

# Trade unions, NGOs, and corporate codes of conduct

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### Abstract

*The proliferation of corporate codes of conduct generates both alliance and tension between trade unions and NGOs that deal with workers' rights in the global economy. Alliance, because trade unions and NGOs share a common desire to halt abusive behaviour by multinational companies and a broader goal of checking corporate power in the global economy. Tension, because unions and NGOs have differing institutional interests, different analyses of problems and potential solutions, and different ways of thinking and talking about social justice in the global economy. There are fears that codes of conduct may be used to undermine effective labour law enforcement by governmental authorities and undermine workers' power in trade unions. The substance behind the rhetoric on this new generation of corporate codes of conduct is certainly open to question. However, this paper argues that, given unions' weak presence in the global assembly line and the rapid-response capabilities of many NGOs, such codes are a valuable asset. Trade unions and NGOs still have more in common with each other than either has with corporations, governments, or international organisations that see free trade and free-flowing capital as the solution to low labour standards. But both need to be clear-eyed about their differences and their proper roles as they navigate the opportunities and challenges that lie ahead.*

### A 'third way' approach to labour rights?

Corporate codes of conduct on workers' rights and labour standards hold out a 'third way' to promote labour rights in the global economy. Advocates argue that codes of conduct can harness the market power of informed consumers to halt abuses against workers in developing countries. Many supporters see such codes as a civil society alternative to 'first way' government regulation or 'second way' trade union organising and collective bargaining to protect workers' rights.

Governments cannot possibly inspect every workplace and catch every lawbreaker, or so goes the conventional argument. And trade unions face a worldwide crisis of organising and bargaining, especially in sweatshop industries. Codes of conduct offer a new option through private-sector self-regulation using civil society vigilance. And like cereal boxes on a supermarket aisle, a daunting variety of workers' rights codes of conduct has entered the public policy marketplace since 1999—the Fair Labor Association (FLA), the Workers' Rights Consortium (WRC), Social Accountability 8000 (SA8000), the Ethical Trading Initiative (ETI), the Clean Clothes Campaign (CCC), and many more.

These 'stakeholder' codes involve a combination of company officials, trade unionists, human rights activists, religious leaders, consumer and community organisations, and other social forces. They

succeed an earlier generation of company codes of conduct issued by Levi's, Reebok, Nike, Gap, and others, which collapsed because of the inherent lack of credibility in corporate self-regulation.

But like 'third way' politics generally, with its talk of putting a human face on free-market efficiencies, the substance behind the rhetoric on this new generation of corporate codes of conduct is open to question. Are consumer awareness and potential reaction enough to punish those who violate workers' rights or to reward those who respect them? Can private policing, even by the best-intentioned NGOs, really protect workers' rights and raise labour standards in a sustained way? Perhaps most challenging, will a rush to corporate codes of conduct undermine effective labour law enforcement by governmental authorities and undermine workers' power in trade unions?

The proliferation of corporate codes of conduct generates both opportunities for alliance and sources of tension between trade unions and NGOs that deal with workers' rights in the global economy. Alliance, because trade unions and NGOs share a common desire to halt abusive behaviour by multinational companies and a broader goal of checking corporate power in the global economy. Tension, because unions and NGOs have differing institutional interests, different analyses of problems and potential solutions, and different ways of thinking and talking about social justice in the global economy.

### **Alliances ...**

The potential for alliances between unions and NGOs is strongest when they both target the most virulent forms of exploitation, like child labour, gender discrimination, unsafe working conditions, and the firing, jailing, or killing of union organisers in factories in developing countries. A global supply chain of subsidiaries, contractors, subcontractors, and subsubcontractors has taken shape in export processing zones (EPZs) around the world. Employers in these enclaves exploit cheap, abundant, and usually female labour in what is often called a global assembly line.

Many of these factories serve household-name companies, whose strongest marketing tool is their image, often conveyed by a logo, a slogan, or a famous spokesperson. But a company's image can also become its Achilles' heel if consumers are made aware of abusive practices in factories that produce the goods they purchase. In the USA, trade unions and NGOs have collaborated in consumer awareness campaigns targeting Nike, Gap, Wal-Mart, Disney, Liz Claiborne and other well-known firms, as well as personalities like TV star Kathie Lee Jordan (with a big splash) and basketball star Michael Jordan (with barely a ripple).

UNITE, the US apparel workers' union, first joined the International Labor Rights Fund, the Lawyers' Committee for Human Rights, the Consumer Federation of America, and other USbased NGOs along with Nike, Reebok, Levi Strauss, Liz Claiborne, and other firms in an effort sponsored by the Clinton administration and then Labor Secretary Robert Reich called the Apparel Industry Partnership. But UNITE pulled out of the partnership's Fair Labor Association (FLA) when union officials thought the NGOs were cutting what they considered a bad deal behind their back-a deal with allegedly weak language and poor enforcement measures.

While they left the FLA, UNITE and other union officials still joined officials from Toys 'R' Us, Avon Products, and the Dole Food Company in the SA8000 programme, which cheerfully proclaims that 'being socially responsible is as easy as 1, 2, 3: adopt high standards, implement your policy, and measure your performance'.

European trade union, NGO, and corporate spokespersons make up Europe's ETI and CCC campaigns. Students initiated the WRC linking trade unions, firms, and universities in a code of conduct requiring disclosure of factories making goods bearing the university's name. A myriad social 'labelling' and product-specific codes for soccer balls, toys, coffee, carpets, and so on has also taken shape, usually with trade union, NGO, and enterprise involvement.

Some trade unions are incorporating NGO concerns into their own advocacy programmes in a move toward a 'social unionism' that moves beyond purely bread-and-butter business unionism. Likewise, NGOs are becoming increasingly sensitised to labour concerns. But shared goals, strategies, and tasks do not erase differences. The new movement for corporate codes of conduct has also generated tensions between unions and NGOs that must be addressed squarely in the face.

### **... and tensions**

Some trade unionists believe in a 'separate-but-cordial' relationship with NGOs so as not to dilute labour's goals with those of other groups. Others are more open to coalitions, but think unions should have a 'first-among-equals' role because they are the most universal, representative, membership-based organisations, while NGOs are all over the lot in terms of membership accountability.

NGOs question leadership claims by the labour movement. They prefer a more horizontal 'one-among-equals' arrangement for coalition work. Many NGOs see themselves as the focus of a new emphasis on 'civil society' in international discourse that should give them equal status with trade union movements. And they point out that union formation is notably lacking among informal-sector workers, women workers, and export-oriented factories where the effects of globalisation are most pernicious and where NGOs are most active.

But with stable organisations and dues-paying members, unions have a ready answer to the question—who do you represent? One can quibble over delegate elections versus direct elections of union leaders, but as elected leaders their capacity to speak for their members is accepted. The situation for NGOs is far more complex. No single organisation speaks authoritatively for the NGO community. NGOs are troubled by the question 'who elected you?'—a query sometimes put by trade unionists. Some NGOs have a membership base and elect board members and officials, but many more are answerable only to a board of directors. And in contrast to regular union dues, NGO sources of funding are often sporadic and crisis driven, and thus NGOs often tailor their projects to those that funders will support.

Elements of class antipathies also come into play. Many NGOs are composed mainly of middle- and upper-class intellectuals and professionals with a lingering perception of labour unions as a special interest group devoted to protecting their own members' jobs and wages at the expense of the larger

society. In turn, unionists, including labour's own intellectuals, are often suspicious of 'do-gooders' in non-labour groups who presume to tell the labour movement what it ought to be doing without ever having passed through the crucible of an organising campaign, hard-nosed collective bargaining, or even a strike in order to understand what workers are up against.

Even the term 'NGO' is unhelpfully vague. While it usually implies the side of the angels, NGOs range across a wide spectrum of funding sources, membership involvement, and willingness to confront corporate power. 'Civil society' is another concept that evokes images of earnest, engaged citizens, when in reality it includes an infinity of left, centre, right, and fringe groups that may or may not live up to the ideals imputed to the term.

In the end, the legitimacy of NGOs rests on the quality of their work and on their effectiveness as advocates. Many have achieved well-deserved respect and authority among governments and within society precisely because of the quality of their research, reporting, and advocacy. Still, many trade unionists believe that while NGOs may rightly take the lead on issues like landmines, torture, genocide, the international criminal court, and other human rights concerns, labour should lead on workers' rights in the global trading system.

### **Hidden agenda, Northern agenda**

Each of the new 'stakeholder' codes of conduct—the FLA and SA8000—holds itself out as a model, jealously promoting its mission and criticising, openly or implicitly, efforts under rival codes. In addition, most unions continue to see strong laws effectively enforced, along with self-organisation and collective bargaining, as the best ways to advance workers' interests. For them, the 'third way' of corporate codes of conduct should be seen not as an alternative but rather as a supplement to labour law enforcement and collective bargaining.

Many trade unionists suspect that behind the new enthusiasm for codes of conduct and related monitoring plans is an agenda aimed at replacing altogether the bargaining and representational role of trade unions and their impact on the political arena. Some see the real goal of corporate backers of codes of conduct as the destruction of strong, class-based workers' organisations that can organise and bargain and back up their demands with the power to strike. Replacing them would be scattered, small, resource-starved NGO monitors whose only clout lies in ad hoc public relations campaigns of which consumers will soon grow tired.

Workers, unions, and NGOs in many developing countries have additional criticisms. For many of them, the movement for codes of conduct is a peculiarly Northern phenomenon. Some Northern advocates have been embarrassed by reports that codes of conduct long in the making at home took years to be translated into the languages of workers in developing countries covered by the codes. And even if they have been translated, some codes have been rarely disseminated to workers at large.

The FLA and SA8000 have been fashioned and refined in Washington, DC and New York, not in Tegucigalpa and Jakarta. The ETI and CCC are driven from London and Amsterdam, not from São Paulo

and Nairobi. The WRC had to scramble to mend fences when claims of extensive consultation with developing country NGOs amounted, under examination, to just a few phone calls and e-mail exchanges.

Many Northern advocates adamantly oppose a monitoring role for international accounting firms or other corporate-oriented social auditors. Some in the South oppose monitoring even by Northern-based NGOs or unions, insisting that only indigenous, locally based NGOs and unions should monitor codes of conduct. But some of the early monitoring experiences using this model only reinforced tensions between unions and NGOs. It turns out that problems of experience, knowledge, legitimacy, capacity, resources, stability, hidden agendas, turf rivalries, and others marking NGOs in the North afflict NGOs in developing countries, too.

### **Monitoring challenge**

Two mid-1990s cases, well known among activists, illustrate labour—NGO tensions and the less-than-ideal effects of 'indigenous' monitoring. They involved the Mandarin apparel factory (Gap supplier) in El Salvador and the Kimi factory (a source for many large US retail companies) in Honduras. At first, when workers supporting unionisation were fired, US unions and NGOs launched publicity campaigns in the USA that helped get many workers' jobs back. These efforts also led to improvements in some of the worst working conditions, such as forced pregnancy testing, denial of washroom privileges, and poor ventilation.

But follow-up monitoring activity by local NGOs sparked suspicions that the NGOs were supplanting the unions' role as worker representatives by discussing wages and working conditions with factory managers. Union leaders were also worried that having NGOs apply codes of conduct exempted government labour inspectors from enforcing national labour laws.

At Mandarin, the original union was challenged by a new, larger rival that it viewed as a company-sponsored ploy using codes of conduct as a cover. Mark Anner, an American living in El Salvador who was trusted by everyone (he was nearly killed in a death-squad bombing of a union office several years earlier), became a de facto mediator working to disentangle proper roles for unions and NGOs at the factory before the monitoring programme could get traction.<sup>1</sup>

At Kimi a respected medical doctor with many years of experience fighting military abuses in Honduras investigated workers' complaints about wage violations and unfair treatment by supervisors. On paper, this reflected the monitoring model most often promoted by NGO advocates in the North: a local human rights activist who speaks the language and is trusted by workers, and not someone from a remotely based NGO or a corporate accounting firm. First World NGOs eagerly awaited the chance to launch a new pressure campaign based on findings by a 'model' monitoring mechanism. But the trouble was that this human rights leader had no experience in collective bargaining or in workplace issues. He emerged from a meeting with management agreeing that workers had to increase productivity and work more diligently before wages could be improved and before supervisors could ease their discipline. Management snowed him with arguments that trade unionists are used to hearing and refuting, but which were new and plausible to him. The union at Kimi then focused on the collective agreement and

on enforcing Honduran labour laws, not the code of conduct the company had agreed to follow. The Kimi factory closed in 2000.

### **Circular firing squad**

Even within the NGO community there are disputes about the adequacy of codes of conduct and polemics that sometimes resemble a circular firing squad. Thus, for example, NGOs involved in the FLA split over that mechanism's monitoring system and its approach to 'living wage' and country eligibility requirements. Denouncing the FLA and the NGOs that are still part of it has become a standard agenda item for other NGOs, even when many of them are involved in alternative schemes (like SA8000 or the ETI) that are not fundamentally different or when they themselves are accused by yet other NGOs of being sell-outs to corporate power. Reminiscent of left-sectarian politics, charges fly that the FLA is dominated by corporations; that SA8000 is a marketing ploy; that the ETI and the CCC are reporting systems with no enforcement; or that the WRC is a 'gotcha' scheme with no plan for engaging producers in a systematic change of behaviour. At the end of this chain of denunciation are NGOs that stake out an absolute no-compromise position. They see their role as keeping the heat on corporations through public exposure and denunciation rather than through negotiation for better codes of conduct, since any negotiation requires some measure of compromise with the hated corporate adversary.

### **Finding a balance**

In many ways, these disputes about what is a reasonable compromise and what is a sell-out reflect similar disputes about labour clauses in trade agreements: whether to compromise on 'side agreements' or other instruments that may not contain every goal, or to denounce any compromise as a sell-out if it fails to achieve every goal. But at this still-early stage of experimentation with new labour—NGO alliances, more patience and less vitriol are in order. None of the codes or monitoring systems has been fully implemented. At this stage, allowing for a variety of experiments and approaches to see what works and what doesn't, without falling into mutual recriminations, is a more fruitful approach for a labour—NGO alliance than denouncing some perceived weakness in each others' language or monitoring procedures.

To advance workers' rights in the global economy requires strong regulation and enforcement at both the national and the international level. Domestic labour law reform is key. So is an expanded role for the ILO, as well as new linkages of labour rights to trade agreements. Trade sanctions against abusive countries and firms are an important tool. Workers' rights also rely on strong trade unions that can organise, bargain, and strike effectively.

Given the weak presence of unions in the global assembly line and the rapid-response capabilities of many NGOs, especially when compared with union bureaucracies, codes of conduct are a valuable asset. The challenge is to find the right balance of national and international legal mechanisms, trade union power, and codes of conduct. The institutional tensions and differences examined here complicate efforts by unions and NGOs to work together for social justice in the global economy. But problems should not block progress. The two communities still have more in common with each other than either does with corporations, governments, or international organisations that see free trade and

free-flowing capital as the solution to low labour standards. At the same time, unions and NGOs need to be clear-eyed about their differences and their proper roles as they navigate the opportunities and challenges that lie ahead.

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### **Note**

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### **Notes**

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<sup>1</sup> Mark Anner is also a contributor to this double issue of *Development in Practice*. See his article 'Building bridges across a double divide: alliances between US and Latin American labour and NGOs', co-written with Peter Evans.