



The added value of the UN Norms

A comparative analysis of the
UN Norms for Business with existing
international instruments

Joris Oldenziel

Amsterdam, April 2005

Centre for Research on Multinational Corporations

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*Stichting Onderzoek Multinationale Ondernemingen
Centre for Research on Multinational Corporations*

Keizergracht 132
1015 CW Amsterdam
The Netherlands
Tel.: 020-6391291
Fax: 020-6391321

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Introduction

In recent years, an increasing number of actors have been involved in setting standards for good corporate behaviour and developing instruments to hold Multinational Corporations (MNCs) accountable for their activities. These include business federations, trade unions, international solidarity groups, consumer groups, governments, international institutions, and pension and investment funds. As a result, a proliferation of codes of conduct can be seen at different national, international, sectoral and corporate levels.

The plethora of codes of conduct has led to large number of norms and criteria which may be considered as the normative framework for Corporate Social Responsibility (CSR) and Corporate Accountability. Increasingly, CSR initiatives also include provisions on the scope, implementation, transparency and reporting, and monitoring and verification. However, the increasing number of initiatives has also led to confusion among the different actors and lack of common starting points for discussion.

This paper deals with the question whether the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights (UN Norms) can have an added value to the existing codes, standards and guidelines. In particular, three key intergovernmental codes are discussed, the OECD Guidelines for Multinational Enterprises, the UN Global Compact and the ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy. The question of the added value is mainly addressed from the perspective of civil society organisations, and will focus on one key aspect of the instruments: the mechanisms for addressing alleged violations of the standards by corporations.

The international instruments are compared with each other in terms of inclusiveness of the standards, and in terms of the operational principles to ensure implementation. The 'parameters' for this comparison come from the 'CSR Frame of Reference' which was drafted by the CSR Platform, a network of around forty NGOs and trade unions in the Netherlands.¹ This Frame of Reference outlines the normative framework of what these organisations consider to be part of CSR, as well as the essential operational aspects that are needed for CSR initiatives to become more than just Public Relations tools. Such operational aspects are supply chain responsibility, stakeholder involvement, transparency and reporting, and independent verification.

The key question for civil society organisations in the debate on corporate accountability is what an effective and credible international instrument should look like. This paper concludes with a number of suggestions and recommendations for future civil society campaigns working toward corporate accountability.

1 <http://www.mvo-platform.nl/mvotekst/CSR%20frame%20of%20reference.pdf>

Dutch CSR Frame of Reference*

CSR Standards

The CSR Frame of Reference (FoR) lists relevant standards, agreements, and operational aspects involved in CSR internationally from the perspective of civil society organisations in the Netherlands. The standards mentioned in the FoR are:

- ❑ Human rights obligations, based on a range of international human rights treaties.
- ❑ Labour standards as defined by the ILO: the four core labour standards, as well as the most commonly mentioned labour rights such as health and safety, working hours, and living wage.
- ❑ Environment; the principle of preventive action, the precautionary principle, tackling environmental damage at the source, and the polluter pays principle.
- ❑ Consumer protection: the right to safety, to information, to choose, to be heard, to appeal and lodge a complaint, to consumer education, to sustainability.
- ❑ Health.
- ❑ Fighting corruption.
- ❑ Other CSR aspects, such as competition, taxation, science and technology, respect for national sovereignty and local communities.

This list of standards is based on extensive consultation among the different members of the CSR Platform, ranging from human rights, consumer, development and labour rights organisations including trade unions. The list is not exhaustive, but provides a good overview of the normative framework of expectations from civil society organisations towards companies. It is acknowledged that these standards are general and must be made sector specific and that not all standards are equally relevant for each business.

Operational aspects

The CSR Frame of Reference highlights a number of basic conditions under which CSR based on the abovementioned standards can become meaningful. First of all, trade and supply conditions, such as prices and supply deadlines should enable the whole supply chain to comply with the standards mentioned.

* See Annex

The notion of supply chain responsibility is becoming increasingly important in the CSR debate. Businesses have a responsibility for the conditions of their production processes, even though they may be outsourced through complex supply chains. It's within these supply chains, especially in developing countries, where most violations of CSR standards occur. Therefore, CSR initiatives that do not acknowledge supply chain responsibility fail to address some of the most important issues related to business behaviour.

Other key operational aspects that are mentioned in the CSR Frame of Reference are stakeholder involvement, transparency and reporting, independent verification, and complaints mechanisms. The provisions mentioned are based on the learning within the NGO and trade union community in for example, partnerships and multi-stakeholder initiatives. It is believed that each of these aspects add to the credibility and effectiveness of CSR initiatives. Elements such as stakeholder involvement, transparency, independent verification and complaints mechanisms are often the key demands from civil society organisations when it comes to corporate social responsibility and accountability.

The OECD Guidelines²

CSR Standards

The standards mentioned in the OECD Guidelines are grouped in ten chapters. Key normative aspects are:

Human rights

In Chapter two, general principles, human rights are mentioned but no human rights instruments are mentioned explicitly.

Chapter II, paragraph 2 states that enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. Enterprises should respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments.

Labour rights

Chapter IV on employment and industrial relations includes paragraphs that are based on all four fundamental labour rights, namely freedom of association and the right to collective bargaining, the effective abolition of child labour, the elimination of all forms of forced or compulsory labour and non-discrimination in employment and occupation.

The employment chapter includes other important clauses on general employment, such as training, handling of complaints, prior notice to workers in cases of major changes, and no practice of double standards.

Elements that are lacking are provisions on the number of working hours, employment contracts and living wages. These standards can be found in most labour codes of conduct such as the ICFTU Code, SA 8000 and the Ethical Trading Initiative's Base Code.

Environment

A chapter is dedicated to environment, which includes environmental principles such as the precautionary principle, and general environmental requirements, for example to set up environmental management systems, to undertake regular monitoring and verification of progress, and to continually seek improvement of environmental performance.

² For the official text of the OECD Guidelines, including the Procedural Guidance and the Commentary: <http://www.oecd.org/dataoecd/56/36/1922428.pdf> (15 March 2005).

The Guidelines also include chapters on information disclosure, competition, taxation, and science and technology, thereby covering a very broad range of CSR issues.

Weaknesses

The Guidelines do not directly refer to specific paragraphs of international standards like ILO and environmental instruments which diminish their value. Their existence, as well as the Universal Declaration of Human Rights (UDHR), is recognised in the Preface, paragraph 8, but it is not stated that companies should respect the principles expressed therein. The Guidelines have vaguer descriptions of labour rights and the precautionary principle than what is established in ILO Conventions and the Rio Declaration respectively.

Operational aspects

The Guidelines, initially appearing to be a purely voluntary measure, are a more unusual hybrid. While they are not directly binding on companies, they are binding on adhering governments, i.e., those countries that are party to the Declaration on International Investment and Multinational Enterprises. This means that such adhering governments are obliged to promote these Guidelines to companies and set up a National Contact Point which both promotes the Guidelines and deals with 'specific instances' in cases where, according to a third party, the Guidelines are violated by a company.

Supply chain responsibility

The latest review of the Guidelines, which took place in 2000, brought about a major change in extending their applicability to worldwide activities of OECD based Multinational Enterprises (MNEs). Also, a relatively weak recommendation to encourage compliance of the OECD Guidelines throughout the MNE's supply chain was added. The scope of this extension has led to heavy debate. A key issue in the debate relates to whether the Guidelines apply only to 'investment' or also 'trade' activities. NGOs have been raising concerns over the fact that the interpretations of the scope of the Guidelines is increasingly being limited.

The operational framework of the Guidelines is outlined in the Procedural Guidance attached to the Guidelines. It outlines how the OECD and adhering governments should implement the Guidelines: setting up National Contact points with the task to promote the Guidelines, respond to specific instances raised by interested parties and report yearly to the OECD's Investment Committee. There is no obligation for NCPs to make their annual report available to the public or NGOs.

The OECD Guidelines' implementation procedure does not provide provisions on how MNEs themselves should implement the Guidelines through their operations, how they should monitor compliance, how to report about progress or allow for independent verification. In other words, many of the operational aspects that civil society organisations perceive as essential for the credibility of the CSR initiatives are lacking in this instrument.

The key element of the OECD Guidelines' implementation is the complaint mechanism. The procedure is unique in the sense that each OECD and adhering government must establish a forum where complaints can be lodged, or in OECD parlance: specific instances can be raised, with regard to supposed violations of MNEs in those countries and violations of that country's MNEs (where they are headquartered) for their activities outside the OECD area.

In terms of transparency, the OECD Guidelines procedure is not very clear, and has as a result led to debate between different stakeholder groups. If the parties have not agreed on a resolution of the problem at the end of the procedure, the results are to be made public by the National Contact Point (NCP) unless preserving confidentiality would be in the best interests of effective implementation of the Guidelines.³ NCPs have thereby no obligation to make the results of the complaint procedure public. Up to date, there have been very few instances where NCPs have publicly named companies to be in violation of the Guidelines.

The experience of NGOs and trade unions with filing cases so far is that the procedures are slow and not transparent, and the outcomes are often unsatisfactory. There have been only very few cases where the OECD Guidelines complaints procedure has in fact contributed to the resolution of the issue. Nonetheless, an increasing number of civil society organisations feel that the instrument should at least be tested and that the procedure does provide some form of addressing the issue at Governmental level. There have also been examples reported where positive actions were taken by companies after complaints were raised against them.⁴

3 OECD, The OECD Guidelines on Multinational Enterprises, REVISION 2000 Procedural Guidance, I C 4 (b).

4 Examples of such cases can be found in the OECD Watch Newsletter, October 2004: <http://www.oecdwatch.org/docs/Newsletter.pdf>

The Global Compact

CSR Standards

The Global Compact sets out ten principles in the area of human rights, labour standards the environment, and corruption. The tenth principle on corruption was added in 2004.⁵ The two human rights obligations mentioned in the Global Compact (GC) are drawn from the Universal Declaration on Human Rights (UDHR) and state that companies should support and respect the protection of human rights within their spheres of influence, and make sure that they are not complicit in human rights abuses.

The labour standards mentioned in the GC are limited to the four fundamental labour standards derived directly from the ILO's Core Conventions. There is no mentioning of other labour standards such as living wages, health and safety, hours of work, and the right to security of employment.

There are three environmental principles of which the *precautionary principle*, with reference to the Rio Declaration, is the most concrete. The other two principles are encouraging companies to undertake initiatives to promote greater environmental responsibilities and to develop and diffuse environmentally friendly technologies.

Although the Global Compact covers four important CSR areas, there is no mentioning of some of the other CSR issues, such as competition, technology transfer or taxation. The advantage is that the normative framework is simple and thereby strongly promotional in character. However this can also be seen, and often is, as a disadvantage in terms of the necessary specificity needed when it comes to implementation and accountability.

Operational aspects

The Global Compact is non-binding and includes no specific criteria of performance. It does not provide for an enforcement mechanism or a monitoring system. To participate in the initiative, companies are encouraged to publicly advocate the principles and the Global Compact. Furthermore, companies are asked once a year to provide the UN with a concrete example of progress made or lessons learned in implementing the principles known as the 'communication on progress'.⁶

5 In January 2004, UN Secretary-General Kofi Annan initiated a consultation process on the possible introduction of a tenth principle against corruption. A formal letter was sent to all participants (1,205, as of 31 December 2003), seeking their views. The consultation process was concluded on 7 May 2004. Of the responses received, approximately 95 percent supported the addition of the principle. Based on the results of the consultation process, the Secretary-General formally introduced a principle against corruption at the Global Compact Leaders Summit, convened on 24 June 2004.

6 N. Jagers, Corporate Human Rights Obligations: in Search of Accountability, 2002, pp. 129-130.

Practical guidance exists on how companies should approach this annual communication. It is expected to include:

- A general description of the company's activities in support of the GC together with a statement from a senior executive
- A description of the ways in which the company has implemented the GC and its principles and key outcomes or expected outcomes

The GC Office neither regulates nor monitors a company's submissions and initiatives.⁷ As a result, a very small number of signatories have actually reported following the guidelines. Measures to counter this problem were recently put in place. Should a participant not submit a link to/description of its communication on progress to the GC website by 30 June 2005, or within two years of joining the compact (whichever is later), that participant will be removed from the list of participants until such a submission is made. Moreover, the participant will not be permitted to take part in GC events.

NGOs and trade unions have for a couple of years raised concerns about the potential danger that companies could use the GC to 'bluewash' their name.⁸ There have been some responses to these concerns, but none of them have been convincing. The UN Secretary General's July 17th 2000 Guidelines on UN cooperation with the business community state that companies that violate human rights are not eligible for membership.⁹ It also contains provisions on the use of the UN name and logo. The GC Office reserves the right to take appropriate action in the event of a breach of these provisions. In serious cases, this may include removing the offender's name from the list of participants.¹⁰

As a reaction to the increasing criticism against the Global Compact, the GC office introduced a formal complaints mechanism in 2004. Complaints can be submitted at the Office. When such complaints are submitted, the Office will 'endeavour to use its good offices to encourage resolution of the complaint, refer the issue to one or more of the UN organisations that are guardians of the principles for action, assistance or advice or, finally, ask the relevant country/regional GC network or other participating organisation to assist in finding a solution.'¹¹ No public statements will be made regarding a complaint until it is solved.¹¹

7 How the Global Compact Works: Mission, Actors and Engagement Mechanisms, 2003, p. 2.

8 See for example, a letter to the Kofi Annan from the Alliance for a Corporate-Free United Nations, January 29, 2002.

9 Guidelines. Cooperation between the United Nations and the Business Community, Issued by the UN Secretary-General 17 July 2000, Chapter III, para 12 c. Available at <http://accsubs.unsystem.org/ccaqfb-intranet/references/privsector.doc> Last visited 2004-05-25.

10 Global Compact, Global Compact Integrity Measures, <http://www.unglobalcompact.org/irj/servlet/prt/portal/prtroot/com.sapportals.km.docs/ungc_html_content/AboutTheGC/HowToParticipate/integrity_measures.pdf>

11 Ibid.

Up to date, no formal complaints have been lodged by NGOs under the new complaints mechanism. The Swiss organisation IBFAN has been submitting letters and reports to the Global Compact concerning questioning the credibility of Nestlé's membership.¹² The response by the Global Compact has been unsatisfactory. Submitting a formal complaint might legitimize the initiative, while past experience and the vague procedures do not guarantee any positive outcomes. This may explain why no complaints have been raised so far.

12 Richter, J. Building on Quicksand? (Construire sur des sables mouvants?) 2nd Edition - April 2004, The Global Compact, democratic governance and Nestlé, (Switzerland, IBFAN, April 2004)

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

CSR Standards

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy contains detailed guidelines for MNEs in the field of labour relations. It contains recommendations for MNEs in the field of employment (promotion, equality of opportunity and treatment, security of employment, training), conditions of work (wages, benefits, work conditions, safety and health considerations) and industrial relations.

The text of the MNE Declaration was revised in March 2000 to incorporate the fundamental principles and rights at work.¹³ The parties to which the Declaration is commended (governments, workers, employers and MNEs) should 'contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up'. Thus, all core labour standards are covered in the Declaration.

The Tripartite Declaration has five major sections. The first section addresses general policies and urges respect for national sovereignty, laws and policy objectives of the host country. Equality of treatment by governments of MNEs and national enterprises is advocated and tripartite consultation - consultation between labor, business and government. The second section calls on MNEs to play a key role in generating and expanding opportunities for stable and secure employment, to use appropriate technologies, and to pay attention to employment policies. The third section focuses on the training, retraining, and promotion of workers in all occupational categories. The fourth section recommends the provision of living wages benefits, and conditions of work with special emphasis on the importance of setting and maintaining high standards of occupational safety and health. In the fifth section, business and government are urged to respect freedom of association and the right to organize and collective bargaining as the principles that guide their actions in all matters related to industrial relations.¹⁴

13 ILO website: Multinational Enterprises, Declaration/History <http://www.ilo.org/public/english/employment/multi/history.htm> (15 March 2005)

14 Tirza Hollenhorst, Chris Johnson, ifPeople (www.ifpeople.net): Tools for Corporate Social Responsibility, Conventions of the International Labour Organization (ILO)

Operational aspects

The Tripartite Declaration is a set of voluntary principles and recommendations intended to guide MNEs into adopting them and similar social policies. Its tripartite structure brings together employers, employee organizations and government representatives (its constituents) but it excludes the direct participation of NGOs. There are no provisions within the document that stipulate mechanisms for implementation, monitoring and independent verification of the Declaration by MNEs.

Although it is a non-binding instrument, there are some implementation procedures. The Declaration is the object of regular reviews and there is a procedure for examining disagreements concerning its application by means of an interpretation of its provisions. In 1980, the Committee on Multinational Enterprises was established to monitor implementation of the Declaration by Governments. One of the tasks of this Committee is to interpret the Declaration through a dispute procedure. However, this procedure is not judicial, and the institutional follow-up to the Declaration does not provide for the public shaming of companies.¹⁹ Furthermore, the procedure is not open to NGOs.¹⁷ To date, only five cases have been subject to decisions by the Governing Body Subcommittee on Multinational Enterprises.¹⁸

Committee on Freedom of Association

The ILO has a number of other complaints mechanisms that are worthwhile mentioning here. The Committee on Freedom of Association is the one most widely used and is competent for dealing with complaints raising the issue of a State failing to uphold workers' rights to Freedom of Association and Collective Bargaining. The mechanism is often used to address violations by specific companies. The content of the complaint submitted by a workers' organisation must show that ILO Conventions n° 87 and n° 98 (respectively on Freedom of Association and the Right to Organise; and Right to Organise and Collective Bargaining) are being violated.

15 ESCR-Net, Steps toward Corporate Accountability for Human Rights: ESCR-Net Report to OHCHR on the Human Rights Responsibilities of Business, September 2004

16 S. Joseph, (1999) Taming the Leviathans: Multinational Enterprises and Human Rights, Netherlands International Law Review. Since the adoption of the MNE Declaration and its Procedure, a number of communications and requests for assistance relating to alleged wrongdoings by MNEs have been received by the Office. These types of communications were, and are, handled outside the scope of the Procedure for interpretation of the MNE Declaration. Source: ILO Website, Multinational Enterprises and Social Policy, <<http://www.ilo.org/public/english/employment/multi/paragraph.htm>> (15 March 2005)

17 Requests for interpretation may be addressed to the Office as a rule by the government of a member State acting either on its own initiative or at the request of a national organization of employers or workers(ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, Procedure for the Examination of Disputes DOCUMENT:(OB Vol. LXIX, 1986, Series A, No. 3) DOCNO:28197704)

18 Two were submitted by a government, and three by international organizations of workers on behalf of representative national affiliates. Four of the cases were found receivable, two unanimously (BIFU case, GB. 229/13/13 Appendix, and Belgian case no. 1, GB.239/14/24/appendix) and the other two by majority decisions (ICEF case, GB.264/MNE/2 and Belgian case no.2, GB.270/MNE/1 confidential). Source ILO website, Multinational Enterprises and Social Policy <<http://www.ilo.org/public/english/employment/multi/paragraph.htm>> (15 March 2005)

The ILO and OECD complaint mechanisms are different in the sense that OECD complaints would tend to lay stress on a multinational company's responsibility, while ILO complaints allows to insist more on the responsibility of Governments in upholding workers' fundamental rights established by ILO Conventions. Therefore, both complaints mechanisms are sometimes used for the same case. For example, the International Textile, Garment and Leather Worker's Federation (ITGLWF) filed a case under the OECD Guidelines procedure concerning trade union rights in Guatemalan garment factories, and at the same time, the case was filed with the ILO Committee on Freedom of Association. The OECD Guidelines case was directed at the parent and buying companies in the US and Korea, while the ILO case directed at the Guatemalan government.¹⁹

ILO complaints are usually a tool to exert pressure on a company via a pressure on the Government of its country. The experience from trade unions is that the procedure is quite slow and some situations being extremely urgent, quite often when the Committee on Freedom of Association produces its recommendation, the industrial dispute is over.²⁰ On the other hand the conclusions and recommendations of the Committee can sometimes prove useful as they form a kind of 'jurisprudence' that can be used in subsequent disputes occurring in the same location or in disputes of a similar nature. Even if ILO recommendations are not directly implemented, the moral impact of the Committee's conclusions is strong and they constitute an unquestionable set of rules that unions can use for defending workers' rights.²¹

19 TUAC, October 2004 TUAC Internal Analysis of Treatment of Cases Raised by Trade Unions with National Contact Points 2001-2004

20 Gérald Audaz, ITGLWF, e-mail 04 March 2005

21 Ibid.

UN Human Rights Norms for Business²²

CSR Standards

The Preamble of the UN Norms explicitly refers to human rights instruments such as the UDHR, the UN Charter and all major UN Conventions. Furthermore, the Preamble refers to ILO instruments, the OECD Guidelines and the Global Compact. The Norms reaffirm the principle that states have the primary responsibility of securing the fulfilment of, respecting, ensuring the respect of and protecting human rights. The obligation extends to corporations only as regards their spheres of activity and influence. Businesses should refrain from activities that directly or indirectly violate human rights, or benefit from human rights violations, use due diligence and do no harm.²³ Another human rights standard in the Norms is the right to security of persons (E. 3). The Norms promote economic, social and cultural rights as well as civil and political rights and states that corporations shall contribute to their realisation (E. 12).

The labour rights standards mentioned in the UN Norms are not grouped together under a heading such as employment. The following standards can be found throughout the instrument:

- Right to equal opportunity and non-discriminatory treatment (E. 2)
- Rights of workers, which includes:
 - Forced and compulsory labour (E. 5)
 - Child labour (E. 6)
 - Health and safety at the workplace (E. 7)
 - Remuneration of workers that ensures an adequate standard of living for them and their families. In other words, to provide a living wage (E. 8) The UN Norms do not try to establish an international minimum wage, but require a fair compensation under local standards.
 - Freedom of association and the right to collective bargaining (E. 9)

22 Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). <<http://www1.umn.edu/humanrts/links/norms-Aug2003.html>> (15 March 2005)

23 UN Norms, commentary to operative paragraph 1, under b. There are legitimate business concerns about what constitutes indirect complicity. Can the mere presence of a company in a country that has human rights deficiencies be interpreted as complicity to human rights violations? According to Sir Geoffrey Chandler companies will need to judge the risks in countries of operations. Companies are not asked to take the role of governments, nor should they be asked to pull out of countries if they have policies ensuring the support of human rights. However, the presence of a company constitutes economic support for the regime in power. If companies are silent about violations and repressions carried out by the regime, they will be seen as complicit in what is going on around them. CSR Europe Q & A session: United Nations Norms on the Responsibility of Transnational Companies, p. 16.

The mentioning of fair compensation (living wage) as opposed to a reference to minimum wage is particularly important, as this clause is lacking in many international CSR standards, but is often a key demand from civil society organisations.

The UN Norms also include environmental aspects, albeit phrases in the context of human rights protection. The precautionary principle is cited twice (E. 13 and 14) as an important standard that businesses should take into account in their business conduct.

Other CSR standards include the respect for national sovereignty (E.10), bribery and corruption (E.11) and obligations with regard to consumer protection (E.13).

In terms of CSR issues covered the UN Norms are more elaborate on human rights issues, in particular on the right to security of persons, while it lacks the elaborate employment chapter of the OECD Guidelines.

Operational aspects

One of the major differences between the abovementioned instruments and the UN Norms is that the Norms include general provisions of implementation in the text itself (section H), with additional provisions in the Commentary.²⁴

It is stated that companies shall adopt, disseminate and implement internal rules of operation in compliance with the Norms (for example a human rights policy). Furthermore, they shall periodically report on and take other measures fully to implement the Norms and to provide for the prompt implementation of the protection set forth in the Norms.

The UN Norms have an explicit reference to supply chain responsibility that goes far beyond the weak phrasing of the OECD Guidelines. Each company shall apply and incorporate Norms in their contracts or other arrangements with their supply chain to ensure respect for and implementation of the Norms. (H.15). The Commentary further states that companies should deal only with suppliers and other businesses that follow the Norms (Commentary, 15.c).

Not only internal monitoring and verification procedures are provided for under the Norms, but also external ones. Companies shall be subject to periodic monitoring and verification by the UN, and other international and national mechanisms already in existence or yet to be created, regarding the application of the Norms.

²⁴ Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003). <<http://www1.umn.edu/humanrts/links/commentary-Aug2003.html>> (15 March 2005)

The details of the monitoring mechanisms remain to be developed. Such mechanisms could consist of an extended mandate to existing UN supervisory bodies or it could become a special body (or a combination). The commentary suggests that the Norms could presently be used by human rights treaty monitoring bodies to create additional reporting requirements by states, and as the basis for future general comments and recommendations.²⁵ It is even possible to consider the Norms as the basis of a mandate for a Special Rapporteur on Transnational corporations. The monitoring unit shall not only check that states enforce the norms, but also directly monitor company actions. Until future bodies are created for the enforcement of the Norms, it was suggested that the Sub-Commission and its Working Group could be equipped to receive and process information regarding corporate compliance.²⁶ The monitoring shall be transparent and independent and take into account input from stakeholders, including NGOs (H.16). However, the Commission on Human Rights has decided that the Sub-Commission shall not, as yet, carry out any monitoring functions.²⁷

Another important operational aspect is the internal complaints mechanism mentioned in the Norms. Legitimate and confidential avenues through which workers can file complaints as regards to violations of the Norms should be provided by companies. The companies shall actively monitor the status of investigations, press for their full resolution and take action to prevent recurrences (Commentary 16.e, f). Furthermore, companies shall conduct annual or other periodic evaluations concerning its compliance with the norms. Assessments revealing inadequate compliance with the Norms are to include plans of action or methods of reparation and redress (Commentary 16. g, h).

Possible legal status

Under international law, there are only two kinds of legally binding documents: treaties or customary international law. The UN Norms are not (yet) a treaty that states ratify and lead to binding legal obligations and certainly not customary law. To develop international customary law takes time and requires a high level of consensus among states. However, their language is stronger and they have a more authoritative approach than existing standards. For a number of reasons, the Norms are likely to have some legal effect:

- International law is not static but is constantly developing. If references are made to the Norms by for example national and international tribunals and courts and they are applied by these tribunals/courts, they will take on greater force and their legal effect will increase.

25 UN Norms, commentary to operative para 16, under b. N. Rosemann, 'Profiting from UN Norms on TNCs', Human Rights Features, 29 March-4 April 2004, p. 9.

26 CSR Europe Q & A session: United Nations Norms on the Responsibility of Transnational Companies, p. 11.

27 E/CN.4/2004/L.73/Rev.1, 16 April 2004.

- The Norms have a solid basis in law. All of the substantive human rights provisions are drawn from existing international law and standards. The novelty of the Norms is to apply these standards to private enterprises within the limits of businesses' impact and influence.²⁸

It is clear that the Norms are not, as of yet, a legal instrument, but rather a work in progress that will be refined as it makes its way through the UN system. On the other hand, since the Norms are based on international law, which countries should translate into national law, a business enterprise may see similar provisions legally binding on it through national legislation.²⁹ Such an approach is urged by the Norms in operative paragraph 17. Even if the Norms will not become legally binding, they, along with the commentary, could still be used as a principal source in the identification and assessment of existing standards in the area. It must be expected that the Norms will influence to some degree any future attempt to create a minimum basis for CSR.

In sum, the Norms provide a comprehensive set of operational aspects similar to those mentioned in the CSR Frame of Reference. To what extent these operational aspects will be put into practice remains to be seen. On 16 April 2004, at the 60th session of the Commission on Human Rights, it was held that as a draft proposal the Norms have no legal standing and the Sub-Commission will not perform any monitoring function. Furthermore, the Office of the High Commissioner for Human Rights has been asked to compile a report setting out the scope and legal status of all existing initiatives and standards on business responsibilities with regard to human rights, including the UN Norms. This report will be submitted to the Commission on Human Rights at its 61st session in April 2005.

In February 2005, the UN High Commissioner on Human Rights published its report that it was asked to compile by the Commission on Human Rights.³⁰ The report concludes, amongst others, that there is a gap in understanding the responsibilities of business with regard to human rights. Furthermore, the report states that there is a growing interest in discussing further the possibility of establishing a United Nations statement of universal human rights standards applicable to business. The UN Norms could be seen as a good basis for such a United Nations statement.

The report confirms the need to continue to discuss the responsibility of businesses with regards to human rights within the UN, and further elaborate on outstanding issues, such as sphere of influence, complicity, and supply chain responsibility.

28 'The UN Human Rights Norms For Business: Towards Legal Accountability', Amnesty International, 2004, pp. 6-7.

29 T. E. McCarthy, 'Business and Human Rights: What do the New UN Norms Mean for the Business Lawyer?', *International Legal Practitioner*, November 2003, p. 74. Governments have committed themselves at the World Summit on Sustainable Development to actively promote corporate responsibility and accountability, based on Rio Principles, including through the full development and effective implementation of intergovernmental agreements and measures. N. Rosemann, 'Common standards, contested principles. Are the Norms on the Responsibility of Business Entities an issue for the 60th CHR? Human Rights Features, 29 March-4 April 2004, p.8.

30 E/CN.4/2005/91, Report of the Sub-Commission on the promotion and protection of human rights, 'Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights, 15 February 2005

Conclusions & recommendations

The CSR Frame of Reference which has served as the basis for the comparison of the four key intergovernmental codes of conduct discussed here, provides an overview of civil society's expectation towards businesses on their CSR policies, implementation procedures, independent verification, involvement of stakeholders and transparency.

Based on the CSR Frame of Reference, it can be concluded that the UN Norms include several normative and operational additions that are not found in the other three intergovernmental instruments, which could clearly fill a gap.

Standards

In terms of CSR standards, the Norms mention the most important CSR standards that are currently part of the CSR debate, particularly in the area of human rights, labour rights and the environment. The normative framework is generally as broad as the OECD Guidelines, with the main difference that the UN Norms refer directly to the existing internationally agreed Conventions and treaties, such as the ILO Conventions and the Rio Declaration. Besides, the OECD Guidelines are phrased much weaker, reinstating their voluntary nature. The way the UN Norms are drafted makes it more likely that it could develop into a internationally binding framework.

Furthermore, UN Norms include some important labour standards such as health and safety at the workplace and the 'living wage' clause, which often are lacking in other international instruments.

An important difference - which can be considered both a weakness and a strength - between the UN Norms and for example the OECD Guidelines and the Global Compact, is that all the UN Norms standards are put in a human rights perspective. The very broad interpretation of human rights used has made it possible to mention labour rights, consumer rights and environmental aspects. While the human rights discourse has a high respectability and public appeal on the one hand, stretching it up might also lead to less general acceptance of the UN Norms as the complete framework for CSR among all those actors in the field of CSR which have different focus.

Operational aspects

Unlike the OECD Guidelines, the ILO Tripartite Declaration and the Global Compact, the UN Norms are not limited by clauses emphasizing their non-regulatory nature. Furthermore it can be said that the Norms, like the Global Compact and the ILO Declaration, carry the universal authority of UN, which is of course an added value to the Guidelines of the 'rich nations club', the OECD.

The provisions of implementation mentioned in the Norms are the key contribution of the Norms, as none of the other instruments include such detailed provision for companies in terms of implementation, monitoring, verification, reporting and stakeholder involvement.

While the UN Norms are unique in listing the general obligations for companies to implement the Norms, the major weakness of the Norms is the lack of clarity about the enforcement mechanism. There is no reference to what would be the specific control and verification mechanisms and/or enforcement initiatives that would be set up by the UN, or eventually the EU or national governments to make sure that the Norms are respected and applied by companies. The Commentary of the Norms provides some ideas such as a monitoring role for the UN Sub-Commission on Human Rights and the possibility for civil society organisation to file complaints. In comparison to the national level forums for filing complaints in the OECD Guidelines' procedure, a single monitoring body to oversee the behaviour of all companies worldwide seems less promising.

The added value of the UN Norms will therefore highly depend on how their enforcement mechanism will be developed. The UN Norms have passed a major hurdle in surviving the 60th session of the UN Commission on Human Rights in April 2004. The report compiled by the UN High Commissioner reaffirms the importance of the initiative. The next step for the initiative to become a real added value for civil society organisations is the acceptance of a set of substantial human rights norms for business by the international community as well as the development of credible and effective enforcement mechanisms.

Recommendations for NGOs

The three existing intergovernmental standards discussed in this paper have obviously not satisfied civil society organisations looking for mechanisms to enhance corporate accountability. The UN Norms might fill the gap, but the question remains what an international binding instrument should look like, (in part) based on the UN Norms. What is needed for the UN Norms to add value to what venues already exist for redress, and how can NGOs make a credible case for an international corporate accountability framework? The following recommendations are addressed to NGOs working towards this aim:

- In order to make a strong case for an internationally binding instrument, evidence needs to be collected that shows that existing instruments are failing to solve problems caused by corporations in the field of labour rights, human rights and the environment. A solid and comprehensive range of cases should be compiled that show that an internationally binding instrument is necessary to deal with alleged human rights violations by companies in a fair, effective and transparent way.³¹
- Develop proposals on what an international legal framework for corporate accountability should look like and how it could/should function. The proposals outlined in the Commentary of the UN Norms form a good basis but need to be further elaborated on in much more detail to become sufficiently concrete to be workable. On the one hand, the provisions directed towards implementation, monitoring and verification of the UN Norms by business need further elaboration. On the other hand, proposals should be developed as to the way forward within the UN for the development of internationally binding regulation, in the form of a treaty, convention and/or adoption into national laws.
- Conduct research and collect experiences on the outstanding issues outlined in the OHCHR report (such as 'spheres of influence', 'complicity' and boundaries of supply chain responsibility). It is important for civil society to develop clear viewpoints on issues, as they come up in every initiative towards corporate accountability.³²
- Continue to actively engage Southern stakeholders, recognizing that international instruments are especially crucial in certain countries where national legal systems are sometimes too weak to sufficiently offer redress for corporate abuse. As the National Contact points based on the OECD Guidelines are at present the only accessible complaint mechanism for NGOs, there should be a strong focus on using, testing and possibly improving this mechanism. At the same time the limitations of the system are clear in terms of the scope (not having a global - UN-based character), credibility and acceptance outside OECD countries, lack of enforcement and transparency, possibilities for redress and compensation should be used to urge for international binding regulation.
- Stress that the creation of a binding instrument will force governments to really demonstrate their commitment to CSR and put CSR at least on the same level as other legal obligations of companies like paying taxes. A binding agreement also 'forces' governments to make active steps in their own national policies towards CSR policies.

31 Examples of case studies of corporate abuses and the value of the UN Norms can be found in the ESCR-Net Briefing Kit, January 2005: http://www.escr-net.org/GeneralDocs/Briefing_Kit_En.pdf

32 The issue of supply chain responsibility is currently discussed within the context of the OECD Guidelines mechanism (investment nexus). OECD Watch has published a discussion paper on this subject: <http://www.oecdwatch.org/docs/OW%20Supply%20Chain%20Discussion%20paper.pdf>

Annex:

The CSR Frame of Reference

Contents

Introduction

This Frame of Reference for corporate social responsibility (CSR) has been developed by the 'CSR Platform', a coalition of Dutch Civil Society Organisations (CSOs) actively promoting CSR. The CSR Frame of Reference lists the relevant standards, agreements and operational aspects involved in CSR internationally. This is done on the basis of treaties, guidelines and instruments enjoying broad international support and leading, either directly or indirectly, to corporate social accountability and responsibilities.

The CSR Frame of Reference has the following goals:

- to identify the relevant international treaties, guidelines and instruments
- to help standardise the way in which CSR concepts are expressed and defined
- to promote the vigorous application of internationally recognised CSR standards;
- to respond to the business world's call on CSOs to provide a coherent vision for CSR
- to guide the members of the CSR Platform – individually as well as collectively – in developing their strategies and launching fresh initiatives with a view to promoting CSR.

The Dutch 'Social and Economic Council' (SER) has issued recommendations on CSR in a document entitled 'Corporate Social Responsibility – A Dutch Approach'. In this document, the SER (an overarching policy-setting body representing trade unions, employers and the government) has stated that CSR should be a core concern for all companies and should be part and parcel of its operations. According to the SER, CSR should focus on the three main dimensions of value creation: Profit, People and Planet. As such, CSR is much more than a mere involvement in social affairs (for example through neighbourhood improvement projects) and charity – no matter how praiseworthy such causes may be. Such actions cannot be seen as an alternative for responsible economic, social and ecological behaviour in a company's core business. Corporations should do everything within their power to enable and promote CSR throughout the value-creation chain that they are part of. CSR is a process in which corporations take responsibility for the social, ecological and economic consequences of their actions – throughout their product and service delivery chains – making themselves accountable, and engaging in a dialogue with all those involved.

In this CSR Frame of Reference, Dutch CSOs further specify their definition of corporate social responsibility. This specification is based, where possible, on international treaties, guidelines and instruments – including ILO labour conventions, the Universal Declaration of Human Rights, the United Nations Conference on Environment and Development (UNCED; Rio de Janeiro, 1992), and the Copenhagen Declaration on Social Development (2000). While agreed to by national governments, these and other treaties also lead to corporate responsibilities and obligations. An internationally binding legal framework for enforcing such corporate obligations internationally has yet to be created.

Several developments currently unfolding could help bring about this legal framework. Of major importance in this respect are the 'the Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights'¹ developed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights. This draft document is based on international treaties and guidelines as well as model codes of conduct developed by CSOs, trade unions and corporations. In addition, major initiatives to define and enforce corporate responsibilities have been taken by the European Parliament.

The voluntary OECD Guidelines for Multinational Enterprises provide an important new standard, though these guidelines cannot be a substitute for legally binding national and international regulations.

Individual corporations and industries have their own dynamics, implying that the various elements of this Frame of Reference will not be equally relevant to each business or economic sector. Companies should engage – individually or in groups – in a constructive dialogue with stakeholders to identify the social and environmental impacts of their actions. Policies for CSR should, in part, be developed and implemented on the basis of such dialogues. It is very important to develop industry-specific guidelines, standards and instruments for implementation that should complement the general principles of this Frame of Reference. Initiatives covering entire sectors or (production) chains would help bring about a systematic implementation of standards and guidelines and the development of 'best practices' based on these guidelines.

The development, interpretation and implementation of CSR will be influenced by experience gained and by the ongoing debate in society, and thus will be dynamic in character. This dynamic nature is evident in the various initiatives launched by civil society and corporations, on occasion working hand in hand with governments. Examples of such initiatives are the international negotiations between trade unions and businesses on fundamental labour standards, multi-stakeholder dialogues such as the Round Table discussions with Dutch multinationals, initiated by Amnesty International, and initiatives such as the Fair Wear Foundation, Max Havelaar and Fair Trade. A number of principles listed in this Frame of Reference have already been included in model codes of conduct such as the ICFTU Basic Code of Labour Practice and industry-specific codes such as those developed by the Clean Clothes Campaign. Such initiatives contribute to improving the quality of norms, their implementation, their monitoring and independent verification. They may also help adjust existing standards or even contribute to the development of new standards.

Given the dynamic nature of CSR theory and practice, the CSR Platform regards this Frame of Reference as a 'living document', to be adjusted as and when major developments with regard to CSR occur.

Intergovernmental co-operation, international legislation and regulation, and CSR initiatives by corporations and CSOs will contribute to the ongoing elaboration of this CSR Frame of Reference.

CSR standards

Human rights

Corporations have an obligation to observe, respect and promote human rights. This responsibility is set out in the preamble to the Universal Declaration of Human Rights (UDHR).² The Universal Declaration of Human Rights, which was adopted on 10 December 1948, is based on the notion that a recognition of the inherent dignity and of the equal and undeniable rights of all members of the global community of people constitutes the basis for freedom, justice and peace across the world.³ The UDHR's articles have been specified in separate UN treaties.⁴

The preamble to the UDHR calls on 'every organ of society' to guarantee 'by progressive measures' that human rights be recognised and complied with. Corporations, as organs of society, are under the obligation to comply with internationally accepted human rights and to promote respect for these rights and freedoms in their respective spheres of activities and influence. Consequently, corporations have the following obligations:

1. Corporations must do whatever they can to promote human rights in those countries where they operate. In areas of conflict, where gross violations of human rights occur, extra care should be taken with respect to the (supervision of) compliance with fundamental human rights.
2. Corporations should investigate how human rights might be affected by the various types of business operations in a given country before launching business activities there.
3. Within the security of both property and personnel corporations need to make sure that all security personnel, whether or not part of national authority, respect Human Rights and comply with the principles of the UN Code of Conduct for Law Enforcement Officials⁵ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁶.
4. Corporations should include an explicit reference to the UDHR or to other international human rights treaties in a code of conduct in which compliance with human rights is guaranteed. This code of conduct should uphold the human rights of employees and protect the human rights of all members of the community in which the corporation operates.

Labour

The International Labour Organisation (ILO), a tripartite UN organisation founded in 1919 and representing governments, businesses and workers, has set up a legal and policy framework for Labour issues⁷. Since its inception, the ILO has issued almost 200 conventions on working conditions. Eight of these ILO conventions specify the four fundamental labour rights.⁸ These four labour standards are as follows⁹:

- Freedom of association and the right to collective bargaining (ILO conventions 87, 98, complemented by 135)
- A ban on forced labour (ILO conventions 29 and 105)
- A ban on child labour (ILO conventions 138 and 182)
- A ban on discrimination in the workplace and in professions (ILO conventions 100 and 111)¹⁰

The ILO conventions focus in particular on governments' responsibilities with respect to labour rights. The Tripartite declaration of Principles Concerning Multinational Enterprises and Social Policy extends the ILO conventions, listing corporate responsibilities with regard to labour issues and also including a number of additional labour standards falling under the specific responsibility of corporations:¹¹

- The right to security of employment (Tripartite Declaration, Art. 24-28)
- The right to a living wage (ILO conventions 26 and 131)
- The right to safe and sound working conditions (ILO convention 155)
- Compliance with the maximum number of working hours (48+12) (ILO convention 1)

The 1976 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines (Chapter IV, Employment and Labour Relations) include important clauses on employment policy in general, namely:

- ❑ Training (Tripartite declaration, Art. 29-32)
- ❑ Handling of complaints (Tripartite declaration, Art. 57-58)
- ❑ Prior notice and maximum mitigation in cases where changes in operations, such as lay-offs and dismissals, have major effects on the livelihood of employees (OECD guidelines IV, Art. 6)
- ❑ No threat of transferral for exercising the right to organise (OECD Guidelines, IV, Art. 7)
- ❑ No practice of double standards (OECD Guidelines, IV, Art. 5)
- ❑ Employing and training staff locally as much as possible (OECD Guidelines, IV, Art. 5)
- ❑ Allowing workers' representatives to negotiate and confer with decision makers (OECD Guidelines, IV, Art. 8)

Environment

The United Nations first recognised sustainable development as a universal goal at the Earth Summit in Rio de Janeiro in 1992¹². This Summit meeting adopted the Rio Declaration on the environment and development, and Agenda 21. There are several other important treaties and conventions specifying the responsibilities of corporations with regard to the effects of their processes, products and services on the quality of air, water, soil, climate, bio-diversity and bio-safety and health. These include the Convention on Biological Diversity (1992)¹³, the Cartagena Protocol on Bio-safety (2000)¹⁴, the Kyoto Protocol¹⁵, the Stockholm Convention on Persistent Organic Pollutants (POPs; 2001)¹⁶, the Rotterdam Convention on Prior Informed Consent (PICs; 1998)¹⁷ and the OECD Guidelines for Multinational Enterprises¹⁸. The Aarhus Convention (1998) was the first to link human rights with environmental rights. This Convention includes important clauses on stakeholder participation, transparency and access to justice¹⁹. Finally, a number of general principles have been stated in the EC treaty²⁰ and the RIO Declaration, designed to prevent adverse effects on safety and the environment:

- ❑ The principle of preventive action (Art. 174 (130 R, section 2) EC Treaty)
- ❑ The precautionary principle (Rio Declaration, Art.15 and Art. 174 (130 R, section 2) EC Treaty)²¹
- ❑ Tackling environmental damage at the source (Art. 174 (130 R, section 2) EC Treaty)
- ❑ 'The polluter pays' principle (Rio Declaration, Art. 16, Art. 174 (130 R, section 2) EC Treaty)²²

Consumer protection

The UN Guidelines for Consumer Protection, revised in 1999, provide international legitimacy to consumer interests. These guidelines are based on the eight principles for consumer protection²³. Consumers and their organisations expect corporations to respect consumer values, to comply with legal standards, and to take the initiative in making themselves accountable for their actions in the light of these standards. The following standards are relevant:

- ❑ The right to access to necessary goods and services (III.D.)
- ❑ The right to safety (III.A, C, H.)²⁴
- ❑ The right to information (III.B.)²⁵
- ❑ The right to choose (III.B.)
- ❑ The right to be heard (III.E.)
- ❑ The right to appeal and lodge a complaint (III.E.)
- ❑ The right to consumer education (III.F.)
- ❑ The right to sustainability (III.G.)²⁶

Health

The universal right to optimum health implies that every human being has a right to the highest possible standard of health. This right is derived from the Universal Declaration of Human Rights (Art. 25) and the international treaty on economic social and cultural human rights (or ESC rights, Art. 12). In its 'general comment Nr. 14'²⁷ the UN Committee on ESC Rights discusses the obligations of both states and non-state actors, such as corporations. In paragraph 42, the Committee notes that while only states are parties to the treaty and hence ultimately accountable, all members of society, including the business world, have an obligation to enforce the right to health. Specifically, this means that 'it is particularly incumbent on State parties and other actors in a position to assist, to provide 'international assistance and co-operation, especially economic and technical' which enable developing countries to fulfil their core and other obligations' (paragraph 45).

This implies that corporations have an obligation to contribute to the following obligations, including:

- ❑ No discrimination in ensuring the right to access to health facilities, goods and services, especially for vulnerable and marginalized groups in society
- ❑ Ensure access to a minimum of food, a basic level of shelter and sanitation and an adequate supply of safe drinking water
- ❑ Provide education and access to information on the community's main health issues, including methods for preventing ill health and checking whether appropriate measures are taken

In addition, corporations have a special obligation with respect to the right to a sound work environment as part of their employees' right to health (Art. 12.2b of the ICESCR). According to the Committee, this right includes:

- ❑ The obligation to prevent work-related accidents and illness
- ❑ Minimising the causes of health risks inherent in the work environment
- ❑ Creating safe and hygienic working conditions

Fighting corruption

Corporate responsibility in the field of corruption is covered by the 1992 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.²⁸ This convention prohibits the bribing of foreign public officials by corporations:

- ❑ Ban on bribing foreign government officials (Art. 1)²⁹

Other CSR aspects

As already stated, the further specification and elaboration of CSR is subject to changes in social interaction and will be dynamic in character. Certain topics relating to CSR have been expressed in guidelines, but are still a matter of public debate. In view of the 'living' nature of this CSR Frame of Reference, this section lists the topics that will play an important role in the further specification and elaboration of corporate social responsibility. The following CSR aspects are involved:

- Competition (OECD Guidelines, Chapter IX, and the set of multilaterally agreed equitable principles and rules for the control of restrictive business practices)³⁰
- Taxation (OECD Guidelines, chapter X)³¹
- Science and technology (OECD Guidelines, chapter VIII)³²
- Respect for national sovereignty and local communities

Condition for compliance with CSR standards

Trade and supply conditions, such as prices, supply deadlines and supply conditions, should at least enable compliance with international treaties and national legislation throughout business value chains. These conditions are established in discussions with key stakeholders.³³

Operational aspects of CSR

Companies are expected to live up to their social responsibilities by adhering to the aforementioned internationally agreed standards and treaties. This responsibility implies that corporations develop specific policies for adopting, implementing and promoting international treaties and guidelines, while guaranteeing that these policies are put into practice in every aspect of their operations. Social responsibility also implies that corporations should be accountable for their actions. By making themselves accountable, corporations honour the public's right to be informed of the ethical, social and environmental effects of a corporation's operations, products and services. As a result, the public will be able to make an informed assessment of companies' CSR performance. Introducing social responsibility and accountability implies adhering to the following principles:

Supply chain responsibilities

CSR should be a key concern of all corporations, and should be part and parcel of their operations. A corporation's social responsibility should cover all of its suppliers, subcontractors, licensees, alliances and anyone serving the company, irrespective of the formal relationship, the nature of the product or service concerned, or the geographic location. The chain's definition and the delineation of the exact scope of a given chain should be determined on the basis of stakeholder participation. Corporations are expected to do everything within their power to enable, promote and implement CSR practices throughout their chain(s) of operation.³⁴

Stakeholder involvement

Allowing oneself to be held accountable requires a readiness to engage in a dialogue with stakeholders. These might be individuals or groups who could affect, or be affected by, corporate actions, decisions, policies, practices or goals. Such effects might be indirect or direct. Corporations should, in their social dialogue, address all stakeholders, including workers, suppliers and the local population, consumers, social organisations and public authorities.

Such dialogues and consultations should at least be governed by national and international standards for consulting workers, their representatives, work councils and trade unions.

The stakeholder process is characterised by an ongoing exchange of information, dialogue, consultation and structural involvement in a company's CSR policies, including issues not yet covered by treaties or legislation.

Companies are expected to participate in a stakeholder dialogue on the basis of an agreement about norms, values, mutual rights and obligations. The dialogue should involve the companies' ultimate decision-makers. Companies should be accountable for the stakeholder process by means of reporting and independent verification.

The stakeholder process aims to give shape to the CSR policy of a company through the joint development of objectives, implementation plans, and indicators. Stakeholder involvement will help develop an understanding of the dilemmas faced by corporations. At the same time, corporations develop a clear awareness of the concerns of the stakeholders with regard to the consequences of company behaviour.

Transparency and reporting

Corporations are expected to be open and transparent in their policies, and must account for their social conduct. Reporting plays a crucial role in this respect. At the moment, the guidelines of the 1997 Global Reporting Initiative (GRI) are the most frequently cited sustainability reporting standards³³. Reporting has the function, among others, of informing stakeholders. Stakeholders should obtain sufficient relevant information on the effects of a company's conduct and the consequences of these effects for the various stakeholders, so as to enable them to make informed choices.

Corporations will account for their actions transparently, by providing relevant, clear and reliable information (of their own accord and on request) in a regular and timely manner.

This information may be made available by the following means:

- 1. Regular public reports**

Companies should provide adequate information in a timely manner, on the social, ethical and environmental policies and/or other codes of conduct they subscribe to, and should specify their performance with respect to such criteria.

2. Provision of information

Companies should provide stakeholders with relevant information, for example by means of impact assessment reports, annual reports, labelling, quality labels, information meetings and training. Companies should live up to their supply chain responsibilities by informing all relevant stakeholders about their CSR policies, for example by distributing a code of conduct, by translating standards in local languages, and by providing information.

3. Publication of data and consultation

In order to inform themselves about specific CSR risks (related to specific projects), corporations should inform stakeholders about their plans at an early stage. Social and environmental impact reports should inform stakeholders in advance about the possible environmental effects of corporate plans.

Independent verification

The quality, use and credibility of a corporation's reports and the underlying management systems and processes will be enhanced by independent verification. An independent process of verification is the key to effective implementation. This starts with internal monitoring by the company on CSR policy compliance (implementation plans, goals and indicators). Corporations do so by setting up internal monitoring systems aligned with other actors in the supply chain. Compliance with CSR policies must also be verified independently. This verification should be carried out by organisations not linked to the companies in question, and should have the full trust of the stakeholders involved. Finally, the outcome of the verification procedure must be made public in a reliable manner.

Ultimately, the goal of corporate social responsibility is to bring about a real change for the better in the lives of both current and future stakeholders. This is why it is important – as part of the monitoring and verification processes – that workers and other stakeholders be provided with opportunities to lodge complaints when their rights are violated. Providing information on a corporation's social conduct should not lead to disciplinary measures, discharge or discrimination. In addition, companies should offer fair compensation in the case of breaches of CSR policies. In cases of non-compliance, the mistakes in question should be corrected and improvement plans should be drafted and implemented.

Notes: see page 34 and further

This CSR Frame of Reference is subscribed to by the following members of the CSR Platform:³⁴

Amnesty International Netherlands
CLAT Netherlands
CNV (National Federation of Christian Trade Unions in the Netherlands)
Consumentenbond (Dutch Consumers Union)
Cordaid (Catholic Organisation for Relief and Development)
DISK
Evert Vermeer Foundation
Fair Trade Organisation
FNV (Netherlands Trade Union Confederation)
Goede Waar & Co
Hivos (Humanistic Institute for Development Co-operation)
ICCO (Interchurch Organisation for Development Co-operation)
IRENE (International Restructuring Education Network Europe)
Coffee Coalition
India Committee of the Netherlands (ICN)
National Association of World Shops
Friends of the Earth Netherlands
Netherlands Committee for IUCN
Netherlands Institute for Southern Africa
Novib (Oxfam Netherlands)
Pax Christi Netherlands
Plan Netherlands
Clean Clothes Campaign
SOMO (Centre for Research on Multinational Corporations)
Max Havelaar Foundation
Netherlands Society for Nature and Environment
VBDO (Dutch Association of Investors for Sustainable Development)
Wemos – Health For all
South-North Federation

Notes on 'Annex: The CSR Frame of Reference - Contents'

- 1 Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights
(April 2003, to be considered July-August 2003).
(<http://www1.umn.edu/humanrts/links/NormsApril2003.html>)
- 2 Universal Declaration of Human Rights, G.A. res. 217A (III), UN Doc A/810 at 71 (1948) <http://www.un.org/Overview/rights.html>
- 3 The UNDHR comprises 30 articles specifying the fundamental human rights, including the right to life, security, freedom, food, shelter, education, development, and the freedom of thought, conscience and religion, of expression and publicly voicing one's opinion, and a ban on torture and slavery (the examples specified in this footnote do not represent the Declaration's articles in full).
- 4 Examples of these are:
 - The right to security: the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials (<http://www.hri.ca/uninfo/treaties/42.shtml>)
 - The rights of indigenous people: ILO Conventions 107 and 169, and the UN Draft Declaration of Indigenous Rights (http://www.unhcr.ch/html/menu2/ind_main.htm)
 - The right to development: International Covenant on Economic, Social and Cultural rights (http://www.unhcr.ch/html/menu3/b/a_ceschr.htm), the UN Declaration on the Right to Development (Art. 1.1) (<http://www.unhcr.ch/html/menu3/b/74.htm>), the Copenhagen Declaration on Social Development.
 - Women's rights: UN Convention on the Elimination of All Forms of Discrimination against Women (www.un.org/womenwatch/daw/cedaw, notably Art. 11 and Art. 14) and the Beijing Declaration and Platform for Action. (The Platform for Action was founded at the Fourth World Conference on Women; <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>).
- 5 http://193.194.138.190/html/menu3/b/h_comp42.htm
- 6 <http://www1.umn.edu/humanrts/instree/i2bpuff.htm>
- 7 A number of the workers' rights listed are also specified in the UNDHR, for example the UNDHR's Art. 20 and 30 (freedom of organisation), Art. 4 (ban on forced labour), Art. 23 (life-sustainable wages). In addition, children's rights are covered by the UN convention on the rights of the child (<http://www.unhcr.ch/html/menu3/b/k2crrc.htm>)
- 8 Conventions of the International Labour Organisation (ILO) (<http://ilolex.ilo.ch:1567/english/convdisp1.htm>)
- 9 Also refer to the ILO Declaration on Fundamental Principles and Rights at work (1998).
- 10 This has been extended recently by the adoption of ILO conventions specifically addressing women's rights: Maternity Protection at the workplace (ILO convention 183) and the Convention on homeworking (ILO convention 177)
- 11 Along with the fundamental labour standards, these standards constitute the basic criteria in the 'SA 8000 standard', the 'ICFTU/ITS Basic Code of Labour Practice', de ETI and de 'CCC Code of labour practices for the apparel and sportswear industry'.
- 12 Sustainable development: 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.' As stated in the 1997 Brundtland report, also known as 'Our Common Future'.
- 13 Convention on Biological Diversity (<http://www.biodiv.org/>).
- 14 Cartagena protocol on biosafety (<http://www.biodiv.org/biosafety/>). This protocol is a supplement to the Convention on Biological Diversity and involves a 'precautionary approach', as stated in Principle 15 of the Rio Declaration.
- 15 Kyoto Protocol: <http://unfccc.int/resource/conv/index.html>
- 16 The Stockholm Convention on Persistent Organic Pollutants: <http://www.chem.unep.ch/sc/>
- 17 The Rotterdam Convention on the Prior Informed Consent (PIC), Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (<http://www.pic.int/>)
- 18 By now, there are some 200 multilateral treaties on the environment, defining the policy and legal framework for the environment. These treaties date back to before and after the 1992 Rio Earth Summit.
- 19 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention; <http://www.unece.org/env/pp/>). This convention specifies 'Principle 10' of the Rio Declaration: 'Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative

- proceedings, including redress and remedy, shall be provided.'
- 20 The principles of taking precautionary measures and preventing and fighting pollution at the source as well as the principle that the 'polluter pays' are the basic principles of the European Union's policy on the environment. Cf. www.europarl.eu.int/factsheets/4_9_1_nl.htm.
- 21 'Principle 15' of the Rio Declaration states as follows: 'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.'
- 22 'Principle 16' of the Rio Declaration states as follows: 'National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.'
- 23 Cf. <http://www.un.org/esa/sustdev/cpp1225.htm>. Consumer rights are also incorporated in a number of treaties: The EC Treaty of Maastricht and the EC Treaty of Amsterdam include clauses saying consumer interests should be taken as principles governing European Union decision-making.
- 24 Corporations should identify new risks and developments that could have adverse consequences for consumers, and collaborate with other parties in the industry as well as with governments while doing so, and they should also engage in a dialogue with consumers and other stakeholders with respect to this issue.
- 25 Corporations should inform the public – on request or instruction, but also on their own accord – about the price, quality and production aspects throughout the chain, so as to uphold consumer interests and remove consumer concerns. Cf. the OECD Guidelines, Chapter VII, Consumer interests, notably Art. 1, 2 and 4. Also important in this regard is the 1981 WHO Code of Marketing of Breast-milk Substitutes (www.who.int/nut/documents/code_english.PDF).
- 26 Corporations should help implement the principles of sustainable production and consumption, in accordance with national and international regulation and treaties. Consumer's rights to sustainable production and consumption are explicitly respected, among others, by the Rio Declaration, the UN (UNEP), the Brundtland report and the European Union.
- 27 General Comment No. 14 (2000) The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights) ([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/40d009901358b0e2c1256915005090be?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/40d009901358b0e2c1256915005090be?Opendocument))
- 28 This treaty has been legally-binding in the Netherlands since 1 February 2001. Corruption is one of the three criteria considered by the Dutch government in the application of its instruments for promoting exports and investments. Article 1 of the Treaty states the following: 'The Offence of Bribery of Foreign Public Officials: Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.'
(<http://www1.oecd.org/daf/nocorruption/20nov1e.htm>)
- 29 Principles with respect to the fight against corruption are also stated in the following guidelines:
- UN Declaration against Corruption and Bribery in International Commercial Transactions (1996; <http://www.un.org/documents/ga/res/51/a51r191.htm>)
 - Chapter VI, Combatting Bribery, in the OECD Guidelines for Multinational Enterprises.
- 30 The 'set of multilaterally agreed equitable principles and rules for the control of restrictive business practices' (<http://www.unctad.org/en/subsites/cpolicy/docs/CPSet/cpset.htm>) and the OECD Guidelines (Chapter IX, on competition) state non-binding rules for fair competition to be adhered to voluntarily. The following principles are involved:
- Corporations should refrain from entering into agreements that would limit competition, particularly when these would hurt developing countries' international trade and economic development.
 - Corporations should refrain from engaging in activities whereby they would abuse their dominant market position, or from acquisitions with adverse effects on developing countries.
- 31 OECD Guidelines (Chapter X):
- Corporations should refrain from transfer pricing, i.e. the practice of manipulating prices in cross-border transfers with the aim of avoiding income or trade taxes.
 - Corporations should not engage in tax evasion.
- 32 With respect to science and technology, this involves

(for example) the debate on health risks, bio diversity
(emergence of gentech crops) and patents.

- 33 Consider the Fair Trade criteria (www.fairtrade.net) criteria,
for example:
- A fair price should cover all production costs, including social and environmental costs
 - A fair price should offer a decent standard of living to producers
 - A fair prices guarantees a margin allowing investments for the future.
- 34 Chain responsibility is increasingly included in international guidelines, treaties and codes of conduct, including the OECD guidelines (Chapter II, paragraph 10) and the UN draft 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights';
<http://www.business-humanrights.org/UN-Draft-Principles.htm>).
- 35 Global Reporting Initiative:
<http://www.globalreporting.org/GRIGuidelines/>.
- 36 For more information on the CSR Platform and its members, refer to www.mvo-platform.nl

