

NGO Perspectives and Recommendations on Responsible Entrepreneurship

Prepared by the ToBI Working Group on Responsible Entrepreneurship¹

In June 1997, the UN General Assembly emphasized the importance of strengthening “interaction with representatives of major groups including through greater and better use of focused dialogue sessions and round tables,” with “input from...business and industry groups in the elaboration, promotion and sharing of sustainable development practices and their promotion of corporate responsibility and accountability.”² The upcoming 1998 CSD Dialogue on Industry provides an important opportunity to examine how corporate responsibility and accountability fit within the larger framework of sustainable development.

This Dialogue seeks to achieve some common understandings of a number of concepts critical to achieving sustainable development. The concept of *responsible entrepreneurship*, linked to Agenda 21’s call for *stewardship* of natural resources, elicits a range of interpretations and opinions. In turn, the meaning of corporate *responsibility* and *accountability* garners a wide diversity of opinion among NGOs, business and industry, trade unions, governments and the United Nations. In this Dialogue we hope to establish enough of a common language to take us beyond the concepts and to the task of changing the way we do business.

While this paper cannot adequately address the diversity of issues surrounding this topic, we hope to at least focus sufficient attention on some of the critical points NGOs have raised in this process. All the NGOs who have contributed ideas and recommendations to this paper may not agree with all the points raised. However, this paper is intended to stimulate a dialogue, not to say the final word.

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¹ For the UN Commission on Sustainable Development, Sixth Session, December 16, 1997. This paper was published by the United Nations as one of the primary background papers for the Major Groups Dialogue on Industry and Sustainable Development, held in April 1998.

² United Nations. *Programme for the Further Implementation of Agenda 21*, United Nations Department for Policy Coordination and Sustainable Development, July 1, 1997.

What is Responsible Entrepreneurship?

An entrepreneur, following Webster's definition, is "one who organizes, manages, and assumes the risks of a business or enterprise." Ironically, environmentalists and human rights advocates tend to criticize corporations precisely for externalizing their risks and costs, passing these on to the environment and society.

Several NGOs find the concept of *responsible entrepreneurship* problematic. Six years after Rio, many NGOs agree with our colleague from Eco News Africa who finds that "such responsibility is not reflected in the behaviour of huge corporations, and if anything things are only getting worse."

For the Northern Alliance for Sustainability (ANPED), responsible entrepreneurship "could be considered a contradiction in terms when related to sustainable development," in that for most entrepreneurs their primary responsibility is to their own financial bottom line. ANPED offers its definition of a "responsible" entrepreneur as someone who "actively supports sustainable development, does not harm the environment, public health or the social fabric of society and reveals to the public all the possible social and environmental impacts of their practices."

Many if not most NGOs agree that the widespread adherence by industry to responsible business principles and practice depends on the degree to which they are also accountable to society. In other words, *corporate responsibility requires accountability*. One NGO describes the notion of corporate responsibility without accountability as like trying to run a bank on the honor system, with no security guards. In spite of all the best practices of honest customers and staff, bank managers fully understand that it takes only a single dishonest exception to take away everyone's common savings. The same is true for sustainable development.

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Voluntary Agreements

Voluntary agreements differ dramatically according to scale of application, the parties involved, their motivations and incentives, and how compliance is assured and verified, in addition to the issues (e.g., labor, health, environment) at the heart of the agreement.

Voluntary agreements can be distinguished according to their scale or level of application. They may be

- Company specific (e.g., Levi Strauss & Company; The Gap; Liz Claiborne; Reebok; Phillips-Van Heusen; L.L. Bean; the Petrobras Ideas Network);
- Product or industry specific (e.g., the CMA's Responsible Care initiative; the White House Apparel Industry Partnership);
- Location or community specific (e.g., Clean Clothes campaign in Bangor, Maine; the PADE Programme for waste management in Rufisque);

- Global or national (e.g., Sullivan Principles; ICC Business Charter; OECD Guidelines for Multinational Corporations; CERES Principles; ICCR's Principles of Global Corporate Responsibility).

There is a big difference between “closed” agreements, among companies within an industry, and more “open” agreements, involving a broader range of employees, communities and populations directly affected by company operations, consumers, concerned stockholders – sometimes clustered together under the term “stakeholders.”

“Closed” agreements: internal to business and industry

Agenda 21 encourages business and industry to “increase self-regulation, guided by appropriate codes, charters and initiatives integrated into all elements of business planning and decision-making and fostering openness and dialogue with employees and the public.” It does NOT say that business and industry does not need to be regulated, but that they should voluntarily operate in a socially and environmentally responsible manner. From a business perspective, voluntary compliance with corporate responsibility codes can help companies anticipate the impacts of investment decisions on the environment, health and human rights – and thus avoid costly litigation, public protest, and disgruntled shareholders.

From the perspective of NGOs, the value of corporate self-regulation depends on whether or not any significant progress is made in adopting responsible practices and developing more sustainable products or services. NGOs are fully aware of the inevitable choice between responsibility and profitability. This conflict highlight the weakness of closed voluntary efforts, which often result in noncompliance, double standards, inadequate targets or standards, and greenwashing. These flaws obviously damage the public credibility of the agreements.

“No matter how great the goodwill or sense of responsibility of a business or industry, it cannot escape the reality that it has to remain competitive and financially viable,” the South Africa New Economics Network (SANE) points out. For a company to operate responsibly, it has to be assured that its competitors, who do not behave likewise, do not gain an advantage in behaving irresponsibly.

In other words, the “rules of the game” must be the same for all; there is no room for “free riders.” When the company must choose between the competitive bottom line and compliance with non-binding guidelines, management will be forced to choose the bottom line. Therefore, industry-based voluntary codes must be strengthened with appropriate government regulations and enforcement as well as public access to information and community participation in relevant company decisions.

As Friends of the Earth concluded in their report on the issue, this is not an argument “against voluntary initiatives by groups of firms or trade associations

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that aim to improve environmental performance beyond compliance with regulations. However...such schemes do not, and cannot, represent an alternative to regulation.”

“Open” agreements: negotiating with stakeholders

In contrast to the closed agreements within business and industry are those more “open” or negotiated agreements and codes involving a wider range of parties. NGOs and the public are more likely to be skeptical of closed voluntary codes and agreements -- especially with no independent monitoring and verification of compliance. NGOs are more likely to support open agreements reached through negotiations with stakeholders.

One example of a stakeholder negotiated agreement is the Ethical Trading Initiative, currently chaired by the New Economics Foundation (NEF). According to NEF, this initiative “is funded by the UK government and incorporates 18 companies (mainly food and clothing retailers) and 16 UK NGOs. It has been established to develop common codes of conduct and approaches to business in poorer countries, in an effort to positively impact on the well-being of employees and their communities. Through the process of experimentation, dialogue and negotiation the ETI will aim to widely endorse a set of standards and an approach to monitoring and verifying these codes of conduct.”

In some cases, community-groups, consumer organizations, or NGOs may themselves initiate a corporate code or agreement, and then lobby companies to sign on as partners. For example, the “Maquiladora Standards of Conduct” was developed in 1990 by the Coalition for Justice in the Maquiladoras (CJM), an international coalition of environmental, religious, community, labor, women's, and Latino organizations.³ This agreement provides guidelines to alleviate acute problems created by the maquila industry along the U.S.-Mexico border. Unfortunately, the Maquiladoras have yet to voluntarily adopt and implement these standards, which nevertheless help raise public awareness and support the workers and community organizers in Mexican border towns.

The Interhemispheric Resource Center (IRC) describes the emergence of stakeholder-initiated codes “as a response to the globalization of the marketplace.” According to IRC, “consumer groups and labor organizations see codes as a way to regulate the practices of corporations that have operations across the globe, while the companies themselves have adopted codes to improve their corporate image and head-off damaging boycotts and bad publicity.” On the other hand, some NGOs warn against open agreements whereby corporations specify the rules and control the moves in the process,

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³ Interhemispheric Resource Center.

using the term “stakeholder” to redefine and reduce communities, workers, and citizens to corporate constituencies in the global economy.⁴

“A prerequisite for such participative forums to work is a degree of trust between the parties,” states World Wildlife Fund-UK,⁵ a trust which “has been undermined in the past by the secrecy with which most companies have shrouded their environmental performance. Responsible companies should have a presumption of transparency about their operations, and work to release as much data as possible. This openness should be supplemented by having regular independent environmental and social audits, drawing on input from employees and the surrounding community.”

Moving in the opposite direction from transparency is a trend toward what might be called the “corporate right to secrecy,” in which “environmental audit privilege” laws are enacted allowing companies to conceal information contained in environmental self-evaluations from national and local enforcement and environmental agencies, the courts, and citizens.⁶ Another component of these corporate secrecy laws is the “privilege” given to regulated facilities of “outright immunity from prosecution for companies who disclose and self-correct violations as a result of auditing,” which will “allow some lawbreakers to retain the financial fruits of their previous disregard for the law.”⁷

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--ANPED

Concerns and criticisms

NGOs express concerns about both types of voluntary corporate agreements because of their potential for greenwashing and public manipulation, wasting time, undermining needed legislation and regulatory efforts, weakening of monitoring and enforcement mechanisms, creating divisions among NGOs, and for masking the increasing power and influence of corporations over civic and governmental bodies.

Since the 1992 Earth Summit, the concept of "voluntary agreements" or "self-regulation" remains a red flag for many NGOs, as this was given to justify removing the Code of Conduct for Transnational Corporations from the Agenda 21 negotiations. This 17-year body of work, despite its non-binding nature, was dismissed at Rio with the promise of a new era of responsible business. “The

⁴ Karliner, Joshua. *The Corporate Planet: Ecology and Politics in the Age of Globalization*. Sierra Club Books, 1997, p. 42.

⁵ Nick Mabey, WWF-UK

⁶ These secrecy laws have been enacted in 19 states in the US, as of November 1996, although challenged by the federal environmental protection agency.

⁷ Network Against Corporate Secrecy. Letter to Carol Browner, USEPA, March 24, 1997.

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most glaring weakness at Rio was the failure to include the regulation of business, financial institutions, and transnational corporations in Agenda 21 and other decisions,” stressed Martin Khor of Third World Network in a speech at CSD5.⁸ “If nothing else,” laments Joshua Karliner of TRAC, “the Earth Summit clarified the fact that global corporations have the power and capacity to seriously influence the focus and trajectory of international agreements on environment and development.”⁹

Greenwashing is one obvious reason for NGO mistrust of corporations and their concerns about voluntary agreements. In their book on greenwash, Greer and Bruno of Greenpeace stress the need to look at the reality hidden beneath the green image fostered by TNCs, that “TNCs are not saviors of the environment or of the world’s poor, but remain the primary creators and peddlers of dirty, dangerous, and unsustainable technologies. The claims of these companies must be scrutinized carefully and their activities and products regulated for the good of the planet and its people.”¹⁰

According to ANPED, voluntary agreements “have not worked, do not reach all entrepreneurs, and are not participatory...which means that they are ineffective.” As they put it, “the road to environmental and social hell has already been paved by such ‘codes of conduct’ and alleged good intentions. In a legalistic society, victims of environmental crimes can find little comfort in ‘non-binding agreements,’ whether they be broken or fulfilled in some vague way. The solution lies in international legally binding regulations to ensure that responsible entrepreneurship will be the only way in which corporations world-wide operate.”

Friends of the Earth International (FoEI) also identify fundamental problems with the voluntary approach:¹¹

- **Ineffective**, “because the potential motivations for compliance are neither strong enough nor sufficiently widespread;”
- **stifle innovation**, “not only to fail to stimulate innovation but also to tend to lock firms into existing, often short-term solutions;”

⁸ Khor, Martin. “Globalization is undermining sustainable development,” in *Third World Resurgence*, No. 81/82, May/June 1997, p. 26.

⁹ Karliner, p. 57.

¹⁰ Greer, Jed & Kenny Bruno. *Greenwash: the Reality Behind Corporate Environmentalism*. Third World Network & Apex Press, 1996, p. 12.

¹¹ Tony Juniper, Friends of the Earth International.

- **undemocratic**, focusing on industry's interests and definitions of the problems while leading "to the Government effectively abdicating responsibility for whole sections of environmental policy,"
- **lack public credibility**, raising "the fear that it will serve the narrow interests of the firms concerned rather than those of the public," and that even "industry groups themselves have serious doubts about the voluntary approach which centre on the lack of motivation for compliance and, in particular, the problems of free-riders."

"Lack of compliance with international commitments made in Rio formed the key to the failure of UNGASS," says Netherlands Committee for IUCN, "This underscores the need for compliance mechanisms in sustainable development agreements, particularly when they target the main actor in environmental and social degradation -- industry." NC-IUCN criticizes voluntary agreements for not including compliance mechanisms, although they consider labeling initiatives like the "Max Havelaar" case in the Netherlands and certain labeling efforts for organic agriculture as "a compliance mechanism within the context of a voluntary agreement." However, NC-IUCN raises the need to ensure that such cases also "fulfill the criteria for inclusiveness and accountability."

Noting the wide gap between business and industry's promotion of voluntary codes and NGOs' criticisms, Eco News Africa suggests that "this would be a good place to look into how far corporations have respected codes" as well as cases of corporate misconduct which gloss over "previous disasters that they have helped create and despite the existence of voluntary codes." Research is needed to clarify the record, to identify the successes and failures, and to assess both the problems and the potentials of the different types of voluntary agreements. "Such an evaluation should include the views of the civil society at large," stresses this Kenyan NGO; "NGOs and Community-Based Organizations...could work on an effective strategy on how this could be best achieved."

Recommended criteria for effective voluntary agreements

Many NGOs believe voluntary codes and guidelines can be effective contributions to sustainable development only if they fulfill the following requirements:

1. **substance:** appropriate content and language (i.e.,undiluted, unambiguous and watertight);
2. **inclusiveness:** active participation of appropriate stakeholders, including opportunities and resources for participation of the wide range of affected persons and organizations;
3. **motivation:** sufficient incentives to encourage voluntary compliance;

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-- Interfaith Center on Corporate Responsibility

4. **integration:** incorporation of social and environmental values into not only the policies and operations of companies, but also in the way they define and measure success and progress;
5. **transparency:** independent monitoring of implementation;
6. **credibility:** independent verification of compliance, involving participation and endorsement by the NGO sector in the choice and methods of verification; and
7. **accountability:** regulatory and civic mechanisms enforcing responsible behavior, including penalizing companies that consistently behave irresponsibly.

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Regulatory Frameworks

Both industry and public advocates complain, for different reasons, about the inadequacy of regulatory frameworks for motivating responsible business practices. Industry often describes regulations as interfering with their ability to establish responsible practices. Advocates of regulation claim that threats of litigation and fines impel companies towards responsible behavior, that regulation *inspires* voluntary responsibility. Other critics point out that current regulations are not always enforced, or that the substance is watered down by industry lobbyists.

Industry perspectives on regulation

Industry has consistently complained that “entrepreneurial solutions to environmental problems” are blocked by “complex and cumbersome regulations.” In their eyes, responsible innovations are hampered by “punitive regulations, costly and time-consuming enforcement and licensing methods” which have not kept up with the “increased awareness of the complex interrelationships between man [sic] and nature.” Speaking for industry’s promotion of the voluntary approach, the International Chamber of Commerce helped launch the *Business Charter* – their preferred alternative to the *UN Code of Conduct for TNCs*.

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¹² Schilling, David. “Making codes of conduct credible: the role of independent monitoring”. Paper prepared for conference on “Global Codes of Conduct” sponsored by the Center for Ethics and Religious Values in Business at Notre Dame, October 6-8, 1997. Interfaith Center on Corporate Responsibility.

Outside CSD, certain elements in industry and government have been secretly advancing a different, heavy-handed strategy for dealing with frustrating regulations. Through the proposed internationally binding Multilateral Agreement on Investment (MAI), companies will have the power to legally override local and national regulations and laws if they are determined to be obstacles to foreign investment. As NGOs gradually learn of this “stealth agreement” they tend to be scandalized and outraged at such an undemocratic and manipulative attack on hard-won laws to protect the environment, health, and human rights. Thus, five years after Rio, industry’s quest to escape accountability reaches new heights. In turn, NGOs continue to struggle for appropriate and effective safeguards, regulations, and access by citizens to information and to the courts to pursue compensation for damages caused by industrial activities.

NGO perspectives on regulation

NGOs have no desire to burden industry with regulations, instead tending to agree with Friends of the Earth International (FoEI) that “traditional forms of regulation have been too prescriptive and consequently the opportunity for exploiting the ability of business to produce novel and timely solutions is constrained,” that “industry is granted no discretion in how to achieve an environmental goal.” Most NGOs readily agree that regulations are only one of many different instruments for influencing corporate and public behavior.

As part of the input to this paper, NGOs recommend a number of social and market-based instruments, such as redirecting or phasing out damaging and unsustainable subsidies by the year 2010,¹³⁻¹⁴ shifting taxes from labor to resource consumption and pollution,¹⁵ introducing an international CO2 tax, taxing airplane fuel¹⁶, implementing the Tobin tax on currency speculation,¹⁷ committing to time-bound targets,¹⁸ and mounting public education campaigns.

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¹³ Germanwatch.

¹⁴ Roodman, David Malin. “Paying the piper: subsidies, politics, and the environment.” Worldwatch Paper 133. Washington, DC, December 1996.

¹⁵ Betty Paschen, Canadian Green Party and Sustainable Edmonton Society.

¹⁶ German Forum for Environment and Development.

¹⁷ WEDO.

¹⁸ NGO Caucus on Sustainable Production & Consumption.

Worldwatch¹⁹ also points to a mix of market instruments and regulations, noting that “laws – not market forces alone – are what will protect endangered species, manage nuclear waste, and ban pollutants that may be deemed unacceptable in any amount, such as DDT or dioxins.” In contrast to industry arguments, Worldwatch observes “there is remarkably little evidence that regulations have seriously depressed the fortunes of industry, or that they have chased businesses into ‘pollution havens’ – countries with lax environmental rules.” Furthermore, says FoEI, “there is strong evidence that regulation remains the primary motivation for firms to improve environmental performance.”

The need for an international regulatory framework

Many NGOs agree with Friends of the Earth on the “need for an international regulatory framework in respect of the monitoring and guidance of TNC activity,” that since the closure of the UN Center on Transnational Corporations, “there has been no official debate on how TNCs should be monitored and regulated.” For ANPED, “nationally enforced regulatory frameworks provide the only tool to hold corporations accountable and liable, ensuring that responsible entrepreneurship includes all business.” Furthermore, regulations level the playing field, eliminating the free rider problem by making the rules of the game the same for all. “This way of giving direction to business and industry,” explains the South African New Economics Network, “largely removes the complex issues which they need to face if these are left entirely up to the criteria of moral judgment and response to social pressure.”

Mixing regulations and market incentives

In general, NGOs tend to call for defending and improving national and international regulations as well as market instruments. For example, the Taskforce on Business and Industry (ToBI) calls for governments to “send the right message” to business -- stressing a mix of ecological tax and subsidy reforms in combination with strengthening citizens’ Right to Know and litigation rights to challenge irresponsible practices.

The Women in Environment and Development Organization (WEDO) encourages CSD6 to promote the language agreed in the Habitat Agenda, in which governments commit themselves to “strengthening regulatory and legal frameworks to enable markets to work, overcome market failure and facilitate independent initiative and creativity, as well as to promote socially and environmentally responsible corporate investment and reinvestment in, and in partnership with, local communities and to encourage a wide range of other partnerships to finance shelter and human settlements development.”

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¹⁹ Roodman, David Malin. “Getting the signals right: tax reform to protect the environment and the economy.” *Worldwatch Paper 134*. Washington, DC, May 1997.

To guide this mix of regulations and market incentives, minimum standards to define responsible practices are needed. To succeed, WWF-UK says, these standards must be “locked into place with binding international regulation.” To implement environmental and social accounting practices across the board, international regulations and binding standards are required. “A lot of ‘complex and cumbersome’ regulations are caused by the lack of political courage of governments to introduce at once the tough standards that are necessary from a sustainability perspective,” explains the Netherlands Committee for IUCN, “Instead, they tend to take a step-by-step approach in which standards are tightened every few years, thus causing a lot of uncertainty for industry.” Rather, a more direct implementation of standards would allow industry to immediately invest in the proper technologies, in contrast to “technologies which will be outdated before the investment is gained back.” Furthermore, adds WWF-UK, such regulations and standards should be promoted by company environmental officers and industry representatives such as the International Chamber of Commerce and World Business Council.

NGO concerns: neglecting the precautionary principle

In their reaffirmation of the *Business Charter*, the International Chamber of Commerce explained that “business looks to government to provide the necessary regulatory framework based on sound science, the understanding of risk assessment and economics.” This emphasis on so-called “sound science” and risk assessment is a standard excuse made by industry to sidestep regulatory safeguards to put controversial new products, chemical additives, genetically modified organisms, or other questionable items on the market or engage in hazardous production practices -- unless science *has undeniably proven* significant harm or damage. Thus, for new chemicals or biotechnology products, the burden of proof and risk is passed onto consumers and communities – not on the company to demonstrate to the public that their intended actions are truly safe. Groups like ANPED, ToBI and others continue to urge incorporating the precautionary principle as part of clean production standards and regulations.

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NGO concerns: double standards

This is the problem whereby companies comply with certain environmental, health and labor standards in countries where this is legally required, but fall far short of such standards in other countries where they have subsidiaries, suppliers, or where they relocate. “Companies rarely relocate to take advantage of lower environmental standards, but when operating abroad often behave in ways which they know would be totally unacceptable in their home countries,” says WWF-UK. However, “a truly responsible company should not act in this inconsistent manner, but aim to operate to worldwide standards.” In this regard, “companies should undertake regular independent environmental audits of subsidiaries and major overseas suppliers,” and “any variation in environmental performance for similar processes must be explained inside the context of a company’s global responsibilities.”

Reporting

In last year's UNGASS report, governments agreed to encourage the "voluntary publication" by business "of environmental and social assessments of their own activities." The intent is to encourage greater transparency by business and industry in providing valid and timely information – especially about those practices having an impact on the health and well-being of communities and environment.

In some countries, certain types of company reports – on campaign contributions and lobbying expenditures, environmental impact assessments for proposed projects or developments, and registers of toxic releases – may be legally required. Beyond these requirements, it is up to the companies as to what additional information they will divulge. Indeed, for the sake of improving their relationship and image with consumers, shareholders, government, and partners, many companies voluntarily provide an assortment of reports about their various practices. In turn, NGOs pose various questions about their reporting.

Questions about corporate reporting

As with voluntary agreements, many NGOs are skeptical of voluntary company self-assessments, suspicious that such self-audits and environmental reports "effectively serve to preempt pressure on companies to open their facilities and books to independent inspectors who could more objectively assess the environmental impacts of their operations."²⁰ In general, NGOs raise a number of questions about corporate reporting, whether voluntary or required:

- Is timely and relevant information about company practices *available* to the public?
- Is the information a company provides *credible*?
- Is it *comprehensible* and *comparable*?
- Does the public have access to the courts or other bodies to act on this information?

Making information available: Community Right to Know

In response to NGO skepticism, the chemical industry with their Responsible Care program says "don't trust us, track us." Although companies in the program are supposed to conduct annual self-evaluations, "the evaluations are not available to the public," says Greenpeace. "Without access to information – even that generated by the company itself," they continue, "the public does NOT have the opportunity to track the corporation any more than it did before

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²⁰ Karliner, p. 48.

Responsible Care.”²¹ In order to effectively track companies and determine whether they are conducting themselves in a responsible manner, the public needs relevant information. If companies will not provide this information voluntarily, then government needs to take the necessary steps to ensure public access.

One example of information that companies are required to report to government and which in turn are to be made available to the public is the Toxic Release Inventory and Community Right to Know laws (in the United States. “Citizens armed with information,” observes ANPED, “are able to monitor their neighbourhood polluters and takes some of the regulatory burden off resource-strapped authorities.” Few other countries have the toxic reporting requirements of the U.S., but governments are being encouraged to introduce Pollutant Release and Transfer Registers (PRTRs). Simply by making this information available to the public, claims the OECD, PRTRs “have had a stronger impact than many regulatory programmes even though a PRTR sets no improvement goals mandatorily.”²² What is mandatory, however, is the reporting.

Only a small handful of countries have yet implemented and enforce Community Right to Know laws. Even in these countries, the Right to Know has yet to be extended to include not just a company’s emissions, but the toxic chemicals used in the production process and in the products themselves. NGOs seek the extension of Right to Know to cover pesticides used and residing in food (an issue of increasing concern regarding the impact of endocrine disrupters), as well as on radioactive materials and genetically engineered organisms.

Industry representatives typically argue against this expansion of Right to Know, using many of the original arguments they used against reporting their toxic releases. Companies claim that public access to information needs to respect “certain limits,” that some data must be respected as proprietary and kept secret. NGOs argue that “too often corporations hide behind the mask of ‘commercial confidentiality’ claiming that disclosure will reduce their ability to compete.”²³

A colleague from Australia suggests that to help soften the “policing nature” which businesses may perceive of government reporting requirements, the reporting system could be extended “to include recognition of outstanding practice through rewards such as awards/preference given to government contracts, etc.”

There are many reasons to question the validity of company reports not verified by reliable, independent methods.

²¹ Greer & Bruno, p. 34.

²² OECD. *Pollutant Release and Transfer Registers: Guidance Manual for Governments*. Paris, 1996.

²³ ANPED.

Achieving credibility: monitoring and independent verification

For a company or industry to establish its credibility with NGOs, it will need to do more than sophisticated advertising and clever public relations. Methods and criteria need to be developed to verify the claims of a company or industry about the safety of their activities. Whether due to gaps in information, simple errors, or overt greenwashing and deception, there are many reasons to question the validity of company reports not verified by reliable, independent methods.

Several NGOs clearly state their distrust of voluntary programs like Responsible Care, described as “vehicles that the transnationals use to define environmental issues on their terms”²⁴ and designed to “divert attention from the fundamental environmental issue: products such as nuclear reactors and toxic chemicals form the lifeblood of many TNCs.”²⁵ Even if these companies make their self-assessments available to the public, what is necessary for them to be credible?

Eco News Africa asks a critical question: “Who [is to] establish such a means for independent verification?” Some NGOs, such as Germanwatch, suggest that governments, business and green NGOs should jointly select an institute to conduct corporate monitoring. The Good Neighbor Project for Sustainable Industries suggest a “right to inspect,” an approach proven effective in numerous previously negotiated agreements. “In this approach, community and workforce representatives or NGOs have been entitled to their own experts, and to accompany them to inspect problem plants and evaluate pollution prevention opportunities.” In many places, particularly in developing countries in Africa and elsewhere, the technical capacity for such monitoring and verification is not immediately available. Rather than commission outside (Northern) consultants to do the job, NGOs suggest “building the strength of primary stakeholders,” particularly local community-groups or others who understand the problems and are best positioned to observe a company’s on-going behavior.

“Today, there is a struggle...over the definition of independent monitoring and who can qualify as an independent monitor,” the Interfaith Center on Corporate Responsibility (ICCR) points out. “The pressure created by NGOs for companies to adopt independent monitoring has created a new industry. Accounting, auditing and consulting firms... have moved into the monitoring field and developed social audit instruments to measure compliance with company codes of conduct.” While the big accounting firms may appeal to companies as credible monitors of their behavior, these firms are less qualified for daily monitoring of potential labor, health and environmental violations to which local NGOs and community groups would be more attuned. Furthermore, since such NGOs are perceived as “not beholden to the company,” they have a credibility “which can carry weight with consumers, investors, labor, human rights groups and the public.”

Today there is a struggle over the definition of independent monitoring and who can qualify as an independent monitor.

²⁴ Karliner, p. 48.

²⁵ Greer & Bruno, p. 33.

One example of an NGO-business partnership to develop such an independent monitoring and verification system is among the Gap and ICCR, Businesses for Social Responsibility, and the National Labor Committee Education Fund in Support of Worker and Human Rights in Central America. In this case, the Gap responded to NGO observations of a violation of the Gap's Code of Vendor Conduct by its maquiladora supplier in San Salvador. By February 1996, the Independent Monitoring Group of El Salvador (IMGES) was formed, a result of consultations and negotiations with factory workers and managers, local and international NGOs, religious and business groups to develop appropriate independent monitoring methods. In March 1996, a historic resolution was signed pledging all parties to improving worker-management relations, rehiring former union leaders and giving total access by NGOs to the plant to monitor the factory's operations. A year later, IMGES issued a public report on its work, stating that all points in the resolution had been fulfilled.

While this example may not be a model for all independent verification situations, it is one positive example of a process in which a company gives up some of its control and trusts in the integrity of an equal partnership with the community and NGOs to reach a solution to a volatile human rights situation. Such an example might be contrasted with the disastrous experience of Royal Dutch Shell with the Ogoni in Nigeria.

Social and environmental audits and screens: making them meaningful

There is also the need of mechanisms ensuring that company self-audits and reports by external auditors are comprehensible, capable of being verified, comparable to some kind of appropriate standard, and that the public has the capacity to respond in a meaningful way.

A number of organizations, such as the Council on Economic Priorities (CEP), the New Economics Foundation, and others are working to develop appropriate auditing and screening mechanisms to make coherent sense of company practices. For CEP and organizations working to promote Socially Responsible Investment (SRI), the emphasis is on developing and using environmental and social screens by which to identify companies acting in an environmentally and socially responsible manner. Such screens are useful to concerned investors who want to be sure they are not investing in enterprises which are causing harm. Groups such as the Institute of Social and Ethical AccountAbility promote "best practices in social and ethical accounting and auditing" and are working to "develop standards and accreditation procedures" for professional social auditors.²⁶

Available and timely data about company behavior is worthless if it is not easily accessible, understandable and comparable to some kind of standard or criteria.

There is also the need of mechanisms ensuring that company reports are comprehensible, capable of being verified, comparable to some kind of appropriate standard, and that the public has the capacity to respond in a meaningful way.

²⁶ Institute of Social and Ethical AccountAbility. *AccountAbility Quarterly*, No. 5, Autumn 1997.

Special training, technical assistance and software may be needed to allow public interest groups to access and apply this data to their work in monitoring the effects of companies on their community.

The UNECE Convention on Access to Environmental Information and Public Participation in Environmental Decision-Making²⁷ is now being negotiated, with NGOs trying “to strengthen the role of the public as an environmental watchdog.” Among European NGOs’ concerns with the Convention include “excessively long time limits...proposed for responding to information requests from the public,” and that “information should be provided in the form requested, where available, and certain data placed on the Internet.” European ECO Forum members also stress the importance of making information not only available, accessible, and credible, but that citizens have access to justice to enforce noncompliance and seek compensation. The UNECE Convention “needs to provide not only the right to complain about infringements of the Convention, but also the right to sue both public and private bodies for breach of environmental laws in general.”

Right to Know and public participation laws need to encompass all regions of the world. Efforts to provide access to information, participation in decision making, and access to justice should be gender sensitive and account for the needs of women. Technologies and methodologies, including information and legal systems, to establish public access to information and participation should be considered part of the discussion about technology transfer to developing countries. In some places, citizens do not even know they have a right to information about the company practices that affect them.

The need to protect whistleblowers

One traditional type of non-statutory monitoring and reporting which requires governmental protection and public support is company “whistleblowing” – whereby employees within a company “blow the whistle” on harmful, dangerous or illegal company practices, which otherwise would remain unknown to the public or government agencies. Generally, this type of employee watchdog activity is penalized by demotion, dismissal or other punishment. Protection for whistle-blowers must be provided in all countries.

Where national whistleblower protection laws exist, workers may be pressured by other “marginally legal” methods to discourage disclosure of embarrassing or costly secrets. Furthermore, warns the Good Neighbor Project for Sustainable Industries, efforts are being made to enact anti-whistleblower provisions into environmental audit protection laws. In addition to having the capacity to challenge such provisions in court and legislatures/parliaments, communities and workers “need expanded rights and opportunities to ensure responsive action on identified hazards.”

Right to Know and public participation laws need to encompass all regions of the world.

²⁷ The UNECE Convention will cover over fifty countries: all of Europe, US, Canada, the Central Asian Republics of the former Soviet Union, and Israel.

Partnerships

As UNIDO recently observed, “relatively few companies have successfully integrated sustainability requirements into their overall corporate strategy and even fewer have made a commitment to follow through in the absence of stringent regulations. Today’s challenge is to stimulate businesses to take this step.”²⁸ As to partnerships between businesses and NGOs, it comes as no surprise that there is much mutual suspicion as well as differences in priorities and worldviews. Many NGOs are especially disturbed by the behavior of industry lobbies to kill environmental legislation or water down agreements. A prime example is the Kyoto climate change summit, which offers “disturbing examples of this lack of responsibility presented by the large oil companies and car manufacturers in the US as they financed a multi-million dollar disinformation campaign to undermine the climate change treaty negotiations.”²⁹

What kind of partnerships are possible?

There are numerous examples of partnerships among NGOs, businesses, government and trade unions, from the neighborhood to the global level. We will undoubtedly hear about many of these examples between now and the Dialogue in April. Some of these will be inspiring models which we may wish to promote or attempt to emulate, such as Clean Clothes Campaign in Bangor, Maine or the examples Malick Gaye of ENDA Tiers-Monde³⁰ gives of entrepreneurial citizens working to build the local economy and community democracy by finding innovative, grassroots solutions to provide local services.³¹ On the other hand, there are numerous examples of a lack of cooperation, false promises, and a competitive treatment of public interest groups and civil society as if they are meant to be included in the concept “global competitiveness.”

“The NGOs are being bamboozled by the UN and the corporations,” David Korten warns. “We are given just enough opportunity to create the appearance of citizen input, but the real action is elsewhere. I think its time to blow the whistle in the realization that talking to ourselves in rooms provided by the UN has little to do with citizen participation in a democratic global governance process.”

Many NGOs continue to believe that CSD is the place for NGOs committed to sustainability to come together to engage our governments, the UN, business and industry and other major groups to define our roles and responsibilities.

²⁸ UNIDO. *Changing Course: Sustainable Industrial Development as a Response to Agenda 21*. Vienna, June 1997.

²⁹ Gail Karlsson, UNA/USA and CitNet Working Group on Climate Change and Energy.

³⁰ Environment & Development Action in the Third World.

³¹ Gaye, Malick. *Entrepreneurial Cities*, ENDA, 1996.

However, many NGOs continue to believe that CSD is the place for NGOs committed to sustainability to come together to engage our governments, the UN, business and industry and other major groups to define our roles and responsibilities, our obligations and our accountability to society. Particularly in light of the global power being granted to corporations by the industry-oriented World Trade Organization and the Multilateral Agreement on Investment, NGOs look to the CSD as the primary international institution where the multiple voices for sustainability have a chance to be heard.

On another level, perhaps the term “responsible entrepreneur” should be thought of not so much in terms of companies but rather in terms of specific responsible individuals within companies and government. Such entrepreneurs would be those people who have personally accepted the risks and responsibility for improving things -- even if their colleagues, staff, Board members or superiors are not convinced. In this case, informal, personal partnerships and alliances among committed individuals may provide the vital levers to move reluctant companies towards more responsible policies and practices. Thus, even if a company continues to cling to irresponsible policies and practices, there may be a set of potential partners within that company who are struggling to change it and who deserve to be acknowledged and supported.

Partnerships to promote responsibility

Many of the concerns and hopes raised by NGOs in this paper depend on government to represent its citizens and ensure that business behaves responsibly. Corporations are not citizens and do not have the right to risk the health and well-being of communities and the environment, despite their responsibility to shareholders to seek higher revenues and financial returns. To possess legitimacy in the eyes of civil society, businesses must be accountable to society.

To move forward, NGOs need to make greater efforts to develop partnerships with businesses sincerely trying to be responsible, governments to help define and implement accountability, and with trade unions to help protect the rights, health and well-being of workers in all countries and companies. Furthermore, NGOs need to take advantage of the CSD’s efforts to include NGOs and major groups more directly in dialogues and consultations with member governments, to help build more productive relationships and mechanisms to achieve deeper understanding and solutions to the global challenge of implementing sustainable development.

Finally, in the words of Eco Africa News, “[the suggestions] need to be debated by all the players who are willing to spend their time to build up good strategies and who can do some work. Otherwise very often we all get together in New York, have long discussions and go back home to the business as usual scenario.” Since our involvement in this Dialogue is to change business as usual, it is up to us to make sure there are indeed practical outcomes.

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NGO Recommended Outcomes for CSD6 Industry Session

NGOs recommend for the CSD, business and industry, trade unions, and other major groups over the coming months and years to join with NGOs to engage in the following actions:

1. For CSD to **sponsor an inventory and evaluation of the effectiveness of voluntary agreements**. This evaluation should include active participation by representatives from business, NGOs, trade unions, and research institutions involved with these issues, as well as an analysis of their differences. The goal would be to identify the strengths and limitations of voluntary agreements and viable mechanisms to assure and verify compliance. The results of this evaluation could be reported at Earth Summit III in 2002, with yearly status reports to the CSD up to that time.

2. For CSD to **establish a Panel on Corporate Responsibility and Accountability**. This Panel could serve as a vehicle for governments and major groups to explore in greater depth methods for promoting corporate responsibility and accountability, as recommended in the UNGASS Programme for Further Implementation of Agenda 21. This Panel could coordinate or sponsor dialogues among major groups and different sectors of business and industry to better define those areas where government regulation and oversight is appropriate and necessary (accountability), and needs to be investment and reinvestment in local communities. With this aim in mind, the Panel could implement some of the following recommendations, such as the inventory and evaluation of voluntary agreements, and provide a vehicle for partner dialogues on the results. In turn, in 2002, the Panel could issue a joint position on recommended measures to the General Assembly for ways to more effectively promote corporate responsibility and accountability in sustainable development.

3. For CSD to **compile, define and further explore NGO and other major group recommendations emerging from this Dialogue**. Such recommendations include:
 - That companies commission regular independent environmental audits of subsidiaries and major overseas suppliers;
 - that companies support efforts to give affected host country citizens the automatic right to primary redress in the company's home country courts, without having to fight for legal standing on a case by case basis;
 - that companies support efforts to institute binding international minimum standards on environmental and labour practices to avoid others free-riding on their efforts;

- for governments to enact or strengthen laws protecting whistleblowers from company reprisals;
- for each country present a plan to redirect or phase out all unsustainable subsidies step by step by the year 2010;
- to explore the need and feasibility for a Convention on Corporate Responsibility and Accountability.

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