



WWF Position paper for Johannesburg: A Sustainable Framework for Corporate Accountability¹

1. Introduction²

Business and industry play an important role in our efforts to achieve sustainable development. Within that broader framework, the past decade has seen the growth and increased influence of transnational corporations in matters relevant to the World Summit on Sustainable Development (WSSD) in Johannesburg. The world's top one hundred corporations – based almost exclusively in developed countries – are today principal drivers of international production and trade, wielding considerable power and influence as a result.³

Transnational corporations (TNCs) affect society and ecological systems in a number of ways, both directly through investments and production and indirectly through R&D and lobbying. Their contribution to sustainable development can be positive or negative. On the one hand, investments by corporations can positively contribute to a country's productive capacity and facilitate the transfer and use of more efficient technologies as well as better working practices.

On the other hand, there can be a significant price to pay through the depletion of natural resources, increased CO₂ emissions, spreading of toxic substances, destruction of local economies, and a lowering of environmental standards. In the case of poor countries, the imbalance in power between investor and host country can seriously limit the host countries' economic and environmental policy options. The scale and pace of operations undertaken by TNCs – often in the extractive sectors – can cause pernicious detrimental impacts on both the natural and social environment. Other issues include exploitation of cheaper workforces, eco-dumping, and a "race to the bottom."

Positive initiatives have been launched where consumers, through independent environmental labelling, have been able to use market mechanisms in a positive way. Internalisation of environmental externalities through economic measures have also been successful in a number of cases. Environmentally and socially progressive companies need to be protected from free-riders that exclude environmental concerns in order to keep the prices of their products as low as possible. WWF has experience of the benefits and potential of voluntary actions first-hand, through our partnerships with key industry sectors including the establishment of the Marine Stewardship Council and the Forest Stewardship Council, and through many other partnerships.

Yet experience in working on issues of global concern such as fisheries, forests, climate, toxics, freshwater and species makes clear that there exists a need for legally binding global rules, especially with respect to transnational companies, to help ensure minimum acceptable levels of responsible corporate behaviour and practices in every country in which they operate. Voluntary initiatives have not proved adequate to address the needs of sustainable development from the environmental, social and equitable benefits viewpoint.

The overarching goal must be to ensure that corporations operate in a manner that supports sustainability and that companies that move in a sustainable direction are supported, not disadvantaged. Enhanced transparency – including through improved public reporting and dissemination of information on corporate activity – is a prerequisite.

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² To address the current unsustainable trends we must explore new approaches. There is no single solution to these challenges and all suggestions in this discussion paper should be viewed from this perspective.

³ World Investment Report 2000. The year before Rubens Ricuperro, Secretary-General of UNCTAD wrote in the introduction to WIR 1999 that: "TNCs are principal drivers of the globalisation process, which defines the new context for development."

2. Voluntary codes of conduct for corporations – opportunities and limits

Currently, no binding rules exist to regulate corporations at the international level. However, a number of companies have their own codes of conduct that set standards for working conditions, protection of the environment, and other issues. These codes have in some cases led to significant improvements, and have provoked innovative new solutions. Some important existing international processes that deal with corporate responsibility include:

The OECD Guidelines for Multinational Enterprises⁴

First released in 1976 and revised in 2000, the guidelines set standards for TNCs operating in OECD countries. Although key areas are covered, the Guidelines are weak on details, and loopholes are easily found. Enforcement is particularly weak, and few companies even know that the Guidelines exist. Furthermore, the guidelines were developed within the OECD without proper consultation with developing countries, despite the impact of TNC activities on them.

All OECD countries are required to appoint a National Contact Point (NCP), who is usually assigned to the Ministry of Foreign Affairs and works as a clearinghouse for conflicts. So far, NCPs have almost exclusively been used by trade unions and few, if any, environmental disputes have been the subject of a complaint. Having said that, the OECD Guidelines represent a code Code that includes a governmental process to encourage positive business behaviour. The administration and experience that exist could therefore be used when developing a binding framework.

UN Global Compact⁵

Launched in 1999, the United Nations entered into a partnership with governments, companies and civil society to promote global corporate citizenship and social responsibility. The compact is not really a code of conduct, but is intended to facilitate the dissemination of best practices on a voluntary basis, based on nine fundamental principles. The Compact has been criticised as a form of “blue wash” where corporations can use the UN logo without committing themselves to anything binding. Some are also afraid that this is the first step in a process where corporations increase their influence over the UN system as a whole.

Global Reporting Initiative (GRI)⁶

The GRI involves a wide range of stakeholders, including human rights advocates, labour and environmental groups, corporations, governments and others, who have undertaken to develop a common framework for voluntary reporting of the economic, environmental and social impact of organisation-level activity. The GRI and the UN Global Compact have developed a co-operative framework to assist in each others’ work.

World Commission on Dams (WCD)⁷

The WCD concluded its work in 2001, and was an interesting initiative because it involved a range of stakeholders including NGOs, businesses, and representatives from Governments and International Financial Institutions (IFIs). The aim of the WCD was to find ways to best develop water and energy resources. The main output – an agreed framework – assesses various options, and elaborates internationally acceptable criteria and guidelines for planning, designing, construction, operation, monitoring, and decommissioning of dams. The WCD process and resulting framework have garnered cautiously optimistic support from the NGO community, but doubts remain as to how the guidelines should be implemented.

These are a few examples of processes involving the issue of corporate responsibility. Other voluntary actions that impact corporate behaviour include trade-related initiatives such as eco-labelling and fair trade labels, as well as civil society campaigns which operate through publicity, or the use of consumer and investor actions.

WWF supports the use of serious voluntary initiatives and recognises their utility, but it is WWF’s experience that there are limits to these approaches. A company’s choice of whether or not to opt in provides no guarantee that responsible policies will be adhered to, nor is there any way to ensure that companies will be held accountable for environmentally or socially harmful behaviour. Furthermore,

⁴ www.oecd.org/publications/Library/webook/00-2001-97-1/index.htm

⁵ www.unglobalcompact.org

⁶ www.globalreporting.org

⁷ www.dams.org

adherence to voluntary initiatives or codes of conduct can leave ethical companies at a short-term commercial disadvantage, by providing an opportunity for unscrupulous competitors to undercut them.

Other concerns about using strictly voluntary commitments include:

- Success is generally contingent on concomitant public pressure (e.g.: campaigning) and varies on a firm by firm and sector by sector basis
- Fear of “greenwashing” or, in the case of UN partnerships, “bluewashing”
- Difficulty of engaging “non-brands” and/or companies that don’t sell directly to the end consumer
- Accountability/legitimacy – self-regulation allows data and audits to be industry-generated, thereby limiting corporate accountability. Based on the large social and environmental impact of TNCs, mechanisms should be put in place to ensure their accountability more broadly.

WWF welcomes voluntary agreements and arrangements, which can be effective in promoting responsible corporate activities. The elaboration of binding rules would nevertheless act as a useful complement to these voluntary initiatives and not as their replacement.⁸ Binding rules should be used to set the bottom floor, while voluntary agreements can encourage front-runners to move ahead.⁹ Therefore, as binding rules are developed, care must be taken to ensure such rules are balanced and do not result in progressive corporations seeking out loopholes to evade increasingly stringent laws. In all areas there must therefore be a balance between voluntary and binding measures.

3. Recommended areas to explore further to promote corporate accountability

Various actions and targets could be pursued at both the national and global level to promote corporate accountability, involving a mix of policy instruments. Voluntary agreements, especially eco-labelling and targets with independent monitoring and verification, will play a key role. These initiatives would be greatly enhanced by a strengthened international framework based on binding rules and a compliance regime, examples of which are outlined below:

i. A Legally Binding Global Framework for TNCs

Negotiations on legally binding rules that govern the behaviour of TNCs should be considered. The World Summit on Sustainable Development (WSSD) in Johannesburg presents a unique occasion to launch such a process. A binding framework could be used to introduce a mandatory floor to environmental and social conduct that would have the effect of preventing responsible firms from being undermined by less responsible competitors. The framework should include various components, such as reporting and information-sharing, best practice guidelines/corporate behaviour, a dispute settlement mechanism that gives broad access to justice for social and environmental violations, as well as positive incentives. Positive incentives could include preferential treatment by institutions like the World Bank, Export Credit Agencies (ECAs) and other publicly controlled institutions.

The following are specific examples of provisions that should be included in a binding framework:

- Mandated annual social and environmental reporting, which is made publicly available
- Multistakeholder consultations on proposed developments, including undertaking Environmental Impact Assessments where appropriate, and disclosure of all relevant material relating thereto
- Broad access to justice by citizens and communities adversely affected by corporate activities
- Requirement for corporate directors to take into account the environmental and social impacts of their operations on relevant stakeholders, and further requirement to disclose relevant experience and training in non-financial matters, including environmental sustainability and human rights
- Adherence to best practices

In order to be credible, the process to develop this framework should include governments, investors and other stakeholders (NGOs) so as to properly balance the rights and interests of all relevant parties. The rules should promote the elaboration of voluntary agreements that go beyond the binding framework, and must not be developed in a way that encourages the lowering of standards in individual countries or prevent countries as well as local authorities to move ahead with stronger rules for corporations.

⁸ OECD (1999), Voluntary Approaches for Environmental Policy: An Assessment.

⁹ UNDP (1999), Human Development Report 1999: “multinational corporations are too important and too dominant a part of the global economy for voluntary codes to be enough. Globally agreed principles and policies are needed for: human concerns - to ensure compliance with labour standards and human rights; economic efficiency - to ensure fair trade and competitive markets; environmental sustainability - to avoid degradation and pollution.”

ii. Establishment of a TNC information and Research Centre (TIRC)

This would be an important part of any process that aims at seriously addressing the issue of TNCs from a sustainability perspective. Consideration should be given to placing the TIRC directly under ECOSOC, with an initial two-year mandate of information collection and dissemination. Results could be evaluated at the end of the two-year period, with recommendations thereafter on resource needs and other issues. Areas of study could include natural resource use, income distribution, education, technology-transfer and consumption levels. The development of sectorial sustainability targets could be one output.

iii. Domestic Regulation and Policies

One of the primary challenges that should be addressed is the uneven power relationship between large corporations and regulating bodies at the national and local level. Governments and local authorities should be supported and given resources to develop codes of conduct for investors in consultation with relevant stakeholders. On all levels the environmental and economic governance structures to support sustainable investment should be strengthened. This includes integrating environmental issues into domestic investment policy, and requiring disclosure by foreign investors of the environmental and social impacts of their activities. The regulation should also provide broad access to justice in the event of a violation by the firm.

4. Conclusion

In a globalising world, the international community needs to recognise that increased corporate accountability and transparency is a key component of achieving sustainable development. The appropriate measures – as outlined above – need to be taken to ensure that corporations operate sustainably. The WSSD presents a vital opportunity to redress the fragmented approach that currently exists to implementing sustainable development by ensuring that all actors and sectors make the necessary changes.

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