International Instruments and Corporate Social Responsibility

A Booklet to Accompany Training on
Promoting labour standards through Corporate Social Responsibility

FOR INSTRUCTIONAL USE ONLY

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Acronyms and abbreviations

BIAC	Business and Industry Advisory Committee to the OECD
CFA	Committee on Freedom of Association
CSR	Corporate Social Responsibility
EU	European Union
EURATEX	European Apparel and Textile Organization
ETUF:TCL	European Trade Union Federation of Textiles, Clothing and Leather
GC	Global Compact
IFA	International Framework Agreement
ILO	International Labour Organization / Office
IUF	International Union of Food and Allied Workers' Associations
MDGs	Millennium Development Goals
MNE	Multinational Enterprise
NCP	National Contact Point
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
TUAC	Trade Union Advisory Committee to the OECD
UN	United Nations
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNHCHR	United Nations High Commission for Human Rights
UNIDO	United Nations Industrial Development Organization
UNODC	United Nations Office on Drugs and Crime
UNWomen	United Nations Entity for Gender Equality and the Empowerment of Women

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Introduction

This booklet has been conceived as a support for training aimed at exploring the labour dimension of corporate social responsibility (CSR). It therefore provides a brief overview of CSR initiatives at the global and enterprise level with a focus on labour-related aspects. It describes the evolution of the concept of CSR, the role played in this area by international organizations, and workplace initiatives. The booklet explains in particular the four main international frames of reference that seek to guide enterprises: the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact, the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights: Implementing the Protect, Respect and Remedy Framework.

1. The concept of Corporate Social Responsibility

A number of different actors have tried to develop and define the concept of CSR. Although various definitions exist, the one proposed by the European Commission in its Green Paper of 2001 was widely accepted throughout the first decennium of the 21st century: CSR is "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. Being socially responsible means not only fulfilling legal expectations, but also going beyond compliance and investing 'more' into human capital, the environment and the relations with stakeholders."[1]

The elements that characterize CSR are:

- its voluntary nature – enterprises voluntarily adopt socially responsible conduct by going beyond their legal obligations;
- the fact that it is an integral part of company management;
- the fact that CSR actions are systematic not occasional;
- its link with the concept of sustainable development;
- its consideration of the impact of business operations on society.

It is also important to underline that CSR cannot substitute for the role of government.

In 2011 the European Commission in its renewed EU strategy 2011-2014 for Corporate Social Responsibility[2] put forward a new definition of CSR to address the very complex issue of "going beyond legal compliance". The new definition describes CSR as "the responsibility of enterprises for their impacts on society" and clarifies that respect for applicable legislation and for collective agreements between social partners, is a prerequisite for meeting that responsibility. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

- maximizing the creation of shared value for their owners/shareholders and for their other stakeholders and society at large;
- identifying, preventing and mitigating their possible adverse impacts.

[1] See: http://ec.europa.eu/employment_social/soc-dial/csr/greenpaper_en.pdf
[2] See: http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm

As such the debate on CSR has evolved around “responsibility” for business operations on society and linkage to sustainable business strategies.

1.1. Origins and evolution

CSR is not a recent phenomenon. The first attempts to define CSR appeared in the United States during the 1950s, but studies on the subject had already been published in the 1920s, as a consequence of the debate on the need for company managers to take into account not only shareholders’ interests but also other stakeholders’ interests. Because of the Great Depression of the 1930s and the Second World War this debate remained marginal. It was therefore only during the 1950s that the CSR debate became the subject of an important number of studies.

During the 1960s and 1970s, the increased importance of multinational enterprises and their growing power and influence in domestic affairs raised questions about the governance of these multinational enterprises. The United Nations (UN) attempted to address this question at the global level but it was the Organization for Economic Co-operation and Development (OECD) and the International Labour Organization (ILO), which adopted two important instruments in this area: the *OECD Guidelines for Multinational Enterprises* (OECD Guidelines), adopted in 1976 and the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (MNE Declaration) adopted in 1977.

The present concept of CSR appeared during the second half of the 1990s, after the Rio Conference on Environment and Sustainable Development of 1992, where the UN invited multinational enterprises to assume a commitment towards society and the environment by including in their commercial agreements provisions to protect basic human rights, workers’ rights and the environment. This CSR concept is closely linked to the notion of sustainable development defined by the World Commission on Environment and Development (Brundtland Commission) in 1987 as: “…development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The increased liberalization of international trade, the expansion of foreign direct investment and the emergence of massive cross-border financial flows of the last two decades have led to significant changes in the way the world economy is organized and governed. In this context of globalization, the private sector has started to play an increasingly important role in areas of work that were previously considered the preserve of public sector actors and civil society such as social policy and the environment, thus contributing to the spread of self-regulation practices and public-private partnerships.

1.2. Company motivations

Many different reasons can motivate companies to adopt socially responsible behavior. Those that are most often mentioned by company managers include:

- raising the capacity to attract and maintain a qualified and motivated workforce;
- improving relations with staff;
- increasing productivity and quality in the long run;
- improving risk management;
- facilitating access to credits, taking into account the current trend of financial institutions to include environmental and social criteria in their assessments;
- increasing customer loyalty; and
- strengthening brand image and company reputation as essential factors for competitiveness.

2. International Organizations and CSR

2.1. The International Labour Organization

The International Labour Organization is a specialized agency of the United Nations, which seeks to promote social justice and internationally recognized human and labour rights. It was founded in 1919 and today has 185 member States. The ILO has four strategic objectives:

- to promote and realize standards and fundamental principles and rights at work;
- to create greater opportunities for women and men to secure decent employment and income;
- to enhance the coverage and effectiveness of social protection for all;
- to strengthen tripartism and social dialogue.

The ILO is unique in the UN system because of its tripartite structure in which employers' and workers' representatives have an equal voice with those of governments in all discussions and decision-making processes.

Box 1: Main bodies of the ILO

The *International Labour Conference* is a sort of international parliament whose main function is to develop and adopt international labour standards. Each ILO member State is represented at the Conference by a national delegation composed by four members: two from the government and one each representing employers and workers, each of whom may speak and vote independently. The Conference also plays an important role in supervising the application of international labour standards in member States.

The *Governing Body* is the executive council of the ILO. It manages the programmes, policies and budget of the International Labour Office and is composed of 56 members comprising 28 government members, 14 employers and 14 workers. States of chief importance permanently hold ten of the government seats, while representatives of other member countries are elected at the Conference every three years, taking into account geographical distribution. The employers and workers elect their own representatives independently.

The *International Labour Office* is the permanent secretariat of the International Labour Organization and is based in Geneva, Switzerland. It is the focal point for the activities of the Organisation, which it prepares under the scrutiny of the Governing Body and under the leadership of a Director-General, who is elected for a five-year renewable term by the Governing Body. The structure of the Office also includes a number of field offices around the world, through wich the ILO maintains direct contacts with governments, employers and workers.

The main function of the ILO is to formulate international labour standards in the form of Conventions and Recommendations, and to supervise their application in member States. Conventions are international treaties subject to ratification by ILO member States. Through ratification, a member State formally accepts the Convention as a legally binding instrument, which implies that it cannot adopt national legislation setting standards below those established by the Convention. In contrast, Recommendations are non-binding instruments. They often deal with the same subjects as Conventions and set out additional guidelines for national policy and action.

ILO Conventions and Recommendations are characterized by their tripartite and universal character. They are the outcome of social dialogue, which involves governments, trade unions and employers in the formulation, adoption, and supervision of the implementation at the national level. They have a universal application, which means that they apply to all people in all States – regardless of the level of social and economic development.

In addition to Conventions and Recommendations the ILO also adopts other kinds of instruments such as declarations, codes of practices and resolutions, which are not legally binding but are aimed at promoting labour principles and at providing further guidance on how to implement them.

The other activities ILO undertakes include:

- developing international policies and programmes to promote basic human rights, improve working and living conditions, and enhance employment opportunities;
- an extensive programme of international technical cooperation, formulated and implemented in an active partnership with constituents, to help countries in making these policies effective in practice;
- training, education, research, and publishing activities to help advance all of these efforts.

Box 2: International Labour Standards

Since its foundation in 1919, the ILO has adopted 189 Conventions and 202 Recommendations covering a broad range of subjects related to the world of work including employment policy, human resources development, wages, working time, and occupational safety and health.

Among the ILO Conventions, eight have been identified as fundamental, in that they cover subjects that are considered as fundamental principles and rights at work.

- Freedom of Association and Protection of the Right to Organise Convention (No. 87), 1948
- Right to Organise and Collective Bargaining Convention (No. 98), 1949
- Forced Labour Convention (No. 29), 1930
- Abolition of Forced Labour Convention (No. 105), 1957
- Minimum Age Convention (No. 138), 1973
- Worst Forms of Child Labour Convention (No. 182), 1999
- Equal Remuneration Convention (No. 100), 1951
- Discrimination (Employment and Occupation) Convention (No. 111), 1958

Note: The texts of all ILO Conventions and Recommendations can be found at www.ilo.org/normlex

2.1.1. Declaration on Fundamental Principles and Rights at Work

In 1998 the International Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work (Fundamental Declaration). Its origins are to be found at the UN World Summit for Social Development in 1995 held in Copenhagen. On that occasion, the chiefs of State and Government from around the world adopted a Programme of Action relating to “basic workers’ rights”, namely: the prohibition of forced labour and child labour, freedom of association, the right to organize and bargain collectively, equal remuneration for work of equal value, and the elimination of discrimination in employment. In 1996, during the World Trade Organization Ministerial conference held in Singapore, States renewed their commitment to observe internationally recognized core labour standards, identified the ILO as the competent body to deal with those standards, and reaffirmed their support for its work in promoting them.

The Fundamental Declaration declares that all ILO Member States, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize the principles concerning the fundamental rights which are the subject of those Conventions. It represents an expression of the commitment by governments and employers’ and workers’ organizations to recognize that such fundamental principles and rights are universal, as they are a prerequisite for social justice, which is the main objective of the ILO.

The principles included in the Declaration are:

a) freedom of association and the effective recognition of the right to collective bargaining;
b) the elimination of all forms of forced or compulsory labour;
c) the effective abolition of child labour; and
d) the elimination of discrimination in respect of employment and occupation.

These principles are the subject of the eight fundamental Conventions mentioned in box 2. Within the international debate on CSR, these principles are considered essential as far as labour is concerned. They have therefore been included among the ten principles of the UN Global Compact (see Section 2.2 below).

The Fundamental Declaration includes a follow-up mechanism with an evaluation procedure of annual reports sent by member States that have not yet ratified one or more of the core Conventions. In the *annual reports*, member States that have not yet ratified one or more of the fundamental Conventions are asked to report on any changes which may have taken place in their legislation and practice concerning the four principles embodied in the Declaration. National, regional and international employers' and workers' organizations can submit their observations about the reports written by governments, which are thereafter examined by a group composed of independent experts.

a) Freedom of association and the effective recognition of the right to collective bargaining

The principle of freedom of association and the effective recognition of the right to collective bargaining guarantees to workers and employers the possibility of joining organizations and acting together not only to protect their own economic interests but also their civil freedoms such as the right to life, to security, to integrity, and to personal and collective freedom. The principle ensures protection against any act of interference and discrimination, as well as against all forms of harassment. As an integral part of democracy, such a principle is crucial in order to realize all other fundamental principles and rights at work. Moreover, the respect of freedom of association and the right to collective bargaining plays a fundamental role to balance economic development, to which it contributes by ensuring the distribution of results of growth and by facilitating productivity and social peace. In a global economy, freedom of association and especially the right to collective bargaining constitute instruments to create a link between social objectives and market constraints.

The principle in question comprises the following rights and guarantees:

1. the right for workers and employers, without any distinction whatsoever, to establish and join organizations of their own choosing in order to promote and protect their own interests, without previous authorization;
2. the right for workers' and employers' organizations to function freely, to draw up their own constitutions and rules, to freely elect their representatives, to organize their administration and activities and to formulate their programmes;
3. the right of workers' and employers' organizations to establish and join federations and confederations and to affiliate internationally;
4. the guarantee that such organizations shall not be dissolved or suspended by administrative authorities;
5. the protection against any act of anti-union discrimination or interference;
6. the promotion of collective bargaining.

Box 3: Conditions for collective bargaining

The principle of free and voluntary negotiation

Collective bargaining and negotiations shall be voluntary. A crucial aspect of the principle of freedom of association is that it implies that negotiation is not compulsory and that the procedures supporting it shall take into account its voluntary nature. Moreover, the contracting parties shall decide at what level they carry it out, without impositions by labour legislation or by authorities.

Good faith

The principle according to which collective bargaining should take place in good faith implies:

- making efforts to reach an agreement;
- carrying out genuine and constructive negotiations;
- avoiding unjustified delays;
- respecting the agreements concluded and applied in good faith; and
- giving sufficient time for the parties to discuss and settle the collective disputes.

In order to facilitate negotiations, the use of conciliation and mediation that is voluntary or established by law, may be accepted. On the other hand, arbitration is only legitimate if requested by both parties, in order to respect the voluntary nature of collective bargaining.

Freedom of association and collective bargaining are among the founding principles of the ILO. Soon after the adoption of Conventions Nos. 87 and 98 on freedom of association and collective bargaining, the organization came to the conclusion that the principle of freedom of association needed a further supervisory procedure. As a result, in 1951 the Governing Body of the ILO set up the Committee on Freedom of Association (CFA), which examines complaints about violations of freedom of association, whether or not the country concerned has ratified the relevant Conventions. Complaints may be brought against a member State by governments, employers' and workers' organizations. The CFA is a Governing Body committee, and is composed of an independent chairperson and three representatives each of governments, employers, and workers. If it decides to receive the case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of its recommendations. In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the ILO Committee of Experts. In over 60 years of work, the CFA has examined more than 2,700 cases. Sixty countries on five continents have acted on its recommendations and have informed it of positive developments on freedom of association during the past 25 years.

b) The abolition of all forms of forced or compulsory labour

According to ILO estimates, today, at least 12.3 million people are victims of forced labour worldwide. Freedom from forced or compulsory labour is a fundamental human right linked to the right to choose work freely. This work should be consistent with individual expectations and skills, and should be carried out in decent human conditions. According to the definition of the Forced Labour Convention (No. 29), 1930, the term forced or compulsory labour shall mean “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. The fact that the worker receives a salary or a wage is irrelevant to determine if a situation can be considered as forced or compulsory labour.

Two elements characterize forced labour.

1. Threat of penalty. The penalty may consist in a penal sanction or in the suppression of rights or privileges. Threats of retaliation may be realized in different forms, from the most blatant, which include the use of violence, physical obligations or even death threats, to the more subtle, often psychological, such as the threat to denounce an illegal worker to the authorities.

2. Involuntarity of the work or service undertaken. The absence of a voluntary offer can be determined by external and indirect pressures, such as the case of withholding a part of a worker's salary as a refund for the loans contracted by the worker or of an absence of remuneration or seizure of the worker's identity documents. The principle that all work relations should be founded on the mutual consent of the contracting parties implies that both may leave the work relation at any moment. If the worker cannot revoke his/her consent, the work he/she has previously and voluntarily accomplished may be considered forced labour, starting from the moment he/she has been denied the possibility of withdrawal, such as in those situations where the worker is compelled to perform the work after the expiration of his/her contract.

Forced labour is universally condemned and banned in principle. However, it continues to exist in different forms, from the most traditional to the more modern. Among the practices that still exist in the world are those described in Box 4.

Box 4: Contemporary forms of forced labour

Slavery. According to the definition given in the UN Slavery Convention of 1926: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". Although slavery was suppressed a long time ago, the violations linked to this condition are still common especially in countries at war, where prisoners are often used for labour in the agricultural sector and in domestic works. In some cases, war orphans are taken as hostages and obliged to work.

Debt bondage. Debt bondage occurs when a person is obliged to work in order to pay his or her debts or the debts of a family member or ancestor. It is a form of forced labour that persists especially in Asian countries and affects children as well.

Trafficking of human beings. According to the definition under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000, trafficking of persons means "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." Victims of trafficking are most often children and women, mostly employed in domestic work, in agriculture, in street selling, in the sex trade and in the garment sector.

Some forms of domestic work. Domestic work can become forced labour when: (1) debt bondage and trafficking are involved; (2) if the worker is physically restrained from leaving the employers' home; or (3) when his/her identity papers are withheld. The worst cases of forced domestic labour involve violence that sometimes includes rape or torture.

Some forms of work imposed by military forces. In some countries military authorities compel civilians to work in order to build and maintain military camps and accomplish works to support projects launched by the authorities or the armed forces. Such forms of forced labour are sometimes imposed to the benefit of private individuals.

Compulsory participation in public works. In some societies, individuals are obliged to work for the country's development. Such a form of forced labour is widespread especially in the agricultural sector, and in building roads and irrigation utilities.

Forced labour also refers to situations in which work is imposed as a:

- means of political coercion;
- method of mobilizing and using labour for purposes of economic development;
- means of labour discipline;
- punishment for having participated in strikes; and
- means of racial, social, national or religious discrimination.

Training and compulsory education shall not be considered as forms of forced labour. The principle of compulsory education is in fact recognized in several international rules as a means to ensure the right to education. Moreover, since compulsory vocational training is deemed as a normal consolidation of compulsory education, it shall also not represent a form of forced labour. When vocational training implies a practical component, the separation between training and occupation is not always easy to identify. A careful evaluation of the two elements that define forced or compulsory labour is necessary to determine whether a given situation should be considered as training or as a case of forced labour.

Finally, the following situations are *not* considered forced labour:

- compulsory military service, when it is limited to mere military activities;
- civic obligations for citizens, for instance the obligation of taking part in a jury or assisting a person who is in danger;
- any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- labour requested in emergencies to prevent dangers of life and normal conditions of existence of the whole or part of the population, such as in cases of war, calamity or threatened calamity; and
- public works such as those carried out by members of a community in the direct interest of said community, provided that those members or their direct representatives have the right to be consulted with regard to the need for such service.

c) The effective abolition of child labour

Child labour is still widespread all over the world in both the formal and informal economies. According to data published by the ILO, there are 215 million child labourers worldwide, of which 115 million in hazardous work.[3] Besides representing an offence to the rights of the child, this form of exploitation perpetuates poverty, jeopardizes economic growth, and prevents equal development.

The term child labour refers to any kind of activity or work which, by its nature or the circumstances in which it is carried out, is harmful to the intellectual, physical, social and moral development of young people and undermines their education, preventing them from going to school, constraining them to abandon schooling too soon or requesting them to work and study at the same time.

1. Worst forms of child labour. The Worst Forms of Child Labour Convention, 1999 (No. 182), identifies the worst forms of child labour in the following situations:

- slavery and similar practices;

[3] See: ILO, Accelerating action against child labour, 2010 (http://www.ilo.org/global/resources/WCMS_126752/lang--en/index.htm).

- the use, procurement or offering of a child for prostitution, production of pornography or pornographic performances;
- the use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs; and
- work that, by its very nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children (see Box 5).

ILO Convention No. 182 also requires that ratifying States design and implement programmes of action to eliminate the worst forms of child labour *as a matter of urgency*. It states that Members must take into account the importance of education in eliminating child labour and, in particular, "ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour." Universal education has an important role to play in combating and eliminating the worst forms of this abuse. Finally, Convention No. 182 specifically mentions girls because the types of child labour that generally involve a disproportionate number of girls are its less visible forms. Girls working in private homes as domestics or who are victims of commercial sexual exploitation, for example, are often more difficult to reach and assist. In many societies, girls also carry the additional burden of lower social status than boys, which can reduce their access to services and opportunities for education.

Box 5: Hazardous work

- Work which exposes children to physical, psychological or sexual abuse.
- Work underground, under water, at dangerous heights or in confined spaces.
- Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads.
- Work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health.
- Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

Source: Worst Forms of Child Labour Recommendation (No. 190), 1999.

2. Minimum age. The Minimum Age Convention, 1973 (No. 138), sets forth that the minimum age for admission to employment or work shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years, in order to ensure the full physical and mental development of the child. A minimum age of 14 years can be initially admissible in countries where the economy and educational institutions are insufficiently developed.

As far as dangerous work is concerned, the minimum age shall be 18 years. However, such work may be performed from the age of 16 years in cases where:

- national employers' and workers' organizations have been consulted beforehand;
- the safety, health and morals of the young persons concerned are fully protected; and
- the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

Activities that are not likely to harm young people's health and development and do not interfere with their school attendance or their participation in vocational orientation and training programmes are considered as light work and the minimum age for performing them shall be 13 years. In those countries where the economy and educational institutions are insufficiently developed, the minimum age for light work can be 12 years.

Minimum age for admission to employment or work		
	Developed countries	Developing countries
Regular Work	15 years	14 years
Hazardous Work	18 years	18 years
Light work	13 years	12 years

3. Conditions of work. Workers under 18 years of age should be guaranteed satisfactory conditions of work. In particular, they shall benefit from:[4]

- a fair remuneration, on the basis of the principle "equal pay for equal work";
- the strict limitation of hours spent at work weekly and daily, including the prohibition of overtime in order to have enough time for education, training, rest and leisure activities;
- a minimum consecutive period of 12 hours night's rest and a rest period every week;
- paid annual leave of at least two weeks and, in any case, a period not shorter than the one accorded to adults;
- coverage by social security schemes dealing with accidents at work, health assistance and forms of sick pay; and
- safety rules and satisfactory health conditions as well as appropriate education and supervision.

d) The elimination of discrimination in respect of employment and occupation

Discrimination can arise in a variety of work-related activities such as: recruitment, remuneration, hours of work and rest, paid holidays, maternity protection, security of tenure, job assignments, performance assessment and advancement, training opportunities, job prospects, social security, and occupational safety and health. Employees who experience discrimination at work are denied opportunities and have their basic human rights violated. This affects the individual concerned and negatively influences the greater contribution that they may make to society.

The workplace is a strategic entry point for freeing society from discrimination. Combating discrimination at the workplace can help reduce disadvantages, such as in education, resulting from inequity that people may have suffered at earlier stages in life. When the workplace brings together workers of different races, sexes and ages, for example, and treats them equally, it helps build a sense of common purpose. By doing so it defuses stereotypes and prejudices that are at the heart of discrimination. Furthermore, from a business point of view discrimination does not make sense. It leads to social tensions that are potentially disruptive to the company and the society. A company that uses discriminatory practices in employment and occupation denies itself access to talents from a wider pool of skills and competencies. The hurt and resentment generated by discrimination affect the performance of individuals and teams in the company. Discriminatory practices result in missed opportunities for development of skills and infrastructure to strengthen competitiveness in the national and global economy. Finally discrimination can damage a company's reputation, potentially affecting profits and stock value.

Discrimination in employment and occupation means treating people differently or less favourably because of characteristics that are not related to their merit or the inherent requirements of the job. According to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), , "discrimination is any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in

[4] Minimum Age Recommendation (No. 146), 1973.

employment or occupation". The Convention therefore identifies seven grounds of discrimination.

- *Race and colour*. Distinctions made on the basis of belonging to an ethnic group, which affect for instance ethnic minorities and indigenous and tribal populations.
- *Sex.* Discrimination on the basis of biological characteristics and functions that distinguish men and women and of social differences between men and women. They comprise, for instance, distinctions on the basis of civil status, marital status, family situation and maternity.
- *Religion*. Distinctions on the basis of membership or not to a certain religion or expression of religious beliefs. This also includes discrimination against atheists.
- *Political opinion*. Discrimination based on different opinions with respect to established political principles, membership to a political party, political or socio-political attitudes, civic commitment or moral qualities.
- *National extraction*. Distinctions made on the basis of a person's place of birth, ancestry or foreign origin. They affect for instance national or linguistic minorities, nationals who have acquired their citizenship by naturalization, and/or descendants of foreign immigrants.
- *Social origin*. Discrimination towards certain individuals because of their social class, socio-occupational category or caste. In some contexts, social origin can influence the professional future of the subject because he/she is denied access to a certain job or he/she is only assigned certain activities.

Convention No. 111 states that Member States may determine other distinctions than these according to their national reality and in consultation with representative employers' and workers' organizations. In fact discriminatory practices can also be based on many other grounds such as: age, disability, health status (in particular HIV/AIDS), membership to trade unions, and sexual orientation.

Non-discrimination means simply that employees are selected on the basis of their ability to do the job and that there is no distinction, exclusion or preference made on other grounds.

1. Direct or indirect discrimination. Discrimination can take many forms, both in terms of gaining access to employment and in the treatment of employees once they are in work. It may be direct, when laws, rules or practices explicitly cite a reason such as sex or race to deny equal opportunity. Most commonly, discrimination is indirect and arises where rules or practices have the appearance of neutrality but in fact lead to exclusions. Indirect discrimination often exists informally in attitudes and practices, which if unchallenged can perpetuate in organizations. Discrimination may also have cultural roots that demand more specific individual approaches.

2. Equal pay for work of equal value. The principle of non-discrimination in respect of employment and occupation comprises the principle of equal remuneration for men and women who accomplish work of equal value. According to the Equal Remuneration Convention, 1957 (No. 100), the principle refers to all the elements of remuneration, such as the salary or ordinary wage and other basic fees, directly or indirectly paid, in money or in kind. To objectively determine the value of work it is necessary to take into account the following elements: work components, responsibilities, skills, efforts, working conditions and main results.

3. Exceptions. Distinctions on the basis of the skills needed for a certain work, special measures of protection or assistance provided by national law, such as the ones concerning health and maternity, the correction of historical wrongs, and measures regarding a person

legitimately suspected of accomplishing activities that may jeopardize the State's security, are not considered discrimination.

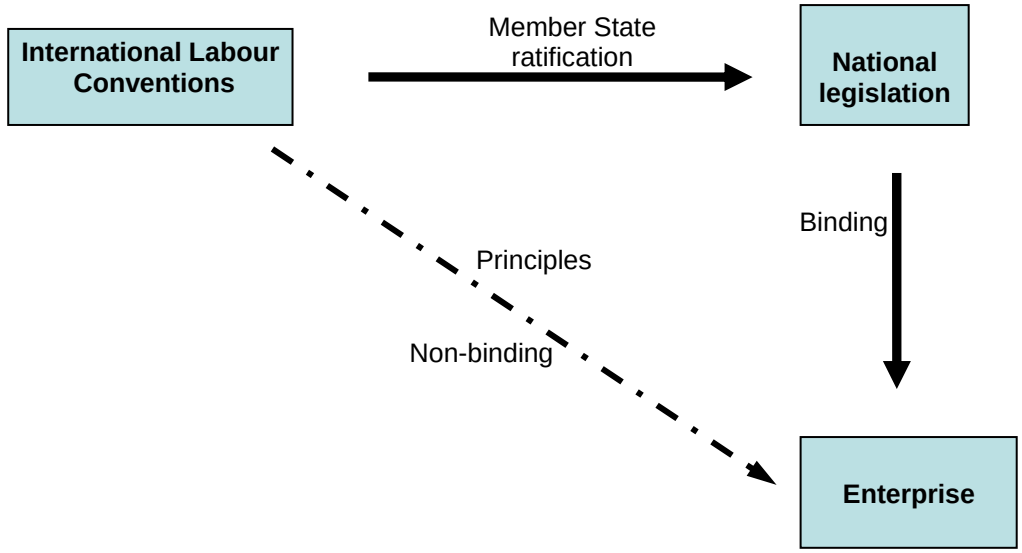
2.1.2. ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

The ILO and CSR

The ILO can play an important role in CSR because labour standards and social dialogue are key aspects of CSR. Most CSR initiatives, including codes of conduct, refer to the principles deriving from international labour standards. Furthermore, the ILO's unique tripartite structure and its efforts to promote social dialogue are key to facilitating the involvement of all relevant stakeholders in the dissemination of CSR.

ILO Conventions, when ratified, become binding for governments, which have to adopt legislation to implement them. On the other hand, the principles derived from ILO Conventions can guide enterprises' behaviour as well as governments that have not ratified them (see figure 1). ILO's work on helping governments to acquire the capacity to effectively enforce national labour legislation and regulations contributes to create an enabling environment for CSR initiatives. Given its tripartite character and global mandate in the field of labour standards, the ILO also plays a critical role in CSR by helping to promote dialogue between governments, workers' and employers' organizations and by providing assistance and tools to better understand the labour dimension of CSR.

Figure 1: International Labour Conventions and enterprises



Many CSR initiatives refer to the ILO Declaration on Fundamental Principles and Rights at Work. However, the point of reference for the ILO's work on CSR is the MNE Declaration, which was adopted by the ILO Governing Body in 1977[5] as a result of discussions among ILO constituents about the social impact of business. Since then, the ILO has been carrying out research and following developments on the subject. At the end of the 1990s, the ILO

[5] The text of the MNE Declaration is regularly updated to include references to new instruments adopted by the International Labour Conference and the Governing Body that are of relevance to the issues it covers. The most recent update was in March 2006.

Governing Body defined the ILO's mandate on CSR as to continue research and disseminate information without taking a position, respecting the voluntary nature of CSR.

With the increasing importance of the CSR debate in the new millennium, ILO's involvement has been growing as well. In 2000, the Organization accepted the invitation of the UN Secretary General to participate in an initiative to promote good corporate citizenship: the UN Global Compact. In 2004 the report of the World Commission on the Social Dimension of Globalization highlighted the ILO's work on CSR-related issues and encouraged the organization to continue undertaking research and to develop an agenda on the business contribution to the social dimension of globalization. Finally, in 2006, the ILO started implementing an In-Focus Initiative on CSR, which seeked to advance the ILO's leadership in this area by promoting the principles laid down in the MNE Declaration as the foundation for good CSR policy and practice. This initiative builds on and complements the ILO's role with respect to governments of member States, setting, implementing and supervising labour standards, promoting social dialogue and assisting countries in implementing good policies in this regard.

The MNE Declaration

The MNE Declaration is the only ILO instrument that contains recommendations for enterprises in addition to governments and employers' and workers' organizations. In the context of CSR, its added value resides in the fact that it was adopted with the agreement of governments and employers' and workers' organizations. Today, it is seen as the main voluntary instrument as regards the labour dimension of CSR.

The objective of the MNE Declaration is to encourage the positive contribution that multinationals can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise. It provide guidelines on how enterprises should apply principles deriving from international labour standards concerning employment, training, conditions of work and life, and industrial relations. They are intended to guide multinational enterprises (whether they are of public, mixed or private ownership), governments, and organizations of employers and workers in home countries as well as in host countries.

The principles laid down in the Declaration reflect good practices that all enterprises – multinational and national – should try to adopt. Both should be subject to the same expectations in respect of their conduct in general and their social practices in particular.

a) General policies

The MNE Declaration begins with a section on general policies (paragraphs 8-12) that contains recommendations to achieve sustainable development and respect for human rights at the workplace. It invites multinational enterprises, governments, employers' and workers' organizations to respect national laws and regulations; give due consideration to local practices; respect international standards concerning human and labour rights; and honour commitments in conformity with national law and accepted international obligations.

Multinational enterprises, in particular, are encouraged to consult governments and, where appropriate, national employers' and workers' organizations, to help make their operations consistent with national policies, development priorities, and the social aims and structure of countries of operation.

Governments, on the other hand, are invited to ratify and comply with the fundamental labour Conventions and, in any event, apply to the greatest extent possible the principles embodied therein. Specific recommendations for governments of multinationals' home countries include

promoting good social practice and being prepared to have consultations with governments of host countries if the need arises.

Box 6: International instruments referenced in the MNE Declaration

Human rights

Universal Declaration of Human Rights (1948)
International Covenant on Civil and Political Rights (1966)
International Covenant on Economic, Social and Cultural Rights (1966)

Labour

ILO Constitution
ILO Declaration on Fundamental Principles and Rights at Work (1998)
ILO Conventions and Recommendations*

Note: A list of these Conventions and Recommendations can be found in the Annex to the MNE Declaration.

b) Employment

With regard to employment, the principles of the MNE Declaration (paragraphs 13-28) are aimed at ensuring the promotion of direct and indirect employment, equality of opportunity and treatment, and employment security.

1. Recommendations concerning employment promotion. Multinational enterprises should:

- take into account employment policies by consulting with local government, and employers' and workers' organizations before and during operations;
- give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels;
- take into account the importance of using technologies that generate employment directly and indirectly;
- pursue, wherever practicable, the conclusion of contracts with national enterprises for the manufacture of parts and equipment, and the use of local raw materials.

Governments are encouraged to pursue active policies to promote employment aimed at ensuring that there is work for all who are available for and seeking work. Such work should be as productive as possible.

2. Recommendations concerning equality of opportunity and treatment. Multinational enterprises should be guided by the general principle of equality of opportunity and treatment throughout their operations; and make qualifications, skills and experience the basis for recruitment, placement, training and advancement of their staff at all levels.

Governments should pursue policies designed to promote equality of opportunity and treatment in employment with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. They should also avoid requiring from multinationals to discriminate on any of the above-mentioned grounds and provide, where appropriate, ongoing guidance on the avoidance of such discrimination in employment.

3. Recommendations concerning security of employment. Multinational and national enterprises should make efforts to provide stable employment for their employees through active manpower planning; observe freely negotiated obligations concerning employment stability and social security; and avoid arbitrary dismissal procedures. Multinational enterprises are further encouraged to provide reasonable notice of changes in their

operations, which would have major employment effects, and consider ways to mitigate adverse effects to the greatest possible extent in cooperation with local government authorities and workers' organizations.

Governments should study the employment impact of multinationals in different sectors of operation; take suitable measures to deal with the employment and labour market impacts of the operations of multinational enterprises; and provide, in collaboration with multinational and national enterprises, some form of income protection upon termination of employment.

c) Training

The section on training (paragraphs 29-32) identifies ways to leverage skills training in order to promote employability.

Multinational enterprises are invited to cooperate with local governments and employers' and workers' organizations in providing their employees in the host country, at all levels, with relevant training that meets the needs of the enterprise as well as the development policies of the country; and participating, along with national enterprises, in local programmes to encourage skill formation and development and vocational guidance. They are further encouraged to contribute to the development of local human resources by making available resource people to help conduct training and affording opportunities to broaden the experience of local management within their worldwide operations.

Governments are encouraged to develop, in collaboration with interested parties, national policies for vocational training and guidance, which in turn would provide a framework within which multinationals could pursue recommended training policies.

d) Conditions of work and life

The section about conditions of work and life (paragraphs 33-40) includes recommendations concerning wages and benefits, minimum age, and occupational safety and health.

1. Wages, benefits and conditions of work. Multinational enterprises are encouraged to offer their employees wages, benefits and conditions of work comparable and not less favourable to those offered by local employers similar in size and resources. In developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, at least adequate to satisfy the basic needs of workers and their families.

Governments, in particular from developing countries, are invited to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises.

2. Minimum age for admission to employment. To secure the effective abolition of child labour, the MNE Declaration commends multinational and national enterprises to respect the minimum age for admission to employment and take immediate and effective measures, within their own competence, to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

3. Occupational safety and health. Recommendations concerning occupational safety and health encourage multinational enterprises to maintain the highest standards of safety and health, bearing in mind their relevant experience from operations in other countries. They should also incorporate, where appropriate, matters relating to safety and health in agreements with workers' representatives and organizations. Since this is one area in which

multinationals can provide a substantial contribution to improve local practices, the MNE Declaration further invites them to:

- make available to the representatives of the workers in the enterprise, and upon request, to the competent authorities and the workers' and employers' organizations in all countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries;
- make known to local governments, enterprises and workers any special hazards and related protective measures associated with new products and processes;
- cooperate in the work of international organizations concerned with the preparation and adoption of international safety and health standards;
- cooperate fully with the competent safety and health authorities, the representatives of the workers and their organizations, and established safety and health organizations, in accordance with national practice.

As far as governments are concerned, the MNE Declaration recommends applying international labour standards in order to ensure that both multinational and national enterprises provide adequate safety and health standards for their employees.

e) Industrial relations

As regards industrial relations (paragraphs 42-59), the MNE Declaration encourages multinationals to observe standards not less favourable than those observed by local employers and to develop internal mechanisms for consultation and settlement of disputes.

1. Freedom of association and the right to organize. The MNE Declaration encourages governments as well as multinational and national enterprises to recognize workers' rights to establish and join organizations of their own choosing without previous authorization; to protect workers against acts of anti-union discrimination; and to allow workers' representatives to consult among themselves, provided that the functioning of the operations of the enterprise are not thereby prejudiced.

Multinational enterprises are further encouraged to support representative employers' organizations, while governments are invited to:

- permit organizations representing multinational enterprises or the workers in their employment to affiliate with international organizations of employers and workers of their own choosing;
- permit the entry of representatives of employers' and workers' organizations from other countries at the invitation of the local or national organizations concerned for the purpose of consultation on matters of mutual concern;
- ensure that special incentives to attract foreign investment do not include any limitation of the workers' freedom of association or the right to organize and bargain collectively.

2. Collective bargaining. To ensure the effective recognition of the right to collective bargaining, the MNE Declaration recommends that workers employed by multinational enterprises should have the right, in accordance with national law and practice, to have representative organizations of their own choosing, recognized for the purpose of collective bargaining; to promote voluntary negotiation between employers or employers' organizations and workers' organizations; and to include in collective bargaining agreements provisions for the settlement of disputes arising over their interpretation and application.

Multinational enterprises are also encouraged to:

- provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements;
- enable duly authorized representatives of the workers in their employment in each of the countries in which they operate to conduct negotiations with representatives of management who are authorized to take decisions on the matters under negotiation;
- not threaten to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize;
- provide workers' representatives with information required for meaningful negotiations.

Multinational and national enterprises are invited to respond constructively to requests by governments for relevant information on their operations. Governments are encouraged to supply to the representatives of workers' organizations on request, where law and practice so permit, information on the industries in which multinationals operate, which would help in laying down objective criteria in the collective bargaining process.

3. Consultations, examination of grievances and settlement of disputes. Multinational and national enterprises are invited to have systems devised by mutual agreement between employers and workers and their representatives for regular consultation on matters of mutual concern; to respect the right of workers to have all their grievances processed without suffering prejudice; and to seek to establish, jointly with the representatives and organizations of workers, voluntary conciliation machinery to assist in the prevention and settlement of industrial disputes between employers and workers.

Box 7: Consultations, examination of grievances and settlement of disputes

- Consultations on matters of mutual concern between employers and workers should not be a substitute for collective bargaining.
- The workers' right to submit a grievance, individually or jointly with other workers, and to have it examined through an appropriate procedure is particularly important in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively, to discrimination, to child labour and to forced labour.
- The voluntary conciliation machinery, which may include provisions for voluntary arbitration, should include equal representation of employers and workers.

f) MNE Declaration follow-up

1. Surveys on the effect given to the MNE Declaration. The main follow-up mechanism of the MNE Declaration is a survey that the ILO carries out every four years among governments and employers' and workers' organizations of all its member States. Through the survey, ILO constituents provide information about the effect they have given to the principles of the MNE Declaration on the basis of a questionnaire approved by the ILO Governing Body. A tripartite working group, composed of Governing Body officers, analyzes the replies and proposes recommendations for future action.

To date, there have been eight surveys. The last one, published in March 2006, includes experiences of Governments and employers' and workers' organizations from 62 countries during the period 2000-03.

These surveys help identify good practices and difficulties in implementing the MNE Declaration, as well as regions and sectors where it needs further promotion. However, this follow-up system has not proven to be particularly effective in providing a clear picture to what extent the MNE Declaration is being put into practice in all countries, as shown by the

low response rate to the eighth survey. The Governing Body, with the assistance of the International Labour Office, is currently exploring alternatives to improve this follow-up mechanism.

2. Interpretation procedure. The interpretation procedure approved by the Governing Body in 1980 can be used by governments, or employers' or workers' organizations, either national or international, to request for an interpretation of the MNE Declaration if there is a disagreement regarding the meaning of any of its principles in an actual situation. The purpose of the procedure is to improve the implementation of the MNE Declaration in specific cases.

To date, the ILO has received five requests for interpretation. Two were submitted by governments, and three by international organizations of workers on behalf of representative national affiliates. Four of the cases were found receivable and examined. The ILO also receives a number of communications and requests for assistance relating to alleged wrongdoings by multinationals. Communications that do not request an interpretation of provisions of the MNE Declaration are handled directly by the Multinational Enterprises Programme[6] or referred elsewhere in the ILO for appropriate action.

3. *ILO Helpdesk for Business on International Labour Standards*. Although not part of the formal follow-up mechanism to the MNE Declaration, this ILO Helpdesk was established by the ILO Governing Body. Aim of the Helpdesk is to provide expert advice on how companies can realize international labour standards and the MNE Declaration. This ILO programme services managers and workers in companies (multinational and domestic enterprises), constituents and industry-wide organizations and provides information and expert advice on how to better align corporate policy and practices with principles of international labour standards and the MNE Declaration.[7]

2.2. UN Global Compact

The idea of the Global Compact was launched in an address to the World Economic Forum on 31 January 1999 when the United Nations' Secretary-General Kofi Annan challenged business leaders to join an international initiative that would bring companies together with UN agencies, labour and civil society to support universal social and environmental principles.

The international reaction to that speech was extremely positive, and the Office of the Secretary General decided to convene the three UN Agencies responsible for the principles and values promoted by the initiative – the International Labour Organization, the Office of the High Commissioner on Human Rights and the United Nations Environment Programme – to discuss on how to create a system to involve companies in the promotion of universal principles and values. The Global Compact's operational phase was launched at UN Headquarters in New York on 26 July 2000.

What is the Global Compact?

The Global Compact is a strategic policy initiative for businesses that are committed to align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. tThe Global Compact is a practical

[6] For further information, please visit the Multinational Enterprises Programme website at www.ilo.org/multi

[7] The Helpdesk is comprised of a website (www.ilo.org/business) and an expert advice email address (assistance@ilo.org) where users can directly submit questions related to the content and use of the MNE Declaration, and the understanding of international labour standards in company operations.

framework for the development, implementation, and disclosure of sustainability policies and practices, offering participants a wide spectrum of workstreams, management tools and resources — all designed to help advance sustainable business models and markets. Overall, the Global Compact pursues two complementary objectives:

1. mainstream the ten principles in business activities around the world; and
2. catalyze actions in support of broader UN goals, including the Millennium Development Goals (MDGs).

With over 8,700 participants and other stakeholders from over 130 countries, it is the largest voluntary corporate responsibility initiative in the world. At its core is the Global Compact Office and six UN specialized agencies (see section 2.2.4. below). It involves all the relevant actors: companies, whose actions it seeks to influence; governments, who defined the principles upon which the initiative is based; employers' and workers' organizations as well as NGOs, which represent the wider community of stakeholders where the companies operate. Academic institutions, development agencies, municipalities and other organizations dealing with CSR also participate in the network.

Box 8: What is the Global Compact?

The Global Compact is:

- an initiative based on the voluntary commitment of companies to a responsible mode of conducting business;
- an initiative that relies on public accountability and transparency;
- an initiative that involves all social actors.

The Global Compact is not:

- a regulatory instrument;
- an instrument which "polices", enforces or measures the behaviour or actions of companies;
- a code of conduct nor a label;
- a mechanism for financing companies engaged in social activities.

Content: ten universally shared principles

The Global Compact asks companies to embrace, support and enact, a set of core values in the areas of human rights, labour standards, environmental protection, and the fight against corruption, and to undertake partnership projects in support of the MDGs.

The ten principles of the Global Compact enjoy universal consensus and are derived from widely accepted international instruments:

- the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948;
- the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in 1998;
- the Rio Declaration on Environment and Development, approved during the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992; and
- the United Nations Convention Against Corruption, adopted by the United Nations General Assembly in 2003.

Thanks to their universality, the 10 principles of the Global Compact are applicable in all of the 193 UN member States, including countries where the legislation concerning human rights, labour, environment protection and fight against corruption is not advanced.

The last of the 10 principles listed in the box below, concerning the fight against corruption, was introduced during the Global Compact Leaders' Summit held in New York in June 2004.

Box 9: Ten Principles

The Global Compact asks companies to:

Human rights
1. support and respect the protection of internationally proclaimed human rights;
2. make sure that they are not complicit in human rights abuse;

Labour
3. uphold freedom of association and the effective recognition of the right to collective bargaining;
4. uphold the elimination of all forms of forced and compulsory labour;
5. uphold the effective abolition of child labour;
6. uphold the elimination of discrimination in respect of employment and occupation;

Environment
7. support a precautionary approach to environmental challenges;
8. undertake initiatives to promote greater environmental responsibility;
9. encourage the development and diffusion of environmentally friendly technologies;

Anti-corruption
10. work against all forms of corruption, including extortion and bribery.

In addition to these ten principles, Global Compact participants have set up working groups on issues that in turn have developed further principles, guidelines, assessments and practicle tools for business. Examples include: Principles for Responsbile Investment (PRI, 2006), Principles for Responsible Management Education (2007), Women's Empowerment Principles (2010), Guidance on Responsible Business in Conflict-Affected & High-Risk Areas: A Resource for Companies & Investors (2010), Supply Chain Sustainability – A Practical Guide for Continuous Improvement (2010), Children's Rights and Business Principles.[8]

How to participate

One of the features that distinguish the Global Compact from other international initiatives in CSR is the fact that it invites companies to formally join. Companies willing to participate are requested to send a letter from the company's Chief Executive Officer, endorsed by the board, to the UN Secretary General, expressing support for the Global Compact and its principles.[9]

The Global Compact Office lists participating companies on its website, but doesn't police or control company activities. Both large and small enterprises can participate, though only those with more than 10 employees are registered on the website. The others can be listed only on local networks' websites. Companies that join the Global Compact have the possibility to participate in different activities and events organized at the global and local levels.

[8] For all issue working groups, see http://www.unglobalcompact.org/Issues/index.html
[9] A sample letter is available on the Global Compact website at http://www.unglobalcompact.org/HowToParticipate/index.html

Box 10: How companies participate in the Global Compact

The Global Compact is a leadership initiative, involving a commitment by a company's Chief Executive Officer (or equivalent), and supported by the highest-level Governance body of the organization (e.g. the Board).

Participation in the Global Compact is a widely visible commitment to the implementation, disclosure, and promotion of its ten universal principles. A company joining the initiative is expected to:

- make the Global Compact and its principles an integral part of business strategy, day-to-day operations and organizational culture;
- incorporate the Global Compact and its principles in the decision-making processes of the highest-level governance body (i.e. Board);
- contribute to broad development objectives (including the MDGs) through partnerships;
- integrate in its annual report (or in a similar public document, such as a sustainability report) a description of the ways in which it implements the principles and supports broader development objectives (also known as the "Communication on progress"); and
- advance the Global Compact and the case for responsible business practices through advocacy and active outreach to peers, partners, clients, consumers and the public at large.

The text above shows that the Global Compact cannot be considered as an instrument for the "static verification" of company behavior but as a learning and dialogue platform. Membership in the Global Compact should therefore be understood as a process of continuous improvement towards more sustainable business models and markets, based on the universally accepted principles and contribution to development and broader UN goals.

Communication on progress

When joining the Global Compact, companies make a commitment to annually issue a Communication on Progress (COP), a public disclosure to stakeholders (e.g., investors, consumers, civil society, governments) on progress made in implementing the ten principles, and in supporting broad UN development goals.

The COP requirement serves the following purposes:

- advance transparency and accountability;
- drive continuous performance improvement;
- safeguard the integrity of the UN Global Compact and the United Nations; and
- help build a growing repository of corporate practices to promote dialogue and learning.

The Global Compact Office provides practical tools – including the basic COP template and the Global Reporting Initiatives guidelines for reporting – to assist companies in communicating their progress at different levels of sophistication.

A COP is a direct communication from business participants to their stakeholders. For this reason, participants are required to make their COP widely available. While the overall format is flexible, each COP must contain the following three elements:

- a statement by the Chief Executive expressing continued support for the Global Compact and renewing the participant's ongoing commitment to the initiative and its principles;
- a description of practical actions (i.e., disclosure of any relevant policies, procedures, activities) that the company has taken (and plans to take) to implement the Global Compact principles in each of the four issue areas (human rights, labour, environment, anti-corruption);
- a measurement of outcomes (i.e., the degree to which targets/performance indicators were met, or other, qualitative or quantitative, measurements of results).

In 2011 the Global Compact Office introduced the Differentiation Programme for Global Compact business participants. Under the Programme a timely COP is to be classified in two categories:

1. a business participant that submits a timely COP that meets all the COP requirements will be categorized as “GC Active”;
2. a business participant that goes beyond the minimum COP requirements by adopting and reporting on a range of sustainability governance and management processes can self-declare itself as “GC Advanced”.

All business participants are required to post their COP on the Global Compact website and to share it widely with their stakeholders.

The COP is the most important expression of a participant's commitment to the Global Compact and its principles. Violations of the COP policy (e.g., failure to issue a COP) will result in the change in participant status to non-communicating and can lead to the expelling of the participant. All names of expelled participants will be made public on the Global Compact website and companies that have been expelled must reapply to join the initiative.[10]

Participants of the Global Compact network

As indicated earlier, the Global Compact is a network involving UN Agencies, companies, governments, employers’ and workers’ organizations, NGOs, and academic institutions.

a) The United Nations and its specialized agencies

At the core of the network are the Global Compact Office (GC Office) and seven UN agencies:

- United Nations High Commission on Human Rights (UNHCHR);
- International Labour Organization (ILO);
- United Nations Environment Programme (UNEP);
- United Nations Office on Drugs and Crime (UNODC);
- United Nations Development Programme (UNDP);
- United Nations Industrial Development Organization (UNIDO);
- United Nations Entity for Gender Equality and the Empowerment of Women (UNWomen).

These organizations are part of the interagency team that meets regularly with the GC Office to ensure consistency among the different activities of the initiative and to explore opportunities of collaboration.

b) Companies

The Global Compact is based on a leadership mechanism aimed at involving the greatest possible number of companies in accomplishing a fairer and more inclusive global economy. Since its official launch on 26 July 2000, the initiative has grown to include over 5,300 businesses in 130 countries around the world.

[10] See: http://www.unglobalcompact.org/COP/analyzing_progress/expelled_participants.html

c) Governments

Governments ensure the legitimacy and universality of GC principles and develop the legal framework in which they are put into practice. By exercising their legislative competency, governments can provide an enabling legal environment where voluntary initiatives, such as the Global Compact, can play a complementary role.

At the global level, governments define the political framework in which the UN Secretary General can test innovative mechanisms to invite business, trade unions and civil society to work together. Furthermore, governments provide financial support to the Global Compact Office and provide general policy guidance for promoting corporate citizenship in line with MDGs. At the national level, governments support the organization of GC events and the creation of local networks, and they contribute to the adoption of policies in line with the GC principles.

d) Employers' organizations

The Global Compact network includes a number of important employers' organizations, well known for their thought-leadership and private sector expertise on critical issues related to sustainable development and corporate citizenship. They promote the initiative among their affiliates thus facilitating the United Nations reaching companies, in particular small and medium enterprises.

e) Workers' organizations

The Global Compact network also includes a number of national and international workers' organizations. They play an important role in supervising the actual implementation of the GC principles thanks to their capacity to directly supervise the changes that companies set in motion after joining the GC. They should be informed by a company when it sends a letter of adhesion and shall play an active role in the implementation of the principles as well as in the elaboration of communications on progress.

f) Civil Society Organizations

Civil Society Organizations – also known as non-governmental organizations (NGOs) – are crucial actors in the advancement of universal values. As global market integration has advanced, their role has gained particular importance in aligning economic activities with social and environmental priorities. Civil society organizations have been an integral part of the Global Compact since its creation. Their perspectives, expertise and partnership-building capabilities are indispensable in the evolution and impact of the Global Compact.

g) Academia

Academia adds a critical dimension to the Global Compact's operations. Through research and educational resources, this sector can increase knowledge and understanding of corporate citizenship.

Box 11: Participation of non-business actors in the Global Compact

All the non-business actors (employers' and workers' organizations, NGOs, public bodies, academic institutions) willing to express their support to the Global Compact are requested to send a letter to the United Nations Secretary General using the sample letter for non-business participants available on the GC website.

Unlike companies, these actors are not requested to send communications on progress. Their participation consists of the support they give to the Global Compact by promoting the initiative within their sphere of influence, and in active participation in the relevant Global Compact local networks.

Local networks

Local networks are clusters of participants who come together to advance the UN Global Compact and its principles within a particular geographic context. They perform increasingly important roles in rooting the Global Compact within different national, cultural and language contexts, and also in helping to manage the organizational consequences of the Global Compact's rapid expansion. Their role is to facilitate the progress of companies (both local firms and subsidiaries of foreign corporations) engaged in the Global Compact with respect to implementation of the ten principles, while also creating opportunities for multi-stakeholder engagement and collective action. Furthermore, networks deepen the learning experience of all participants through their own activities and events and promote action in support of broader UN goals. Local network representatives come together for an annual meeting coordinated and chaired by the Global Compact Office, which is known as the Annual Local Networks Forum. The purpose of the Local Networks Forum is for Local Networks to learn from each other's experiences in building a network, review and compare progress, identify best practices and adopt recommendations intended to enhance the effectiveness of Local Networks, including relating to governance.

2.3. OECD Guidelines for Multinational Enterprises

The OECD Guidelines, adopted in 1976 and revised in 2000 and 2011, are recommendations addressed by governments to multinational enterprises.[11] They set out voluntary principles and standards for responsible business conduct consistent with applicable laws. The OECD Guidelines are aimed at:

- ensuring that the operations of multinational enterprises are in harmony with government policies;
- strengthening the basis of mutual confidence between enterprises and the societies in which they operate;
- helping improve the foreign investment climate;
- enhancing the contribution to sustainable development made by multinational enterprises.

The OECD Guidelines are part of a broader instrument – *the OECD Declaration on International Investment and Multinational Enterprises* – which promotes a comprehensive, interlinked and balanced approach for governments' treatment of foreign direct investment and for enterprises' activities in adhering countries. In addition to the Guidelines, this Declaration includes sections relating to national treatment of foreign enterprises, conflicting requirements on enterprises, and international investment incentives and disincentives.

[11] To date, adhering countries include the 34 OECD member countries, plus eight non-OECD members: Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru and Romania. Since the operations of multinational enterprises extend throughout the world, the OECD welcomes non-member states to subscribe to the Declaration on International Investment and Multinational Enterprises of which the Guidelines are a part.

Box 12: The Organization for Economic Co-operation and Development (OECD)

The OECD is an inter-governmental organization that deals with important economic and social issues. Its main objectives are:

- fostering economic growth, employment and prosperity while maintaining financial stability;
- contributing to sound economic development in member and non-member countries through technical assistance;
- helping to ensure the expansion of global trade on a multilateral and non-discriminatory basis and to reduce and eliminate obstacles to international trade.

Today, the OECD has 34 member countries (see list below). To become a member, a State needs to fulfill two conditions: a market economy and a democratic government. The OECD works closely with some 70 non-member countries as well as NGOs and civil society. Employers are represented by the Business and Industry Advisory Committee to the OECD (BIAC) and workers by the Trade Union Advisory Committee to the OECD (TUAC).

Decision-making power is vested in the OECD Council. It is made up of one representative per member country, plus a representative of the European Commission. The Council meets regularly at the level of Ambassadors to the OECD and decisions are taken by consensus. The Council meets at ministerial level once a year to discuss key issues and set priorities for OECD work. The work mandated by the Council is carried out by the OECD secretariat, which is in Paris. The OECD Council regularly consults BIAC and TUAC.

OECD activities include data collection and harmonization; undertaking research and studies; providing a forum where governments of member countries can discuss and develop economic and social policies; defining common principles to ensure better coordination of national and international policies; and adopting various kinds of international instruments such as agreements, decisions and recommendations.

OECD member countries: Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxemburg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

Field of application

The OECD Guidelines are addressed primarily to multinational enterprises with public, private or mixed capital. However, all of their business partners (including suppliers, contractors, sub-contractors, licensees and other entities with which multinationals enjoy a working relationship), small and medium-sized enterprises are also encouraged to apply them. The Guidelines are not aimed at introducing differential treatment between multinational and domestic enterprises but at reflecting good practice for all.

The OECD Guidelines are the only comprehensive and multilaterally endorsed rules that governments are committed to promoting and recommending to enterprises. Although they are not legally binding for enterprises, they constitute government recommendations and are thus considered morally binding. Furthermore, they are binding for governments of adhering countries[12] which are committed to promoting their application by all companies that are nationals of their countries wherever they operate. Adhering governments should not use the Guidelines for protectionist purposes or to question the comparative advantage of a country where multinational enterprises invest.

The OECD Guidelines are not an alternative to national laws and regulations, to which multinational enterprises are fully subject. They represent complementary principles and standards of behaviour of a non-legal character, particularly concerning the international activities of enterprises. While they extend beyond the law in many cases, they are not intended to place an enterprise in a situation where it faces conflicting requirements.

[12] See above.

Box 13: Application of the OECD Guidelines among business partners

As clarified in the commentary to the Guidelines, practical limitations to the ability of enterprises to influence the conduct of their business partners exist. The extent of these limitations depends on sectoral, enterprise and product characteristics such as the number of suppliers or other business partners, the structure and complexity of the supply chain and the market position of the enterprise vis-à-vis its suppliers or other business partners.

The influence enterprises may have on their suppliers or business partners is normally restricted to the category of products or services they are sourcing, rather than to the full range of activities of suppliers or business partners. Thus, the scope for influencing business partners and the supply chain is greater in some instances than in others. Established or direct business relationships are the major object of this recommendation of the Guidelines rather than all individual or *ad hoc* contracts or transactions that are based solely on open market operations or client relationships. In cases where direct influence of business partners is not possible, the objective could be met by means of dissemination of general policy statements of the enterprise or membership in business federations that encourage business partners to apply principles of corporate conduct compatible with the Guidelines.

Content

The OECD Guidelines are divided into eleven chapters covering the following issues: general policies; disclosure; human rights; employment and industrial relations; environment; combating bribery, bribe solicitation and extortion; consumer interests; science and technology; competition; and taxation. This booklet deals with the recommendations concerning labour principles, which can mostly be found in the chapter concerning employment and industrial relations, but also to some extent in the chapters on general policies, human rights and environment. The human rights chapter was added in the 2011 revision to incorporate specific recommendations concerning enterprises' respect for human rights. It draws upon the UN Framework for Business and Human Rights "Protect, Respect and Remedy" and is in line with the Guiding Principles for its Implementation.

The chapter on general policies encourages multinational enterprises to take into account the policies in force in the countries where they operate and the points of view of other stakeholders as well as to contribute to economic, social and environmental progress in order to achieve sustainable development. Multinational enterprises should also respect the internationally recognized human rights of those affected by their activities and encourage local capacity building through close co-operation with the local community.

The update brought the chapter on employment and industrial relations of the Guidelines very closely in line with the provisions of the Declaration on Fundamental Principles and Rights at Work and the MNE Declaration, although the MNE Declaration remains more detailed. It also recognizes the ILO as the competent body to set and deal with international labour standards, and the key reference point for companies to understand the provisions of this Chapter. However, the responsibilities for the follow-up procedures under the ILO MNE Declaration and the OECD Guidelines are institutionally separate.

The updated text also encourages business partners to apply principles of corporate conduct compatible with the Guidelines.

OECD Guidelines follow-up

Two bodies are responsible for the OECD Guidelines follow-up: National Contact Points (NCP) and the OECD Investment Committee.

a) National Contact Points

1. Every country adhering to the OECD Guidelines must set up a *National Contact Point* (NCP) that performs the following tasks:

- promoting and disseminating the Guidelines among interested parties and potential investors, including making them available in national languages;
- raising awareness of the Guidelines in cooperation, where appropriate, with employers' and workers' organizations, NGOs and other interested parties;
- responding to requests for information from other NCPs, employers' and workers' organizations, NGOs, non-adhering governments and other interested parties; and
- respond to enquiries about the Guidelines from: (i) Other National Contact Points; (ii) The business community, worker organisations, other non-governmental organisations and the public; and (iii) Governments of non-adhering countries.

In preparation for the Annual Meeting of NCPs, which is held annually at the OECD Headquarters, NCPs submit reports on their efforts to promote and implement the Guidelines. The reports contain information about specific instances handled by the NCPs (see below). The purpose of the Annual Meeting is to provide NCPs with a special forum to share experiences and to discuss issues that may arise concerning the Guidelines. BIAC, TUAC and NGOs are also invited for consultation on the Guidelines. In connection with the meeting, a roundtable on corporate responsibility is organized. After the meeting, the OECD issues an Annual Report, which includes a report of the various meetings, contributions from BIAC, TUAC and NGOs as well as other documents relevant to the Guidelines.

2. Specific instances. When a company is believed to be in breach of the Guidelines, a trade union, an NGO or another interested party can raise this as a case (specific instance) with the appropriate NCP. If the violation has occurred in a country that has adhered to the Guidelines, the issue should be raised with the NCP of that country. If the problem has arisen in a non-adhering country, the case has to be submitted to the NCP in the country where the company is headquartered.

When an NCP receives a case, it is responsible for trying to resolve the issue, through a range of available options that include offering a forum for discussion for the parties concerned, allowing conciliation or mediation. It can also seek advice from relevant authorities, employers' and workers' organizations, the OECD Investment Committee and other relevant experts. In deciding what course of action to take, the NCP is required to make an initial assessment as to whether the case "merits further examination". To that purpose, it considers the identity of the interested party and its interest in the matter, whether the issue is substantiated, the relevance of applicable regulations and procedures, and how similar issues have been or are being dealt with. The NCP then responds to the party that raised the case. If the NCP decides that the issue does not merit further examination, it must give reasons and issue a public statement where, at a minimum, the NCP describes the issues raised and the reasons for the its decision.

In addition to this, at the conclusion of the procedures and after consultation with the parties involved, the NCP needs to make the results of the procedures publicly available, taking into account the need to protect sensitive business and other stakeholder information, by issuing:

b) A report when the parties have reached agreement on the issues raised. The report should at a minimum describe the issues raised, the procedures the NCP initiated in assisting the parties and when agreement was reached. Information on the content of the agreement will only be included insofar as the parties involved agree thereto.

c) A statement when no agreement is reached or when a party is unwilling to participate in the procedures. This statement should at a minimum describe the issues raised, the reasons why the NCP decided that the issues raised merit further examination and the procedures the NCP initiated in assisting the parties. It can also make recommendations to the parties on how the Guidelines apply to the case. NCPs may, therefore, inform an enterprise that its activities violate the Guidelines. Although the Guidelines do not provide for sanctions against companies that do not respect them, the mere fact that the conclusions of NCPs should be in the public domain can have an impact on company behaviour. Moreover, the purpose of the procedure is to find joint and constructive solutions to problems that may arise and not to "punish" enterprises that have failed to live up to the Guidelines.

While the procedures are underway, information relating to the case will be kept confidential. Afterwards, and if the parties involved do not agree on a resolution of the problem, they are free to comment publicly on the case, though they cannot disclose the information and views provided by another party during the proceedings unless the other party agrees to their disclosure. After consulting the parties involved, the NCP should make the results publicly available, unless maintaining confidentiality would better ensure effective implementation of the Guidelines.

b) OECD Investment Committee

1. The OECD Investment Committee is the body responsible for overseeing the Declaration on International Investment and Multinational Enterprises. Regarding the Guidelines, the tasks of the Committee include:

- organizing exchanges of points of views on matters covered by the Guidelines, including the advisory bodies BIAC and TUAC as well as non-members;
- examining requests for assistance by NCPs, particularly in cases of doubts about the interpretation of the Guidelines;
- studying the annual reports of NCPs;
- examining requests from adhering countries, BIAC or TUAC whether an NCP is complying with its responsibilities in relation to the implementation of the Guidelines;
- providing clarifications, where necessary;
- organizing exchanges of views on the activities of NCPs; and
- reporting to the OECD Council on issues regarding the Guidelines.

The Investment Committee is composed of government representatives of the OECD member countries. When issues relating to the Guidelines are discussed, government representatives of non-OECD countries that have adopted the Guidelines are also invited to participate. To facilitate its work, the Investment Committee is assisted by a working party. The Investment Committee regularly consults BIAC and TUAC on questions concerning the Guidelines and other issues relating to investment and multinational enterprises.

2. Clarification procedure. Since the OECD Guidelines are drafted in general terms, so as to apply globally in countries with different legal systems and practices, "clarifications" of the meaning of the Guidelines may sometimes be necessary. The purpose of the clarification procedure is to provide additional information about whether and how the Guidelines apply to a particular situation. The OECD Investment Committee is responsible for issuing such clarifications.

Although clarifications may arise in connection with the activities of a specific enterprise, they are not intended to assess the appropriateness of that enterprise's conduct. Thus, an individual enterprise is not referred to by name in the clarifications. Furthermore, it has the

right to express its views to the Investment Committee verbally or in writing, directly or through BIAC.

An adhering country or an advisory body to the OECD (BIAC and TUAC) can make a request for clarification if it is believed that an NCP has not fulfilled its responsibilities or if it has not interpreted the Guidelines correctly. The Investment Committee will then consider issuing a clarification. It may also consult various experts as well as BIAC and TUAC. If necessary, it will make recommendations to improve the functioning of NCPs and the effective implementation of the Guidelines.

2.4. UN Business and Human Rights Framework and Guiding Principles

Over the past decade, the UN human rights machinery has been considering the scope of business' human rights responsibilities and exploring ways for corporate actors to be accountable for their impact on human rights. On 16 June 2011, the UN Human Rights Council endorsed the Guiding Principles on Business and Human Rights; implementing the UN "Protect, Respect and Remedy" Framework, providing – for the first time – a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

Box 14: The mandate of the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises

In the early 2000 an expert body of the Human Rights Commission attempted to impose on companies, directly under international law, the same range of human rights duties that States have accepted for themselves under treaties they have ratified. This attempt in the form of "Norms on Transnational Corporations and Other Business Enterprises" however failed and ended in much controversy between the business community and civil society.

In 2005, Human Rights Commission requested the UN Secretary General to appoint a Special Representative on the issue of human rights and transnational corporations and other business enterprises. Professor John Ruggie appointed with following mandate from the Human Rights Commission/Human Rights Council:

First mandate (2005-2008), to "identify and clarify" existing standards and practices in the area of business and human rights through systematic research providing a broader and more solid factual basis for the business and human rights discourse; to recommend one authoritative focal point around which the expectations and actions of relevant stakeholders could converge. In June 2008 the "Protect, Respect and Remedy" Framework he developed following three years of extensive research and consultations, was adopted by the Human Rights Council.

Second mandate (2008-2011), to operationalize the "Protect, Respect and Remedy Framework", in the form of Guiding Principles, again involving extensive consultations with multiple stakeholders. These Guiding Principles were unanimously adopted by the Human Rights Council in June 2011, in HRC resolution A/HRC/17/4.

Field of application

The Guiding Principles[13] do not create new legal obligations but constitute a clarification and elaboration of the implications of existing standards, including under international human rights law, and practices for both States and business enterprises, including as they relate to enhancing access to remedy for victims of business-related human rights abuse.

The general principles section of the Guiding Principles says that:

[13] See: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

- the Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure;
- the Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization;
- nothing in the Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights;
- the Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.

Content

The UN "Protect, Respect and Remedy" Business and Human Rights Framework rests on three pillars.

1. The State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication.
2. The corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.
3. The need for greater access by victims to effective remedy, both judicial and non-judicial.
4. Each pillar is an essential component in an inter-related and dynamic system of preventative and remedial measures: the State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse.

The Guiding Principles cover under these three pillars 31 recommendations.

I. State duty to *protect*

The ten recommendations under this chapter cover the over-arching duty of the State to protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises, by taking the appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication. This includes the duty for States to clearly express the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. States should therefore enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically assess the adequacy of such laws and address any gaps. States moreover should ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights. States also should provide effective guidance to business enterprises on how to respect human rights throughout their operations; and encourage business enterprises to communicate on how they address their human rights impacts. Moreover States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by

the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies. In the commercial relationships with enterprises States should exercise adequate oversight in order to meet their international human rights obligations.

Specific attention is required in conflict affected areas because the increased risk of gross human rights abuses. States should help ensure that business enterprises operating in those contexts are not involved with such abuses.

Policy coherence at the national level is required to ensure that all governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, States should moreover maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

At the international level, when States act as members of multilateral institutions that deal with business-related issues, they should seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising; draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

II. Corporate responsibility to *respect*

The fourteen Principles on the second pillar further define the corporate responsibility to respect human rights. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.

This responsibility requires that business enterprises: 1) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; 2) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) a policy commitment at the most senior level to meet their responsibility to respect human rights;
(b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. This process should include

assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.
(c) legitimate processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

The Principles under this pillar clearly state that in all contexts, enterprises should:

(a) comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
(b) seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
(c) treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

III. Access to *remedy*

The six Principles under this third pillar provide recommendation to both States and enterprises. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy. States therefore should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy. States also should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

States also should consider ways to facilitate access to effective non-State based grievance mechanisms dealing with business-related human rights harms.

Business enterprises should establish or participate in effective operational-level grievance mechanisms so that grievances are addressed early and remediated directly. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, source of continuous learning and based on engagement and dialogue.

Follow-up mechanism

In order to promote the dissemination and implementation of the Guiding Principles, the Human Rights Council established the *Working Group on the issue of human rights and transnational corporations and other business enterprises,*[14] consisting of five independent experts for a period of three years.

Also, the Human Rights Council decided to establish an *annual Forum on Business and Human Rights under the guidance of the Working Group* to serve as a venue for stakeholders from all regions to discuss trends and challenges and identify good practices in

14 http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx

the implementation of the Guiding Principles, and to promote dialogue and cooperation. The first Annual Forum will take place in Geneva on 4-5 December 2012.[15]

[15] http://www.ohchr.org/EN/Issues/Business/Pages/ForumonBusinessandHR2012.aspx

3. Workplace initiatives

3.1. Negotiated instruments: International Framework Agreements

International Framework Agreements (IFAs) are instruments negotiated between a multinational enterprise and a Global Union Federation (GUF) concerning the international operations of the company. They are aimed at establishing an ongoing and stable relationship between the parties. Sectoral trade unions from the home country of the company also participate in the negotiation of the agreement.

Although framework agreements are strictly speaking not CSR initiatives, but expression of social dialogue or collective bargaining at the internal level, they are often referred to in the CSR debate because they are instruments in which multinational enterprises commit themselves to applying the same labour standards to their employees in all the different countries in which they operate. However, a specific aspect that distinguishes frameworks agreements from CSR initiatives is that they result from negotiation between companies and international workers' representatives. Framework agreements are thus one of the possible developments of industrial relations in the era of globalization.[16]

Content and field of application

The content of these agreements vary according to the different requirements and characteristics of the companies and trades unions involved, as well as depending on the industrial relations traditions between the parties. All frameworks agreements include the four fundamental labour principles and most of them refer specifically to ILO Core Conventions. The other provisions that differ from one agreement to the other refer to various issues covered by ILO standards such as the protection of workers' representatives, wages, occupational safety and health, and skills training. Some agreements also include an expression of support of one or more of the international CSR instruments described above as well as the ILO Declaration on Fundamental Principles and Rights at Work. Most framework agreements make reference to the entire supply chain, even if supplier companies are not parties to them. Companies usually commit to inform all their subsidiaries, suppliers, contractors and subcontractors about the agreement.

Implementation and follow-up

Another characteristic of framework agreements is that almost all of them include some kind of follow-up mechanism, which involves trade union participation. Thus, the implementation sections of the agreement set up specific actions on the part of management and workers' representatives. These include actions such as company-wide dissemination (and translation, where necessary) of the agreement or the development of joint training programmes. Some agreements provide for specific joint missions by the relevant national trade union and global union federation in order to carry out on-site monitoring of the implementation of the agreement. Most framework agreements also include mechanisms for the global union federation to raise a case if the company violates the terms of the agreement.

Other agreements

In Europe, there are agreements negotiated by multinationals and national or European trade unions with the aim of obtaining from the company a commitment to apply the same standards they observe in their home countries in all the countries where they operate.

[16] An overview of existing IFAs can be found at http://www.global-unions.org/framework-agreements.html

These agreements are different from International Framework Agreements insofar as they do not involve Global Union Federations. They are developed and adopted through negotiation and not unilaterally.

In the context of European Sectoral Social Dialogue, there are also agreements signed and implemented by the social partners at the European level concerning CSR and the international operations of companies. These agreements are referred to as codes of conduct, joint statements or charters, and bring together trade unions and industry representatives in various sectors: for example, commerce, hospitality, textiles and clothing, banking, woodworking and private security. These negotiated codes normally cover the fundamental principles and rights at work, in addition to other labour and employment standards, and include provisions for joint implementation and monitoring. However, these agreements are not signed by European companies themselves but by their regional industry representatives, who in turn help implement them at the national level through their membership.[17] They are designed to have a trickle down effect and open the door to collective bargaining at the national level. And this is exactly what happened in one example taken from Italy after the signing of a Europe-wide agreement in textiles. A national collective agreement was negotiated and signed for Italy's garment and textiles sector on the basis of the joint charter signed by the European Apparel and Textile Organisation (EURATEX) and the European Trade Union Federation of Textiles, Clothing and Leather (ETUF:TCL). This agreement covers over 650,000 workers and includes an average monthly pay increase, the creation of new joint bodies, improved information and consultation rights, and improved maternity pay.[18]

Finally, another kind of agreement is that signed between a Global Union Federation and a MNE with the objective of solving a specific problem. These agreements do not cover all the international operations of the company and do not include policy statements on respecting all fundamental labour standards. This is the case of the agreement that was signed between Del Monte and the IUF in 2000 to put an end to the dispute between the company and its Guatemalan trade union. The agreement defined an ongoing framework for dispute resolution and allowed Guatemalan plantation workers to return to their jobs and receive compensation for lost wages.

3.2. Non-negotiated instruments: Codes of Conduct

A code of conduct is a written policy or statement of principles adopted voluntarily by a company to express its commitment toward a particular conduct. By their very nature, company codes contain commitments often made in response to market incentives not to legal obligations.

Modern codes of conduct originated with model codes on advertising and marketing practices developed by the International Chamber of Commerce in the late 1930s. During the 1960s and 1970s, labour provisions in enterprise codes of conduct were primarily directed at internal management practices. The late 1980s and 1990s saw a rapid proliferation of codes with several new trends. In response to increasing public pressure on enterprises, the application of traditional codes expanded from covering headquarters and foreign subsidiaries to the entire production chain. Thus, during the 1990s, companies that produce trademark goods internationally started adopting codes of conduct intended to apply to their sub-contractors and suppliers.

In today's global economy, the structure and operation of supply chains play a defining role in the development and implementation of codes. In cases where the retailer has a long-

[17] For a list of these agreements, see: http://ec.europa.eu/employment_social/soc-dial/csr/csr_doc.htm
[18] The agreement can be found at http://www.eiro.eurofound.eu.int/2004/05/inbrief/it0405102n.html

lasting relationship with its suppliers, it is easier to manage the implementation of the code's provisions and specific mechanisms are set up to ensure compliance. On the other hand, if the retailer has a long and complex supply chain, the situation might become very challenging.

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Codes vary considerably in both their scope and application. The selective approach by which most codes address labour issues appears to promote uneven implementation of fundamental labour rights, both within a single enterprise and across the world's labour force. Although they increasingly cover the companies' main suppliers and their workers, they do not often include every link in the supply chain. Codes rarely encompass workers in the informal sector (such as subcontractors' unregistered workers, home workers, etc.) and many workers in sensitive situations are not reached.

Implementation

A typical code implementation process in the manufacturing and retail sectors involves four stages.

1. The adoption and integration of the code of conduct within the company's management system.
2. The assessment of suppliers' conformity with the code. Codes of conduct do not always include mechanisms to monitor their implementation and, when they do, monitoring is often the responsibility of company management and does not involve workers' representatives. This process is internal to the company, its management system and supply chain. Most of the social auditing that takes place concerns this internal assessment. The implementation mainly focuses on the labour conditions at suppliers' level but might also include subcontractors' level.
3. Based on the result of the audit, companies tend to take remediation steps in cases where non-compliance with the code is detected. Remediation includes measures to achieve improvements in those areas as well as ongoing monitoring by the buyer, by a country-level voluntary private initiative, or within the production facility itself. Thus, companies are seriously challenged in developing effective and credible solutions to support their suppliers in upgrading labour practices. It explains why most companies are now joining efforts in developing industry-wide and supply chain-wide initiatives where they can share information and learn together.
4. The final stage involves a company reporting on how it has performed in respect of the aspirations of its code of conduct. This may also involve a process of verification or certification by an external organization.

There are two different models of code implementation among buyers. The first emphasizes risk assessment and the policing of suppliers for compliance with a code of conduct. Supplier contracts may be terminated in the event of serious non-compliances. In these systems, audits are usually carried out by external agents and do not include complete remediation processes.

The second type of system places the emphasis on needs assessment and the identification of the root causes and reasons that conditions at suppliers do not conform to the code. Relationships between the buyer and supplier tend to be more direct and remediation may involve partnering between them to improve workplace conditions over time. The assessment process is most likely to be carried out by the buyer rather than a contractor and the labour assessment system integrated with the buying department. It results in the transfer of skills and technology and most often the upgrading of workplace practices which may also improve working conditions if workers' representatives are involved.