



**Coalition-Building Among Legal and Non-Legal
Actors in the Anti-Sweatshop Movement:
A New Hybrid?**

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This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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List of Acronyms

CCC	Clean Clothes Campaign
ECCHR	European Centre for
EU	European Union
ILO	International Labour Organisation
PILER	Pakistan Institute of Labour Education and Research
TNCs	Trans-national corporations
NGOs	Non-governmental organisations
NTUF	National trade Union Federation of Pakistan

Abstract

Since 2006, three legal cases have been filed in Europe to establish corporate accountability of European retailers for labour violations in South Asia, within their value chains. The garment sector value chain has come under intense scrutiny and public attention since three large-scale industrial tragedies took place within months of each other in South Asia – the Baldia factory fire in Pakistan and the Tazreen Fashions fire and Rana Plaza building collapse in Bangladesh. The political structures created by these events opened up opportunities for new coalitions to emerge within the anti-sweatshop movement to hold TNCs accountable for rights violations in their supplier and subcontracted factories. Legal groups took on a major role in some of these campaigns, joining hands with conventional anti-sweatshop actors and local partners in South Asia, in part to strengthen the legal frameworks for corporate accountability that had thus far allowed violations like these to continue unchecked, within the sector.

The paper attempts to understand the dynamics of coalition building between legal actors and anti-sweatshop campaigns. It does this using a detailed study of the inter- and intra-organisational dynamics within the transnational coalition of actors that came together to hold the German discount retailer, Kik Textilien und Non-Food GmbH accountable for the factory fire in Pakistan. The paper attempts to provide a model for how legal actors can successfully form coalitions with existing anti-sweatshop actors, despite divergent objectives and ideologies. The findings from the case suggest that such coalitions are most effective when legal groups share common discourses with the anti-sweatshop movement, are able to locate the legal strategy being pursued within a larger campaign agenda, and share a common constituency with anti-sweatshop actors. When these conditions are not met, the existence of conflicting agendas and strategies may invite the risk of the campaign failing to achieve its short- or long-term objectives and undermine the movement. The successful inclusion of legal actors within the anti-sweatshop movement, on the other hand, could enable mutually reinforcing hybrid strategies to be employed by campaigns, strengthening the movement.

Relevance to Development Studies

Existing literature on anti-sweatshop movements has largely ignored the role of legal actors within coalitions on corporate accountability. In Europe, a spate of legal cases on corporate accountability of TNCs in the garment sector, for labour violations at the level of supplier and subsidiary firms, has made the need for such an analysis imminent. The paper attempts an interdisciplinary analysis by using social movement theories against the backdrop of a dynamic legal environment, to understand how organisations with different objectives and strategies can successfully work together to strengthen labour governance. As more legal cases will undoubtedly follow the ones in Europe, this paper also introduces a potential model for anti-sweatshop actors and legal groups to use, for successful collaboration in the future.

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Keywords

Anti-sweatshop, law and social movements, value chains, garments and textiles, Trans-national corporations, TNCs, coalitions, Pakistan, Germany, KiK, Ali Enterprises, Baldia factory fire, Clean Clothes Campaign, political opportunity structures, collective action frames, organisational transformation

Around 256 workers lost their lives in one of the worst industrial disasters in Pakistan's recent history, when the Ali Enterprises factory in Baldia, Karachi, caught fire. The manager of the factory had locked the only fire exit to the garment production factory. The German discount retailer, KiK Textilien und Non-Food GmbH, was the main buyer from the factory, at the time of the fire, and had a long-running relationship with Ali Enterprises. KiK had also contracted an Italian certification company, RINA, to undertake an audit of the factory just a few weeks prior to the accident. The factory had been pronounced safe for work.

On 9 September 2016, shortly before the 4th anniversary of the event, the German discount retailer, KiK, reached an agreement with PILER, a Pakistani NGO at the forefront of the struggle against KiK, to pay \$5.15 million as compensation for the families that were affected by the fire. The International Labour Organisation had moderated the negotiation with KiK on long-term compensation to the victims of the tragedy.

The agreement was the culmination of four years of struggle by the coalition that fought to hold KiK accountable to the workers at the factory. At the time of writing this paper, there was a concurrent legal case against KiK at a district court in Germany, seeking damages for pain and suffering for four of the affected families. The case is the first of its kind in Germany.

Chapter 1 - Introduction

The operations of many large business enterprises extend beyond territorial boundaries. Transnational corporations (TNCs) increasingly source raw materials and even finished products from locations where production costs, particularly labour costs, are low and labour protections lax. Contemporary manufacturing industries often involve a constellation of actors and activities, crisscrossing geographical and functional frontiers.

The garment export industry in South Asia typically comprises of a large brand or retailer undertaking temporary contracts with local manufacturers, often unregistered SMEs that are under the radar of government regulation, with minimal direct investment by TNCs in terms of capital or labour in the manufacturing process. However, the TNCs in question may nevertheless exercise a high degree of control over the operations, largely through their control over the price of the product and lead times. Gereffi's conceptualization of buyer-driven chains are emblematic of such networks in the garment, textiles and footwear sector, with large, consolidated brands and retailers playing a key role in setting the price and organizing the production, without directly employing the majority of the workforce engaged in manufacturing the product, focusing their resources on designing and marketing activities. (Gereffi 1996: 429)

With manufacturing spread across multiple firms, in multiple locations, the workforce that is involved in the manufacture of the product is becoming temporally, geographically and functionally fragmented, which has broader repercussions on their ability to organize effectively and challenge this arrangement through traditional sources of power. Weak unionisation in the sector in South Asia means that workers also lack institutional capacity to bargain with large corporations and even local institutions. In the absence of structural and institutional power (Brookes 2013), coalitional power becomes an almost necessary tool for labour bargaining. This may require reaching across geographical, sectoral and, more often than not, class divides, to engage with groups such as consumers' representatives and international NGOs. At the local level, too, worker-community alliances can be utilised to create pressure on employers and State authorities. (Brookes 2013: 192).

Anti-sweatshop coalitions are diverse coalition structures that have emerged as a political force in this environment of globalized production, linking labour and consumer struggles and challenging brands on the basis of both legal and moral authority, to demand better working conditions for workers in the garment, textiles and footwear industry. Members of anti-sweatshop coalitions may have distinct organisational identities but tend to share common values and discourses, allowing them to function as a loose transnational advocacy network. (Keck and Sikkink 1999: 89) The involvement of diverse actors within these coalitions allows them to "participate simultaneously in domestic and

international politics, drawing upon a variety of resources, *as if they were part of an international society.*” (Keck and Sikkink 1999: 90) Strategies employed by individual actors, while using similar discourses, may differ, based on their expertise, their constituency, their institutional character and the scale at which they operate.

Anti-sweatshop campaigns may focus on one or several targets as the locus of their advocacy strategies, such as the home State, the host State, the direct employer or the transnational corporation. With the hollowing out of States within neo-liberal regimes and jurisdictional boundaries rendering States unable to exercise control over TNCs, anti-sweatshop coalitions have increasingly shifted their focus to TNCs, to attach responsibility as well as demand remedy. Concurrently, regulation, too, has increasingly become privatised, through instruments such as multi-stakeholder initiatives and voluntary codes of conduct, with the State playing little more than a monitoring role in the process. Regardless, some anti-sweatshop groups continue to lobby for a stronger role for the State, through the enactment or strengthening of laws governing corporate conduct and arguing for the jurisdiction of States to extend to harms committed elsewhere, when the corporation responsible is headquartered in that State.

While both the North American and European anti-sweatshop movements have many things in common in terms of discourses and strategies, there are also some important differences. Bair and Palpacuer (2012) highlight some of them, most importantly the role of organised labour in shaping the activism around the issue. According to Bair, organised labour played a relatively minor role in anti-sweatshop activism in Europe and the charge was instead led by civil society organisations. Additionally, while labour groups made the connections between the violations of workers’ rights in the USA and those in other supplier countries, forming connections of solidarity between workers in home and host locations, no similar link was made in the European context (Bair and Palpacuer 2012: 522). Thus, given the outward focus of European activist groups, it is unsurprising that union involvement has not been a key force within the anti-sweatshop campaigns in Europe. In many Southern countries, where union density is low and union power weak, it is also NGOs that are more closely embedded in the communities and involved in advancing the workers’ rights agenda, among other, broader goals.

The different ways of framing the problem, the author argues, also shaped the form the campaigns took in these different regions. For instance, the relatively low involvement of labour rights groups and trade unions in leading anti-sweatshop campaigns in Europe has led to campaigns overwhelmingly focusing on political consumerism discourse in their advocacy strategies. The role of NGOs in labour governance has also been criticised for its role in legitimizing private codes of conduct. (See, for instance, Braun and Gearhart 2004) New actors within the anti-sweatshop movement could thus draw caution from some of the limitations of existing coalitions, in terms of worker representation.

A key gap in the scholarship on European anti-sweatshop coalitions is that existing literature remains fixated with NGOs and Trade Unions as primary actors and labour and consumer interests as primary drivers of the anti-sweatshop agenda, ignoring other groups that may play an important, even decisive role in these movements for greater corporate accountability. Legal professionals are one such group, translating demands of workers and other interested groups into legal claims. While local lawyers are known to support NGOs and other actors at the national level, less is written about lawyers and legal groups from the home location of corporations that have emerged as important allies in transnational litigation against TNCs. After the Rana Plaza building collapse in Bangladesh, for instance, a series of cases were filed against buying companies in the USA, Canada and France by legal groups in those countries.

In Europe alone, there have been three prominent legal cases against TNCs from the garment, textiles and footwear sector in the last decade, for harms committed in another country – the first was a case of false advertising against Lidl Stiftung & Co. KG, in 2010¹, filed by the Hamburg Consumer Protection Agency, with support from the Clean Clothes Campaign (CCC) and the European Centre for Constitutional and Human Rights (ECCHR). CCC undertook a study at Lidl's supplier factories in Bangladesh and found a broad range of labour violations, including unpaid overtime and harassment. The case was filed when Lidl claimed, in its advertising material, that it only sourced its non-food products from socially compliant factories, while evidence was found to the contrary. The second case was against KiK Textilien und Non-Food GmbH, a major German retail giant. Four families affected by the Baldia factory fire in Pakistan in 2012 filed the case in at a district court in Germany, in 2015. ECCHR has been actively supporting this case.² A third case was filed against Groupe Auchan SA in France, by the civil society organisation Sherpa, along with two other NGOs in France. The initial complaint was filed in 2014, upon discovering routine violations of workers' rights at Auchan's supplier factories in Bangladesh, after it became known that Auchan had been sourcing garments from the Rana Plaza building complex, at the time of the fire. (Sherpa 2014) All three companies are discount retailers specialising in selling low-cost garments and other products to European customers.

While it is evident that legal actors bring a specialised capacity to the anti-sweatshop movement, they may also have distinct differences from other anti-

¹ For more details on the case, please see ECCHR's summary of the case, "Complaint re fair working conditions in Bangladesh: Lidl forced to back down", Available at https://www.ecchr.eu/en/our_work/business-and-human-rights/working-conditions-in-south-asia/bangladesh-lidl.html. Accessed 8 November 2016.

² For more details on the case, please see ECCHR's summary, "Paying the price for clothing factory disasters in south Asia", Available at https://www.ecchr.eu/en/our_work/business-and-human-rights/working-conditions-in-south-asia/pakistan-kik.html. Accessed 8 November 2016.

sweatshop groups on how they conceptualise and deal with labour rights violations – coalitions between legal actors and other anti-sweatshop groups have the potential to create complementarities for successful campaigning but also to create conflict, between the various strategies and objectives. There is a need, therefore, to understand the dynamics of the involvement of legal actors in anti-sweatshop coalitions and what this means for the broader movement.

This paper tries to understand the dynamics of coalitions between legal actors and established actors within the anti-sweatshop movement, to hold TNCs accountable in their home countries for labour violations at supplier and subcontracted firms in another country. It does this using a detailed analysis of the coalition that strove to hold KiK accountable for the fire at the Baldia factory in Karachi, Pakistan, in 2012. As legal actors are relatively new coalition partners for the anti-sweatshop movement in Europe, this paper will try to understand how the coalition between the various organisations formed and how legal actors worked within the context of a broader anti-sweatshop campaign. The ambition of the paper is that an in-depth look at this coalition will be able to go some way towards addressing this vital gap in the literature, in a way that can inform future coalitions between legal actors and established anti-sweatshop groups.

This paper is structured as follows: Chapter 1 was an introduction to the anti-sweatshop movement and the recent cases in Europe, which have brought the legal actors working with the movement to light. Chapter 2 will lay out the legal context that shapes the interaction between corporations, State and civil society and which ultimately has an impact on how legal actors integrate within the anti-sweatshop movement, through the venue of legal cases. Chapter 3 is an overview of conceptual frameworks that help us understand how diverse actors come together to form a coalition. It does this through an analysis of political opportunity structures within which coalitions form, collective action frames under which coalitions come together and organisational transformation within coalition structures. Chapter 4 then, based on a combination of in-person interviews and secondary data, tries to piece together the coalition-building process around the KiK campaign. It provides a brief history of the case, followed by a review of inter- and intra-organisational dynamics that lent the coalition its particular form. Chapter 5 attempts to bring together the findings of the case to suggest a path ahead for legal actors partnering with anti-sweatshop groups. Lastly, Chapter 6 will offer some concluding remarks on whether these coalitions can provide an alternative model for public-private strategies for corporate accountability, as well as identify some further areas for research.

Chapter 2 – Law as a site of contestation

Legal actors rely heavily on the legal framework of their countries and international law, both for deriving legitimacy from the rule of law and as a site of struggle and change. Changes in the legal context can create political opportunities for action for anti-sweatshop movements. Anti-sweatshop actors can also actively intervene in amending the institutional framework within which corporations operate, through strategic litigation. Along with an understanding of the garment sector and the foundations of the anti-sweatshop movement, an appreciation of law as a dynamic site of action provides a necessary backdrop on how one can view coalition building between legal and non-legal actors in this context.

To a great extent, the legal framework can be considered responsible for the widespread disregard for labour rights (and other human and environmental rights) in many countries where TNCs operate. A transnational corporation may be directing the production activity, and benefit from the way the production process has been organised, yet it may not have any legal obligations towards the workers employed by their subsidiaries, suppliers or subcontractors who manufacture all or part of their product, as they operate as separate legal entities.

National governments, in both home and host locations, have failed to adequately check the power of TNCs. While TNCs operate across national boundaries, in most cases jurisdictions of nation states are confined to national boundaries, with severe limitations to when a case of harm committed elsewhere may be admitted in the national courts. The Alien Torts Claims Act of 1789 in the USA is a notable exception, which expressly allows extraterritorial tort cases to be heard in US courts (DeWinter-Schmitt 2007: 481). Given the high degree of dependence on international investment to finance local industrial growth and the fierce competition between many Southern countries to attract TNCs, governments are also known to take a soft stance towards large TNCs in an effort to present themselves as attractive investment destinations. This capitalistic logic allows TNCs to cherry-pick production destinations where safeguards are weakest, costs are lowest and potential for profits are highest – while evading responsibility for their conduct. (Weilert 2010: 452-454)

International law, too, provides certain privileges to TNCs over communities and even States. For instance, the Investor-State Dispute Settlement mechanism that is enshrined in various bilateral investment treaties allows corporations to take legal action against states but there is no reciprocal arrangement

for States to hold corporations accountable in a similar forum³. As a result, the framework is seen as illustrative of a systemic power imbalance between corporations, communities and States. Social movements have described this framework as ‘architecture of impunity’⁴, enabling corporations to conduct their operations unencumbered by regulatory protections, often at the expense of communities and workers.

However, the nature and content of law is not static but constantly evolving, based on the balance of power between different interested parties, which also explains the influence legal cases have on discourses of social movements and vice-versa. Law provides a space for democratic debate, social struggle and institutionalization of legal protections that may go towards preventing, as well as remedying violations of the type that are discussed in this paper. Critical to this understanding of law as a site of struggle is to focus on legal mobilization as a process, rather than on cases and judgments as legal outcomes. For instance, legal cases also provide significant scope for coalition building and provide a common cause for action for campaigns. The legal case against Auchan in France, after the Rana Plaza strategy in Bangladesh, has helped expose the limits of the legal architecture and therefore assisted civil society groups in their campaigns for a “duty of vigilance” law in France.⁵

A recent example of such forms of mobilisation is the coming together of diverse civil society groups, to argue for an international legally binding treaty to regulate the conduct of TNCs, through participation in the annual meetings of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights at the United Nations in Geneva. One of the movements participating in the process, for instance, brought together legal actors, NGOs, academics, communities affected by mining, people affected by dams, peasant movements, movements for rights of garment workers and people affected by privatization of water, among others, together under the collective idea of challenging ‘corporate power’⁶. Legal actions, by providing a collective agenda for campaigns, can contribute to systems of solidarity that exist beyond the scope of the process being challenged.

³ Some recent cases settled using this mechanism include Chevron v. Ecuador (2006) and Philip Morris v. Uruguay (2010). More cases can be accessed from UNCTAD’s Investment Policy Hub, available at <http://investmentpolicyhub.unctad.org/ISDS>

⁴ See, for instance, an infographic on the subject available at <https://www.tni.org/en/impunityinfographic> (Transnational Institute, Amsterdam). Published on 23 January 2015. Accessed on 8 November 2016.

⁵ Personal interview with SHERPA.

⁶ See Press Release, “Conclusions of the Global Campaign on the UNHRC 2nd Session of the “Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights” (OEIGWG) concluding on 28th October 2016”, Geneva. Available at <http://www.stopcorporateimpunity.org/press-release-conclusions-global-campaign-unhrc-2nd-session-oeigwg/>. Published on 28 October 2016. Accessed on 8 November 2016.

Recognizing that legal action can provide an additional venue for action, the study will try to look at positive models for anti-sweatshop campaigns to establish partnerships with legal actors, in order to utilise multiple venues for achieving justice for affected workers in the garment sector.

The next chapter attempts to put forth a conceptual framework that may help us better analyse how legal actors and anti-sweatshop coalitions come together using political opportunity structures, their shared collective action frames and the effect these have on organisational identities of the actors within the coalition.

Chapter 3 –Legal Actors and the Anti-sweatshop Movement

Legal groups and scholars are a relatively new coalitional partner for anti-sweatshop alliances in Europe, bringing a different institutional capacity to these movements and enabling strategic litigation against corporations. Involving legal groups in the home country has the added advantage of offering another arena for action – the assumption is that institutions are stronger (e.g. an independent judiciary) and can be used to hold buyers accountable in a way that may not be as easily accomplished in some host countries. However, the interaction between legal groups and anti-sweatshop actors can be contentious, due to their different organisational objectives and systems from which they derive legitimacy. This chapter therefore This section, following McCann's approach, takes an “interpretive, process-oriented” look at the legal mobilisation of social movements. (McCann, 2006: 21) It aims to provide a framework through which it is possible to understand the process of coalition building between such unlikely partners and how organisational transformation can be one way of achieving a positive coalition.

There are both productive and counterproductive tensions that arise in the interaction between legal groups and social movements. Legal groups, due to their professional capacity, may act as gatekeepers of legal venues, privileging the access of certain groups and voices. Professional legal groups have aided corporations in undermining State authority and in limiting responsibility to communities affected by their operations. Even as allies, legal actors may distract the resources of the movement away from other organization building and fracture movements by introducing competing claims and ideas of justice. (McCann, 2006: 23)

On the other hand, Scholars also set great store by law as a tool for empowering social movements. McCann notes how “formal legal actions like litigation can work initially to expose systemic vulnerabilities...As marginalized groups act on these opportunities, they often gain sophistication and confidence in their capacity to mobilize legal conventions to name wrongs, to direct blame, to frame demands and to advance their cause.” (McCann, 2006: 26)

McCann expands the realm of understanding of law as beyond legal institutions, focusing instead on the symbolic power of law in constructing and contesting realities and power relations. Legal tools, in this framework, are used to supplement other forms of mobilisation and movement building. Locating law as a supplementary tool also helps us to look at mobilisation in a broader sense and not focus on successful court cases as necessary to successful outcomes for the movement at large. McCann cites several examples in his paper, including that of the wage equity issue in the United States, where, despite failures in achieving a successful judgment, the sustained struggle for justice allowed a stronger movement to emerge – by unifying claims, attracting resources and improving capacities in making these claims. (McCann, 2006: 27-28)

A major contribution of legal mobilisation of social movements has been its signalling role. According to McCann, positive court judgments are not necessary for justifying the use of legal tools, rather “legal leveraging is most successful when it works as an unfulfilled threat”. (2006: 30) When confronted with the possibility of an enforceable judgment, which cannot be controlled by the parties involved, actors may try to re-establish their autonomy by attempting to reach an agreement outside of court. Within the anti-sweatshop struggle, two cases come to mind – in the Nike v. Kasky lawsuit in 1998⁷, as well as the case against Lidl in 2010, the corporations reached a settlement that was agreeable to the other party, before the courts pronounced a judgement. In the Lidl case, which was a false advertising lawsuit, the corporation retracted the advertisements in question within weeks of the filing of the complaint. McCann also notes how “defiant groups often can mobilise legal norms, conventions and demands to compel concessions even in the absence of clear judicial or other official support” (2006: 29).

Often, legal groups will take on cases with very selective interaction with other groups involved in the same struggle. This can often lead to ‘translations’ of the demands of workers into claims that can promise no direct benefit to them. Some examples are consumer protection lawsuits, which frame the consumers as the injured party – to take advantage of the opportunity presented by its false advertisement, the case against Lidl was framed as one of deception of consumers, rather than of holding businesses accountable for negligence, which had allowed routine violence against workers in Bangladesh to continue.⁸ The case was finally settled with Lidl withdrawing the promotional material in question but no promises were made with reference to improving working conditions within its network of suppliers. The campaign did not prominently involve domestic labour rights groups from Bangladesh, much less the workers themselves. As a result, the case could not contribute to mobilisation efforts of the workers in Bangladesh and its effects remained confined to the borders of Germany.⁹

Legal groups argue that consumer protection cases are equally important and address a different dimension of the problem, as corporations unduly profit from this wilful deception or ‘greenwashing’. However, they also men-

⁷ For a summary of the case, please see the note on “Nike lawsuit (Kasky v Nike, re denial of labour abuses)” on the Business and Human Rights Resource Centre website. Available from <https://business-humanrights.org/en/nike-lawsuit-kasky-v-nike-re-denial-of-labour-abuses-0>. Accessed on 8 November 2016.

⁸ “In an advertising prospectus (1/2010) Lidl writes: ‘*Lidl worldwide dedicates itself to fair working conditions*’ and ‘*We at Lidl therefore only accept non-food bids from selected suppliers and producers, who are willing to actively adopt social responsibility and can show they do so.*’ We ask: is that not misleading the consumers? Doesn’t this suggest to the consumers that the Lidl suppliers comply with the social standards?” - Background of the complaint against Lidl by Gisela Buckhardt, Clean Clothes Campaign (Germany). Available at <http://www.achact.be/upload/files/Lidl plainte.pdf>. Accessed on 8 November 2016.

⁹ Interview with ECCHR, August 2016.

tioned that while such cases can be complementary to cases taken up on behalf of workers, they must not become substitutes for other actions.¹⁰

The paper argues that by locating their claim within the context of a larger movement can in fact be a mutually beneficial arrangement. Through their alliance with anti-sweatshop groups, legal groups may have a legitimate interest in pursuing the case beyond its otherwise purely strategic character, in making sure that the translation of the workers' voices into a common cause for action is authentic and addresses the issue that is being raised, and in fact assists in movement building and mobilising of affected groups.

To understand exactly how such a coalition may emerge, it is necessary to understand the political context that catalyses a certain group of actors into coming together to achieve a common objective, how collective action frames are formed within the coalition, as well as how individual organisations transform to gain legitimacy within the coalition.

3.1 Political opportunity structures and social movements

Meyer and Staggenborg (1996) have developed a theory of movements and countermovements through the lens of political opportunity structures available to movements. This enables us to understand how coalitions are formed and how they react to events and processes that open up venues for new forms of collective action.

To begin with, political opportunity structures provide a moment for social actors to come together to achieve a common outcome. For instance, institutional changes, such as changes in political regimes or reorganisation of ministries may create new political opportunity structures. It is worth noting that political opportunity structures are open to influence by state as well as non-state actors. Movements may themselves create political opportunities, rather than receive them, actively affecting social and political realities. By magnifying a major event, such as an industrial tragedy, through alliance building and amplification of information through media outlets, social movements can also create a frame or discourse, which may compel opposing movements to respond in a certain way.

A shift in political opportunities, caused by such events or processes, will in turn entail a different approach by social movements, in order to achieve the desired outcome. It may allow different alliances to be built, for instance, between the social movement and political elites, or social movements and the public, in a way that was not possible before. It may also close opportunities

¹⁰ Interviews with various human rights lawyers, between August and October 2016

for alliances with certain groups that previously existed. (Meyer and Staggenbord 1996: 1633)

Incidents like the Baldia factory fire in Pakistan or the Rana Plaza building collapse create such opportunity structures, although smaller scale events can also precipitate a structure for alliance building. In the Lidl case, for instance, the publishing of the advertising material by Lidl allowed the CCC and ECCHR to come together to file the claim against the TNC. At the same time, the group that conducted the research that discovered the labour violations in Lidl's supplier factories in Bangladesh, and the workers in those factories, were excluded from this process, even though they provided the grounds for the case. They were not able to play a formal role in the legal claim, due to the nature of the claim as a consumer protection lawsuit in Germany.

The authors note how movement revival can be facilitated by the creation of more “institutional venues for action” (Meyer and Staggenborg 1996: 1648), which also requires them to shift targets of action. By shifting venues, movements may leverage off certain advantages they may have, such as institutional capacities, in order to increase their chances of success. For instance, having legal partners within the coalition could encourage movements to file a lawsuit against TNCs, as a tactic to put the corporation on the defensive. This theory of how movements affect and respond to political opportunity structures is important to understand how coalitions are formed and how new venues for action are utilised to achieve shared objectives.

The authors also recognise the heterogeneity of movements by noting how they simultaneously operate in multiple venues. Each venue may require a different frame and different strategies, which may make the “overall frame” weak, relative to venue-specific agendas, and affect the formation of a coherent strategy for action. According to the authors, this conflict is exacerbated when there is heightened conflict between opposing movements. The next section further develops this idea of collective action frames and multiple agendas within frames.

3.2 Collective action frames and agenda-setting

What is widely understood and appreciated by scholars of social movement theory is the importance of a collective agenda for alliance building. For a group to work together as a movement or coalition, it must agree on a broader collective action frame, which will in turn inform its overall strategy. Corporate Accountability is one such frame, which has enabled groups with diverse interests, agendas and constituencies to come together for collective action, within the anti-sweatshop movement. The three cases from Europe mentioned in Chapter 1 all refer to accountability for harms committed further down the value chain by transnational corporations in the garment sector, in countries other than where they are headquartered. This issue, due to its obvious legal dimensions and the extensive campaigning by anti-sweatshop groups bringing the governance gaps to the public eye in Europe, has attracted professional

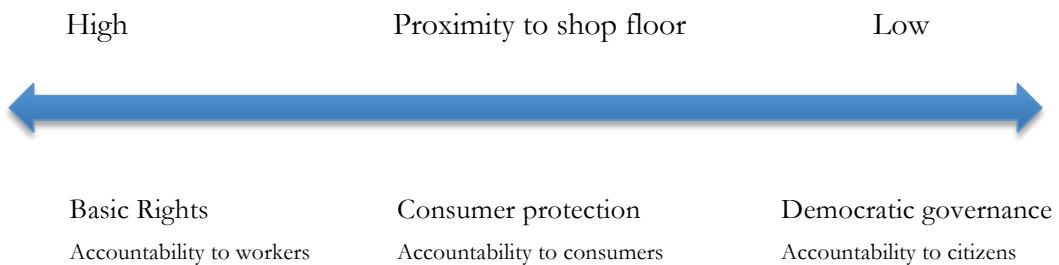
legal groups with a similar focus on corporate accountability to start working with partners in this sector. This section discusses some of the ways in which the anti-sweatshop movement has interpreted the corporate accountability frame, which are then used to justify the actions that are taken.

Civil society organisations and trade unions tend to play an important role of translating the voices of unorganised and unrepresented workers within their network to a broader agenda for action. Doing this typically requires some level of abstraction and generalisation, to frame it as an issue larger than that affecting only those directly affected by the event or process. On the other hand, fears exist that if the cause or frame is too narrowly defined, the scope of action that is taken by the relevant authorities may not address the wider, more structural issues that affect workers' and citizens' lives. The development of the cause or collective action frame must therefore achieve a fine balance between the immediate needs of workers and the broader need for structural change.

Within the anti-sweatshop literature, models for collective action frames have been explored quite widely. Anner and Evans (2004) offer two broad causes or "complexes of activity". These include basic rights complexes that focus on the achievement of basic rights for workers, and democratic governance complexes that focus on normative and institutional changes to challenge the governance framework itself. In order to look at these causes in a transnational context, one can infer that the basic rights framework involves bargaining directly with TNCs to fulfil workers' demands, whereas the democratic governance complex tries to achieve corporate accountability through dialogue and advocacy at higher levels of governance. A major distinction between the two is that the latter is at a greater distance from "the shop floor" than the basic rights complex and tends to work with a longer time horizon, in terms of its impact on the ground.

However, these two broad complexes are unable to adequately explain the different coalitions that form to hold corporations accountable. For instance, many coalitions also come together using the cause of consumer protection, to hold corporations accountable. Boycott movements and other consumer campaigns against TNCs, fall into this category. The consumer protection complex (my addition to Anner and Evans's schema) argues for corporate accountability and change in corporate behaviour, through consumer action and to fulfil consumer expectations, but does not necessarily demand basic rights for workers nor does it necessarily target a change in the legal framework of the home or host country. It may, however, offer indirect benefits to the affected workers through targeting the corporation and influencing it to implement changes in its operations. It therefore falls somewhere in the middle of the continuum, between the basic rights complex and the democratic governance complex.

Figure 3.1 Corporate Accountability Complexes



Source: Adapted by the Author from Anner and Evans (2004)

Between these alternative causes used by contemporary coalitions within the anti-sweatshop movement, the further along the continuum one moves towards the democratic governance agenda, the less likely it is that the immediate concerns of the affected workers will be given a central place in strategies for action.

It is not often that a coalition will smoothly pick one of these causes for action. Often it will require negotiations between the various actors, based on their organisational agendas or, in extreme cases, some level of organisational transformation (further explained in the following section). In some cases, when organisations are unable or unwilling to transform, the coalition may take up different causes in different venues or at different scales, to hold the corporation accountable.

3.3 Organisational transformation

While there may be a broader frame of corporate accountability bringing coalitions together, they may disagree on the agenda for action to achieve this goal. Conflict may arise when coalition agendas do not align with organisational identity models. If organisations do not transform to adopt the broader coalitional agenda, there is a risk that the coalition may fracture or become ineffective. This section discusses when and how organisations may transform, to reduce conflict between actors within a coalition.

Transnational corporations are at once globally and locally embedded, thus requiring both global and local responses from anti-sweatshop coalitions. As new alliances are formed, organisations within the coalitions often tend to shift scale, which may also require a shift in their overall agendas and interests. Andre Spicer's work (Spicer, 2006) relates to how the logic of organisations changes with changes in scale. "The governance, strategy and work systems" (Spicer, 2006: 2) of a particular organisation, he argues, are embedded in the spatial scales at which they operate. He implies that changes in scale will also

necessarily result in change in the organisational logic, in turn affecting their strategy and work systems.

Spicer contributes a non-hierarchical view of rescaling, with the understanding that organisations are simultaneously occupying different spatial scales, rather than a process of escalation from the local to the regional, national and global. (Spicer 2006: 4) This is especially true of anti-sweatshop actors that operate at many different spatial scales at the same time, using different strategies (both practical and discursive) to achieve their objectives. Although organisations may have a particular way of operating at the scale in which they are usually embedded, they may be required to undergo “transformation, hybridization and translation” (Spicer 2006: 3) in their work systems as they form partnerships with other actors in a multi-scalar coalition.

To understand organisational transformation, it is first necessary to understand what constitutes an organisation’s identity. Scholars have argued that an organisation’s identity is primarily defined by its interests, its agendas or objectives, its representativeness (referred to in the model as organisational democracy) and the power it enjoys through its location in a particular context. (Pegler 2003: 11) These characteristics then determine how an organization interprets change in its broader context and how it responds to political opportunities. While this framework was initially developed to understand union identities, it is equally useful in looking at other social actors within the anti-sweatshop movement.

While organisations may share interests for the duration a particular campaign, other facets of its identity could differ, leading to conflicts within the coalition. Organisational representativeness is one way of addressing such divergence, i.e. when all actors consider themselves accountable to the same group. In the context of anti-sweatshop coalitions, these could be workers, consumers or citizens of a particular country. There are several difficulties in achieving worker representation and strategic engagement in anti-sweatshop coalitions, especially for organisations who traditionally do not consider them their main constituency but rather are engaging with them as clients, in the context of a campaign.

Unorganised workers are particularly difficult to engage with, for many transnational actors, as they lack an easily translatable, collective voice. Many of the groups claiming to represent workers interests, including trade unions, seldom include affected workers within their ranks. This is particularly true of in South Asia, where unionisation levels are extremely low. It cannot be denied that NGOs and Unions have occupied political spaces in a way that leave little room for less institutionalised worker groups to make their voices heard. As political processes, they have also had representational issues in terms of which class of consumers and workers they represent. (Frank 2003)

Where workers are included, they may be instrumentalised in a way that allows these groups to maintain hegemonic power over the labour discourse. Brooks (2002) refers to examples from the anti-sweatshop campaign in the USA, where two women workers from El Salvador and Honduras were invited to speak about their experiences of workplace abuse and given a central space in the campaign centres of New York, Amsterdam and San Francisco. (Brooks 2012: 91-92) She mentions how these workers, while ostensibly enjoying visibility and agency within the campaign, tend to become little more than illustrations of a pre-existing discourse. They are rarely invited to take part in strategizing beyond their role as a symbol of the broader problems with the industry. As Brooks notes, “Gender, race, nation, class, and the garment workers themselves, do the work that holds the process of transnational protest together, while fields of local agency are channelled into a politics of performance.” (Brooks 2002: 95)

Organisational democracy requires a long-term strategy of “planned obsolescence”, as Dana Frank puts it in her article (Frank 2003: 365), for the non-working class groups to eventually play only a functional role in the coalition and not a strategic role, aiming to collapse the class differences that create conflicts in end goals. This, however, requires organisational strategies to also assist with mobilising workers in a way that they can participate in future actions with successively fewer levels of intermediaries.

An outstanding concern for groups representing workers’ interests that form part of the coalition then becomes one of legitimacy – to what extent do these groups effectively translate the voices of workers into their strategies, in a way that is authentic? To what extent do they enable workers to claim formerly closed spaces, even at the expense of their own privileges, so that workers can own the discourse of which they are the subjects?

Thus, in order to understand how coalitions form and how individual organisations or ‘the moving parts’ operate within the coalition, it is important to locate them in their political context, to acknowledge the possibility of competing interpretations of collective action frames and to understand how their organisation identity may shift, to enhance their own effectiveness as well as to minimise sources of conflict within the coalition.

Chapter 4 – Holding KiK Accountable

This chapter provides a detailed look at the coalition that formed to holding KiK accountable for the tragedy. It first offers a brief look at Europe's relations with Pakistan in the context of the garment sector, followed by a detailed timeline of the KiK campaign. The following sections will then look at inter- and intra-organisational factors that shaped the coalition and gave it its unique shape.

The methodology used to collect data for analysis involved a series of in-person interviews with key actors within the campaign against KiK – these included local NGOs from Pakistan, the international NGO involved in the campaign, the legal group supporting the plaintiffs in the legal case and global trade union members involved in the case. This was further supported by general interviews with legal experts, civil society organisations working on corporate accountability, academics and other groups involved in anti-sweatshop activism. The data from the interviews was supplemented by secondary literature on the campaign, including press releases by the organisations involved, research studies by civil society organisations as well as media coverage of the campaign.

4.1 Europe-Pakistan relations in the garment sector

The export sector in Pakistan is heavily dependent on revenues from the textile and garments sector, which account for more than half of its export earnings. This sector is also a major source of employment, accounting for nearly 40% of employment in the manufacturing industry, particularly in job categories with low entry barriers. (UNDP n.d., 1) Pakistan's primary trade partner in this sector is the EU, accounting for 75% of Pakistan's garment export business.¹¹ Pakistan therefore remains heavily reliant on continuing trade with the EU to support the sector.

In Pakistan, as with other South Asian countries, the EU also promotes broader social goals through its trade and investment policy with the country, for instance through the Generalised Scheme of Preferences (GSP), which allows Pakistan tariff-free access to the European market, if it complies with EU requirements on 'sustainable development and good governance'¹². Under normal circumstances, Pakistan would either need to move towards greater com-

¹¹ European Commission Trade Policy in Pakistan. Available at <http://ec.europa.eu/trade/policy/countries-and-regions/countries/pakistan/>. Accessed 9 November 2016.

¹² Ibid.

pliance with labour standards or risk losing its access to the scheme. The GSP+ status recently awarded to Pakistan has served as a bargaining tool in the hands of both European governments and Pakistani civil society organisations, to promote labour rights in Pakistan, albeit its visible effects on the ground so far have been limited.

Despite the size of the garments and textiles sector, the number of people employed and its contribution in terms of export revenue, labour protections for workers in this sector are extremely poor. There is a high degree of informality, with a negligible share of workers employed through long-term contracts. Unionisation rates are abysmally low in Pakistan overall, estimated to be between 1-5% of the total workforce, (PILER 2014) and union activity is often punished with dismissals or arrests.¹³

Pakistan's garments, apparel and footwear sector has also had its share of large-scale industrial tragedies (ur-Rehman et al 2012), highlighting the unsafe conditions under which these workers are employed. Much like the Rana Plaza building collapse, the factory fire in Karachi, Pakistan, created an opportunity to scale the event up to the global level and address the poor labour conditions in Pakistan through a transnational network of actors. At the time of the fire, Pakistan was producing garments for many leading brands and retailers from the EU (Alam 2012) many of which (including KiK) have voluntary codes of conduct and conduct factory audits of their suppliers. The tragedy in Karachi, in addition to highlighting the poor state of regulation by State authorities, also drew attention to the failure of self-regulation by corporations to guarantee protection of workers in their supplier factories.

The KiK campaign that formed after the Baldia factory fire in Karachi is an example of a coalition of actors within the anti-sweatshop movement that involved close cooperation of non-legal actors with a specialised, professional legal group, including transnational collaborations. Given the limited number of legal cases that have been filed for labour violations at a supplier or subcontracted factory abroad, this particular case has important implications for the anti-sweatshop movement in Europe. The campaign involved concurrent strategies – a Memorandum of Understanding between KiK and PILER for immediate compensation, long-term compensation and health and safety improvements, as well as a legal case against KiK in Germany. Each strategy reinforced the other to bring the campaign to a successful conclusion, and understanding how these strategies worked together can only be understood in the context of how the various actors, with very different organisational identities and contexts, worked with each other in the course of this campaign.

¹³ For details, please see ITUC Survey of violations of Trade Union Rights in Pakistan, available at <http://survey.ituc-csi.org/Pakistan.html?lang=en#tabs-1>

4.2 The KiK Campaign

This section lays out a brief chronology of events in the KiK campaign as well as an introduction to the main actors, within the campaign, before taking a deeper look at the inter- and intra-organisational dynamics of the coalition that eventually formed around this incident.

The Baldia factory fire on September 9, 2012 in Karachi was one of the largest industrial tragedies in Pakistan's history, killing over 260 workers. The workers were trapped in the building when fire started, as the main exit had been locked from the outside by a manager of Ali Enterprises, the Pakistani company that ran the factory. The estimates of injured workers are much higher but there is no record of just how many workers were working in the building at the time of the fire, as most of them were unregistered. The workers at the factory were not members of a union. They had no organisation of their own to represent their grievances and no collective bargaining arrangements with their direct employers.¹⁴ Locally, the situation highlighted the precarious conditions under which labour operates in the garment sector, and the laxity of local regulations on building safety as well as labour laws.

When it was discovered that KiK Textilen was buying most of the garments produced at the Baldia factory at the time of the fire and had even hired an Italian certification company, RINA, to audit the factory for social compliance shortly before the fire, the case took on an international dimension. Along with the Tazreen factory fire and the Rana Plaza building collapse in Bangladesh, the incident made clear to international audiences that working conditions in the South Asian garment export sector were extremely precarious. KiK had been named as one of the buyers in all three of these industrial tragedies.

The contemporary anti-sweatshop movement in Europe has been traced back to the 1980s, with actions against the European clothing brand, C&A for labour violations at their factories in Asia. It was one of the first cases where consumer tactics were used against a clothing brand and affected workers were invited to Europe, to draw attention to the violation.¹⁵ (Bair and Palpacuer 2012: 13) The Clean Clothes Campaign (CCC), which had been a central player in the anti-sweatshop campaign in Europe from the very beginning, became involved in the campaign in Karachi, helping local NGOs in Pakistan to identify the link between the Baldia factory and KiK in Germany. CCC has a long history of involvement in anti-sweatshop campaigns for violations in Asia, which enabled it to get involved very quickly with the campaign.¹⁶ With the assistance of CCC, a Memorandum of Understanding (MoU) was signed be-

¹⁴ Interview with PILER, August-September 2016

¹⁵ ... Adopting a tactic that would be repeated subsequently, European activists organized a tour for the affected workers in the U.K. and the Netherlands, holding press conferences to bring their plight to public attention (E5 2007; Sluiter 2009). – Bair 2012

¹⁶ Between 2000 and 2005, CCC organized 184 campaigns in response to labor rights violations, of which 78% occurred in Asian factories (Merck 2007) “

tween PILER and KiK, to provide for immediate relief and long-term compensation for the workers, as well as investments in improving health and safety conditions in the industry.

Pakistan's engagement with international anti-sweatshop groups has been similarly traced back to the Nike controversy in the mid-1990s, where a number of reports highlighted the use of child labour in producing soccer balls for the brand. (Wazir 2001) Groups like the Pakistan Institute of Labour Education and Research (PILER), an NGO, were closely involved in the monitoring of Nike's promised efforts in Pakistan, after the campaign, (PILER 2009) and have continued to work with NGOs and trade unions from the USA and Europe since then on research studies and advocacy work. PILER has been working on labour issues in Pakistan since 1948 and has an extensive network in South Asia and at international levels with academics and civil society groups. After the fire, PILER immediately became involved in the campaign against KiK in Pakistan. It assisted with filing cases against the owners of the factory in local courts and lobbied with local and national governments for immediate and long-term compensation for the victims. It was the signatory on the MoU signed with KiK soon after the tragedy. Along with other local labour organisations, PILER is also pushing for the creation of sectoral unions, to deal with the continuous violations of labour laws at factories and on issues regarding worker representation.¹⁷

The European Centre for Constitutional and Human Rights (ECCHR), a German group of legal experts, also approached CCC in order to lend their expertise to the campaign. ECCHR and CCC's German chapter had previously worked together in filing a case of false advertising against Lidl, another major German discounter, in 2010, when labour violations were discovered at its supplier factories in Bangladesh. The group had also filed a complaint against TUV Rheinland, an auditing company, after the Rana Plaza tragedy. It thus had experience of both the sector and of working with anti-sweatshop activists in Europe. ECCHR's work is not restricted to the garment sector, however, and covers a broad range of issues.¹⁸

ECCHR, which specialises in strategic interest litigation, made several visits to Karachi, after becoming involved with the campaign, and initiated a legal case against KiK in Germany on 13 March 2015, to seek damages for pain and suffering (which was not covered by the MoU) for four members of the Baldia Factory Fire Affectees Association, an association of families of workers who were killed or injured in the fire in Karachi. This is the first case of its kind in Germany and, if successful, would pave the way for legal responsibility of multinational corporations for harms committed in third countries.¹⁹ The case has received a lot of attention from a wide range of actors engaging with the field

¹⁷ Interviews with PILER, August-September 2016

¹⁸ For further details on ECCHR's work, please visit their website <https://www.ecchr.eu/en/home.html>

¹⁹ Interview with ECCHR, August 2016

of business and human rights in Europe and Asia. ECCHR also recently received the Hans-Litten award for 2016 by the German Association of Democratic Lawyers for its exemplary work, including on cases in the textile industry.²⁰

In terms of trade unions and workers' representatives, the National Trade Union Federation of Pakistan (NTUF) and the global union, IndustryAll, were actively involved in the campaign. In addition, a number of affected workers and their families came together as the Baldia Factory Fire Affectees Association (hereafter, the Affectees Association). The Affectees Association, along with representatives from the NTUF, made several tours of Germany and spoke at various events organised by ECCHR and other German civil society organisations, to generate awareness about the tragedy among German consumers and build political pressure in Germany. Significantly, the Affectees Association also chose the four plaintiffs in the legal case against KiK.

In August 2016, the courts in Germany granted legal aid to the four affected workers pursuing the case in Germany. This development, indicative that the court had accepted jurisdiction for the case, triggered an agreement on the compensation amount through the mechanism of the MoU, with the mediation of the International Labour Organisation (ILO). KiK agreed to pay \$5.15 million as long-term compensation to the workers affected by the tragedy.²¹ At the time of writing of this study, the legal case was still ongoing.

On the surface, this appears to have been an exemplary collaboration of various actors who managed to work together despite very different objectives and strategies. However, the next sections bring out the complexity of their interaction with each other. It covers some of the significant points of productive and counterproductive tensions between the coalition partners and how they were ultimately resolved. This is done through an analysis of the inter-organisational dynamics that were in evidence, within the broader coalition, and of the intra-organisational dynamics, to understand how actors viewed and interpreted their own position within the broader coalition. These sections will draw extensively from the conceptual framework introduced in Chapter 3, for the analysis.

4.2.1 Inter-organisational Dynamics

The review of the case in the previous section showed how certain events, such as the scale of the fire and the discovery that KiK was the major buyer

²⁰ "Hans-Litten-Award 2016 goes to Wolfgang Kaleck and Miriam Saage-Maaß", ECCHR website, Published on 15 October 2016. Available at <https://www.ecchr.eu/en/home.html>. Accessed on 9 November 2016.

²¹ For more details on the case, please see ECCHR's summary, "Paying the price for clothing factory disasters in south Asia", Available at https://www.ecchr.eu/en/our_work/business-and-human-rights/working-conditions-in-south-asia/pakistan-kik.html. Accessed 8 November 2016.

from the factory, allowed for the entry of actors like ECCHR within the campaign. The legal case that was taken up by ECCHR offered a new venue of action for the campaign. However, the scaling up of the event to the global level also led to conflicting agendas emerging within the coalition, which threatened to destabilise the coalition. This section therefore tries to highlight how the various developments within the campaign affected the shape of the overall coalition, as well as some weak points within the campaign.

4.2.1.1. Navigating new venues for action

With the discovery of KiK as the main buyer from the factory and the scaling up of the campaign to the global arena, several new venues for action became available to the campaign. The venues that opened up were both spatial and institutional – for instance, the location of the KiK headquarters in Germany led to extensive campaigning in that country by CCC and others, focusing on generating consumer pressure, civil society pressure, as well as legal pressure on KiK. It not only enabled an MoU to be signed between PILER and KiK, but also paved the way for the involvement of ECCHR and other lawyers, which ultimately led to the filing of the case against KiK in Germany. Without the connection to Germany, it is possible that the campaign would have been restricted to the national stage in Pakistan. The compensation claims would also have to be pursued primarily through local courts, rather than through negotiations with KiK on a long-term settlement and for investments in industry improvements.

Once ECCHR became involved, through its prior relationship with CCC, a group of European lawyers visited Karachi to assess the situation and think of possible strategies for action. This came at a time when talks on the MoU were stalled, convincing some of the other actors of the need to change tracks and try a different strategy. The perceived failure of the negotiations thus created a political opportunity structure for new coalition partners to emerge and for new strategies for action to be employed. NTUF and a selected group of affected families, under the banner of the Baldia Factory Fire Affectedees' Association, fully lent their support to the case. Meanwhile, PILER continued to push for agreement on the MoU, eventually involving the ILO as a mediator between the two parties.

The legal case not only opened KiK up to greater media scrutiny than before in Germany, it also compelled it to respond to the affected persons directly and in response to the legal charges against it. The legal case, if successful, would make it impossible for KiK to maintain its stance that it has no responsibility for the deaths and injuries, as a result of the fire.²²

²² 'For its part, KiK reiterates its commitment to paying the victims. "KiK, a major but by far not the only European or American buyer [of Ali Enterprises], wants to contribute to aid payments for the affected persons of the tragedy," reads a statement KiK emailed to The Express Tribune. "This support, however, is fully voluntary and does not acknowledge any assumption of liability.'" The full article is available at <http://tribune.com.pk/story/1116567/families-baldia-factory-fire-victims-seek-justice-german-court/>. Accessed on 9 November 2016.

The involvement of legal partners and the filing of the case in Germany radically changed the structure of the coalition and the political arena within which the interaction with KiK was taking place. The campaign was able to attack KiK's reputation through multiple venues at the same time, forcing it to accept responsibility for the loss caused by the fire. While there was a genuine fear that the legal venue might close the venue that allowed for negotiations between PILER and KiK to continue, the interviews suggest that the degree of information exchange and cooperation between the actors²³ working in the campaign prevented this risk from being borne out.

4.2.1.2. Trigger points for entry and exit of coalition partners

Like in the Lidl case, it was possible that the opening of the legal venue at the international level may have made it more difficult for local groups to participate in the process. However, as a result of the particular nature of the political opportunity structure that existed at the time this was not an issue. This was primarily by virtue of KiK's status as the majority buyer from the factory, allowing for the affectees to also have a formal role in the legal case. The affectees were further assisted by the absence of any threat of dismissal or punishment for participating in the legal case (the factory had closed, after the fire). The perceived failure of the parties to reach an agreement on the MoU also enabled them to fully focus on the legal case, without fearing that it would affect ongoing negotiations.

However, the political backdrop also created a major rift within the campaign. As neither KiK nor PILER had formally withdrawn from the negotiations on the MoU, PILER could not participate in the legal case. Similarly, as NTUF and the Affectees Association had decided to put their weight behind the legal case, they were effectively unable to take a strategic role in the negotiations. Because PILER's perception of the political opportunity structure did not match that of the other parties that took up the legal case (it did not believe that the negotiations had failed), its venues for action remained unchanged from before. Instead, it believed that an aggressive step such as a legal case might lead to a breakdown in negotiations, leaving the affected workers with an uncertain future. As these fears were not borne out, both strategies were able to continue on their own trajectories, crossing paths only at the juncture when the German courts admitted the case by granting the plaintiffs legal aid in August 2016, thus hastening the process of an agreement between KiK and PILER on the MoU.

Conversely, an agreement on the MoU before the case was considered admissible in the German courts may have led the Affectees to withdraw their support in favour of the compensation arrangement through the MoU, also leading to ECCHR's exit from the coalition (as there would be no legal case to pursue). Before the decision to award legal aid was announced, this was also

²³ According to interviews with CCC and ECCHR, there were several rounds of discussions between the groups pursuing the MoU and the group engaging with the legal case, in order to arrive at a common understanding.

the shared understanding of what would be the most likely outcome of the campaign. However, after the legal aid was awarded, the political opportunity structure had altered – despite the agreement on the MoU, both ECCHR and the Affectees are inclined to see the case through to the end. (Ashraf 2016)

The legal case has also enabled ECCHR and other partners to draw attention to the need for a strong duty of care act in Germany, clarifying the legal responsibility of TNCs towards harms committed in third countries. This opens up the issue in a way that allows the actors to address the broader norms shaping the political context, rather than just the incident that prompted the action. Parallels can be drawn to the case filed by the French CSO, Sherpa, against Auchan in France, to lobby for a stronger duty of vigilance act in France. Thus, the legal case has also enabled ECCHR to actively intervene in generating a political opportunity for change in Germany's institutional framework.

4.2.1.3 Common frame, competing causes

At the national level, the coalition of labour rights groups, NGOs, lawyers and workers all came together to assure the victims of justice, for guaranteeing compensation from the state, and to improve access to basic rights for the affected workers as well as for workers in the industry at large. The interviews do not suggest any conflict at the national level between the various strategies pursued. Rather, there appears to have been a high level of coordination among the local-level actors in Pakistan.

At the international level, however, there were competing agendas at play, which are partly attributable to the dominance of certain actors in certain locations, where they each had a preferred ideology and strategy of operating, rather than the consensus-based approach that one would expect from a well-coordinated coalition. CCC and PILER, for instance, continued to put their weight behind the MoU, as the strategy most likely to achieve longer-term compensation, which was an immediate need of the affected families. For both actors, the affected workers' right to compensation from KiK was paramount – their cause most closely mirrors the 'basic rights complex' introduced in Chapter 3.

As discussed in previous sections, ECCHR was concurrently leading a parallel campaign for establishing precedent in German courts for corporate accountability of TNCs for violations in their value chains, through the 'test case' against KiK.

ECCHR's cause more closely fits the "democratic governance" framework put forth by Anner and Evans (2004), as the focus of the litigation tries to change norms at the institutional level in Germany, rather than offering a direct benefit to the affected workers or prioritising compensation to the affected workers. While questions arise as to how well the plaintiffs are informed of the intentions behind the case, ECCHR have noted in their interviews that

they had multiple discussions with the workers and that the plaintiffs were fully aware of what the case is attempting to achieve, as well as the limitations of what the case can offer to the survivors of the tragedy.²⁴

Thus, the campaign pursued two different approaches within the larger frame of corporate accountability. Interviews suggested that while both PILER (supported by the CCC) and ECCHR pursued different means to tackling the issue, they fully respected each other's contribution to the overall campaign, recognising the complementarity of the two approaches. Both, however, agreed that the 'basic rights' of the workers needed to be given the highest priority.

Overall, there is an indication that while changing political economy structures open up venues for action and in allowing new actors to become integrated within the coalition, it can also lead to conflicting agendas and objectives within the campaign and forcing existing actors to withdraw from the coalition. There is a risk that coalition partners may undermine each other, if the conflicts between their objectives and interests are not resolved. Here, however, the two sets of actors managed to pursue their separate strategies, according to their relative expertise and their respective agendas, while making sure that it did not adversely affect the work of the other actors. This required significant organisational-level adjustments and compromises, as will be explored in the following section.

4.2.2 Intra-organisational Dynamics

This section focuses on how the main strategic actors within the campaign transformed to cope with the new shape of the coalition, after the legal case was initiated. This involved an analysis of the degree to which an organisation adapted to the shifting scales within the campaign, especially in their engagements with their clients – in this case, the affected workers.

4.2.2.1 Shifting organisational strategies

As discussed in Chapter 3, Spicer's (2006) model shows us how transnational coalitions often force actors to operate at unfamiliar scales – on unfamiliar terrain and with unfamiliar partners, which may require significant changes in their work systems.

Both CCC and ECCHR, in their own ways, are products of their institutional context in Europe. Negotiations with international companies are a common strategy for arriving at mutually agreeable outcomes, for trade unions and NGOs. In the context of Europe, trade unions and NGOs like CCC enjoy an institutionalised, even privileged political space, relative to their counterparts in many other Southern countries. Confrontation through legal action is therefore not the preferred means of engaging with a corporation but rather seen as

²⁴ Interviews with ECCHR, August 2016

a last resort, by such groups. Bair and Palpacuer (2012: 16) describes CCC's preferred strategy as one of 'propose and oppose', wherein confrontation through a legal campaign or mobilisation would only be undertaken when all possibility of negotiations have been exhausted. In the case of Lidl, this approach was very much in evidence. After repeated attempts to influence the company through reports highlighting violations at their factories in Bangladesh, CCC and ECCHR finally launched the legal case against the corporation – but only after Lidl falsely used advertising material that asserted that they had already achieved compliance within their production network, despite evidence suggesting otherwise. For this campaign, the trigger point was the release of the advertising messages by Lidl, which prompted CCC to go on the offensive against the organisation. No such trigger point was reached, from CCC's point of view in the KiK campaign. Thus, little evidence of transformation or adaptation is visible from CCC's position within the context of this campaign, which seemed very much in line with its usual strategy.

The judiciary in Germany is considered to be independent, enforcement mechanisms are strong and legal reform is considered an important tool for changing behaviour of corporations. In Germany, the rule of law considered a fundamental rule in the regulation of society and understood as such, even by opposing groups. This allows for strategic litigation to be far more successful in changing behaviour of actors, than it would be in countries where there is limited faith in State institutions and enforcement mechanisms are weak. As a result, for ECCHR, taking up such test cases seemed a standard mechanism to achieve their objective for changing the institutional framework within which organisations operate and influencing their behaviour. This also appears to be unchanged in ECCHR's approach, from the Lidl case to the campaign against KiK.

However, despite having prioritised the filing of cases over addressing limitations in worker representation in the past, ECCHR can be said to have undergone a process of adaptation and learning. As its first case in this sector against Lidl did not involve workers in a formal capacity, it could not offer any direct benefit to the affected workers – either through the case or through information sharing and capacity building. Its engagement in future campaigns, such as the ones against TUV Rheinland²⁵ and KiK have involved a far closer engagement with affected communities, with repeated visits by ECCHR to Bangladesh and Pakistan, respectively. This has partly been possible through resource pooling with local partners in Pakistan as well as with international NGOs. ECCHR was also compelled to locate itself as an actor within a larger campaign of established anti-sweatshop groups and cooperate with them, through the campaign.

As national-level actors scaled up to engage in the international arena, they also altered their organisational interests and strategies. It appeared as

²⁵ Further details regarding the complaint against TUV Rheinland are available at https://www.ecchr.eu/en/our_work/business-and-human-rights/working-conditions-in-south-asia/bangladesh-tuev-rheinland.html

though their organisational interests had become hybridised with those of organisations like CCC and ECCHR, due to their relatively more powerful position in Germany and Europe.

NTUF, for instance, is a trade union in Pakistan that, while collaborating closely with PILER at the national level, supported the legal strategy undertaken by ECCHR, rather than playing a major role in the negotiations with KiK on the MoU. By lending its support to the legal case in Germany, it effectively broadened its interests to strive for legal reform in Germany, which aimed to benefit a larger class of workers, including those in other sectors and countries supplying German buyers.

PILER, too, worked at multiple scales within this campaign. At the local level, it worked hard to achieve justice for the affected families through multiple strategies, including a criminal conviction of the factory owner as well as lobbying for access to compensation and social security for the affectees. PILER employed other tactics for creating a local movement around the campaign, such as reviving discussions for the formation of a sectoral union for the garments sector. It also organised a performance of a song by Jawad Ahmad, a famous Pakistani singer, on the anniversary of the tragedy, which had been written in honour of the affected families.²⁶ These were unrelated to the campaign against KiK but are evidence of PILER's engagement with the workers as a civil society organisation bridging the gap between the citizen and the State.

At the international level, however, its agenda converged closely with those of the CCC, which also explains their close partnership. Given that PILER's engagement with CCC goes back many years, it may also be inferred that PILER's organisational identity at the international scale mirrors CCC closely due to a process of mutual adaptation and learning from their close association. For instance, PILER was, like CCC, extremely reluctant to become involved in the court case at the international level, despite avidly pursuing the conviction of the factory owner in Pakistan – partly due to its position as a signatory on the MoU but also because neither PILER nor CCC believed at the time that the negotiations had irrevocably broken down. PILER preferred instead to continue working on the negotiations, by involving the ILO as a mediator. Given how the campaign eventually played out, a key learning that could emerge from this experience for CCC and PILER could be how the “propose and oppose” strategies need not be substitutes but could also run in tandem, even at the international level, in a way that serves the interests of the broader campaign.

We can thus observe how changing scale also resulted in changing organisational power for the various organisations (Pegler 2003) prompting changes in organisational strategies, with those of weaker groups tending to transform into something much closer to that of their more powerful partners.

²⁶ The song, “Sun lo kay hum mazdoor hain”, is available at <https://www.youtube.com/watch?v=oDMVoCFej7E>

4.2.2.2 Workers representation and capacity-building

Aspects of organisational democracy are extremely relevant to analysing the dynamics of organisations within the coalition, as it has been highlighted as a major limitation of many traditional transnational anti-sweatshop actors. In addition, traditional anti-sweatshop actors that are associated with a set of workers only in the context of a campaign may take a clientalistic view of the workers (rather than engagement with the workers on a wider range of issues or over a longer term) and risk making instrumental use of the workers, to achieve their own ends.

While it may be asserted that neither consumer groups nor legal groups ordinarily operate with the same constituency as labour rights groups and workers' organisations, both CCC and ECCHR used the violation of workers' rights as a cause for action within their discourse and claimed to represent the interests of the workers, to other parties. ECCHR, for instance, mentions on its website:

*"On 13 March 2015, four of those affected by the disaster filed a compensation claim against KiK at the Regional Court in Dortmund. Muhammad Hanif, Muhammad Jabbir, Abdul Aziz Khan Yousuf Zai and Saeeda Khatoon are all members of the Baldia Factory Fire Association, the organization run by those affected by the fire, and are seeking 30,000 euro each in compensation. The European Center for Constitutional and Human Rights (ECCHR), medico international and the National Trade Union Federation (NTUF) from Pakistan are assisting with the case, which was filed by Berlin lawyer Dr. Remo Klinger."*²⁷

CCC, in its press release following the first visit it made to Pakistan, after the tragedy, also makes various claims on behalf of the workers – to KiK as well as to the national government of Pakistan.²⁸ It can therefore be argued from their statements and their engagements with the workers that both CCC and ECCHR, while not labour rights organisations, felt that they owed the workers some degree of representation within their organisational strategy, at least in the context of this campaign. One possible explanation for this is that they felt compelled to do so, as the case and the negotiations demanded close engagement with the workers as a result of their very structure. It was mentioned during the interviews that the specifics of the legal case in Germany, as well as the limitations of what it could promise, were well understood by the affected families – this was critical for ECCHR as the case would have to be withdrawn, if the affected families were not prepared to participate in the case or did not find it worth their while to continue. Another explanation could be that, to manage the conflict that would inevitably arise should they work together while pursuing wildly divergent interests and agendas within the cam-

²⁷ For more details on the case, please see ECCHR's summary, "Paying the price for clothing factory disasters in south Asia", Available at https://www.ecchr.eu/en/our_work/business-and-human-rights/working-conditions-in-south-asia/pakistan-kik.html. Accessed 8 November 2016.

²⁸ See "Clean Clothes Campaign delegation's visit to Pakistan, available at <http://pakistannewsreleases.com/clean-clothes-campaign-delegations-visit-to-pakistan/>. Accessed 9 September 2016.

paign, the representation of workers in their strategic decision-making created a broad coherence within the movement, ensuring that all actors would give foremost priority to the affected families' needs for compensation, even while pursuing different causes under the corporate accountability frame.

Regardless, unlike during the Lidl case, one important outcome of this case was that ECCHR interacted regularly with the Affectees Association, particularly the four plaintiffs, with the assistance of translators and with mediation by the NTUF. For ECCHR, the implicit assumption was that the Affectees Association was adequately representative of the workers affected by the tragedy. The Affectees Association also had a hand in choosing the four plaintiffs from among them, which reflects the relative autonomy of the group and their participation in making important strategic choices. The fact that the workers had formed an organised group was critical in facilitating their interaction with ECCHR, as the affected families who were not part of the Affectees Association were not involved in the work on the case.

CCC, in this particular campaign, also made visits to Pakistan but its interaction with the workers was largely mediated through PILER. PILER was in regular contact with the broader affected community of workers and their families (not just the Affectees Association), although information sharing on important developments was largely conducted in a top-down manner – updates would be communicated to community leaders to share with others in their residential areas. PILER, due to its prominent status as a civil society organisation in Karachi, and its long history of work on labour rights in the region, was considered an authentic translator of workers' demands by the CCC and the global unions involved in the campaign. However, PILER's continuing efforts towards organising the workers are a sign that an independent voice may emerge from the workers themselves.

In summary, given the diversity within existing anti-sweatshop coalitions and types of legal actors, and constantly changing political contexts, it is difficult to see a consistent pattern of interaction between the two groups. However, some initial conclusions can be drawn from the data – pre-existing partnerships within the anti-sweatshop movements that have a history of working together may have an established manner of operating and a strategy of action, which may be destabilised with the entry of new partners. At the same time, new partners bring in added capabilities to the campaign that are useful to take advantage of new venues created by changing political opportunity structures. Interviews with civil society groups involved with the campaign suggest that the benefits outweigh the risks and see a more positive role for legal groups going forward in the movement, especially those like ECCHR that work with a social justice focus and share political values with other anti-sweatshop actors. A high-profile case in North America was repeatedly cited as an example where the legal groups did not work as part of a larger campaign. The interviewees claimed the case was poorly argued and not only could the case not offer a remedy to the claimants, the dismissal of the case in court also caused actual harm to the broader campaign for corporate accountability.

There is therefore hope that the conflicts within this movement are no more than teething troubles and under the right conditions, regular engage-

ment between anti-sweatshop actors and legal groups working for corporate accountability can help in smoothening out some of the rough edges of these partnerships.

Chapter 5 – New Directions in Anti-Sweatshop Coalitions

A detailed study of the campaign offers many insights into the advantages of including legal actors within anti-sweatshop coalitions. Legal groups add an important institutional capability to campaigns and open up additional venues for action. Legal groups change corporate behaviour by using the State as a regulatory authority. As a strategy, it derives legitimacy from the rule of law, which can be a powerful source of power in institutional contexts where enforcement mechanisms are strong. Professional legal groups also benefit from the alliance – they may lack capacities on the ground, or have a limited understanding of dynamics at the industry or regional level. They can therefore benefit from the experience of broader campaign networks. By forming stronger links with the anti-sweatshop movements, and by pooling resources, legal groups may also become aware of future opportunities for legal action. For instance, groups like the CCC and global unions could create political opportunities through their campaign work that allow for legal cases to be filed, as a supplementary strategy – much in the same way as the KiK campaign.

Based on the findings in Chapter 4, this chapter brings together the lessons that can be drawn from the KiK campaign, that have relevance for how legal actors and anti-sweatshop actors can be part of positive coalitions that are mutually beneficial for both actors, and how these coalitions can be used to further the agenda for greater corporate accountability.

5.1 Engaging with Legal Reform

Anti-sweatshop groups in Europe have by and large not engaged with the legal infrastructure, being as it is unequally weighted in favour of corporations. However, the legal framework is dynamic and open to contestation, such as through strategic litigation approaches that constantly seek to reinterpret law and bring it up to speed with contemporary realities. For instance, discussions around the duty of vigilance law in France created an opportunity for Sherpa to file a case against Auchan, to draw attention to the gaps in the legal framework and enable these findings to feed into discussions on the construction of the law. At the same time, law can be a limiting factor and constrain movement building – due to collective redress not being a possibility for affected communities in German courts, only four of over 300 affected families were able to put their claims forward in the case against KiK.

There is renewed pressure from citizen groups to both strengthen legal frameworks as well as utilise them, with widespread consensus on the inability of soft law measures to provide communities with some level of protection, vis-à-vis these powerful economic giants. The current legal framework is not yet well developed enough to guarantee consistent and predictable outcomes for affected groups. There is as yet no consensus on when, where and how

corporations may be held liable for harms committed in a different country. Partnerships with legal groups that share similar objectives can allow anti-sweatshop coalitions to intervene in ‘democratic governance’ spaces and actively attempt to change the legal infrastructure, in a way that aids the movement’s objectives.

Anti-sweatshop movements thus need to take more of a frontline role in engaging with legal processes, than they have done in the past. For instance, the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights at the United Nations, which is tasked with creating a binding treaty to regulate the operations of transnational corporations, is an important opportunity for anti-sweatshop actors to get involved in setting the legal standard, by lending their expertise to the process. The presence of civil society actors at the moment is overwhelmingly biased towards agricultural peasants’ organisations and environmental groups, with limited engagement from trade unions and organisations bringing perspectives from the manufacturing industries. CCC, in one of the interviews, for instance, mentioned that while it had not engaged with this process in the past, it was considering getting involved in the near future, which would be a positive development, as it would also create a space for many of its local partners to lend their voice to the process through the CCC.

Thus, anti-sweatshop groups must establish closer links with legal groups, in order to be able to influence the democratic governance arena. Legal actors, similarly, must ally with anti-sweatshop movements to ensure that the pursuit of democratic governance reforms are placed within the context of a larger movement and that they benefit from the experience of established anti-sweatshop actors in the sector. By engaging with legal groups on the democratic governance framework, the coalitions can collectively challenge the privatisation of labour governance. Legal action engages with public institutions and can allow these coalitions to draw the State back into a more active role in regulating the conduct of TNCs.

5.2 Legal Actors as Coalition Partners – Raising the Stakes

The second learning from the case is that the inclusion of legal actors within a coalition can significantly raise the stakes of what can be achieved through the campaign – it can lead to an ‘all or nothing’ scenario, where the best case involves both short-run and long-run objectives being achieved through the case, while the worst case could have meant that neither of those objectives would be met by the coalition. There was a constant risk within the KiK campaign that one set of agendas and strategies may end up undermining the other, although it was eventually not borne out.

Anti-sweatshop coalitions tend to have an established agenda and style of operating, within the European context. The “propose and oppose” logic of the CCC seems to be dominant and also, to some extent, practiced by its local

partners. Legal groups who work with a different strategy could potentially destabilise this established practice. In certain cases, this non-conservative stance could prove advantageous to the broader coalition, as it did in the KiK campaign. However, if not adequately managed, it could lead to conflict between the various actors and harm the broader campaign – also potentially harming the interests of workers dependent on the campaign for access to justice.

Legal cases can also have unintended costs for communities – if legal cases cause capital flight from countries, they could also lead to job losses for the very workers that the law may have been trying to protect. Thus, locating the legal strategy within a larger campaign strategy is essential to avoid potentially negative externalities of legal actions.

Lastly, should legal actors be permitted to set the agenda for the broader campaign, there is a risk that what gets scaled up from the local to the transnational level will be limited by what the legal infrastructure allows and the resources of the legal group. For instance, resources for legal action at the transnational level are far more easily mobilised when it is a large-scale tragedy, as opposed to for routine labour violations.²⁹ Cases that are perceived to have a low chance of success, i.e. when the judgement is less likely favourable, may not be pursued at all. Thus, there is a risk that if legal groups become the gate-keepers of access to law, with limited input from communities and actors representing their interest, they may end up limiting access to the legal arena for anti-sweatshop actors, even where there is a moral case to be made for corporate accountability. Linking up with anti-sweatshop actors and affected communities could enable legal groups to identify areas where legal grounds for corporate accountability fall short of the moral grounds used by the anti-sweatshop movement and labour groups, as suggested areas for legal activism for the broader coalition.

As scholars have shown, from the point of view of aggrieved communities, the outcome of the case is far less relevant than its contribution to the mobilisation of the community (Newell 2001: 85) and in its power as an ‘unfulfilled threat’ (McCann 2006: 30). Locating legal actors within a broader coalition of actors is necessary so that legal groups effectively use strategic litigation in a way that it serves as a tool of counter-hegemonic power, rather than function as an end in itself. Groups like ECCHR, which share the political values of the broader coalition, may be better placed than other non-partisan legal groups, in forming effective coalitions with other actors.

5.3 Representation of clients in strategic decision-making roles

Many legal groups do not see a role for workers mobilisation as a critical part of strategic litigation – they may push for greater worker involvement but do not see it as an obstacle if they do not manage to include them within their strategy for action. However, the evidence that was collected in many

²⁹ Interview with ECCHR, August 2016

strategic litigation cases, such as the cases against Lidl, Auchan and KiK, heavily relied on the lived realities of workers to build an argument for better regulation of transnational corporations. Legal groups should avoid replicating the problems with the existing anti-sweatshop movement, by becoming yet another group that translates the voice of workers into causes that fit its own organisational agenda. Moving workers from objects to subjects within this strategy will require an overhaul of the client-based work of legal groups to a more constituency-based approach. The emergence of a legal group like ECCHR is a promising development, as it attaches a high level of importance to engagement with the workers in its cases, and has successively improved its level of engagement with the communities that it speaks for.

The Affectees Association, which emerged during the campaign against KiK, was able to provide an articulate and authentic voice to the broader campaign, with support from ECCHR and other actors. Similar groups have been known to form around other legal cases, such as the group of affectees known as Los Afectados, which have mobilised against Chevron-Texaco in Ecuador.³⁰ There may be additional benefits from this engagement well beyond the timeline of the case. For example, once the proceedings on the legal case begin in Germany, the plaintiffs may have to undergo some amount of training by the lawyers to present their evidence in court. This knowledge, once gained, can also be transferred to their peers. Similarly, having seen the benefits of operating through an organised body and as a result of their close interaction with NTUF, the Affectees Association could play an instrumental role in convincing more workers to join local unions or to self-organise.

The most significant learning from this case has been the benefit of workers' concerns being represented in strategic decisions by all actors within the campaign, even if the causes at the organisational level differed. This gave the movement overall coherence, at least in terms of organisational priorities, and minimised conflict between the actors. While the same effect can be anticipated when coalition partners share any group as their common constituency, a worker-centred campaign also offers distinct benefits in terms of enabling workers' organisations to form and adding to their capacities.

In summary, effective coalitions between legal groups and the anti-sweatshop movement can be established if they succeed in developing a common discourse with the other actors within the coalition, if they can reach a common understanding of how legal action fits within the broader campaign agenda and, most importantly, if they can provide a central space to affected communities for providing coherence and strategic direction to the campaign. Such alliances can achieve longer-term objectives of modifying the legal archi-

³⁰ See a reference to the group in the article 'Jungle Law' that appeared in the magazine, *Vanity Fair*, Published on 3 April 2007. available at <http://www.vanityfair.com/news/2007/05/texaco200705>. Accessed on 9 November 2016.

tecture within which corporate accountability is assigned, without sacrificing the immediate needs of workers affected by rights violations.

Chapter 6 - Conclusion

The Baldia factory fire tragedy, the Rana Plaza building collapse and the Tazreen factory fire all exposed some glaring failures of the self-regulation regime of labour governance, preferred by most corporations, in its ability to prevent and address labour rights violations within the value chain. However, the unique campaign that formed to hold KiK accountable, after the fire, puts forward a practical and alternative model for corporate accountability that challenges much of the prevailing wisdom on labour governance approaches.

While most of the scholarship on public and private governance of global production networks tends to see the two as substitutes, or at least a binary choice for social actors, the evidence from this paper suggests that a hybrid is indeed possible – not only in terms of the kinds of actors that come together to form a coalition but also in terms of strategies utilised by the coalition.

A combination of legal strategies with social movement approaches can, under certain circumstances, allow a multi-pronged approach to corporate accountability in a way that the strategies mutually reinforce each other. While one targets the State as regulator, the other targets corporations through movement building and establishing a moral standard. Neither is effective on its own – legal cases without social movements backing them are vulnerable to attack and can have negative consequences on the communities that they attempt to represent. Independent state institutions are prerequisites for legal actions to be enforceable, which limits the spaces where legal action may be utilised effectively. Similarly, private forms of regulation such as voluntary codes of conduct tend to be tokenistic and leave little recourse for communities in cases of non-compliance. When soft law tactics and private regulation are given a legal backbone, however, they become far more powerful in what they can promise affected communities. An ‘unfulfilled threat’ (McCann 2006: 30) of legal action is sometime sufficient to persuade corporations to reach compromises with the claimants. The number of court cases that are settled out of court suggest that even if the outcome of the cases is uncertain, the reputational cost of court proceedings and the threat of losing autonomy over the outcome is enough to convince corporations to persuade them to reach a settlement with the claimants, rather than allow for a judgement to be pronounced. However, this would require close coordination between legal actors and social movements, to ensure that their respective strategies can mutually reinforce each other, rather than undermine each other. The case suggests that this would be most likely when the two share common discourses, are able to locate the legal case within a broader campaign and providing representation within their campaigns to a common constituency – such coalitions may be best placed to successfully use hybrid strategies for holding corporations accountable.

While this paper explores just one case in depth, other cases from the sector that were reviewed also seem to be in conformity with the findings. However, further research is required on inter- and intra-organisational dynamics within similar coalitions of legal and non-legal actors that employ hybrid approaches to governance, to test the model’s validity.

An additional area of research, which has been briefly explored through this paper but was not investigated in detail by the author due to time and resource limitations, is the impact of such hybrid strategies on mobilisation of affected communities. It is unclear at this stage in the campaign how event- or process-based systems of solidarity endure beyond the timeline of the campaign.

Lastly, the paper privileges an inter-organisational perspective and the analysis would benefit from a focus on intra-organisational dynamics that can clearly illustrate processes of organisational learning within coalitions, to illustrate how coalitions form and how organisations negotiate their space, within them.

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