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## **Fundamental principles and realities of practice: work health and safety in low-and middle-income countries.**

### **1. Introduction**

In June 2022 the International Labour Conference (ILC) agreed that a right to a ‘safe and healthy work environment’ be part of the International Labour Organization’s (ILO’s) 1998 *Declaration on Fundamental Principles and Rights at Work*. This change places the issue of occupational safety and health (OSH) on an equal footing with other core labour standards that are already covered by the Declaration, including freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; and elimination of discrimination in respect of employment and occupation. It also means that the Occupational Safety and Health Convention 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187) are now recognized as fundamental within the meaning of the Declaration, thus conferring them with the same special significance as the others already included in the 1998 Declaration.

This raised status for OSH carries potentially significant implications for the protection of workers in newly industrialising, low-and middle-income countries (LMICs), especially in the ‘global south’, where, according to global estimates, are found a disproportionately high distribution of work-related illnesses, injuries and deaths. Estimates of work-related death rates for countries in South-East Asia and the Western Pacific have, for example, been calculated to be 30% and 10% higher than the global rate (WHO/ILO 2021: 47). For some time, it has also been the case that while there are improving trends in such outcomes in advanced economies, similar improvements are not evident in LMICs (Takala et al 2014). Indeed, if anything, in these countries the evidence suggests trends in the opposite direction. At the same time, it is acknowledged that the term ‘LMIC’ covers a wide range of economies. The standard World Bank definitions of low, lower and upper middle-income economies embrace countries with very different economic, social, political and regulatory infrastructures (World Bank 2024). Generally, our use of the term refers to examples of economies falling within these categories in which research studies show the presence of weak health and safety infrastructures, poor practices and outcomes, and for illustrative purposes we refer to a range of such countries in this paper.

Workers at risk of work-related harm in these countries are therefore likely to benefit most from any improved prevention measures arising from the inclusion of OSH among the Fundamental Principles of the ILO’s Declaration. However, it is widely acknowledged that in many LMICs infrastructures involved in the design, adoption and application of public regulatory measures are underdeveloped and deficient in their support for securing compliance with global standards on health and safety at work. Moreover, it is questionable how much the politics of investment in production in these countries supports worker centred approaches to improved OSH practices (Hammer 2023). Given this, it cannot be assumed that the inclusion of OSH within the ILO Declaration will in fact have beneficial effects. Rather, it is necessary to consider what actions can be taken ‘in the shadow’ of this change to ensure that they are forthcoming.

The paper aims to contribute to a discussion of better OSH regulation in these export orientated LMICs by exploring the extent to which the 2022 Amendment to the ILO’s Declaration may represent a significant development in the protection of worker health and safety in such economies. This exploration begins by drawing on existing evidence to identify the main determinants of the disproportionate scale of work-related death, ill health

and injuries in these LMICs. It then assesses how far two existing avenues of support for improved work health and safety practices and outcomes — namely (a) global and national regulatory standards, infrastructures and interventions; and (b) private standards — have demonstrated an ability to stimulate improvements in OSH outcomes in such economies prior to the adoption of the 2022 Amendment. Finally, on the basis of a critical review of the evidence, the paper considers what factors are likely to facilitate or hinder how far and in what ways the explicit inclusion of health and safety in the Declaration might be a source of OSH improvements within LMICs.

The paper is based on a critical review of the literature relevant to work health and safety in global supply chains. Following an outline of the methods employed in the study, it is divided into three main sections. The first briefly details some of the important features of newly industrialising LMICs that create impediments to the control of work-related risks and their effective regulation. The next section builds on this analysis by examining current public forms of health and safety regulation and evidence of the barriers that inhibit firms' efforts to comply with regulatory provisions. The final section analyses the literature on how the two avenues of support mentioned above — global and national regulation, and private regulation — can be used effectively to address the identified barriers to the *effective operation* of OSH arrangements in these countries, and in this way ensure that inclusion of a right to a 'safe and healthy work environment' in the ILO's Fundamental Principles and Rights at Work will indeed generate the positive outcomes that have been claimed for it.

## 2 Study Methods

The wider study on which this paper is based comprised an informed, critical review of relevant literature on health and safety and GSCs, in parallel with a series of interviews and discussions with key informants. The present paper supplemented these sources with a further review of recent literature addressing the 2022 changes to the ILO Declaration of Fundamental Principles and Rights at Work.

*Reviewing the literature:* The review focused on the conditions of work experienced in LMICs and the contexts in which strategies aimed at improving them are operationalised. It was conducted in the conventional manner by first establishing a set of appropriate analytical categories: for example, country settings; regulatory, industrial relations and business contexts; OSH (and other related) practices and outcomes; and policy, regulatory and business levers promoting improved work health and safety. Using OR/AND combinations in Boolean logic a preliminary search for publications containing at least one term from each category was conducted in several electronic databases. Searches were made for publications from January 2015 to December 2022. The research team then drew upon their collective research experience to select the publications likely to be most relevant and further explored cited references, thus accounting for significant accounts pre-dating 2015. Sifting material in this way revealed references to health and safety indicators, especially in relation to prescriptive OSH standards, but very few relating to OSH management practices conforming with principle- and process-based standards such as those on OSH in most advanced economies and found in global standards like ILO's Health and Safety Convention 155 and guidance accompanying it (ILO 2009).

*Engagement with key informants:* At the outset of the study a small group of key informants (N~12) were appointed by the study's funder as a reference group to help guide, discuss and refine its investigation and analysis. They comprised representatives of key policy organisations and professional bodies at national and global levels, acknowledged academic experts in the field of the study, and representatives of trade unions and employers at global

level. They shared in the design of the study through recorded on-line video discussions and subsequently provided written and/or virtual feedback on interim and draft final reports. Exchanges with informants therefore extended from the outset of the study to its conclusion and, in line with the study's objectives, ranged across the OSH challenges posed by GSCs, and the nature and impact of current regulatory approaches aimed at addressing them, as well as the factors that influence their operation.

A number of functionaries of the International Labour Office (ILO) (N~15), with significant experience and involvement in support of initiatives to improve labour conditions in LMICs and especially those at the ends of global supply chains, also took part in recorded discussion groups that took place both online and via in-person meetings in Geneva. They comprised field staff engaged with the main ILO supply chain support programmes, senior ILO officials with responsibility for these programmes at a global level, and staff from other departments who provided further support for ILO initiatives relating to global supply chains. Such discussions initially helped inform the design of the review. Subsequently, interim findings were shared with those concerned and their detailed comments helped inform further consideration of matters in the final report.

The approach adopted by the review was similar to that used by the authors in previous studies reviewing, for example, evidence of support for health and safety in micro and small firms in Europe (EU-OSHA 2016) and in securing substantive compliance with health and safety standards more generally in EU member states (EU-OSHA 2021). In these studies, the method was found to be especially useful in capturing underlying determinants of observed practice. Starting from an understanding of the power of both market and environmental factors in determining the relations that influence OSH, the analysis further drew on theoretical frames found in regulatory studies. Again, the same previous research experience indicated that framing analysis in this way was helpful in both theorising and explaining OSH interventions and the factors that influenced their impacts (see for example Bluff et al 2022).

### **3 Contexts of work health and safety in LMICs.**

There is widespread academic consensus that significant impediments to the effective control of work health and safety risks exist in many LMICs in key economic sectors such as food, agriculture, electronics, clothing and footwear, toys and vehicle manufacture — all of which are increasingly export orientated and often situated at the ends of global supply chains (GSCs)<sup>1</sup> controlled by large trans-national corporations (TNCs). Most notably, these sectors are characterised by rapid industrial development, informal employment and business relationships, limited public regulation, weaknesses in the arrangements for worker representation, under-resourcing and poor development of professional support,. It is also clear from the research evidence that, collectively, such contextual features are important

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<sup>1</sup> <sup>1</sup> The terminology used to describe the structures that facilitate these business relations varies. Terms such as supply chains, value chains, commodity chains, production networks and so on, are frequently used and distinctions between their meanings and contexts are also discussed. However, for the sake of simplicity, this article follows the generic definition used by ILO/OECD/IOM/UNICEF (2019):

*‘Global supply chains represent goods and services that cross international borders for consumption or as inputs for further production.’*

The definition does not distinguish between established and emerging economies involved in the production and transfer of the goods and services. However, the focus of the present paper is on those chains that facilitate the production of goods and services in LMICs and their trading in markets of developed countries.

determinants of the disproportionate scale of work-related harm found in LMICs (Walters et al 2024)).

### ***Industrial development***

Sourcing of production and services from LMICs by firms based and largely trading in advanced economies contributes to their economic development. For this reason, it has been widely supported by governments in LMICs, featuring in their economic development plans and prompting initiatives such as special economic zones in Indonesia or the maquiladoras industries in Mexico, for example, which may either be under-regulated or difficult to regulate, or even specifically freed from regulatory requirements that apply elsewhere (see Arkebe and Lin 2020). More generally, free market and neo-liberal global economic policies, adopted by both LMIC host and TNC home states and at the global level, have, in combination with rapid advances in information technology and logistics, supported the move away from direct investment in the ownership of local sources of production. Instead, there has been a shift towards placing greater reliance on developing local businesses via GSCs, over which TNCs exert control, notably through retention of intellectual property, and the imposition of cost and delivery requirements (Gereffi et al 2019).

There is a substantial discourse on the strengths and weaknesses of such supply arrangements and the nature of their governance. In particular, five different types of governance have been distinguished by Gereffi and his colleagues (Gereffi et al 2005; Frederick and Gereffi 2009): market, modular, relational, captive and hierarchical. The usage of these is argued to be in large part determined by a) the complexity of information sharing that a demand requires, b) how far the information for 'production' can be specified in relatively precise terms, and c) the level of supplier competence that is available. These variations in governance are in turn seen to lead to supply relationships that differ considerably in terms of the depth of interactions involved and the implications they have for employment conditions in supplier organisations (Lakhani et al 2013).

This trend towards TNCs placing greater reliance on such supply relationships is widely recognised to have been an important feature of the global economy in recent decades and to have acted to stimulate economic interconnectedness within it. Theorists within the field of Global Production Networks, for example, have noted how it has supported the bringing together of the global and the local, notably in terms of the way in which global forces have affected regulatory regimes. At the same time, the extent to which the influence of TNCs has contributed to social development and, more specifically, to the health, safety and welfare of workers in the LMICs is a more vexed question (Barrientos et al 2011). While many of the high-profile TNCs involved with GSCs have measures in place to promote health and safety standards, evidence of their influence in improving outcomes for safety or health remains limited (Short et al 2020). Notwithstanding the linkages and forms of governance GSCs involve, buyers do not always have the capacity to establish the type of supply relations they desire (Gereffi et al (2005). Meanwhile, in high hazard industries like mining, oil and gas extraction and metal manufacture, where inward investment of TNCs in LMICs may still follow older patterns of ownership and control, evidence indicates that health and safety outcomes are not necessarily any better (Quinlan 2023). Interpenetration of formal and informal work and employment makes for further complications for OSH management (as Lahiri Dutt 2016, for example, notes in the case of mining in India).

### ***Informality of employment and business relations***

At the global level, the ILO has indicated that, overall, more than 60% of the world's working population are found in the informal economy.<sup>2</sup> Of the two billion people who work informally, most reside in LMICs, where: ‘the majority lack social protection, rights at work and decent working conditions’ (ILO 2018). A wide range of work activities are found in informal sectors, depending on the region and country (see, for example, Fudge 2012). They have invariably, however, been found to be associated with pervasive and poor working conditions and work that is often accepted as dangerous, but tolerated by society, and by workers themselves (Sankaran 2012). Furthermore, although the work health and safety practices of suppliers in LMICs may be affected to some degree by well-resourced foreign lead firms in GSCs, work may be outsourced from these first-tier suppliers to other firms, lying beyond such influence, not only in the formal economy but in the informal parts of LMIC economies too. Important questions therefore arise regarding the design of strategies to achieve regulatory influence over the conditions experienced in such work, and the contexts in which they occur — which many accounts demonstrate to be hugely different from those found in the formal economy (Bartley 2020).

Heterogeneity and flexibility are two of the hallmarks of informality. Workers may be in waged or non-waged employment (including self-employment). The places where work is carried out in this part of the economy often stretch well beyond typical workplaces in the formal economy. They include, for example, the homes of workers, public spaces such as informal roadside markets, or other venues not normally understood as traditional ‘workplaces’ in the regulatory or preventive work health and safety literature. Indeed, as Lund et al (2016) demonstrate, with case studies in Africa and South America, conventional approaches to promoting and supporting compliance with labour standards, whether through regulatory inspection, support from professional occupational health services or trade unions, are unlikely to achieve much impact in such scenarios. In addition, such work may, in turn, involve a much wider range of controlling (or influencing) actors than those traditionally thought to be included among regulatory influences.

Bartley (2020) points out that although lead firms in GSCs and global regulators may regard LMICs as ‘regulatory vacuums’ to which the global standards of Conventions and Codes of Conduct provide a remedy, this view may misunderstand a more complex reality in which multiple regulatory influences are at work. For example, local government institutions, port authorities, local health services, spatial planning bodies and tax authorities, among others, may be as important as labour inspectors as regulatory influences on health and safety in informal work. As Aked (2021) notes, business transactions in this part of the economy are governed by an organising logic which is highly *networked and relational*, involving a range of private actors with potential influence over the implementation and operation of work health and safety arrangements. In addition, stressors and risks associated with work in the informal economy are likely to raise wider health and safety considerations, including in relation to nutritional needs, psycho-social support requirements, environment risk impacts and so on, and in ways different to those familiar in the formal economy (Lund et al 2016).

### ***Workers’ interests and representation***

Workers in LMICs also face challenges in representing their interests. Trade unions in LMICs are seldom as strong as those in advanced economies, which have long histories of industrialisation, worker mobilisation and organisation (Visser 2019). At the same time,

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<sup>2</sup> The informal sector or informal economy is usually defined as a process of income generation in which the participating actors and their activities are not recognised, recorded, protected or regulated by public authorities: see Fudge 2012, 6-7.



inter-country differences in union rights and power also exist in LMICs. The ITUC's *Global Rights Index*, for example, accords different ratings to Mauritius, Vietnam and Bangladesh.<sup>3</sup>

Unions in LMICs have more generally found it difficult to organise in informal sectors, where workers may be difficult to contact, and collectivise, and their needs may differ from those of workers in the formal sector (ILO 2020a). Yet global standards on OSH rest on notions of the fair representation of workers' interests and the ILO's standards frequently require arrangements for workers' participation in the delivery of arrangements to comply with them. Global union federations (GUFs) are active in some sectors offering support for local trade union actions in LMICs and there are notable examples of success in this respect – such the former Bangladesh Accord – although, it is generally acknowledged that these are exceptional rather than the norm (James et al 2019)

Moreover, at the highest level of OSH norm-setting and policy-making the official basis of worker representation still largely focuses on trade unions (Lakhani et al 2013), despite the weakness of organised labour in many countries and the growing range and networks of informal economy organisations that could (and at times do) offer alternative avenues of representation. While there is some evidence of partnerships, for example, between informal economy representative institutions and trade unions, many workers are not independently represented at local, national and international levels (ILO 2022). Although formal collective bargaining agreements encompassing health and safety arrangements and the right to access workplaces for health and safety purposes essentially remain the prerogative of trade unions, in many LMICs membership of trade unions is by law limited to *employees* working in a direct employment relationship. This limitation often exists alongside the problematic implementation of regulatory requirements on worker participation, such as, for example, the selection of health and safety representatives and membership of joint health and safety committees at workplace, sector and national levels (James and Walters 2022). This is particularly so in relation to informal workers and work (ILO 2020b).

### ***Economic rationales and constraints of public regulation***

The reduced costs of production and other business advantages associated with the informal nature of LMIC economies have provided incentives for lead firms in GSCs to outsource production to LMICs and further distance themselves from direct ownership and control of local production. The opportunities for economic development within host countries presented by such redirecting of FDI have, in turn, not been lost on host country governments. As Richard Locke (2013, 10) concluded in his influential book on the effectiveness of private codes of conduct and the like:

*'...in many cases, the national governments of the developing countries hosting ... factories [have] either lacked the institutional capacities to fully regulate labour, health and safety and environmental standards within these supply chain worksites or they [have] intentionally chose[n] not to enforce their own domestic laws and regulations for fear of driving up costs and thus driving away these sources of economic development, employment and taxation. As a result, the factories producing for global supply chains [have fallen] into a regulatory void in which labor laws and workplace standards [have not been] enforced by either host (developing) country governments or by the national authorities governing the large consumer markets absorbing much of this global production.'*

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<sup>3</sup> See <https://ituc-csi.org/ituc-global-rights-index-2023>.

More widely, other aspects of the public regulation of OSH in LMICs are frequently problematic. For example, not only is the provision for occupational health services generally poor (Rondinonie et al 2021), but systems of support for both public health and social welfare are very limited — with poor or non-existent access to social insurance benefits, compensation for persons who have been injured or made ill by their work, adequate or affordable treatment for injuries or ill-health or support for returning to work following absences caused by work-related ill-health or injury (Lund 2012; Lund and Marriot 2011). Furthermore, as we suggest in more detail in the following section, other systems for supporting compliance with regulatory standards such as through advice from specialist professional services, access to training, or even provision of information are all quite limited in comparison to those found in advanced economies.

Even more widely, it is increasingly acknowledged nowadays that the relationship between work and health is substantially more complex than that determined by the control of risks traditionally associated with OSH, going beyond compliance with statutory duties relating to their control. As numerous studies show, adverse health effects can flow from many wider influences, including matters of financial remuneration, job-insecurity, work organisation, , unfair treatment, informality, gendered inequalities and so on. Moreover, such negative influences are more commonly experienced among workers on low incomes and in insecure or informal employment. Yet, while such factors are acknowledged and extensively discussed in the wider literature, there is very little information or study of them in relation specifically to health and safety in LMICs. Instead, attention has tended to focus rather more narrowly on work health and safety practices and their outcomes in relation to particular sectors or products.

#### **4 Supporting compliance with OSH standards in LMICs**

The previous section reviewed some of the factors within LMICs mitigating against the effective control of work health and safety risks. Shifting economic policies favouring support for export orientated production in combination, with neo-liberalism as the essential political-economic ideology informing these developments, are seen to define the economic policy contexts, both globally and in LMICs, within which the ILO's 2022 Amendment will be required to operate to achieve greater traction for OSH. This section examines in more detail factors more directly affect implementation and operation of work health and safety regulatory instruments. It first briefly outlines some key features of modern health and safety regulation and then considers the main factors identified as influencing its implementation and operation in LMICs.

##### ***The nature of public regulation***

Most countries, including LMICs, have regulatory institutions, including legislation, seeking to prevent injuries, disease and death at work. In the past 50 or so years the nature of the preventive measures in these provisions has changed from traditional specification standards requiring specific safeguards to standards that are principle-, performance- or process-based and which require duty-holders (usually employers) to assess and manage health and safety risks in ways that are participative and better integrated with the overall management of firms. This approach has spread through most developed countries and to many, but far from all, LMICs as well. Such reforms have also had a substantial effect on global standards for OSH, as reflected in ILO Conventions, like Convention 155,<sup>4</sup> as well as in the content of

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<sup>4</sup>Although to date, less than half the member states of the ILO — some 75 — have ratified Convention 155. See:[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_I D:312300:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_I D:312300:NO)



voluntary standards like ISO 45001. The changes introducing this approach have also often sought a more inclusive coverage of work, with generic duties placed on employers to identify, assess and control the risks of the work for which they are responsible, regardless of its nature, sector or location. They have further required the establishment of national work health and safety authorities and systematic national work health and safety policies and plans. Again, these developments are reflected in ILO standards, such as Convention 187, requiring a promotional framework for OSH and Convention 161 on occupational health services.

### ***Implementation and operation in LMICs***

Critical analysis focusing on these developments, mainly in advanced economies, suggests that while modern regulatory strategies may go some way to address some of the weaknesses of former specification standard approaches as well as some of the consequences of changes in work arrangements, they have features that undermine their effective operation. Not least, their mandates often require the support of ‘enabling preconditions’, which are frequently missing or underdeveloped across large sections of advanced economies and are certainly problematic in LMICs (EU-OSHA 2021). Indeed, in LMICs the wider challenges of poverty, informality and the under-resourcing of measures for social and health protection discussed in the previous section mean that there is often little sign of such pre-conditions. As a result, a common finding is not so much the absence of statutory work health and safety provisions, but an absence of the means to implement their requirements. For example, a survey mapping the coverage of work health and safety rules and provisions and their enforcement in 79 ICOH member countries found that while more than 90 per cent of respondents felt there was a set of rules and provisions regulating health and safety in their country, they believed that these rules and procedures were only ‘partially’ enforced and utilized (Rondinone et al 2021). Several country studies point to similar problems in more detail (see for example, Moyo et al 2015 on Southern Africa; Atusingwize et al 2019, on Uganda; Joshi 2003, on India; Hang 2018, on Vietnam; Zhuang and Ngok 2014, on China; Tang 2020, on South East Asia; and more generally, Heyes and Rychly eds 2021).

Two issues have been central to these problems of operationalisation: first, the problematic application of regulatory requirements on OSH management; and, second, the inadequate systems in place to monitor and enforce these requirements.

### ***The management of OSH***

A problem with work health and safety regulation in most countries is that, notwithstanding the move to principle-, performance- and process-based approaches, it is still primarily focused, like other forms of employment regulation, on protecting employees in an employment relationship. Despite the substantial recent developments in most, if not all, national labour markets around the world — which have revived work arrangements such as contracting, agency labour, and other forms of precarious work — the main general duty in work health and safety law in almost all countries is still owed by an ‘employer’ to its ‘employees’. In the case of the informal economies of LMICs, in particular, such employment relationships may only be found among a minority of the work-active population. This is seriously problematic where supply chains are involved, as they frequently are in newly industrialising LMICs, and the actors controlling the conditions of work experienced by workers are often those that remotely determine the price and delivery requirements that drive production and have no direct employment relationship with the workers involved in supplying their goods and services.

The emphasis provisions place on responsibility for the *management* of work health and safety is also not without problems. It is widely acknowledged that this requires levels of knowledge and competency from duty holders which, while not especially challenging for larger organisations with the will and capacity to address them, are much more so for the smaller enterprises that constitute the great majority of firms, employing a large part of the workforce both in advanced economies and in LMICs (EU-OSHA 2016). In LMICs, as previously noted, this problem is compounded by the fact that a substantial proportion (and in some cases, a greater proportion) of work, and the workers undertaking it, is in the informal economy where investment in formal means of work health and safety management is even more unlikely.

A further problem is that access to the competence required to manage health and safety effectively is also insufficient. Occupational health services, individual health and safety practitioners, and the like, are key players in delivering support for employers to meet their work health and safety regulatory obligations effectively. Again, large organisations and TNCs in high hazard industries may have few problems in organising the use of (external or internal) occupational health services or employing generalist work health and safety professionals to advise them on work health and safety management (Walters et al 2022a). However, survey evidence from advanced economies suggests that many, possibly the majority, of workers in these countries still *do not benefit* from access to such support (ETUI 2014; Rantanen et al 2017) and shows a size-related relationship between firms and their use of occupational health services (Walters 2024). In newly industrialising LMICs the presence of specialist support for work health and safety beyond that employed in large and often trans- or multi-national companies has been largely absent. For example, a 1995 report of the joint ILO/WHO Committee on Occupational Health suggested that only an estimated five to 10 per cent of workers in developing countries had access to occupational health services (ILO/WHO 1995) and ILO General Survey Reports provide a range of further examples of the limitations of such infrastructural support in these countries.<sup>5</sup> While there have been many calls for its increased provision, there is little evidence to suggest that the coverage of such services has grown substantially, or apace with the growth of industrialisation (see also Joshi 2003; Rondinone et al 2021). There is even less evidence available on what these services and their practitioners actually contribute to the prevention of work-related fatalities, injuries and ill-health, even when they are available (Walters 2024).

### ***Limitations of inspection and enforcement***

Historically, following the introduction of national legislative measures on work health and safety, state regulatory inspectorates have usually been established and tasked with supporting their implementation. There are many different approaches to achieving this, depending on the wider historical, political and regulatory contexts in which they occur (see Walters 2016; Piore and Schrank 2018). For the most part, the responsibility for inspection is held by the state, although there may be some degree of delegation to regional or local authorities, or to sector-based organisations, as well as the involvement of social insurance institutions. In some countries, worker-elected health and safety representatives may also have inspection powers.

Regulatory inspectorates generally have powers to administer health and safety regulation, inspect work activities and take measures to ensure compliance from duty holders with standards, including by issuing statutory notices or initiating prosecutions. Enforcement powers vary nationally. They include, in addition to initiating prosecutions, administrative

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<sup>5</sup> See for example ILO 2017a, on construction, mines and agriculture.

sanctions — statutory notices requiring contraventions of the health and safety statute to be remedied, prohibiting dangerous work, or, requiring an employer to consult OSH experts — and in some countries, on-the-spot fines or citations. Meanwhile, in parallel with changes in standard setting, there has often been a change in the orientation of enforcement policies away from their traditional focus, at least rhetorically, on deterrence and punishment, and towards seeking the more enlightened engagement of duty-holders that is arguably implied by principle-, performance- and process-based regulation. Such a role requires a different skill set for inspectors to those associated with more traditional enforcement policies. However, the extent to which such skills are possessed by inspectors in LMICs is largely unknown and, in the few cases in which it is documented, acknowledged to be inadequate (see for example Hang on Vietnam; Abdelrahim et al 2023, on Sudan; Atusingwize et al 2019, on Uganda and Rondinone et al 2021, more generally).

State arrangements for work health and safety inspections in virtually all countries are subject to significant resource constraints, both historically and currently, which have resulted in regulatory agencies developing sets of practices designed to meet the contexts in which they operate. There is an extensive and long-standing literature discussing these approaches, and their strengths and weaknesses (see EU-OSHA 2021 for a recent review). Not surprisingly such constraints are evident in LMICs and frequently noted in the (albeit quite limited) literature on regulatory inspection in them (see also in general, Baker ed 2005). Thus, in an ILO study of labour inspection systems in a mixture of 17 high, low and-medium-income countries, Vega and René (2013) noted:

*‘In several countries, however, securing effective enforcement represents a significant challenge. From the national studies, figures on sanctions and infringements from different administrative records show a lack of enforcement in some specific areas, particularly in [work health and safety] matters... Other national studies observe that fines and penalties are only rarely followed through and that enforcement procedures are initiated only if a violation results in serious harm to worker health or safety.’*

More recent ILO project evaluations repeatedly point to weaknesses. These include insufficient institutional capacity, in relation to numbers of inspectors and occupational health providers and professionals, and also in relation to their technical capacities (Rasolonjatovoarivelo 2020). They also encompass the limited capacities of employment injury institutions and limitations in collecting and analysing OSH data (Frederick et al 2021, see also Contri and Infante-Villarroel 2019 a and b). In the case of Palm Oil production in Indonesia, for example, fewer than one per cent of enterprises were found to be visited by labour inspectors each year (ILO 2017b), while in Mexico, none of the workplaces examined in an ILO project reported having undergone an inspection (Mogrovejo et al. 2020) and the capacities of labour inspectors were assessed to be too limited to ensure compliance with OSH legislation (see ILO 2021a, b and c).

Inspection, and processes of securing compliance with modern regulatory standards more generally, are complex activities, requiring not only technical OSH expertise, but also communication (especially negotiation) skills, and the ability to understand how organisations, and management approaches, work. This is difficult enough to resource and implement in the world’s wealthiest countries. In LMICs where there are fewer resources available to regulators, unions or prevention services, it is even more difficult to develop the required regulatory capacity. As Graham and Woods (2005, 868) observed:

*‘Weak rule of law, the absence of government administration capacity, and weak bargaining power.... have all mitigated against the emergence of appropriate and effective regulatory institutions.’*

Similarly, Locke (2013, 169) comments that while most countries hosting GSCs have passed strong labour laws ‘... in many of these countries, these labour laws and regulations are often violated, and the labor inspectorates/ministries charged with inspecting workplaces and enforcing labor laws are weak, underfunded, and at times, prone to politicization or even corruption.’

In some LMICs, these obstacles may be exacerbated by the comparatively low social and economic status of field inspectors, relative to the owners or managers of the organisations they are charged with inspecting.

## 5 What is to be done?

Despite the challenges detailed above, there may be opportunities to improve the effectiveness of work health and safety regulation within LMICs through (a) horizontal actions to improve the efficiency and effectiveness of domestic state regulation; and (b) vertical actions focussed on supplementing those measures with a combination of regulatory strategies undertaken by external actors.

### *Horizontal actions*

It is widely recognised that public regulation, whether in LMICs or elsewhere, using traditional approaches to labour inspection, is unlikely on its own to be effective in protecting workers (EU-OSHA 2021). It is further recognised that while meeting the challenges of work health and safety in LMICs necessarily requires a solid base of regulatory standards, there is additionally a need for strategies that are more responsive to the economic structures and organisation within such countries (Bartley 2011). In South and South-East Asia, for example, researchers critical of current state regulatory practices argue that more strategic inspection and enforcement are required (see e.g. Hang 2018, on Vietnam; Zhuang and Ngok 2014, on China; Sarkar 2021 on India; and Chandrasiri and Ramani 2021 on Sri Lanka). Indeed, the concept of ‘*strategic enforcement*’, developed by David Weil (2010, 2018), has some salience in relation to LMICs, as is in part recognised in ILO publications on labour inspection.<sup>6</sup>

At present, empirical evidence of the application of such approaches in LMICs is rarely documented in the literature. There are, however, relevant examples from Latin American countries with significant issues of poverty, social inequality, informal work and instability. For example, Schrank and Piore (2007) describe labour inspection practices in Central America, while Piore and Schrank (2008 and 2018) point to a revival of labour market regulation in a number of countries influenced by the Franco-Iberian (Latin) model of labour inspection by inspectorates monitoring compliance with the full range of labour law provisions. They argue that this model allows inspectors to tailor their enforcement actions to firms' exigencies, and reconciles regulation with economic flexibility. In a similar vein, Pires (2008) argues that findings in Brazil indicate that labour inspectors have been able to promote sustainable compliance (legal and technical solutions linking up workers' rights with firms' performance) by combining punitive and educative inspection practices.

Meanwhile, in Latin America, as well as in some other countries, there has been substantial interest in approaches to *co-enforcement*, based on empirical research into collaborative inspection and enforcement processes involving state regulators working with worker

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<sup>6</sup> The ILO Approach to Strategic Compliance Planning for Labour Inspectorates draws upon some elements of strategic enforcement (ILO 2017c, 4–11). It calls for inspectorates to operationalise strategic compliance plans, prioritise compliance issues and targets, recognise influences on compliance, and enlist all stakeholders, and all available activities, tasks, actions, campaigns and tactics.

organizations (see Amenguel and Fine 2017; Fine 2017; Gordon 2017; Fisk and Patel 2017; Posthuma and Bignami 2014).

It is clear, however, that to introduce effective regulatory innovation of this type requires leadership, co-ordination, investment in training and substantial support for labour inspectors and others involved in its implementation. Unfortunately, even in advanced economies such approaches have seldom received adequate state resourcing. In fact, in many of these countries, these kinds of innovative methods have been used as means of ‘doing more with less’, in political contexts that favour advisory state approaches and voluntary compliance (EU-OSHA 2021). In such circumstances, critics argue that they are unlikely to represent substantial or effective alternatives to more traditional inspection regimes (see for example Tombs 2017). In the case of LMICs, such criticisms have prompted discussion of the role to be played by vertical sources of ‘supplementary’ regulation involving TNCs and global trade union confederations, technical assistance programmes and other external ‘vertical’ sources of influence.

### ***Vertical supplementation***

Cross-border trading relationships, involving the supply of goods and services from LMIC-based suppliers to buyers in developed countries, embody forms of international economic interconnectedness. As a result, they are invariably embedded in multi-scalar regulatory systems within which local horizontal forms of state regulation can be usefully supplemented by externally sourced ‘vertical’ regulation, as is, for example, highlighted in the literature on Global Production Networks (see e.g. Coe et al 2008).

Experiences with the horizontal application of ILO Conventions adds weight to the potential value of such ‘supplementation’. For it shows that even when they are ratified, their requirements are not adequately enforced, and they frequently fail to effectively stimulate and support good practices on OSH in LMICs (Bacarro 2015; Royle 2010). As already noted, some observers argue that the ILO’s Declaration of Fundamental Principles offers an approach that helps circumvent these weaknesses in traditional approaches to global regulation by (a) promoting principles of universal and lasting importance that transcend limitations on the operation of ILO Conventions, especially in LMICs and (b) promoting the use of the requirements of Conventions as reference standards for good practices that can be further supported by a combination of other private and public regulatory influences (Politakis 2022).

Evidence on the impact of the original 1998 Declaration lends some support to this argument. When first adopted, the Declaration was greeted with some scepticism (Liukkonen 2020), and critics pointed to its non-binding nature and argued it was a response to the increasing demands for flexibility and for voluntary approaches to labour law that were a consequence of trade liberalization. (see for example Alston 2004). However, in the more than 20 years of its existence it has come to be regarded more favourably. Politakis (2022) argues that the Declaration has helped develop an international consensus on fundamental workers’ rights that provides an alternative means of securing compliance with Conventions. This, he suggests, is because its requirements and those of the Conventions it prioritizes have found their ways into many largely private law instruments, including bilateral free trade agreements; the UN Guiding Principles on Business and Human Rights; OECD Guidelines for Multinational Enterprises; and the UN Global Compact. Additionally, the Declaration is also referred to in International Framework Agreements between global union confederations and TNCs (see further below), as well as by private corporate social responsibility (CSR) codes. It is also a reference point for the World Bank’s operations as well as featuring among the labour safeguards of regional development banks. Such private law instruments are

argued to have ways of securing compliance that are not limited to public systems of regulatory enforcement. For example, a recent comparative analysis of the promotion and enforcement of compliance with labour provisions through trade agreements by Canada, European Union and United States notes their increased use and concludes that governments, employers and unions view them as tools for rectifying deficiencies in labour rights and working conditions (Corley-Coulibaly et al 2023).

It is further argued that far from undermining ILO Conventions, the 1998 Declaration boosted the ratification rate of the eight Conventions to which it refers, with more than 580 new ratifications registered since its adoption. For some observers this suggests that ratification of the two OSH related Conventions associated with the 2022 OSH amendment to the 1998 Declaration may similarly increase.<sup>7</sup> As a result, there may well be greater adoption of their requirements in national laws. However, these arguments do not really engage with the literature on what makes such regulatory requirements operationally effective in the case of work health and safety, as opposed to what might influence their inclusion on the statute books of LMICs. Given the observation that it is not the presence of regulatory measures that is the problem in LMICs, but rather their operational effectiveness,<sup>8</sup> a degree of caution regarding the likely impact of the 2022 amendment would seem to be warranted.

The critical literature on compliance with corporate codes of conduct on OSH and other forms of private regulation points not only to evidence indicating their potential relevance to improving OSH but also their limited effectiveness to date in overcoming weaknesses of State level regulation within LMICs (see for example Locke 2013; Kuruvilla 2021). There is, as a consequence, widespread agreement that while such activity on the part of global TNCs is both relevant and potentially valuable, and inclusion of OSH in global Declarations such as the Fundamental Principles may be helpful, to be effective such initiatives need to be located, and orchestrated, within broader collaborations. The same, moreover, is argued to be true of other forms of private regulation (Abbot et al 2015; Thomas and Turnbull 2018; 2021).

The well-known case of the (now superseded) Bangladesh Accord provides an example of such a collaboration and the types of features it can encompass. Established under an agreement concluded between global union federations and affiliated Bangladesh unions, on the one hand, and more than 200 TNCs in the garment industry, on the other (Anner 2021, 624-626), evidence indicates that while not without problems, the initiative was largely successful in identifying and resolving building and fire risks in the factories falling within its remit (James et al 2019). Its key features included legal enforceability of its requirements, co-governance by the signatories, transparency, worker participation, a complaints mechanism, and processes of workplace inspection, reporting, remediation and training to ensure compliance with its health and safety standards (Donaghey and Reinecke 2017).

Examples of other successful interventions in the garment industry undertaken under the ILO programme 'Better Work' similarly demonstrate the potential value of the careful co-ordination of multi-stakeholder initiatives involving horizontal and vertical forms of collaboration (Better Work 2022). This programme owes its existence to an original initiative in Cambodia in which the ILO was given a role in ensuring compliance with the labour provisions contained in a trade agreement between the US and Cambodian governments. Initially, the programme's operation generated much criticism and in response the ILO expended much effort improving its outcomes. Its subsequent successful extension elsewhere

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<sup>7</sup> According to the ILO's Normlex data base, at present less than half of the ILO's member states have ratified either of the Conventions. In the case of ILO Convention 155, it is ratified by 76 Member States, while ILO Convention 187 is ratified by 60 Member States.

<sup>8</sup> See the comment on the findings of Rondinone et al (2021), in Section 3 on page 7.

points to the positive role that collaborative networking involving unions, buyers, suppliers and local governments can play within a regulatory approach focussed on establishing mutually reinforcing dynamics between improving labour conditions and the achievement of enhanced organisational productivity, notably through support for factory-level capability building (Better Work 2022). It also highlights, though, how the effectiveness of such initiatives cannot be assumed since much depends on them being designed and supported in ways that are appropriate to the contexts in which they are to operate.

These caveats should not detract from the evidence these initiatives provide indicating that the vertical supplementation of domestic regulation within LMICs can exert an important, and beneficial, regulatory influence. Further evidence of this is found in initial evaluations of French 'duty of vigilance' legislation which strengthens the responsibilities of large France-based parent companies to protect workers in their supply chains and points to some degree in the same direction, notwithstanding the limited nature of some of the French provisions (Savoirey and Brabant 2021; Lafarre and Rombouts 2022). From a rather different perspective, similar support comes from the argument of Lund et al (2016) that to be effective, work health and safety interventions need engagement with and from multiple stakeholders and institutions.

## **6 Conclusions**

Drawing on the findings of a substantial review of the relevant literature, this paper has investigated the regulatory measures that are likely to facilitate or hinder the capacity of the right to a 'safe and healthy work environment' that was added to the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work* in June 2022 to generate OHS improvements in LMICs. To this end, it has discussed the current state of relevant regulatory approaches to ensuring the health and safety of workers in GSCs and the main determinants of their provision and effectiveness in the national and global contexts in which LMICs are situated. In doing so, it has presented evidence which indicates that achieving the aspirations of the Declaration in LMICs requires sound operational strategies to address the challenging contexts responsible for a disproportionate toll of work-related death, injury and disease in such countries.

More specifically, the paper has highlighted how regulatory approaches are significantly compromised where there are scarce resources available to ensure their effective operation; where the nature of the economy and especially the large presence of informal work, make conventional approaches inappropriate; and where there may be political or economic policy barriers to the effectiveness of work health and safety regulation. It has further confirmed, as others have argued in relation to labour standards more generally in LMICs, that while global business trends and economic policies may have contributed to economic development through their support of export orientated production and services in LMICs, their impact on social development, as measured by improved standards for OSH, has not always developed apace. In fact, in some sectors evidence indicates that their impact may have helped maintain and even spread poor OSH outcomes. Additionally, it must be acknowledged that the politics of investment are also bound up with the strategies of mobile capital to minimise regulatory burdens, off-load risks and maximise financial profitability. As Bartley (2020) points out, there is a hierarchy of rules in which, worker-centred rules and representation are a low priority, often for both the firms and states involved. Weak enforcement in this context is therefore not just a resource issue, but may be a consequence of the strategic evasion of regulation by lead firms in GSCs.



Such challenges notwithstanding, the paper finds indications, both from theoretical arguments and empirical data, of ‘what works’ in securing effective regulatory influences on work health and safety in LMICs. More specifically, although empirical data remains scarce, there are signs of some positive ways forward. They indicate, for example, that an optimal approach to achieving such influence involves adopting a mix of regulatory instruments and strategies, with the parallel engagement of a range of regulatory actors and ensuring they are led and co-ordinated in a way which sends consistent messages to the targets of regulation, and makes sure that the different forms of intervention cohere, with the strengths of some, balancing out the weaknesses of others. More narrowly, they point to the need for local health and safety and labour regulators to work together, along with other state regulators, and highlight that such orchestration need not be limited to public regulation. Rather, combinations of private and social forms of regulation may be used productively, as illustrated by the operation of both the former Bangladesh Accord and the ILO’s Better Work Programme.

While the challenge of informality remains significant in LMICs, it is conceivable that such enforceable multi-stakeholder approaches could be designed to reach beyond the formal sector and address this challenge, through seeking engagement with a wider range of public and private institutions with regulatory capacities relevant to the informal economy. However, strategic thinking is required to achieve the necessary leadership and direction of such orchestration in order to make appropriate and best use of limited resources and to achieve ‘buy in’ from key players.

As most writing on the impact of the 1998 Declaration makes clear, it is more a political statement than an enforceable legal instrument. Studies were, as a consequence, originally somewhat divided on the impact of the Declaration (see Alston 2004 for a critical appraisal). However, the current weight of opinion has been found to favour the notion that its political impact has been significant and has supported adoption of the requirements of the ILO’s core conventions in both public and private regulatory standards globally (Politakis 2022). Adding to it those addressing OSH, may therefore help provide stronger political stimulus to the kind of orchestration referred to above, while indirectly promoting the normative influence of ILO Conventions on work health and safety.

This could provide the ILO with a greater opportunity to provide both normative leadership and technical assistance regarding the design of appropriate regulatory and operational responses to achieve better adherence to its OSH standards. However, the global economic and political environment in which the Declaration and its Amendment is required to achieve this impact remains one in which neo-liberalism is the essential political-economic ideology that sets policy imperatives. TNCs, as a result, continue to drive spatial divisions of labour and FDI, and hence the global unevenness of capitalism, and to shape economic relations between the global South and North. Given this environment, it must remain questionable whether the consensus required among ILO stakeholders to ensure that the Declaration has a positive impact on the regulation of OSH in GSCs really exists — as the continuing impasse on the regulation of GSCs forcefully demonstrates (Thomas and Turnbull 2021). Without this consensus, and in such an ideological environment, it is difficult to see how the ILO can play more than a limited and localised role in stimulating and sustaining the level of strategic orchestration between private and public actors required to deliver the vertical and horizontal influences needed to secure compliance with its own OSH standards in LMICs. As a result, there remain huge challenges to be overcome if the inclusion of OSH among the Fundamental Principles of the ILO’s Declaration is to counter business imperatives to extract value at the local level and stimulate the positive outcomes that have been anticipated by some commentators.

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