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 the growing concerns of stakeholders 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 for some of them human rights and/or labour rights principles, that participating companies voluntarily commit to respect 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 UN initiated the Global Compact); others were launched by governments (EITI, Kimberley Process) some bring together a number of stakeholders (so-called "multi-stakeholder initiative" gathering businesses, governments, NGOs, trade unions); some are business-led, while others are sector-oriented.

Aside from joining these initiatives, most of the world's largest companies have adopted their own CSR policies, code of ethics, ethical charters or code of conduct. Some of these policies are based on the companies' own values while others explicitly refer to internationally recognised human rights standards. The business and human rights website has listed 292 companies with a formal human rights policy.[1]

Another interesting trend is the conclusion of international framework agreements (IFA) within multinational companies negotiated between the company and a global union federation (GUF), through which the parties commit to respect labour rights standards in all the company's operations throughout the world. These types of agreements usually include a monitoring procedure.

To respond to criticisms of CSR initiatives that are deemed too "soft" because there are deprived of any power to sanction companies not respecting the principles they have committed to follow, some initiatives have recently established procedures to review companies' policies and ultimately remove from the list of participants those not complying with the principles put forward by the initiative. This conse-

1 Business and Human Rights Ressource Centre, www.business-humanrights.org

quence can certainly be considered as 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 "blame and shame" companies that use CSR initiatives for so-called "green-washing." Some initiatives disclose information on complaints that were filed against the companies and their outcome while others remain silent. It is thus difficult to assess the usefulness of some of these complaints mechanisms. Where available and relevant, this section provides an insight into concrete cases handled by grievance procedures. It can be helpful to engage parallel actions to filing a case before such a grievance mechanism, including public campaigning to publicise the complaint in order to apply some pressure on the company and the CSR initiative to solve the matter.

Furthermore, a company's public commitments to respect human rights and environmental standards, even if considered as "voluntary", may be used in legal procedures against it, for example by using competition law or consumer protection laws.

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

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 "seeks to align business operations and strategies everywhere with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption".[2]

With over 6066 corporate participants and other stakeholders from over 132 countries, the UN Global Compact has become the largest corporate responsibility initiative.

THE TEN PRINCIPLES OF THE GLOBAL COMPACT

Human Rights

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

Principle 2: Make sure that they are not complicit 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: The elimination of all forms of forced and compulsory labour.

Principle 5: The effective abolition of child labour.

Principle 6: The elimination of discrimination with regard to employment and occupation.

2 UNGC, "Overview of the UN Global Compact", www.unglobalcompact.org/AboutTheGC

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges.
Principle 8: Undertake initiatives to promote greater environmental responsibility.
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.

Who participates in the Global Compact?

– **Companies from any industry sector**, except those companies involved in the manufacture, sale etc. 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 their CEO to the UN Secretary General in which it expresses its commitment to (i) the UN 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 United Nations 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.

The list of participants can be accessed at the following address: www.unglobalcompact.org/participants/search

Although these will not be looked into in detail in this guide, the Global Compact (notably) counts on different multi-stakeholder working groups, comprised of NGOs, companies and other representatives, that have been established to provide advice and 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 at developing practical tools for businesses.

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," as participants are listed on the UN website, can request permission to use a version of the GC logo and can represent their company as respecting the 10 principles without having to prove that they act in accordance with these principles.[3] In 2004 and as a result of numerous criticisms against the Global Compact allowing companies which blatantly violate the principles to participate in the initiative, and to restore its credibility, the GC adopted "integrity measures". 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 UNGC emphasises that the initiative focuses on learning, dialogue and partnerships as a complementary regulatory approach to helping address knowledge gaps and management system failures.[4]

Participation may now be questioned in cases of companies' misuse of the UN or of the GC logo. Further, 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".

Serious allegations of Human Rights violations[5]

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, and 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; gross corruption or other particularly serious violations of fundamental ethical norms.

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

4 See UNGC, Note on "The Importance of Voluntarism", www.unglobalcompact.org/AboutTheGC/the_importance_of_voluntarism.html

5 UNGC, "Note on Integrity Measures", www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/index.html

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"[6].

▶ NOTE
The GC 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.

⊙ Process and Outcome

HOW TO SUBMIT AN ALLEGATION?

Anyone may send the matter in writing to the office of the Global Compact
Contact: **globalcompact@un.org/**
Ursula Wynhoven (wynhoven@un.org)

The matter can also be directly sent to the chair of the Global Compact Board, Ban Ki-Moon, UN Secretary General, which can contribute to drawing media attention to the complaint.

Process

Upon receipt of a matter, the 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 on the matter 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 participating 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 participating company concerned, in taking actions to remedy the situation.

6 UNGC, "Integrity Measures, Frequently Asked Questions", www.unglobalcompact.org

– 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 until such time as 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 it 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 the 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 complaint to the UN Global Compact office requesting the UNGC to 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 3 months. The groups alleged that PetroChina, through

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

On 12 January 2009, the UNGC finally 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 UN 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" and 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 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 Compact's Integrity Measures[7].

In July 2009, the Board finally decided to maintain PetroChina as a participant in the 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."

7 Letters can be accessed here: http://investorsagainstgenocide.net/2009-0201%20UNGC%20Board%20letter.pdf, www.unglobalcompact.org/docs/news_events/9.1_news_archives/2009_01_12b/Sir_Mark_Letter_to_Mr._Cohen_and_Mr._Slob.pdf

➔ Call for Nestlé to be expelled from the UN Global Compact[8]

In June 2009, a report was submitted to the UNGC 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 can continue. Concerns raised by the International Labour Rights Fund, trade union activists from the Philippines, Accountability International and Baby Milk Action include:

– 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;
– environmental degradation, particularly of water resources.

The report claims that Nestlé used the UN 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 the company in question and both the company and person raising the matter exchanged correspondence. According to the Global Compact Office, the company has indicated that it remains willing to engage in further dialogue about the matters raised and therefore Nestlé has not been designated as "non-communicative". No decision has been made public as to whether Nestlé will be removed from the Global Compact. In the meantime, activists denounced that Nestlé remain one of the main sponsors of the Global Compact Summit have 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 note and elaborated in the FAQ document, 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 GC Office, which may seek advice and guidance from a variety of sources including UNGC 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.

Annual Communication on Progress (COP)[9]

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

8 For more info, see Nestlé Critics, Presse release, www.nestlecritics.org/index.php?option=com_content&task=view&id=61&Itemid=79

9 UNGC, "Communicating Progress", www.unglobalcompact.org/COP/index.html

Since 2005, business participants are required to annually submit a COP on the UN Global Compact's website and to share the COP widely with their stakeholders. The absence of a COP will result in the change in a participant's status which can be considered as "non-communicating" and eventually after a the lapse of a year in the de-listing of the participant.

The total number of businesses which were removed for failure to meet the Global Compact's mandatory annual reporting requirement now stands at 2959. 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 now 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 its chief executive officer to UN Secretary-General Ban Ki-Moon and submit a COP to the Global Compact database.

However, on 24 March 2010, the Global Compact Board introduced a one-year moratorium – until 31 December 2010 - on de-listing companies from non-OECD/G20 countries, following the recent removal of a high number of companies in these countries[10]. This can be justified by the fact that non – OECD and non – G20 countries did not have robust local networks in place. According to the Global Compact Office, the purpose of the moratorium is to give the Global Compact Office time to undertake further capacity building efforts so that participants can fully understand what is required by the COP. As a result, 347 companies that had been de-listed between January 1, 2010 and March 1, 2010 have been reinstated.

Investors write to companies not living up to UNGC Commitments

An international coalition of investors including funds 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 have failed to produce an annual COP on the implementation of the ten principles of the 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)[11].

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

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

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 and although some progress has been made since 2004 to give teeth to the Global Compact, the requirements participating companies have remain – from a civil society perspective – extremely weak.

Submitting a COP is the only requirement for companies and the content of these reports is not monitored nor verified by the Global Compact 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 GC. Civil society organisations have suggested that it would be preferable for companies to be accepted into the GC only when they are ready to publish their first COP. While the UNGC 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.

In September 2010, the United Nations Joint Inspection Unit (JIU) published a report on the Global Compact's role1, putting forward the need to review its functioning. 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 effective monitoring system to measure actual implementation of the principles by participants". Ten years after its creation and despite its intense activity and itsincreasing budget, the reports highlights that the results of the Global Compact remain mitigated.

The JIU's main critics are:
– the lack of regulatory and institutional framework;
– the lack of effective monitoring of engagement of participants;
– the non-consolidated, transparent, clear budgetary and financial reporting;
– the costly and questionably effective governance;
– the need for an unbiased and independent regular evaluation of the UNGC performance.

The report concludes to a need of improvement of the Global Compact, or else, the authors warn, it may damage the United Nations' reputation.

ADDITIONAL INFORMATION

– **UNGC**
www.unglobalcompact.org
– **Global Compact Critics**
http://globalcompactcritics.blogspot.com

CHAPTER II

ISO – International Organization for Standardization

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ISO is the world's largest developer and publisher of International Standards.[12] 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 thousands of standards on a variety of subjects, including risk management, quality management systems (ISO 9001), environmental management systems (ISO 14 001) and on 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. 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. 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. **ISO 26 000 in contrast with most ISO standards does not aim at certification.**

The objective of ISO 26000 is to "provide harmonised, globally relevant guidance based on international consensus among expert representatives of the main stakeholder groups and so encourage the implementation of social responsibility worldwide. The guidance in ISO 26000 draws on best practice developed by existing public and private sector initiatives and is intended to be useful to organisations large and small in both these sectors".
ISO 26 000 defines social responsibility as the "responsibility of an organisation for the impacts of its decisions and activities on society and the environment, through

12 ISO, www.iso.org

transparent and ethical behaviour that contributes to sustainable development, including health and the welfare of society; takes into account the expectations of stakeholders, is in compliance with applicable law and consistent with international norms of behaviour and is integrated throughout the organisation and practised in its relationships".[13]

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.**

A look into 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 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 f**undamental 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.

13 ISO, Draft international standard ISO/Dis/26000, 2009.

Complaints

ISO is a standard developing organisation and, as such, is not involved with the implementation of the 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**.

There are many steps to follow before it is possible to submit a complaint directly to ISO:
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.
4) Only if all of these steps have been fulfilled can a complaint be made to ISO.

HOW TO MAKE A COMPLAINT?[14]

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.);
– 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).
Send the complaint to: **MSSComplaints@iso.org**

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14 ISO, *Complaints*, International Organization for Standardization, www.iso.org/iso/iso_catalogue/management_standards/certification/mss_complaints.htm

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 26000 only provides guidance to organisations, both its content and **potential usage remain too vague and uncertain** to assess its usefulness. No complaint mechanism is therefore available.

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.[15] While Denmark and Austria have undertaken such processes, 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

15 ISO, *Ibid*.

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 of 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 EITI[16] and the Kimberly Process[17]. Some companies in the extractive sector have established company-based grievance mechanisms that affected communities or company' employees may turn to.[18] 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. While these initiatives can potentially contribute to preventing human rights abuses, they cannot provide reparation for victims seeking remedies.

The current guide only addresses two 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

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16 The Extractive Industry Transparency Initiative, EITI is a coalition of governments, companies, civil society groups, investors and international organizations 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. 49 of the world's largest oil, gas and mining companies support and participate in the EITI process. Although this initiative has gained recognition, there is no specific mechanism by which to evaluate or question the compliance of a company with the principles and criteria set out by EITI therefore this initiative will not be looked into in detail in this chapter. See http://eitransparency.org

17 The Kimberley Process is a joint government initiative with participation of industry and civil society to stem 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 Kimberley 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. Sanctions banning diamond procurement from specific areas are respected. See www.kimberleyprocess.com

18 This is the case of companies such as Anglo-American, BHP Billiton, and Newmont. For more information: Human Rights in the Mining & Metals Sector, Handling and Resolving Local Level Concerns & Grievances, http://baseswiki.org/w/images/en/4/46/ICMM_HR-Concerns-and-Grievances.pdf

The Voluntary Principles on Security and Human Rights

In 2000, governments (initially the UK and US), NGOs and companies initiated the Voluntary Principles on Security and Human Rights ("the Voluntary Principles" or VPs)[19]. 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?[20]

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 involved.

Participants commit to conducting **risk assessments**; to taking steps to ensure actions taken by governments, particularly the actions of **public security providers** are consistent with human rights; and 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
- Identification of Security Risks	- Security Arrangements	- Law Enforcement
- Potential for Violence	- Deployment and Conduct	- Coordination with State Forces
- Human Rights Records	- Consultation and Advice	- Weapons Carriage
- Rule of Law	- Responses to Human Rights Abuses	- Defensive Local Use of force
- Conflict Analysis		
- Equipment Transfers		

Who participates in this initiative?[21]

– Governments: Canada, the Netherlands, Norway, Colombia, Switzerland, The UK, and the US;

19 Voluntary Principles on Security and Human Rights, www.voluntaryprincples.org

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

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

– Non-Governmental Organisations: Amnesty International, The Fund for Peace, Human Rights Watch, Human Rights First, International Alert, IKV Pax Christi, Oxfam, Pact Inc., Search for Common Ground.
– Observers: International Committee of the Red Cross, International Council on Mining & Metals, International Petroleum Industry Environmental Conservation Association).
– 17 companies: AngloGold Ashanti, Anglo American, BG Group, BHP Billiton, BP, Chevron, ConocoPhillips, ExxonMobil, Freeport McMoRan Copper and Gold, Hess Corporation, Marathon Oil, Newmont Mining Corporation, Occidental Petroleum Corporation, Rio Tinto, Shell, Statoil, Talisman Energy

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:[22]
– Publicly promote the Voluntary Principles.
– Pro actively 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.
– Subject to legal, confidentiality, safety, and operational concerns, **provide timely responses** to reasonable requests for information from other Participants with 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. 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.

22 Voluntary Principles on Security and Human Rights, Resources, Amendments May 2009, http://voluntaryprinciples.org/files/vp_amendments_200905.pdf

Who can raise concerns about participants?

Participants only 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.**

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.

NOTE

Although little information on the use of the mechanism is available, it has been used 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 concerns exist of "sustained lack of efforts" on the part of a participating company as an additional tool to raise awareness on a situation of human rights abuse.

Overall, the principles remain criticized for their voluntary nature, their lack of enforcement mechanism and the lack of transparency of the process. 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 it into its internal guidelines.[23] While their language is easily understandable, it remains unclear what is expected from companies and States to put them into practice. 10 years after their creation, the VPs face important challenges to ensure they can contribute to improving situations for victims in particularly complex settings.

International Council on Mining and Metals (ICMM)

The International Council on Mining and Metals[24] was established in 2001 to address the core sustainable development challenges faced by the mining and metals industry. It brings together 20 national, regional and global mining associations and 19 companies including: African Rainbow Minerals, Anglo-American, AngloGold Ashanti, Barrick, BHPbilliton, Freeport McMoran Copper and Gold, GoldCorp, GoldFields, Minerals and Metals Group, Lihir Gold, Lonmin, Mitsubishi Materials, Newmont, Nippon Mining and Metals co. Ltd, Rio Tinto, Sumitomo Metal Mining, Teck, Vale and Xstrata.[25]

What are the rights protected?

Membership of ICMM requires a commitment to implement the ICMM Sustainable Development Framework. It is mandatory for corporate members to meet:
- The implementation of 10 principles[26] throughout the business, one of them being to **uphold fundamental human rights** and respect cultures, customs and values in dealings with employees and **others who are affected by their activities**.
- **Report** in accordance with the Global Reporting Initiative (GRI) G3 framework.
- **Provide independent assurance** that ICMM commitments are met.

The ICMM Assurance Procedure was agreed upon in May 2008 and must be implemented by all ICMM members (in relation to their sustainability reports for the

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

24 ICCM, www.iccm.com

25 ICMM, *About Us*, International Council on Mining and Metals, www.icmm.com/page/4/about-us/about-us

26 ICMM, *ICCM Principles*, International Council on Mining and Metals, www.icmm.com/our-work/sustainable-development-framework/10-principles. This website and ICMM documents do not appear to be available in other languages.

financial year ending December 2009 or March 2010).[27] This procedure clearly provides for greater credibility of the reporting.

Who can file a complaint?

Any person who believes that a company is in breach of their membership commitments, and wishes to make representations may do so.[28]

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 organization committed to fostering good practice in sustainable development."[29]

Process and Outcome[30]

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 by 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 by 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 complaints when

27 ICMM, *Assurance*, International Council on Mining and Metals, www.icmm.com/our-work/sustainable-development-framework/assurance

28 ICMM, *Sustainable Development Framework*, International Council on Mining and Metals, www.icmm.com/our-work/sustainable-development-framework

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

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

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

At this stage, the President[31] 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 and 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 able to 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 could 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 as to whether complaints have been filed by ICMM and about their outcome.

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

ADDITIONAL RESOURCES

– **ICMM Position Statements (providing further clarification / interpretation of ICMM's 10 Principles)**
www.icmm.com/our-work/sustainable-development-framework/position-statements

– **ICMM Position Statement on Mining and Indigenous People, May 2008**
www.icmm.com/documents/29

– For more information on grievance mechanisms in the mining industry, see research undertaken by the Centre for Social Responsibility in Mining, The University of Queensland www.csrm.uq.edu.au.

↗ **Children working on shipbreaking yards in Bangladesh.**
© Ruben Dao

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 supplyer 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.[32] This is notably explained by the fact that corporations felt the need to create a level-playing field.

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 (SAI) publish the list of factories certified while others say they are happy to provide the information whether a factory is supplying one of its members (FLA).

The current section reviews some of these complaints mechanisms.

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32 See for example the Global Social Compliance Program (a platform centered around the issue of remediation, including the reform of purchasing practices) www.gscpnet.com

ETI – Ethical Trading Initiative

The Ethical Trading Initiative[33] is a tripartite collaboration between companies, trade unions and NGOs[34].
There are about 50 member companies. Each of them must:

– Adopt the Base Code[35], which is drawn from ILO conventions and includes provisions about freedom of labour, freedom of association and the right to collective bargaining, safe and hygienic working conditions, prohibition of child labour, payment of living wages, working hours, non-discrimination, and prohibition of harsh and inhumane treatment.

– Sign up to ETI's Principles of Implementation[36] to progressively implement the code.

– Submit annual reports to the ETI Board: 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, their membership is terminated.**

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.

ETI member companies are: Allport, Arco, Asda, ASOS.com, Beltrami, BBS Granite Concepts Ltd, Boden, Brett Landscaping, BTC Group, Buerberry Group Plc, C&A, Clearsprings (management) Ltd, Commercial Group, Co-operative Retail, DAKS, Debenhams Retail, Dewhirst Group, DNS Stones Ltd (UK), Eileen Fisher, Ethical Tea Partnership, Fat Face Finlays Horticulture Holdings Ltd, Foster Refrigerator, Fyffes Group, Gap Inc, Greencell, Icon Live, Inditex, Jaeger / Aquascutum, Jenclare Brands, Giftpo int Ltd,KeithSpicer Ltd, Jack Wills Ltd, John Lewis partnership, Hardscape, Mears Group, London Stone Paving Ltd, London Underground, Mackays, Madison Hosiery, Marks & Spencer, Marshalls, Monsoon Accessorize, Melros Textile, Mens Wearhous USA, Mothercare, MR International, N Brown, Natural Paving Products, New Look Retailers, Next Retail,Pacific Brands, Pavestone, Pentland Brands (includes: Berghaus, Boxfresh,

33 EITI, www.ethicaltrade.org

34 ETI, *Our Members*, Ethical Trade Initiative – Respect for workers worldwide, www.ethicaltrade.org/about-eti/our-members

35 ETI, *The ETI Base Code*, Ethical Trade Initiative – Respect for workers worldwide, www.ethicaltrade.org/resources/key-eti-resources/eti-base-code

36 ETI, *Principles of Implementation*, Ethical Trade Initiative – Respect for workers worldwide, www.ethicaltrade.org/resources/key-eti-resources/principles-implementation

Brasher, Ellesse, Gio Goi (Footwear Licensee), KangaROOS, Kickers (UK & Ireland Licensee), Lacoste Chaussures (Footwear Licensee), Mitre, ONETrueSaxon, Prostar, Red or Dead, Speedo, Ted Baker (Footwear Licensee), Premier Foods, Primark (ABF Limited),Ringtons, River Island, Rohan Designs, Ruia Group, Sainsbury's, Stone Masters Ltd,Supremia, Tesco, The Body Shop International, Tchibo GmbH, Typhoo Tea, Union Hand-Roasted, Unique Building Products Ltd, Sportswear International Ltd, Strata Stones Ltd, Supergroup Plc, WH Smith, William Lamb Footwear, Winfresh (UK) Ltd.

Complaints mechanism

The ETI says it can serve as a forum to negotiate and to further the protection of the workers in situations where their rights have been violated. ETI has set up guidelines to deal with alleged code violation[37]. These guidelines are currently under review.

1. Who can file a complaint?

An individual, an NGO or a trade union not member of ETI willing to use this mechanism should contact one of the NGO's or trade union member's.[38]

HOW TO FILE A COMPLAINT?

– Basically, if an ETI member (NGO or trade union) is aware of a violation of the code by a supplier of an ETI corporate member, **it may notify by writing the relevant ETI member company with a copy to the ETI secretariat** (eti@eti.org.uk)

– For further information, contact the ETI secretariat: eti@eti.org.uk

2. Process and outcome

The parties meet to discuss the allegation and adopt a Memorandum of Understanding on how to deal with it. An investigation is launched by the company. The parties meet to discuss the investigation report and decide on the next steps. If the investigation report finds that the Code has been breached, a remediation plan is developed with the supplier concerned.

If the parties disagree over the conclusions of the investigation report, the opinion of the Secretariat may be sought and the option of an independent investigator is

37 ETI, Alleged Code Violation investigation guidelines, November 2001, www.ethicaltrade.org/sites/default/files/resources/Alleged%20Code%20Violations%20Guidelines%202009_0.pdf

38 A list of civil society organizations working with EITI is available on: EITI, "civil society": http://eiti.org/supporters/civilsociety

considered. If the disagreement cannot be resolved, the issue is referred to a sub-committee of the ETI Board for further action.
If the issue is not solved in 6 months the ETI member has to report.

Unfortunately, no information is available on ETI's website on cases handled and their outcome.

SAI - Social Accountability International

SAI[39] is a multi-stakeholder organisation, that established SA8000, a set of standards that companies and factories use to measure their social performance, and 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.

SAI member companies can be found online.[40]

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.[41]

Complaint Mechanisms[42]

SAAS manages the complaints filed on the performance of a certified organisation (type 3 complaint).

Who can file a complaint?

Any interested party may file a complaint.

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

39 SAI, www.sa-intl.org
40 SAI, www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=906&parentID=478&nodeID=1
41 SAI, *About us*, Social Accountability International, www.sa-intl.org
42 SAAS, *Complaints and Appeals Process,* Social Accountability Accreditation Services, www.saasaccreditation.org/complaints.htm

the complainant is not satisfied with the outcome of the investigation, it may file another type of complaint against the CB with SAAS.

HOW TO FILE A COMPLAINT?

The complaint should be fully detailed, and objective evidence to the complaint must be provided. The complaint should be made in writing and addressed to:

Executive Director, SAAS
15 West 44th Street, Floor 6, New York, NY 10036
fax: +212-684-1515
Email: saas@saasaccreditation.org

To date, 22 complaints have been filed under this procedure. A full list of the complaints and their outcome can be found at: www.saasaccreditation.org/complaintlist.htm.

➔ In Action – Kenya Human Rights Commission (KHRC) complaints against Del Monte Kenya Ltd.[43]

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 exercice their right to organize and workers preivously retrenched before the complaint were compensated. Jobs

43 Complaint #009: Certification Complaint Del Monte Kenya Ltd. – Management Systems; www.saasaccreditation.org/complaint009.htm

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 tem impacts that were unfortunately not sustained in the long term. There are currently 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 would be victims of threats and intimidation from management and unfair dismissal of union leaders (for retrenchment reasons according to the company).

41 ex-employees face a petition submitted by Del Monte to the Industrial Court. This case is in the process. Usually characterized by the slowness of its procedures and risks of corruption, these judicial processes are -according to workers- means employed by the company to deprive and discourage new employees to reconsidering working conditions and the management of 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.

ADDITIONAL INFORMATION

– The list of certified facilities can be accessed here:
www.saasaccreditation.org/certfacilitieslist.htm

Fair Wear Foundation

The Fair Wear Foundation[44] is an international verification initiative dedicated to enhancing garment workers' lives all over the world.

Improving working conditions?

Members must comply with the 8 labour standards[45] 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 decent living wage
– No excessive working hours
– Safe and healthy working conditions

44 FWF, http://fairwear.org
45 FWF, *Labour Standards*, Fair Wear Foundation, http://fairwear.org/labour-standards

– Legally-binding employment relationship
The list of brands working with FWF can be accessed on FWF website.[46] Compliance with the Code of Labour Practices is checked by FWF[47] through factory audits and a complaints procedure, through management system audits at the affiliates and through extensive stakeholder consultation in production countries.

Who can file a complaint?

FWF's complaints procedure can be accessed by a factory worker 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.

Process and Outcome[48]

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.

HOW TO FILE A COMPLAINT?

Complaints should be addressed to:

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

46 FWF, *Brands*, http://fairwear.org/?w=fair-wear-brands

47 FWF, *Verification*, Fair Wear Foundation, http://fairwear.org/page/verification. Fair Wear Foundation, Complaints Procedure, June 2009, http://fairwear.org/images/2010-01/fwf_complaints_procedure_june_2009.pdf

48 *Ibid*

FWF complaint mechanism in action

Metraco (2006)[49]

In April 2006, a complaint was filed concerning the Metraco factory in Turkey where FWF affiliate O'Neill was at the time sourcing. 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 Metraco.

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.

FFI (2006-2007)[50]

In 2006, a complaint was filed concerning the FFI factory in India from which Mexx (Liz Claiborne) was sourcing. The complaint included a number of major issues, such as severe physical harassment of workers, unlawful dismissal and forced unpaid overtime.
Mexx informed FWF in April 2007 that, being in the process of reconsidering its supply chain strategies in general, Mexx wished to stop its commercial relationships with FFI for several reasons. FWF has assessed the member company's attempts to come to remediation, and concluded that Mexx had seriously tried to solve issues and could not be qualified as a "cut & run" policy.

49 FairWear, "Final Report on the complaint against Metraco", http://fairwear.org/images/2010-01/report-on-metraco-complaint.pdf

50 Report of Complaint Against FFI, http://fairwear.org/images/2010-01/report-on-ffi-complaint.pdf

Fair Labor Association (FLA)

The Fair Labor Association is a multistakeholder initiative established in 1999.

A Workplace Code of Conduct has been developed which is based on the International Labour Organisation standards. On June 14, 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.[51]

The list of participating companies can be accessed on FLA website.[52] Among them, well known companies such as: Adidas Group, Apple, Asics Corp., H&M, Nike 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.

Who can file a complaint?[53]

Any person, group or organization 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 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.

Process and Outcome

Step 1: FLA reviews complaint and decides on its admissibility.
Step 2: FLA notifies and seeks explanations from company

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51 Side-by-side comparison Code of Conduct: http://www.fairlabor.org/fla/Public/pub/Images_XFile/R439/Final_Code_Comparison.pdf
52 FLA, Participation Companies, www.fairlabor.org/fla_affiliates_a1.html
53 FLA, Third Party Complaints, www.fairlabor.org/thirdparty_complaints.html

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.

HOW TO FILE A COMPLAINT?

– A Third Party Complaint Form is available in several languages
www.fairlabor.org/images/WhatWeDo/3pcenglish_form.pdf

– A complaint should contain as much detail and specific information as possible. The identity of the plaintiff may be kept confidential on request.

– You can send your complaint by post, e-mail or fax to:
Jorge Perez-Lopez, Executive Director
Fair Labor Association
1707 L Street, NW,
Suite 200Washington
DC 20036 USA
Email: jperez-lopez@fairlabor.org
Fax: +1-202-898-9050

– A list and summary of complaints can be found at:
www.fairlabor.org/what_we_do_third_party_complaints_e1.html

Worker Rights Consortium (WRC)

The Workers Rights Consortium[54] is an independent organisation which conducts investigations in factories specialised in sewing apparel and making other products which are then sold in the United States and Canada. WRC focuses especially on apparel and other goods bearing university logos.

Over 175 universities, colleges and high schools are affiliated to WRC[55]. 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, freedom of association, workplace safety and health, women's rights, child labour and forced labor, harassment and abuse in the workplace, non-

54 WRC, www.workersrights.org
55 *Ibid*.

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 the 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.[56]

WRC conducts factory inspections. These investigations may be initiated in response to complaints.

Complaints mechanism[57]

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?

– The complaint should contain specific allegations.
– An online complaint form may be used:
www.workersrights.org/contact/complaints.asp.
– 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.

Worker Rights Consortium
5 Thomas Circle NW, Fifth Floor
Washington, DC 20005
United States of America
Tel: +(202) 387-4884 - Fax: +(202) 387-3292
wrc@workersrights.org

Process and Outcome

The Executive Director assesses each complaint submitted to the 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 the 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.

56 *Ibid*.
57 WRC, Investigative Protocols, www.workersrights.org/Freports/investigative_protocols.asp

When a company is unwilling to press its supplier factory to undertake the appropriate remedial steps, the WRC will report this to affiliated schools and the public. 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/Freports/index.asp#freports

FLA & WRC Third Party Complaint Mechanism in Action

Estofel (2005-2009)[58]

In November 2007, Estofel Apparel Factory in Guatemala closed without legally mandated severance and other termination compensation for workers.
Shortly after the closure of Estofel's factories, COVERCO (Commission for the Verification of Corporate Codes of Conduct), a Guatemalan labor 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; they also pressed for the payment of full severance to Estofel workers with Singaporean company Ghim Li, a business partner of Estofel.

In February 2008, the 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 the 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 the WRC, the company subsequently provided a range of documents.
On the basis of the evidence gathered, the 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 the 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

58 See Worker Rights Consortium, *Case summary: Estofel S.A. (Guatemala), April 1, 2009*: www.workersrights.org/Freports/Estofel%20Case%20Summary%20-%204-1-09.pdf
See FLA, "Coverco Final report", March 2009, www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009/coverco_finalreport_eng.pdf
See FLA Summary Report, March 25, 2009, www.fairlabor.org/images/WhatWeDo/ThirdPartyComplaintReports/Estofel/estofel_summary_report.pdf

February 2008[59]. UW administration helped convene an ad hoc group consisting of representatives of the 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 by telephone in May 2008 and **continued to do so until payments to the workers in question were made in late 2008 and early 2009.**

COVERCO started its field investigation on June 27, 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 October 15, 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 while the factory had already paid benefits which amounted 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 on (1) workers who received the additional payments executing a *desistimiento* (withdrawal) terminating legal claims against the factory; (2) those workers who had filed law suits dropping them; and (3) setting February 20, 2009 as the end of the period for making the payments.

The WRC worked with Coverco and the FLA to design an outreach program to contact to the workers owed and inform them of the offer of payment. Because of the significant time that had elapsed since their dismissals, a significant 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.[60] 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.

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

60 FLA, "Coverco Final Audit Report", August 2008, www.fairlabor.org/images/NewsandPublications/NewsReleasesandStatements2009/coverco_investigativereport_eng.pdf

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)[61].
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 fairtrade products also abide by standards mainly with regard to prices paid to and contracts paid to producers. FT standards are available here: www.fairtrade.net/generic_standards.html

Complaint's Procedure

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.

61 FLO, www.fairtrade.net

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.

Process and Outcome[62]

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.

62 FLO, Allegation Standard Operating Procedure, www.flo-cert.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.[63]

What is the scope and content of Global Framework Agreements?

Despite sector and company specificities, the IFAs share some common ground[64]:
– 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

63 See notably: http://www.imfmetal.org

64 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.

Additional features include:
– Reference to the Universal Declaration of Human Rights
– Anti-corruption
– Environmental commitments
– 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 vary. 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.[65] 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.[66]

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[67]

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

65 European Foundation for the Improvement of Living and Working Conditions, idem.

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

67 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, http://id.erudit.org/iderudit/016489ar

implementation and monitoring that aim at making them effective"[68]. Most IFAs institute a committee of employees and company representatives in charge of the implementation of the agreement.

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.[69]
– 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[70]

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 longerterm 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[71]

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.

68 Sobczak, *op.cit*., 2007.

69 See IFA with EDF, article 22 : www.icem.org//files/PDF/EDFAccord_RSE09b_EN.pdf

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

71 PSA Peugot Citroen, PSA Peugeo Citroën Global Framewok Agreement on Social Responsibility, 2006 www.imfmetal.org:80/files/06041112011079/ifa_psa_english2006.pdf

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 Organization's Declaration on Fundamental Principles and Rights at Work, The Rio Declaration on Environment and Development and The United Nations Convention Against Corruption.

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.

* * *

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[72]. However, the International Organisation of Employers in particular question how a court would regard this type of agreement and how it might affect any other national agreements signed by the company[73]. 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"[74].

72 Bourque, *op.cit.*, 2008.

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

74 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.

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**
www.global-unions.org/spip.php?rubrique70

– ORSE (Observatoire sur la Responsabilité Sociétale des Entreprises), *Répertoire sur les pratiques des entreprises en matière de négociation des accords-cadres internationaux*, 2006. Paris: www. orse.org

– Bourque, Reynald. 2008. International Framework Agreements and the Future of Collective Bargaining in Multinational Companies. *Just Labour* 12: 30-47.

– Dimitris Stevis, International framework agreements and global social dialogue: Parameters and prospects, Employment Sector Employment Working Paper No. 47, ILO, 2010.

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[75]:

75 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

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 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[76], 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).

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

Monsanto v. Eaux et Rivières de Bretagne and UFC-Que choisir? (2006)[77]

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 Betagne* 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".[78]

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".

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."

Nike v. Kasky (2003)

In 1998 Marc Kasky, an American Citizen, filed a lawsuit against the Nike Corporation for false advertising in connexion with a public relations campaign on working conditions in subcontractors' factories. The case stirred up considerable interest among corporations because it posed a fundamental question: can information about the social and environ-

77 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

78 Free translation

mental policy of a company be considered as advertising, and therefore be attacked as such? The Californian courts first ruled in favour of Nike, but the Supreme Court of California ruled in favour of Marc Kasky, recognising the legitimacy of his action. Nike then appealed to the United States Supreme Court, invoking the protection of the freedom of speech of business enterprises. In July 2003 the Supreme Court declared itself incompetent.
On September 12, 2003 both sides agreed in a friendly settlement, that "investing in factory worker programs and furthering collaboration on corporate reporting are far better uses of funds and energy than continued litigation,"
Nike undertook to invest 1.5 million dollars to help set up audit programmes, and to finance educational and credit programmes to the tune of at least 500,000 dollars over the next two years. The whole of the 1.5 million dollars was paid to the Fair Labor Association (see Section V, Chapter IV of this guide).

Germany

The German law on unfair competition (UWG)[79] 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

79 Act Against Unfair Competition of 7 June 1909 (amended on 22 June 1998) www.wipo.int/clea/en/details.jsp?id=1013&tab=

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)[80]

The European Center for Constitutional and Human Rights (ECCHR), jointly with the Clean Clothes Campaign, 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." 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. Lidl also accepted to engage in a dialogue with the organisations at the origin of the complaint.

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.

80 For more information: ECCHR,"Lidl Retracts Advertisments, www.ecchr.de/lidl-case/articles/lidl-retracts-advertisements.html

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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[81]. 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[82], 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.

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81 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/media/article/s1/id27/juliette_29102009.pdf

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

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 subsidiaires (see section II, part I, chapter III).

↗ A boy fixes goat skins to dry in front of a lake of untreated tannery waste in Bangladesh