

Is the ILO's governance system fit for the 21st century?

Global Social Policy

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DOI: 10.1177/14680181221094952

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Moral outrage often follows news stories exposing egregious abuse of workers, but it does not result in the actions needed to address it. Sadly, it feels like a perpetual game of whack-a-mole. I will argue, giving three examples from my own professional experience, that we need a new governance system regulating the world of work. The International Labour Organization (ILO) is the right institution, but often has the wrong actors around the negotiating table who can fix the endemic labour abuse that characterises our global economic system today.

The principle of tripartism and ILO governance

The ILO's fundamental principle of tripartite dialogue between governments, employers and workers to regulate the world of work means the latter should have an equal say in how they should be treated at work. It is at odds with the way the global economy actually operates yet it is extraordinarily important as a principle. Negotiation, consultation and information exchange between relevant actors remain the best way to sustain a fair and healthy economy and society. But this is complicated by the fact that the ILO's 187 member states have vastly different economies, political systems and labour markets.

Shared respect for the fundamental right of workers to freedom of association and collective bargaining is the most important 'enabling right' because it means workers can collectively withhold their labour if they are treated badly and can freely, independently and democratically elect their own representatives to negotiate better terms and conditions of work on their behalf. That makes for safer workplaces, and workers who are treated with the dignity they deserve.

The reason this is so important is because governments and employers will rarely, if ever, cede rights to workers without a struggle.

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Who employs workers?

The tripartite governance of the ILO made perfect sense when it was created in 1919 and that probably remained true for decades. But the global economy and the world of work have changed.

Governments are responsible for upholding labour standards in their own countries, but when the employment relationship is distributed, the ownership of the business is itself unclear, and where accountability for labour rights abuse rests with multiple actors, it is very difficult to hold any single business responsible or accountable.

What is more, governments – even in democratic countries – often turn a blind eye to abusive labour practices. The private sector and government are often in a cosy, back-scratching relationship, and government contracts are frequently awarded to businesses that support the political party in power.

Employers are no longer the only actors in the employment relationship. Multinational corporations comprise a sizeable proportion of the global economy. Their ownership and operations cannot be regulated by any single country since they source goods and services from multiple jurisdictions and do not directly employ most of the workers in their supply chains. As such, employers' organisations – which constitute one of the tripartite constituents of the ILO – do not adequately represent the interests the private sector in the global economy.

Informal workers make up the majority of working people around the world, yet they do not enjoy the protections of most ILO conventions. Trade unions do not represent the global majority of workers. Workers that are informally employed are have often denied their basic rights as workers.

There are, in addition, many types of employment relationships. The deregulation of the labour market means that most workers do not have permanent contracts, nor do they work in places where it is possible to join an independent, democratic, trade union. Workers in informal employment relationships include domestic workers, home-based workers, migrants, temporary or seasonal workers, gig workers and own-account workers. Smallholder farmers as well as most small and medium enterprises are often family-run businesses, employing people on temporary basis when needed. Domestic workers are hidden from public view, often on call 24 hours a day, doing very hard work for little pay. Street vendors and waste-pickers are often reliant on local authorities to determine where and how they can operate and earn an income. Home-based workers are contracted by agents that operate as intermediaries between workers and employers based on agreed outputs and costs. Migrant workers are often in a de facto contractual relationship with labour recruiters who charge crippling fees to secure them their jobs. They often do not have a formal employment contract but are bound to work for their employer with no choice about the type of work they do or the wages they earn. Wage theft is common. Many end up in situations of forced labour because of debt bondage, confiscation of their ID documents and denied the right to to leave their job without their employer's consent.

Institutions and systems to mitigate labour rights abuse

The UN Guiding Principles on Business and Human Rights (UNGPs) were established out of a recognition of that businesses must be held responsible for the abuse of human

rights where it occurs in their operations and supply chains. They also reflect a recognition that governments on their own cannot effectively regulate enterprises with huge power and multi-jurisdictional reach. The UNGP framework requires governments to be accountable for their responsibilities to protect the human rights of people living and working in their countries. Businesses have a duty to conduct human rights due diligence and to remediate any harm they cause to workers. Mandatory human rights due diligence, modern slavery and transparency legislation is on the rise and is becoming increasingly important. But, important as they are, the UNGPs provide a conceptual framework around which regulation and accountability can be framed. They are not a governance mechanism to make decisions. While there are National Contact Points and Business and Human Rights Action Plans in some countries, the UNGPs are not designed to hold specific businesses or governments accountable when human rights abuses are identified.

Multi-stakeholder initiatives such as the Ethical Trading Initiative (ETI) have been created to fill an important gap in the ILO's tripartite system. The ETI Base Code is based on ILO labour standards, and on a much smaller scale, the ETI mirrors the ILO's tripartite governance arrangements – comprising equal representation of businesses, trade unions and civil society organisations. However, it remains a voluntary initiative to share information, debate and collaborate in advancing respect for labour rights in business supply chains. Most other multi-stakeholder initiatives do not include trade unions. But they exist because companies are worried about their reputations, litigation cases and financial losses that will result when abuse and exploitation is exposed to the public. They exist because there are limits to what one organisation can achieve on its own, because there is a lack of transparency in supply chains, because labour rights violations are evident in every sector and country in the world, and because fixing problems takes time and needs a nuanced approach.

Some practical examples

As an international development practitioner who has worked in multilateral institutions including the ILO, in government, with non-governmental organisations (NGOs), multi-stakeholder organisations and charities, I have learnt that things change when diverse parties with vested interests in the same issues work together to find solutions. The right players need to be around the table discussing issues of critical interest to them and have their own incentives to address them, rather than being driven by well-intentioned external actors or the availability of funding for projects. Below are some examples.

The UK Modern Slavery Act

When I worked at the ETI, I led an advocacy initiative to secure the inclusion of the Transparency in Supply Chains requirement (Clause 54) of the UK Modern Slavery Act 2015. The UK government intended initially to enact legislation on modern slavery aimed at identifying and prosecuting criminals responsible for trafficking and

forced labour, with no reference to the responsibilities of businesses. It was a hard fight to get them to include the requirement that businesses with an annual turnover of £36 million annually produce a Modern Slavery Statement setting out the steps they will take to ensure modern slavery is not taking place in their operations or supply chains.

We led a coalition with well-known brands and retailers, industry bodies, investors, trade unions and civil society organisations, working closely with parliamentarians and other key stakeholders. This included a letter to the Prime Minister with the logos and signatures of well-known UK businesses who called for a level playing field. They did not want to compete with unscrupulous businesses that operated under the radar. We did not get everything we asked for, but it was a start. After 5 years, the government accepted most of the recommendations of an independent review, and the next version of the law promises to be stronger. It may eventually be replaced by mandatory human rights due diligence legislation.

Child labour in the surgical instruments sector

Pakistan is a major exporter of high-quality surgical instruments. They are produced in the Sialkot region and are used in public and private health authorities in Europe and the United States. Following a number of studies that exposed severe labour exploitation and child labour within the industry, there had been some improvement in a handful of factories exporting to markets in Europe and the United States. However, the systemic problems remained, with little visibility or oversight of the lower tiers of the supply chain where exploitation was most prevalent.

Commissioned by Nordic public bodies, I led a study in partnership with a local Pakistani NGO to both understand the root causes of poor labour standards in the sector and identify the actual and potential roles of all of the key stakeholders in the global value chain to find long-term solutions to these complex, endemic problems. The research study involved a wide range of key stakeholders to ensure it reflected their own understanding of the issues in the sector, to establish ownership and buy-in to the findings, and ensure that those most affected would identify the right solutions. Two multi-stakeholder steering committees were established at local and international levels to oversee the research – both of which met several times over an 18-month period to provide critical inputs and advice on the research. The stakeholders included government officials at national and local levels, international public procurement bodies, international supplier companies, surgical instruments industry associations, manufacturing businesses in Sialkot, trade unions, NGOs, international and Pakistani experts and academics.

The summary report identified a set of recommendations. It proposed that with the right level of commitment, a shared sense of responsibility and a willingness to build trust and good faith between all parties, a multi-stakeholder approach to improving the surgical instruments sector in Pakistan could provide a global model of good practice. Sadly, the next stages did not get the level of buy-in needed by Pakistani actors or major international public buyers, aside from those that commissioned the study. The Government of Pakistan was facing multiple crises – political, economic, social – and this was not a priority. From a local industry perspective, there were no real incentives

for change – it would require major investment and they were not feeling enough pressure from their international customers to fix problems that could remain hidden. Trade unions and NGOs faced existential threats to their existence from an increasingly authoritarian regime. The blog I wrote in early 2021 when the report was launched was far too optimistic.

The Essential Workers Campaign

My work at the Open Society Foundations (OSF) included coordination of an Essential Workers Campaign in 2021 in response to the devastating impacts of the coronavirus pandemic on workers and their families. It comprised a coalition of seven worker organisations – trade union federations representing health and care workers and informal workers’ organisations representing domestic workers, street vendors, home-based workers and agricultural workers – all performing essential roles in the economy but invisible, poorly paid and badly treated. The Campaign focused on migrants, women, minorities, and others working in precarious forms of employment, excluded from labour rights protections and lacking safety nets. The demands of the Campaign were for workers and their representatives to sit at the decision-making table when high-level discussions on the economic recovery process were taking place. It called for fair incomes, health and safety at work, the elimination of violence and harassment at work and securing social protections for all workers – especially the most vulnerable.

The initial idea was to hold a parallel Workers Economic Forum (WEF) at the same time as the World Economic Forum (WEF) in Davos and invite those who attend the WEF to listen to workers and have a conversation with them about how to ensure a just economic recovery that benefits all. But as Davos in 2021 was cancelled, we organised a virtual three-part Essential Workers Summit instead. It featured workers from around the world in conversation with decision-makers in government, civil society organisations, heads of global bodies, the private sector and investors. Short videos were produced that could be shared on social media and shown at global forums. Training in communications and media skills helped coalition partners to build their reach and visibility in mainstream media. When the WEF in Davos finally took place in January 2022, they were not interested in discussing the needs of essential workers. Instead, the OSF jointly hosted an Essential Workers Conference with the Organisation for Economic Cooperation and Development (OECD) Global Deal Unit in 2022 – focused on social dialogue. It achieved its goal of facilitating high-level conversation between worker representatives, government officials and business leaders on the needs of essential workers.

Conclusion

The current global economic and social upheaval has resulted in many forums and new initiatives to discuss the crisis and find solutions. There is no shortage of ideas on what should be done. But these lack the international mandate and governance framework that exists in principle in the ILO. It ensure that different perspectives are heard, solutions negotiated, and decisions made and specific parties are publicly held accountable.

Where there is credible leadership that operates in good faith, where transparent and democratic decision-making systems are trusted by all parties, solutions can often be found, however complex the problems. We can envisage a world in which relevant actors take responsibility for actions within their own sphere of influence and within an agreed time frame. The necessary human and financial investments are made available, credible monitoring systems that track progress are created, and there are key moments for review and revision along the way. The litmus test for how well the system is working is the degree to which workers can independently organise, bargain collectively, raise grievances without fear of retribution, and receive satisfactory remediation when their rights are violated.

Not all problems can be fixed by governance systems. The world is messy and unpredictable. It requires a willingness to embrace complexity, be open to constant adaptation and flexibility. The result could be an ILO that is fit for purpose in the 21st Century.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

Author biography

Cindy Berman has championed social justice issues for over 30 years. Born in South Africa, she was active in the anti-apartheid movement, and has worked in international organisations (including the ILO), government, multi-stakeholder and civil society organisations around the world. She currently works as a consultant, plays an advisory role in several human rights organisations, and tutors at Cambridge University.