

# Chapter 2

## Understanding of CSR and Its Standards

### 2.1 Concept of CSR and Its Fundamentals

#### 2.1.1 Definitions of CSR

In defining CSR, there is no overall agreement<sup>1</sup> or consensus. There is a lack of an all embracing definition.<sup>2</sup> Moreover, there is no universal definition of CSR. As a result, there remains an uncertainty about what CSR exactly is<sup>3</sup>; how it can be defined accurately or conclusively. The reason may be rooted in its interchangeable and overlapping character with other terminologies such as ‘corporate citizenship’, ‘the ethical corporation’, ‘corporate governance’, ‘corporate sustainability’, ‘social responsible investment’, and ‘corporate accountability’.<sup>4</sup> The reason may also lie in the fact that the contemporary CSR agenda essentially involves the concept of

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<sup>1</sup> Michael Hopkins ‘Corporate Social Responsibility: An Issue Paper’ (Working Paper No. 27, Policy Integration Department, World Commission on Social Dimension of Globalisation, 2004) 1 [http://www.ilo.org/public/english/bureau/integration/download/publicat/4\\_3\\_285\\_wcsdg-wp-27-27.pdf](http://www.ilo.org/public/english/bureau/integration/download/publicat/4_3_285_wcsdg-wp-27-27.pdf) 12 July 2007.

<sup>2</sup> M. Van Marrewijk, ‘Concept and Definitions of CSR and Corporate Sustainability: Between Agency and Communion’ (2003) 44:2-3 *Journal of Business Ethics* 95, 105.

<sup>3</sup> Jamie Snider and others in their articles titled ‘Corporate Social Responsibility in 21<sup>st</sup> century: A View from the World’s Most Successful Firms’ said that an exact definition of CSR is elusive since beliefs and attitudes regarding its nature fluctuate with the relevant issue of the day. As such, viewpoints have varied over time and occasionally are even oppositional. See also T. Pinkston, A B Carroll, ‘A Retrospective Examination of CSR Orientations: Have They Changed?’ (1996) 15:2 *Journal of Business Ethics* 199, 207.

<sup>4</sup> Australian Parliamentary Joint Committee and Financial Service, Corporate Responsibility: Managing Risks and Creating Value (Report 2006) 4; See above n 1, 1; see also Michale Bowfield and Jerdej George Frynas, ‘Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World’ (2005) 81:3 *International Affairs* 499, 501; see also Dirk Matten and Jeremy Moon, ‘Implicit’ and ‘Explicit’ CSR: A Conceptual Framework for Understanding CSR in Europe (2008) 33:2 *The Academy of Management Review* 404, 405.

stakeholders and development as an integral issue of business operation in the present context. This holistic character of CSR creates confusion about the exactness of associated issues which is well expressed in the words of Jeremy Cooper of Australian Securities and Investment:

There are some vexing terminology problems such as what a stakeholder is, what sustainability means, what triple bottom-line reporting is and what we really mean by corporate social responsibility itself. . .<sup>5</sup>

Another reason for the lack of an agreed definition may lie in the ever-changing and dynamic character of the concept of CSR itself and the expansion of its practices aligning with the increased demands from the society and pressing development issues. From that point of view CSR so far historically can be referred to as a sequence of three approaches, each having a different perspective in terms of definition and boundary of responsibility.<sup>6</sup> They are the shareholder approach, the stakeholder approach, and the societal approach.<sup>7</sup>

The shareholder approach is regarded as the classical view on CSR as pioneered by Milton Friedman. For Friedman, CSR is interpreted as a means of increasing or maximising the profits of the company where the shareholders are the focal point in pursuit of profit maximisation.<sup>8</sup> Social responsibility activities are not the main concern for companies; they are concerned with CSR only to the extent that it contributes to the aim and goal of the business.<sup>9</sup> This view in fact is intended for the protection of the shareholders or the stockholders' economic interests. This is not consistent in full with the objects and purposes of the concept of CSR as recently construed where stakeholders' interests are a significant concern.<sup>10</sup>

According to the stakeholder approach propounded first by Freeman in 1984, the business organisations are not only responsible and accountable to their shareholders, but also take into consideration the legitimate interests of the stakeholders that can affect or is affected by the operational activities, as well as the achievement of organisational objectives.<sup>11</sup> This approach never means that the companies ignore business profits and wealth creation initiatives. Rather it strikes a balance between business profit and stakeholder interests as companies have immense influence on the lives of stakeholders.<sup>12</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Marrewijk, above n 2, 95.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid; See M. Friedman. 'The social responsibility of business is to increase its profit.' *The New York Times Magazine* (New York) 13 September 1970, 32-33, 1212-126.

<sup>9</sup> Marrewijk, above n 2, 96.

<sup>10</sup> For more information see the definitions given since 1990s by different organisations and individuals such as the Commission of the European Communities in 2001, 2002 and 2003, World Business Council for Sustainable Development in 1999 and 2000, Michael Hopkins in 1998 and 2003, Marsden in 2001, and Anderson in 2003. They converge on the point of stakeholders' interests.

<sup>11</sup> Marrewijk, above n 2, 96.

<sup>12</sup> James E. Post, Anne T. Lawrence and James Weber, *Business and Society* (10<sup>th</sup> ed. 2002) 59.

The societal approach<sup>13</sup> is a broader view of the stakeholder approach and suggests that companies as an integral part of society should undertake responsibilities to the society as a whole. They should constructively serve the needs of the society to the satisfaction of public consent.<sup>14</sup> In connection with the business responsibility in society David C. Korten said:

Business has become, in the last half century, the most powerful institution in the planet. The dominant institution in any society needs to take responsibility for the whole. . . Every decision that is made, every action that is taken, must be viewed in the light of that kind of responsibility.<sup>15</sup>

It is true that there is no universally agreed upon or recognised definition of CSR for the aforesaid reasons. However this does not mean that CSR lacks definition. There is a proliferation of definitions proposed at the different stages of time and in view of the different contexts and thus the understanding of the concept of CSR, its nature and objective becomes clear. In his article on 'Corporate Social Responsibility: Evolution of Definitional Construct' Carroll gave a lengthy account of evolution of the definition of the concept of CSR beginning from the 1950s to the 1990s highlighting a specific feature of each decade in terms of its development.<sup>16</sup> He marked the 1950s as the modern era of CSR in terms of a definitional construct or its emergence, the 1960s as a time of expansion and the 1970s as a time of proliferation.<sup>17</sup>

According to Carroll, in the 1980s some additional theoretical issues were added to the concept itself including corporate social performance, stakeholder theory, and business ethics theory.<sup>18</sup> As definitional development occurred in 1990s these alternative themes took centre stage in the manifestation of CSR.<sup>19</sup> Thereupon all subsequent definitions of CSR were dominated by the stakeholder and societal approach, with the recognition of social, economic, and environmental issues as the basic components of responsibility. The best illustration of this is available in the definitions and views developed in the late 1990s and thereafter by the different intergovernmental, governmental and development organisations as well as some postmodern academics.<sup>20</sup> For understanding the current concept of CSR two

<sup>13</sup> With early contributions of McGuire (1963), Goodpaster and Mathews (1982), and the Committee for Economic Development (1971), including Van Marrewijk (2001) and Gobbles (2002).

<sup>14</sup> Marrewijk, above n 2, 97.

<sup>15</sup> Ibid.

<sup>16</sup> A. B. Carroll 'Corporate Social Responsibility: Evolution of a Definitional Construct' (September, 1999) 38: 3 *Business & Society* 268, 269.

<sup>17</sup> Ibid 270.

<sup>18</sup> Ibid 280.

<sup>19</sup> Ibid 288.

<sup>20</sup> Alexander Dahlsrud, 'How Corporate Social Responsibility is Defined: An Analysis of 37 Definitions' (2008) 15: 1 *Corporate Social Responsibility and Environmental management*, 1, 8-11.

definitions are discussed below as they appear to be more comprehensive and covering the essential features of CSR. One is from Commission of the European Communities and another is from David Marsden.

The Commission of the European Communities defines CSR as a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis.<sup>21</sup> In another definition by the Commission it is said that corporate social responsibility is essentially a concept whereby a company decides voluntarily to contribute to a better society and a cleaner environment.<sup>22</sup> Given these definitions, CSR appears to be a managing element that starts at the company level with its performance in a socially responsible manner, where the trade-off between the companies' financial requirements and the needs of the various stakeholders are in a balance, acceptable to all parties.<sup>23</sup> The companies' financial requirements basically mean gaining profit and sustainability of market. The definitions also explore that CSR as a voluntary obligation extends its scope of application to social and environmental issues in company's activities and in their relations with stakeholders, where the ultimate goal is to contribute to building up a better society.

Likewise, David Marsden considers CSR as a core characteristic of a socially responsible company, not an additional option. He says:

Corporate social responsibility is about the core behaviour of companies and the responsibility for their total impact on their societies in which they operate. CSR is not an optional add-on nor is it an act of philanthropy. A socially responsible corporation is one that runs a profitable business that takes account of all the positive and negative environmental, social and economic effect it has on society<sup>24</sup>.

Marsden's definition lucidly articulates the underpinning point of the companies' social responsibility concept that arises for the total impact of their activities on societies within and outside their operational territory. In his view a social responsible corporation while conducting business considers the whole spectrum of negative and positive social, economic and environmental effects of their activities on the social society. He does not recognise CSR as an act of philanthropy that serves temporal purpose of any individual of the society.

In the light of two above mentioned definitions CSR appears to be a core business agenda that companies should undertake on permanent basis in their

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<sup>21</sup> European Commission, *Green Paper: Promoting a European Framework for Corporate Social Responsibility* (2001) <http://www.europa.eu.int> 5 July 2007.

<sup>22</sup> Dahlsrud, above n 20, 8.

<sup>23</sup> Ibid; the definition of the Commission of the European Communities mentioned in the text were made in 2001. But the later definition made in 2002 speaks broadly of CSR as it says: Corporate responsibility is about companies having responsibilities and taking actions beyond their legal obligations and economic/business aims. These wider responsibilities cover a range of areas but as frequently summed up as social and environmental-where social means society broadly defined, rather than simply social policy issues. This can be summed up as the triple bottom line approach, i.e, economic, social and environmental.

<sup>24</sup> Dahlsrud, above n 20, 9.

relations with the stakeholders. It is a shift from traditional philanthropy. The contemporary definitions also focus on the similar viewpoints about CSR. One example is that World Business Council for Sustainable Development (WBCSD) considers CSR as the continuing commitment of business intended for sustainable economic development through the improvement of quality of life of employees, their families, the local community and society at large. The definitions also reveal that CSR refers to three main dimension of responsibility: social economic and environmental.

The author of this book considers all views about CSR represented by aforementioned definitions based on stakeholder approach. Moreover, he holds that CSR represents a plethora of responsibilities that a company should adopt in their policies and perform beyond legal requirements in response to the needs and expectations of its different stakeholders and society at large.

Finally, the synthesis of the definitions stands that CSR requires a company to

- consider the social, environmental and economic impacts of its business operations; and
- be responsive to the needs and expectations of its customers, employees, investors, shareholders, and the local communities.

### ***2.1.2 Explaining the Different Dimensions of CSR***

Dimension of CSR means the areas and scope of the application of CSR as a business agenda. The dimension is determined here in terms of the component of CSR. It is all about the social, ethical and other responsibilities a company should consider in their business operations or the categories of responsibilities falling under the application of CSR. It is generally known that CSR is multi-dimensional in terms of its objectives as it involves the interests of different types of stakeholders. The benchmark principles of CSR encompassing chiefly social, economic and environmental issues are a bearing on its multi-dimensional approach. The range of the interests of the stakeholders either internal or external expands with the change of time in the face of an increase of their expectations from corporations. Nevertheless, there are different opinions and views about determining the dimensions of CSR.

The European Commission Green Paper 2001 identifies two dimensions of CSR; internal and external.<sup>25</sup> The internal dimension includes human resource management, health and safety at work, management of environmental impacts, and natural resources.<sup>26</sup> The external dimensions involve local communities, business partners, suppliers, consumers, human rights and global environment.<sup>27</sup> The internal issues

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<sup>25</sup> European Commission, above n 21.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

assumed to be those dealing with companies' internal management. Likewise, the external issues concern the external management.

In terms of dimensions of CSR, Carroll's view concerning the different components of CSR is relevant. He holds that CSR consists of four types of responsibilities. They are economic, legal, ethical, and philanthropic responsibilities.<sup>28</sup> Ethical responsibility refers to doing what is right and just, fair and non-harmful; legal responsibility means to obey the law; economic responsibility means to make the company's business profitable and philanthropic responsibility means that company should be a good citizen in the society.<sup>29</sup> Carroll's division of social responsibility covers a plethora of core issues, but not the issues that mainly developed after the mid 1990s, when sustainable development issues were integrated into the mainstream CSR agenda.

Alexandar Dahlsrud in a recent study attempts to identify the dimensions of CSR. On the basis of the analysis of 37 definitions of CSR developed in majority over the last 10 years, he identifies five dimensions of CSR.<sup>30</sup> They are the voluntary dimension, stakeholder dimension, economic dimension, social dimension and environmental dimension.<sup>31</sup> However, it can be contended that the voluntariness of CSR in the majority of relevant literature has been considered as the nature of CSR. Similarly the stakeholder aspect of CSR is the current model of CSR. By dimension this book means the size and extent of the application of CSR as a company's business strategy. In this sense, they are not fully suited to the intended concept of dimension.

Nevertheless Dahlsrud's dimensions, from both theoretical and operational perspective, can be classified into two; nature-based dimensions and content and issue or content-based dimension. The voluntariness and stakeholder dimensions are nature-based ones. Economic, social and environmental dimensions are the issue-based ones. Nature-based dimensions refer to something which focuses on the inherent character and actionable value. Issue or content-based dimensions refer to the main concerns and areas of CSR and also demarcate the purview of practice. The discussion of the issue-based dimension of CSR is the basis of forth-coming analysis of the state of CSR practices of the private enterprises under this book.

Voluntariness is the basic character of the CSR agenda. Stakeholder is the latest and ongoing model of the CSR concept that, in fact, brings a fundamental change into the character of CSR and broadens the scope of action. On the other hand the main principles of CSR are designed on the basis of the economic, social and environmental agenda of a company. A company in its business strategy should take all the responsibilities, either social or ethical into its considerations when it

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<sup>28</sup> A B Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (1991) 34:4 *Business Horizons* 39, 40, 41.

<sup>29</sup> Ibid.

<sup>30</sup> Dahlsrud, above n 20.

<sup>31</sup> Ibid.

operates. Therefore here the focus will be on the economic, social and environmental dimensions.

Economic, social, and environmental issues and areas are popularly recognised and distinguished as fundamental to the CSR agenda,<sup>32</sup> because the activities and the operations of corporations mainly impact the economic and social life of the people in and outside as well as the natural and human environment. Simon Zadek states that corporate citizenship is about business taking greater account of its social and environmental as well as financial footprints.<sup>33</sup> The concept of sustainable development or sustainability reporting for business developed and operationalised by *Triple Bottom Line* focuses on three issues, namely, social responsibility (people), environmental responsibility (planet), and economic responsibility (profit).<sup>34</sup> So a company can be considered simultaneously in terms of responsibility variables as an economic institution, a social actor and an environmental protector.

As far as the economic dimension of CSR is concerned, a company's goal should be to contribute to economic improvement, preserving profitability and conducting its business operation. The best explanation of this can be found in Novak's seven sets of economic responsibilities. These include: (1) to satisfy the customers with goods and services of good quality and real value; (2) to earn a fair return on the funds generated by the financiers and investors; (3) to create new wealth to 'maximise social value' and help the poor for their economic emancipation and also optimise efficiency by raising wages of the employees; (4) to create new jobs; (5) to defeat envy through generating increased mobility and giving people the sense that their economic conditions can improve; (6) to multiply the economic interests of the citizens; and (7) to promote innovation.<sup>35</sup>

As regards the economic responsibilities of a company's CSR agenda, Carroll emphasises consistent performance for maximising per share earnings, commitment to profitability, maintenance of strong competitive position, maintenance of high levels of operational efficiency, and retaining consistent profitability.<sup>36</sup> *Triple Bottom Line* provides 14 economic indicators including, more importantly: (1) direct and indirect economic impact on communities through spending power and geographic economic impact; (2) economic impact through business process; (3) outsourcing, knowledge, innovation, social investments in employees and

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<sup>32</sup> Antonio Argandoña, *From Ethical Responsibility to Corporate Social Responsibility* (2007) IESE Business School, University of Navarra [http://www.stthmoas.edu/cathstudies/cst/conferences/thegood\\_company/final\\_papers/Argandoña\\_per\\_cent\\_20final\\_per\\_cent20pape.pdf](http://www.stthmoas.edu/cathstudies/cst/conferences/thegood_company/final_papers/Argandoña_per_cent_20final_per_cent20pape.pdf) 24 August 2004.

<sup>33</sup> Simon Zadek, *The Civil Corporation: The New Economy of Corporate Citizenship* (1<sup>st</sup> ed. 2001) 7.

<sup>34</sup> The Concept of Triple Bottom Line was developed by J Elkington in his book 'Cannibals with Forks: Triple Bottom Line of 21<sup>st</sup> Century Business in 1997.'

<sup>35</sup> G P Lantons, 'The Boundaries of Strategic Corporate Social Responsibility' (2001) 18: 7 *Journal of Consumer Marketing* 595, 597.

<sup>36</sup> Carroll, above n 28, 39-41.

consumers; and (4) taxes, tax incentives, wages, pensions and other benefits paid to employees.<sup>37</sup>

The social dimension of the CSR agenda is the key factor in setting up the relationships between the business and society. Its basic objective is that corporations should work for building up a better society and therefore, integrate social concerns in their business operations and consider the full scope of their impacts on communities.<sup>38</sup> The application of the issues covered under this may result in bringing up a better working and business environment in and outside of a company and assure its good citizenship in the society.

A company as a social actor, being itself a part of the human community, should pay its attention to serving the purpose of the internal and external human communities. It should realise and accordingly respond to their needs, expectations, rights, and demands for the wellbeing of their social life. The internal human community includes owners, managers, and employees. The social responsibility concept as developed internationally explains basically the needs of the employees as internal community.<sup>39</sup> External communities mean the local community in which the corporations operate, and also the other stakeholders. From a practical point of view, social issues mainly concern the local community who are impacted in many ways by the companies' activities in their social life. The local community also expects companies' assistance in improving its quality of life.

In the light of the above discussions the social contents of a company's CSR agenda cover a range of issues that may be divided into three clusters: (1) labour rights and practices; (2) human rights; and (3) other social issues. Labour rights and practices include all core labour standards and working conditions as recognised by the ILO Tripartite Declaration concerning Multinational Enterprises and Social Policy and all other ILO Conventions and Recommendations. The core labour rights include the freedom of association, the right of collective bargaining, prohibition of forced and compulsory labour; abolition of child labour, and a guarantee of acceptable working conditions.<sup>40</sup> Working conditions include a maximum number of hours per week, a weekly rest period, limits to work by young persons, minimum wages, minimum workplace safety and health standards, elimination of employment discrimination, and equal opportunities.<sup>41</sup> The right to work meaning

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<sup>37</sup> Australian Government Corporations and Market Advisory Committee Report 'Corporate Social Responsibility (2006) 71.

<sup>38</sup> Dahlsrud, above n 20, 4.

<sup>39</sup> See the International Instruments dealing with corporations' responsibilities such as the OECD Guidelines for Multinationals, ILO Tripartite Declaration, the UN Global Compact and so on.

<sup>40</sup> See ILO, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977, revised 2000) <http://www.ilo.org/public/english/employment> 4 September 2007.

<sup>41</sup> Ibid; see also Social Accountability International, *Social Accountability 8000* (1998) <http://www.ceppa.org> 4 September 2007. SA (8000) is designed to describe the labour standards in the developing countries, and Global Reporting Initiatives Guidelines concerning labour practices and decent work.



protection against unjustified dismissals and technical and vocational guidance and training can be considered the right of employees.<sup>42</sup>

As far as human rights are concerned, the respect for protection and compliance with international human rights standards in the jurisdiction of companies' operations are the paramount concern of corporate social behaviour. The UN Global Compact urges business enterprises to support and respect internationally proclaimed human rights within 'their sphere of influence'.<sup>43</sup> The phrase (as quoted from the preamble of the UN Global Compact) 'within their sphere of influence' indicates the inclusion of a wide range of operational activities of the enterprises in relation to employment, product, and business etc. and those are linked to the individuals and people who are either in or outside corporations such as employers, suppliers, buyers, and consumers. It also proclaims that a company must ensure that they are not complicit in human rights abuse.<sup>44</sup>

Against the said backdrop, corporations have responsibilities for the promotion and protection of all relevant civil, political, economic, social and cultural rights of those who are within 'their sphere of influence'. These can be enumerated as fundamental labour rights, the right to life of the employees, suppliers and customers, the right to hold opinions, freedom of expression, thought, conscience and religion, the right to family life, right to privacy, minority rights to culture, religious practices. The development-oriented rights are also included such as the right to education, health, adequate and fair distribution of food, clothing, housing, social security, and the enjoyment of the technological development.<sup>45</sup>

The above discussion about the labour and human rights aspects of social dimension reflects that the labour and human rights issues are overlapping, mutually supportive and inclusive of each other. Moreover, all other assessment or performance tools and reporting methods such as Social Accountability 8000 and Global Reporting Initiatives show a significant amount of mirroring between labour and human rights issues.

Another aspect of social dimension is corporate social investments and philanthropic activities in communities. It includes poverty alleviation programmes, sponsoring social and cultural activities of the local communities, establishment of academic institutions, funding for basic education, training and other sensitisation programmes, organising skill and capacity building programmes, founding hospitals, medical units and arrangement of other health care services, funding for alleviating and curing epidemics such as HIV and cancer, undertaking

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<sup>42</sup> The right to work as mentioned in the *Triple Bottom Line* though, does not fall within the purview of core labour rights, but as these are concerned with employees' labour issues, can be considered as labour rights.

<sup>43</sup> United Nations, *Global Compact* (2000, revised in 2004) <http://www.unglobalcompact.org> 4 September 2007.

<sup>44</sup> Ibid.

<sup>45</sup> See 'Triple Bottom Line of Sustainable Development' Amnesty International's Guidelines for Companies, Social Accountability 8000, Global Reporting Initiative Guidelines (GRI).

natural disaster management programmes, development partnership programmes with governments and NGOs investment for greengage, and fresh water supply.

In addition, participation in community programmes, provision of employment opportunities, engagement in social security management, and involvement of the local people in the decision-making of the corporation are all considered as part of the social dimension of CSR. The said aspect of corporate responsibility is intended to remove 'the social welfare deficiency' and enhance and improve the community's quality of life.<sup>46</sup>

The last content-based dimension of CSR is the environment, which is the most significant concern of business enterprises across the world today. The operational activities of corporations have immense impact on living and non-living natural resources, including ecosystems, land, air and water. All major international instruments providing normative standards of CSR introduce corporate responsibilities for environmental protection. For example, the UN Global Compact among its ten principles on the whole, dedicates three as primary responsibilities of the corporations. They are 'adopting a precautionary approach to environmental challenges',<sup>47</sup> 'undertaking initiatives to promote greater environmental responsibility',<sup>48</sup> and 'encouraging the development and diffusion of environmental friendly technology'.<sup>49</sup>

Similarly, ICC Business Charter for Sustainable Development introduces 16 principles for environmental management covering, 'inter alia', the establishment of environmental management on the basis of priority, integrating management systems, the efficient use of energy and materials, sustainable use of renewable resources, minimisation of adverse environmental impact and waste generation, and the safe and responsible disposal of residual waste, adopting precautionary approach, development emergency preparedness plans, and so on.<sup>50</sup>

OECD Guidelines for Multinational Enterprises in association with other corporate responsibilities provides some principles for environmental protection. They focus mainly on the assessment and consideration by enterprises of foreseeable environmental and environment related health consequences of their activities and their impact on indigenous natural resources, and assessment of health risks of products as well as from the generation, transport, and disposal of waste.<sup>51</sup> In addition, the enterprises should undertake appropriate measures in their operations for the minimisation of the risk of accidents and damage to health and the environment and co-operate in mitigating adverse effects.<sup>52</sup>

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<sup>46</sup> Carroll, above n 28, 39-41.

<sup>47</sup> United Nations, *Global Compact*, above n 43.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> International Chamber of Commerce, *Business Charter for Sustainable Development* (1991) [http://www.iccwbo.org/home/environment\\_energy/charter.asp](http://www.iccwbo.org/home/environment_energy/charter.asp) 4 September 2007.

<sup>51</sup> See Organisation for Economic Co-operation and Development (OECD) *Guidelines for Multinational Enterprises* (2000), <http://www.oecd.org> 4 September 2007.

<sup>52</sup> Ibid.

The international normative standards of CSR developed so far are comprised mostly of social, economic, and environmental issues. In setting standards greater attention and consideration is paid to labour rights and industrial relations, human rights, environmental protection, combating bribery, protection of consumer interests, ensuring quality of products, and other responsibilities concerning the market place. The social investments, community relations and the philanthropic issues are mainly based on companies' discretion and developed through practices in order to be a 'good citizen of the society'.

It is noteworthy to say that in attaining the objective of this book the focus remains confined to some fundamental aspects of the above mentioned content based dimension of CSR and they are mostly in relation to labour and industrial relations, human rights, environmental protection, and philanthropic issues.

To sum up the discussion on the definition of CSR, although there is no universally agreed definition of CSR at a global level, the concept of CSR has been settled and recognised as a long term business strategy balancing corporate rights with obligations towards stakeholders which is ever-growing in nature. It requires a company to consider the social, environmental and economic impacts of its business operations. In addition, it suggests a company to address the needs and expectations of each kind of stakeholder.

As far as dimensions are concerned, the CSR agenda involves economic, social and environmental responsibilities as the activities of corporations' impacts greatly on these three areas. The majority of the international standards focus on labour, human rights, environment and consumer protection related issues as the core contents of CSR. The social investment, community relations, stakeholder engagement and philanthropic activities also fall within the purview of companies' responsibility based on the companies' discretion developed by the individual self-regulatory guidelines.

## **2.2 Development of CSR Standards: Institutional Approaches**

### ***2.2.1 Voluntary or Self Regulation as a Basis for the Development of CSR Standards***

Voluntary regulation contributes to the development of CSR standards across the world. As CSR deals with companies' social and ethical responsibilities, direct regulatory initiatives are often absent in the application of CSR. At a national level, there are significant barriers to regulating companies to ensure that they manage their social and environmental impacts properly. Direct regulation or prescriptive legislation often leads to tokenistic responses and can quickly become an inaccurate reflection of society's concerns, lagging behind public opinion. Likewise at the international level, due to inadequate global governance and discrepancies in social

and environmental issues, no law-making treaty is yet concluded where company is directly subject to regulation in respect of its activities having social, economic and environmental impacts. This situation leads to reliance on and proliferation of self-regulatory actions related to CSR as manifested in different voluntary multi-stakeholders codes and international regulating standards setting initiatives by the ILO, the OECD and the UN for providing guidelines of corporate behaviour in relation to workers' rights, human rights, ethical business, and the environment.

### ***2.2.2 Different Forms of Voluntary Codes of CSR***

There are different forms of voluntary codes developed so far to promote CSR standards. They can be classified as follows:

- Company, trade association, and model codes of conduct;
- Multi-stakeholder codes; and
- Intergovernmental codes.

All these codes of conduct have contributed to the promotion of CSR standards. But among them multi-stakeholder and intergovernmental codes give rise to a structural basis for the promotion of CSR standards and their application. Therefore the following discussion has greater focus on multi-stakeholder and intergovernmental initiatives.

#### **2.2.2.1 Company, Trade Association and Model Codes of Conduct**

Company codes of conduct are adopted by companies independently or unilaterally. The codes are the main self-regulatory instruments addressing their social, environmental, human rights and economic externalities. Company codes are largely concentrated on sectors where brand reputation and export orientation are important. Codes addressing labour issues usually tend to be connected with the garment, footwear, sporting goods, toy and retail sectors while those related to environmental aspects are likely to be found in chemical, forestry, oil and mining.<sup>53</sup> Sources suggest that the world's larger multinational companies have taken the lead in adopting such codes as a means of responsible sourcing<sup>54</sup> and alternative means

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<sup>53</sup> United Nations Research Institute for Social Development, Corporate Social Responsibility and Business Regulations: How should Transnational Corporations be regulated to minimize malpractice and improve their social, environmental and human rights record in developing countries? (2004) <http://www.unrisd.org> 24 October 2007.

<sup>54</sup> Hu Xiaoyong, *Corporate Codes of Conduct and Labour Related Corporate Social Responsibility: Analysing the Self Regulatory Mechanisms of Multinational Enterprises and Their Impacts to Developing Countries* (2006) The Japan Institute for Labour Policy and Training <http://www.jil.go.jp/profile/documents/Hu-pdf> 27 October 2007.

of regulation.<sup>55</sup> There are different motivations identified for the adoption of self-regulatory codes such as: (1) it is an alternative to regulation; (2) it is an answer to social pressure; (3) it is a way of achieving social licenses meaning social recognition<sup>56</sup>; (4) it is a sign of corporate social responsiveness; and (5) it is a behavioural process.

Trade association codes are adopted by a group of firms in a particular industry in a unilateral manner. Examples are the British Toy and Hobby Association Code, the US Chemical Manufacturers' Associations' Responsible Care Programme, and the International Chamber of Commerce's Business Charter for Sustainable Development, or by the association of developing countries' firms for example, the Bangladesh Garments Manufacturers and Exporters Association (BGMEA) Code and the Kenya Flower Council Code.<sup>57</sup> The association codes, like company codes, focus on labour issues, working conditions in the core enterprises, development and sustainability concerns such as poverty, deforestation and pollution, as well as the rights and responsibilities of suppliers.<sup>58</sup>

The model codes are basically intended to provide a benchmark of what a particular organisation considers or regards as good practice in terms of codes of conduct.<sup>59</sup> These codes are not designed to be applied in the practice of a particular company. Instead, they are left to the desire or will of companies to follow. They are, for instance, the European Parliament's Code of Conduct on CSR, ICFTU's basic Code of Conduct, and European Parliament's Code of Conduct on CSR covering labour practice, and Amnesty International's Guidelines for Companies.

### 2.2.2.2 The Multi-Stakeholder Codes

In recent years corporate self-regulation has been addressed through multi-stakeholder initiatives including standard setting and the promotion of dialogue, reporting, monitoring, auditing and certification related to social, environmental

<sup>55</sup> Levis Julian, 'Adoption of Corporate Social Responsibility Codes by Multinational Companies' (2006) 17:1 *Journals of Asian Economics* 50, 51.

<sup>56</sup> The adoption of self-regulatory code of conduct on CSR helps a company achieve social licence. Because, the social actors through protests, use of media and boycotts license (to do business) the company that over comply. Meeting the requirements of social licence can be made through compliance with CSR and the existence of a CSR code gives an evidence on their compliance.

<sup>57</sup> Jenkins Rhys, *Corporate Codes of Conduct: Self-Regulation in a Global Economy* (2001) United Nations Research Institute for Social Development <http://www.unrisd.org> 25 October 2007.

<sup>58</sup> Peter Utting, *Corporate Social Responsibility and Business Regulations: How Should Transnational Corporations be Regulated to Minimize Malpractice and Improve their Social, Environmental and Human Rights Record in Developing Countries?* (2004) United Nation Research Institute for Social Development <http://www.unrished.org> 24 October 2007.

<sup>59</sup> Rhys, above n 57.

and human rights issues.<sup>60</sup> Multi-stakeholder initiatives in designing such codes involve companies, trade union organisations, and other worker's organisations, labour and human rights NGOs, relevant government departments, and academics. But the NGOs and companies' roles are evidently prominent.

There is a diversity of ways by which the multi-stakeholder initiatives intend to improve corporate social and environmental policy and performance. Some of them stress on certification or monitoring of policies and management systems; some are concerned with processes as well as certifying actual performance and impacts; others reflect on voluntary reporting and 'best practice learning'. Some prominent examples of multi-stakeholder initiatives are the following:

- Certification Schemes: ISO 14001(environmental management standards), the Fair Labour Association (FLA) and Social Accountability International's (SAI) SA8000 (labour standard);
- Global Reporting Initiatives, Ethical Trading Initiative and AA1000;
- Standard setting and monitoring schemes associated with anti-sweatshop initiatives: Clean Clothes Campaign (CCC), the Workers Rights Consortium (WRC), and Worldwide Responsible Apparel Production WRAP); and
- Initiatives that emphasise stakeholders and learning about good practice, such as the United Nations Global Compact (this will be discussed under the head of intergovernmental initiatives).

Multi-stakeholder initiatives have played an important role in the promotion of both substantive and procedural standards of CSR. The early focus on working conditions in the industry levels has been complemented by an exclusive attention to labour rights. Procedural aspects as improved by these initiatives involve the introduction of external independent monitoring instead of companies' internal monitoring systems in order that changes in companies' performance can be measured well.

Multi-stakeholder initiatives give rise to the scaling up of standards and a slight hardening of the soft voluntarism that featured in the early experience of CSR based on corporate self-regulation.<sup>61</sup> Some multi-stakeholder initiatives appear to be more effective in practice than others in connection with different regulatory functions. In this respect it is notable that O'Rourke has placed non-governmental systems of labour regulation on a spectrum, 'from purely 'privatised' regulation to more 'collaborative regulation' to more 'specialised regulation'.<sup>62</sup>

Moreover, multi-stakeholder initiatives can be seen as effective and important elements in the new institutionalism and the move for good governance that are the

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<sup>60</sup> Ibid.

<sup>61</sup> Peter Utting, *Rethinking Business Regulation: From Self-Regulation to Social Control* (2005) United Nations Research Institute for Social Development <http://www.unrished.org> 24 October 2007.

<sup>62</sup> Dara O'Rourke, 'Outsourcing Regulation: Analysing Non-governmental Systems of Labour Standards and Monitoring' (2003)33:1 *The Policy Studies Journal* 1, 10.

core features of the Washington consensus.<sup>63</sup> This consensus widely recognises the institutional need to control and minimise perverse social, environmental and development effects of open markets, economic liberalisation and corporate globalisation.<sup>64</sup>

The distinctive feature of multi-stakeholder initiatives is that under different institutional forms, they have contributed to the development of a number of codes on particular CSR issues and therewith the monitoring and verification procedures. ISO 14001 under its institutional framework provides a set of guideline for improving the environment management and certification system. SA8000 provides international workplace standards and monitoring process with the objective of helping companies develop and manage social accountability systems.<sup>65</sup> FLA under 'Workplace Code of Conduct and Principle for Monitoring' has developed internal and independent monitoring procedures to promote labour standards in the workplace in the USA and worldwide apparel industries. Similarly, CCC has adopted a code of conduct with a view to improving working conditions in the global garment industries including sportswear.<sup>66</sup> The Global Reporting Initiative has provided a framework for reporting on the basis of triple bottom lines which refers to companies' social, economic and environmental impacts. In recent development, the Global Reporting Initiative known as G3 has provided for disclosure of management approaches in relation to those aspects.<sup>67</sup> In addition, under the auspices of the United Nations Global Compact, learning and networking processes have been developed for the promotion of CSR practices on the basis of ten principles declared by the Compact.

It is noteworthy that the major contribution of the multi-stakeholder codes is that they have developed standards and their management and thereby CSR though voluntary, took the form of quasi-binding responsibility. They have developed

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<sup>63</sup> The term Washington Consensus was initially coined by in 1989 by John Williamson to describe a set of ten specific economic policy prescriptions that he considered to constitute a "standard" reform package promoted for crises-wrecked developing countries by Washington DC based institutions such as the international Monetary Fund, World Bank and the US treasury Department. The phrase Washington Consensus is today a very popular and often pilloried term in debates about trade and development. It is often seen as synonymous with 'neoliberalism' and 'globalisation'.

<sup>64</sup> Utting, above n 61.

<sup>65</sup> European Commission Directorate General for Employment and Social Affairs, *ABC of the Main Instruments of Corporate Social Responsibility* (2004) [http://europa.eu.int/comm/employment\\_social/soc\\_dial/csr\\_index.htm](http://europa.eu.int/comm/employment_social/soc_dial/csr_index.htm) 30 September 2009.

<sup>66</sup> Hu Xiaoyong, 'Corporate Codes of Conduct and Labour Related Corporate Social Responsibility: Analysing the Self-Regulatory Mechanisms of Multinational Enterprises and Their Impacts to Developing Countries' (2006) The Japan Institute for Labour Policy and Training (2006) <http://www.jil.go.jp/profile/documents/Hu-pdf> 27 October 2009.

<sup>67</sup> It is noteworthy that the reporting on the basis of triple bottom line under Global Reporting Initiative first developed in 2002 and in 2006 it was focusing the disclosure of the management approach of company's economic social and environmental aspects.

monitoring and verification mechanisms and their institutional application in the global supply chains that help promote ethical business. The labour, human and environmental standards incorporated by these codes are based on different inter-governmental codes.

### **2.2.2.3 The Intergovernmental Codes**

The three major intergovernmental organisations, the OECD, the ILO, and the UN have adopted in recent years declarations and guidelines consisting of the general norms of CSR applicable globally and covering the major contents. These include the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declarations for Multinational Enterprises, the UN Global Compact, and the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. These four instruments provide guidelines for corporate behaviour and regulating framework for MNEs and their employment practices. In addition, the UN Environment Programme Finance Initiative (1992 restructured in 2003) and the UN Principles for Responsible Investment (2006) also provide norms for financial institutes and companies respectively for meeting the requirement of certain environmental, social, and ethical standards.

The distinctive features of these instruments (except the Global Compact) appear to be:

1. that these intergovernmental codes provide a body of standards that can form a basis for defining and verifying accepted corporate conduct and practices related to CSR, and can be applicable to all types of corporations, either multinational or home grown private enterprises;
2. that these codes present a co-regulatory approach such as in the case of the ILO where the implementation and norms setting responsibilities are proposed to be shared by the national governments, corporations, and workers' representatives; and
3. that they (OECD and UN Norms) introduce a corporate accountability agenda or international regulation system to hold corporations to account, rather than urging companies to improve standards, or report voluntarily.

Accordingly the following discussion focuses on the contents of the standards set by these codes, their applicability, and implementation mechanisms to regulate the corporate social behaviour.

#### **The OECD Guidelines for Multinational Enterprises**

The Guidelines for Multinational Enterprises are part of the OECD Declaration on Investment and Multinational Enterprises that is intended for protecting and



promoting foreign direct investment.<sup>68</sup> The Guidelines were first adopted in 1977, and subsequently amended several times.<sup>69</sup> Finally in June 27, 2000, the OECD issued its revised Guidelines after lengthy negotiations with the member countries and consultation with numerous NGOs.<sup>70</sup>

The revised Guidelines represent a comprehensive CSR code for multinationals by providing non-binding principles and standards for responsible business conduct with the aim of promoting economic, environmental and social progress. The current text of Guidelines, therefore, is relatively detailed, covering 38–54 specific corporate responsibility issues.<sup>71</sup> The revision was important since the use of the Guidelines is specially needed in host countries, where relevant legal norms and policies are often lacking or ineffective in enforcing basic human rights and other standards.

### *The Contents of Standards*

The Guidelines provide voluntary principles for responsible business conduct in various fields such as employment and industrial relations, environmental protection, combating bribery and protection of consumer interests. They are as follows:

Employment and industrial relations: Employment and industrial relations include the right of employees to be represented by trade unions and other bonafide representatives; the abolition of child labour; the elimination of all forms of forced labour; the prohibition of discrimination against employees; the provision of the necessary facilities for an employee representative for the development of effective collective agreement; the promotion of co-operation between enterprises, employees and their representatives on matters of mutual concern; and undertaking adequate steps to ensure occupational health and safety in their operation.<sup>72</sup>

Environmental protection: The environmental responsibilities as recommended by the Guidelines emphasise that enterprises should take into account ‘the need to protect the environment, public health and safety and generally conduct their activities in a manner contributing to the wider goal of sustainable development’.<sup>73</sup>

<sup>68</sup> OECD Guidelines for Multinational Enterprises, above n 51.

<sup>69</sup> The OECD Guidelines were amended in 1979, 1987 and in 1991.

<sup>70</sup> Lea Hanakova, ‘Accountability of Transnational Corporations under International Standards’ (LL.M Book, University of Georgia School of Law, 2005) [http://digitalcommons.law.uga.edu/stu\\_llm/17](http://digitalcommons.law.uga.edu/stu_llm/17) 18 May 2007.

<sup>71</sup> Business for Social Responsibility (BSR) Report (November 2000) <http://www.bsr.org> 16 October 2009. The current text was enriched with the entirety of social responsibilities after a revision. The revision added a number of issues to the main text including an extension of labour rights, a direct referral to human rights assigning the multinational responsibilities, and a reference to their responsibility to the supply chain (i.e., business partners, suppliers and sub-contractors). More importantly the applicability guidelines cover extraterritorial activities of TNCs.

<sup>72</sup> The recommendations made by the Guidelines to implement these rights express all four fundamental principles and rights at work which are set by ILO Declaration in 1998.

<sup>73</sup> The OECD Guidelines for Multinational Enterprises, above n 51.

The Guidelines also suggest means of implementation, such as establishing and maintaining an appropriate system of environmental management, providing the public and employees with adequate and timely information on the environment, health and safety impacts of their activities, and providing adequate education and training to employees in environmental, health and safety matters.<sup>74</sup>

Prohibition of bribery and the protection of consumer interests: The Guidelines set forth the principles relating to the prohibition of bribery and the protection of consumer interests. In regard to bribery enterprises are encouraged to abstain or refrain from paying any portion of a contract payment to public officials or the employees of business partners or to their relatives.<sup>75</sup> They are also encouraged to ensure appropriate remuneration to and legitimate service of their agents, enhance transparency, and promote knowledge and awareness of and compliance with companies' anti-bribery policies.<sup>76</sup> In addition, to eliminate bribery, the company should adopt management control systems and avoid illegal contributions to candidates for public office or political parties.<sup>77</sup>

As far as the protection of consumer interests is concerned, enterprises should adopt fair business, marketing and advertising practices and should take 'all reasonable steps' to ensure the safety and quality of their products and services.<sup>78</sup> 'All reasonable steps' means meeting 'all agreed or legally required standards for consumer health and safety including health warnings and product safety and information levels'. It also means providing accurate and clear information about safe use, maintenance, storage and disposal of products. They should provide consumers with clear dispute resolution procedures.<sup>79</sup>

### *The Applicability of the Guidelines*

It is clear that the Guidelines adopted by the OECD in the form of recommendations of the governments of adhering member and non-member states are intended for the multinational enterprises operating in and from the adhering countries. The Guidelines are applicable to all entities within multinational enterprises, whether parents or subsidiaries. In the performance of responsibilities the different entities of multinationals extend their co-operation and assistance to one another. Although the nomenclature of the Guidelines specifies its application to multinationals, they

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<sup>74</sup> Ibid; The text of the environmental issues in the Guidelines is the reflection of the principles and objective as introduced by Rio Declaration of Environment and Development and Agenda 21 (within the framework of the Rio-Declaration. Agenda 21 outlines the main issues regarding sustainable development and identifies key threats and challenges to achieving desired goals.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid; The principles relating to combating bribery reflects the contents of the OECD Convention of Combating Bribery of Foreign Public officials which came into force on 15 February 1999.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

are also relevant for domestic enterprises.<sup>80</sup> However, the Guidelines do not expect from the small and medium-sized enterprises the same degree of performance as from larger businesses.<sup>81</sup>

### *Implementation Mechanism*

The implementation procedures of the OECD Guidelines depend on the activities of the National Contact Point (NCP) of each adhering country of the OECD. Each adhering country will set up a NCP at its government office with a responsibility to encourage the observance of Guidelines in the national context and ensure that they are known and understood by the business community and by other interested parties.<sup>82</sup> The NCP conducts, surveys, guides, makes enquiries, and discusses issues concerned with the Guidelines and assist in resolving any potential problems.<sup>83</sup> The NCP also extends its assistance in resolving specific complaints. Any person may seek assistance or raise a complaint to the NCP in relation to the violation of the Guidelines. The NCP is expected to perform its duty in a visible, accessible transparent and accountable manner. The NCP reports on its activities annually.<sup>84</sup>

### The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises

In 1977 the ILO Governing Body issued a Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy which is regarded voluntary regulation of corporate behaviour.<sup>85</sup> By the adoption of this Declaration the ILO first set a code of conduct on labour standards for the multinationals. This Declaration articulates all the issues pertaining to labour rights and their protection contained in the different conventions of the ILO. In 2000 this Declaration was revised to incorporate the ILO Declaration on Fundamental Principles and Rights at Work that embody (a) the freedom of association and right to collective bargaining; (b) the elimination of forced and compulsory labour; (c) the abolition of child labour; and (d) the elimination of discrimination in the workplace.<sup>86</sup> Out of concern

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<sup>80</sup> Section 1.4 of the OECD Guidelines says “the Guidelines are not aimed at introducing differences of treatment between multinational and domestic enterprises; they reflect good practice for all. Accordingly, multinational and domestic enterprises are subject to same expectations in respect to their conduct wherever the Guidelines are relevant to both.”

<sup>81</sup> OECD Guidelines, above n 51, Sect. 1.5.

<sup>82</sup> Ibid part 2.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Phillip H. Rudloph, ‘The Tripartite Declaration of Principles Concerning Multinational Enterprises’ in Rammon Mullerat (ed), *Corporate Social Responsibility: The Corporate Governance of the 21<sup>st</sup> Century* (2005) 217.

<sup>86</sup> Ibid.

for core labour rights, including employment policy, job security, and health and safety issues, the Declaration calls upon governments, employers, labour unions, and TNCs to work towards the realisation of economic and social development. It calls for formulating appropriate national laws and policies and recommends that the principles be implemented by all concerned parties.

### *The Contents of the Standards*

The Tripartite Declaration provides a set of policy guidelines and recommendations to both the ILO member states' governments and multinational enterprises in regard to the implementation of labour rights and other employment issues which have already been established by the different conventions.

**Labour rights:** The labour rights as reaffirmed by the text include freedom of association, the right to organise, the right to collective bargaining in all matters of industrial relations, provision of favourable wage rates, benefits and working conditions and maintenance of high standard of occupational safety and health.<sup>87</sup>

**Employment:** The employment issues relate to the expansion of opportunities for stable and secure employment within the host country, promoting training and retraining initiatives as well as the promotion of workers in all occupational categories.<sup>88</sup> Multinational enterprises, while operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments as well as security of employment and long term development of the enterprises.<sup>89</sup>

**Human rights:** The Declaration also makes a special reference to human rights urging all the concerned parties to respect the Universal Declaration of Human Rights and the corresponding International Covenants on Human Rights.<sup>90</sup> The Declaration calls on member states to ratify ILO Conventions 87, 98, 111, 122, 138, and 182 and to apply their principles, along with the recommendations 111, 119, 122, 146, and 190.<sup>91</sup>

### *The Applicability of the Declaration*

The ILO Tripartite Declaration provides guidelines in relation to labour and employment issues applicable to governments, employers and workers' organisations and multinational enterprises. The text itself states that 'the principles set out in this Declaration are commended to the governments, the employers' and the workers organisations of home and host countries and to the multinational

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<sup>87</sup> ILO Tripartite Declaration, above n 40.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Rudloph, above n 85, 218.

<sup>91</sup> Hanakova, above n 70.

enterprises themselves.<sup>92</sup> It further states that these principles are intended to guide the governments, the employers' and workers organisations and multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and recommendations of ILO, as would further social progress.<sup>93</sup>

There is a fundamental difference between other ILO Conventions and the Declaration as updated in 2000. In other ILO Conventions the ratifying states are the sole subject of the focus on labour rights and employment related issues. As the Declaration is the outcome of a joint effort from governments, employers and workers organisations, the multinationals including all these three groups are the subjects of the principles. The responsibilities of both governments and multinationals are with respect to the relevant issues throughout the text. The responsibilities of governments as outlined appear more persuasive and co-operative in nature while enterprises are recommended directly to undertake implementation and compliance measures. It is apparently understood that the principles, in respect of labour and employment issues, are only addressed to multinational enterprises and therefore they are expected to implement them in their conducts. However, the principles of this Declaration also apply to the domestic enterprises (as the OECD Declarations for Multinational Enterprises do). This is evident in the following text of the Declaration:

The principles laid down in this Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of this Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular.<sup>94</sup>

### *Implementation Mechanism*

The Declaration does not provide any specific mechanism or monitoring process to implement the recommended principles. It presents a co-regulatory approach or tri-party participation such as government, workers and the enterprises in implementing the principles. However, the ILO has established a bureaucratic system to implement the Declaration which includes investigations carried out by the ILO secretariat and a subsequent report presented to the Board of Directors of the concerned company. In order to maintain industrial relations it proposes to undertake some steps to resolve any dispute, with the joint intervention of enterprises and representatives and organisations of the workers.<sup>95</sup>

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<sup>92</sup> ILO Tripartite Declaration, above n 40.

<sup>93</sup> Ibid; this statement provides co-regulatory approach for handling corporate social activities.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

## The United Nations

### *The UN Global Compact*

The Global Compact is an agreement between the United Nations and world business community that came into being on the basis of UN Secretary-General Kofi Annan's speech delivered in 1999 at the World Economic Forum at Davos, Switzerland and was implemented in July 2000.<sup>96</sup> Initially, the Global Compact was a set of nine principles of good corporate citizenship comprising human rights, labour standards and the environment. Then it was revised in 2004 with the addition of one more principle regarding bribery and corruption.<sup>97</sup> The Global Compact urges the business community to 'enact and embrace its principles in the said areas.'<sup>98</sup>

The Global Compact principles are divided into four areas; human rights, labour standards, the environment, and bribery and compensation. It incorporates altogether ten principles. The principles are by nature substantive. Two of them ask companies to protect and respect human rights as proclaimed internationally.<sup>99</sup> Four principles emphasise fundamental labour standards including the freedom of association and effective recognition of the right to collective bargaining, and elimination of all kinds of forced and compulsory labour, and elimination of discrimination in respect of employment and occupation.<sup>100</sup> Three principles are devoted to environmental issues. Under these principles, companies are encouraged to support precautionary approach to environmental challenges, undertake initiatives to promote greater environmental responsibility, and develop environment friendly technologies.<sup>101</sup> Here the second principle 'to promote greater environmental responsibility' seems to be vague and lacks the nature of substantive principles. The last principle says that businesses should work against all forms of corruption including extortion and bribery.<sup>102</sup>

The principles encompassed by the Compact are based on the Universal Declaration of Human Rights (1948), the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977) and the Rio Declaration for Environment and Sustainable Development (1992) which the companies are expected to adopt and integrate in the areas of their business.<sup>103</sup>

<sup>96</sup> Hans Corell, 'The Global Compact' in Ramon Mulert (ed.) *Corporate Social Responsibility: the Corporate Governance of 21<sup>st</sup> Century* (2005) 235.

<sup>97</sup> Ibid.

<sup>98</sup> United Nations, *Global Compact* (2000, revised in 2004) <http://www.unglobalcompact.org> 04 September 2007.

<sup>99</sup> Principles 1 and 2 of the UN Global Compact.

<sup>100</sup> Principles 3, 4, 5, and 6 of the UN Global Compact.

<sup>101</sup> Principles 7, 8, and 9 of the UN Global Compact.

<sup>102</sup> Principle 10 of the UN Global Compact (revised in 2004).

<sup>103</sup> Lisa Whitehouse, 'Corporate Social Responsibility, Corporate Citizenship and the Global Compact: A New Approach to Regulating Corporate Social Power' (2003)3:3 *Global Social Policy* 299, 307.

The Global Compact presents an integrated approach towards international business. Its importance mainly relates to its provision of ‘a global framework to promote sustainable growth and good corporate citizenship through committed and creative corporate leadership’.<sup>104</sup> Not only that, it also attempts to detail its principles in a way that informs corporate activity on a global scale.<sup>105</sup> In the opinion of Hans Corell, the Compact attempts to achieve two kinds of goals that are complementary.<sup>106</sup> The first is to make the Compact and its principles part of the internal strategy and operations of a business.<sup>107</sup> The second is to engage the stakeholders and facilitate cooperation among them in order to resolve common problems.<sup>108</sup>

Four mechanisms have been developed to achieve these goals within the organisational forum of Global Compact; dialogue, learning, local networks and project partnerships. The business is encouraged to hold dialogues and networking, learning and project partnership among governments, civil society, and labour. The Compact proposes to hold dialogues to obtain mutual understanding and joint efforts among businesses, labour and non-governmental organisations in resolving the key challenges of globalisation.

The UN Global Compact principles do not seem to be a full structured regulatory instrument of corporate responsibility, as it lacks the monitoring or enforcement mechanism that would ensure corporate compliance with the principles. It is instead a facilitating forum to advance global corporate social responsibility and to work for a sustainable future. It engages the private sectors to directly work with the UN, in partnership with ILO and NGOs, to identify and promote good corporate practices based on universal principles. It is viewed as a new type of partnership at a global level among the UN member states, MNCs, the ILO and NGOs to promote good corporate citizenship.<sup>109</sup> As a global platform, the Compact aims to make the business sector a strategic partner for development as it appears to have brought together business, labour and civil society to search for solutions to contemporary challenges.<sup>110</sup>

Since its inception the Global Compact has received a satisfactory number of responses from companies of the developed and developing world.<sup>111</sup> A growing number of companies are applying its principles in reviewing corporate strategies

<sup>104</sup> Global Compact Office, *The Global Compact: Corporate Leadership in the World Economy*, (2001) New York, United Nations.

<sup>105</sup> Ibid.

<sup>106</sup> Corell, above n 96, 235.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Hevina Dashwood, ‘Corporate Social Responsibility and the Evolution of International Norms’ in John J. Kirten and Michael Trebilcock (ed.) *Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance* (2004) 189.

<sup>110</sup> George Kell, *The UN Global Compact: Concept, Achievements, Future* (2002) United Nations <http://www.unglobalcompact.org> 20 September 2007.

<sup>111</sup> Dashwood, above n 109, 353.

and adjusting day to day operations, and have established networking with the Compact head office. Participation includes both large scale MNCs and SMEs. According to a Global Compact database report in 2003, 19 % of approximately 1,200 signatories are SMEs.<sup>112</sup>

Some critics highlight the vagueness of the Global Compact as it lacks proper monitoring and enforcement procedures, expressing their impression that companies' participation in the Global Compact is tokenistic or opportunistic. It is said that 'many corporations would like nothing better than to wrap themselves in the flag of the United Nations in order to "blue wash" their public image, while at the same time avoiding significant changes to their behaviour'.<sup>113</sup> Likewise it has been viewed that the companies' participation in the Global Compact is only "reputation management".<sup>114</sup> The decision by the UN to adopt a 'facilitative approach rather than enforcement' has lead to the more cynical accusations that the Global Compact offers companies a 'free ride'.<sup>115</sup>

Despite the criticisms referred to, the fact remains that to an extent, the initiative launched with the Global Compact undoubtedly reflects the new prominence of CSR on the international agenda. The development of the Global Compact like the OECD and ILO Tripartite Declarations has intensified the sense of urgency about CSR in some subsequent international forums and conferences.<sup>116</sup> For example, CSR was a prominent issue at the Kananaskis G8 Summit in 2002 and the World Summit on Sustainable Development in Johannesburg.

### *The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*

With the massive expansion of corporate business practice in the last few decades the impact of business activities on the international community became an increasingly concern of the UN. In response to this concern, it began to pay greater attention to the impact of corporate operations, particularly on human rights. Since the 1970s until 2000 many attempts were taken by the UN to set human

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<sup>112</sup> United Nations Industrial Development Organisation (UNIDO), *Survey of Small and Medium Enterprises in the Global Compact* (2004) <http://www.unido.org/file-storage/download/?filepercent5fid=22104> 21 September 2007.

<sup>113</sup> S. Prakash Sethi, *Setting Global Standards, Guidelines for Creating Codes for Multinational Corporations* (1st 2003) p.; Lea Hanakova, *Accountability of Transnational Corporations under International Standards* (LL.M theses, University of Georgia School of Law, 2005) 40 [http://digitalcommons.law.uga.edu/stu\\_llm/17](http://digitalcommons.law.uga.edu/stu_llm/17) 10 September 2007.

<sup>114</sup> Whitehouse, above n 103, 310.

<sup>115</sup> Ibid; Corporate Europe Observatory, *Global Compact Give TNCs a Free PR Ride* (2000), Amsterdam: Corporate Europe Observatory <http://www.unglobalcompact.org> 10 September 2007.

<sup>116</sup> Dashwood, above n 109, 353.



rights standards, but each unfortunately failed.<sup>117</sup> Finally on 13 August 2003, the working group of UN Sub-Commission on the Promotion and Protection of Human Rights<sup>118</sup> produced a Draft Norms on the Responsibilities of TNCs and other Business Enterprises with Regard to Human Rights and a commentary on the draft.<sup>119</sup> The Norms were subsequently considered at the annual meeting of the then United Nations Commission on Human Rights (presently UN Human Rights Council).

The Norms are considered as a landmark step in representing a significant instrument at the international level which imposes a wide range of accountability on businesses. The Norms are an attempt to put the business under the obligation of the protection of human rights and provides guidance to companies that what human rights obligations they should fulfil. Professor John Ruggie, the Special Representative to the UN Secretary General (2005) maintains that the obligations of corporations should and can supplement, not replace the state obligation and, the original responsibility for the protection of human rights lie with the state.<sup>120</sup> According to his view, the Norms do not have status of international human right law.

### *The Content of the Norms*

The Norms encompass and restate a wide range of human rights, labour, humanitarian, environmental, consumer protection and anti-corruption issues. Though other issues are covered, human rights are prominent. It is argued that the Norms set out in the text appear to be more comprehensive and more focused on human rights than any internationally recognised legal or voluntary corporate codes of conduct have drawn up by the ILO, the OECD, the European Parliament, the UN Global Compact, trade groups, individual companies, unions, NGOs or others.<sup>121</sup>

Before describing the substantive standards relating to human rights, the text in its first paragraph clarifies the general obligations of states, TNCs and other enterprises in promoting and securing human rights. It establishes that the primary

<sup>117</sup> Jakob Ragnwaldh and Paola Konopik, 'The UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Rights', in Ramon Mullerat (ed.) *Corporate Social Responsibility: The Corporate Governance of 21<sup>st</sup> Century* (2005) 251, 252.

<sup>118</sup> The Sub-Committee is the main subsidiary body of the United Nations Council on Human Rights, and is composed of 26 human rights experts acting in their personal capacity.

<sup>119</sup> United Nations High Commission on Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (2003) [http://www.unchr.ch/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev](http://www.unchr.ch/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev) 4 September 2007.

<sup>120</sup> UN Secretariat, *The Interim Report of Secretary –General Special Representative*, (2006) <http://www.business-humanrights.org/Documents/SRSG-Report> 3 June 2009.

<sup>121</sup> Weissbrodt David and Muria Kruger, 'Norms on Responsibility of Transnational Corporations and Other Business with Regard to Human Rights' (2003) 97:4 *The American Journal of International Law* 901,904.

responsibility for the promotion and protection of human rights is left with states, including their responsibility to ensure whether TNCs and other business enterprises are duly respectful of human rights.<sup>122</sup> The obligations imposed on enterprises under these Norms at no stage reduce the obligations of states.<sup>123</sup>

The TNCs and other business enterprises are responsible for promoting and respecting human rights within ‘the respective spheres of their influence’.<sup>124</sup> The responsibilities as reflected by the Norms can be enumerated as the right to equal opportunity and non-discrimination treatment; the right to security of persons; the right of works including safe and healthy working environment and the right to collective bargaining; respect for national sovereignty and human rights,<sup>125</sup> and consumer and environmental protection.<sup>126</sup> With respect to all of these issues, the Norms to a large extent refer to existing international principles, additionally specifying some basic methods for implementation.<sup>127</sup>

### *Implementation Mechanism*

The text describes three means of implementing the Norms. The first is adoption, dissemination and the application of internal rules of operation in compliance with the Norms. The second is a periodical report on the implementation of the Norms to all stakeholders and to the United Nations. The third is monitoring by the United Nations and other International or national mechanisms.

Each transnational corporation or other business enterprise shall adopt, disseminate and implement rules of operation in compliance with the Norms.<sup>128</sup> Corporations are required to ‘apply and incorporate these Norms in their contracts and other arrangements’ with all individuals party to them such as contractors, subcontractors, suppliers, licensees, distributors and all other natural or legal persons.<sup>129</sup> The commentary on the Norms states that companies must attempt to influence the human rights of all their business partners and in the case of a persistent breach of the Norms the company must conclude the business contract.<sup>130</sup>

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<sup>122</sup> UN Norms above n 119; see also Caroline Hillemanns ‘UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ (2003) 4:10, *German Law Journal* 1,4. <http://www.germanlawjournal.com/article.php?id=330>. 15 October 2007.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid.

<sup>128</sup> Ibid.

<sup>129</sup> Ibid.

<sup>130</sup> Ibid.

Companies are required to place a periodically report on their implementation of the Norms to all stakeholders as well as to the United Nations.<sup>131</sup> Reporting is a better way of strengthening the compliance rate with human rights obligation as incorporated in the Norms.

As for monitoring, it is stated that companies shall be subject to periodic monitoring and verification by the United Nations, or other national and international mechanisms already in existence or to be formed in the future for the purpose of application of the Norms.<sup>132</sup>

### *The Applicability of the Norms*

Throughout the text, the Norms impose compliance with human rights and other associated principles on both transnational corporations and other business enterprises. It generally indicates that all business, whether domestic or international should comply with the norms in their activities.

The text of the Norms defines both transnational and ‘other business enterprises’. The definition of transnational as cited in the Norms is clear as meaning an international business entity as it refers to ‘an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.’<sup>133</sup>

On the other hand the definition of ‘other business enterprises’ as cited in the Norms does not clearly mean absolute domestic enterprises.<sup>134</sup> The phrase ‘other business entities’ may include any business regardless of the international or domestic nature of its activities, including a transnational corporation; and a corporate, partnership or other legal form used to establish the business entity.<sup>135</sup> In addition, it has been said that ‘Norms are presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation, the impact of its activity is not entirely local, or the activities involve violation of the right to security.’<sup>136</sup> In the light of the ‘presumption of the application’ it is not entirely clear which business is falling under the scope of the term ‘other business enterprises’. It creates an ambiguity of what exactly is indicated by this, although Amnesty International interprets by the term as ‘encompassing purely domestic enterprises’.<sup>137</sup>

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<sup>131</sup> Ibid; see also Heenan Blaikie, ‘Corporate Social Responsibility and Codes of Conduct: The Privatisation of International Labour Law’ (Paper presented at Canadian Council on International Law Conference 15 October 2004) 13.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Rangwaldh and Paola Konopik, above n 117, 253.

<sup>135</sup> UN Norms, above n 119.

<sup>136</sup> Ibid.

<sup>137</sup> Rangwaldh and Konopik, above n 117.

Professor David Weissbrodt's clarification as to the application of the Norms to other business enterprises' includes three kinds of other business entities beyond multinationals.<sup>138</sup> Firstly, businesses engage in activities related to international commerce through import or export, even though they do not have any foreign subsidiaries.<sup>139</sup> Secondly, the other businesses operating locally are connected with international commerce and transnational corporations through supply chains.<sup>140</sup> And thirdly, influential businesses that are active in local or national markets and have a significant impact on the enjoyment of human rights.<sup>141</sup>

To resolve this issue the best way is to follow the guideline as available in the Draft UN Code of Conduct on Transnational Corporations and likewise, in the OECD Guidelines and ILO Tripartite Declarations for multinationals. It has been stated in the UN Draft Code that this code is not intended to introduce differences between domestic and international enterprises but wherever the provisions are relevant to both, transnational corporations and domestic enterprises should be subject to the same expectations in regard to their conduct.<sup>142</sup> Similar ideas and provisions are contained in the OECD Guidelines and the ILO Tripartite Declaration.<sup>143</sup> Both these international corporate codes, though apparently drafted for multinationals, may be applied in both transnational and domestic enterprises as mentioned before. So the term 'other business enterprises', however defined, is logically understood to cover all kinds of domestic enterprises irrespective of their size of operations and these fall within the scope of application of the Norms.

Moreover the basic principles as set out in the Norms are so crucial that they should be respected by all kinds of businesses.<sup>144</sup> The general observation is that all kinds of businesses in the era of economic globalisation are essentially in competition in the global markets to some degree.<sup>145</sup> In this situation, making a distinction between the standards that should apply to transnational and those that should apply to smaller domestic corporations appears to be difficult.<sup>146</sup> In truth, in the current era of globalisation, where foreign investments are largely increasing in domestic enterprises, it is difficult to determine a company wholly of national or international status because of a diversity of structures and forms of ownership and functional scope. So the conditions assigned for 'other business enterprises' in the paragraph 21 of the Norms does not give rise the scope that smaller domestic corporations are not required to comply with human rights standards in their operations.

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<sup>138</sup> Weissbrodt and Kruger, above n 121, 909.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

<sup>142</sup> UN Norms, above n 119.

<sup>143</sup> OECD Guidelines for Multinational Enterprises, part-1, Para 4; ILO Tripartite Declaration, Para. 11.

<sup>144</sup> Hillemanns, above n 122.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

The Norms also apply to all businesses in their supply chains. The text states:

Each transnational corporation or other business enterprise shall apply and incorporate these Norms in their contract or other arrangement and dealings with contractors, subcontractors, suppliers, licensees, distributors, or natural or other legal persons that enter into any agreement with transnational corporations and other business enterprise in order to ensure respect for and implementation of the Norms.<sup>147</sup>

## 2.3 Conclusion

The above discussion reflects that the three major regulatory initiatives have given mainly a structural basis to the globally recognised CSR standards. They are company, association and NGO model codes, multi-stakeholder codes, and intergovernmental codes. As CSR is a voluntary responsibility issue, each has tried to develop the standards in its own way. Nevertheless, the common issues are in place in all the codes of conduct reflecting the current stakeholder model of corporate behaviour.

The company and associations codes lack coherency as they have been developed unilaterally and in an individual way. These codes are often of limited scope. In the case of multinational corporations, the codes usually focus on working conditions in core enterprises and development concerns that have a high profile in the richer industrialised countries while issues such as labour rights, rights and responsibilities of suppliers and home based workers and independent monitoring receive less attention.<sup>148</sup>

Notwithstanding the limitations of the codes, they have so far generated benefits for various stakeholders and broadened the concept of corporate responsibility in relation to environmental management, workplace conditions and company-community relations.<sup>149</sup> At least it can be said that the existence of the corporate codes and association codes are clear recognition of CSR as an extended corporate governance issue. Also, with the focus on advertisement as a requirement, the codes have awakened consumer interest in how goods are produced in addition to the question of price.

Multi-stakeholder codes are the result of stakeholders' reactions, pro-actions and concern for corporate activities, societal demands and market regulation. These codes are on specific issues and cover internal and external monitoring processes. Through the development of management mechanism they have given a quasi-binding nature in the application of CSR. In addition, they have made an effort to bring into decision-making a broader range of participants, promoting a social movement which puts pressure on companies to implement their external responsibilities. At the same time they have created positive impacts on governmental enforcement of the law, respect for individual human beings, and in working

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<sup>147</sup> The UN Norms, above n 119.

<sup>148</sup> Utting, above n 61.

<sup>149</sup> Ibid.

conditions in multinationals, home based enterprises and in supply chains. But critics find some major differences in the extent to which they integrate trade unions and local-level monitoring and verification organisations in developing countries and more importantly in the southern actors.<sup>150</sup>

The intergovernmental codes such as the OECD and the ILO Declarations, and the UN Norms have contributed to the development of general norms of corporate social behaviour that are all-pervading and provided a regulating framework for MNEs and their employment mechanism. The basic contents of these codes are almost similar and in a sense they are full structured codes. The standards set by these instruments focus on labour and human rights, the environment, consumer protection, accountability, business conduct, community involvement, and corporate governance. Specifically, the OECD Guidelines focus on a wider range of issues such as employment and industrial relations, the environment, combating bribery, and protecting consumer interests. The ILO Tripartite Declaration represents the previous conventions adopted on different issues of labour and employment. In this sense, it can be considered as a composite international labour code. The UN Global Compact is not a full structured corporate code; rather some recommendations intended to promote social responsibility practices through global networking. The UN Norms, although particularised with human rights, cover the major issues generally pertaining to companies' social behaviour.

It is noticeable that CSR norms tie labour and human rights together. The rights which are recognised as labour rights in these codes are incorporated into all of the international human rights instruments.

The implementation mechanisms provided by these codes are soft in nature and differ from each other. The OECD suggests the establishment of an NCP in the member states as an implementation mechanism, while the ILO undertakes a co-regulatory approach through tri-party involvement such as government, employers and representatives of the workers.

There are some basic differences between multi-stakeholder and intergovernmental codes. Intergovernmental codes provide principles regulating the social behaviour of the MNCs as well as national companies. Intergovernmental codes are based on more substantive and less procedural principles of corporate regulation, while multi-stakeholder codes include substantive principles and procedures for investigation, monitoring and reporting issues. The intergovernmental codes are full structured, covering all issues of corporate social responsibility, where multi-stakeholders are adopted on specific issues. But in application, the multi-stakeholder codes are more pronounced. The international development institutions, NGOs and multinational private auditing companies as the drivers of CSR across the world measure the promotional activities of CSR mainly in the light of multi-stakeholder codes.

Finally it may be said that all of the above codes of conduct have been developed institutionally in order to promote international standards to shape a recognised and acceptable CSR structure as a long term business strategy of any company.

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<sup>150</sup> Ibid; Xiaoyong, above n 54.

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