

Chapter 10

CORPORATE SOCIAL RESPONSIBILITY AND HUMAN RIGHTS

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On the face of it, human rights and the company seem worlds apart, and like oil and water, an impossible mix. But reality is proving otherwise. Every day brings more tangible and visible evidence of how closely human rights and today's enterprises are linked, the key perspective being corporate social responsibility (CSR). Until recently, human rights were mostly thought to inhabit the domain of rights and duties of states, never (compliance with the law apart) the corporate domain. Although currently gaining ground in theoretical debates and in the practice of some companies, the issue is not really a new one. The mid-1970s had seen a dawning realization of how company power was extending beyond economic to political, cultural and social areas. Since then, the continuous evolution of company activities and power seem to have radically restructured the equilibrium of their relations with the State and society.¹ Nowadays, companies are among the most decisive actors in determining how human rights are put into practice.²

Several working documents of the UN Commission on Human Rights and the UN Sub-Commission on the Promotion and Protection of Human Rights³ as well as Security Council resolutions⁴ establish a close relationship between the activities of some companies and human rights abuses. These documents stress the fact that companies have very often applied the so called 'downward harmonization', which basically entails the selective adoption of the employment and environmental legislation offering the lowest international social, environmental

¹ The income of five transnational companies amounts to double the Gross Domestic Product (GNP) of the 100 poorest countries.

² Felipe Gómez Isa, 'Las empresas transnacionales y los derechos humanos' in *Boletín de Estudios Económicos*, Vol. LV, No. 170, August 2000, p. 333.

³ See <<http://www.unhchr.ch/data.htm>>.

⁴ See <<http://www.un.org/Docs/sc/>>.

and human rights standards. The documents also point out that while companies may contribute to development by creating jobs, paying taxes and transferring technology, they may also instigate structural violence, poor working conditions and destruction of ecosystems, and in so doing effectively become barriers to sustainable development of the least favoured nations. As a result, the above documents offer substantial input into the timeless debate around company contributions to the right to development.

Today, the traditional concept by which only states and individuals can be held responsible for abuses of human rights is clearly being called into question - by civil society in general, in political circles and, over the last decade, also by some business managers. Indeed, increasing numbers of companies are linking human rights to their CSR strategy *upstream* as a basis for CSR screening (policy), and *downstream* as a resource for CSR measurement and evaluation (practice). What is being considered today is a new paradigm of company in which respect for minimum international human rights standards has become an issue inextricably linked to the process of building a responsible company.

Social, political and economic actors no longer view companies as mere suppliers of products and services but as new social, economic and environmental actors in a globalized economy where production processes are being closely examined. Nowadays, the question goes beyond environmental and social quality concerns (CSR matters) and includes human rights issues. Organizations formerly operating within a legal framework are now aware of a new frame of reference instigated by citizens and consumers. These days, society's relationship with companies and their 'authorization' to act is under constant review, and currently extends to whether they violate human rights within their area of influence. In effect, companies are being required to build their legitimacy and identity on the basis of respect for human rights, increasingly seen an integral part of responsible 21st-century businesses and business leadership.

The crucial issue here, however, is not only where human rights fit into CSR strategies, but how this is happening, and what present and future challenges to expect. As we will see later, the process seems to start from within, when companies begin to question why and how they should be managing this new field within its CSR strategy. Looking at this issue, we too have identified some questions, questions that we will attempt to work through during the course of this article.

- What is the general human rights context within which companies are operating? In other words, what are the real trends on the human rights agenda internationally, and what are the new challenges facing their protection and promotion?
- In this context, why are human rights being included on company agendas today? What are the main initiatives linking companies with protection of human rights, turning it into the core value of company CSR?
- But we should also ask: just what kind of human rights are we talking about in the company context? And what is the area of influence of companies in the field of human rights?
- Finally, what are the issues still to be addressed on international and corporate agendas that link human rights to the business field?

A. HUMAN RIGHTS IN THE WORLD

Before going on, we will try to get a clearer view of the situation of human rights today. Being aware of current trends and debates and starting to think them through will help decide what issues affect or might have a bearing on the international context within which companies operate. Far from being isolated from world events, corporate responsibility is deeply affected by a whole range of other trends.

Whereas until recently, the debate on globalization had held centre stage in most discourses on the new challenges to the protection and promotion of human rights. But by 2003 and 2004, the atrocities of 11th September 2001 in New York and 11th March 2004 in Madrid were making the international struggle against terrorism its most visible *leitmotiv*. This is confirmed by an analysis of reports from the various human rights organizations (Amnesty International⁵ and Human Rights Watch⁶) and international or intergovernmental organizations (European Union⁷ and United Nations, in the latter, reports of the 59th session of the United Nations Commission on Human Rights⁸). All show that the world situation on human rights issues in 2003 was still marked by the international agenda imposed after the 11 September 2001 attacks. In many countries, anti-terrorist legislation, practices and policies were seen to be threatening serious violations of civil and political rights. This and other threats to economic, social and cultural rights (ESCR) were borne out by resolutions of the United Nations Commission on Human Rights.⁹ Otherwise, 2003 also saw violations of basic freedoms, an increase in the practice of torture, deterioration in prison conditions, lack of procedural guarantees and hardening of policies for granting refugee and asylum status.¹⁰ Analyses and prospects were not much more encouraging as regards ESCR.

More specifically, the 2003 reports of Amnesty International and Human Rights Watch reveal systematic and generalized abuses affecting the right to life and safety of the individual by actions or omissions of the State in 71 countries. Torture and abuse were used in 117 countries (although 134 countries ratified the Convention against Torture) and there were serious violations of basic freedoms in more than 80 countries. Groups most affected here were defenders of human rights and media workers. Moreover, abuses were often committed in a context of impunity.¹¹ The European Commission¹² pinpointed many worrying human rights situations worldwide, and the Swedish and Greek presidencies respectively identified a total of 32 countries, mainly in Asia. Of particular relevance during the 59th session of the United Nations Commission on Human

⁵ Amnesty International, *Report 2003*, Amnesty International Publications, London, 2003.

⁶ Human Rights Watch, *World Report*, New York, 2003.

⁷ Council of the European Union, *European Union Annual Report on Human Rights 2003*, Brussels, 13 October 2003.

⁸ Geneva, 17 March–25 April 2003. See <<http://www.unhchr.ch>>.

⁹ Resolutions E/CN.4/RES/2003/37 and E/CN.4/RES/2003/68.

¹⁰ School of Peace Culture, *Alert 2004! Report on Conflicts, Human Rights and Peace-building*, School of Peace Culture, Barcelona, 2004. See <<http://pangea.org/unescopau>>.

¹¹ *Ibid.*

¹² Council of the European Union, *Annual Report on Human Rights of the European Union 2003*, Brussels, 13 October 2003. See <http://europa.eu.int/comm/europeaid/projects/eidhr/documents_en.htm>.

Rights were reports by Special Rapporteurs and resolutions on serious human rights situations in 19 countries¹³ as well as presidential statements on 3 further countries.¹⁴

In conclusion, 2003 saw the consolidation of post-11S legislative trends towards restricting basic freedoms and extending controls over movements of displaced people, refugees and asylum seekers (above all in developed countries). However, in spite of this deterioration in the promotion and protection of human rights at national level, the United Nations continued to adopt new legal instruments for protection against these abuses in international scenarios¹⁵. In Africa, America and Arab League countries there were important initiatives for human rights protection, for instance the coming into operation of the African Court on Human and Peoples' Rights. On 23 April, the 60th session of the United Nations Commission on Human Rights closed¹⁶ in Geneva in the presence of the new High Commissioner, L. Arbour. The main challenge signalled by many human rights organizations during the period had been met: that among other important issues addressed, some measures be adopted to protect the human rights put in jeopardy by anti-terrorism measures.

B. HUMAN RIGHTS ON THE CSR AGENDA

Four basic trends can be identified as catalysers of the new human rights presence in business discourses and practices and at top-level economic forums.¹⁷ First, the controversial process of economic globalization. In an unequal world, globalization causes economies to resort increasingly to internationalization and offshoring, thus spreading productive processes over countries with very different levels of human rights protection. Second, the emerging network society. Under its rules, companies are perceived as not simply economic actors, but as playing their part along with other social actors in interactions with their equivalents in other fields. Third, information and knowledge technologies, which create expectations of greater corporate transparency, while fast-tracking and multiplying content and information on these issues in local and global interactions. Fourth, the emerging risk society, by which company reputation, image and identity are coming under the scrutiny of certain rising values in a civil society that is increasingly informed and mobilized on such issues. One of a company's main assets, on a par with other more tangible assets like product quality and technological innovation, is its reputation. For example, a report of the International Business Leaders Forum¹⁸ has concluded that the risk to companies being associated with human rights violations grew consistently in the eighties but above all in the nineties. It is

¹³ Afghanistan, Belarus, Bosnia and Herzegovina and Ex-Yugoslavia, Burundi, Cambodia, Chad, Cuba, the Democratic Republic of Congo, Haiti, Iraq, Myanmar, occupied Territories including Palestine, the Democratic People's Republic of Korea, Liberia, Sierra Leone, Turkmenistan, Somalia and the Sudan.

¹⁴ Colombia, Haiti and Timor-Leste.

¹⁵ For example, the adoption of the International Convention on the Protection of the Rights of all Migrant Workers and their Families.

¹⁶ Geneva, 17 March–23 April 2004. See <<http://www.unhchr.ch>>.

¹⁷ See the G8 agendas at <<http://www.g8.gc.ca/>> and those of the World Economic Forum <<http://www.weforum.org/>>.

¹⁸ See <<http://www.iblf.org/>>.

therefore in this context that our societies are calling on responsible companies to build into their legitimacy, identity and responsibility a respect for human rights.

C. CORPORATE SOCIAL RESPONSIBILITY AND HUMAN RIGHTS: MAIN INITIATIVES

Beyond initiatives put forward by international organizations in the 80s and the 90s (such as the Declaration on Fundamental Principles and Rights at Work (ILO), the Tripartite Declaration of principles concerning Multinational Enterprises and Social Policies (ILO) and the WHO/UNICEF International Code on Marketing of Breastmilk Substitutes) all aimed at giving companies guidance on the incorporation of human rights criteria into their strategies it ought to be stressed that in recent years, new proposals on these same issues have been consolidating in international, business and third sector circles. Guided by the type of instruments featured in the report of the European Commission, *Mapping Instruments for Corporate Social Responsibility*, we briefly highlight below the most significant instruments in this area, including guidelines and statements of principles, and systems of accreditation and accountability.

Initiatives analysed come from the United Nations Global Compact¹⁹ (henceforth the Global Compact), Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises in Regard to Human Rights²⁰ (UN Norms), the European Union Green Paper on Corporate Social Responsibility²¹ (Green Paper), the OECD Guidelines for Multinational Enterprises²² (OECD Guidelines), the Ethical Trading Initiative Base Code²³ (ETI Code), Amnesty International's Human Rights Guidelines for Companies²⁴ (AI Guidelines), Global Sullivan Principles for Corporate Social Responsibility (Sullivan Principles), Social Accountability 8000²⁵ (SA8000) and the guidelines of the Global Reporting Initiative²⁶ (GRI Guidelines).

1. United Nations Global Compact²⁷

The current Secretary General of the United Nations, Kofi Annan, declared in 1998 that he 'was building a more solid relationship with the business community. Thriving markets and human security go hand in hand: without one we will not have the other'.²⁸ Later, on 31 January 1999 at the World Economic Forum

¹⁹ See <<http://www.unglobalcompact.org>>.

²⁰ See <<http://www.unhchr.ch>>.

²¹ Commission of the European Community, *Green Book. To foster a European Framework for the Social Responsibility of Companies*, COM(2001)366 end, 18.7.2001. See <www.europa.eu.int/comm/employment_social/soc-dial/csr/csr_index.htm>.

²² See <<http://www.oecd.org/daf/investment/guidelines/>>

²³ See <<http://www.eti.org.uk>>.

²⁴ See <<http://www.amnesty.org.uk/business/pubs/hrgc.html>>.

²⁵ See <<http://www.cepaa.org>>.

²⁶ See <<http://www.globalreporting.org>>.

²⁷ *Ibid.*

²⁸ Department of Public Information of the United Nations, DPI/1820/Rev.1 June 1998.

at Davos Kofi Annan launched the so-called ‘Global Compact’, an agreement between the United Nations and the world business community, for the respect and promotion of human rights.

Global Compact urges the business community to respect a series of principles divided into nine sections, inspired by existing international instruments. This new instrument considers as basic respect for rights contained in the Universal Declaration of Human Rights (UDHR) but adds that companies must embrace the other international instruments of human rights, and suggests those that might ‘inspire’ the private sector in their work to act in the protection and promotion of human rights²⁹ for example the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work and the Rio Declaration on Environment and Development. After a round of consultations to evaluate the possibility of incorporating a tenth principle concerning corruption, the Office of Global Compact suggested to the Secretary General of United Nations, K. Annan, the inclusion of this tenth criterion in the summit of 24 June 2004. Global Compact thus includes expectations of society which recognize that companies have responsibility for the impact of their activities. This is a series of voluntary recommendations requiring an effort of cooperation between the different institutions of society that the United Nations has qualified as an open model due to the flexibility and the invitation to shared learning that it implies. Here, company and stakeholder submissions are shared openly and publicly in the Learning Forum.

The nine principles are:

Human Rights

- Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights within their sphere of influence; and
- Principle 2: make sure that they are not complicit in human rights abuses.

Labour Standards

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

Environment

- Principle 7: Businesses should support a precautionary approach to environmental challenges;
- Principle 8: undertake initiatives to promote greater environmental responsibility;
- Principle 9: encourage the development and diffusion of environmentally friendly technologies; and
- Principle 10: Business should work against corruption in all its forms, including extortion and bribery.

²⁹ OHCHR, *Business and Human Rights: A Progress Report*, Geneva, 2000. See <<http://www.unhcr.ch/business.htm>>.

Global Compact therefore invites companies to (1) support and respect the internationally proclaimed protection of human rights within their sphere of influence, and adds that (2) they must ensure that they are not complicit to human rights abuse, an issue that carries a lot of weight as far as the United Nations' position is concerned. In any event, Global Compact is not a performance or assessment tool. It does not provide a seal of approval.

According to the report *Business and Human Rights: A Progress Report*³⁰ that examines progress in the field of the Global Compact, companies who support this initiative must:

- Respect local and international laws principles on human rights spans both legal frameworks.
- Satisfy consumer concerns, given recent allegations about activities violating economic, social and cultural rights like labour rights.
- Promote the rule of law.
- Build community goodwill.
- Select partners, suppliers or subcontract companies according to their respect for human rights.
- Explore human rights situations in the countries where they invest so as not to interfere with international or European sanction policies.
- Introduce and effectively apply social responsibility measures on human rights.

Finally, Global Compact suggests that companies should follow a series of practical steps for the integration of human rights into their corporate strategy:

- Identify issues relating to human rights that a company can and must confront. This will vary considerably depending on the sector and the country in which they operate.³¹ The analysis of the impact of business activities on human rights and their relationships must help to define the corresponding policy and its implementation.
- Carry out a policy based on international instruments.
- Define mechanisms for implementation.
- Dialogue/Collaboration: For many companies, this is the first step and consists of starting from a consensus between the different actors involved, facilitating transparency in the process.
- Train own and foreign staff on corporate principles on human rights issues.
- Develop internal and specialist capacity on human rights, devoting human resources to promotion and surveillance of this issue at company premises.
- Involve company partners in respect for human rights contents in corporate politics, establishing fluent communications.
- Establish a mechanism of internal audit on the issue.
- Establish mechanisms for independent verification and above all public communication of the results.

³⁰ *Ibid.*

³¹ It can be seen that while most companies focus on employment questions, mining and textile companies need other more complex approaches.

Recent years have seen the development of numerous initiatives for partnership between the business sector and various United Nations agencies. But what is new in Global Compact is that it calls on the business sector to become directly involved in the implementation of human rights globally, and to actively convert human rights into a framework of reference for their actions. Proof of the enthusiasm generated by this initiative in the business field is the recent launching of a series of national platforms (in Spain, France, Egypt, Japan, etc.) that attempt to offset criticisms made by the third sector on the lack of guarantees on monitoring of commitments by certain companies.

2. United Nations Norms on the Responsibility of Transnational Corporations³²

The second United Nations initiative originated in its Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now Sub-Commission on the Promotion and Protection of Human Rights) that in 1998³³ established a Working Group of 5 experts on working methods and activities of transnational corporations.³⁴

This Sub-Commission decided to establish for a three-year period a working group with five members with the following mandate:³⁵

- To identify and examine the effects of working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights, and the right to development, as well civil and political rights;
- To examine, receive and gather information, including any working document prepared by a member of the Sub-Commission, on effects of the working methods and activities of transnational corporations on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights;
- To analyse the compatibility of the various international human rights instruments with the various investment agreements, regional as well as international, including, in particular the Multilateral Agreement on Investment;
- To make recommendations and proposals relating to methods of work and activities of transnational corporations in order to ensure that such methods and activities are in keeping with the economic and social objectives of the countries in which they operate, and to promote the enjoyment of

³² See <<http://www.umn.edu/humanrts/links/businessresponsabilitycomm-2002.html>>.

³³ Sub-Commission on Prevention of Discrimination and Protection of Minorities of the European Economic and Social Committee of the United Nations, *The relationship between enjoyment of economic, social and cultural rights and the right to development, and the working methods and activities of transnational companies*, Resolution 1998/8 of 20 August 1998, E/CN.4/Sub.2/RES/1998/8.

³⁴ Mr El-Hadji Guisse (Africa), Mr Zhong Shukong (Asia), Mr Asbjorn Eide (Western European and other States), Mr Paulo Sérgio Pinheiro (Latin America), Ms Antoanella Iulia Motoc (Eastern Europe).

³⁵ *Ibid.*

- economic, social and cultural rights and the right to development as well as of civil and political rights;
- To prepare each year a list of countries and transnational corporations indicating, in United States dollars, their gross national product or financial turnover, respectively; and
 - To consider the scope of the obligation of the States to regulate the activities of transnational corporations, where their activities have or are likely to have a significant impact on the enjoyment of economic, social and cultural rights and the right to development, as well as of civil and political rights of all persons within their jurisdiction.

Although the mandate did not specify as an issue for debate the creation of an instrument to regulate the activities of transnational corporations, one of the proposals that was discussed at the first session in Geneva in August 1999 was the text 'Principles on the conduct of companies with regard to human rights'. This was prepared by David Weissbrodt (University of Minnesota), an expert in the field, whose main proposal was the establishment of a code aimed at company regulation.³⁶ The voluntary or compulsory nature of this proposal became the object of a fierce debate between supporters of a binding regulation (some NGOs with consultative status) and the defenders of a simple declaration of principles.

Finally on 13 August 2003, the Sub-Commission unanimously adopted the Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises in regard to Human Rights that were included on the agenda for discussion in the 60th session of the United Nations Human Rights Committee in 2004. However it seems that the proposal was adjourned in the expectation of a new report of the United Nations High Commissioner for Human Rights, to be reconsidered in the 61st session.

Main criteria established by the norms:

- Corporations shall ensure that they have no negative impact on the enjoyment of human rights in its widest sense.
- Corporations shall establish internal mechanisms that ensure compliance with human rights.
- Corporations shall submit to independent monitoring.
- Corporations shall ensure non-discriminatory practices.
- Corporations shall not benefit from contexts where International Humanitarian Right is violated.
- Corporations shall respect labour rights.
- Corporations shall maintain fair marketing practices.
- Corporations shall respect the environment and contribute to sustainable development.

³⁶ Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Economic and Social Committee of the United Nations, *Principles Relating to the Human Rights Conduct of Companies*, working document of Mr David Weissbrodt, E/CN.4/Sub.2/2000/WG.2/WP.1 of 25 May 2000, pp. 11–13.

- These criteria shall be applicable to contractors, sub-contractors and suppliers.
- Corporations shall provide prompt, effective and adequate reparation to persons, entities and communities.

3. European Union Green Paper on Corporate Social Responsibility³⁷

Corporate Social Responsibility (CSR) and its linking with human rights has gradually become part of the agenda of the European Union (EU). The European Parliament (EP) began to examine the subject in the late 1990s, but it was not until 2001 that the Commission published its Green Paper on CSR³⁸ and July 2002 when they completed their strategy with a Communication³⁹ on the subject.

The first initiative on the social responsibility of European companies in the EP took place in the nineties. At the end of 1998, the EP discussed a resolution on creating a code of conduct for European companies who operated in SDS (Still in Development States). The EP had over the years supported the need for development and monitoring of codes of conduct addressed at the business sector. In December 1996, the Annual Report on Human Rights called for the creation of a code for European companies operating in third countries to force them to respect human rights (including civil, social, economic and environmental rights) with the inclusion of control and sanction mechanisms.

In December 1997, the EP approved a report on offshoring and direct foreign investments in third countries, in which the need was reiterated for the creation of a code of conduct devoted to European companies based in human rights. It is recommended that companies undertake to respect in their activities the requirements that figure on the list in the Official Journal of the EC as guarantees of human rights.

Finally, the 'Resolution on EU standards for European enterprises operating in developing countries: towards a European code of conduct' of the EP (A4-0508/98), a proposal by Richard Howitt was approved in January 1999. If we refer to the contents of the resolution, we note the strong appeal to the Commission for (1) the establishment of a code of conduct; (2) the creation of the independent and impartial 'European Monitoring Platform' to which formal complaints could be made; (3) as a temporary measure, the EP would designate specialist *rapporteurs* and hold public sessions of the EP with the presence of observers; (4) the inclusion of the Declaration of the ILO on labour principles and rights (1998) in EU agreements with third countries;

³⁷ Commission of the European Community, *Green Paper on Promoting a European Framework for Corporate Social Responsibility*, Brussels, 18.7.2001 (COM (2001) 366 end) pp. 14–16. See <http://www.europa.eu.int/comm/employment_social/soc-dial/csr/csr_index.htm>.

³⁸ *Ibid.*

³⁹ Commission of the European Community, *Communication from the Commission concerning Corporate Social Responsibility: a Business Contribution to Sustainable Development*, COM (2002) 347 – end, 2 July 2002.

(5) the proposal of incentives for companies to comply with international standards and facilities for access to EU funding and (6) the possibility of acquiring a 'social label'.

Some years later, after the subject had matured sufficiently within the European Union, the Green Paper on promoting a European framework for Corporate Social Responsibility⁴⁰ addressed this issue in terms of the role that could be played by companies that decide voluntarily to contribute to a better society. The paper is a direct contribution to the goal of making the EU the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion (March 2000 Lisbon European Council). The Green Paper also makes clear, however, that codes of conduct do not substitute for national and international laws, but can complement them.

Regarding human rights, the Green Paper argues that CSR is closely linked to human rights, above all in international activities and supply chains. The Paper also mentions the environment and sustainable development in its references to human rights, implying a broad interpretation of corporate human rights that includes what have been defined as 'third generation rights'. There is a growing conviction, it asserts, that the impact of company activities on the rights of employees and local communities goes beyond the field of labour rights as such. The EU also argues for the need for information and training in this field, both within and outside the company. Finally, it highlights the need for gradual and continuous improvement in levels of protection for human rights, including proactive action to promote human rights in the corporate arena.

4. OECD Guidelines for Multinational Enterprises⁴¹

The OECD Guidelines are voluntary recommendations addressed by governments to multinational enterprises operating in or from adhering countries. These Guidelines form part of the OECD Declaration on International Investment and Multinational Enterprises adopted in 1976 to facilitate direct investment in its Member States. They provide voluntary principles and standards for responsible business conduct, forming the first multilateral initiative taken by several governments in the corporate human rights field. The 2000 Review of the Guidelines recommends observance of the Guidelines by enterprises wherever they operate, even outside the OECD area.

Areas dealt with in the Guidelines:

- Labour and industrial relations,
- Human rights and environment,
- Information disclosure,
- Competition, taxation,
- Science and technology.

⁴⁰ *Ibid.*

⁴¹ See <<http://www.oecd.org/daf/investment/guidelines/>>.

The Guidelines aim to encourage positive contributions to corporate economic, environmental and social progress, and to minimize difficulties that might arise due to their incorporation. They are intended to create a common international framework of reference to complement corporate initiatives in the field. This has involved the creation of an implementation system sustained by three core concepts: National Contact Points, the OECD Committee on International Investment and Multination Enterprises (CIME) and the advisory Committees to the OECD of business and labour federations.

It should be noted that the Guidelines were reviewed in 2000 to adjust them to the new challenges presented by globalization, incorporating additional references to certain human rights. This updating of the original 1976 provisions (in a text already revised in 1979, 1982, 1984 and 1991) introduced recommendations relating to the elimination of child labour and forced labour, as well as recommendations on human rights in general, corruption, consumer rights and the need for transparency.

5. Ethical Trading Initiative Base Code⁴²

The Ethical Trading Initiative (ETI) is an ‘alliance of mainly retail or consumer goods’ companies, NGOs and trade unions operating in the UK, whose aim is to improve labour conditions in the global supply chains which produce goods for the UK market’.⁴³ The ETI Base Code and the accompanying Principles of Implementation contains nine clauses which reflect the most relevant international standards with respect to labour practices. The aim of the ETI is to identify, develop and encourage good practice in the implementation of labour rights. The Principles of Implementation set out general principles for the implementation of the Base Code.

The Base Code refers to the following circumstances:

- Employment is freely chosen,
- Freedom of association and the right to collective bargaining are respected,
- Working conditions are safe and hygienic,
- Child labour shall not be used,
- Fair living wages are paid,
- Working hours are not excessive,
- No discrimination is practised,
- Regular employment is provided, and
- No harsh or Inhumane treatment is allowed.

Thus, this initiative binds companies strictly to compliance with labour rights.

⁴² See <<http://www.ethicaltrade.org>>.

⁴³ *Ibid.*

6. Amnesty International's Human Rights Guidelines for Companies⁴⁴

Amnesty International argues in its guidelines that corporations have the responsibility to contribute to the proactive promotion and protection of human rights. Companies, they say, must oversee the rights of their employees. Further, they have the moral and legal responsibility to use their influence in promoting respect for human rights wherever they operate. Here Amnesty International tells companies must go beyond specifying policies and practices on staff and safety systems. They must not stand aside if they could pressurize governments or armed groups who are committing violations of human rights within their areas of influence.

The guidelines refer to the following criteria on human rights:

- Community rights,
- Labour rights,
- Right to non-discriminatory treatment,
- Right to freedom from slavery,
- Health and security,
- Freedom of association and right to collective bargaining, and
- Equitable employment conditions.

These guidelines offer companies a basic framework for developing human rights policies in a wider sense and provide a checklist of principles based on internationally accepted human rights standards that are embodied in a range of UN conventions and protocols.

7. Global Sullivan Principles for Corporate Social Responsibility⁴⁵

In 1977 the Reverend Leon Sullivan launched the Sullivan Principles with the aim 'to persuade US companies with investments in South African to treat their African employees the same as they would their American counterparts'.⁴⁶ These principles were then re-launched in 1999 as the Global Sullivan Principles for Corporate Social Responsibility and they are supposed to be applicable to companies operating in any part of the world.

The Global Sullivan Principles refer to the support for:⁴⁷

- Universal human rights,
- Equal opportunities,
- Respect for freedom of association,

⁴⁴ See <<http://www.amnesty.org.uk/business/pubs.shtml#guidelines>>.

⁴⁵ See <<http://www.globalsullivanprinciples.org>>.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

- Levels of employee compensation,
- Training,
- Health and safety,
- Sustainable development,
- Fair competition, and
- Working in partnership to improve quality of life.

According to the organization, a company adhering to the Principles is expected to provide information which demonstrates its commitment to them. The Principles have been endorsed and implemented by companies, business organizations, business councils, non-governmental organizations, local authorities, etc. To date (April 2004), around 100 companies have expressed their commitment with the Principles worldwide.

8. Social Accountability 8000⁴⁸

Social Accountability International (SAI), a non-profit organization based in New York (known until recently as the Council on Economic Priorities Accreditation Agency), addressed the growing concern about labour conditions around the world by developing in 1998 a standard for workplace conditions (Social Accountability 8000), as well as a system for independently verifying factories compliance. As the organization states, 'SA8000 is promoted as a voluntary, universal standard for companies interested in auditing and certifying labour practices in their facilities and those of their suppliers and vendors. It is designed for independent third party certification'.⁴⁹ SA8000 certifies compliance through independent auditors. On human rights, SA 8000 refers to labour rights and envisages the following nine principles based on international human rights norms such as the International Labour Organisation conventions, the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights.

SA8000 nine principles:

- Child labour,
- Forced labour,
- Health and safety,
- Compensation,
- Working hours,
- Discrimination, and
- Free association and collective bargaining.

This proposal, which allows companies themselves to manage implementation of labour rights, includes both negative rights (prohibition of forced labour, for example) and positive rights (stating for example that companies must ensure a living wage).

⁴⁸ See <<http://www.cepaa.org>>.

⁴⁹ *Ibid.*

9. Global Reporting Initiative Guidelines⁵⁰

The Global Reporting Initiative (GRI), with headquarters in Amsterdam, is 'a multi-stakeholder process and independent institution whose mission is to develop and disseminate globally applicable Sustainability Reporting Guidelines'.⁵¹ The GRI voluntary Guidelines released in 2000 and aimed to help organizations to report on the economic, environmental, and social dimensions of their activities, products, and services were reviewed in 2002⁵² after a wide multi-stakeholder and consulting process. These currently form the main international frame of reference for CSR reporting and incorporate parameters based on human rights.

This initiative was set up in 1997 by the Coalition for Environmentally Responsible Economies (CERES) but in 2002 the GRI became independent. Nowadays it is an official collaborating organization of the United Nations Environment Programme (UNEP) and works in cooperation with the Global Compact. Nevertheless, the GRI also incorporates the active participation of a wide range of stakeholders such as corporations, governments, non-governmental organizations, consultancies, accountancy organizations, business associations, rating organizations, universities, and research institutes which contribute to the ongoing development of the GRI materials. In fact, a series of additional instruments has been developed to facilitate reporting; for example, technical protocols, sector supplements and issue guidance documents. To date, more than 400 organizations all over the world have published reports that adopt part or all of the Guidelines. Nonetheless, one of the most frequent criticisms of this system is that the GRI does not assess the conformity of reports or certify compliance regarding the Guidelines.

In the section devoted to social reporting, the GRI uses several human rights indicators based on a series of international human rights instruments. For example, the Tripartite Declaration of Principles relating to Multinational Enterprises and Social Policies (ILO) and the OECD Guidelines for Multinational Enterprises.

Social indicators are based on the following labour rights and other human rights:

Labour practices and decent work:

- Employment
- Labour/management relations
- Health and safety
- Training and education
- Diversity and opportunity

Human rights:

- Strategy and management
- Non-discrimination
- Freedom of association and collective bargaining

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² A fresh revision is expected in 2005.

- Child labour
- Forced and compulsory labour
- Disciplinary practices (additional indicator)
- Security practices (additional indicator)
- Indigenous rights (additional indicator)

This reporting initiative emphasizes that ‘an organization’s contribution in the area of labour practices should not be simply to protect and respect basic rights; it should also be to enhance the quality of the working environment and value of the relationship to the worker (...). Human rights indicators under human rights help assess how a reporting organization helps maintain and respect the basic rights of a human being’.⁵³ Unlike other initiatives, the GRI also includes a reference in its section on group rights to the rights of indigenous peoples.

10. Corporate Initiatives

If initiatives taken from the company side are examined we find that, in practice, increasing numbers of these are citing human rights in their corporate codes of conduct or triple bottom line reporting as universal values governing their actions. Others, without making explicit mention of human rights, incorporate them in both policy and practice.⁵⁴ Also significant over the last ten years is how quickly human rights are being embraced by companies. This growing response to a new and changing scenario has sometimes been very high-profile, in the wake of the numerous scandals, trials and campaigns implicating some companies and their *anything goes strategies*. At other times it has been a discrete process of gradually impregnating corporate business strategies elsewhere.

In this first, reactive – phase, largely during the eighties and nineties, companies began referring to human rights in their corporate codes in reaction to surveillance by certain organizations and media, denouncing examples of poor company management, mainly in transnationals in the textile and mining sectors. Here, a growing number of European companies and several key economic sectors mainly in OECD countries began constructing their human rights responsibilities by adopting a code of conduct or statement of principles.⁵⁵

According to a survey carried out by the Ashridge Center for Business and Society on the 500 most important companies in the world (*Fortune*), the following human rights appear in their statements of principles, codes of principles or corporate strategy.

⁵³ *Ibid.*

⁵⁴ Mikael K. Addo, ‘Human Rights and Transnational Corporations: An Introduction’ in Mikael K. Addo (ed.), *Human Rights and the Responsibility of Transnational Corporations*, Kluwer Law International, London, 1999, pp. 28–29.

⁵⁵ OECD (1998) Trade Directorate, *Codes of Corporate Conduct: An Inventory*, OECD, TD/TC/WP(98)74/End.

Discrimination based on race, sex, language or political or religious grounds	94%
Occupational safety and health at work	92%
Rights of local communities	66%
Right of people to protect and respect their cultural identity	58%
Right of association and trades union rights	38%
Prohibition of child labour	34%
Prohibition of forced labour	30%
Reference to UN international human rights instruments	16%

Source: Based on Andrew Wilson, Chris Gribben, *Business Responses to Human Rights*, Ashridge Center for Business and Society, April 2000, p. 15.

Later, a growing number of companies became involved, not just developing a discourse on their web pages but actually putting into practice specific human rights policies.⁵⁶ During this second-proactive-phase, more and more companies have been adopting corporate policies on human rights,⁵⁷ diagnosing risks in human rights terms and introducing appropriate mechanisms, methodologies and internal and external assessment systems. So it should come as no surprise that during the current more mature phase companies are moving from words to deeds and starting to create new instruments for management. By creating new challenges, methodologies and systems of assessment for organizations to manage, this development will undoubtedly be one of the keystones in company image and reputation and company legitimacy of the future.

Here, the Ashridge Center for Business and Society also stated that:

44% of companies recognized that their codes make some reference to human rights (above all European companies and those in the mining sector)
60% of companies had someone responsible for human rights management (a department or person assumes this responsibility)
60% of companies had someone or a department responsible for human rights management
36% of companies say they have at some time decided not to proceed with a foreign investment because of concerns over human rights issues although many of these decisions are not viewed as human rights decisions but are considered simply as business decisions.
19% of companies recognized having disinvested from a particular country because of concerns about human rights issues (above all in the USA)

Source: Andrew Wilson, Chris Gribben, *Business Responses to Human Rights*, Ashridge Center for Business and Society, April 2000, pp. 2-3.

⁵⁶ Christopher L. Avery, *Business and Human Rights in a time of Change*, Amnesty International UK, London, 2000.

⁵⁷ Peter Frankental and Frances House, *Human Rights, Is It Any of Your Business?* Amnesty International UK and The Prince of Wales Business Leaders Forum, London, 2000.

After analysing these initiatives from different fields it can be said to be empirically proven that human rights are indeed on the agendas of companies, international bodies and the third sector.

However, this process is not free from debate and there are currently many and diverse debates on the matter (not only on the legal vs voluntary issue⁵⁸) which basically focus on following questions: (1) What human rights should the company take into account? Are we talking about labour rights alone or about the impact of companies on a wider range of human rights; and (2) What is the area of influence of companies on human rights? Which stakeholders do companies consider in their human rights strategy, and consequently what is the scope and what are the limits of their responsibility?

To help explore the terms of this debate we first analysed the type of human rights mentioned by some of the main CSR initiatives analysed above. The attached table gives a summary of which human rights the different CSR initiatives linked to the corporate field.

Here we can decide whether the various instruments refer to respect for human rights in their widest sense, including first, second and third generation rights, or whether they are limited to the labour and environmental rights traditionally linked to corporate CSR. It was also thought appropriate to give cases where the initiative refers to international human rights instruments, since it was felt that these should be the main reference points for corporate human rights strategy.

Main instruments on CSR and human rights.

Initiatives/ references to:	Human rights	Labour rights	Environmental rights	Reference to international instruments
<i>Instruments</i>				
<i>for promotion</i>				
Global Compact	√	√	√	√
UN Norms	√	√	√	√
Green Paper	√	√	√	√
OECD Guidelines	√	√	√	√
ETI Code		√		√
AI Guidelines	√	√		√
Sullivan Principles	√	√	√	
<i>Accreditation</i>				
<i>systems</i>				
SA8000	√	√		√
<i>Accountability and</i>				
<i>reporting systems</i>				
GRI Guidelines	√	√	√	√

Source: Own figures from European Commission, Directorate – General for Employment and Social Affairs, *Mapping Instruments for Corporate Social Responsibility*, European Commission, Luxembourg, 2003.

⁵⁸ Rory Sullivan (ed.), *Business and Human Rights. Dilemmas and Solutions*, Greenleaf Publishing, Sheffield, 2003, pp. 22–32.

As the table shows, most CSR instruments analysed include as valid parameters for promotion, certification and/or reporting a wide range of human rights, not limited to labour rights. Such CSR instruments include what has been called the universal, indivisible and inherent nature of human rights, thus linking companies to international standards of first, second and third generation human rights in their area of influence and their daily *praxis*. Judging from our analysis, there are no ‘first-class’ and ‘second-class’ human rights in Corporate Social Responsibility. However, initiatives do place special emphasis on labour rights and rights relating to the protection of the environment. This takes us back to the proposal of the Green Paper on promoting a European framework for Corporate Social Responsibility, which argues that there is a growing conviction that company activities have an impact on the rights of its employees and local communities that goes beyond the labour rights field.

As regards how to define the area of influence of the company on human rights areas and the scope and limitations of corporate responsibility, it is salient to remember the focus proposed by the Global Compact. This invites companies not only to respect the international protection of human rights in their area of influence, but also to ensure that they are not complicit in human rights abuses. It is common these days to assume that direct responsibility (in respect for human rights in a company’s area of influence, including suppliers, customers and partners) goes hand in hand with a broader indirect responsibility, regarding company complicity in human rights abuses committed by other actors (dictatorships, armed groups, etc.), and in which it plays a negative or positive role.

The area of influence any company over human rights will be strongly influenced by the type of relationships it establishes, and with which of its stakeholders. Stakeholder theory presents a systematic view of the relationships a company establishes with its environment, in other words with each individual or group of individuals who can affect or be affected by its objectives or activities. It therefore gives a face to the groups for whose human rights the company is responsible. Using this perspective, a company assumes its responsibilities and evaluates the consequences of its actions in the social sphere. Seen from the stakeholder viewpoint, company decision-making is achieved by evaluating economic and social effects, but also human rights effects on its stakeholders. The main effect of this approach is that the company determines the scope of its human rights responsibility by taking the people affected as the central axis of its human rights strategy.

D. THE COMPANY AND HUMAN RIGHTS: PENDING AGENDA ISSUES

In the introduction we talked about a new scenario, where new responsibilities are emerging, due to constant reconfiguration of relationships of power between civil society, the State and the company. The latter is not considered to be a mere economic actor but a social actor who interacts with others, and through its very existence shapes our *modus vivendi* and *modus operandi*, crucially determining individual enjoyment and use of human rights. In this context, if we read the

preamble of the United Nations Universal Declaration of Human Rights (UDHR) about moral aspects of the system for international protection of human rights, we read:

‘The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every **organ of society**, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction’. (bold added).

This text argues that both companies, as authentic economic and social organs of present-day societies, and individuals jointly with States and nations, are invited to respect and ensure respect for the principles proclaimed in the UDHR. Although the UDHR is not in itself legally binding, it represents a universal commitment to the defence of the basic rights of the individual. Apart from this, Article 30 of the UDHR states that ‘Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein’.

Today, the Gordian Knot still waiting to be undone is, beyond how to manage human rights in the company, how to measure business management in terms of human rights. In this sense, companies have recourse to creating indicators to help them evaluate their compliance with human rights and to correct inappropriate practices and processes. The Human Rights Compliance Assessment of the Danish Center for Human Rights⁵⁹ is an instrument that tries to bring human rights into corporate management through a specific database on policies, practices and indicators of assessment.

Seen from this perspective, CSR and human rights policy may be on the way to becoming a definitive part of overall business strategy, included in corporate strategy and decision-making. Today the challenges of international competitiveness demand that companies not only know how to manage crises of reputation in the media, but also gain comparative advantage through their human rights record.

No less important in this process is its spin-off: the establishment of new relationships, new collaborations with the third sector, involving co-responsibility for and ‘co-construction’ of projects. During this construction, in which company managers engage in constant internal-external interaction, dialogues with stakeholders are indispensable. We are looking, then, at a challenge to capacity for participation and commitment. A challenge which will end in the conclusion that without respect for human rights, CSR could not exist. Although respect for human rights might be seen as an integral part of responsible 21st-century businesses and business leadership, we must bear in mind that this is a complex issue, presently under construction. And like other process under construction, it suffers all the contradictions and difficulties common to all creative processes.

⁵⁹ See <<http://www.humanrightsbusiness.org/>>.

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CORPORATE SOCIAL RESPONSIBILITY

*The Corporate Governance of the
21st Century*

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