Globethics Repository



UNRISD research and policy brief 1

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see https://www.globethics.net. Data and content policy of Globethics Repository see https://repository.globethics.net/pages/policy.

Item Type	Journal
Authors	Utting, Peter
Publisher	United Nations Research Institute for Social Development (UNRISD)
Rights	With permission of the license/copyright holder
Download date	2026-11-15 11:03:43
Link to Item	http://hdl.handle.net/20.500.12424/178839

UNRISD Research and Policy Brief 1

Corporate Social Responsibility and Business Regulation

How should transnational corporations be regulated to minimize malpractice and improve their social, environmental and human rights record in developing countries?

UNRISD United Nations Research Institute for Social Development

Thinking and policy on corporate regulation have been in flux during recent decades. Whereas the neoliberal discourse of the 1980s emphasized deregulation and corporate rights, the corporate social responsibility (CSR) agenda of the 1990s stressed corporate self-regulation and voluntary initiatives involving, for example, codes of conduct, improvements in occupational health and safety, environmental management systems, social and environmental reporting, support for community projects and philanthropy. As the limits of self-regulation became apparent, and as the regulatory capacity or willingness of developing country governments, international bodies and trade unions continued to decline, alternative regulatory approaches have emerged. These have centred on co-regulation, in which a combination of government, multilateral, civil society and business interests engage in public-private partnerships (PPPs) and multi-stakeholder initiatives (MSIs) associated with standard setting, reporting, monitoring, auditing and certification. More recently there have been increasing calls for corporate accountability and a renewed interest in international regulation of transnational corporations (TNCs). From the perspective of development and good governance, how effective are these different approaches?

UNRISD Research on Corporate Social Responsibility

UNRISD work on TNCs and CSR commenced in the mid-1990s in the context of a broader inquiry into the social effects of globalization. In the late 1990s, the Institute examined whether corporate claims associated with the "greening of business" in developing countries were reflected in reality, and analysed the types of pressures and incentives that were prompting some companies to change their environmental policies. In 2000, UNRISD launched a three-year inquiry into the potential and limits of voluntary initiatives for improving the social and environmental performance of business. Under this project, research was carried out in Brazil, India, Mexico, Peru, the Philippines and South Africa. During 2003, studies were also conducted on UN-business partnerships; multistakeholder standard-setting, monitoring and certification schemes; the corporate accountability movement; and international regulation of TNCs.

Research Findings

Company codes of conduct

Codes of conduct, unilaterally designed by corporations or business and industry associations, have constituted one of the main forms of corporate self-regulation. Company codes are heavily concentrated in sectors where brand reputation and export orientation are important. Codes addressing labour issues tend to be associated with the garment, footwear, sporting goods, toy and retail sectors; those concerned with environmental aspects are likely to be found in chemicals, forestry, oil and mining. Company and business association codes are often of limited scope, focusing on working conditions in core enterprises and development concerns that have a high profile in the richer industrialized countries, such as sweatshops, deforestation and pollution. Issues such as labour rights, the rights and responsibilities of suppliers and home-based workers, and independent monitoring of TNCs often receive less attention.

Notwithstanding the limitations of codes, they can and have generated benefits for various stakeholders, widening the concept of corporate responsibility in relation to environmental management, workplace conditions and company-community relations. Because of codes, TNCs increasingly accept the notion of "extended responsibility" for the activities of their affiliates and some suppliers. By focusing attention on how goods are produced—as opposed to what is produced—codes have the potential to broaden consumer interest and mobilization beyond questions of price and quality, to the social and environmental implications of their choices. There is a danger, however, of codes being seen as something more than they really are, and used to deflect criticism, reduce the demand for external regulation and undermine the position of trade unions.

Multistakeholder initiatives

The limitations of company codes of conduct and corporate self-regulation have been addressed in recent years through what are often called multistakeholder initiatives, involving standard setting and the promotion of dialogue, reporting, monitoring, auditing, and certification related to social, environmental and human rights issues.

There are considerable differences in the ways MSIs aim to improve corporate social and environmental policy and performance, all of which have advantages and disadvantages. Some emphasize certification and/

or monitoring of policies and management systems; some are concerned not only with "process", but also with certifying actual performance and impacts; others focus on voluntary reporting and "best-practice learning". A few have developed complaints procedures to deal with specific cases of malpractice.

Many MSIs assume the organizational form of non-governmental organizations (NGOs), although industry, trade union and multilateral organizations have also taken the lead in some cases. MSIs have been somewhat successful in addressing certain weaknesses associated with corporate self-regulation. Of particular note have been their attempts to impose a degree of coherency on the confusing proliferation of company codes, and the attention they have directed to issues of labour rights, independent monitoring, the responsibilities of suppliers in TNC value chains, and international labour, environmental and human rights law. By their very nature, MSIs bring into decision-making processes a broader range of actors and can, therefore, have positive implications in terms of democratic global governance. But there are major differences in the extent to which they integrate trade unions, local-level monitoring and verification organizations in developing countries, and Southern actors more generally. Questions have also arisen regarding the accountability, legitimacy and credibility of some MSIs and the NGOs with a dominant position in these new systems of corporate regulation, including their representation of workers' interests and their close association with the corporations they seek to regulate.

Examples of Multistakeholder Initiatives

- Certification schemes—ISO14001, SA8000, Forest Stewardship Council, Marine Stewardship Council
- "Anti-sweatshop" initiatives—Fair Labor Association, Worker Rights Consortium, Clean Clothes Campaign, Global Alliance for Workers and Communities, Worldwide Responsible Apparel Production
- United Nations Global Compact—encourages companies to adhere to nine principles derived from international labour, environmental and human rights law
- Global Reporting Initiative, Ethical Trading Initiative and AA1000, which attempt to improve certain aspects of management, monitoring and reporting systems, as well as learning through stakeholder engagement
- Global framework agreements between TNCs and international trade union organizations

Most MSIs have spent their early years absorbed in complicated experimental or pilot phases involving relatively few companies. This experience has yielded important lessons and facilitated constructive adaptation, but it has also raised serious questions regarding the extent to which such initiatives can be effectively scaled up and reach more than a small proportion of the world's TNCs and other large companies. The cost and complexity of many MSI procedures, the sheer scale of TNC operations and the limited capacities of many of the NGOs or other organizations involved inhibit both quality and scale. Furthermore, most firms remain fairly immune to the pressures and incentives that are driving CSR and that might encourage them to participate in MSIs.

Transnational Corporations, Certification and Reporting: Participation in Selected Multistakeholder Initiatives

AS OF 2002: TOTAL TNCs = **64,000**; TOTAL AFFILIATES = **870,000**

Multistakeholder initiative	Entities[a]	As of
ISO14001 Certification	49,462	December 2002
SA8000 Certification	353	February 2004
Global Reporting Initiative		
- in accordance with GRI guidelines[b]	18	December 2003
- using GRI guidelines	366	December 2003
United Nations Global Compact	1,184[c]	December 2003
Fair Labor Association		
- participating companies[b]	12	December 2003
- affiliated companies (licensees)	1,266	December 2003
Ethical Trading Initiative	34[d]	December 2003

Sources: UNCTAD, *World Investment Report 2003*; ISO, SAI, GRI, Global Compact, FLA and ETI Web sites. [a] Depending on the initiative concerned, these may include TNCs, SMEs, factories or other establishments. [b] This category implies a higher level of commitment to the initiative's norms and guidelines. [c] Most of these companies are firms in developing countries. [d] Includes the Tea Sourcing Partnership, which comprises 12 companies.

There appears to be a significant trade-off between quality and scale. Some MSIs, such as the Clean Clothes Campaign and the Worker Rights Consortium, employ comprehensive monitoring and verification methods but engage with only a handful of companies. In contrast, certain certification schemes such as ISO14001 and SA8000 have expanded fairly rapidly but rely heavily on large accounting and auditing firms whose methods have been questioned—costs tend to be high (particularly for small firms) and it is difficult for them to assess accurately and objectively workplace conditions; labour, gender and community relations; and environmental impacts.

Public-private partnerships and the United Nations Global Compact

PPPs also bring together a range of stakeholders and encompass a variety of arrangements where companies pool their resources with governmental, intergovernmental and/or civil society organizations (CSOs) to address specific development tasks and goals. One subset of PPPs that has proliferated in recent years has involved business and the United Nations (UN), through mechanisms such as the Global Compact and global health partnerships. The speed with which various UN bodies and TNCs have embraced the partnership approach is often seen as a positive sign not only that TNCs are channelling more resources toward social and sustainable development, but also that corporate citizenship, with its emphasis on shared values, is progressing.

But the lack of attention to criteria and procedures for selecting and screening corporate partners, and to monitoring and compliance mechanisms, are downsides to the rapid proliferation of PPPs. Partnerships provide opportunities for corporate image enhancement and policy influence through privileged access to developing country governments and multilateral organizations. Many also constitute vehicles for market penetration, preferential access to developing country markets and other means of increasing the competitive advantage of TNCs.

The partnership approach often ignores some basic inconsistencies between the policy interests of developing countries and those of TNCs. This emerges most clearly in relation to the global macroeconomic policy regime, centred on trade and investment liberalization, which creates an enabling environment for TNCs but often limits the development options and fiscal revenues of developing country governments. TNCs and powerful business lobbies actively support this regime and oppose the types of policy reform proposed by many scholars, activists and policy makers. UN-business partnerships provide TNCs with opportunities to pursue their own policy interests within the United Nations, and the organization's public purpose can be undermined if it begins to promote policy goals preferred by business when these are far from universally approved.

Corporate accountability and international regulation

Concerns about the limits of CSR and voluntary initiatives have resulted in renewed calls for corporate accountability and international regulation of TNCs. Since the 1980s, international regulation of business has been characterized by two major imbalances. First, multilateral co-operation has strengthened global corporate property rights; in marked contrast, regulation related to social obligations has taken place primarily at the national level or through relatively weak forms of voluntary initiatives at the global level. Second, while rules exist between the countries of the Organisation for Economic Co-operation and Development (OECD) in relation to investment, taxation and competition policy, these systems of regulation have not yet extended to developing countries in a way that supports development.

The emerging corporate accountability agenda includes proposals to establish institutional mechanisms that hold corporations to account, rather than simply urging companies to improve standards or to report voluntarily. Corporate accountability initiatives promote complaints procedures, independent monitoring, compliance with national and international law and other agreed standards, mandatory reporting and redress for malpractice.

Examples of Corporate Accountability Instruments, Proposals and Campaigns

- United Nations "Norms on Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights" (drafted in 2003)
- OECD Guidelines on Multinational Corporations (revised in 2000)
- Aarhas Convention—mandatory environmental reporting (approved in 2003)
- World Health Organization Framework Convention on Tobacco Control (approved in 2003)
- United States Alien Tort Claims Act and "transnational litigation" (reactivated in the 1990s)
- Corporate Accountability Convention or Organization (proposed in 2002)
- European Union Code of Conduct (resolution passed in 2002)
- Publish What You Pay Campaign (launched in 2002)
- International Right to Know Campaign (launched in 2003)
- Tax Justice Network (formed in 2003)

Complaints Procedures

Complaints procedures can assume numerous institutional forms involving, for example, judicial and parliamentary processes, collective bargaining and global framework agreements between TNCs and international trade union organizations, and NGO watchdog bodies that "name and shame" companies in relation to specific activities and practices. In recent years there has been a diversification of complaints procedures, with the rise of "transnational litigation" involving prosecutions of TNCs for misconduct abroad, shareholder activism, consumer boycotts and ombudsman initiatives. Some MSIs have developed provisions for complaints procedures. Several multilateral organizations, such as the World Bank, International Labour Organization and OECD, and the North American Free Trade Agreement, have also developed such procedures; in practice, however, they are often weak. Through the recently drafted "Norms on Responsibilities of TNCs and Other Business Enterprises with Regard to Human Rights", an attempt is under way to develop standards and complaints procedures within the United Nations Commission on Human Rights.

The corporate accountability movement has put the spotlight on certain issues that have not figured prominently, if at all, in the mainstream CSR agenda but which are fundamental to the role of TNCs in governance and development: corporate power; perverse fiscal, financial and pricing practices; and corporate lobbying for macroeconomic policies that can have negative developmental impacts.

The corporate accountability agenda emphasizes the need to re-articulate voluntary and legal approaches. It seeks to re-establish the authority of states and intergovernmental institutions over corporations; consolidate governance infrastructures involving CSOs and co-regulation; and strengthen workplace democracy through workers' organizations, recognition and respect of labour rights, and new forms of "participatory" ownership.

To the extent that corporate accountability proposals pose a challenge to corporate interests, they are likely to be resisted by some business groups, political leaders and policy makers. Their success will thus require the backing of a fairly powerful coalition of forces. There are a few signs that such a coalition may be in the making, with certain proposals now receiving the backing of selected individuals and organizations associated with corporate interests, CSOs and networks, governmental and multilateral organizations, and academic opinion.

The consolidation of such a coalition must, however, overcome several tensions and constraints: relatively limited participation of Southern groups in the relevant networks and campaigns; ongoing tensions between NGOs and trade unions; limited accountability and legitimacy of some NGOs and other organizations that are shaping MSIs and public policy; and the danger that the participation of business interests in any corporate accountability initiative or coalition may result in excessive dilution of proposals and/or co-optation.

Policy Implications

- Codes of conduct should be seen more as an area of political contestation than a solution to the problems created by economic globalization. Strategies are required to ensure that

codes of conduct are complementary to government legislation and provide a space for workers to organize. This is more likely to occur when they are a component of MSIs, rather than when they are unilaterally developed by companies or trade associations.

- There is an urgent need to define what a desirable international regulatory regime would look like from the perspective of developing countries. MSIs and proposals for international regulation of TNCs need to be more sensitive to the priorities, concerns and realities of various actors in developing countries. The governance and membership structures of MSIs and international campaigns and networks have to accommodate such interests.
- Because of the difficulties of scaling up codes of conduct and voluntary reporting, auditing and certification systems, more attention needs to be focused on complaints procedures to detect, publicize, prosecute and otherwise deal with specific breaches of agreed standards. This would involve MSIs developing such procedures, as well as strengthening a range of other organizations and institutions, including, for example, the rule of law, judicial processes, government inspection units, watchdog NGOs, investigative media, trade unions, parliamentary oversight committees, ombudsman-type arrangements, and consumer and shareholder activism.
- The United Nations Global Compact should channel more of its resources and energies to boosting the efforts of developing countries to improve labour, human rights and environmental standards in ways that are in tune with national development efforts and priorities. Issues of corporate tax evasion and avoidance, transfer pricing and corporate lobbying for economic policies that conflict with the development interests of low-income countries require more attention.
- The United Nations needs to strengthen mechanisms for selecting and screening corporations that enter into partnership arrangements; for monitoring and evaluating such relationships; and for terminating collaboration with "free-riders" and those that violate internationally agreed norms.
- The notion of UN-business "partnership" needs to be rethought. Developing countries require greater freedom to select both the level and kind of foreign direct investment that is consistent with their economic situation and poverty reduction strategies. PPPs *for development* would promote corporate investment, philanthropic, fiscal, pricing and lobbying policies and practices consistent with developing country strategies and policy frameworks.
- The United Nations needs to counter the reality or perception that it is soft on public regulation of TNCs and that it ignores conflicts of interest and double standards practised by some corporations. It should explore ways of articulating voluntary and legal forms of regulation; strengthening the monitoring and implementation procedures associated with relevant International Labour Organization and international human rights norms; promoting complaints procedures; and doing more to encourage not only best-practice learning, but also critical research on the developmental impacts of corporate activities.
- Because corporations are heavily constrained in their goals and policies as a result of their accountability to financial markets, and because many of the problems associated with CSR result from patterns of ownership that concentrate wealth and abuse the property rights of the relatively powerless, the corporate responsibility agenda needs to pay more attention to the role of the financial services industry and issues of property ownership.
- Effective business regulation will occur only when it is backed by an influential coalition of interests. Governments and multilateral organizations should thus support the efforts of CSOs, networks and movements that exert pressure on corporations to behave responsibly, and should facilitate the participation of Southern actors in global initiatives.

UNRISD Sources

Bendell, Jem. Forthcoming. *Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement*. Programme on Technology, Business and Society. UNRISD, Geneva.

FitzGerald, E.V.K. 2000. *Regulating Large International Firms*. Programme on Technology, Business and Society, Paper No. 5. UNRISD, Geneva.

Jenkins, Rhys. 2001. *Corporate Codes of Conduct: Self-Regulation in a Global Economy*. Programme on Technology, Business and Society, Paper No. 2. UNRISD, Geneva.

United Nations Research Institute for Social Development (UNRISD). 1995. *States of Disarray: The Social Effects of Globalization*. UNRISD, Geneva.

Utting, Peter. 2002. "Regulating business via multistakeholder initiatives." In NGLS/UNRISD (eds.), *Voluntary Approaches to Corporate Responsibility: Readings and a Resource Guide*. Development Dossier. NGLS, Geneva.

Utting, Peter (ed.). 2002. *The Greening of Business in Developing Countries: Rhetoric, Reality and Prospects*. UNRISD and Zed Books, London.

Zammit, Ann. 2003. *Development at Risk: Rethinking UN-Business Partnerships*. UNRISD and South Centre, Geneva.

UNRISD Research and Policy Briefs aim to improve the quality of development dialogue. They situate the Institute's research within wider social development debates, synthesize its findings and draw out issues for consideration in decision-making processes. They provide this information in a concise format that should be of use to policy makers, scholars, activists, journalists and others.

This Research and Policy Brief was prepared in March 2004 by Peter Utting, co-ordinator of UNRISD work on Corporate Social Responsibility. He can be contacted at UNRISD at 41 (0)22 9172951 or utting@unrisd.org.

UNRISD research on Corporate Social Responsibility is supported financially by the MacArthur Foundation and the Institute's core donors—Denmark, Finland, Mexico, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.

Copyright © UNRISD. Short extracts from this publication may be reproduced unaltered without authorization on condition that the source is indicated. For rights of reproduction or translation, application should be made to UNRISD, Palais des Nations, 1211 Geneva 10, Switzerland. UNRISD welcomes such applications.

UNRISD
United Nations Research Institute for Social Development

The United Nations Research Institute for Social Development (UNRISD) is an autonomous agency that promotes research on pressing social issues of development. Multidisciplinary studies are carried out in collaboration with the Institute's extensive network of scholars and research institutes, mainly in developing countries.

For more information on the Institute, contact Nicolas Bovay, Programme Information Officer, UNRISD, Palais des Nations, 1211 Geneva 10, Switzerland; phone 41 (0)22 9171143, fax 41 (0)22 9170650, bovay@unrisd.org, www.unrisd.org.

Printed in Switzerland GE.04-00819-March 2004-4,000 UNRISD/PB/04/1 ISSN 1811-0142