

# SHARED PROSPERITY:

THE INVESTOR CASE FOR FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

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# ABOUT THE GLOBAL UNIONS' COMMITTEE ON WORKERS CAPITAL



The Global Unions' Committee on Workers' Capital (CWC) was established in 1999 as an international labour union network for dialogue and action on the responsible investment of workers capital. We bring together over 700 trade unions and pension fund board members from more than 25 countries to foster a community of practice aimed at upholding strong labour practices and trade union priorities in investments. We are an initiative of the International Trade Union Confederation (ITUC), the Global Unions Federations (GUFs) and the Trade Union Advisory Committee to the OECD (TUAC).

The CWC's work is led by a Leadership Team composed and supported by a Networked Secretariat, which includes unions around the world and meets on a monthly basis. The CWC's Leadership Team is:

#### **CHAIR:**

Christoffer Jönsson, *LO-Sweden, CEO of Folksam LO Pension*

#### **CO-CHAIR:**

Liz Shuler, *President of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)*

#### **CO-CHAIR:**

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Please note that this brief is for informational purposes only. It is not intended to provide and should not be relied on for investment, legal, tax or accounting advice. Trustees should consult their own advisors and investment professionals to evaluate the merits and risks of any investment.

# ACRONYMS

**BEIS**

Business, Energy and Industrial Strategy

**CS CCOO**

Confederación Sindical de Comisiones Obreras

**DEI**

Diversity, equity and inclusion

**EPI**

Economic Policy Institute

**ESG**

Environmental, social and governance

**GFA**

Global Framework Agreement

**IAHR**

Investor Alliance for Human Rights

**ILO**

International Labour Organization

**IMF**

International Monetary Fund

**ITF**

International Transport Workers' Federation

**ITUC**

International Trade Union Confederation

**IUF**

International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations

**LGIM**

Legal and General Investment Management

**NBIM**

Norges Bank Investment Management

**NCP**

National Contact Point

**OECD**

Organisation for Economic Co-operation and Development

**OECD Guidelines for MNEs**

Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises

**OHCHR**

Office of the United Nations High Commissioner for Human Rights

**PRI**

Principles for Responsible Investment

**SDG**

Sustainable Development Goals

**UAW**

United Auto Workers

**UFCW**

United Food and Commercial Workers International Union

**UGT**

Unión General de Trabajadores

**UN**

United Nations

**UNGPs**

United Nations Guiding Principles on Business and Human Rights

# EXECUTIVE SUMMARY

This brief explains why respect for the fundamental labour rights of collective bargaining and freedom of association is important to investors. When workers come together in a trade union, they can effect meaningful changes in their compensation and working conditions, bringing valuable benefits to themselves and their companies and contributing to broader societal goals of economic growth, income and wealth equality, equity and inclusion. As these benefits and

contributions are of interest to investors, this brief outlines how they can meet their responsibilities to protect workers' fundamental labour rights.

Because there are many misconceptions around the role unions play in workers' lives, the companies they work for and society at large, this executive summary addresses some common "myths" that the brief examines.

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## WHAT ARE FUNDAMENTAL LABOUR RIGHTS?

Freedom of association and collective bargaining are fundamental human rights enshrined in the International Labour Organization (ILO) Core Conventions. ILO Core Conventions state that employers and their agents should not prevent, prohibit or interfere with – directly or indirectly – the exercise of workers' rights to organize and join a union.<sup>1</sup> Fundamental labour rights are also included in the ILO Declaration on Fundamental Principles and Rights at

Work, which means that all ILO member states have an obligation to respect, promote and realize fundamental labour rights, irrespective of whether they have ratified individual conventions.<sup>2</sup>

Importantly, fundamental labour rights are considered "enabling rights" because they can foster respect for other human rights such as gender equality, health and safety and decent working conditions.

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## WHAT ARE INVESTOR RESPONSIBILITIES TOWARD FUNDAMENTAL LABOUR RIGHTS?

Companies have a responsibility to respect fundamental labour rights. The 2011 UN Guiding Principles on Business and Human Rights (UNGPs) provide guidelines for companies – including institutional investors – to protect and respect human rights while remedying human rights abuses committed in their business operations.<sup>3</sup> The Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNEs) are a comprehensive set of standards for responsible business conduct, with specific guidelines regarding employment

and industrial relations (Section 5).<sup>4</sup> The OECD's Responsible Business Conduct for Institutional Investors guidance clarifies that investors – including minority shareholders – are expected to use their "leverage" to influence companies to prevent or mitigate impacts.<sup>5</sup>

With legislation in place in several jurisdictions and the European Commission proposing a directive, there is a push for mandatory human rights due diligence\* for companies. These and other regulatory developments may hold stewardship implications for investors.

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\* Please see the glossary for a definition of the term "human rights due diligence."

# WORKERS AND UNIONS UNDER ASSAULT

PERCENTAGE OF COUNTRIES IN EUROPE WHERE WORKERS HAVE EXPERIENCED VIOLATIONS OF COLLECTIVE BARGAINING

54%

## **MYTH: ALL WORKERS ARE ABLE TO JOIN A UNION FREELY AND BARGAIN COLLECTIVELY.**

Workers' rights to freedom of association and collective bargaining are under attack, with many employers in all corners of the globe taking aggressive measures to prevent, prohibit or interfere with workers' efforts to join a union and bargain collectively. These measures include a range of techniques, including violence, and are often executed with government support. In the U.S., the sophisticated suite of union avoidance tools used by companies has been well documented. Tactics include assembling workers for captive audience meetings to discourage unionization and threatening to close work sites, cut wages and fire workers.<sup>6</sup>

Violations of workers' rights are a worldwide phenomenon, pervasive in the Global North and South alike. In 2022,

the International Trade Union Confederation (ITUC) reported that workers have seen companies and governments violate their right to freedom of association (77% of countries) and infringe upon their right to collective bargaining (79% of countries). In Europe, for example, workers in 54% of countries experienced violations of collective bargaining rights. Meanwhile, the ITUC categorized the U.S. as experiencing "systematic violations of rights."<sup>7</sup>

Though they violate ILO Core Conventions, decades of concerted union avoidance activities have contributed to a sharp decline in union density. In OECD countries, union density has fallen by 20% since 2000.<sup>8</sup>

\* Please see the glossary for a definition of the term "union density."



# FUNDAMENTAL LABOUR RIGHTS AND SYSTEMIC RISK

**MYTH: RESPECT FOR LABOUR RIGHTS IS A PRIORITY FOR UNIONS, BUT IRRELEVANT FOR INVESTORS.**

Fundamental labour rights are essential rights in themselves; they also unlock widespread potential benefits while mitigating crucial societal and investment risks. Institutions such as the International Monetary Fund (IMF), the OECD and the Global Deal have stated that collective bargaining and freedom of association are fundamental to a sustainable and inclusive economy. Evidence from these – and other – institutions demonstrates that unionization leads to important societal and economic outcomes, including stimulating economic growth, weathering economic shocks and tackling the systemic risks of inequality.

negatively impact long-term investment performance, hold implications for the universe of investment opportunities and destabilize the global financial system. Addressing labour relations and labour rights in stewardship is an avenue proposed by the PRI for investors to mitigate the systemic risk of inequality.<sup>10</sup>

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***Upholding fundamental labour rights is important to investors because they mitigate systemic risks of inequality and weak economic growth.***

Upholding fundamental labour rights is important to investors because they mitigate systemic risks of inequality and weak economic growth. Institutional investors are long-term investors and, as such, their investment returns depend on a stable and healthy economy.<sup>9</sup>

Because their returns are threatened by systemic risk, investors have joined governments, regulators and the general public in raising expectations of how companies identify and mitigate environmental, social and governance risks. The Principles for Responsible Investment (PRI) identifies inequality as a systemic risk and argues that it may

# INEQUALITY AND UNION DENSITY

**MYTH: ALL WORKERS ARE ABLE TO JOIN A UNION FREELY AND BARGAIN COLLECTIVELY.**

Trade union density and inequality have an inverse correlation. A strong and vast body of research demonstrates that declining union density contributes to stagnating real wages and rising inequality.<sup>11</sup> In the U.S., for instance, declining union density accounts for a third of the wage gap that grew between high- and middle-wage earners between 1979 and 2021. In the U.K., the share of gross domestic product (GDP) going to wages shrank from 57% to 49% between 1979 and 2018 as union density declined by 30% over the same period.<sup>12</sup> On the positive side, a study of 32 OECD countries found that higher collective bargaining coverage is strongly correlated with lower wage inequality. In particular, it found

ers alongside that of low-wage earners.<sup>14</sup> Unionization also raises wages in competing non-unionized workplaces, as they must lift pay to attract and retain workers.<sup>15</sup> At a macroeconomic level, investors also benefit from a more equal division of labour income through greater social and political stability, improving the ability of workers to invest in their and their children's education and training, and increased economic demand from rising living standards.

***In the U.S., declining union density accounts for a third of the wage gap that grew between high- and middle-wage earners between 1979 and 2021.***

countries where workers are covered by sectoral bargaining have lower wage inequality than countries with firm-level bargaining only or no collective bargaining.<sup>13</sup> In this regard, sectoral or multi-employer bargaining can play an important role – particularly in low-wage or low-margin industries – in uplifting the lowest wages without putting companies at a competitive disadvantage.

Importantly, these data show that the benefits of unionization extend beyond the unionized workers themselves. OECD research, for instance, found that union density increases the share of earnings to middle-income wage earn-



PERCENTAGE OF UNION DENSITY DECLINE BETWEEN 1979 AND 2018

# FUNDAMENTAL LABOUR RIGHTS AT THE COMPANY LEVEL: THE BUSINESS CASE

**MYTH: UNIONS MEAN THAT COMPANIES SPEND MORE ON LABOUR COSTS. UNIONS GIVE WORKERS PROTECTIONS THAT DISINCENTIVIZE PRODUCTIVITY. AS SUCH, UNIONS DETRACT FROM SHAREHOLDER VALUE.**

Workers who exercise fundamental labour rights add value to the companies they work for, which in turn creates value for investors. Trade unions enhance corporate human rights due diligence in the area of labour rights while also making positive contributions to risks that investors consider material, such as health and safety; training; retention; productivity; contracting efficiency; and diversity, equity and inclusion (DEI).



## HUMAN RIGHTS DUE DILIGENCE

Workers are the foundation of human rights due diligence because they are best placed to observe and report risks and violations in a company's operations or value chains. The value that workers add in identifying and mitigating material risks is enhanced when they are unionized. Collective bargaining agreements protect employees from retaliation for reporting human rights

found that compliance was positively correlated with workplace unionization and collective bargaining processes.<sup>16</sup> The International Accord for Health and Safety in the Garment and Textile Industry, which builds upon the Bangladesh Accord, is another example that is often cited as a model for effective human rights due diligence. A legally binding agreement between multinational com-

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***Workers are the foundation of human rights due diligence because they are best placed to observe and report risks and violations in a company's operations or value chains***

violations and provide a grievance resolution system between union members and management. The Global Deal, for instance, analyzed years of data in garment factories in five countries and

panies, national trade unions and global trade union federations, the Bangladesh Accord successfully mitigated and remedied countless health and safety risks for over two million workers.<sup>17</sup>

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## HEALTH AND SAFETY

Trade unions bring significant improvements to a company's health and safety performance. Collective bargaining agreements often institute health and safety structures and arrangements, which are central to identifying and mitigating risks.<sup>18</sup> In the U.S., for example, a 2018 study found that a 1% decline in unionization resulted in a 5% increase in occupational mortalities.<sup>19</sup>

In the U.S., a study of 13,350 nursing homes found that unions were associated with a 10.8% lower COVID-19 mortality rate among residents and 6.8% lower worker infection rates.<sup>21</sup>



A U.S. STUDY OF 13,350 NURSING HOMES FOUND THAT UNIONS WERE ASSOCIATED WITH A 10.8% LOWER COVID-19 MORTALITY RATE AMONG RESIDENTS

Health and safety emerged at the forefront of risks during the COVID-19 pandemic for reputational and operational reasons alike. During the early stages of the pandemic in Spain, a trade union alerted a government labour inspector to COVID-19 transmission risks at an Amazon.com warehouse. The inspector ordered Amazon to immediately address these health and safety concerns to keep the facility open.<sup>20</sup>

## TRAINING AND SKILLS

Trade unions also bring benefits to companies by encouraging workforce training, which in turn builds skills and productivity. Research demonstrates that worker voice arrangements are correlated with workers' access to training and that unionized workers are more likely to receive training than their non-unionized peers.<sup>22</sup> In many countries, trade unions operate formal apprenticeship programs and worker training centres. Trade unions also facilitate the informal transmission of knowledge between workers on the shop floor by building camaraderie and

assuring workers that the gains from the productivity improvements that they generate will be shared with them through collective bargaining.

As workplaces transition in response to climate and technological changes, collective bargaining is even more essential to addressing company skills gaps.<sup>23</sup> Research based on a 2019 European Company Survey, for instance, linked positive outcomes in workplace automation to collective bargaining agreements.<sup>24</sup>

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## PRODUCTIVITY

Contrary to the outdated stereotype that unions have a negative impact on productivity, empirical evidence offers a more accurate analysis, with the positive impact of unionization on productivity varying by country, sector, industry and company.<sup>25</sup> To the extent that unions are associated with increased labour-related expenses, they also improve worker efficiency and work processes, with a positive net result. Research has also found that union density and collective bargaining increase productivity because they facilitate communication of information to company management, establish mutual responsibility for a company's success, reduce turnover, promote productive modes of organizing work, resolve industrial disputes effectively, promote training and reduce time lost to injury or death.<sup>26</sup> Important-

ly, the job satisfaction that has been associated with unionization can also translate into increased productivity.<sup>27</sup> Collective bargaining also provides assurance to workers that the gains from their contributions will be shared with them. As a result of these contractual assurances, employees are more willing to invest their time and energy to acquire the knowledge and skills required for high productivity.

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***As workplaces transition in response to climate and technological changes, collective bargaining is even more essential to addressing company skills gaps.***

## DIVERSITY, EQUITY AND INCLUSION

Trade unions address underlying conditions that limit a company's ability to achieve diversity, equity and inclusion (DEI) goals. They do so by reducing racial and gender pay gaps, improving access to training and promotion, providing a safe structure from which to address intimidation and discrimination and promoting work-life balance.<sup>28</sup> While employment discrimination is forbidden in many countries by law, unions provide an accessible workplace grievance system for all workers, which is particularly important for low-income workers who otherwise may not be able to access legal protections through private litigation, for example.

In European countries such as Spain, Belgium and the U.K., data sets show a correlation between workers' voice arrangements and a lower incidence of various forms of intimidation and discrimination.<sup>29</sup> Notably, in the U.K., the

Trades Union Congress (TUC) found that workers on permanent (union) contracts reported fewer cases of racial harassment and discrimination by their employers compared with those on zero-hours (non-union) contracts.<sup>30</sup>

A vast body of research from the U.S. shows that unions boost pay for women, people of colour and other vulnerable groups, thereby helping to close race and gender pay gaps.<sup>31</sup> This trend is particularly pronounced in low-wage industries where women and people of colour are most represented, such as hospitality, janitorial, nursing and food service.<sup>32</sup>

Unionized workplaces score better than their non-union counterparts on work-life balance arrangements and access to related benefits that improve gender inclusiveness, such as parental leave, paid family leave and job sharing.<sup>33</sup>

## MYTH: MANAGERS OPPOSE UNIONIZATION TO PROTECT SHAREHOLDERS.

If unions are beneficial to workplace productivity, why do so many employers resist their employees' freedom to come together in a union to negotiate for a fair return on their work? Part of the answer is agency costs and a disconnect between short-term executive compensation incentives and long-term organizational performance. Corporate managers may resist unionization if they perceive it as a challenge to their personal authority – the "imperial CEO" phenomenon that is common in many corporate cultures. This managerial urge to resist unionization at any cost imposes an expense on the company and its shareholders. The fact that the

productivity benefits from unions accrue over the entire careers of the unionized workforce also creates a misalignment in executive pay incentives. The typical senior executive's compensation plan is limited to a one-year performance period or, at most, a three-year performance period. Why should a CEO invest in co-operative labour management relations that will pay off over the long term when the average CEO's tenure in office has been falling in recent years? For these reasons, it is up to long-term investors to demand that their portfolio companies embrace fundamental labour rights as a business strategy for sustainable value creation.

• ***For these reasons, it is up to long-term investors to demand that their portfolio companies embrace fundamental labour rights as a business strategy for sustainable value creation.***



# INTRODUCTION

Labour rights are human rights. The rights to freedom of association and collective bargaining are fundamental pillars of human freedom. These rights guarantee that individual workers can join together in protected concerted workplace activity to better their working lives, improve the companies they work for and contribute to the advancement of society.

By virtue of their membership in the ILO, almost all countries in the world are required to protect workers' rights to freedom of association and collective bargaining. In parallel, under the UNGPs and the OECD Guidelines for MNEs, companies and investors also have the responsibility to respect these fundamental labour rights.



PERCENTAGE OF COUNTRIES WHERE WORKERS HAVE SEEN COMPANIES AND GOVERNMENTS UNDERMINE THEIR RIGHTS TO ESTABLISH AND JOIN A UNION

Unfortunately, fundamental labour rights are under attack around the globe. Workers' rights to freedom of association and collective bargaining are compromised when employers take measures to prevent, prohibit or interfere with – directly or indirectly – workers' efforts to join a union and negotiate the terms and conditions of their employment. In 2022, the ITUC reported that workers in 77% of countries – including countries in the Global North such as the U.S., Belgium, Australia, the U.K. and others – have seen companies and governments undermine their rights to establish and join a union, and workers in 79% of countries – again, including the same and other countries in the Global North – have faced corporate and state actions that violated their right to collective bargaining.<sup>34</sup>

This brief describes why investors should implement respect for fundamental labour rights across their portfolios. First, it outlines how the UNGPs and OECD Guidelines for MNEs establish investors' responsibilities to uphold human rights, including fundamental labour rights. Second, it explains how upholding trade union rights is an opportunity for investors to mitigate systemic social risks, such as inequality. Third, through research and case studies, it demonstrates that trade unions are associated with many benefits at the company level that, taken together, constitute a business case for labour rights. These include mitigating material risks through supporting human rights due diligence; better health and safety performance; improved training and skills development; increased productivity; and a workplace that is more diverse, more equitable and more inclusive. Finally, the brief provides a guide for investors to implement respect for labour rights across asset classes.

• **Unfortunately, fundamental labour rights are under attack around the globe.**

## GLOBAL FRAMEWORK AGREEMENTS: A TOOL FOR MITIGATING RISKS TO LABOUR RIGHTS IN HIGH-RISK COUNTRIES

*Global Framework Agreements (GFAs), also known as International Framework Agreements (IFAs) or Transnational Company Agreements (TCAs), are an increasingly important form of cross-border social dialogue. They have been recognized as such by a number of international organizations, including the ILO.<sup>35</sup> These agreements between global union federations and multinational employers define specific rights and standards that apply to all employees of the multinational company, and increasingly to subcontractors and suppliers as well.*

*GFAs can serve as an important tool for a company to mitigate risks to freedom of association and collective bargaining, particularly in high-risk countries. In many current global agreements, employers explicitly promise not to oppose or obstruct unionization. Some go further and allow unions access to workers during the organizing process. Several case studies illustrating the role of GFAs can be found throughout this report.*

\* Please see the glossary for a definition of the term "global union federation."

# INVESTOR RESPONSIBILITIES AND FUNDAMENTAL LABOUR RIGHTS

## WHAT ARE FUNDAMENTAL LABOUR RIGHTS?

Freedom of association and collective bargaining are fundamental labour rights. Along with freedom from forced labour, the elimination of discrimination in employment and occupation, freedom from child labour, and a safe and healthy working environment, freedom of association and collective bargaining are enshrined in the nine ILO “fundamental” or Core Conventions, and further detailed in Convention 87 and Convention 98.<sup>36</sup> Under these ILO Conventions, employers and their agents should not prevent, prohibit or interfere with – directly or indirectly – the exercise of workers’ rights to organize and join a union.<sup>37</sup>



Together, the ILO Core Conventions are considered the minimum social floor in the world of work and “enabling rights” that serve as a precondition for the attainment of other rights related to the improvement of work conditions.<sup>38</sup> The term “enabling rights” means that respecting these rights can help ensure respect for other human rights such as gender equality, health and safety, adequate wages and reasonable working hours.

The vast majority of countries in the world have signed and ratified the ILO Core Conventions and incorporated them into domestic law. Moreover, the ILO Declaration on Fundamental Prin-

ciples and Rights at Work lays out the expectation that all member states are required to respect trade union rights, regardless of whether they have ratified the respective individual conventions.<sup>39</sup> Although the U.S., for instance, has not ratified ILO Conventions 87 and 98, it has still committed to respect, promote and realize trade union rights by virtue of its ILO membership.

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***Together, the ILO Core Conventions are considered the minimum social floor in the world of work and “enabling rights” that serve as a precondition for the attainment of other rights related to the improvement of work conditions.***

## FUNDAMENTAL LABOUR RIGHTS AND INSTITUTIONAL INVESTORS: QUICK LINKS

The [ILO Core Conventions](#) include [freedom of association \(87\)](#) and [collective bargaining \(98\)](#).

The [ILO Declaration on Fundamental Principles and Rights at Work](#) obliges all ILO member states to respect, promote and realize fundamental labour rights, irrespective of whether they have ratified individual conventions.

The [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) provide guidelines for companies to protect and respect human rights.

The [Organisation for Economic Co-operation and Development \(OECD\) Guidelines for Multinational Enterprises \(MNEs\)](#) set standards for responsible business conduct, including in employment and industrial relations. The OECD's [Responsible Business Conduct for Institutional Investors](#) discusses how the OECD Guidelines for MNEs apply to investors.

## WHAT ARE INVESTOR RESPONSIBILITIES TOWARD FUNDAMENTAL LABOUR RIGHTS?

The 2011 UNGPs establish that businesses have a responsibility to seek to meet human rights standards, including fundamental labour rights, even where states have not met their obligations. The UNGPs provide guidelines for businesses – including institutional investors – to prevent, address and remedy human rights violations committed in their operations.<sup>40</sup> In 2013, the Office of the United Nations High Commissioner for Human Rights (OHCHR) drafted guidance on the application of the UNGPs to institutional investors, advising business entities to seek to prevent or mitigate adverse human rights impacts directly linked to their operations, products or services through their business relationships. The letter noted that “appropriate action will depend on several factors, including what leverage the enterprise has to change the behaviour of the entity causing the harm.”<sup>41</sup>

depend on factors such as asset class, investment strategy and position in a portfolio. Importantly, the guidance makes clear that minority shareholders in companies that cause or contribute to adverse human rights impacts have a responsibility to mitigate those adverse impacts.<sup>43</sup>

Human rights due diligence responsibilities are increasingly becoming mandatory for companies. Legislation mandating due diligence on human rights impacts, including fundamental labour rights, is in force in France and will be in force in Germany from 2023. A directive has been proposed by the European Commission, with explicit inclusion of the financial sector. The U.K. and Australia have introduced legislation specific to modern slavery, and the Netherlands has introduced legislation regarding child labour.

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***The momentum toward mandatory human rights due diligence legislation has significant implications for investors and requires heightened attention to their stewardship of fundamental labour rights across portfolios.***

The OECD Guidelines for MNEs further set out company responsibilities to conduct human rights due diligence, specifying standards regarding employment and industrial relations (Section 5).<sup>42</sup> Governments adhering to the OECD Guidelines for MNEs have a binding commitment to implement them and are required to set up a National Contact Point (NCP), whose role includes mediating alleged incidences of non-observance of the guidelines. The OECD’s Responsible Business Conduct for Institutional Investors guidance explains why and how investors are expected to use their “leverage” to influence companies to prevent or mitigate impacts. Appropriate actions that investors may take to influence portfolio companies

The momentum toward mandatory human rights due diligence legislation has significant implications for investors and requires heightened attention to their stewardship of fundamental labour rights across portfolios. A group of more than 105 institutional investors with \$5 trillion in assets under management coordinated by the Investor Alliance for Human Rights has responded to these developments by calling upon governments to introduce mandatory human rights due diligence legislation. They describe mandatory human rights due diligence as materially beneficial, essential in creating uniformity and efficiency across jurisdictions, and necessary for investors to fulfill their responsibility to respect human rights.<sup>44</sup>

## THE SUSTAINABLE DEVELOPMENT GOALS

The push to strengthen investor human rights due diligence arises in a context where investors are facing expectations from a range of stakeholders to generate positive outcomes for people and the environment. There is much interest on the part of large investors to assess their portfolio holdings based on the United Nations (UN) Sustainable Development Goals (SDGs).<sup>45</sup> The UN SDGs were adopted by all UN member states in 2015 as a blueprint for broad societal goals related to sustainability,

peace and prosperity. SDG 8, Decent Work and Economic Growth, articulates a commitment to “protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.” The PRI has outlined a five-point rationale for institutional investors to contribute to the SDGs, which includes arguments on how they provide a framework for risk mitigation and asset allocation.<sup>46</sup>



# WORKERS AND UNIONS UNDER ASSAULT

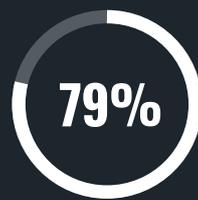
There is currently an escalating global assault on fundamental labour rights that underscores the urgency for investor action. For many years, a disturbingly large number of employers around the globe, often with government acquiescence, have fought fiercely to prevent workers from exercising their rights to freedom of association and collective bargaining. In doing so, they have employed a wide range of techniques, including violence, to undermine workers' organizations. And these tactics are not isolated to specific countries or regions.

The ITUC has released an annual study of labour rights in countries around the globe since 2014 – the ITUC Global Rights Index. Since the first report, violations of workers' rights have increased in virtually every category and every corner of the world. In 2022, employers and authorities impeded the registration of unions in 74% of countries studied, up from 59% in 2014.<sup>47</sup>

FIGURE 1: VIOLATIONS OF WORKERS' RIGHTS



PERCENTAGE OF COUNTRIES THAT VIOLATED THE RIGHT TO STRIKE



PERCENTAGE OF COUNTRIES THAT VIOLATED THE RIGHT TO COLLECTIVE BARGAINING



PERCENTAGE OF COUNTRIES THAT EXCLUDED WORKERS FROM THE RIGHT TO ESTABLISH OR JOIN A TRADE UNION



PERCENTAGE OF COUNTRIES WHOSE WORKERS HAD NO OR RESTRICTED ACCESS TO JUSTICE



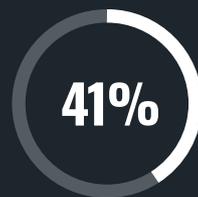
PERCENTAGE OF COUNTRIES THAT IMPEDED THE REGISTRATION OF UNIONS



WORKERS WERE DETAINED AND ARRESTED IN 69 COUNTRIES



WORKERS EXPERIENCED VIOLENCE IN 50 COUNTRIES



PERCENTAGE OF COUNTRIES THAT RESTRICTED FREE SPEECH AND ASSEMBLY



TRADE UNIONISTS WERE MURDERED IN 13 COUNTRIES

Source: International Trade Union Confederation (ITUC). (n.d.). Global Rights Index 2022. <https://www.globalrightsindex.org/en/2022>

**For many years, a disturbingly large number of employers around the globe, often with government acquiescence, have fought fiercely to prevent workers from exercising their rights to freedom of association and collective bargaining.**



PERCENTAGE OF COUNTRIES WHERE EMPLOYERS AND AUTHORITIES HAVE VIOLATED THE RIGHT TO STRIKE

Workers’ rights violations were not exclusive to developing countries or regions. The ITUC rates countries on a scale of 1 to 5, with 1 indicating sporadic violations of labour rights and 5 indicating no guarantee of labour rights.<sup>48</sup> As seen in Table 1, the U.S. received a rating of 4 for systematic violations of labour rights. Even in Europe, the region that received the best rating, workers’ rights violations are common, with employers and authorities violating the right to strike in 73% of countries, the right to collective bargaining in 54% of countries and the right to form a union in 41% of countries.<sup>49</sup>

Active employer opposition to freedom of association and collective bargaining is not new. Since the 19th century, various employers in many countries have used private security forces, espionage

and violence to resist workers’ organizing efforts. The ITUC Global Rights Index suggests that these tactics are still prevalent in too many countries.

More specifically, in countries in the Global North, employers have evolved their union avoidance methods to work within and around labour law, achieving with briefcases what they used to achieve with batons.<sup>50</sup> This is particularly apparent in the U.S., where a “union avoidance” consulting industry dedicated to resisting unions has evolved to teach company managers how to resist worker organizing efforts; employers pay these consultants about \$340 million each year, with millions more going to law firms that specialize in union avoidance, such as Littler Mendelson; Ogletree Deakins; Morgan, Lewis & Bockius; and Jackson Lewis.<sup>51</sup>

TABLE 1: ITUC GLOBAL RIGHTS INDEX: SELECT 2022 COUNTRY RATINGS FOR LABOUR RIGHTS VIOLATIONS<sup>52</sup>

Rating	Criteria	Select Countries
5	No guarantee of rights	Bangladesh, China, Colombia, Egypt, India, Iran, Korea (Republic of), Philippines and Turkey
4	Systematic violations of rights	Australia, Botswana, Chile, Djibouti, Nigeria, Romania, Vietnam, the U.S. and Zambia
3	Regular violations of rights	Belgium, Bulgaria, Canada, Madagascar, Mexico, Poland, South Africa and the U.K.
2	Repeated violations of rights	Congo (Republic of), France, Israel, Japan, Namibia, New Zealand, Singapore, Spain, Switzerland and Taiwan
1	Sporadic violations of rights	Austria, Denmark, Finland, Germany, Iceland, Norway and Sweden

**Employers pay these consultants about \$340 million each year, with millions more going to law firms that specialize in union avoidance.**



As a result, anti-union tactics are widely used in the U.S. According to a 2009 study:

“employers threatened to close the plant in 57% of [union representation] elections, discharged workers in 34%, and threatened to cut wages and benefits in 47% of elections. Workers were forced to attend anti-union one-on-one sessions with a supervisor at least weekly in two-thirds of elections. In 63% of elections employers used supervisor one-on-one meetings to interrogate workers about who they or other workers supported, and in 54% used such sessions to threaten workers.”<sup>53</sup>

Only the first three anti-union tactics are illegal in the U.S. (though all of them violate ILO Core Conventions), but U.S. labour law enforcement is extremely difficult for workers to obtain and can take years to adjudicate, and employers face few penalties if judged to have violated the law.<sup>54</sup>

Despite this, public opinion in the U.S. continues to climb in support of trade unions. As of September 2021, 68% of Americans approve of labour unions, the highest the approval rating has been since 1965 when it was 71%.<sup>55</sup> Approximately 50% of the non-unionized workforce in the U.S. stated that they would join a union if an election was held at their workplace.<sup>56</sup> Consumers also have expressed opposition to anti-union practices. According to a survey from January 2022, 42% of Americans expressed that they are less likely to purchase from a company attempting to stop its employees from unionizing and 41% said the same of a company with a union on strike.<sup>57</sup>

The union avoidance industry has not remained isolated to U.S.-based compa-

• **68% of Americans approve of labour unions, the highest the approval rating has been since 1965 when it was 71%.**



20%

PERCENTAGE OF UNION DENSITY DECLINE  
IN OECD COUNTRIES SINCE 2000

For more examples, see  
**Appendix 2: Leading Investor  
Practices to Implement  
Freedom of Association and  
Collective Bargaining**

nies. Numerous multinational corporations have employed union avoidance law firms to resist their workers' exercise of rights to freedom of association and collective bargaining.<sup>58</sup> In some of these efforts, the companies and firms have sought to weaken the protections provided by the ILO Core Conventions by arguing for employers' right to campaign against unions. They also opposed stronger worker protections, such as those provided by the Bangladesh Accord on Fire and Building Safety.<sup>59</sup>

Employers' active resistance to unions – in violation of ILO Core Conventions – is, in large part, responsible for the decline in union density in many countries. Taken together, union density has fallen by 20% since 2000 in OECD countries.<sup>60</sup> In the U.S., the proportion of private sector workers in unions is just 6.1%, the lowest since the 1920s – even though 68% of Americans approve of unions.<sup>61</sup>

In past years, few investors have spoken out publicly against the union-avoidance activities of their portfolio companies. But this is now changing.

Investors have begun to articulate dissatisfaction with companies engaging in union avoidance. In 2021, a group of over 70 Amazon.com investors with more than US\$6.4 trillion in assets under management and US\$20 billion in Amazon shares called on the company to stop interfering with efforts by its workers to unionize at a warehouse in Alabama. The group was convened by Swedish investors Folksam and Öhman Fonder and included the comptrollers for both New York State and New York City, Legal and General Investment Management, BMO Global Asset Management and the Church of England Pensions Board.<sup>62</sup> In December 2021, a group of investors with over US\$1.3 trillion in assets under management wrote a letter to Starbucks raising concerns with its union avoidance campaign and urging it to accept the results of an election where workers voted to join a union and proceed in good faith.<sup>63</sup> The Danish pension fund AkademikerPension announced it will sell shares in airline Wizz Air following a failure to see indicators of changes from the company after engagement on labour rights concerns.<sup>64</sup>

## CASE STUDY: UNION NEUTRALITY\* AND CARD CHECK\*\* AT FORD MOTOR COMPANY

Since 2003, Ford Motor Company (Ford) and the United Auto Workers (UAW) union have had a neutrality and card check agreement, which protects and implements Ford workers' rights to freedom of association and collective bargaining. The agreement applies to all hourly employees in all facilities operated in the U.S. by Ford, or any of its affiliates or subsidiaries.

Under the agreement, when workers at a facility seek to join the UAW:

- Ford will recognize the UAW when a majority of the workers demonstrates support for the union through a card check process overseen by a third party;
- Ford will, upon UAW request, communicate its pledge to respect

workers' rights regarding union representation to any of its workers;

- Ford will not retaliate against workers who seek to join the union;
- Ford will, upon request, provide the UAW with an opportunity to address the workers during working hours;
- Ford will, upon request, provide the UAW with limited access to workers in non-work areas during non-working hours, provided such access is not disruptive to operations; and
- Ford will, upon request, provide the UAW a list of all employees, their home addresses and their job classifications.

In the agreement, Ford also pledges to discuss the benefits of voluntarily adopting the agreement when it enters any joint venture, sale of assets, stock sale or other transaction in the U.S.<sup>65</sup>

\* Please see the glossary for a definition of the term "union neutrality policy."

\*\* Please see the glossary for a definition of the term "card check."

# FUNDAMENTAL LABOUR RIGHTS AND SYSTEMIC RISK



Investors have a responsibility to uphold fundamental labour rights – and an interest to do so as well. Unions play an essential role in mitigating systemic risks and fostering healthy markets based upon sustainable and inclusive economic growth.

The investment returns of institutional investors depend on a healthy economy. Those same returns are threatened by systemic risk, leading not only investors but also governments, regulators and the general public to raise their expectations of company risk recognition and mitigation. The U.K.'s Financial Reporting Council's 2020 Stewardship

Code, for example, asks asset owners and managers to “identify and respond to market-wide and systemic risks to promote a well-functioning financial system.”<sup>66</sup>

***Economic inequality is a source of political and social instability that is a threat to sustainable investment returns.***

Code, for example, asks asset owners and managers to “identify and respond to market-wide and systemic risks to promote a well-functioning financial system.”<sup>66</sup>

As participants in civil society, trade unions are essential for the functioning of democracy. The freedom of workers to organize and bargain collectively is the most fundamental form of democratic participation. The very function of trade unions is to promote the economic well-being of their members through the democratic process. Unions promote, teach and exercise democratic practice. One study found that unionized workers are 12% likelier to vote than non-union-

ized workers, and another study found that the average voter turnout is higher in states with greater union density.<sup>67</sup> Unions give a collective voice to those whose individual voices would be weak. They give workers experience in democratic decision-making and understanding of the importance of basic human rights. Without free and effective trade unions, the economy often serves only to enrich the few, and the government serves only to protect their privilege. Autocratic governments are not conducive to sustainable economic growth or the property rights of investors.

Economic inequality is a source of political and social instability that is a threat to sustainable investment returns. While climate change is most often associated with systemic risk to investment portfolios, the COVID-19 pandemic and racial justice movements have highlighted systemic risks presented by income and wealth inequality. As the PRI outlines, inequality:

“has the potential to negatively impact institutional investors’ portfolios as a whole; increase financial and social system-level instability; damage output and slow economic growth; and contribute to the rise of nationalistic populism and tendencies toward isolationism and protectionism.”<sup>68</sup>

The PRI asserts that inequality may negatively impact long-term investment performance, hold implications for the universe of investment opportunities and destabilize the global financial system. The PRI suggests that, in order to address inequality, investors should focus attention on labour relations and labour rights, as well as corporate taxation and CEO compensation.<sup>69</sup>

The push for investors to understand and address the systemic risks of inequality is backed by research. Findings from the IMF, for example, suggest that inequality has significant negative implications for growth and macroeconomic stability. The IMF argues that inequality can result in a concentration of political and decision-making power, generating political and economic instability that may, in turn, increase risk and reduce

investment.<sup>70</sup> Additional IMF research found an inverse relationship between inequality and economic growth, noting “if the share of total income of a country’s wealthiest 20% increases by just 1%, GDP growth will be 0.08% lower in the subsequent five years, whereas an increase in the income share of a country’s poorest 20% is associated with 0.38% higher growth.”<sup>71</sup>

## MAKING WORKER VOICE REAL AND MEANINGFUL

*Some investors are beginning to include “worker voice” or “employee voice” in the expectations they communicate to portfolio companies.<sup>72</sup> This is a positive and welcome development. There is, however, an important distinction between measures that companies may take to promote “worker voice” and the expression of workers’ collective voice through a democratic and representative structure that enables collective bargaining.*

*Many companies cite employee surveys, bulletin boards, intranets, focus groups, “open door policies,” team meetings, quality committees, whistleblower hotlines and internal social media apps as methods for the expression of worker voice. These are all ways for gathering feedback from workers. However, they are not alternatives for unions. They are not a means for workers to speak collectively, in their own interests, independently of management. They do not create a structure by which workers can choose representatives who are separate from management,*

*organize workers’ deliberations and engage in collective bargaining with the company.*

*Furthermore, these mechanisms do not necessarily allow workers to express their views and offer feedback anonymously, without fear of retaliation. By contrast, union representatives meet with workers and transmit their feedback to management on behalf of workers. In doing so, they provide workers with protection from retaliation, addressing an inherent power imbalance between workers and management. Mechanisms that do not guarantee anonymity or create sufficient worker trust in the process may result in worker intimidation or fear of retaliation, and may impede – rather than facilitate – worker voice.<sup>73</sup>*

*In short, devices that a company uses to collect worker input do not constitute the realization of workers’ right to freedom of association and collective bargaining.*

# INEQUALITY AND UNION DENSITY

If inequality is a systemic risk, trade union density is one source of risk mitigation; union density and inequality are inversely correlated. As research around the globe demonstrates that declining union density has contributed to stagnating real wages, and rising income and wealth inequality,<sup>74</sup> it follows that investors have an opportunity to address systemic risk through upholding fundamental labour rights.

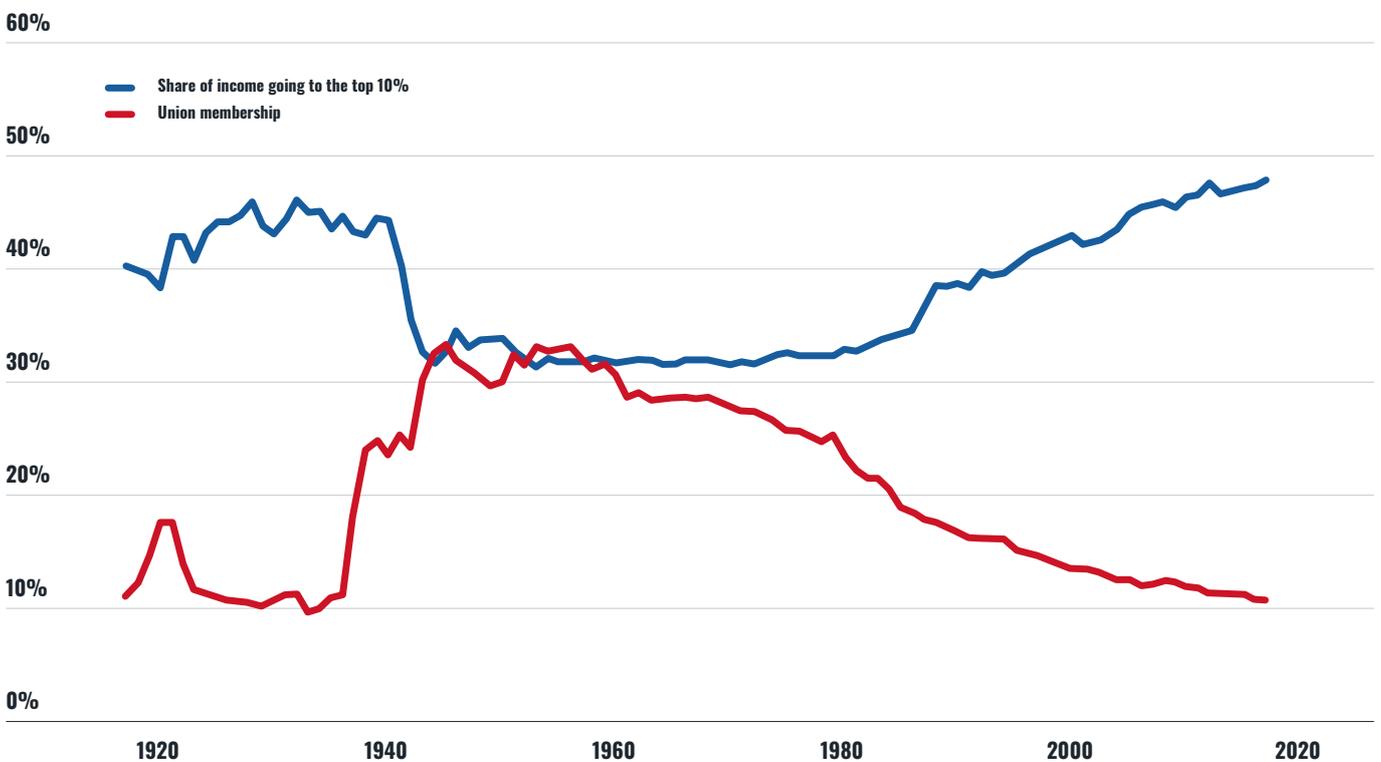
density declined from the end of World War II, income inequality worsened. The Economic Policy Institute (EPI) calculates that declining union density in the U.S. accounts for a third of the wage gap that grew between high- and middle-wage earners between 1979 and 2021 and that, during this same period, the erosion of collective bargaining was second only to excessive unemployment in fuelling wage inequality.<sup>75</sup>

The relationship between inequality and union density is historic. As union

**Investors have an opportunity to address systemic risk through upholding fundamental labour rights.**

Figure 2: Union Membership and Income Inequality, 1917–2017

**AS UNION MEMBERSHIP DECLINES, INCOME INEQUALITY RISES**  
Union membership and share of income going to the top 10%, 1917–2017



Source: Shierholz, H. (2019, August 27). Working People Have Been Thwarted in Their Efforts to Bargain for Better Wages by Attacks on Unions. Economic Policy Institute. <https://www.epi.org/publication/labor-day-2019-collective-bargaining/>

Similarly, in the U.K., union density declined from 54% in 1979 to 23.4% in 2018. The share of GDP going to wages shrank from 57% to 49% between 1979 and 2018, with a higher proportion of the wage share going to top earners.<sup>76</sup> And in Australia, where restrictions and prohibitions have weakened the labour labour rights protection framework, union density fell from 50% in the early 1980s to under 15% in 2019.<sup>77</sup>

lective bargaining coverage is strongly correlated with lower wage inequality, accounting for 50% of the cross-country variance in wage inequality. In particular, it noted that countries where workers are covered by sectoral bargaining have lower wage inequality than countries with firm-level bargaining only or no collective bargaining.<sup>83</sup> In this regard, sectoral or multi-employer bargaining can play an important role – particularly

## ***The IMF published research in 2015 indicating “strong evidence that lower unionization is associated with an increase in top income shares in advanced economies during the period 1980–2010.”***

The IMF published research in 2015 indicating “strong evidence that lower unionization is associated with an increase in top income shares in advanced economies during the period 1980–2010.”<sup>78</sup> Similarly, research from the OECD found that the quality of labour relations and trust in unions are negatively correlated with the unemployment rate and earnings inequality.<sup>79</sup> It notes that one of the core missions of collective bargaining is strengthening the bargaining power of low-wage workers, which increases the share of earnings accruing to low- and middle-income workers.<sup>80</sup>

The extent of the union wage premium is determined by different national contexts. In the U.K., for instance, union members earn approximately 5% more than equivalent non-union members on average.<sup>81</sup> Family incomes in U.S. union households are 10% to 20% higher than non-union households – and the union wage premium is higher for non-white and less-educated workers.<sup>82</sup> The union wage premium is not associated with increased inequality. A study of 32 OECD countries found that higher col-

in low-wage or low-margin industries – in uplifting the lowest wages without companies being put at a competitive disadvantage.

Union density does not just lift wages for unionized workers. In what researchers term the “spillover effect,” competing non-unionized workplaces must also raise wages to obtain and retain workers.<sup>84</sup> Similarly, the spillover effect further reduces social inequality by incentivizing non-unionized employers to offer non-wage benefits and labour conditions, such as health care, retirement benefits, health and safety standards and paid sick leave.<sup>85</sup>

Furthermore, unions can counteract the dampening impact that employer concentration in local labour markets – often referred to as labour market monopsony power – has on wages. Research has shown that employers are able to set wages below competitive levels when there are few employers hiring in a local area. A study that used U.S. census data in the manufacturing sector from 1978 to 2016 found that the negative relationship that has been



**35%**

PERCENTAGE OF UNION DENSITY DECLINE  
IN AUSTRALIA FROM THE EARLY 1980S  
TO 2019

observed between local-level employer concentration and wages increases when unionization rates are low. It follows that unions have been found to lift wages closer to their competitive level.<sup>86</sup> While the exercise of labour market monopsony power may be economically rational at the firm level, diversified investors suffer from reduced economic growth from underutilized workers and the fact that anti-competitive business practices are associated with reduced innovation.

The role that collective bargaining and trade unions play in mitigating economic shocks that can both cause and contribute to further inequality came to the fore during the COVID-19 pandemic. The ITUC found that the 12 countries

implementing the strongest COVID-19 support measures (regarding paid sick leave; wage support; income support; mortgage, rent or loan relief; and free health care) all had done so as a result “either of strong tripartite or social dialogue structures and traditions, or concerted and successful campaigning and lobbying by trade unions.”<sup>87</sup> By alleviating immediate economic pressures, these measures enabled businesses and their employees to enact necessary public health policies, such as temporary closures and reduced hours. In turn, these public health policies helped avert a more devastating economic crisis by both limiting the length of time the public health measures were needed and preventing a dramatic rise in unemployment or poverty.

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***The role that collective bargaining and trade unions play in mitigating economic shocks that can both cause and contribute to further inequality came to the fore during the COVID-19 pandemic.***



## MULTI-EMPLOYER AND SECTORAL BARGAINING

*While in most countries collective bargaining predominantly takes place at the company level, several countries, particularly in Europe, have parallel systems of multi-employer or sectoral bargaining. In such cases, employers negotiate with trade unions for working conditions that apply to several companies of a certain area (e.g., an airport) or a certain sector (e.g., cleaning) at the same time. On the company level, unions and employers are free to negotiate additional collective agreements.*

*In a number of countries, these forms of multi-employer bargaining are supported by the state. As such, multi-employer agreements can be made “generally applicable” so they also apply to companies that are not members of the negotiating organization or that did not sign the contract. In other countries, the state provides the negotiating infrastructure or obliges companies to be a member of bargaining organizations.*

*Virtually all countries with established multi-employer bargaining infrastructures have parallel systems providing for workplace-level company voice through works councils or local trade union structures. They provide for workers’ voice on topics not covered by the higher-level bargaining and additional negotiations on the practical implementation of higher-level agreements.*

*The advantage of sectoral or multi-employer bargaining is that through generally binding standards set at the sectoral level, companies from a same sector compete on a level playing field. Companies cannot get a competitive advantage over competitors by cutting down on wages or working conditions as the same standards apply to all companies. Wages and working conditions, in essence, are taken out of competition.<sup>88</sup> Another advantage is that difficult negotiations on conflictual issues like wages and working conditions are lifted from the company level to the sectoral level. This means that on the company level, negotiation can focus on issues where finding win-win solutions is easier.<sup>89</sup>*

*Additionally, bargaining on the multi-employer level has the advantage of saving on transaction costs.<sup>90</sup> Instead of multiple bargaining sessions in individual companies, a single bargaining round will settle many issues, meaning less time and resources go to bargaining on the company level.*

*In terms of possible disadvantages, multi-employer bargaining hampers the entry of new competitors in a certain sector. New firms, which are often smaller and have reduced margins, need to provide the same sectoral set wages and working conditions, making it more difficult for them to find a place in the competitive environment.*

*Countries with strong systems of multi-employer bargaining consistently have higher collective bargaining coverage rates, which in turn are related to more equal, innovative and employment-rich economies.<sup>91</sup>*

# FUNDAMENTAL LABOUR RIGHTS AT THE COMPANY LEVEL: THE BUSINESS CASE

Beyond the systemic risks associated with fundamental labour rights violations, investors have an interest in the exercise of labour rights at the individual company level to address risks from both human rights and investor materiality perspectives. As with other human rights, failure to respect labour rights may generate reputational, operational, regulatory and legal risks at the company level that hold negative implications for investors.

As this section details, researchers have demonstrated that trade unions have

multiple positive effects on workers and companies – and these positive effects can translate into enhanced value for investors. Perhaps most directly relevant to investors is the role trade unions play in mitigating risks through the performance of effective corporate human rights due diligence. Similarly, trade unions aid in the realization of corporate goals with well-established investor interests, such as good governance, health and safety, training, retention, workforce productivity and DEI.

## **CASE STUDY: RESPONDING TO EMERGENT HUMAN RIGHTS RISKS THROUGH A GFA – THE EXAMPLE OF TELEFONICA**

*The Spanish telecommunications giant Telefónica; the global trade union federation UNI Global Union; and the two Spanish unions, Confederación Sindical de Comisiones Obreras (CS CCOO) and Unión General de Trabajadores (UGT), have had a GFA\* in place since 2000,<sup>92</sup> which guarantees workers' right to freedom of association, along with other provisions, including commitments to protect against forced labour and child labour, and to protect health and safety. This agreement established a constructive working relationship that allowed for work between UNI Global Union and Telefónica to respond proactively to emergent risks across its global operations. For example, in 2019, the parties came to a groundbreaking agreement on the "right to disconnect," which allowed the company to have a global set of principles with global trade union support to navigate the challenges arising through the rise of digitalization*

*in the highly impacted information and communications technology sector.<sup>93</sup>*

*During the COVID-19 pandemic, this proactive global social dialogue again demonstrated its value. In May 2020, UNI Global Union, Telefónica, CS CCOO and UGT announced another agreement that secured the right to a safe return to work for the company's employees worldwide, including strict safety guidelines as workplaces reopened.<sup>94</sup> This included establishing monitoring mechanisms using existing health and safety committees or creating emergency COVID-19 commissions, allowing for both global and local enforcement of the provisions. This accountability ensured that commitments translated into real health and safety protections, giving workers more trust in the process of returning to work – benefiting both the company and its investors.*

\* Please see the text box on page 14 or the glossary for a definition of the term "Global Framework Agreement (GFA)."

## HUMAN RIGHTS DUE DILIGENCE

Companies and investors increasingly recognize the importance of human rights due diligence for the maintenance of reputational value, operational continuity, litigation avoidance and social licence to operate.<sup>95</sup>

Labour rights are human rights and should be included in the value that investors accord to human rights due diligence. As previously described, fundamental labour rights are also “enabling rights” – human rights that, when realized, empower the exercise of other rights. For example, workers facing disparate treatment can use their rights to freedom of association and collective bargaining to ensure freedom from workplace discrimination and harassment. Similarly, conducting due diligence on labour rights may support investors’ efforts to mitigate other risks such as health and safety harms, environmental damage or modern slavery.<sup>96</sup>

lower non-compliance with national regulations covering salaries and benefits, contracts, as well as occupational safety, health, and welfare standards. Moreover, the process, rather than strictly the content, of collective bargaining agreements reached appear to have positive effects for improving working conditions.”<sup>97</sup>

As commercial social audits have been discredited as an adequate methodology for managing human rights risks,<sup>98</sup> models working with trade unions and worker representatives have become leading practice. A prime example of the effectiveness of this model is the International Accord for Health and Safety in the Garment and Textile Industry, which succeeded and built upon the Bangladesh Accord, a legally binding agreement between multinational companies in the fashion industry, national trade unions and the global trade union feder-

***fundamental labour rights are also “enabling rights” – human rights that, when realized, empower the exercise of other rights.***

Trade unions can strengthen companies’ human rights due diligence capacity when they are involved in risk identification, mitigation and remediation processes. Through social dialogue, trade unions facilitate stakeholder engagement, an integral part of the due diligence approach recommended by the OECD and the ILO. According to the multi-stakeholder partnership organization Global Deal:

“Analysis of compliance assessment data in garment factories in five countries over repeated years of capacity-building and monitoring by the joint ILO-World Bank Better Work projects illustrates [the importance of social dialogue]. It finds that workplace unionization and the presence of collective bargaining processes are associated with

ations UNI Global Union and IndustriALL Global Union. The Bangladesh Accord addressed critical health and safety risks in the Bangladeshi garment value chain. On September 1, 2021, the new International Accord took effect, continuing the commitments to the health and safety program in Bangladesh, but also pledging to expand into new countries.<sup>99</sup>

European Commission studies<sup>100</sup> and ILO reports<sup>101</sup> cite the Bangladesh Accord as a model that meets the requirements of human rights due diligence. Analysis of the model shows that it delivered real improvements in mitigating and remedying hundreds of thousands of health and safety risks across more than 1,600 factories covering more than two million workers.<sup>102</sup> The key elements of this success were its legally binding status, the equal representation of trade

• **where freedom of association and collective bargaining exist in global supply chain settings, “compliance with all code provisions [of labour codes of conduct] is significantly higher.”**



unions to brands and the independent and transparent nature of the monitoring and remediation process.<sup>103</sup>

On a company level, trade unions, whose members are embedded in every aspect of the enterprise’s operations, can alert management to potential human rights violations in their global value chains or even their own operations. In a recent book chapter, Fischer-Daly and Raymond present research showing that where freedom of association and collective bargaining exist in global supply chain settings, “compliance with all code provisions [of labour codes of conduct] is significantly higher.”<sup>104</sup> Improved compliance where freedom of association and collective bargaining are not restricted seems to be linked to a number of factors, including their increasing “worker agency,” which can bring about better conditions through local capacity building as well as “whistleblowing” and “warnings” to call attention to workplace violations.<sup>105</sup> The authors also emphasize that fundamental labour rights are enabling rights that can lead to better compensation and working conditions.

For example, the global clothing retailer Hennes & Mauritz AB (“H&M”) reported that the company’s partnerships with trade unions at international and local levels “have played a constructive role in informing H&M’s due diligence on its supply chain by helping the company to identify instances of unapproved sub-contracting and resolving labour-management tensions in specific factories and sourcing markets.”<sup>106</sup>

## **CASE STUDY: PROTECTING LABOUR RIGHTS IN HIGH-RISK COUNTRIES THROUGH A GFA – THE EXAMPLE OF CARREFOUR**

*GFA's are an effective means to ensure respect for trade union rights in difficult environments. UNI Global Union's global framework agreement with Carrefour structured a dialogue between the federation and the company in which the parties agreed to processes that ensured respect for freedom of association for Carrefour workers in the high-risk countries of Romania and Colombia.*

*In Colombia, one of the riskiest countries in the world for labour rights, Carrefour workers were able to form a trade union that continued even once the company sold its Colombian assets. In Romania, when Carrefour acquired a local firm, the social dialogue enabled by the global framework agreement established a smooth process for the workers to join a union.*

Even where companies are resistant to co-operation, unions can provide due diligence that protects workers and those very same companies. French call centre company Teleperformance employs 420,000 workers in 88 countries. Four French trade unions and UNI Global Union documented health and safety and labour rights shortcomings in Teleperformance's response to the COVID-19 pandemic in 10 countries. These included nine union allegations of the company dismissing or not renewing short-term contracts in retaliation for workers exercising their rights.<sup>107</sup> When discussions with Teleperformance failed to achieve improvement, the unions filed a Specific Instance with the French NCP for the OECD.

The final statement of the NCP, issued in July 2021, recommended overall that the company should "strengthen its due diligence and engagement with stakeholders representing workers in order to ensure the respect for the right of freedom of association and collective bargaining of workers as provided for

in the OECD Guidelines."<sup>108</sup> Specifically, to strengthen its health and safety performance, the NCP recommended that the company strengthen employees' representation in health and safety committees and "for India and the Philippines, the NCP recommends that Teleperformance formally involve the social partners in the monitoring of the COVID management policy and of the work at home rolling out."<sup>109</sup>

There are increasing legal obligations for companies to involve trade unions in their human rights due diligence. France's Duty of Vigilance Law, for example, specifies that due diligence plans "shall be drafted in association with the company stakeholders involved"<sup>110</sup> and requires an alert mechanism to be "developed in working partnership with the trade union organization representatives of the company concerned."<sup>111</sup>

***GFA's are an effective means to ensure respect for trade union rights in difficult environments.***

## HEALTH AND SAFETY

Trade unions improve health and safety performance. The need for such improvement was clear before 2020, and the COVID-19 pandemic has only heightened the urgency. In 2022, the International Labour Conference adopted a resolution to add the principle of a safe and healthy working environment to the ILO Fundamental Principles and Rights at Work.<sup>112</sup>

The ILO estimates that 2.78 million workers die each year from work-related injuries and illnesses, and another 374 million suffer from non-fatal work-related injury and illness. In addition to the tragic loss of life, lost workdays due to accidents and disease represent almost 4% of the world's annual GDP.<sup>113</sup>

At the company level, poor health and safety performance can lead to higher absenteeism and more downtime – decreasing productivity. It can further hurt productivity through the impact on morale and loss of skilled employees. Companies can bear direct costs from legal fees, higher insurance premiums and material damage to equipment. High-profile cases can damage reputations and, ultimately, risk a company's licence to operate. These risks give companies and investors clear incentives to enhance health and safety performance – and trade unions can help.

The relationship between unionization and health and safety has been studied extensively in the U.S. One study compared all U.S. private sector establishments where unions barely won union-certification elections and barely lost union elections between 1985 and 2009.<sup>114</sup> It found that the workplace safety law enforcement inspection rates, violations cited and penalties issued increased by approximately 8% of a standard deviation where unions barely won certification, providing strong evidence that law enforcement is related to the rights-facilitation effect of unions.<sup>115</sup> Evidence from the U.S. has also shown that a 1% decline in unionization causes



about a 5% increase in occupational mortalities.<sup>116</sup> Analysis of New York City construction sites found twice the number of health and safety violations at non-union sites as at union construction sites.<sup>117</sup> In 2014 and 2015, 80% and 74%, respectively, of construction fatality sites inspected by the Occupational Safety and Health Administration were non-union.<sup>118</sup>

Collective agreements lead to these improvements through their focus on health and safety arrangements, such as via the appointment of dedicated health and safety representatives. These workplace delegates help train workers, respond to emerging problems, arrive at solutions, contribute to the development of new and safer procedures and guarantee enforcement, which is particularly important in the context of weak government enforcement.<sup>119</sup> In 2021, the International Transport Workers' Federation (ITF) Seafarers Trust developed and launched an app for use by dockworkers at container terminals to help identify and reduce hazards in ports.<sup>120</sup> It is currently available in English and Arabic,



80%

PERCENTAGE OF CONSTRUCTION  
FATALITY SITES IN 2014 INSPECTED BY  
THE OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION THAT WERE NON-UNION



10.8%

A STUDY OF 13,350 NURSING HOMES ACROSS THE CONTINENTAL U.S. FOUND THAT UNIONS WERE ASSOCIATED WITH 10.8% LOWER RESIDENT COVID-19 MORTALITY RATE

and it is part of a global push by unions to address unacceptably high rates of port injuries and fatalities.

During the COVID-19 pandemic, trade unions demonstrated their ability to address health and safety risks. In the nursing home sector, trade unions were a key differentiator in responses to the pandemic. A study published in *Health Affairs* of 13,350 nursing homes across the continental U.S. found that unions were associated with 10.8% lower resident COVID-19 mortality rates, as well as 6.8% lower worker infection rates from June 8, 2020, through March 21, 2021.<sup>121</sup> This confirmed the authors' earlier analysis focusing on nursing homes in New York State.<sup>122</sup> They note, "In general, labour unions give workers a collective voice in workplace decision-making and may enable them to notify management of workplace hazards without fear of retribution."<sup>123</sup>

At one Amazon.com warehouse in Spain, the trade union CS CCOO alerted the government labour inspector to gaps in the company's response to COVID-19.<sup>124</sup> As a result, company representatives and union employees created a work commission to evaluate and monitor compliance with the labour inspector's required measures to protect the health of the workforce against COVID-19.<sup>125</sup>

In contrast, in the U.S., where Amazon.com has fought unionization, the company's health and safety record is worse than the warehouse industry average (and the logging and meat-packing industries), and management has dismissed several workers who advocated for improved health and safety measures.<sup>126</sup>

## CASE STUDY: UNION NEUTRALITY AND ACCESS AT DANONE AND UNILEVER

*Danone and Unilever have both signed GFAs with the global union federation International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). In 2019, the IUF and its affiliate, United Food and Commercial Workers International Union (UFCW), negotiated a three-page neutrality and access agreement with Danone North America. Under the five-year pact, the parties "agree that there is a mutual interest in an orderly and manageable progression of [union] organizing efforts in the Danone plant." Accordingly:*

- *The parties agree to schedule union representation elections at specific company sites at mutually agreed-upon times;*
- *The company agrees to remain strictly neutral regarding workers' choice to unionize and refrain from speaking against the union;*
- *The union agrees not to disparage the company;*
- *To facilitate each election, the company provides the union with a list of employees at each site;*

- *The parties agree that a specific number of union representatives will have access to each company site at specific times leading up to each election; and*
- *Elections are held via secret ballot, overseen by a mutually agreed-upon arbitrator.*

*So far, the agreement has led to elections at approximately half a dozen Danone facilities in the U.S., with more than 1,000 Danone workers joining the UFCW. Subsequently, the parties have negotiated strong union contracts that improve wages and provide a wide gamut of benefits, such as grievance procedure, health care, paid vacation and pension.*

*The IUF and UFCW have negotiated a similar agreement with Unilever in the U.S., with similar results. Similarly, H&M and Inditex have negotiated union neutrality agreements with similar outcomes covering their retail stores as a result of their GFAs with UNI Global Union, another global union federation.*

## TRAINING AND SKILLS

Trade unions encourage workforce training, which creates benefits for companies by addressing skills gaps and increasing productivity. In many countries, trade unions operate formal apprenticeship programs and worker training centres. In the U.S., for example, 75% of all construction trades apprentices are trained in joint labour-management training programs.<sup>127</sup> Trade unions also facilitate the informal transmission of knowledge between workers on the shop floor by building camaraderie and assuring workers that the gains from the productivity improvements that they generate will be shared with them through collective bargaining. The OECD has found that the presence of any type of worker voice arrangement is positively associated with workers' access to training.<sup>128</sup> There is evidence that OECD countries with stronger collective bargaining systems also see a higher share of the workforce participating in training programs. This is further substantiated by research that has found that union members are more likely to receive training than non-unionized employees.<sup>129</sup>

The urgency of increased and improved training is made all the greater by the significant transformations occurring on the economic, technological and climate fronts. A 2020 McKinsey global survey on future workforce needs found that nearly nine in 10 executives and managers say their organizations either face skills gaps already or expect gaps to develop within the next five years.<sup>130</sup> Similarly, the OECD noted:

“Collective bargaining can allow companies to adjust wages, working time, work organisation and tasks to new needs in a flexible and pragmatic manner. It can help shaping new rights, adapting existing ones,

regulating the use of new technologies, providing active support to workers transitioning to new jobs and anticipating skills needs.”<sup>131</sup>

Evidence indicates that trade unions are aiding the transition to new workplace technologies. There is a statistically significant and positive cross-country correlation (0.82) between trade union density and the share of adults with information and communications technology skills.<sup>132</sup> According to a study based on the 2019 European Company Survey and covering 21,000 workplaces in 28 countries, “[a] positive and statistically significant association is identified between the presence of worker representation and the use of robots and data analytics in individual establishment.” Worker representation “encouraged the upgrading of workforce skills while also impacting job design and working time management.” All three of these factors were found to enable and complement investment in automation, because

“social dialogue helps to transform workers' attitudes on new technology from resistance to co-operation. This research also shows that the positive impact of worker representation on workplace automation is driven by workplaces that are covered by higher-level collective bargaining agreements.”<sup>133</sup>

As an example, the German trade union ver.di and port logistics company Hamburger Hafen und Logistik Aktien Gesellschaft used social dialogue to anticipate changes in the workplace originating from technological innovation and artificial intelligence. This process ensured that workers were retrained to prevent redundancies, and appropriate health and safety measures were implemented.<sup>134</sup>

• ***Trade unions encourage workforce training, which creates benefits for companies by addressing skills gaps and increasing productivity.***

## **CASE STUDY: DELIVEROO: FROM “THE WORST IPO IN LONDON’S HISTORY” TO A VOLUNTARY PARTNERSHIP AGREEMENT**

*When the U.K. food delivery company Deliveroo offered shares on the London Stock Exchange in March 2021, the shares lost 27% on the first day, wiping out £2.3 billion in company value. The “unmitigated disaster” might have been avoided had the company listened to delivery riders’ concerns about pay and respected workers’ rights to freedom of association and collective bargaining. While the share collapse had many sources, the company’s independent contractor labour model was among the causes of the investor skepticism.<sup>135</sup>*

*Several asset managers, including Legal and General Investment Management (LGIM), Aviva Investors and Aberdeen Standard Investments, took the unusual step of releasing public statements against the initial public offering (IPO), and one, LGIM, said it was pushing the U.K. Financial Conduct Authority to make sure Deliveroo is not included in premium indices, so it does not have to invest in the firm through its passive investment arm.<sup>136</sup>*

*Investors’ reluctance had three causes. First, they were concerned about the sustainability of the company’s insistence that its workers be classified as independent contractors and the associated costs. Deliveroo workers*

*had gone on strike to protest low and declining pay, lack of holiday/sick leave and unsafe working conditions, and to demand union rights. Second, they worried about regulatory scrutiny of the labour model. U.K. and European Commission authorities, among others, had raised questions about Deliveroo’s independent contractor model, and Spanish authorities granted the company’s workers the right to form unions and engage in collective bargaining. And third, they disliked the dual-class share structure that gave the founding CEO voting control without majority economic ownership.<sup>137</sup>*

*In May 2022, GMB Union and Deliveroo signed an agreement for the 90,000 self-employed riders working for the company.<sup>138</sup> The Voluntary Partnership Agreement establishes a “guaranteed pay floor” and accords to GMB rights to collective bargaining on pay and consultation rights on benefits and other issues, including riders’ health, safety and well-being. GMB may also represent riders who have joined the union in disputes. Deliveroo, in turn, will accommodate GMB’s access to facilities, recognizing that it “will want to meet with, recruit and seek the views of Riders in order to be able to represent their interests.”<sup>139</sup>*



## PRODUCTIVITY

Many investors and company executives inaccurately assume that trade unions have a negative impact on corporate performance. The empirical literature paints a more accurate story, one in which the positive impacts of unionization often outweigh any negatives. Although companies may express concerns that unions will reduce profits by increasing labour-related expenses, research demonstrates that unions may also increase productivity by improving worker efficiency and work processes, with a positive net result.<sup>140</sup> One U.S. study, for example, that analyzed data from over 27,000 companies between 1983 and 1999 using a regression discontinuity design<sup>141</sup> found little to no union effect on company survival rates over a time horizon of up to 18 years, stretching between 1983 and 2001.<sup>142</sup>

workers who have acquired the most company-specific skills and knowledge are less likely to lose their jobs. In countries with employer-based retirement systems, collective bargaining provides protection for employees who have forgone alternative career opportunities that their pension benefits will not be unilaterally changed. As a result of these assurances, employee turnover is lower at unionized workplaces.

The impact of unions on productivity varies by country, sector, industry and firm.<sup>143</sup> One recent study, using data from Norway, found a positive correlation between the level of union density (percentage of a firm's workers in a union) and productivity, with an increase in union density of one percentage point raising firm productivity by 1.7% to

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### ***One recent study, using data from Norway, found a positive correlation between the level of union density (percentage of a firm's workers in a union) and productivity***

Ever since Henry Ford doubled the Ford Motor Company's autoworker wages to \$5 a day in 1914, the payment of efficiency wages above the market-clearing wage has been recognized as an effective business strategy to promote workforce productivity. Particularly in today's knowledge-based economy, being an "employer of choice" for whom workers actively choose to work is a competitive advantage for many companies. However, many of the productivity benefits from paying efficiency wages are only realized over time as workers develop firm-specific knowledge and skills over their careers. Collective bargaining provides assurance to workers that their employers cannot easily renege on their efficiency wage promises that are intended to induce loyalty and effort. For example, the use of the seniority system to determine layoffs ensures that longer-tenured

1.8%.<sup>144</sup> Following an earlier study, the authors suggest that the "voice effect," where the union consolidates and communicates the knowledge of workers to management, could be the mechanism for productivity improvement. By improving the flow of information between workers and managers, the union makes it easier for managers to learn what works in the production process and thereby improve it.<sup>145</sup>

Another recent study, also based on Norwegian data, argues that collective bargaining agreements, not just union density, lead to greater productivity by giving workers a collective voice, and establishing a system of workplace governance in which employer and employees are mutually responsible for productivity growth and business development. In effect, the collective agreements encourage workers and

managers to co-operate to improve performance.<sup>146</sup> Similarly, an analysis of works councils provides evidence that they increase productivity and argues that they do so by building trust between workers and managers, facilitating workplace problem solving and reducing turnover.<sup>147</sup>

Unions are associated with companies that adopt “high-performance” methods of work organization, such as teamwork, quality of work and problem-solving groups. These high-involvement work systems are often more flexible and innovative since they encourage and reward workers who offer suggestions for improvement.<sup>148</sup>

A study drawing on U.S. nursing home data found that unions are correlated with multiple types of productivity increases. After unionization, nursing homes experienced improvements in both output and quality of care per nursing hour. The productivity impacts were greater among lower-skilled workers.<sup>149</sup> Again, the authors suggest the “voice effect” is a possible source for increased productivity.

The productivity impact of unions also varies by labour relations regime. At the extremes, where bargaining is centralized with little firm-level negotiation or where bargaining is decentralized with nothing but firm-level negotiations, unions tend to be associated with lower productivity growth. But where multi-level bargaining takes place, combining sector-level foundational negotiations with firm-level specific-term setting, productivity growth tends to be higher.<sup>150</sup>

The impact of unions is multifaceted, and several factors could contribute to explaining links between unionization and productivity improvement. As noted previously, unionized workplaces are safer, with fewer injuries. The U.K. Department of Trade and Industry (now Business, Energy and Industrial Strategy [BEIS]) found that unions eliminated 616,000 lost days of work and saved taxpayers between £181 million and £578 million each year.<sup>151</sup> As previously mentioned, studies in the U.S. found an inverse relationship between unioniza-

tion rates and occupational fatalities and – in the case of construction sites – safety violations.<sup>152</sup> The reduction of lost time due to injury or death is an obvious contribution to productivity.

Union workplaces tend to experience increased job tenure and decreased quit rates. The BEIS research cited above found that the presence of workplace representatives resulted in 13,000 to 25,000 fewer dismissals and 17,000 to 34,000 fewer voluntary exits each year, worth £179 million to £356 million to employers.<sup>153</sup> As Harvard professor Richard Freeman explained more than 40 years ago, unions are “voice institutions” and “when workers have a voice institution for expressing discontent, they should use the exit option less frequently and thus exhibit lower quit rates and longer spells of job tenure with firms.” And, indeed, Freeman’s own evidence supported this conclusion, as do more recent studies.<sup>154</sup> Another study attributes longer job tenure to the higher compensation that comes with unionization.<sup>155</sup>

Other worker benefits associated with unions, including work-life balance, dispute resolution, fair scheduling, career advancement and job security, further incentivize longer tenure and lower turnover. Whatever reason unionized workers have for staying at their jobs, their increased tenure likely has positive impacts on productivity.<sup>156</sup>

In Europe, worker representation contributes to increasing employment tenure, improving investment in human capital, managing global supply chain risks and resolving industrial disputes in a way that stabilizes production processes at the company level.<sup>157</sup> In industries facing structural changes due to automation and digitalization, worker representation combined with collective bargaining can facilitate co-operation, flexibility, sound management, innovation and enhanced responsible business conduct performance.<sup>158</sup>

Union contributions to productivity improvement may also result from the increased training associated with unionization, discussed earlier. Several



**AFTER UNIONIZATION, NURSING HOMES EXPERIENCED IMPROVEMENTS IN BOTH OUTPUT AND QUALITY OF CARE PER NURSING HOUR**



studies suggest that unionized and other firms with compressed wage structures are more likely to invest in training. In general, firms will pay for training where the returns from that training, usually in the form of increased output or productivity, are greater than the wages they must pay for the increased skill. Where unions have set minimum wages, firms are incentivized to raise the productivity of their workers through training – and, empirically, they do so. Furthermore, a trained workforce is associated with product innovation, not just process innovation.<sup>159</sup>

From a worker's perspective, in addition to compensation and training, unions can improve many aspects of a job, including, as already mentioned, health and safety, work-life balance, dispute resolution, scheduling, benefits, career advancement and security. The accompanying improvement in job satisfaction can translate into increased effort, loyalty and skills acquisition, each of which results in greater productivity. In turn, higher productivity inspires worker skills acquisition, leading to further productivity increase.<sup>160</sup>

## **CASE STUDY: WORKING WITH UNIONS TO DETECT AND REMEDY FORCED LABOUR IN SHIPPING SUPPLY CHAINS**

*As a result of travel restrictions to address the COVID-19 pandemic in 2020, an estimated 400,000 seafarers were stranded on board ships and unable to return home when their contracts expired. The crisis created instances of forced labour in global value chains, with crews at sea for more than a year. Alerted by the International Transport Workers' Federation (ITF), industry actors and investors recognized that the crisis was creating unacceptable conditions for seafarers and threatening global supply chains.<sup>161</sup> Because of the complex nature of the shipping industry, the ILO worked with unions and employers to develop a maritime due diligence tool for companies.<sup>162</sup> With the tool, and working with the ITF, several retail com-*

*panies have identified where vessels shipping their products risked breaching international maritime law due to the treatment of crew members during the pandemic. In one example, because the vessel was covered by a collective bargaining agreement, an ITF inspector was able to identify an instance where two crew members had been kept at sea beyond their legal contract and ensure that they were immediately allowed to return home.*

## DIVERSITY, EQUITY AND INCLUSION

The benefits of diversity, equity and inclusion (DEI)<sup>163</sup> are enormous and well documented, accruing to companies and society at large.<sup>164</sup> Trade unions can aid in the achievement of DEI goals by reducing racial and gender pay gaps, improving the pipeline of access to training and promotion, tackling intimidation and discrimination and promoting work-life balance. While employment

As one example, U.S. union-represented workers in service occupations, including food service and janitorial services, make 52.1% more in wages than their non-union counterparts.<sup>169</sup>

In addition to directly negotiating wage increases, trade unions can address pay gaps by establishing non-discriminatory employment and recruitment

### ***Through collective bargaining, workers facing discrimination can improve their wages and reduce pay gaps.***

discrimination is forbidden in many countries by law, unions provide an accessible workplace grievance system for all workers. Access to a union grievance mechanism to address employment discrimination is particularly important for low-income workers who may not be able to access formal legal remedies against discrimination through litigation, for example.

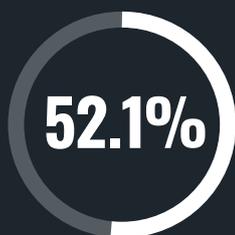
Through collective bargaining, workers facing discrimination can improve their wages and reduce pay gaps. For example, unionized women in the U.S. earn 4.7% more than non-unionized women.<sup>165</sup> Black union workers – both men and women – earn a 13.1% premium over Black non-union workers, while the wage premium for unionized Hispanic workers is even higher, at 18.8%. For both groups, the union boost in pay brings their wages closer to their white counterparts and thereby closes pay gaps.<sup>166</sup>

In the U.S., union density is clearly associated with increased economic mobility: specifically, union membership increases the likelihood of children graduating from college and earning higher incomes than their parents.<sup>167</sup> The union premium can be particularly pronounced in low-wage industries, such as hospitality, janitorial, nursing and food service, where workers who face discrimination are more highly represented, further reducing wage gaps.<sup>168</sup>

practices.<sup>170</sup> In Peru, the Lambayeque water trade union (a member of the FENTAP national union) and the Public Water and Sanitation Board developed a gender-neutral job evaluation process, following a labour court ruling requiring that the company and union review the existing discriminatory job classification system. They agreed on a new job classification system and are gradually updating salary scales in line with it.<sup>171</sup>

Trade unions also help ensure equal access to promotion and training. For example, around 30% of collective agreements in the retail and commerce sector in the European Union contain at least one clause on equal access to training, around 40% a clause on equal promotion opportunities, close to 50% a clause on equal pay and close to 80% a clause on non-discrimination.<sup>172</sup>

Workplace intimidation and discrimination are additional issues that trade unions can alleviate. Data for European countries show that direct and mixed forms of workers' voice arrangements are associated with a lower incidence of various forms of intimidation and discrimination.<sup>173</sup> In Spain, CS CCOO's working group on gender and sexual diversity has successfully negotiated clauses protecting against sexual and gender identity discrimination.<sup>174</sup> In Belgium, the Confédération des syndicats chrétiens union negotiated flexible working hours with some employers

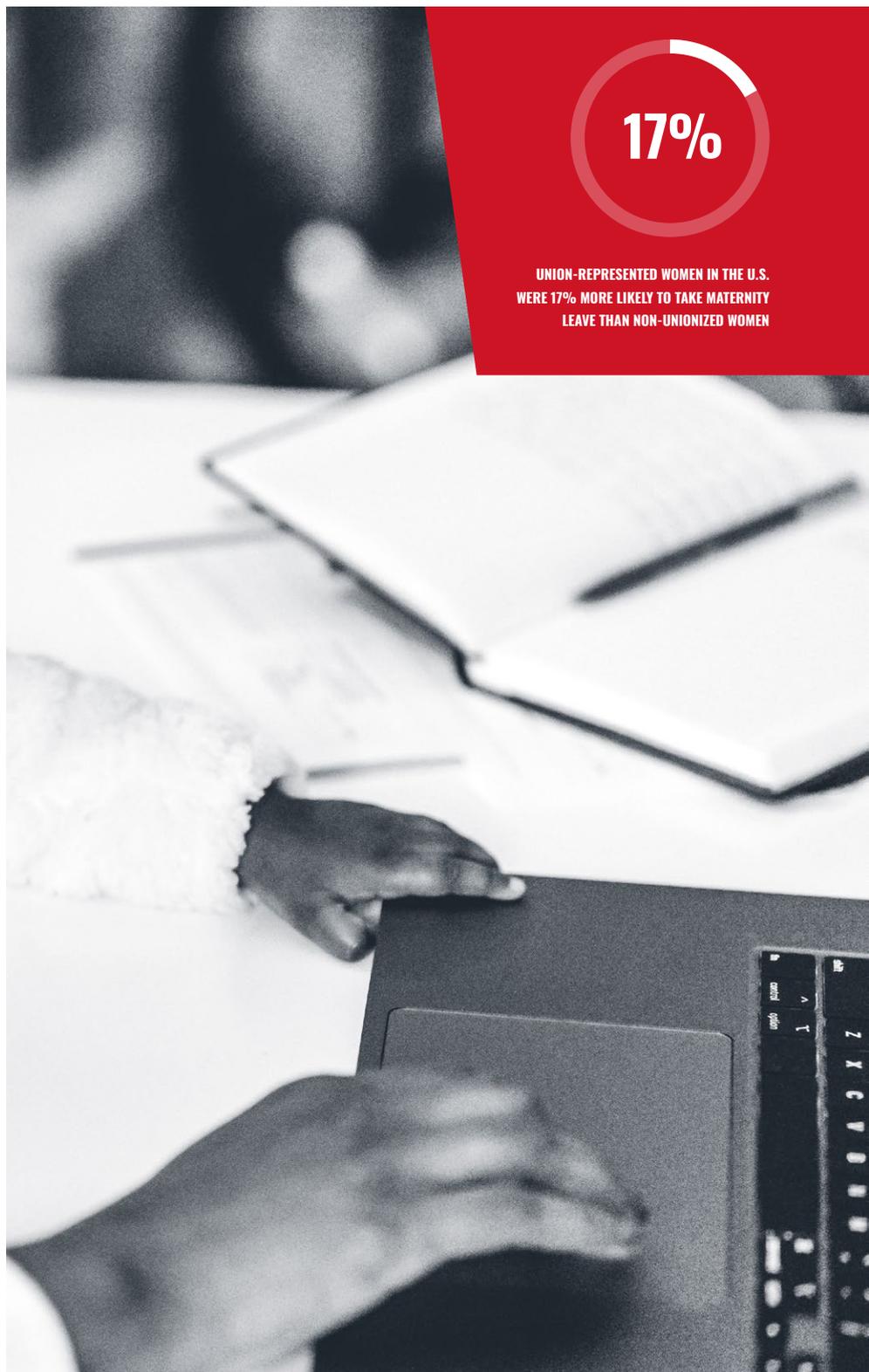


**U.S. UNION-REPRESENTED WORKERS IN SERVICE OCCUPATIONS MAKE 52.1% MORE IN WAGES THAN THEIR NON-UNION COUNTERPARTS.**

to allow for practising religion and to reduce religious discrimination.<sup>175</sup> In the U.K., the TUC found that workers on permanent (union) contracts were less likely to report racial harassment and discrimination by their employer compared with those on zero-hours (non-union) contracts.<sup>176</sup> On a global level, trade unions have also flagged hidden discrimination issues that have a fundamental impact on workers' dignity and well-being, such as safe access to sanitation facilities for female workers.<sup>177</sup>

Unions can improve work-life balance arrangements and access to associated benefits, improving gender inclusiveness in the workplace. In the U.K., research has shown that unionized workplaces are more likely than similar non-unionized settings to provide family-friendly practices such as paid family leave, parental leave, child care and job sharing. Research also demonstrates a positive association between union density and paid parental leave.<sup>178</sup> Furthermore, unions increase employees' awareness of such practices through their role in communicating and providing information, facilitating their use. One study revealed that union-represented women in the U.S. were 17% more likely to take maternity leave than non-unionized women.<sup>179</sup> In non-unionized workplaces, a lack of information about rights to maternity leave, along with fears of losing other entitlements, were reasons given for not taking maternity leave.

The DEI benefits of unions are indisputable despite the history of discrimination based on gender, race, disabilities and other factors in some trade unions. Trade unions have not been immune to the same forces as other societal institutions, and they continue to work to address their own discriminatory policies and practices.<sup>180</sup> Recent research indicates that union membership in the U.S. tends to reduce racial resentment and leads white unionized workers to be more likely to support affirmative action and government efforts to improve the social and economic standing of the Black community, compared with their non-unionized counterparts.<sup>181</sup> Today, African Americans are more likely to be



union members compared with other racial groups in the U.S.<sup>182</sup> This research points to the broader political implications of declining union membership on racial and gender equity in the workplace.

# IMPLEMENTING INVESTOR RESPECT FOR LABOUR RIGHTS

As labour rights are human rights, tools that have been developed to assist investors in meeting their responsibilities to respect human rights can be applied equally to labour rights.<sup>183</sup> At the institutional level, the Investor Alliance for Human Rights (IAHR) suggests that investors develop policy commitments, governance structures, due diligence processes and grievance processes and mechanisms. At the investment level, the IAHR recommends a series of steps related to investment decision-making and stewardship, including responsible divestment.<sup>184</sup>

The Committee on Workers' Capital Baseline Expectations for Asset Managers on Fundamental Labour Rights ("CWC Baseline Expectations")<sup>185</sup> is a framework for investors that is specific to labour rights. It suggests tangible steps that investors can take, with a progression from "baseline" to "leading practice" in four categories:

- Overall stewardship framework
- Stewardship practices in public equities
- Stewardship practices in private markets (including infrastructure and real estate assets)
- Policy advocacy



The guidelines we propose below are based on the CWC Baseline Expectations. These guidelines apply equally to asset owners and asset managers, and across asset classes. As the forms of investor ownership vary, the tools available to implement respect for labour rights may also vary. Nonetheless,

ship\* activities. In turn, asset managers may develop and implement their own investment stewardship policies regarding labour rights and make them available to their asset owner clients.

Whether directly or through contracted investment stewardship providers, all in-

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***In all four areas addressed by these guidelines, investors will benefit from meaningful dialogue with trade unions, national and global union federations, the ILO and other authorities on work and labour relations.***

ownership confers responsibility to act, regardless of the form ownership takes. Asset owners who contract with asset managers for the stewardship of their investments still have responsibility for those investments and may, through explicit procurement policies, communicate their expectations of their asset managers regarding labour rights. For example, through asset manager selection and oversight, asset owners can make clear the labour rights policies they expect their asset managers to adopt and implement as they carry out their contracted investment steward-

vestors can implement these guidelines. In all four areas addressed by these guidelines, investors will benefit from meaningful dialogue with trade unions, national and global union federations, the ILO and other authorities on work and labour relations. Trade unions have extensive knowledge and experience in the implementation of labour rights, as well as familiarity with the types and extent of labour rights violations and their remedies. They can aid policy development, contribute to oversight, assess potential abuses and support risk mitigation.

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\* Please see the glossary for a definition of the term "investment stewardship."

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## **STEWARDSHIP FRAMEWORK**

Investor respect for fundamental labour rights begins with a clear policy commitment to such rights, which should be approved at the most senior level and informed by relevant human rights expertise. It should be publicly available and actively disseminated internally and externally. At minimum, the policy should:

- Commit the investor to respect the fundamental rights stated in the ILO Declaration on Fundamental Princi-

ples and Rights at Work, including ILO Conventions 87 and 98; and

- Acknowledge the investor's human rights due diligence responsibilities under the OECD Guidelines for MNEs and the UNGPs.

The policy should also describe:

- The business relationships (scope) to which it applies, including the business relationships of investee

companies, their supply chains, contingent workers and independent contractors, and, in the case of asset owners, the procurement of service providers such as asset managers and ratings agencies;

- How the investor performs due diligence to identify potential and actual adverse impacts it is linked to or to which it contributes;
- How it acts on labour rights complaints received from trade unions;
- Which escalation methods (e.g., proxy voting, watch lists, collaborative engagements, divestment) will be employed when engagements on fundamental labour rights do not meet objectives;
- How it provides access to remedy for affected workers in cases where it has caused or contributed to negative labour rights impacts (e.g.,

when it holds a majority ownership stake or board seat); and

- How it uses its influence to ensure that investee companies provide legitimate access to remedy in cases where it is directly linked to a negative outcome (e.g., a minority shareholding).

Investors should incorporate meaningful trade union input into the development of their investment stewardship frameworks by committing to ongoing dialogue, referring to information from trade unions within the total mix of information guiding stewardship and committing to report back to trade unions.

Investors should incorporate labour rights into other stewardship priorities and programs, such as climate action plans, asset class-specific policies (e.g., responsible contractor policies) and risk mitigation strategies.

## LABOUR RIGHTS DUE DILIGENCE AND REMEDY

*An investor's labour rights policy commitment and governance structures should support a robust due diligence process.*

*Investors should be clear and transparent about their due diligence process, identifying:*

- *How it identifies actual and potential adverse labour rights impacts in the pre- and post-investment phases;*
- *How it incorporates trade unions into impact identification;*
- *How it draws on trade union expertise, including the ITUC's Global Rights Index, and national and international labour rights reports and databases;*
- *How it informs engagement and stewardship priorities; and*

- *How its results are reported internally and externally.*

*Investor due diligence should prioritize companies that are:*

- *Subject to charges, litigation or extrajudicial proceedings (including OECD NCP Specific Instances) related to fundamental labour rights; or*
- *The subject of trade union reports of adverse fundamental labour rights impacts.*

*Investors should use their leverage,<sup>186</sup> through engagement, proxy voting and collaboration, to ensure that investee companies avoid adverse labour rights impacts by co-operating in good faith with workers' efforts to exercise their rights to freedom of association and collective bargaining.<sup>187</sup> Those same tools can be used to achieve remedy where adverse impacts occur.*

## STEWARDSHIP PRACTICES IN PUBLIC EQUITIES (I.E., SHAREHOLDER ENGAGEMENT AND PROXY VOTING)

Investors should use their leverage,<sup>188</sup> through engagement, proxy voting and investor collaboration to ensure that investee companies act in good faith when workers attempt to exercise their rights to freedom of association and collective bargaining.

Investors' shareholder engagement with investee companies should:

- Adopt respect for fundamental labour rights as an engagement priority, distinct from human capital management, to hold investee companies accountable to their responsibilities under international norms and frameworks;
- Insist investee companies support trade union recognition and collective bargaining throughout their value chains by:
  - o Including union neutrality and union access\* policies with respect to workers seeking to form or join trade unions;
  - o Making policy commitments to labour rights for all employees in the company's value chain;
  - o Disclosing labour rights-related metrics, such as percentage of workers covered by collective bargaining agreements or union avoidance expense (see Appendix 1: Guide to Engagement on Labour Rights: Questions Investors Can Ask Investee Companies);
  - o Embedding labour rights in corporate governance and risk mitigation structures;
  - o Involving trade unions in processes to identify and improve poor labour practices;
  - o Offering workers practical support to exercise their labour rights;
  - o Training local management on expectations to meet labour rights standards;
  - o Recognizing and negotiating with local unions in good faith collective bargaining;
  - o Investigating trade union complaints and providing remedy if problems are found;
  - o Working with national and global unions to understand, mitigate and remedy risks;
- Promote the adoption of GFAs where applicable; and

- Participate in collaborative investor initiatives when individual engagements fail to provide effective resolution to adverse fundamental labour rights impacts.

Investors should escalate their shareholder engagements on fundamental labour rights through proxy voting by:

- Adopting a proxy voting guideline that references the responsibility of investee companies to uphold fundamental labour rights;
- Voting for:
  - o Shareholder resolutions that promote respect for fundamental labour rights;
  - o Shareholder resolutions that support workforce voice and/or representation in corporate governance, including shareholder resolutions recommending worker directors on corporate boards; and
  - o Worker directors where they stand for election in an investee company;
- Voting against:
  - o Directors with oversight for labour issues and/or company reports and accounts in cases where:
    - a) A company is subject to charges, litigation or extrajudicial complaints, including OECD NCP Specific Instances, relating to a failure to uphold fundamental labour rights (regardless of engagement duration); and
    - b) Engagement has failed to address ongoing fundamental labour rights violations for 12 months after an initial engagement on the subject matter;
- Pre-declaring voting intentions at least seven days prior to the annual general meeting;
- Describing their proxy voting rationale related to fundamental labour rights when applicable; and
- Publishing voting records on a quarterly basis.

\* Please see the glossary for a definition of the term "union access"

## STEWARDSHIP PRACTICES IN PRIVATE MARKETS

As with their stewardship practices in public markets, investors should ensure that fundamental labour rights are respected in their private market investments, including by companies contracted to manage or operate assets. Investors should adopt responsible contractor policies to ensure that private assets are built, maintained and operated in compliance with fundamental labour rights. In addition, they should disclose:

- Their private market assets, including ownership stakes and board representation;

- The labour rights risks identified as a result of their due diligence processes.

Investors should also publicly state support for worker retention and, where applicable, continued union representation in the event of transactions leading to full or partial sale of private market assets.



## POLICY ADVOCACY

Investors should encourage policy and regulation that:

- Expand corporate disclosure of labour-related information;
- Enhance labour rights due diligence;
- Expand worker and trade union representation in corporate and institutional governance; and
- Support the realization of core labour issues, such as expanded social security and the right to join trade unions.

## LABOUR RIGHTS GOVERNANCE

*As with other human rights, investors should ensure that their top governing body takes responsibility for the oversight of labour rights. For asset owners, this implicates the board of directors or board of trustees; for asset managers, it implicates the board of directors. Investor boards should confirm that labour rights governance is embedded throughout their organization's activities, including the selection and stewardship of investments. For asset owners, this also means embedding labour rights governance in the selection and oversight of investment managers. All investors should assign day-to-day responsibility and provide resources for labour rights policy implementation to specific functions that report up the management chain. The board and senior management should receive regular reports on labour rights performance across portfolios.*

*Labour rights governance requires procedures for identifying risks and impacts in both the pre- and post-investment phases and across functions, including portfolio management, research and analysis, engagement and stewardship. Similar procedures should be developed for the selection, engagement, oversight and review of all business*

*partners, including external managers, portfolio companies, ratings agencies, research firms and other service providers. These procedures should be responsive to emergent risks and reviewed at least annually.*

*Investors can incorporate trade union input into their labour rights governance by:*

- *Committing to annual dialogue with relevant trade union representatives, including the CWC, to discuss trade union priorities related to investment stewardship, including, but not limited to, fundamental labour rights violations (for asset managers, this dialogue can include asset owner representatives where pertinent);*
- *Including information from trade unions in the total mix of data that guide investment decisions and stewardship practices; and*
- *Committing to report back to trade unions that provide information on adverse fundamental labour rights impacts on the outcome of its stewardship activities.*

# CONCLUSION

Under the UNGPs and the OECD Guidelines for MNEs, investors have obligations to respect labour rights. And because the business case is strong, investors also have an economic interest in doing so.

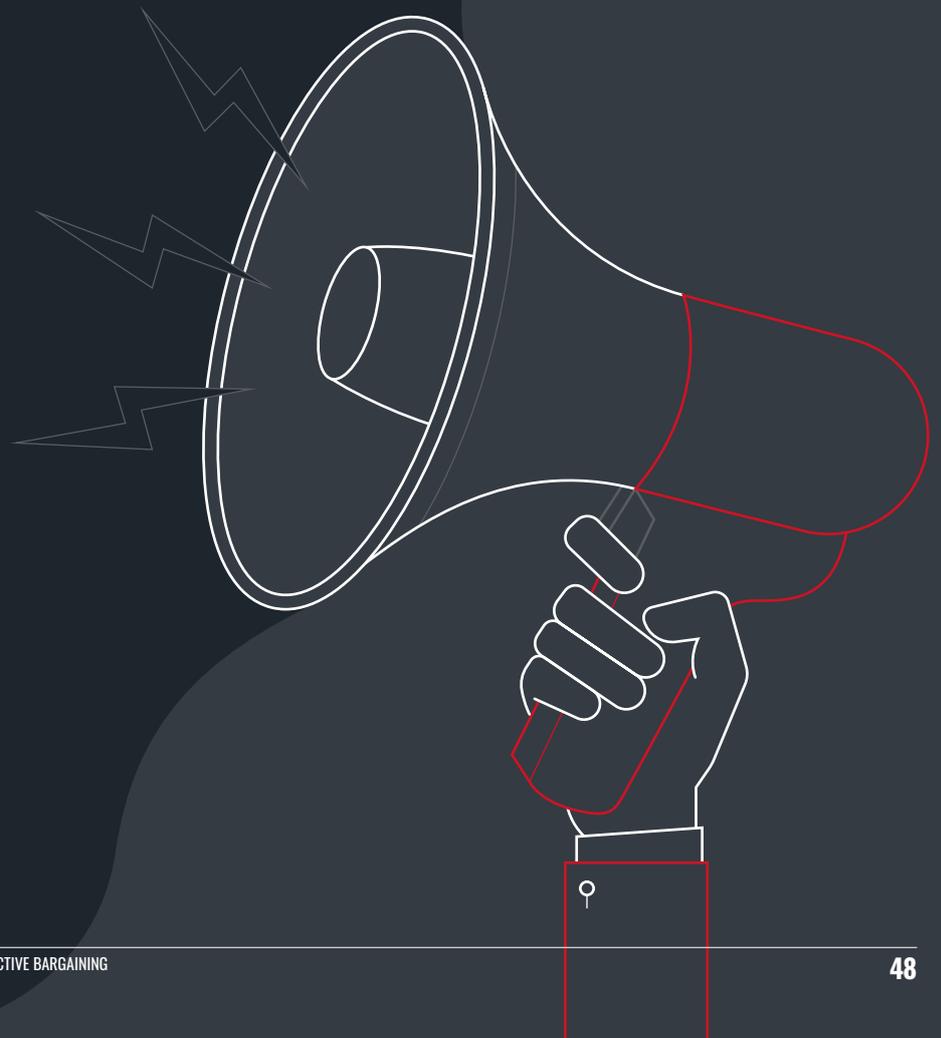
Upholding fundamental labour rights is a way for investors to mitigate systemic risks of inequality and weak economic growth. Numerous studies across years and jurisdictions indicate that there is a historical correlation between trade union density and equality.

Where workers can exercise their rights to freedom of association and collective bargaining, companies and investors benefit from some combination of enhanced human rights due diligence; better health and safety performance; improved training and skills development; lower turnover; increased productivity; and a workplace that is more diverse, more equitable and more inclusionary.

The CWC Baseline Expectations can guide investors in upholding fundamental labour rights across their investments. Investors should make a clear policy commitment to these rights and describe the processes that they have in place to perform due diligence, respond to concerns from trade unions, escalate engagements and provide remedy as appropriate. In public equities and private markets, investors should use their leverage to ensure that investee companies act in good faith when workers attempt to exercise their rights to freedom of association and collective bargaining. The policy advocacy that investors participate in should reflect their commitments to respecting fundamental labour rights.

Ownership gives investors many tools for the implementation of their labour rights responsibilities. However, not all tools are equal. Policy commitments, governance structures and due diligence mechanisms are absolutely necessary, but they are not sufficient. Investors must walk the talk, and that means taking action to achieve remedy where they identify potential and actual adverse labour rights impacts. It means using their ownership voice by engaging with investee companies, voting in support of labour rights and escalating where necessary. Investors must not be

afraid to call their investee companies out publicly, put them on watch lists, launch or join collaborative initiatives, or divest. Only through such action will investors fulfil their labour rights responsibilities.



# APPENDIX 1: GUIDE TO ENGAGEMENT ON LABOUR RIGHTS: QUESTIONS INVESTORS CAN ASK INVESTEE COMPANIES

As in many other areas of corporate governance, disclosure is a challenge for investors when it comes to labour rights and human capital management. The U.S. Securities and Exchange Commission is expected to propose new rules for human capital management disclosure. The U.K. Companies (Miscellaneous Reporting) Regulations 2018 require large companies (both listed and private) to include as part of their annual strategic report “how the directors have engaged with employees” and “how the directors have had regard to employee interests, and the effect of that regard, including on the principal decisions taken by the company during the financial year.”<sup>189</sup> The passage of the European Union’s Corporate Sustainability Reporting Directive will increase reporting requirements for large companies on how they manage social and environmental risks.<sup>190</sup>

Even with the new rules, investors are not likely to receive the level of disclosure necessary to assess human and labour rights performance. Here are some questions investors can ask that will fill in the blanks and give investors greater insight into how investee companies are implementing respect for labour rights.

***As in many other areas of corporate governance, disclosure is a challenge for investors when it comes to labour rights and human capital management.***

---

## **GOVERNANCE AND OVERSIGHT**

Please describe the company's commitment to respecting workers' rights to freedom of association and collective bargaining (hereafter referred to as "labour rights").

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How does the company implement its commitment to respect labour rights for its direct employees; for indirectly employed and contingent workforces; and in its vendor, supplier and contractor relationships across its value chains?

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Does the company conduct ongoing due diligence to identify, prevent, mitigate and account for violations of labour rights?

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Are there non-judicial grievance mechanisms in place for workers to raise complaints or concerns regarding labour rights violations?

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What role, if any, does the board of directors play in providing oversight of the company's observance of labour rights?

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Can the company describe its lobbying and political spending activity in different jurisdictions related to legislation or regulation impacting labour rights?

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Can the company describe how it approaches stakeholder engagement, including how it identifies stakeholders to engage with and how it ensures that this engagement is meaningful?

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## **FREEDOM OF ASSOCIATION**

How is the company's commitment to the freedom of association of workers to organize and join trade unions communicated to the company's workforce?

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Are employees and union representatives permitted to discuss union matters, wear union insignia and distribute union literature in the workplace?

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What are the company's policies regarding the workforce's use of company email systems and digital communication platforms to discuss union matters?

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Does the company permit union stewards and trade union representatives to participate in new employee orientation and workforce training programs?

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How does the company ensure freedom of association in countries that do not guarantee workers' rights according to the ITUC Global Rights Index?

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How does the company ensure labour rights for non-employee direct operations workers and supply chain workers?

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## **COLLECTIVE BARGAINING RIGHTS**

Can the company disclose a summary description, by country, of the terms and conditions addressed by its collective bargaining agreements?

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What are the percentage and number of workers and facilities, by country, that are covered by enterprise-level and/or sectoral collective bargaining agreements?

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Can the company provide a country-by-country list of trade unions with whom it has entered into collective bargaining agreements?

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Has the company entered into a Global Framework Agreement with a global union federation to ensure that labour rights are respected across jurisdictions?

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Can the company describe the number of workers involved in, and the location of, any work stoppages or other workplace protests during the past year, and provide a summary of the disputed issues and how they were resolved?

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## **UNION AVOIDANCE ACTIVITIES**

Does the company actively seek to dissuade workers from forming trade unions in its employee communications, workplace signage or digital messaging?

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Does the company employ labour relations consultants or law firms as part of a union avoidance strategy, and, if so, can the company disclose the recipients and payments?

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Are company employees required to attend meetings regarding trade unions, and, if so, are trade union representatives permitted to participate and speak?

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What are the company's policies regarding employee privacy, workplace surveillance and company information gathering regarding union organizing activities?

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Will the company disclose legal proceedings and/or other adjudicative processes related to the company's respect for labour rights and how they were resolved?



# APPENDIX 2: LEADING INVESTOR PRACTICES TO IMPLEMENT FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

Investors have a responsibility to uphold human rights, including labour rights. Many investors around the globe have recognized this responsibility and taken action to protect and respect workers' rights to freedom of association and collective bargaining. These actions include the incorporation of labour rights into investors' investment policies, voting at shareholder meetings to uphold labour rights, individual and collaborative engagements with portfolio companies to protect labour rights, shareholder resolutions at AGMs and, in the extreme, divestment from companies that would not remedy labour rights abuses. In many of these activities, investors have sought input from trade unions.

• ***Many investors around the globe have recognized this responsibility and taken action to protect and respect workers' rights to freedom of association and collective bargaining.***

## INCORPORATING LABOUR RIGHTS INTO RESPONSIBLE INVESTMENT POLICIES

### ÉTABLISSEMENT DE RETRAITE ADDITIONNELLE DE LA FONCTION PUBLIQUE (ERAFP):

The French public sector additional pension scheme ERAFP has adopted a Socially Responsible Investment Charter that is built on five core areas. Of these, three directly promote workers' interests: rule of law and human rights, social progress and democratic labour relations.

In the labour relations area, ERAFP says it "shall assess the way in which issuers respect the rights of employees and other workers, and shall give priority to those who score positively on the following principles:

- 1- Respect for the rights of trade unions and promotion of social dialogue:
  - o respect for the right to strike, freedom of affiliation and the allocation of resources for staff representatives;
  - o respect for employee representatives, provision of information, consultation and collective bargaining;
  - o the existence and role of participatory or advisory bodies (works councils, group councils, joint technical committees or their equivalents, etc.) in particular as regards the verification of economic, corporate and environmental information provided by the issuer; the ability of such bodies to make proposals and the extent to which these are taken into account;
  - o the issuer's internal practices when entering into agreements or contracts."<sup>191</sup>

### FONDS DE RÉSERVE POUR LES RETRAITES (FRR):

In its "socially responsible investment principles applicable to FRR awarded mandates for this approach to asset management," FRR sets out as its first principle: "Respect basic human and investor rights." Within this first principle, FRR seeks to "promote and ensure compliance with fundamental principles and rights at work: freedom of association and recognition of the right to collective bargaining."

FRR's second principle is to "develop employment by improving the quality of human resource management." With this principle, FRR seeks to "promote human resource management policy that favors disclosure, dialogue and the active participation of employees in their workplace and business" and to "define and conduct of human resource management policy whose focus is long term and whose language is consistent with the organization's business development strategy. In particular, such policy favours negotiation and consultation with personnel representatives (both at the local and corporate level, where applicable), and actively promotes employment and the durable involvement of employees in the workplace and the business."<sup>192</sup>

• ***FRR sets out as its first principle:  
"Respect basic human and investor  
rights."***

### **NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM (NYCERS):**

NYCERS updated its Responsible Contractor Policy in 2017. This effort has inspired other U.S. pension plans and asset managers to undergo a similar review to strengthen their responsible contractor policy language. Under the policy, NYCERS will not consider any investments that have the potential to eliminate public sector jobs.<sup>193</sup>

The policy applies to any contract over \$100,000 and notes that “a Responsible Contractor, as used in this Policy, is a contractor or subcontractor who pays workers fair wages and benefits as evidenced by payroll and employee records. “Fair benefits” may include, but are not limited to, employer-supported family health care coverage, pension benefits and apprenticeship training programs.”<sup>194</sup>

### **NORGES BANK INVESTMENT MANAGEMENT:**

Norges Bank Investment Management (NBIM), which manages the \$1.3 trillion in assets of the Norwegian Government Pension Fund Global or Norwegian Sovereign Wealth Fund, published an expectations document on human capital management and states that this will become a priority in their ownership work. The expectations include that “Good labour relations, including freedom of association and collective bargaining, provide a foundation for companies to adopt and implement human capital management strategies effectively” and that “Companies should engage with workers and their representatives, such as trade unions.”<sup>197</sup>

• ***Under the policy, NYCERS will not consider any investments that have the potential to eliminate public sector jobs.***

For investments where NYCERS has a majority ownership interest, contractors are not permitted to bid on projects if they have been debarred by the City or State of New York for failure to pay prevailing wages or benefits on any prior job for which it was required by law. The policy also ensures competitive bidding by providing notice to interested parties of contracts that are available to bid.<sup>195</sup>

Significantly, the policy also has provisions that apply to investments where NYCERS has a minority ownership interest to encourage the use of qualified contractors that are minority and women-owned business enterprises, who remain neutral on union-organizing efforts by workers and that provide employer-paid safety training.<sup>196</sup>



#### **OPTRUST:**

Canadian pension plan manager OPTrust, with \$25 billion in assets under management, has a Statement of Responsible Investment Principles that outlines the high-level principles that apply to its policies, regulatory engagements and company engagements. Among the core principles guiding its investment processes is the “responsible treatment of people and communities,” which commits the fund to supporting and encouraging:

- “Participation by unions, labour employers, communities and other stakeholders in the growth of the companies in which we invest;” and
- “Adherence to the UN International Labour Organization’s principles relating to the right to form and join trade unions and bargain collectively.”<sup>198</sup>

#### **RÉGIME DE RETRAITE DES GROUPES COMMUNAUTAIRES ET DE FEMMES:**

The Quebec, Canada–based Régime de retraite des groupes communautaires et de femmes is a pension plan for non-profit and women’s organization workers. Its investment policy emphasizes that the plan beneficiaries have requested that investments be aligned with community-sector values. This implies prioritizing investments that respect a number of social and environmental factors, such as workers’ fundamental rights to freedom of association and collective bargaining, as well as gender equity in supply chains.<sup>199</sup>

## INCORPORATING LABOUR RIGHTS INTO VOTING ACTIVITIES

### RAILPEN:

The U.K.-based pension fund specifies in its Voting Policy 2022 that:

“Freedom of association is a fundamental human right and Railpen believes that the right for workers to form and join organisations of their own choosing is key to ensuring a company operates in the interest of all its stakeholders, and is therefore well-positioned for long-term financial success. Railpen will continue to raise our concerns with portfolio companies, where we believe that they have not respected their employees’ right to form and join a union, and to bargain collectively, as enshrined by the International Labour Organisation’s Conventions.

Where we have concerns that employee relationships are being neglected, where the right to freedom of association appears to be curtailed or where disclosure on workforce treatment, diversity and labour rights is deemed inadequate, Railpen may choose to vote against the adoption of the Report and Accounts or the director we deem responsible.”<sup>200</sup>

### DESJARDINS ASSET MANAGEMENT (DGAM):

DGAM has an article on human rights and labour rights in its proxy voting policy.

It asserts that it “endorses the United Nations’ position that even though companies should not replace governments and international agencies in the promotion of human rights and labour rights, they are nonetheless responsible for ensuring their operations do not impede the exercise of these rights.”

It also says that it “generally supports proposals fostering respect for human rights in Canada and in other areas of the world when the proposals are based on universal principles established by the United Nations Universal Declaration of Human Rights, International Labour Organization (‘ILO’) conventions...”

DGAM also states it will vote for adopting codes of conduct or measures affecting “labour rights as set forth by the ILO and particularly prohibition of forced labour, prohibition of child labour, prohibition of discrimination in hiring and in working conditions, and the rights of association and collective bargaining.”<sup>201</sup>

• ***“Freedom of association is a fundamental human right and Railpen believes that the right for workers to form and join organisations of their own choosing is key to ensuring a company operates in the interest of all its stakeholders***

**AVIVA:**

In its Global Voting Policy, Aviva states that:

“We will not support the re-election of chair of the board or chair of the sustainability committee (or most relevant resolution) where we have concerns in relation to a company’s:

- Involvement/remediation of a breach of global conventions.
- Approach to human rights or human rights due diligence.
- Failings in its duties to treat employees and workers fairly and responsibly.

“Where deemed appropriate we will support shareholder proposals calling for improvements in human rights, human rights due diligence

and disclosures. The same will apply to resolutions asking for better disclosures around diversity and inclusion, so that shareholders and other stakeholders can better assess company performance in these areas.”

In relation to this policy, Aviva states:

“We expect companies to support and promote the fundamental right to freedom of association and collective bargaining. This is particularly important during periods of transition and restructuring, when companies should adopt global standards of best practice when engaging with workers and respecting the right of unions, particularly when negotiating material changes to contractual terms.”<sup>202</sup>

## INCORPORATING LABOUR RIGHTS INTO ENGAGEMENT ACTIVITIES

**ÖHMAN FONDER AND FOLKSAM:**

In 2021, these two Swedish asset managers organized a group of over 70 Amazon.com investors with more than \$6.4 trillion in assets under management and \$20 billion in Amazon shares that called on the company to stop interfering with efforts by its workers to unionize at a warehouse in Alabama. The group included the comptrollers for both New York State and New York City, Legal and General Investment Management, BMO Global Asset Management and the Church of England Pensions Board.<sup>203</sup>

**TRILLIUM ASSET MANAGEMENT:**

In December 2021, U.S.-based Trillium Asset Management convened a group of investors with over \$1.3 trillion in assets under management to write a letter to Starbucks, raising concerns with its union avoidance campaign, urging it to accept the results of an election where workers voted to join a union and calling on the company to negotiate in good faith.<sup>204</sup> In early 2022, Trillium organized another group of investors, representing over \$1 trillion in assets under management, and sent management at the New York Times Company a letter stating that the interests of long-term shareholders require management to honour workers’ right to organize.<sup>205</sup>

**AVIVA INVESTORS FRANCE, AXA INVESTMENT MANAGERS, CANDRIAM INVESTORS GROUP, MANDARINE GESTION, LEGAL AND GENERAL INVESTMENT MANAGEMENT AND SYCOMORE ASSET MANAGEMENT:**

At the 2022 Teleperformance annual general meeting, a group of investors raised nine questions related to the company's workforce management, including several on the company's respect for freedom of association, and asked for further information on levels of collective bargaining coverage by country as well as steps taken by the company to promote the rights to freedom of association and collective bargaining in high-risk countries.<sup>206</sup>

**SHAREHOLDER ASSOCIATION FOR RESEARCH AND EDUCATION (SHARE):**

In 2022, while representing the Toronto-based Catherine Donnelly Foundation, SHARE filed a historic shareholder resolution at Amazon.com urging the company's board of directors to review how the company's actions in the face of union-organizing efforts align with its stated commitment to freedom of association and collective bargaining under ILO Core Conventions. This resolution received declarations of investor support from Schroders,<sup>207</sup> Legal and General Investment Management<sup>208</sup> and Norges Bank Investment Management,<sup>209</sup> among others, as well as recommendations to vote in favour from proxy advisors Glass Lewis and ISS.<sup>210</sup> Approximately 39% of share votes cast were in support of the first-time resolution.<sup>211</sup>

SHARE also filed, in 2022, a shareholder resolution at NFI Group asking the company to adopt and disclose to shareholders a policy on its commitment to neutrality when employees exercise their right to form or join trade unions ("Neutrality Policy"). The resolution called on NFI Group to commit to uphold the ILO Declaration on Fundamental Principles and Rights at Work and describe how it would ensure these commitments are operationalized.

SHARE withdrew the resolution after NFI Group agreed to include a Freedom of Association Statement in its 2021 Environmental, Social and Governance Report. In the report, NFI Group commits to respect the rights to freedom of association and collective bargaining in its global operations and "not undermine or pressure any employee from exercising this right." The company also stated it would update its Human Rights Statement and Code of Business Conduct and Ethics in 2022 to reflect this commitment.<sup>212</sup>



## INCORPORATING LABOUR RIGHTS INTO INVESTMENT DECISIONS

### DANISH AND DUTCH PENSION FUNDS:

In February 2022, Danish pension fund AkademikerPension announced it would sell its stake in budget airline Wizz Air over alleged “human and labour rights abuses” against its workers.<sup>213</sup> Amid severe labour controversies in Denmark at Ryanair, a number of Danish pension funds decided to sell their shares in the

company, including PFA Pension, ATP, Industriens Pension and PensionDanmark.<sup>214</sup> Trade union rights concerns at Walmart also led to several investors divesting from the company, including ABP<sup>215</sup> and the Norwegian Sovereign Wealth Fund, although this recommendation to exclude the company was recently revoked.<sup>216</sup>

## INVESTOR COLLABORATION WITH TRADE UNIONS TO ADDRESS ENVIRONMENTAL, SOCIAL AND GOVERNANCE RISKS

### FEDERATION OF THE DUTCH PENSION FUNDS:

Along with individual Dutch pension funds, trade unions, non-governmental organizations and the Dutch government, the Federation of the Dutch Pension Funds signed the Responsible Business Conduct Agreement. Under this agreement, the parties aim to prevent or tackle negative consequenc-

es for society and the environment of investments by pension funds, and each of the parties contributes its expertise toward this aim. The agreement takes an approach based on the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights to identify, prioritize and address environmental, social and governance risks.<sup>217</sup>

### INVESTOR INITIATIVE FOR RESPONSIBLE CARE:

To address risks in nursing homes, UNI Global Union (“UNI”) and a group of institutional investors have developed an innovative model of investor and trade union collaboration in the Investor Initiative for Responsible Care. Together with founding investors, UNI organized an investor statement of expectations for the nursing home sector, which now has more than 130 institutional investor signatories with more than \$4.4 trillion in assets under management.<sup>218</sup>

The power of the model, however, is in the implementation. The global trade union federation operates as a secretariat to the collaboration. UNI aids investors with their investor-run collaborative engagements, provides expertise on the material workforce risks in the sector and offers effective solutions to address those risks. UNI catalyzed the devel-

opment of key indicators and engagement questions that support impactful engagement by the investor signatories.

The investor-trade union initiative in the nursing home sector was validated after allegations in relation to business ethics, working conditions and mistreatment of elderly residents came to light at Orpea SA in France.<sup>219</sup> Prior to the scandal, a group of investor signatories led by Sycomore Asset Management had begun engagements with Orpea in relation to working conditions and quality of care, including specifically on issues found in the company’s respect for freedom of association and collective bargaining.<sup>220</sup> Following the publication of the allegations, the French Responsible Investment Forum and UNI published a statement setting out how this scandal demonstrated the importance of trade unions to both address company risks such as those at Orpea and strengthen investors’ stewardship.<sup>221</sup>

# RESOURCES

[The ILO Declaration on Fundamental Principles and Rights at Work](#)

[The ILO Core \(Fundamental\) Conventions:](#)

- [C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)
- [C098 - Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)

[The UNGPs](#)

[The OECD Guidelines for Multinational Enterprises \(MNEs\)](#)

- [Responsible Business Conduct for Institutional Investors](#)

Investors with further questions are encouraged to contact the CWC and consult these resources:

[The CWC Baseline Expectations for Asset Managers on Fundamental Labour Rights](#)

[The CWC Guidelines for the Evaluation of Workers' Human Rights and Labour Standards](#)



# GLOSSARY

## CARD CHECK

U.S. labour law permits employees to organize a labour union by majority sign-up of union authorization cards. The company agrees to recognize and bargain in good faith with the union when a majority of workers sign the cards.

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## GLOBAL FRAMEWORK AGREEMENT (GFA)

Sometimes called a transnational company agreement or an international framework agreement, this agreement between a union or union federation and a multinational company ensures workers within a company's worldwide operations can exercise fundamental labour rights in accordance with ILO core labour standards on freedom of association and collective bargaining.<sup>222</sup> The agreement defines specific rights and standards that apply to all employees of the multinational company, and increasingly to subcontractors or suppliers as well.

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## GLOBAL UNION FEDERATION

A membership organization of unions around the world with members working in particular industries and sectors.

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## HUMAN RIGHTS DUE DILIGENCE

Measures companies can take to proactively manage potential and actual adverse human rights impacts with which they are involved.

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## INVESTMENT STEWARDSHIP

How investors use their influence over investee companies and other investment chain actors, such as policy-makers or service providers, to preserve and enhance the value of assets on behalf of beneficiaries and/or clients.

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## UNION ACCESS

The ability of workers and their union representatives to enter the workplace for the purpose of engaging in union activity, such as informing workers about the benefits of unions and collective bargaining, investigating grievances and supporting members.

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## UNION DENSITY

The percentage of a company's workforce covered by a collective bargaining agreement. Density can be measured locally, nationally and globally, as well as across companies. It is useful information for assessing the implementation of fundamental labour rights.

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## UNION NEUTRALITY POLICY

A publicly available statement in which a company commits to refrain from all forms of interference, including communicating management or board preferences, when workers seek to organize or join a union.

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# END NOTES

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