Labour standards in MNCs and their contractors

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Introduction

Rather than treating multinational companies only as a threat, over the past decade there has been a growing appreciation among unions internationally that MNCs also afford considerable opportunities, not only in terms of the pay and working conditions of their own employees, but also via their impact on labour markets in their host countries. Thus, MNCs have become the focus of debates about labour standards in which the lead company is seen as the lynchpin in promoting ‘decent work’, not only in national bases and subsidiaries, but also throughout the commodity/value chain. However, since MNC employment comprises only a small component of the total labour market in developing countries, such an outcome is not automatic; it is possible for MNCs to reduce labour costs significantly with no significant upward pressure on wages.

In the absence of enforceable public regulation of wage and labour standards, either internationally or, in many cases, nationally, a great deal of attention has been paid in recent years to the possibility of voluntary regulation, that is to say the promotion and implementation of standards within companies which go beyond any external regulatory requirements that might apply (see Table 1). Such voluntary arrangements include internal company codes of conduct, typically included in corporate social responsibility (CSR) policies, standards developed in conjunction with NGOs or other third parties (‘private’ social standards, Riisgaard and Hammer, 2011) and also agreements resulting from some form of collective bargaining with unions, such as International Framework Agreements (IFAs), which form the focus of this paper.

Table 1: Typology of voluntary regulation of labour standards

<table>
<thead>
<tr>
<th>Type</th>
<th>Key actor(s)</th>
<th>Method</th>
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<tbody>
<tr>
<td>Internal Code of Conduct</td>
<td>MNC</td>
<td>Unilateral action by company</td>
</tr>
<tr>
<td>Multi-stakeholder model</td>
<td>MNC, other companies and other stakeholders (social justice NGOs, consumer</td>
<td>Jointly developed and opted into by individual companies</td>
</tr>
<tr>
<td>standard</td>
<td>organisations, unions)</td>
<td></td>
</tr>
<tr>
<td>International Framework</td>
<td>MNC and Global Union Federation (sometimes also home country union and worker</td>
<td>Negotiated.</td>
</tr>
<tr>
<td>Agreement</td>
<td>reps on EWCs)</td>
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The scope for union intervention in this way – and the power of an MNC itself to influence the working lives of those who contribute to the production process - is clearly affected by the type of product market in which the company operates and the way in which the production process is either integrated within one firm
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or dispersed between many. Therefore, in order to understand the extent to which MNCs are capable of implementing and enforcing standards or procedures, some account needs to be taken of the nature of the relationship between the firms that carry out production and the relative power of the various organisations involved. One way of modelling these dimensions is the approach to global value chain (GVC) analysis developed by Gereffi and colleagues (2005), which has been adopted to demonstrate how specific structural configurations, along with specific forms of value chain governance, set the parameters for union action and intervention (Robinson, 2010; Riisgaard and Hammer, 2011.)

Gereffi et al (2005: 83-84) identify five types of value chain governance, which can be seen as forming a continuum between external market relationships and internal bureaucratic control:

a) Markets  
b) Modular value chains  
c) Relational value chains  
d) Captive value chains  
e) Hierarchy

Whilst the notion of such intermediate relationships is not new, this categorisation does provide a useful framework for discussing the implications of such structural arrangements. Gereffi et al. note, for example, that in the case of small suppliers that are dependent on large buyers ‘significant switching costs’ may be involved and that contractors may therefore be ‘captive’ (Gereffi et al, 2005: 84). The structural features of such a relationship can be seen to predispose clients to particular forms of governance. Whereas market links are governed by the price mechanism, ‘captive’ links involve a high degree of monitoring of suppliers and detailed control of “less competent suppliers” by the lead firm (Sturgeon et al, 2008: 307). Furthermore they argue that all five of these linkages are ‘associated with predictable combinations of three distinct variables: the complexity of information to be exchanged between value chain tasks; the codifiability of that information; and the capabilities resident in the supply base’ (Sturgeon et al, 2008: 307).

However, the concept of ‘governance’ is a broad and rather elusive one. Riisgaard and Hammer (2011) focus on the extent to which value chains are ‘driven’ by one of the constituent firms, and show how this power to impose conditions within the chain is a precondition for effective union leverage. Yet the structural relationship of firms within the chain is only one factor; Robinson (2010) shows how asymmetry of power in a highly ‘driven’ chain has facilitated competition on cost and thereby restricted opportunities for bargained outcomes.

While some degree of simplification is required in order to model the salient features of inter-firm relationships, the world in which unions operate is self-evidently more complex. For example, although the very term ‘value chain’ was a conscious move to indicate a more universalistic approach than had been the case with earlier accounts of ‘commodity’ chains, most attempts to apply GVC
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concepts to labour standards have focussed on relatively simple, linear chains. And whilst the GVC approach is, in principle, capable of moving beyond static, descriptive accounts to tackle both the dynamics of organisational restructuring and the mechanisms of control that make particular arrangements possible (e.g. Flecker and Meil, 2011), the application of the concept to labour standards has often treated variants as the outcomes of relatively fixed inter-organisational relationships (Quan, 2008).

GVC categories set a bare framework, but in order to assess the options for unions, it is necessary to understand something about how the work process is organised and why it is organised in this way. Therefore, even within the constraints imposed by particular product markets, specific outcomes need to be seen in terms of company strategy. Companies’ ‘make or buy’ decisions are influenced by a number of factors, of which the cost of provision is only one. Companies may need to protect against risk of market fluctuation; they may intend to move the cost of particular assets or functions ‘off the books’; or they may choose to distance themselves from responsibility for a particular section of the workforce. It is this ‘fragmentation strategy’ (Shutt and Whittington, 1987), rather than its resulting structure, that is our starting point here.

In this way, the dis-integration of production pre-supposes a mechanism – be it via the market or direct managerial control - of re-integrating the overall process. In cases where a product or output can be specified in sufficient detail and monitored sufficiently closely, then it may be that the market power of the client alone is enough to avoid post-contract opportunism (Perrow, 2009). However, given that the client needs to control for both cost and quality, relationships are rarely as ‘hands-off’ as might be suggested by the formal terms of the contract (Rubery, 2007). The dilemma posed by such principal/agent problems has prompted attempts to find ‘third way’, or network arrangements – arrangements that ostensibly occupy a position between those of the open market or closed bureaucracy (Grimshaw et al., 2005). The characteristics of such a relationship may, conceivably, be facilitated by the contractual terms, but never fully specified. Hunter et al. (1996), for example, see this as an evolutionary process, whereby a low-trust demands model, where outputs are closely specified and economies extracted by competition between contractors, may be developed into a supplier development model, focused on inputs, where the client takes an active part in contractor HR management. The problem, though, is intractable, since this high-trust ‘relational’ contracting also involves high levels of scrutiny and increased transaction costs (Williams, 2008: 247). Nevertheless, insofar as such contractual relationships can be sustained, “network-like, long-term obligational relationships may well be more apt to facilitate the transfer of labour standards than market relationships” (Fichter et al., 2011: 19); this assumes, of course, that the MNC sees such a transfer as either desirable or as their responsibility. And the fact that contracting is typically justified in terms of cost reduction may mean that there is actually very little room for the parties to exercise discretion (Vincent and Grugulis, 2009).
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**IFAs and union organisation**

IFAs arise from negotiation between multinational companies and global union federations (GUFs) and set out core labour rights that are held to apply to subsidiaries and, in some cases, to contractors. The main focus of agreements is usually a commitment to abide by named International Labour Organisation (ILO) Conventions – especially the eight fundamental or core ILO Conventions. The first IFA was signed by the French food MNC, Danone and the Global Union Federation (GUF) for the sector, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) in 1988. Since then around 80 agreements have been signed and there is a growing body of literature on IFAs (e.g. Bourque, 2008; Schömann et al, 2008; Papadakis (ed.), 2008; Telljohann et al, 2009; Stevis, 2010; Riisgaard and Hammer, 2011; Fichter et al, 2011). Most of this research focuses on the agreements themselves and the way in which the structure of value chains explains particular outcomes. There are exceptions to this (Davies et al, 2011) and there is a growing awareness of a point that might appear self-evident in national studies of industrial relations: negotiated agreements are only the starting point, not an end in themselves. In particular, the extent to which words are translated into practice depends upon implementation, monitoring and enforcement, and this means that, to a large extent, action is a function of the strength of union organisation in the workplace (Davies, et al., 2011). This is very much how the GUF for the construction industry, BWI (Building and Wood Workers International) views IFAs, describing them in the following terms:

International framework agreements create a basis for the recognition of trade unions in the factories, offices and building sites of multinational companies, thus clearing the way for trade union organising (BWI, 2008: 10).

The BWI has been one of the more active GUFs, having signed 16 IFAs (its first was with IKEA in 1998) (BWI, 2011).

While the technical difficulties to be overcome in putting such standards in place vary according to the form and complexity of the value chain, there is no logical reason why fundamental rights at work cannot be promoted in this way. In the case of safety management, for example, the presumption of main contractor responsibility has been sufficient to prompt a relatively firm response: construction MNCs tend to take safety extremely seriously, with well-developed reporting arrangements, relatively active policing, and with the option of sanctions in the case of infringement (Davies et al. 2011; James et al. 2008).

Given that the challenges are greatest in value chains that are only weakly ‘driven’ by the lead company (Riisgaard and Hammer, 2011) and where a large number of suppliers compete for short-term contracts, we might expect the most fertile ground for IFA implementation to be taken up by large, regionally dominant companies with relatively stable contractual relationships.
**The research**

The focus of this paper is Lafarge, a global producer of cement, aggregates and ready-mix concrete. We examine the impediments and the possibilities for translating the standards embodied in the Lafarge IFA into practice. One way of understanding the differential application of labour standards, including via IFAs, is by modelling the structure of particular value chains and the power relationships between the organisations involved. However, there are problems with this sort of analysis, in that the level of abstraction obscures the specifics of work organisation and underestimates the extent to which value chain configurations are themselves the result of corporate strategy.

In this study, we demonstrate how outsourcing of a core activity can facilitate, on the one hand a highly interventionist approach to quality-critical criteria – ostensibly a highly ‘driven’ relationship – and, on the other hand a distancing from operational decisions which impact on labour standards.

In the absence of adequate monitoring and enforcement by MNCs, the prospects for improving labour standards throughout value chains depends largely on the ability of trade unions to organise subsidiaries and contractors. For an agreement that itself includes the right to union organisation and bargaining, this is a serious limitation: a “chicken and egg” problem (Davies et al. 2011). On the other hand, there are grounds for suggesting that, rather than being over-estimated, IFAs have yet to be treated sufficiently seriously. We argue that the Lafarge case demonstrates the possibilities for labour and employment relations matters to be promulgated through the terms of outsourced contracts and for labour standards, in particular, to be monitored and enforced by the same mechanisms that are used so effectively to control quality-critical issues. It also offers an opportunity for unions to use the IFA in a way that meets the (reasonable) criticism that there is little point in creating agreements that trade unionists cannot use (Croucher and Cotton, 2009: 68).

This preliminary short study with its focus on Lafarge is part of a larger project that examines the impact of IFAs on the activities of three signatory construction MNCs (Lafarge of France, Hochtief of Germany and Royal Bam of the Netherlands) in three countries (South Africa, Russia and India).

Key informants within Lafarge’s South African subsidiary were interviewed in South Africa. These included HR and operational managers. We also interviewed subcontractor management and recruitment consultants. In addition, officers from the BWI’s Africa regional office, full time officials and elected stewards of the key union (the National Union of Mineworkers) were interviewed, as well as officials of the transport union (South African Transport and Allied Workers Union) responsible for the collective bargaining agreement which covers the transport subcontractors. Officials from the bargaining council for the freight industry were also interviewed. The research further draws on an earlier round of interviews, involving officials from the two key unions operating in the construction sector (NUM and BCAWU). Finally the study utilises a range of
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documentation from the company, the relevant unions, South African government bodies and South African industry organisations.

**The construction sector and Industrial Relations in South Africa**

The South African construction industry employs over one million workers (Statistics South Africa, 2011a), of these, 739,000 are in the formal sector and 293,000 in the informal sector (ibid). It contributes on average 3.5% of the GDP in South Africa (Business Monitor International 2006). The industry covers building, civil engineering and the manufacture of materials for the building and civil engineering sectors (Bamu and Godfrey, 2009). The market for construction products is dominated by three very large producers, with Lafarge accounting for 27% of a market worth R5.4 billion in 2003 (McCutcheon, 2003). The production of cement and ready-mix concrete differs from building site work in obvious respects. Plant is relatively fixed and permanent and, related to this, the core workforce is in relatively stable employment.

The construction industry as a whole is characterised by high levels of casual and informal labour, poor safety and very low rates of union membership. South Africa is no exception, with estimates of union membership ranging from less than 17% (McCutcheon, 2002: 33) to as low as 12% (Budlender, 2009: 15) or even 9% (Cottle, 2010). This is one of the sectors in the country with the lowest trade union density. It is difficult territory for union organisation as it includes many small businesses, with a large informal sector alongside the formal sector, and many short-term contracts, casual work, and other forms of informal employment (Budlender, 2009: 14).

Figure 1 (below) illustrates the typical employment relationships in construction in South Africa.

**Figure 1: Flexible work arrangements in construction in South Africa**

![Diagram showing flexible work arrangements in construction in South Africa]
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While such a model would be typical of construction sites elsewhere in the world as well as in South Africa, the model for Lafarge - as a construction materials producer - is different (see Figure 2).

Figure 2: Flexible work arrangements in Lafarge (with focus on ready-mix concrete business unit and its logistics)

The fact that the construction process is, in essence, site-bound means that that it does not lend itself to ‘spatial fixes” (Silver, 2003) and is, therefore, inextricably part of local labour control regimes (Jonas, 1996). The production of cement and concrete, for example, while demanding economies of scale in production, is nevertheless, because of the nature of the product and of the process, integrated within, and dependent upon, a defined geographical market.

Lafarge

Lafarge’s wholly owned South African subsidiary, Lafarge South Africa Holdings Pty, was acquired in 1998. The parent company is Lafarge S.A. - a Limited
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Liability Company (Société Anonyme) incorporated in France under French law. In terms of sales, it describes itself as the ‘world leader in building materials’ (Lafarge, 2011: 24) and as

the world leader in the cement market, the second largest aggregates producer, the third largest concrete producer and the third largest gypsum wallboard manufacturer worldwide (Lafarge, 2011: 24).

In 2010 it generated €16,169 million in sales, posted a current operating income of €2,241 million and has assets of €42,494 million. The Group employs 76,000 people in 78 countries (Lafarge, 2011: 24).

Lafarge regards sub-Saharan Africa as an important emerging market, so South Africa is a key location for the company’s expansionary policy. Within South Africa, it operates through the wholly owned Lafarge South Africa Holdings (Pty) Limited which itself has four business units: aggregates; ready-mix concrete; cement; and gypsum products, such as plasterboard (Lafarge South Africa, 2011). The company has one cement plant and two grinding plants with a total cement production capacity of 3.6 million tonnes, and 17% of market share. It has 23 aggregates sites and 56 concrete sites with annual sales of 4.8 million tonnes of aggregates and 1.2 million cubic metres of concrete. There is also a plasterboard plant and manufacturing lines for gypsum components (Lafarge, 2010).

The two main areas for Lafarge in South Africa (cement and ready-mix concrete) have very different profiles. For cement, there are high barriers to entry, competitors are large companies, and the product is not perishable. The bulk of workers are directly employed, augmented by agency workers and casual labour. This business unit is characterised by a bureaucratic/supervisory control regime.

For the ready-mix concrete business, because of the perishable nature of the product and high transport costs, plants are dispersed around the country, based in ‘micro markets’. The barriers to entry in ready-mix are relatively low, there are many small competitors and this adds to the volatility of these micro markets. So, whilst plant is relatively fixed, it may be dismantled and moved as market circumstances dictate.

The core functions are carried out by approximately 2,500 direct employees of Lafarge. These are almost all SA nationals, with less than 1% migrant workers (interview, HR manager, October 2010). In addition to the direct employees in the plants, there are around 450 contractors’ staff in transport for ready-mix and 300 in transport for aggregates (interview, HR manager, October 2010). The SBU’s have a separate Human Resources structure and collective bargaining units.
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Labour standards and union organising in Lafarge

Introduction

Lafarge sees itself as having a positive relationship with unions and reported that in 2010, ‘67% of Group employees are represented by elected representatives or unions’ (Lafarge, 2011: 112) and 71% of business units are covered by collective agreements (Lafarge, 2011: 113).

Direct employees in the cement and ready-mix business units (up to the Deputy Sales Managers – a middle management role) are overwhelmingly members of the National Union of Mineworkers (NUM), with a number of skilled workers in smaller union, Solidarity. Trade unions in the construction industry have been weak traditionally (Goldman 2003). The NUM, which began as a mining union, started organising in the construction industry after a COSATU congress resolution in 1997 recommended merger with the construction affiliate CAWU. This was after several failed attempts to revitalise the construction sector affiliate.

The 1995 Labour Relations Act (LRA) underpins the role of centralised collective bargaining, via Bargaining Councils, and provides a range of protections for union organisation, including closed, or ‘agency’ shop agreements. However, there is no bargaining council in the construction manufacturing industry and Bargaining Councils have generally been in decline, with a number of them collapsing in recent years (Godfrey et al 2007). The recognition agreement in the Ready-Mix business unit creates an NUM ‘agency shop’ under Section 25 of the LRA. This aims to prevent freeloading by the automatic deduction of ‘fees’ from the pay of all employees who are not union members. The agreement also formalises a set of organising rights and trade union facilities, including union access to the employer’s premises, a check off system and time-off for union duties (often specifying a paid full-time shop steward). Between disputes, at least, there appears to be a cooperative employer approach for in-house workers. Stewards’ remits, for example, can extend between plants when representation is not available locally. Shop stewards are ordinarily employed on a full-time basis at the cost to the employer. However, when this study was conducted Ready Mix SBU did not have a fulltime shop steward after an industrial relations dispute, which resulted in the dismissal of the previous shop steward.

The transport division is subcontracted and, as we demonstrate below, the working arrangements have enabled the client to maintain a high degree of detailed control, while minimising the opportunity for cross-company union organisation. Ready-mix truck drivers are not unionised and are not part of the bargaining unit. Transport subcontractors are, however, covered by the Bargaining Council for the freight sector through extension of the collective agreement (Interview Shop steward Ready Mix SBU May 2011; NBCRFLI, 2009). The agreements of this bargaining council are extended to non-parties in terms of section 32(2) of the Labour Relations Act, including the ‘agency shop’ agreement. However, these employees are not union members and SATAWU
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The main union in the transport and logistics sector, the subcontracted division of the SBU, does not actively attempt to organise the subcontractors.

The Lafarge IFA

The Lafarge IFA was signed in 2005 by the company and BWI and ICEM (the GUF for mineworkers). The IFA commits Lafarge to the ILO’s Declaration on Fundamental Principles and Rights at Work, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the United Nations Global Compact and also the Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises. It also commits the company to several specific ILO Conventions which are listed (29, 87, 98, 100, 105, 111, 135, 138, 155 and 182: the core Conventions together with an additional two), South Africa has ratified all of the Conventions covered by the Lafarge IFA except 135.

Although some IFAs contain relatively firm commitments on extending labour rights provisions to contractors, the wording of the Lafarge agreement is weak:

Lafarge will seek to use the services of those trading partners, subcontractors and suppliers, which recognise and implement the principles listed below (Lafarge IFA).

Compare this wording with that of the IFA of Royal Bam, another construction MNC operating in South Africa:

Royal BAM Group NV considers the respect for workers’ rights to be a crucial element in sustainable development and will therefore refrain from using the services of those trading partners, subcontractors and suppliers which do not respect the criteria listed above (Royal Bam IFA).

Following pressure from the BWI, Lafarge reports that it initiated an audit of sub-contracting activities and carried out surveys to investigate how fundamental labor rights are embodied in our labor practices (Lafarge, 2010:17).

It says that it sees this as essential to improve out-sourcing practice, to ‘ensure that fundamental rights are preserved in out-sourcing contracts and share good practice’ (Lafarge, 2010: 17). However, while this is welcomed by the BWI, it also noted that throughout the company, out-sourcing was increasing, no gender breakdown of the statistics for out-sourced workers was available, and

Trade unions expect a clear message from Lafarge to take on responsibility for human rights and supply chain management in its businesses in all countries (Lafarge, 2010: 18).

The clause on monitoring is equally vague, with no explicit mention of enforcement:
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A reference group consisting of representatives of the Lafarge management and the signatory international federations shall meet at least once a year, or whenever necessary, to follow up and review the implementation of this agreement (Lafarge IFA).

According to the European Trade Union Confederation (2010), there is also regular telephone and email contact and

Regarding monitoring, there are regular meetings with the signatories. One or two people from ICEM and one from BWI meet twice a year or more if difficulties arise (ETUC, 2010: 93)

The framework agreement itself is invisible in the South African subsidiary. This is not surprising given the absence of any mention of it in the parent company’s annual report or either of the websites of the parent or South African subsidiary. A senior HR manager states that the IFA has “no impact at all”:

The only way we are governed by international agreements would be for things like an insurance provider ... But in terms of unions, labour relations, that is dealt with in SA with the NUM (interview, HR manager, October 2010).

Similarly, a transport supervisor, who has not heard of the IFA, states:

Labour relations and bargaining units is dealt with nationally and we never get information of the European unions or American unions about how they negotiate or what kind of contracts they sign. We don’t have knowledge of that (interview, transport manager, October 2010).

This lack of awareness extends to the trade union. The NUM organiser for Lafarge claimed to have heard of the IFA but was not familiar with any relevant details. He suggested that shop steward councils that are provided with all agreements, including IFAs. However, a shop steward from the Ready Mix SBU commented:

I have never heard of that agreement. I guess they are handled by our national executive but it has not yet filtered down to us on the shop floor. You can get more information perhaps from our national coordinator. I deal with day today shop floor issues affecting our members and certainly do not in any way involve such global agreements.

The ETUC reports (2010: 94) that ‘local management and unions are involved in implementation...’ It is difficult to see how this could possibly be the case, given the lack of knowledge of the IFA that we found, and the ETUC report (2010: 94) does concede that there ‘is poor information on the agreement at the local level’. This is in the context of a highly centralised and directive approach to HR generally. Nevertheless, the IFA has made it possible for BWI to formalise a relationship with the company at both international and regional levels.
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The core workforce

In terms of the number of activities involved, cement manufacture is a relatively uncomplicated industry, making it possible to define organisational boundaries sharply. Lafarge’s own plants have a core of directly employed workers, while activities defined as non-core or temporary are bought in. Lafarge outsources mining, blasting and excavation, although these are clearly integral parts of the process. Concentration of ownership, coupled with the cost of transport, mean that some of these firms are heavily dependent on Lafarge contracts. The main gypsum processing plant, for example, which is operated by a third party, was constructed near to Lafarge’s Lichtenburg site.

Several respondents described Lafarge as a ‘multi-local’ organisation in which ‘we don’t necessarily wait for France to make a call on us – we do make local decisions as well’ (Interview, site manager, October 2010). On some issues however, such as occupational health and safety (OHS), the control from the Parisian headquarters of Lafarge is very direct and specific, with standards defined and applied to all contractors worldwide (also see ETUC, 2010). A similar approach is now taken to ensuring the ‘sustainability’ credentials of suppliers and contractors. A plant supervisor explained how instructions are cascaded down from the MNC HQ:

They have a global safety manager and that will have an African counterpart, an Asian counterpart… and then it starts becoming a web until it comes to a South African safety manager and a regional safety manager… It would be the same set of rules… if I went to Lafarge Kenya I would expect to find the same rules, the same safety walkways, the same signage, the same paperwork… (Interview, plant supervisor, October 2010).

But health and safety and sustainability are not the only areas subject to global control. Pay and grading structures and principles relating to remuneration and incentives are also set by the company headquarters:

The job grading system is decided in Paris. You have no choice. You will use the Hay job grading system. You are not allowed to look at [other factors]. That is it – that’s the ’law’. Performance bonus structure for execs is decided in Paris. They decide what will incentivise people… Your internal auditors are decided in Paris… Expat management – how you manage them and how their packages are structured – decided in Paris (Interview, HR manager, October 2010).

Agency and casual labour

The construction industry can be seen as a barometer of economic activity. In South Africa, a peak during the run up to the World Cup in 2010 has been followed by a pronounced slowdown. Lafarge claims to use temporary labour
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precisely to cope with peaks in workload and to act as a buffer for core jobs. As is the case for the rest of the industry, temporary labour is provided via third party contractors. There are a series of distinctions made between different types of operators: labour brokers, labour-only subcontractors and recruitment ‘consultants’. The latter are used for more specific posts that require some selection. Temporary manual labour is provided by labour brokers and labour-only subcontractors. Labour brokers (also called temporary employment services) provide a specified number of workers with particular skills to a client for a fixed period of time. The labour broker remains the employer, but the worker is under the control and direction of the client who dictates tasks, methods and timing of the work to be done. By contrast, a labour-only subcontractor is more like a straightforward outsourcing operation where a client hires the subcontractor to carry out a specific task over a set period. The subcontractor has a certain amount of autonomy in carrying out the task, employs their own workers who are not controlled by the client (Bamu and Godfrey, 2009). Larger and more reputable brokers distinguish themselves from the ‘bakkie brigade’ (Bamu and Godfrey, 2009). A recruitment consultant explains:

[They] arrive with a truck in the morning. The employees are gathered somewhere. They have never seen them. They say “We need 20 people to dig roads”. These people don’t know what a road is, never mind how to dig it. (interview, October 2010)

In the case of workers recruited through registered temporary employment services, they are legally employed by the contractor, but are integrated into the host company as any other member of staff.

In theory we are the boss, but … their contract that they receive from us says that they will abide by Lafarge’s procedures. We even say who they will be reporting to. Even though we are the ultimate employer and we do the payroll, they will report to [a Lafarge supervisor]. We don’t interfere in that relationship. She is our employee but we play more of a HR role. Our contract is … they abide by the company’s rules. The company decides what are their hours, what is the lunchtime, what they want from the person and the wage rate. (Interview, recruitment consultant, October 2010)

The contractor’s role extends to disciplinary management: “They say ‘Come and sort this person out’. All the labour problems – all the nasties – we handle” (Interview, recruitment consultant, October 2010). In these cases, though, there is close coordination between contractor and client and the contractor’s ability to intervene rests on the client’s power to vary the terms of the contract. So, although temporary employees are entitled to union representation, the disciplinary process tends to be curtailed: “Generally, the client would shorten the term, because the term isn’t definite.” (Interview, recruitment consultant, October 2010).
Trade unions elsewhere have largely failed to organise temporary and casual workers, but this is particularly challenging in an economy with high and growing unemployment. The fragmentation of the workforce has drawn new patterns of social exclusion and inclusion and imposed constraints on the labour movement (Webster and Von Holdt, 2005). For example, the NUM succeeded in including new provisions for ‘limited duration contracts’ in the 2009 agreement for the civil engineering sector, giving workers with 18 months of continuous employment equal rights with permanent employees. However, the union reports that, perhaps predictably, the employer response is to terminate employment before this point (Interview, NUM national officer, October 2010).

**Captive contactors**

From the early 1980s, Lafarge SA began to outsource the transport of ready-mix concrete. This was explicitly driven by the potential for cost savings. Initially, this work was transferred to a large number of owner-drivers, each operating a single truck. This maximised Lafarge’s market power with respect to its contractors, but it also meant that the company was reliant on individual drivers for the delivery of a perishable product. For this reason, Lafarge encouraged contractors to expand, allowing up to six trucks per owner (Lafarge South Africa, 2010). One consequence of this increase in contractor size is that individual drivers are now employees of the contractor and thus covered by labour relations legislation. The outsourcing of this responsibility is an integral part of strategy: “Drivers would triple the payroll. And strikes – there is quite a lot of baggage to carry all these trucks” (Interview, Plant supervisor, October 2010).

These contractors are integrated closely into Lafarge’s operation and are subject to detailed control. Schedules, sent from the national head office to the plant, set out truck movements and loads. “The driver has nothing more to do other than collect his delivery schedule and concentrate on providing a quality service” (Lafarge South Africa, 2010). Since deliveries of ready-mix cover the whole country, Lafarge needs its fleet to be positioned to match demand in the various regions. Contractors may be required to move trucks (and drivers) at short notice (Interview, transport contractor, October 2010). When orders decreased in 2010, following completion of the various World Cup projects, contractors with trucks at plants in the north of the country were told to move these to the south (Interview, sales manager, October 2010). This re-siting of trucks, along with day-to-day movement, is closely monitored by Lafarge’s truck scheduling programme, which enables the client not only to keep track of truck availability, but also to calculate contractors’ performance in terms of profit, load and mileage per truck.

The owners have signed a service level agreement saying that 95 or 98% the truck is available for business. We would like all our trucks to be 100% utilised. … if there is no income, we are going to have to move them into the next level to say You are going to have to move to this section to make money for yourself. (Interview, Sales Manager, October 2010)
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This degree of control is partly a function of the labour market, particularly during recession. But it is also the result of the nature of the contract relationship. Contractors begin from a position of weakness and are then locked in to a long-term commitment that makes them entirely dependent on the continued allocation of work.

Trucks are bought on loan with Lafarge surety (loans of R38 million up to 2009). Although drivers were given a “free hand” in their choice of truck, they all use the same model (Mercedes Benz South Africa, 2010). Every contractor also opted to take up the approved finance and insurance package. Many contractors began as owner-drivers with one vehicle and were encouraged to expand, with some now operating more than 20 trucks. Having tied up this capital, though, contractors have little control over their investment. Although they own (or are paying for) the truck cab, the mixer unit remains the property of Lafarge. This is clearly not something that can be replaced quickly, and particularly since this carries the Lafarge insignia, the contractor’s own cab cannot be put to any other use. Contractors’ investment is effectively client-specific.

Contractors’ single use investment in trucks makes them entirely dependent on Lafarge. In this sense, contractors are akin to franchisees. The other side of this is that the investment requires Lafarge to act as guarantor for contractors’ debt. The company therefore has an incentive to maximise the use of the asset for the duration of the debt, giving some measure of security of employment. It is when the debt is paid off that contracts are reassessed.

...we had a meeting and they said “All the trucks that’s been paid up, the contracts are now finished. We are not going to renew the contracts.” ... Five of my trucks were taken out of the fleet and the mixers were taken off. ... I did not retrench anyone – I just offered them another position in Jo’burg in trucks that I still owe on. So they did do it. There were a lot of trucks taken out of the fleet. Say there were 200 in the fleet, but there was no work for that amount of trucks. ... all the trucks that’s been paid were taken out of the fleet (Interview, Transport contractor, October 2010).

The relationship that Lafarge South Africa has with its transport contractors is clearly a captive value chain and, as such, presents particularly interesting terrain for the IFA. However, as with other parts of the company, when it decides to do so, Lafarge imposes conditions along the value chain. Health and safety is one such area, and the contractors’ trucks have to operate under Lafarge’s rules:

They have to adhere to Lafarge’s safety standards. We train our contractor on safety. PPE [personal protective equipment] – that is Lafarge standards. The contractor has to purchase PPE from Lafarge to ensure that it is up to our standards. Working hours – overtime regulations – we guide them on that but we obviously can’t enforce it (Interview, HR manager, October 2010).
TU strategies and prospects

Some aspects of the challenged posed by outsourcing to union organisation and strategy can be seen as universal and predictable. The break-up of larger membership and bargaining units vastly increases the call on resources, while at the same time limiting the union’s ability to respond. Since the viability of the union as a whole ultimately depends on the viability of individual units (Willman, 2001), unions face fundamental decisions concerning the allocation of resources and the prioritisation of organising activity. For this reason, outsourcing calls into question the uneasy tension between workplace democracy and managed centralism that is a feature of many unions.

However, beyond this level of generality, the impact of restructuring is a product of time and place: in this case, moulded by the way in which the South African economy and industrial relations have evolved since 1994. To see the specifics of union action primarily as responses to employer initiatives is to understate the interconnectedness involved in such a process of evolution; nowhere is this more apparent than in South Africa. The changing contours of national labour control regimes present both employers and unions with new opportunities, constraints and priorities. Not only union responses, but also company outsourcing strategies themselves need to be understood in this context.

By most objective measures, the history of South African trade unions since the fall of the apartheid regime has been one of remarkable success. COSATU’s revolutionary role pre-1994 and its formal place with the ANC and SACP in the ‘triple alliance’ made it possible to secure constitutional status for labour rights and to build a legislative and regulatory framework that is relatively supportive of collective bargaining and gives unions a significant voice via social partnership institutions at a national level. Early membership growth has been checked by the neoliberal turn of government economic policy, economic slow-down, as well as by the type of restructuring discussed in this paper but, nevertheless, COSATU currently claims 1.8 million paid up members and total membership stands at 3.2 million, or 25% of the workforce (COSATU, 2011; Budlender 2009). This history has embedded trade unions, as institutions, within national life and established principles of collective organisation that are yet to be seriously challenged. On the other hand, it can be argued that unions’ influence and their success as institutions has been at the expense of a broader, independent agenda. Buhlungu (2010), for example, argues that the centralisation of power within COSATU and the refocusing of union priorities on a narrow, economistic agenda can be seen as a ‘paradox of victory’ in which “the fruits of union victories continue to elude them as the processes of liberalisation that they champion almost always result in the organisational weakening of union structures” (Buhlungu, 2010: 17).

The longer-term effect on union strategy may result also from the changing membership profile. Rather than a relatively stable, unskilled workforce in mining and manufacturing, the union now struggles to organise workers a
fragmented labour market and fragmented workforce (Webster and Von Holt, 2005). The NUM argues that the more peripheral workforce is inherently difficult (Interview, National Coordinator, October 2010), but retrenchment around an organisable ‘core’ is itself unsustainable, as the core is progressively eroded.

So, whilst militancy can be seen as a response to economic circumstances (Kraus, 2007), it also needs to be seen in the context of a ‘social movement’ unionism that has proved unsustainable (Bramble, 2003) within the post-apartheid context. Von Holdt (2002) argues that under apartheid, rather than agents for the ‘negotiation of order’ (Hyman, 1975) in the workplace as in the industrial democracies, unions were agents for the ‘generation of disorder’ at the workplace as part of the struggle against white minority rule. The model of industrial unionism that remains appears incapable of responding to the scale of restructuring and job destruction under neoliberal reconstruction (Buhlungu, 2010). As South Africa’s unions have become more institutionally embedded, it is arguable that they are beginning to face some of the problems of their sister unions in the northern economies (Baccaro et al, 2003; Behrens et al, 2003) in that they rely more and more on their institutional position rather than membership strength and, in so doing, further demobilise their membership.

South Africa has some of the most labour friendly legislation in the world, drawn from international best practice. One of the features of the post-1994 settlement was the 1995 Labour Relations Act, whose declared aim was to promote economic development, social justice, ‘labour peace’ and democracy in the workplace. This resulted in the adoption of an industrial relations regime that promotes collective bargaining through industrial bargaining councils. These voluntary membership bodies have the power to conclude and enforce collective agreements and – depending on membership density - to extend such agreements to the rest of the industry.

As noted in the case of Lafarge, the law sets out employer responsibilities with respect to trade union organisation and formalises the right to strike. Bargaining councils also administer legally binding closed shop, or ‘agency shop’ agreements for member organisations, which, when enforced, tackle the problem of free-riders. However, crucially, the law does not impose a duty on employers to bargain.

In the case of the bargaining council for the road freight industry, the agreement specifically applies to subcontractors:

> An employer who subcontracts work falling within the Council’s registered scope shall be jointly and severally liable, together with the subcontractor, for the subcontractor’s compliance with the provisions of this Agreement (NBCRFLI, 2009: 38.2)

It is worth noting, however, that it refers to subcontracting by affiliated employers; the separation of such bargaining council jurisdictions means that the main contractor – which is not itself a freight operator – is not covered. The bargaining council structure also sets union demarcations, so, in this case, the
NUM is not able to recruit drivers. Section 12 of the Labour Relations Act gives the clear right to trade union representation, as well as the right to hold union meetings on employer’s premises. Outsourcing, though, has provided the pretext for undermining such rights, since the client is not technically the ‘employer’. Nevertheless, South African law remains relatively consistent, clear and supportive and might reasonably be used as the platform for organising.

Given this last point, the unions’ track record is, perhaps, surprising. Subcontracted drivers working for Lafarge are not union members. In other words, their ‘agency shop’ fee is deducted, they are, as individuals, covered by the terms of the collective agreement, but they are not represented. Compared with this relatively stable workforce, the difficulties in organising temporary and agency labour are understandably much more serious. The NUM claims to attempt to recruit limited duration workers, for example, but sees this as an ‘impossible’ task (Interview, NUM officer, October 2010.) While the number of these staff in Lafarge is decreasing, they constitute, according to the NUM, 60% of the total construction workforce. Most of these workers, effectively, have been categorised as non-organisable.

In order to understand this, we need to recognise that the way in which restructuring and fragmentation affect the ways in which unions operate is more complex than a simple response to employer initiatives. Sustainable union growth in the context of a fragmented industry during economic recession has accentuated a trend towards managed centralism. Unions have been forced to prioritise resources and to adopt a more ‘strategic’ approach to organising. Even in large civil engineering projects, unions have taken the view that it is not financially viable to target employers with fewer than 50 workers (Interview, NUM and BCAWU National Coordinators, August 2008**).

Conclusion

Typologies of value chain structure are of limited use in understanding the way in which particular client-contractor arrangements may either facilitate or obstruct the application of standards or practices. In order to understand how the dis-integration of ownership can co-exist with close operational integration, we argue that the standard tools of value chain analysis need to be accompanied by a closer focus on the nature of the work process. The Lafarge example illustrates at micro level, Woods’(2001: 41) observation that value chain analysis can help us to understand:

    one important aspect of globalisation, namely the simultaneous economic integration of countries and disintegration of production processes.

In the case of ready-mix delivery, outsourcing means that what would once have been considered a ‘core’ activity has been converted to an ostensibly straightforward market relationship. Nevertheless, the form of this relationship allows the client to exercise exactly the same level of control of the work process as would be the case with direct employees, yet, on the other hand, contractors can be treated as independent third parties who are not subject to the client’s
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human resources policies or broader commitments on labour standards or industrial relations.

A combination of low market power and high asset-specificity means that contractors are effectively captive. This has enabled the client to demand a degree of flexibility and responsiveness that appears to be feasible only because the cost of this flexibility has been shifted to the contractor. Operational control also includes a close specification of contractors’ obligations with respect to safety. On the other hand, personnel management issues, particularly those associated with labour standards, are distanced from the main company's remit.

South Africa is an unusual case in that although, like many emerging and developing economies (OECD, 2009), it has a high proportion of workers in the informal sector – around 30% (Statistics South Africa, 2011), its industrial relations system in the formal sector is highly developed. Labour rights rest on clear legislative provisions, unions are relatively strong both industrially and politically and collective bargaining is both sophisticated and embedded in the key industries and services. However, in the Lafarge case, the fragmentation policy of the company has combined with the strict jurisdiction rules for union coverage to weaken the position of workers. Even though South Africa is already a signatory to most of the ILO Conventions outlined in the Lafarge IFA, its coverage of the whole of the Lafarge value chain, as opposed to the partial coverage of the different collective bargaining agreements, offers the unions an opportunity to use the IFA to strengthen the position of workers’ representation. But this requires the unions to re-adopt a strategy of organising workers rather than organising employers and to forge a means of overcoming jurisdictional problems in which workers fall between two or more areas of union responsibility. We have shown how Lafarge is prepared to impose standards and procedures throughout its value chain in certain areas – health and safety, sustainability, pay and grading systems. There is no reason why this could not be extended to labour standards and labour rights. Although the IFA appears to have very little impact within Lafarge in South Africa today, it could be the institutional vehicle for such a change in union strategy and workers’ rights.
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References


Business Monitor International (2006), South Africa Infrastructure Report, Quarter 2.


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