

## Codes of conduct in the clothing industry

# The regulation gap

Codes of conduct are supposed to regulate working conditions in garment and sports shoe factories all over the world. Efforts to coordinate these voluntary initiatives have so far not been effective. Stronger and more binding initiatives are needed.



Photo: Rutger Post

By **Ellen Lammers**

**W**ho regulates the behaviour of transnational corporations? Over the last three decades, with the rise of neo-liberal ideology, there has been a shift away from the reliance on government regulation towards corporate self-regulation. Since the 1980s, voluntary initiatives and private codes of conduct have been driving the corporate social responsibility (CSR) agenda aimed at mitigating the negative effects of globalization on factory working conditions in developing countries. In 1992, Levi Strauss was the first company to develop a corporate code of conduct that placed labour rights in the context of global production chains and international supplier relations. Nike and Reebok immediately followed suit. These codes of conduct in the clothing and sportswear industry were a clear response to ‘anti-sweatshop’ campaigns. Since the early 1990s, such campaigns have publicized the persistent violations of labour rights in the so-called ‘workplaces of the world’.

**Ellen Lammers** is a researcher and writer based in Amsterdam. She trained as an anthropologist (PhD, University of Amsterdam) and conducted several years of research in Uganda, dealing with young men's individual experiences of war and displacement.

## Codes

Codes of conduct lay down rules, guidelines and commitments to enhance the behaviour of (international) firms within society. Such codes vary in specificity and content, and may include norms on wages, hours of work, and health and safety, as well as core labour rights addressing child labour, discrimination and the right to freedom of association.


By the end of the 1990s, an enormous number of codes of conduct had been developed. Some of these were drawn up by companies, but also by business support groups such as the International Chamber of Commerce and industry associations. Others were introduced by social interest groups and NGOs, such as the Clean Clothes Campaign, which adopted a Code of Labour Practices in 1998. These private codes of conduct were a response to the lack of binding public rules for international business behaviour – the ‘regulation gap’. However, they are voluntary codes and have no binding means of enforcing good behaviour. Ans Kolk (University of Amsterdam) and Rob van Tulder (Erasmus University Rotterdam) developed a framework to analyze the compliance likelihood of these many different voluntary codes. Their analysis showed that the more sophisticated codes, for instance in the sporting goods industry, came about through interactions between different stakeholders.

## Multi-stakeholder initiatives

Since the late 1990s, there has been a rapid growth in the number of so-called multi-stakeholder initiatives (MSIs) that bring together companies and NGOs, and sometimes trade unions, university and government representatives, at one negotiation table. These initiatives are part of the gradual hardening of approaches to corporate regulation, and emerged because the codes designed unilaterally by companies and industry sectors had shown their limitations. MSIs have increased the focus on labour rights as opposed to mere working conditions. They advocate reference to the International Labour Organization (ILO) Core Conventions as well as to national labour law. Many of the earlier codes were restricted to rules for company-owned factories. MSI codes, in contrast, include rules and norms for their many suppliers and subcontractors. In response to the fast-growing web of individual codes of conduct, the MSIs wanted to bring in more coordination and collaboration in the implementation of these codes and in monitoring to check who does and does not live up to them.

Today, five MSIs and two business initiatives are leading the approach to regulating the global clothing and sportswear industry (see box below). Their members include companies like Gap, Nike, H&M, Reebok, Mexx and Gsus. In total, over 150 importing firms in the United States and Europe, sourcing from thousands of suppliers in Asia, Latin America, Europe and Africa, have signed up to these seven initiatives.

Have these MSIs succeeded in influencing the ethical business behaviour of such companies? And are workers really benefiting from their efforts?

The findings of independent research on this issue are only just emerging. The first studies indicate that MSIs have produced 'a very mixed scorecard'. The most comprehensive study to date on the impact of MSI codes of labour practice, commissioned by the Ethical Trading Initiative (ETI) and carried out by the Institute of Development Studies (University of Sussex, UK), confirms this picture. 

To begin on a positive note, the IDS study found that many more factory managers had started working in compliance with national labour legislation – a significant change that 'may help ensure the sustainability of changes over time'. It also found that factory workers' wages had increased, that working hours had been reduced, and that many more workers were covered by national health and pension schemes. However, the codes adopted by the 30 companies included in the IDS study had different impacts on different types of labourers. Permanent and regular workers benefited most, while migrant and contract workers experienced little or no change. This finding supports the argument of Pearson and Seyfang that voluntary codes merely influence 'enclaves' in the global economy: not only do contract labourers miss out, but also home-based and informal sector workers.

Second, the IDS study found that the codes had most impact on health and safety (better fire safety, training on emergency procedures, safer use of chemicals), but they were less effective in areas such as discrimination, harsh treatment, freedom of association and the right to collective bargaining. The governments of many supplying countries – such as Bangladesh, China, Turkey and Vietnam – are still failing to enact or enforce labour laws that prescribe these fundamental labour rights. This is perhaps the main reason why in many factories in such countries the situation is actually getting worse.

## Less than expected

Fransen and Kolk's research shows that compared to codes drawn up by NGOs or companies, the MSI codes are 'by far the most specific in their description of rules, criteria and policies' and 'demand specific management commitment' from participating companies. Why then, despite the time, money and manpower invested, have the results not yet lived up to expectations?

A first bottleneck is the actual commitment of companies. Companies must integrate ethical sourcing into their core business practices. According to an ILO study, their progress in doing so is still inadequate. Its remarkable finding is that the companies' sourcing departments, which are crucial in managing the relationships with suppliers and imposing standards, are often least involved with code compliance issues.

A second related problem comes from the competition between MSIs. Given the competing codes developed by different MSIs, companies can strategically 'pick and choose' their membership. This, Fransen argues, endangers the effectiveness of all separate initiatives. In another study, Utting has shown, perhaps unsurprisingly, that private initiatives that are more strongly influenced by business interests – such as the Worldwide Responsible Apparel Production (WRAP) and the Business Social Compliance Initiative (BSCI) – have weaker standards, monitoring and disclosure provisions.

Third, while this multitude of initiatives and codes gives companies room for manoeuvre, some suppliers can no longer see the wood for the trees. They complain that it is impossible to live up to all the different and conflicting code requirements. However, recent ILO and World Bank studies show that compliance with the strictest code usually works to satisfy all parties.

## The limits of monitoring


The biggest obstacle to improving the situation is probably that the MSI procedures that are supposed to promote compliance with the agreed upon codes are too weak. How can compliance be achieved? Publicizing the labour rights violations of specific companies is one method that has proved effective in the past. However, as Utting puts it: 'many schemes are reluctant to ruffle the feathers of their corporate 'partners' by engaging in naming and shaming tactics'. The MSI codes are also voluntary and thus have no recourse to binding enforcement mechanisms. ►

## Manufacturers without factories

Today, the owners of almost all sportswear and clothing brands are 'manufacturers without factories'. While the dresses, jeans and trainers are designed and marketed in the United States or Europe, the factories that produce them are located in Africa, Asia and Latin America. The industry is highly dependent on seasonal changes in fashion, and the demands of brand owners and retailers who must constantly replace their stock. Their many suppliers then receive large orders with tight deadlines, so that the workers (the vast majority female and many of them migrants) sometimes work for 20 hours a day to meet them. Poverty wages, the structural lack of job security, long hours and forced overtime, unhealthy working conditions, abusive management regimes, and the suppression of trade union rights are the characteristics of this industry.

Monitoring for compliance, therefore, is still the primary method. But monitoring alone produces only limited results.

One controversial issue is that in many cases MSIs rely on the same method of monitoring as private companies, that is, by means of social audits carried out by commercial firms. An entire industry has developed around social auditing. But research shows that social audits often do little more than 'scratch the surface' of what they are supposed to investigate. Studies by O'Rourke, Mamic and the World Bank demonstrate that long and complex supply chains make monitoring extremely difficult. Consider that, for instance, Gap alone sources from 4000 factories in 55 countries. Such transnational companies cannot possibly ensure that all their suppliers are monitored.

Commercial auditing often fails to obtain reliable information from workers and managers. It often misses crucial violations of workers' rights too. Factories are 'cleaned up' just before visits, for example, workers are instructed on how to answer (on risk of losing their jobs), or managers stay within earshot when workers are interviewed. Insufficient time and training on the part of auditors also play a part. This is evident in the lack of gender sensitivity in auditing practices, in an industry in which 70 to 90% of the workforce is made up of (young) women. Last, but by no means least, a crucial factor is *who* conducts the audit, and thus, to what extent it can be considered independent. Merk notes that 'It is increasingly argued that when companies employ a commercial firm to monitor code compliance ... this is in fact not much different from having the work done by company staff'. 

### Ways forward

What can be done to overcome the shortcomings of mainstream monitoring, and to realize sustained improvements for workers in the clothing and sportswear industry?

All studies point at the crucial importance of increasing local stakeholder participation. The IDS study advocates that MSIs shift their focus to sourcing countries. Directly supporting and training workers and suppliers will be a more cost-effective way to change working conditions.


Fransen and Kolk question why so few local organizations or unions are included in monitoring and auditing activities, and generally hold companies responsible. The Dutch Fair Wear Foundation is unique in that it does not work with commercial auditors, but trains its own audit teams in which many locals

participate. The Ethical Trading Initiative is also working on more sustainable and participatory models. Generally, however, this missed opportunity for enhancing local (developing-country) stakeholder involvement – a key ingredient of the MSI philosophy – makes multi-stakeholder initiatives less credible and legitimate. The independent Nike study recommends that 'a more systemic approach' is needed, that is, one that combines external pressure (from state, unions, NGOs) with transparent monitoring, and provides suppliers with technical and management assistance to tackle some of the root causes of their poor working conditions. It also suggests that monitoring should be done 'in cooperation with and increasingly by developing country government authorities who could gain the capacity and legitimacy to exercise their rightful duty and enforce their own laws'.

This suggestion highlights the other key question: is it time to come full circle and reinstate the role of governments and international institutions in the regulation game? The increasingly competitive global market does not bode well for workers in textile and sportswear factories. Brands and retailers keep pushing prices down and allow their suppliers ever less time to produce their jeans and trainers. Such pressure makes it almost impossible even for the most willing suppliers to improve labour practices. And thus, even the staunchest proponents of voluntary codes of conduct agree that their role and impact can only ever be limited. What they need is a back-up from enforceable international and national laws that dictate the rights of workers and punish companies that violate these rights. There are signs that the role of government is back on the international agenda – even if only by the appointment two years ago of the first Special Representative on Business and Human Rights to the UN Secretary General. ■

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