




# The German Due Diligence Act and the Automotive Supply Chain in Africa: *An Opportunity for Trade Union Solidarity?*

**FRIEDRICH  
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## FOREWORD

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The German Supply Chain Due Diligence Act (SCDDA) was adopted on June 25, 2021 and came into force on January 01, 2023. The Act is the result of a very contested political process in Germany. It marks an important paradigm shift from the previous voluntary commitments of companies to clearly assign the responsibility for ensuring human rights in the supply chain to the producing company. The SCDDA is an important win in the fight to ensure the guarantee of workers' and environmental rights in all steps of the productive process. The European Union's (EU) proposed Corporate Sustainability Due Diligence Directive (CSDDD) that is currently negotiated between the EU Parliament, the Council of the European Union and the European Commission, will have a far wider reach and will hopefully overcome some of the weaknesses of the German SCDDA.

The legal framework is without a doubt a crucial element to the protection and advancement of working conditions worldwide. But how can global implementation be achieved, taking into account the dramatic power imbalance between multinational companies and workers in the Global South? The role of trade unions will be key to making sure that the true experiences of workers are reflected in the company reports and to ensure that the stipulations of the law, for example, transparent and accessible complaint mechanisms, are available to all workers in the supply chain. In case of violations, it will be key for trade unions in the respective country, as well as in Germany, to cooperate to make sure that violations are remedied by the company or are taken to the necessary legal process to force the companies to comply with the law. To analyse the preparedness of trade unions in the automotive sector in Sub-Saharan Africa to take on this task and the potential opportunities for trade unions to organise along the supply chain, the Trade Union Competence Center for Sub-Saharan Africa of the Friedrich-Ebert-Stiftung commissioned the study captured in this report. It was conducted before the coming into law of the SCDDA with the empirical research taking place between June and October 2022 in South Africa, Ghana, Kenya and Germany.

The study presents an insight into the realities of workers in German automotive companies and their suppliers. The SCDDA is clearly needed as evidenced by the violations that are documented in the research. Under previously-existing law, they constituted violations, however, they could not be remedied. The SCDDA presents an additional avenue, holding the mother company in Germany directly responsible for achieving justice for workers.

However, the law in its current state remains ambiguous regarding the role of workers' representatives – both in the producing country as well as in Germany. The EU directive presents the opportunity to improve national legislation regarding the role of trade unions, transparency of complaint mechanisms, protection of complainants, duty of companies to inform workers, among others.

A big thank you goes out to the two lead researchers, Dr Lorenza Monaco and Dr Hendrik Simon, as well as to the country researchers: Mario Jacobs, Emma Fergus (South Africa); Karim Sibiri Saagbul, Loretta Baidoo, Marian Atuguba (Ghana); Jaqueline Wambui Wamai, Davis M Gitonga, Agnes Mukami Murithi (Kenya). Despite the hesitation of some stakeholders to share information, the research provides an important reference for trade unions to hold companies accountable, to improve the working conditions of workers and to organise along the supply chain. At the same time, it provides empirical evidence of the weaknesses of the law when it comes to implementation – information that progressive policy makers, trade unions and civil society can use to ensure that the EU directive and any amendments of the Act will provide the conditions to effectively close the gaps for companies to abuse the rights of workers in the interest of profit.

*A luta continua!*

**Kathrin Meissner**

Johannesburg, June 2023

## ABSTRACT

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On June 25, 2021, Germany passed a new 'Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains' (Supply Chain Due Diligence Act [SCDDA] or, in German, *Lieferkettensorgfaltspflichtengesetz [LkSG]*). The Act, which has been in force since January 2023, could become an important tool for trade unionists to fight human and environmental rights violations in supply chains. Against this scenario, the current study by Friedrich-Ebert-Stiftung, Trade Union Competence Centre (FES TUCC) explores the opportunities the SCDDA offers to workers and trade unions in the automotive supply chain, focusing on case studies from Germany, South Africa, Kenya and Ghana.

In particular, this study explores the potential of the Act, and the possibilities to use it as a tool to build transnational union solidarity and to strengthen organising. By voicing the perspectives of trade

unions/works councils in Germany, and trade unions and industry representatives in South Africa, Ghana and Kenya, the study also represents a first attempt to provide empirical grounds before the full implementation of the new law. The study thus aims to provide concrete feedback on the potential strengths of the SCDDA, to illustrate examples of violations in the automotive supply chain, and most importantly, to reflect on the possible limitations of the law and on the type of support trade unions may need during its implementation.

Ultimately, the study comes to the conclusion that the Act represents a very important step and a possible tool to build stronger, transnational union solidarity across companies and countries. However, there are still uncertainties, gaps to fill, and challenges that urgently need to be addressed in order to fully understand the Act's potential.

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## LIST OF ABBREVIATIONS AND ACRONYMS

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4IR	Fourth Industrial Revolution
AMEO	Automobile Manufacturers Employers' Organisation
AVA	Associated Vehicle Assemblers
AUKMW	Amalgamated Union of Kenya Metal Workers
BAFA	Federal Office for Economic Affairs and Export Control
B-BBEE	Broad-Based Black Economic Empowerment
<i>BetrVG</i>	<i>Betriebsverfassungsgesetz</i>
CBA	Collective Bargaining Agreement
CCMA	Commission for Conciliation, Mediation and Arbitration
CKD	Complete knocked down
CMC	Cooper Motor Corporation
COTU-Kenya	Central Organisation of Trade Unions – Kenya
CSDDD	Corporate Sustainability Due Diligence Directive
DFI	Department of Factories Inspectorate
DoEL	Department of Employment and Labour
DOSH	Directorate of Occupational Safety and Health Services
EEA	Employment Equity Act
ELC	Environment and Land Court
ELRC	Employment and Labour Relations Court
EMCA	Environment and Management Co-ordination Act
ESG	Environmental, Social and Governance EPA Environmental Protection Agency
FBU	Fully built unit
FES TUCC	Friedrich-Ebert-Stiftung, Trade Union Competence Centre
FKE	Federation of Kenya Employers
GADP	Ghana Automobile Development Policy
GBA	German Business Association
GFA	Global Framework Agreement
GTAI	German Trade and Invest
GUF	Global Union Federation
GUTA	Ghana Union of Traders' Association
HRM	Human resource manager
HSE	Health, Safety and Environment
ICU	Industrial and Commercial Workers Union
IEA	Isuzu East Africa
IFC	International Finance Corporation
<i>IG Metall</i>	<i>Industriegewerkschaft Metall</i>

ILO	International Labour Organisation
IMF	International Metalworkers' Federation
JSNC	Joint Standing Negotiation Committee
KAM	Kenya Association of Manufacturers
KNCHR	Kenya National Commission on Human Rights
KVM	Kenya Vehicle Manufacturers
LI	Legislative instrument
<i>LkSG</i>	<i>Lieferkettensorgfaltspflichtengesetz</i>
LRA	Labour Relations Act
MEIBC	Metal and Engineering Industries Bargaining Council
MELR	Ministry of Employment and Labour Relations
MIBCO	Motor Industry Bargaining Council
MOTI	Ministry of Trade and Industry
NAACAM	National Association of Automotive Component and Allied Manufacturers
NAP	National Action Plan
NBCRFLI	National Bargaining Council for Road Freight and Logistics Industry
NBF	National Bargaining Forum
NEDLAC	National Economic Development and Labour Council
NHIF	National Hospital Insurance Fund
NLC	National Labour Commission
NSSF	National Social Security Fund
NMWA	National Minimum Wage Act
NSE	Nairobi Securities Exchange
NUMSA	National Union of Metalworkers of South Africa
OEM	Original equipment manufacturers
OHS	Occupational health and safety
PCC	Public Complaints Committee
PPE	Personal protective equipment
RMI	Retail Motor Industry
SKD	Semi knocked down
TUC Ghana	Trades Union Congress of Ghana
UNICOF	Union of Industry Commerce and Finance Workers
UNFCCC	United Nations Framework Convention on Climate Change
UNGPs	United Nations Guiding Principles of Business and Human Rights
VW Ghana	Volkswagen Ghana
VWSA	Volkswagen South Africa

# 1

## INTRODUCTION





# 1 Introduction

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The current research study by Friedrich-Ebert-Stiftung, Trade Union Competence Centre (FES TUCC) arose from the perception of the innovative potential, scope and possible impact of the new German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz [LkSG]*, or Supply Chain Due Diligence Act [SCDDA]). Despite existing initiatives aimed at regulating corporate behaviour and guaranteeing social responsibility, violations of human, labour and environmental rights are still frequent and affect all supply chains, in the Global North and even more so in the Global South. Whether in large companies or smaller producers, information on working conditions and manufacturing practices often get progressively lost, thus leaving violations and unlawful practices unknown. In addition, most initiatives that are meant to prevent violations and secure responsible corporate practices have mostly been left to voluntary action, and have thus rarely led to any binding constraints. This new Act appears to take these important steps in this regard: listing a comprehensive list of possible violations and associated risks; requiring companies to perform regular risk analyses and to avail clear complaint mechanisms; and seeking to make such responsible behaviour mandatory. Indeed, the SCDDA must be welcomed as an important and progressive advancement towards stronger corporate social responsibility in the supply chain, and towards the harmonisation of better working standards, across companies and across countries.

However, with the implementation of the Act in January 2023 (and at the time of writing), significant gaps still remain. We highlight issues that need to be clarified, possible limitations and obstacles to the full implementation of the law, and concerns of some recipient countries, namely South Africa, Ghana and Kenya. Overall, we reflect on how unions, in Germany and the rest of the world, could potentially use the SCDDA as an instrument to strengthen organising and transnational solidarity. We also assess, in practice, what the unions would need in order to do so. With this study, we provide empirical grounds to shape the political process of further defining the Act, as well as necessary steps for union action.

Specifically, we seek to explore the Act from a union viewpoint, and to also provide a Global South perspective, which will be indispensable to fulfill the global scope of the SCDDA, and to properly use it to build transnational networks. In order to do so, we first voice the concerns of trade unions and works councils in Germany – expressing what they fear, what they think should be further specified, and what they see as weaknesses and strengths. We then gather the perspective of three Sub-Saharan African countries: South Africa, Ghana and Kenya. Focusing on the automotive industry, we first map the auto supply chain in these three countries – questioning the current knowledge of the sector and highlighting what unions would need to know in order to implement the Act. We then assess whether there has been any discussion on the Act to date, in the respective countries. Then, we provide examples of the most common violations reported in the case of the automotive industry (more could have been detected in different productive sectors). This is followed by exploring existing complaint mechanisms and risk assessment practices available to trade unions, and reflecting on the relationship between local tools and the requirements of this new, external legislation. Finally, we draw some conclusions and provide recommendations, voicing the concerns of the trade unions that participated in this study and highlighting the type of support they may need to make effective use of the SCDDA.

Ultimately, this report welcomes the SCDDA as an important step to improve working conditions and corporate practices in the supply chain, by strengthening the fight against human, labour and environmental rights violations. At the same time, the report is intended to provide an honest and balanced picture of both the potential and the limitations embodied in the new Act, as it currently stands. We suggest which gaps to fill and which issues to clarify, and hope to contribute to a debate on how to make this Act as effective and comprehensive as possible, and valuable for as many workers as possible. Moreover, the recommendations from this study will be useful for the current political debate of Due Diligence Legislation at European Union (EU) level. Overall, we also wish to

stress that without listening to the voices and taking into account the lived experiences of trade unions and workers in the Global South, this Act will not fulfill its full and global potential. If production networks and supply chains have become global, then we want to also build transnational solidarity, global working standards and international union networks. Aluta continua!

## 1.1 Background, genesis and content of the SCDDA

The need for greater corporate social responsibility is a much-needed development to address labour and environmental conditions in global supply chains. In the past, there have been severe violations of human, labour and environmental rights, leading in some cases to catastrophic disasters, mostly happening in the Global South.<sup>1</sup> Driven primarily by civil society organisations (trade unions and non-governmental organisations [NGOs]), several instruments were introduced to ensure that companies along the supply chain comply with core human right (including labour) standards. Some of these instruments include Global Framework Agreements (GFAs) and private ethical codes.

In the case of Germany, several multinational corporations concluded global/international framework agreements at the turn of the 21st century. One such agreement is the Volkswagen/International Metalworkers' Federation (IMF)<sup>2</sup> *Declaration on Social Rights and Industrial Relationships at Volkswagen*.<sup>3</sup>

One of the provisions of that agreement is that:

*Volkswagen supports and expressly encourages its contractors to take this declaration into account in their own respective corporate policy. It views this as an advantageous basis for mutual relationships.*

While the Volkswagen GFA constituted an important step towards greater corporate social responsibility, there is little evidence that the terms thereof enjoyed similar success throughout Volkswagen's global operations, resulting in IndustriALL suspending the GFA in January 2019.<sup>4</sup>

Indeed, one major problem is that these instruments are mostly voluntary and considered as soft law, i.e., they are not binding and they do not impose legal or effective obligations. It is this 'gap' in supply chain governance that spearheaded the current drive to legislate due diligence practices, over and above the fact that, in 2020, 83-87% of German companies did not have any core elements of human rights due diligence integrated into their business processes despite committing themselves voluntarily under the National Action Plan according to the UN Guiding Principles of Business and Human Rights (UNGPs).<sup>5</sup> The creation of the SCDDA follows on from similar legislative developments across Europe and other parts of the world.<sup>6</sup>

The Act, which came into effect on January 01, 2023 and which will supposedly expand its reach on January 01, 2024, will substantially up the ante in terms of global supply chain accountability. It is to be welcomed as progressive legislation, following on from the United Nations Guiding Principles of Business and Human Rights (UNGPs). While the SCDDA offers significant opportunities for human rights stakeholders (in particular, workers and their trade unions) to hold corporations to account for human rights and environment abuses, certain gaps remain. This report, which is a result of the research study, considers both the opportunities and gaps with a view to promoting and protecting the rights of workers along global supply chains where the lead firm (or original equipment manufacturer [OEM]) is based in Germany.

1 The Rana Plaza disaster in Bangladesh in April 2013 is one such example.

2 Now part of IndustriALL Global Union.

3 Agreement of June 2002.

4 Available at <https://www.industriall-union.org/industriall-suspends-global-agreement-with-volkswagen>.

5 Available at <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/NAP/About-the-NAP/Monitoring/monitoring.html;jsessionid=F7A3CE1355D9932F9F1970B457593672.delivery1-replication#doc83c79780-2047-406d-bfc4-89a8667ccaaabodyText3>.

6 For example, the European Commission (EU) recently issued a directive on corporate sustainability and due diligence. Available at [https://ec.europa.eu/growth/news/just-and-sustainable-economy-commission-lays-down-rules-companies-respect-human-rights-and-2022-02-23\\_en](https://ec.europa.eu/growth/news/just-and-sustainable-economy-commission-lays-down-rules-companies-respect-human-rights-and-2022-02-23_en). See also <https://library.fes.de/pdf-files/iez/16784.pdf> for an international comparison.

It provides a brief introduction, scope and analysis of the SCDDA. The report also examines the obligations of lead entities in ensuring that it protects the relevant human rights and guards against environmental risks in their operations.

## 1.2 A brief analysis and overview of the SCDDA

### Scope and purpose

The SCDDA will apply to all enterprises based in Germany with at least 3 000 employees in Germany (and those engaged by means of a temporary contract of more than six months).<sup>7</sup> From January 01, 2024, the application of the Act will be broadened to include enterprises with at least 1 000 employees. Employees within a group of companies are included in these calculations.<sup>8</sup>

The broad purpose of the SCDDA is to prevent human rights violations caused by multinational companies. Thus, the SCDDA obliges German enterprises to identify and react to potential or actual human rights and environmental risk violations that occur along their global supply chains. The obligations imposed on these enterprises apply in respect of their own business areas (meaning every activity of the business which is required to achieve the business's objectives)<sup>9</sup> and in relation to their direct suppliers. The obligations are extended to their indirect suppliers in the case of the enterprise receiving substantiated knowledge of potential human rights or environmental risk violations.

The primary human rights standards that are protected by the SCDDA include the core conventions of the International Labour Organisation (ILO) and related labour standards: a rights risk under Section 2 (2) SCDDA is a *'condition under which, on the basis of*

*factual circumstances, there is a sufficient probability that a violation of one of the following prohibitions [rights] is imminent'*: modern forms of slavery; forced labour; child labour; safety at work; equal treatment at work; living wage; pollution of land, water, and air; possession of land; excessive force by security services; any severe human rights violations; mercury; and persistent organic pollutions.<sup>10</sup>

### The obligations of enterprises

The obligations of enterprises under the SCDDA depend on various factors, including:

- a) The nature and scope of the entity's business activities
- b) The enterprise's ability to influence the entity that is responsible for violating the environmental standards of human rights in question
- c) The anticipated severity of the violation
- d) Whether the violation is reversible
- e) The probability of the violation occurring
- f) The type of causal contribution of the enterprise to the violation.

This is somewhat similar to the sliding scale approach of the UNGPs on Business and Human Rights, which has been criticised for allowing enterprises to make broad decisions on their own degree of accountability.<sup>11</sup>

The duties of an enterprise in ensuring that it protects the relevant human rights and guards against environmental risks in its operations are broken down into various steps and briefly include the following:

#### 1. Risk management and risk analysis

- a) These steps require enterprises to implement new risk management strategies or to adapt existing risk management strategies in line with the requirements of the Act, with a specific view to identifying the risk of their own business

<sup>7</sup> Section 1 of the SCDDA – The enterprise must have their “central administration, their principle place of business, their administrative headquarters, or their statutory seat in Germany”.

<sup>8</sup> Section 1 of the SCDDA.

<sup>9</sup> Section 2 of the SCDDA.

<sup>10</sup> In addition, the SCDDA references occupational health and safety protections, amongst other rights and standards. See further Section 2.

<sup>11</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, endorsed by The Human Rights Council in its resolution 17/4 of 16 June 2011.

operations and of their direct suppliers violating human rights or environmental standards, as well as measures to minimise or prevent these risks. Significantly, when implementing a risk management system, enterprises are obliged to give due consideration to the interests of their employees and those in the supply chain, as well as others who may be affected by their operations.

The risk analysis could be a critical process that the trade unions and workplace forums could get involved in (both domestically in Germany and businesses down the supply chain).

- b) Enterprises must appoint a responsible officer to oversee and give effect to the risk analysis process. The results of the risk analysis must be communicated to the relevant decision-makers, such as the board of directors or the purchasing department of the enterprise. Such analyses must be done at least annually or more often (i.e. on an ad hoc basis) if new risks are likely to arise.

A practical consideration is whether trade unions or workplace forums could play a role in appointing or assisting this person or could the responsible officer be appointed from their ranks.

## 2. Policy statement

- a) Enterprises must adopt a policy statement on their human rights strategies, which must include a process for complying with their due diligence obligations under the SCDDA.
- b) The policy must include an identification of the risks, as well as the enterprise's human rights and environmental expectations of employees and suppliers based on its definition.

Trade unions and workplace forums should be involved in shaping this policy, i.e., consultation must be a requirement.

## 3. Preventive and remedial measures

- a) Based on the risk analysis, enterprises must adopt and implement or review existing preventive and remedial measures to ensure that they can comply with the requirements of the SCDDA (including preventing, minimising and, in certain instances, remedying violations of human rights and environmental standards). These review measures should include contractual assurances, training measures and agreeing to contractual control mechanisms to verify compliance.

Trade unions and workplace forums should be involved in developing these review measures.

- b) Both in their own business area and in respect of their direct suppliers, enterprises must have control measures in place with worker representatives monitoring them. These control measures might include, for example, contractual assurances, a risk-informed basis for selecting and monitoring suppliers, and training courses for suppliers. Codes of conduct can be helpful here to raise awareness.
- c) Where an enterprise discovers a violation that is either occurring or imminent, it must take steps to prevent, end or minimise it.
- d) Where an enterprise cannot end an identified violation in the foreseeable future, the enterprise must draw up a concept for ending or minimising the violation or risk without undue delay. Notably, there must be a concrete timetable. The concept must consider various factors, including the joint development and implementation of the plan (alongside the violating entity), considering sectoral initiatives or joining with other enterprises in the sector to increase the enterprise's influence, and temporarily suspending the enterprise's business relationship with the violating entity.

- e) Terminating a business relationship due to violations is only required in certain circumstances, including if:
  - i. the violation is grave;
  - ii. the intended remedy is not achieved within the timeframe set out in the concept; and
  - iii. the enterprise has no less severe means of ending the violation or way of influencing the violator.<sup>12</sup>
- f) These measures must be reviewed annually and on an ad hoc basis where new risks are identified or likely to arise. Where necessary, the measures must be updated without undue delay in line with this review.
- g) The effectiveness of the remedial actions must be reviewed annually and on an ad hoc basis when the lead entity's business or supplier base expands considerably.

#### 4. Complaints procedure

- a) Enterprises must establish, implement and publish a complaints mechanism in terms of which affected persons or persons with knowledge of human rights violations can point out risks or actual violations. This mechanism may be internal to the enterprise, but it must cover its business area and direct suppliers. It must also be accessible, confidential, and public and ensure that the lodging of a complaint will not give rise to discrimination or victimisation of the relevant parties. However, although Section 8 (3) SCDDA stipulates that the persons entrusted with implementation must guarantee impartiality, i.e. be independent and not bound by instructions, this is currently not the case: neither special protection against dismissal nor a ban on disciplinary action are provided for (Zimmer, 2023, 46).

- b) There is also an obligation on enterprises to ensure that there is a complaints procedure that allows for reporting human rights or environmental standards violations by indirect suppliers. Where the enterprise has substantiated knowledge of the probability of such a violation occurring, it must adapt its risk management system without undue delay by carrying out a risk analysis, laying down preventive measures, and drawing up and implementing a prevention, cessation or minimising concept.
- c) The complaints mechanism must be reviewed annually and/or on an ad hoc basis in case potential new risks arise.<sup>13</sup>

Trade unions and workplace forums could play a role in creating the structure of the grievance/complaints procedure and assist with the accessibility of the complaints procedure and/or ensure the confidentiality of workers when laying complaints of this nature. If the filing of a complaint is not entirely at the discretion of the person concerned, the works council's right of (mandatory) co-determination under Section 87 (1) No. 1 BetrVG applies (Zimmer, 2023, 74).

#### 5. Documentation and reporting obligations

- a) An enterprise's fulfilment of its due diligence obligations under the SCDDA must be documented, and a report on this must be submitted to the relevant competent authority every year. The report should also be published annually on its website.

Trade unions and workplace forums should monitor the report and report to the relevant competent authority when gaps are identified.

<sup>12</sup> See further on remedial action, Section 7 of the SCDDA.

<sup>13</sup> Section 9 of the SCDDA. Note that in terms of Section 9(3) of the SCDDA, the Federal Minister of Labour and Social Affairs is to be involved in the regulation process alongside the Federal Office for Economic Affairs and Export Control. It has similar powers in terms of Sections 14, 15 and 17. Presumably, this would be to the benefit of labour and workers more generally.

## Compliance, monitoring and enforcement

The competent authority for ensuring enforcement of the SCDDA is the Federal Office for Economic Affairs and Export Control (BAFA). It is given broad powers in terms of the Act in this regard. For instance, it has the powers, of its own accord or at the request of an affected person, to impose measures on an enterprise to ensure compliance with human rights standards.<sup>14</sup> It also has extensive rights to access information and premises, and enterprises must support and cooperate with BAFA in its monitoring and enforcement efforts.

Trade unions and non-governmental organisations (NGOs) may be given authority to litigate for affected persons in terms of the SCDDA.<sup>15</sup> This is potentially very useful, although the cost of litigation would

be problematic for many NGOs and trade unions, particularly outside of Germany. In addition, the SCDDA neither extends nor creates new civil liability. **However, the law can help to address freedom of association or violations trade unions may face in their countries, even if freedom of association is not guaranteed nationally.**

In terms of penalties, enterprises that fail to comply with their obligations under the SCDDA may (subject to the nature of the infringement) be liable to pay fines of up to 800 000 euros; if an enterprise's average annual turnover is above 400 million euros, the maximum penalty (again subject to the nature of the infringement) is 2% of the enterprise's average annual turnover.

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<sup>14</sup> Section 14 of the SCDDA.

<sup>15</sup> Section 11 of the SCDDA.

# 2

## CURRENT DEBATE AND RECENT DEVELOPMENTS IN GERMAN AUTOMOTIVE COMPANIES



## 2 Current Debate and Recent Developments in German Automotive Companies

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The passing of the German Supply Chain Due Diligence Act (SCDDA) (*Lieferkettensorgfaltspflichtengesetz, [LkSG]*) is the subject of lively debate among more than politicians and society at large in Germany. It is also debated in many industries, particularly within the German automotive industry. The SCDDA appears to be a current topic as it plays an important role for management as well as for works councils. However, despite broad public debate, it is still unclear how companies and employee representatives are preparing themselves for the enforcement of the Act. Where does the Act offer leverage for enforcing human rights along the automotive supply chain? What role do German works councils play? What experience in complaint management and risk analysis can they draw on – also with a view to production sites abroad (for example, in African countries) and networking with transnational stakeholders? And how prepared are they for all these tasks once the law is enforced?

Answering this set of questions was the goal of the study on the role of works councils in the implementation of the SCDDA as part of the present pioneer study. For this purpose, in addition to an analysis of secondary sources (media reports, legal texts, press releases from press departments in German companies, videos of panel discussions), interviews were conducted with seven works councils and one human rights officer in German automotive original equipment manufacturers (OEMs) and tier-1 suppliers, as well as with four German trade unionists. The results of this limited survey cannot be deemed fully representative. However, certain generalisations can be anticipated from the results, which could be further consolidated through follow-up studies after the implementation of the Act.

In terms of field access, it was striking that management reacted cautiously to interview requests, and that works council members attached great importance to anonymity, even in well-organised OEMs. This underscores that the SCDDA is perceived as an extremely sensitive issue by the companies and works councils. There is noticeable caution among the

stakeholders within the German automotive companies; all wanting to avoid mistakes with this topic, which is also significantly highlighted in the German media.

This section gives a brief overview of the German automotive industry and the system of industrial relations. This is followed by an overall assessment of the role of works councils in the enforcement of the SCDDA, complaint management and risk management. There is also a reflection on opportunities for transnational networking as a tool for strengthening due diligence along the automotive supply chains.

### 2.1 Power and due diligence in global production: the nodes of the German automotive chain

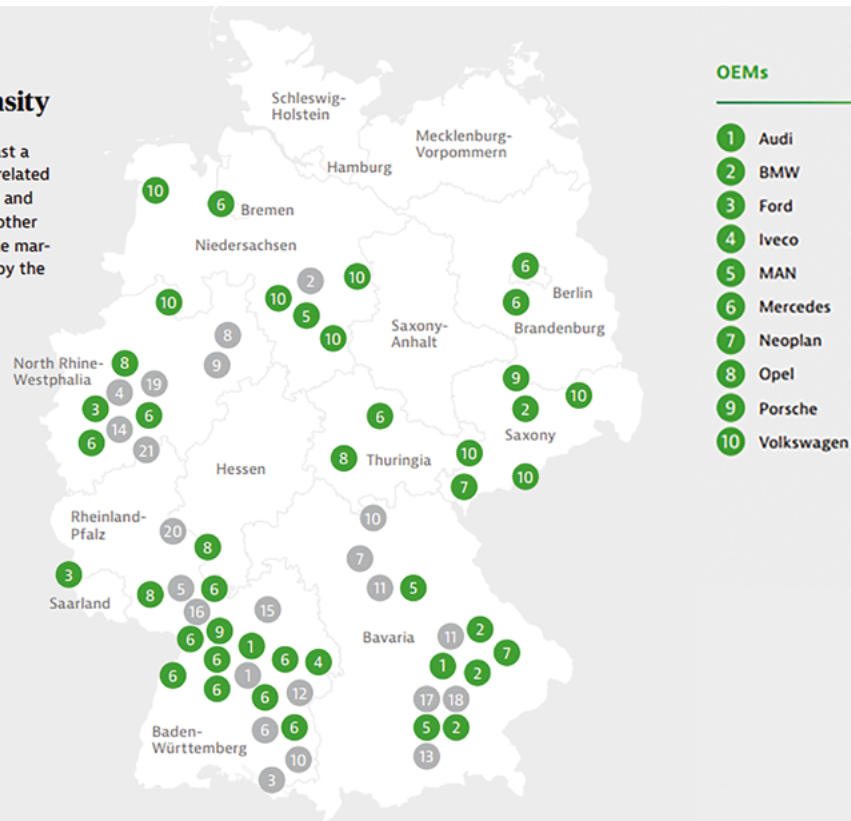
As has been mentioned, the SCDDA first and foremost addresses companies that have their *'central administration, their principal place of business, their administrative headquarters or their statutory seat in Germany'*, as stated in Section 1 (1) SCDDA. It is further stated that it is these enterprises which *'are under an obligation to exercise due regard for the human rights and environment-related due diligence obligations'* – and which were therefore the focus of the study. As OEMs are epicentres of power in automotive supply chains, it is worth taking a closer look and to briefly map the structure of the German automotive industry.

The power of German OEMs such as Volkswagen, Audi, Mercedes, or BMW can also be expressed in figures. In 2021, German OEMs contributed to more than three quarters (318 billion euros) of the total turnover in the German automotive industry (BMWK, 2022). German automotive OEMs are among the big winners of globalisation; they benefit considerably from the possibility of producing and delivering transnationally. However, to the extent that work can be relocated out of Germany, the pressure on the almost 786 000 people directly employed in the industry increases as a direct consequence of lean production, offshoring, and outsourcing.



## German Automotive OEM and Supplier Density

No other country in Europe can boast a comparable concentration of auto-related R&D, design, supply, manufacturing and assembly facilities. Accordingly, no other country in Europe provides the same market opportunities as those offered by the German auto industry.



Source: GTAI 2020

Over the last 30 years, the structure of the German automotive industry has changed dramatically. Due to the vertical disintegration of OEMs, 70% of the automotive value added is now provided by suppliers. The German automotive sector is accordingly characterised by a multitude of German and international OEMs, as well as first, second and third tier suppliers, which are interlinked in the complex and dynamic automotive supply chains (see the map: Source: GTAI, 2020). OEMs are the dominant players in these supply chains, not least because, given the high density of suppliers, OEMs can play suppliers off against each other in favour of 'competitiveness'. This constitutes a big challenge that is also putting pressure on employees and trade unions further down the supply chain globally, but also in Germany (Ludwig & Simon, 2017; Ludwig & Simon, 2021).

The enormous power of OEMs within global value chains also points to the more general power

asymmetry between globally-positioned companies and, primarily, nationally- and company-organised unions. Nevertheless, there are now strategies in the German automotive industry for organising supply chains in Germany and globally, which might also be used to enforce the SCDDA. Employees in the automotive industry in Germany are organised by the *Industriegewerkschaft Metall (IG Metall)*, a particularly strong trade union with around 2.3 million members and headquarters in Frankfurt am Main. *IG Metall* is a member of the German Trade Union Confederation (DGB), the European Metalworkers' Federation (EMF) and IndustriALL. A few years ago, *IG Metall* initiated a debate on the organisation of supply chains.<sup>16</sup> *IG Metall's* approach is to have outsourced companies (or even new industries that are emerging due to outsourcing processes within the automotive industry, such as contract logistics) organised by *IG Metall*. An important aspect in these considerations is to regulate supply chains more strongly.

<sup>16</sup> For more details see Ludwig, 2014.

In view of the 'dual system of interest representation' in Germany, in addition to *IG Metall*, the company employee representative bodies, the works councils, are of particular importance for organising automotive chains. If there are several works councils in a company (for example, because there are several plants with their own 'local' works council), a general works council must be established, according to Section 47 (1) Work Constitution Act (*Betriebsverfassungsgesetz [BetrVG]*). Works council members are elected every four years by all employees of the plant – and are endowed with the right of co-determination (*mitbestimmung*). This right includes: the right to be consulted on certain issues; the right to make proposals to the company management; and, above a certain threshold of employees, the election of supervisory board members in German companies. Within the framework of co-determination, works council members are therefore also central players in the control and enforcement of the SCDDA, as well as in the networking of company actors (Simon, 2021). Their role is to be highlighted in the upcoming sections.

## 2.2 Worker's representatives, management and the enforcement of the SCDDA: on the sidelines or on the playing field?

Overall, it is apparent that the SCDDA is perceived as an extremely important and sensitive issue by the companies and works councils that took part in the survey. In principle, the Act is welcomed as a positive development by the works councils — not least because it confirms the change in discourse in companies mentioned by experts (Grabosch, 2022): instead of the dominance of competition-related aspects, the argument of human rights is now added as a factor in risk analysis.

As one works council officer summarises:

*'So I think it [the SCDDA] already helps in negotiations (. . .): say, we have not only always the factor, as it was in the past, (. . .) the factor of price,*

*which influences the purchase decision – and that will hopefully also determine the risk analysis – then you have perhaps also more social criteria and the purchase gets a bit of a different role. I think that they [purchasing department] always go very hard into the dialogue and that is always the only criterion and if that changes now, in that it simply carries a risk if you always only evaluate the factor of money, then I think it is easier for you to award contracts, then it is also easier for you to go into the exchange with the company, [and to discuss the question] what the future should bring? Or what role do the employees want to play? And how must we perhaps also qualify them so that they can then also perform such tasks?' (EG2)*

A second works council officer added that companies will become more sensitive to the role of human rights in supply chains in the future:

*'Yes, they will become more careful. What was not so interesting before will now become interesting. That's something.'* (EG3)

The SCDDA thus appears to be the first step toward a shift in discourse.

### Between legal certainty and indeterminacy

With the implementation of the SCDDA, comes a stronger legal obligation for enterprises to exercise due diligence. Both management and works councils respondents in the survey insisted that human-rights issues have traditionally been an important topic in their companies for years (EG1; EG2; EG3; EG4; HR1). In particular, the 2011 UN Guiding Principles on Business and Human Rights (UNGPs) are a key reference point. However, the SCDDA is broadly recognised by stakeholders as more legally binding than soft law: *'If it is law, then it must be taken seriously,'* as argued by the manager (head of sustainability) of a tier-1 supplier (FS1). According to the manager, the increase in legal bindingness is *'first of all a threat'* for a company; the reaction is to strive for legal certainty in regulations.

In addition, according to German works councils and trade unionists, the SCDDA has led to a legal upgrading of due diligence in companies. One trade unionist working on transnational trade union networks argues that the issue of due diligence, the issue of respecting human rights, is not a new topic:

*'These are things we have dealt with before. (...) So it's nothing new, but with the law we now have the opportunity for the first time to move away from a voluntary approach to a legal obligation, and we see that as a paradigm shift, and we also see our special responsibility as a trade unionist who has to deal with so many widely ramified supply chains, that we have to do our homework there.'* (TU1)

A human rights officer recruited in an OEM specifically to implement the SCDDA summarises, 'Now even those who previously ignored it are forced to deal with the concept of human rights due diligence' and continues:

*'Now everyone knows what human rights due diligence actually is or that it is a component of corporate responsibility, I don't think that was so clear at the beginning either. It was always perceived as a soft issue. I mean you can see it in our development in the Group, we used to be an integrity management [ontrol] S[elf] A[ssessment] area and now we are in the social compliance area, that is an enormous difference if you think in terms of corporate hierarchies or corporate structures. We are now setting standards for the entire organisation here.'* (HR1)

What sounds like a clear legal boost from a legal professional is at the same time associated by both management and works councils with the emergence of new zones of uncertainty: both managers and works councils complain that some important terms – especially in the catalogue of risks – are legally vaguely defined in the SCDDA. As stated by a works council representative, 'there's a bit of concern that there's so much legal uncertainty.' (EG2) According to works councils (EG3; EG7), this is due, among other things, to vague, difficult and unclearly defined legal formulations in the text.

The empirical analysis also clearly shows that in the cooperation between works councils and human rights officers, the political dimension tends to remain with the works council, while the legal expertise remains with the companies' lawyers – and this division of roles is accepted as such. This can work if the relationship between a human rights officer and a works council is good and free of conflicts. Since human rights officers are often human rights lawyers with an intrinsically positive attitude toward due diligence, the chances of this cooperative division of labour succeeding are good. The use of human rights officers points to an increasing legal professionalisation of the due diligence discourse in the company. On the other hand, works councils should be careful not to let their control function slip too far out of their hands. Training for works councils – for example, by trade unions – can be an important instrument in this regard, and the works councils interviewed in the survey were also aware of the importance of gaining more basic legal skills with regard to the SCDDA (EG1; EG4). As commented by a works council officer:

*'Well, I can already see this need, even when I talk to other colleagues from other companies "How do you see it? Where do you stand at the moment?". They actually feel the same as I do, that there is simply still a need for qualification.'* (EG 4)

As one human rights officer summarised in a group interview with a works council:

*'I think it's incredibly important because, by law, the works council is not just someone who is affected by the law, but a very relevant stakeholder. (...) Implementation in the local units depends to a large extent on the local works council representatives and also on the revision of the system. So, the whole issue of effectiveness and conclusions about the system, works councils should also be actively involved in shaping and working on this. And they can only do that if they understand the law, also in terms of the stakeholder issue that the law raises.'* (HR1)

## The SCDDA as a tool of co-determination

The role of the works council in the enforcement of the SCDDA is still vague. A number of the surveyed works councils assess the SCDDA largely positively. It seems to fit well with the handling of human rights issues which they described (EG1; EG4). However, other works councils assess the SCDDA as not yet sufficient, also with a view to co-determination: one works council representative calls for a better European regulation of due diligence – also with a view to the competitiveness of Germany as a location (EG2). Another works council officer believes that the SCDDA does not go far enough:

*'In this watered-down form, as the law is now, I think it lacks a bit of leverage, ultimately the link to co-determination, the control function of co-determination.'* (EG3)

A third works council officer adds:

*'What responsibility or role co-determination now has in this law, that's not entirely clear to me.'* (EG2)

This uncertainty is also due to the fact that works councils are not explicitly mentioned in the SCDDA. The corresponding competences of the works council with regard to the duties of care included in the SCDDA must therefore be derived from the *BetrVG* (Works Constitution Act). In particular, the right of co-determination, Section 87 *BetrVG*, comes into question here. In addition, the economic committee must in future also be informed about questions of corporate due diligence in supply chains in accordance with the SCDDA, Section 106 (3) (5b) *BetrVG*. It is important to check in each individual case whether the co-determination rights of the works council apply (see, in depth, Zimmer, 2023, 61).

Although there is sometimes a lack of clarity regarding the specific role of the works council, all of the works councils interviewed in the survey see their own body as having a clear responsibility to monitor the implementation of the SCDDA: one works council member, when asked to describe the works council's role in implementing the law, responds as follows:

*'[We have the] control function. [It must be controlled] that the audit reports are shown, like the financial reports, so to speak, that there are regular points in supervisory boards or in economic committees where the company must present what they have done, where there are difficulties, what measures have been taken. In the case of very obvious violations, there is also the possibility of simply marching in with the management in such a process and looking at things on site in order to build up pressure, so to speak, or to check whether measures have been taken in the case of serious violations that have been defined, whether they have definitely been implemented and not just rely on hearsay that management says "yes, yes, we have recognized it, we have solved the problem" and in reality these are empty words and the environmental pollution or the child labor or the violation of human rights continues unhindered.'* (EG3)

Overall, among the interviewees, the importance of the works councils' own initiative is rated as high in order to perform their control function vis-à-vis the company's due diligence. The company is perceived to be primarily responsible for enforcing the SCDDA which, in principle, carries the risk that responsibility is shifted to the company and the professionalisation of the due diligence discourse in the company with human rights officers. However, all works councils and human rights officers interviewed (EG1; EG2; EG3; EG4; EG5; HR1) are, in principle, sensitive to the central importance of strong co-determination in the process of due diligence acts. However, the precise role of the works council seems too vaguely defined. In some cases, works councils might object to the recruitment of a candidate for the position of human rights officer if legally specified reasons exist, Section 99 (1)(1) *BetrVG*. However, in general, the selection of the human rights officer(s) cannot be influenced by the works council. This is unfortunate, and should be reconsidered in the case, i.e., of a European due diligence act.

## Zones of uncertainty: risk analysis and complaint mechanisms

The preparation and assessment of works councils for risk analysis and complaints management also fit in with this ambivalent picture: it is important to note that, perhaps surprisingly, many managers and works councils were still in the early stages of familiarising themselves with the SCDDA when the interviews for this study were conducted in mid-2022. It is worth noting that there is a lack of clarity, particularly with regard to concrete implementation of the risk analysis and complaints management systems. The overall impression is that the actual implementation of the SCDDA would not be envisaged until the law comes into force in 2023.

Some works councils are waiting to see how companies behave after the SCDDA comes into force. In interviews, several works council members from OEMs said that they were still at the beginning of their preparations for the implementation of the SCDDA and did not know exactly how their company would implement the new requirements in risk analysis and complaints management – and what concrete role the works council would play. The actors within the companies were still in a phase in which they were defining their own responsibilities. The *'concrete feasibility and role of the works council will become clearer'* after the law is enforced - a comment from the works council of an OEM (EG1). On the company side, too, the prevailing attitude is to wait until concrete applications and experiences emerge in the course of the next years (FS1). In other cases, however, works councils report that mechanisms for risk analysis and complaint management – mostly in the form of audit systems and anonymous whistleblower hotlines/mail addresses – already existed before the implementation of the SCDDA and now have to be adapted to the new situation.

Some of the works councils and human rights officers would have wished for a more far-reaching law. For example, there is criticism of the SCDDA's 'massive focus' on the tier-1 level:

*'So [the law is] an insanely important step, but it's not the end of the journey.'* (HR1)

Since the SCDDA does not do much to change the fact that it is difficult to reach the lower levels of the supply chain, where most human rights violations take place (as contended by one works council officer), the opportunities and limits of the law are considered too much in *'our little prosperity OEM bubble'* (EG2). In the 'intransparent' supply chains, supply relationships are often unclear. Who is responsible for due diligence and when, seems unclear to many of the works council members and company representatives that were interviewed. This may be connected to the fact that the SCDDA – as shown in the African case studies in the next sections – is hardly discussed in companies outside of Germany, or at the bottom of the supply chain. Thus, works councils still see a need for improvements in the law, including a more clearly defined role for themselves in its implementation. A works council member emphasises the need to establish publicly accessible, independent compliance hotlines and posits the following vision:

*'It is also a consideration, (...) that is now a completely visionary thought, that work councils and trade unions say "We create our own, really neutral hotline without the enterprise or with any enterprise insiders, a completely neutral place." (...) Kind of like a trade inspectorate, a supply chain inspectorate.'* (EG3)

In addition, works councils sometimes do not trust existing mechanisms – external audits are criticised often as incorrect and misleading, and the accessibility and neutrality of complaints mechanisms, such as whistle-blower hotlines, are not always clear. One works council member says he would like to see stronger control functions for the works council in the law, so that he can attend audits himself and be involved in complaints management (EG3). With this, the member believes that trade unions and works councils also have a duty to continue to influence policymakers to

make improvements. This brings us to the last point of this study: trade union strategies and perspectives for transnational networking.

### **Transnational networks of solidarity and trust: approaches to SCDDA enforcement**

Based on the problems of power asymmetries and lack of transparency in the global supply chains, indeterminacy and dubious dissemination of the SCDDA, German trade unionists and some works councils have identified that part of the solution is to network with global counterparts.

This also applies to the enforcement of the SCDDA: for *IG Metall*, it is clear that it is precisely the local experiences with human rights violations and customary complaints management in plants in the Global South that is recognised as a key to bringing the SCDDA to bear via transnational networking with partner trade unions. Works councils in German company headquarters also recognise trade union networking as an opportunity for enforcement.

In this context, global networking is recognised as a condition for more extensive information about the SCDDA. It is only with partner unions that workers in local supply chains can be informed and trained about the SCDDA and its scope in the form of information campaigns, as well as having its implementation monitored. A neutral, trust-based complaints mechanism about local risks, complaints and violations of the law is also only possible if employee representatives build proper networks. *IG Metall* can draw on three closely intertwined strategies in this regard.

The first strategy is to combine measures to inform about the SCDDA with the development of organising power of unions abroad. *IG Metall* conducts awareness-raising workshops in its projects with partner unions, mainly online, but also face to face with various sister unions abroad to provide information about the law. As Claudia Rahman, Head of Division of Global Trade Union Policy, *IG Metall*, explains:

*'We need to show what advantages the involvement of stakeholders, especially employees or their employee representatives and trade unions brings for the implementation of the law (at all levels, from company trade unions to regional and sectoral trade union organizations to umbrella organizations; depending on the trade union structure in the country, they can play different roles or must be used in combination) (...). Unions need to understand why GFAs or the SCDDA help for their daily struggle and trade union work.'*

Informing about the law is crucial, 'but in order to get involved', Rahman continues:

*'... you need again a certain level trade union power to enforce this. With a very low union density and small and fragile unions in many countries organizing is key.'*

She adds:

*'Unions often have a bad image or are not considered as strong. Many see unions as a mere service organization for workers or a third party who promises to help them and often fails, especially when employers use union busting. Strategic organizing builds on the workers' issues and their empowerment in a strategic way. Workers and union officials have to understand that the workers are the union. When a union says this, it must act accordingly: workers can engage themselves in union activities and have a say – especially in organizing campaigns and collective bargaining rounds. The union officials act with the workers and not for them. Unity and joint engagement in a union makes workers stronger. They can defend their rights, bring their demands through (settled in a collective agreement) and like this bring about change to the positive. This is how we try to fight the employers' approach of "divide and rule". The power of workers lies in their numbers and a good strategy.'*

*IG Metall* therefore aims to build union power by conveying a strategic organising approach within the process of informing about the SCDDA. According to this organising approach (see also Ludwig, 2014; Ludwig & Simon, 2017; Ludwig & Simon, 2021), informing about the SCDDA and building union power should go hand in hand. From the perspective of *IG Metall*, the SCDDA can help as a lever for organising in contexts where union busting occurs. According to *IG Metall*, this requires concerted solidarity actions in a variety of networks including IndustriALL, Global Union Federations, bilateral union cooperations, as well as global and European works councils.

The second strategy of *IG Metall* thus aims to build new networks: the *IG Metall* International Network Initiative (NWI), which was launched in 2012 and consolidated in 2021. Its aim is to support more intensive cooperation between company employee representatives of the same international groups across national borders (Simon, 2021). For example, a European-African network including shop-stewards of the National Union of Metalworkers South Africa (NUMSA) was founded at the tier-1 supplier, Lear, which serves, in particular, the direct exchange of information between German and South African employee representatives at Lear. According to Jochen Schroth, Director at *IG Metall*'s Transnational Department:

*'The core concern is that we inform and participate, because the company would definitely not do that without us. (...) First of all, this is important for the exchange of information and the creation of transparency in the company's strategy, which is often lacking. For example, German colleagues can pass on information to their South African colleagues via short official channels, or vice versa.'*

Kathrin Schäfers, the NWI's coordinator at *IG Metall*'s Transnational Department, adds that this information network can also be used to enforce the SCDDA:

*'I believe that it is essential to establish contact with foreign trade unions and, above all, with the company representatives from trade unions in the countries. Because only if we know what is happening along the supply chain can we bring the law to life at all.'*

*IG Metall*'s third strategy (currently at the planning stage), the toolbox, fits in well with this idea of an information network. If implemented in the future, the toolbox will include, *inter alia*, a sample presentation, a fact sheet, a collection of arguments, a list of frequently asked questions (FAQ), sample modules for a global framework agreement on implementation, and a questionnaire for reporting cases. This will provide works councils with concrete tools to better understand their own role in the process. As became obvious in interviews with works councils, there is an absolute need for such training. *IG Metall* emphasises the differences of these lists, because the respective contexts have to be taken into account: solutions are not to be worked out for everyone, but rather context-dependent solutions are to be found.

*IG Metall* is also concerned with a context-sensitive dialogue with the partner trade unions in order to identify central risks and complaints. From *IG Metall*'s perspective, it is particularly important to collect examples of good and bad complaint practices in order to generate efficient complaint management in the respective contexts. Furthermore, this should be done in dialogue with the respective partner unions by means of finding good formulations for complaints. *IG Metall* sees three levels as helpful here: the global corporate level in Germany; the local level of the respective plants and their contexts in foreign countries; and regional clusters in which workers of plants in similar contexts and backgrounds can exchange information with each other. *IG Metall* is thus striving for a networking strategy that is conceived in a bottom-up manner and focuses on the needs and experiences of colleagues abroad.

## 2.3 Conclusion and recommendations: using the SCDDA to build transnational networks of solidarity

The results of the pilot study are not entirely unequivocal. Rather, considerations on the implementation of the SCDDA point to ambivalent perceptions among works councils and management. While the SCDDA is seen as an important first step, at the same time there are still uncertainties regarding the scope of the law, the responsibilities and understanding of the roles of the co-determination actors, and the concrete impact on risk and grievance management.

Some of these problems should be solved once the SCDDA is evaluated. The problems/shortcomings could also be solved within the framework of the more demanding European Supply Chain Act, which has been presented as a draft (Corporate Sustainability Due Diligence Directive [CSDDD]) by the European Union Commission (European Commission, 2022). However, at this point it cannot be anticipated what the CSDDD will look like at the end of the political process and whose interests will determine the final version of the directive. In addition, it is important to use the possibilities of the SCDDA now that it has been implemented since January 2023, in terms of co-determination.

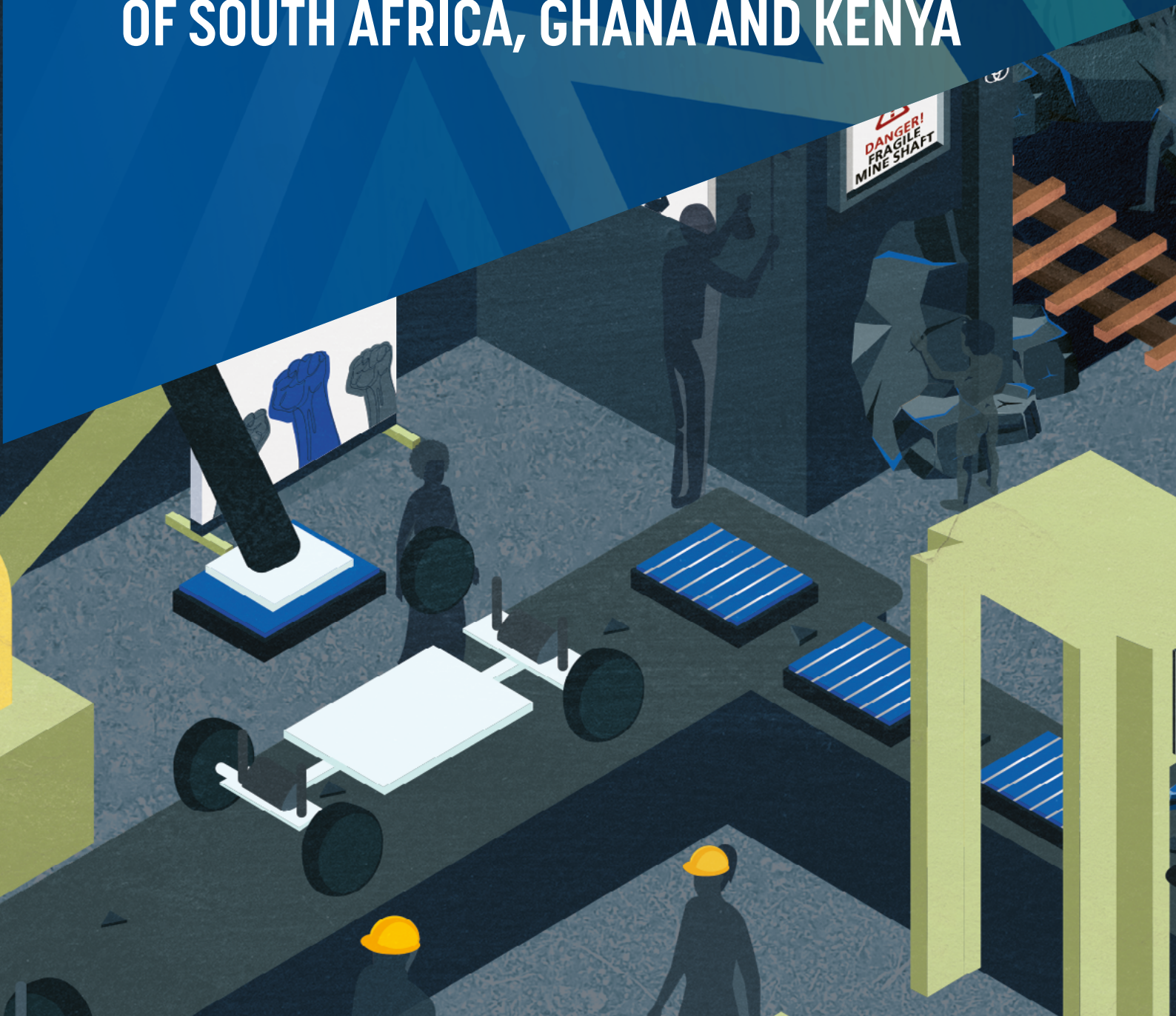
In conclusion, these are the recommendations to make use of co-determination in the existing German SCDDA.

1. Training is of central importance – especially for works council members. There is still an obvious need for training on the SCDDA, which trade unions should address. This is true for Germany: works councils must know their role and the rights under the SCDDA in order to implement them. They must not hand over their responsibilities to legal experts. Here, in addition to works council qualifications, the toolbox of *IG Metall*, which provides basic information for workers in Germany, is to be welcomed. It is also important that the choice of learning material corresponds to the recipients of these trainings. Legal training courses in particular can easily escalate into long and difficult-to-understand expert lectures that are difficult for colleagues without legal training to put into practice in their companies.
2. The qualification requirement applies in Germany – but more especially internationally. More precise knowledge about risks and existing complaint mechanisms in supply chains is needed. The approach of *IG Metall* to develop a transnational, context-sensitive toolbox in cooperation with partner trade unions seems promising. Through the toolbox, foreign trade unions and workers can understand how complaints have been practised so far, and why they may not have led to helpful results. Risk analysis and complaint management must be understood as political processes in which German law and local contexts and experiences must intertwine.
3. Information and union power building should go hand in hand. Through a variety of existing and new networks, the legal power of the SCDDA can be used to build new union power through organising strategies in contexts of union busting. This can then also be used to strengthen trade union power resources worldwide.
4. However, the duty to inform cannot lie with trade unions alone. The SCDDA places an obligation on companies to properly map supply chains. This should also be interpreted by the co-determination actors as a legal imperative to oblige the company to provide information along the supply chain. Without basic information on the SCDDA, a complaints procedure is in principle *not* publicly accessible, as the SCDDA requires.
5. The approach of *IG Metall* to promote networking with partner trade unions is therefore very welcome. Trust can be built via transnational company networks for passing on information about risks, rights violations, and complaints. The SCDDA can therefore be used as a direct instrument to build solidarity and trust along the supply chain.



# 3

## DUE DILIGENCE IN THE AUTOMOTIVE SUPPLY CHAIN IN AFRICA: THE CASE OF SOUTH AFRICA, GHANA AND KENYA



## 3 Due Diligence in the Automotive Supply Chain in Africa: the Case of South Africa, Ghana and Kenya

### 3.1 South Africa

In this section, the report shifts the focus onto the South African automotive supply chain – and specifically on OEM 1 and their suppliers – to find out about the level of understanding of the SCDDA. The section is divided into two parts. First, we look at how the automotive supply chain is preparing for the implementation of the SCDDA. Secondly, we provide a brief overview of the automotive supply chain, including key stakeholders and previous or current human, labour and environmental violations and reporting mechanisms. A specific set of recommendations is included in the final chapter of the report.

In South Africa, we conducted and recorded interviews with key stakeholders in the automotive supply chain, including with the only recognised trade union in the industry, the National Union of Metalworkers of South Africa (NUMSA).<sup>17</sup> At the outset, it is important to highlight some limitations (not related to research design and methods) to do with the availability of respondents and, in the case of NUMSA, the organisational challenges the union experienced at the time of the interviews. For example, we attempted to interview a senior manager at OEM1. This interview was not granted as it was argued that only headquarters can authorise interviews with researchers.

Likewise, one of the suppliers to OEM1, a German-owned multinational supplier, agreed to the interview subject to a disclosure of the interview questions beforehand. Having complied with this request, we received a reply stating that:

*'Unfortunately I cannot go ahead with this interview for 2 reasons, 1 I think I would contravene our internal compliance rules and secondly I know very little on the topic.'*<sup>18</sup>

We also attempted to interview an environmental group active in the automotive sector but, mainly due to time constraints, that did not occur. In the end, we built on interviews with the following stakeholders:

- Two senior managers at supplying companies to OEM1
- Four NUMSA shop stewards employed at OEM1, Supplier1, Supplier2 and Supplier3<sup>19</sup>
- One NUMSA local organiser
- Two senior representatives of the National Association of Automotive Component and Allied Manufacturers (NAACAM).

This report accordingly presents a synthesis of each stakeholder grouping and a brief analysis.

#### The view from suppliers and industry bodies

All indications are that suppliers to OEM1 knew about the existence of the SCDDA but conceded that there have been no formal discussions about the law, either within their enterprises or with OEM1 (or any other German company they supply). As one interviewee commented:

*'We know about the law but not yet discussed inside the company' [and] 'we have an excellent compliance record and audits are done internationally.'*<sup>20</sup>

Another supplier expressed a similar view:

*'[T]he expectation of the new law is nothing new as suppliers must comply with strict contractual conditions when contracting with an OEM' [and] 'we conduct our own audits of our suppliers, and the quality of the audits would be similar.'*<sup>21</sup>

<sup>17</sup> For the purposes of confidentiality and anonymity, the list of interviews is not included in this report.

<sup>18</sup> Senior manager at a German-owned component supplier.

<sup>19</sup> For ethical reasons we omitted the identities of the supplier companies.

<sup>20</sup> Tier-1 supplier interview (company A).

<sup>21</sup> Tier-1 supplier interview (company B).

The supplier interviewees emphasised the stringent contractual conditions when contracting with an OEM and that they are subjected to regular audits, both local and international. The audits include quality of product standards, the environment, and labour standards. In addition, they must remain compliant with applicable national legislation and collective agreements concluded at the Motor Industry Bargaining Council (MIBCO), the sectoral collective bargaining forum covering the majority of component suppliers.

Representatives of the National Association of Automotive Component and Allied Manufacturers (NAACAM) confirmed the above audits, including an annual survey on compliance they conduct amongst component suppliers. Their survey, as became apparent after that interview, primarily checks broad-based black economic empowerment (B-BBEE) certification to understand the status of transformation in the sector.<sup>22</sup> The NAACAM interviewees further confirmed that there has been some discussion about the new SCDDA, but nothing structured. Lastly, they too indicated that tier-1 suppliers must comply with stringent supply conditions determined by the headquarters of the OEM in Germany and that suppliers must comply with the legislative framework (discrimination law in the form of the Employment Equity Act (EEA), health and safety laws and other applicable laws).

While the above may be true, it is surprising that **OEM1 and the German-owned supplier have not initiated formal discussions on the SCDDA**. As has been noted, the SCDDA requires enterprises to implement new risk management strategies or to adapt existing risk management strategies in line with the requirements of the act, taking into account the interests of their own employees and those along the supply chain. The fact that the OEM1 shop steward and NUMSA official confirmed that there have been no discussions between the company and the union on the implementation of the act, could indicate that the company has no intention to consult either its own employees or NUMSA on such risk management strategies. At the time of the interviews, with less than three months before the implementation of the SCDDA,

it remained to be seen if the collective bargaining parties will engage in discussions of this nature.

### Trade union perspective

The NUMSA interviewees (shop stewards and officials) **confirmed that there had been no discussion in the union on the new law yet**. They appeared uncertain as to which structure in the union should initiate these discussions, i.e., whether it should be the national sector coordinators or at local level. The Global Union Federation for the sector, IndustriALL Global Union, has disseminated some preliminary information on the SCDDA. However, this has not been sufficient for the unions to have a clear position of their role nor have they been able to develop action plans on those grounds.

The union interviewees further found comfort in that the motor component sector is well regulated under the MIBCO where NUMSA is the most representative trade union. The union, they argue, is well placed to influence industrial policy in the sector. As with the other stakeholders interviewed, the union interviewees recognised that the legislative framework and collective agreements concluded in the National Bargaining Forum (NBF) and MIBCO covers matters related to discrimination, employment equity, skills development, and so on. Added to this, most companies in the automotive and motor industries introduced corporate social responsibility programmes that are applicable throughout the supply chain.

In addition, the OEM1 shop steward and NUMSA official mentioned the global framework agreement (GFA) signed in 2002. The GFA included a charter on industrial relations agreed to in 2012 and amended in 2021. According to the union interviewees, the charter covers many elements of the SCDDA. At the time of the interview and the drafting of this report, we made several attempts to obtain a copy of the industrial relations charter, but to no avail. As such, we cannot confirm the causal link between the industrial relations charter and the SCDDA.

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<sup>22</sup> This is in line with the Broad-Based Black Economic Empowerment Act, No 53 of 2003. The objectives of the act are to facilitate broad-based black economic empowerment.

The union interviewees further conceded that, currently, much energy is devoted to wage negotiations at the NBF and MIBCO as both collective agreements come to an end in 2022. This is understandable as it relates to bread-and-butter issues, the core function of trade union activity. With this in mind, we believe that given the significant trade in component parts between Germany and South Africa (and the strong German component manufacturing ownership in South Africa), there is a strong argument that the union could make this a sectoral bargaining subject matter. In doing so, the reach of due diligence provisions could be expanded to the broader component manufacturing sector. This may still be an issue the union can pursue in the next few years.

### A brief analysis

All the interviewees pointed to a strong regulatory framework covering the automotive and component sectors. The regulatory framework includes national legislation, compliance instruments linked to commercial contracts between the OEMs and suppliers (and in turn the suppliers to the tier-1 supplier) and collective agreements binding on parties in the sector. For that reason, interviewees did not immediately see that the SCDDA will have an impact on the two sectors (automotive assembly and component manufacturing).

While there can be an argument that the regulatory environment in South Africa is sufficient, that argument is advanced looking through the lens of South African legislation. This view, however, does not take the potential of transnational legal instruments such as due diligence into account to directly hold companies responsible to comply with their obligations. As such, the cursory view of the interviewees, including the union, signals a lack of (or no) interrogation of the SCDDA. This much is evident from the interviewees, without exception, conceding that they had no formal discussions about the SCDDA.

The OEM1 union interviewees further pointed to the global framework agreement charter on industrial relations. They assumed that it ‘covers many elements of the German Due Diligence Law’. However, due to the unavailability of the GFA charter it is not possible to double check if the charter mirrors the SCDDA. In any event, IndustriALL suspended the global GFA which, presumably, also suspends any agreements or charters concluded under the GFA.<sup>23</sup> Moreover, all the NUMSA interviewees acknowledged that there has been no organisational discussion about the SCDDA and that they did not know its details.

### 3.1.1 The automotive supply chain in South Africa

As noted in a previous FES TUCC/IndustriALL study,<sup>24</sup> one of the first challenges is how to ‘demarcate’ the automotive industry, i.e., what are the boundaries of the automotive industry? This question may appear simple, but many commentators define the automotive industry differently, adding or excluding the following parts in their definitions: component manufacturing and vehicle assembly; vehicle sales; repair and recycling of motor vehicles; vehicle parts; and distribution. Figure 1 provides a basic description of the automotive industry supply chain.



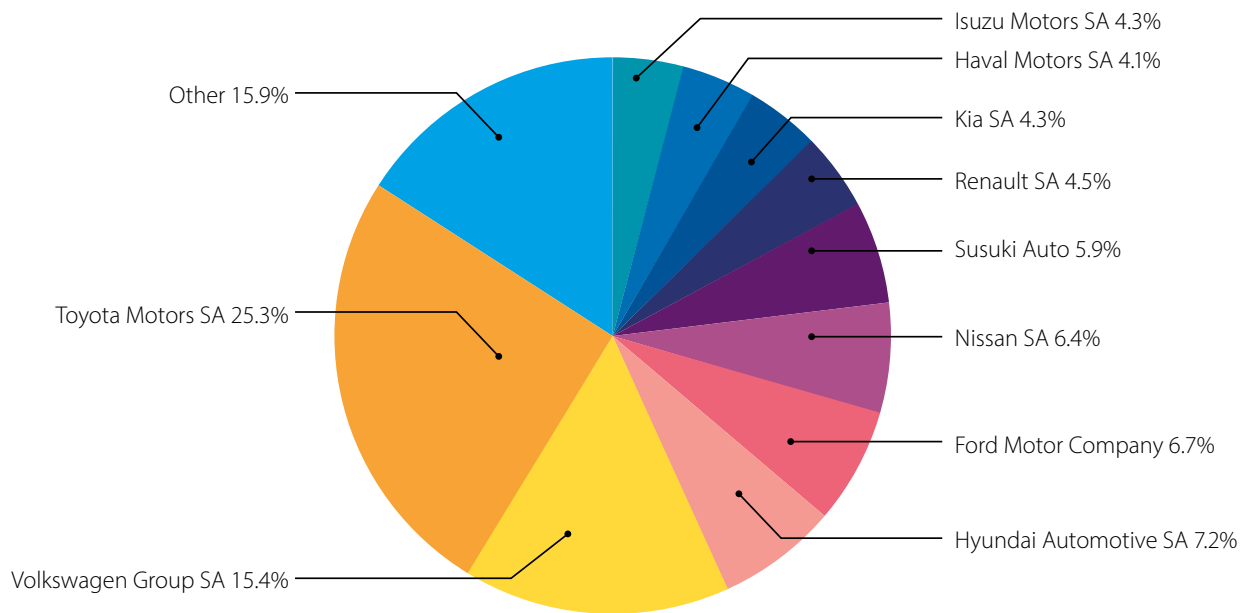
■ FIGURE 1 Basic automotive industry supply chain

Source *Who Owns Whom* (2021).

23 This proposition was put to the OEM1 union interviewees. They agreed with my conclusion but could not clarify the status of the GFA or the industrial relations charter.  
 24 FES TUCC/IndustriALL study on sustainable investment and decent work in the auto sector, 2020, online at <https://www.industrialunion.org/we-want-decent-jobs-in-sub-saharan-africa>.

The brief of this study is to examine vehicle manufacturers, defined as the assemblers, i.e., the OEMs/importers, and their suppliers, the automotive component manufacturers.<sup>25</sup> There are 22 companies involved in the production of cars and commercial vehicles in South Africa, of which seven are original equipment manufacturers (OEMs). The seven OEMs are BMW, Ford, Isuzu, Mercedes-Benz, Nissan, Toyota and Volkswagen South Africa (VWSA).

In terms of new vehicle market share in 2021 (Figure 2), Toyota led with 25.3% of new vehicle sales, followed by Volkswagen (15.4%), Hyundai (7.2%), Ford (6.7%), Nissan (6.4%), Suzuki (5.9%), Renault (4.5%), Kia (4.3%), Isuzu (4.3%) and Haval (4.1%).



**FIGURE 2** New vehicle market share, 2021

Source *Automotive Export Manual 2022*.

### Component manufacturers

The components manufacturers are divided into three tiers as follows: tier-1 suppliers are companies that supply directly to the OEMs; tier-2 companies supply parts to the first tier suppliers; and tier-3 companies are suppliers of raw material (plastics or metal) used by tier-2 suppliers. Our main interest is the first and second tier suppliers. There are approximately 200 tier-1 suppliers and 80 tier-2 suppliers in South Africa. In terms of ownership, tier-1 suppliers are mainly large multinational companies with approximately 75% foreign ownership.

South African ownership in component manufacturing companies is present more in the tier-2 suppliers.<sup>26</sup> In Appendix 1, we provide a list of component manufacturers that are members of NAACAM. It is our understanding that only manufacturers that are NAACAM members are considered credible enough to supply into the automotive assembly segment of the supply chain. As such, the list represents a fairly accurate account of component suppliers likely to be affected by the SCDDA.<sup>27</sup>

<sup>25</sup> Not all vehicle manufacturers have a manufacturing presence in South Africa. Of the 43 vehicle brands in South Africa, many are imported and only some are manufactured in the country.

<sup>26</sup> NAACAM.

<sup>27</sup> NAACAM interview.

The bulk of original equipment component imports originates from Germany, followed by Thailand, Japan, the United States of America (USA) and China, as illustrated in Table 1.

**TABLE 1** Top five countries exporting original equipment components to South Africa, 2015–2019

Country	2015	2016	2017	2018	2019
Germany	47%	46%	46%	38%	34%
Thailand	12%	16%	16%	17%	16%
Japan	15%	11%	11%	11%	10%
USA	2%	2%	3%	5%	5%
China	4%	4%	4%	4%	4%

**Source** *WhoOwnsWhom, The Motor Vehicle Industry in South Africa February 2021.*

As is evident from Table 1, there is significant German interest in the supply of original equipment components to the South African automotive sector. In monetary terms, imports from Germany amounted to R51 571.8 million (3 021.2 million euros) during 2021. The top five imported products (ZAR Rand value in millions) include original equipment components (R33 266.7 million/ 1 948.8 million euros), engine parts (R746.1 million/43.7 million euros), automotive tooling (R507.2 million/29.7 million euros), tyres (R501.4 million/29.4 million euros) and transmission shafts/cranks (R463.9 million/27.2 million euros).

In terms of the top five component exports (ZAR Rand value in millions) from South Africa to Germany include catalytic converters (R12 535.4 million/734.4 million euros), engine parts (R1 453.3 million/85.1 million euros), axles (R436.6 million/25.6 million euros), clutches/shaft couplings (R377.6 million/22.1 million euros) and shock absorbers/suspension parts (R273.7 million/16 million euros).<sup>28</sup>

## Labour relations

In labour relations terms, the automotive components sector as it has been defined falls under separate collective bargaining arrangements. The seven assemblers/OEMs are in the National Bargaining Forum (NBF) represented by the Automobile Manufacturers Employers' Organisation (AMEO), with the National Union of Metalworkers of South Africa (NUMSA) on the union side. The automotive components sector falls primarily within the Motor Industry Bargaining Council (MIBCO), although there are about 20 components manufacturers which, for historic reasons, are under the Metal and Engineering Industries Bargaining Council (MEIBC). MIBCO covers a wide range of sectors and involves two employers' organisations and two trade unions. The negotiations in MIBCO take place for all the sectors in plenary but the negotiations for the components sector are the most important and are primarily between the Retail Motor Industry (RMI) and NUMSA.

The positive spin-off is that NUMSA has significant bargaining influence at both collective bargaining forums and are therefore able to engage in strategic bargaining strategies to influence the collective bargaining outcome at both forums.

In terms of employment in the automotive manufacturers and component manufacturing sectors, the Table 2 records reported employment at automotive manufacturers and employment in the component manufacturing sectors.

**TABLE 2** Vehicle manufacturers and component manufacturing employment, 2020–2021

Sector employment	2020	2021
Vehicle manufacturers' employment	29 926	30 697
Component manufacturing employment	76 800	78 874
<b>Total employment</b>	<b>106 726</b>	<b>109 571</b>

**Source** *Automotive Export Manual 2022.*

<sup>28</sup> Automotive Export Manual 2022.

The employment data show positive employment growth in both the vehicle manufacturer and component manufacturing sectors over the 2020–2021 period. When compared to employment levels pre-Covid, where vehicle manufacturing employment levels stood at 29 855 (2018) and 30 250 (2019), there is a clear indication that employment in that sector is demonstrating positive employment growth. However, component manufacturing employment remains lower than the 80 000 employment levels reported over the 2018 and 2019 period.<sup>29</sup>

Minimum employment conditions in the automotive assembly and component industries are generally more favourable than other private sector central collective bargaining fora. This is measured by the wide range of employment conditions applicable in both industries, as well as the levels at which wages and conditions are set. The NBF has one of the highest minimum wages in the private sector when compared to other private

bargaining council collective agreements and provides for a medical aid scheme and housing allowance, and employment conditions not commonly associated with private sector bargaining councils. In the case of component manufacturers, the employment conditions of workers covered by the relevant Chapter of the MIBCO agreement (Chapter III) are generally more favourable than other workers falling under MIBCO.

As previously mentioned, the NBF and MIBCO collective agreements expire in 2022. At the time of writing this report, parties at the respective bargaining forums were still engaged in wage negotiations. In Table 3, we set out the minimum wage rates and some employment conditions negotiated at the NBF and MIBCO that are currently applicable. These are not the full employment conditions within the respective industries; they are the only employment conditions that could be obtained from NUMSA.

**TABLE 3** Some employment conditions in the Motor Industry Bargaining Council (MIBCO), Chapter III Agreement (2019–2022)

Industry minimum wage	Annual bonus	Transport allowance	Medical aid scheme	Housing allowance	Family responsibility leave
R99.23 (US\$5.43) per hour	8.33% of basic pay	R2 675.00 (US\$156) per annum (equates to R222.92 (US\$13) pm)	Industry framework agreement is currently being developed	Once-off payment of R5 000 (US\$291) for first-time homeowners; monthly subsidy of R500 (US\$29) for qualifying employees	3 days paid leave per annum as per the BCEA and 3 days per occurrence in the event of death of the employee's immediate family members

<sup>29</sup> 2018/19 employment data obtained from the Automotive Export Manual 2020.

Industry minimum wage	Working hours	Overtime rate	Annual leave	Annual bonus	Shift allowance	Transport allowance	Medical aid scheme	Family responsibility leave	Sick leave
R25.08 (US\$1.45) per hour; actual wages at component manufacturers are much higher than the BC minimums	40–45 hours per week	1½ times the ordinary wages for overtime worked between 06:00 and 23:00; double the ordinary wages for overtime worked between 23:00 and 06:00 and/or on statutory public holidays	4 weeks leave on full pay	Minimum of 3 weeks' wages	Between 10–25% of wage	Plant level agreement	Moto health; 50% contribution split	3 days paid leave per annum	30 working days (5-day worker), 36 days (6-day worker); this is over a 3-year leave cycle

### 3.1.2 Previous violations, disputes and communities/workers at risk

In this section, the report discusses matters highlighted by the trade union representatives constituting violations of their rights. We group these violations in line with the prohibitions mentioned in the SCDDA, i.e., core International Labour Organisation (ILO) conventions (freedom of association, collective bargaining, forced and slave labour, child labour and discrimination); health and safety and adequate wage protection; and environmental human right protection. We note that some of the complaints may not fall squarely under the specific sub-heading but considered it a 'best fit'.

### Core ILO conventions

One of the first complaints registered by the union concerns the union-busting tactics employed by Supplier4. This German-owned company prides itself as 'a leading global provider of polymer & composite products for industry and end-users. With about 20,000 employees in more than 170 locations and 54 countries'.<sup>30</sup> The company is a supplier to Volkswagen South Africa (VWSA), Mercedes-Benz South Africa (MBSA) and Isuzu Motors and is also a NAACAM member. According to the union interviewees, the company will do whatever to ensure that its employees are dissuaded from joining a trade union. One tactic used is to remunerate staff at wage rates higher than the applicable rate prescribed

<sup>30</sup> Available at <https://www.rehau.com/za-en/company-information-new>.



by the bargaining council agreement. By doing so, workers employed at the company fear that they will lose their higher wage rates if they join the union. The union has thus far not been able to secure the necessary representativity to organise workers at this company.

In another case, OEM1 terminated the commercial contract between itself and Schnellecke South Africa. This then led to the transfer of logistics staff from Schnellecke South Africa to DHL, the new logistics service provider. This led to NUMSA losing their plant level collective bargaining rights as DHL staff are covered by the National Bargaining Council for Road Freight and Logistics Industry (NBCRFLI) bargaining council.<sup>31</sup>

Possibly the gravest violation is the unfair labour practices experienced by staff employed by service providers contracted to perform non-core activities (cleaning, security, etc). The union interviewee cited a case (which is currently being attended to):

*'A cleaner at a contracted company (service provider) had to hide her pregnancy and instead went on sick leave for fear of being dismissed. Following her return to work 10 days later [after the delivery of her child] her company dismissed her. This was known to my company and they decided not to intervene.'*<sup>32</sup>

Another complaint of discrimination concerns the withdrawal of rights previously enjoyed by workers employed by service providers. The union interviewee noted that:

*'The company took away the transport facility previously provided to service providers resulting in a worker being stabbed on his way to work.'*<sup>33</sup>

Other complaints included:

*'Employees at supplier companies work for extended periods on fixed-term contracts, some for up to two years.'*<sup>34</sup>

*'Some workers have been on short time for more than six weeks, but the company didn't want to offer them any training.'*<sup>35</sup>

## Health and safety and adequate wage protection

One union interviewee recorded a string of health and safety concerns at the company. These included:

*'... oil spilling out of machines; the press can jam; maintenance problems; the doors are broken, and it is cold at night; machines not safe to work.'*<sup>36</sup>

The interviewee was adamant that these health and safety concerns happen because of cost cutting/saving measures. In addition, it was indicated that the Health, Safety and Environment (HSE) committee is not meeting as required by law and not doing inspections. The interviewee noted that, *'we are not getting HSE reports from the safety officer and manager.'*<sup>37</sup>

There are allegations that some employers pay less than the wage rates prescribed in the Bargaining Council Agreement or the National Minimum Wage Act (NMWA) (currently R25.42/1.28 euros per hour). It is not clear if this was reported to the applicable bargaining council (in the case of non-compliance with the bargaining council wage rates) or the Department of Employment and Labour (DoEL) or the Commission for Conciliation, Mediation and Arbitration (CCMA) in respect of non-compliance with the minimum wage act. It is also not known if the employer was granted an exemption to pay either less than the bargaining council or national minimum wage.

31 See South African Transport and Allied Workers Union obo Members/DHL Supply Chain (South Africa) (Pty) Ltd and others [2022] 1 BALR 96 (CCMA).

32 Union interview at a tier-1 supplier.

33 Union interview at a tier-1 supplier.

34 Union interviewee at tier-1 supplier.

35 Union interviewee at tier-1 supplier.

36 Union interviewee at tier-1 supplier.

37 Union interviewee at tier-1 supplier.

## Environmental human rights protection

The union interviewees mentioned two environmental complaints. The first, at OEM1, happened many years ago with claims that the paint shop disposed of chemicals in a nearby river thereby contaminating the river.

*This happened many years ago and the matter was addressed within OEM1 and with suppliers. They now take regular samples to test the water quality in the river.<sup>38</sup>*

In the second complaint, at a tier-1 supplier, the interviewee noted that:

*There used to be bad waste management practices at my company, but we are having greater compliance now (for the last 10 years).<sup>39</sup>*

### 3.1.3 Existing complaint mechanisms and structures for risk analysis

At OEM1 there is an internal audit committee that regularly meets and an international audit that is conducted twice a year. This is a system that appears to work with no identifiable problems.

In respect of suppliers, the consensus is that there are complaint mechanisms in place at all the suppliers that were interviewed. These complaint mechanisms take on different forms albeit similar in application. It includes, amongst others, employee satisfaction surveys, central complaint procedure, and whistle-blower procedure. The trade union interviewees acknowledge that these complaint mechanisms exist at their respective companies.

The challenge, one union interviewee noted, is how to address known complaints at a supplying company. For example, at the interviewee's company there is a policy that prohibits shop stewards from tackling problems experienced at supplier companies. The standard argument advanced by management is that it is a separate company and workers, or shop stewards,

employed at that company must seek resolution with their management. Their hands are therefore tied and they cannot engage their own management or the management of the supplying company in respect of the complaints in question.

The simple answer to the above scenario lies in the complaints procedure in the SCDDA. In terms of that procedure:

*Enterprises must establish, implement and publish a complaints mechanism in terms of which affected persons or persons with knowledge of human rights or environmental violations can point out risks or actual violations. This mechanism may be internal to the enterprise, but it must cover its business area and direct suppliers. It must also be accessible, confidential, and public and ensure that the lodging of a complaint will not give rise to discrimination or victimisation of the relevant parties.*

In the case of risk analysis, the preferred (and only) method used to identify any risk is via audits, whether it is done internally, locally (nationally) or internationally. One key problem identified by some of the union interviewees is that these audit outcomes are not disclosed to them. Therefore, they can confirm that audits are being conducted but they have no knowledge of any risks identified in the audits. As such, they have no input on how those risks can be nullified or mitigated. Here too the SCDDA could assist trade unions. The law specifically provides that:

*In establishing and implementing its risk management system, the enterprise must give due consideration to the interest of its employees, employees within its supply chain and those who may otherwise be directly affected in a protected legal position by the economic activities of the enterprise or by the economic activities of an enterprise in its supply chains.*

<sup>38</sup> Union interview at automotive manufacturer.

<sup>39</sup> Union interviewee at tier-1 supplier.

### 3.1.4 Conclusions and recommendations: possible uses of the SCDDA and potential for union solidarity

All interviewees stated that, in principle, the regulatory framework in South Africa is sufficient to protect the rights of workers and they were not sure if the introduction of the SCDDA would have a significant impact. At the same time, the union interviewees have listed the many violations as captured in this report.

Hence, the SCDDA offers an important new opportunity to achieve justice for wronged workers by holding the OEM directly responsible for non-compliance by its suppliers. It is this aspect of the SCDDA that could go a long way in addressing a situation where an employer simply says that it is not their problem but the problem of the supplier. Under the SCDDA, the problem at the supplier becomes a problem at the OEM for it is the OEM that could face litigation or fines in respect of non-compliance within its supply chain.

#### Key recommendations

1. The NUMSA interviewees, and other NUMSA informants we spoke to, confirmed that, at the time of this study, there has been no internal discussion on the SCDDA and how this law could be used to assist workers along the supply chain. However, all indicated that the SCDDA could be an important leverage to ensure better employment and other conditions along the supply chain. It is therefore a matter of urgency and imperative that NUMSA, in cooperation with, for example, IndustriALL and international partners, address this shortcoming.
2. There is a strong German-owned automotive assembly and component manufacturing presence in South Africa. Likewise, trade in automotive component parts between the two countries dominate trade in those commodities. On the other hand, NUMSA is the only union bargaining with OEMs at the NBF and the most representative trade union at MIBCO. NUMSA could use their collective bargaining strength, at both bargaining forums, to conclude collective agreements that (a) affirms the application of

the SCDDA on German-owned companies and their suppliers, and (b) binds the entire sector(s) to similar standards. In so doing, NUMSA will effectively create an enforceable due diligence mechanism cutting across multiple industrial sectors.

3. There is nothing in law prohibiting NUMSA from concluding a collective agreement with an OEM or tier-1 supplier in establishing minimum wages and employment conditions/standards when the OEM/tier-1 company contracts out work to a service provider. Concluding such a collective agreement could either deter an enterprise from contracting out 'non-core' activities or, alternatively, should it still contract out work, create a baseline of employment conditions for workers employed at service provider companies. This will, in most instances, address any aspect of wage protection.

## 3.2 Ghana

### 3.2.1 Structure of the automotive supply chain and actors involved

Since Ghana gained independence in 1957, the country's automotive industry has undergone various development phases. These different phases of development have typically been influenced by government policies and global market forces. The government of Ghana recently launched a policy blueprint for the automotive sector, contained in the Ghana Automobile Development Policy (GADP) in 2019 (MOTI, 2019). The main goal of the GADP is to position Ghana as a holistic, integrated and competitive industrial hub for manufacturing automobiles within the West Africa sub-region through partnership with private investors and actors. Through the policy, the government is providing some monetary incentives and market guarantees, such as corporate tax holidays and import duty exemptions, as a strategy to attract private investors and automotive companies into the country (Monaco, et al., 2021).

Indeed, before the launch of the GADP in 2019, there were automotive companies that had already established their presence in the country and were undertaking different activities and services within the automotive sector. In addition to welcoming Volkswagen (VW), Ghana has had memorandums of understanding (MOUs) with Toyota, Suzuki and other global manufacturers such as Renault, Nissan, Chanzan, Honda and Hyundai, indicating their readiness to establish assembling plants in Ghana (Monaco, et al., 2021). Other automotive companies now operating in Ghana are Mitsubishi, Sinotruk, and a local company called Kantanka Motors.

There are different actors within the automotive supply chain in Ghana. The automotive industry is comprised largely of recognised dealerships that deal in new cars and genuine spare parts, mostly inaccessible to the large lower middle class; these are small to medium scale vehicle garages/dealerships that trade in used and new vehicles and spare parts. These vehicle dealership companies often acquire franchises from the original equipment manufacturers (OEMs) as sole representatives of the parent companies in Ghana. In addition to the importing of vehicles, and limited assembling and sales, the dealership companies also undertake after sales services including servicing, repairs and sale of original spare parts. The common dealership automobile companies in Ghana are Auto Parts Limited, Universal Motors, Silver Star Auto Limited, Japan Motors, Auto Plaza Ghana, and Toyota Ghana.

There are also actors within the automotive sector in Ghana that do vehicle assembling that have either built their own assembling plants or have established joint plants in partnership with other companies. These companies are mostly involved in semi knocked down (SKD) or enhanced SKD assembling processes. The companies typically import kits from OEMs as either SKD or enhanced SKD. While no automotive company is currently assembling vehicles in Ghana as complete knocked down (CKD), some have submitted their investment plans to the government demonstrating their intentions to move from SKD assembly to CKD vehicle assembling (Monaco, et al., 2021).

Other actors within the structure of the automotive supply chain in Ghana are the vehicle garages/dealerships that sell used vehicles and the spare part dealers who mostly import used or new vehicle spare parts into the country. The garage/dealership owners often sell vehicles involved in accidents that have been repaired, or used vehicles, and tend to target customers who are unable to purchase brand new vehicles. The spare parts dealers, who mostly operate as informal businesses, also sell new and second-hand vehicle parts to people who are not able to purchase the original parts from the vehicle dealerships. Most people tend to patronise the used vehicles garages and informal spare parts dealers because of their low pricing and affordability. Besides, people tend to also associate the used vehicles and spare parts from abroad with originality and of good quality.

In addition to the automotive companies and allied establishments within the structure of the automotive supply chain in Ghana, there are other prominent actors that play important roles within the supply chain. These actors include the workers of the companies, trade unions, state agencies that are mandated to regulate and monitor activities within the automotive supply chain, as well as the communities where these businesses are located. There are different forms of employment within the automotive supply chain in Ghana. Workers are engaged as either permanent employees, casual or part-time workers, or are self-employed providing diverse services to the companies.

Based on the field work conducted for this study, it is apparent that trade unions are present within the automotive sector in Ghana and most workers working with the automotive dealerships and assembling plants have largely been organised by a trade union. For example, the Industrial and Commercial Workers Union (ICU) have organised almost 2 000 workers in various automotive companies and the union is still intensifying its recruitment and organising efforts in Ghana (IndustriALL, 2021). Other trade unions and worker associations that are active within the automotive sector are the Trades Union Congress of Ghana (TUC Ghana), Union of Industry Commerce and Finance Workers (UNICOF), and the Ghana Union of Traders' Association (GUTA).

TUC Ghana is the largest national trade union centre in Ghana with more than twenty national sector unions as its affiliates, including UNICOF. UNICOF and ICU are the two main trade unions organising workers within the automotive sector in Ghana. The membership jurisdiction of UNICOF covers the organising of both senior level and junior scale workers in companies where the union has collective bargaining certificates to organise. The category of workers that are organised by UNICOF in the automotive companies generally includes workers engaged in vehicle servicing and sales with either permanent or casual work contracts.

Though the ICU is not affiliated to TUC Ghana, the union is touted as the largest trade union organising workers within the automotive supply chain with the mandate to represent workers in automotive companies such as Auto Parts Ghana Limited, Toyota Ghana Limited, Japan Motors Trading Co. Limited, and Mechanical Lloyd Ghana Limited (Monaco, et al., 2021). In the interview with the Head of the Organising Department of TUC Ghana, it was indicated that:

*'... the current priorities of TUC Ghana are to support its affiliates to organise in new and existing enterprises and help build union power and solidarity within its rank and file.'*

According to an Industrial Relations Officer of UNICOF, the focus of the union for the automotive sector is to complete the outstanding negotiations with the management of Universal Motors, the plant that has been contracted by VW to assemble cars, to sign the collective bargaining agreement. The union also aims to maintain harmony at the workplace, coupled with providing trade union education for its members and election of leaders of the union at the plant.

Supply chains have become the basis and predominant form of industrial organisation in international trade and are growing in terms of scope and the economic activities that are organised within this framework (Wright & Kaine, 2015). Whereas supply chains can propel economic growth for developing countries, with the additional benefit of providing jobs and incomes for workers when companies outsource their production, supply chains have also been known to generate pressures and present dire consequences

for labour and trade unions (Marchington, et al., 2005). Failures within various supply chains are contributing to significant work deficits for conditions of work, such as wages and working time, that affect employment relations and protection for workers (ILO, 2016).

Therefore, a range of instruments including national laws, ILO labour standards and other international conventions are often used to safeguard the working conditions and promotion of the rights of workers, the environment and trade unions. The SCDDA is one such legislation.

Within the automotive supply chain in Ghana, currently only VW has an obligation to adhere to the provisions of the SCDDA as they are the only German OEM that assembles cars in the country. Other OEMs, such as Mercedes-Benz, Audi, BMW, Porsche, Ford Europe, Opel and Man Trucks are only represented by automotive dealership companies and companies that provide after-sales services such as servicing and sale of spare parts.

Nonetheless, disseminating information about the SCDDA is important for preventing violations of human and environmental rights in the country within the automotive supply chain, and will become more relevant once the EU directive comes into force. Indeed, actors who participate in the joint activity of production or affect the labour conditions of workers, whether directly or indirectly, should have the responsibility of protecting and promoting improved working conditions for workers and also take steps to prevent human and environmental rights violations (Dahan, Lerner, & Milman-Sivan, 2021).

### **3.2.2 Previous violations, disputes and subjects at risk**

Whereas the significance of human and environmental rights for working people and the environment cannot be overstated, identifying and mitigating the risks that can lead to the violation of these rights is equally important. This study set out to assess the extent to which identifiable human and environmental rights have been violated in the past, or rights that are being currently violated within the automotive supply chain in Ghana.

A number of key respondents demonstrated how some fundamental human and environmental rights have been violated in the past, as well as the existence of important risk factors that give impetus for rights violations. A fundamental right of workers that is often violated is the right of workers to organise themselves or join a trade union. Though there are active trade unions organising within the automotive supply chain in Ghana, there are still reported cases of workers being unable to freely organise themselves into trade unions to collectively bargain with their employees. It was reported that workers who express interest to organise or join a trade union are called out or harassed and, in some instances, threatened with termination of their employment contracts.

A trade union officer with UNICOF stated that the management of the automobile plant were clearly anti-union:

*'It was clearly an anti-TUC because there were appointment letters given to employees that had indications on it that they cannot join the union and pose a difficulty, clearly, the workers had a lot of challenges and they wanted to join the mother union. So, the question now is will they be willing to fill the forms? Because of the fear factor? But at the end of the day, the union had to make them understand that they will do everything possible to ensure that their interests are served and, in the end, they complied.'*

Another officer within the same trade union also asserted that the union has been facing challenges of workers not being allowed to join trade unions and that was their major challenge:

*'For us in UNICOF, I think one major problem we will be having is the freedom of association. I don't think we've had major problems with child labour and all those things.'*

Beyond the workers being threatened and prevented from organising themselves or freely joining trade unions of their choice, there are also reported cases of trade unions being frustrated and not receiving the required cooperation from the management of some automotive companies. For example, it was reported

that trade unions that have received the required collective bargaining certificate for over a year have still not been able to commence negotiations with the company. The delay in starting the negotiations of the working conditions and entitlements of workers was attributed to the several excuses that the management of the automotive company frequently gives for their unavailability. This development does not only undermine the rights of workers to be represented, it also shows the power dynamics within the automotive sector, suggesting a weaker position assumed by trade unions in the automotive sector in Ghana.

Another form of a workers' rights violation that was reported relates to the unfair treatment of workers in ways that are inconsistent with law and best industrial practices. It was reported that the termination of workers' employment contracts without recourse to due process or established procedures was common. This practice further undermines the rights of workers by creating fear and anxiety among workers. Also, though the proportion of female workers is relatively low compared to male workers within the automotive supply chain, incidences of sexual harassment and unsolicited sexist comments about female workers were also reported. A senior officer of UNICOF commented as follows:

*'When it comes to gender, sometimes when you go into some of these factories, they tend to take the male's perspective over female. I know, we went for negotiation at one of the locals and then the human resource manager made a very funny comment. He said that over here that the lady's dress indecently, and as such it somehow disrupts their work, and they shouldn't complain if they are sexually violated. So, they were trying to come up with a policy on sexual harassment. And then he made that statement.'*

These cases of workplace sexual harassment, especially those targeting female workers, have the tendency to further marginalise and push women out of employment in a sector that is already male dominated. For example, out of the 1 982 workers that ICU have organised within the automotive industry in Ghana, only 154 are women, representing less than 10% of the workforce that is organised (IndustriALL, 2021).

Violation of workers' rights within the automotive sector is also manifested in the non-payment of adequate wages to workers. It was reported that wages and other monetary entitlements of workers are not paid on time and/or payments of some workers' benefits are outstanding for a long time. A key respondent of the study explained this situation as follows:

*'One major problem facing workers of this [company] is the non-payment of their provident fund by the management. Though the provident funds of workers are being deducted from their salaries every month, these monies are not being paid into the workers' accounts as the law requires. The workers don't even know the fund managers of their provident fund and there is no transparency about the whole process.'*

Another important area where workers within the automotive supply chain face risk is the provision and use of appropriate personal protective equipment (PPE) at the workplace. Though PPE is required for protecting workers against injuries and accidents, it was reported that some companies are either not providing the required PPE or are not enforcing the use of the PPE within the work space as required by law and best practices. This situation often exposes workers to injuries and hazardous materials, which results in health issues and illnesses. A trade union officer of UNICOF stated:

*'I don't know about pollution of water bodies ... but one thing that I can talk about would be health and safety issues. I mean, with our members, because especially with the factory workers, they complain about heat fumes, poisonous or gases that they might be inhaling. And in discussions, there are certain remedies that they think could help them deal with those remedies. Some of them talk about soda, milk, you know, those ...'*

The occurrences of these violations of workers' rights within the automotive supply chain undoubtedly result in disputes, which may be protracted, between the automotive companies and the workers, or sometimes with trade unions that represent workers in the automotive companies.

### 3.2.3 Existing complaint mechanisms and structures for risk analysis

There are diverse existing mechanisms and procedures that facilitate the identification and analysis of risk factors that may lead to the violation of human and environmental rights within the automotive supply chain in Ghana. Mostly, these established mechanisms are creations of international laws, national laws and regulations, statutory state institutions, and acknowledged industry best practices. The legal frameworks for complaint mechanisms and risk analysis within the automotive supply chain in Ghana include the constitution of Ghana, Labour Act (Act 651), Workmen's Compensation Act (No. 187 of 1987), and applicable ILO conventions and core labour standards that Ghana has ratified.

Consequently, the existing complaint mechanisms and structures for resolving disputes and risk analysis within the automotive supply chain in Ghana include the TUC Ghana, Joint Standing Negotiation Committee (JSNC) at the work place, the National Labour Commission (NLC), the Department of Factories Inspectorate (DFI), the Labour Department, the courts, and the Environmental Protection Agency (EPA). A respondent from UNICOF commented on the dispute resolution mechanism:

*'I do not know the extent to which that interaction is there, but for VW, if there is any issue, we engage the HR in Ghana. If there is any issue, we write and form a standing negotiating committee so what we need to do is to fix a date and engage the employer on the issue that bothers us.'*

TUC Ghana is the biggest trade union centre in Ghana and provides leadership and guidance to both workers and trade unions when disputes arise at the work place or workers' rights are being violated. TUC Ghana also undertakes risks analysis through its research and advocacy work and helps in addressing the risks that workers face.

Similarly, the DFI as a department under the Ministry of Employment and Labour Relations (MELR) is primarily responsible for the enforcement of occupational health and safety in the country. The department's mandate is to ensure that employers provide and sustain workplaces

and environments that are safe and guarantee the health and safety of employees at all times. The department ensures that employers provide required information, instructions, training and supervision of their workers. DFI thus undertake regular monitoring visits to companies to assess and ensure the requisite occupational health and safety protocols are followed, including the provision of PPE and training of workers.

The Labour Department is also a department under the MELR with a core mandate of implementing and enforcing the labour regulations in the country. A core function of the Labour Department is to verify and issue certificates to trade unions to organise identifiable categories of workers of registered companies in the country. The Labour Department also mediates and settles disputes that may arise between competing trade unions or between trade unions and employers. The activities of the Labour Department are therefore crucial for respecting freedom of association by promoting and guaranteeing the rights of workers to organise themselves or freely join a trade union of their choice.

Another complaint mechanism and structure within the automotive supply chain is the National Labour Commission (NLC). The NLC is a creation of the Labour Act of Ghana and its mandate is to help settle industrial disputes, investigate labour-related complaints including unfair labour practices, take steps to prevent labour disputes and right abuses, and promote effective cooperation between workers and management. In performing its duties, the NLC has the authority to receive complaints from workers, trade unions and employers on matters of industrial disagreements and allegations of violations of rights or any provisions provided for by law. The NLC can also require an employer or a trade union to provide any information and statistics that the commission considers essential, such as terms and conditions of workers employment. When the NLC establishes violations of rights of any provision of the Labour Act, the commission has the power to notify employers or workers and trade unions accordingly and direct them to take immediate measures to rectify such violations.

Regardless, the JSNC is the primary complaint mechanism or structure for addressing work-related violations and mitigating identifiable risks at the workplace. The JSNC is also a key provision within the Ghana Labour Act. Its membership is comprised of the representatives of both the trade union with the bargaining certificate for the class of workers concerned, and the employer of the workers. The core duty of the JSNC is to negotiate on matters that are referred to it by making rules that govern its procedure. Predominantly, the JSNC negotiates the collective bargaining agreements that cover the terms and conditions of workers' employment, such as workers' and employers' rights, obligations, entitlements, organisation of work and delegations, amongst others.

With regard to risks analysis and complaint management, it was reported that TUC Ghana analyses and captures the various reported human and environmental rights violations through its different structures, depending on the severity of the violation. Some rights abuses are discussed at high decision-making structures of TUC Ghana, such as the steering committee, general council, or at a TUC Ghana congress. For UNICOF, workers' risks analysis is often not done by the union on a regular basis. However, based on workers' feedback to draft collective agreement, risk factors are included in the agreements that are signed with the management of the companies after negotiating them at JSNC.

There are also standardised procedures that are followed in reporting rights violations at the workplaces and within unions in Ghana. Some specific cases of how workers' rights have been abused in the past were reported, and how the issues were finally resolved. When there is a complaint in a company, the union may have prior knowledge of it. However, the leadership of the workers at the company often contacts the union officials for guidance and advice on what actions they should take. Sometimes workers take steps to address the rights abuse but will have to ultimately inform their trade unions.



It was reported that there is a standard procedure for reporting complaints within UNICOF. Concerns are first reported internally to a union leader based at the same place of work. The second step is for the union leader at the company to report the matter to the national union, which in this case will be UNICOF. In the event that the matter is not addressed at JSNC, the third step is to report the matter to the appropriate authority such as the NLC, Labour Department, or the police.

Though the NLC, DFI and the Labour Department are key institutions in the country for preventing rights violations and disputes at the workplace, these state agencies are confronted with a multitude of challenges that undermine their ability to efficiently execute their mandates.<sup>40</sup> It was reported that these state institutions were poorly resourced and not able to procure the requisite logistics and personnel for their work. In addition to the lack of funding, the agencies are only located in three cities – Accra, Kumasi and Takoradi – with no office presence in the northern sector of Ghana. It is therefore imperative to address the challenges of these state agencies if the prevention of violation of human and environmental rights is to be achieved.

### **3.2.4 Conclusions and recommendations: possible uses of the SCDDA and potential for union solidarity**

The study on the SCDDA within the automotive supply chain in Ghana assessed the extent to which identifiable stakeholders were aware of the law, the existing structure of the automotive supply chain in the country, reported cases of human and environmental rights violations, existing complaint mechanisms, and the plausible application of the law for preventing rights violations as well as supporting trade unions to organise and strengthen workers solidarity.

Based on the interviews conducted for the study, it emerged that generally the level of awareness of the law about the identifiable stakeholders was found to be low. At the time of the interviews, almost all those interviewed contended that they did not have any knowledge about the SCDDA. When asked about

knowledge of the SCDDA, an industrial relations officer stated, *'Not that much, I am not particularly privy to that law'*. There was only one respondent that claimed to have only heard about the law when, as an attendee, it was mentioned in a virtual meeting. There was also no discussion of the SCDDA within the trade unions in Ghana at the time of the study.

The study also established that trade unions do not regularly undertake any risk analysis. Instead, trade unions often take action on reported cases of violations of workers' rights as the violations may arise. Upon an assessment of the stated risks within the context of the SCDDA, there was no immediate evidence of children being employed, forced labour, unlawful evictions and taking of land, and use of security forces for protection. Yet, risks of not respecting freedom of association and occupational health and safety largely exist, and other violations cannot be excluded. So, using the SCDDA to ensure that workers and trade unions are able to organise and to guarantee adequate occupational health and safety measures is critical.

All the stakeholders that were interviewed argued that the SCDDA, as explained by the researchers, was an important law and could help in preventing the violation of human and environmental rights within the automotive supply chain. An important way the SCDDA could help workers and trade unions is being a catalyst for the attainment of freedom of association in the country. It was argued that workers are now at the mercy of management of the companies. Given that organising workers is typically a challenge for trade unions which undermine the fundamental right of workers to form or join a trade union, the SCDDA could help in providing a leverage for addressing this vital risk factor within the automotive supply chain.

Whereas trade unions can use the SCDDA to prevent violations of human and environmental rights by reporting cases of abuses to the necessary forums for redress, employers and companies will also be careful with matters of occupational health and safety, terms and conditions of work, and freedom of association by workers so as to avoid the risk of being reported

<sup>40</sup> For example, it is highly questionable if the tax exemptions given to international investors in the sector are an expedient policy towards overall development. Available at <https://www.freightnews.co.za/article/ghana-uses-tax-break-attract-auto-industry-0>.

within the framework of the law and to suffer the consequences thereof.

Also, while global trade union solidarity and cooperation are essential for defending the rights of workers and promoting their interests, the study did not find any ongoing partnership between trade unions in Ghana and their counterparts in Germany. The existence of such collaboration could be a leverage for trade unions to learn and share lessons on how to effectively use the SCDDA to prevent rights violations in both countries within the automotive supply chain.

Regardless of the prospects of the SCDDA, some respondents contend that the focus of the law on only German companies was limiting as there are other automotive companies without German connection where widespread violations of rights exist. The officer from the NLC stated:

*'Well, I think it's about time we looked at adopting some of these things to help but it is rather unfortunate that the due diligence law covers only German companies. I was praying that the law will cover not just German companies but it will also cover other companies as well because they have a lot of these violations taking place. Going forward, maybe we will be able to develop this further to have other countries so that these provisions can apply in their places of work as well.'*

*'With respect to the one covering the child labour, I believe that it's in order because even our labour laws make provisions to ensure that no person under the appropriate age of being in legal employment. Part 7 of the labour act, under Sections 58,61 has a law prohibiting employment of young person's especially in hazardous work and registering of young persons to engage in labour that is forced, improper or the nature of the environment is not helpful. I believe that when this law is being enforced, it will be very helpful for persons like us who are engaged in resolution of labour related dispute but my only issue will be the nature of filing the complaints because I don't know if the law will*

*make provision that, even if you are in Ghana, you can be in Ghana and not necessarily have to travel to Germany before you can be heard because if that is the case then I'm not sure some of this logistical challenges may be the reason why someone may not necessarily pursue even in a clear case where right-violation had taken place.'*

It was reported that the majority of companies that were known for human and environmental rights violations in Ghana included those that were linked to Indian, Chinese and Lebanese businesses.

A further challenge that could arise are current experiences with complaint mechanisms because they require high transactions costs and are not easily accessible. Even though the Act prescribes that complaint mechanisms must be easily accessible in countries of the supply chain, aggrieved parties might be discouraged from seeking redress using the law based on previous experiences.

### **Key recommendations**

The following measures are recommended:

1. Training and education on the SCDDA should be provided to key actors within the automotive supply chain in Ghana, including workers, trade union leaders, managers of the automotive companies, and relevant state institutions.
2. Since state institutions like the NLC, DFI and Labour Department have the power to take necessary measures to prevent the violations of human and environmental rights in Ghana, it is crucial to give them sufficient resources to efficiently execute their mandates. This will strengthen labour inspections and systems in order to ensure full compliance with laws and regulations and access to appropriate and effective remedy and complaints mechanisms. Government may have limited capacity and resources to effectively monitor and enforce compliance with laws and regulations.

3. Trade unions should be supported to educate the rank and file of their members on the SCDDA and how it can be used to prevent the violation of their rights and reduce the risks at the workplace. This should include providing relevant information and support to workers regarding the key provisions and complaint mechanism within the SCDDA.
4. Trade unions in Ghana should also be supported to establish relations and cooperation with German trade unions to provide avenues for sharing information and building solidarity among workers across national borders.

### 3.3 Kenya

#### 3.3.1 The German automotive supply chain in Kenya

Kenya's automotive industry is characterised by fully built units (FBU) and complete knocked down (CKD) production. ( IndustriAll and FES, 2021). The automotive market in the country deals with the retail and distribution of vehicles as well as after sales servicing and the sale of spare parts . Vehicle assembling is done in three plants: the Isuzu East Africa (IEA) in Nairobi; the Associated Vehicle Assemblers (AVA) in Mombasa; and the Kenya Vehicle Manufacturers (KVM) in Thika.

The most established motor vehicle dealers in Kenya include Toyota (East Africa), Cooper Motor Corporation, Isuzu East Africa, Simba Colt and DT Dobie. Ordinarily, KVM assembles motor vehicles for Dobie and CMC Motors. CMC motors have exclusive distribution of Ford, Mazda, and Suzuki vehicles in East Africa.

German vehicles are usually assembled and distributed by KVM and DT Dobie, respectively.

DT Dobie has four branches in Nakuru, Kisumu, Nairobi and Mombasa and has been holding the franchise for Mercedes-Benz for passenger and heavy commercial vehicles in East Africa since its incorporation in 1958. In 2014, the company started its franchise dealership for Volkswagen passenger and light commercial vehicles.

There is also a category of companies that offer services to assembling companies. On the other end of the German automotive business are dealerships which import spare parts from Germany and South Africa for Volkswagen, Mercedes-Benz and BMW.

Table 4 shows the mapping of the German automotive supply chains in Kenya.<sup>41</sup>

According to the interviews in this study, Mercedes-Benz small passenger cars come already assembled, and very few are made at DT Dobie, while KVM or AVA assemble trucks in Mombasa. KVM also fabricate some parts particularly the body works.

**TABLE 4** Distribution of German automotive supply chains in Kenya

No.	Company	Location	Service offered	Car model	Tier-1 OEMs and other suppliers	Ownership/ shareholding
1.	DT Dobie	Nairobi, Kenya	Assemble/ manufacture	Mercedes-Benz and VW	Tier-1 on some spare parts, e.g. body parts	Toyota Tsusho Corp. (TTC) (97.81%)
2.	Kenya Vehicle Manufacturers	Thika, Kenya	Assemble	VW	Original equipment manufacturers	Govt. of Kenya (35%) CMC holdings (32.5%) DT Dobie (32.5%) <sup>42</sup>

<sup>41</sup> Please note that the list may not necessarily be exhaustive.

<sup>42</sup> Willdaynes, 2020, Kenya vehicle manufacturers, global infrastructure magazine, www.kvm.co.ke.

No.	Company	Location	Service offered	Car model	Tier-1 OEMs and other suppliers	Ownership/ shareholding
3.	Siemens AG	Nairobi, Kenya	Automation technology	Mercedes-Benz and VW	Tier-1 on automation technology	Privately owned
4.	IBM Corporation	Nairobi, Kenya	IT services	VW	Original equipment manufacturers	Vanguard Group Inc. (8.9%) BlackRock Inc. (6.9%) State Street Corp. (5.9%) James Whitehurst (0.02%) Arvind Krishna (0.01%) James Kavanaugh (0.01%)
5.	Elite Auto Fit	Nairobi, Kenya	Spare parts	VW	Other suppliers	
6.	BMW Center	Nairobi, Kenya	Service company	BMW	Other suppliers	
7.	Bavaria Auto Ltd	Nairobi, Kenya	IT services, automation technology	BMW	Other suppliers	
8.	Porsche Center, Nairobi	Nairobi, Kenya	Provision of maintenance, spare parts	Porsche	Other suppliers	
9.	Kenhar Motor Services Ltd	Nairobi, Kenya	Provision of maintenance, spare parts	BMW, VW, Audi, Mercedes-Benz, Porsche	Other suppliers	Privately owned
10.	Eurotechnik Ltd	Nairobi, Kenya	Spare parts, maintenance services	Audi, VW, Porsche	Other suppliers	
11.	Inchcape PLC	Nairobi, Kenya	Distribution, retail and services company	BMW	Other suppliers	
12.	Verminah BMW services	Nairobi, Kenya	Distribution, retail and services company	BMW	Other suppliers	

### 3.3.2 Previous violations, disputes and subjects at risk

Workers in the automotive industry in Kenya are represented by the Amalgamated Union of Kenya Metal Workers (AUKMW), which is an affiliate of the Central Organisation of Trade Unions (COTU-Kenya). It organises mechanics, spray painters and electricians, cleaners, drivers, receptionists, and assembly workers in the automotive industry. The union represents workers in DT Dobie and KVM.

The 'union's priority areas include championing decent work to ensure that workers' rights are protected, workers enjoy social protection, job security, and have a voice at the workplace. The union is represented by shop stewards in every branch of the automotive industries that they organise. The union branch implements the union policies at the workplace and ensures that workers are protected, addresses violations of workers' rights, and also educates workers in casual employment about their rights. It is important to note that most technicians in companies are either casual workers or are regarded as independent contractors.

The union has tried recruiting, organising and ensuring that workers (including casual workers) in the automotive sector have access to freedom of association and collective bargaining. However, this has not always been successful as some companies are hesitant to have casual employment covered by the main Collective Bargaining Agreement (CBA). The companies prefer to have a different CBA for casual workers, while the union position is that there should only be one CBA covering all workers.

The union is concerned that some companies employ a large number of casual workers. The use of non-standard forms of employment is also on the rise in the sector as some companies shun employing workers on permanent contracts. Notably, a worker in casual employment is generally excluded from the benefits and protections provided for under the labour laws in Kenya. Section 2 of The Employment Act 2007 refers to a casual worker as 'a person the terms of whose engagement provide for his payment at the end

*of each day and who is not engaged for a longer period than twenty-four hours at a time*'. It is important to note that casual employment may be converted to a term contract under Section 37 of the Employment Act if the work has been continuous for a month, or the work performed by the casual worker cannot reasonably be expected to be completed within a period of three months. However, in reality this is not always the case. Besides workers in casual employment, there is also outsourcing in the automotive industry in Kenya, especially security personnel, drivers, cleaners and receptionists.

### Cases of human and workers' rights and environmental violations

Investigations in the automotive industry in Kenya have established that workers in casual employment contracts are treated differently than in permanent employment contracts. For example, the union highlighted the challenge they are having in negotiating terms for workers in casual employment under the CBA. Additionally, it was mentioned that casual workers receive lower wages than other workers despite having the same work output as permanent colleagues. The union also noted that workers in casual employment are tasked with more duties that are not commensurate with the wages they receive. Workers in casual employment also find themselves in poor working conditions with safety and health considerations.

It is also reported that shop stewards face termination due to their involvement in organising and when they report cases of violations. For example, the union managed to recruit members at a certain company, and the company signed a 'check off' (a system where employers send the union the dues of the unionised members). However, the union states that the shop stewards are living in fear of termination. At times, workers have risked losing their jobs if they enrolled in labour unions.

This has pushed workers to forsake their rights for their work. In their words:

*'... tunasema heri shari nusu kuliko shari kamili, loosely translated to ... better a little trouble than a disaster.'*

Thus, protecting their jobs becomes a priority. It was also noted that due to high levels of unemployment, and the use of non-unionised unskilled labour, negotiating power is low, and workers '*... just want a meal at the of the day.*' This has offered an opportunity for employers to exploit the desperation of workers.

The union reported some instances when employees are forced to work unpaid overtime. Other workers are subjected to assignments that are not in their job description. For example, a mechanic was assigned the duties of an electrician, which is above his job description, and he was not compensated even when demanding payment. Civil societies have expressed concerns about occupational health and safety in the automotive industries, highlighting poor occupational health and safety (OHS) practices that endanger workers' lives, resulting in serious injuries and fatalities. This is indirectly equated to the violation of the right to life for such employees/workers exposed to such OHS hazards.

Occupational health and safety issues are also a concern for the union. For example, the union highlighted an accident involving a male employee in one of the companies. The employee was injured while trying to fix a car, and an engine fell on him, incapacitating him from performing the same duties that he would perform before the accident. He was assigned lighter duties at the store, but later his services were terminated after receiving compensation. The company refused to reinstate him even after the union presented the case. The worker, through the union, filled out the Directorate of Occupational Safety and Health Services (DOSHS) forms. However, eventually, the union could not trace him when they tried following up on the matter.

Another example of an OSH case involved a mechanic in casual employment, injured on duty. The company catered for his medical expenses but withdrew from the compensation plan as initially agreed after he was discharged.

There have also been instances where there have been serious concerns about human and environmental rights violations where some industries use roofing materials which contain asbestos. Workers are required to use this industrial waste water collected in tanks when it rains, while during the dry seasons the

same tanks are filled with water from trucks used for dissolving chemicals such as asbestos. Workers use this water for bathing after work as some companies do not provide clean water. Notably, while some companies have discontinued the use of asbestos, others continue to use asbestos.

The union also noted that there are instances when workers are under-equipped or provided with substandard tools of the trade that expose these workers to a hazardous working environment. In one case, a spray painter used a handkerchief as protective gear. He eventually developed breathing problems and lost his job. The provision of protective gear for workers is one issue that the union is pursuing in some companies.

Some respondents also mentioned that the automotive industries use materials such as paints without a proper disposal mechanism, leading to pollution and harm to the environment and people.

### 3.3.3 Existing complaint mechanisms and structures for risk analysis

A complaint mechanism on labour rights violations in Kenya is generally established under labour laws, specifically the Employment Act. However, dispute resolutions may be carried out at industry level, sometimes guided by an existing CBA and company policies.

Usually, any dispute or complaint of a non-unionised worker, or in a workplace without a CBA, should be reported to the immediate supervisor. For a worker not represented by the union, the complaint is filed for conciliation with the labour office nearest to the workplace. If the conciliation remains unresolved, the worker can file a complaint before the Employment and Labour Relations Court (ELRC).

On the other hand, unionised workers can present their complaints or grievances through a works committee and shop steward, who then has the responsibility of settling the matter with the employer. If the shop steward cannot settle the matter, they then forward the complaint to the union at the branch level. The union contacts the employer in a bid to resolve the issue outside the court.

If the dispute is not settled at the shop level, it is taken to the industrial relations department (union lawyer). Thereafter, if the parties have exhausted the dispute resolution in the collective bargaining agreement through the General secretary, the matter is reported (or transferred) to the Cabinet Secretary for Labour, who then appoints conciliators within 21 days. If conciliation fails, the parties can have recourse under the ELRC. If a worker is not satisfied with the decision of the ELRC, the matter can be appealed through the Court of Appeal.

Some companies have independent committees mandated to ensure workers' safety and a conducive environment. Complaints are reported to the committee which then presents the grievance directly to the company's managing director. These committees normally comprises three workers elected by the workers and three management appointees.

Dt Dobie has a provision on its website for whistleblowers where they provide a number, email address and an anti-corruption policy.

### 3.3.4 Human rights and environment due diligence in Kenya

Kenya had no mandatory requirement for human rights due diligence for companies at the time of writing this report. This means that businesses, including, state-owned enterprises, are not obliged by any law to engage those whose rights are most likely to be impacted by their operations while identifying human rights and environmental risks and taking effective measures to address them.

Nevertheless, Kenya has adopted the National Action Plan (NAP) on Business and Human Rights to reaffirm its commitment to the United Nations Guiding Principles of Business and Human rights (UNGPs). The policy focuses on five themes: land; environment; labour; revenue transparency; and access to justice. It outlines concrete commitments by the government for addressing adverse business-related human rights impacts. The policy does not create new obligations but restates those already recognised under the Constitution and oriented towards addressing actual and potential business and human rights challenges by both the government and businesses. The policy

further proposes a review of the Companies Act 2015 to require mandatory periodic human rights due diligence reviews for business activities with significant negative risks to the environment, host communities and workers.

The policy notes that most businesses have a relatively low understanding of their human rights responsibilities resulting in a lack of engagement with employees, local communities and other stakeholders in ensuring that they respect human rights and provide a remedy for violations. Business associations stated that they lack proper guidance on establishing credible operational-level grievance mechanisms.

Despite Kenya having no mandatory human rights and environmental due diligence for companies, it has a relatively progressive legal framework on labour rights and environmental protections. The Constitution of Kenya provides a framework under which justice can be sought in environmental, human and labour rights cases. It further creates specialised courts to handle such violations; the Environment and Land Court (ELC) and the Employment and Labour Relations Court (ELRC).

The Constitution of Kenya, 2010, provides the normative framework for the respect of human rights by businesses in Kenya. Article 20 provides that the Bill of Rights binds all state organs and all persons, defined in Article 26 as including a 'company, association or other body of persons whether incorporated or unincorporated'. The state and state organs have a fundamental duty to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights under Chapter 4 of the Constitution of Kenya.

Article 41(1) of the Constitution of Kenya, 2010, provides that every person has a right to fair labour practices. It is important to note that the threshold of fair labour concept is neither defined in the Constitution nor is it a statute under Kenyan law. It further provides that every worker has the right to fair remuneration. It is worth noting that the Constitution refers to fair remuneration rather than a minimum wage. However, fair remuneration is also a concept that has not been defined in the Constitution or other statutes. The Constitution also provides for reasonable working conditions, the right to strike and the right to freedom of association and collective bargaining.

Article 42 of the Constitution further provides that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures. Article 69 also requires the State to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, including eliminating processes and activities likely to endanger the environment. It also obligates every person, the definition of which includes businesses, to cooperate with state organs and other persons to protect and conserve the environment. Additionally, Article 70 of the Constitution gives any person the right to seek redress in court if the right to a clean and healthy environment has been violated or is likely to be violated.

The Environment and Management Co-ordination Act (EMCA) 1999, amended in 2015, is the operative law on environmental matters. It is Kenya's first framework of environmental law. It sets out general principles, creates administrative bodies, lays out environmental quality standards and provides for environmental offences' inspection, enforcement and punishment. In addition, the Climate Change Act 2016 provides mechanisms and measures to improve resilience to climate change and promote low-carbon development. Its main objective is to provide a regulatory framework for an enhanced response to climate change.

The EMCA also establishes Public Complaints Committees (PCC), as provided in Section 31. At the same time, Section 32 of the same act provides for the functions of the complaints committee which are to investigate any allegations presented before it against any person or authority in relation to environmental conditions in Kenya. From its investigation and findings, it is mandated to make a report together with recommendations and present the same before the environmental council.

The Energy Act 2019, on the other hand, has a vast scope of application, covering all forms of energy, from fossil fuels to renewables. The Energy Act mandates the government to promote the development and use

of renewable energy, including biodiesel, bioethanol, biomass, solar, wind and hydropower. It also provides a practical supporting framework for transitioning to a green economy with likely gains in environmental protection and climate change. It is important to note that Kenya has ratified both the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement, under whose auspices it has assumed obligations to plan, take action and report on measures taken to mitigate global warming.

On labour rights and protections, all employers must comply with the Kenyan labour laws, which cover employment contracts, regulation of wages, child labour, social protection and labour relations. The substantive laws include: the Employment Act; the Labour Relations Act; the Labour Institutions Act; the Works Injury and Benefits Act; and the Occupational Safety and Health Act. It is also important to note that these Acts do not cover the informal economy; however, social 'protection laws cover the informal economy workers under the National Hospital Insurance Fund (NHIF) and the National Social Security Fund (NSSF).

### 3.3.5 Discussions on the SCDDA

Some respondents have discussed the SCDDA to a certain extent. However, this is not the case at the shop level in the industries, mainly because there is limited awareness and information available on the Act. Nevertheless, professional service providers and the Kenya National Commission on Human Rights (KNCHR)<sup>43</sup> are instrumental in the developmental process of the Kenya National Action Plan on Business and Human Rights (NAP). Thus, they have particular interest in the SCDDA. Importantly, the Commission is part of the implementing committee of the NAP and regard the SCDDA as a good example to operationalise the policy. They are also keen on the EU Corporate Sustainability Due Diligence Draft directive discussions.

KNCHR noted that the Commission would be keen on monitoring compliance with the SCDDA, especially in the German supply chains. This will be done within the Act and the concept of the United Nations' Guiding

<sup>43</sup> The Kenya National Commission on Human Rights (KNCHR) is an independent National Human Rights Institution created by Article 59 of the Constitution of Kenya 2010 and established through the KNCHR Act of Parliament (the Kenya National Commission on Human Rights Act, 2011). It is the State's lead agency in promoting and protecting human rights.



Principles of Business and Human Rights. Mapping the supply chains' supply to cite compliance will also be crucial to the Commission.

Further, discussions of the SCDDA by professional firms that were interviewed have been under the auspices of Environmental, Social and Governance (ESG). The ESG Guidance Manual by Kenya's Nairobi Securities Exchange (NSE) was published in November 2021 (Nairobi Securities Exchange ESG, 2021). The guide aims to improve and standardise ESG information reported by listed companies in Kenya (Nairobi Securities Exchange ESG, 2021). but also acts as a guide to the non-listed companies on integrating ESG reporting into their businesses. Basically, ESG encompasses three categories of environmental, social and governance issues. Social issues are based on the entity's relationship with its employees and other stakeholders, and include wages, diversity, inclusion, prevention of sexual harassment, workplace safety, employee training and education, employee attrition, customer relationships, consumer protection and supply chain management. Environmental concerns include usage, management and conservation of natural resources (such as energy, land, fresh water and biodiversity), reduction of carbon emissions, waste management and compliance with environmental regulations.

On their website, Roedl and Partners<sup>44</sup> discuss extensively the provisions of the SCDDA, depicting vast understanding of the law in Kenya.

Another respondent also mentioned that SCDDA is a huge topic of discussion under the IFC performance standards, particularly in companies that work on advising on environmental and social due diligence (ESDDs) to investment companies in their investment cycle.

From our research, organisations focusing on carrying out due diligence for investors in Kenya have been engaging in the discussions of the SCDDA. While carrying out due diligence for the investors, companies mainly focus on areas such as human trafficking concerns, use of child labour, minimum wages, unionisation (whether

workers are unionised), the existence of a CBA, housing allowances, and holiday allowances, among other issues. They also investigate whether the company is applying impact sourcing during their operations.<sup>45</sup> It is important to note that their investigations do not only rely on the information provided by the companies but also in court searches (on any cases in court against the companies) and ESG. In the case of any violations, this is flagged in their report. One of the issues raised on the SCDDA during the interviews was the concept of fair wages and how this is informed. In Kenya, a minimum wage is provided by the Regulation of Wages Order, as per the Kenya Gazette Supplement No. 114 of 1st July 2022, which sets the minimum wage at Kshs 15,201 (113,70 euros). It is important to note that when firms are making due diligence reports on wages, they are only bound by the minimum wage and sectoral wages. The question then is what would guide a violation of a fair wage, thus making it essential to have a guideline on what would inform the fair wage, making implementation a concern.

Respondents noted that the SCDDA is an additional impetus to the existing measures and is now not optional but mandatory, bringing all entities under obligation to carry out due diligence. Unfortunately, this is only the case for German entities and their suppliers and leaves other entities out, thus creating a need to improve the ESG principles. Nevertheless, the respondents noted that the SCDDA might provide an avenue to standardise working conditions in the Global South with those in Germany.

While discussions and knowledge of the SCDDA have occurred among some professionals and trade union officials, workers at the industry level had not yet been informed about the Act and what it provides.

Discussions of the SCDDA by the Amalgamated Union of Kenya Metal Workers (AUKMW) officials were from a conversation initiated by one union official who was doing some background information to guide this report. The union indicated that there has been much interest among its officials, especially on how it could

<sup>44</sup> Roedl and Partners is a German global professional service firm, providing legal, taxes, financial and accounting services, with around 5 000 professionals in 55 countries. It focuses on the needs of foreign direct investment and truly integrated services for private investors, international financial institutions and governmental agencies in Africa. Available at <https://www.roedl.com/about-us/locations/africa/>.

<sup>45</sup> This is to check whether entities, while employing workers, consider gender equality, people from marginalised areas, etc.

inform the activities at some of the workplaces they organise.

### 3.3.6 Perception of the SCDDA

There have been some concerns from civil societies about the SCDDA. One issue that was raised was that the Act seems to be elitist in nature. Firstly, because the awareness of the SCDDA is still lacking and discussions are only at a higher level and secondly, because the Act is meant to cover companies affiliated with Germany. That means that if the SCDDA is enforced, the standards in these companies in the automotive industries may be way better compared to other companies, yet workers would be working the same jobs.

Some respondents felt that the SCDDA might not necessarily have a broader impact if it is only targeting the German supply chains as other global supply chains would not be obliged to undertake mandatory due diligence in their operations in their supply chains.

For it to work effectively, the SCDDA has to align itself with the existing laws in Kenya. This is mainly in the context of environmental protection. Aligning itself with the realities of the Kenyan context would also mean exerting the Act through a public participation process. However, it was felt by some that the Act is very much aligned with the government commitments under NAP, and the Act can provide remedial action where national law falls short of providing a remedy. There was also an observation by the respondents that the SCDDA has aligned itself with international standards, principles and guidelines on environmental and human rights protections which would strengthen decent work for workers.

The question of sovereignty of a state was raised when the interviewee from the civil society questioned the enforcement of laws from Germany to a local entity registered in Kenya. It was also raised whether this meant that the German Act would supersede the national laws in Kenya regarding human rights and environmental protections. Some respondents felt that if German-based companies continue to invest in Kenya, there would be a need for the two countries to form an agreement that would facilitate the enforcement of the SCDDA and enhance the protections enshrined in the Act. This is also because Germany has a civil legal

jurisdiction which is different from the Kenyan context, which is common law. However, thus far, the SCDDA is not in contradiction to the national laws. It reinforces the existing laws enshrined in the bill of rights, labour, and environmental laws.

It was also noted that the reporting mechanisms are not clear. Additionally, it was pointed out that reporting of violations may not necessarily be an option for workers as the first duty is to protect jobs in the face of low employment opportunities in the country.

### 3.3.7 Factors that may hinder the implementation of the scdda

1. Kenya is a litigious country which has seen rights being improved and remedies awarded for violations. However, strategic litigation has not always delivered the desired outcomes due to its adversarial legal system and the backlog of court cases. However, there is always an opportunity to litigate environmental and labour rights violations. The cost of litigation is still high for significant sections of individuals and communities. In some lawsuits, for example, it may be necessary to summon experts such as environmental experts to testify on specific issues. Such expertise may be unavailable for the community or, where available, may be very expensive for the community to secure.
2. Labour inspections would enhance the implementation of due diligence, offering an avenue for reporting violations. However, labour inspection is not well funded and there are not enough labour inspectors. An inadequate number of state labour inspectors is one of the factors leading to a weak enforcement mechanism.
3. Institutional corruption was highlighted as one of the factors that may hinder the implementation of the SCDDA, with workers not able to access justice through complaints mechanisms not only in the Act, but also in the country's avenues to access justice.
4. Lack of awareness of the SCDDA may also hinder the reporting of violations and the reporting by the supply chains on the realities of workers' rights and other environmental obligations on risk assessment.

5. The number of employees threshold in Germany in the SCDDA of 3 000 in 2023 to 1 000 in 2024 may be exploited by entities using non-standard forms of employment, for example, workers in outsourced employment, workers with casual employment contracts, or even those misclassified as independent contractors.
6. High unemployment in Kenya may reduce the likelihood of workers reporting violations due to the fear of termination, instead of pushing for a respect of the rights enshrined in the SCDDA.
7. Lack of public awareness and understanding of the requirements of the SCDDA may hinder its operationalisation. One such factor would be a failure in the enforcement of internal processes in internal laws and policies.
8. Lack of capacity (technical, financial or legal) was highlighted by the respondents as one challenge that may hinder the enforcement and uptake of the SCDDA in Kenya. Institutional power has to be built in terms of capacity for monitoring and reporting.

### 3.3.8 Conclusions and recommendations

In conclusion, the SCDDA can potentially improve the human and environmental workers' rights in Kenya if effectively enforced and monitored. Such foreseen improvements will be improved working conditions, reduced inequalities, and safeguarding rights. The Act could also help strengthen relations between OEMs and suppliers beyond commercial discussions and bring the actors to the table for deeper engagement on sustainability, human and workers' rights, and environmental protections.

Regarding temporary workers, the SCDDA provides that temporary agency workers must be included in the calculation of the number of employees in Germany where the duration of their assignment exceeds six months (Part 1 Section 1(2)(2)). The concern is whether this will give rise to further casualisation of work providing an avenue where companies would have more workers outside this scope.

### Key recommendations

1. The complaint mechanisms should be clear, published in a publicly-accessible place to all workers, in all languages widely spoken by workers. This should also include an online portal or reporting desks so that workers can feel safe. A complaint mechanism should also include a means of reporting not only harm, but also redress.
2. Trade unions and civil societies need to be a mouth-piece in reaching relevant institutions that workers would not have access to in terms of implementing the Act, reporting violations, and so on.
3. In their advocacy, unions should also consider targeting consumers, in terms of awareness of violations of the producers of the services and goods produced by the consumers.
4. The International Labour Organisation plays a crucial role in ensuring decent work in supply chains by adopting new norms and measures. The decision to add the principle of a safe and healthy working environment to the ILO's Fundamental Principles and Rights at Work in June 2022 is highly commended as member states now have to commit to it regardless of their level of economic development and whether or not they have ratified the relevant Conventions.
5. There is a need for an index of compliance with the due diligence principles adopted by Kenya to guide investors, consumers, trade unions and civil societies.
6. There is a need to create awareness among workers, companies and the government on the SCDDA. In creating awareness, there would be a need to consider how the information is disseminated and packaged. In this regard, it would be important to ensure that grassroots organisations are aware of the SCDDA and also have a duty to create awareness of the Act.

Such grassroots organisations are trade unions and other community-based organisations. While undertaking such a measure, a SWOT (strengths, weaknesses, opportunities and threats) analysis may be necessary to map out which entities would be significant, and at what level.

7. It would be essential to have buy-in from the German Business Association (GBA) or the Kenya Association of Manufacturers (KAM) and the Federation of Kenya Employers (FKE) on the promotion of the Act.
8. Trade unions and civil society should consider financial institutions as pressure points to push companies to fully implement the Act.
9. Kenya should implement the policy measures enshrined in the National Action Plan (NAP) on business and human rights for the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs). Particularly, the introduction of a requirement for conducting human rights due diligence, including the impacts on gender, before approval of licences/permits to businesses. In addition, there should be an amendment of the Companies Act to enshrine the development of guidelines for non-financial reporting. This will ensure that there is an obligation under due diligence in all supply chains in the country.
10. Civil societies should ensure that failure to comply will attract administrative fines and consumers for a particular brand.
11. It would be prudent for professional firms to incorporate the SCDDA into the environmental and social due diligence process as part of their broader sustainable finance activities. This will serve as a new reference framework in addition to the mainstream sustainability standards

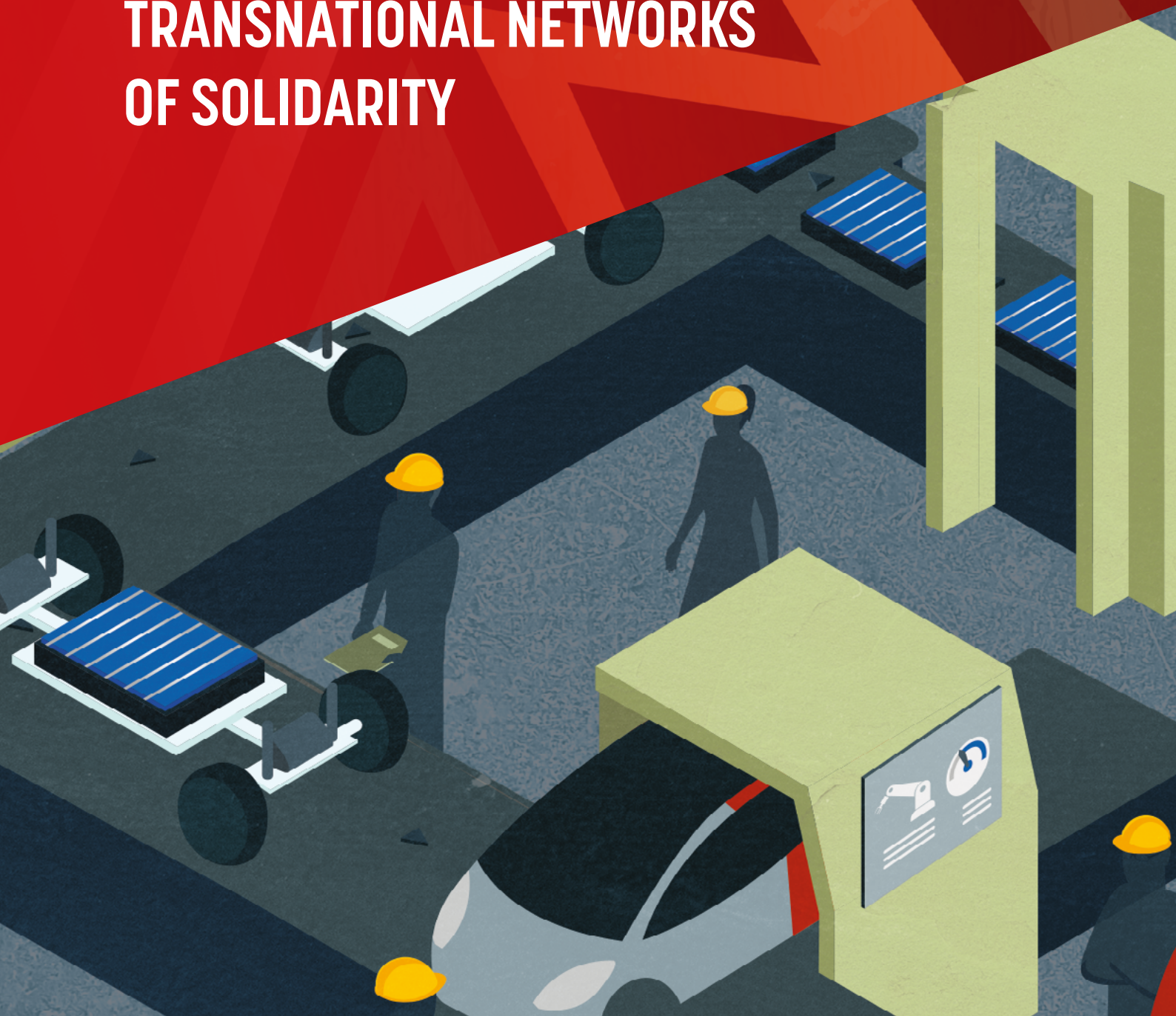
applied during the environmental and social due diligence (ESDD) process (IFC PSs, ILO Conventions/labour standards) and country-specific environmental and social-related laws and regulations.

12. There is a need to create a training session for the Amalgamated Union of Kenya Metal Workers (AUKMW) on understanding the due diligence principles, the SCDDA and accountability and remedy in global supply chains and what the considerations could be for workers and unions. This is assuming that the union will play a significant role in ensuring compliance with the SCDDA by ensuring workers in the industry report violations. The raising of awareness should not only be aimed at union level but also at shop floor level.
13. The SCDDA can provide an opportunity for trade unions to organise workers in non-standard employment and push for their inclusion in the main companies' CBA and also in the informal economy.
14. *IG Metall* trade union can play a critical role in terms of offering transnational solidarity, and also in transnational organising. This could potentially bring workers in Kenya together with workers in Germany, which could be an opportunity to push for the implementation of the SCDDA and assist with reporting.
15. Legal advice and research may not always be accessible to workers as it may be expensive. The international lawyers assisting workers can be utilised in their capacity of offering legal support in case of strategic litigation.
16. A booklet containing a summary of the SCDDA could be provided to workers to enhance their knowledge of their rights.

# 4

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## CONCLUSIONS AND RECOMMENDATIONS: USING THE SCDDA TO BUILD TRANSNATIONAL NETWORKS OF SOLIDARITY



## 4 Conclusions and Recommendations: Using the SCDDA to Build Transnational Networks of Solidarity

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The introduction of the new German Supply Chain Due Diligence Act (SCDDA) undeniably represents an important step towards the extension of global corporate social responsibility and against the still frequent violations of human, environmental and labour rights within global supply chains. First and foremost, it represents a crucial step to finally bind multinational corporations to respect obligations that were previously left to a mere voluntary initiative.

The SCDDA carries important legal and political meanings, which this study has tried to highlight. By exploring how German companies and trade unions are preparing for its implementation, and the perspective of three African countries – South Africa, Ghana and Kenya, this study is an attempt to reflect on the wide potential of this new Act, and to launch some inputs for a growing global debate.

The German case study reflects on the institutional and political structures that, on the one hand, contributed to the emergence of the Act, and on the other, will be involved in its implementation. It reports the current debate within German companies, reflects on the role works councils will play once the Act comes into force, highlights gaps and zones of uncertainty, and finally draws some conclusions on available tools for transnational union cooperation.

The three African cases – South Africa, Ghana and Kenya – serve a different purpose. They reflect the current perspective of countries in the Global South where the Act will be ‘received’: countries hosting German companies or manufacturing components for German companies. In these three cases, we investigated three main questions: whether a debate on the law has emerged; reported cases of violations that would justify or require the use of the law; and existing complaint mechanisms and risk analyses. Finally, these three cases voice recommendations on the possible use of the Act to build transnational union networks and strengthen solidarity across countries.

Overall, this study allowed us to shed light on three key aspects: 1) the potential of the SCDDA, i.e., what this law can contribute to; 2) gaps that still remain, and areas of uncertainty; and 3) what the unions would need to start using the Act as a tool to build solidarity and strengthen organising in the supply chain.

In terms of **potential contribution**, all the studies in the different countries welcome the Act as a potentially useful instrument to build trade union solidarity across companies and across countries. The Act can also help move beyond a union focus only centred around the individual company/workplace, and foster a stronger supply chain view, which would give a better idea of the interconnectedness between companies and between workers in different companies operating in the same supply chain. The Act is also welcome as a potential opportunity to standardise working conditions in the Global South. Finally, the Act is seen as a potential tool for trade unions to expand their reach and to strengthen organising in unorganised companies or among workers in non-standard employment.

As far as **gaps and areas of uncertainty** are concerned, the study highlights how mechanisms of implementation still need to be clarified. In particular, the role of works councils in Germany should be more strongly defined, as well as the complaint mechanism, that should be made clearer and accessible to all. The lack of sufficient knowledge of the supply chain, on behalf of both unions and companies, was also highlighted as a substantial gap.

In addition, the relationship between external law and local legislation in countries outside of Germany would require further exploration and clearer directives. The limited scope of the Act, i.e., the thresholds of 3 000 and 1 000 workers per company, also raises significant concerns; notably, the fear that the law will not reach out to the smaller companies in the supply chain, where violations most often occur, is still widespread.

Likewise, the fear that the Act will create an 'elite' of protected workers in German companies, while leaving out workers in companies of different ownership, was also expressed. Ultimately, the fear that imposed thresholds might induce, rather than discourage, further casualisation and outsourcing, was also raised. Finally, in the African contexts, two more concerns were expressed: the presence of widespread institutional

corruption, that might make the detection of violations particularly difficult; and the fear of termination in contexts of high unemployment, that might easily induce a trade-off between reporting violations and losing one's job.

Building on these findings, the study led to the following recommendations:

### **Key recommendations**

- Given the areas of uncertainty in Germany, and the very limited discussions on the SCDDA that have taken place in the three African cases to date, the need to provide training, information and technical instructions on the contents of the Act, its possible use and implementation, is very high. This will need to involve not only trade unions and workers, but also grassroots organisations and communities, that could also discover and denounce violations. Here, the toolbox planned by *IG Metall* can be considered as an example to discuss and to adapt to different contexts.
- Follow-up studies, including more companies once the Act is implemented, will be necessary.
- The role of IndustriALL and of Global Union Federations (GUFs), potentially acting between multinational companies and local trade unions, will be extremely important to detect and voice violations.
- Local trade unions will need support not only in terms of training sessions about the Act, but also with regard to resources needed to properly map supply chains and working conditions in companies they do not yet organise.
- Complaint mechanisms should be made clear and standardised, to be a proper reference for workers – common reporting lines or desks where workers can feel safe should be considered.
- The approach of *IG Metall* to promote networking with partner trade unions is very welcome. Transnational company networks can therefore be used as a direct instrument to build solidarity and union power along the supply chain.



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The background of the page is a complex, abstract geometric pattern. It consists of various overlapping shapes, including triangles, rectangles, and irregular polygons, all rendered in different shades of orange, yellow, and light brown. The pattern is dense and layered, creating a sense of depth and movement. The word "APPENDIX" is printed in a clean, white, sans-serif font, positioned in the upper left quadrant of the page. The overall aesthetic is modern and graphic.

# APPENDIX

## Appendix 1 – Suppliers to OEMs (NAACAM members)

Member Company Name	Tier	Local/MNC	German ownership	Supply
Acoustex Trim	1	Local		Yes
Adient South Africa (Pty) Ltd	1	MNC		Yes
ADR Distributors South Africa (Pty) Ltd	3	Local		Yes
Advics	1	MNC		Yes
Alfred Teves Brakes Systems (Pty) Ltd	2	Local		
Atlantis Foundries (Pty) Ltd	1	MNC	German	Yes
Aunde South Africa (Pty) Ltd	2	MNC	German	Yes
Auria	1	MNC		Yes
Auto Industrial Group	1 & 2	Local		
Auto X (Pty) Ltd	1	Local		
Autoliv Southern Africa (Pty) Ltd	1 & 2	MNC		Yes
Automould	1, 2 & 3	Local		Yes
Autoneum	1	MNC		Yes
Aveng Trident Steel (Pty) Ltd	1, 2 & 3	Local		Indirectly
Axalta Plascon	1	MNC		Yes
BASF South Africa (Pty) Ltd	1 & 2	MNC	German	Yes
Benteler South Africa (Pty) Ltd	1 & 2	MNC	German	Yes
Bleistahl Manufacturing South Africa (Pty) Ltd	1 & 2	MNC	German	Yes
Borbet SA (Pty) Ltd	1	MNC	German	Yes
Bosal Afrika (Pty) Ltd	1	MNC		Yes
Boysen Exhaust Technology RSA (Pty) Ltd	1	MNC		Yes
Braceable	1 & 2	Local		
Bridgestone South Africa (Pty) Ltd	1	MNC		
Brink Towing Systems (Pty) Ltd	1	Local		Yes
C & J Services	1 & 2	Local		
Capewell South Africa (Pty) Ltd	2	Local		
Caravelle Automotive Carpets	1	Local		Yes
Cataler SA (Pty) Ltd	1	MNC		
CGI Creative Graphics International	1 & 2	MNC		Yes
Columbus	3	Local		
Continental Tyre SA (Pty) Ltd	1	MNC	German	Yes
Corning Products South Africa (Pty) Ltd	3	MNC		
CRH - Africa Automotive (Pty) Ltd	2	Local		Yes
D & B Interiors	1	MNC	German	Yes
Daliff	2	Local		
Dask	1	Local		
Delta Automotive	1	Local		Yes
Donaldson Filtration Systems (Pty) Ltd	1	MNC		Yes
Driv Incorporated	1 & 2	MNC		
Dynafoam Converters	1 & 2	Local		Yes
East Cape Manufacturing	2	Local		
Ebor Automotive Systems (Pty) Ltd	1 & 2	Local		Yes
Elringklinger South Africa (Pty) Ltd	1	MNC	German	Yes

Member Company Name	Tier	Local/MNC	German ownership	Supply
Expert Automotive Trim	1 & 2	Local		
Faurecia	1 & 2	MNC		Yes
Feltex Automotive Trim	1 & 2	Local		Yes
Feltex Fehrer	1 & 2	Local		Yes
Feltex Foam	1, 2 & 3	Local		Yes
First National Battery	1	Local		
Formex Industries (Pty) Ltd	1 & 2	Local		Yes
G.U.D Holdings (Pty) Ltd	1 & 2	Local		Yes
Gabriel	2	MNC		
George Stott Automotive	1	Local		
Goodyear	1	MNC		
Grupo Antolin SA (Pty) Ltd	1 & 2	MNC		Yes
Hansen Engineering (Pty) Ltd	2 & 3	Local		
Hellerman Tyton (Pty) Ltd	1 & 2	MNC	German	Yes
Henkel South Africa (Pty) Ltd	1 & 2	MNC	German	Yes
Heraeus South Africa (Pty) Ltd	3	MNC	German	Yes
Hesto Harnesses	1	Local		
Hudson Rubber	2	Local		
Hulamin Operations	2 & 3	Local		Indirectly
Ikigai Automotive Components (Pty) Ltd	1	Local		
Isringhausen of SA (Pty) Ltd	1 & 2	MNC	German	Yes
Jaschke Metal Engineering CC	2 & 3	Local		
Jendamark Automation (Pty) Ltd	2	MNC		Yes
John Moffat Prolock (Pty) Ltd	2	Local		
Johnson Matthey (Pty) Ltd	2	MNC		Yes
KLT	1	MNC		
Kromberg & Schubert	1	MNC		Yes
Lear Corporation	1	MNC		Yes
Linde-Wiemann RSA (Pty) Ltd	1	MNC	German	Yes
Lumotech (Pty) Ltd	1 & 2	Local		Yes
M A Automotive and Die (Pty) Ltd	1	MNC		Yes
Mahle Behr SA (Pty) Ltd	1	MNC	German	Yes
Maxe	1	Local		
Maxion Wheels (Pty) Ltd	1	MNC		
MCR Manufacturing	2	Local		
Microfinish South Africa (Pty) Ltd	1 & 2	Local		
MSSL Motherson	1	MNC		Yes
MW Wheels	1 & 2	MNC		Yes
Naickers Toolmakers	2	Local		
Natal Gaskets	2	Local		
NGK Ceramics South Africa (Pty) Ltd	3	MNC		
Ngkntk South Africa (Pty) Ltd	1	MNC		
PlasticOmnium	1	MNC		Yes
Polytec	1	MNC		Yes
Purem	1 & 2	MNC		Yes

Member Company Name	Tier	Local/MNC	German ownership	Supply
Qplas (Pty) Ltd	1	Local		Yes
Ramsay Engineering (Pty) Ltd	1 & 2	Local		
Rand York (Pty) Ltd	1	Local		
Rehau Polymer	1	MNC	German	Yes
RG Brose (Pty) Ltd	1	MNC	German	Yes
Robert Bosch South Africa (Pty) Ltd	1	MNC	German	Yes
Schaeffler South Africa (Pty) Ltd	1	MNC	German	Yes
Securi-lid	1	Local		
Selago Industries (Pty) Ltd	2 & 3	Local		
Senior Flexonics (Pty) Ltd	1 & 2	MNC		Yes
Shatterprufe	1	Local		Yes
Sintered Metal Products (Pty) Ltd	2	Local		
SJM Flex SA (Pty) Ltd	2	MNC		Yes
SMA Engineering SA (Pty) Ltd	1	MNC		Yes
Smiths Manufacturing (Pty) Ltd	1 & 2	Local		
Sodecia Automotive Pretoria (Pty) Ltd	1	MNC		Yes
SP Automotive Profile Sealing Systems SA (Pty) Ltd	1	MNC		
SP Metal Forgings Uitenhage (Pty) Ltd	1 & 2	Local		
SP Metal Forgings Boksburg (Pty) Ltd	1 & 2	Local		
Spicer Axle SA (Pty) Ltd	1	MNC		Yes
Steelbest	1 & 2	Local		Yes
Sumitomo	1	MNC		
Supreme Spring	1	Local		
Takata South Africa (Pty) Ltd	1	MNC		
TE Connectivity	2	MNC		
Technique Manufacturing Corporation CC	1 & 2	Local		
Tenneco Automotive Holdings SA (Pty) Ltd	1	MNC		Yes
Thai Summit	1	MNC		
Thekwiniwire South Africa (Pty) Ltd	2	Local		
TNV Plastics	3	MNC		
Toyota Boshoku	1	MNC		
Umicore Catalyst SA (Pty) Ltd	1 & 2	MNC	German	Yes
Unitrade 745 (Pty) Ltd	2	Local		
Vacuform	1 & 2	Local		
Venture Otto SA (Pty) Ltd	1	Local		
AdventureAutomotive Products (Pty) Ltd	1	Local		
Wabco South Africa (Pty) Ltd	1	MNC	German	Yes
Webroy	2	Local		
Weidplas South Africa (Pty) Ltd	1	MNC		Yes
Wekaba Engineering	1 & 2	Local		
Widney Transport	1	Local		
WRC Automotive	2 & 3	Local		
Yangfeng South Africa Automotive Interiors Systems (Pty) Ltd	1	MNC		Yes
ZF Lemforder (Pty) Ltd	1	MNC	German	Yes
ZF Passive Safety (Pty) Ltd	1	MNC	German	Yes



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