

# Labour standards and capacity in global subcontracting chains: evidence from a construction MNC

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## ABSTRACT

This article investigates how fundamental labour rights specified in international framework agreements are implemented and monitored in subcontracting chains. It shows how labour's capacity for workplace-based monitoring is influenced by factors such as ownership structures, the societal context, and, most importantly, the institutions and dynamics of local labour control.

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## 1 INTRODUCTION

Economic globalisation has challenged trade unions' ability to match the scope as well as the structure of (largely) global product markets with meaningful forms of labour market control. Reflecting the nature of multinational corporations (MNCs) as one of the most extensive and powerful institutions at global level, trade unions, as well as civil society organisations, have used MNC structures for numerous transnational labour rights campaigns. In their quality as lead firms, they are targeted to influence the dynamics of inter-firm networks, set quality, social and environmental standards, and thereby impact on the governance of work and employment at the global level (see e.g. Bair, 2009; Riisgaard and Hammer, 2011). International framework agreements (IFAs), that is agreements between MNCs and global unions on fundamental labour rights, are one instance in this broader strategy where MNCs have become the terrain of attempts to establish structures for social dialogue (Hammer, 2005; Papadakis, 2008; Stevis, 2010). Reflecting the structure of global production, IFAs not only aim to extend labour rights within the global operations of a particular MNC, but beyond its organisational boundaries to subcontractors and suppliers

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(Locke *et al.*, 2011; Riisgaard and Hammer, 2011). Thus, the logic of these agreements tries to establish encompassing labour market controls (based on the labour standards of the ILO's 1998 Declaration of Fundamental Rights at Work) that are suited to the changing scope and structure of global production.

Yet although IFAs have attracted interest as a strategic tool, research on how they function in practice has been limited. Debates have been concerned with the content, the social dialogue and industrial relations aspects of IFAs, as well as how their monitoring mechanisms compare with multi-stakeholder standards (Hammer, 2005; Schömann *et al.*, 2008). What has not been addressed so far, mostly due to a lack of extensive case studies, is how structures and dynamics within MNCs, particular sectors, societal contexts and local labour markets impact on the outcomes of IFAs. This is reflected in an incomplete conception of regulation through sub-contractor chains in IFAs, which assumes uniform MNC procedures, as well as local labour markets, and underestimates the tensions such regulation creates. This article addresses some of these shortcomings through more broadly and locally contextualised case studies. The potential of IFAs as tools in the social governance of global production is explored through the following questions: how do actors at both ends of the subcontracting chain try to achieve compliance; what is the role of local institutions and dynamics in implementation; and what is the impact of sector-specific characteristics, in this case the construction industry. This allows an analysis of the factors that impact on implementing workplace-based labour rights monitoring on the one hand, and union organisation on the back of such management–labour relations on the other.

The empirical material draws on an overview of the IFAs concluded by the Building and Wood Workers' International (BWI) and one of its predecessors, the International Federation of Building and Wood Workers (IFBWW), as well as an extended analysis of a German construction MNC, Hochtief, in its operations in emerging economies. The Hochtief IFA was concluded in 2000, and was the first of nine IFAs the BWI has agreed with construction MNCs, many of which contain mandatory extension provisions to subcontractors and suppliers. Our case study looks at the IFA in the Hochtief operations in Brazil, Malaysia and Ukraine, and focuses on the implementation of workplace-based labour rights monitoring, using the IFA, in local labour markets that are dominated by considerable subcontracting, informal labour and migrant labour. The next section returns to key debates on social standards, highlighting the challenges for the social regulation of employment that result from the specific labour market dynamics in the construction industry. It also discusses the BWI's strategy regarding IFAs. The main section deals with the implementation, monitoring and local uses of the Hochtief IFA in Brazil, Malaysia and Ukraine. We argue that the effectivity of global agreements is contingent on local factors, as they are crucial in how subcontractor workforces are drawn into the remit of the lead MNC's industrial relations. The conclusion underscores the role of the local context in building local–global institutions of monitoring and industrial relations.

## **2 LABOUR REGIMES AND FUNDAMENTAL LABOUR RIGHTS IN CONSTRUCTION**

The extension of social standards through global value and subcontracting chains can be analysed as a rudimentary, though meaningful, strategy to control the labour market. Riisgaard and Hammer (2011), for example show how the global scope and

configuration of product markets structure the opportunities of trade union intervention. In order to analyse the effectivity of IFAs, however, this focus needs to be extended to the specific parameters of workplace-based labour rights monitoring at the local level.

## 2.1 Subcontracting local labour control

In debates on multi-stakeholder social standards, local participation and transparency are seen as necessary conditions for achieving compliance across subcontracting chains (O'Rourke, 2006). Contrasting compliance and commitment approaches, Locke *et al.* (2009) have recently restated the case for a 'commitment model' based on a longer-term relational approach to improving labour standards in supplier factories. However, even if multi-stakeholder standards hold a role for organised labour in monitoring (more often than not auditing is performed by non-workplace actors), the logic of IFAs is qualitatively different in that monitoring is to function through *workplace organisation*, and thereby aims for a 'thicker' set of management–labour relations in response to workplace issues. This also means that the challenges in getting IFAs to work are different compared with other (multi-stakeholder) labour standards: establishing sound implementation and monitoring mechanisms is not sufficient, as it is workplace capacity that is required in the first place. So far, though, case studies on the role of IFAs at the local level have been rare (see Riisgaard 2005 on Chiquita and Wills 2002 on Accor for exceptions), and subcontracting, which complicates monitoring as well as organisation, did not play any role in these cases.

Insofar as the functioning of framework agreements concluded at the global level is contingent on implementation and management–labour relations at workplace level, the analysis needs to draw on a framework that captures locally embedded dynamics and links to wider global institutions and processes. The construction industry, in fact, offers a pronounced example where product and labour market factors at the global level have to be absorbed and adapted to corresponding markets at the local level. Global restructuring has led to extremely tiered subcontracting chains, which, on the one hand, link the project management, technical expertise and financing of MNCs with layers of smaller and more place-bound companies while, on the other hand, significant increases in labour migration and informal employment co-exist with the local fixity of construction (see also Bosch and Philips, 2003; ILO, 2001; Lillie and Greer, 2007). Considerable outsourcing of lower-end functions has fuelled the massive growth of the informal economy, to an extent where 'informality is now the norm, rather than the exception, in the construction industry throughout much of the developing world' (Wells, 2007: 91), though this phenomenon is by no means restricted to developing countries (ILO, 2001). Against this background, the concept of local labour control regime (LLCR) allows capturing the evolution of locally embedded institutions and dynamics and their links with developments at the global level. Introduced by Jonas (1996) as an element of local modes of social regulation, as well as an extension of labour process analysis (see also Castree *et al.*, 2004), LLCRs underscore the following tension: while capital exploits variations across space in product, consumer and labour markets, there is a simultaneous need to stabilise the conditions of accumulation and social regulation in particular places in order to realise profits. An LLCR constitutes a crucial element in this respect, defined as

an historically contingent and territorially embedded set of mechanisms which co-ordinate the time-space reciprocities between production, work, consumption and labour reproduction within a local labour market (Jonas, 1996, 325).

Insofar as the functioning of an IFA relies on workplace capacity for monitoring, the concept of an LLCR helps in analysing the way local institutions and dynamics of work and employment change in response to shifting global–local product and labour market linkages (ownership, subcontracting, migration), as well as the wider implications these developments have with regard to labour control. Regarding the specific global–local linkages in the construction industry, monitoring as well as labour organisation is complicated by the industry's local, project-based and relatively labour-intensive character, together with the relative mobility of labour, materials and services.

Restructuring over the last decades has resulted in labour control regimes, which combine horizontally and vertically fragmented subcontracting chains with informal and (internal or international) migrant labour in particular ways. In industrialised countries, trends of casualisation have come as self-employment, often described as false self-employment in cases where workers are *de facto* employees without many of the statutory protections arising out of direct employment (Harvey and Behling, 2008; see Forde *et al.*, 2008 on different forms of contingent labour). In the European Union (EU), cross-border subcontracting and 'posting' of workers has led to significant labour migration in the sector, as well as pressure on existing social and labour standards (Cremers *et al.*, 2007). In emerging economies, the relation between (rural) labour supply, migration, urban labour markets and labour control is very different (e.g. Breman, 1996). Here, the industry has become a major employer of migrant labour, overwhelmingly in informal employment, which was put at between 75 and 95 per cent in countries such as Brazil, India, and Malaysia (ILO, 2001; Wells, 2007). Flows of migrant labour often overlap with the rise of informal labour, thereby creating tiers of labour control, which correspond to tiers of subcontracting (often with a crucial role for labour intermediaries). Subcontracting in such a context exerts constant pressures on wage levels (often below living and minimum wages), employment conditions (e.g. working time, high rates of occupational injuries) and living conditions (reflecting exploitative and/or paternalistic settings) [see also Human Rights Watch (HRW), 2009a]. Workers' ability to challenge such conditions is often circumscribed by a form of dormitory labour process (Pun and Smith, 2007), associated with further abuses (withheld wages, restrictions on leaving the employment relationship; HRW, 2009b).

This article argues that an investigation into the local functioning of the workplace-based labour rights monitoring specific to IFAs needs to take into account the specific form of LLCRs. The implementation of labour rights, as well as management–labour relations in subcontracting chains has become more difficult in the face of the restructuring and outsourcing in the construction industry sketched above. Independent of these secular developments, however, the analytical importance of LLCRs results from the qualitatively different forms of social organisation across societal and local contexts. Regulation through subcontractor chains is contingent on power dynamics between different actors within a particular MNC, as well as the local dynamics of re/production and institutions that shape a tractable construction labour force in the first place. The next subsection reviews the development of IFAs in the construction industry before we turn to the specific case study of Hochtief's IFA in three emerging economies.

## 2.2 BWI and international framework agreements in construction

In the attempt to extend labour market control in both a horizontal as well as vertical dimension, IFAs have become an important plank in BWI's strategy. The aim, promoted via information, education and training initiatives, is to use them as a focus in building coordination networks in MNC subsidiaries and subcontractors, and to encourage affiliates 'to use framework agreements as a tool for organising' (IFBWW, 2003: 3). With the signing of an IFA with IKEA in 1998, the BWI was among the first Global Unions to embark on this strategy, and has since signed 14 IFAs in total, 9 of which were concluded with construction MNCs.

What is particular to the development of BWI's IFAs is, first, that these IFAs often contain strong provisions on core labour standards, and specifically commit construction MNCs to enforcing compliance in the subcontracting chain; in fact, Hochtief, Skanska, Impregilo and VolkerWessels regard compliance as mandatory. Second, recent agreements tend to commit to a wider range of ILO Conventions that are particularly relevant to the sector, for example including wages (C94, C95, C131), the reduction of working hours (C1, C47, Rec116), and occupational health and safety standards relevant to construction (C155, C161, C162, C167). Generally, there is explicit mention of the importance of establishing an employment contract, and some agreements contain strongly worded clauses on living wages (see those concluded by Impregilo, Italcementi, Royal BAM, Veidekke, VolkerWessels). Further, a number of IFAs also refer to ILO standards and tools in the area of health and safety.<sup>1</sup> Third, the agreements establish explicit responsibilities and routes of reporting, mostly via a reference/monitoring group, which reports to the MNC's Executive Board.

A first important function of framework agreements is that global unions are recognised as stakeholders in compliance with fundamental labour rights and 'social dialogue'. In the first instance, this means that conflicts can be raised with central management at the headquarters. An IFBWW (2004) review, for example mentions a complaint about organising a construction site of Hochtief's US subsidiary, Turner, a conflict that was resolved after the intervention of Hochtief's home country union in the construction industry, IG BAU. In Skanska, it was the monitoring group that dealt with complaints from Peru ('concerning the local management, salary scale, canteen and food, milk provisions, reemployment of staff'), Germany (on employment/dismissal of Polish workers) and the US (on unfair labour practices). Another protracted conflict in one of Lafarge's Korean subcontractors, however, shows the difficulties of enforcement in subcontractors—not only of the provisions of the IFA, but also the decisions of weak government regulatory bodies (in this case, the Labour Relations Commission; BWI, 2007b). In March 2006, Woojin Industry, one of Lafarge Halla Cement's in-house subcontractors, closed down after 21 of its 35 workers joined the Korean Chemical and Textile Workers Federation (KCTF). While workers who retracted their union membership were employed in other subcontractors of Lafarge, this was refused to unionised workers, even though the Regional Labour Relations Commission ruled twice that Lafarge, which is taken to have managerial control over Woojin Industry, has unfairly dismissed the workers. The KCTF members launched a

<sup>1</sup> See for example the ILO Code of Practice on HIV/AIDS and the World of Work (Impregilo, Italcementi, Lafarge, Royal BAM, Veidekke, VolkerWessels), the ILO Guidelines on Occupational Safety and Health Management Systems (Italcementi, Lafarge, Royal BAM, Veidekke, VolkerWessels), the ILO Code of Practice on Safety and Health in Forest Work (Italcementi, Veidekke), and the ILO Code of Practice on Safety in the Use of Synthetic Vitreous Fibre Insulation Wools (Italcementi, Veidekke).

campaign, including a sit-down strike in front of their plant, sought mediation from the Ministry of Labour, and engaged the Regional Labour Relations Commission and the National Contact Point dealing with the OECD Guidelines for Multinational Enterprises. They also went to France to meet management at the Lafarge headquarters, as well as home country unions. In early 2007, two KCTF officers started a hunger strike in front of Lafarge's Seoul office. In March 2007, the National Labour Relations Commission overturned the ruling of the Regional Commission; in reaction, the KCTF appealed to the Ordinary Court (TUAC, 2007: 39). With the BWI's help, an agreement has since been reached that included re-employment for the workers concerned (Interview, BWI General Secretary).

Beyond such high-level and elementary complaints mechanisms, the BWI has recognised that IFAs constitute only a first step towards securing labour rights, particularly in the face of the project-based character of construction, complex and changing subcontracting chains, as well as vastly differing labour market structures, employment regulations and trade union capacity. In this respect, some BWI affiliates have developed distinct ways of working with IFAs. For example, a number of national and international trade union activities have been geared towards providing information about IFAs, training on organising and building networks in MNCs. Equally, some affiliates organised their international projects to follow and monitor their home country MNCs, and to support trade union campaigns, organisation and capacity building in foreign locations. The Dutch construction unions in particular have repeatedly monitored Netherlands-based construction MNCs in the Gulf region (BWI, 2007a; n.d.-a); Dutch and Swiss construction unions have used building projects for the 2010 football World Cup in South Africa to monitor contractors and start a dialogue with the international football association FIFA (BWI, 2008). A number of these initiatives and missions form part of the regular review processes of the respective IFAs. Visits by the reference/monitoring groups can provide a platform for fact finding in MNCs' foreign operations, to address problems, as well as to create capacity for trade unions and social dialogue. A visit to review the Tanzanian Veidekke subsidiary Noremco, for example, helped to strengthen local management–labour relations and subsequently resulted in a collective bargaining agreement between the Tanzanian construction union Tamico and Noremco (BWI, 2007c).

Thus, although IFAs commit the MNC and its subcontractors to the same labour rights, monitoring without implementation initiatives, as well as monitoring organised from the headquarter without parallel local capacity, cannot translate into consistent practice. The complex structure of subcontracting provides the basis for outsourcing or denying responsibility, rationalised through the 'institutional distance' between home and host country: 'the further you go away from your [home base] the more difficult things become' (Interview, Hochtief HQ, HR manager). The role of the joint reference group, where such a body exists, is inevitably limited, although in some cases, country visits have been made by union–management teams. According to the BWI, problems in monitoring compliance are exacerbated further when outsourced to commercial auditing companies, as this reveals shortcomings such as

... the auditors' ignorance about labour rights issues or the realities of working conditions; the extraordinary scale of subcontracting chains in our industries, which would require an army of auditors to verify compliance with the standard; and the marginalisation of trade unions in the representation of workers' interests (Hellmann, 2006: 4).

The reporting of IFA infringements is largely reliant on a local trade union presence, yet so far, 'only a handful' of unions have actively used these agreements (Hellmann,

2006: 4). Given that the most serious infringements might reasonably be expected to occur in unorganised workplaces, this raises a fundamental question, particularly with respect to freedom of association provisions: whether internationally negotiated commitments can provide a platform for union organising, rather than just act as an additional tool for already well-organised unions.

### **3 USING THE IFA IN HOCHTIEF: GLOBAL NEGOTIATION, LOCAL ORGANISING?**

In the following, we examine how responsibility for fundamental labour rights in Hochtief is implemented, monitored, and ‘outsourced’ under different ownership and subcontracting arrangements in the context of different local labour regimes. The tiered and fragmented character of the construction industry, as well as the global–local nature of building capacity via labour rights campaigns pose a number of substantive and methodological challenges in researching IFAs. We have chosen to compare a regional subsidiary in Brazil (Hochtief do Brazil), an MNC operating in Malaysia, which is majority owned by Hochtief (Leighton Group), and the Ukraine operations of Hochtief’s Europe division. Interviews about the functioning of the IFA were conducted at different levels: at headquarters with the Hochtief HR manager and president of the general works council, at global union level with two key players in the BWI, and at local level with national and local trade union officers (15 interviews in total). Interviews in Brazil, Malaysia and Ukraine were conducted by co-authors who are based, research and work in the respective local industrial relations contexts. This was designed to secure an awareness of the societal and local practices of work and employment, political discourse and strategies in the case studies—an awareness, however, that was cross-analysed with documentary evidence from national trade unions, as well as the academic literature. Thus, the focus was on local labour practices rather than a ‘catalogue of diversity’ (Hyman, 2001: 205) dealing with IFAs as a function of MNC or Global Union strategies (see Hale and Wills 2005 for a research design with similar intentions). We focus on the actual use of a particular agreement, mediated by national institutions and trade union strategies, and analyse the potential of IFAs to establish management–labour relations and thereby open a space for trade union organisation at the local level.

#### **3.1 The virtual construction company**

Hochtief describes itself as ‘an international construction services provider’. Headquartered in Germany, it claims to be the world’s third largest and most international company in the construction industry. In 2008, its sales were 19,103 million euros, 86.5 per cent of which were realised outside Germany; total employee figures stood at 64,527, of which 83 per cent worked outside the home country (Hochtief, 2009), up from 74.5 per cent in 2002. Over the last decades, Hochtief has developed its global reach and consolidated its position in the higher end parts of the value chain, for example in construction-related services via public–private partnerships, where it finances, builds and operates infrastructure projects, as well as in facilities management. The global reach, however, is achieved via different ownership structures. The Americas division consists of the Turner Corporation in the US and Hochtief do Brazil. Turner is the leading general builder in the US, the world’s largest construction market. The Asia-Pacific division has a strong position in Australia

through its majority holding in the Leighton Group, which spans the entire construction value chain. Leighton has also secured important positions in growth markets elsewhere with Leighton Asia, as well as the Al Habtoor Leighton Group in the Gulf region. Leighton holds 45 per cent in the latter, which is mainly active in Dubai, Abu Dhabi and Qatar, with a perspective to expand into new markets in the Middle East and North Africa. In 2007, Al Habtoor Leighton had more than 2,000 projects under development in the Gulf region, and employed around 30,000 people (Leighton, 2007). Hochtief Construction Services Europe is active in Germany, the UK, Austria, Poland, the Czech Republic, and Russia and Ukraine.

Hochtief sees itself as a pioneer in social responsibility and sustainability, claiming that it is one of few companies in the sector to publish a comprehensive report on those issues (Hochtief, 2007). Its sustainability report follows the guidelines of the Global Reporting Initiative, and was audited by PricewaterhouseCoopers. The company is also listed on the Dow Jones Sustainability Indices. Underlining the role of CSR in the Group, a CSR committee was established in 2007, which includes a range of representatives from corporate functions, as well as the works council. Formally, the committee meets quarterly, is responsible for implementing 'CSR thinking' in all Hochtief divisions, and reports and formulates recommendations to the Executive Board (Hochtief, 2007). In the home country, management-labour relations are intense and cooperative: a union official describes how 'the highest employee representative and the highest employer representative meet, that could be at a weekly level, that is how it is lived' (Interview, President, Hochtief General Works Council). In contrast to home country relations and CSR issues, however, there is so far no specific review or application group of the IFA, even though this agreement was concluded in 2000 as the first IFA in the construction industry, and takes up a number of the pressing issues facing work and employment in the industry. Hochtief commits to respect the ILO core labour standards, as well as other, more general, standards: 'adequate' wages, 'reasonable' working time, and 'decent' working conditions. Although there is no formally constituted forum, BWI, IG BAU and General Works Council members claim to regularly meet union representatives in Hochtief subsidiaries (respective interviews).

While, formally, the monitoring mechanism is universal, important differences arise internationally—differences on the basis of labour rights, ownership structures, as well as the societally specific frameworks to host countries' management-labour relations. This is exemplified well in Hochtief's approach to the majority-owned Leighton Group which mainly operates in Asia and the Middle East. Whereas there have been no issues under the IFA in Europe—'We didn't expect any major problems and we don't have them' (Interview, Hochtief HQ, HR manager)—the Leighton Group publishes its own CSR report, and Hochtief admits to limited influence in applying IFA terms, formally as well as in practice:

Due to the regional characteristics specific company guidelines and ethics guidelines apply to Leighton (Hochtief, 2007: 4).

Leighton is a publicly traded company. We own more than 50% so we have a certain influence. But it is an independent company; other than talk to people and try to convince them . . . (Interview, Hochtief HQ, HR manager).

At the same time, though, this fragmented approach to social and labour rights does not mean that Hochtief has no managerial authority at all along the subcontracting chain. Hochtief operates a 'cross-divisional competence center for occupational safety



and health and environmental protection (OSHEP center)', which is responsible for implementing and monitoring the OSHEP Directive, applicable throughout the Group. This centre is led by the president of the General Works Council, has around 30 staff, and has so far overseen the external certification of more than 50 per cent of Hochtief's corporate units<sup>2</sup> (Interview, President, Hochtief General Works Council; Hochtief, 2007: 13). In this area, the company has developed strong compliance provisions for suppliers:

[W]e will also require contractors and suppliers to comply with a Code of Conduct which we have formulated. In this, we will, for instance, require compliance with international standards on ethical conduct, respect for the basic rights of employees and guaranteed measures regarding safety and environmental protection. There will be a provision that we have the right to check, at any time and unannounced, whether subcontractors and suppliers are complying with this planned Code of Conduct. In the event of any breaches of this, Hochtief reserves the right to terminate the business relationship (Hochtief, 2007: 21).

Thus, while it might be expected that ownership and societal factors play a role in the way labour rights can be implemented in subcontracting chains, Hochtief's comprehensive approach to health and safety suggests that its managerial authority does extend to subcontractors. It might be argued that systems to ensure health and safety are taking priority over fundamental labour rights because health and safety standards are primarily perceived as risk management tools, whereas the IFA seems politically less urgent. With regard to the latter the sustainability report merely states:

This represents an undertaking to adhere to the standards with regard to the rights of our own employees and the employees of our partners (Hochtief, 2007: 21).

As a lead company in the provision of construction services, Hochtief is a 'virtual' construction company, insofar as it focuses on high-end activities, with only limited involvement in actual building. While efforts to regulate the terms of work and employment have to go beyond its organisational remit, the company has developed a selective approach. First, although there is a constructive working relationship on the IFA between BWI, IG BAU and the General Works Council and headquarters, this seems to be restricted to that level. Second, a mandatory requirement that subcontractors comply with a code of conduct on health and safety sits alongside an approach to CSR that is regionally restricted. In the next section, we show how this uneven application is evident in experiences at workplace level.

### 3.2 Limits of implementation and monitoring

The problems inherent in the employer's selective approach are compounded by the operational logic of the monitoring process, which can be described as *ad hoc*. There is no permanent reference group, and the formal role of the unions in monitoring and review is only sketchily defined. In the event of infringements, for example, the unions 'will report this contravention to the Executive Board of Hochtief. This body will examine and introduce suitable measures to remedy the issue' (Hochtief *et al.* 2000). As will be seen, however, in the absence of a properly resourced audit procedure, implementation is largely dependent upon union organisation and vigilance.

<sup>2</sup> Certification according to SCC (Specialist Contractors Confederation), OHSAS 18001, AS 4801 (Australia) (Hochtief, 2007: 35).

Similar to most other IFAs in the construction industry, compliance with these provisions is, ostensibly, mandatory for suppliers:

Hochtief requires that its contractual partners shall support this Code of Conduct and shall also ensure that it is adhered to by any of their contractual partners who are in any way active in connection with the business activity of Hochtief (Hochtief *et al.* 2000).

However, as the terms of the agreement are not enforced systematically in subcontractors, they are in effect applied differentially depending on ownership structures, specific host country regulations, as well as the parameters of local labour control. In Brazil, for example, Hochtief is well established through its subsidiary, Hochtief do Brazil. The construction workers' union, CONTICOM-CUT (which affiliates 90 out of the country's 500 construction unions), has affiliates which attempt to organise Hochtief sites in three Brazilian cities. However, in the case study site in the state of São Paulo, the president of the local union was not aware of the IFA, highlighting that neither the local nor the national level is well placed to provide bargaining support or strategic leadership: while the national confederation is dependent on affiliates for information on Hochtief activities, local affiliates have to rely on company channels. At the moment, industrial relations in the direct workforce are 'based on conflict' (Interview, CONTICOM official, São Paulo), while the subcontracted and informal workforce is not represented. Although the company claims that 'the right of Hochtief employees to be members of a trade union is expressly welcomed' (Hochtief, 2007: 31), restrictions on organisation make it almost impossible to extend this welcome to contractors. For example, all meetings with members or potential members have to be conducted off-site. Implementing the IFA's standards and developing local management-labour relations on this basis are obviously problematic in this context, although the IFA might have a role in establishing the conditions for wider union coordination: 'If the [IFA] made it possible to organise at the workplace, then the company would have to open doors' (Interview, CONTICOM official, São Paulo). Thus, strategies to disseminate the IFA are crucially shaped by parameters of labour control in Brazil: the considerable growth of subcontracting (Amadeo and Pero, 2000), the high share of internal migrants (46 per cent in 1996), and undocumented and self-employed workers (74.6 per cent in 1999; ILO, 2001: 11, 18), as well as the city-based structure of unions, prescribed by Brazilian collective labour law, which clearly hinders the development of broader strategies.

In the case of Malaysia, Leighton, in which Hochtief is the largest shareholder, is not only excluded from the latter's CSR strategy, it is also openly anti-union and has refused to participate in talks on social dialogue with headquarters. In 2006, for example, the BWI organised a workshop on the implementation of the IFA in Kuala Lumpur, which included board-level representation, as well as Malaysian management, together with the Union of Employees in the Construction Industry (UECI) and other unions. Leighton's own senior management, however, was not present: 'They could not get Leighton around the table' (Interview, BWI General Secretary; BWI, 2006). In Malaysia itself, Leighton does not recognise the UECI for collective bargaining. Faced with employer hostility and with extensive restrictions on membership and action, the UECI focuses on the core 'organisable' workforce, that is technical and supervisory staff. For these employees, Leighton's anti-unionism goes hand-in-hand with relatively high pay. The union is limited to individual representation, either through the company's internal procedures or at Industrial Court, and mostly recruits on that basis. Some attempt has been made to extend this scope to site workers, and the

IFA has been part of this. A recruitment campaign during 2007 focused on workplace safety, using the IFA as a benchmark of the type of labour relations elsewhere in the company. The campaign specifically targeted migrant workers, although it is also true that the most vulnerable—the undocumented—remain a significant proportion of the construction workforce. Still, organisers reported in a 2007 UECI workshop that ‘at first sight’, workers ‘were not keen to see Union people as they were too scared’ (Interview, UECI official). Trade union activity in Malaysia is circumscribed by regulations that limit organisation by industry, occupation and region, and constitute the basis of managerial unilateralism (Ramasamy and Rowley, 2008). From the 1980s onwards, the government supported the expansion of enterprise unionism, which further underscored the landscape of a plethora of relatively small unions with low density (Ramasamy and Rowley, 2008). Unionisation in the construction sector is further complicated, as 74 per cent of the construction workforce does not have formal employment contracts, and the vast majority of these (80 per cent) are foreign migrant workers (Narayanan and Lai, 2005). Although there is no longer a legal barrier to organising these workers, some ‘indirect restriction’ is imposed (BWI, n.d.-b), that is to say that employer clauses in contracts may effectively prohibit membership (Piper, 2007). Given this extremely narrow legal space, it is hardly surprising that unions have found it difficult to develop capacity for organising.

In Ukraine, issues of governance are more straightforward. Projects are managed through Hochtief’s own European division and work on site is carried out by a relatively small number of major contractors, which still reflects the concentration of formerly state-owned construction companies. Sub-contracting tends to be limited to ‘non-core’ activities, and the multi-tiered subcontracting seen in Western Europe is a relatively recent import, associated with foreign ownership in the sector. For example, Hochtief’s largest Ukrainian project, the sports stadium at Dnipropetrovsk, only involved fewer than 30 companies. This structure might be expected to facilitate communication of the company’s commitments down the contracting chain. However, of four major contractors surveyed at the Dnipropetrovsk project (concrete works, steel construction, grass pitch, painting), only one was able to report any knowledge of the IFA (Interviews, managers). The terms of the IFA were not included in contract documentation; in the one case where management had heard of the IFA, this had arisen in discussion with Hochtief in Ukraine. Unions have remained strongest in the large, ex-state sector employers in the sector. Ukrstalkonstruktziya, formed in 1973, is the contractor responsible for manufacturing and assembling the steel structure for the Dnipro stadium project. Here, union density is high (reported as 98 per cent in one of the company’s plants.) A union organiser sums up employment relations: ‘This company is a very good employer. They look after their workers. People don’t have any problems here’. From this position of paternalism and relative security, the IFA seems irrelevant to the permanent workforce: ‘Why would the union concern itself with [the CSR] policies of a German company?’ (Interview, local union official, Dnipropetrovsk). Meanwhile, Hochtief’s direct workforce in Ukraine, including 40 German and Ukrainian office-based staff, is not unionised, and attitudes here reflect the image of unions in the country: ‘You just pay union dues and get nothing’ (Interview, Hochtief Construction Ukraine, engineer). In Ukraine, the prospects for outsourced workers are held back by the legacy of Soviet era unionism. The continuing role of unions as service providers for their core, state-sector membership has largely marginalised attempts to organise outsourced workers (Kubicek, 2004). But as large, privatised, conglomerates are dismantled, undeclared work has risen to a conservative

estimate of 55 per cent (Williams, 2007), and union memberships have become fragmented and uneven. In other circumstances, it is clear that IFAs can at least serve as a catalyst for action. The Ukrainian construction workers' union, UCBMIW, used the Lafarge IFA successfully as part of the 2004 dispute over safety and working conditions at a cement works. Admittedly, the settlement in this case also required the threat of strike action—it was not enough to quote the terms of the agreement. Also, in contrast to construction, the Lafarge workforce was directly employed, and 90 per cent unionised. However, the IFA did serve to mobilise members and to signal to the company that this was, potentially, a company-wide grievance.

Effectively, Hochtief operates a four-tier approach to the IFA. The first tier comprises Hochtief's direct workforce in the home country, where industrial relations reflect the strength of the IG-BAU. Second are the regional subsidiaries and joint ventures, which are allowed considerable latitude to capitalise on restrictive labour legislation. Third are the subcontractors. The evidence suggests that IFA terms are not routinely communicated, and the Ukrainian case demonstrates that even where relatively few contractors are involved, there is almost no awareness among managers of their obligations. The fourth tier is the informal labour that makes up the bulk of the workforce in all three countries. The term 'informal' labour is used in a variety of ways to describe a range of worker statuses of varying vulnerability (Wells, 2007). The crucial point is that these are workers for whom the 'standard' employment relationship does not exist, and whose working lives are therefore largely unregulated. While the IFA does not claim to reach them, their presence represents an existential threat to union organisation (Gallin, 2001). In other words, they are, at the same time, the workers who most need a trade union and also the biggest obstacle to organising the industry as a whole.

#### 4 CONCLUSION: APPLYING THE GLOBAL AGREEMENT LOCALLY?

Global negotiated agreements on freedom of association can in principle provide some foundation for local initiatives; however, implementation and workplace-based monitoring are mediated by product and ownership structures, as well as societal and local arrangements of subcontracting and labour control. Institutions of industrial relations and labour control at societal and local level are particularly crucial in developing capacity for workplace monitoring, or even management–labour relations in a broader sense. The respective contexts of the Hochtief operations surveyed, for example result in very different 'politics of application' of the IFA: in Brazil, city-based unions would need to control worksites dominated by migrant self-employed labour and organise interests *vis-à-vis* a major subsidiary; in Malaysia, organising the majority of the construction workforce would be contrary to the professional and political identities of the unions, and directly take on the majority-owned MNC's anti-unionism, which is backed up by the state; in Ukraine, MNC as well as union strategies still need to engage with legacies of paternalism. In all cases, it seems crucial to go beyond mere complaints mechanisms and to actively address local obstacles to building capacity. The option to complain about abuses to headquarters does not in itself comprise a capacity to organise the formulation of a complaint, and what remains by default is the exploitation of the particularities of highly segmented local labour markets. Thus, insofar as LLCRs are strategically selective with regard to labour capacity, they equally make a difference to IFA implementation and monitoring.

In addition to the mentioned factors and the importance of the local context, the actual ‘politics of the IFA’, that is the contested nature of the content, as well as any IFA-related initiatives, should not be underestimated. This is demonstrated by competing standards (occupational health and safety, CSR, IFA), which demand different degrees of subcontractor compliance, an aspect that emphasises the divergent strategies as well as capacities of the different actors. In the absence of statutory control, for example Hochtief’s own OHS procedures for the monitoring and certification of suppliers could well be a model (see James *et al.*, 2007) to extend the application of the IFA to subcontractors. Equally, the absence of a standing reference group to monitor and implement the IFA constitutes a serious disadvantage. Such a forum might be pivotal in establishing a continuous working programme, and a first step in treating the IFA as enforceable objectives, rather than as aspirations. Such an approach might offer a focus for the formation of regular trade union networks with the BWI’s national and local Hochtief subsidiaries. The concept of LLCRs has helped in linking elements of both the politics of application, as well as the politics of the IFA: ultimately, the institutions and sectoral characteristics, all of which are specific in the way they are societally and locally embedded, also shape the interests and strategies with regard to the IFA.

At a more general level, this case study underlines the importance of researching the complexity of embeddedness and power. While the particular form of LLCRs alerts us to the way mobile as well as fixed segments of capital (and labour) can take advantage of the frontier of control, skill levels, as well as other characteristics of the local political economy, the contested nature of labour rights, implementation and monitoring mechanisms means that participation in review mechanisms reflects the power balance within the subcontracting chain, between capital and labour across different scales, as well as in particular localities. These issues are particularly important in the context of the social organisation of labour markets in emerging economies, where the provisions of IFAs challenge management prerogatives of labour control (e.g. through subcontracting, contingent and informal labour). The case studies of the (very limited) local uses of the Hochtief IFA in Brazil, Malaysia and Ukraine has shown that the local context creates a ‘strategic selectivity’, that the use of the agreement is integrated in established local rationalities of conflict and compromise.

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