

**ACCOUNTABILITY OF PRIVATE BUSINESSES:
A QUESTION OF SUSTAINABLE DEVELOPMENT AND HUMAN RIGHTS**

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This we know: the earth does not belong to man: man belongs to the earth... All things are connected like the blood which unites one family... Whatever befalls the earth, befalls the sons of the earth. Man did not weave the web of life: he is merely a strand in it. Whatever he does to the web he does to himself.¹

Introduction

This paper sets out to define topics and offer a framework for discussion of the human rights obligations of private business in the context of recently developed environmental principles and international standards for corporate activities.

The appearance of business ethics and principles, and international standards for business practices, as well as the monitoring of the corporate world from an environmental optic, stems from the growing world-wide consciousness of the need to foster sustainable growth, to protect our environment and strive for sustainable exploitation of our natural resources. The issues surrounding this world-wide trend, have been most specifically focussed on the environmental aspects of economic development; that is, on environmental development considered as the sustainable use of natural resources.

The debate of the incorporation of human rights into business or corporate ethics and principles, and into international standards departs from the premise that the natural environment and humanity are integrally linked. In this essay, we argue that sustainable development implies not only ecological sustainability (which is generally concerned with environment) but also social sustainability (which is integrally linked to human rights). It follows that just as corporate activities have an impact on environmental conditions, so do they on the quality of life of humans. In this respect, when we speak of environmental sustainability, and when we address corporate activities which threaten our environment, human rights come into (or “should” come into) the discussion arena, as an inevitable contemporary concern of our society and of its sustainable development.

The first question posed for this paper in the Terms of Reference was: *What are the most serious environmental impacts of corporate activities that raise potential human rights concerns.* If we were to attempt to strictly separate corporate activities which affect environmental sustainability from those that affect human rights, we could conceivably come up with an endless list of environmental impacts, of human rights impacts, and of impacts that affect both environment and human rights. The list would be as long as there were companies and corporate activities, and as long as there were new companies there would be new items to add to the list. Furthermore, we would continue to unduly separate environmental issues from human rights issues, when instead these should be thought of as part of a greater whole.

¹ Letter from the Chief Seattle, patriarch of the Duwamish and Squamish Indians of Puget Sound, to U.S. President Franklin Pierce in 1855. Reprinted in the *Illustrated Weekly of India* 16, May 20, 1984. See J.L. Clark, “Thus spoke Chief Seattle: The Story of an Undocumented Speech”, 17 Prologue: The Journal of the National Archives 58 (Spring 1985)

We suggest to rephrase the question and think of the issues from an alternative perspective. That is, *How might we broaden the framework presently used to promote environmentally sustainable development, to include a broader interpretation of sustainable development which incorporates protection for human rights.* The result would be a broader and more comprehensive framework for the promotion of sustainable development which addresses a more integral set of issues, namely, the rational exploitation of natural resources and the concurrent protection of human rights.

In this century a significant body of laws and treaties governing human rights have been developed. And in the last several years, we have seen principles and international standards appear to establish a social and legal framework for the promotion of environmentally sustainable economic development. However, these two areas of international law have not, as of yet, found common ground, or complimentary or collaborative dynamics. Yet an important legal base exists to begin to bridge environment and human rights.

This paper reviews existing principles and international standards for the promotion of sustainable environmental development as concerns corporate activities, and analyses these for their human rights context. It suggests areas where human rights issues can be further developed, or where they might compliment or buttress these principles and international standards. The paper attempt to uncover areas of overlap of these bodies of law, in hopes to foster this relationship and in so doing, develop a broader, more comprehensive and integral promotion of sustainable development from a corporate perspective.

The paper is organized as follows: Section I is a brief introduction on the concepts of integrating environment and human rights protection. Section II reviews some of the more prominent existing principles and international standards on corporate activity and environmentally sustainable development. In this section an assessment is made of these principles and international standards, qualifying their focus in terms of attention to both environmental promotion and human rights concerns. Section III reviews enforcement mechanisms of environment and human rights compliance of corporate activity, and draws conclusion on the state of the principles and international standards, and makes recommendations as to how human rights can be further incorporated into the sustainable development debate. Section suggests topics for further research.

SECTION I Linking Human Rights and Environment

Today more than ever, the world community is realising the importance of the natural environment to human life and to the sustainable development of our planet. Such is the value assigned to these issues that the world agenda has converged on environment and human rights in recent international debate. The Rio Environmental Summit (1992), the World Conference in Vienna on Human Rights (1993), the Cairo Conference on Population and Development (1994), the Istanbul Conference (Habitat II, 1996), are prime examples of the world's convergence on environment and human rights, and of the urgency of addressing the issues surrounding them.

Society's view of artificially induced environmental degradation has graduated from recognising the harm of development to natural resources, to the recognition that the harmful disturbance of our planet's biodiversity directly and negatively impacts human life.

Yet in practice, and in the development of international jurisprudence, this view has yet to find a formal place and framework in the development agenda. Recent international jurisprudence addressing the environment and human rights, has focused on these areas through separate legal frameworks, despite the view that the linkages between environmental abuses and human rights abuses are in some cases more than evident.

We have arrived to the end of the millennium with the understanding that human life is not possible without the sustainable functioning of our natural ecosystems. We can easily conclude that the deterioration of our environment, hence, puts our very lives at risk. The unsustainable development of our environment threatens thus, our *human right to life*². This is a first rapprochement of the overlap between environment and human rights. If we explore this relationship further, we quickly discover that there are many direct or indirect overlaps between our environment and our basic human rights. The existence of a *healthy and sustainable environment* is a condition *sine qua non* for the existence of other basic human rights. We can name a few of these basic human rights which are inextricably linked to environmental conditions:

- **The right to health**, evidently affected by environmental contamination, including (but not limited to) environmental abuses such as water source contamination, air contamination, and noise pollution
- **The right to property** is often violated by commercial intrusion into legally protected geographical regions (a recurrent example is the intrusion of commercial ventures into indigenous lands for the extraction of natural resources³). The value of our property is also affected by water, air and noise contamination of commercial activity.⁴
- **The right to human development** can only be viewed as sustainable development with consideration for our environmental habitat.
- **The right to equality** is greatly affected by the unequal burden shared by certain sectors of society which are the targets of environmental contamination. Toxic dumps⁵ systematically appear in geographical areas of population sectors less able to defend themselves or to protest against such abuses. (*Environmental discrimination*)
- **The right to participate** is a basic premise of democratic societies, not only participation understood as the individual's right to participate in decisions (investment decisions, urban planning decisions, commercial policy) which directly or indirectly affects our habitat, but also participation in terms of an individual's right to be informed about what goes on in his/her habitat.
- **The right to information** is elemental to exercise in order to take informed action to guarantee our safe and healthy environment.

² For a comprehensive conceptual explanation of the right to life see A.A. Cancado Trindade, "The Parallel Evolutions of International Human Rights Protection and of Environmental Protection and the Absence of Restrictions upon the Exercise of Recognised Human Rights", *Revista del Instituto Interamericano de Derechos Humanos*, Nro. 13, pp. 50 – 76.

³ E.g. the case of Shell and the Ogoni in Nigeria, Texaco in Ecuador, or SOLCARSA and the Awas Tingni in Nicaragua.

⁴ The major decision of the European Human Rights Court on environmental harm as a breach of the right to private life and the home is *Lopez-Ostra v. Spain*. See *Lopez-Ostra v. Spain*, ECHR (1994), Series A, No. 303C.

⁵ E.g. the case of the communities of Louisiana in the U.S., or the Santiago del Estero community (la Argentina town) in Argentina.

These are just some of the areas where human rights and environment clearly overlap⁶. What is most relevant in this analysis is that society, and particularly the actors which are behind the efforts to promote environmental legislation and/or environmental ethics and conduct, and human rights, recognise the inextricable nature of these fields; that we understand that we cannot think of our environment as somehow removed from our basic human rights. We need to think of the environment as a context for our human development, that is, that the environment is an integral part of our human condition, and that everything and anything that influences our environment, directly influences that condition. In some cases the relationship will be more direct than others, but ultimately, our human condition is always affected when our environment is affected.

In a corporate analysis of this division of approach, the dichotomy is evident. The environmental approach is (in practice) understood as predominantly *external* to corporate activity, that is, the impact of the activity is usually measured as an external consequence of the activity. Company A pollutes a river by dumping its residue into the river. The toxic contamination is an environmental impact viewed as *external* to the company.

The human rights analysis is conversely, largely (and in practice) *internal*. That is, the human rights issues raised in corporate activities usually focus on worker conditions (worker rights). Company A employs children, or Company B discriminates against women workers. These are treated as human rights issues and are generally *internal* to the operations of the company (that is they are contained within the internal operations of the company).

The approach of environmentalists and human rights activists to address abuses to environmental and human rights, as well as legislation, principles and international standards, and institutional resources to address the consequences of abusive corporate activities and conditions, and the reaction mechanisms for each, also remain *external* or *internal* to the issues. That is, the environmental approach rarely looks inward, while the human rights approach rarely seeks to address external consequences. This is where the existing frameworks used to address the environment and human rights need to break their internal/external confines.

If we go beyond our traditional approach, and examine the issues from a broader and more integral perspective, we realise that the contamination of the river detrimentally affects the health conditions of the individuals who drink, eat or use the river for leisure, and consequently their human right to life, and to clean health, are violated. Yet in practice experimented human rights mechanisms are rarely evoked by environmentalists to address environmental abuses⁷. The approaches to address external and internal issues arising from corporate activity, remain largely within the external and internal boundaries of the environmental or human rights mechanisms developed to address them.

⁶ For a further analysis on how human rights and environment overlap see Alexandre Kiss, "Sustainable Development and Human Rights", *Human Rights, Sustainable Development and Environment*, IIDH-BID, 2nd. Ed. (1995), pp. 29-38.

⁷ For a review of environmental cases in international human rights systems see Dinah Shelton, "The Jurisprudence of International Human Rights Tribunals Concerning Environmental Matters", (CEDHA publication, forthcoming, 2000).

The continued separation (in approach) of the protection of environment and human rights, fails to take advantage of the complimentary nature of the issues, and more importantly, the availability of legislation, control mechanisms, and institutional resources available in each of the fields, to promote broader sustainable development. If we continue to foster this separation, we continue to isolate issues that are part of a greater inseparable whole. The rapprochement of the protection of the environment and human rights is the only way to promote truly sustainable and integral development.

SECTION II International Environmental Corporate Framework

The following is a list and analysis of existing international environmental principles and standards which attempt to provide a framework to regulate corporate activity in terms of environmental sustainability. These are considered among the most advanced international standards for corporations on environmental sustainability. The section reviews each set of standards and comments on their relevance towards safeguarding against corporate violations of human rights.

CERES Principles

Following the Exxon Valdez oil spill of 1989, a group of concerned consumers, investors and environmentalists formed the Coalition for Environmentally Responsible Economies (CERES) and developed a set of principles known as the CERES Principles. The CERES Principles are a model code of environmental conduct intended for corporations regardless of size or industry. By adopting these principles, the corporation makes a public commitment to achieve continuous environmental improvement and to become accountable for the environmental impact of all of its activities. As of September 1999, over 55 companies had endorsed the CERES Principles.⁸ These include influential corporations such as General Motors, Polaroid, and Timberland as well as Ben & Jerry's Ice Cream, The Body Shop International, and Domino's Pizza Distribution Corporation. Although not widely adopted, the CERES Principles have increased international public awareness on corporate environmental accountability and served as a model for future initiatives.⁹

The CERES Principles are perhaps the most successful in addressing human rights concerns within the context of environmental corporate ethics. While primarily concerned with the environmental conduct of corporate activity, they address several issues which incorporate health and safety for workers and communities in several of the principles they enumerate. In this respect, they have crossed the bridge linking human rights and environmental concerns. On the principles of Public Information and Risk Reduction, they successfully establish the link between the *internal* and the *external*, emphasising the commitment to “inform in a timely manner everyone who may be affected by conditions [*external*] caused by our company that might endanger health, safety or environment” and “minimize the environmental, health and safety risks to our employees [*internal*] and the communities

⁸ For more information on the CERES Principles see www.ceres.org

⁹ Hunter, Salzman, Zaelke, “International Environmental Law and Policy” *Textbook - Foundation Press New York, New York, 1998, Chapter 19, Section II.*

[external] in which we operate". Health and safety, are the principal human rights issues addressed in the CERES Principles. Others, such as property rights, right to equality, right to human development, etc., are not addressed.

Business Charter for Sustainable Development (International Chamber of Commerce)

The International Chamber of Commerce (ICC) is a Paris-based non-governmental organisation created in 1919. The ICC currently has over 7,500 member company and business organisations operating in 123 countries. In April 1991, two years after the publication of the CERES Principles and in response to recommendations in the 1987 Brundtland Report, the International Chamber of Commerce developed its own set of voluntary corporate standards known as the *Business Charter for Sustainable Development*. The Charter contains 16 recommended principles for environmental management which companies should integrate into their daily operations. More than 1200 companies have pledged their support for the Charter since it was issued, including 132 of the Fortune 500 companies.¹⁰

The key principles set out in the Charter are: (1) the recognition of environmental management as among the highest corporate priorities, (2) the prior assessment of a new project's environmental impact, and, (3) the development of products and services with no undue environmental impact and safe for their intended use. The objective of the Charter is to assist a wide variety of organisations in improving their environmental performance by implementing management practices in accordance with the Charter's principles, measuring progress, and reporting progress both internally and externally.¹¹

The ICC's International Environmental Bureau is responsible for the Charter program and a related project to document case studies of organisations who demonstrate sound environmental management practices advocated by the Charter. The goal is to provide "best practice" examples to serve as guides and incentives for companies implementing the Charter. The ICC has also developed guidelines explicitly directing companies how to implement the charter.¹²

The Business Charter, clearly addressed the issue of sustainable development from the environmental perspective. The Charter is focused almost exclusively on the environmental nature (the ecological nature) of corporate activities. While the ICC Charter is perhaps useful to cover the basic tenets of appropriate business conduct, it fails to address the human element and human rights that might be affected by corporate conduct. The one section of the Charter which begins to address one human right (the right to information) is point 15 of the code "Openness to concerns", emphasising dialogue with employees and the public on the potential hazards and impact of operations" makes a small step in this direction.

¹⁰ UNEP, *ICC Announce Joint Effort to Encourage Sustainable Development*, BNA DAMY ENV'T REP., May 4, 1994.

¹¹ Hunter, Salzman, Zaelke, "International Environmental Law and Policy" *Textbook - Foundation Press New York*, New York, 1998 - Chapter 19, Section III.

¹² ICC Establishes Industry Council as Advocate on environmental Issues, BNA Daily ENV'T REP., Feb. 2, 1993.

EMAS (EU) Eco-Management and Audit Scheme

EMAS is the Eco-Management and Audit Scheme adopted by the European Union. Launched in 1993 as a voluntary program for European-based industry, the regulation became effective in 1995 and establishes a series of requirements for certification of an environmental management system. Participating EU companies establish an environmental management system for their production site and then are assessed for compliance at periodic intervals by an accredited third party.

The requirements for EMAS certification include a written corporate environmental policy, an inventory of the environmental impacts of a company's production processes, a program of environmental measures to track performance, and a management system including procedures to implement periodic audits and continuous improvement in environmental performance.¹³

The EMAS scheme, meanwhile, makes no reference to human rights.¹⁴

ISO 14000 (environmental management)

The International Organisation for Standardisation (ISO), was established in Geneva in 1946 to standardise industrial and consumer products moving across national borders. Today more than 100 countries are members of ISO. The ISO 14000 series, is a collection of voluntary consensus standards that have been developed to assist organisations to achieve environmental and economic gains through the implementation of effective environmental management systems.¹⁵

The ISO14001 standard specifies requirements for establishing an environmental policy, determining environmental aspects and impacts of products/activities/services, planning environmental objectives and measurable targets, implementation and operation of programs to meet objectives and targets, checking and corrective action, and management review. ISO14001 Environmental Management System (EMS) requires having documented procedures that are implemented and maintained in such a way that successful achievement of environmental goals commensurate with the nature and scale of activities is promoted. In addition, the EMS must include appropriate monitoring and review to ensure effective functioning of the EMS and to identify and implement corrective measures in a timely manner.

¹³ Corporate *Environmental Reporting. Embraced or Resisted?*, BNA INT'L ENV'T DAILY, April 20, 1994 cited in Hunter, Salzman, Zaelke, "International Environmental Law and Policy" *Textbook - Foundation Press New York*, New York, 1998 - Chapter 19, Section IV.

¹⁴For the Text of Council Regulation 1836/93 - EMAS see http://europa.eu.int/comm/environment/emas/emas_reg_en.htm

¹⁵For more details on the series of ISO 14000 see www.scc.ca/iso14000/thestnds.html See also ISO Guide 64 1997.

It should be noted that ISO 14001 is recognised by the European Commission. Therefore there is a complementary procedure when a certificate of compliance to ISO 140001 already exists for the site to be verified by EMAS.¹⁶

The ISO 14000 addresses the issue of “clean production” as ecoefficiency. That is ISO 14000 series understands the concept of “clean production” as only meaning ecoefficiency. This narrow approach prevents this international standard to address human rights, since ecoefficiency is merely one aspect of “clean production”, human rights is the other.

Social Accountability 8000 (social responsibilities of corporations)

In early 1997, the non-profit Council on Economic Priorities Accreditation Agency (CEPAA) was established and convened an expert advisor to assist in drafting standards to address workers’ rights. Representatives of unions, human rights and children’s rights organisations, academia, retailers, manufacturers, contractors, as well as consulting firms, accounting, and certification firms helped to develop a draft standard, Social Accountability 8000 (SA 8000).

Based on conventions of the International Labour Organisation and related international human rights instruments including the Universal Declaration of Human Rights and the UN Convention on the Rights of the Child, SA 8000 is a common standard for companies seeking to guarantee the basic rights of workers. SA 8000 addresses child labour, health and safety, freedom of association and the right to collective bargaining, discrimination, disciplinary practices, working hours and compensation.

Factories need to make improvements and abide by a timetable for verifying that problems have been addressed; they must document progress in problem areas. For example, a factory which employed exploitative child labour would need to document, maintain, and effectively communicate policies and procedures that addressed the needs of displaced children (i.e., those put out of work by effective monitoring itself) - plus take preventive action to avoid a recurrence.

SA 8000 offers a comprehensive set of principles and international standards protecting workers (an internal perspective) which can be used to strengthen environmentally focussed principles and international standards. The principles and international standards listed in SA 8000 are very corporate related (worker related), they do not address social problems produced by the corporation. In this respect they fail to address the types of activities which may arise from unfriendly environmental practices, such as the consequences of corporate toxic waste dumping and resulting health risk for the community. SA 8000 also fails to address the right to life, liberty and personal security, right to leisure time, social security, right to information, and other basic human rights.

¹⁶ See Commission Decision 16/4/97 on the recognition of ISO14001. See also *Where a Certificate of compliance to ISO14001/EN ISO14001 already exists for the site to be verified* (Guidance document. in http://europa.eu.int/comm/environment/emas/use14001_en.htm

Analysis of International Principles and Standards for Human Rights Content

The above cited principles and international standards on corporate environmental and social conduct each have strengths and weaknesses in terms of their explicit or implicit capacity to address human rights concerns in corporate activities. The majority of the principles and international standards that have been developed, however, focus primarily and almost exclusively on the environmental impacts of corporate activities, with the exception of SA 8000 which is exclusively dedicated to workers' rights. However, in the case of SA 8000, environmental issues are absent from the issues addressed.

In the other principles and international standards, human rights are either excluded or dealt with only indirectly or with very limited scope. These principles and standards are clearly confined by the *external* and *internal* dynamics previously mentioned. They generally fail to make the crossover from the world of environment to the world of human rights, and thus fail to effectively and integrally address sustainable development.

In terms of human rights responsibility¹⁷ maybe the most interesting international standard to model human rights obligations for private business is the ISO 14001 consisting of standards for environmental management, if these were reoriented (redrafted) into what could be a human rights management system (HRMS). ISO14001 human rights standards could include the need for sites to document and make available to the public a Human Rights Policy. In addition, the standards could require the establishment of procedures for ongoing review of the human rights aspects and environmental impacts of products, activities, and services.

Based on these human rights and environmental aspects and impacts, human rights goals and objectives could be established that are consistent with the human rights policy. Programs could then be set in place to implement these activities. As with the Environmental Management System, internal Audits of the HRMS could be conducted routinely to ensure that non-conformance to the system are identified and addressed. In addition, the management review process could ensure top management involvement in the assessment of the HRMS, and as necessary, address issues to minimise corporate activities which result in human rights violations.

What is certain is that the focus of environmental standards on corporate activity, needs to bridge the gap between the focus on ecological externalities of the environmental approach, and the inward looking approach of the human rights world. Meanwhile the worker rights oriented approach of the human rights world needs to rethink and incorporate the environmental impacts of corporate activity into their defence and promotion mechanisms. The division of labour between environmental and human rights actors and resources unnecessarily duplicates and isolates what should be complimentary efforts to promote integral sustainable development.

¹⁷ In this respect an important difference exists between *accountability*, which is legally binding, and *responsibility*, which pertains to an ethical obligation to act in a certain way, but which has no binding legal obligations. *Responsibility* refers to company voluntary efforts to act in the best interest of society, while *accountability* refers to the legal obligation to do so.

We are not in need of a new set of human rights standards to which corporations should adhere. Presented in this manner, this would appear to the corporate world as merely another set of standards with which they must comply. The sense of burden imposed on the corporate sector, by creating yet another set of standards for companies to adhere to, risks the non-adherence to, or poor response of companies to the standards. Instead, a more integral approach, expanding existing principles, broadening our understanding of sustainable development, and breaking the internal and external confines of our approach, can have a more positive result in the incorporation of human rights into international standards for corporate promotion of development.

Conclusions

Fostering human rights standards in international sustainable environmental standards for corporate activity should strive for the following objectives:

1. Broaden the concept of sustainable development where it is too centred on ecological sustainable development. Such standards should visualise human rights as well as environmental issues.
2. Foster collaboration between actors and resources of the environment and human rights fields, making use of available mechanisms, past experience, institutional resources, and human resources presently employed to promote environmental sustainability and human rights protection.
3. Break the *external* and *internal* confinements of the environment and human rights fields. Environmental standards need to go beyond the externalities caused by unsustainable activities to incorporate internal concerns. While human rights standards need to look beyond the corporate boundaries to include externalities which affect communities and other outside actors.
4. Develop, strengthen, expand, and further promote enforcement mechanisms which can properly monitor and help enforce corporate compliance with international environmental and human rights standards.

SECTION III Potential and Existing Enforcement Mechanisms of Human Rights and Environmental Rights in Corporate Activities

The effectiveness of enforcement mechanisms of human rights standards, as of environmental standards in corporate activity depend on the extent of their codification and on the institutionalisation of the enforcement mechanism. The following is a brief review of some potential mechanisms which can be used to monitor and enforce compliance by corporations. They are cited merely to generate debate. The essay does not attempt to draw conclusions on the appropriateness of one mechanism over another.

A Treaty on Human Rights Obligations of Private Business

Human Rights obligations of private business can be codified as a treaty and monitored through a treaty body. An example of how States created international legal obligations to impose civil liability directly on private actors to compensate for environmental harm they cause is the series of the Oil Conventions (The International Convention on Civil Liability for Oil Pollution Damage¹⁸ and the Convention for Oil Pollution Damage). These Conventions provide mechanisms to assess compensation from oil tanker owners, cargo owners, and insurance companies. They have been used for over 28 years to provide compensation to parties injured by oil spills. Should it be decided that a similar Convention is the best mechanism to codify international human rights obligation of private business, a similar mechanism of enforcement could be set in place. The Convention could state that the corporation is liable to parties who have suffered a human rights violation. Actions brought under the Convention could be brought to courts of the contracting State in which the human rights violation occurred.

To leave the monitoring and enforcement of such a treaty only to national courts risks weakening the overall system of protection, particularly due to the weakness and or non-independence of the judiciary power in many countries. Therefore the Convention should include a treaty body to reinforce compliance.

Although codification of human rights obligations of private business through a treaty may seem an ideal approach, its realisation is a complex and arduous venture, and hence, may not be the best option. The never adopted UN Code on Transnational Corporations is an example of the difficulty of this process.

An International Standard on Human Rights Obligations of Private Business

Human Rights obligations of private business can be codified as an International Standard. International Standards on environmental obligations of private business have so far had reasonable success. As time passes, an increasing number of businesses are complying with international standards. The experience with the ISO 9000 series is a good example of this. One of the main differences concerning enforcement between an international standard and a treaty is that the standard is not legally binding. Thus, the compliance with the standards is based on the goodwill of the private business to adopt it.

When addressing human rights obligations in states where the respect for human rights by a company rests solely on the company's will to comply, and is not grounded in judicial enforcement of human rights, the situation is far more complex. However an International

¹⁸ The International Convention on Civil Liability for Oil Pollution Damage, adopted in 1969 and ratified by over 50 countries, channels liability to the ship-owner, who is strictly liable for oil releases. The owner is liable up to \$14 million to parties who have been injured or suffered a loss from the spill. Actions brought under the CLC must be brought in the courts of the contracting state in which the damage occurred within 3 years from the date of the damage, but not later than 6 years after the date of the incident.

Standard on Human Rights Obligations of Private Business could be the first step towards achieving a binding document.

Introducing a new set of standards for human rights may result in an over-burdening of the corporate sector with multiple standards. This excessive conditioning of corporate activity from multiple optics risks resulting in general non-compliance. This means that further standards must make compliance not only morally attractive but economically necessary and/or profitable. In this respect, it is necessary that an International Standard on Human Rights Obligations of Private Business be complemented by measures that reinforce and ensure compliance with the standard, such as¹⁹:

- Market access through certification schemes
- Closed-door policy for non-complying companies
- Strengthened Public Access to Information. In order for government and civil society to effectively evaluate the positive and negative impacts of different corporate decisions and practices on society and environment, the public as well as government need to have access to information about such impacts. A serious vacuum continues to exist regarding information available to local communities and the general public about corporate decisions and practices which could negatively affect their human rights.
- NGO lobby of governments to accept/approve companies
- The development of public education programs to empower citizens and employees with knowledge of the kinds and sources of information available on corporate decisions and practices which may affect them and their communities and about which they have a basic right to know. Such programs should teach citizens how they can access and interpret this information, including how they can pinpoint potential or actual impacts in and on their communities. Part of this education should include skills in developing community-based indicators for community assessments;
- Enactment and enforcement of Community Right-to-Know legislation and programs whereby citizens and employees are legally empowered with the right to know about human rights obligations of private business.
- Establishment and enforcement of laws requiring regular company reports on implementation of their human rights policy. The report should include such issues as a company's releases, use and storage of potentially dangerous substances.²⁰
- Promotion of full product labelling that will identify the products as "Human Rights Safe"
- Require TNCs to make public the same information as required in their home country to those countries in which they are operating or investing, particularly in countries with lower human rights and environmental standards;
- An international or regional system could be established to collect and help disseminate relevant information from and about corporate human rights performance, with inputs from NGOs and community organisations.
- Enactment of human rights tax reform, implementing the most appropriate program for shifting taxes away from sustainable behaviour (which should be encouraged) towards

¹⁹ Some of the ideas presented here were drawn from an NGO report to the UN Commission on Sustainable Development 1997.

²⁰ Examples of such laws include the OECD's Pollutant Release and Transfer Registers (PRTRs) and the USA's Toxic Release Inventory (TRI).

those practices that are unsustainable, unjust, and inefficient (which should be discouraged).²¹

- Develop and enforce appropriate liability laws. Deregulation should end where human rights abuses and environmental destruction begin. Appropriate regulations are necessary for corporations to successfully operate, discouraging unfair competition from “free riders” by providing a level playing field. Furthermore, citizens and public interest groups depend upon the instrument of liability laws to hold specific corporations legally accountable for their actions - particularly companies abusing society’s trust and engaging in irresponsible conduct or double standards. Furthermore, evidence shows that companies are more likely to solve environmental and other problems where liability claims are high.
- Promote consumer associations with the objective of raising consumer awareness of human rights conditions in which products are made. Example of this kind of associations are *Traidcraft*²², *Fair Trade*²³, *Ethical Trading Initiative*, and *Clean Clothes Campaigns*²⁴
- The promotion of Human Rights Investment Funds. Such funds will use not only economic criteria but human rights criteria when selecting companies for investment. Examples on how this fund could be constituted are Iber Fondo 2000, F.I.M and el BCH Horizons.²⁵

From the various suggestions for promotion of human rights in sustainable development two issues come to the forefront. Firstly, ethical standards to which corporations will adhere to voluntarily do not suffice to ensure that companies will comply with the standards. That is, a formal framework (regulation) is necessary to ensure compliance. Secondly, that the compliance with standards should in some measure reward companies which comply over companies which do not comply. Incentives, such as tax shelters for sustainable behaviour are important and effective to ensure compliance. Enforcement mechanisms, both local and international, are the key element to ensure compliance. International mechanisms of enforcement, blockades, commercial retaliation/punishment, are effective to reduce abuses ranging from protection of terrorism, racial discrimination, or for putting at risk state security. Such retaliation for the respect of human dignity, should be a priority of our society.

²¹ The UN could host an international forum in which all countries can address the issue of enacting human rights tax reform.

²² www.traidcraft.co.uk

²³ www.gn.apc.org/fairtrade

²⁴ www.cleanclothes.org

²⁵ Cited in: Morelo, Gustavo. “La responsabilidad social de las empresas”. Discussion Paper 1999. Universidad Católica de Córdoba, Argentina.

SECTION IV Areas for Further Research

1. Integration study. A study on how to integrate the areas and resources available in Human Rights and Environment with a view to present a unified framework to corporations.

2. Establishment of Mechanisms to Monitor and Assess Corporate Practices

No central body yet exists to review the various claims of best and worst practices by business and industry, especially transnational corporations. Because of the tremendous impact of investment and business activities, such a body is needed to review and evaluate these impacts and to enable the voice of those affected by these impacts to be heard.

3. Study of methods and mechanisms to hold international corporations responsible for international law.

4. Guideline for Corporations. Development of a guideline and analytical tool to educate corporations on human rights impacts of corporate activities and a guideline or method with which the corporations and assess their compliance with environmental and human rights standards. This guideline or tool for corporations can be developed quickly and with limited resources and should be included in any attempt to foster human rights inclusion into international standards for sustainable development.