Rethinking Corporate Accountability

By:

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Earlier this month, investigative journalists disclosed that Indian garment factories responsible for the supply to global supermarket chains such as Marks & Spencer, Tesco and Ralph Lauren were exploiting their workers. Some of the allegations include poor wages, 22-hour work shifts with no toilet or water breaks. These conditions exist despite the existence of a local law, the Indian Factories Act, which sets out working conditions for workers in this industry. More importantly, the brands that use these suppliers in India are all part of the ethical trading initiative that was set up in 1998 shortly after the sweatshop conditions that engulfed major brands such as Nike and Gap in the 1990s.

The ethical trading initiative is part of a trend known as a multi-stakeholder initiative (MSI) that involve a 'collaboration among various public and private actors—such as corporations, governments, CSOs, and rights holders—that have a stake in an issue.' These MSIs set global voluntary industry standards for its members to follow and are often punted as addressing issues of public

concern such as human rights violations in specific industries. These MSIs are geared towards establishing a governance model to tackle a gap 'where a state either cannot, or will not, fulfill its duty to protect its citizens against human rights violations by companies.' The stated aim of the ethical trading initiative is to improve working conditions in global supply chains by developing effective approaches to implementing the Base Code of labour practice developed by the initiative.

Despite the increasing popularity of MSIs, it is clear that self-regulation through this governance model is not the answer to driving corporate accountability for matters of public concern such as human rights protection. In a report released in July 2020 by MSI Integrity, a non-profit originally dedicated to understanding the human rights impact and value of MSIs, it was found that MSIs are not effective tools for holding corporations accountable for abuses, protecting rights holders against human rights violations, or providing survivors and victims' with access to remedy. The report showed that we need to rethink the role of MSIs and the presence of an MSI in an industry should not be a substitute for public regulation.

In the particular case of the ethical trading initiative, the initiative's own self-evaluation into whether it has delivered on its mission and theory of change found as far back as 2015 that 'corporate purchasing practices and weak trade unions were key areas to address in efforts to produce meaningful improvement in working conditions.' Yet, five years later, the MSI has not addressed this issue and the ongoing violations taking place in India has become known. The initiative acknowledges that the tripartite nature of trying to please stakeholders from the public, private and civil society sectors threaten 'meaningful action because it necessarily entails conflicting interests and objectives between members.' These findings show that the grand experiment of MSIs as described in the MSI Integrity report is not working. While there are modest achievements such as the success with the elimination of child labor practices among the members of the ethical trading initiative, for example, we need to revisit why public regulation does not suffice in holding corporations accountable in the first place?

Developing new systems for corporate accountability

When corporations commit human rights abuses, the problem is usually not due to a lack of regulation. In the most recent scandal involving India and the garment industry, the Indian Factories Act sets enforceable standards for companies to comply with. This also applies in South Africa where a robust set of regulations including the Labour Relations Act, National Minimum Wage Act and the Promotion of Equality and Prevention of Unfair Discrimination Act all set out comprehensive standards for corporations to follow. Yet, earlier this year, a foreign owned Durban based company was found to have been 'locking' in its employees within its premises in a race to quickly produce personal protective equipment as COVID-19 was spreading around the country.

This suggests that the issues go beyond regulation and to an extent, enforcement. This brings to the fore the role of state and non-state actors in canvassing for a socially responsible corporation. The legal core of corporations continues to be the prioritization of shareholder value; however, to tackle the governance and accountability of corporations, we need to expand the interests that corporations serve. In the existing model for the corporate form as recognized in South Africa and globally, while shareholders are recognized as those who hold financial interests/investments in a company, there have been attempts to broaden the definition of who a shareholder is with various options emerging including employee ownership schemes and the recognition of benefit corporations. However, these alternative models do not sufficiently focus on the diversity of stakeholders and the inclusion of rights holders who are affected by a company's operations in the management and governance of a company. Consequently, MSIs have been championed as the anti-model to the traditional corporate board. Although the presence of different stakeholder groups in MSIs are intended to express the equality of parties in decision-making, the power dynamics in MSIs (big corporation versus local NGO) often affect the effectiveness of these fora.

In order to prevent the use of MSIs for corporate whitewashing and to involve the home state of multinational corporations rather than the singular focus on host states when dealing with corporate behavior, there is an emerging initiative to adopt a binding business and human rights treaty as a form of transnational regulation of multinational corporations. With the adoption of this treaty not guaranteed, urgent mechanisms are needed to provide remedies for

corporate violations of human rights. According to the UN Guiding Principles on Business and Human Rights, which backs a role for MSIs in human rights protection, 'poorly designed ... grievance mechanisms [within MSIs] can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.' While it is easy to identify the important features of a well-designed grievance mechanism such as independence, accessibility, affordability, transparency, efficiency, among others, establishing non-judicial mechanisms with these features are easier said than done.

Looking forward

It is important that future reform on grievance mechanisms, corporate ownership and governance must center workers and communities in a time where economic inequality is expanding and companies are becoming bigger in size, capital, profits and their impact on people and our planet increasingly profound.This will entail new forms of knowledge generation that involve rights holders and other marginalized groups. There are lessons to learn from the emergent solidarity economy and new economy movements (including feminist economics) in both the Global North and South. These utilize community-centered models that prioritize community agency and will generate new ways of thinking about corporate accountability.

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