

CORPORATE SOCIAL RESPONSIBILITY AND WORKERS' RIGHTS

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Corporate social responsibility (CSR) brings an important dimension to the global economy. CSR can enhance human rights, labor rights, and labor standards in the workplace by joining consumer power and socially responsible business leadership—not just leadership in Nike headquarters in Oregon or Levi Strauss headquarters in California, but leadership in trading house headquarters in Taiwan and Hong Kong, and leadership at the factory level in Dongguan and Shenzhen.

Ten years ago, I would not have said this. I viewed corporate social responsibility and corporate codes of conduct as public relations maneuvers to pacify concerned consumers. Behind a façade of social responsibility, profits always trumped social concerns. CSR was only a fig leaf hiding abusive treatment of workers.

But in recent years some concrete, positive results from effectively applied CSR programs convinced me of their value. In Mexico in 2001, workers at the Korean-owned KukDong sportswear factory succeeded in replacing a management and government-dominated trade union with a democratic union of the workers' choice. Compliance officials from Nike and Reebok, two of the largest buyers, joined forces with the Fair Labor Association (FLA) and the Workers Rights Consortium (WRC) enforcing their codes of conduct to achieve this result.

Important help also came from a Mexican non-governmental organization, the Worker Support Center (*Centro de Apoyo al Trabajadora*, CAT), and from a Korean NGO, the Korea House of International Solidarity (KHIS). KHIS played a critical role by mediating and bridging the “culture gap” between the Korean management and Mexican workers. Independent evaluations by the

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International Labor Rights Fund (ILRF) and the monitoring group Verité also contributed to this positive outcome.¹

In Sri Lanka in 2003, I visited factories and trade union offices where workers enjoyed democratic unions with good collective agreements. Union representatives told me they achieved these goals thanks to intervention by brand name buyers implementing their codes of conduct with local factory managers. In one key case at the Jaqalanka Ltd. sportswear factory, collaboration among trade unions, the Sri Lankan NGO Center for Policy Alternatives, and the U.S.-based Fair Labor Association contributed to workers' successful organizing efforts.²

I. TWENTY YEARS OF FAILURE

I drew my earlier critical analysis from practice. In the mid-1990s, twenty years of experience with corporate codes of conduct had shown few results. The Sullivan Principles of the 1970s and 80s, a code of conduct for U.S. firms in South Africa, had no apparent effect on the apartheid regime there. United States companies signed the Sullivan Principles out of concern with potential adverse reaction by consumers. Signing the Sullivan Principles allowed firms to continue profiting from operations in racist South Africa underneath a veneer of social responsibility. In the end, only strong international economic sanctions, backing the liberation struggle of the South African people, brought down the apartheid system.³

In 1976, following dramatic exposés of American corporations' involvement in plots against the democratically-elected socialist government of Chile,⁴ major international agencies fashioned codes of conduct for multinational enterprises. The United Nations, the Organization for Economic Cooperation and Development (OECD),

1. See Jeff Hermanson, "Global Corporations, Global Campaigns: The Struggle for Justice at Kukdong International in Mexico," unpublished paper presented to Cornell seminar on labor revitalization, April 6, 2004 (on file with author); Jeremy Blasi, *Kukdong: A Case of Effective Labor Standards Enforcement*, "Henning Center for International Labor Relations, UC Berkeley, available at <http://henningcenter.berkeley.edu/gateway/kukdong.html>.

2. See Centre for Policy Alternatives, *Jaqalanka Limited and Free Trade Zone Workers Union (FTZWU) Dispute Settlement Process* (Progress Report from Centre for Policy Alternatives, June 28, 2004), at http://www.cpalanka.org/research_papers/Jaqalanka2.doc; *Jaqalanka, Free Trade Zone Workers Union strike "fair labour" deal*, DAILY MIRROR EDITION, Dec. 11, 2006, <http://www.dailymirror.lk/2003/10/22/ft/6.asp>.

3. See Jorge Perez-Lopez, *Promoting International Respect for Worker Rights through Business Codes of Conduct*, 17 FORDHAM INT'L L.J. 1 (1993).

4. See *Multinational Corporations and United States Foreign Policy: Hearings before the Subcomm. on Multinational Corporations of the Senate Comm. On Foreign Relations (the "Church Committee")*, 94th Cong., 1st sess., 381-86 (1975).

and the International Labour Organization (ILO) proposed declarations and guidelines to protect workers' rights, among other goals.⁵

The United States blocked adoption of the UN code. The OECD adopted its Guidelines for Multinational Enterprises and the ILO adopted its Tripartite Declaration of Principles Concerning Multinational Enterprises. However, these instruments had no apparent effect on corporate behavior. Complaints brought consultations among diplomatic "contact points," as they were called. But these officials took no action against companies that violated workers' rights. Indeed, complaints could not even be called "complaints." They had to be "requests for clarification" (OECD) or "requests for interpretation" (ILO), and "requesters" could not name the corporations that committed violations.⁶

II. "EXTERNAL" AND "INTERNAL" CODES OF CONDUCT

The Sullivan Principles and intergovernmental codes like those of the OECD and ILO can be called "external" codes of conduct. They were developed outside the corporation and presented to management for promises to comply with the code. They showed few results. However, civil society continued campaigning in the media to expose child labor, forced labor, deadly working conditions, assassinations of worker organizers and other abuses. These stories mobilized public opinion against corporations, requiring a new response.

In the late 1980s and early 1990s, several brand-name companies developed their own "internal" codes of conduct. Reebok, Levi's, Nike, J.C. Penney, and others, for example, announced that supplier firms in their global production chain would have to abide by their internal company codes or face loss of orders. The brands said they

5. See *Draft United Nations Code of Conduct on Transnational Corporations*, May 1983, 23 ILM 626 (1984); Organisation for Economic Co-operation and Development, *Guidelines for Multinational Enterprises* (1976, updated in 2000), available at http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html; International Labour Organization, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977), available at <http://www.ilo.org/public/english/employment/multi/download/english.pdf>. For extended discussion, see David Weissbrodt & Muria Kruger, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, 97 AM. J. INT'L. L. 901 (2003).

6. See Trade Union Advisory Committee (TUAC), *A Users' Guide for Trade Unionists to the OECD Guidelines for Multinational Enterprises*, available at http://www.tuac.org/en/public/docs/00/00/00/67/document_doc.phtml.

would take responsibility themselves for monitoring and enforcing their codes.

Levi Strauss & Co. and Reebok Corp. were in the forefront of this movement for internal, corporate-sponsored codes of conduct. They reviewed the UN's Universal Declaration of Human Rights, ILO Conventions, and other international human rights instruments in formulating their codes. They established monitoring and enforcement systems with detailed questionnaires on practices in foreign supplier plants, surprise visits by auditors, and reviews by company officials charged with enforcing the code.⁷

III. THE FOX AND HENHOUSE PROBLEM

Levi's and Reebok did a good job implementing their internal codes of conduct. However, internal codes had inherent weaknesses. Sourcing from hundreds, even thousands of factories around the globe, even the most diligent CSR-conscious company could not guard against labor abuses in every one of its supplier factories. Critics could always find supplier plants with child labor, unsafe conditions, workers fired for trade union action, and even worse abuses. Exposés continued in the media, creating a strong impression of hypocrisy and failure of internal corporate codes of conduct.⁸

Companies' monitoring and enforcing their own codes of conduct led inevitably to charges that the fox was monitoring the henhouse. Critics argued that management would sooner cover up abuses than expose them to public scrutiny. The demand for independent monitoring and verification, independent of corporate control, became irresistible.⁹

7. For extensive discussion of the foregoing, see Lance Compa & Tashia Hinchliffe-Daricarrere, *Enforcing International Labor Rights Through Corporate Code of Conduct*, 33 COLUM. J. TRANSNATIONAL L. 663 (1995).

8. See, e.g., Robert Collier, *Pressure Mounts on U.S. Apparel Industry; Saipan lawsuits boost drive for conduct code*, SAN FRANCISCO CHRON., Feb. 15, 1999, at A1, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/1999/02/15/MN20657.DTL>; William J. Holstein et al., *Santa's Sweatshop*, U.S. NEWS & WORLD REPORT, Dec. 16, 1996, at 50, available at http://www.usnews.com/usnews/biztech/articles/961216/archive_035166_7.htm.

9. See Mark B. Baker, *Private Codes of Conduct: Should the Fox Guard the Henhouse?*, 24 U. MIAMI INTER-AM. L. REV. 399 (1993); Robert J. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: The limits and possibilities of promoting international labor rights through private initiatives*, 30 L. & POL'Y INT'L BUS. 111 (1998); David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT'L L. 931 (Summer 2004).

IV. THE NEW "STAKEHOLDER" CODES OF CONDUCT

Today a new generation of codes called "multi-stakeholder" initiatives has appeared. Companies, unions, human rights groups, community and development organizations, and other NGOs participate in formulating a code of conduct. These multi-stakeholder codes of conduct on workers' rights contain provisions on monitoring, verification, certification of supplier factories, enforcement mechanisms, and transparency. Among the most prominent are the Fair Labor Association (FLA), Worker Rights Consortium (WRC), Social Accountability International (SAI), Ethical Trading Initiative (ETI), Clean Clothes Campaign (CCC), and Worldwide Responsible Apparel Production (WRAP).¹⁰

The differences among these groups are too detailed for this short paper. So are their often sharp rivalries, jealousies, and criticisms aimed at one another. Under some of these plans, monitoring, verification, and certification are carried out by Northern "social auditing" firms, some of them simply new divisions of traditional financial auditing companies like PricewaterhouseCoopers. In others, Southern non-governmental organizations are involved in code enforcement. The codes have different degrees of transparency and public reporting of their findings. Some contain "living wage" provisions, while others do not.

Despite their differences, all these models create a dynamic of dialogue among brand-name buyers, factory managers, trade unions, NGOs, and other social actors. While some of the codes call for cancellation of purchasing contracts with supplier factories that violate the code of conduct, even these "hard" systems join their "soft" counterparts in seeking improvement and compliance, rather than cutting off business and hurting the workers they are trying to help. In fairness, such contract cancellation should only come after providing sufficient notice and opportunity for correction.

V. PROBLEM: THE "NORTHERN" ANGLE

One problem with CSR and codes of conduct is that they are mostly a Northern phenomenon. The Fair Labor Association, Worker Rights Consortium, and Social Accountability International have been fashioned and refined in Washington, D.C., and New York,

10. See Web sites respectively at <http://www.fairlabor.org>; <http://www.workersrights.org>; <http://www.sa-intl.org>; <http://www.ethicaltrade.org>; <http://www.cleanclothes.org>; www.wrapapparel.org.

not in Shanghai and Sao Paulo. The Ethical Trading Initiative and the Clean Clothes Campaign are driven from London and Amsterdam, not from Jakarta and Nairobi.

To be effective, CSR needs involvement and commitment from developing country business leaders, trade unionists, and NGOs. This is not a reason to turn away from CSR models that have failed to involve them so far, or done so only partially. It is a reason to bring social actors in developing countries into the process of developing and strengthening CSR programs.¹¹

VI. A FINAL CAUTION: CSR MUST SUPPLEMENT, NOT REPLACE, LABOR LAWS AND COLLECTIVE BARGAINING

CSR is a valuable backstop when national governments falter at adopting and enforcing strong national and international labor standards. Governments cannot possibly inspect every workplace and catch every lawbreaker.¹² CSR can also help when workers cannot help themselves through collective bargaining. Trade unions face a worldwide crisis of organizing and bargaining. Workers struggle, often against great odds, to build unions in many of the most "globalized" sectors of production and commerce such as agriculture, apparel, and electronics. They make some breakthroughs, but most workers in these sectors are still without organizations to defend them and bargain on their behalf.

Codes of conduct offer a new way to advance workers' rights through private sector self-regulation using civil society vigilance, consumer buying power, and socially responsible business leadership. But human rights advocates and business promoters of CSR must keep their eyes open to a wider context. CSR can make valuable contributions to workers' rights, but CSR by itself is not enough.

A platform stands on three legs. On one leg or two, it topples. CSR can only create a stable foundation for workers' rights with two other legs: 1) strong laws strongly enforced by government authorities, and 2) strong, democratic trade unions where workers can improve conditions through self-organization and collective bargaining.

Focusing on CSR as the solution to workers' rights violations could undermine effective labor law enforcement by governmental

11. A special edition of the Oxfam journal *Development in Practice* contains many articles speaking to these themes; see 14 DEVELOPMENT IN PRACTICE issue nos. 1 & 2 (Feb. 2004).

12. As U.S. labor law scholars and practitioners well know, this is true for the United States as well as for developing countries. See, e.g., Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards* (2000), available at <http://www.hrw.org/reports/2000/uslabor>.

authorities and the representational role of trade unions. One may well ask: is the real goal of some corporate backers of codes of conduct the prevention of strong, class-based workers' organizations that can organize and bargain collectively, and participate in their country's political process to secure strong labor laws? Some companies might well prefer dealing with codes of conduct and weak, scattered NGOs rather than strong governments and unions. While NGO critics can mount publicity campaigns about abuses at single factories, consumers soon grow tired of repeated exposés. Only the most conscientious and alert consumers can sustain selective purchasing based on respect for workers' rights.

A rush to corporate codes of conduct could allow powerful companies to avoid government regulation, union organizing, and enforceable collective agreements that uphold workers' rights and labor standards. Strong laws effectively enforced, along with self-organization and collective bargaining, are the best sustainable ways to protect workers' rights. CSR and corporate codes of conduct should be seen not as an alternative but as a supplement to labor law enforcement and collective bargaining.

VII. DEMOCRATIC TRADE UNIONS: THE KEY IN CHINA

Corporate social responsibility programs and related codes of conduct now almost always include freedom of association, the right to organize, and the right to bargain collectively. For many companies and for many stakeholder codes seeking to implement CSR, the question of China's trade union monopoly under the All-China Confederation of Trade Unions (ACFTU) creates a threshold problem.

The ILO Committee on Freedom of Association has identified the ACFTU monopoly and its "transmission belt" role as violations that prevent "the establishment of trade union organizations that are independent of the public authorities and of the ruling party, and whose mission should be to defend and promote interests of their constituents and not to reinforce the country's political and economic system."¹³ The Committee on Freedom of Association has also deplored the use of criminal prosecutions against workers who protest abusive treatment, saying "the Committee deeply regrets the government's . . . perseverance in the punishment of acts related to

13. See ILO, *310th Report of the Committee on Freedom of Association* (1998).

labor conflict with lengthy terms of imprisonment for acts of subversion on the basis of general and vague accusations."¹⁴

Besides its relationship to government, the ACFTU also has a widespread practice of company managers, sometimes even human resources managers, holding trade union leadership posts. One officer of the Chinese employers' federation told researchers that trade unions are "just a branch of management" whose role is not so much to represent workers as to explain to workers why the company cannot increase their wages or why layoffs will help the company.¹⁵ Another research group found that "Chinese unions function more as an offshoot of the Human Resources department, and are primarily concerned with supporting managerial interests."¹⁶

Under international human rights standards and Conventions 87 and 98 of the ILO, workers have the right to choose their own representatives from their own ranks. Neither the government nor the employer should tell them who their representatives must be. Moreover, company managers should not be trade union leaders. This perverts the very idea of trade unionism. A trade union's role is to present workers' demands to management, not management's demands to workers.

This does not mean that trade unions cannot have strong ties to a governing political party or work cooperatively with management. The British Trades Union Congress (TUC) is organically linked to that country's Labour Party. So are the Swedish and German trade union centrals with each country's Social Democratic Party. In the United States, the AFL-CIO has a de facto relationship with the Democratic Party, with official positions in party leadership reserved for trade union officials. Among developing countries, the Congress of South African Trade Unions (COSATU) has a similar tie to the African National Congress (ANC), and Argentina's General Confederation of Labor (CGT) is linked to the Peronist party.

At the same time, these trade union bodies maintain an arms-length distance from political parties. They collaborate with the parties whenever possible, but they also criticize them when necessary. In every case, the real test is whether workers themselves, through their chosen representatives, have freely decided to enter a

14. See ILO Committee on Freedom of Association, *China* (Case No. 2189), Report No. 333 (April 2004).

15. See Simon Clarke, Chang-Hee Lee & Qi Li, *Collective Consultation and Industrial Relations in China*, 42 BRIT. J. INDUS. REL. 235 (2004).

16. See D. Ding, K. Goodall & M. Warner, *The impact of economic reform on the role of trade unions in Chinese enterprises*, 13 INT'L J. HUM. RES. MGMT. 431-49 (2002).

relationship with the political party while maintaining independence from party control.

A further test of trade union freedom is the existence of unions that choose not to ally themselves with a political party in or out of power, without suffering discrimination because of this choice. In each of the countries mentioned above, and in others where trade union-party alliances exist by workers' choice, there are also dissident unions opposed to political party platforms or to government policies. The right of these unions to freely function must be respected to fully afford workers' freedom of association.

Unions must be independent of management as well as of government. But trade union principles do not prevent cooperation with management to improve productivity, quality, safety, and other marketplace goals in the context of a bargaining relationship that preserves workers' rights. Strong unions and strong managements can bargain their way to optimal outcomes that meet workers' needs while respecting the needs of the business.

The challenge for CSR in China in the months and years ahead is to create new space for democratic trade union activity that comports with international human rights standards and ILO Conventions. A truly progressive CSR program should support the movement toward workers' democratic self-organization. CSR should not hold itself out as an alternative to trade unionism, but as an ally of trade unionism.

Meeting this challenge is not just the responsibility of CSR officials from brand-name buyer firms and factory managers in supplier firms. Trade unionists, too, must take more responsibility for extricating themselves from government or management domination and taking the role of representing their members before government and management. This does not automatically mean confrontation with government or management. It means social dialogue and finding solutions through discussion, negotiation, and compromise.

The ILO has strong capacity-building programs to help governments, employers, and unions achieve these goals. On the trade union side, so do the International Confederation of Free Trade Unions (ICFTU) and the sectoral Global Union Federations (GUFs).¹⁷ On the employer side, the International Organization of Employers and its regional affiliates provide training for managers. Many university industrial relations programs similarly offer programs on collective bargaining skills, grievance handling, administration of

17. In November 2006, the ICFTU merged with the World Confederation of Labor to form the new International Trade Union Confederation (ITUC).

collective agreements, and other aspects of labor-management relations.

A reputation for good workplace practices and high labor standards can be a powerful "brand" asset for companies and for countries in the global economy. Labor rights advocates and "fair trade"-minded consumers should continue their calls for socially responsible production. On the business side, management throughout the supply chain, from top officials at firms' headquarters in the United States and other developed countries down to factory managers and supervisors in supply facilities in China and other developing countries, should nurture CSR to its full potential. Full potential includes workers' rights to organize and to bargain collectively to improve their working conditions.