence of governmental intervention and regulation has exacerbated social tensions and inequalities (McCarthy 2010; Rist et al. 2010). The rapid growth of palm oil plantations came at the expense of natural forests, peat lands, and less efficient plantations, which were replaced by commercial palm oil plantations. The expansion of land use for palm oil production in Indonesia has continued, given the wealth of land available for agriculture, but this has been to the detriment of both the environmental and social relations in the country(side).

5.4. Indonesia and the ILO

Indonesia became a member of the ILO in 1950, the year after its independence. During the reign of Suharto, Indonesia ratified only a handful of ILO Conventions, several of which were evidently not enforced by the authoritarian state, such as the Freedom of Association and Protection of the Right to Organise Convention (C.87) and Right to Organise and Collective Bargaining Convention (C.98). However, within 2 years of the fall of Suharto, Indonesia has ratified all the ILO’s core Conventions including the Abolition of Forced Labour Convention (C.98), the Discrimination (Employment and Occupation) Convention (C.111), Minimum Age Convention (C.138) and the Worst Forms of Child Labour Convention (C.182). In total, Indonesia has now ratified 19 Conventions, all of which are ‘in force’ as summarised in Table 5.3. The government has also ratified two out of the four governance (priority)

Conventions.¹¹⁶ Although agriculture employs an estimated 38.9 per cent of the nation's labour force, Indonesia has not ratified any agricultural Conventions, including the Plantations Convention (C.110). In fact, government and employer representatives from Indonesia, along with Malaysia, were the only constituents of the ILO to vote against the adoption of the Safety and Health in Agriculture Convention (C.184) in 2001, illustrating their desire to remain attractive to FDI in their agricultural sector(s).

Table 5.3: Ratified ('in force') ILO Conventions in Indonesia

| Convention | Date Ratified |
|--|----------------------|
| Equality of Treatment (Accident Compensation) Convention, 1925 (C.19) | 12 June 1950 |
| Forced Labour Convention, 1930 (C.29) | 12 June 1950 |
| Marking of Weight (Packages Transported by Vessels) Convention, 1929 (C.27) | 12 June 1950 |
| Underground Work (Women) Convention, 1935 (C.45) | 12 June 1950 |
| Right to Organise and Collective Bargaining Convention, 1949 (C.98) | 15 July 1957 |
| Equal Remuneration Convention, 1951 (C.100) | 11 August 1958 |
| Hygiene (Commerce and Offices) Convention, 1964 (C.120) | 13 June 1969 |
| Weekly Rest (Commerce and Offices) Convention, 1957 (C.106) | 23 August 1972 |
| Tripartite Consultation (International Labour Standards) Convention, 1976 (C.144) | 17 October 1990 |
| Certification of Ships' Cooks Convention, 1946 (C.69) | 30 March 1992 |
| Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) | 09 June 1998 |
| Abolition of Forced Labour Convention, 1957 (C.105) | 07 June 1999 |
| Discrimination (Employment and Occupation) Convention, 1958 (C.111) | 07 June 1999 |
| Minimum Age Convention, 1973 (C.138)* | 07 June 1999 |
| Worst Forms of Child Labour Convention, 1999 (C.182) | 28 March 2000 |
| Employment Service Convention, 1948 (C.88) | 08 August 2002 |
| Labour Inspection Convention, 1947 (C.81) | 29 January 2004 |
| Seafarers' Identity Documents Convention (Revised), 2003 (C.185) | 16 July 2008 |
| Promotional Framework for Occupational Safety and Health Convention, 2006 (C.187) | 31 August 2015 |

Note: Fundamental Conventions are highlighted

** Minimum age specified at 15 years*

Source: ILO Normlex (www.ilo.org/normlex)

¹¹⁶ The four governance (priority) Conventions were established in the Social Justice Declaration (2008).

Until recently, the relationship between the ILO and Indonesia was perhaps best described by an ILO official as ‘detached’ (PAO Notes). In fact, it was not until 2014 that a D-G of the ILO visited Indonesia on an official visit (PAO Notes), even though the ILO introduced a Decent Work Country Programme (DWCP) in Indonesia in 2002 and established a Field Office in Jakarta under the Asia-Pacific Regional Office in Bangkok in 1970. The current DWCP (2012-2015) covers three priority areas: creating employment for inclusive and sustainable growth; forging sound industrial relations in the context of effective employment governance; and promoting social protection for all.¹¹⁷ As with all ILO action the Organization works in Indonesia through the government and national worker and employer’s federations. In Indonesia, the ILO works with the Ministry of Manpower and Transmigration, the Indonesian Employers’ Organization (Asosiasi Pengusaha Indonesia, APINDO)¹¹⁸ and the three major federations, namely the formerly state-backed union All-Indonesia Workers Union Confederation (Konfederasi Serikat Pekerja Seluruh, KSPSI), the Indonesian Prosperous Labor Union Confederation (Konfederasi Serikat Buruh Sejahterah Indonesia, KSBSI)¹¹⁹ and the Confederation of Indonesian Workers, which also remains linked to the old authoritarian union SPSI (Konfederasi Serikat Pekerja Indonesia, KSPI). Today, there are approximately 90 competing trade union *federations* in Indonesia (Caraway 2004). Whilst KSPI and KSBSI are affiliated with the International Trade Union Confederation (ITUC), the former state-backed union (KSPSI) is not a formal affiliation but is still recognised by the ILO following the previous period of authoritarianism.¹²⁰

The major employment acts established following the fall of Suharto are a significant improvement over the previous rules and regulations however many of them fall short in terms of failing to be in full compliance with the ratified Conventions (demonstrated in the following section). The Indonesian government has also received

¹¹⁷ Indonesia is currently in the process of developing a new DWCP for the next 5 years.

¹¹⁸ There is only one employer federation in Indonesia. APINDO is similar to the trade unions and is dominated by government. Following the fall of Suharto, it has led multiple campaigns against union-friendly policies (Ford 2013).

¹¹⁹ KSBSI has also been described as a ‘yellow union’ as it supports the idea of market flexibilisation but has been viewed as more progressive as it tries to find a middle ground between workers’ and employers’ interests (Hauf 2017 p.129).

¹²⁰ This is an unusual anomaly in the ILO governance structure as typically trade unions and employer associations are only recognised if they are members of the International Trade Union Confederation (ITUC) or the International Organization of Employers (IOE), respectively.

sustained criticism from the ILO’s CEACR, in particular on the application of C.87, C.98, C.138 and C.182, as summarised in Table 5.4. In recent years, the CEACR has ‘requested’ (‘ILO speak’ for ‘do it’) the Indonesian government to amend many of the sections of the Manpower Act to bring it in line with their ratified Conventions and the government has repeatedly ignored requests for amendments or withheld data on collective agreements to the ILO’s supervisory mechanisms (PAO Notes).

Table 5.4: Complaints made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2015

| Convention | Complaints |
|---|---|
| Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) | Violence against striking workers; acts of intimidation against union leaders; excessive violence; arrests in relation to demonstrations and police involvement in strike situations; rights to organise by civil servants; right to strike; imposition of fines for striking workers; and right to appeal. |
| Right to Organise and Collective Bargaining Convention, 1949 (C.98) | Anti-union discrimination; sanctions; employer interference; presence of employers during voting procedures; arbitration, conciliation and meditation; and time limit on collective agreements. |
| Minimum Age Convention, 1973 (C.138) | Significant number of child labourers; lack of labour inspection; and children in the informal economy are excluded by national labour law. |
| Worst Forms of Child Labour Convention, 1999 (C.182) | Domestic child workers in hazardous conditions; child trafficking; corruption hindering anti-trafficking efforts; commercial sexual exploitation, including child-sex tourism; and child labour in fishing. |

Source: ILO, Normlex (www.ilo.org/normlex)

Although Indonesia has ratified several ILO Conventions, the overall conclusions drawn by numerous reports on the state of employment conditions in the palm oil sector have been damning. Exploitative labour practices are often reported in national newspapers as well by non-governmental organisations (NGOs) (e.g. Amnesty International and Human Rights Watch), the UK press (e.g. *The Guardian* ran several stories on Indonesian palm oil in 2015) and government Departments,

particularly those produced by the U.S. Department of Labor.¹²¹ The palm oil sector has continued to be the subject of controversy, particularly in respect of human and labour rights. Many of the workers on Indonesia's palm oil plantations are victims of serious forms of labour exploitation, with some workers forced into working on the plantations, including children, and suffering from routine abuse. The majority work and live under extreme conditions, while many employers bar workers from joining and forming trade unions. This means transnational corporations (TNCs) can exploit spaces of exception, the holes in horizontal governance as depicted in Figure 5.1. As a recent report on the labour abuses in Indonesia's palm oil sector states: 'these exploitations constitute modern forms of slavery' (Accenture 2013 p.33).

5.5. Working in the field

'I don't go to school ... I carry the sack with the loose fruit ... it is difficult to carry it, it is heavy ... my hands hurt and my body aches.'

A 10-year old boy working on a palm oil plantation in Indonesia owned by Wilmar International ((quoted in Amnesty International 2016)

Although the Indonesian palm oil sector has experienced a remarkable growth over the last three decades as a result of trade liberalisation and the instigation of policies targeting export-orientated development, the evidence presented here, based on questionnaires of workers and focus group discussions with the tripartite constituents, show that the meteoric rise in export revenues and a greater integration in the palm oil GPN has not occasioned compliance with ratified labour standards and decent work (voice, equity and efficiency) for the millions of workers engaged in the sector. Table 5.5 lists the decent work deficits identified in the research.

¹²¹ Indonesia has been the target of several petitions filed under the Generalised System of Preferences (GSP) legislation maintaining that Indonesia did not meet internationally recognised labour standards. The U.S. threatened to cut off important trading privileges under the GSP because of labour rights abuses in Indonesia.

Table 5.5: Decent work deficits on Indonesian palm oil plantations

| Articles of the Plantations Convention (C.110) | Decent work deficits |
|---|--|
| Wages and contracts | Informal and casual contracts; not informed of conditions of work/not consulted when changes take place; workers do not receive a living or minimum wage; piece-rate system. |
| Forced labour | Forced to undertake tasks they did not want to perform; rest/break times limited; denial of vacations; not allowed to leave the plantation; personal documents confiscated. |
| Child labour | Child labour on the plantations. |
| Labour inspection | Dearth of labour inspection; labour inspectors acting in employers' interests. |
| Freedom of association and collective bargaining | Union busting; prevented from forming or joining a trade union; dismissal for joining a trade union; yellow unions. |
| Living conditions | Accommodation without roof, sanitary facilities, place to cook or access to clean drinking water |
| Discrimination | Social origin and gender discrimination; pregnancy as a reason for dismissal. |
| Conditions of work | Arduous work; long working hours and long working weeks; denied access to paid holiday; limited maternity protection; pesticide spraying (lack of protective clothing); widespread use of paraquat*. |

Note: *Paraquat is a fertilizer and a toxic chemical banned in the EU.

Source: QIWP

Figure 5.7 illustrates the location of surveys with a total of 983 plantation workers and smallholders, both organised (members of a trade union) and unorganised, who were interviewed in North Sumatra and Aceh in March 2015. The majority of the workers surveyed were male (85 per cent) and were involved in all three phases of palm oil cultivation, namely: preparation, maintenance and harvesting, and replanting. In total, 48 trade unions representatives participated in the focus group discussions, 51 representatives from government (typically labour inspectors) and 19 employers (primarily plantation owners). The workers who were surveyed were predominantly selected in advance by the employers and any worker in the sample can be assumed to represent the 'best case' in terms of conditions of work.¹²² Regardless of this selection

¹²² References to Field Notes denote observations as well as the recorded speech of constituents at the focus group discussions.

bias, and therefore all the more notable, the research uncovered significant violations of ratified ILO standards, including violations of internationally agreed human and labour rights. The following eight sub-sections are informed by the content of the Plantations Convention (C.110).

Figure 5.7: Location of questionnaire surveys with palm oil plantation workers and smallholders



5.5.1. Contracts and wages

Most of the labour force working on Indonesia's palm oil plantations are employed informally and there is a substantial reliance on casual and other precarious forms of labour. National law covers regulations for short-term work, yet casual workers often do not have access to the same rights as regular workers and are usually brought in informally by plantations employers (often unregistered) to help meet fluctuations in demand (Field Notes). The questionnaire survey found that 56 per cent of the workers surveyed were casual (i.e. did not have a permanent contract). In Indonesia, the law states that daily or casual employment is 'for certain works which is changing in terms of time and volume of work and wages are based on attendance'. Workers can only be employed under this arrangement for less than 21 days a month. If they are employed

for 21 days (or more) in three consecutive months (or more), by law their status should become permanent.¹²³ Although permanent workers were significantly more likely to have worked on the plantation longer than casual workers,¹²⁴ 82 per cent of casual workers had worked on the plantation for over one year and 20 per cent had worked between 10 and 20 years on the plantation. Thus, the Ministerial Decree No. 100 has had very little impact on the rights of these workers.

The law also states that companies that employ daily workers are required to have a written contract, however the questionnaire revealed that only 33 per cent of workers (both permanent and casual) had signed a contract before starting the job. Casual workers were both more likely to have not signed a contract¹²⁵ and more likely to not be consulted when changes happened to their contracts (e.g. salary or hours of work)¹²⁶ in comparison to permanent workers. These casual labourers did a variety of jobs including harvesting and maintaining the palm oil trees and were statistically more likely to be female than male as shown in Table 5.6. The focus group discussions provided more in-depth information on these challenges. Many of the trade union representatives and government officials argued that casual workers were pervasive on the plantations whereas employers refuted this claim, despite the evidence to the contrary from the very workers they had selected to participate in the questionnaire surveys (Field Notes). The trade unions (focus groups) also claimed that casual workers often did not receive minimum wages, benefits that fall under collective bargaining agreements or protection against unfair dismissal (Field Notes), a claim that was also verified by survey respondents as casual workers were less likely to receive the minimum wage¹²⁷ or be members of a trade union¹²⁸ than permanent workers. A trade union representative gave further detail: ‘temporary workers are supposed to be temporary [i.e. no more than three months] but some of them stay temporary for years. Managers do this so they can refuse to pay for their medical bills’ (Field Notes). In fact, palm oil sector employers often hired temporary labour to make

¹²³ Ministerial Decree No. 100. ‘Daily or Casual Employment Agreement’ Article 10. Ministry of Manpower and Transmigration. 2004.

¹²⁴ $\chi^2 (5, N=863) = 161.69, p < .01$ Only statistically significant differences are reported in the text, where the p value is less than 0.01.

¹²⁵ $\chi^2 (1, N=835) = 69.577, p < .01$

¹²⁶ $\chi^2 (4, N=863) = 163.37, p < .01$

¹²⁷ $\chi^2 (4, N=731) = 324.202, p < .01$

¹²⁸ $\chi^2 (1, N=670) = 246.893, p < .01$

up for their concessions to one group with gains from others and use the former as a buffer for their flexibility.

Table 5.6: Work status and gender of surveyed palm oil workers

| Work Status | Male (%) | Female (%) |
|--|----------|------------|
| Permanent worker | 49.0 | 16.0 |
| Casual worker | 52.0 | 84 |
| Total | 100 | 100 |
| Women were significantly more likely than men to be casual or daily workers: $\chi^2(1, N=863) = 172.657, p < .01$ | | |

Source: QIWP

Workers are typically paid a basic wage (below the minimum wage), which is increased by the amount of palm oil fruit they collect under a piece-rate system. Consequently, the assistance of their families (including children) or friends is often sought in order to quicken the pace and increase the size of each collection, following which a larger wage is available to be shared. Performance-based wages allow employers to pay a basic wage that is below the statutory minimum wage, for example when the harvest is poor. The trade unions alleged that the daily quotas set by the company were often unrealistic and workers were forced (via long hours) to meet their targets (Field Notes). Wages were in general inadequate to sustain a decent standard of living (Field Notes). In fact, some workers reported that they had to harvest almost a tonne (1000kg) of palm oil fruit per day (each bunch weights between 10kg and 25kg). The questionnaire survey found that most workers (85 per cent) did not receive the minimum wage in their region and 10 per cent of workers receive less than USD 2 a day, which is below the World Bank's poverty line.

In Indonesia, most of the workers surveyed (47.2 per cent) received between 1,750,001 Indonesian Rupiah (IDR) (USD 131) and IDR 2,000,000 (USD 145) per month (as illustrated in Figure 5.8) and this proportion increased to 72 per cent for casual workers, which was significant when compared to permanent workers.¹²⁹ Minimum wages in Indonesia are negotiated by tripartite wage councils,¹³⁰ however in

¹²⁹ $\chi^2(4, N=731) = 303.02, p < .01$

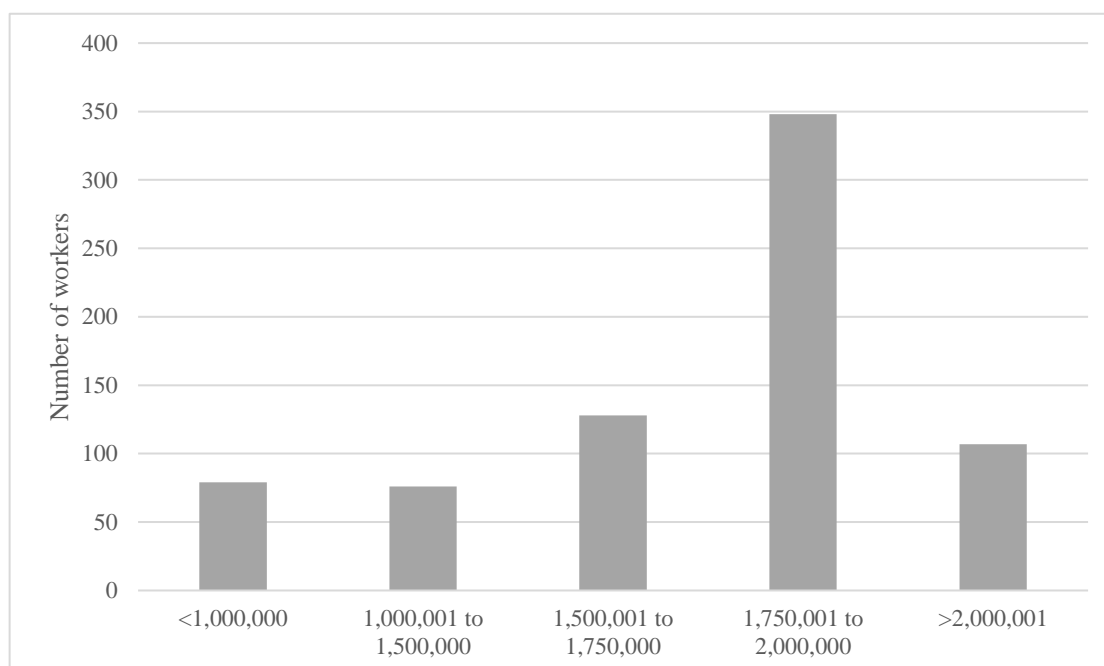
¹³⁰ Minimum wages are determined at the provincial level, district level and occupational level. According to the Labour Law Act (Article 89) minimum wage rates are set by Governors after considering recommendations from – usually tripartite – Provincial Wage Councils and/or District Heads/Mayors, while taking into account the assumed needs for a decent living per province. The

most cases it is the union that has the best relationship with the national government that is involved i.e. KSPSI. This has led to the adoption of wages far below the level the other (independent) unions were willing to accept (Hauf 2017). Wages and efficiency of workers were a contentious issue in Indonesia, for both the trade unions and the employers, and the focus group discussions quickly turned to the level of wages across the sector. The palm oil plantation employers believed that their source of competitiveness came from offering the lowest-cost palm oil production in the world. A palm oil plantation owner stressed that: ‘the price of palm oil in the market is very important, it affects the businesses here ... we [employers] would like to pay higher wages but we must stay competitive’ (Field Notes). Whilst price is the most important factor in palm oil trade, it is worth reiterating that the daily targets for harvesters can be as much as a tonne per day and crude palm oil sells approximately for USD 800 per metric tonne (1000kg).¹³¹ Trade unions repeatedly argued that employers refused workers’ demands for higher wages presumably for this reason. As one trade union official stressed: ‘wages have been kept very low to cut back on production costs, management benefit but workers do not’ (Field Notes).

reported wages usually do not include benefits or allowances. The minimum wage in Aceh province is USD 160 per month and in North Sumatra is USD 137 per month.

¹³¹ Although this is a crude comparison as the palm oil fruits must be milled, refined and transported, it is indicative of where value is captured in the GPN. According to the Food and Agriculture Organization of the United Nations (FAO), extraction rates of palm oil from each palm oil fruit bunch are approximately 23-24 per cent. Go to: <http://www.fao.org/docrep/005/y4355e/y4355e04.htm> [Accessed 23 June 2017].

Figure 5.8: Wages per month (all workers) (IDR)



Source: *QIWP and QIWS*

In 2013 large scale protests and demonstrations at the annual minimum wage negotiations led to a minimum wage increase of 40 per cent in some regions in Indonesia (Vaswani 2013). However, companies can apply for exemptions in order to delay payment of higher minimum wages (Better Work Indonesia 2013) and employers can avoid paying the minimum wages by claiming that their economic performance precludes them from doing so (Hauf 2017 p.136). Presently independent unions are mobilising to increase the minimum wage to USD 285 per month, more than double what many palm oil plantation workers currently receive. However, although in 2015 peaceful wage demonstrations went ahead, the police used tear gas and water cannons against the demonstrators in Jakarta. A number of trade union activists were detained but later released by the police (ITUC 2015). As wages are typically set at the provincial level, trade unions raised concerns regarding the indicators for establishing the minimum wage as these only consider the living needs of single workers (Field Notes). Among plantation workers, 80 per cent of those surveyed during the fieldwork were the primary wage earner in their family and thus needed to support not only themselves but also their families. In short, as stated by the ILO Director for the Jakarta Office, ‘the minimum wage in Indonesia is effectively a social ceiling that sustains poverty and prevents social mobility, rather than a social floor that offers protection and a springboard for those most vulnerable’ (Field Notes).

5.5.2. Forced labour

Indonesia has ratified the Forced Labour Convention (C.29) and the Abolition of Forced Labour Convention (C.105), which prohibits all non-voluntary work as well as debt bondage, trafficking, forced overtime and the withholding of wages. Many of the observed problems on Indonesian palm oil plantations are considered indicators of forced labour by the ILO. The questionnaire survey results, detailed below in Table 5.7, demonstrate the prevalence of forced labour in the plantations sector. A significant number of workers are not allowed to leave the plantation or dispose of their wages freely and are refused break times. There have also been allegations of trafficked forced labour from the trade unions (focus groups) as workers from rural areas are coerced to accompany potential ‘employers’ by a proposed terms of reference, but are eventually transported to plantations and forced to conform to the labour requirements in place (see also Skinner 2013). In addition, most employers, trade unions and government officials agree that forced labour is common in the palm oil plantation sector (Field Notes). Many trade union representatives also stressed that it is common for employers to not allow workers to leave the plantations and that often employers keep workers’ personal documents (Field notes; see also Accenture 2013). Similar to other identified decent work deficits, these violations were more common among casual workers than permanent workers.¹³²

Table 5.7: Cases of forced labour in Indonesia’s palm oil sector

| Were you ever forced (during the recruitment phase, during the journey, or at work) to do something you did not want to do? | | |
|--|---------------|----------|
| | Number | % |
| Yes | 94 | 10.8 |
| No | 775 | 89.1 |
| Total | 869 | 99.9 |
| From the following list, please indicate if you experienced any of these situations in your work: | | |
| | Number | % |
| Lack of rest or break-times provided by law (less than 24 consecutive hours during a week) | 145 | 18.1 |
| Denial of vacations | 112 | 14 |
| Receiving less than usual remuneration for taking | 83 | 10.4 |

¹³² $\chi^2 (8, N=788) = 25.274, p < .01$

| | | |
|--|-----|------|
| a holiday (includes payment in kind) | | |
| Unpaid overtime | 42 | 5.3 |
| Being limited to freely dispose to your wages | 202 | 25.3 |
| Prevented from forming and/or joining a union or any other organisation | 45 | 5.6 |
| Not allowed to leave the plantation | 97 | 12.1 |
| Personal documents confiscated | 62 | 7.8 |

Source: *QIWP*

5.5.3. Child labour

Although the Plantations Convention (C.110) does not deal with child labour explicitly, it is a particularly important aspect in the agricultural sector, where many families rely on their children to harvest and collect their produce. Following the ratification of the Minimum Age Convention (C.138) in 1999 and the Worst Forms of Child Labour Convention (C.182) in 2000, the Government of Indonesia adopted Law No. 23 on Child Protection in 2002 to address the issue of child labour. The Manpower Act sets the minimum age for work at 15 years and the minimum age for hazardous work at 18 years (in line with C.182). Light work is permitted for children aged 13 to 15 years. The Manpower Act specifically prohibits the ‘worst forms of child labour’.¹³³ Indonesian law falls short on these principles in several ways. For example, the Manpower Act excludes children who are engaged in self-employment or in employment without a clear wage relationship, which essentially means that the law does not cover the informal economy, where most children work. The ILO has drawn attention to the poor enforcement of this Act. In 2010 more than 1.5 million children aged 10-17 years were still engaged in work in Indonesia, concentrated in the agricultural sector (ILO 2011a). Almost half the child labour population (aged 5–17 years) were engaged in hazardous work with more than half of working children aged

¹³³ The Worst Forms of Child Labour Convention (C.182) defines ‘worst forms of child labour’ as: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) 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.

13-14 years engaged in work that does not constitute ‘light work’ (ILO 2011a). Palm oil fruit harvesting, because of its hazardous nature, is defined as a ‘worst form of child labour’ and therefore in violation of C.182.

According to the US Department of Labor, child labour, including the worst forms of child labour, is common on Indonesian palm oil plantations (DOL 2015a). This was confirmed by the questionnaire which found that children are used on palm oil plantations to gather dropped palm oil fruits that have fallen to the ground and to spray herbicides and pesticides (Field Notes). Child labour is used especially in North Sumatra and East and West Java, where the level of poverty is highest.¹³⁴ An indication of the scale of child labour was derived from the questionnaire survey, which found that that 17 per cent of workers agreed that children aged 15-17 years work on the plantations and 11 per cent agreed that workers younger than 15 years work on the plantations. This was corroborated by many of the participants at the focus group discussions who acknowledged that child labour was a ‘significant problem’ (Field Notes). Trade union officials pointed to the piece-rate wage system, where workers need to meet quotas between 800 kg and 1.5 tonnes of palm oil fruit each day to receive the minimum wage, as one of the main causes of child labour in the sector, as workers are financially compelled to bring their family to work to ensure the quota is met (Field Notes). Typically, this means that children have to drop out of school. In one case, when walking around one of the plantations, children were observed toiling as *kernet* workers.¹³⁵ These workers are not officially employed by the plantation but assist their family or friends in meeting the daily quota. As an ILO official based in Indonesia remarked, ‘although at a distance it was difficult to determine the worker’s age ... a conservative estimate would be 13 years old’ (Field Notes).

5.5.4. Labour inspection

The ratification and implementation of international labour standards is the first step towards an effective system of horizontal governance, and in all countries is dependent upon rigorous enforcement of labour laws. Labour inspection is extensively covered in the Plantations Convention C.110, which stresses (among others) that ratifying

¹³⁴ North Sumatra, East and West Java are among the top five Indonesian provinces with the highest absolute poverty (Indonesia-Investments 2016).

¹³⁵ A *kernet* worker refers to those workers who collect loose palm kernels and cut and organise palm branches.

member States must have ‘suitably trained’ inspectors, workers and their representatives shall be afforded every facility for communicating freely with the inspectors, and that workplaces must be inspected ‘often’.¹³⁶ The local regional offices (Disnakers) are responsible for inspecting plantations to ensure their compliance with national labour law. However, the level of commitment by the state to uphold the labour laws in Indonesia is hard to determine. For example, there have been no written documented cases of prosecution for exploitation of child labour, and the involvement of labour inspectors in enforcing regulations on child labour is limited (Accenture 2013). In 2014, the Indonesian government employed 2,400 labour inspectors to oversee an estimated 225,000 businesses and workplaces (DOL 2014), many of which are in the remote rural economy. In short, as a trade union official put it: ‘labour enforcement in the palm oil plantation [sector] is essentially broken’ (Field Notes). Local labour offices are understaffed and underfunded and have little authority to sanction employers that violate the law. This has been partly caused by the decentralisation of labour governance to the district level whereby local governments oversee funding of the inspectors (Caraway 2010). Local leaders (mayors), rely on campaign funds from businesses and, in the rural economy, this is often from plantation owners. Furthermore, since the passage of the Trade Union Act in 2000, only one employer has been convicted of unfair labour practices in a criminal court whereas dozens of independent union leaders have been gaoled because of complaints made by employers (Field Notes). In 2013, the ILO (2013b) concluded that only 1 per cent of Indonesian businesses are visited by a labour inspector each year.

The questionnaire survey results confirmed the claims that labour inspection is in deficit as only 37 per cent of workers stated that they had seen a labour inspector. Casual workers in particular were less likely to have seen a labour inspector on the plantation compared to permanent workers.¹³⁷ For many workers, additional clarification was needed during the focus groups to explain what exactly a labour inspector is and what they do (Field Notes)! The trade unions stressed that labour inspectors generally do not have the capacity to enforce labour laws and the lack of funding limits the number of formal investigations. Furthermore, some unions report

¹³⁶ As discussed in Chapter 4, ILO Conventions are typically flexible in terms of allowing member States to establish what ‘adequate’, ‘suitably trained’ and ‘often’ means in practice.

¹³⁷ $\chi^2 (1, N=863) = 60.871, p < .01$

that the labour inspectors accepted money from employers as bribes. As one trade union representative stated: ‘government [labour inspection] is not performing well and they act in the employers’ interest’ (Field Notes). Because of a lack of capacity (or will) on the part of the government, labour inspectors can only (infrequently) inspect large-scale plantations, leaving smallholders effectively ‘exempt’ from adhering to national labour law. The comments of a labour inspector help to highlight the difficulty for a country that wishes to maintain its position in the world markets: ‘the palm oil industry is paramount to our [Indonesia’s] success, we have to manage costs to ensure that we remain the number one exporter [of palm oil]’ (Field Notes). As this statement demonstrates, labour inspectors have an eye on efficiency for employers rather than voice and equity for workers. In addition, inspectors claim that it is impossible to police and monitor all the plantations: ‘there are thousands of plantations and not many of us’ (Field Notes), drawing attention to the ineffectiveness of horizontal public governance. An ILO report in 2013 stressed that although the Indonesian government aimed to double the number of workplace inspections employed in 2009, this has not been achieved as the initiative has not received the necessary resources and coordination has been poor (ILO 2013b). Again, this indicates that the Indonesian government is not committed to closing the holes in the horizontal governance ring (Figure 5.1).

5.5.5. Freedom of association and collective bargaining

Freedom of association is not only a recognised human right but a necessary condition for further gains in wages and conditions of work in GPNs. Whilst Indonesia has a history of radical labour relations, this was broken when the PKI and SOBSI were crushed during the *coup d’état* and this political legacy casts a shadow on the landscape of today’s trade unions. However, numerous repressive statutes have been repealed since the demise of the Suharto regime in 1998 and Indonesia has ratified both Conventions on freedom of association and collective bargaining (C.87 and C.98), which enabled new unions to be founded virtually overnight. Indonesian labour law states that: ‘every worker/laborer has the right to form and become a member of a trade/labor union’.¹³⁸ However, although the law prohibits anti-union discrimination by employers and provides penalties for violations, leading some commentators to

¹³⁸ Manpower Act, 2003

suggest that Indonesia has the strongest collective labour rights in Asia (Caraway 2009), the government does not enforce the law effectively. As a result, anti-union discrimination is rife in the plantation sector with local thugs hired to intimidate union organisers and workers are frequently dismissed for engaging in legal trade union activities (Field Notes, cf. Caraway 2010). Trade unions in the sector are scattered and fragmented across dozens of competing federations and thousands of unaffiliated enterprise unions. In fact, of the 90 nationally registered federations, 54 are not affiliated to a global confederation (Caraway 2015 p.27). In addition, there are hundreds if not thousands of independent enterprise unions¹³⁹ and, in several of the plantations surveyed during the fieldwork there were up to six different unions represented. Trade union density is only 4 per cent of total employment (Hayter 2011) and whereas on the palm oil plantations, where the questionnaires took place, trade union density was 14 per cent many of the workers surveyed were members of a yellow union.¹⁴⁰ Furthermore, unlike Sri Lankan tea (Chapter 6) there were no collective bargaining agreements on the palm oil plantations.

Women are less likely to be a member of a trade union than their male counterparts¹⁴¹ and those workers who are members of an independent trade union live in a constant fear of employment retribution and are terrified of being dismissed for joining a trade union (Field Notes). Casual workers were less likely to be members of a trade union (compared to permanent workers)¹⁴² and although they may have the legal right to organise, they understood that they are easily replaceable (Field Notes).¹⁴³ When workers were members of a trade union they had significantly higher wages,¹⁴⁴ were less likely to have been exposed to child labour,¹⁴⁵ were more likely to be informed when changes happened to their salary etc,¹⁴⁶ and were more likely to be

¹³⁹ These are either worker-established unions or, as found predominantly in the plantation sector, yellow (company) unions. 'Yellow union' refers to employer-sponsored or state-led pseudo-unions. The term goes back to the early twentieth century, when such unions labelled 'yellow' were established in Europe to undermine the 'red' syndicalist or socialist unions.

¹⁴⁰ It is worth remembering that the plantations surveyed were agreed in advance by the trade unions, governments and employers and this partly explains the unusually high trade union density.

¹⁴¹ $\chi^2 (1, N=676) = 39.744, p < .01$

¹⁴² $\chi^2 (1, N=670) = 246.893, p < .01$

¹⁴³ The decline in trade union membership in Indonesia overall since democratisation has been partly as a result of the increase in flexibilisation (see also Juliawan 2010).

¹⁴⁴ $\chi^2 (4, N=642) = 163.113, p < .01$

¹⁴⁵ $\chi^2 (1, N=656) = 18.941, p < .01$

¹⁴⁶ $\chi^2 (4, N=676) = 56.532, p < .01$

consulted in relation to changes in their contract, when compared to non-unionised workers.¹⁴⁷ In short, unionisation matters and is clearly a key element in horizontal governance.

Cases of union busting were common on the plantations, which included management banning workers from joining a trade union, intimidating workers from forming their own unions, and establishing ‘yellow unions’ whereby management would set up their own plantation unions to displace representative unions. The unlawfulness of yellow unions is a fundamental right guaranteed by C.98 on the Right to Organise and Collective Bargaining and the Plantations Convention (C.110). Furthermore, several of the workers surveyed were members of the state-backed union (KSPSI and less often KSPI)¹⁴⁸ that was established during Suharto’s non-democratic regime. Plantation owners have also warned employees against contacting union organisers, and the unions claimed that their representatives were typically the first to be dismissed when production on the plantations was low (Field Notes). As one worker stressed: ‘we cannot do much because we are trapped in the fear of being fired and not having [a] decent life’. As a union representative noted, ‘if they could, they [employers] would get rid of trade unions’ (Field Notes). Several workers also drew attention to cases of violent assaults on workers who attempted to form unions (Field Notes). These anecdotal accounts of restrictions on worker voice are more pronounced as Indonesian labour law dictates that to engage in collective bargaining a trade union must represent more than 50 per cent of a company’s workforce.¹⁴⁹ These cases of decent work deficits run contrary to the Plantations Convention (C.110), which states that workers must be protected from ‘dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.’

Unfortunately, it became increasingly apparent during the fieldwork that many of the trade union representatives that were interviewed were company-backed or, in

¹⁴⁷ $\chi^2(3, N=676) = 27.407, p < .01$

¹⁴⁸ The SPSI was reformed into two competing federations (KSPSI and KPSI), which continue to be perceived as ‘yellow unions’.

¹⁴⁹ The Manpower Act states that only registered unions can conduct collective bargaining. Should none of the unions reach the 50 per cent threshold, unions can form coalitions to represent more than 50 per cent (Caraway 2006a).

other words, ‘yellow unions’ representatives. Moreover, several plantation workers stated that once they had become permanent employees they were immediately ‘enlisted’ as a member of the company-backed union and were required to pay membership fees (Field Notes). Clearly, any TNC looking for weak labour regulation will find numerous spaces of (trade union) exception in the palm oil plantations of Indonesia.

5.5.6. Living conditions

During colonialism, the plantation owners were held responsible for ensuring the basic needs of their workers, which is why current plantations have a strong role as providers of healthcare and social services in Indonesia. Today, as a report by Accenture (2013 p.19) notes, ‘securing reliable labour is one of the key challenges for plantations, which are typically located in remote, rural communities far away from labour markets. Rural communities often lack the basic infrastructure that is required to support worker communities, such as housing, markets, schools, hospitals, commercial businesses, utilities, and security. Consequently, it often falls to plantations to create worker communities, providing the “entire infrastructure”’. The Plantations Convention (C.110) in particular recognises the importance of employers providing ‘adequate housing accommodation for plantation workers’ and dedicates a whole Part (XII) to housing. On Indonesia’s palm oil plantations however, the housing provided was found to be ‘inadequate’ or more accurately, deplorable – 31 per cent of workers did not have a roof on their accommodation, 26 per cent did not have a place to cook, and 54 per cent did not have access to clean drinking water. In particular, casual workers and females were significantly less likely to have accommodation provided by the employer compared to permanent and male workers.¹⁵⁰ This is not just indecent by Western standards but according to minimum ILO standards.

5.5.7. Discrimination

Discrimination against workers on the plantation is a continuing problem for the palm oil sector. Indonesia has ratified both the Equal Remuneration Convention (C.100) and the Discrimination (Employment and Occupation) Convention (C.111). The Manpower Act requires that all workers receive the same opportunities and treatment

¹⁵⁰ Casual workers = $\chi^2(1, N=863) = 266.844, p < .01$
Female workers = $\chi^2(1, N=874) = 61.229, p < .01$

from employers and prohibits the firing of women while they are pregnant, giving birth, nursing or recovering from miscarriage.¹⁵¹ Although compliance with maternity leave was relatively good (3 months at full pay), several female workers were fired when they became pregnant (Field Notes). If Indonesia had ratified the Plantations Convention (C.110) this would be in violation of Article 50, which states that ‘the dismissal of a women solely because she is pregnant or a nursing mother shall be prohibited’. The survey found that one in seven workers that were interviewed had been discriminated against, particularly due to social origin. Women were more likely to be discriminated against and had less access to employment contracts,¹⁵² medical services, housing,¹⁵³ social security (e.g. health insurance and pensions)¹⁵⁴ and annual holidays with pay¹⁵⁵ compared to male respondents. A trade union representative also drew attention to cases where female plantation workers were forced into performing sexual activities with employers before securing their jobs (Field Notes). The ratification of C.110 therefore is a necessary but not sufficient condition to (re)establish labour standards in Indonesia. Ratification needs to be bolstered by independent unions and comprehensive labour inspection.

5.5.8. Conditions of work

The conditions of work on palm oil plantations can be arduous due both to the climate and the labour-intensive nature of work. Many workers commented on the unbearably hot and humid conditions, consequently suffering from heat exhaustion, and other occupational safety and health concerns. Palm oil trees can grow to a height of 20 metres and workers use a long pole with a curved knife attached to its end, an *egrek*, to drop bunches from trees as depicted in Image 5.2,¹⁵⁶ which was found to lead to severe back pain, discomfort and other musculoskeletal disorders (Ng et al. 2014), as well as injuries sustained by falling branches (bunches of palm oil fruit can weigh up to 25kg). Furthermore, once the palm oil fruit is dropped, workers must bend down and retrieve the ripe fruits and carry these to a trailer. Thus, workers are required to lift hundreds of kilos of palm oil fruit each day (often more than a tonne) in difficult working positions. Yet, workers appeared resigned to the problems associated with

¹⁵¹ The Act is not explicit about equal pay for equal work.

¹⁵² $\chi^2(1, N=843) = 31.468, p < .01$

¹⁵³ $\chi^2(1, N=874) = 74.334, p < .01$

¹⁵⁴ $\chi^2(1, N=629) = 107.983, p < .01$

¹⁵⁵ $\chi^2(2, N=635) = 71.540, p < .01$

¹⁵⁶ Note he does not wear any personal protective equipment.

palm oil production: ‘we can’t tell management about these problems as we will lose our jobs, we just have to live with it’ (Field Notes). Working weeks are long and 25 per cent of the workers surveyed work 7 days per week. Working hours are also long with 27 per cent of workers working between 8-10 hours per day and 6.3 per cent working more than 11 hours per day. These hours of work were confirmed by the focus group discussions with the trade unions who stressed the unbearable nature of the working environment and drew attention to cases of the abrupt deaths of workers caused by excessive tiredness (Field Notes). The conditions of work were significantly more ‘decent’ for trade union members than those who were not a member. For example, trade union members were more likely to receive social security benefits¹⁵⁷ and annual holidays with pay¹⁵⁸ compared to non-unionised workers.

Image 5.2: Worker carrying an ‘egrek’ used for harvesting palm oil.



Other occupational safety hazards were identified. Palm oil production involves the application of many chemicals throughout the production process, including fungicides, insecticides and herbicides, which help to protect the palm oil fruit against insects and diseases. By their very nature, the chemicals used are highly toxic and require careful handling and application. The focus group discussions revealed that paraquat, an extremely toxic pesticide, was still used widely on the

¹⁵⁷ $\chi^2 (4, N=490) = 180.205, p < .01$

¹⁵⁸ $\chi^2 (2, N=498) = 37.944, p < .01$

plantations harming many workers as personal protective equipment (PPE) and training was rarely provided (Field Notes).¹⁵⁹ Even in cases where training was provided, workers often found the PPE unreasonably hot and inconvenient and chose not to wear it as it would slow their pace and consequently their ability to meet their daily quotas. Paraquat is commonly used in Malaysia and Indonesia due to its low price and effectiveness as a fertilizer and is seen as a necessary element in ensuring high quality and low-cost palm oil. It was common for workers to suffer severe poisonings as a result and these cases often went untreated due to a lack of healthcare facilities on the plantations and surrounding areas. This disproportionately affected casual women workers (compared to permanent male workers) as they typically were responsible for spraying chemicals on the plantations and were often not given health care and accident insurance (due to their casual status).¹⁶⁰ The use of paraquat is prohibited in many Western countries and Indonesia was one of three countries that recently blocked the listing of paraquat as a hazardous substance under the Rotterdam Convention.¹⁶¹

In summary, both the questionnaire and focus groups comprehensively document the plethora of decent work deficits that exist within the sector. When taken together this data adds up to serious violations of ratified labour standards as well as the Plantations Convention (C.110). The Plantations Convention, which has not been ratified by Indonesia, aims to address many of the violations occurring in the palm oil plantation sector. The working life of a palm oil plantation worker in Indonesia is characterised by insecure employment, inadequate protection from health and safety hazards, cases of forced and child labour, discrimination against women workers, poor wages and a lack of individual and collective voice. The questionnaire survey and focus group discussions did not just demonstrate indecent work but also labour governance deficits.

¹⁵⁹ Paraquat is acutely toxic through swallowing, absorption through damaged skin, or by inhalation.

¹⁶⁰ $\chi^2 (2, N=653) = 25.074, p < .01$

¹⁶¹ The Rotterdam Convention is a United Nations multilateral treaty overseen by the United Nations Environment Programme (UNEP), which promotes responsibilities in relation to hazardous chemicals. Indonesia ratified the Rotterdam Convention in 2013 and must ban the use of chemicals included in the Convention. However, along with Guatemala and India, Indonesia successfully blocked the listing of paraquat. The UN Special Rapporteur of the UN Human Rights Council on Human Rights Implications of Hazardous Wastes later responded that it is, 'legally and morally unjustifiable for countries to obstruct listing paraquat under the [Rotterdam Convention].'

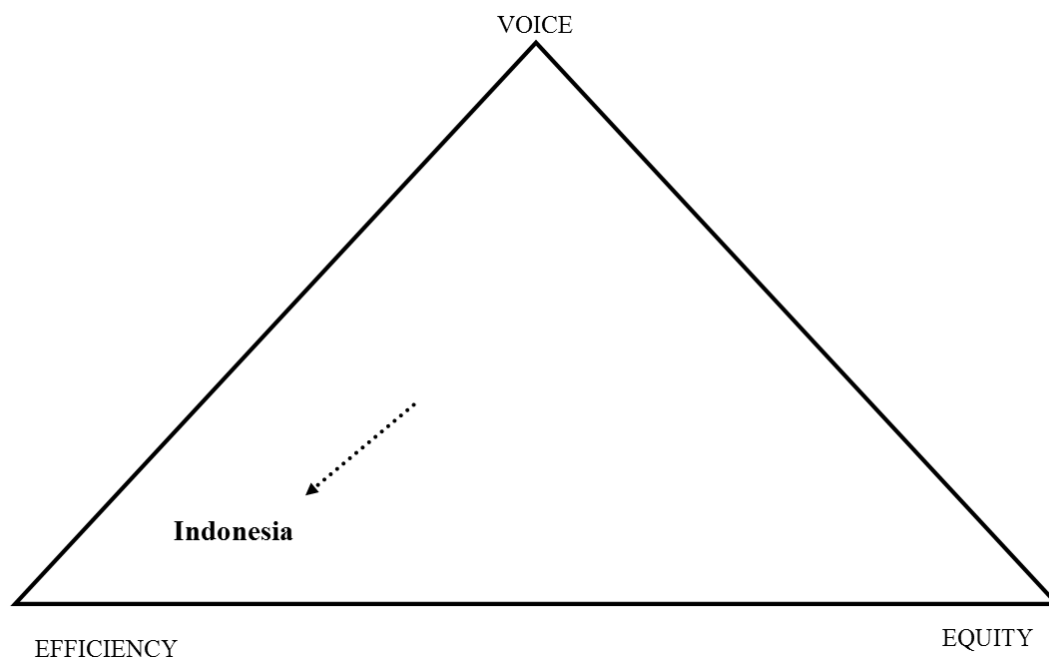
5.6. Horizontal and vertical governance and indecent work

Palm oil in Indonesia ‘not only fails to reduce poverty, it actively produces it.’

Oliver Pye et al. (2016)

The conditions of work in Indonesia’s palm oil sector highlight the pervasiveness of indecent working conditions in many sectors supplying products that find their way into households across the globe. Over the last decade, the palm oil sector has experienced a monumental rise in both its production and exports, which has led to a dramatic increase in employment in the sector. The Indonesian government has prioritised efficiency (and export revenues) at the expense of equity and individual and collective voice, as depicted in Figure 5.9 (the arrow in Figure 5.9 indicates the ‘direction of travel’ in respect of voice, equity and efficiency following the Global Transformation). As Marti (2008 p.2) states, ‘Indonesia is a uniquely diverse country whose communities and environment are being sacrificed for the benefit of a handful of companies and wealthy individuals’. Whilst public and private governance are often regarded as complementary for decent work (Toffel et al. 2012; Locke 2013; Donaghey et al. 2014), vertical private and social governance on its own makes little difference to the social conditions of Indonesian palm oil workers. Effective vertical governance is not a panacea; rather it relies on a strong system of horizontal governance as a necessary condition to ensure that TNCs cannot exploit spaces of exception, the holes in horizontal governance as depicted in Figure 5.1. In the palm oil sector, there is a dearth of private and social interest in improving conditions of work and public governance is weak. When there is a lack of horizontal and vertical labour governance then the result is indecent work. In the Indonesian context when the major social actors are absent (such as trade unions and consumers), then the only interests that can be aligned are those between government and TNCs, to the detriment of the millions of workers toiling on palm oil plantations.

Figure 5.9: Indonesia and the objectives of the employment relationship under the Global Transformation



Source: adapted from Budd (2004)

The Indonesian case is a telling example of the problems of implementing and enforcing labour standards in an age of Global Transformation. In other words, Indonesia's palm oil sector highlights the main *problematique* of global labour governance when horizontal (i.e. the territorial embedding of economic and social relations between capital, labour and the state) and vertical (i.e. the vertical organisation and flow of value activity across multiple scales from the global to the local) public, private and social governance – are absent. Although Indonesia has ratified a modest number of ILO Conventions (19), the surveys and focus group discussions found that they were in breach of several of these standards, in particular: Forced Labour Convention (C.29); Freedom of Association and Protection of the Right to Organise Convention (C.87); Right to Organise and Collective Bargaining Convention (C.98); Abolition of Forced Labour Convention (C.105); Discrimination (Employment and Occupation) Convention (C.111); Minimum Age Convention (C.138); and Worst Forms of Child Labour Convention (C.182). If further verification were needed, the Indonesian palm oil sector demonstrated that ratification does not automatically guarantee decent work. For the approximately 2-3 million workers who

toil on Indonesia's palm oil plantations any sense of work performed under 'conditions of freedom, equity, security and human dignity' (ILO 1999) is a distant dream.

The reasons for the existence and prevalence of indecent work is firstly because of the configuration of the network. The production network is not 'driven' in a 'hands-on' way by strong lead firms such as brands – transactions for palm oil are completed at an 'arms-length', there is no explicit control of suppliers by brands and no regular forms of engagement. The large-scale producers, such as Wilmar International who supply many Western brands, have an extensive network of subsidiaries who produce the palm oil (subcontractors and sub-subcontractors). Palm oil is standardised and the specifications for production are easily codifiable and measurable, where price and quantity is the main determinant of the market transaction. As a result, there is a low lead firm influence on the suppliers' employment relations, which does not bode well for organised labour seeking 'targets' for collective action (cf. Lakhani et al. 2013). The indecent working conditions are also as a result of governance (or lack of), such as the government's inadequate enforcement (public horizontal governance), weak trade union power (social horizontal governance) both in terms of structural power (workers who are easily replaced) and associational power (yellow unions and 'state friendly' unions), hostile employer associations (private horizontal governance) and a dearth of organisational responsibility along the production network (vertical private/public/social governance). Palm oil production in Indonesia demonstrates that when horizontal and vertical public, private and social governance are absent, indecent work is common (as visually represented at the start of this chapter in Figure 5.1 where the 'thin' horizontal governance ring 'barely touches' and ultimately cannot embed the vertical).

5.6.1. Horizontal governance

The Indonesian government's strategy for international competitiveness is based on low price and cheap (indecent work), which has shaped its labour standards policies (public horizontal governance) and consequently the behaviour of suppliers. The further expansion of the palm oil sector is guaranteed following the Indonesian government's 2011 Master Plan for the Acceleration and Expansion of Indonesian Economic Development, which resolutely supports the development of large-scale palm oil plantations. Historically, the expansion of the palm oil sector has been

supported by claims from government that it this will reduce poverty and create jobs, whereas the research presented here demonstrates that ‘decent’ jobs are few and far between.

Effective horizontal governance is a necessary condition for the establishment of international labour standards and the traditional ILO governance model depends on this nation state approach, relying on governments to ratify, implement and subsequently enforce these principles which support independent trade unions and facilitate collective bargaining with employer associations. In Indonesia, the government’s lack of commitment to ensuring decent work is exemplified by the low ratification of ILO Conventions.¹⁶² Even those laws that have been drafted with the assistance of the ILO (e.g. the Manpower Act of 2003), to align Indonesia with its ratified standards, have implemented a flexibility cause, which has allowed significant amount of outsourcing and the prevalence of short-term contracts. As Hauf (2017 p.137) notes, ‘the ILO was subsequently seen by them [independent trade unions] as promoting labour market flexibility and therefore as siding with the employers and the pro-business government’.

Even when these Conventions have been ratified and implemented, many workers surveyed during the research did not receive the benefits that these standards entail as enforcement of these Conventions is also incredibly weak. The survey demonstrated that labour inspection in Indonesia barely touches upon the pace of production, even though the government ratified the Labour Inspection Convention (C.81) in 2004. It is clearly in direct violation of this Convention as it requires countries to place inspectors under the control and supervision of a central body (unlike the regional ‘Disnakers as referred to in Sub-section 5.5.4). To illustrate this point, according to the ILO, effective public governance requires a minimum number of labour inspectors to enforce the national law. Indonesia’s total labour force is 127.7 million and according to the ILO the recommended number of labour inspectors should be 6,385 (one per 20,000 workers) (GB.297/ESP/3 p.4), whereas the actual number is only 2,400. According to a trade union representative in one of the focus group

¹⁶² Indonesia is at present ranked 150th out of 186 ILO member States in terms of ratification. This is the same number of ratifications as both Somalia and Afghanistan.

discussions this is a policy of ‘no policy’ (Field Notes). Employers can therefore bust unions with little fear of legal repercussions and TNCs in their search for a ‘spatial-juridical fix’ can exploit these ‘spaces of exception’; in this case remote, rural areas where the labour law is not enforced effectively.

Trade unions are key social governance actors in promoting and protecting decent work, and although these deplorable conditions of work are nothing new, and are partly as a result of the history of labour repression (in particular towards trade unions) in Indonesia, worker structural and associational power remains weak. Firstly, palm oil plantation workers are substitutable and although the work is arduous it is low skilled and unemployment in rural areas in Indonesia is very high, especially among the young (17.5 per cent) (ILO 2016b). This is compounded by the spread of short-term and casual contracts in the palm oil sector, which has made it tougher to recruit trade union members, since casual workers (as uncovered during the survey) fear that joining a union will result in their contract not being renewed (Field Notes). Although many of the casual contracts uncovered during the field work violate Indonesia labour law, the penalties for violation are weak (severance pay or conversion to permanent status) and labour inspection systems do not enforce the provisions of the law in these spaces of exception. Others have noted that this is more accurately ‘outsourcing as union busting by stealth’ (Ford 2013 p.236). Secondly, workers do not have effects on other parts of the network. Palm oil production does not require any just-in-time production processes and although demand is high, so is supply, as palm oil does not expire. Therefore, workers cannot immediately influence the production network by engaging in industrial action. Thirdly, as the production network is not driven in a ‘hands-on’ way by lead firms (the palm oil GPN is predominantly ‘driven’ by price, as determined by supply and demand and the vertical rules shaped by the large transnational producers) – most associated with relational and hierarchical forms of governance – there is little option for independent trade unions to target powerful lead firms in the network. Because price is the main determinant of sourcing palm oil from several transnational producers it is much more difficult for workers to systematically tackle these ‘less-driven’ chains.

Associational power of workers is also weak. Following the end of the military dictatorship in 1998, the number of trade unions have increased but union membership (density and number) has declined. Hence unions have not been able to unify around collective goals. The Trade Union Act of 2000 encouraged fragmentation, by establishing low thresholds for union formation (groups as small as ten workers are allowed to form a union), permitting multi-unionism at the supplier level, and creating a union registration process that facilitated the formation of ‘yellow unions’. Yellow unions were common on the plantations and freedom of association and collective bargaining was further undermined by inter-union conflict between the old state-sponsored unions and the new independent unions. Employers in particular take advantage of this and can support the old unions, whilst ignoring the new more democratic ones (Field Notes).

In addition, in labour-intensive industries such as palm oil, workers at the bottom of the production network lack bargaining power in isolated negotiations with employers since their wages are not expected to provide effective demand for the goods that they have produced. Tellingly, there were no collective agreements in place at any of the plantations that were surveyed. Moreover, none of the major political parties in Indonesia have built institutionalised links to trade unions (unlike the Sukarno-era) and trade unions’ efforts to engage with political parties has been insignificant.¹⁶³ Of the 48 parties that competed in the 1999 elections, only four claimed to represent labour’s interests and only two of these had links to unions. In addition, according to one ILO official, the Indonesian trade union movement has been essentially absent within the ILO and unlike other East-Asian countries has been largely silent at meetings and discussions (PAO Notes). This is a major factor when compared to the political arena in Sri Lanka (see Chapter 6). Furthermore, the links and unity between horizontal and vertical unions is weak. None of the plantation unions that were spoken to during the focus group discussions were members of The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Association (IUF) or any of the other Global Union Federations (GUFs). This leaves very little opportunity for collective action across a production network. Private horizontal governance through employer associations is likewise

¹⁶³ This is as a result of the eradication of the Left under Suharto.

weak. Employers do not act collectively and the only recognised employer federation (by the ILO and the state), APINDO, has experienced a declining membership, has been openly hostile to independent unions, and acted as an instrument of the state rather than as an independent vehicle for the advancement of business interests (cf. Ford 2013). In fact, out of all the plantation owners spoken to during the focus group discussions, only 15 per cent were members of an employer association. As a result, neither unions or the employers (plantation owners) are able to ‘embed’ TNCs.

The field work uncovered some seriously troubling findings, however there were also some positive examples of labour agency. Every year the annual minimum wage negotiations give the unions the opportunity to ‘flex their muscles’. In October 2012, over two million workers joined the first national strike in Indonesia in 50 years, and in 2013, a year which was particularly raucous, trade unions engaged in wildcat strikes to ensure the government met their demand for a higher minimum wage. However, two caveats are needed. Firstly, the minimum wage negotiations were mainly centred on the manufacturing and service sector in the large cities in Indonesia and secondly, the Indonesian government violently suppressed these protests. In fact, in 2015 the CEACR requested Indonesia to respond to the numerous ‘allegations concerning violence and arrests in relation to demonstrations and strikes, and to take measures to ensure that the use of excessive violence in trying to control demonstrations is avoided, that arrests are made only where criminal acts have been committed, and that the police are called in strike situations only where there is a genuine and imminent threat to public order’. The CEACR has also indicated that police accountability was lacking in referring to a shooting incident during a strike. This report, like many others has gone unnoticed (or perhaps more accurately ignored) by the Indonesian government. Even though the Manpower Act of 2003 recognises the right to strike, the unions must navigate a legal minefield. For example, a strike requires workers to meet with employers at least twice over a two-week period (more difficult in remote rural areas) or to obtain written documentation that the negotiations had deadlocked. This provision is difficult to meet considering that employers can refuse to meet or to acknowledge that meetings took place. Furthermore, the authorities can deem a strike illegal without notice, so workers who go on strike may lose their jobs. This is in direct violation to the ratified Convention on the Right to Organise and

Collective Bargaining (C.98), which states that measures must be taken ‘to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements’.

The weak horizontal governance in Indonesia partly explains why firms invest in Indonesia particularly as, in the palm oil sector, price is the main determinant in transactions with global buyers. As there is no effective system of horizontal governance in place then (vertically) TNCs such as the major buyers (e.g. Unilever) and the producers (e.g. Wilmar International) are able to pursue their own self-regulated approach to sourcing and managing labour on their plantations and with their suppliers, contributing to the (in)decent work that was uncovered during the course of the fieldwork. In other words, the lack of commitment by the Indonesian government to ratify, implement and enforce ILO Conventions, hostility of employers to recognise trade unions and their members, and workers lack of associational and structural power means that the necessary conditions of horizontal governance (the ILO’s approach to establishing labour standards) are absent, resulting in (in)decent work. If TNCs are not ‘embedded’ in an effective system of horizontal governance, then vertical governance by TNCs is not sufficient to ensure conditions of work as they have limited responsibilities imposed upon them by the tripartite actors within the borders of the nation state.

5.6.2. Vertical governance

‘The serious and systemic labour abuses documented by Amnesty International have been occurring on palm oil plantations in Indonesia for years. They are the direct result of how the businesses are run.’

Amnesty International (2016)

Effective vertical governance in an age of Global Transformation requires the commitment of TNCs, which are then held responsible (e.g. by national laws or agreements with global union federations), and other international actors (e.g. global civil society pressure and auditing) to improve conditions of work. Vertical governance on its own though is ineffective without the necessary conditions of

horizontal governance that ‘embed’ TNCs into specific labour regimes. In the case of Indonesia’s palm oil sector, there is a dearth of effective horizontal private, public and social governance and weak vertical governance by both private and social actors.

Palm oil is a standardised product; palm oil made in Indonesia is essentially no different from palm oil made in Malaysia. In fact, palm oil has a ubiquity seldom found in any other agricultural commodity and ends up in a plethora of products including soap, shaving gel, biscuits and doughnuts. Consumers groups and civil society have little knowledge of the product and there is a lack of ‘direct’ or ‘genuine link’ between producers in Indonesia and consumers in Western markets. The ‘invisibility’ of the commodity in terms of both a lack of civil society pressure (unlike Fairtrade in the tea sector for example) and the fact that palm oil is rarely sold in its raw form in Western markets has resulted in a lack of ‘awareness’ by consumers of the working conditions endured by workers that contributes to the products that end up on the shelves of many supermarkets. The workers’ ‘invisibility’ was not lost on a trade unionist in Indonesia: ‘foreign buyers don’t care about the working conditions on the plantations here’ (Field Notes).

Whereas abuses in the apparel sector in the 1990s in Indonesia were the subject of international scrutiny (O’Rourke 2006), social concerns in the palm oil sector have not been in the spotlight. Whilst some commentators might draw attention to consumer pressure in addressing decent work deficits (Donaghey et al. 2014), in the palm oil sector there is a lack of demand from consumers for ethically sourced palm oil under conditions of decent work, and global civil society has largely remained silent on social issues, in particular the role of labour. Large TNCs that are household names, such as Unilever, have been able to continue their operations without threat to their reputation. Furthermore, the main ‘drivers’ of the palm oil production network are large-scale agribusinesses, located in developing countries and are not held accountable by civil society organisations (CSOs) who predominantly operate in developed economies.

CSOs such as Greenpeace, have elevated the issue of deforestation as a result of the palm oil expansion in Indonesia and its impact on both climate change and the local wildlife and the environment has become the primary focus of consumer

campaigns aimed at changing the behaviour of both states and firms in Indonesia. However, the social aspects of production have been overlooked. As the *Guardian* newspaper asked: ‘why do people care more about orangutans than migrant workers?’ (Villadiego 2015). Furthermore, although some NGOs have focussed on the worst aspects of labour exploitation (e.g. slavery and child labour) they view workers as ‘passive victims’ that need to be helped by consumer campaigns. For example, Accenture (2013 p.3) recommends ‘interventions for key stakeholder groups, namely governments and corporations, to eliminate the industry’s dependency on and exposure to slavery’ but completely ignores the agency of labour. Rather they appeal to those who are primarily responsible for the indecent work in the palm oil sector.

In 2004, because of consumer pressure for sustainable (environmentally friendly) palm oil, the Roundtable on Sustainable Palm Oil (RSPO) was launched, which is widely considered to be the industry’s best attempt to promote vertical social (multi-stakeholder) governance. However, more accurately it is ‘a hollow front for corporate greed and brutality’ (IUF 2006). The RSPO brings together stakeholders (predominantly private actors) including NGOs, brands, as well as the large suppliers along the palm oil production network to promote the growth and use of sustainable palm oil products. Through dialogue between its stakeholder groups, RSPO has developed a global standard for sustainable palm oil – the RSPO Principles and Criteria. Although RSPO has 1,600 members from more than 72 countries, RSPO certified sustainable palm oil accounts for only 18 per cent of global palm oil production.¹⁶⁴

Despite attempts to produce sustainable palm oil and hold TNCs accountable for their operations, RSPO has been unsuccessful in creating improvements in conditions of work on the palm oil plantations. One of the major deficiencies with RSPO is its ‘mass balance supply chain model’, which allows certified plantations to mix their palm oil with conventional plantations as long as the ‘overall facility quantities are controlled’, thus similar to the case of Rainforest Alliance (in the following chapter), palm oil labelled as ‘sustainable’ can include both non-certified as

¹⁶⁴ RPSO certification is achieved when plantations request an ‘accredited Certifying Body’ to assess whether they are in compliance with the RSPO ‘Principles and Criteria’. If the plantation conforms to the standard then it is assessed every 12 months (with the plantation bearing the cost of the audit).

well as certified palm oil (RSPO 2011). In addition, there is a dearth of references to ILO Conventions in its guidelines and instead the initiative prioritises deforestation and land issues as its core mandate.¹⁶⁵ In fact, the certification scheme includes language that potentially undermines ILO standards, for example that ‘the health and safety plan should also *reflect* guidance in ILO Convention 184’ (emphasis added) and that several ILO Conventions ‘should be taken into account [not complied with] as appropriate in developing national interpretations’, which leaves space for reinterpretation.¹⁶⁶

Whilst the RPSO certification demands a living wage it does not have a model in place to determine what this would be and the guidelines do not tackle the health and safety deficiencies in the sector (for example, the certification does not ban the use of paraquat). Perhaps more importantly, considering the necessary conditions for horizontal governance, RPSO offers no assurance that the producers respect the right to freedom of association and collective bargaining. Similarly, it cites C.87 and C.98 on freedom of association and collective bargaining as ‘guidance’ irrespective of their classification as human rights. In addition, RSPO does not have any representation from trade unions, instead relying on CSOs to represent the workers ‘voice’. More recently, the NGO Palm Oil Investigation has withdrawn its support for RSPO as they have ‘lost confidence in the ability of RSPO’s leadership to manage its certification system to effectively regulate the supply of sustainable palm oil due to repeated systemic and governance failures’ (POI 2016), citing three cases of evidence of exploitative labour practices on RSPO certified plantations.¹⁶⁷ As a result, even with the significant backing of large TNCs such as Unilever and Wilmar International, RSPO fails to systematically ensure the (sparse) standards in its principles are respected.

In response to the failure of RPSO to promote and protect decent work, several NGOs and trade unions (IUF amongst them) established the *Free and Fair Labor in*

¹⁶⁵ Even in terms of environmental sustainability RSPO has been largely unsuccessful. According to a 2013 Greenpeace report: ‘The RSPO wants its members to be industry leaders in sustainability, but its current standards leave them free to destroy forests’ (Greenpeace 2013).

¹⁶⁶ For example, the Rural Workers’ Organisations Convention (C.141), Migration for Employment Convention (C.97) and the Social Policy (Basic Aims and Standards) Convention (C.117).

¹⁶⁷ June 2014 (Finnwatch 2014), November 2015 (EIA 2015) and September 2016 (NGO Mighty 2016).

Palm Oil Production: Principles and Implementation Guide (vertical social governance).¹⁶⁸ Whilst this guide goes above and beyond the RSPO standard (in terms of references to labour standards), these guidelines have remained a set of principles rather than an initiative that includes independent monitoring and auditing of complying enterprises. Western buyers such as McDonalds and KFC have committed to reducing their impact on deforestation to placate consumers, however this has not included any form of social responsibility. Similarly, the large producers of palm oil, who have the bargaining power in the production network have not been the target of any major consumer campaigns or international trade union pressure. In short, even those private and social vertical governance initiatives that have been established cannot, and likely will not, improve conditions of work on the palm oil plantations and certainly do not meet the conditions set out in Chapter 2 (Section 2.7.1).

5.7. Conclusion

Improving conditions of work and the establishment of labour standards is rooted in the ‘intertwining’ of effective horizontal and vertical public, private and social governance, it is thus both territorial *and* organisational. Palm oil plantations play an important role in Indonesia’s economy in general, and the agriculture sector in particular, predominantly as a result of Indonesia’s pursuit of export markets and trade liberalisation. It is widely held (by the government) that palm oil plantations contribute significantly to the development of rural livelihoods and employment in Indonesia. Although Indonesia may be the largest producer and exporter of palm oil in the world this has been achieved through prioritising efficiency (cost of production, productivity) over equity (wages, child and forced labour etc.) and voice (right to collective bargaining and freedom of association as well as unfair dismissal protections). Thus, without effective horizontal governance the ILO’s involvement in the sector has been minimal.

Despite almost two decades of freedom of association and the collapse of the repressive regime, workers in Indonesia face major challenges in securing decent work. Independent unions are struggling under the weight of government suppression

¹⁶⁸ https://www.humanityunited.org/wp-content/uploads/2015/03/PalmOilPrinciples_031215.pdf [Accessed 14 March 2017].

and there is no robust right to strike, government enforcement is specifically designed and incapable of securing labour rights, precarious forms of work have created a situation where employers disregard the law, and the outside world has paid little attention to the plight of palm oil plantation workers. Even the ILO's supervisory comments have fallen on deaf government ears. Not only is there forced and child labour but workers are often threatened by management to exercise their human right of joining a trade union and engaging in collective bargaining. Workers also often do not receive a minimum wage, they live in deplorable conditions, have their personal documents withheld and suffer gender-based discrimination. Furthermore, while there has been movement towards vertical private and social (multi-stakeholder) governance, the most prolific NGOs focus largely on environmental concerns and ignore social responsibility. In short, vertical governance on its own has proven to be inadequate at ensuring decent working conditions and is 'virtually untouched' by horizontal governance. Because of a dearth of horizontal and vertical governance, brands, suppliers and the government continue to prioritise the low cost of production (efficiency) over combating the cases of (in)decent work (voice and equity). The situation for palm oil workers in Indonesia will continue to deteriorate unless the labour standards that they have ratified are implemented and enforced effectively and workers' *human* rights are respected. In the following chapter, attention is turned to the Sri Lankan tea sector where the conditions of work are comparably better.

6. Decent Work on Sri Lanka's Tea Plantations

'To improve the standards of workers [in the tea sector] the ILO needs to be dealing with the companies involved'

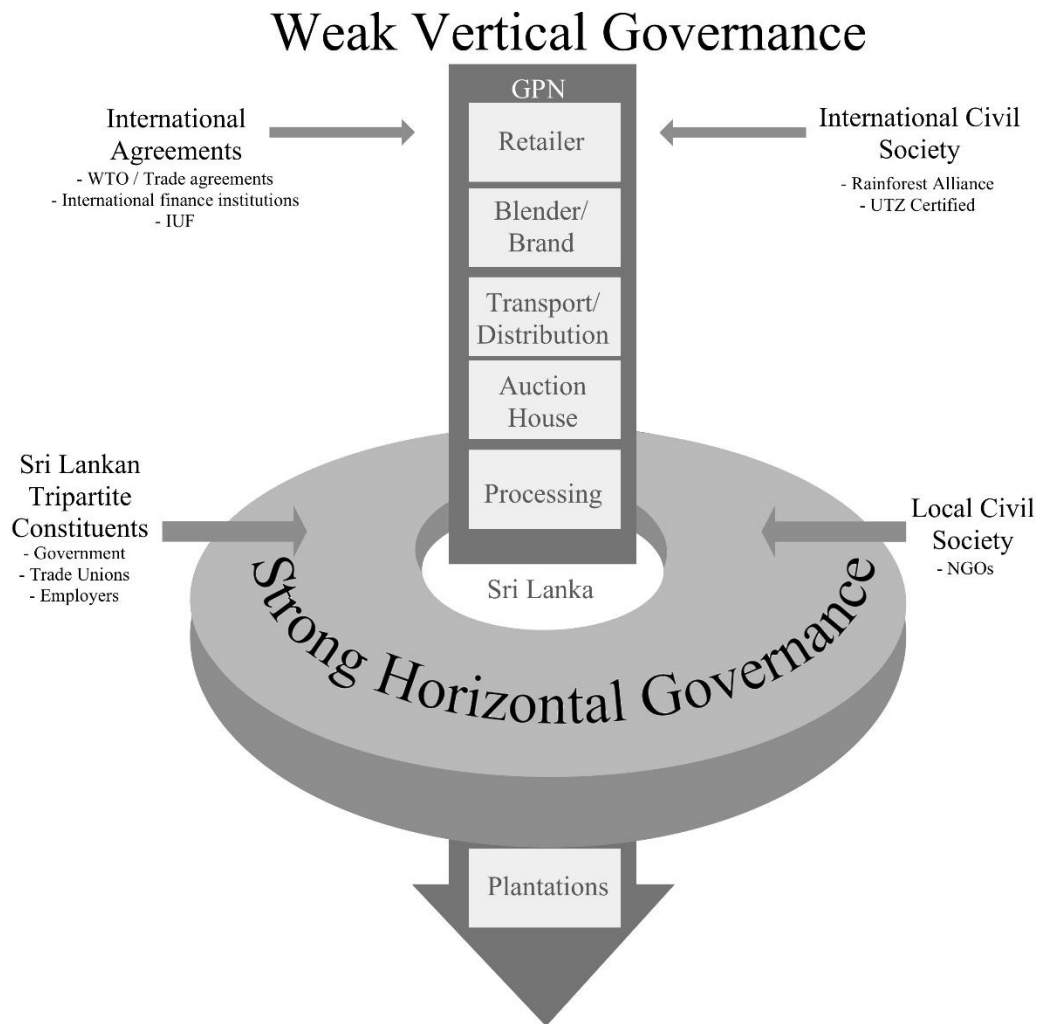
Ceylon Workers' Congress (CWC) Representative (Field Notes).

6.1. Introduction

This chapter demonstrates that conditions of work on Sri Lankan tea plantations are broadly in line with ratified ILO Conventions and workers experience a 'balance' of voice and equity at work. Tea plantation workers are typically unionised and have associational and structural power, government enforcement and intervention is effective in ensuring tea plantation workers received benefits under national law and, as a result, employers experience a competitive 'level playing field' within the country's tea sector. The decent working conditions can be attributed to strong horizontal public, private and social governance coupled with weak vertical private and social (multi-stakeholder) governance (although unions have been engaged in cross-border collective action). However, although tea plantations workers in Sri Lanka might experience decent work, the conditions of work and spaces of exception in other tea production/exporting countries threatens the sustainability of these conditions. The rise of vertical social governance initiatives such as Rainforest Alliance have had an insignificant impact on the conditions of work in Sri Lanka whilst simultaneously legitimising indecent working conditions in other countries. When transnational corporations (TNCs) have tried to exploit these international differences in labour standards, trade unions in Sri Lanka have engaged in cross-border (vertical) collective action to compensate for weak forms of vertical governance and embed capital in 'thick' (strong) horizontal governance, as depicted in the visual map in Figure 6.1.¹⁶⁹ This chapter is structured in seven sections, which follow the framework introduced in Chapter 2 – namely the horizontal and vertical governance of global production networks (GPNs) – as illustrated in relation to Sri Lanka tea in Figure 6.1.

¹⁶⁹ If the horizontal ring in Figure 5.1 was a 'swiss cheese', the horizontal ring in Figure 6.1 is more like a fondue.

Figure 6.1: Horizontal and vertical governance in the Sri Lankan tea sector



Firstly, in order to establish the dynamics of vertical governance, an assessment of the tea production network is carried out, identifying the main actors who are engaged in the sector and the how the sector is organised, in particular the production network configuration (Section 6.2). This is followed in Section 6.3 by a ‘rich’ narrative and an analysis of the horizontal governance dynamics in Sri Lanka to identify the horizontal actors and describe the history of tea production in the country and the contemporary realities of work, because the history of national industrial relations casts a long shadow (Caraway et al. 2015). Thirdly (Section 6.4), an overview of the relationship between Sri Lanka and the ILO is provided, including an analysis of ILO Conventions (horizontal governance) that the country has ratified and an outline of the observations made by the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR). These three sections

lead to the expectation that decent working standards will be met. The fourth section (6.5) of this chapter details the results of the questionnaire survey and focus group discussions that were undertaken in the tea sector and compares and contrasts this with other empirical research. In the penultimate section (6.6), conclusions are drawn on the reasons why the Sri Lankan tea sector experiences decent work, especially in comparison to Indonesia's palm oil plantations. Simply stated, the decent working conditions in Sri Lanka are a direct result of strong horizontal governance that can embed TNCs, rather than the weak vertical governance that legitimises (indecent) conditions of work in other countries. This chapter helps inform the question of how the ILO can (re)establish labour standards in an age of Global Transformation in a country/sector with strong horizontal governance but weak vertical private governance. Section 6.6 is followed by a conclusion in Section 6.7 summarising the main findings of the chapter.

6.2. The tea global production network

Tea is the second most consumed beverage in the world, after water, and it is estimated that 25,000 cups are drunk every second (Oxfam 2013). Owing to the global demand for tea it is one of the most extensively exported and imported agricultural commodities. Consumption is highly concentrated and just seven countries import over half of the tea on the world market (van der Wal 2008). Similarly, although produced by over 35 countries worldwide, four countries lead the production (and export) of tea: China, India, Kenya and Sri Lanka (Table 6.1). Turkey, Vietnam and Indonesia also play a major part in growing tea as shown in Figure 6.2. Overall, 60 per cent of world tea production is consumed domestically in the producing countries (Groosman 2011).¹⁷⁰ However, in some countries, for example in Sri Lanka, Malawi and Kenya, the majority of tea produced is exported. While the UK and the USA are among the top five importers of tea, as illustrated in Table 6.2, more tea is exported to Middle Eastern, North African and ex-Soviet Union countries than is destined for North American and European countries.

¹⁷⁰ China and India are the largest producers of tea in the world but much of their output is for domestic markets as both countries have large populations for whom tea is a daily staple.

Table 6.1: Top five exporters of tea (2013)

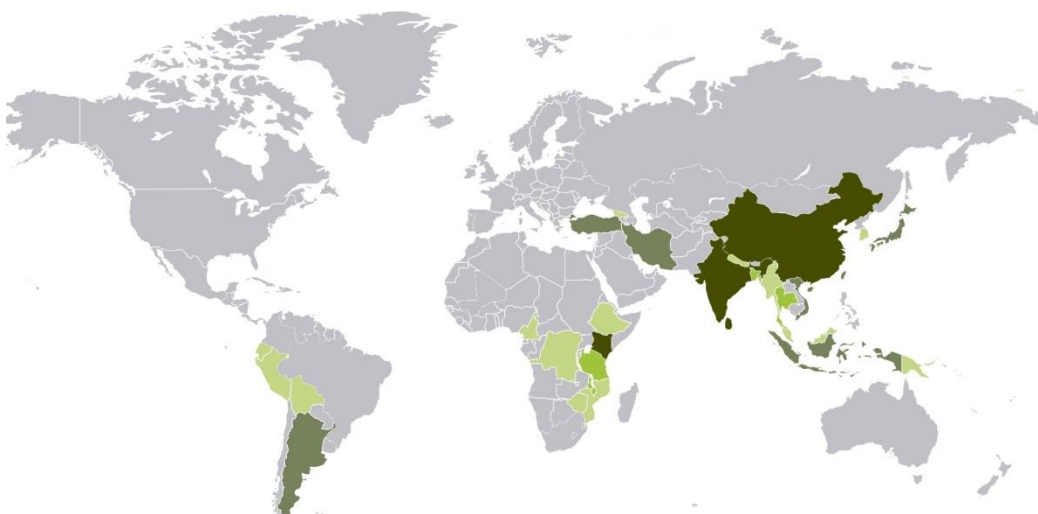
| Country | Export quantity (tonnes) |
|-----------|--------------------------|
| Kenya | 448,809 |
| China | 325,806 |
| Sri Lanka | 317,710 |
| India | 254,841 |
| Vietnam | 90,296 |

Source: FAOSTAT (2013)

Table 6.2: Top five importers of tea (2013)

| Country | Import quantity (tonnes) |
|----------------|--------------------------|
| Russia | 173,070 |
| United Kingdom | 137,581 |
| United States | 130,160 |
| Pakistan | 121,900 |
| Afghanistan | 106,583 |

Source: FAOSTAT (2013)

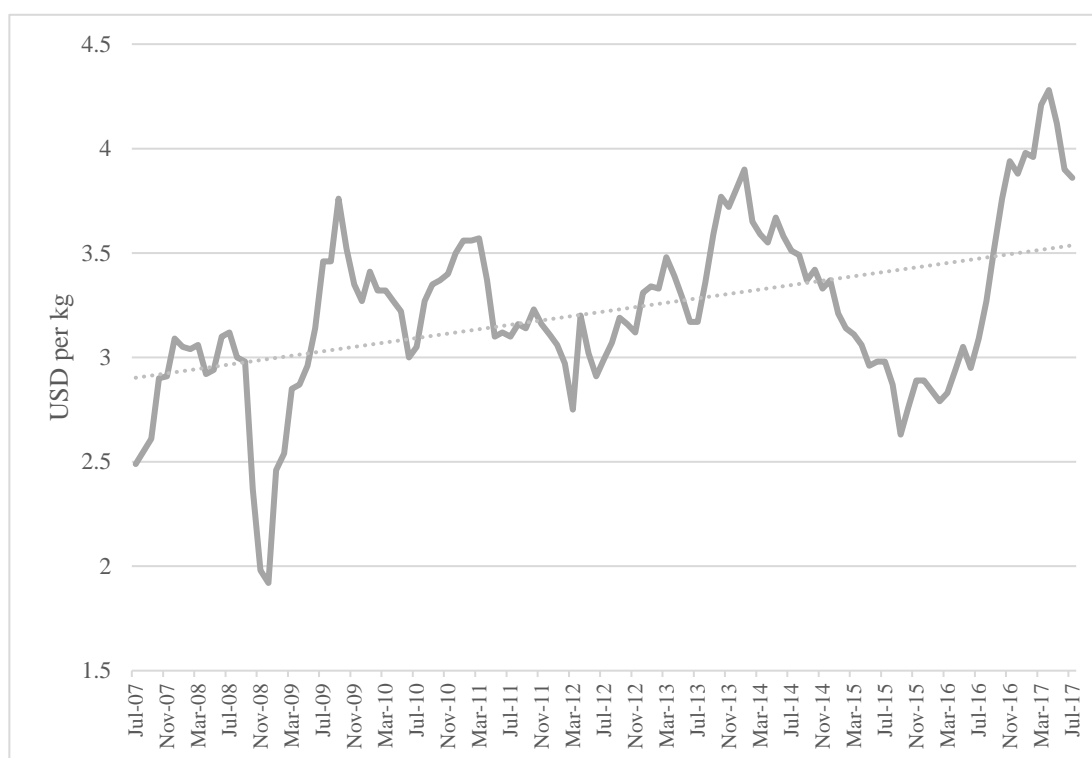
Figure 6.2: Location of tea producing countries

Source: IMF (2015)

The production of tea has doubled in the last decade and export quantity has increased by 66 per cent (FAOSTAT 2013). However, regardless of these figures, producer prices have fallen dramatically. If corrected for inflation, world market prices for tea in the period from 2000 to 2005 were half that of the 1980s (van der Wal 2008). In addition, there is fierce competition between producing countries for market share and significant incentives to decrease costs and improve productivity of tea production to increase foreign direct investment (FDI) and export incomes (van der Wal 2008). As production costs have not fallen but market prices have, there is evidence that this

in turn has negatively affected working conditions and the livelihoods of plantation workers and smallholder farmers in tea producing countries (Groosman 2011). Between 2009 and early 2014 market prices remained high but in 2015 tea prices fell to pre-2008 levels as illustrated in Figure 6.3, which tracks the price of Sri Lankan tea.

Figure 6.3: Changes in Sri Lankan tea prices between July 2006 and July 2017



Source: World Bank (2017)

For the tea grown in Sri Lanka to ultimately find its way to consumers' cups it must firstly go through a series of processes (the vertical arrow in Figure 6.1): picking, manufacturing, warehousing, auction and/or private sale, blending, packaging, branding and retailing, as depicted Figure 6.4. At each of these stages, the product's economic form is transformed in some way and value is added. It begins in the rural economy where a combination of large-scale plantations and smallholders grow and harvest the tea. Large-scale plantations (50 acres or more) typically have their own processing facilities on the estate. A processing centre is shown in Image 6.1. The tea sector is dominated by large-scale plantations due to the fact that their establishment in remote locations favoured enterprises with significant economies of scale (Hayami and Damodaran 2004). Plantation systems typically employ both permanent and

temporary waged workers who often reside on the plantation. The work is intense and the tropical climate needed for the production of tea means it can be particularly hot (temperatures in Kandy, Sri Lanka, for example, fluctuate between 22 and 30°C) and humid (70-80 per cent humidity).

Figure 6.4: Tea production chain

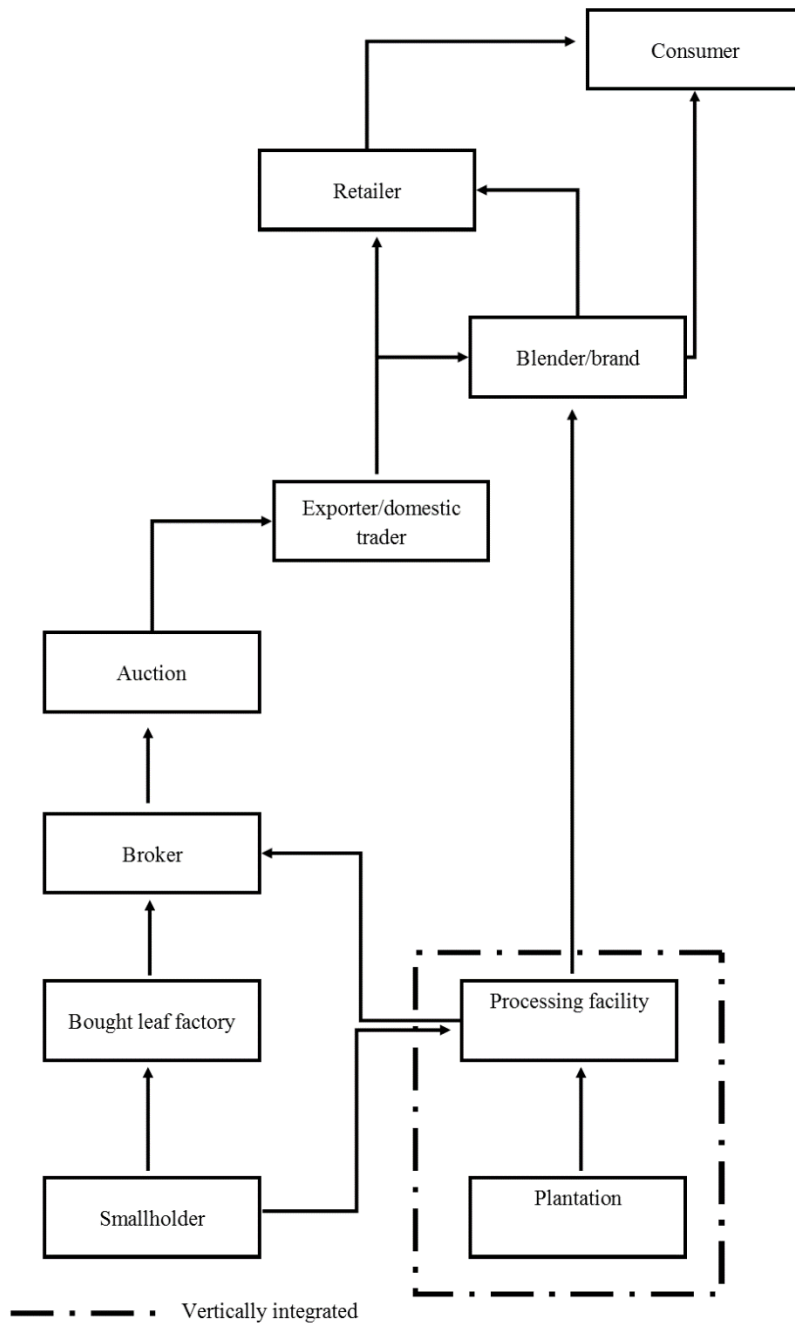


Image 6.1: A tea processing centre in Sri Lanka



Tea production, unlike other agricultural commodities, is not seasonal and part of its attractiveness to both plantation owners and smallholders is that, with the exception of the pruning period, tea has the capacity to generate a regular, week-in week-out income stream. A common refrain in the sector is that tea quality ‘is produced in the field’ and hand plucking is the best way to ensure the quality imperative of capturing young buds is met, though it comes at the price of low plucking volumes per workers (Neilson and Pritchard 2009).

Tea is not sold as a standard product or always bought privately but is predominantly (70 per cent) bought and sold through auction houses in the main cities of tea producing nations (e.g. Colombo in Sri Lanka) (Lines 2006). This is especially the case for rare teas such as Ceylon white tea, which can fetch upwards of USD 280 for 1kg of silver tips. Brokers determine the price of tea by communicating the present supply and demand and other factors such as taste, rarity and the grades of the leaf.¹⁷¹

¹⁷¹ Particular plantations (whether they are upland or lowland), years (based on weather conditions) and the condition of the tea leaves themselves will result in a grading, which affects its price.

Unlike the coffee auction, there is no single price for tea and the price fluctuates from day-to-day (Groosman 2011). Therefore, although coffee and tea are both tropical commodities, in terms of the variability of quality parameters, tea is more akin wine. Consumers are typically oblivious to the auction system as tea sold to consumers usually incorporates blends of different grades and origins and these produce particular flavours. A standard tea bag, for instance, can include up to 30 different teas that is then then marketed under a ‘household name’ (e.g. English Breakfast, Earl Grey etc.).

With the growth of supermarkets in Europe and North America, the tea production network dramatically changed. This has led to an increase in direct purchasing by TNCs from individual plantations and the bypassing of the auction system (Groosman 2011 p.4). TNCs such as Unilever for example will typically buy tea with a poor grading straight from individual plantations to use in their blends, whilst buying the more expensive tea at auction. As shown in Table 6.3, TNCs in the sector typically fall into four categories: retailers such as Asda (Walmart) and Tesco; brand-owners such as Unilever and Tata Global Beverages (TGB); producers such as James Finlay; or traders such as Van Rees. Only a handful of TNCs control the tea supply chain in terms of producing, packing, trading and retailing. Some 85 per cent of the global production of tea is sold by TNCs (CBI 2011) and the main packers such as Unilever and TGB are major players in the consumer market (Groosman 2011). The three largest brands control one fifth of the market – Unilever (12 per cent), TGB (4 per cent) and Associated British Foods (3 per cent) – and have a dominant position in the production network (Groosman 2011). As a result, individual producers and workers typically have very little say over the terms of trade and consequently the conditions of work (van der Wal 2008). The downstream stages such as retailing and branding are the most profitable. Apart from plucking and processing, most of the value generated from the production of tea happens outside the producing country.¹⁷² The most ‘lucrative’ (where value is captured) aspects of the tea production network happen within advanced economies where the TNCs are based. For example, the well-known brand Twinings sources the majority of its tea from Kenya but then it is blended and packaged in the UK and re-exported globally to other markets (Altman 2002).

¹⁷² It is estimated that tea brands and retailers capture 86 per cent of the value added, compared to 7 per cent for the producing country (War on Want 2010).

Table 6.3: Dominant transnational corporations (vertical private governance actors) in the tea global production network

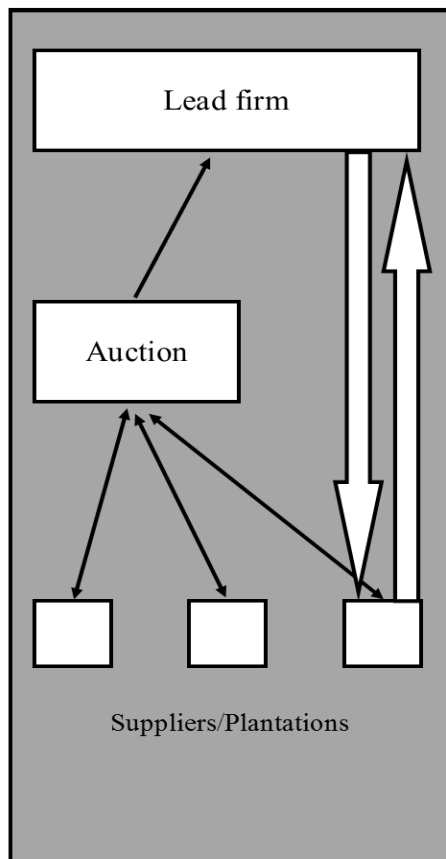
| Producing and processing | Trade | Blending and packaging | Retailing* |
|---------------------------------|--------------|-------------------------------|-------------------|
| Unilever | Unilever | Unilever | Sainsbury's |
| TGB | TGB | TGB | Morrisons |
| McLeod Russel | Van Rees | Associated British Foods | Tesco |
| James Finlay | James Finlay | Apeejay | Asda |
| John Keels | | | |

*Note: * all the retailers listed are from the UK*

The tea chain can most simply be described as a buyer-producer chain, where the lead firms are the final buyers (Gereffi and Korzeniewicz 1994). The tea supply chain, whilst retaining its complexity, has become more vertically and horizontally integrated and streamlined as TNCs seek ways to reduce costs. As a result of the auction system, coupled with direct purchasing by TNCs, the production network configuration is more accurately 'bipolar' as illustrated in Figure 6.5. Whilst the auction system is typically used for the rarer teas in which the price is based on quality, grade, type, supply and demand, many TNCs are forging relational ties with individual plantations to circumvent the auction house system and buy the 'cheaper' teas directly. There is a high task complexity in the network as tea has significant product differentiation (gradings of tea) and is typically sold to lead firms as a finished good (apart from packaging and blending). Whilst this may be surprising considering the harvesting of tea is simple (plucking of leaves) the comparison with wine is very apt. For example, just like there are various types of wine based on grape, region and *terroir*, there are many different types of tea, based on the leaf, quality and also the region (there are differences in taste between upland and lowland harvested tea). There is high task codifiability (i.e. the extent to which information can be transmitted efficiently) as although the tea GPN is complex, there is little explicit coordination between suppliers and lead firms. Buyers do not dictate the methods of production but focus on price, quality, quantity, type of tea and, to a lesser extent, social and environmental standards. Lastly, there is high supplier capability (e.g. in relation to the requirements of the transaction) with low task complexity (i.e. the complexity of information and knowledge transfer required to sustain a particular transaction)

between lead firms and suppliers, and suppliers can produce tea without financial or technological input from buyers. In the tea GPN, brands are the major private governance actors. In fact, unlike Indonesian palm oil, there are no major transnational producers of tea and most producers are located at the national level.

Figure 6.5: Tea production network configuration



Decent work deficits that occur in the tea sector are often due to the practices instigated by TNCs in governing their production network (Sukthankar and Kolben 2007). As a result, the terms of trade between retailers and suppliers in tea supply chains are intimately connected to the working conditions at the plantation level. The threat of supply switching or termination, as well as an increase in consumer pressure for favourable conditions, have all impacted the promotion of decent working conditions. Consequently, many actors in the tea GPN are involved in horizontal and vertical public, private and social forms of governance, as illustrated in Table 6.4. However, whilst TNCs voice their commitment to improving labour standards they concurrently attempt to undermine conditions of work. For example, Unilever's

various tea brands have cooperated at the international level to depress commodity prices, while keeping tea retail prices high (Sukthankar and Kolben 2007 p.73).

Table 6.4: Types of labour governance in the Sri Lankan tea sector

| Actor | Horizontal governance | Vertical governance |
|--|--|---|
| Private governance | Employer associations (collaborative). | Codes of conduct, sourcing mechanisms, pricing (high quality/ differentiated market). |
| Social governance (multi-stakeholder) | Trade unions (strong). | Rainforest Alliance (ineffective), UTZ Certified (ineffective), IUF (strong). |
| Public governance | Government regulation (strong), ILO labour standards (ratified). | WTO, World Bank, IMF (free marks and privatisation). |

6.3. Tea production in Sri Lanka

‘There are few countries in the world where an ethnic group, trade union, political party and a specific industry are so closely intertwined, as in the case of tea plantation labour in Sri Lanka’

Former Sri Lankan President Mahinda Rajapaksa, 2004 (quoted in Sukthankar and Kolben 2007 p.75)

Sri Lanka has a long history of producing tea and the ‘Ceylon’¹⁷³ brand is world-renowned for both its high quality and distinctive taste. Although both India and China consume the vast majority of the tea that they produce, Sri Lanka has a largely export-driven tea industry (van der Wal 2008). Approximately 190,000 – 240,000 workers are employed directly in the tea sector and nearly one million people (out of the Sri Lankan population of 20 million) live on the plantations (Chandrabose and Sivapragasam 2015). Most recent estimates have valued the sector at 7.7 billion Sri Lankan Rupees (LKR) (approximately, USD 513 million) (EFC 2015). Though it has remained significant, the importance of tea in Sri Lanka’s economy has seen a

¹⁷³ When Sri Lanka was a British Crown colony it was called Ceylon. In 1972, Ceylon officially changed its name to the Democratic Socialist Republic of Sri Lanka. The name Ceylon has largely disappeared in Sri Lanka in general but is still widely used when referring to the tea sector, specifically the brand of tea, and many actors in the sector retain the colonial name (e.g. the Employers’ Federation of Ceylon and the Ceylon Workers’ Congress).

remarkable change in recent decades. The tea industry used to account for 17 per cent of Sri Lanka's GDP in the 1950s but has since fallen considerably to approximately 2 per cent (Herath and Weersink 2009). However, in terms of its contribution to agricultural earnings, the sale of tea accounts for a massive 70 per cent of all agricultural export revenues, and a significant 12 per cent of all export earnings of the Sri Lankan economy (MIT [no date][b]). In 2014 Sri Lanka was the largest tea exporter in the world by value (USD 1.38 billion) and accounted for 20 per cent of all tea exported (MIT [no date][b]).¹⁷⁴ As illustrated in Figure 6.6, Sri Lanka today produces around 340,000 tonnes of tea per year and this level of production has been steadily increasing (FAOSTAT 2013).

Figure 6.6: Tea production in Sri Lanka (1970-2013)



Source: FAOSTAT (2013)

Tea production in Sri Lanka is divided into two supply subsets; tea produced by larger estates (plantations)¹⁷⁵ and tea produced by smallholders. The large-scale

¹⁷⁴ Tea is Sri Lanka's largest export (followed by non-knit women's suits) and has a revealed comparative advantage (meaning that its share of global exports is larger than what would be expected from the size of its export economy and from the size of a product's global market) (MIT [no date][b]).

¹⁷⁵ In Sri Lanka, plantations are typically referred to as 'estates'. For the sake of clarity, I will use the term 'plantations'.

plantations are organised under 23 regional plantation companies, and although large-scale plantations are still important, there has been a gradual evolution towards a system of small-scale and independently owned farms that are dependent on market mechanisms and the larger plantations for coordination and sale (Herath and Weersink 2009). The tea that is grown on small-scale farms is typically processed on larger plantations that have access to the necessary facilities. The tea from small and large-scale plantations is then divided into ‘grades’ depending on quality and type, and then prepared for transportation to brokerage firms who store the tea. These firms are also the bodies responsible for selecting and sending samples of their stock to prospective buyers, who attend the Colombo tea auction to bid for and purchase the ‘lots’ of tea. These companies can range from small to medium sized buyers, and they often channel their purchases into export routes destined for larger TNCs. Although the Sri Lankan production network has an extensive set of production stages and includes numerous actors, towards its distribution end it is dominated by a select few TNCs (van der Wal 2008).¹⁷⁶

The high quality of Ceylon tea is its hallmark and it commands the highest price in the international tea market (USD 3.82 per kg compared to Kenya’s USD 2.58 per kg, and India’s USD 2.42 per kg). To ensure this quality is retained, hand plucking is typically used to harvest the leaves. As a result, productivity is low on tea plantations in Sri Lanka compared to other large tea exporters, most notably Kenya.¹⁷⁷ In Sri Lanka, the average daily plucking of a worker is 18 kg, compared to 38 kg in South India and 48 kg in Kenya (EFC 2015). This is combined with a high labour cost, which accounts for up to 70 per cent of the cost of production of a kilo of tea.

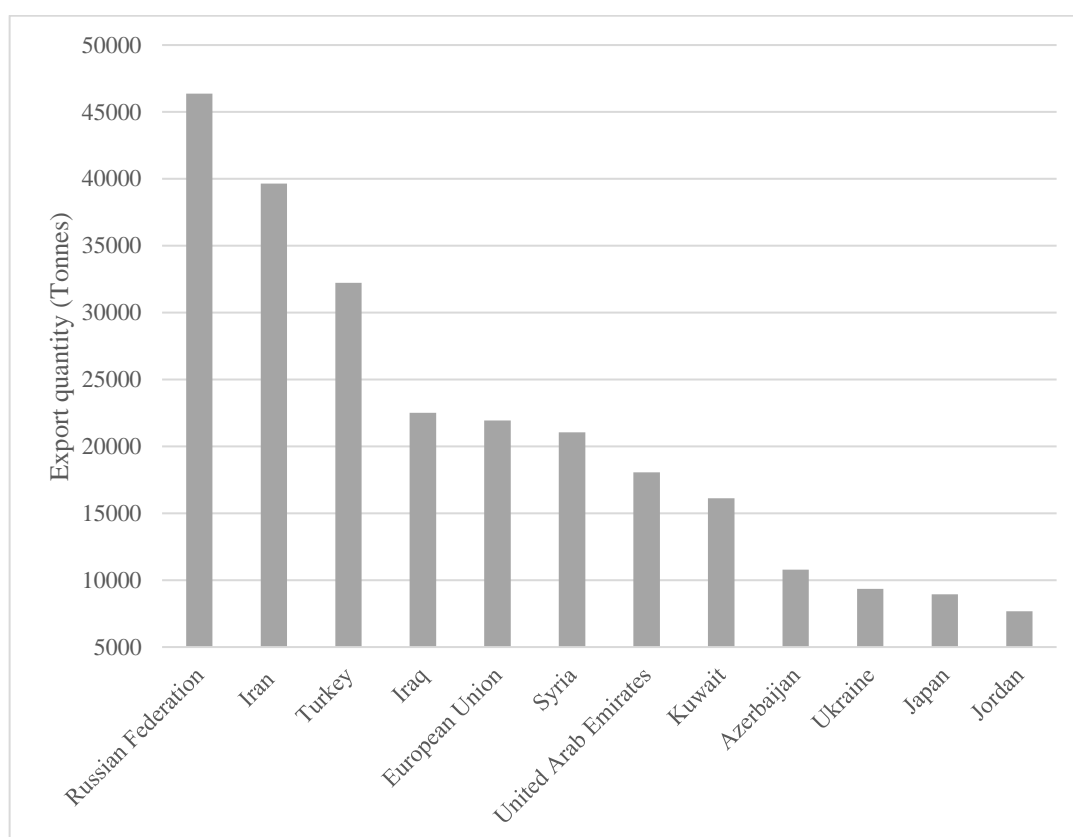
Traditionally, Sri Lanka exported most of its tea to the UK, its major consumer for more than a century, but competition from the East African countries (in terms of cost) led to a decline in exports to the UK. The country’s tea exports to the EU markets declined from around 30,000 tonnes in 1995 to 22,000 tonnes in 2008 (FAOSTAT 2013). The principle destinations for Ceylon tea, as illustrated in Figure 6.7, are now

¹⁷⁶ Predominantly TNCs originating from the UK (Twinings), Germany (Teekanne), and the Netherlands (Unilever), although TGB (India) has also secured considerable power on the international tea market.

¹⁷⁷ The introduction of mechanised harvesting of tea in Kenya reduced the quality and has led to the destruction of approximately 500,000 jobs since its introduction in 2006 (KHRC 2008).

Russia, Iran, United Arab Emirates, Turkey, Iraq, Syria, Ukraine, Japan, and the European Union. The downturn in the Middle East, following a raging military conflict in Ukraine and economic sanctions in Russia, as well as the recent depreciation of its currency, have contributed to a slump in tea prices.

Figure 6.7: Destination countries for Sri Lankan tea (2013)



Source: FAOSTAT (2013)

Sri Lanka has a long colonial history. The British introduced tea as a botanical specimen in 1824 however tea was not planted as a commercial crop until four decades later in 1867 when James Taylor, a Scottish coffee planter, created the first tea ‘plantation’ in Sri Lanka. Plantations in Sri Lanka began as large, ‘vertically organised’ estates and were governed either by a large company or by the government (Herath and Weersink 2009). Initially, the living standards and welfare of the workers fell under the direct responsibility of the plantation companies and a private owner or company managed each estate separately. In 1890, Thomas Lipton bought estates in Sri Lanka (then Ceylon) and engaged in the plucking, preparation, shipping and packaging of the tea. Unilever purchased Lipton in 1930 and expanded this model of

vertical integration. The greatest problem for these early planters was finding local, cheap and unskilled labour to pluck the tea. For this purpose, Indians from the poverty-stricken and famine-prone southern state of Tamil Nadu were brought over to Sri Lanka to grow and harvest the crop and ‘Indian origin Tamils’ today make up 80 per cent of the plantation worker population. The Indian Tamils were commonly known as ‘coolies’¹⁷⁸ and were recruited under the ‘Kangany system’ whereby labour recruitment from India and supervision on the plantations was in the hands of Tamil ‘headmen’ (Guilmoto 1993). The Kangany (headman) was responsible for negotiating their work contracts and this led to a period of worker exploitation on the tea plantations (Seneviratne 2015).

In 1948, Sri Lanka became an independent state and many of the plantation workers brought over from India were deemed ‘stateless’. By 1965 the tea industry had grown to such an extent that Sri Lanka was the single largest producer of tea in the world. However, the tea industry remained largely under British management, particularly at the product and branding end of the production network. During 1971-1972 the government nationalised all the plantations owned by Sri Lankan and British companies. Plantations under state sponsorship paid higher wages than the minimum wage, on the basis of political expediency rather than the viability of the plantations as a source of export revenues. The ‘firm hand’ of government in setting wages and resolving disputes on the tea plantations is a characteristic that continues today.

In the 1970s, the Sri Lankan national legal and social infrastructures became the institutions responsible for the welfare of the estate labourers. In 1971, Sri Lanka established a separate Ministry of Plantations Industries. Along with the Ministry of Labour and Trade Union Relations and the Ministry of Plantation Infrastructure and Development, these three ministries regulate the sector. Labour regulations are also promoted by relatively well organised unions in Sri Lanka, who have been active in voicing their concerns and in establishing collective bargaining agreements, and trade union membership on the large-scale plantations remains particularly high compared to the country as a whole (see Sub-section 6.5.5). There are three main trade union federations present on the tea plantations in Sri Lanka: Ceylon Workers Congress

¹⁷⁸ Often defined as an indentured servant.

(CWC); Lanka Jathika Estate Workers Union (LJEWU); and Joint Plantation Trade Union Centre (JPTUC). In total there can be as many as twelve independent unions present at any one plantation. On the employer's side, the Planters' Association of Ceylon, under the national Employers' Federation of Ceylon (EFC), represents the 23 regional plantation companies, which produce 66 per cent of the country's tea (EFC 2015).

The Sri Lankan Government made considerable land reforms between 1972 and 1976 which, aside from largely nationalising the plantations, established a legal distinction between smallholder producers, with 50 acres or less of agricultural land and no processing machinery on the estate, and larger plantations. The period from 1948 to 1977 was when Sri Lanka was a 'textbook' example of a dualistic economy with a well-established and relatively modern plantation export sector coexisting with a traditional, subsistence smallholder agricultural sector (World Bank 2004). In 1977 the free market system was introduced¹⁷⁹ following the election of the right-wing United National Party (UNP) and ushered in a period of trade liberalisation. Trade liberalisation produced consternation for the trade union movement and this led to a backlash culminating in the general strike in July 1980 (Amerasinghe 2009). Driving the rapid expansion of production was a desire by the Sri Lankan government to increase export earnings and these changes were intimately linked to the introduction of neoliberalism. Privatisation of the tea plantations followed in 1992, largely under the auspices of a Structural Adjustment Programme (SAP) provided and enforced by the International Monetary Fund (IMF), Asian Development Bank (ADB) and the World Bank (Ali et al. 1998). However, the state retained the role of 'regulator' of product and the government came under some criticism in this role, with evidence that a divergence of internal interests had interfered with their effectiveness in maintaining labour standards. For example, Unilever Ceylon led the way in promoting the privatisation of social security, leading to reduced benefits and a higher degree of casualisation (Sukthankar and Kolben 2007 p.73). It was also during this period, in 2003, that the Tamils were first granted Sri Lankan citizenship.

¹⁷⁹ This included removing high export taxes, tariff reforms and a significant cut back on public sector expenditure (many state enterprises were privatised or closed). The first export processing zone was also established in 1977 in Colombo.

6.4. Sri Lanka and the ILO

Sri Lanka became a member of the ILO in 1948, the same year as its independence. As summarised in Table 6.5, Sri Lanka has ratified all eight of the fundamental Conventions, two of the four governance Conventions and 30 technical Conventions, and has denounced nine Conventions.¹⁸⁰ Although the importance of agriculture to the economy has declined over the last three decades, Sri Lanka has ratified many agricultural specific Conventions including the Plantations Convention (C.100) and the Right of Association (Agriculture) Convention (C.11). The ILO and Sri Lanka have developed a close relationship since it joined the Organization and a Field Office was established in Colombo in 1984.¹⁸¹ Since 2008, Sri Lanka has implemented two Decent Work Country Programmes (DWCPs), which have helped strengthen labour laws following the end of the civil war in 2009,¹⁸² and the DWCPs were instrumental in supporting workers in conflict-affected areas. The current DWCP (2013-2017) aims to improve the conditions of work and opportunities for youth and women in the country.¹⁸³ The ILO's social partners in Sri Lanka include the Ministry of Labour and Labour Relations, the EFC, and the four national trade union confederations that are affiliated to the International Trade Union Confederation (ITUC): CWC, Sri Lanka Nidahas Sevaka Sangamaya (SLNSS), the National Trade Union Federation (NTUF) and the National Workers Congress (NWC).

¹⁸⁰ The nine denouncements were 'automatic' in that they either relate to Conventions which are not 'up-to-date' (what the ILO refers to as 'shelved Conventions') and instruments that have been surpassed by Conventions adopted later for example the Minimum Age (Agriculture) Convention (C.10) was automatically denounced because of the ratification of the Minimum Age Convention (C.138).

¹⁸¹ As detailed in Chapter 3, the Sri Lankan tea sector was initially chosen by the ILO because of the expectation, through informal communication, that this case could be used as an example of good practice (PAO Notes). In addition, the Field Office in Colombo is renowned for its effectiveness in working with the tripartite social partners.

¹⁸² The Sri Lankan civil war was between the ruling Sinhalese and Tamil Tigers. It lasted 26 years.

¹⁸³ The DWCP includes three country priorities: (1) promotion of full, decent and productive employment and enabling environment for competitive, sustainable enterprise development; (2) strengthened democratic governance of the labour market; and (3) social inclusion and the establishment of a social protection floor. Go to: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/genericdocument/wcms_215962.pdf [Accessed 2 April 2017].

Table 6.5: Ratified ('in force') ILO Conventions in Sri Lanka

| Convention* | Date Ratified |
|--|----------------------|
| Forced Labour Convention, 1930 (C.29) | 05 April 1950 |
| Final Articles Revision Convention, 1946 (C.80) | 19 September 1950 |
| Underground Work (Women) Convention, 1935 (C.45) | 20 December 1950 |
| Medical Examination of Young Persons (Sea) Convention, 1921 (C.16) | 25 April 1951 |
| Unemployment Indemnity (Shipwreck) Convention, 1920 (C.8) | 25 April 1951 |
| Workmen's Compensation (Occupational Diseases) Convention, 1925 (C.18) | 17 May 1952 |
| Right of Association (Agriculture) Convention, 1921 (C.11) | 25 August 1952 |
| Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (C.99) | 05 April 1954 |
| Fee-Charging Employment Agencies Convention (Revised), 1949 (C.96)** | 30 April 1958 |
| Minimum Age (Sea) Convention (Revised), 1936 (C.58) | 18 May 1959 |
| Night Work of Young Persons (Industry) Convention (Revised), 1948 (C.90) | 18 May 1959 |
| Minimum Wage-Fixing Machinery Convention, 1928 (C.26) | 09 June 1971 |
| Right to Organise and Collective Bargaining Convention, 1949 (C.98) | 13 December 1972 |
| Final Articles Revision Convention, 1961 (C.116) | 26 April 1974 |
| Minimum Wage Fixing Convention, 1970 (C.131) | 17 March 1975 |
| Workers' Representatives Convention, 1971 (C.135) | 16 November 1976 |
| Protection of Wages Convention, 1949 (C.95) | 27 October 1983 |
| Weekly Rest (Commerce and Offices) Convention, 1957 (C.106) | 27 October 1983 |
| Radiation Protection Convention, 1960 (C.115) | 18 June 1986 |
| Equal Remuneration Convention, 1951 (C.100) | 01 April 1993 |
| Labour Statistics Convention, 1985 (C.160)*** | 01 April 1993 |
| Maternity Protection Convention (Revised), 1952 (C.103) | 01 April 1993 |
| Tripartite Consultation (International Labour Standards) Convention, 1976 (C.144) | 17 March 1994 |
| Plantations Convention, 1958 (C.110) | 24 April 1995 |
| Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) | 15 September 1995 |
| Seafarers' Identity Documents Convention, 1958 (C.108) | 24 November 1995 |
| Labour Inspection Convention, 1947 (C.81) | 03 April 1996 |
| Discrimination (Employment and Occupation) Convention, 1958 (C.111) | 27 November 1998 |
| Minimum Age Convention, 1973 (C.138)**** | 11 February 2000 |
| Worst Forms of Child Labour Convention, 1999 (C.182) | 01 March 2001 |
| Abolition of Forced Labour Convention, 1957 (C.105) | 07 January 2003 |

Notes: * Fundamental Conventions are highlighted

** Accepted the provisions of Part III

*** Acceptance of Articles 7, 8, 10, 12, 13 and 15 of Part II has been specified pursuant to Article 16, paragraph 2, of the Convention.

**** Minimum age is specified at 14 years

Source: ILO Normlex (www.ilo.org/normlex)

Domestic labour laws are strong, based on clearly defined and differentiated roles and responsibilities of employers and employees. They include considerations of employment remuneration, occupational safety and health, freedom of association, collective bargaining, and access to justice. Forms of hazardous work and child labour in particular are banned by the Sri Lankan Constitution. Labour laws in Sri Lanka are well developed for workers within the formal sector, including health care, pension schemes, and social protection, with minor differences between the public sector and private sector application of these standards (ILO 2013a). Irrespective of the number of ILO Conventions that Sri Lanka has ratified, the government continues to come under fire from the CEACR with respect to freedom of association and collective bargaining (C.87 and C.98), particularly for those workers in the public sector and garment workers in export-processing zones (EPZs) (Gunawardana 2007), as summarised in Table 6.6.

Table 6.6: Complaints made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2015

| Convention | Complaints |
|---|---|
| Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) | Intimidation, arrest, detention and suspension of trade union activists and workers following a strike in an export processing zone (EPZ); minimum age for trade union membership; right of public servants' organisations to establish and join federations and confederations; dispute prevention and settlement. |
| Right to Organise and Collective Bargaining Convention, 1949 (C.98) | Anti-union discrimination, including dismissals in an EPZ; right to bring anti-union discrimination cases directly before the courts; exercise of workers' rights to organize and collective bargaining in EPZs; right to collective bargaining in the public sector. |

Source: ILO Normlex (www.ilo.org/normlex)

It is apparent that most of the complaints and the observations made by the CEACR have not been in relation to the tea sector although freedom of association continues to be a significant issue across Sri Lanka in general. The evidence to date regarding Sri Lanka's tea sector is largely positive, in particular when compared to other tea producing nations. In India, for example, TGB's decision to withdraw from

its plantation operations without notice led to hunger, malnutrition, and even starvation of many plantation workers and their families (Columbia 2014). Human rights violations are common on Indian tea plantations (GNRTFN 2016), child labour is widespread on Ugandan, Tanzanian, Kenyan and Indonesian tea plantations (IPEC 2004; van der Wal 2008; The Ecologist 2011), working hours are excessive in Malawi (Groosman 2011), and in Kenya the tea plantation owners purposely hire casual workers to circumvent national labour laws that guarantee freedom of association (War on Want 2010). Available evidence for Sri Lankan tea however highlight that the conditions of work are decent, although child labour has been identified as a particular issue in the smallholder sector (Seneviratne 2015).

6.5. Working in the field

The evidence presented here, based on questionnaire surveys and focus group discussions, demonstrates that horizontal governance is a necessary precondition for decent work (voice, equity and efficiency). Labour laws covering the rights of tea workers are enforced and workers have been able to exercise structural and associational power, leading to the decent working conditions experienced in the sector, as summarised in Table 6.7. Sri Lanka is thus a ‘polar opposite’ case to Indonesian palm oil and the processes of interest are more ‘transparently observable’.

Table 6.7: Decent work on Sri Lankan tea plantations

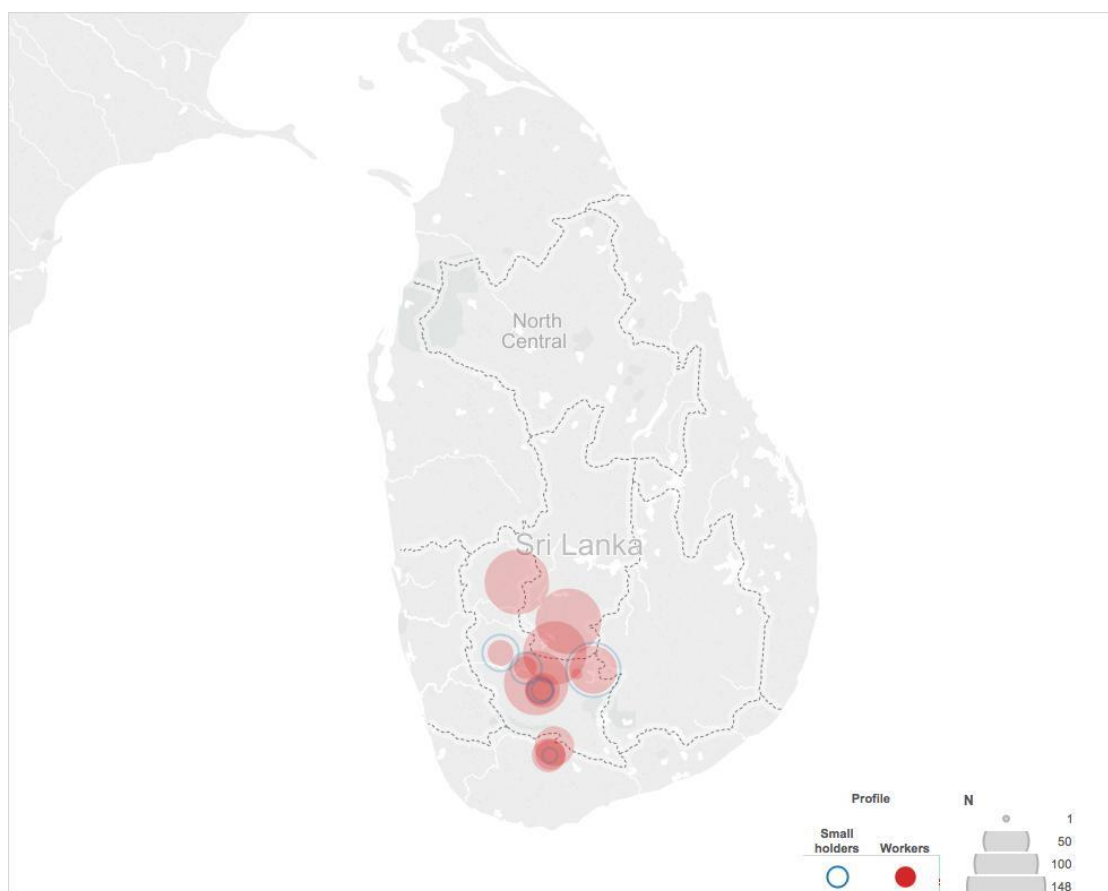
| Articles of the Plantations Convention (C.110) | Decent Work |
|---|---|
| Wages and contracts | Full-time permanent contracts; wages above minimum wage and other low-skilled sectors; positive government interventions in wage determination; piece-rate system but overseen by unions. |
| Forced labour | Some personal documents withheld but no significance. |
| Child labour | Handful of cases of child labour on smallholder farms but no significance. |
| Labour inspection | Number of labour inspectors in line with ILO benchmarks; only large-scale plantations inspected. |
| Freedom of association and collective bargaining | Collective bargaining; high trade union density; extension permitted; collective employers. |

| | |
|---------------------------|---|
| Living conditions | Substandard living conditions; disparity between employers and workers. |
| Discrimination | Commitment to equality but concerns about ethnic discrimination. |
| Conditions of work | In-line with ratified Conventions; 8 hour work day; 5/6 day week; some examples of employers not paying for OSH injuries or providing maternity protection. |

Source: QSLWP

Figure 6.8 depicts the location of questionnaire surveys. A total of 831 plantation workers and smallholders, both organised (members of a trade union) and unorganised, were surveyed in the regions of Kandy, Nuwara Eliya and Ratnapura. The majority of the workers surveyed were female (71 per cent) and were predominantly tea pluckers. Male respondents (29 per cent) were typically tasked with processing the tea and preparing the harvest (e.g. spraying pesticides). The majority of the respondents (81 per cent) worked on large-scale plantations (100 acres or more) whilst 12 per cent worked on medium scale plantations (50-100 acres) and 7 per cent on smallholder farms (less than 50 acres). The workers surveyed were primarily selected in advance by the employers and any trade unionist in the sample can be assumed to represent the ‘best case’ in terms of a positive attitude towards their employer. To combat this selection bias, questionnaires were also conducted with workers outside the plantations in local community spaces such as Buddhist temples. Accompanying the questionnaire survey, 26 focus group discussions (Field Notes) were held at the national (4), provincial and district levels (22) in selected locations in Colombo, Kandy, Kegalle, Nuwara Eliya and Ratnapura with employers (primarily plantation owners/managers), governments (primarily labour inspectors) and trade union representatives. In total, 45 trade unions representatives participated in the focus group discussions, 82 representatives from government and 37 employers.

Figure 6.8: Location of questionnaire surveys with tea plantation workers and smallholders



6.5.1. Contracts and wages

Tea plantations require an active labour force that works throughout the year,¹⁸⁴ but there is some seasonal fluctuation, particularly as plucking normally takes place only twice a year (early spring and early summer). As a result, tea plantations have a regular labour requirement, and a need for a residential labour force. However, casual workers assist with the harvest during the peak periods (Field Notes). The majority of the labour force on Sri Lanka's tea plantations were permanent waged workers and very few were considered to be in 'non-standard' forms of work.¹⁸⁵ The questionnaire survey found that 78 per cent had a permanent position on the plantation as demonstrated in Table 6.8. As Table 6.8 shows, in contrast to Indonesia, there are no differences in the work contracts of men and women despite men doing very different jobs. It is typical that

¹⁸⁴ Pruning and maintenance of the tea bushes takes places all year.

¹⁸⁵ Non-standard forms of work, as defined by the ILO, include temporary employment, temporary agency work and other contractual arrangements involving multiple parties, ambiguous employment relationships, and part-time employment (ILO 2016c).

new recruits will work for 3 months on a ‘probation’ contract. After they have worked this period they are considered a permanent employee (Field Notes). As a permanent employee, workers are guaranteed 300 days of work per year and admittance into the two social security programmes: The Employees’ Provident Fund (EPF) and Employees’ Trust Fund (ETF) (as stipulated in the collective bargaining agreement).¹⁸⁶ Although the majority of workers were on permanent contracts there were very few cases of written formal contracts in the tea sector (only 20 per cent of workers).¹⁸⁷ Instead, terms and conditions were communicated verbally. As further explained by a plantation owner, when queried about the lack of formal contracts: ‘Why do they need a contract? The workers live here, where else are they going to work? ... this is a job for life’ (Field Notes). This was corroborated by the trade unions who agreed that if workers choose to, they could work on the plantations from age 18 until retirement (Field Notes). Most of the workers were informed about the conditions and type of work before they started (51.8 per cent) and the majority of workers were informed if there were changes in relation to their salary or payment (63.2 per cent) and were normally consulted (70 per cent).¹⁸⁸ Working on the tea plantations is a family affair and many workers can trace their ancestors to the first Indian Tamils who were brought over by the British (Field Notes). As a result, children (once they reach the minimum age) typically follow their parents and take up jobs on the plantations. In fact, 91 per cent of the workers surveyed were recruited from the plantations they were born on.¹⁸⁹ However, while the majority of permanent workers only work on one plantation (90

¹⁸⁶ Both of these social security programmes include benefits such as life insurance cover, disability benefits and financial assistance for other health conditions as well as pension schemes/retirement funds.

¹⁸⁷ Workers do not have a statutory right to a written contract of employment as stipulated in the collective bargaining agreement. However, Sri Lanka follows a ‘common law’ system inherited from British colonial rule and thus in the absence of a written employment contract ‘the terms and conditions of employment would need to be ascertained from the oral agreement; the common law; any applicable statutory provisions; customs or usage and practices in the workplace; and any Collective Agreement or decisions of Labour Tribunals’. Go to: <http://www.salary.lk/home/labour-law/employment-security> [Accessed 14 April 2017].

¹⁸⁸ In stark contrast to the difference between permanent and contract workers on Indonesia’s palm oil plantations, in Sri Lanka there was no statistical relationship between contract type (permanent vs. casual) and whether workers were informed about changes in their contracts, whether they were consulted or whether they were informed about the conditions of work before starting. This demonstrates equality of treatment.

¹⁸⁹ There was no statistical significance between work status and where the worker had been recruited. This also demonstrates equality of treatment.

per cent), casual workers were more likely to be employed on more than one plantation.¹⁹⁰

Table 6.8: Work status and gender of surveyed tea workers

| Work Status | Male (%) | Female (%) |
|--|----------|------------|
| Permanent Worker | 73 | 81 |
| Casual Worker | 27 | 19 |
| Total | 100 | 100 |
| No statistical significance between male and females and work status | | |

Source: QSLWP

Wages are typically set through the collective bargaining agreement between the three major plantation trade unions (CWC, LJEWU and JPTUC) and the EFC. Labour accounts for up to two-thirds of the costs involved in making a kilo of tea (EFC 2015). As a result, wages are the most contentious issue in Sri Lanka’s tea sector in relation to both the quantity and the method of wage payments, as one employer explained: ‘the wages on the estates are much higher than elsewhere in Sri Lanka ... we have falling prices but our costs are larger than any other tea producing country, you cannot expect us to pay more’ (Field Notes). Although the wages are higher than other low-skilled jobs in Sri Lanka, Ceylon tea commands a much higher price than any other tea on the international market. The agreed basic daily wage¹⁹¹ between the EFC and the trade unions, when the survey was conducted, was LKR 450 per day (USD 3) and workers are paid an additional contribution to their wages for ‘attendance’ (workers must work 25 days per month) taking their wage up to LKR 620 (USD 4.1) per day.¹⁹² In other words, provided the tea worker works 25 days per month they will receive LKR 15,500 per month (USD 105). However, payment is also conditional on performance: to receive this daily wage, tea pickers must pluck between 15 and 20 kg of tea per day (depending on the daily limit that is set, which is largely based on the weather, and any revisions to this limit must, according to the collective agreement, be made in consultation and agreement with the trade unions). The quantity of tea collected is monitored several times per day as workers go to weighing stations in the plantations as illustrated in Image 6.2. In addition, for each kilo of tea plucked

¹⁹⁰ $\chi^2 (1, N=652) = 35.309, p < .01$

¹⁹¹ Although it is referred to as a ‘daily wage’ workers are paid once a month.

¹⁹² Workers also receive 1.5 times salary for working on a Sunday.

more than this limit, the wage is supplemented (LKR 20 per kg, USD 0.13). As a result, although there is no piece-rate system in place on the plantations, the number of hours worked per day fluctuates depending on the weather, the season and the productivity of the worker.

Image 6.2: Tea pickers waiting to weigh their harvest



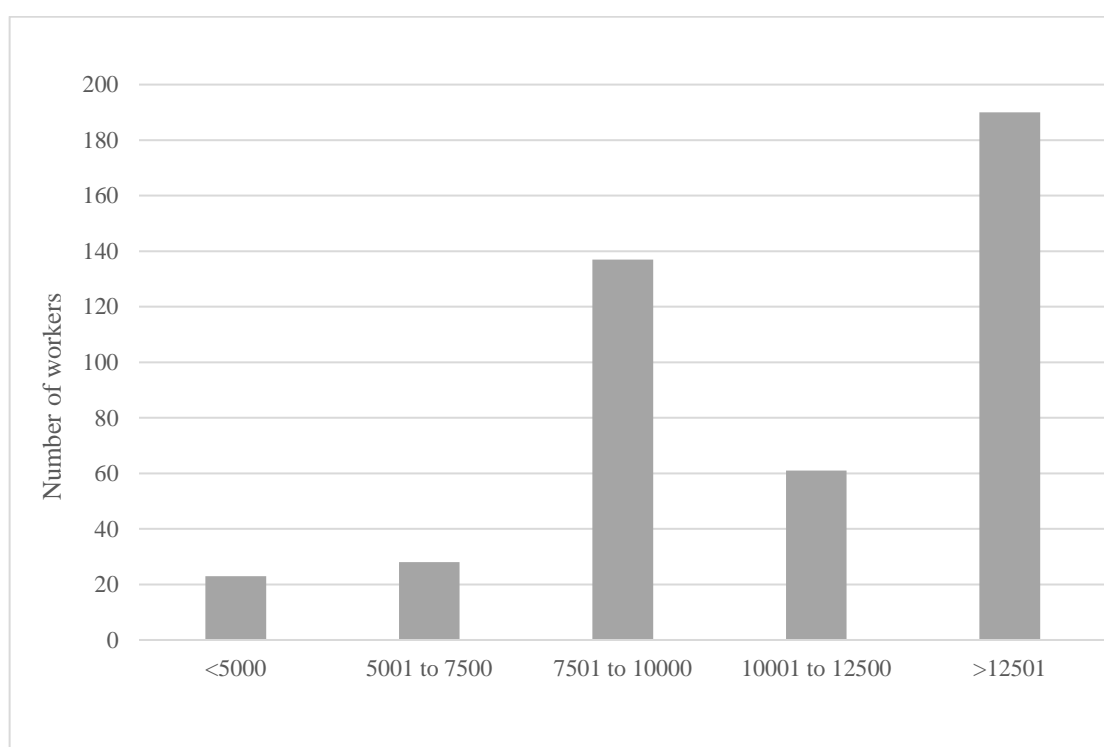
Wages for workers on the tea plantations were found to be typically above or at minimum-wage levels in Sri Lanka.¹⁹³ Casual workers were statistically more likely to receive a lower wage than permanent workers¹⁹⁴ but there was no relationship between gender and wage. The workers who were surveyed reported earning within the range of LKR 300-700 (USD 2-4.6) per day, with the average (32 per cent) earning LKR 451-550 (USD 3-3.7) per day. However, this excluded benefits and allowances and the actual daily wage, once benefits were considered, was LKR 620 (USD 4.1). On a monthly basis, most workers (43.3 per cent) reported earning more than LKR

¹⁹³ Since the research took place, the unions and employers have agreed a new collective agreement, which stipulates that workers can now earn up to LKR 720 per day (USD 4.6), which is above the national minimum wage.

¹⁹⁴ $\chi^2 (4, N=213) = 60.005, p < .01$

12,501 (USD 85) as illustrated in Figure 6.9 (those workers who earned less than this were typically casual workers who did not work full time). As a result, the wages were largely in line with the agreed collective bargaining agreement (minimum of LKR 450, USD 3, per day) and the minimum daily wage in Sri Lanka of LKR 400 (USD 2.6). In addition, tea plantation workers receive higher wages than workers in other industrial sectors such as garment manufacturing where the industry's average wage is LKR 10,000 (USD 65) per month. There have been recent demands for a daily wage of LKR 1,000 (USD 6.8) by the trade unions but in comparison to other tea producing nations, wages in Sri Lanka (USD 85 per month) are significantly higher than Kenya (USD 30) and India (USD 30). However, it is worth remembering that the average price for tea in Sri Lanka between July 2016 and July 2017 was USD 3.82 per kg compared to Kenya's USD 2.58 per kg, and India's USD 2.42 per kg.

Figure 6.9: Wages per month (all workers) (LKR)



Source: QSLWP and QSLWS

6.5.2. Forced labour

Sri Lanka has ratified both the Forced Labour Convention (C.29) and the Abolition of Forced Labour Convention (C.105), which prohibit all non-voluntary work as well as debt bondage, trafficking, forced overtime and the withholding of wages. The

participants in the focus group discussions agreed that forced labour is not an issue in the Sri Lankan tea plantation sector (Field Notes). The survey found that 97.1 per cent of the workers had ‘not been forced to do something they had not agreed to’. However, several workers had experienced aspects associated with forced labour as illustrated in Table 6.9 and the trade unions drew attention to a few cases of employers withholding personal documents from workers. As one trade union representative stressed, ‘Workers are not forced to work here [on the plantation] but it’s a rural area and [they] have nowhere else to work, so in that respect they are trapped’ (Field Notes). Although, as indicated below, there were very minor cases of forced labour there was no statistical relationship between forced labour and gender, contract type, whether the worker was a member of a union, or the type of plantation they worked on. This is in stark contrast to the prevalence of forced labour found on Indonesia’s palm oil plantations.

Table 6.9: Cases of forced labour in Sri Lanka’s tea sector

| Were you ever forced (during the recruitment phase, during the journey, or at work) to do something you did not want to do? | | |
|--|---------------|----------------------------|
| | Number | % |
| Yes | 19 | 2.9 |
| No | 629 | 97.1 |
| Total | 648 | 100 |
| From the following list, please indicate if you experienced any of these situations in your work: | | |
| | Number | % (668 respondents) |
| Lack of rest or break-times provided by law (less than 24 consecutive hours during a week) | 21 | 3.1 |
| Denial of vacations | 42 | 6.3 |
| Receiving less than usual remuneration for taking a holiday (includes payment in kind) | 19 | 2.8 |
| Unpaid overtime | 28 | 4.2 |
| Being limited to freely dispose to your wages | 33 | 4.9 |
| Prevented from forming and/or joining a union or any other organisation | 5 | 0.7 |
| Not allowed to leave the plantation | 16 | 2.4 |

| | | |
|---------------------------------------|----|-----|
| Personal documents confiscated | 13 | 1.9 |
|---------------------------------------|----|-----|

Source: QSLWP

6.5.3. Child labour

Sri Lanka has ratified the Minimum Age Convention (C.138) and the Worst Forms of Child Labour Convention (C.182) and all other key international Conventions concerning child labour.¹⁹⁵ Under the Employment of Women, Young Persons and Children Act (No. 47 of 1956) the Sri Lankan government prohibits all children under 14 years from working and all those under 18 years from working in hazardous work. However, 67 per cent of all working children (9 per cent of all children in Sri Lanka aged 5-14 years) continue to work in the agricultural sector (DOL 2015b) and the Labour Department of Sri Lanka stated that the presence of child labourers below the age of 14 has been a recurring and serious issue on tea plantations although the situation is improving (Auchter 2014).¹⁹⁶ Numerous interventions by the government, including compulsory schooling up to age 14 years and a ‘zero tolerance’ approach, has reduced the scale of child labour and in 2015, almost 98 per cent of children aged 5-14 years attended school (DOL 2015b). Other studies have found that, as a general rule, plantation owners actively discourage the use of child labour, and others assert that child labour has been eliminated from the Sri Lankan tea plantation sector (van der Wal 2008).

There was consensus in the focus discussions that child labour is not a problem on the large-scale tea plantations (Field Notes). Participants drew attention to interventions by the Government of Sri Lanka, including a greater focus on educational attainment, designed to ensure that children do not work on tea plantations. As a labour inspector pointed out: ‘[on] large scale plantations it [child labour] is not a problem, the smallholders have a problem though’ (Field Notes). The survey corroborated the focus group discussions as 93.4 per cent of respondents asserted that they had not seen anyone between 14-17 years old¹⁹⁷ working on the tea plantations and 98.4 per cent said they had not seen any workers less than 14 years of age working on the plantations.

¹⁹⁵ Specifically, the *United Nations Convention on the Rights of the Child* and its optional protocol as well as the *Palermo Protocol on Trafficking in Persons*.

¹⁹⁶ 30 per cent of the government representatives agreed that child labour was still a problem in the tea sector but mainly on smallholder farms.

¹⁹⁷ As the minimum age in Sri Lanka is set at 14 years (compared to 15 in Indonesia) the questionnaire questions were adapted.

Of course, on smallholder tea farms, child labour remains part and parcel of the employment landscape, with families relying on the work of their children in situations of dire poverty. In fact, smallholders were significantly more likely to state that they had seen children aged 14-17 years¹⁹⁸ and less than 14 years working on the plantations.¹⁹⁹ The eradication of child labour has become particularly important for large-scale tea plantations exporting to North American and European markets, as one plantation owner emphasised: ‘If child labour is found on our plantations it is not the government that is blamed, but us ... we can’t sell our tea if children are working here’ (Field Notes). As illustrated in Image 6.3, ‘no child labour’ signs are a common sight on the large-scale plantations.

Image 6.3: No child labour sign



¹⁹⁸ $\chi^2 (3, N=844) = 17.306, p < .01$

¹⁹⁹ $\chi^2 (3, N=839) = 25.579, p < .01$

6.5.4. Labour inspection

Although Sri Lanka has ratified a significant number of ILO Conventions and has a well-developed corpus of national law, the geographical location of tea plantations (in remote rural areas) has created challenges for the effective enforcement of labour laws through inspection services. Sri Lanka has a decentralised labour inspection system²⁰⁰ and local regional offices are responsible for inspecting plantations to ensure their compliance with national law. The number of labour inspections has increased from 8,300 in 2014 to 57,262 in 2015 as a result of the nationwide implementation of the Labor Inspection System Application (LISA) in 2014 (supervised by the ILO),²⁰¹ which has increased the labour inspectorate's capacity to reliably and accurately collect data on the number of labour inspections that are conducted (DOL 2015b). Sri Lanka employs 434 labour inspectors to inspect 86,169 workplaces, many located in the remote rural economy (ILO 2012).

The majority (52 per cent) of the questionnaire survey respondents stated that they had seen a labour inspector on their plantations in the past year (Field Notes). Permanent workers were statistically more likely to have seen a labour inspector compared to casual workers,²⁰² and most workers on the large-scale plantations reported that labour inspectors do visit regularly and talk to workers. While the shortage of labour inspection personnel was frequently mentioned during the focus group discussions, the majority of the tripartite constituents indicated in the accompanying questionnaires that they believe that plantations are subject to inspection at least every 6 months by the Ministry of Labour and Trade Union Relations officials (Field Notes). This inspection becomes more frequent if complaints are filed against the employer (Field Notes). Labour inspectors themselves stressed that their limited capacity is compounded by a lack of transport for officials, making labour inspections infrequent in remote areas more difficult and less frequent. While some government officials claim that consultations with workers are part of the process, trade unions bemoaned that labour inspectors do not sufficiently respond to

²⁰⁰ The labour inspectorate is decentralised into 11 zones, 36 district offices and 17 sub-district offices.

²⁰¹ LISA is a new way to record inspections via electronic tablets, which is then uploaded to a master database.

²⁰² $\chi^2 (1, N=641) = 13.255, p < .01$ This significant relationship may be as a result of the fact that casual workers were more likely to work fewer hours than permanent workers, $\chi^2 (4, N=652) = 71.820, p < .01$

complaints and that they fall short in reaching out to workers and their representatives (Field Notes). That said, in comparison to Indonesia, the labour inspection systems in Sri Lanka are far superior and better placed to enforce national legislation, in effect strong and ‘thick’ horizontal public governance as depicted in Figure 6.1.

6.5.5. Freedom of association and collective bargaining

Tea plantation workers’ interests in Sri Lanka are defended by powerful and coordinative trade unions. Whilst these unions compete for members and representation on the plantations, when the collective bargaining agreement comes up for renewal they collectively mobilise. Collective bargaining in Sri Lanka continues to be adversarial by and large, and the plantations sector is no different, although plantation employers are largely receptive to trade unions (Amerasinghe 2009). Between 1997 and 2006 the number of workers involved in strikes in the plantations sector was on average 33,983 per year (523,705 worker days lost) compared to 23,867 (111,302 worker days lost) in all other private sector industries (Amerasinghe 2009).²⁰³ While sectoral level collective bargaining has largely disappeared in Sri Lanka the collective bargaining in the tea sector is still conducted on a multi-employer basis. The sector-wide agreement guarantees a minimum number of days’ work per year and is renegotiated every 2 years and has led to significant increases in wage levels in the sector. Sector-level bargaining is as a result of the government’s wage reforms in the 1980s when the plantations were still nationalised and this consolidated union bargaining power in the sector (Amerasinghe 2009). The collective bargaining agreement covers 90 per cent of workers in the sector, is binding on the signatories and is gazetted and extended to the entire plantation sector, including those not employed by the 23 regional plantations companies as well as smallholders who hire workers.²⁰⁴

Trade union membership is high in the tea sector and the majority of the interviewed workers were members of one of the three main trade unions (73 per cent in total and 96 per cent on the large-scale plantations). Protection, mediation, voice

²⁰³ Data not available from 2007. Go to:

http://www.labourdept.gov.lk/index.php?option=com_content&view=article&id=129&Itemid=60&lang=en [Accessed 13 June 2017].

²⁰⁴ Smallholders and those on medium-sized plantations were less likely to be a member of a trade union, $\chi^2(2, N=512) = 43.253, p < .01$, but are still covered by the collective bargaining agreement.

and advocacy for workers' rights and aspirations were among the most frequently cited incentives for joining such organisations (QSLWP). In fact, 82 per cent of trade union members argued that membership of the trade union had improved their conditions of work. The majority of the members who participated in the focus group discussions acknowledged that plantation workers have the right to join and form unions (Field Notes). In general, there was an understanding that employers in the plantation sector are open to working with trade unions and that the best way of communicating with workers is through their union representatives. Overall, the tripartite constituents considered themselves to be successful in establishing mechanisms for collective bargaining and social dialogue (Field Notes). It is clear that freedom of association and collective bargaining in Sri Lanka is significantly more effective at guaranteeing workers' rights in comparison to Indonesia.

6.5.6. Living conditions

Most tea plantation workers are wholly dependent on plantation owners for the provision of basic necessities, and generations of workers can live and die in the enclave economy of a single plantation. Prior to privatisation of the plantation sector in 1992 it was the responsibility of government to provide housing, medical and social services for tea workers in Sri Lanka. Plantation companies are now, by law, responsible for providing the schools, health clinics, and housing, which elsewhere are generally considered to be the responsibility of government. Following privatisation, the Plantation Human Development Trust (PHDT) was established to implement social development programmes and to ensure the quality of living for those workers on the plantations managed by the 23 regional plantations companies. The PHDT is a tripartite organisation consisting of the Government of Sri Lanka, the regional plantation companies and the plantations' trade unions. However, the PHDT is significantly underfunded and living conditions on the tea plantations leave much to be desired (Field Notes). During British Colonial rule, workers lived in barrack type rooms called 'line houses' characterised by long rows of small units (10 feet by 12 feet), with common sanitation facilities. Many workers on the plantations continue to live in these line houses. A clause in the agreement between the ILO and the government, setting out the terms for the agreed fieldwork, stipulated that ILO staff

were forbidden from taking pictures of the living conditions on the plantations.²⁰⁵ From observations, it was blatantly apparent that this was due to the squalid living conditions endured by many plantation workers (Field Notes).

The survey results revealed that 51.1 per cent of workers stated that accommodation that was of adequate size, 95.1 per cent were provided with a roof, 81.5 per cent have a place to cook, 85.9 per cent have access to drinking water and 91 per cent have access to sanitary facilities. In general, the majority (51.4 per cent) were satisfied with the accommodation that was provided for them. Lack of access to safe and potable water and adequate sanitation facilities have caused malnutrition of some tea plantation workers. In addition, there is inadequate access to healthcare for the plantations community. Hospitals are understaffed, or are far removed from plantation areas (Field Notes). Although maternity facilities were provided on most of the plantations there was a shortage of qualified midwives (Field Notes).

During the focus group discussions trade union officials emphasised that living conditions were often poor because, while the government provided adequate housing, following privatisation the responsibility was now with employers who routinely ignored requests for improved housing (Field Notes). Employers acknowledged that they were responsible for providing housing, however as many of the workers' family members live on the plantation they are 'reluctant' to invest in adequate housing (Field Notes). There was a readily observable 'social chasm' between tea pluckers and management as management/plantation owners 'bungalows' (grand old colonial houses, Image 6.4) were often only a few hundred metres away from the workers' 'line houses' (Image 6.5).

²⁰⁵ However, I was able to take a few pictures out of the car window (see Image 6.5 below).

Image 6.4: Management ‘bungalows’



Image 6.5: Sri Lankan worker ‘line houses’



There have been improvements in the general standard of living and human development indicators among the plantation population (UNDP 2012 p.7). However, the relative deprivation of the plantation community is evident in the statistics. Literacy figures, for example, are 95 per cent for men in Sri Lanka, but 88 per cent for men in plantation areas, while for women the statistics are 91 per cent countrywide and 75 per cent on plantations (van der Wal 2008). Consequently, although the conditions of *work* can be described as decent (i.e. voice and equity for workers), there is an overwhelming neglect in terms of worker communities and living standards.

6.5.7. Discrimination

Sri Lanka has ratified the Equal Remuneration Convention (C.100) and the Discrimination (Employment and Occupation) Convention (C.111), both fundamental Conventions of the ILO. However, social origin and ethnicity still play a large part on Sri Lankan plantations. The 26-year long civil war erupted largely because of inequalities that were manifested along ethnic lines. Given that tea labourers of ethnic Indian Tamil descent largely populate the estates (UNDP 2012 p.5), the civil war is inherently part of the history of tea plantations and labour conditions. These inequities have been clearly identified and acknowledged by the Sri Lankan government, not least by including separate statistics, when available, for those residing on plantations.

Managers and employers on the plantations are typically Sinhalese and workers are Indian Tamils, each with their own language and religious beliefs, which the participants of the focus groups argued created ethnic tensions (Field Notes). In fact, managers routinely pointed out that they cannot even communicate to their workers as they do not speak Tamil (Field Notes). However, the questionnaire survey results dispelled the general assumption that discrimination is widespread on the tea plantations as only 4.8 per cent of workers believed they were treated less favourably.²⁰⁶ Of those that were discriminated against only 31 per cent (17 workers out of the total sample of 650) argued that it was because of ethnicity. Historically, women have been widely employed in tea plucking and men take up the roles of pruning, spraying pesticides and processing, which requires some skill with machinery (van der Wal 2008). Men typically work fewer hours (four hours compared to eight

²⁰⁶ There was no significance between gender and whether a worker had been discriminated against.

for women)²⁰⁷ but work the same number of days per week²⁰⁸ and receive the same daily wage.²⁰⁹ This role disparity has remained largely unchanged since colonial rule, however gender discrimination was not reported as a challenge in the questionnaire survey (only 7 workers out of the total sample of 650 reported suffering gender discrimination).²¹⁰ In comparison, Indonesian women palm oil workers were more likely to be casual workers and suffer discrimination (e.g. race, sex, age) compared to men.

6.5.8. Conditions of work

Work as a tea plucker is hard and repetitive and life for workers on tea plantations has been noted for its strict disciplinary and hierarchical structure. However, conditions of work on the tea plantations in Sri Lanka were predominantly in line with ratified ILO Conventions. Workers receive 20 days paid holiday per year,²¹¹ are guaranteed 300 days' work per year and workers are not required to fulfil a minimum number of days worked per month (unless they want to receive the attendance bonus). The survey revealed that most workers work five (37.5 per cent) or six (38.1 per cent) days per week and most workers (68.7) work eight hours per day. All workers received breaks during the day (98.6 per cent), with 59 per cent of workers having over 61 minutes per day as breaks. However, although the working day is reasonable many workers drew attention to the arduous nature of actual work. The plucking of tea and pruning and maintenance of tea bushes is gruelling as all the work is completed manually throughout the day with typical temperatures of 22-30°C and the plucked tea is carried on the workers' backs in baskets causing musculoskeletal disorders. Furthermore, many workers (because of the heat) do not wear shoes or gloves and reports of snake bites were common (Field Notes).

According to national legislation, female workers must receive 3 months paid maternity leave (the Plantations Convention stipulates 12 weeks). However, the workers surveyed disputed this as 20 per cent of workers claimed not to have received

²⁰⁷ $\chi^2(4, N=654) = 51.016, p < .01$

²⁰⁸ There was no significance between gender and days worked per week.

²⁰⁹ There was no significance between gender and wages per month.

²¹⁰ The collective bargaining agreement explicitly refers to 'equal value for work without discrimination' payments.

²¹¹ Casual workers were less likely to receive annual holiday with pay when compared to permanent workers, $\chi^2(1, N=361) = 13.214, p < .01$

any form of maternity leave and thus in violation of C.110. Under the collective bargaining agreement, workers are provided with total custodial child care from ages 0-5 years, vaccinations, and allowances for milk powder, flour and rice, which was corroborated by the questionnaire.

Government officials stated that employers must enrol their employees in the national social security system that covers occupational injuries. Trade union officials, in contrast, identified several cases where occupational accidents were regarded as the worker's responsibility and no compensation was offered. Employers argue that compensation is given to any worker who has to take time off work due to an occupational injury. The questionnaire results revealed that two-thirds of workers received compensation if they were injured as a result of an accident at work. However, casual workers were significantly less likely to receive any form of social security.²¹² Workers who spray chemical and pesticides were provided with personal protective equipment (PPE) and areas were designated as 'chemical free zones' as depicted in Image 6.6. In summary, the conditions of work on Sri Lanka's tea plantations are decent and clearly superior to those found in Indonesia.

²¹² $\chi^2 (1, N=358) = 75.202, p < .01$

Image 6.6: Chemical free zone



6.6. Horizontal and vertical governance and decent work

Tea production in Sri Lanka remains highly labour-intensive, physically harsh and repetitive, and is performed predominantly by women. However, a common qualification during the focus group discussions was that ‘we may have decent work [as defined by the ILO] on the estates, but it is not dignified’ (trade union official, Field Notes). When pressed on the matter:

‘Youngsters are leaving the estates because there is no dignity in this work ... working on a tea plantation is looked down upon, there’s no shops here or drinking houses ... they want to work in Colombo with their phones and computers in a garment factory paying shit wages and working 12 hours a day because that is better than the work here ... this is a job for life, it is hard but better than being exploited’ (Field Notes).

This opinion was shared by both employers and trade unions. Employers’ contend that it is becoming increasingly difficult to recruit and retain (young) workers on the tea plantations, so there is an insufficient supply of labour. Youth employment is low on

tea plantations²¹³ as they are attracted to the major cities and industrial hubs to work in retail and garment manufacturing jobs. This can be attributed to the ‘perception’ that wages and living conditions are superior and there is greater access to services. Young women are also attracted to work as domestic workers overseas (e.g. the Gulf states). A trade union representative provided more detail on this: ‘Young women go and work in foreign countries as “domestic slaves” ... we never hear from them again’. As van der Wal (2008 p.37) stresses: ‘in Sri Lanka, in spite of all the legal measures to protect worker welfare, it is clear that plantation work is no longer attractive. The labour situation on the plantations has gone from one of surplus to deficit, with an annual decline of 10-20 percent of the workforce. This poses considerable problems for the tea sector in this country’.

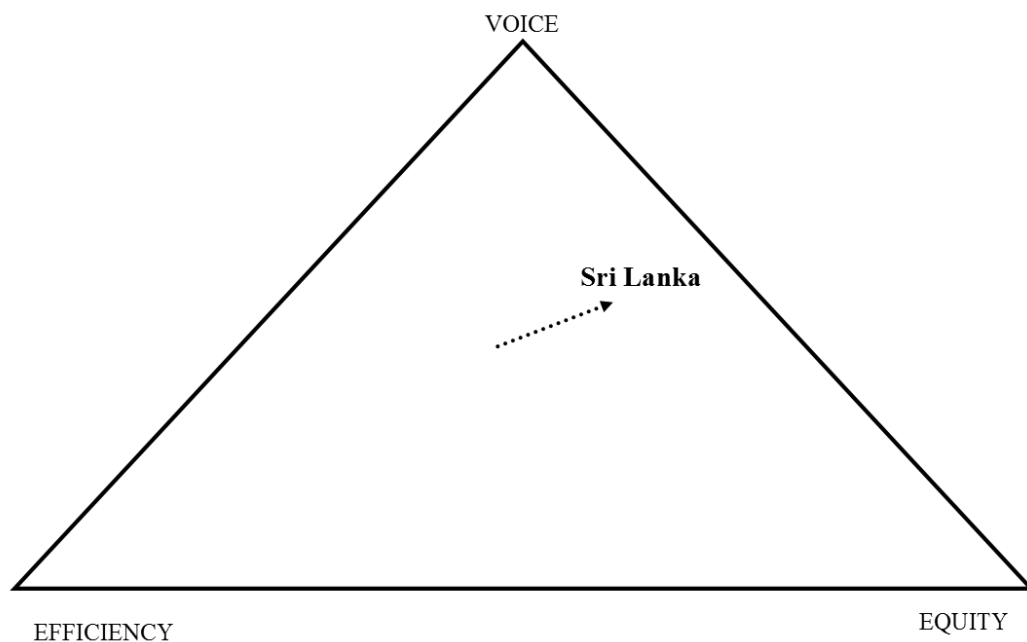
The questionnaire and focus group discussions revealed that workers on Sri Lanka’s tea plantations experience decent work, as defined by the ILO, under conditions of equity and voice as illustrated in Figure 6.10. The arrow in Figure 6.10 depicts the changes to the employment relationship in Sri Lanka under the Global Transformation. The voice and equity of tea plantation workers remains unchanged. Although internal efficiency on the plantations has not decreased in Sri Lanka (the harvesting and processing techniques have largely remained unchanged since colonialism), external price competition with other tea producing countries has decreased comparative international efficiency and therefore employers perceives a shift in the direction of the arrow indicated in Figure 6.10. Sri Lanka was in compliance with all the Articles included in the Plantations Convention (C.110) (excluding some cases of maternity protection violations). However, the tripartite constituents have struggled over the last three decades to ‘balance’ efficiency (cost and level of production) with equity and voice creating a challenge for the sustainability of the decent working conditions uncovered during the fieldwork. As a member of the EFC stated:

‘More needs to be done to attract investment – importantly, sustainable employment generating income. Growth and sustainability not only requires economic efficiency in enterprises but compliance with social and

²¹³ The mean age was 41 years with a standard deviation of almost 12 years. In Indonesia the mean age was 34 years with a standard deviation of just over 9 years.

environmental standards to meet the expectations of the world community. While achieving economic efficiency continues to pose challenges, Sri Lanka has had its own share of problems based on labour standards and alleged human rights issues as well ... It was not so long ago that Sri Lanka had to respond to a petition filed by the AFL-CIO alleging breach of labour standards' (EFC 2014).

Figure 6.10: Sri Lanka and the objectives of the employment relationship under the Global Transformation



Source: adapted from Budd (2004)

The Sri Lankan tea sector is a telling example that debunks the assumption that low-skilled workers at the lowest echelons of the production network will necessarily endure indecent work. More importantly, the sectoral case study also highlights the importance of effective horizontal public, private and social governance (the ILO's traditional governance model) as a foundation in ensuring the establishment of labour standards and the promotion of decent work. The reasons for the conditions of work are partly historical as 'the historical context of Sri Lanka has played a major role in the current behaviour of management and labour' (Amerasinghe 2009 p.1). The history of labour legislation in Sri Lanka is naturally interwoven with the history of British Colonialism, but also contemporaneous in labour's struggle to embed TNCs in horizontal governance. The clash between TNCs' search for lower costs via spaces of

exception, the striving of national based actors for better conditions of work and attempts by TNCs and civil society organisations (CSOs) to promote ethical accountability within the sector, provides an ongoing source of contest for labour governance in many tea producing countries. However, in Sri Lanka there are fewer ‘spaces of exception’ or ‘holes’ for TNCs to exploit (as depicted in Figure 6.1).²¹⁴ The interest here is not just on tea produced within systems of vertical governance, but how these intersect with horizontal governance within the economy of Sri Lankan tea production and trade. When our analytical lens is focussed on labour governance it is clear that decent work on Sri Lanka’s tea plantations is promoted and protected through effective government enforcement (public horizontal governance), strong worker structural and associational power (social horizontal governance) and collective action by employer associations (private horizontal governance). Social (multi-stakeholder) and private vertical governance however is weak and does not go above and beyond the national law, is poorly monitored and primarily focuses on improving organisational efficiency rather than equity and individual and collective voice for the thousands of workers on Sri Lanka’s tea plantations.

6.6.1. Horizontal governance

‘Tea plantations are enclaves, alien and inward looking and cut off from the outside world’

Chattopadhyay (2003)

The Government of Sri Lanka has ratified a significant number of ILO Conventions (40) and the questionnaire results highlighted that the tea sector was largely in compliance with these standards, most importantly the Plantations Convention (C.110). Furthermore, Sri Lanka and South Africa were the only two countries who voted for the social labelling initiative instigated by Michel Hansenne, when D-G of the ILO (Baccaro 2015), illustrating Sri Lanka’s desire to unify and standardise regulation across the global economy. In recent years however, the Government of Sri Lanka has come under fire from the international community in general and the ILO’s CEACR in particular regarding its regulation (or lack of) in the garment sector. The promotion of export-processing zones, which prohibit trade union organisation, have

²¹⁴ Hence, more akin to dipping a piece of bread in a fondue than a ‘thin’ bit of ‘swiss cheese’ as in the Indonesian palm oil sector.

led to a rise in the number of workers enduring deplorable conditions of work (Ruwanpura 2016). However, as one employer noted, ‘Tea plantations are not in special zones like the garment industry ... if you want to find bad conditions you should start there’ (Field Notes). This quote further emphasises that, unlike in Indonesia, although Sri Lankan tea plantations are geographically ‘separate’ they are not an ‘exception’ where the normal rule does not apply. The contrast between the garment and tea sector puts into focus the importance of understanding the specific horizontal governance dynamics across different GPNs, and that labour outcomes may be uneven within the same economy.

Sri Lanka has effective horizontal public governance with strict labour laws, particularly regarding those companies or bodies that oversee the work of large groups of labourers, as in the tea sector. The Government has for many years (post-privatisation) provided specific laws and regulations for the plantation population, including ratifying the Plantations Convention (C.110) in 1995, and there has been a continuing trend for state intervention on labour related challenges. In October 2007, the President, Mahinda Rajapaksa, intervened to increase wages in the plantations sector despite the fact that there was a collective agreement in place (Amerasinghe 2009). The President told the EFC that it was necessary to treat the plantation population as an essential sector considering their contribution to the country’s national income and that it was fair to give the workers a pay rise considering the increasing demand and high price for tea. Such state intervention in labour relations in the plantations sector is a direct result of its history. When the plantations were privatised in 1992 the plantation minimum wage, paid by the state, was higher than the national minimum wage and this gap was further enhanced as a result of government pressure to make privatisation palatable to the major unions in the plantations, who were (and continue to be) affiliated to the government of the day.²¹⁵ The practice of negotiating wages through collective bargaining in the plantation

²¹⁵ In 1977 the voting system changed from a Westminster system (where the Prime Minister was elected by the legislative members elected by a majority vote at the electorates) to a proportional representation. This increased the bargaining strength of minority parties such as those endorsed by the unions as they could influence the outcomes of a presidential election through ‘block votes’. As an example, tripartite wage boards set the wages for three sectors: plantation agriculture; industry and commerce; and services. All real wages have dropped apart from those in the plantations sector (Herath and Weersink 2009). This provides further evidence of the associational power of workers in the tea sector.

sector is now well entrenched although the state still intervenes on thinly veiled political grounds. This is coupled with a labour inspectorate that, while lacking capacity in terms of personnel and transport, by and large ensures that national labour law is enforced. By way of example, Sri Lanka's total labour force is approximately 8 million and according to the ILO, the recommended number of labour inspectors should be 400 (one per 20,000 workers) and in Sri Lanka there are 434 (ILO 2012).

One thing that stands out in the Sri Lankan tea sector is the strength of the social partners in promoting labour governance (social and private). On the employer's side, the plantation employers are well organised under the 23 regional plantation companies who act collectively and have been instrumental in engaging in collective bargaining with the major trade unions. The collective bargaining agreement is the only remaining sectoral agreement of its type in Sri Lanka and extends to both non-union members as well as smallholders. A particular example of horizontal private governance is the collaboration between the ILO, trade unions and the EFC. They jointly established the *Compliance+* brand as a response to Sri Lankan businesses (in particular the tea sector) competing in the global economy and their awareness that they 'are subject to much pressure, not only to comply with the local laws in relation to labour standards but conform to norms set by international buyers from time to time' (EFC 2014). The *Compliance+* standard establishes an alternative to the various standards that are in place for businesses to embrace. These include: equal opportunities in employment; employer-employee relations; work arrangement practices; and environment. This is monitored through an independent third-party audit. Successful completion of the audit results in the business receiving the brand *Compliance+*. The effectiveness of this initiative is still unclear but several aspects distinguish it from other private horizontal governance initiatives. First, employees and trade unions are actively audited on their perception of management, and their views and observations in relation to the four areas mentioned above weigh heavily towards the company being awarded the certification. Secondly, the initiative was developed by the ILO and includes references to several ILO Conventions that are not at present ratified by the Government of Sri Lanka (for example, the Safety and Health in Agriculture Convention, C.184). For their part, employers maintain that Sri Lanka can be regarded as a country which maintains very high standards in relation to

employment relations, in comparison with other countries in South Asia. As one employer put it, ‘it is important that we showcase this reality’ (Field Notes).

Sri Lankan tea workers are also well organised and have been active in voicing their concerns, engaging in collective bargaining and exercising structural and associational power. Workers’ associational power in Sri Lanka is deeply rooted in the struggles on the tea plantations, leading one employer to claim that: ‘trade unions are kingmakers in the sector’, referring to their collective organisations and alliances with major political parties. As up to one million Sri Lankans live on tea plantations (5 per cent of the total population) the trade unions wield significant political power. This is exemplified by the state’s involvement in wage setting in the sector following privatisation when impasses are reached between unions and employers. In fact, according to some commentators, out of all the major tea producers in the world only Sri Lanka and India have active unions (van der Wal 2008). Trade union density (as a proportion of total waged employment) is only approximately 6 per cent across the whole of Sri Lanka (Hayter 2011), whereas in the tea sector the figure was 96 per cent of workers on the large-scale tea plantations and 73 per cent across all tea workers surveyed (QSLWP, QSLWS).

Workers also possess strong structural power. Although the plucking of tea is a low-skilled task, the considerable out-migration of youth to urban areas makes the existing workforce less easily substituted. In addition, workers live on the plantations and thus employers would have to evict and not just replace workers (e.g. with casual workers). These factors have increased workers’ leverage with employers. As one trade union representative stated in the focus group discussions:

‘Most managers are not trained and don’t know how to run an estate, they are appointed through political influence and they do not think about the wellbeing of the labourers. The estate manager used to be a very important person and did not speak to [his/her] workers. Well, now they have to listen to the workers as otherwise they will not be able to find workers. No machine can pluck tea [in Sri Lanka]; therefore, the labourers are ahead of the management ... we are a pressure group. If they do not listen to grievances we stage demonstrations’ (Field Notes).

Workers also have structural power through their position and effects on the production network as they are located in a key industrial sector where localised work stoppages compels employers to meet demands, particularly when they supply directly to TNCs, who specify the quantity, quality, price and timing of delivery. Thus, the continuing trend for larger buyers such as Unilever to purchase tea directly from plantations in Sri Lanka in a ‘hands-on manner’ provides leverage for workers to exercise structural power on other parts of the network.

The production of tea has very tight schedules and often tea bushes will only have a one-week window to pluck in which the maturity of the leaf is optimal. The tea leaf must then be processed (involving withering, maceration, oxidation, fixation, sweltering, rolling and drying) within 24 hours. Not surprisingly, trade unions have employed ‘go-slow’ and ‘Satyagraha’²¹⁶ strategies when the collective bargaining agreement comes up every 2 years for renegotiation to ensure their wage demands are met. This has been largely successful and the collective agreement has led to significant increases in nominal wage levels in the sector (from LKR 190 per day, USD 1.2, in 2005 to LKR 720, USD 4.6, in 2017).²¹⁷ The power of the unions to apply pressure on employers to grant wage increases was not lost on the EFC Director Ravi Peiris:

‘This is not just an employer-employee relationship, it is an employer-community relationship and the employers have to think of wage negotiations under this highly politicised set up ... This is the only industry based on collective agreement that is surviving in Sri Lanka ... It may be necessary to consider wage negotiations based on the capacities of companies as they face different issues, although that approach itself is complicated’ (quoted in Sirimanna 2011).

The trade unions acknowledged that the wage increases could pose a threat to the survival of the sector: ‘In the past, some employers have occasionally worked at a loss, but this is not viable. It could be said that finding the money to pay the wages is the employers’ problem but, at the same time, if we destroy the plantations industry,

²¹⁶ Satyagraha is a particular form of non-violent resistance whilst defying state authority by open organised infraction of the law.

²¹⁷ Wages in the tea sector have increased every 2 years since the collective agreement was signed.

we will be left with no jobs’ (Field Notes). For the workers therefore: ‘The greatest challenge we face, is finding a balance between the survival of the sector against the threat of lower cost producers and a pay rise that ensures the vital minimum for the workers and their families’ (Field Notes). According to employers, productivity related pay is a necessity to remain competitive. From the unions’ perspective, such systems and processes represent the creeping intensification of work (Field Notes).

Labour as an active participant in the Sri Lankan tea sector has enabled considerable improvements in wages and conditions of work. This effective horizontal governance is largely responsible for the conditions of work at present on the plantations. As can be noted below, current forms of vertical private and social (multi-stakeholder) forms of governance have had little impact on the conditions of work in Sri Lanka but when TNCs attempt to create spaces of exception the unions have acted vertically and engaged in cross-border campaigns to embed TNCs into the ‘thick’ horizontal governance as depicted in Figure 6.1.

6.6.2. Vertical governance

6.6.2.1. Certification schemes and decent work

The gradual decline of the price of tea has produced a galvanising effect in terms of raising consumer awareness (in the affluent West) of the social hardships associated with tea production. Sri Lanka’s tea sector, like many other agricultural sectors exporting to affluent economies, has experienced a proliferation of private and social (multi-stakeholder) vertical governance initiatives over the past two decades, principally as a response to growing pressure and expectations that TNCs are not only responsible for their own operations, but also the labour practices of their trading partners. In addition, consumers are increasingly concerned about whether certain products are produced under fair and/or sustainable conditions. Vertical social governance mechanisms such as certification agencies do exist in the Sri Lankan tea sector (although not to the extent as other tea producing countries such as Kenya)²¹⁸ and most of the employers surveyed had at least one of these ‘Western’ certificates, however they have had little to no impact on the conditions of work in Sri Lanka.

²¹⁸ In Kenya 40 per cent of tea produced is ‘standard-compliant’ whilst in Sri Lanka it is just 5 per cent (Potts et al. 2014). The reason for this is partly because of Sri Lanka’s export markets (Russia, Middle East etc., see Figure 6.7) where there is less pressure from consumers for ethically produced tea.

The most prevalent certification schemes in the Sri Lankan tea sector were Rainforest Alliance and UTZ Certified.²¹⁹ With regards to labour standards, the baseline for these certification schemes are the four fundamental principles of the ILO: (i) freedom from forced labour; (ii) freedom from child labour; (iii) freedom of association and the right to collective bargaining (iv) freedom from discrimination on grounds of gender, race etc. However, the ILO is not a partner to these certification agencies and takes no responsibility in ensuring that these principles are enforced or even their interpretation within the text of the certificate. In fact, these certification schemes draw their own external legitimacy from ‘referring’ to ILO Conventions, without involving the ILO in their governance structures. As Chapter 4 demonstrated the ILO stands ‘below’ TNCs and ‘aside from’ CSOs because of its nation-state (horizontal) approach to labour governance. Table 6.10 details the certification scheme and their references to ILO Conventions. However, as can be inferred from Table 6.10, the certification schemes are not homogenous and come nowhere near the comprehensiveness of ILO Conventions.

Table 6.10: International labour standards and certification schemes in the Sri Lankan tea sector

| Certification scheme | ILO standards mentioned in the certificate | Language |
|---|--|---|
| Rainforest Alliance (Sustainable Agriculture Network) | Fundamental Conventions | ‘On certified farms, workers’ rights are protected, including essential ones as defined by ILO core conventions’; numbers of Conventions are mentioned; conflicting language ‘according to ILO Convention 87, Collective Bargaining’ (not mentioned in full). |
| UTZ Certified | Fundamental Conventions along with; Hours of Work (Industry) Convention (C.1); Protection of Wages Convention (C.95); Plantations Convention (C.110); Migrant Workers’ Convention (C.143); | ‘The Code of Conduct is based on International Labor Organization (ILO) Conventions’; no explicit mention of compliance with ILO standards in the Code of Conduct; ILO Conventions are footnoted in the preamble and not referred to in the scope of the Code of Conduct. |

²¹⁹ In the tea sector in general Fairtrade and the Ethical Tea Partnership are also common certification schemes. However, these were not present on any of the surveyed plantations. It was announced in June 2017 that the Rainforest Alliance and UTZ Certified will merge into one organisation.

| | | |
|--|--|--|
| | Occupational Safety and Health Convention (C.155); and Safety and Health in Agriculture Convention (C.184) | |
|--|--|--|

Source: <http://sanstandard2017.ag/2017standard/certification-documents/> [Accessed 12 February 2017] and <https://utz.org/what-we-offer/certification/the-standard/> [Accessed 12 February 2017]

Whilst the majority (over 80 per cent) of the plantation owners surveyed had an ‘ethical certificate’, there were a handful that had achieved both.²²⁰ The plantation employers’ perception of these certificates were mixed. On the one hand, several employers stressed the importance of the certificates, as a precursor for accessing more lucrative markets: ‘Everyone knows Ceylon tea is the best quality tea in the world ... these labels are a good way to identify good employers and export to the West’ (Field Notes). The majority, however, approached the certificates with considerable pessimism:

‘Certain buyers won’t buy tea from an estate if it’s not certified, so we are forced really ... these certificates haven’t changed the practices here ... child and forced labour have been gone a long time ... to be honest the frog [Rainforest Alliance] is more about selling tea than protecting workers’ rights’ (Field Notes).

One plantation employer during a focus group discussion proudly showed off his Rainforest Alliance and UTZ certificates and newspaper clippings of his philanthropic work in the local community to an ILO official and myself (Field Notes). However, later stated: ‘these mean nothing [in practice] ... I was doing all this before, it just means I can now receive a premium on the tea produced here’ (Field Notes). Hence, the certificates do not improve conditions of work in Sri Lanka but legitimise poor conditions of work in other tea producing countries. The fact that these certification schemes achieve little or nothing with respect to decent work was highlighted by one plantation owner who wryly remarked that: ‘This certificate [Rainforest Alliance] means nothing when Kenyan plantations are also compliant with it’ (Field Notes).

²²⁰ It was not possible to match workers to specific plantations and hence no conclusions could be drawn as to whether certified plantations had better conditions of work.

In short, certification schemes provide little more than brand compliance for already decent employers and are used by employers/plantation owners as a way to increase the market value of their tea. Most tellingly, the audits for these schemes were ineffective. As one plantation owner stated: ‘They let us know when they’re coming, we have a whole schedule mapped out for the next six months’ (Field Notes). For TNCs, of course, they provide a (fragile) bulwark against reputational damage and a way to differentiate their products in the supermarkets. Central to this façade is that most of the certification schemes are established by the TNCs themselves rather than any actors democratically representing the interests of labour, and certainly not the ILO. In fact, workers and their communities have largely been left out of most companies’ sustainability programmes in the tea sector. Sukthankar and Kolben (2007 p.75) identify a particular example:

‘In the early period of the tea crisis, codes of conduct had been tried and failed. The IUF [International Union of Food workers.], for example had prepared a draft code in 1995, focusing not only on core labor rights, but also on living wages, housing, water, hours of work, and health and safety. However, the industry came back with its own initiative in 1997, the ‘Ethical Tea Partnership’ (of which Unilever was a founding member), while superficial in both content and process, successfully blocked IUF’s code from being adopted widely’.

This was during the same time period that the international non-governmental organisation (NGO) Action Aid devoted a report to the tea crisis in India,²²¹ pointing out the role of brands by noting that buyer cooperation on the auction floor had kept prices artificially low, even though retail prices were rising (Action Aid 2005). These certification schemes, backed by TNCs, typically include the ‘lowest denomination’ of labour standards (ILO fundamental Conventions that have been classed as ‘human rights’ and, at any rate, must be ‘respected’ by all member States). They also ‘ignore’ or ‘exclude’ the vast corpus of other ILO Conventions particularly those that are the most important (i.e. most of the ILO’s agriculture sector Conventions). As a result,

²²¹ The tea crisis began in India but spread to other producer countries (including Sri Lanka to a lesser extent). The tea crisis was caused by a sharp drop in producer prices as a result of oversupply of tea in the global market. A report by the ILO in 2005 noted that the large tea companies were benefiting from the fall in auction prices and rise in retail prices for tea: ‘This widening gap between consumer and auction prices ... is cutting into the margins realised by the tea producers’ (Sankrityayana 2005 p.94)

these schemes are not a guarantor of decent work but a ‘certification of the baseline’ to appease ethical consumers. Rainforest Alliance, for example, can best be described as ‘a less expensive way for companies to answer consumers’ concerns about sustainability than to achieve Fairtrade certification’ (Nicholls and Opal 2005 p.141) as in order to receive the Rainforest Alliance ‘label’ as little as 30 per cent of the product must be guaranteed to be sourced from Rainforest Alliance-certified plantations. Furthermore, Rainforest Alliance does not refer to any ILO Conventions outside of the fundamental Conventions. The certificate also includes conflicting language. For example, whereas the Fairtrade Hired Labour Standard states that ‘your company must be in full compliance with ILO Convention 87 (Freedom of Association and Protection of the Right to Organize Convention)’ Rainforest Alliance notes that ‘freedom of association must be respected ... according to ILO Convention 87, Collective Bargaining’.²²² As Table 6.10 indicates, similar to the RSPO in the palm oil sector, UTZ certification states that it is ‘based on ILO Conventions’ (and lists a number of ILO Conventions in a footnote) however, explicit references to ILO Conventions in its compliance guidelines for producers are absent.

What can we infer from this? First of all, although these vertical social governance mechanisms may be increasing in scope and coverage, they have had little to no effect on the conditions of work in Sri Lanka – they promote a base standard that is far exceeded by the floor of labour rights already present under national law and the collective bargaining agreement (horizontal labour governance). Second, certification schemes do not represent a ‘enlightened awakening’ of TNC’s responsibility in their production networks but rather a ‘public relations exercise’ to differentiate their products. It is no coincidence that the ‘weakest’ of all the certification schemes, Rainforest Alliance, is the most prevalent. Third, unions are nowhere to be seen within the governance structure of certification and although they reference the ILO’s fundamental Conventions, the ILO is not directly involved with either their establishment, interpretation or enforcement. Similar to the RPSO in Indonesia, these certification schemes view labour as a ‘passive victim’ that needs help from brands

²²² It should be noted that in several places within the certificate the incorrect or ‘short-hand’ title for ILO Conventions is used. The full title in this case is: The Freedom of Association and Protection of the Right to Organise Convention (C. 87).

and consumers. However, in the Sri Lankan tea sector, organised labour as an ‘active participant’ has proved itself able to promote and protect decent work.

6.6.2.2. Embedding the vertical in the horizontal

In an increasingly interconnected global economy, differences in the cost of labour between sectors in different countries provide motivation for TNCs to relocate and source various activities from less regulated countries: a *spatial fix* to the problem of capital over-accumulation (Harvey 2001 pp.284–311). However, in the Sri Lankan tea sector the power of trade unions operating horizontally and vertically have rebuffed attempts by TNCs to divide-and-conquer and horizontal governance is ‘thick’ enough to close up any spaces of exception (Figure 6.1).

In 1998, Sri Lankan tea workers conducted a massive strike against the privatisation of the tea sector that led to a new collective agreement being signed with the EFC and an increase in wages for all workers in the sector. Unilever Ceylon, citing the India-Sri Lanka Free Trade agreement (that reduced tariffs on tea) tried to instigate a strategy of divide-and-conquer, pitting Indian and Sri Lanka tea workers against each other – ‘blaming cheap imports from the other for a drop in prices that would not only render wage increases impossible but require actual reductions’ (Sukthankar and Kolben 2007 p.74). Unilever went one step further and threatened to stop all tea sourcing from Sri Lanka as a direct result of the establishment of the collective bargaining agreement, and instead sell Indian tea in Sri Lanka. ‘Unilever Ceylon ... was hoping to expand the potential of its export labels essentially by buying the bulk of its tea from India and then re-exporting it as a blend with a little Sri Lankan tea, as the CEO acknowledge in 2003, noting that the plan had been blocked by the Sri Lankan government under pressure from the plantation unions’ (Sukthankar and Kolben 2007 p.74). Tamil unions in South India and Sri Lanka²²³ cooperated under IUF to call Unilever’s bluff. The unions became the nucleus of an international campaign that demanded the end to ‘unethical and unhealthy competitiveness’. As Sukthankar and Kolben (2007 p.74) note: ‘The strong ties between South Indian tea plantation unions and the Ceylon Workers’ Congress in Sri Lanka might have had no broader relevance

²²³ It is worth reiterating that the vast majority of workers on the tea plantations in Sri Lanka were Indian-origin Tamils who were brought over by the British under colonial rule. This has created strong ethnic ties between the Indian and Sri Lankan Tamil unions.

had it not been for the need for extensive mobilization to counter the problem faced by tea plantation workers around the world'. Therefore, although this is a positive example of transnational (vertical) action by trade unions it is not a sustainable alternative to effective horizontal governance as in many tea sectors across the globe, workers do not have the (vertical) associational power of Sri Lankan tea workers.

Competing pressures did not end with Unilever's attempt to regime shop in 1998 but again the unions and governmental regulation stopped these pressures from having an impact on conditions of work. In 2015, the EFC opposed any wage increases in the collective agreement and instead wanted to increase the daily tea plucking quota by 5kg, citing the crisis in the international tea market and lower labour costs in other countries. The head of the Planters' Association²²⁴ drew attention to the low wages of tea pickers in India (USD 25 per month) and Kenya (USD 39 per month) irrespective of the fact that Sri Lankan tea fetches a much higher price on the international market. It was only when the government stepped in and helped prepare the agreement that a new collective agreement was signed in October 2016 between the EFC and the major plantation unions, which increased the maximum daily wage by LKR 110 (USD 0.75) up to LKR 720 (USD 4.6). Therefore, at present Sri Lankan tea workers can earn up to LKR 1,8250 per month (USD 120).²²⁵ Management frequently iterated during the focus group discussions that, in addition to daily wages and other expenditures, employers are also obliged to bear a range of other labour costs, including holiday pay, annual leave, and social security contributions. According to the regional plantation companies, taking into consideration the plantation welfare scheme, today the actual cost per worker per day is LKR 1,026.73 (USD 6.82) (Field Notes). These estimates could not be corroborated and whilst it is quite understandable that plantation owners point out how their international competitiveness is impaired by the cost of labour, it is sobering to remember that tea plucking is arduous and repetitive work. This evidence draws attention to the importance of effective horizontal and vertical governance in an age of Global Transformation.

²²⁴ The Planters' Association is the employer association that represents the 23 regional plantation companies and is a member of the EFC.

²²⁵ This excludes benefits under the Employees' Provident Fund (EPF) and Employees' Trust Fund (ETF).

6.7. Conclusion

Tea plantations in Sri Lanka have a long history and continue to play an important role in Sri Lanka's economy. The questionnaire and focus group discussions revealed that tea plantation workers experience decent work (equity and voice), as defined by the ILO. Although it is immediately apparent when visiting the plantations that many in Western society would balk at the conditions of work, in comparison to other tea plantation sectors across the globe, and even compared to other sectors within Sri Lanka, the conditions of work are comparably decent. Decent work in the Sri Lankan tea sector demonstrates the key role of labour in horizontal and vertical governance. However, what must be appreciated is that many workers working on tea plantations in other countries do not have the associational power to thwart attempts by TNCs to exploit or, in the case of Sri Lanka, 'create' spaces of exception.

Although the Plantations Convention (C.110) has been ratified by the Sri Lankan government it is not possible to establish unequivocally a direct line of causality between the implementation and enforcement of this standard and the conditions of work on the ground. More precisely, it is difficult to 'disentangle' the impact of the Convention from national employment law, the collective bargaining agreement and trade union organisation and activity. These relationships are thoroughly embedded in long standing socio-economic, legal and political institutions. What was crystal clear, however, most notably during focus group discussions, was that workers and employers had intimate knowledge of the Conventions that had been ratified and the numerous projects that the ILO country office in Colombo had implemented, in particular on the eradication of child labour and infrastructure (housing and sanitation) improvements. When asked, 'how could the ILO support your country in promoting decent working conditions in the plantations?', the trade unions argued for 'capacity building seminars and workshops' and other educational programmes whilst employers stressed the need for 'youth employment projects' (Field Notes). To be sure, the focus group discussions were conducted in an official capacity and constituents were more likely to mention the ILO's work when talking to ILO representatives. However, all three constituents viewed the ILO's role in a very positive light. This is in contrast to the focus group discussions in Indonesia where several employers stated that the ILO's role was 'sufficient', specifically that

‘Indonesia has ratified ILO core conventions and that is enough’ (Field Notes). Others spoke openly, and honestly, that they ‘do not know what the ILO does’ (Field Notes). Although several trade union members argued for sanctions against the Indonesian government, others did not know what the ILO could (or does) do. Even in the presence of ILO representatives, several were forthright in saying that they ‘had never heard of ILO action’ (Field Notes).

Bringing together the challenges raised in this chapter and the previous, it is evident that decent work rests on effective horizontal and vertical public, private and social governance. Although tea workers experience decent work this is because of strong horizontal governance rather than vertical governance, which in this case legitimises indecent working conditions in competing countries (e.g. non-union and low pay). In other words, horizontal governance is a necessary but not sufficient condition for the establishment of labour standards in an age of Global Transformation. The challenge for understanding how the ILO can (re)establish labour standards cannot rest wholly on upbeat accounts of how vertical private governance mechanisms are supposedly raising the global floor of labour rights, or on despairing (race-to-the-bottom) accounts of how neoliberalism and intensified global competition are leading to work intensification and the eradication of decent labour standards at the national level. What needs to be appreciated is the bigger picture of how vertical governance simultaneously interacts with horizontal governance and the struggles and contestation that occurs between the need for voice and equity for workers and efficiency for employers. The following chapter compares and contrasts Sri Lanka’s decent work with Indonesia’s (in)decent work to explain the variance in outcomes and discuss what this means for the establishment of labour standards in an age of Global Transformation under the process of change occurring within the ILO on decent work in global supply chains.

7. The Promise, Potential and Limits of International Labour Standards

‘The rules of the global economy should be aimed at improving the rights, livelihoods, security, and opportunities of people, families and communities around the world.’

World Commission on the Social Dimension of Globalization (2004 p.143)

7.1. Introduction

At the outset, it was revealed that the impact of the Global Transformation on labour standards and the role of the ILO required explanation, understanding and ultimately revising. The purpose of this chapter is to reflect analytically on the cases of Sri Lankan tea and Indonesian palm oil with a view to the implications for the ILO and the (re)establishment of labour standards and the protection and promotion of decent work (voice, equity and efficiency). Each of the foregoing chapters have established that public, private and social forms of governance, at both the horizontal and vertical, have differing impact on the establishment and subsequent enforcement of labour standards. As Chapter 4 demonstrated, the relevancy of the ILO’s standard-setting role, which relies on horizontal governance, agreed and implemented by the state and reinforced by national social partners, has diminished during the Global Transformation and into this vacuum a private (vertical) system has emerged, which is ineffective at promoting and protecting decent work. Policy initiatives established by the two former D-Gs, whether the 1998 *Declaration on Fundamental Principles and Rights at Work* or the 1999 *Decent Work Agenda*, share one thing in common – they have not guaranteed decent work for all. However, the election of Guy Ryder in 2012 and his subsequent focus on the implications of global production networks (GPNs) for labour standards, indicates a potentially significant reframing of the system of global labour governance and the ILO’s activities.

Chapter 5 analysed the conditions of work in Indonesia’s palm oil sector and highlighted that when there are ineffective private, social and public forms of governance within sovereign (horizontal) state borders, the outcome is indecent work. It also demonstrated that current forms of vertical private governance are not an

effective ‘substitute’ for the implementation and enforcement of labour standards at the national level. Chapter 6 detailed the conditions of work in Sri Lanka’s tea sector and established that effective horizontal governance can result in decent work. Weak vertical private and social governance (certification schemes) did not ‘complement’ horizontal governance but legitimised indecent conditions of work in other countries, in particular the ‘spaces of exception’, whereby the regulatory capacities of the state are constrained. These were exploited by transnational corporations (TNCs) whilst creating the illusionary façade of being ‘socially responsible’ actors. One of the most significant findings was the continuing salience of horizontal actors and institutions in determining labour standards in global production networks (GPNs).

This chapter draws upon the rich insights collected by the 2 years of ‘participant-as-observer’ and action research as well as the empirical data (questionnaires and focus group discussions) collected from the field. The argument is that the problem for the ILO and its current standard-setting role is that its sphere of responsibility only extends to horizontal governance actors (the national tripartite constituents) and thus ‘misses’ the rising influence of TNCs on conditions of work at the sectoral, national, and local levels (as depicted in Figure 4.1). Examination of the conditions of work in both the tea and palm oil sector suggests that labour standards will only be effective when horizontal public, private and social governance are in place. Horizontal governance is a necessary condition for the establishment of labour standards, but as demonstrated in the two cases, is not sufficient to guarantee ‘decent work for all’. This suggests that tripartite action is still vitally important for decent work but that additional leverage is needed to combat the practices of TNCs.

What does this say about the ILO? The traditional ILO paradigm of implementing labour standards is ineffective when it comes to ensuring decent work in a world characterised by the proliferation of GPNs. This is a significant test for the ILO, which is founded on the philosophical (and practical) idea that ‘poverty in one country constitutes a danger to prosperity everywhere’ (ILO 1944), and raises an important question of *how* the ILO can (re)establish labour standards?

To answer this question, this chapter is structured in four sections. First, a discussion on the nature of promoting and protecting decent work is analysed based on the empirical field research in Indonesia and Sri Lanka (Section 7.2). Secondly, to understand the challenge of the ILO's traditional role, attention is drawn to the promise, potential and limits of horizontal governance in the two cases (Sub-section 7.2.1). This section underscores the fact that although horizontal governance previously maintained a floor of decent work during the 'Great Transformation' it has been subject to pressure from firms and institutions outside the national context. In other words, the empirical data demonstrates that horizontal governance is a *necessary* but not *sufficient* condition for 'decent work all'. Attention is then drawn to the promise, limits and potential of vertical governance to promote and protect decent work (Sub-section 7.2.2). Again, the empirical data demonstrates that current forms of vertical governance are ineffective at ensuring decent working conditions and suffers from serious limitations, most notably its market-orientated nature, exclusion of labour and potential to open spaces of exception and undermine horizontal governance. To ensure decent working conditions and the (re)establishment of labour standards requires effective horizontal private, public and social governance with organisational responsibility vertically, providing national actors with leverage over TNCs.

It is not merely enough to understand the role of the ILO in the global economy, there is also a responsibility to change it, thus, in the last section (7.3), the ILO's role is discussed, not in a manner to suggest what the ILO 'has' to do, but rather what it 'could' do (based on current forms of labour governance and its institutional structure) to promote and protect decent work in GPNs. If vertical public governance is needed to 'close' spaces of exception and promote and protect decent work and if the ILO is the only organisation with the constitutional mandate to bring capital, labour and the state together then a new policy paradigm is needed that goes above and beyond supporting tripartite constituents at the horizontal level. The two sectoral cases were part of a larger project within the ILO, namely an international Convention for decent work in global supply chains. The International Labour conference (ILC) in June 2016 signalled an important first step for the ILO towards a system of vertical public governance that could not only bolster the position of horizontal actors by providing additional leverage to embed transnational actors in the sovereign space of member

States, but also encourage states to enforce international standards *on other states and actors connected through GPNs*. This goal is fundamental to the century-long mission of the ILO, as discussed in Section 7.4.

7.2. Decent work in the field

‘To allow the market mechanism to be the sole director of the fate of human beings and their natural environment ... would result in the demolition of society ... No society could stand the effects of such a system ... unless its human and natural substance as well as its business organization was protected from the ravages of the satanic mill.’

(1944 p.76)

There is no doubt that the spread of GPNs has had a detrimental impact on terms and conditions of work across the globe (Seidman 2007; Neilson and Pritchard 2009; Posthuma 2010; Locke 2013; Rossi et al. 2014) and few would argue that current forms of international regulation that govern the activities of firms in GPNs can guarantee ‘decent work’ for all, not least the ILO itself (ILC.105/PR/14). Somewhere within the production network, decent work deficits can be found in almost all the products that reach high street shops or the shelves of supermarkets in Western countries, be it palm oil, tea, bananas, garments or electronic goods. According to Hepple (2005 p.86) we have ‘witnessed the galloping privatization, and lowering of public labour standards. This is a different kind of “race to the bottom”, not a genuine “race to the top”’. What we have witnessed in the preceding chapters is that decent work has been affected by the emergence of GPNs, but not all is despair.

In Chapter 5 it was demonstrated that the structure of the palm oil GPN places extreme pressure on producer countries to downgrade (or stall advances in) labour standards in order to remain efficient (low cost and high productivity) creating decent work deficits for many workers characterised by poor wages, child and forced labour and an absence of independent trade union representation. It was found that Indonesian palm oil plantations are remote ‘spaces of exception’ where the ‘normal rule’ does not apply, where labour inspection is inadequate and the frequent violation of ratified Conventions (Freedom of Association and Collective Bargaining, C.87 and C.98) has

resulted in ineffective associational power of workers ('yellow unions'), which is an important condition in embedding TNCs in public labour governance. Even public governance mechanisms established by the state have been focussed on bolstering horizontal and vertical private actors to ensure the efficiency of palm oil production at the expense of equity and voice for the millions of workers employed. The search for higher efficiency at the cost of equity and voice means that many workers have substandard contracts of employment and are consequently not covered by (admittedly inadequate) national regulations. Most importantly, many of the decent work deficits uncovered by the research were exactly what the (unratified) Plantations Convention (C.110) was adopted to address.

Even in a country that has ratified the Plantations Convention (C.110) and has comparably better labour conditions, work is arduous and tough for the workers on Sri Lankan tea plantations. Although tea plantation workers experience decent work and were free of forced or child labour and workers had a right to a trade union representation, there were cases of employers avoiding their responsibilities under national law (e.g. not providing payments for occupational accidents or providing maternity protection). However, the impact of GPNs on conditions of work in this sector remain pervasive. The organisational dynamics of TNCs have pitted Sri Lankan tea workers against workers in other countries as a way in which to source the highest quality tea at the lowest cost and employers have tried to use international differences in labour standards to refuse wage demands. Yet, the effectiveness of horizontal governance in Sri Lanka and labour's ability to act vertically has thwarted attempts by TNCs to 'fire the starting gun' for a 'race-to-the-bottom' and create spaces of exception in the plantation economy. Table 7.1 summarises the (in)decent work that exist within the two 'polar opposite' cases.

Table 7.1: (In)decent work in Sri Lanka and Indonesia

| Articles of the Plantations Convention (C.110) | Indonesian palm oil indecent work | Sri Lankan tea decent work |
|---|--|---|
| Wages and contracts | Informal and casual contracts; not informed of conditions of work/not consulted when changes take place; workers do not receive a living or minimum wage; piece-rate system. | Full-time permanent contracts; wages above minimum wage and other low-skilled sectors; positive government interventions in wage determination; piece-rate system but overseen by unions. |
| Forced labour | Forced to undertake tasks they did not want to perform; rest/break times limited; denial of vacations; not allowed to leave the plantation; personal document confiscated. | Some personal documents withheld but no significance. |
| Child labour | Child labour on the plantations. | Handful of cases of child labour on smallholder farms but no significance. |
| Labour inspection | Dearth of labour inspection; labour inspectors acting in employer's interests. | Number of labour inspectors in line with ILO benchmarks; only large-scale plantations inspected. |
| Freedom of association and collective bargaining | Union busting; prevented from forming or joining a trade union; dismissal for joining a trade union; yellow unions. | Collective bargaining; high trade union density; extension permitted; collective employers. |
| Living conditions | Accommodation without roof, sanitary facilities, place to cook or access to clean drinking water, | Substandard living conditions; disparity between employers and workers. |
| Discrimination | Social origin and gender discrimination; pregnancy as a reason for dismissal. | Commitment to equality but concerns about ethnic discrimination. |
| Conditions of work | Arduous work; long working hours and long working weeks; denied access to paid holiday; no maternity protection; pesticide spraying; widespread use of paraquat. | In-line with ratified Conventions; 8 hour work day; 5/6 day week; some examples of employers not paying for OSH injuries or providing maternity protection. |

Source: QIWP, QIWS, QSLWP, QSLWS

7.2.1. The promise, potential and limits of horizontal governance

‘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.’

(1919)

The two cases reveal the importance of effective horizontal governance. Whilst labour standards may originate either in national laws or from international norms (such as ILO Conventions), their implementation is generally the provenance of horizontal actors. However, in Indonesia the state was incapable of mediating the competing interests of different stakeholders both within (hostile business associations) and without (TNCs, both buyers and producers) its sovereign border. In Indonesia, national political actors created (or ratified) regulations and laws that they did not intend to enforce because they were responding to international expectations or demands, pursuing domestic legitimacy, and attempting to achieve moral and symbolic goals. Although the government of Indonesia had ratified the eight fundamental Conventions of the ILO, they had made little effort to ensure their enforcement. In Sri Lanka, in contrast the role of horizontal public governance was particularly important in enforcing labour standards, preventing defections by individual plantations and also in resolving collective action problems among the trade unions and employer associations.

In Sri Lanka, the role of workers and trade unions is effective in ensuring labour standards and promoting decent work, principally as a result of strong associational power of unions and their institutional links with political parties. This mirrors the situation in Latin America where ‘traditionally labor-backed parties have ensured the ongoing support of their core constituencies – unions and their members – by adopting increasingly union-friendly collective labor laws in an otherwise uncertain political and economic environment’ (Murillo and Schrank 2005 p.972). In contrast, independent unions on the palm oil plantations of Indonesia were few and far between and none had formed institutional relations with political parties that might have increased their associational power.

The two cases also point to the importance of understanding the sectoral characteristics of GPNs for workers' structural power. As the palm oil GPN is not 'driven' (i.e. when a TNC governs the production network in a hands-on manner) by lead firms (mainly brands) in Western economies this closes off many avenues for labour (as well as civil society in general) to target the strategic actor(s), that is the driver(s). No single actor has the power to control or impose conditions (labour standards) on the rest of the network, which deprives labour of a vehicle to coordinate sympathetic (pro-labour) actors who could cooperate and campaign for decent work. However, to suggest that labour is only successful in 'driven' production networks, with easily identifiable brands, that Global Union Federations (GUFs), civil society organisations (CSOs) and others might target via consumer pressure, would be misplaced. In Sri Lanka the structural power of workers, based on their non-substitutability and their strategic location within the GPN, enabled them to engage in industrial action to improve conditions of work. In this case the target was not lead firms (TNCs) or individual plantation owners, but the national (horizontal) employer association. The regional plantation companies in Sri Lanka were instrumental in acting collectively, establishing one of the only remaining sectoral agreements in the country, and indeed, one of the only sector-wide agreements in existence in any agricultural sector in the global South.

Whilst many would argue that horizontal governance is necessary *and* sufficient to establish labour standards and promote decent work it is apparent that in an age of Global Transformation it falls short of promoting, protecting and ensuring the equity and voice of all workers. In other words, if horizontal governance worked on its own and 'if the ILO was able to ensure full compliance with the entire international labour code, there would be no need to look for alternative enforcement mechanisms' (Zandvliet and Van der Heijden 2015 p.189). In practice, the ILO cannot ensure full compliance with labour standards and universality is all but a distant dream.

7.2.2. The promise, potential and limits of vertical governance

‘Corporate social responsibility [CSR] doesn’t improve workers’ rights but it concentrates the pain.’

ILO Official (PAO Notes)

As firms and institutions have become integrated into GPNs, labour conditions have been affected by actors and institutions outside the national (horizontal) context. In order to maintain relationships between firms and institutions across a production network, TNCs and international non-governmental organisations (NGOs) and CSOs have developed different forms of private and social vertical governance. Within GPNs, horizontal regulation will be more effective, *ceteris paribus*, when combined with vertical governance, which operates along the production network (i.e. linking a series of buyers and suppliers, employers and workers, in different countries). However, although some may see potential in vertical private governance in addressing the gaps left by inadequate horizontal governance (Locke 2013); current forms of vertical private governance, in isolation, are incapable of promoting and protecting decent work.

Whilst the case of Sri Lanka is evidence that there is a market for social responsibility and social progress and is indisputably attractive for TNCs, as Ewing stresses, ‘if the naïve need any convincing about corporate social responsibility, take a look at the global financial crisis, caused by the corporate social irresponsibility of some of the biggest corporations in the world, now compounding their irresponsibility by insisting on paying their executive massive bonuses at the public’s expense, after having been bailed out by taxpayers in what amounts to the biggest welfare scheme in history’ (Ewing 2010 p.xiii). In Sri Lanka, although the tea sector has seen a dramatic rise in the number of ‘conscious consumers’ and certification schemes (e.g. Rainforest Alliance and UTZ certified), the impact of these schemes was negligible in terms of improving decent work. The plantation owners stressed that the certification schemes and codes of conduct of TNCs did not require any principles that exceeded the national law, which they were bound to comply with because of the structural and associational power of workers in the sector and the collective agreement signed by the social partners (Field Notes). CSOs acted as ‘surrogate regulators’ rather than putting

pressure on the states to become a more effective regulator by publicising violations and embarrassing government agencies who fail to do their jobs. More importantly, these certification schemes viewed labour as a ‘passive victim’ that need to be helped by consumer campaigns often orchestrated by the main perpetrators of poor labour conditions. In Sri Lanka, it is obvious that labour is an ‘active participant’ and not a ‘passive victim’.

While TNCs in the tea sector need to avoid reputational damage that might be caused by the public disclosure of labour wrongdoings in their production networks, plantations linked to these networks have the incentive to comply with the buyers’ (sparse) codes of conduct as it ensures access to global markets and, in theory, differentiates them from other suppliers. Whilst many companies (such as Unilever) and organisations (such as Rainforest Alliance) seek to improve the credibility of their code of conduct by ‘referring’ to the core labour standards of the ILO, their definitions differed from ILO Conventions and their wording even contradicted these standards. In fact, the ILO’s role is visibly absent from corporate social responsibility (CSR) programmes (certification schemes and codes of conduct). The problem with relying on vertical private and social governance to ensure labour standards are established is that market incentives do not always function effectively and frequently fail to reward firms that provide good working conditions or punish those who are exploitative to workers. In Sri Lanka, most of the plantations needed to be Rainforest Alliance certified to produce for export.²²⁶ However, because the labour standards specified in the Rainforest Alliance certification were already covered by national law, suppliers did not need to change their practices to be in compliance and, at least for the ‘average’ consumer, on paper there are no differences in conditions of work between Sri Lanka, Kenya and India certified plantations. Producers in Kenya and India can therefore expand their production whilst relying on the ‘thin’ accountability measures in these certification schemes at the same time as avoiding other fundamental rights such as freedom of association and collective bargaining. In other words, the certification schemes legitimised the weak horizontal governance in other tea producing countries and did not ‘complement’ the strong horizontal governance in the Sri Lankan tea

²²⁶ Primarily because one of the largest TNCs in the sector, Unilever, has committed to sourcing all its tea from Rainforest Alliance approved plantations by 2020.

sector. As Zandvliet and Van der Heijden (2015 p.172) comment on a different beverage:

‘What does it mean when The Carlsberg Group states that it “shall respect employees’ rights to form, join or not join a labour union or other organisation of their choice, and to bargain collectively in support of their mutual interests [...]” without a reference to the ILO? To what extent is this different from SABMiller, which states that the company “is committed to conducting its business with due observation of the principles of [...] the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and ILO Core Conventions on Labour Standards.” Should labour rights activists (who are of course not influenced by taste, price, marketing or other superficial concerns) order a Carlsberg or a Peroni Nastro Azzurro?’

When drinking a beverage more popular than beer, should labour activists or ‘concerned consumers’ brew a cup of black Kenyan tea or a cup of black Ceylon tea, both with Rainforest Alliance certification?

TNCs might commit to these vertical forms of governance whilst seeking to open new spaces of exception in horizontal governance as evident by the example of Unilever pitting workers in India and Sri Lanka against each other. While this attempt at ‘divide-and-conquer’ failed – the structural and associational power of Sri Lankan tea workers, in particular their collaboration with IUF and Indian Tamil trade unions (vertical governance), was able to embed TNCs in horizontal governance – this cross-border action relied on ethnic ties and particular political associational power, and thus is an unlikely option for many tea workers in other tea producing countries. Neither is it a sustainable alternative to effective vertical public governance, providing national actors with statutory leverage over TNCs.

In Indonesia, although the palm oil sector was similar to tea in terms of being an agricultural commodity predominantly for export, and requiring low-skilled intensive labour, it was not subject to the same level of interest from private actors promoting vertical forms of governance. In fact, the only form of private vertical governance initiative, the RSPO, did not effectively enforce social provisions and

instead targeted environmentally conscious consumers. Lead firm purchasing practices and the search for ‘spaces of exception’, combined with the promotion of weak certification schemes by TNCs, has placed significant pressure on suppliers to ignore demands (where they exist) for decent work. This highlights the issue of the market-orientated nature of private and social (multi-stakeholder) vertical governance; in the case of the palm oil sector there is no market for socially responsible palm oil and at best a barely visible link between producer and consumer. Market incentives were insufficient for firms to improve labour conditions, particularly as the production network was ‘less visible’ to the consumers they serve. As such, these initiatives are premised on the idea that TNCs respect for human and labour rights is voluntary and should be part of a strategy of ‘good’ corporate social responsibility. In fact, the International Organization of Employers (IOE) (2002) stresses that labour rights standards should only be observed if they lead to economic stability (i.e. efficiency). Presumably then, if vertical private governance does not result in improved efficiency, then the case for respecting voice and equity fall apart.

In summary, vertical private (CSR) and social governance (certification schemes) was not a ‘substitute’ for effective horizontal governance in Indonesia and did not ‘complement’ horizontal governance in Sri Lanka. In addition, these forms of labour governance did not give national actors – most notably labour (particularly as they are rarely included in the decision-making processes of these initiatives) – greater leverage over TNCs, suppliers or national enforcement agencies. With these insights, the next important question is *how* to reframe the current system of global labour governance and ultimately give a voice to the ‘marginalized, exploited and oppressed’ (Brook and Darlington 2013 p.239). What is needed are international labour standards, agreed by states, enforced by government agencies, supported by social partners and engaged civil society. The onus here is on public actors who can extend their responsibility across borders. In other words, effective and mutually (re)enforcing public, private and social horizontal governance combined with intertwining vertical *public* governance that would embed TNCs in horizontal governance.

7.3. The ILO: A horizontal player in a vertical world?

Historically, the ILO played a significant role in bolstering horizontal governance through its tripartite structure. However, in a far more interconnected world the ILO's conception of decent work and the instruments for attaining it, derived from an era where economies were largely national in scope, needs to be reconsidered. Common principles and practices to be pursued in individual member States are still necessary but no longer sufficient.

Although TNCs might have significant influence and power they are not present in collective bargaining at the national (horizontal) or international level,²²⁷ or within the traditional structure of the ILO.²²⁸ It has even been suggested that, 'given the importance of buyers and the prices they offer to suppliers, one might ask whether this tripartite body [of the ILO] should be made a quadripartite body to also include buyers' representatives' (Nathan 2013 p.29). A global labour governance paradigm to promote decent work in GPNs demands vertical and not simply horizontal labour governance, which has been the defining feature of Guy Ryder's directorship (Chapter 4). The rise of GPNs and the fact that TNCs are often the drivers of these constantly shifting production networks, as Guy Ryder suggests, 'would seem to indicate that there are additional opportunities for the ILO to promote decent work in their operations' (ILC.102/DG/1A p.4). Whilst TNCs stand 'above' and 'outside' the ILO's sphere of responsibility and the ILO works through its tripartite constituents and therefore 'stands aside' from CSOs and NGOs, this is not to gainsay that the ILO cannot traverse on a different path to extend its responsibility vertically and in doing so develop a new 'policy paradigm' for decent work in GPNs.

Whilst the literature on labour governance largely omitted the role of the ILO, what the ILO missed was the transversal approach of global capital. If we conceive the ILO as a horizontal player that is 'path dependent' (Baccaro and Mele 2012) we can only conclude that it is unlikely to overcome its 'institutional sclerosis'. However, the

²²⁷ The exception to this are the limited number of international framework agreements (IFAs) that have been signed and the collective bargaining agreement between the International Maritime Employers' Council (IMEC) and the International Transport Workers' Federation (ITF).

²²⁸ To reiterate, the members of the International Organization of Employers (IOE) are national employer associations who are expected to respect national employment laws (whether or not these comply with ILO Conventions).

argument here is if multilevel (public) forms of labour regulation are needed to close global governance gaps and ensure TNCs cannot exploit spaces of exception, the ILO is the only international organisation with the constitutional mandate to bring capital, labour and the state together to promote decent work in GPNs. Whilst the two empirical chapters have demonstrated that horizontal governance has not guaranteed ‘decent work for all’, it is exactly a new model of international labour standard that is needed to counter the challenges posed by the Global Transformation. However, one of the problems for the ILO is that it still faces a difficulty in combining its traditional horizontal action with engagement along the vertical network (Ryder 2015a).

7.3.1. Labour governance in an age of global transformation

‘I frequently hear employers, and they say it to me, we understand that we have responsibility but please don’t expect us to take on the responsibility of the state, this is what you’re trying to make us do. The other side of the fence, you often here government say we are having a hell of a time working with enterprises because they escape the parameters of our national level regulatory frameworks. Bit of a standoff in that regard.’

Guy Ryder (2015a)

Current forms of vertical governance are ineffective, especially as any involvement on the part of the ILO has been limited. Under the system of ‘vertical private governance’ depicted in the left-hand side of Table 7.2, labour standards rest ultimately in the hands of lead firms in the production network and their voluntary codes of corporate conduct, which as evident in the tea and palm oil GPN, have been proven incapable of territorially embedding TNCs. Certification schemes, while including independent monitors and referencing ILO Conventions, are driven by large TNCs without any independent representation from workers and, again as evident in the two cases, did not lead to substantial improvements in working conditions. Most importantly, both of these forms of governance have no institutional involvement by the ILO.

Likewise, the ILO has no involvement in international framework agreements (IFA) (Niforou 2014) and even under the Bangladesh Accord on Building and Fire Safety, in its capacity as an independent chair (Reinecke and Donaghey 2015), the Organization has been unable to bring the Bangladeshi government and smaller sub-

contractors to the table on a regular basis (PAO notes). However, the Accord was a significant step towards a new role for the ILO in global labour governance, working directly with vertical actors (TNCs and GUFs) rather than the Organization's (horizontal) tripartite constituents in the garment sector (as under the Better Work Programme).

Table 7.2: The ILO and global labour governance

| | Corporate Social Responsibility | Certification Schemes | The Bangladesh Accord | International Framework Agreements | Better Work Programme | ILO Conventions (Plantations Convention) | Maritime Labour Convention, 2006 | Global Production Network 'Standard(s)' |
|---------------------------------------|-------------------------------------|---|--|---|--|--|---|--|
| <i>Scope for Universal Protection</i> | | | | | | | | |
| <i>Form of Governance</i> | Private | Social (multi-stakeholder) | Private and social | Social | Private and public | Public | Public | Public |
| <i>Primary Actors/Targets</i> | Lead firms and first tier suppliers | Lead firms, first tier suppliers, NGOs and CSOs | Lead firms, global union federations and Bangladesh garment suppliers (first tier) | Global union federations and lead firms | ILO tripartite constituents in seven (garment producing) countries | Ratifying member States | Ratifying member States and non-ratifying 'flag' States | Potentially all actors in the relevant global production network |
| <i>Actor Scope</i> | Vertical | Vertical | Vertical | Vertical | Horizontal | Horizontal | Horizontal and vertical | Horizontal and vertical |
| <i>Territorial Embeddedness</i> | | | | | | | | |
| <i>ILO Function</i> | N/A | N/A | Independent chair | N/A | Technical assistance and capacity building | Standard-setting and monitoring | Standards consolidation, certification and monitoring | 'Standard' setting, consolidation, certification and monitoring (TBC.) |

Source: adapted from Thomas and Turnbull (2017 p.16)

As we move from left to right in Table 7.2, from private to public forms of labour governance, where the ILO plays an increasingly important role, there are examples of contemporary forms of governance, such as the ILO's Better Work Program. This partnership between the ILO and the International Finance Corporation (IFC), is often referred to as an innovative form of labour governance through establishing an independent system of monitoring of garment factories (Rossi et al. 2014). Enterprise Advisers, who are locally trained and recruited by ILO staff, assess factory compliance with ILO standards as well as national law and must conduct their duties based on a strict ethical code, thereby combating some of the common criticisms of vertical private governance. It is more successful than existing forms of vertical private labour governance in terms of its scope and substantive outcomes (Posthuma and Rossi 2017), but 'conditionality' is premised on compliance with local labour standards (horizontal public governance rather than vertical), and like the Accord is sector-specific (textiles and garments). In practice, 'Better Work' is not 'ILO work' in the purest sense as it is financed (predominantly) by Western donors²²⁹ for a specific industrial sector and has no formal endorsement by the ILO's Governing Body. More importantly, in making the (neo-liberal) 'business case' for Better Work, the driving force behind this Programme 'is not so much realising labour rights as human rights or fulfilling workers' demands for better working conditions as it is the growing demand for social auditing and certification schemes within transnational supply chains and the trend towards "ethical capitalism" more broadly' (Hauf 2015 pp.149–150).²³⁰

Unlike Better Work, ILO Conventions are 'core' ILO work – tripartite approved and open to all member States for ratification and therefore to the right-hand side of Table 7.2. The Plantations Convention (C.110) is a typical example of an ILO Convention that is stringent, still relevant precisely because of the Global

²²⁹ Only the Director of the Department is financed by the ILO regular budget, the rest of the program is funded by external donors, including the Dutch and Danish Ministries of Foreign Affairs, the UK's Department for International Development, US Department of Labor, Irish Aid and Human Resource and Skills Development Canada.

²³⁰ In the garment industry, there was a 73 per cent drop in the workers' rights score of the top 20 apparel exporters to the US between 1989 and 2010. At the same time, there was a 42 per cent reduction in the price paid for the clothes they produced (IndustriALL 2016). At the ILC in 2016 the Workers' Group derided the limited scope of the Better Work program and highlighted its failure to ensure a living wage and respect for freedom of association.

Transformation and sectorally specific. However, as previously noted, it does not cover the majority of workers who would benefit from the Convention. As discussed in Chapter 4 the Convention is only in force in ten countries and apart from cocoa and coconut production covers less than 30 per cent of the production of the agricultural commodities as stipulated in its Articles. Whilst in Sri Lanka the ratification was indicative of the state's approach to ensuring decent working conditions in the sector; in Indonesia, neoliberal government policy for increased efficiency (e.g. export revenues) has meant it has remained unratified, particularly as the government evidently wants to remain attractive to foreign investment. As previously identified in Chapter 4, and demonstrated in Chapters 5 and 6, the current ILO paradigm of promoting decent work through Conventions (horizontal governance) has four major challenges:

1. It is increasingly difficult to reach consensus between the tripartite constituents on the content of Conventions and whether they should be adopted (e.g. the Home Work Convention, C.177).
2. When consensus is reached these Conventions are then not ratified and often fail to cover most of the workforce in that particular sector (for example the Plantations Convention, C.110).
3. When ratified they are often not implemented effectively (for example the prevalence of child labour in Indonesian palm oil plantations even though the country has ratified C.138 and C.182).
4. When implemented effectively they are not universal, challenging one of the ILO's founding principles that 'poverty in one country constitutes a danger to prosperity everywhere' (ILO 1944).

Although the Plantations Convention (C.110) suffers from the problems of other horizontal forms of labour governance, it is at the sectoral level that the ILO first approached the idea of vertical public governance under the adoption of the Maritime Labour Convention (MLC), 2006, which represents a 'new paradigm for global labour rights implementation' (Lillie 2008). International shipping is one of the most difficult sectors to regulate, given the mobility of both capital and labour, and the MLC was a long time in the making (first discussed at the ILC in 2001, formally adopted in 2006 but only entered into force on 20 August 2013, one year after reaching the 'threshold')

for ratification of 30 member States). Nonetheless, the MLC is one of the most comprehensive ILO Conventions, covering over 90 per cent of world gross tonnage of shipping, and more importantly it gives the ‘port state’, wherever a vessel calls, the right to inspect conditions on board foreign ‘flag state’ vessels. In other words, ‘the MLC will have member States enforcing labour standards directly on *each other’s ships*’ (Lillie 2006 p.192 original emphasis), thereby preventing TNCs from exploiting weak horizontal governance (the ‘flags of convenience’ with more favourable tax laws and much weaker employment protection). Thus, international shipping is re-embedded not by the port state enforcing its own national law but the international standards set out in the MLC.

The notion of vertical public governance (member States’ responsibility to cooperate and monitor across borders) under ILO Conventions is not just shown in the case of the MLC but also in the Indigenous and Tribal Peoples Convention (C.169). The Convention includes the obligation that ratified member States ‘shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders’ (Article 32). In the past, two other Conventions (now shelved)²³¹ requested that member States extend their jurisdiction beyond their territorial boundaries to ensure compliance by those nationals acting abroad. Thus, it seems that the notion of holding member States and other actors outside of the territory as responsible is not out of the question at the ILO.

The idea of a standard that governs trade across borders (right-hand side of Table 7.2) is hardly a novel proposition. The discussions at the WTO in the mid-1990s focussed on the inclusion of a ‘social clause’ within trade agreements (which would mandate governments to comply with labour standards when engaging in bilateral and multilateral trade) (Elliott and Freeman 2003). In addition, the idea of a global social label was included in the 1997 D-G report to the ILC (ILC.85/DG/1A).²³² However, both examples of potential vertical public governance experienced vehement

²³¹ Contracts of Employment (Indigenous Workers) Convention (C.64) and Recruiting of Indigenous Workers Convention (C.50).

²³² This idea eventually resulted in the *Declaration on Fundamental Principles and Rights at Work* (1998).

resistance, seen by many developing countries as ‘disguised protectionism’ and by employers in the ILO as going against the principles of free trade (Baccaro 2015). However, the ILO already has the ‘blueprint’ for a standard on GPNs and has the necessary constitutional tools in place. The importance of a standard for GPNs cannot be overstated, it would speak volumes for the continuing relevancy of the ILO in the twenty-first century. The Conclusions of the ILC in 2016 highlight the ILO’s first step on this altogether different path.

7.3.2. The ‘first step’ towards decent work in global production networks

‘The decision three years ago to put an item on global supply chains on the agenda was taken not only in the wake of tragic efforts but also in a deliberate effort to be a driver of change in the reality of work. The subject of global supply chains is chosen not because it is easy – it is not – but because it is important and will be even more so in the future.’

Guy Ryder (2016a)

The implication of GPNs on labour standards has been the hallmark of Guy Ryder’s directorship (as discussed in Chapter 4). As the former leader of one of the ILO’s tripartite constituents, Ryder was highly critical of GPNs, both in general – ‘what is not acceptable, is that companies shift production and locate supply chains to avoid trade unions and to avoid respect for worker rights. That is not about comparative advantage. It’s about absolute abuse, and any approach to the global economy has to make it impossible’ (Ryder 2003) – and in relation to specific countries – ‘it is disgraceful that these companies, including well-known global brands which claim they want to contribute to China’s development, have been joining together to stop any reform so they can continue to derive profit from violations of the most fundamental labour standards in their China operations and supply chains’ (Ryder 2007). As the D-G of the ILO his rhetoric is more measured but still critical of the ILO’s horizontal role in these chains: ‘For the ILO, whose interest and responsibilities are centred on the labour practices along these chains, the corresponding question is whether it is sufficient to continue to address these matters purely by reference to the States which are its members and which are legally bound to apply ratified Conventions’ (ILC.102/DG/1A p.14).

The Office is well aware of this ‘mismatch’ between public/private/social and horizontal/vertical governance, as well as the ‘gaps’ that appear in this (uncoordinated) system (i.e. the ‘spaces of exception’ exploited by mobile capital). However, until recently, the ILO has largely overlooked the implications of GPNs for its core mission of ‘decent work for all’ (ILO 2015b). As described in Chapter 4 the ILC discussion on decent work in global supply chains was a long time in the making, first suggested by the Workers’ Group at the ILO’s Governing Body in November 2006 but not adopted for an ILC agenda item until the October Governing Body in 2013 as shown in the simple timeline in Figure 7.1, which maps the data according to ‘when’, ‘where’ and ‘what happened’ (the initial stages – from 2006 to 2013 – were previously analysed in Section 4.3.4). The data that follows is ‘bracketed’ in two ways: over time (‘what has happened’ and ‘what is likely to happen next’) and between the tripartite constituents (e.g. how workers’ representatives reacted, and why, given the stated position of employers and government representatives).

Figure 7.1: Timeline of decent work in global supply chains

| When | Where | What |
|----------------------------|---------------------------------|--|
| November 2006 | Governing Body | Workers’ Group suggest a global supply agenda item for the ILC |
| November 2006–October 2012 | Governing Body | Discussion but inaction |
| October 2012 | Governing Body | Guy Ryder appointed Director-General |
| April 2013 | Bangladesh | Rana Plaza disaster |
| May 2013 | International Labour Conference | Director-General report to the ILC (‘call to arms’) |
| June 2013 | International Labour Conference | Discussion on global supply chains in relation to cross-border social dialogue |
| October 2013 | Governing Body | Decent work in global supply chains becomes agenda item for ILC |
| June 2016 | International Labour Conference | Conclusions adopted on the need for a new standard on global supply chains |
| October 2016 | Governing Body | Agreed to have a bundle of three meetings on decent work in global supply chains |
| 2017– | TBC | Standard(s) (Convention) on decent work in global supply chains |

The need for vertical public governance was openly and acrimoniously debated over nine days at the ILC in June 2016 (four days of plenary discussion in the ILC, two days in committee drafting Conclusions and three further days of plenary discussion of the draft Conclusions in the ILC).²³³ For the Employers' Group, horizontal governance was necessary and sufficient: 'The only way to ensure that all workers are equally protected is to develop strong national institutions that can implement and enforce laws covering all companies and workers within its borders, regardless of whether they participate in cross border supply chains' (Employers' Spokesperson, PAO notes).²³⁴ For the Workers' Group, in contrast, a purely horizontal approach was far too limited:

'Everyone is connected but no-one is responsible. We need accountability and governance, particularly from the "economic employer", the lead firm in the supply chain. We need standards that apply wherever the supply chain reaches. There can be no excuses, no exemptions, no blaming abuses on the local management just because it's a subcontractor or far from the home country' (Workers' Spokesperson, PAO notes).

The Workers' Group proposed that the 'economic employer' could be held accountable via a Convention 'on decent work in global supply chains, which can and should provide the basis for a new approach to labour regulation and enforcement, much the way that the MLC has for the maritime industry' (PAO notes). The potential of a 'supply chain MLC' was an idea the workers advocated on numerous occasions to highlight the limitations of horizontal governance, the need for vertical regulation, and the new repertoire of policy options available to the ILO and its constituents:

'Most laws and international Conventions stop at the borders, the model of regulation in the ILO being to set minimum standards at the global level that need to be ratified in national legislation, which has only a territorial effect. The Maritime Labour Convention is an interesting example of a new

²³³ ILO staff nicknamed this the 'fireworks committee', because 'everyone is waiting for the employers to explode. Someone at some point is going to light the fuse' (PAO notes).

²³⁴ The employers refused to use the nomenclature of 'global supply chains', despite using this term in previous meetings, referring instead to 'cross-border supply chains' throughout the ILC discussion. The employers in fact refused to discuss several issues, including standards, the idea that cross-border (global) supply chains had adversely impacted employment relationships, and the contention that supply chains had created a 'governance gap'.

approach, going beyond national borders, which can help us identify innovative ways forward’ (Workers’ Spokesperson, PAO notes).

The Workers’ Group acknowledged that ‘the Employers’ Group is not particularly enthusiastic about our ideas [not to say that they find this a scary proposal]’ (PAO notes),²³⁵ no doubt because the employers had vested interested in opposing any proposals for new labour standards. While some governments stayed true to conventional ILO speak – the US representative, for example, politely noted that ‘not everyone played by the rules’ (PAO notes) – the discourse of the Africa Group was far more emotive, describing indecent work as the result of ‘intentional design’ by TNCs of their GPNs (Namibia representative, PAO notes). Only member States from the Asia Pacific region (e.g. Bangladesh and India) expressed any forthright opposition to the proposal for a new standard on decent work in global supply chains.

Following the first plenary discussions (three days) the Office wrote up a series of draft Conclusions summarising the debate on decent work in global supply chains. A total of 121 amendments, the vast majority from the Employers’ Group, were received in total on seven pages of text, with the first day of contentious discussions on the draft concluding at 23:00 and 01:30 on the second day (all other Committees working on other ILC agenda items finished their work by 18:00 every evening). In a 6-hour debate on the word ‘standard’, the Employers’ Group sought to exclude this word from the Conclusions of the ILC, thereby attempting to prevent the idea of a Convention on decent work in global supply chains going forward to the Governing Body. Once again, the Office and the Workers’ Group commanded the moral high ground: ‘It’s a sad day for the ILO when this house cannot discuss “standards”’ (Workers’ representative, PAO notes). Of the 25 agreed points in the Resolution and Conclusions the most significant, which in the words of one ILO official ‘has changed the ILO’s mandate’ (PAO notes), was saved until last:

‘There is concern that current ILO standards may not be fit for purpose to achieve decent work in global supply chains. Therefore, the ILO should review this issue and convene, as soon as appropriate, by decision of the

²³⁵ The latter [part] of this sentence was an ‘off the cuff’ remark (i.e. spoken but not included in the official typescript prepared by the Workers’ Group).

Governing Body, a technical tripartite meeting or a meeting of experts to:
(a) Assess the failures which lead to decent work deficits in global supply chains. (b) Identify the salient challenges of governance to achieving decent work in global supply chains. (c) Consider what guidance, programmes, measures, initiatives or standards are needed to promote decent work and/or facilitate reducing decent work deficits in global supply chains’ (ILC.105/PR/14-1 para.25).

For IndustriALL, one of the most active GUFs that has signed 47 IFAs with TNCs covering 10 million workers, ‘inclusion of the word “standard” is crucial as this allows the possibility of a future Convention to be squarely on the agenda’ (IndustriALL 2016). The International Transport Workers’ Federation (ITF), the GUF representing the workers during the adoption of the MLC, echoed these sentiments: ‘We could finally see protection for workers in global supply chains, wherever they are based, by ensuring accountability and governance, particularly from the lead firm in the chain. We’ve done it before for seafarers, with the ground-breaking ILO Maritime Labour Convention 2006’ (ITF 2016). Whilst the General-Secretary of the International Trade Union Confederation (ITUC) said the day after the Conclusions were adopted:

‘last night’s discussion ... was a very good first step, it lays the ground work, it was a general discussion but we want a Convention, absolutely, we want to see countries taking responsibility ... in the medium term we want the rule of law, we want the ILO’s standards to be packaged together, we want to look at deficits and we want a Convention on supply chains.’²³⁶

Whilst the Conclusions of the ILC in 2016 indicate a substantial ‘first step’ towards a GPN Convention, the enforcement mechanisms and normative scope of the standard have yet to be discussed. This leads to a pressing question: what would a ‘GPN standard’ look like in comparison to other forms of current labour governance?

²³⁶ Go to: <https://www.youtube.com/watch?list=PL27HDLFDYbmK4VZhLOJPwYeO86xka8iQx&v=Ya29mheIDBI> [Accessed 20 January 2017]

7.3.3. From horizontal to vertical governance

‘It is not out of the question that the initial role of the ILO as a “revolution insurance” comes to the fore again’.

(2015 p.28).

There is no doubt that a GPN ‘standard’ (or standards), which could include a Convention or Recommendation in ‘ILO speak’, would be a public form of labour governance as the ILO’s orientation is grounded in Westphalian sovereignty and depends heavily on the actions of its member States. The ILO’s fate is irrevocably bound up with the fortunes of its member States as the Organization has tried (and failed) to include TNCs, CSOs and NGOs in its sphere of responsibility (Baccaro and Mele 2012). As Maupain (2013 p.250) questions ‘if the state lacks the institutional capacity to stay above the quickly rising swells of social change in the era of financial globalisation, does that leave the ILO anchored to a sinking paradigm?’ It is evident from the Sri Lankan tea sector, that in the face of globalisation, the state plays an important role in solving collective disputes between employers and workers and ultimately providing an alternative to a race-to-the-bottom. As a result, the standard will likely (and most effectively) target horizontal public governance actors (member States) but expand responsibility vertically across the whole GPN.²³⁷ This is particularly important as decent work implies that *all* workers, whether or not they are in a GPN or a ‘space of exception’, must be covered (i.e. universal application within and across member States). This responsibility cannot flow solely out of individual TNCs, but depends on effective implementation within a country, particularly as different production network configurations can place distinct pressures on working conditions and result in varying employment relationships (Lakhani et al. 2013).

What will make a production network standard different is that it would adopt an MLC type model, which gives leverage to one country over the firms of another (vertical public governance). For example, home countries could regulate brands by refusing to import goods made under conditions that violate the core labour standards. However, this rarely occurs. A GPN standard would require responsibility for TNC

²³⁷ Dahan et al. (2012) argue that the current statist model of responsibility at the ILO is fundamentally ineffective as does not take into account the labour violations that occur beyond a member State’s jurisdiction.

home countries to govern (indirectly or directly through independent monitoring/inspection) conditions of work in host countries (suppliers and subcontractors). As in the case of the MLC, only the member State can violate the Convention but TNCs can violate the standards set out in the Convention. The Convention would hold TNCs legally accountable to apply the labour standards established in the Convention throughout their supply chains and it would force them to conduct meaningful due diligence, ensuring responsibility. To be clear, a GPN Convention is about giving workers *inter alia*, a voice in wage setting to determine their ‘living wage’ and the right to negotiate working time, rest breaks etc. The underlying assumption is that the ILO already has the normative tools at its disposal and the constitutional mandate to adopt a standard on GPNs, which would not require radical change in the Organization’s current institutional design. Although political will at the ILO is currently not discernible (employers and developing countries may ‘push back’), employers have already agreed that ‘current ILO standards may not be fit for purpose’ at the ILC in 2016 (ILC.105/PR/14-1 para.25).

To integrate the horizontal and the vertical, private, public and social actors must accept their responsibilities along the production network, most notably the idea that a TNC in country X can be held responsible for the employment practices of its suppliers in country Y. In short, any change in material conditions for workers must start with the idea of responsibility for decent work across borders (vertically). While ILO member States must bear some degree of responsibility for labour violations within their borders, it should not be automatically assumed that other States or private actors are without their share of responsibility. For example, the following actors could be deemed responsible for a labour rights violation on an Indonesian palm oil plantation, where the TNC’s headquarters is located in a different country: (a) the Indonesian government where the violation occurred; (b) the plantation owner; (c) the supplier (TNC); (d) the brand (TNC); and (e) the country in whose territory the TNC resides (either the brand or the supplier). This does not suggest a reduction in the responsibility of ILO member States, but rather that responsibility for labour violations may occur outside of the borders of sovereign states.

As a starting point, a GPN standard would have to be compatible with existing vertical public governance forms such as WTO trading rules, and thus non-discriminatory and open to new members, which in the ILO would be relatively straightforward as all WTO members are also members of the ILO and all Conventions are open to ratification by all ILO member States. The importance of having this standard agreed at the ILO, as opposed to the WTO, is that it would automatically give a foundation for tripartite action. Whilst a tripartite foundation for a new standard (Convention) would grant it a certain degree of legitimacy in the global economy it also offers all member States (and national employer associations) an equal voice on its eventual content, even those who do not intend to ratify the Convention. However, it is through tripartism that the ILO established one of the most innovative instruments for global labour governance.

The MLC, 2006 is a potential blueprint for a GPN standard (Convention)²³⁸ and the following elements are needed for it to be effective: 1) the awarding of a ‘labour certificate’; 2) the principle of ‘no more favourable treatment’; 3) a self-contained inspection and dispute resolution mechanism written into the Convention; and 4) the setting of substantial obligations with reference to international labour standards without countries having to ratify them.

The MLC notes that: ‘each Member shall ensure that ships that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by this Convention’ (Regulation 5.1.3). This is the principle ‘incentive’ for employers to comply with the MLC (and lobby flag States for ratification) as without this certificate, port States (who have ratified the MLC) are able to inspect the vessel to ensure compliance. A certificate or label under which a TNC (shipping lines in the case of the MLC) complies thus seems an appropriate way to incentivise these companies to comply with the standard and for member States to ratify. A GPN certificate would have to be affixed by the host country or ‘country of origin’ (analogous to the maritime certificate, which is issued by the flag State) and would indicate whether goods and services (both domestic and international) were produced

²³⁸ As the quotes at the end of Sub-section 7.3.2, and the comments by the workers’ spokesperson at the ILC in 2016 show this is an idea that the workers have stressed at multiple points during the discussion on global supply chains.

in accordance with applicable legislation (discussed below).²³⁹ The certificate could provide for the ‘mutual verification’ among destination/home country governments subject to confirmation by an independent Committee at the ILO, which could deal with complaints and monitoring. Coupled with this could be the principle of ‘no more favourable treatment’ (Article 5, MLC), whereby non-complying/unratified member States will not be treated more favourably than those who have committed to its principles. The practical consequence comes out clearly in the port State control provisions of Title 5 of the MLC, under which ships of all countries (irrespective of ratification) will be subject to inspection in any country that has ratified the Convention, and possibly detained if they do not meet the minimum standards of the MLC. Hence, member States ‘have an incentive to ratify and implement the MLC so that their shipping will not be singled out by PSC [port-state control] inspectors as problematic’ (Lillie 2008 p.205)

If a ‘GPN certificate’ was included within the principles of the Convention then a mandatory and universal verification system would have to be included that could be quickly mobilised on the basis of any complaint of violation, which would have to be subject to an objective and adversarial process. A principle benefit of having this standard approved at the ILO is that it would be subject to the ILO’s supervisory mechanisms, principally the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA). However, the current system of supervisory mechanisms at the ILO assigns responsibility to only those States where the violation occurred (mainly developing countries) and a more relevant idea, which would increase the role of the Office, would be the establishment of a ‘special GPN Committee’. Similar to the Special Maritime Committee, the CEACR and the CFA, a GPN Committee would require an expanded institutional role for the Office, namely that when it detects violations with the standard it should no longer assume that the sole actor responsible is the member State where the violation occurred, rather it could be private actors as well as other member States.

²³⁹ There are two immediate problems that could diminish the effectiveness of a GPN certificate. Firstly, as evident in Indonesia, the role of governments as affixers could be problematic, considering their current government policy. Secondly, although in sectors such as tea and bananas (less so palm oil as it is destined for a multitude of products) there is typically only one ‘country of origin’, in other GPNs such as electronics and garments there are multiple countries involved (e.g. cotton production in Uzbekistan and coltan, used in mobile phones, mining in the Democratic Republic of Congo).

The Committee could also consider receiving complaints from CSOs, GUFs and workers' unions that are not necessarily members of ITUC. This would be subject to the discretion of the Committee but, as evident in the case of Indonesia, the lack of independent unions questions the extent to which the current supervisory mechanisms can establish a comprehensive picture of labour violations. Extending this responsibility to the member States that could effectively assist in remedying these violations – for example the home country where the brand or lead firm resides – would be a more realistic picture of responsibility. Another advantage of a 'stand-alone' GPN committee would be the option of a 'tacit amendment procedure', as detailed in the MLC, which allows the updating of aspects of the Convention without a full meeting of the ILC. This is particularly important considering the complexity and magnitude of a GPN standard and that revisions may be necessary, which would be very time consuming under the normal ILO process (a full meeting of the ILC).

Incorporating TNCs and other member States into the ILO's complaints mechanism would require discretion by the Committee as to whether to receive or reject complaints, particularly whether the complainant has a 'direct interest' (political or otherwise) in its outcome. The current Commission of Inquiry²⁴⁰ has routinely applied its authority to request information from vertical actors. For example, a complaint filed by Ghana against Portugal, in relation to a violation of the Abolition of Forced Labour Convention (C.105) by companies originating from Portugal, resulted in the establishment of a Commission of Inquiry. The Commission investigated allegations against the concerned TNCs and visited workplaces and met and interviewed workers.²⁴¹ Adopting a GPN standard would therefore require that all actors deemed responsible for labour rights violations be subject to the ILO's sanction mechanisms. Article 33 of the ILO's Constitution, as described in Chapter 4, states that the Governing Body may recommend to the ILC 'such action as it may deem wise and expedient to secure compliance'. Nothing in the wording suggests that this

²⁴⁰ Under the ILO Constitution, if a complaint is filed against a member State for not complying with a ratified Convention by another member State which ratified the same Convention, the Governing Body may form a Commission of Inquiry, consisting of three independent members, which are responsible for carrying out a full investigation of the complaint. To date 11 Commissions of Inquiry have been established. If a country does not fulfil the recommendations of the Commission then the Governing Body can instigate Article 33 (as discussed in Chapter 4).

²⁴¹ The CEOs of the private companies concerned were invited to give evidence before the Commission.

prohibits sanctions against private actors or sanctioning member States outside of the location where the violation occurred.

Such verification of any complaints could in turn lead to mandatory on-site inspections performed by an independent monitor under the auspices of the ILO, similar to that piloted in the Better Work Program where the ILO plays the role of ‘monitor of monitors’.²⁴² This should be done through tripartite action, which would compel the host country to cooperate and be bound by the result. However, this goes far beyond the ILO’s constitutional mechanisms (for example under Article 26 a Commission of Inquiry into allegations of violations of Conventions can only take place with the consent of the member State under examination). Therefore, a legal obligation would have to be placed firmly within the principles of the standard (similar to the MLC’s Title 5). Finally, the Convention would have to stipulate the consequences of violations of the Convention, whether this is a formal notice, suspension of the certificate or full withdrawal of recognition.

Whilst a Recommendation may be more realistic, a Convention avoids any contradiction between its normative scope (i.e. the mandatory standards enshrined in its Articles) and a member State’s obligations under existing ratified Conventions. As the MLC superseded most ILO maritime Conventions,²⁴³ countries ratifying the MLC were no longer bound by the previous ratified Conventions, but instead bound by the provisions of the new global standard. In fact, having the ratification of a package of Conventions as a prerequisite risk limiting participation or potentially stopping it from ‘getting off the ground’ because of the time it takes to agree, ratify and implement an ILO Convention. One possible alternative is the ‘substantial equivalence’ concept included in the MLC (Article 6). An important concern in the case of the maritime sector was that not all flag States had ratified every maritime Convention and the Office was wary of the time it took for ratification and implementation (PAO Notes). Hence, under Article 6, a member State, ‘which is not in a position to implement the rights and principles in the manner included in [Part A of the Convention] may ...

²⁴² The ILO has considerable technical expertise in this area and the International Training Centre in Turin (ITC-ILO) would be an appropriate place for training the monitors.

²⁴³ Before the MLC was adopted there were 38 ‘up-to-date’ ILO Conventions that the ILO had adopted that dealt with maritime related issues.

implement Part A through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.’²⁴⁴ The inclusion of ‘substantial equivalence’ in a GPN standard would therefore mean that national laws deemed to provide equivalent or superior protections to workers need not be changed.

A GPN standard could never offer guarantees on every aspect of the working conditions prevailing during the production process and it would be impossible to include all the 77 ‘up-to-date’ ILO Conventions in its principles (particularly as many are sectoral standards). Fundamental Conventions are the obvious candidates for inclusion in a GPN standard because all parties agree on their relevancy and they have ‘special significance’ under the 1998 Declaration. However, this risks diluting ILO labour standards even further and the standard must go above and beyond existing forms of vertical private and social governance. The inclusion of the four Governance Conventions, prioritised under the 2008 Declaration on Social Justice, would in particular broaden the scope of the standard well beyond existing vertical forms of governance. As the standard is likely to be not just one Convention but several sectoral Conventions,²⁴⁵ as the social partners are typically organised along sectoral lines and as evident from the two cases the sectoral context is important for understanding labour governance, it could follow the MLC in consolidating existing ILO sectoral standards and therefore, would not change the content of standards but rather their method of implementation. Table 7.3 lists current ‘up-to-date’ ILO Conventions and their link with several sectors intimately connected to GPNs. As transport-related Conventions are relevant to all sectors and GPNs, these could also be included under the normative scope.²⁴⁶

²⁴⁴ It further states that ‘any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent ... if the Member satisfies itself that; (a) it is conducive to the full achievement of the general object and purpose of the provision of provisions of Part A ... and (b) it gives effect to the provision or provisions of Part A’.

²⁴⁵ The internal restructuring of the ILO under Ryder, which elevated the sectoral dimension of the ILO’s work and the fact that SECTOR is the lead Department on the global supply chain ILC item, will be instrumental in successfully progressing a sectoral focus.

²⁴⁶ It should be noted that the MLC is one of the most complex ILO Conventions as it already ‘packages’ numerous maritime ILO Conventions, and its inclusion may be beyond the scope of a GPN standard.

Table 7.3: Normative scope of a global production network standard

| | | Sectoral Conventions | | | | |
|--|--------------------------------|--|------------------------------------|--|--|--|
| | | Plantations/agriculture | Fishing | Mining | Construction | Manufacturing |
| | | Labour Inspection (Agriculture) Convention (C.129)*; Plantations Convention (C.110); Rural Workers' Organisations Convention (C.141); Safety and Health in Agriculture Convention (C.184) | Work in Fishing Convention (C.188) | Medical Examination of Young Persons (Underground Work) Convention (C.124); Safety and Health in Mines Convention (C.176) | Asbestos Convention (C.162); Safety and Health in Construction Convention (C.167) | Weekly Rest (Industry) Convention (C.14); Promotional Framework for Occupational Safety and Health Convention (C.187) |
| Universal Conventions (applicable to all sectors/GPNs) | Governance Conventions | Labour Inspection Convention (C.81); Employment Policy Convention (C.122); and Tripartite Consultation (International Labour Standards) Convention (C.144) | | | | |
| | Fundamental Conventions | Forced Labour Convention (C.29); Freedom of Association and Protection of the Right to Organise Convention (C.87); Right to Organise and Collective Bargaining Convention (C.98); Equal Remuneration Convention (C.100); Abolition of Forced Labour Convention (C.105); Discrimination (Employment and Occupation) Convention (C.111); Minimum Age Convention (C.138); and Worst Forms of Child Labour Convention, (C.182) | | | | |
| | Transport Conventions | Seafarers' Identity Document Convention (Revised) (C.185); and Maritime Labour Convention, 2006 | | | | |

*Note: *Whilst the Labour Inspection (Agriculture) Convention (C.129) is a Governance Convention it is not applicable to all sectors.*

Whilst the development of a GPN standard is no easy task, support should be expected first and foremost from workers and their organisations (local, national, regional and global federations). For workers, there is no real alternative to strong, enforceable guarantees through public horizontal governance that empowers them to exercise associational power. The introduction of a GPN Convention could offer an attractive approach to help them embed TNCs and put labour standards into practice. The role of national and international unions would be paramount in lobbying governments to ratify, particularly in sectors where workers already have associational power through institutional links across the production network such as in tea, electronics and garments. The difficult social partner to ‘persuade’ would no doubt be the employers, particularly as in recent years there has been growing employer opposition to *any* new standard-setting. In addition, although the employers have agreed to three further meetings on decent work in global supply chains, this does not guarantee that they will consent to a standard-setting discussion at the ILC.

Thus, the potential future of a GPN standard will be decided decisively by whether or not it can captivate a ‘critical mass’ of member States. Though the Convention could function well enough with a limited number of ratifications, the purpose of such a Convention is to promote decent work more effectively than current forms of labour governance, which means participation by a large number of countries. For the 153 member States who have already ratified the fundamental Conventions (who derive a moral and reputational benefit from these commitments) the advantage of a GPN standard and its accompanying certificate could provide something more tangible. Moreover, with the ‘substantial equivalence’ principle presented above, the circle of eligible member States could immediately expand. As demonstrated in the MLC case, the nature of a ‘maritime certificate’, the consequences of violation and leverage it gave to horizontal actors resulted in the major flag States being the first countries to sign up to the Convention, such that it reached the threshold of 30 per cent world gross tonnage of ship 5 years before it met the minimum number of member States (30) ratifying the Convention. This delay highlights the importance of orchestration by the Office (Baccaro 2015), working directly with labour in providing ideational and material support to empower them and leverage their national governments.

7.4. Conclusion

‘A massive project lays before the organisation, but only so long as it does more than survive, and also remains true to itself, showing how effectively it can implement the essential functions it was originally assigned.’

(2013 p.258).

The ILO remains the principal agency for establishing and promoting labour conditions across the globe but as the ILO approaches its centenary in 2019 many critics have questioned the ILO’s role in an age of Global Transformation. Global labour governance has become multifaceted, multi-scalar and more complex than ever, combining horizontal and vertical private, social and public governance. GPNs are now the driving force behind a reconfiguration of the global economy and a new paradigm of international development and labour governance. The organisation of production and distribution through GPNs has undermined the traditional paradigm of global labour governance and although the ILO’s inherent interests and responsibilities are aligned with these networks its traditional horizontal structure does not capture the reality of a globalised system of production or a vertical form of labour governance. The system of horizontal governance (international labour standards enforced by the state and bolstered by worker structural and associational power and collective action by the social partners) served the interests of developed economies for much of the twentieth century, but these ‘rules of the game’ that facilitated the ‘Great Transformation’ are no longer ‘fit for purpose’ in the wake of a ‘Global Transformation’ of work and employment.

The discussion at the ILC in 2016 confirmed the analysis presented in Chapter 4 that the employers will always want to ‘apply the brakes’ on initiatives put forward by both the workers and the Office and its D-G. However, although the adoption of the MLC required ‘steering’ by the governments and the Office it has achieved much greater coverage than any other sector-specific Convention (as a percentage of the workforce as opposed to ratification by member States) and just like the MLC, the potential impact of a new standard for GPNs is much greater than conventional (horizontal) ILO governance. ‘Spaces of exception’ would no doubt remain, but the ILO is the only international organisation with a mandate to ‘close’ or ‘fill’ existing gaps through public, as opposed to social or private governance. The key point is that

globalisation has undermined the existing (horizontal) system but the ILC in 2016 has produced an agreed text, so at last the ILO is moving in a different direction – a direction that potentially transforms the ILO’s current role in global labour governance towards vertical public governance.

As always, the road to a new ILO Convention is long, with the Governing Body’s proposed timetable for further research and future meetings on decent work in global supply chains extending to 2021 (GB.328/INS/5). The discussion is expected to be fractious and there is no guarantee that the tripartite constituents will eventually agree on a new Convention, particularly as proposals for new standards have in recent years been adamantly opposed by employers and many developing countries. Anybody familiar with the ILO would know that having an ILC general discussion is only a first step, which provides no guarantee for action and real change but needs to be followed up with additional steps, such as putting the issue on the agenda of future conferences with a view to standard-setting, and (most importantly) implementing budgetary and organisational changes. These steps undoubtedly take time, but as one ILO official noted, the issue of global supply chains is like a ‘rolling stone; no one can stop it, but equally no one knows where it will end up’ (PAO Notes). In other words, once text is agreed at the ILC, it provides a reference or ‘anchor’ for future meetings, policy ideas and developments. The ILC discussion in June 2016 highlights the desire of the ILO (the workers, most governments and the Office) to re-conceptualise its role in an age of Global Transformation. The idea, in other words, is to develop a system of labour governance that would incorporate both the organisational scales (vertical dimension) of GPN actors and their territorial embedding (horizontal dimension).

Leverage is important here as the ILO cannot hope that persuasion and expertise are sufficient in dealing with the looming labour governance deficits particularly as naming and shaming has fallen on deaf government ears. In other words, the ILO must be a ‘determined actor’ rather than just a ‘moral commentator’ (Ryder 2012). The ILO is well placed to govern labour vertically by understanding the incentives of the different actors to conform or not conform to adopted labour standards. Although CSR has led to improvements in working conditions for some workers, in most GPNs it falls short of the progress envisioned by the ILO

Constitution, namely a ‘just share of the fruits of progress to all’ (ILO 1944). Whilst the ILO is not involved in vertical private governance, this is not a space that the ILO could (or want to) readily occupy.

The first step has been taken by the ILO to address the challenges of promoting decent work in GPNs by extending public forms of labour regulation to vertical production networks. While the changes being proposed at the ILO are potentially paradigm shifting, the outcomes of this process are by no means clear. Whilst standard-setting takes a long time in the ILO (as illustrated by the MLC), this process has the potential to be transformative. This different path would see the ILO intertwine new vertical rules into the horizontal system in order to ‘embed’ the GPNs of TNCs that ‘cannot be allowed to operate like an independent republic’ (PAO notes). As a result, the idea of a ‘global MLC for all industrial sectors’ or some other standard for decent work in GPNs will now be heard, giving voice to the many marginalised workers toiling in these networks.

8. Conclusion

‘This epilogue is but a prologue. How will our successors 50 years from now, judge what we will then have done during our second half century?’

Wilfred Jenks (1976 p.263), Director-General (1970-1973) on the ILO’s 50th anniversary

In 2019 the ILO will celebrate its 100th year. However, as David Morse, the longest serving Director-General (D-G) of the ILO (1948-1970), proclaimed in 1969: ‘What, however, are we celebrating? In my view, the most significant feature of the fiftieth anniversary is that it marks the survival of the ILO’ (Morse 1969b p.1). The ILO’s survival will no doubt be assured by its status within the UN family and the fact that it is the only international organisation with the constitutional mandate to bring capital, labour and the state together to promote decent work. But it is no longer enough, as Guy Ryder has made clear, for the ILO to simply act as the ‘social conscience of the international system ... the ILO must be a *determined actor* not a *moral commentator*’ (Ryder 2012 emphasis added). Echoing these sentiments, the Workers’ spokesperson, in her opening statement to the International Labour Conference (ILC) in 2016, argued that:

‘As much as the ILO was founded almost a century ago to deal with the aftermath of a war wrecked world, nineteenth century imperialism and colonialism, and the beginning of twentieth century globalising economies, today, the ILO is confronted with the essential question of whether its aims, structures and instruments are capable of dealing with the new world of work and the different face of globalisation in the twenty-first century’ (PAO Notes).

In this context, it is pertinent to ask: how and under what conditions is the ILO able to (re)establish effective labour standards (voice, equity and efficiency) under the Global Transformation (in general) and GPNs (in particular)?

In common with other critical realists, my research was underpinned by a desire not simply to describe but to discover and above all explain ‘the existence of alternative possibilities hidden within the dominant social order’ (Lopez 2006 p.158).

While working with the ILO ‘on the inside’, and then working for the Organization ‘in the field’, it became apparent that hidden within the dominant social order of current forms of global labour governance (i.e. private, voluntary and self-regulatory standards, with a focus on compliance by business, rather than governments, and ‘enforcement’ via the market mechanisms rather than hierarchical authority) was a determination to develop a new international labour standard for decent work in global production networks (GPNs). Under the leadership of Guy Ryder, the Office had resolved to ‘close’ spaces of exception and more firmly embed transnational corporations (TNCs) in the ILO’s traditional system of horizontal labour governance, empowering labour’s voice and arming trade unions with greater leverage over TNCs at the local, national and international levels.²⁴⁷ The ‘alternative possibility’ of a new standard (international Convention) for decent work in GPNs, which by its very nature would shift the attention of the ILO from the horizontal to the vertical and constitute a new paradigm for global labour governance, has arguably been hidden from the outside world by ‘ILO speak’ (understated and neutral language), orchestration by the Office (‘behind the scenes’ autonomous action), and the ‘glacial process of change’ (the extended time it takes to negotiate, agree, ratify, implement and enforce a new Convention). Working ‘on the inside’ over an extended period has brought the ‘determined action’ of the ILO to light in the preceding chapters.

Having demonstrated the propriety of GPN theory to understand the interaction of horizontal and vertical labour governance, there is still the pressing question of policy relevance and how GPN research can be mobilized to determine whether, and if so how, labour might capture more economic and social value (cf. Coe and Yeung 2015 pp.212–213). The Employers’ Group at the ILO have tried to cloud this question with analytical fog – they would like the ILO and the Office to see a ‘dish of spaghetti’, not ‘pearls on a string’ (ILC.102/PR/11 p.5-6). GPN theory enables policy-makers to see how ‘pearls on a string’, from the lead firm (transnational corporation) to the local sub-contractor or plantation owner, vertically dissects horizontal governance with all the associated (territorial) outcomes for different social actors, most notably labour

²⁴⁷ Although the ILO is a tripartite organisation, it is still the International *Labour* Organization. When Albert Thomas, the ILO’s first D-G (1919-1932), was challenged on his ‘allegiance’ to the workers’ side, ‘he could, of course, and often did, point to the text of the Constitution and argue that the Organisation had been created for the workers and to improve their conditions’ (Phelan 1936 p.236).

(whether work is decent or indecent). By focussing on the strings of pearls that connect workers in sector-specific, multi-actor and multi-scalar GPNs, the ILO can reinforce its expert legitimacy and orchestrate the Workers' Group and a sufficient number of member States to prevent employers from 'applying the brakes'.

Emancipation and empowerment of workers' voice is not just a task for the ILO – as academics, we can make a case for more overtly partisan scholarship²⁴⁸ based on action research *with* the ILO to determine how, where and when the Organization can more effectively promote and protect decent work for all (Lakhani et al. 2013 p.466). This research needs to be meaningful to social actors, where the decisive test is whether theory explains as well as identifies causal mechanisms in social change towards social justice. Thus, research needs to be designed to have 'impact' (Edwards 2015 p.290), and to have impact it should 'democratiz[e] the research process, acknowledg[e] lived experiences and contribut[e] to social justice agendas to counter prevailing relations that are deeply gendered, classed and racialized' (Reid and Frisby 2008 p.93), with a 'much greater focus on both action and collaboration' (Huzzard and Björkman 2012 p.163). Guy Ryder (2015a) shares the same vision:

'My approach to leading the ILO has been that it's essential that the ILO increases its capacity to better understand what's going on in the world of work ... upon that basis, we need to act more effectively together [with academia] upon our understandings, and it will take political courage from the leadership and others to steer the ILO's role.'

Whilst the findings of research are always subject to (re)interpretation by the ILO's tripartite constituents, and then subject to the Organization's own democratic ('glacial') procedures and practices before any changes come to light, this is no excuse for the predominant approach to research on the ILO 'from the outside'. As a researcher not to engage in this (action research) process 'is to distance oneself from the social group's intellectual engine' (Brook and Darlington 2013 p.239).

²⁴⁸ What Brook and Darlington (2013 p.235) refer to as the 'Gramscian intellectual', a scholar who is 'rooted in, and bound to, a specific social group'.

Starting as an intern at the ILO, I was somewhat ‘distanced’ from the intellectual engine of the Office and more inclined to share the despondency of Guy Standing (2008; 2010a) and others (Tsogas 2001; Hagan 2003; Alston 2005) who have denigrated if not written off the Organization. As an international civil servant, engaged in a very different relationship with colleagues in SECTOR and then working (literally) in the field, my despondency turned to hope. Just as Albert Thomas in 1920 stressed that the Office had to *mener une politique* and, ‘take the initiative *vis-à-vis* employers and governments and urge upon them concrete policies to combat unemployment and improve working conditions’ (quoted in Alcock 1971 p.50), Guy Ryder today is empowering workers’ voice, taking the initiative and ‘steering’ fundamental and potentially paradigmatic changes at the ILO. This transformation will speak volumes for the prospects of decent work for millions of workers around the globe and for the continuing relevance of the ILO in an age of Global Transformation.

9. Reflections on the Research Limitations and Future Research Challenges

As with any research project, limitations became apparent during and after the collection and analysis of data. Reflection on these limitations presents opportunities and challenges for future research. While some of these issues have already been discussed and addressed (in Chapter 3) there are two recurring issues that deserve more attention: 1) case selection; and 2) data collection and analysis.

9.1. Case selection

As with any action research rooted in collaboration there were several constraints when it came to case study selection. The original proposal for the PhD research was to undertake a comparative study of decent work deficits in two ILO member States and two sectors that were connected to wider global production networks (GPN). At the ILO, I worked on the plantations area of critical importance (ACI) where six countries (Panama, Dominican Republic, Ghana, Malawi, Sri Lanka and Indonesia) and three commodities (bananas, tea and palm oil) were singled out. These cases were selected, through a process of dialogue between ILO officials and the tripartite constituents, not just because of the importance of the commodity to the economy in question, the potential for vertical governance or, as noted in Chapter 3, whether they would be ‘nice places to visit’ (PAO Notes), but also because of ‘ILO politics’ (both internal, within and between departments, and external, between the Office and member States).

As a junior member of staff, I had limited influence in the selection of cases – some of my ideas took root²⁴⁹ while others fell on stony ground. Ultimately, the desire to conduct a ‘matched comparison’ was not the driving force behind the ILO’s action under the ACI²⁵⁰ as politics and ‘practicalities’ intervened. For example, the original idea for the tea sector was to compare Sri Lanka and Malawi²⁵¹ however, the

²⁴⁹ I originally suggested palm oil in Indonesia as a suitable case to explore the impact of GPNs because there was a lack of conclusive research on the conditions of work faced by the millions of workers who toil on these plantations.

²⁵⁰ My suggestion for Malaysia palm oil as a suitable comparison was not agreed as it was not a country of focus for SECTOR during the 2014/2015 biennium.

²⁵¹ Same sector, both producing primarily for export but significant differences in the quality of tea being produced and initial impressions of decent work.

government of Malawi failed to agree to the study.²⁵² Following from this I entertained the idea of comparing Panama bananas, Sri Lanka tea, Indonesia palm oil and Ghana palm oil as I was granted access to all the questionnaire and focus group discussion data. However, within the time (and word) limits of a PhD it was decided that these further comparisons could not be incorporated in the thesis.

Within these methodological constraints I chose two countries and sectors that were ‘polar opposites’ in terms of initial impressions of decent work and ratification of key ILO Conventions. In an ‘ideal world’, as opposed to the world of ILO politics, a more effective way to test the ILO’s role in the tea sector would have been to compare Sri Lanka and India. Sri Lanka has ratified the Plantations Convention (C.110), whereas India has not. Both countries have a predominately Tamil workforce in the tea sector with a similar history of industrial relations, both produce primarily for export and both have close connections with the ILO and its field offices. A comparative study between two similar countries and sectors would have its own analytical merits but India was not on the ILO’s ‘hit list’ and my own time and resources clearly would not stretch to a comparable level of field data (questionnaires and focus group discussions).

9.2. Data collection and analysis

Despite a prolonged period of participant observation and the data collected in focus groups, it proved difficult to report verbatim the views and experience of research participants. The data from the ‘participant-as-observer’ research was based primarily on diary notes taken at official ILO meetings and internal task-team meetings. Although my job at these meetings was often to take notes, verbatim speech was impossible to capture without the use of a recorder. Similarly, any informal one-on-one discussions with ILO staff were also not audio recorded as participants spoke much more freely ‘off the record’.

Focus group discussions in the field were particularly difficult to transcribe as they were conducted in the local language²⁵³ with simultaneous interpretation. Whilst

²⁵² Almost five years on from its initial approach by the ILO the research in the Malawi tea sector has still not been approved by the government.

²⁵³ Bahasa in Indonesia and Sinhalese and Tamil in Sri Lanka.

there is fundamentally a disconnect between what the participants said and the interpreted material, it was the only option in the field. As a result, notes were written by hand during the focus group discussions and later elaborated on. In Indonesia, I was unable to participate in the focus group discussions but was given the hand-written notes of an ILO official to analyse. This creates another barrier in terms of data collection as the official might not have produced notes in relation to topics I would determine to be crucial to an analysis of the GPN and the role of the ILO, for example any mention of the ILO's responsibility in relation to TNCs.

Consequently, these limitations in respect to data capture have an impact on data analysis. Whilst NVivo was used as a general methodological tool, to organise the diary notes as well as the notes from the focus group discussions, as none of the focus group discussions or interviews at the ILO were recorded it was not possible to conduct a systematic coding of the responses.

9.3. Future Research

Further investigation on the role of the ILO in an age of global transformation is needed. Although the International Labour Conference (ILC) Conclusions (June 2016) on decent work in global supply chains provided a convenient empirical 'end point' for my research, process analysis emphasises that outcomes are also inputs to the next stage of social interaction. Thus, the ILC Conclusions provided the foundation for a 5-year work programme based around three more tripartite meetings to further explore the ILO's role in global supply chains and provide the (empirical) foundations for a new standard.²⁵⁴ Further research is needed to examine this evolving agenda for the ILO.

For the ILO to progress a standard on decent work in GPNs it needs to enhance its expert legitimacy (its moral legitimacy is occasionally questioned but fundamentally assured), otherwise the Office is unlikely to be in a position to orchestrate the tripartite constituents and steer the Organization along a different path.

²⁵⁴ These three meetings include: a meeting of experts on decent work and protection of fundamental principles and rights at work for workers in export processing zones (2017); a meeting (format to be determined) on cross-border social dialogue to address decent work in global supply chain issues, including human rights due diligence (2018); and a meeting (format to be determined) on paragraph 25 of the ILC conclusions concerning decent work in global supply chains (2019) (GB.329/INS/3/2).

Research on the world of work that ‘privileg[es] the voice of the marginalized, exploited and oppressed in order to improve knowledge of their relationships to underlying structures of subordination as a means to challenge them’ (Brook and Darlington 2013 p.239), is clearly called for. The research presented here on GPNs and global labour governance is a ‘blueprint’ for future research that the Office could undertake to understand how best to promote voice and equity for labour rather than efficiency for capital.

Whilst working at the ILO it became apparent that the role of the Office and the Director-General (D-G) was pivotal in the adoption of the ILC Conclusions in 2016. Previous studies of international civil servants (ICSs) working for the Organisation for Economic Co-operation and Development (OECD), the World Bank and the European Commission paint a picture of ‘neutrality’, with ICSs producing ‘independent research and policy guidance’ (Trondal et al. 2014). To be sure, officially, ICSs are not in any sense representatives of governments or other entities, nor are they proponents of their policies. Consequently, ICSs typically define themselves and their roles in line with an epistemic ideal which emphasises autonomy, trust and horizontal communication both inside and outside the organisation, with role perceptions directed primarily towards their expertise and educational background, as well as towards external professional networks (Marcussen and Trondal 2011). In practice, of course, ICSs use their ‘expert authority’ and conduct ‘independent policy analysis’ either to ‘depoliticise’ particular issues or ‘promote’ a particular policy agenda. The role of ICSs in the ILO is more explicit in this respect, as the Office of the ILO works towards the ‘philosophical idea’ (Schmidt 2010) of ‘decent work for all’. This is not to suggest that ILO officials are neither bound by the International Civil Service Commission standards of conduct nor personally hold to the independent values of ICSs, but rather to highlight the scope of ICSs within the ILO to engage in autonomous policy making. This presents an opportunity for further research on the role of the International Labour Office and its civil servants to consider how they remediate tensions between the competing expectations of their roles and how these roles steer the future course of the ILO in an age of globalisation. Of course, this would have to be done from the ‘inside’ to understand the inner workings of the Organization and its staff.

Whilst it has not been the purpose of this PhD to go into detail regarding the discursive struggles and strategic reframing undertaken by Guy Ryder in relation to supply chains, what should be apparent is the influence of institutional entrepreneurs in steering a course for the ILO (Thomas and Turnbull 2017). Most of the critiques regarding the ILO were written before 2012 and have not been able to comment on the managerial and strategic reforms introduced by Ryder, which were designed to meet some of the problems identified in their analyses. Therefore, an important avenue for further research will be to consider future orchestration (Abbott et al. 2015) and collective action framing (Benford and Snow 2000) by Guy Ryder in comparison to previous D-Gs such as Juan Somavía and Michel Hansenne.

Finally, future research needs to examine the utility of the horizontal and vertical governance framework via both further validation and development. A key first step in validation would be empirical comparisons of the framework across other production networks (e.g. contextualised comparisons between India and Sri Lanka tea). Whilst the framework considers the implications of institutional influences at the local, sectoral, national and international levels, more work is needed to understand how relationships in one part of the network affect relationships in other parts. Moreover, since the focus has predominantly been on the plantation workers at the bottom of the network, additional research is needed to understand how other workers such as those in processing and shipping and logistics have an impact, or are affected by, the nature of these vertical relationships.

Appendix 1: How the ILO Works

1. Structure and governance

1.1. The Director-General

The ILO Director-General (D-G) is the overall head of the International Labour Office. The D-G is appointed by the ILO's Governing Body on a 4-year term on a secret majority vote. At the 2012 election there were nine candidates. In total, there have been ten D-Gs since the ILO's establishment, as summarised in Table A1.1 below. Typically, D-Gs have come from labour ministries or other high-profile government positions. Guy Ryder was the first D-G to come from outside the government group.

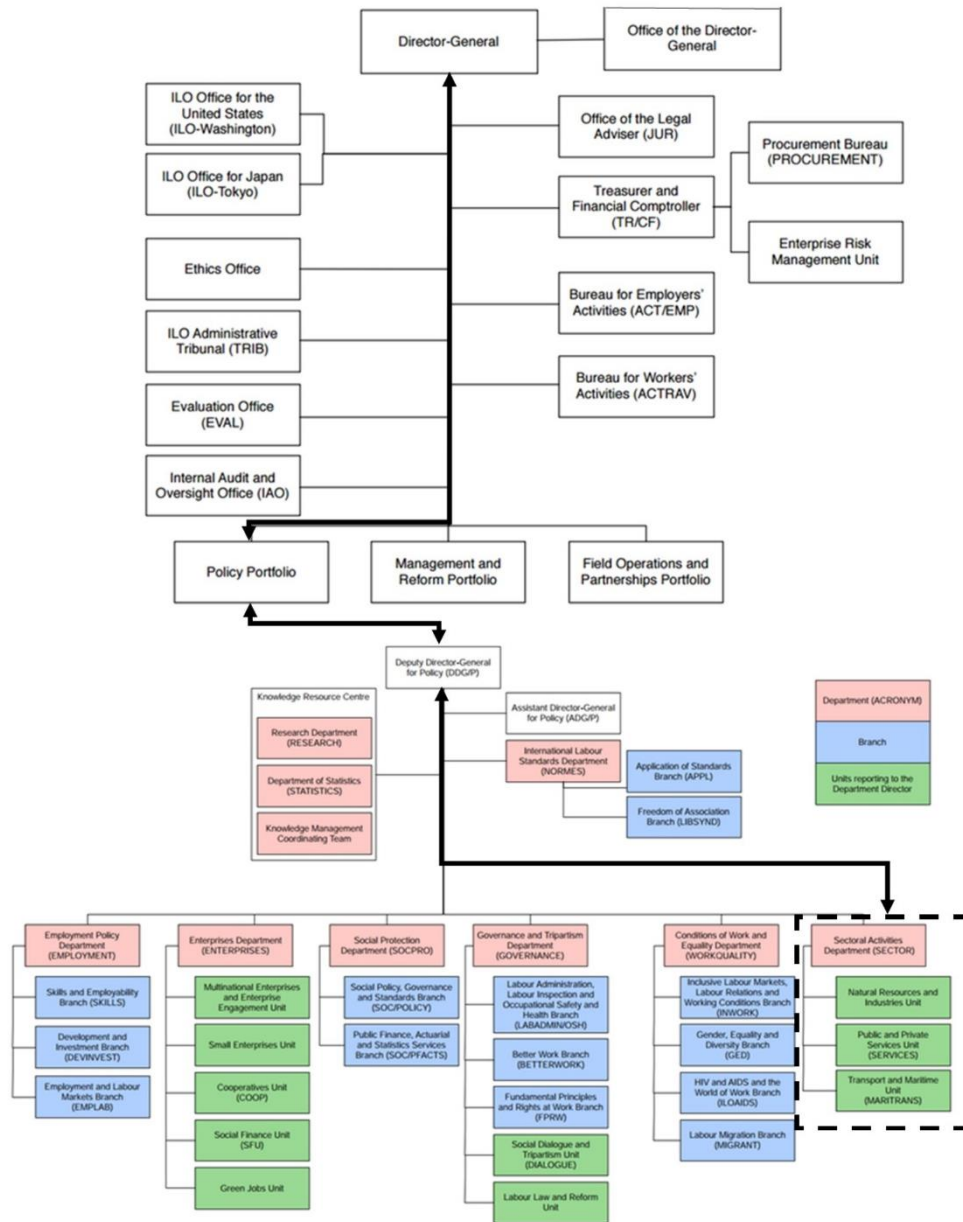
Table A1.1: Director-Generals of the ILO

| Director-General | Country of origin | Period in office |
|-------------------|-------------------|------------------|
| Albert Thomas | France | 1919-1932 |
| Harold Butler | United Kingdom | 1932-1938 |
| John G. Winant | United States | 1939-1941 |
| Edward Phelan | Ireland | 1941-1948 |
| David A. Morse | United States | 1948-1970 |
| C. Wilfred Jenks | United Kingdom | 1970-1973 |
| Francis Blanchard | France | 1974-1989 |
| Michel Hansenne | Belgium | 1989-1999 |
| Juan Somavía | Chile | 1999-2012 |
| Guy Ryder | United Kingdom | 2012 to date |

1.2. The International Labour Office

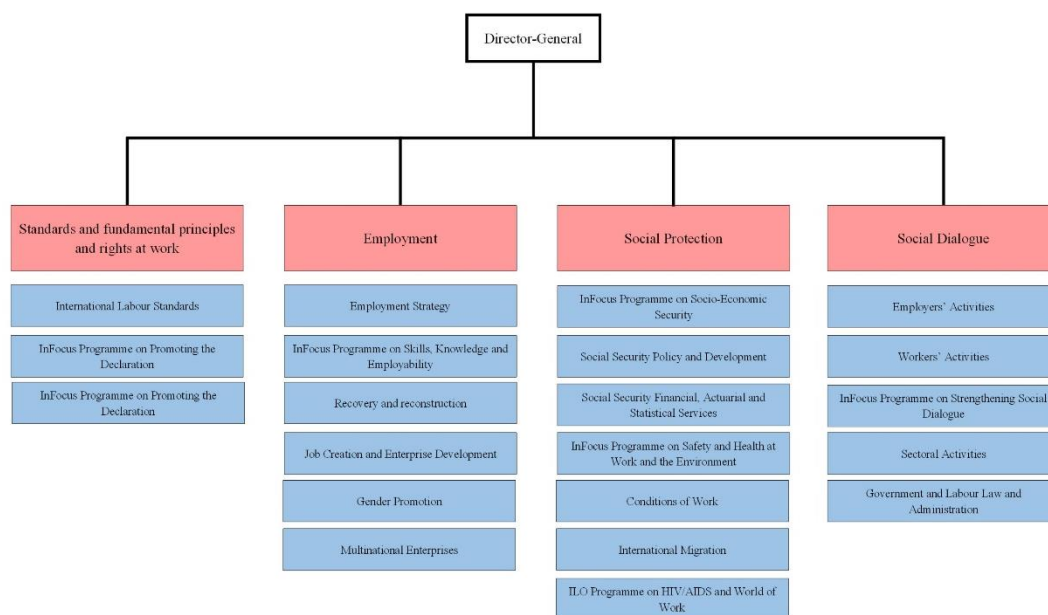
The International Labour Office is the permanent secretariat of the ILO. The Office employs approximately 2,800 international civil servants at its headquarters in Geneva, Switzerland and in its 38 Field Offices. The majority of the staff in the Field Offices are technical cooperation staff, whereas in the headquarters they are permanent staff. There are five Regional Offices: Europe and Central Asia, Asia and the Pacific, Arab states, Latin America and the Caribbean and Africa. Under the Regional Offices there are also smaller Field Offices: thirteen in Africa, seven in Latin America and the Caribbean, eleven in Asia and the Pacific and two in Europe. The ILO established the International Training Centre in Turin (ITC-ILO) in 1965, which provides education and training for both constituents and ILO staff. The current organisational structure is shown below in Figure A1.1 and the previous structure in Figure A1.2.

Figure A1.1: ILO organisational chart



Note: the Sectoral Policies Department and their 'chain of command' is highlighted

Figure A1.2: Previous organisational structure (policy departments)



Note: only the policy departments are depicted

1.3. The Governing Body

The ILO's Governing Body, according to the Constitution (Article 2), is in charge of controlling the International Labour Office. The Governing Body is comprised of 56 government representatives (representing 28 governments including the ten 'States of chief industrial importance' largest economies)²⁵⁵ The other 18 government members are elected every 3 years. The rest of the Governing Body comprises of 14 employers and 14 workers, who are elected via a separate electoral process. The Governing Body meets 3 times a year (October, March and June, during the ILC).

The Governing Body serves several key roles. First, it appoints the D-G. Secondly, it determines the agenda of the International Labour Conference. Thirdly, it allocates the regular budget, which is set on a biennial basis. The regular budget of the ILO totalled USD 801.26 million in the 2016/2017 biennium. The Governing Body sets the main activities or thematic areas for the ILO and then individual Departments

²⁵⁵ Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States.

are at liberty to decide how best to spend the allocated budget, which is then communicated back to the Governing Body for verification.

1.4. The International Labour Conference

The constitutional structure of the ILO, consisting of governments, workers and employers from each of the member States, participate in the work of the ILO in a ratio of 2-1-1 respectively. Employers and workers each occupy a quarter of the seats each (187 seats) in the International Labour Conference (ILC) while government representatives hold the remaining half (374 seats).²⁵⁶ The ILC meets once per year (typically May/June) for 2 weeks and all member States are invited. Over 5,000 delegates attended the ILC in 2016.

The ILC serves several key roles. First, the ILC is broken down into several committees who discuss the main social and labour questions at the ILO. There are two permanent committees. First, the Committee on the Application of Standards (CAS) which discusses any cases identified by the Committee of Experts on the Application of Standards and Recommendations (CEACR). In such cases, the member State in question is invited to speak to the Committee regarding the violation and the members of CAS issue a report on their findings. The second permanent Committee is the Finance Committee, which discusses the Programme and Budget. The other Committees are those decided by the Governing Body. These can take several forms. First, standard-setting where the contents of new Conventions and Recommendations are debated over two sittings of the ILC. Secondly, general discussions that focus on new topics for the ILO, which approve Conclusions that are then submitted to the Governing Body for approval. Thirdly, under the ILO *Declaration on Fundamental Principles and Rights at Work* (1998) and the *Declaration on Social Justice for a Fair Globalization* (2008), there are recurrent discussions where one of the four pillars of the Decent Work Agenda are deliberated (either employment, social protection, social dialogue or rights at work).

²⁵⁶ Governments send two representatives from each country. There are currently 187 member States of the ILO.

1.5. Technical Cooperation

The ILO engages in other activities outside the regular budget through technical cooperation. Although technical cooperation at the ILO is small compared to other UN agencies it now covers over half of the ILO's budget and is implemented in some 140 countries. The ILO receives money from international donors and other multilateral organisations to implement specific projects, whereby the ILO hires technical cooperation staff for fixed-term projects.

2. Funding and budget

The main source of funding for the ILO is its regular budget, which is raised from the governments of member States according to a UN-wide scale of contributions. Developing countries typically pay very little (0.01 per cent) of the budget, whereas the United States accounts for 25 per cent. The other main source of finance comes from voluntary core and non-core contributions.²⁵⁷ Voluntary core contributions provide a pool of un-earmarked flexible resources allocated by the ILO to strategic areas, underfunded themes and new priorities. Non-core contributions are earmarked resources and largely driven by donors such as individual countries or international/supranational institutions such as the EU or the African Development Bank. Voluntary contributions are the backbone of the ILO's technical cooperation projects. Programmes typically fall into two sub-sets. First knowledge generation through targeted research. Secondly, development work whereby the ILO establishes particular projects in member States sometimes through request of the country or through individual Department's priority countries. Projects in ILO member States are typically facilitated by working through ILO Field Offices and/or Regional Offices. The results of all work (from both voluntary and regular budget sources) are then communicated back to the Governing Body for their approval.

²⁵⁷ During the 2014-2015 biennium, the ILO received USD 31.5 million in voluntary core contributions and USD 237.8 million in voluntary non-core contributions.

Appendix 2: Plantations Questionnaire

Questionnaire for plantations workers in the Sri Lankan tea sector (QSLWP)

I. Over the past 3 years, have you engaged in any of the following activities related to the tea sector?

1. Work on a tea farm/plantation owned by someone else (Wage-employed agricultural activities, including processing)
2. Non-agricultural work (e.g. in trading or transport) related to tea for someone else (Wage-employed non-agricultural activities)
3. Work on your own tea farm/plantation (Own-account agricultural activities)
4. Work on the tea farm/plantation of your father or other family member

NOTE:

- **If none of the above applies, please stop the interview.**
- **If only option 1, 2 and/or 4 apply, please use questionnaire 1 for Workers (this questionnaire).**
- **If only option 3 applies, please use questionnaire 2, entitled Agricultural producer tool, for farmers or family members working at their own a farm or related business.**
- **If the respondent is engaged in both wage employment (option 1, 2 and/or 4) and own-account work (option 3), please ask the following question to find out which questionnaire to use**

II. Which of these tea related activities have been the most important for your household's livelihood?

1. Work related to tea for someone else (e.g. company, state owned, family member)
 (use questionnaire 1)
2. Work on your own tea farm/plantation
 (use questionnaire 2)

PART A – CHARACTERIZATION SECTION

I would like to start by asking some questions about you

A1. Gender (by observation):

1. Male
2. Female

A2. How old are you? _____

A3. Do you live with your family?

1. Yes
2. No

A4. How many people live in your home/household? _____

A5. What is the highest level of schooling that you have attained? (If respondent is a student, code the highest-level s/he has completed so far)

| | |
|--|--------------------------|
| 1. No formal education | <input type="checkbox"/> |
| 2. Incomplete primary school | <input type="checkbox"/> |
| 3. Complete primary school | <input type="checkbox"/> |
| 4. Incomplete secondary school | <input type="checkbox"/> |
| 5. Complete secondary school | <input type="checkbox"/> |
| 6. Some university-level education, without degree | <input type="checkbox"/> |
| 7. University-level education, with degree | <input type="checkbox"/> |
| 8. Graduate level degree and higher (MA, PhD) | <input type="checkbox"/> |

A6. Were you born in this country?

1. I was born in this country
2. I am an immigrant to this country

PART B – PROFESSIONAL PROFILE AND CURRENT SITUATION

I would like to start with your professional background and the current situation at work

B.1 How many years have you been working in the tea sector for someone else?

B.2 Do you currently have more than one job?

1. Yes **B.3.1** Please, specify: _____
2. No

B.3 What kind of plantation/farm do you work on?

1. Large estate/plantation company
2. Medium-scale farm/plantation
3. Smallholder farm/plantation
4. Out-grower/contract farm/plantation
5. Don't know
6. Other

B.4 Do you work on more than one plantation or farm?

1. Yes
2. No

B.5 Do you supervise other people at work?

1. Yes
2. No

NOTE 2: Please see Note 1 regarding the administration of questionnaires. If the worker currently works in more than one farm/plantation, the following questions should be addressed to the farm/plantation where s/he spends more time and/or the farm/plantation that grows the tea

B.6 Are you currently or most recently (multiple answers possible):

1. A permanent worker
2. A casual worker
3. A daily worker
4. A seasonal worker
5. An agency worker
6. Other situation **B.6.1** Please, specify: _____

B.7 During the peak months, how many days a week, on average, do you work for your current (or most recent) employer?

| | |
|--|--|
| | |
|--|--|

B.8 During the peak months, how many hours a day do you usually work (for your current or most recent employer)?

| | |
|--|--|
| | |
|--|--|

B.9 During a full day of work, do you have any breaks?

1. Yes
2. No (**Go to question C.1**)
3. Doesn't answer (**Go to question C.1**)

B.10 How much time in total do you have for breaks during a full day of work?

- (*Please use 0.5 for half hours*) _____

PART C – ENGAGEMENT AND RECRUITMENT

Your opinion has been very useful so far and I appreciate your honesty. Can we talk now a little bit about how you were recruited and your opinion about it?

C.1 Were you recruited at or near the place of employment (e.g. in the same province where you normally live)?

1. Yes (**Go to question D.1**)
2. No

C.2 Were you recruited/ offered this job:

1. Directly by your employer
2. Through a recruitment agency
3. Other (Please, specify)

C.3 Were you provided with transportation to the place of employment upon your recruitment?

1. Yes (**Go to question C.5**)
2. No

C.4 If you were not provided with transportation, how did you get to your destination? Please, specify:

C.5 Were you compensated for costs of travel?

1. Yes

2. No (**Go to question C.11**)

C.6 If you were provided with transportation, was it in a satisfactory/adequate condition?

- 1. Yes
- 2. No
- 3. Don't Know/No Answer

C.7 Was it necessary to break the journey for the night?

- 1. Yes
- 2. No (**Go to question C.9**)

C.8 Was the place to sleep provided by your employer?

- 1. Yes
- 2. No
- 3. Doesn't answer

C.9 Did you have access to medical attention during the journey?

- 1. Yes
- 2. No
- 3. Don't know

C.10 Was there someone (a representative from those who employed you) responsible for accompanying you during the journey?

- 1. Yes **C.11.1** Who? Please, specify:
 - 2. No
 - 3. Don't know
-

C.11 Did you have to go to the doctor for examination when you were recruited for this job?

- 1. Yes
- 2. No
- 3. Can't remember/does not answer

C.12 On a daily basis, do you need transport to come to work?

- 1. Yes
- 2. No (**Go to question D.1**)

C.13 Is the transport provided by the employer?

- 1. Yes
- 2. No (**Go to question D.1**)

C.14 If so, how satisfied are you with the transport provided by your employer?

1. Satisfied
2. Indifferent
3. Not satisfied
4. No answer given

PART D – CONTRACTS AND WORKING CONDITIONS

I would like to proceed talking about your contractual situation and present working conditions.

D.1 When you were recruited to do this work did someone inform you about the conditions and type of work (e.g. tasks and responsibilities, salary, working hours, etc.)?

1. Yes
2. Partially
3. No (go to question D.4)
4. Don't know (go to question D.4)
5. Doesn't answer (go to question D.4)

D.2 Who was this person?

1. My employer
2. Someone else

D.2.2 Who and what is your relationship to this person?

3. Don't know

D.3 From the following list, please identify the sorts of conditions that you were informed about and promised to have before starting to work:

| | Was promised before job started | |
|---|---------------------------------|--------------------------|
| | Yes | No |
| 1. Salary, means of payment and regularity (how much would you be paid, how would you be paid and when) | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Meals | <input type="checkbox"/> | <input type="checkbox"/> |

| | | |
|--|--------------------------|--------------------------|
| 3. Social security (e.g. health insurance, pension) | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Rest periods (breaks: for lunch, dinner and rest days) | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Work clothes | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Drinking water | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Training | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Annual holidays with pay (after a period of continuous service) | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Tasks and responsibilities (information about what you were supposed to do) | <input type="checkbox"/> | <input type="checkbox"/> |

D.4 From the following list, please identify the sorts of conditions that you receive in your current (or most recent) job:

| | Is received | | |
|---|--------------------------|--------------------------|--------------------------|
| | Yes | No | Partially |
| 1. Salary, means of payment and regularity | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Meals | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Social security (e.g. health insurance, pension) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Rest periods (breaks: for lunch, dinner and rest days) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Work clothes | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Drinking water | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Training | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Annual holidays with pay (after a period of continuous service) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Tasks and responsibilities (information about what you are supposed to do) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

D.5 If there is a change in relation to your salary or payment, are you informed?

1. Yes, always
2. Frequently
3. Sometimes
4. No, never
5. Not applicable (if no changes have so far taken place regarding salary or payment)

D.6 Are you usually consulted when any changes take place in relation to your working conditions (example: wages, working hours, paid holidays)?

1. Yes
2. No
3. Don't know
4. Not applicable (if no changes have so far taken place regarding working conditions)

D.7 Did you sign a contract for this job?

1. Yes
2. No (**Go to question D9**)
3. Not applicable

D.8 Did you understand everything in its content?

1. Yes
2. No

MATERNITY PROTECTION

NOTE: QUESTION D.9, D.10, D.11 and D.12 ARE RELATED TO MATERNITY PROTECTION, IF NOT APPLICABLE GO TO QUESTION D.13

D.9 Were you ever pregnant while working in this job?

1. Yes
2. No (**Go to question D.13**)

D.10 Please, briefly explain what happened? (cover aspects such as: maternity leave – time and payment; medical attention, dismissal situations and other relevant aspects)

D.11 Did you have the opportunity to take maternity or paternity leave after childbirth?

1. Yes **D.10.1** How many days? _____
2. No
3. I didn't ask for it
4. Doesn't answer
5. Not applicable **Go to D13**

D.12 After childbirth, did you receive the following:

| | YES | NO |
|---------------------|--------------------------|--------------------------|
| 1. Salary | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Cash benefits | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Medical benefits | <input type="checkbox"/> | <input type="checkbox"/> |

MEDICAL CARE AND WORKMEN'S COMPENSATION

D.13 Do you have access to medical services at your workplace (e.g. doctor or nurse that you can visit or call)?

1. Yes
2. No **(Go to question D.15)**
3. Don't know **(Go to question D.15)**

D.14 Are you happy with the medical services you have?

1. Yes
2. No
3. Don't know

D.15 Do workers get compensation if they get injured as a result of an accident during their work?

1. Yes
2. No
3. Don't know

HOUSING

D.16 Does your employer provide you with housing/accommodation?

1. Yes
2. No **(Go to question D.20)**

D.17 From the following list, please indicate if the accommodation includes:

| | YES | NO |
|--|--------------------------|--------------------------|
| 1. Accommodation of adequate size (e.g. with ventilation, floor and breathing [air] space) | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. A roof to protect from bad weather | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. A place for cooking | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Drinking water | <input type="checkbox"/> | <input type="checkbox"/> |

5. Sanitary facilities (washrooms and toilets)

D.18 Does your family live with you?

- 1. Yes
- 2. No

D.19 In general, how satisfied are you with the housing accommodation provided to you?

- 1. Satisfied
- 2. Not satisfied
- 3. Indifferent

LABOUR INSPECTORS

D.20 Have you ever seen a labour inspector on the farm/plantation where you work? (If necessary, briefly explain the term “labour inspector”)

- 1. Yes
- 2. No (Go to question D.22)

D.21 Could you please briefly explain what happened?

FORCED LABOUR AND VIOLATIONS

D.22 From the following list, please indicate if you experienced any of these situations in your work: (Multiple answers possible)

| | |
|---|--------------------------|
| 1. Not allowed to have break-times or (less than 24 consecutive hours during a week) | <input type="checkbox"/> |
| 2. Not allowed to have vacations | <input type="checkbox"/> |
| 3. Receiving less than usual remuneration for taking a holiday (includes payment in kind) | <input type="checkbox"/> |
| 4. Delays in wage payments or | <input type="checkbox"/> |
| 5. Being limited to freely use your wages | <input type="checkbox"/> |
| 6. Unpaid benefits for overtime | <input type="checkbox"/> |

| | |
|--|--------------------------|
| 7. Prevented from forming and/or joining a union or any other organization | <input type="checkbox"/> |
| 8. Not allowed to leave the farm/plantation | <input type="checkbox"/> |
| 9. Had your personal identification documents taken away | <input type="checkbox"/> |
| 10. Not applicable | |

D.23 Were you ever forced (during the recruitment phase, during the journey or at work) to do something you did not want to do?

1. Yes
2. No (Go to question D.25)
3. Didn't want to give an answer (Go to question D.25)

D.24 Please explain:

DISCRIMINATION

D.25 Have you ever felt that you have been treated less favourably than another worker?

1. Yes
2. No (Go to question D.27)

D.26 From the following list, please indicate on which basis you think you were treated less favourably (multiple answers possible):

| | |
|---|--------------------------|
| 1. Race | <input type="checkbox"/> |
| 2. Colour | <input type="checkbox"/> |
| 3. Sex | <input type="checkbox"/> |
| 4. Religion or belief | <input type="checkbox"/> |
| 5. Nationality | <input type="checkbox"/> |
| 6. Tribe/ethnicity | <input type="checkbox"/> |
| 7. Social origin (e.g. caste, social class) | <input type="checkbox"/> |
| 8. Political opinion | <input type="checkbox"/> |
| 9. Trade union membership | <input type="checkbox"/> |
| 10. Age | <input type="checkbox"/> |
| 11. Disability | <input type="checkbox"/> |

| | |
|-----------------------------|--------------------------|
| 12. Pregnancy and maternity | <input type="checkbox"/> |
| 13. Sexual orientation | <input type="checkbox"/> |
| 14. Other (Go to D25.14.1) | <input type="checkbox"/> |

D.26.1 Can you, please, briefly explain what happened?

CHILD LABOUR

D.27 Do you know workers who are between 14-17 years of age working on this farm / plantation?

1. Yes
2. No
3. Don't know (**Go to question E.1**)
4. Doesn't answer (**Go to question E.1**)

D.28 Do you know children who are less than 14 years old working on this farm / plantation?

1. Yes
2. No
3. Don't know (**Go to question E.1**)
4. Doesn't answer (**Go to question E.1**)

D.29 What kind of work do they do (task description)?

PART E – FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Now I would like to talk about your work relations and your opinion about freedom of association and collective bargaining.

E.1 Have you heard about organizations formed by workers to defend their rights?

1. Yes

2. No **(NOTE: Explain briefly and go to question E7)**

E.2 From the list below, which kind of association have you heard about?

1. Trade union
2. Workers' association
3. Cooperative
4. NGO
5. Migrant association
6. Other

E.6.1 Please, specify: _____

E.3 Are you a member of any of these organizations?

1. Yes **Please specify**
2. No
3. Doesn't apply **(Go to question E.5)**
4. Don't know **(Go to question E.5)**
5. Don't answer **(Go to question E.5)**

E.4 Why are you OR are you not a member of the organization(s)?

E.5 Has any union (or other organization) negotiated an agreement with your employer about working conditions?

1. Yes
2. No **(Go to question E.7)**
3. Don't know **(Go to question E.7)**

E.6 Has it improved your working conditions?

1. Yes
2. No
3. Don't know **(Go to question F.1)**
4. Don't answer **(Go to question F.1)**

NOTE 3: QUESTION E.7 and E.8 ARE ONLY ADDRESSED TO WORKERS WHO DO NOT HAVE AN ORGANIZATION WORKING FOR THEM OR HAVE NEVER HEARD ABOUT SUCH ORGANIZATIONS

E.7 How interested would you be interested in joining an organization that defends workers' rights?

1. Very interested

- 2. Somewhat interested
- 3. Not interested
- 4. Don't know
- 5. Didn't want to answer **(Go to question F.1)**

E.8 Please, explain why:

PART F – WORKERS' PROFILE

Finally, I would like to ask you some questions about you.

F.1 What do you do on the farm/plantation (task description)?

F.2 How are you paid

(multiple answers possible)

- 1. In kind
- 2. In cash (or salary) **(Go to question F.4)**
- 3. With promissory notes, vouchers or coupons **(Go to question F.4)**
- 4. I'm not paid **(Go to question F.9)**
- 5. Other **F.2.5.1 How?**

F.3 If you are paid also in kind, please specify which sort of kind and whether this is appropriate for your personal use and benefit:

F.4 Is your wage paid directly to you?

- 1. Yes
- 2. No

2.1 If not, please explain

F.5 Does your family help you with your work at the farm/plantation in order for you to earn this salary?

- 1. Yes
- 2. No

F.6 How much are you paid on average? (Fill only one line, according to the situation)

I. Salary (in LKR)

1. Hour

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2. Day

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3. Week

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4. Month

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F.7 Does this value include any benefits/allowances?

1. Yes Which and how much? _____
2. No

F.8 Are you the primary person providing income for your family/ household?

1. Yes
2. No

F.9 Considering the current situation in your household, the number of people financially dependent on you, and your financial needs (food, housing, clothing), what is the lowest monthly amount you would need to live a decent life (in LKR/month)?

MIGRANT WORKERS (PROFILE)

NOTE: This section is to be completed if the respondent's reply to Question A.6 indicated that s/he is an immigrant to this country

F.10 Country of birth:

F.11 What was the reason for leaving your country? (Main reason)

F.12 What was the reason you chose this particular country? (Main reason)

F.13 How old were you when you first arrived here? _____

F.14 Did your family come with you?

1. Yes

2. No

F.15 Did you have travel documents to cross a border (e.g. passport, identity card)?

1. Yes

2. No

F.16 Do you have a work visa?

1. Yes

2. No

3. Don't need one

4. Don't know

Thank you

OBSERVATIONS BY THE INTERVIEWER

I. Respondent interest:

a. Respondent was very interested

b. Respondent was somewhat interested

c. Respondent was not interested

II. Interview privacy:

a. There were no other people around who could hear the interview

b. There were other people around who could hear the interview

III. Code of the region where the interview was conducted:

a. [region/city]

- b. [region/city]
- c. Other Where? _____

IV. Code the language in which the interview was conducted?

- a. English
- b. [National language]
- c. Other Which? _____

V. This questionnaire was conducted
by _____

VI. Date: _____

Appendix 3: Focus Group Moderation Guide for Trade Union Officials

1)

[Name] got a new job. She/he will work on a (tea/banana/palm oil) farm/plantation on the other border of the country. Her cousin got the job for her. [Name] was told to meet someone called Mr. [Name] for details about the journey, as they should cross the border during the night. [Name] was afraid but she/he didn't have a choice; she/he needed to be strong for her family. 'They need me', she/he thought!

Questions:

1. Is this realistic?
2. How do plantations workers usually look for jobs?
3. What should [Name] do to prepare herself/himself for the journey and new work?

Note: With this discussion, we want to know trade union officials' perceptions about (1) how workers find jobs (2) the process of recruitment for migrant workers.

2)

[Name] went to see Mr. [Name]. [Name] said that there was nothing to be afraid of; she/he would go with more workers and the job was really good. She/he could have a written contract, very good salary, a nice house, paid holidays and rest times, access to medical services. In other words, anything she/he wanted! And the good news was that [Name] promised her/him that all workers would have a very spacious bus to get to the other country. 'It's a great job!'

Questions:

1. How migrant workers are usually convinced to work across the border?
2. Do you have complaints about these sorts of situations?
3. Is this how employers use to recruit migrant workers? Is there any other way? (e.g. through an agency?)

Note: With this discussion, we want to understand trade unions' official's perceptions concerning migrant workers recruitment.

3)

[Name] accepts to come with Mr. [Name]. There was a bus but it was really small! The majority of the workers didn't have a place to sit; some of them were standing during the journey. A young girl that came with her father got very sick, but there was no doctor on board and no time to rest or stop. [Name] started to feel that she had made a mistake.

Questions:

1. Is this realistic?
2. What is the typical procedure for long journeys during the process of recruitment? Does the employer provide something?
3. In this case how can [Name] get help?
4. Can she get any support from you?
5. What usually happen when a worker gets sick?
6. What about if a worker suffers an accident at work?
7. [Name] thought that she would have a contract but apparently not. Does it happen frequently?
8. Do the majority of workers have written contracts?

Note: With this discussion, we want to understand trade union official's perceptions about (1) workers' recruitment and employer's responsibilities; (2) capacity in helping workers during the process of recruitment; (3) written contracts in plantations sector.

4)

After 36 hours of traveling, [Name] finally arrives to the final destination. It was not exactly what she/he had in mind: she/he found a small place to sleep – there was a bed, but it was dirty; there was a roof, but it was leaky. The place was definitely not as expected.

Questions:

1. Does it sound familiar?
2. Do employers usually provide workers with housing?
3. Are the houses usually suitable for the workers?

Note: With this discussion, we want to understand trade unions' officials (1) perceptions about house conditions for workers in plantations' sector.

5)

The next morning [Name]'s employer, Ms. [Name], called all workers for a meeting. She/he said that they could talk directly with her/him anytime for any reason. She/he said that she/he would listen to any complaint that anyone had. Workers were authorized to plant whatever they wanted to eat. The salary was based on what they would produce. Ms. [Name] made a lot of promises. 'You can leave the farm/plantation whenever you want, but make sure you'll come back to work'.

Questions:

1. How does your employer communicate with workers?
2. How can you help workers to have access to all information they need about your rights and responsibilities?
3. Have you heard about situations where workers are not allowed to leave the farm/plantation?
4. What about employers' keeping workers' personal documents?
5. How do employers usually pay workers?
6. Is there a difference if it's men or women?

Note: With this discussion, we want to understand trade union officials' perceptions about (1) labour relationship and communication; (2) capacity to support workers by giving information; (3) employers' habits concerning salary and payments; (4) perceptions about forced labour and (5) gender discrimination.

6)

A few weeks later, [Name] founds that she was pregnant she didn't know what to do! She was so scared of being dismissed for this.

Questions:

1. If [Name] came to see you for help, what advice would you give her?

Note: With this discussion, we want to understand trade union officials' perceptions (1) about workers' fears in relation to their employers; (2) their capacity to provide support to workers.

7)

[Name] decided to say to her employer that she was pregnant. Her employer got very excited: [Name] got her maternity leave, she was free to choose her doctor

and she have moved to a better house! ‘I had no reason to be afraid! I have a really supportive employer!’

Questions:

1. Is this realistic?

Note: With this discussion, we want to understand trade unions official’s perceptions about (1) employer’s attitudes in relation to this sort of situation.

8)

The next day, [Name] was talking to her friend [Name] who worked on another farm/plantation in the neighbourhood. [Name] was telling [Name] about her experience with a labour inspector. Apparently, a labour inspector went to the farm/plantation, where [Name] was working, because he received complaints about discrimination and child labour! He checked all around, including contracts, housing, working conditions, and talked with some workers, including [Name].

Questions:

1. Is this realistic?
2. Do labour inspectors used to go to the farms/plantations?
3. If yes, what is the typical procedure?
4. Based on your experience, do workers on plantations’ sector experience forms of discrimination? Which kind?
5. Have you heard about workers who are less than 14 years old?
6. What about workers who are between 14 and 17 years old?
7. What sorts of work/tasks would they do?

Note: With this discussion, we want to know trade union’s official’s perceptions about (1) labour inspectors (2) discrimination (3) child labour.

9)

During the conversation, [Name] told [Name] that a trade union representative came to the farm/plantation where she/he worked, and asked her employer to talk. They wanted to represent the workers and told [Name] and her/his colleagues that if they had someone to represent them they would be better protected; ‘I thought it was an excellent idea!’ said [Name], ‘I was thinking of becoming a member of this trade union, what do you think?’

Questions:

1. Is this the typical procedure of a trade union?
2. Do you have many members?
3. (Why) is it difficult for workers to join trade unions?
4. Can migrant workers join a trade union?
5. What about seasonal or daily workers, can they join?
6. Which are the major reasons why plantations worker come to see you?

Note: With this discussion, we want to know trade union's official (1) practices of recruitment of members; (2) perceptions about the reasons why workers join or not join trade unions.

10)

[Name] didn't know what to say, she/he knew nothing about this; but she/he heard that trade unions could help workers setting their terms and conditions and even to represent workers on negotiations with employers: 'Imagine that they can talk for us and because they know our rights and responsibilities as workers, they can fight for us'.

Questions:

1. Have you been involved in collective bargaining agreements?
2. How did it work?

Note: With this discussion, we want to know trade unions' official's practices and perceptions about collective bargaining.

11)

[Name] couldn't fall asleep that night. She/he was thinking about all the workers that were in trouble right now. Where can they find help? Can they go to the police? Does the Government or someone else give support?

Questions:

1. What would you answer to [Name]?

Note: With this discussion, we want to know trade unions' official's general perceptions of the role of the Government and other authorities in supporting and protecting workers.

Appendix 4: A (Brief) History of the ILO

Figure A4.1 (at the end of this Appendix) depicts the historical ‘timeline’ of the ILO while Table A4.1 (at the end of this Appendix) documents the five main periods of the ILO: establishment and consolidation; the age of embedded liberalism; institutional sclerosis; declaratory innovation; and the path breaking ‘age’.²⁵⁸

The ILO is the United Nations (UN) agency responsible for workers’ rights and drawing up and overseeing international labour standards. Part XIII of the Treaty of Versailles (1919) established the ILO following the savagery of the First World War. As Robert Cox (1973 p.102), former Director of the ILO’s International Institute for Labour Studies noted, ‘the ILO was Versailles answer to Bolshevism’ as industrialised governments in the West were wary at the time of any spread of communism westward. As a result, it was assumed that if workers could channel their concerns through institutional reform rather than revolutionary uprising then the spread of Bolshevism could be curbed. It was not just political warfare that was a danger to democratic capitalism in 1919 but also industrial warfare. The threat of aggressive competitors in overseas markets, and the realisation that labour should not be treated as a commodity in a competitive marketplace, led to the first of nine principles in the ILO’s Constitution that: ‘Labour should not be regarded as a commodity or article of commerce’ (ILO 1919).

The ILO was originally a Euro-centric organisation as Europeans vastly outnumbered non-European states within the Governing Body, much to the chagrin of India and South Africa (Hughes and Haworth 2011 p.7). The political importance of the ILO was cemented when the United States and the Soviet Union joined in 1934. This was important for the ILO as the Organization was trying to distance itself from the deteriorating League of Nations.²⁵⁹ However by the mid-1930s international cooperation was beginning to falter as a result of the Great Depression and the world

²⁵⁸ For a detailed history of the ILO, see Maupain (2013); Hughes and Haworth (2011); and Alcock (1971).

²⁵⁹ The League of Nations was the body that preceded the United Nations and was replaced following the onset of the Second World War. The United States and Soviet Union were not members of the League of Nations.

political situation was deteriorating. In 1933 the National Socialist Party led by Adolf Hitler won the German elections and in Italy the National Fascist Party was elected under Benito Mussolini. The failure of the League of Nations to broker any solutions rendered it increasingly impotent in the face of these challenges.

Following the onset of the Second World War, the League of Nations ceased to be and the ILO was forced to move from Geneva to Montreal for the duration of the war. In 1944, the ILO reaffirmed its mandate in the *Declaration of Philadelphia* and this helped the Organization survive the demise of the League of Nations. Subsequently, the ILO became a specialised agency of the UN in 1946. The *Declaration of Philadelphia* proclaimed that ‘labour is not a commodity’, that ‘freedom of expression and of association are essential to sustained progress’, that ‘poverty anywhere constitutes a danger to prosperity everywhere’, and that ‘the war against want should be based on concerted and continuous international effort’ (ILO 1944). Crucially, this Declaration placed human rights at the centre of the ILO’s functions for the first time and argued that labour standards were an indelible part of political democracy, proclaiming that ‘all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity’ (ILO 1944). The Declaration became not only a statement of the aims and purposes of the ILO but also part of the constitutional obligations of ILO membership.

During the period following the end of World War II the ILO had to deal with de-colonisation and its membership grew exponentially, from just 44 members when it was founded to 124 by 1969. By way of illustration, at the time of the ILO’s establishment there were only three independent African nations: Ethiopia, Liberia and the Union of South Africa.²⁶⁰ Subsequent growth led to a huge change in the role of the ILO as the Organization developed its technical and developmental capacity to assist newly independent states. The surge in membership also required institutional growth and a network of Regional and Field Offices were established that could facilitate the expansion of these technical programmes. In addition, the International

²⁶⁰ Today there are 55 independent states in Africa that are recognised by the ILO and the UN (the ILO recognises Western Sahara as a territory but it is not a member State).

Institute for Labour Studies was set up in 1960 for the study of labour conditions and the International Training Centre in Turin was established in 1964 as the ILO sought to meet the vocational needs of developing countries.

Even though the number of governments represented at the ILO was increasing, the ILO was still viewed by many as a Euro-centric Organisation emphasising, ‘trade unionism, collective bargaining and industrial cooperation [which] nurtured a corporatist ideology that resonated with the national bodies who filled the conferences and committees that were the lifeblood of ILO decision making’ (Hughes and Haworth 2011 p.16). Decolonisation also represented the first threat to tripartism, as the ILO struggled to represent those workers in the non-industrialised world. Tripartism worked reasonably well until the 1950s/1960s when the ILO was predominantly a European institution and in the 1970s it still proved to be viable thanks to the alliance between Western countries and the trade unions (Cox 1973). However, in practice no country in the global South ever came close to putting a national tripartite model into practice (Baccaro and Mele 2012).

This post-war Keynesian period of embedded liberalism facilitated the ILO’s mandate and its normative power. Building on the burgeoning discourse on human rights and the dominance of the growth of the welfare state, this ensured support for international labour standards, particularly freedom of association and the right to collective bargaining.²⁶¹ This period also saw the largest number of Conventions ratified per member State as the ILO expanded its technical capacity to persuade recently de-colonised nations to ratify their standards. On its fiftieth birthday in 1969 the ILO received the Nobel Peace Prize in the field of human rights. This was the ‘zenith’ of the ILO and ironically signalled the beginning of a long period of institutional sclerosis in the ILO as it focussed on its new developmental and technical capacity.

The period of 1970-1997 proved to be a watershed for the ILO. After the new D-G Wilfred Jenks appointed an Assistant Director-General from the Soviet Union,

²⁶¹ Two of the ILO’s most rigorous and important Conventions were adopted during this time: Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) and Right to Organise and Collective Bargaining Convention, 1949 (C.98).

the United States decided to withdraw 50 per cent of its financial support to the ILO and withdrew completely from the Organisation between 1977 and 1980.²⁶² When the United States returned to the fold, it began a process of shifting the ILO's focus away from human rights towards support for the Washington Consensus. As Standing (2008 p.369) observed, 'the ILO quietly ceased to be an international body attempting to redress structural inequality and became one promoting employment equity'. Furthermore, the fall of the iron curtain exposed workers in relatively sheltered developed countries to competition from the workforce of the developing and emerging economies.

The ILO has always been embroiled in, and hamstrung by, superpower politics, while the prominence/pre-eminence of the World Trade Organization (WTO), World Bank and International Monetary Fund (IMF) has often led to contradictory messages on the importance of labour standards. In 1975 the ILO moved its headquarters a mile 'up the hill' in Geneva. The organisation that moved into its old premise was the General Agreement on Tariffs and Trade (GATT), which later evolved into the WTO and was often at loggerheads with the ILO, particularly over its approach to the effectiveness of trade unions in promoting economic growth and development. For example, for many years these international institutions refused financial support to developing countries that adhered to ILO norms on minimum wages, employment protection, social dialogue and social security (on the assumption that these standards would impair labour market flexibility and discourage investment) (Sengenberger 2013 p.53).

The role of the ILO was also affected by the disintegration of the Bretton Woods Accord, which signalled the end of an embedded liberalist world, with the oil crisis of 1972-1973 resulting in a fall in profitability and a (global) squeeze on labour costs. The Washington Consensus that emerged in the 1980s and the spread of neoliberalism led to significant changes in the Organization, particularly the decline in power of organised labour, and the instigation of liberalisation and privatisation struck many of its key European members. The Thatcherism approach to market liberalisation

²⁶² At that time, the United States was by the far the largest contributor to the ILO's budget. The United States gave its notice to withdraw in 1975 but was not put into effect until 1977.

saw the rise of unemployment established within the traditional constituencies of trade unionism (Hughes and Haworth 2011). The alliance that was well established in the 1960s and 1970s, between the ILO and its European trade unions and member States, started to fall apart. The market capitalism approach became the rationale for governments in both industrialised and developing economies for changes in employment structures and attitudes towards welfarism. During this period, the ILO operated at arms-length with the World Bank, WTO and IMF but the Organisation attempted to place its social and labour agenda firmly within the approaches of these organisations. The jettisoning of the social clause debate in 1996,²⁶³ was the final nail in the coffin for attempts by trade unions and several developed countries to link trade and labour standards (Elliott and Freeman 2003). Many commentators saw this period as the end of the ILO, yet the ILO survived partly because of the efforts and political acumen of its D-G and other institutional entrepreneurs within the Office. The period from 1998-2008, designated the ‘declaratory innovation’ age for the ILO in Table A4.1, saw the ILO finally produce a response to concerns and contention over trade, labour standards and the need for a ‘social dimension’ to curtail the worst excesses of globalisation for workers around the world (discussed in greater detail in Section 4.3).

Table A4.1: The historical path of the ILO

| Period | Milestones | Number of member States* | Conventions adopted (average per year) | Ratifications (average per year) |
|---|--|--------------------------|--|----------------------------------|
| Establishment and Consolidation (1919-1944) | Bolshevism and end of WWI; ILO Constitution (1919); U.S. and Soviet Union join (1933); <i>Declaration of Philadelphia</i> (1944) | 44-55 | 2.6 | 34.0 |
| ‘Golden Age’ of Embedded Liberalism (1945-1969) | End of WWII; ILO joins UN (1946); technical cooperation expansion; de-colonisation; Nobel Peace Prize (1969) | 55-123 | 2.5 | 102.7 |

²⁶³ A social clause essentially refers to a legal provision in a trade agreement aimed at removing the most extreme forms of labour exploitation in exporting countries by allowing importing countries to take trade measures against exporting countries which fail to observe a set of internationally agreed minimum labour standards.

| | | | | |
|-------------------------------------|---|---------|-----|---------|
| Institutional Sclerosis (1970-1997) | USA leaves and then re-joins the ILO (1977-1980); fall of the Berlin Wall (1989) | 123-173 | 1.8 | 104.9 |
| Declaratory Innovation (1998-2011) | <i>Declaration of Fundamental Principles and Rights at Work (FPRW) (1998); Decent Work Agenda (1999); Declaration on Social Justice for a Fair Globalization (2008)</i> | 173-183 | 0.6 | 101.0** |
| Breaking the Path (2012-to date)*** | Area of Critical Importance (ACIs) (2013); Enterprise Initiative (2014); Global supply chain discussion (ILC 2016) | 183-187 | 0 | 59.3 |

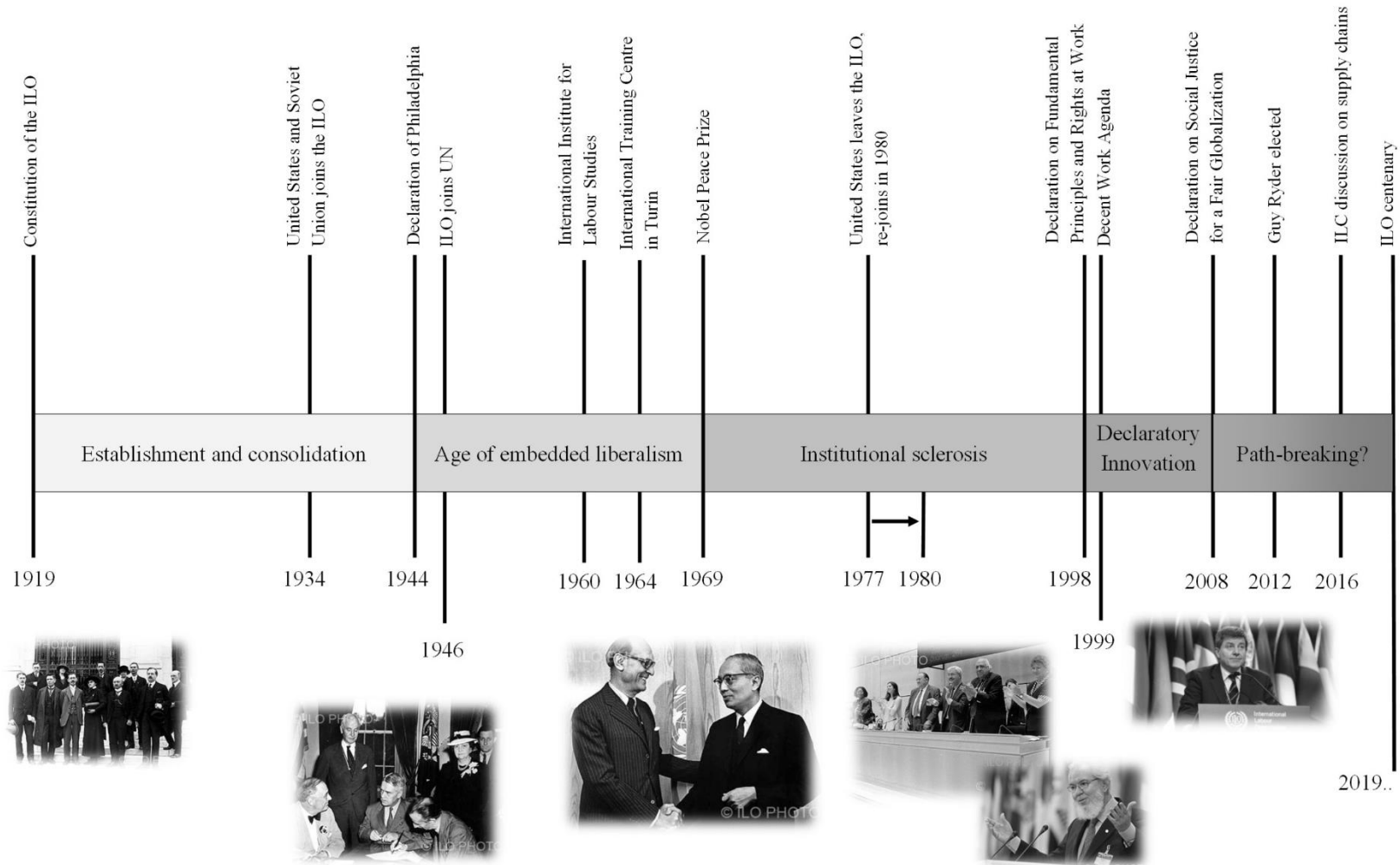
Notes: * Number at the start and end of the period

** Ratifications were 'inflated' following the Declaration on FPRW (245 ratifications in 2000 alone, the highest since the 333 ratifications of 1960) with 108 member States signing the Worst Forms of Child Labour Convention, 1999 (C.182) in 2000 and 2001.

*** Number of Conventions adopted and ratifications to 31 December 2016.

Source: ILO, Normlex (www.ilo.org/normlex), author calculations

Figure A4.1: Timeline of the ILO



Appendix 5: 'Up-to-date' ILO Conventions and Ratifications

| Convention | Number of ratifications |
|---|-------------------------|
| Weekly Rest (Industry) Convention, 1921 (C.14) | 120 |
| Forced Labour Convention, 1930 (C.29) | 178 |
| Medical Examination of Young Persons (Industry) Convention, 1946 (C.77) | 43 |
| Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (C.78) | 39 |
| Labour Inspection Convention, 1947 (C.81) | 145 |
| Freedom of Association and Protection of the Right to Organise Convention, 1948 (C.87) | 154 |
| Labour Clauses (Public Contracts) Convention, 1949 (C.94) | 63 |
| Protection of Wages Convention, 1949 (C.95) | 98 |
| Migration for Employment Convention (Revised), 1949 (C.97) | 49 |
| Right to Organise and Collective Bargaining Convention, 1949 (C. 98) | 165 |
| Equal Remuneration Convention, 1951 (C. 100) | 173 |
| Social Security (Minimum Standards) Convention, 1952 (C.102) | 55 |
| Abolition of Forced Labour Convention, 1957 (C.105) | 175 |
| Weekly Rest (Commerce and Offices) Convention, 1957 (C.106) | 63 |
| Plantations Convention, 1958 (C.110) | 12 |
| Discrimination (Employment and Occupation) Convention, 1958 (C.111) | 175 |
| Radiation Protection Convention, 1960 (C.115) | 50 |
| Equality of Treatment (Social Security) Convention, 1962 (C.118) | 38 |
| Hygiene (Commerce and Offices) Convention, 1964 (C.120) | 51 |
| Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (C.121) | 24 |
| Employment Policy Convention, 1964 (C.122) | 111 |
| Medical Examination of Young Persons (Underground Work) Convention, 1965 (C.124) | 41 |
| Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (C.128) | 17 |

| | |
|--|-----|
| Labour Inspection (Agriculture) Convention, 1969 (C.129) | 53 |
| Medical Care and Sickness Benefits Convention, 1969 (C.130) | 15 |
| Minimum Wage Fixing Convention, 1970 (C.131) | 53 |
| Workers' Representatives Convention, 1971 (C.135) | 85 |
| Minimum Age Convention, 1973 (C.138) | 170 |
| Occupational Cancer Convention, 1974 (C.139) | 41 |
| Paid Educational Leave Convention, 1974 (C.140) | 35 |
| Rural Workers' Organisations Convention, 1975 (C.141) | 40 |
| Human Resources Development Convention, 1975 (C.142) | 68 |
| Migrant Workers (Supplementary Provisions) Convention, 1975 (C.143) | 23 |
| Tripartite Consultation (International Labour Standards) Convention, 1976 (C.144) | 139 |
| Continuity of Employment (Seafarers) Convention, 1976 (C.145) | 17 |
| Seafarers' Annual Leave with Pay Convention, 1976 (C.146) | 17 |
| Merchant Shipping (Minimum Standards) Convention, 1976 (C.147) | 56 |
| Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (C.148) | 46 |
| Nursing Personnel Convention, 1977 (C.149) | 41 |
| Labour Administration Convention, 1978 (C.150) | 76 |
| Labour Relations (Public Service) Convention, 1978 (C.151) | 53 |
| Occupational Safety and Health (Dock Work) Convention, 1979 (C.152) | 27 |
| Collective Bargaining Convention, 1981 (C.154) | 46 |
| Occupational Safety and Health Convention, 1981 (C.155) | 66 |
| Workers with Family Responsibilities Convention, 1981 (C.156) | 44 |
| Maintenance of Social Security Rights Convention, 1982 (C.157) | 4 |
| Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (C.159) | 83 |
| Labour Statistics Convention, 1985 (C.160) | 50 |
| Occupational Health Services Convention, 1985 (C.161) | 33 |
| Asbestos Convention, 1986 (C.162) | 35 |

| | |
|---|-----|
| Seafarers' Welfare Convention, 1987 (C.163) | 18 |
| Health Protection and Medical Care (Seafarers) Convention, 1987 (C.164) | 15 |
| Social Security (Seafarers) Convention (Revised), 1987 (C.165) | 3 |
| Repatriation of Seafarers Convention (Revised), 1987 (C.166) | 14 |
| Safety and Health in Construction Convention, 1988 (C.167) | 31 |
| Employment Promotion and Protection against Unemployment Convention, 1988 (C.168) | 8 |
| Indigenous and Tribal Peoples Convention, 1989 (C.169) | 22 |
| Chemicals Convention, 1990 (C.170) | 21 |
| Night Work Convention, 1990 (C.171) | 15 |
| Working Conditions (Hotels and Restaurants) Convention, 1991 (C.172) | 16 |
| Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (C.173) | 21 |
| Prevention of Major Industrial Accidents Convention, 1993 (C.174) | 18 |
| Part-Time Work Convention, 1994 (C.175) | 17 |
| Safety and Health in Mines Convention, 1995 (C.176) | 32 |
| Home Work Convention, 1996 (C.177) | 10 |
| Labour Inspection (Seafarers) Convention, 1996 (C.178) | 15 |
| Recruitment and Placement of Seafarers Convention, 1996 (C.179) | 10 |
| Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (C.180) | 21 |
| Private Employment Agencies Convention, 1997 (C.181) | 32 |
| Worst Forms of Child Labour Convention, 1999 (C.182) | 181 |
| Maternity Protection Convention, 2000 (C.183) | 30 |
| Safety and Health in Agriculture Convention, 2001 (C.184) | 16 |
| Seafarers' Identity Documents Convention (Revised), 2003 (C.185) | 31 |
| Maritime Labour Convention, 2006 (MLC, 2006) | 68 |
| Promotional Framework for Occupational Safety and Health Convention, 2006 (C.187) | 37 |
| Work in Fishing Convention, 2007 (C.188) | 6 |
| Domestic Workers Convention, 2011 (C.189) | 22 |

Source: ILO, Normlex (www.ilo.org/normlex)

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