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VOLUNTARY COMMITMENTS : USING CSR INITIATIVES AS A TOOL FOR ENHANCED ACCOUNTABILITY



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SECTION V

VOLUNTARY COMMITMENTS: USING CSR INITIATIVES AS A TOOL FOR ENHANCED ACCOUNTABILITY

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For over a decade, a number of voluntary initiatives on Corporate Social Responsibility (CSR) have been established in response to stakeholders' growing concerns on the role of multinational companies in human rights and environmental abuses, in particular in developing countries. Most of these initiatives are based on a set of principles, including human rights and/or labour rights, that participating companies voluntarily commit to respect in their operations and within their sphere of influence. Most initiatives propose tools to companies to integrate human rights concerns in their daily activities. The structure of these initiatives vary: some are anchored in international organisations (the Global Compact was initiated by the UN); others were launched by governments (EITI, the Kimberley Process); some bring together a number of stakeholders (so-called “multi-stakeholder initiatives” gathering businesses, governments, NGOs, trade unions); some are business-led, while others are sector-oriented.

In parallel to joining these initiatives, most of the world's largest companies have adopted their own CSR policies, code of ethics, ethical charter, or code of conduct. Some of these policies are based on the company's own values, while others explicitly refer to internationally recognised human rights standards. The Business and Human Rights Resource Centre has listed over 300 companies whose policy statements explicitly refer to human rights.¹

Another trend is the conclusion of International Framework Agreements (IFA) within multinational companies, which are negotiated between the company and a Global Union Federation (GUF). Through these IFAs, the parties commit to respect labour rights standards in all of the company's operations throughout the world. These types of agreements usually include a monitoring mechanism.

Furthermore, some countries are developing legislation imposing companies financial and non-financial reporting obligations. Following the adoption of Regulation

¹ Business and Human Rights Resource Centre, Company policy statements on human rights, <http://business-humanrights.org>

2014/95/EU, countries such as the UK² and France³, have adopted laws introducing general and specific reporting obligations. Likewise, the US has for instance modified its legislation potentially allowing civil society to petition customs authorities to halt the import of slave-made products⁴. In France, a bill aiming at imposing a duty of care on large companies is currently being discussed.⁵

In 2015, the Swiss Coalition for Corporate Justice launched a Swiss Popular Initiative aiming at introducing a new article 101a “Responsibility of business” in the Swiss Constitution, in order to impose companies the obligation to respect international human rights. The initiative will be submitted to popular vote.

To respond to criticisms of CSR initiatives that are deemed too “soft” because they lack power to sanction companies that do not respect the principles they have committed to follow, some initiatives have recently established procedures to review companies’ policies and, ultimately, to remove those not in compliance from the list. Such exclusion can be considered to be extremely weak compared to the harm that the company may have caused. However, NGOs and communities can make use of these procedures to shed light on abuses and “name and shame” companies that use CSR initiatives for so-called “green-washing”. It is difficult to assess the usefulness of some of these complaint mechanisms because some initiatives disclose information regarding complaints that were filed against companies, including their outcomes, while others remain silent. Where available and relevant, this section provides an insight into concrete cases handled through grievance procedures. It can be helpful to conduct certain actions in parallel to filing a case before such a grievance mechanism, including public campaigning to raise awareness on the complaint in order to pressure the company and the CSR initiative in question to solve the matter.

A company’s public commitment to respect human rights and environmental standards, even if considered to be “voluntary”, may be used against it in legal procedures such as those involving competition or consumer protection laws.

The current chapter briefly reviews a number of existing initiatives that include some kind of procedure for complaints; describes international framework agreements; and, finally, suggests ways in which to use voluntary commitments in legal procedures.

2 Modern Slavery Act, 2015. Since its adoption, only 22 of the 75 statements met the formal conditions and only 9 included all the elements of information required by the law. See: <http://corporate-responsibility.org>

3 Loi No. 2010-788 du 12 juillet 2010 portant engagement national pour l'environnement (Loi Grenelle II) complemented by its application decree 2012-557. The congress is now deliberating on a modification of this law in order to comply with all the elements of the European directive.

4 Trade Facilitation and Trade Enforcement Act (H. R. 644), Sec. 910.

5 ECCJ, "Duty of Care of Transnational Corporations: waiting is no longer an acceptable way forward", 3 March 2016, available at: www.corporatejustice.org

PART I

Overview of CSR initiatives

CHAPTER I

The UN Global Compact

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What is the Global Compact?

Officially launched on 6 July 2000 by the United Nations, the Global Compact (UNGC or GC) is a voluntary initiative which supports companies to “do business responsibly by aligning their strategies and operations everywhere with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption” and to “take strategic actions to advance broader societal goals, such as the UN Sustainable Development Goals (...)”.⁶

With over 12,000 participants in 162 countries around the world, including over 8,000 companies, the Global Compact has become the largest corporate responsibility initiative.

THE TEN PRINCIPLES OF THE UN GLOBAL COMPACT⁷

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: ensure non-complicity in human rights abuses.

Labour Standards

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: eliminate all forms of forced and compulsory labour;

Principle 5: effective abolition of child labour; and

Principle 6: eliminate discrimination with regard to employment and occupation.

⁶ UNGC, *Our Mission*, www.unglobalcompact.org

⁷ UNGC, *The Ten Principles of the UN Global Compact*, www.unglobalcompact.org

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

② Who participates in the Global compact?⁸

- **Companies from any industry sector**, except those companies involved in the manufacture, sale, and distribution of anti-personnel land mines or cluster bombs, companies that are the subject of a UN sanction, or that have been blacklisted by UN Procurement for ethical reasons. Private military companies and tobacco companies, often excluded by other initiatives or ethical funds, are allowed to become participants. To participate, a company simply sends a letter signed by its CEO to the UN Secretary General in which it expresses its commitment to (i) the Global Compact and its ten principles; (ii) engagement in partnerships to advance broad UN goals; and (iii) the annual submission of a Communication on Progress (COP).
- Companies joining the Global Compact commit to implement the ten principles within their “sphere of influence”. They are expected to make continuous and comprehensive efforts to advance the principles wherever they operate, and integrate the principles into their business strategy, day-to-day operations, and organisational culture.
- Other **stakeholders** can also participate in the Global Compact, including civil society organisations, labour organisations, business associations, cities, and academic institutions.

Although these will not be discussed in detail in this guide, the Global Compact counts on different multi-stakeholder working groups (comprised of NGOs, companies, and other representatives) established to provide advice, and to promote implementation of the principles. These groups draw from the work of the UN Special Representative on the issue of business and human rights, and aim to develop practical tools for businesses.

⁸ The list of participants can be accessed at UNGC, *Our Participants*, <https://www.unglobalcompact.org/what-is-gc/participants>

How to use the Global Compact to denounce human rights violations by companies?

Since its creation, the Global Compact has been criticised by many civil society organisations for offering companies an easy way of “green-washing” or “blue-washing”. Participants are listed on the UN website, can request permission to use a version of the Global Compact logo, and can present their company as acting in accordance with the 10 principles without having to prove that they do so.⁹ In 2004, as a result of numerous criticisms against the Global Compact for allowing companies which blatantly violate the principles to participate in the initiative, the Global Compact adopted “integrity measures” in order to restore its credibility.¹⁰ In December 2008, the UN Secretary General, Ban Ki-Moon encouraged the Global Compact “to further refine the good measures that have been taken to strengthen the quality and accountability of the corporate commitment to the Compact. As we move forward, it will be critical that the integrity of the initiative and the credibility of this organisation remain beyond reproach”.

For its part, the Global Compact emphasises that the initiative focuses on learning, dialogue and partnerships as a complementary voluntary approach to help address knowledge gaps and management system failures.¹¹

Participation may now be questioned in cases of misuse of the UN or the Global Compact logo. Moreover, two procedures by which companies may ultimately be de-listed from the initiative have been introduced, although the Global Compact insists it is not a “compliance based initiative”.

② Serious allegations of human rights violations¹²

Serious allegations of human rights violations in which a business participant is involved **may be brought to the attention of the Global Compact Office** to “call into question whether the company concerned is truly committed to learning and improving”. The Office gives some examples of such violations: murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other child exploitation, serious violations of individuals’ rights in situations of war or conflict, severe environmental damage, and gross corruption or other particularly serious violations of fundamental ethical norms.

9 For more information on the limits of the Global Compact, visit: <http://globalcompactcritics.blogspot.com>

10 UNGC, *Integrity Measures Policy*, www.unglobalcompact.org

11 See UNGC, *The Importance of Voluntarism*, www.unglobalcompact.org

12 UNGC, *Note on Integrity Measures*, www.unglobalcompact.org

The Global Compact Office “will generally decline to entertain matters that are better suited to being handled by another entity, such as a court of law, local administrative agency, or other adjudicatory, governmental, or dispute resolution entity”.¹³

► NOTE

The Global Compact Board insisted on using the term “matter” instead of “complaint” in order not to raise false expectations, highlighting that the process relates to dialogue facilitation rather than complaint resolution.

HOW TO SUBMIT AN ALLEGATION?

- Anyone may send the matter in writing to the Global Compact Office.
Contact: info@unglobalcompact.org
- The matter can also be sent directly to the Chair of the Global Compact Board, who is the UN Secretary General. This may contribute to drawing media attention to the complaint.

🕒 Process and Outcome¹⁴

Process

Upon receipt of a matter, the Global Compact Office will:

- Filter out prima facie frivolous allegations. If a matter is found to be prima facie frivolous, the party raising the matter will be so informed and no further action will be taken by the Global Compact Office.
- If an allegation of systematic or egregious abuse is found not to be prima facie frivolous, the Global Compact Office will forward the matter to the company concerned, requesting:
 - written comments, which should be submitted directly to the party raising the matter, with a copy to the Global Compact Office;
 - that the Global Compact Office be kept informed of any actions taken by the participating company to address the situation which is the subject matter of the allegation. The Global Compact Office will inform the party raising the matter of the above-described actions taken by the participating company.
- The Global Compact Office will be available to provide guidance and assistance, as necessary and appropriate, to the company concerned, in taking actions to remedy the situation.

¹³ UNGC, Integrity Measures, *Frequently Asked Questions*, www.unglobalcompact.org

¹⁴ UNGC, *Integrity Measures Policy*, *op. cited*

- The Global Compact Office may, at its sole discretion, take one or more of the following steps, as appropriate:
 - Use its own good offices to encourage resolution of the matter, ask the relevant country/regional Global Compact network, or another Global Compact participant organisation, to assist with the resolution of the matter.
 - Refer the matter to one or more of the UN entities that are the guardians of the Global Compact principles for advice, assistance, or action.
 - Share information with the parties about the specific instance procedures of the OECD Guidelines for Multinational Enterprises and, in the case of matters relating to the labour principles, the interpretation procedure under the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.
 - Refer the matter to the Global Compact Board, drawing in particular on the expertise and recommendations of its business members.

Outcomes

- If the concerned participating company refuses to engage in dialogue on the matter within the first two months of being contacted by the Global Compact Office, **it may be regarded as “non-communicating”**, and would be identified as such on the Global Compact website a dialogue commences.
- If the continued listing of the participating company on the Global Compact website is considered to be detrimental to the reputation and integrity of the Global Compact, the Global Compact Office reserves the right **to remove that company from the list of participants**, and to so indicate on its website. To this date, this situation has never occurred.
- A participating company that is designated as “non-communicating” or is removed from the list of participants will not be allowed to use the Global Compact name or logo if such permission had previously been granted.
- If the concerned participating company has subsequently taken appropriate actions to remedy the situation, it may seek reinstatement as an “active” participant in the Global Compact, and in the list of participants on the Global Compact’s website.

The procedure in action

➔ Activists demand the removal of PetroChina from the list of Global Compact participants - Global Compact says the complaint is not suitable for further action.

In December 2008, Investors Against Genocide (IAG) and the Centre for Research on Multinational Corporations (SOMO) submitted a formal “matter” to the Global Compact Office requesting that it formally apply its “Integrity Measures” against PetroChina, and that the company be removed from the list of participants if no satisfactory resolution of the issues raised was found after three months.¹⁵ The groups alleged that PetroChina,

¹⁵ Details of the engagement with the UNGC can be found at www.investorsagainstgenocide.org

through its investments in Sudan, contributed to grave human rights violations in Darfur, amounting to genocide.

On 12 January 2009, the Global Compact Office refused to accept and act on the complaint of “systematic or egregious abuse” of the Global Compact’s overall aims and principles by PetroChina. Georg Kell, Executive Director of the Global Compact Office, stated that the UNGC “decided not to handle this matter as an integrity issue of an individual company, PetroChina”. He noted that “the matters raised could equally apply to a number of companies operating in conflict-prone countries”. In his response to the NGOs, Kell further asserted that the “Global Compact’s approach to business and peace emphasises engagement rather than divestment, and the power of collective action rather than focusing on any one individual company”. He further stated that “handling this matter as an integrity issue of one company would run counter to the Global Compact’s approach of looking for practical solutions on the ground”.

Following the refusal by the Global Compact Office to accept and act upon the allegations against PetroChina, a participant in the Global Compact, the complainants decided to write a letter to all the members of the Global Compact Board, asking them to reconsider the ill-advised initial response. This approach had a positive impact. The group of complainants received a letter from Sir Mark Moody-Stuart, Vice-Chair of the Global Compact Board. In the letter, Mr. Moody-Stuart said that the Board would discuss the matter “fully” at its next meeting, and that it would “review the processes described” in the Global Compact’s Integrity Measures.¹⁶

In July 2009, the Board finally decided to maintain PetroChina as a participant in the Global Compact. The Vice-Chair of the Board stated that CNPC, PetroChina’s parent company, “...has been active in supporting sustainable development in [Sudan] and engaged in the newly formed and embryonic Local Network, although not itself a Global Compact signatory”. The Board also took note that CNPC “had engaged in Global Compact learning and dialogue activities on conflict-sensitive business practices”.

The Global Compact Board explained that “the Board agreed that the operation of a company in a weakly-governed or repressive environment would not be sole grounds for removal from the initiative and that the Global Compact, as a learning platform, cannot require a company to engage in advocacy with a government. Given this, and the fact that the matter did not involve a Global Compact participant, the Board unanimously agreed that the matter had been handled appropriately by the Global Compact Office, and was not suitable for further action”. It was also noted that CNPC “has been willing and prepared to engage in learning and dialogue activities on conflict-sensitive business practices and that positive efforts are being made through the Global Compact Local Network to embed good business practices in Sudan, which is all that could be expected in the situation”.

¹⁶ The letter can be accessed at www.unglobalcompact.org

➔ Call for Nestlé to be expelled from the UN Global Compact¹⁷

In June 2009, a report was submitted to the Global Compact Office alleging that Nestlé's reports were misleading, and that Nestlé used its participation in the initiative to divert criticism so that abuses of human rights and environmental standards could continue. Concerns raised by the International Labour Rights Fund, trade union activists from the Philippines, Accountability International, and Baby Milk Action included:

- aggressive marketing of baby milks and foods, and undermining of breastfeeding, in breach of international standards;
- trade union busting and failing to act on related court decisions;
- failure to act on child labour and slavery in its cocoa supply chain;
- exploitation of farmers, particularly in the dairy and coffee sectors; and
- environmental degradation, particularly of water resources.

The report claims that Nestlé used the Global Compact to cover up its malpractice so that abuses could continue.

The Global Compact Office dealt with this matter under its integrity measures dialogue facilitation process. The matter was forwarded to Nestlé and both Nestlé and those raising the matter exchanged correspondence. According to the Global Compact Office, Nestlé has indicated that it remains willing to engage in further dialogue about the matters raised and therefore it has not been designated as “non-communicative”. In the meantime, activists denounced that Nestlé remained one of the main sponsors of the Global Compact Summit held in June 2010.

Companies under review are unfortunately not listed on the Global Compact website. Although the process is outlined in the Integrity Measures Policy and FAQ, the extent to which other stakeholders may access and comment on the allegations made against a participating company remains vague. The decision to bar a company belongs to the Global Compact Office, which may seek advice and guidance from a variety of sources including Global Compact local networks and relevant UN agencies. Nevertheless, de-listing companies from the initiative is perceived as a last resort, and the criteria that are applied by the Global Compact – apart from a failure to communicate on part of the company – to finally de-list a company remain unclear.

¹⁷ *International campaign calls for Nestlé to be expelled from UN initiative*, Press release 17 June 2009 www.nestlecritics.org. For more info, see Nestlé Critics, Presse release, www.nestlecritics.org/index.php?option=com_content&task=view&id=61&Itemid=79

Annual Communication on Progress (COP)¹⁸

A Communication on Progress (COP) is a disclosure on progress made in implementing the ten principles of the Global Compact, and in supporting broad UN development goals.¹⁹

Since 2005, business participants are required to annually submit a COP on the Global Compact's website and to share the COP widely with their stakeholders. Non-business participants are required to produce an annual Communication on Engagement (COE) that describes the ways that they advance the initiative. The absence of a COP will result in a change in a participant's status, which can be considered as "non-communicating" and, after a lapse of a year, in the de-listing of the participant.

In 2010, the Global Compact Board introduced a one-year moratorium on de-listing companies from non-OECD and non-G20 countries, following the recent removal of a high number of companies in these countries.²⁰ According to the Global Compact Office, the purpose of the moratorium was to give the Global Compact Office time to undertake further capacity building efforts so that participants could fully understand what is required by the COP. As a result, 347 companies that had been de-listed between 1 January 2010 and 1 March 2010 were reinstated.

The total number of businesses which were removed for failure to meet the Global Compact's mandatory annual reporting requirement stands at over 5000.²¹ The high number of de-listings over a relatively short period is due to a policy adjustment which led to the elimination of the "inactive" status in the Global Compact database. Companies are de-listed after one year of being identified as "non-communicating". To re-join the Global Compact, companies must send a new commitment signed by their CEO to the UN Secretary-General, and submit a COP to the Global Compact database.

¹⁸ UNGC, *The Communication on Progress (COP) in Brief*, www.unglobalcompact.org

¹⁹ *UN Global Compact Policy on Communicating Progress*, March 2013, www.unglobalcompact.org

²⁰ UNGC, News and Events, *Global Compact Board Addresses Delistings, Calls for Review of COP Procedures*, www.unglobalcompact.org/news/20-03-25-2010

²¹ UN News Centre, Interview with Georg Kell, Executive Director, UN Global Compact, 23 June 2015, available at www.un.org

➔ Investors write to companies not living up to Global Compact commitments

An international coalition of investors, including Aviva Investors, Boston Common, and Nordea Investment Funds, have been encouraging companies to comply with their commitment to submit a COP to the Global Compact. In 2010, the coalition sent letters to 86 major Global Compact participants which had failed to produce an annual COP on the implementation of the ten principles of the Global Compact. In 2008, the engagement resulted in 33 percent of laggard companies subsequently submitting their progress reports. In 2009, positive responses increased to 47.6 percent (50 out of 105 companies).²²

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The mandate of the Global Compact is to provide guidance rather than to act as a watchdog. Part of its mission is to encourage companies to undertake efforts to become more transparent. However, although some progress has been made since 2004 to give teeth to the Global Compact, the requirements to participating companies remain – from a civil society perspective – extremely weak.

Submitting a COP is the only requirement for companies and the content of these reports is neither monitored nor verified by the Global Compact Office administrative staff, or any other external independent body. As a result, companies that are involved in human rights violations may continue to refer to their participation in the Global Compact. Civil society organisations have suggested that it would be preferable for companies to be accepted into the Global Compact only when they are ready to publish their first COP. While the Global Compact does transmit information to its local networks about existing recourse mechanisms, such as the OECD national contact points (NCPs), the procedure for handling complaints for systematic or egregious abuses should be reviewed and strengthened. The articulation between this procedure and other quasi-judicial mechanisms described in this guide (ILO, OECD etc.) could be reflected upon, as could the articulation between the Global Compact (and its local branches) and other envisaged quasi-judicial mechanisms at the UN level for complaints of corporate-related human rights abuses.

²² UNCG, News and Events, *Investors Give New Twist to Good COP/Bad COP*, www.unglobalcompact.org/NewsAndEvents/news_archives/2009_01_12.html

In September 2010, the United Nations Joint Inspection Unit (JIU) published a report on the Global Compact's role, putting forward the need to review its functioning.²³ The report highlights “the lack of a clear and articulated mandate, which has resulted in blurred impact, the absence of adequate entry criteria, and an ineffective monitoring system to measure actual implementation of the principles by participants”. Ten years after its creation, and despite its intense activity and an increasing budget, the report highlights that the results of the Global Compact remain mitigated.

The JIU's main criticisms are:

- the lack of regulatory and institutional framework;
- the lack of effective monitoring of engagement of participants;
- the lack of consolidated, transparent, and clear budgetary and financial reporting;
- the costly and questionably effective governance; and
- the need for an unbiased and independent regular monitoring of the performance of the Global Compact.

More than fifteen years after its creation, the Global Compact continues to be criticised by numerous civil society organisations for its lack of adequate monitoring and accountability mechanisms.

ADDITIONAL INFORMATION

– UNGC

www.unglobalcompact.org

– Global Compact Critics (No longer updated but available as a reference)

<http://globalcompactcritics.blogspot.com>

²³ UN Joint Inspection Unit, *United Nations corporate partnerships: The role and functioning of the Global Compact*, JIU/REP/2010/9, 2010, www.unjiu.org

CHAPTER II

ISO – International Organisation for Standardization

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ISO is the world's largest developer and publisher of voluntary International Standards.²⁴ It is a network of national standards institutes from 162 countries. Some of these institutes are government-based, whereas others have their roots in the private sector.

Standards

ISO has developed tens of thousands of standards on a variety of subjects, including risk management, quality management systems (ISO 9001), environmental management systems (ISO 14 001), and numerous technical issues.

ISO standards are voluntary, however a number of ISO standards – mainly those concerned with health, safety or the environment – have been adopted in some countries as part of their regulatory framework, or are referred to in legislation for which they serve as the technical basis. ISO standards may become a market requirement, as has happened in the case of ISO 9000 quality management systems. All ISO standards are reviewed every five years to establish if a revision is required. Organisations (including corporations) abiding by a standard will seek certification for their organisation or for a product by the various national and international certification or registration bodies operating around the world.

ISO 26 000: an attempt to standardise social responsibility

In 2005, ISO launched the development of an International Standard providing guidelines for social responsibility, ISO 26 000.²⁵ It has been developed through various consultations led by a multi-stakeholder working group including industry, government, labour, consumer, NGO and SSRO (support, service, research and other related entities) representatives. It was adopted in November 2010. **In contrast with most ISO standards, ISO 26 000 does not aim at certification.**

The objective of ISO 26000 is to “assist organisations in contributing to sustainable development. It is intended to encourage them to go beyond legal compliance, recognizing that compliance with law is a fundamental duty of any organisation and an essential part of their social responsibility. It is intended to promote common

²⁴ International Organisation for Standardization, ISO, www.iso.org

²⁵ For a preview of ISO 26000:2010 see www.iso.org

understanding in the field of social responsibility, and to complement other instruments and initiatives for social responsibility, not to replace them”.²⁶

ISO 26 000 deals with a wide range of issues, and has identified seven “core subjects”: organisational governance; human rights; labour practices; the environment; fair operating practices; consumer issues; and, community involvement and development.

The human rights components of ISO 26 000

With regard to human rights, ISO 26 000 recognises that non-state organisations can affect individuals’ human rights, and hence **have a responsibility to respect human rights**, including in their **sphere of influence**. To respect human rights, organisations have a responsibility to exercise **due diligence** to identify, prevent and address actual or potential human rights impacts resulting from their activities or the activities of those with which they have relationships. Due diligence processes may also contribute to alert an organisation to a responsibility it has in influencing the behaviour of others, in particular when the organisation may be implicated in causing human rights violations.

- ISO 26 000 points out **human rights risk situations** (weak governance zone, etc.) where additional steps may be taken by organisations.
- Organisations should **avoid complicity** in human rights violations, be it direct, beneficial, or silent complicity.
- An organisation should establish **remedy mechanisms**.
- An organisation should pay attention to vulnerable groups and avoid any kind of **discrimination**.
- An organisation should respect **fundamental principles and rights at work**, as defined by the ILO, and engage in fair labour practices.

Content-wise, ISO 26 000 draws from existing initiatives, such as the Framework presented by the UN Special Representative on the issue of business and human rights. On the other hand, it goes further by including concepts and addressing issues such as the sphere of influence to determine companies’ complicity, the entire cycle life of products, sustainable purchasing and procurement practices, sustainable consumerism, responsible marketing, consumers’ right to privacy and access to information, respect for communities’ values and customs. A whole section is devoted to community involvement and development. The text nevertheless remains criticised for attempting to include various concepts – both judicial and non judicial – into the same document, thereby creating possible confusion.

²⁶ ISO 26000: 2010, Scope, *op. cited*

Complaints²⁷

ISO is a standard developing organisation and, as such, is not involved with the implementation of standards in the various countries. Complaints can only be made regarding standards that are subject to certification hence **no complaints are possible under ISO 26 000**.

Complaints can be submitted to ISO regarding the misuse of the ISO logo or false certification to ISO standards. Complaints can remain confidential if requested, and a response will be sent within 14 days. ISO does not “guarantee a resolution and cannot assume any liability, but it can help to facilitate dialogue between the parties involved and work towards a positive outcome”.

A complaint can be directly submitted to ISO only if the following steps have been fulfilled:

- 1) You must have filed a complaint with the company in question first.
- 2) If the outcome of this complaint is unsatisfactory, you must make an official complaint to the certification body which accepted the company in question.
- 3) If this is unsuccessful, you must complain to the national accreditation body in charge.

HOW TO MAKE A COMPLAINT?

The following information must be provided:

- Your contact details;
- Information about the parties that are the subject of the complaint (including contact details, if possible);
- Details about your complaint, including a chronology of events (including dates, parties, etc.); and
- Information about the steps that you have taken to address your complaint (see the steps to be taken before sending a complaint to iso above).

If the complaint is regarding a certification, information about the certificate in question (including the name and contact details of the certifier, the certificate number and the date of certification).

The complaint must be sent to Msscomplaints@iso.org

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²⁷ ISO, Standards, Certification, Complaints, www.iso.org

To a certain extent, ISO 26 000 – and the lengthy process of its elaboration- reflects a wide range of issues which are being debated around the responsibility of businesses with regard to human rights and contributes to further acknowledgement that corporations cannot ignore human rights. To date, ISO 26 000 only provides guidance to organisations, and both its content and **potential usage remain too vague and uncertain** to assess its usefulness. No verification or complaint mechanisms are available.²⁸

Although it **is not meant to become a certification standard** nor to be used as a standard-setting document, nothing in the text prevents countries from adopting national standards based on ISO 26000 that could become certifiable. This has been done in Denmark, Austria has undertaken the process, and other countries such as Mexico are preparing for it. In the absence of a national norm incorporating ISO 26 000, nothing will prevent consulting firms (which actively participated in the drafting process) from proposing their services to businesses to evaluate, audit and establish ranking systems using the ISO 26 000 standards.

After a lengthy approval process, the text was adopted and published as an International Standard in late 2010. Its future use remains uncertain and will certainly be hampered by the text's unwieldiness and complexity. Developments in the next few years will most probably vary greatly from one country to another and should nevertheless be closely followed by civil society organisations in order to eventually require companies and governments to undertake steps which respect the spirit and content of ISO 26 000.

ADDITIONAL RESOURCES

- **Information on ISO 26 000**
www.iso.org
 - **IISD (research organisation), webpage on ISO 26 000**
www.iisd.org/standards/csr.asp
 - **SOMO, Online comparison tool of the OECD Guidelines, ISO 26000 & the UN Global Compact, December 2013**
www.somo.nl/dossiers-en/csr/corporate-responsibility-instruments
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²⁸ For a reflection on ISO 26000 two years on, see Ethical Corporation, *ISO 26000: Sustainability as standard?*, Jon Entine, 11 July 2012 www.ethicalcorp.com

CHAPTER III

Extractive industry initiatives

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Companies operating in the extractive sector (oil, mining, gas) have a considerable record of alleged violations of human rights, in particular the rights of local communities, including indigenous peoples. As a result, a number of companies have adopted their own CSR policies and/or joined CSR initiatives, such as the Extractive Industry Transparency Initiative (EITI) and the Kimberly Process.²⁹ Some companies in the extractive sector have established company-based grievance mechanisms that affected communities or company employees may turn to.³⁰ NGOs, communities, and individuals willing to explore such mechanisms should turn to the concerned company to obtain information on the procedures and possible outcomes and assess whether it is worth making use of these mechanisms. Although company-based mechanisms, if designed to ensure meaningful participation from stakeholders in particular communities, may represent interesting mechanisms to monitor and assess the respect for human rights, they are, by their very nature, inherently flawed due to their lack of independence.³¹ While these initiatives can potentially contribute to preventing human rights abuses, they cannot provide reparation for victims seeking remedies.

This guide addresses three collective initiatives in the extractive sector which may be of interest:

- The Voluntary Principles on Security and Human Rights
- The International Council on Mining and Metals
- The Executive Industry Transparency Initiative (EITI)

²⁹ The Kimberly Process is a joint government initiative with participation of industry and civil society to stop the flow of conflict diamonds. The trade in these illicit stones has fuelled decades of devastating conflicts in countries such as Angola, the Democratic Republic of Congo, and Sierra Leone. The Kimberly Process Certification Scheme (KPCS) imposes requirements on its members to enable them to certify shipments of rough diamonds as 'conflict-free'. This initiative is designed to ensure UN bans on diamond procurement from specific areas are respected. See www.kimberleyprocess.com

³⁰ This is the case of companies such as Anglo-American, BHP Billiton, and Newmont. For more information on the design of such mechanisms see: Oxfam Australia, *Community – company grievance resolution: A guide for the Australian mining industry*, 2010, <http://womin.org.za> and ICMM, *Human Rights in the Mining & Metals Sector, Handling and Resolving Local Level Concerns & Grievances*, 2009, www.icmm.com

³¹ Earth Rights International, with the cooperation of SOMO, is working on a model of community-driven operational grievance mechanism. For more information, see www.earthrights.org and www.earthrights.org

The Voluntary Principles on Security and Human Rights

In 2000, governments (initially the UK and US), NGOs, and companies established the Voluntary Principles on Security and Human Rights (“the Voluntary Principles” or VPs).³² The objective is to provide guidance for businesses in the extractive industry (mainly oil, gas and mining) on maintaining security and respect for human rights throughout their operations. The principles were born as a direct response to abuses perpetrated by private guard companies and security services in countries such as Colombia, Peru, Nigeria, Indonesia, Ghana and Democratic Republic of Congo.

🕒 What is the scope and content of the Principles?

The principles have been put in place to guide companies in upholding human rights and fundamental freedoms throughout their operations and to ensure the safety and security of all those involved.

Participants commit to conducting **risk assessments** and taking steps to ensure actions taken by governments, particularly the actions of **public security providers** are consistent with human rights. Where host governments are unable or unwilling to provide adequate security to protecting a company’s personnel or assets, **private security** should observe the policies of the contracting company regarding ethical conduct and human rights, the law and professional standards of the country in which they operate, emerging best practices and international humanitarian law.

Risk Assessment:	Companies & Public Security:	Companies & Private Security:
<ul style="list-style-type: none">- Identification of Security Risks- Potential for Violence- Human Rights Records- Rule of Law- Conflict Analysis- Equipment Transfers	<ul style="list-style-type: none">- Security Arrangements- Deployment and Conduct- Consultation and Advice- Responses to Human Rights Abuses	<ul style="list-style-type: none">- Law Enforcement- Coordination with State Forces- Weapons Carriage- Defensive Local Use of force

³² Voluntary Principles on Security and Human Rights, www.voluntaryprinciples.org

② Who participates in this initiative?³³

- **Governments:** Australia, Ghana, Canada, the Netherlands, Norway, Colombia, Switzerland, The UK, and the US;
- **Non-Governmental Organisations:** The Fund for Peace, Human Rights Watch, International Alert, LITE-Africa, New Nigeria Foundation, Pact, Partners for Democratic Change International, Partnership Africa Canada, Pax, Search for Common Ground³⁴;
- **Observers:** Colombian Mining & Energy Committee on Security and Human Rights, DCAF, IFC, Institute for Human Rights and Business, International Committee of the Red Cross, International Council on Mining & Metals, International Petroleum Industry Environmental Conservation Association); and
- **Thirty companies:** Alphamin Bisie Mining SA, AngloGold Ashanti, Anglo American, Barrick Gold Corporation, BHP Billiton, BP, Chevron, ConocoPhillips, ExxonMobil, Freeport McMoRan Inc., Glencore, Goldcorp, Hess Corporation, Marathon Oil, Newcrest Mining Limited, Newmont Mining Corporation, Norsk Hydro, Occidental Petroleum Corporation, Pacific Exploration and Production Corp., PanAust, Premier Oil, Repsol, Rio Tinto, Wooside Energy, Seven Energy, Shell, Sherritt International, Statoil, Total, Tullow Oil.

In 2007, the Voluntary Principles adopted formal **Participation Criteria** intended to strengthen the principles by fostering greater accountability on part of all the VPs participants.

All participating governments, companies and NGOs, must meet the following criteria:³⁵

- Publicly promote the Voluntary Principles;
- Proactively implement or assist in the implementation of the Voluntary Principles;
- Attend plenary meetings and, as appropriate and commensurate with resource constraints, other sanctioned extraordinary and in-country meetings;
- Communicate publicly on efforts to implement or assist in the implementation of the Voluntary Principles at least annually;
- Prepare and submit to the Steering Committee, one month prior to the Annual Plenary Meeting, a **report on efforts to implement** or assist in the implementation of the Voluntary Principles according to criteria agreed upon by the participants;
- **Participate in dialogue** with other Voluntary Principles Participants; and
- Subject to legal, confidentiality, safety, and operational concerns, **provide timely responses** to reasonable requests for information from other Participants with

³³ Voluntary Principles on Security and Human Rights, *Who's involved?*, www.voluntaryprinciples.org/participants/

³⁴ In 2013, several NGOs, such as Amnesty International and Oxfam, decided to withdraw from the VPs due to concerns regarding the failure of the initiative to develop robust accountability systems for member companies. See for example: www.amnesty.org

³⁵ Voluntary Principles on Security and Human Rights, *Participation Criteria*, www.voluntaryprinciples.org/resources

the aim of facilitating comprehensive understanding of the issues related to implementation or assistance in implementation of the Voluntary Principles.

Any Participant's status will automatically become **inactive if it fails to submit an annual report** and/or categorically refuses to engage with another Participant.³⁶ However, it is noteworthy that there is no system for evaluating how closely the Principles are followed by individual companies or governments, as only general reports are published.

② Who can raise concerns about participants?

Only participants can raise concerns regarding whether any other Participant has met the Participation Criteria and, where appropriate, concerns regarding **sustained lack of efforts to implement the Voluntary Principles**.

② Process and Outcome

Participants will seek to resolve any concerns through direct dialogue with another Participant. If direct dialogue fails to resolve the issue, a Participant may submit its concerns to the Steering Committee.

- If determined by consensus of the Steering Committee that these concerns are based on reliable information, and that the Voluntary Principles process will be strengthened by further consultations, the matter will be referred to the Secretariat within 60 days of its submission to the Steering Committee.
- The Secretariat will facilitate formal consultations between the interested Participants, subject to the requirement of confidentiality set forth in this document.
- In no more than six months, the Participants involved in these consultations may present the matter to the annual or special Plenary for its consideration.
- That Plenary shall decide what, if any, further action is appropriate, such as:
 - recommendations
 - expulsion
- A party to a complaint can request that the Steering Committee conduct a status review of implementation and consider any issues arising from the implementation of a recommendation.
- Categorical failure to implement the Plenary's recommendations within a reasonable period as defined by that Plenary will result in inactive status.
- Decisions to expel a Participant must be taken by consensus, excluding the Participant who is raising the concerns and the Participant about whom the concerns are raised. In the event concerns are raised about more than one Participant, the decisions with respect to each Participant will be reached separately.

³⁶ Voluntary Principles on Security and Human Rights, *Governance Rules of the Voluntary Principles Initiative*, www.voluntaryprinciples.org/resources

► NOTE

Although there is little information available on the use of the mechanism, it has been used several times in the past. For instance, a mediation process was conducted under the auspices of the Voluntary Principles on Security and Human Rights after a complaint made by Oxfam America. See *Marco Arena, Mirtha Vasquez and others v. Peru* in Section I, Part III, Chapter III.

* * *

Considering that NGOs participate in the process, victims could approach these NGOs where there are concerns of “sustained lack of effort” on the part of a participating company. This is an additional tool to raise awareness on a situation of human rights abuse.

Overall, the Voluntary Principles remain criticised for their voluntary nature, lack of enforcement mechanism, and the lack of transparency of the process.³⁷ Yet, they remind states of their legal obligations and, although they may be voluntary for companies, their employees are expected to respect the principles once a company has adopted them into its internal guidelines.³⁸ While their language is easily understandable, it remains unclear what is expected from companies and states to put them into practice. There remain important challenges to ensure that the VPs can contribute to improving situations for victims in particularly complex settings.

³⁷ See for example Earth Rights International, *Assessing and Improving the Voluntary Principles on Security & Human Rights, Lessons from the Nigerian Experience*, May 2013, www.earthrights.org

³⁸ Salil Tripathi, *Have the Voluntary Principles Realised their Full Potential?*, Institute for Human Rights and Business, 17 March 2010.

International Council on Mining and Metals (ICMM)

The International Council on Mining and Metals³⁹ was established in 2001 to address the core sustainable development challenges faced by the mining and metals industry. It brings together 35 national, regional and global mining associations and 23 mining and metal companies including: Anglo-American, AngloGold Ashanti, Areva, Barrick, BHPbilliton, GoldCorp, Glencore Minerals Mitsubishi Materials, Newmont and Rio Tinto.⁴⁰

② What rights are protected?

Membership of ICMM requires a commitment to implement the ICMM Sustainable Development Framework, which was developed following a two-year consultation process with various stakeholders.⁴¹ It is mandatory for ICMM corporate members to:

- Implement the 10 principles for sustainable development⁴² throughout the business, one of which is to “uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by their activities”. They must also integrate six supporting position statements into corporate policy.⁴³
- Report annually in accordance with the Global Reporting Initiative (GRI) G4 Guidelines.⁴⁴
- Provide independent third-party assurance that ICMM commitments are met, in line with the ICMM Assurance Procedure, which was agreed upon in May 2008.⁴⁵ Most members assure their sustainability reports and any ICMM-specific assurance requirements in an integrated manner. This procedure clearly provides for greater credibility of the reporting.

ICMM conducts an annual assessment of the progress that each member company is making against these performance commitments. The resulting annual member performance assessment is published in ICMM’s Annual Review.⁴⁶

ICMM has also published different guides for its members, including on responsible sourcing, indigenous peoples and mining.

³⁹ ICMM, www.icmm.com

⁴⁰ See the full list of member companies at ICMM, Member Companies, www.icmm.com

⁴¹ Mining, Minerals, and Sustainable Development project, <http://www.iied.org/>

⁴² The 10 Principles are benchmarked against leading international standards, including the Rio Declaration, the Global Reporting Initiative, the Global Compact, OECD Guidelines on Multinational Enterprises, World Bank Operational Guidelines, OECD Convention on Combating Bribery, ILO Conventions 98, 169, 176, and the Voluntary Principles on Security and Human Rights. ICMM, Sustainable Development Framework, 10 Principles, www.icmm.com

⁴³ ICMM, Sustainable Development Framework, *Position Statement*, www.icmm.com

⁴⁴ ICMM, Sustainable Development Framework, *Public Reporting*, www.icmm.com

⁴⁵ ICMM, Sustainable Development Framework, *Assurance Procedure*, www.icmm.com/document/439

⁴⁶ ICMM, Sustainable Development Framework, *Member Performance*, www.icmm.com

② Who can file a complaint?

Any person who believes that a company is in breach of their ICMM membership commitments at the operational level and wishes to make a complaint may do so.⁴⁷

② Under what conditions?

ICMM has developed a complaint hearing procedure to hear “complaints that a company member is in breach of a membership standard or requirement or any other allegation that a member company has engaged in inappropriate behaviour.” The membership standards or requirements are “ICMM’s public reporting and assurance requirements, plus formally adopted position statements that bind company members to specified procedures or actions” (see links below). “‘Inappropriate behaviour’ is any activity by a member company that could, in the Council’s considered opinion, adversely affect ICMM’s standing and credibility, taking into account ICMM’s mandate as a leadership organisation committed to fostering good practices in sustainable development.”⁴⁸

If a company consistently fails to meet the requirements of membership, the ICMM Council of CEOs would review the membership status of the company concerned. The Council has the power to suspend or expel a member company as appropriate with the support of a 75% majority of Council members.

② Process and Outcome⁴⁹

All complaints must be in writing.

Upon receiving a complaint, ICMM acknowledges the complaint and forwards it to the company concerned. The company is responsible for resolving the complaint, but ICMM is kept informed throughout the process by copies of relevant correspondence. If the case is resolved through interaction between the company and the complainant, the company notifies ICMM of the resolution, and ICMM writes to the complainant for confirmation.

If the case cannot be resolved through interaction between the company and the complainant, ICMM is responsible for dealing with the complaint only if the “Council decides that an investigation of the complaint is appropriate and in ICMM’s interests. There is no automatic obligation to investigate all complaints received.” Upon receiving the complaint, the President contacts the complainant and the company concerned to request additional details. ICMM only considers

⁴⁷ ICMM, Sustainable Development Framework, *op. cited*

⁴⁸ ICMM, *ICCM complaint(s) hearing procedure*, International Council on Mining and Metals, www.icmm.com/our-work/sustainable-development-framework

⁴⁹ ICMM, *ICCM complaint(s) hearing procedure*, www.icmm.com/document/199

complaints when there is sufficient information “to establish, prima facie, that a breach of an ICMM standard could have occurred.”

At this stage, the President⁵⁰ prepares a report which is transmitted to the affected company member for comment.

- The President considers any response from the member and prepares a report for the Council’s Administration Committee. A copy of this report is provided to the affected member.
- The Administration Committee considers the report and determines the appropriate response. Where the Committee believes that the issue should be resolved by a full explanation of the circumstances to the complainant, the President discusses the issue with the complainant and then provides a written response to the complainant and the affected member.
- Where the Administration Committee considers that a serious breach of standard may have occurred, a report is prepared by the President for the Council.
- The Council then considers the report and any representations by the affected member, determines the appropriate response, and the President informs the complainant and member of this in writing. If it is determined that a breach has occurred, “the Council will decide what sanction or condition (if any) would be appropriate in the circumstances.” In doing so, the “Council will take into account Section 12.1.2 of ICMM’s Bylaws which allow members to request a meeting of the Council to consider any proposed suspension or termination of a member.” In all cases, the Council is informed of the complaints and how they have been resolved.

There is no information online as to whether complaints have been filed by ICMM and about their outcome.

The Extractive Industry Transparency Initiative (EITI)

The Extractive Industry Transparency Initiative (EITI) is a coalition of governments, companies, civil society groups, investors and international organisations which supports improved governance in resource-rich countries through the verification and full publication of company payments and government revenues from oil, gas and mining. The initiative was launched by the UK in 2002. Although not a complaint mechanism as such, it is an interesting initiative that can be used by NGOs to call on States and companies for accountability.

Over 90 of the world’s largest oil, gas and mining companies participate in the EITI. In almost all implementing countries, the commitment to implement the EITI has been decreed in some way. There remain a limited number of OECD coun-

⁵⁰ The Council may appoint at its discretion an appropriately qualified independent person to act as an ombudsman to hear the complaint and report to Council.

tries implementing the EITI.⁵¹ The initiative also contributed to the development, such as in the US and the EU, of mandatory disclosure requirements for listed companies to disclose detailed data on major payments to the governments where they operate.

The EITI Standard,⁵² which is the authoritative source on how countries can implement the EITI, was formally launched at the EITI Global Conference in Sydney 23-24 May 2013. These standards replace the 2011 EITI Rules.⁵³ The Standard is the “global transparency standard for improving governance of natural resources”, that participating countries are required to comply with. In April 2015, the EITI Board launched a process of updating the EITI strategy, including clarifying the EITI Standard.⁵⁴

The 12 EITI Principles outlined in the EITI Standard aim to increase transparency of payments and revenues in the extractives sector.⁵⁵ The Standard highlights seven minimum requirements that must be implemented by countries that are EITI members (also called EITI Compliant countries).

All companies (regardless of whether they are EITI Supporting Companies) operating in a country implementing the EITI are required to disclose how much they pay to the government. To become an EITI Supporting Company, companies are not required to provide additional reporting or disclosure of payments. Non-extractive companies and institutional investors are expressing growing support to the EITI.

➤ Process and Outcome

Countries implementing the EITI Standard publish annual EITI Reports, in which they disclose information on tax payments, licences, contracts, production and other key elements around resource extraction. The reports are compiled by Independent Auditors, who are appointed by the multi-stakeholder groups in each EITI country, and who compare and compile the data from company and government reports.

Participating countries can be de-listed from the EITI if, after a 24 month warning, they still fail to meet the requirements for compliance with the EITI Standard. Civil

51 See participating countries at <https://eiti.org/countries>

52 *The EITI Standard*, EITI International Secretariat, January 2015, www.eiti.org

53 For an overview of the key changes, see [eiti.org https://eiti.org/blog/charting-next-steps-transparency-extractives](https://eiti.org/blog/charting-next-steps-transparency-extractives) On 12 February 2015, as countries were preparing for validation under the new EITI Standard, the Institute for Multi-Stakeholder Initiative Integrity (MSI Integrity) released a report on the governance of EITI. See: *Protecting the Cornerstone: Assessing the Governance of Extractive Industries Transparency Initiative Multi-Stakeholder Groups*, MSI Integrity, February 2015, www.msi-integrity.org

54 EITI, *The future shape of the EITI Standard – strategy update*, www.eiti.org

55 The Extractive Industry Transparency Initiative, *The Principles*, <https://eiti.org/eiti/principles>

society organisations closely monitor reports published by member countries and use States' participation in this initiative as a mean to call for greater accountability.⁵⁶

ADDITIONAL RESOURCES

- **ICMM 6 Position statements (providing further clarification / interpretation of ICMM's 10 Principles)**
www.icmm.com
 - **ICMM Position statement on Indigenous People and Mining, May 2013**
www.icmm.com
 - **ICMM updated Indigenous Peoples and mining good practice guide. November 2015**
<http://www.icmm.com>
 - **Oxfam Australia, Community –company grievance resolution: A guide for the Australian mining industry, 2010**
<http://womin.org.za>
 - **ICMM, Human Rights in the Mining & Metals Sector, Handling and Resolving Local Level Concerns & Grievances, 2009**
www.icmm.com
 - **Centre for Social Responsibility in Mining, University of Queensland**
www.csr.mq.edu.au
 - **Extractive Industries Transparency Initiative (EITI)**
<https://eiti.org/>
 - **Publish what you pay,**
www.publishwhatyoupay.org
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⁵⁶ On the eve of 2016 Global EITI conference, more than 100 civil society organisations strongly criticized EITI governance failures. see "Statement EITI Governance Failures Threaten Independent Civil Society", *PWYP*, 24 February 2016.

CHAPTER IV

Labour Rights Initiatives in the Supply Chain

* * *

Multinational companies in the general retail sector as well as in the footwear, clothing and toys industry, sourcing from a complex supply chain are very exposed to violations of labour rights in supplier factories. Following international campaigns denouncing human rights abuses occurring in the supply chain of high profile multinational companies in the 1990's, in particular child labour, greater attention has been given to purchasers' responsibility vis-à-vis their supply chains. Numerous initiatives, business-led or multi-stakeholder, have been established with the objective of improving working conditions for factory workers, through adoption of standards, social auditing and implementation of corrective actions. Recently, major buyers have pooled efforts to harmonize standards across sectors, share information and contribute to the operationalization of labour and human rights standards within the production and sourcing processes.⁵⁷

Some of these initiatives have set up complaints procedures that workers and their representatives may use to denounce abuses taking place within a supplying factory, and seek a remedial action by one or several multinational companies sourcing at this factory. Individual companies may also have established workers' hotlines or other forms of grievance resolution procedures. It is not always easy to determine which company the factory where a violation occurs is producing for or what CSR initiative this company is engaged in. However, brands often appear on products processed by factories, which may enable to check what initiative this brand is participating in. Some initiatives publish the list of certified factories (such as Social Accountability International-SAI) while others say they are ready to provide the information if asked whether a factory is supplying one of its members (such as the Fair Labour Association-FLA).

The current section reviews some of these complaints mechanisms.

⁵⁷ See, for example, the Global Social Compliance Program (GSCP), a global collaboration platform promoting the harmonization of best practice towards sustainable supply chain management and bringing together key actors in the consumer goods industry. The GSCP is not a new standard or monitoring initiative. www.theconsumergoodsforum.com/gscp-home Other initiatives include the Business Social Compliance Initiative: <http://www.bsci-intl.org/>

ETI – Ethical Trading Initiative

The Ethical Trading Initiative⁵⁸ is a tripartite alliance between companies, trade unions and NGOs aiming to promote respect for workers' rights around the globe. There are about over 70 member companies⁵⁹, which must:

- Adopt the ETI Base Code⁶⁰, which draws from ILO Conventions and includes provisions on freely chosen employment, freedom of association and the right to collective bargaining, safe and hygienic working conditions, prohibition of child labour, payment of living wages, non-excessive working hours, non-discrimination, regular employment and prohibition of harsh and inhumane treatment.
- Sign up to ETI's Principles of Implementation⁶¹ to progressively implement the code.
- Submit annual reports to the ETI Board on measures taken to improve working conditions their supply chains: Company annual reports are reviewed by the ETI Board, the Secretariat provides detailed feedback to each company, identifying where progress has been made and where further action is required. **If member companies do not make sufficient progress, or fail to honour their membership obligations, the ETI tripartite Board may terminate their membership.**

Furthermore each year, the ETI Secretariat, together with representatives from its trade union and NGO membership, conducts random validation visits to a minimum of 20 percent of its reporting members. The purpose of these visits is to check that the company's management processes and systems for collecting data for its annual report are consistent and reliable.

Complaints Mechanism

The ETI states that it can serve as a forum to negotiate and to further the protection of the workers in situations where their rights have been violated. The ETI set up the ETI Code Violation Procedure in order to provide a formal avenue for raising and addressing breaches of the ETI Base Code **in the supply chains** of ETI Member companies.⁶² These guidelines, which draw on the UN Guiding Principles on Business and Human Rights were reviewed in November 2014.

⁵⁸ ETI, www.ethicaltrade.org

⁵⁹ See the full list of members: ETI, *Our Members*, www.ethicaltrade.org

⁶⁰ ETI, *The ETI Base Code*, www.ethicaltrade.org

⁶¹ ETI, *Principles of Implementation*, 2009, www.ethicaltrade.org

⁶² ETI, *Code Violation Procedure*, 10 November 2014, www.ethicaltrade.org

② Who can file a complaint?

ETI members; and an individual, NGO or a trade union that are not member of ETI, through contacting one of the member NGOs or trade unions that may be willing to take their complaint forward.⁶³

② Process and outcome

This complaint procedure has four distinct stages.

- Stage 1: A complaint is filed and the company responds.⁶⁴ Where the parties agree, the complaint then progresses to stage 2;
- Stage 2: A remediation plan is developed and implemented. Where the parties are unable to agree on developing a plan, the complaint will progress to mediation under stage 3;
- Stage 3: Mediation seeks to place the parties in a position where they can agree on developing a remediation plan.
- Stage 4: Where mediation fails, either party can request an ETI recommendation on the complaint. Any of the parties can request that such a recommendation be reviewed by a tripartite sub-committee of the ETI Board.

In order to avoid the victimisation of workers, the complainant can withhold their names, and the ETI member must warn its supplier under allegation that there is a “no victimisation” policy in relation to workers who may be named in the complaint. All information received from each party will be provided to the other parties to the complaint, and in the case of a mediation procedure, parties can agree to keep the contents confidential. Progress on complaints heard under this process will be routinely reported to the ETI Board. At the conclusion of a complaint, the ETI will publish a statement agreed by the parties or a short summary of the complaint and the outcome. There is limited information on ETI’s website on complaints and outcomes regarding cases of violations of workers’ rights in members’ supply chains, but the secretariat can easily be contacted (see below).⁶⁵

⁶³ ETI can assist with making contact with the relevant members. See the full list of members at ETI, *Our Members*, www.ethicaltrade.org

⁶⁴ A sample complaint form can be found in the ETI, *Code Violation Procedure*, *op. cit.*

⁶⁵ See ETI, Resolving violations, www.ethicaltrade.org/in-action/resolving-violations

HOW TO FILE A COMPLAINT?

- If an ETI member (NGO or trade union) is aware of a violation of the Base Code by a supplier of an ETI corporate member, it may notify the relevant ETI member company in writing, putting the ETI secretariat in copy (eti@eti.org.uk)
 - For further information, contact the ETI secretariat by writing to eti@eti.org.uk and General Inquiries (emma.clark@eti.org.uk)
-

SAI - Social Accountability International

SAI⁶⁶ is a multi-stakeholder organisation that established SA8000 standard for decent work⁶⁷, a set of standards which companies and factories use to measure their social performance, which is subject to certification. SA8000 is grounded on the principles of core ILO conventions, the UN Convention on the Rights of the Child, and the Universal Declaration of Human Rights. SA8000 is used in over 3,000 factories, across 66 countries and 65 industrial sectors. SAI member companies⁶⁸ and the commitment requirements can be found online.⁶⁹

The Social Accountability Accreditation Service (SAAS) is responsible for monitoring the use of the SA8000 standards and for accrediting and monitoring certification bodies carrying out SA8000 audits.⁷⁰

Complaint mechanisms⁷¹

SAAS manages the complaints filed regarding the performance of a certified organisation (Type 4 complaint).

② Who can file a complaint?

Any interested party may file a complaint.

⁶⁶ SAI, www.sa-intl.org

⁶⁷ SAI, SA8000® Standard and Documents, www.sa-intl.org

⁶⁸ SAI, Corporate Programs, *Members*, www.sa-intl.org

⁶⁹ SAI, Corporate Programs, *Mission Statement*, www.sa-intl.org

⁷⁰ SAI, Social Accountability Accreditation Service (SAAS), www.sa-intl.org

⁷¹ Social Accountability Accreditation Services (SAAS), Complaints and Appeals Process, www.saasac-creditation.org/complaints

② Process and outcome

Before addressing a complaint to the SAAS, the complainant has to go through the internal complaints procedures of the facility concerned. If it is not addressed at this stage, the complaint should be filed with the Certifying Body. The complaints should be filed with SAAS after all other avenues for hearing complaints have been exhausted or the complainant feels that their concerns have not been investigated and addressed properly.

When a complaint is received, it is immediately forwarded to the Certification Body (CB), which must develop a plan of action and contact the complainant. If the complainant is not satisfied with the outcome of the investigation, it may file another type of complaint against the CB with SAAS.

A full list of the complaints and their outcome can be found at: www.saasaccreditation.org/node/62.

HOW TO FILE A COMPLAINT?

The complaint should include the following:

- Objective evidence of the violation;
- Documentation supporting the violation;
- Evidence that direct requests were made to the certified organisation and that the organisation had not acted on them (if applicable); and,
- Evidence that the company's internal grievance process was not carried out.

The complaint should be made in writing, it must not be anonymous but it can remain confidential, and a complaint form can be downloaded www.saasaccreditation.org/complaints.

The complaint should be sent to:

Executive Director, SAAS
15 West 44th street, Floor 6,
New York, NY 10036
Fax: +212-684-1515
Email: Lisa Bernstein, LBernstein@saasaccreditation.org

➔ In Action – Kenya human Rights Commission (KHRC) complaints against Del Monte Kenya Ltd.⁷²

In February 2005, SAI received a complaint from KHRC, citing clause 9 in the SA8000 Standard, concerning human rights violations, poor corporate relations between Del Monte and the neighbouring community, and the complacency of the company in addressing these issues. The complaint was forwarded to Coop Italia, a Del Monte customer and SA8000 certified company, and to SGS, the certification body. Due to organisational changes within the company, the certification had been suspended by SGS just before the complaint reached SAI. However, surveillance audits were conducted in March 2005 and in June 2005 and a recertification audit was conducted at the facility in January, 2006. During its audits, SGS identified initiatives that the company had undertaken to address community engagement, conducted interviews with Union representatives and individual workers. SGS did not find specific violations against the requirements of the SA8000 Standard, though some minor issues were identified and corrective actions recommended. During the recertification audit, a meeting was organized with a representative from KHRC. Overall, in his opinion, the company and its management were adopting a positive attitude towards the community. The company was officially re-certified in March 2006. This complaint was officially closed in August, 2007. The Certification Body has continued to be in contact with the initial complainant throughout the surveillance process at the facility.

At the time, the complaint led to important improvements. Del Monte started respecting the union agreement (CBAs). Unions and workers obtained more space to exercise their right to organize and workers previously retrenched before the complaint were compensated. Jobs were evaluated and workers paid accordingly (for jobs of equal value); housing conditions were proved and a plan of action was designed to ensure continuous improvement in the future. However, these turned out to be short term impacts that were unfortunately not sustained in the long term. There were ongoing allegations of violations (notably by workers) stating that the company is no longer respecting the CBA nor the job reevaluation plan that was agreed. Workers alleged being victims of threats and intimidation from management and unfair dismissal of union leaders (for retrenchment reasons according to the company).

This type of situation clearly reflects the limitation of such settlement mechanisms and the necessity for States hosts to take measures to establish regular and adequate systems of inspection which guarantee the respect of human rights by the companies.

⁷² Complaint #009: Certification Complaint Del Monte Kenya Ltd. – Management Systems; www.saasac-creditation.org/complaint009.htm

ADDITIONAL INFORMATION

– The list of certified facilities can be accessed at www.saasaccreditation.org/certifacilitieslist.htm

Fair Wear Foundation

The Fair Wear Foundation (FWF)⁷³ is an international verification initiative dedicated to enhancing garment workers' lives all over the world. FWF's 80 member companies represent over 120 brands, and are based in seven European countries.

④ Improving working conditions?

Members must comply with the 8 labour standards⁷⁴ outlined in the Code of Labour Practices:

- Employment is freely chosen
- Prohibition of discrimination in employment
- No exploitation of child labour
- Freedom of association and the right to collective bargaining
- Payment of a living wage
- No excessive working hours
- Safe and healthy working conditions
- Legally-binding employment relationship

The list of brands working with FWF can be accessed on FWF website.⁷⁵ Compliance with the Code of Labour Practices is checked by FWF⁷⁶ through factory audits and a complaints procedure, through management system audits at the affiliates and through extensive stakeholder consultation in production countries.

④ Who can file a complaint?

FWF's complaints procedure can be accessed by a factory worker, manager or by a representative from a local trade union or NGO. Complaints concern violations of the Code of Labour Practices. This system only applies when workers are not able to access local grievance mechanism, i.e. when other options, such as factory grievance systems or local labour courts, are not fair, effective, and/or accessible.

⁷³ FWF, <http://fairwear.org>

⁷⁴ FWF, *Labour Standards*, Fair Wear Foundation, <http://fairwear.org/labour-standards>

⁷⁵ FWF, *Brands*, www.fairwear.org/36/brands/

⁷⁶ FWF, *Verification*, www.fairwear.org and Fair Wear Foundation, *Complaints Procedure*, March 2014, www.fairwear.org

② Process and Outcome⁷⁷

In every country where it is active, FWF has a local complaints manager. Upon receipt of the complaint, FWF informs the affiliate(s) sourcing from the factory in question and investigates the complaint. The investigation can lead to recommendations and proposals for corrective action. It also includes a time frame and reporting. Once the investigation is complete, the affiliate is asked to formulate a response. When the entire procedure is closed and the verification process concluded, a final report is published. FWF provides information on its website on complaints under investigation; the name of the factory or the sourcing company is sometimes mentioned. When a member company, the plaintiff or the accused party disagrees with the outcome of the procedure, or disagrees with FWF's methods of verification; or when FWF is certain that a member company is not addressing the complaint seriously, appeals can be made to FWF's Executive Board. The Board will consider the advice of FWF's Committee of Experts and decide on a proper course of action.

The list of complaints can be found on FWF website's resource pages: www.fairwear.org/506/resources/

HOW TO FILE A COMPLAINT?

Complaints should be addressed to:

Fair Wear Foundation (FWF)

P.O. Box 69253

1060 CH Amsterdam the Netherlands

Tel +31 (0)20 408 4255 - Fax +31 (0)20 408 4254 / info@fairwear.nl

FWF complaint mechanism in action

→ **Mettraco (2006)**⁷⁸

In April 2006, a complaint was filed concerning the Mettraco factory in Turkey where FWF affiliate O'Neill was sourcing at the time. The complaint involved unlawful dismissal of union members and harassment of others, constituting an infringement on the right to freedom of association and collective bargaining and was found to be justified. In October, an investigation was conducted by an independent person appointed by the Dutch employers association MODINT, which is also one of FWFs funding organisations, and five FWF and ETI member brands, working with Mettraco.

⁷⁷ Fair Wear Foundation, *Complaints Procedure*, March 2014, www.fairwear.org

⁷⁸ FWF, *Final Report on the complaint against Mettraco 2006-2007*, www.fairwear.org

In December, MODINT received the report which found the claims from the union to be justified and, a letter was sent to Metraco, with recommendations including protecting workers' rights, re-employing the unfairly workers dismissed and entering into dialogue with the trade union with the assistance of an observer. All requirements were not accepted by Metraco, thus FWF came to the final conclusion that Metraco had been acting in clear violation of the International Labour Standards on Freedom of Association and the Right to Collective Bargaining and not showing the will to correct this serious non-compliance by refusing to come to an agreement with the trade union on the issue of the workers that had been dismissed because of their trade union membership.

JSI/O'Neill informed FWF – in a “confidential manner” – in October that they would stop ordering from Metraco, mainly due to business reasons but also because of their reluctance to correct their non-compliance.

FWF assessed the member companies' attempts to remediate the situation, and concluded that they had seriously tried to get the issues solved and could not be qualified as a “cut & run” policy.

➔ **Takko Fashion (2014)**⁷⁹

On 17 May, 2014, a complaint was filed by 12 workers concerning a supplier of Takko Fashion located in Bangladesh.

The workers from finishing section claimed that the factory did not pay minimum wages, that it had reduced operators' monthly wages, and that they were forced to unpaid overtime and were not provided with payslips. In addition, the workers said that they would be under a lot of pressure from the management or even got fired if they objected to unpaid overtime. On 19 May, 2014, FWF decided that the case was admissible and that it was relevant to FWF's Code of Labour Practices in relation to payment of living wage and occupational health and safety, and regard to harassment.

The local audit team conducted an audit in September 2014. The audit was able to verify part of the complaint on wage payments. Additionally, it was found that verbal abuse with sexually explicit profanity was common in the factory.

The audit report was shared with Takko Fashion, which was meant to follow up and make sure the factory paid minimum wages to all workers and maintain record on overtime. A training programme on preventing and reducing harassment at work was set up, with the aim of setting up an internal grievance handling systems to improve working conditions. At least 20 requests for support, including on unfair termination, verbal abuse, maternity benefit, were solved by the factory's internal process up to November 2014.

⁷⁹ FWF, Complaint, Takko Fashion, Bangladesh, 25 September 2014, www.fairwear.org

The remediation process includes verification conducted by FWF with regards to the issue of harassment, and plans to verify minimum wage payment to cleaners.

Complaints against factories in Bangladesh supplying Takko Fashion continue.

Fair Labor Association (FLA)

The Fair Labor Association (FLA)⁸⁰ is a multi-stakeholder initiative involving companies, non-governmental organisations (NGOs) and colleges and universities in a collaborative effort to improve workplace conditions worldwide established in 1999.

A Workplace Code of Conduct has been developed which is based on the International Labour Organisation standards.⁸¹ On 14 June, the Fair Labor Association published the enhanced FLA Workplace Code of Conduct and Compliance Benchmarks, which includes higher standards for protection of workers' rights. The Code covers areas such as: forced labour, child labour, harassment in the workplace, non-discrimination and the respect of employment conditions such as working hours, health and safety, freedom of association and collective bargaining, compensation of overtime and environment.⁸²

The list of participating companies can be accessed on FLA website.⁸³ Famous companies affiliated with FLA include Adidas Group, Apple, H&M, Nestlé, Nike, PVH and Sygenta.

Upon joining the FLA, companies commit to accepting unannounced independent external monitoring (IEM) audits of their factories, contractors and suppliers. If factories violate the Code, FLA requires the correction of the through remediation plans **which are made public**. These plans are also published. Additionally verification audits are undertaken to check on the progress made in factories.

② Who can file a complaint?⁸⁴

Any person, group or organisation can report instances of persistent or serious non-compliance with the FLA Workplace Code of Conduct in a production facility used by an FLA-affiliated company, supplier, or university licensee. On its website, **FLA mentions it can be contacted to check if a factory produces for an FLA**

⁸⁰ Fair Labor Association, www.fairlabor.org

⁸¹ FLA, *Code of Conduct*, www.fairlabor.org/our-work/labor-standards

⁸² FLA, *Workplace Code of Conduct and Compliance Benchmarks*, Revised 5 October 2011, www.fairlabor.org

⁸³ FLA, *Affiliates*, www.fairlabor.org/affiliates

⁸⁴ FLA, *Third Party Complaints*, www.fairlabor.org/thirdparty_complaints.html

affiliated company. The complaint process is meant to be a tool of last resort when other channels (internal grievance mechanism, local labour dispute mechanisms...) have failed to protect workers' rights.

② Process and Outcome

- Step 1: FLA reviews complaint and decides on its admissibility.
- Step 2: FLA notifies and seeks explanations from the company.
The company using the factory has 45 days to conduct an internal assessment of the alleged non-compliance and if found to be valid, develop a remediation plan.
- Step 3: FLA conducts an investigation If warranted, the FLA conducts further investigation into the situation in the factory with the help of an external, impartial assessor or ombudsman.
- Step 4: A remediation plan is developed based on the report from the external assessor.

➔ KIK - Factory fire in Pakistan (2012)

In September 2012, 280 workers died and hundreds more were injured in a devastating factory fire in Ali Enterprises textile factory in Karachi, Pakistan. The inadequate storage of flammable textile facilitated the spread of a fire caused by an electrical short circuit, and the absence of emergency exits left many workers trapped in the burning building.

The factory's biggest client was KiK, a German discount retailer, which had bought 70% of the garment produced by the factory in 2011.⁸⁵ In the immediate aftermath of the fire, KiK paid USD 1 million compensation, to be distributed by a commission among the survivors and relatives of the deceased. However, Kik refused to pay compensation for the loss of income to families affected by the fire. Representatives of these families tried negotiating with KiK for 2 years in order to receive compensation, but the negotiations ended in December 2014 with KiK firmly refusing to pay. Consequently, on 13 March 2015, four of the victims of the fire filed a claim against KiK at the Regional Court in Dortmund, Germany, seeking a 30,000 Euros compensation per victim.

In Pakistan, the owners of the factory are currently subject to a criminal investigation in relation to the 2012 fire. Lawyers representing some of the victims have also initiated legal proceedings against Pakistani regulatory and prosecutorial authorities for negligence in the investigation. On 9 May 2015, the ECCHR submitted an amicus brief to the High Court in Karachi calling to broaden the scope of the criminal investigation so as to cover the responsibility of KiK and RINA – the Italian company who issued the factory an SA 8000 certificate as a guarantee of safety and other workplace standards – for “contribut[ing] to

⁸⁵ ECCHR, *Case Report: Pakistan, Cheap Clothes, Perilous Conditions*, 15 May 2014.

the fire through their failure to take action on safety standards.”⁸⁶ Depending on how the case before the court in Pakistan proceeds, victims and their counsels “will consider taking legal action in Europe.”⁸⁷

HOW TO FILE A COMPLAINT?

- A Third Party complaint Form is available in several languages at:
www.fairlabor.org/third-party-complaint-process
- Complaint can also be submitted online at:
www.fairlabor.org/third-party-complaint-form
- A complaint should contain as much detail and specific information as possible. The identity of the plaintiff may be kept confidential upon request.
- You can send your complaint by post, e-mail or fax to:
Jorge Perez-Lopez
Director of Monitoring
Fair Labor Association
1505 22nd
Street, NW
Washington, DC 20037 USA
jperez-lopez@fairlabor.org
Tel. +1-202-898-1000
Fax. +1-202-898-9050
- A list and summary of recent complaints can be found at:
www.fairlabor.org

Worker Rights Consortium (WRC)

The Worker Rights Consortium⁸⁸ is an independent labour rights monitoring organisation which conducts investigations in factories specialised in sewing apparel and other products, which are then sold in the United States and Canada. WRC focuses especially on apparel and other goods bearing university logos.

Over 182 universities, colleges, and high schools are affiliated with WRC.⁸⁹ They have adopted a manufacturing code of conduct which contains basic protection for workers in each of the following areas: wages, working hours and overtime compensation,

⁸⁶ ECCHR, “Paying the price for clothing factory disasters in south Asia”, available at: www.ecchr.eu

⁸⁷ *Ibid.*

⁸⁸ WRC, www.workersrights.org

⁸⁹ WRC, *Affiliates*, www.workersrights.org/about/as.asp

freedom of association, workplace safety and health, women's rights, child labour and forced labor, harassment and abuse in the workplace, and non-discrimination and compliance with local law. This code provides for its implementation in relevant contracts with licensees. Affiliates have to make sure that licensees provide WRC with information on the names and locations of all factories involved in the production of their logo goods. WRC makes a factory database available on its website.⁹⁰ WRC conducts factory inspections. These inspections may be initiated in response to complaints.

Complaints mechanism⁹¹

② Who can file a complaint?

Complaints can be filed by any party regarding alleged violations of the code of conduct.

HOW TO FILE A COMPLAINT?⁹²

- The complaint should contain specific allegations, and include the name and country of the factory, a detailed description of worker rights violations, and the complainant's telephone number.
- Complaints may be verbal or written, and may be submitted by telephone, fax, email, post, or any other means of communication. The complaint can be sent to WRC or any of its local contacts at:

Worker rights Consortium
5 Thomas circle NW, Fifth Floor
Washington, DC20005
United States of America

Complaints should be emailed to Lynnette.Dunston@workersrights.org or faxed to (202) 387-3292.

② Process and Outcome

The Executive Director assesses each complaint submitted to WRC and decides, in consultation with the Board, whether an investigation should proceed. A collaborative investigative team may be set up which includes at least one representative from the workers or the community, and a representative of WRC. The collaborative investigative team formulates recommendations on remedial actions.

The WRC works with US apparel companies that are procuring goods from the factory in question to encourage the implementation of these recommendations. When a company is unwilling to press its supplier factory to undertake the appropriate remedial steps, WRC will report this to affiliated schools and the public.

⁹⁰ WRC, *Factory Disclosure Database*, www.workersrights.org/search

⁹¹ WRC, *Investigative Protocols*, www.uwosh.edu

⁹² WRC, *Worker Complaint*, www.workersrights.org/contact/complaints.asp

Colleges and universities that have a relationship with the company in question may then choose to communicate with their licensee and/or take other action as deemed appropriate by each individual institution.

The WRC publishes factory reports on its website: www.workersrights.org/

FLA & WRC Third Party Complaint mechanism in Action

➔ Estofel (2005-2009)⁹³

In November 2007, Estofel Apparel Factory in Guatemala closed without legally mandated severance and other termination compensation for its workers. Shortly after the closure of Estofel's factories, COVERCO (Commission for the Verification of Corporate Codes of Conduct), a Guatemalan labour rights organisation, alerted the FLA about the situation. COVERCO also contacted FLA-affiliated company, Phillips-Van Heusen (PVH), that had sourced directly from the factory until a few months before the closure. In turn, PVH pressed Estofel to provide full severance payments. PVH also pressed for the payment of full severance to Estofel workers with Singaporean company Ghim Li, a business partner of Estofel.

In February 2008, WRC collected testimonies from the complainant workers, reviewed relevant documents, and communicated with factory management. Estofel was initially slow to cooperate in a meaningful way, but WRC was ultimately able to meet with factory management in April 2008, along with a representative of Vestex, a Guatemalan trade association that has played an important role in the case. Upon request from WRC, the company subsequently provided a range of documents.

On the basis of the evidence gathered, WRC found that upon closing the factory's two manufacturing units in October and November of 2007, Estofel had paid workers less than 50% of the severance and other termination benefits due to them by law. The non-payment of termination compensation affected nearly 1,000 workers.

In March 2008, University of Washington (UW) officials communicated to WRC and FLA concerns about violations of workers' rights and failure to pay severance at Estofel, based on information gathered by UW students during field work conducted in Guatemala in February 2008.⁹⁴ UW administration helped convene an ad hoc group consisting of representatives of WRC, FLA, University of Washington, GFSI Inc., Hanes brands (licensor of the Champion brand to GFSI), Phillips-Van Heusen, Ghim Li, and the Collegiate Licensing Company (licensing agent for the University of Washington). The group began meeting regularly via telephone in May 2008, and continued to do so until payments to the workers in question were made in late 2008 and early 2009.

⁹³ See Complaint regarding Estofel S.A, Guatemala 2008, www.accessfacility.org

⁹⁴ Emily Lee, "Making History in Honduras", The Daily of the University of Washington, <http://dailyuw.com/2010/2/23/making-history-honduras>

COVERCO started its field investigation on 27 June 2008, and produced a final report in August 2008. Based on information provided by the factory, COVERCO reported that Estofel had a total of 974 employees on 15 October 2007, around the time when the closure process started. COVERCO estimated that the 974 former Estofel workers were due total benefits of \$1,375,175, however the factory had already paid benefits amounting to \$478,997. After a negotiation period, Estofel ultimately agreed to a settlement that would exclude payment of indirect labor benefits. Estofel conditioned the payments as follows: (1) workers who received the additional payments must execute a desistimiento (withdrawal) terminating legal claims against the factory; (2) those workers who had filed lawsuits must drop them; and (3) 20 February 2009 was scheduled as the deadline for making the payments.

The WRC worked with Coverco and the FLA to design an outreach programme to contact the workers owed and inform them of the offer of payment. Because of the significant time that had elapsed since their dismissals, an extensive outreach effort was needed. Coverco's work in this regard included the placement of advertisements in Guatemalan newspapers, and collaboration with an ad hoc leadership committee of former Estofel workers.

Coverco was ultimately able to reach nearly 95% of the 974 workers identified in its August 2008 report.⁹⁵ An additional eleven out of thirteen workers subsequently identified as being due compensation were also reached. In total, between December 4, 2008, when payments began, and February 20, 2009, the closing date set by Estofel for the payment period, 871 workers out of 974 had received compensation, with the total amounting to \$526 000.

⁹⁵ FLA, "Coverco Final Audit Report", August 2008, www.fairlabor.org

CHAPTER V

Fair Trade Initiatives

* * *

As opposed to other initiatives presented in this chapter, fair trade initiatives mostly relate to small producers and are not necessarily focused on multinational companies. While the following section will provide a brief overview of the Fair Trade Labelling Organisation (FLO), numerous other types of labels exist, such as environmental labelling initiatives.

Fairtrade (FT) is a strategy for poverty alleviation and sustainable development. Its purpose is to create opportunities for producers and workers who have been economically disadvantaged or marginalised by the conventional trading system. Different fairtrade labels have been developed, however, the most evolved system is the one developed by Fairtrade Labelling Organisation (FLO).⁹⁶ All operators using Fairtrade certified products and/or handling the fairtrade price are inspected and certified by FLO-CERT.

Standards

Although standards differ depending on the scale of the production (small-scale producers, contract production, hired labour), they all set high requirements in terms of social development and labour conditions including with regard to non-discrimination, freedom of labour, freedom of association and collective bargaining, conditions of employment and occupational health and safety. FT standards also deal with environmental protection. Additionally, FT standards exist for each type of products labelled under fairtrade. Traders of fair trade products also abide by standards mainly with regard to prices paid to and contracts paid to producers.

FT standards are available at www.fairtrade.net.

Complaint's Procedure

② Under what conditions can a complaint be filed?

An allegations procedure has been set up to deal with allegations about a certified party (producer or trader) non-compliance with FT standards.

⁹⁶ FLO, www.fairtrade.net

② Who can file a complaint?

Any party may file an allegation, including but not limited to, a Fairtrade operator, an NGO, a labor union or any individual.

The allegation must be submitted in writing to: QualityManagement@flo-cert.net

The allegation must contain: name and/or identification of operator, description of facts.

② Process and Outcome⁹⁷

The party filing the allegation is informed throughout the process. The quality management first evaluates the validity of the allegation to determine whether to initiate an investigation. If the allegation is considered valid, based on the kind and severity of the allegation, appropriate investigation measures are determined. This may include analysis of the written evidence provided by the allegation party, interviews with parties involved, evaluation of the allegation by a third party (e.g. technical expert opinion, legal statement), analysis of the allegation as part of the next regular audit at the concerned operator, an unannounced or additional audit to verify the allegation on site.

- If the concerned operator is found to be in compliance with the Fairtrade Standards, the allegation will be summarily dismissed.
- If the concerned operator is found to be in non-compliance with the Fairtrade Standards, FLO- CERT will issue a non-conformity. The non-conformity may lead to one of the following actions:
 - a. The operator may be requested to suggest corrective measures to address the non-conformity. This might be followed-up in documents or a follow up audit.
 - b. If the non-conformity is linked to a major compliance criterion, the certificate of the operator may be suspended while the operator can suggest corrective measures to address the non-conformity. This might be followed up on documents or a follow up audit.
- The operator may be decertified due to a major breach of the Fairtrade Standards.

⁹⁷ FLO-CERT, Complaints, Appeals and Allegations, www.flocert.net

PART II

International Framework Agreements (IFAs)

An International framework agreement (IFA) or a global framework agreement (GFA) is “an instrument negotiated between a multinational enterprise and a Global Union Federation (GUF) in order to establish an ongoing relationship between the parties and ensures that the company respects the same standards in all countries where it operates“ (ILO definition).

The difference between a CSR commitment such as a code of conduct and a Global Framework Agreement is that the latter is a signed agreement with the people employed by the company. According to unions, such an agreement gives the company’s claims in the field of CSR credibility as it provides for joint implementing and monitoring procedures, whereas codes of conduct are the responsibility of companies only.

The vast majority of the about 70 currently existing agreements have been signed since 2000. Most of these IFAs were signed in TNCs whose headquarters are in Europe.⁹⁸

② What is the scope and content of Global Framework Agreements?

Despite sector and company specificities, the IFAs share some common ground⁹⁹:

- Reference to ILO Core Labour Standards, such as the freedom of association, the right to collective bargaining, the abolition of forced labour, non-discrimination, and the elimination of child labour.
- Reference to ILO Declaration on Fundamental Principles and Rights at Work.
- Recognition of the union and its affiliates in operations worldwide.

Additional features include:

- Reference to the Universal Declaration of Human Rights
- Anti-corruption
- Environmental commitments

⁹⁸ See notably: www.imfmetal.org

⁹⁹ For a review of the content of IFAs, please see: European Foundation for the Improvement of Living and Working Conditions, European and international framework agreements: Practical experiences and strategic approaches, Luxembourg: Office for Official Publications of the European Communities, 2009 and Reynald Bourque, “International Framework Agreements and the Future of Collective Bargaining in Multinational Companies” in Just Labour: A Canadian Journal of Work and Society – Volume 12 – Spring 2008.

- Linkage to CSR policy (i.e. Global Compact Principles)
- Obligations with regard to restructuring including information sharing and consultation
- Decent wages and working hours
- Health and safety standards
- Training and skills development.

The scope of these agreements varies. According to a study conducted by the European Foundation for the Improvement of Living and Working Conditions in 2009, almost 70% of the existing IFAs mention suppliers and subcontractors, and half of the agreements merely oblige companies to inform and encourage their suppliers to adhere to the IFA. 14% of the IFAs actually contain measures to ensure compliance by suppliers, and 9% are to be applied to the whole supply chain, with the transnational company assuming full responsibility. Only a few companies acknowledge in the IFA a comprehensive responsibility for the whole production chain, including subcontractors. Among these are the IFAs with CSA-Czech Airlines, Inditex, Royal BAM and Triumph International.¹⁰⁰ Some IFAs establish that their commitment varies according to the degree of power they have within their different subsidiaries. Some IFAs extend their scope to subcontractors and present commitments to respect the labour rights (in particular regarding health and safety in the workplace) of workers of the subcontractors. One example often cited is the IFA concluded with EADS.¹⁰¹

In case of non-respect, some IFAs, such as the one negotiated by Rhodia, contain precise sanctions for suppliers and subcontractors, including the termination of the contract in the case of violations of clauses that are considered to be the most important ones, for example the provisions on health and safety or on human rights.¹⁰²

🔗 Implementation of Global framework Agreements

Implementation and monitoring systems of the commitments taken by the company also vary; the most recent IFAs are more precise on the implementation aspect. According to some, the added value of IFAs is “not only to reaffirm these rights when referring to national labour law standards, but also to organise procedures on implementation and monitoring that aim at making them effective”.¹⁰³ Most IFAs institute a committee of employees and company representatives in charge of the implementation of the agreement.

¹⁰⁰ Isabelle Daugareilh, *La dimension internationale de la responsabilité sociale des entreprises européennes: Observations sur une normativité à vocation transnationale*, in M.A. Moreau, F. Caffagi, F. Francioni, *La dimension pluridisciplinaire de la responsabilité sociale d'entreprise*, éd. PUAM, Aix-Marseille, 2007

¹⁰¹ *Ibid*

¹⁰² André Sobczak, *Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility*, in *Relations industrielles / Industrial Relations*, vol. 62, n° 3, 2007, p. 466-491, www.erudit.org

¹⁰³ Sobczak, *op. cit.*, 2007.

Other concrete implementing measures may include:

- Annual reporting on the implementation.
- Provision for the creation of a special body in charge of supervising the implementation of the agreement and interpretation of the agreement in case of dispute.¹⁰⁴
- Grievance resolution procedures at the local and international level. Some agreements establish a formal complaint mechanism by which an employee (EADS, Rhodia) or any other stakeholder (Daimler Chrysler) may denounce a breach of the agreement.
- Audit on compliance within the company.
- Few IFAs provide for the possibility to invite NGO representatives to the annual meeting.

➔ **An analysis of the Daimler Chrysler dispute resolution procedure**¹⁰⁵

This IFA's dispute resolution record provides compelling evidence that IFAs can produce positive results that can help promote global industrial relations, particularly where there are strong national unions and international networks and a process by which to bring the issue to the attention of the company in a timely manner. A longer term approach that seeks to improve labor relations amongst suppliers, rather than respond to crises, is now necessary. Delays in solving disputes, coupled with the re-emergence of problems considered as solved, will challenge the legitimacy of the dispute resolution process –the most prominent element of the Daimler IFA.

An example of an International framework Agreement

➔ **PSA Peugeot Citroën Global framework Agreement on social responsibility**¹⁰⁶

PSA Peugeot Citroën, a worldwide automotive corporation headquartered in France, signed an IFA with the International Metalworkers' Federation (IMF) and the European Metalworkers' Federation (EMF) in March 2006. The agreement is interesting as it covers both the company itself and its supply chain, is firm on labour and human rights, and provides for a monitoring procedure.

The Preamble refers to previous commitment of the corporation including the Principles of the Global Compact, the Universal Declaration of Human Rights, The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work, The Rio Declaration on Environment and Development and The United Nations Convention Against Corruption.

¹⁰⁴ See IFA with EDF, article 22: www.icem.org

¹⁰⁵ Extract taken from: Stevis Dimitris, *International Framework Agreements and Global Social Dialogue: Lessons from the Daimler case*, Employment Sector Working Paper no. 46, 2009.

¹⁰⁶ *PSA Peugeot Citroën Global Framework Agreement on Social Responsibility*, 2006, available at www.newunionism.net

Chapter 1: Scope of agreement

The Agreement applies directly to the entire consolidated automotive division; certain provisions also apply to suppliers, subcontractors, industrial partners and distribution networks.

Chapter 2: PSA Peugeot Citroën's commitment to fundamental human rights

PSA Peugeot Citroën agrees to promote compliance with human rights in all countries in which the corporation is present, including in geographical areas where human rights are not yet sufficiently protected. PSA Peugeot Citroën agrees to work towards preventing situations of complicity or acts of collusion concerning fundamental human rights violations. PSA Peugeot Citroën reiterates its commitment to union rights (ILO Convention no. 87, no. 135, 98), condemns forced labour (ILO Conventions nos. 29 and 105), commits to abolishing child labor and sets the minimum age for access to employment in the company at 18 (with an exception at 16 for countries and region whose economies and education systems have not achieved sufficient levels of development), and to eliminate discrimination (ILO Convention no. 111). PSA Peugeot Citroën is committed to working against all forms of corruption.

Chapter 4: social requirements shared with suppliers, subcontractors, industrial partners and distribution networks

While PSA Peugeot Citroën cannot take legal responsibility for its suppliers, subcontractors, industrial partners and distribution networks, the corporation will transmit this agreement to the companies concerned and request that they adhere to the international agreements of the ILO mentioned previously. PSA Peugeot Citroën requires that its suppliers make similar commitments with regard to their respective suppliers and subcontractors. When requesting quotes from suppliers, PSA Peugeot Citroën agrees to ensure that compliance with human rights is a determining factor in the selection of suppliers for the panel. Any failure to comply with human rights requirements will result in a warning from PSA Peugeot Citroën and a plan of corrective measures must be drawn up. Non-compliance with these requirements will result in sanctions including withdrawal from the supplier panel.

Chapter 5: Taking into account the impact of the company's business on the areas in which it operates

PSA Peugeot Citroën is committed to promoting the training and employment of the local working population in order to contribute to economic and social development wherever the corporation does business.

Chapter 6: Deployment of basic labour commitments

PSA Peugeot Citroën agrees to widely inform corporation employees about the content of this agreement.

Chapter 7: Monitoring of the agreement and the creation of a Global Council

This chapter provides for the establishment of local social observatories in each of the major countries made up of human resources divisions and labour unions in charge of monitoring the application of the Global Framework Agreement on an annual basis. At the corporate level, a report on the deployment of the agreement in the countries concerned will be presented each year to the PSA Peugeot Citroën Extended European Council on Social Responsibility.

Interesting global framework agreements have also been signed with major companies such as H&M, Codere, Volvo, etc. A list of agreements signed is accessible here: www.global-unions.org

➔ IndustriALL Global Union and H&M sign global framework agreement

In March 2015, IndustriALL Global Union together with the Swedish trade union IF Metall signed a global framework agreement with H&M, protecting the interests of 1.6 million garment workers.

“The agreement includes setting up **national monitoring committees**, initially planned for countries such as Cambodia, Bangladesh, Myanmar and Turkey to safeguard the implementation of the agreement from the factory floor upwards, and to facilitate a dialogue between the parties on the labour market¹⁰⁷.”

* * *

The legal status of IFAs and the ways they can be used in legal proceedings are not clear. The GUFs involved in the negotiation of IFAs see them more as “gentlemen’s agreements,” that is, voluntary agreements that put the onus of application on the signatory parties only. From this point of view, these agreements belong to “soft law”. The most effective sanction in the case of violation by the signatory company of the rights or principles stated in these agreements remains the tarnished corporate image resulting from denunciation campaigns.¹⁰⁸ However, the International Organisation of Employers in particular questions how a court would regard this type of agreement and how it might affect any other national agreements signed

¹⁰⁷ IndustriALL Global Union and H&M sign global framework agreement, 3 March 2015, www.industriall-union.org

¹⁰⁸ Bourque, *op. cit.*, 2008.

by the company.¹⁰⁹ The recognition by courts of the legality of such an agreement might indeed lead to imposing direct obligations under the international labour standards on companies. It should however be noted that some of these agreements specifically include a “peace clause” which prevents the union from appealing to lodging a complaint before any judicial authority before the exhaustion of all internal mechanisms in place to ensure a friendly settlement of the dispute.

The lack of clear legal status of these agreements may become a problem for companies in the future. “Such a risk is less linked to a potential conflict between the signatory parties insofar as the IFAs themselves may define special dispute settlement mechanisms without involving the courts, than to a potential conflict with a third party, be it an NGO or an individual citizen”.¹¹⁰

Framework agreements are mainly a means of transnational social dialogue within the company itself and may contribute to the resolution of disputes between workers and employers in particular with regard to respect for labour rights and human rights. Some agreements set forth the possibility for other stakeholders to denounce a breach before the internal grievance mechanism, but this is rare. In any case, NGOs or victims’ representatives aware of human rights violations involving a company that has signed an IFA should contact the global union federation or its local affiliate in order to bring the matter to the attention of the internal committee in charge of implementing the agreement.

ADDITIONAL RESOURCES

- **A full list of IFAs can be accessed here:**
www.global-unions.org/-framework-agreements
- **IndustriALL, Global Framework Agreements**
www.industrialunion.org
- **UNI Global Union, Global Framework Agreements**
www.uniglobalunion.org
- **Orse (Study Centre for Corporate Social Responsibility)**, which includes resources such as guidelines on engagement practices with trade-unions (conditions of negotiation, signature and implementation of an IFA, listing the involved actors and the best practices).
www.orse.org
- **Dimitris Stevis**, International Framework Agreements and Global Social Dialogue: Parameters and Prospects, Employment Sector Employment Working Paper no. 47, ILO, 2010.

¹⁰⁹ International Organisation of Employers, International Framework Agreements, An Employer’s Guide, Update version, August 2007.

¹¹⁰ A ndré Sobczak, *Legal Dimensions of International Framework Agreements in the Field of Corporate Social Responsibility*, in *Relations Industrielles / Industrial Relations*, vol. 62, n° 3, 2007, p. 466-491.

PART III

Using the voluntary commitments of companies as a basis for legal action

Consumer protection legislation can be used against business enterprises for denouncing “unfair commercial practices”, which include misleading and aggressive practices on the part of the enterprise, in particular in advertising and marketing. Public commitments – albeit voluntary – by enterprises in matters of social responsibility that are not fulfilled can to a certain extent be considered to be unfair commercial practices, as the enterprise hopes to gain commercial benefits vis-à-vis consumers by deceiving them.

Legal actions against multinational corporations based on misleading advertising are generally brought not by victims in the host country, but by NGOs, in particular consumer organisations based in the country of origin of the company. They can, however, have a positive impact on the activities of the multinational corporation abroad. It would produce a very negative image if companies that had made public commitments were to back down for fear of court action for unfair commercial practices. For companies that are conscious of the power of groups of consumers, the risk of being sued for such marketing and advertising practices is a real and tangible one. Such legal instruments should therefore prove very useful in helping NGOs to make companies do what they promised to do, especially as the law on commercial practices is quite explicit, whereas the legal framework in which victims can lodge a complaint regarding human rights violations committed abroad is far from satisfactory, as is shown in section II.

What is misleading advertising?

The European Directive 2005/29/CE of May 11, 2005 concerning unfair business-to-consumer commercial practices gives a definition of misleading commercial practice:¹¹¹

According to the Directive, misleading advertising is any advertising which, in any way, including in its presentation, is capable of:

- deceiving the persons to whom it is addressed;
- distorting their economic behaviour; or
- as a consequence, harming the interests of competitors.¹¹²

Article 6.1. A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or [...] deceives or is likely to deceive the average consumer [...] and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise.

2. A commercial practice shall also be regarded as misleading if [...] it causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise, and it involves:

[...]

- b) non-compliance by the trader with commitments contained in codes of conduct by which the trader has undertaken to be bound, where:
 - i) the commitment is not aspirational but is firm and is capable of being verified, and
 - ii) the trader indicates in a commercial practice that he is bound by the code.

This Directive has been transposed in the Member States of the European Union.

A few national examples...

France

Article L.121-1 of the Consumer Code stipulates: “Advertising comprising, in whatever form, allegations, indications or presentations that are false or likely to deceive and that bear on one or several of the following factors, is prohibited: existence, nature, composition, substantial qualities, content of active agents, species, origin, quantity, mode and date of manufacture, properties, price and conditions of sale of goods or services advertised, conditions of use, results that can be expected

¹¹¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (“Unfair Commercial Practices Directive”), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:EN:PDF>

¹¹² European Commission, Misleading advertising, <http://ec.europa.eu>

from their utilisation, reasons and methods of sale or of provision of services, scope of the advertiser's commitments, identity, qualities or skills of the manufacturer, retailers, promoters or providers of services".

This article applies to both traders and individuals, regardless of the advertising media concerned. Before the re-writing of the definition of misleading commercial practices, the offence of misleading advertising was established without having to prove intent to deceive the consumer. However, according to a ruling by the criminal chamber of the *Cour de Cassation* on December 15, 2009,¹¹³ it would appear that intent is now required for the offence of deceptive advertising to be established. For advertising to be reprehensible it must be untruthful (containing untruthful allegations regarding the characteristics listed in Article L 121-1) and deceptive (of such a nature as to mislead the consumer).

➔ **Monsanto v. Eaux et Rivières de Bretagne and UFC-Que choisir? (2009)**¹¹⁴

On October 6, 2009 the Cour de cassation confirmed the conviction of Monsanto for untruthful advertising of its herbicide Round Up, sold as being "biodegradable" and leaving the "soil clean". Following the complaint lodged in particular by the associations Eaux et Rivières de Bretagne and UFC-Que choisir, in January 2007 the Lyon criminal court sentenced Monsanto to a 15,000€ fine and the publication of the judgement in the newspaper *Le Monde* and in a gardening magazine, for untruthful advertising. In October 2008 the Lyon Court of appeal confirmed the ruling of the lower court, invoking "a presentation (on the packaging of the product) that eludes the potential danger by using reassuring language and that misleads the consumer".¹¹⁵ On October 6, 2009 the Cour de cassation dismissed Monsanto's appeal, thereby making definitive the sentencing to a fine of 15,000€ for "untruthful advertising".

➔ **French NGOs file a complaint against global retailer Auchan**

In April 2014, three NGOS (Collectif Ethique sur l'étiquette, Peuples Solidaires and Sherpa) filed a complaint in Lille, France against the supermarket Auchan alleging the company used misleading advertisements regarding the conditions in which its clothing was produced. The plaintiffs highlight that the company has made public statements regarding its commitment to social and environment standards in its supply chain. Auchan has denied the claims.

The NGOS allege that Auchan lied to its customers about working conditions at its suppliers abroad after labels from its "In Extenso" clothing range were found in the rubble of the Rana Plaza factory in Bangladesh that collapsed in April 2013, killing thousands of workers and injuring hundreds. The supermarket has denied placing orders at the Rana

¹¹³ Cass.Crim., December 15, 2009, n° 09-89.059

¹¹⁴ For more information, see Blandine Rolland "Environmental information: convictions for untruthful advertising", *Journal des accidents et des catastrophes*, Actualité juridique, JAC 95, n°104, May 2010

¹¹⁵ Free translation

Plaza factory and said it was the victim of “concealed subcontracting”. Since then, it says it has taken steps, including signing the “Fire and Safety Agreement” aiming at improving safety measures in Bangladesh’s garment factories.

In May 2014, the prosecutor’s office in Lille launched a preliminary investigation. In January 2015, the case was dismissed on the grounds of lack of sufficient evidence from the investigation report to prove the “misleading” character.

In June 2015, the 3 NGOs filed a new complaint as civil parties, bringing new elements based on findings of a mission to Bangladesh in December 2014. A judge has been appointed to the instruction after the complaint was filed and the case is pending.¹¹⁶

United States

Advertising is regulated by the Federal Trade Commission, a government agency charged with prohibiting “unfair or deceptive commercial acts or practices”.

The aim is prevention rather than punishment. A typical sanction is to order an advertiser to stop acting illegally, or to publish additional information in order to avoid the risk of deception. Corrective advertising may also be imposed. Fines or prison sentences are not contemplated, except in the rare cases in which an advertiser refuses to obey an injunction to put an end to his acts. Current legislation defines false advertising as a “means of advertisement other than labelling, which is misleading in a material respect; and in determining whether an advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal material facts in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual.”

➔ **Federal Trade Commission v. Wellness Support Network Inc. (2010)**¹¹⁷

In October 2010, FTC challenged claims for the defendants’ Diabetic Pack and Insulin Resistance Pack. The defendants touted the Diabetic Pack as a treatment for diabetes and advertised primarily online relying on consumer testimonials.

¹¹⁶ Case extract from Business and Human Rights Resource Centre, Auchan lawsuit (re garment factories in Bangladesh), <http://business-humanrights.org>

¹¹⁷ Federal Trade Commission, www.ftc.gov

The FTC asked a federal judge to permanently bar the company from making deceptive claims and to require the defendants to provide refunds to consumers. The U.S. Court entered the final judgement and order on February 19, 2014.

A federal court ruled in favour of the FTC and has ordered the company to pay nearly \$2.2 million. The FTC will reimburse the fund to the consumers. Furthermore, the court has prohibited the company –Wellness Support Network Inc.- from claiming without rigorous scientific proof that their supplements would treat and prevent diabetes.

➔ **Eradicating slavery in seafood Industry supply chain – Nestlé case before U.S. jurisdictions (Melanie Barber, et al. v. Nestle USA Inc., et al.)**

Following reports from the media and NGOs that certain products such as shrimp and pet food are linked to inhumane working conditions,¹¹⁸ Nestle SA launched an investigation in December 2014 into the working conditions in its seafood supply chain. This investigation confirmed the findings of The Associated Press that slave-made products enter the US as part of Nestlé's supply chain.¹¹⁹

In August 2015, a group of pet-food consumers filed a class-action lawsuit in the federal tribunal of California against Nestlé claiming "Nestlé is obligated to inform consumers that some proportion of its cat food products may include seafood which was sourced from forced labour."¹²⁰ The plaintiffs alleged that in failing to disclose that some of the ingredients in its cat food were produced as a result of forced labour, Nestlé violated California's Unfair Competition Law, the California Consumers Legal Remedies Act, and the False Advertising Law. According to court documents, the Thai Union Frozen Products PCL – a thai network of small fishing ships –, provides its catches to Nestlé. "Both parties [PCL and Nestlé] acknowledge that some proportion of the small fishing ships use forced labour".¹²¹

In January 2016 this demand filed by consumers against Nestlé was rejected. Judges considered that California's Transparency in Supply Chain Act only imposes an obligation on companies to provide information (through their web-page or otherwise) on the efforts the company has undertaken to eradicate slavery and human trafficking from their supply chain. An appeal has been filed against this decision.

¹¹⁸ Affectio Mutandi, "Des esclaves pour produire nos crevettes: Tout le modèle des low-cost à revoir", 18 June 2014, available at: <http://affectiomutandi.com>

¹¹⁹ Associated Press, "Nestlé confirms labor abuse among its Thai Suppliers", 23 November 2015, available at: www.ap.org

¹²⁰ *Melanie Barber, et al. v. Nestle USA Inc., et al.*, Case No. 8:15-cv-01364, in the U.S., C.D. Cal., Southern Division.

¹²¹ Legal Newslne, "Plaintiff loses challenge to Calif. law in forced labor case over Fancy Feast, appeal to Ninth Circuit", 27 January 2016, available at: <http://legalnewslne.com>

Germany

The German law on unfair competition (UWG)¹²² also covers misleading advertising, on the grounds that it gives the announcer an undue competitive advantage.

Article 3 of the UWG specifies;

“Any person who, in the course of trade and for the purposes of competition, makes misleading statements concerning business circumstances, in particular the nature, the origin, the manner of manufacture or the pricing of individual goods or commercial services or of the offer as a whole, price lists, the manner or the source of acquisition of goods, the possession of awards, the occasion or purpose of the sale or the size of the available stock, may be enjoined from making such statements.” Article 4-1 deals further with consumer protection: “Any person who, with the intention of giving the impression of a particularly advantageous offer, makes statements which he knows to be false and liable to mislead in public announcements or communications intended for a large number of persons, concerning business circumstances, in particular the nature, the origin, the manner of manufacture or the pricing of goods or commercial services, the manner or source of acquisition of goods, the possession of awards, the occasion or purpose of the sale or the size of the available stock, shall be liable to imprisonment of up to two years or a fine.”

Like other European countries (the United Kingdom in particular), German legislation allows groups of consumers to bring actions against advertising strategies that have deliberately misled consumers in order to incite them to buy. Also, although this does not appear in the legislation, in matters of misleading advertising the associations have another instrument at their disposal, the *Abmahnverfahren*. By this means, they can bring an action against traders. However, before doing so, they must ask the trader to cease the unfair practice. The trader can accede to the request and sign a declaration (*Unterwerfungserklärung*) by which he is obliged to cease the unfair practice and to pay a fine in case of violation.

→ Hamburg Customer Protection Agency v. Lidl (2010)¹²³

The European Center for Constitutional and Human Rights (ECCHR), jointly with the Clean Clothes Campaign (CCC), supported the Customer Protection Agency in Hamburg by filing a complaint against Lidl on April 6, 2010. In the application, Lidl is accused of deceiving its customers concerning compliance with social and labour standards in its suppliers' factories. In its brochures Lidl stated “At Lidl, we contract our non-food orders only with selected suppliers and producers that are willing to undertake and can demonstrate their social responsibility. We categorically oppose every form of child labour, as well as human and labor rights violations in our production facilities. We effectively ensure these standards.”

¹²² Act Against Unfair Competition of 7 June 1909 (amended on 22 June 1998) www.wipo.int

¹²³ For more information: ECCHR, “Lidl Retracts Advertisements, www.ecchr.de

Lidl is therefore accused of deceiving its customers and is gaining an unfair competitive advantage. This is the first time a German company is sued for poor working conditions. Only ten days after the filing of the complaint, the company admitted the truth of the allegations against it in respect of human rights abuses in Bangladesh, and had to revise its advertising strategy. On 14 April 2010, Lidl agreed to withdraw the public claims and advertisements that its goods were being produced under fair and decent working conditions. A consent decree was filed with court to memorialise this agreement. Furthermore, Lidl is no longer permitted to refer to its membership in the Business Social Compliance Initiative (BSCI) in its advertising materials.

HOW TO FILE A COMPLAINT FOR MISLEADING ADVERTISING?

- Contact a consumer association or a consumer information centre in the country in which the multinational is based, or in which it engages in advertising or marketing campaigns that are considered to be deceptive.

The list of consumer associations in Europe can be consulted at:

http://ec.europa.eu/consumers/empowerment/cons_networks_en.htm#national

Consumer associations in 115 countries have formed Consumers International.

Map of member organisations at:

www.consumidoresint.cl/globalmap.asp

www.consumersinternational.org

The European consumer Center has branches in the European countries for informing consumers of their rights and available recourses:

http://ec.europa.eu/consumers/ecc/contact_en.htm

- File a complaint. In most countries bodies have been set up for dealing with disputes between consumers and customers by hearing complaints with a view to reaching an out-of-court agreement. It can be an ombudsman, a consumer commission or a sectoral commission. Consumers can also file a complaint with a court for individual or collective harm. Class actions or joint actions through consumer associations are often well suited for such situations.

* * *

The advantage of legal actions against misleading advertising that are based on consumer protection legislation against unfair commercial practices, is that in many countries such legislation is well defined, making it possible to uncover doubtful human rights and environmental practices on the part of companies. Unfortunately, however, they do not enable victims of human rights abuses to obtain justice: the

courts do not punish the acts of the companies that lead to human rights violations, only their advertising and marketing practices connected with their commitment to act responsibly. All the same, such initiatives can have a positive impact on corporate behaviour, as companies are concerned about their image in the countries where their main consumers live. In such matters an alliance between human rights organisations and consumer associations is essential.

Furthermore, certain legal developments tend to confirm that for business enterprises, taking into account environmental, social and governance criteria (ESG) does not merely concern their own voluntary initiatives, but is well and truly part of their responsibility. More and more enterprises recognise this, either by joining a variety of corporate social and environmental responsibility initiatives, or by adopting a code of conduct. In some cases companies even run the risk of criminal liability if they fail to take into account certain principles, in particular in connexion with sustainable development.¹²⁴ And indeed voluntary commitments on the part of companies in terms of corporate environmental and social responsibility are often cited by plaintiffs in court cases in which enterprises are accused of human rights violations, as elements of proof to show the context in which their activity can be qualified as being contrary to generally accepted standards of behaviour. In France, notably, the Dassault case (in which a trade union questioned the legal status of the internal code) gave rise to considerable legal debate regarding the degree of obligation resulting from a “code of conduct” adhered to by the company and that it had undertaken to comply with. The case was decided on December 8, 2009 by a ruling of the Cour de cassation,¹²⁵ and effectively demonstrated that such undertakings could provide grounds for invoking corporate liability, either if the company disregarded the obligations entered into, or if, under cover of a so-called code of “ethics”, it violated the fundamental rights and liberties of its employees. Numerous and rapid developments are taking place in the area of corporate social responsibility. In the coming years it will be important to monitor the situation closely since it represents an additional instrument that can be used for greater corporate accountability.

Moreover, the controls instituted by parent companies over subsidiaries on commercial partners in relation to the respect of codes of conduct contribute to demonstrating the capacity of the parent company to influence other legal entities. In the Shell Nigeria case before Dutch Courts, Shell’s environmental policy and compliance verification system was one element used to determine the influence of the multinational over its Nigerian subsidiaries (see section II, part I, chapter III).

¹²⁴ In this respect, see the article by Juliette Mongin and Emmanuel Daoud, *Is criminal law still alien to the concept of ‘sustainable development’? This is by no means certain!*, published in *Pratiques et Professions*, www.vigo-avocats.com

¹²⁵ Cass. Soc. 8 December 2009, n°08-17.091