



UNIVERSITY of the  
WESTERN CAPE

**Labour Rights and Working Conditions in Corporate Codes of Conduct:  
An assessment of the legal dimension, in different national contexts, of selected  
multinational corporations' Corporate Social Responsibility commitments.**

**Student Name: Thierry Galani Tiemeni**

**Student Number: 2760534**

**A Thesis submitted in fulfilment of the requirements for the LLD degree in the Faculty  
of Law, University of the Western Cape.**



**Supervisors:**

**Professor Darcy Du Toit**

**Professor Kitty Malherbe**

**2015**

## KEY WORDS

Child labour

Collective bargaining

Code of conduct

Corporate Social Responsibility

Employment security

Forced and compulsory labour

Freedom of association

Industrial relations

Labour rights

Multinational Corporations

National context

Slavery

Working conditions

Workplace discrimination



## ABSTRACT

At the heart of this thesis is the notion of Corporate Social Responsibility (CSR), an innovative concept deep-rooted in the globalisation phenomenon. The notion of CSR entails the much-debated duty of businesses, not only to comply with international and local standards in terms of, *inter alia*, labour rights and working conditions, human rights and environmental protection, but also to be at the forefront of voluntary and uplifting actions geared toward addressing societal issues and concerns. For corporations, it is about moving from the traditional approach of business as an activity with the sole purpose of realising profit towards acknowledging the need to integrate societal and environmental issues and concerns into their business purposes.

The thesis examines selected multinational corporations' (MNC) approaches to CSR as contained in their codes of conduct, in an effort to reach a comprehensive understanding of the purpose, interest and practices of businesses engaging in CSR activities.

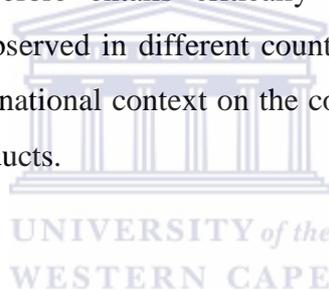
Particular attention is given to the analysis of labour orientated measures implemented by selected MNCs as they undertake to voluntarily act as proponents of the theory of the necessity of socially responsible businesses. The aim is to comparatively assess the legal dimension and the relevance, in different countries, of these MNC CSR commitments.

The first part of the thesis is theoretical and has the purpose to present a comprehensive analysis of CSR against the current legal framework, at a global scale and within the context of selected countries. The thesis will explore the notion of CSR in order to present its definition and characteristics, briefly retrace its history, differentiate it from related and/or similar concepts, and finally assess the extent of its introduction and adaptation into various national and international institutional frameworks. Even though initially addressing the issue of CSR in the current legal framework as a whole, the scope of the thesis will ultimately be reduced to focus only on labour-related aspects of CSR.

The aim of the thesis is to assess MNC's CSR commitments, and subsequently highlight the interaction between CSR, labour and employment legal frameworks (at national and international level) and the effective implementation of labour rights and working conditions as observed in the context of different countries.

More importantly, the thesis will also include a comparative analysis of CSR principles included in selected MNC codes of conduct, in order to assess the extent of their compliance with national labour legislation, international labour standards, as well as the standards and principles set by national and international CSR instruments and institutions. The purpose of such an exercise is to thoroughly assess the impact of a national context - in terms of national legal, economic, social and industrial framework - on the legal dimension, and the relevance of MNCs CSR commitments. A crucial argument developed in the thesis refers to the fact that MNC codes of conduct may have the potential to impact on labour rights and working conditions of a MNC across the different countries into which the MNC operates.

Finally, considering the fact that as a topic CSR is a potentially controversial subject, it is necessary to point out, from the onset, that the thesis engages with the subject from a critical perspective. The approach therefore entails critically analysing and discussing MNC commitments and practices as observed in different countries, so as to be able to ascertain and comprehend the impact of a national context on the content, the relevance and the legal dimension of MNC codes of conducts.



## DECLARATION

I declare that *Labour Rights and Working Conditions in Corporate Codes of Conduct: An assessment of the legal dimension, in different national contexts, of selected multinational corporations' Corporate Social Responsibility commitments* is my own work; that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Thierry Galani Tiemeni

03 March 2015

Signed .....



## ACKNOWLEDGEMENT

I would like to express my sincere gratitude to my supervisors, Professor Darcy du Toit and Professor Kitty Malherbe. I am thankful for your patient encouragements and invaluable guidance; and for your continuous support and assistance throughout the research and writing processes of this thesis. I also wish to thank Professor Israel Leeman, for his availability, and his assistance in improving the style, presentation and language of this thesis.

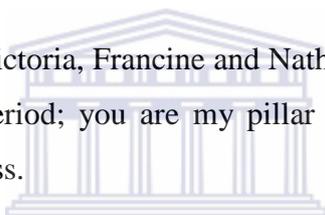
This thesis is dedicated:

To my mother, Mrs Kakam Marie-Claude, for being my role model, and for inspiring me to relentlessly aim for the achievement of my dreams.

To my siblings (Alvine, Joseph, Fabrice, Valentin, Hervé-Rolland, Ghislaine and Rodrigue), and to Dr Alexis Tague Kakeu, for you have always been there for me.

To the Galani family (Saurelle, Victoria, Francine and Nathan), for all the sacrifices you had to endure during this difficult period; you are my pillar of strength and my inexhaustible source of motivation and happiness.

To Teddy Matondo Massamba, for you have shown me the true meaning of friendship, your sacrifices will never be forgotten.



WESTERN CAPE

## LIST OF ABBREVIATIONS AND ACRONYMS

ADB	African Development Bank
Alucam	Aluminium du Cameroun
BAT	British American Tobacco
B-BBEE	Broad-Based Black Economic Empowerment
BCEA	Basic Conditions of Employment Act 75 of 1997
BEE	Black Economic Empowerment
CBM	Consultative Business Forum
CCA/SIDA	Coalition de la Communauté des Affaires contre le Sida, le Paludisme et la Tuberculose
CELA	Club of Emerging Leaders for Africa
CERES	Coalition for Environmentally Responsible Economies
CJDES	Centre des jeunes dirigeants de l'économie sociale
CLPA	Child Labour Programme of Action
CSI	Corporate Social Investment
CSR	Corporate Social Responsibility
DTI	Department of Trade and Industry
ECHR	European Court of Human Rights
EEA	Employment Equity Act 55 of 1998
ESG	Environmental, Social, and Corporate Governance
ETI	Ethical Trading Initiative
EU	European Union
FLA	Fair Labor Association
GCE	GICAM Code of Ethics
GICAM	Groupement Inter-patronal du Cameroun
GRI	Global Reporting Initiative
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation

ILO	International Labour Organisation
IPEC	International Programme on the Elimination of Child Labour (ILO)
ISO	International Organisation for Standardisation
JSE	Johannesburg Stock Exchange
JSE SRI	Johannesburg Stock Exchange Socially Responsible Investment Index
King I	King Report on Corporate Governance (1994)
King II	King Report on Corporate Governance for South Africa (2002)
King III	King Code of Governance Principles and the King Report on Governance (2009)
LRA	Labour Relations Act 66 of 1995
MDG	Millennium Development Goals
MNC	Multinational Corporation
MNE Declaration	ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
NBI	National Business Initiative
NCP	National Contact Point
OECD	Organisation of Economic Co-operation and Development
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires
OHSA	Occupational Health and Safety Act 85 of 1993
OIF	Organisation Internationale de la Francophonie
PCGE	Plateforme de coordination Groupe d'Entreprises contre le VIH-Sida
SRG	Sustainability Reporting Guidelines
TRC	Truth and Reconciliation Commission (South Africa)
TUAC	Trade Union Advisory Committee
UCW	Understanding Children's Work Programme
UN	United Nations
UNCED	UN Conference on Environment and Development
UNDP	United Nations Development Programme
UNEP	UN Environment Programme

UNGC	UN Global Compact
UNPRI	UN Principles for Responsible Investment
VP	Voluntary Principles on Security and Human Rights
WACAP	West Africa Cocoa/Commercial Agricultural Program to Combat Hazardous and Exploitative Child Labour
WBCSD	World Business Council for Sustainable Development



## TABLE OF CONTENTS

KEY WORDS .....	ii
ABSTRACT .....	iii
DECLARATION .....	v
ACKNOWLEDGEMENT .....	vi
LIST OF ABBREVIATIONS AND ACRONYMS .....	vii
TABLE OF CONTENTS.....	x
CHAPTER 1 .....	1
INTRODUCTION.....	1
1.1. Background to the problem .....	1
1.2. Significance of the study .....	2
1.3. Research Questions and Hypotheses.....	5
1.4. Research Purpose and Objectives.....	6
1.5. Scope of the thesis .....	7
1.5.1. Selected aspects of the broad notion of corporation social responsibility .....	7
1.5.2. Selected companies .....	7
1.5.2.1. British American Tobacco p.l.c. (BAT).....	8
1.5.2.2. Total S.A. ....	8
1.5.2.3. Nestlé S.A. (Nestlé) .....	9
1.5.3. Selected countries.....	10
1.6. Research Methodology .....	10
1.7. Chapter outline and thesis structure .....	11
1.7.1 Part One .....	11
1.7.2 Part Two .....	12
1.7.3 Part Three.....	13
1.8. The theoretical framework of CSR .....	13
1.8.1 The notion of CSR.....	13
1.8.1.1 Common Definitions of CSR.....	14
1.8.1.2 Scientific definition of CSR .....	15
1.8.1.2.1 The inclusion of stakeholder issues, concerns and interest into the Bottom Line	15
1.8.1.2.2 CSR as the purpose of the modern corporation .....	16
1.8.1.2.3 CSR as a voluntary commitment above the legal requirement .....	17
1.8.2 Essential characteristics of CSR.....	17

1.8.2.1 The core principles of the notion of CSR.....	17
1.8.2.1.1 The principle of voluntarism .....	18
1.8.2.1.2 The principle of corporate social responsibility beyond the legal requirement....	18
1.8.2.1.3 The principle of the societal dimension of corporate activities .....	18
1.8.2.2 Other aspects of the notion of CSR.....	19
1.8.2.2.1 CSR and the concept of Triple Bottom Line .....	19
1.8.2.2.2 The scope of CSR.....	20
1.8.3 Summary of terminology .....	20
1.8.3.1 Differentiating CSR from similar and/or related concepts and acronyms.....	20
1.8.3.1.1 Related concept .....	21
a) Corporate Social Investment (CSI) .....	21
b) Corporate Governance .....	21
c) Corporate Citizenship.....	22
d) Corporate Philanthropy .....	23
e) Business Ethics.....	23
f) Corporate Sustainability / Corporate Sustainability and Responsibility.....	24
1.8.3.1.2 Alternate Acronyms .....	24
a) Corporate Social Accountability.....	25
b) Corporate Social Responsiveness and Corporate Social Performance.....	25
c) Corporate Self-Regulation.....	25
1.8.3.2 Theoretical background of terminology similar and/or related to CSR.....	25
1.8.3.2.1 The ‘Social’ aspect as a business imperative .....	26
1.8.3.2.2 The surge of a new generation of investors .....	27
1.8.3.2.3 Sustainable Development and the role of business in society .....	27
CHAPTER TWO .....	29
ORIGINS AND EVOLUTION OF THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY .....	29
2.1 Introduction .....	29
2.2 Historical perspective on the interaction between business and society .....	31
2.2.1 Perspectives on the role and impact of business in society .....	31
2.2.2 The Code of Hammurabi (18th century BC).....	34
2.2.3 Marcus Tullius Cicero (106 BC- 43 BC) .....	35
2.3 Economic and societal transformations and the historical evolution of CSR.....	36
2.3.1 The advent of societal activism against corporations.....	36
2.3.2 Adam Smith.....	38

2.3.3 Utilitarianism and the theory of CSR .....	39
2.3.4 The input of religion on the development of the theory of CSR .....	41
2.3.4.1 Catholic social thought and CSR.....	41
2.3.4.2 The religious principles of ‘trusteeship’ and ‘stewardship’ .....	42
2.3.4.3 Quaker input into the materialisation of CSR .....	43
2.3.5 CSR theory and the societal awareness and responsiveness of businesspeople .....	44
2.3.5.1 Andrew Carnegie (1835-1919).....	44
2.3.5.2 John Davison Rockefeller (1839-1937) .....	45
2.3.5.3 The Cadbury brothers .....	46
2.4 Genesis of modern CSR.....	47
2.4.1 From corporate philanthropy to corporate social responsibility.....	47
2.4.2 Context and impact of a concise formulation of the concept of CSR.....	48
2.4.2.1 Dawn of modern CSR as a countermovement to stakeholder demands on businesses .....	48
2.4.2.2 Bowen’s ‘Social Responsibility of the Businessman’ .....	49
2.5 Evolution of modern CSR .....	50
2.5.1 Evolution of the concept of CSR.....	50
2.5.1.1 Bowen and the enunciation of the CSR theory.....	51
2.5.1.2 Evolution of theories on the definition of CSR .....	53
2.5.2 Modern CSR in practice.....	53
2.6 CSR in the new millennium .....	55
CHAPTER 3 .....	57
THE GLOBAL FRAMEWORK OF CSR.....	57
3.1 Introduction: .....	57
3.1.1 The globalisation of CSR.....	57
3.1.2 The global CSR framework: A heterogeneous selection of CSR instruments and initiatives .....	62
3.2 Public initiatives: governmental and intergovernmental CSR initiatives.....	63
3.2.1 Framework within the OECD.....	63
3.2.1.1 The OECD Guidelines for Multinational Enterprises.....	63
3.2.1.2 Other OECD initiatives .....	65
3.2.1.2.1 The OECD Principles of Corporate Governance .....	65
3.2.1.2.2 The OECD Guidelines on Corporate Governance of State-Owned Enterprises .....	66
3.2.2 CSR Framework within the ILO .....	66

3.2.2.1 The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy.....	66
3.2.2.2 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up.....	68
3.2.2.3 Other ILO initiatives .....	69
3.2.2.3.1 The Decent Work Agenda .....	69
3.2.2.3.2 The Better Work Programme.....	70
3.2.2.3.3 ILO Declaration on Social Justice for a Fair Globalisation .....	70
3.2.3 Framework within the United Nations (UN).....	71
3.2.3.1 The UN Global Compact.....	71
3.2.3.1.1 The UN Global Compact Ten Principles .....	71
3.2.3.1.2 Global Compact as an institutional framework .....	73
3.2.3.1.3 Critical assessment of the Global Compact .....	74
3.2.3.2 Other UN CSR initiatives .....	76
3.2.3.2.1 Voluntary Principles on Security and Human Rights .....	76
3.2.3.2.2 UN Principles for Responsible Investment.....	77
3.2.3.2.3 Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights.....	78
3.2.3.2.4 UN Guiding Principles for Business and Human Rights .....	80
3.2.4 The European Union framework on CSR .....	81
3.2.4.1 European Union Green Paper on CSR.....	82
3.2.4.2 European Union CSR Communications.....	83
3.2.4.3 European Parliament CSR Resolutions.....	84
3.2.4.4 European Union Multi-stakeholders CSR institutions.....	85
3.2.4.5 The European Communication of 25 October 2011 .....	85
3.2.5 The International Organisation for Standardisation (ISO) and CSR .....	87
3.2.6 Prominent national initiatives.....	89
3.2.6.1 The King Reports on Corporate Governance .....	89
3.2.6.2 The US Model Business Practices.....	90
3.3 CSR instruments and institutions by private role players.....	90
3.3.1 NGO and other corporate stakeholders' initiatives.....	91
3.3.1.1 AccountAbility.....	91
3.3.1.2 The Global Reporting Initiative and its Sustainability Reporting Guidelines .....	93
3.3.1.3 The Ethical Trading Initiative.....	94
3.3.1.4 The Fair Labor Association .....	96

3.3.2 Corporate initiatives .....	98
3.3.2.1 The Sullivan Principles and the Global Sullivan Principles .....	98
3.3.2.2 World Business Council for Sustainable Development.....	100
3.3.2.3 Emergence of CSR focussed Stock Market Indexes .....	101
3.4 Conclusion.....	102
CHAPTER 4 .....	103
NATIONAL FRAMEWORK FOR CORPORATE SOCIAL RESPONSIBILITY IN SOUTH AFRICA, CAMEROON, AND FRANCE .....	103
4.1 Introduction .....	103
4.2 CSR in South Africa.....	107
4.2.1 Historical context of CSR in SA.....	107
4.2.2 Business and Society during Apartheid South Africa .....	108
4.2.2.1 CSR in the Apartheid socio-political context.....	109
4.2.2.2 CSR in the legal framework of Apartheid South Africa .....	112
4.2.2.3 Pioneering CSR activities during Apartheid South Africa.....	115
4.2.3 CSR during the SA political transition .....	117
4.2.3.1 Business and society during the SA political transition .....	118
4.2.3.2 The foundations of the contemporary CSR framework.....	119
4.2.3.2.1 Corporate Approaches.....	119
4.2.3.2.2 Official approaches .....	121
4.2.4 The South African CSR framework .....	123
4.2.4.1 CSR in South African Law .....	123
4.2.4.1.1 The Constitution of the Republic of South Africa, 1996 .....	123
4.2.4.1.2 South African labour and employment legislation .....	124
4.2.4.1.3 The Companies Act 71 of 2008 .....	125
4.2.4.1.4 The B-BBEE legal and policy frameworks.....	126
4.2.4.1.5 The Department of Trade and Industry Notice 1183 of 2004 .....	126
4.2.4.2 CSR in South African Domestic ‘Soft Law’ .....	127
4.2.4.2.1 The Johannesburg Stock Exchange Socially Responsible Investment Index.....	127
4.2.4.2.2 The King Reports on Corporate Governance .....	129
4.3 CSR in Cameroon.....	131
4.3.1 Characteristics of the Cameroonian CSR framework.....	131
4.3.2 The foundations of the Cameroonian CSR framework .....	133
4.3.2.1 MNCs as CSR agents in Cameroon .....	133

4.3.2.2 Other CSR agents in the Cameroonian context .....	134
4.3.2.2.1 International institutions .....	134
4.3.2.2.2 Civil society .....	135
4.3.2.3 Conclusion.....	135
4.3.3 CSR framework in Cameroon.....	135
4.3.3.1 CSR in the Cameroonian legal framework .....	135
4.3.3.2 CSR instruments and institutions.....	137
4.3.3.2.1 Corporate CSR instruments and institutions .....	138
4.3.3.2.1.1 The Groupement Inter-patronal du Cameroun ‘Code of Ethics’ .....	138
4.3.3.2.1.2 GICAM HIV-AIDS Programs .....	138
4.3.3.2.1.3 The French Corporations CSR Charter .....	139
4.3.3.2.2 CSR initiatives from International Institutions.....	139
4.3.3.2.2.1 The West Africa Cocoa/Commercial Agricultural Program to Combat Hazardous and Exploitative Child Labor .....	140
4.3.3.2.2.2 The African Development Bank .....	140
4.4 CSR in France.....	140
4.4.1 Introduction .....	140
4.4.2 Historical overview of French CSR framework.....	140
4.4.3 Characteristics of the French CSR framework .....	142
4.4.3.1 The French CSR framework in the EU context.....	142
4.4.3.2 Social Dialogue and Employee Protection in the French CSR framework .....	142
4.4.3.3 French official approach to CSR .....	143
4.4.3.4 A focus on CSR Reporting and CSR Communication .....	145
4.4.4 The French CSR framework: instruments and institutions .....	146
4.4.4.1 ‘Hard law’ CSR instruments.....	146
4.4.4.1.1 Act No 2001-152 of 19 February 2001 on employee savings .....	146
4.4.4.1.2 Act No 2001-420 of 15 May 2001 on new economic regulations .....	147
4.4.4.1.3 The Environment Charter of February 2005.....	147
4.4.4.1.4 The Grenelle Act I of 2009 .....	147
4.4.4.1.5 The Grenelle II Act of 2010 .....	148
4.4.4.2 ‘Soft law’ CSR instruments .....	148
4.4.4.2.1 The National Strategy on Sustainable Development .....	148
4.4.4.2.2 The CSR Charter of French Corporations in Africa.....	148
4.4.4.2.3 Sustainable Development Charter .....	149

4.4.4.2.4 The Bilan Sociétal .....	149
CHAPTER 5 .....	150
CSR AND CORPORATE CODES OF CONDUCT.....	150
5.1 Introduction .....	150
5.1.1 Aim of the chapter .....	151
5.1.2 Scope of the chapter.....	151
5.1.2.1 Selected Multinational Corporations.....	151
5.1.2.2 Selected Corporate Documentation .....	152
5.1.2.3 Specific content of corporate codes of conduct .....	153
5.1.2.4 Specific items of comparison .....	153
5.2 Corporate codes of conduct: A theoretical framework.....	154
5.2.1 The concept of corporate codes of conduct.....	154
5.2.1.1 Definition .....	154
5.2.1.2 Historical overview and purpose of corporate codes of conduct.....	156
5.2.1.3 The diversity of corporate codes of conduct .....	158
5.2.2 A critical analysis of the concept of corporate codes of conduct.....	160
5.2.2.1 Relevance and effectiveness of corporate code of conducts .....	160
5.2.2.2 The legal dimension of corporate codes of conduct .....	162
5.3 The British American Tobacco p.l.c. Code of Conduct.....	166
5.3.1 Introduction .....	166
5.3.1.1 An overview of CSR in the tobacco industry.....	166
5.3.1.2 The BAT code of conduct .....	166
5.3.2 Labour rights and working conditions in the BAT code of conduct.....	167
5.3.2.1 The BAT Standards of Business Conduct.....	167
5.3.2.2 The BAT Statement of Business Principles.....	168
5.3.2.3 BAT Employment Principles.....	170
5.3.2.3.1 The principle of diversity.....	170
5.3.2.3.2 The principle of openness and responsiveness .....	171
5.3.2.3.3 The 'freedom through responsibility' principle .....	171
5.3.2.3.4 The physical and material wellbeing principle.....	172
5.3.2.3.5 The fair, clear and competitive remuneration principle.....	173
5.3.2.4 Additional CSR documents.....	173
5.3.2.4.1 The BAT Child Labour Policy.....	173
5.3.2.4.2 The BAT Philosophy for Supplier Partnerships .....	173

5.4 The Total S.A. Corporate Code of Conduct .....	174
5.4.1 Introduction .....	174
5.4.1.1 CSR in the oil and gas industry .....	174
5.4.1.2 The Total S.A. code of conduct: a framework of corporate publications .....	174
5.4.2 Labour rights and working conditions in the Total S.A. Code of Conduct .....	175
5.4.2.1 The Total S.A. Code of Conduct and Ethics Charter .....	175
5.4.2.1.1 Business Principles .....	176
5.4.2.1.2 Total Ethics Charter .....	177
5.4.2.2 The Total Human Rights Internal Guide .....	177
5.4.2.3 The Total Safety Health Environment Quality Charter .....	178
5.5 The Nestlé S.A. Corporate Code of Conduct .....	178
5.5.1 Introduction .....	178
5.5.1.1 An overview of CSR approaches and practices of Nestlé S.A. ....	178
5.5.1.2 The Nestlé S.A. Code of Conduct: a framework of corporate publication.....	179
5.5.2 Labour rights and working conditions in the Nestlé S.A. Code of Conduct .....	179
5.5.2.1 The Nestlé Code of Business Conduct .....	179
5.5.2.2 The Nestlé Corporate Business Principles .....	180
5.5.2.3 The Nestlé Human Resources Policy .....	181
5.5.2.4 The Nestlé Employee Relations Policy .....	182
5.5.2.5 The Nestlé Policy on Safety and Health at Work .....	183
5.5.2.6 The Nestlé Supplier Code .....	183
5.6 Assessment of the content of the BAT, Total S.A. and Nestlé S.A. Corporate Codes of Conduct .....	184
5.6.1 Elimination of child labour and protection of children .....	185
5.6.1.1 Child labour in international law .....	185
5.6.1.1.1 The ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment .....	185
5.6.1.1.2 The ILO Convention 182 of 1999 on the Worst Forms of Child Labour .....	186
5.6.1.1.3 The UN Convention on the Rights of the Child of 1989 .....	186
5.6.1.1.4 The International Covenant on Economic, Social and Cultural Rights of 1966 ...	186
5.6.1.2 Child labour in international CSR instruments .....	187
5.6.1.3 Child labour in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct .....	188
5.6.2 Slavery, forced and compulsory labour .....	188
5.6.2.1 Slavery, forced and compulsory labour in international law .....	188

5.6.2.1.1 The UN Universal Declaration of Human Rights of 1948.....	188
5.6.2.1.2 The UN International Covenant on Civil and Political Rights of 1966.....	189
5.6.2.1.3 The ILO Forced Labour Convention 29 of 1930 .....	189
5.6.2.1.4 The ILO Abolition of Forced Labour Convention 105 of 1957 .....	189
5.6.2.1.5 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up .....	189
5.6.2.2 Slavery, forced and compulsory labour in international CSR instruments.....	190
5.6.2.3 Slavery, forced and compulsory labour in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct.....	190
5.6.3 The principle of equality and the prohibition of workplace discrimination .....	191
5.6.3.1 The principle of equality and the prohibition of discrimination in international law	191
5.6.3.1.1 The UN International Covenant on Civil and Political Rights of 1966.....	192
5.6.3.1.2 The UN International Covenant on Economic, Social and Cultural Rights of 1966 .....	192
5.6.3.1.3 ILO instruments dealing with and providing for equality and non-discrimination .....	193
5.6.3.2 The principle of equality and the prohibition of discrimination in international CSR instruments.....	193
5.6.3.3 The principle of equality and the prohibition of discrimination in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct.....	195
5.6.4 Freedom of association, collective bargaining, and industrial relations rights .....	196
5.6.4.1 Freedom of association, collective bargaining, and industrial relations rights in International Law .....	196
5.6.4.2 Freedom of association, collective bargaining, and industrial relations in international CSR instruments.....	198
5.6.4.3 Freedom of association, collective bargaining, and industrial relations in the Nestlé S.A., Total S.A. and BAT Codes of Conduct .....	201
5.6.5 Working conditions.....	203
5.6.5.1 Working conditions in International Law.....	203
5.6.5.2 Working conditions in international CSR instruments.....	204
5.6.5.3 Working conditions in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct.....	205
5.6.6 Employment security .....	206
5.6.6.1 Employment security in international law.....	206
5.6.6.2 Employment security in international CSR instruments.....	207
5.6.6.3 Employment security in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct.....	209
5.7 Conclusion.....	209

CHAPTER 6 .....	211
COMPARATIVE ANALYSIS OF THE CODES OF CONDUCT OF BRITISH AMERICAN TOBACCO Plc, NESTLÉ S.A., AND TOTAL S.A. IN THE NATIONAL CONTEXTS OF CAMEROON, FRANCE AND SOUTH AFRICA, RESPECTIVELY.....	211
6.1 Elimination of child labour and protection of children.....	212
6.1.1 Cameroon.....	212
6.1.1.1 The context .....	212
6.1.1.2 The Constitution and relevant international instruments .....	212
6.1.1.3 Laws and regulations .....	213
6.1.1.4.1 Ministerial Order No 17/MTLS/DGRE .....	214
6.1.1.4.2 Ministerial Decree No 2001/109/PM.....	214
6.1.1.4.3 Ministerial Order No 00785/DGSN/CAB .....	215
6.1.1.4.4 Ministerial Order No 068/MINT/SS.....	215
6.1.1.4.5 Act No 2005/015 .....	215
6.1.1.5 CSR instruments and institutions.....	215
6.1.2 France.....	216
6.1.2.1 The context .....	216
6.1.2.2 The Constitution and relevant international instruments .....	216
6.1.2.3 Laws and regulations .....	217
6.1.3 South Africa.....	218
6.1.3.1 The context .....	218
6.1.3.2 The Constitution and relevant international instruments.....	219
6.1.3.3 Laws and regulations .....	219
6.1.3.3.1 The Children’s Act .....	220
6.1.3.3.2 The Basic Conditions of Employment Act.....	220
6.1.3.3.3 Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities .....	221
6.1.3.4 Governmental institutions.....	221
6.1.4 Conclusion.....	222
6.2 Slavery, forced labour and compulsory labour.....	222
6.2.1 Cameroon.....	222
6.2.1.1 The context .....	222
6.2.1.2 The Constitution and relevant international instruments.....	223
6.2.1.3 Laws and regulations .....	224
6.2.2 France.....	225

6.2.2.1 The context .....	225
6.2.2.2 The Constitution and relevant international instruments .....	227
6.2.2.3 Laws and regulations .....	228
6.2.3 South Africa.....	229
6.2.3.1 The context .....	229
6.2.3.2 The Constitution and relevant international instruments .....	229
6.2.3.3 Laws and regulations .....	230
6.2.4 Conclusion.....	231
6.3 The principle of equality and the prevention and/or prohibition of workplace discrimination .....	231
6.3.1 Cameroon.....	231
6.3.1.1 The Constitution and relevant international instruments .....	231
6.3.1.2 Laws and regulations .....	232
6.3.1.3 Workplace discrimination in the Cameroonian context.....	233
6.3.2 France.....	236
6.3.2.1 The context .....	236
6.3.2.2 The Constitution and relevant international instruments .....	237
6.3.2.3 Laws and regulations .....	238
6.3.3 South Africa.....	240
6.3.3.1 The context .....	240
6.3.3.2 The Constitution and relevant international instruments .....	241
6.3.3.3 National legislation .....	241
6.3.3.3.1 The Employment Equity Act.....	241
6.3.3.3.2 The Labour Relations Act .....	242
6.3.3.3.3 The Basic Conditions of Employment Act .....	243
6.3.3.3.4 Governmental institutions .....	243
6.3.4 Conclusion.....	243
6.4 Freedom of association, collective bargaining, and industrial relations .....	244
6.4.1 Cameroon.....	244
6.4.1.1 The Constitution and relevant international instruments .....	244
6.4.1.2 National legislation .....	245
6.4.1.3 Freedom of association, collective bargaining, and industrial relations in the Cameroonian context.....	246
6.4.2 France.....	248



6.4.2.1	The Constitution and relevant international instrument .....	248
6.4.2.2	Laws and regulations .....	249
6.4.3	South Africa.....	250
6.4.3.1	The Constitution and relevant international instruments.....	250
6.4.3.2	National legislation .....	250
6.4.4	Conclusion.....	251
6.5	Working conditions.....	252
6.5.1	Cameroon.....	252
6.5.1.1	The context .....	252
6.5.1.2	The Constitution and international instruments .....	253
6.5.1.3	Laws and regulations .....	253
6.5.1.3.1	Duration of work.....	253
6.5.1.3.2	Pay, remuneration and compensation .....	253
6.5.1.3.3	Occupational health and safety.....	254
6.5.1.3.4	Social security rights .....	254
6.5.2	France.....	255
6.5.2.1	The Constitution and international instruments .....	255
6.5.2.2	National legislation .....	255
6.5.2.2.1	Duration of work.....	255
6.5.2.2.2	Pay, remuneration and compensation .....	256
6.5.2.2.3	Occupational health and safety .....	256
6.5.2.2.4	Social security rights .....	256
6.5.3	South Africa.....	257
6.5.3.1	The Constitution and relevant international instruments.....	257
6.5.3.2	National legislation .....	257
6.5.3.2.1	Duration of work.....	258
6.5.3.2.2	Pay, remuneration and compensation .....	259
6.5.3.2.3	Occupational health and safety.....	259
6.5.3.2.4	Social security rights .....	260
6.5.4	Conclusion.....	261
6.6	Employment security .....	261
6.6.1	Cameroon.....	261
6.6.1.1	The Constitution and relevant international instruments.....	261
6.6.1.2	Laws and regulations .....	262

6.6.2 France.....	264
6.6.2.1 The Constitution and relevant international instruments.....	264
6.6.2.2 Laws and regulations .....	265
6.6.3 South Africa.....	266
6.6.3.1The Constitution and relevant international instruments.....	266
6.6.3.2 Laws and regulations .....	266
6.6.4 Conclusion.....	268
CHAPTER 7 .....	270
CONCLUSION.....	270
7.1 INTRODUCTION.....	270
7.2 SUMMARY OF THESIS.....	271
7.2.1 Theoretical framework.....	271
7.2.2 CSR in practice at national and international levels .....	273
7.2.3 CSR in selected MNCs Codes of conduct .....	275
7.3 FINDINGS.....	275
7.3.1 CSR as a voluntary commitment beyond the minimum legal requirement .....	276
7.3.2 Labour and employment rights in MNCs' CSR codes of conduct.....	276
7.3.3 CSR codes of conduct and national context.....	277
7.4 RECOMMENDATIONS.....	278
7.4.1 Cameroon.....	279
7.4.2 France.....	281
7.4.3 South Africa.....	282
BIBLIOGRAPHY .....	284
ARTICLES .....	284
BOOKS .....	293
CHAPTERS IN BOOKS.....	298
MONOGRAPHS, WORKING PAPERS AND DISCUSSION PAPERS.....	302
CONFERENCE PROCEEDINGS .....	306
INTERNATIONAL LEGAL AND INSTITUTIONAL MATERIAL.....	308
CORPORATE PUBLICATIONS.....	314
CASES AND DETERMINATIONS.....	315
STATUTES, REGULATIONS AND LEGISLATIVE INSTRUMENTS .....	316
INTERNATIONAL INSTRUMENTS.....	320
ONLINE PUBLICATIONS AND INTERNET SOURCES.....	321



UNIVERSITY *of the*  
WESTERN CAPE

# CHAPTER 1

## INTRODUCTION

### 1.1. Background to the problem

CSR is a concept that refers to corporate activities, driven by societal considerations, with the primary aim to address issues and concerns of corporate stakeholders.<sup>1</sup> As such, CSR presents essential characteristics: CSR is voluntary in its nature;<sup>2</sup> CSR has stakeholders' interest as its purpose;<sup>3</sup> CSR consists of measures above the minimum legal requirement,<sup>4</sup> and therefore CSR results from – and generates - corporate societal awareness and responsiveness.<sup>5</sup> As such, CSR is nowadays being formalised into corporate codes of conduct, the purpose of which is to present self-imposed corporate commitment toward stakeholders and the greater community. As instruments of corporate self-regulation, corporate codes of conduct have generated, and are at the centre of several controversies regarding the desirability, feasibility and effectiveness of corporate self-regulation.<sup>6</sup>

This thesis specifically address the issue of the consistency - in different countries - of the legal dimension and relevance of MNC CSR commitments pertaining to labour rights and working conditions. The thesis also focuses on the impact of the national legal framework regulating labour and employment relations - as well as labour orientated national CSR instruments and institutions - on the content, the pertinence and the effectiveness of MNC CSR codes.

---

<sup>1</sup> Dahlsrud A 'How corporate social responsibility is defined: an analysis of 37 definitions' (2008) 15(1) *Corporate Social Responsibility and Environmental Management* 5-6.

<sup>2</sup> European Commission *Green Paper of 18 July 2001 on "Promoting a European framework for Corporate Social Responsibility"* 366 final (2001) 6.

<sup>3</sup> Freeman RE *The Role of CSR in the New Narrative of Business* 5th international CSR Conference (2012) 8.

<sup>4</sup> McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007) 12.

<sup>5</sup> Visser W *The Ages and Stages of CSR, Towards the Future with CSR 2.0* (2011) 1.

<sup>6</sup> Flohr A et al *The Role of Business in Global Governance; Corporations as Norm-Entrepreneur* (2010) 198.

The central research problem of this thesis revolves around the issue of the impact of MNC CSR codes on labour relations: How does a CSR code of conduct affect the legal dimension of the relationship between a MNC and its workforce?

Assessing the effectiveness of a MNC corporate code of conduct in its purpose of improving the working conditions and promoting the labour rights of a MNC workforce across the globe is indeed the essential issue at the epicentre of this thesis. It is also important to assess the consistency of these codes of conduct across all countries in which a MNC operates at the global level. The thesis however only focuses on a textual and legal analysis of the content of selected corporate codes of conduct and does not intend to engage into an analysis and/or discussion of the actual and practical impact of these codes of conduct when implemented in these different national contexts.

## 1.2. Significance of the study

Corporate codes of conduct have been the topic of extensive research aimed at the discussion of the essence, the legal dimension, the effectiveness<sup>7</sup> and the impact on corporate activities and/or concerned communities of corporate self-regulation.<sup>8</sup>

The academic debate on the legal dimension of corporate codes of conduct ultimately leads to the topic of the intersection between CSR and law, a topic which has generated a prolific literature worldwide, across all aspect of the theory of law.

Many books, articles and research reports have been published where various authors address and discuss issues relating to the interaction between CSR and law, using different approaches and offering different perspectives on the subject. These include prominent research projects such as the *ESTER WP2 Comparative Report*,<sup>9</sup> a European CSR research project edited by Dugareilh, a leading expert in the field of CSR and Labour Law. This

---

<sup>7</sup>Murray J *Corporate Social Responsibility: an Overview of Principles and Practices* (2004).

<sup>8</sup>Jenkins RO, Pearson R & Seyfang G *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (2002).

<sup>9</sup>Daugareilh I & Kosher E *Social Regulation of European Transnational Companies: ESTER Comparative Report* (2006).

research report analyses trends, approaches and practices of CSR by corporation in various European countries.

Numerous books and articles have also been published with the purpose to theoretically address and discuss the issues of the intersection and interaction between CSR and law, such as the book *The New Corporate Accountability, Corporate Social Responsibility and the Law*<sup>10</sup> where various scholars address pertinent issues relating to the essence of the relationship between law and CSR.<sup>11</sup>

The book *Responsabilité sociale de l'entreprise transnationale et globalisation de l'économie*<sup>12</sup> also offers a platform to a panel of leading international legal experts to discuss crucial issues relating to the legal dimension of CSR as relevant to the activities of MNCs in the current globalised world economy. New perspectives on the legal dimension of CSR are explored in the light of the observed incidence of the globalisation phenomenon on the essence of CSR.

In another legal comparative publication,<sup>13</sup> labour and employment aspects of CSR are specifically addressed by various scholars via a thorough comparative analysis of the legal implications of CSR in different countries and/or regions. Topics explored include the effects of CSR on industrial relations and vice-versa, as well as the legal dimension of labour-related CSR principles and practices.

The intersection between CSR and labour practices of MNCs has recently emerged as a key aspect of the CSR debate. This explains the recent proliferation of publications analysing and investigating the legal dimension and effectiveness of labour-related CSR activities of MNCs. Thus, the necessity to mention articles such as 'Corporate social responsibility, globalisation,

---

<sup>10</sup>McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007).

<sup>11</sup>See also Zerk JA *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (2006).

<sup>12</sup>Daugareilh I (ed) *Responsabilité Sociale de l'Entreprise Transnationale et Globalisation de l'Économie* (2011).

<sup>13</sup>Pennings F, Konijn Y & Veldman A *Social Responsibility in Labour Relations, European and Comparative Perspectives* (2008).

the multinational corporation, and labor: an unlikely alliance'<sup>14</sup> for a global perspective on the subject, as well as Du Toit's article 'Self-regulated Corporate Social Responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview'<sup>15</sup> for a South African labour law perspective.

The impact of various country-specific factors on the incidence, consistency, effectiveness and legal dimension of MNC CSR activities is also a recurrent topic in the current literature on CSR. For instance, in *Corporate Social Responsibility and Globalisation*<sup>16</sup> Cramer analyses and discusses the impact of different national contexts (social, political, cultural and historical factors) on the essence of national CSR frameworks.

The relation between business and social mindsets and CSR drivers in various European national contexts is analysed in another prominent CSR publication<sup>17</sup> and several authors and institutions have also addressed the issue from a global<sup>18</sup> or African perspective;<sup>19</sup> and even from a francophone Africa perspective.<sup>20</sup>

This topic has progressively evolved into becoming a source of inspiration providing CSR scholars with a fertile theoretical ground where hypotheses for the current debate on the future of CSR are rooted. This was precisely highlighted during the 5th International CSR Conference in Berlin 2012 where different approaches to the future of CSR were debated, based on quantitative and qualitative analyses of the adoption and adaptation of international CSR instruments, institutions and principles into the context of different countries, such as, in China<sup>21</sup> and India.<sup>22</sup>

---

<sup>14</sup>Harrington AR 'Corporate social responsibility, globalization, the multinational corporation, and labor: An unlikely alliance' (2011)75 *Albany Law Review* 483.

<sup>15</sup>Du Toit D 'Self-regulated Corporate Social Responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview' (2009)30 *Industrial Law Journal* 2227.

<sup>16</sup>Cramer J *Corporate Social Responsibility and Globalisation: An Action Plan for Business* (2006).

<sup>17</sup>Habisch A et al *Corporate Social Responsibility across Europe* (2005).

<sup>18</sup>Kinnicutt S & Mirvis P (eds) *Corporate Citizenship Around the World, How Local Flavor Seasons the Global Practice* (2008).

<sup>19</sup>Smit A (Lead Author) *Shaping Corporate Social Responsibility in Sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013). See also Popp D (ed), *Built-in or Bolted-on: Corporate Social Responsibility in Sub-Saharan Africa, A Survey on Promoting and Hindering Factors* (2009).

<sup>20</sup>Wong A & Yameogo KSU *Les Responsabilités Sociétales des Entreprises en Afrique Francophone* (2011).

<sup>21</sup>"CSR in China" was the Topic of the S23 CSR Workshop at the Paul-Löbe-Haus during the 5th International CSR Conference, Humboldt University, October 2012, Berlin

This thesis however takes a totally different approach as it focuses on the analysis of the correlation between the specificity of a national context on the one hand, and the legal dimension as well as relevance of a MNC CSR code of conduct on the other hand.

The originality of this thesis lies in the hypothesis of the inconsistency in the legal dimension and the relevance of MNC corporate codes of conduct when transposed into the context of different countries. This approach results from the combination of the following two aspects of the theoretical framework of CSR into one unique line of reasoning: on the one hand, the legal dimension of corporate codes of conduct and, on the other hand, the impact of country-specific factors on CSR principles and activities.

The thesis is aimed at the assessment of the impact of a national context (country-specific legal and CSR frameworks) on the legal dimension, the relevance and the practical effects of MNC corporate commitment as contained in their codes of conduct.

A comparative analysis of a selection of corporate codes of conduct against the background of relevant labour legislation as well as CSR instruments, in selected countries, will provide the necessary tools/knowledge for the verification or substantiation of the thesis hypotheses regarding the impact of a national context on the content, the relevance and the legal dimension of MNC CSR codes of conduct.

The aim of the thesis is to analyse and discuss aspects of the content of CSR codes of conduct relevant to labour rights and working conditions. The thesis does not intent to analyse and /or discuss actual labour and employment practices implemented by selected MNCs. The thesis also does not address the issue of the practical impact on labour rights and working conditions of the implementation - or the lack thereof – of each CSR codes of conduct.

### **1.3. Research Questions and Hypotheses**

---

<sup>22</sup> “CSR in India” was the Topic of the F13 CSR Workshop at the Paul-Löbe-Haus during the 5th International CSR Conference , Humboldt University, October 2012, Berlin

The hypotheses at the basis of this thesis are related to the issue of the effective compliance of MNCs' CSR commitments with nationally and internationally established institutional and theoretical frameworks of CSR. The thesis submits that MNCs CSR codes of conduct do not comply with the essential characteristics of CSR as a voluntary commitment above the legal requirement. The research questions underpinning this thesis are the following:

- Are multinational labour-orientated CSR commitments measuring up to relevant CSR standards, principles and instruments and the corresponding legal rules?
- What are the legal dimension and implications of a MNC code of conduct?
- Are MNCs CSR commitments, as expressed in Corporate Codes of Conduct, actually imposing voluntary measures above the minimum legal requirements, globally and within the context of selected countries?



#### **1.4. Research Purpose and Objectives**

The initial purpose of this thesis is to outline the legal and conceptual framework of CSR. The thesis intends, in a preliminary theoretical approach, to analyse the concept of CSR, its definition and history, and present the legal framework of CSR, globally as well as within the context of selected countries (South Africa, France and Cameroon).

Another purpose of this thesis is to evaluate the efficiency of MNCs' codes of conduct in implementing basic CSR principles. It is about assessing the effectiveness of MNCs codes of conduct, in implementing the core principles embedded in the academic definition as well as the institutional framework of CSR.

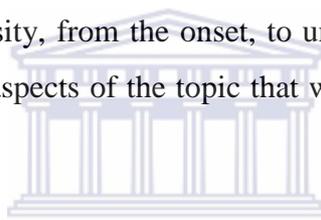
The thesis specifically intends to analyse and establish the correlation between MNCs' CSR commitments and the labour rights and working conditions effectively enjoyed by these MNCs' employees in their various operations in several different countries. The purpose is to find whether MNC approaches to, and implementation of, international CSR standards and

principles are relevant and consistent across the different countries into which they operate. This also calls for an analysis of the relevance and the impact of country-specific factors on the nature, the legal dimension, the consistency and the efficiency of CSR principles contained in MNC codes of conducts.

The aim of the thesis is, first, to assess and compare these MNCs' CSR codes of conduct, against the background of nationally and internationally established CSR standards and CSR principles and the corresponding legal rules. An additional aim is to assess the impact of a national context (legal and CSR instruments providing for labour and employment relations) on the content and the effectiveness of these codes of conduct.

### **1.5. Scope of the thesis**

The concept of CSR is inherently a very broad topic - far wider than the scope of this thesis. This explains the practical necessity, from the onset, to underline the scope of the thesis by precisely specifying the various aspects of the topic that will constitute the subject matter of the thesis.



#### **1.5.1. Selected aspects of the broad notion of corporation social responsibility**

The scope of the notion of CSR is wide and entails diverse areas such as the protection of human rights and the environment, the fight against corruption, as well as labour and employment rights.<sup>23</sup> The hypotheses to be tested and discussed in this thesis are consequently to be perceived in the light of a specific aspect of the CSR concept (labour and employment related CSR principles, standards and instruments), against the background of specific provisions of the relevant legal framework (labour and employment legislation).

#### **1.5.2. Selected companies**

Corporate approaches and practices of CSR are multiple and diverse because they are inherent to each corporation's unique understanding of its role within its community. It

---

<sup>23</sup>Aletter F, von der Burg K & Zanella I *Corporate Social Responsibility in South Africa as Practiced by South African and German Companies* (2010) 8-15. See European Commission *Green Paper of 18 July 2001 on "Promoting a European framework for Corporate Social Responsibility"* "366 final (2001)4-6.

therefore was a challenge to decide which companies to sample in this research, considering the vast amount of MNCs present in the world.

The thesis however focuses its scope on the analysis of three carefully selected MNCs, namely:

#### **1.5.2.1. British American Tobacco p.l.c. (BAT)**

Created in 1902 following a joint venture between British Imperial Tobacco Company and the American Tobacco Company, BAT is a British multinational tobacco company with headquarters in London. BAT has its primary listing on the London Stock Exchange where it is a constituent of the FTSE 100 Index. BAT also has a secondary listing on the Johannesburg Stock Exchange. BAT employs 'more than 55 000 people worldwide' and has a portfolio of over 200 brands sold in over 180 countries.<sup>24</sup>

As a key player in the global tobacco industry, BAT operates in over 180 countries, is a tobacco market leader in over 60 markets and has 44 cigarettes factories in 39 countries,<sup>25</sup> including South Africa, France and Cameroon.



#### **1.5.2.2. Total S.A.**

Total S.A., an integrated oil and gas company and chemicals manufacturer, is a French multinational headquartered in Paris. Founded in 1924 by French authorities as the Compagnie Française des Pétroles (CFP),<sup>26</sup> Total S.A. has evolved to become the fifth largest publicly-traded integrated international oil and gas company,<sup>27</sup> having in the process realised the successful takeover of Petrofina of Belgium in 1999 and French Elf Aquitaine in 2000.

Total S.A. has commercial operations in more than 130 countries, oil and gas exploration and production operations in more than 50 countries, and employs 97 000 people across the world. Total S.A. has primary listings in the Paris Stock exchange (France), and is a

---

<sup>24</sup> British American Tobacco p.l.c. *Who we are: Our business in 2013* (2013) 1-15.

<sup>25</sup> See British American Tobacco p.l.c. *Who we are: Our business in 2013* (2013) 1-15.

<sup>26</sup> Literally means the French Petroleum Company.

<sup>27</sup> Based on market capitalization (in dollars) as of 31 December 2012.

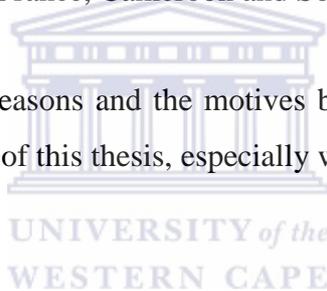
constituent of the French benchmark stock market index CAC 40, as well as the New York Stock Exchange.<sup>28</sup> Total S.A. is also present in Cameroon and South Africa.

### **1.5.2.3. Nestlé S.A. (Nestlé)**

Nestlé S.A. is a Swiss multinational company, headquartered in Vevey (Switzerland), and dealing with nutritional, snack food, and health-related consumer goods.

Nestlé S.A. was founded in 1905 following the joint venture between two pioneer corporations: Farine Lactée Henri Nestlé founded in 1867 by German immigrant Henri Nestlé, and the Anglo-Swiss Milk Company, established in 1866 by brothers George and Charles Page. Nestlé S.A. has its primary listing on the SIX Swiss Exchange (Nestlé is a constituent of the Swiss Market Index) and has a secondary listing on Euronext. With 450 factories and operations in 86 countries Nestlé S.A. group employs around 328 000 people across the globe and is present in France, Cameroon and South Africa.

Questions might arise as to the reasons and the motives behind the selection of these three specific corporations as the focus of this thesis, especially when considering the multitudes of MNC operating across the world.



Initially, the selection of these three corporations was based on mere logical and practical considerations requiring selected MNC, firstly, to be present and active in all three countries where the thesis research project were to be deployed (France, Cameroon and South Africa). Total S.A., Nestlé S.A. and BAT are European MNC with wide global imprints, thus they are of the few MNC present (with sound commercial and industrial activities) in all three countries to be analysed in the context of this thesis.

Secondly, the thesis particularly focuses on the labour and employment aspect of CSR as observed in the context of different countries, thus the relevance of an analysis of MNCs with a considerable workforce evenly dispersed across the globe. Total S.A., Nestlé S.A. and BAT have a global workforce of 97 000, 328 000 and 55 000 employees respectively, with an

---

<sup>28</sup>Cf Total S.A. Group presentation at <http://www.total.com/en/about-total/thumbnail/key-figures> (accessed on 18 November 2014).

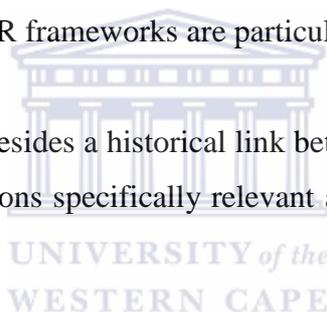
important commercial and industrial presence in all three countries to be analysed in the context of this thesis.

Thirdly, selected corporations were to be formally involved in CSR activities, having published formal CSR codes of conduct and subsequent CSR reports; these are indeed characteristics shared by Total S.A., Nestlé S.A. and BAT.

### **1.5.3. Selected countries**

Considering the diversity and the wide variety of national frameworks of CSR encountered across the globe, the following questions are most likely to be asked: What are the criteria for the selection of the above-mentioned countries as focus of this thesis? And how are the CSR frameworks in South Africa, France and Cameroon particularly relevant to this thesis? It is therefore essential to explain the reasons behind the selection of South Africa, France and Cameroon as countries whose CSR frameworks are particularly interesting.

The answers to these questions, besides a historical link between France and Cameroon,<sup>29</sup> are entrenched in a set of considerations specifically relevant as factors determining the essence of a country's CSR framework.<sup>30</sup>



## **1.6. Research Methodology**

As discussed above, the thesis entails three different phases, each with a specific objective thus a distinctive methodological approach:

The first part of the thesis constitutes a theoretical analysis of the concept of CSR and is based on a literature review-based methodological approach. In order to unveil the theoretical, legal and institutional frameworks of CSR, the thesis starts with an in-depth analysis of key texts of the CSR literature, as well as reports and publications on specific CSR instruments.

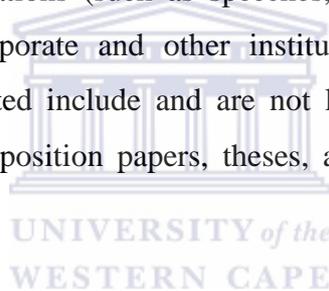
---

<sup>29</sup>France as a former colonial power ruled Cameroon as from the late 19th century up to 1960 when Cameroon obtained independence; this explains the similarity in the legal system as well as the presence in Cameroon of several French MNCs including Total SA, a key player in Cameroonian oil and energy industry.

<sup>30</sup> See 4.1 below.

The second part of the thesis adopts a comparative approach for the analysis of MNC codes of conduct with the purpose of assessing the impact of country-specific factors on their legal dimension, their implementation and their effectiveness. Labour related content of these codes of conduct are to be comparatively assessed, issue by issue, in order to comprehend the impact of a national context on the relevance and legal dimension of a MNC code of conduct. During this process, CSR principles and commitments contained in MNCs' codes of conduct are to be comparatively assessed against relevant national and international CSR instruments and institutions, as well as national and international legal frameworks regulating labour rights and working conditions.

Material to be consulted and utilised during these two initial parts of the thesis consist of both primary and secondary sources. Primary sources to be analysed include legal primary sources (such as Constitutions, cases, statutes, administrative regulations) and original documents, including excerpts and/or translations (such as speeches, corporate codes of conduct and other relevant publications, corporate and other institutional pamphlets, news reports). Secondary sources to be consulted include and are not limited to books, journal articles, working papers, discussion and position papers, theses, and publications by CSR-relevant institutions.



The final part of the thesis consists of a summary and a discussion of the findings made during the previous comparative phase. Specific recommendations are also to be made in light of the observed impact (or the absence of it) of a national context on the legal dimension and relevance of MNCs' CSR commitments.

## **1.7. Chapter outline and thesis structure**

The thesis focuses on the understanding of CSR, as a concept and as a practice, and intends to analyse CSR in both its theoretical expression and practical manifestations, thus the following parts:

### **1.7.1 Part One**

The initial part of the thesis is focused on the description, definition and characterisation of CSR.

In order to effectively grasp the essence of CSR, the first phase of the thesis entails the analysis of four significant aspect of the concept, thus Part I of the thesis has the following chapters:

- **Introduction (Chapter 1)**

Chapter 1 consists of the background of the thesis, the framework of the research, and a theoretical analysis (and discussion) of the definition and the characteristics of CSR.

- **Theoretical Background (Chapter 2)**

Chapter 2 discusses the origins and the evolution of CSR as a concept and as a practice.

- **Institutional and legal framework of CSR(Chapter 3 and 4)**

These chapters outline a contemporary overview of the formal framework of CSR (legal and institutional) as deployed globally (**Chapter 3: the global framework of CSR**), but also within the national context of selected countries (**Chapter 4: National framework of CSR in South Africa, France and Cameroon**).

### **1.7.2 Part Two**

The second part of the thesis is focused on a comparative assessment of selected MNCs' codes of conduct. These codes of conducts are to be tested, firstly against national and international CSR standards, principles and instruments, and secondly against the legal framework regulating labour rights and working conditions at the international level, as well as within the context of selected countries.

- **CSR and Corporates Codes of Conduct: (Chapter 5)**

The aim of this chapter is to assess British American Tobacco p.l.c., Nestlé S.A. and Total S.A. Codes of Conduct as tool for the implementation of each MNC's CSR vision. This is done via a theoretical analysis of the concept of corporate code of conduct followed by a thorough assessment of these MNCs' codes of conduct against the international legal and CSR framework providing for labour right and working conditions. .

- **The interaction between CSR Codes of Conduct, Labour Rights and Working Conditions in selected countries (Chapter 6)**

In this chapter, the thesis proceeds to an analysis of British American Tobacco p.l.c., Nestlé S.A. and Total S.A. labour related CSR commitments when transposed into the CSR and legal context of South Africa, France and Cameroon. The comparison focuses on the assessment of the content, the legal dimension and the relevance of each MNC's CSR code of conduct in these different national contexts

### **1.7.3 Part Three**

The final part of the thesis (**chapter 7**) consists of a concluding chapter that summarises and discusses findings made during the previous phase of the thesis. It also provides recommendations for the amelioration of the effectiveness and relevance of corporate codes of conduct.

## **1.8. The theoretical framework of CSR**

### **1.8.1 The notion of CSR**

As a starting point, the thesis will examine the notion of CSR in order to understand its quintessence and capture its substance into a formal definition. This however can potentially be an arduous task considering the multiplicity of approaches proposing a theoretical or practical definition of CSR, as well as the absence of a universally established characterisation of the concept: 'CSR is a vague and intangible term, which can mean anything to anybody, and therefore is effectively without meaning.'<sup>31</sup>

Another notable constraint to the effective definition of CSR is the broad range of acronyms and terminologies usually utilised in order to refer to notions and concepts sometimes synonymous to CSR, sometimes similar and/or related to CSR, but also, sometimes quite different and divergent from the essential ideas underpinning the concept of CSR. Thomas and Nowak actually noted that 'there seems to be an infinite number of definitions of CSR, ranging from the simplistic to the complex, and a range of associated terms and ideas (some used interchangeably)' including corporate sustainability, corporate citizenship, corporate

---

<sup>31</sup> Frankental P 'Corporate social responsibility - a PR invention?' (2001) 6 (1) *Corporate Communication: an International Journal* 20.

social investment, the triple bottom line, socially responsible investment, business sustainability and corporate governance.<sup>32</sup>

A reflection on the nature and essence of CSR is the objective of this thesis, thus the purpose of this initial chapter is also to discuss the quintessence of the notion of CSR and offer a perspective on various approaches in defining CSR. The focus is on the discussion of CSR's most notable definitions as commonly proposed and widely approved by CSR theoreticians (such as scholars and business writers) as well as by those practically involved in CSR strategies, CSR policies and CSR implementation (such as corporate, governmental and institutional executives as well NGO and civil society representatives).

This process of defining CSR is articulated into successive stages entailing:

- The presentation of a selection of CSR definitions
- The recapitulation of the essential characteristics of CSR
- The summary of various terminologies of CSR, and its differentiation with related concepts.

#### **1.8.1.1 Common Definitions of CSR**

Common definitions of CSR - as proposed by individuals and/or organisations who are not CSR professionals or experts and who are not directly involved in CSR practice or research activities -are usually generic and broad in meaning and in substance. Such definitions usually embrace multiple aspects of the concept itself as well as similar or related notions such as, corporate citizenship, corporate social investment or corporate sustainability. For instance, the *Cambridge Business Dictionary* defines CSR as 'the idea that a corporation should be interested in and willing to help society and the environment as well as be concerned about the products and profits it makes'.<sup>33</sup>

Another denominator of these generic definitions of CSR is the absence of a specific indication as to what constitute the intrinsic and defining feature of CSR. Utting, in the

---

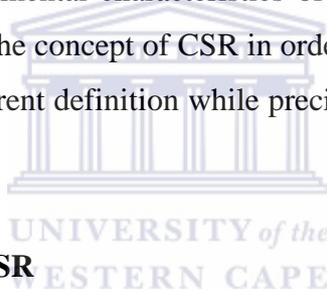
<sup>32</sup> Thomas G & Nowak M 'Corporate Social Responsibility: A definition' (2006) 62 Graduate School of Business/Curtin University of Technology 3.

<sup>33</sup> Cambridge Business English Dictionary *Corporate Social Responsibility* Cambridge University Press, available online at <http://dictionary.cambridge.org/dictionary/business-english/corporate-social-responsibility> (accessed 18 November 2014).

*Encyclopaedia of Globalisation*, relevantly notes: ‘CSR is frequently defined in very broad terms. It can mean the ethical behaviour of a corporation toward society; greater responsiveness on the part of owners and managers to the concerns of a corporation’s stakeholders; or voluntary initiatives that go beyond philanthropy and the minimum standards set by law.’<sup>34</sup>

Daugareilh also points to the fact that even at the corporate level, CSR is not always attributed a comprehensively consistent definition by corporations engaging in CSR activities. According to Daugareilh, the corporate world in fact usually considers CSR to be a carry-all concept allowing corporations not only to unilaterally label as CSR an eclectic selection of activities, aimed at different objectives, thus targeting and affecting different stakeholders of the corporation; but also to use a wide-ranging selection of terminology in order to express the corporation’s CSR commitments.<sup>35</sup>

In order to fully grasp the fundamental characteristics of CSR, it therefore is necessary to thoroughly research and analyse the concept of CSR in order to highlight its quintessence in a concise, comprehensive and coherent definition while precisely differentiating it from similar and/or related concepts.



### **1.8.1.2 Scientific definition of CSR**

The aim of this section is to refer to CSR definitions as proposed by academics, researchers and practitioners specialising in CSR. The interest of this approach lies in the fact that one needs to rely on experts’ definitions in order to understand the essence of the concept when confronted with the vagueness and/or the inaccuracy of commonly proposed definition of CSR. The most important aspect of these scientific definitions is the fact that even though they are not always convergent, at least they each usually outline with precision a significant aspect of the concept of CSR, such as:

#### **1.8.1.2.1 The inclusion of stakeholder issues, concerns and interest into the Bottom Line**

---

<sup>34</sup> Utting P ‘Corporate social responsibility’ (2007) 1A-E *Encyclopedia of Globalisation* 220.

<sup>35</sup> Daugareilh I ‘Introduction’ in Daugareilh I (ed) *Responsabilité sociale de l’entreprise transnationale et globalisation de l’économie* (2011) page X.

Freeman defines stakeholder as ‘any group or individual who can affect or is affected by the achievement of the organization’s objectives.’<sup>36</sup> Corporate acknowledgement of stakeholder issues, concerns and interests is considered to be at the core of the CSR concept. The quintessence of CSR consequently translates into a corporate duty to take into consideration community’s demands and include societal concerns into their classical bottom line.

On this note, Bowen has described CSR as referring to ‘the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of actions which are desirable in terms of the objectives and values of our society’.<sup>37</sup> This practically translates into the necessity for businesses to depart from the bottom line approach that only consider the interest of the shareholders, and adopt a business stance that fully integrates effective societal awareness and responsiveness:

‘CSR is the way in which business consistently creates shared value in society through economic development, good governance, stakeholder responsiveness and environmental improvement. Put another way, CSR is an integrated, systemic approach by business that builds, rather than erodes or destroys, economic, social, human and natural capital.’<sup>38</sup>

#### **1.8.1.2.2 CSR as the purpose of the modern corporation**

This theoretical approach envisions the advent of CSR as a crucial step in the historical evolution of the role and purpose of business in the society. When analysed against the background of the traditional theory of the corporation as an entity solely aimed at the interest of its shareholders,<sup>39</sup> the emergence of the concept of CSR denotes the corporate acknowledgement of the necessity to strike a balance and ensure harmony between the interest of shareholders and those of the stakeholders of a corporation as well as the society at large. Du Toit specifically highlights the fact that, historically, CSR emerged and evolved as a notion ‘seeking to strike a balance between standards demanded of business corporations by their critics and those deemed reasonable by their shareholders’.<sup>40</sup>

---

<sup>36</sup> Freeman RE *Strategic Management: A stakeholder Approach* (1984)46.

<sup>37</sup> Bowen HR *Social Responsibility of the Businessman* (1953) 6.

<sup>38</sup> Visser W *The Ages and Stages of CSR: Towards the Future with CSR 2.0* (2011)1.

<sup>39</sup> Freeman RE *The role of CSR in the New Narrative of Business* 5th international CSR Conference (2012) 1. Freeman refers to this traditional theory as the Old Story of the 20th century which considers that business is primarily about making money and profits and that the only constituency that really matters are shareholders.

<sup>40</sup> Du Toit D ‘Self-regulated Corporate Social Responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview’ (2009)30 *Industrial Law Journal* 2227.

Freeman further asserts that CSR is progressively becoming the actual purpose of the corporation:

‘Business is primarily about purpose...money and profits follow. Any business creates (or sometimes destroys) value for shareholders, as well as customers, employees, suppliers, and communities. Building and leading a business involve getting these interests going in the same direction.’<sup>41</sup>

### **1.8.1.2.3 CSR as a voluntary commitment above the legal requirement**

CSR consists of corporate voluntary societal commitments that goes beyond the minimum legal requirement a corporation is normally subjected to. This essential characteristic of CSR is especially outlined by the European Commission in its 2001 Green Paper which describes CSR as

‘a concept whereby corporations integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis. Being socially responsible means not only fulfilling legal expectations, but also going beyond compliance and investing ‘more’ into human capital, the environment and the relations with stakeholders.’<sup>42</sup>

After a review of these definitions, it is to be acknowledged that even though they comprehensively capture significant aspect of the notion of CSR, they are also somehow limited because they usually emphasise a specific aspect of CSR, at the expense of other interesting features of the concept. Hence the aim of the next section is to summarise all essential characteristics of CSR. It is about assembling the different, most important aspects of the concept, in order to reach a comprehensive but concise definition of CSR.

## **1.8.2 Essential characteristics of CSR**

This section’s analysis of the notion of CSR focuses on a review of all essential characteristics of CSR, thus the need to answer the following question: Which specific characteristic defines CSR and therefore makes it a particular notion unmistakably different from similar and/or related concepts?

### **1.8.2.1 The core principles of the notion of CSR**

---

<sup>41</sup> Freeman RE *The role of CSR in the new narrative of business* 5th international CSR Conference (2012) 8.

<sup>42</sup> European Commission *Green Paper of 18 July 2001 on “Promoting a European framework for Corporate Social Responsibility”* “366 final (2001) 6.

The notion of CSR entails three core principles:

#### **1.8.2.1.1 The principle of voluntarism**

Voluntarism is an essential element of the notion of CSR. CSR refers to voluntary corporate initiatives aimed at the achievement of corporate societal objectives. A corporate societal initiative therefore needs to be deliberate and voluntary in order to claim the CSR label.<sup>43</sup>

#### **1.8.2.1.2 The principle of corporate social responsibility beyond the legal requirement**

This is an extension of the voluntarism principle. CSR refers to corporate societal initiative beyond the scope of normal legal rules and standards (national and international) regulating corporate initiatives. According to McBarnet, the ‘conventional concept of CSR as beyond the law’ has a dual significance referring to ‘goals beyond the requirements of law, and of being driven by extra-legal forces’.<sup>44</sup>

The essence of CSR is to implement rules and regulations above the minimum legal requirement. CSR should extend the corporation’s natural respect of laws and regulations ‘by stating their social responsibility and voluntarily taking on commitments which go beyond common regulatory and conventional requirements, which they would have to respect in any case’.<sup>45</sup>

For the corporation, CSR consequently encompasses a commitment to go beyond the normal legal requirement (national and international) and promote specific values such as human rights, social justice, business ethics and fair trade.<sup>46</sup>

#### **1.8.2.1.3 The principle of the societal dimension of corporate activities**

A CSR initiative should ideally have the aim to implement a corporation’s response to community and stakeholder concerns, by combining societal awareness and societal

---

<sup>43</sup> European Commission *Green Paper of 18 July 2001 on “Promoting a European framework for Corporate Social Responsibility”* “366 final (2001) 4.

<sup>44</sup> McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007) 12.

<sup>45</sup> European Commission *Green Paper of 18 July 2001 on “Promoting a European framework for Corporate Social Responsibility”* “366 final (2001) 3.

<sup>46</sup> European Commission *Green Paper of 18 July 2001 on “Promoting a European framework for Corporate Social Responsibility”* “366 final (2001) 6.

responsiveness. CSR needs to be a true expression of a corporate pursuit of the interest of its stakeholders and not a mere, profit-led, marketing or PR exercise:

‘At the core of CSR is the idea that it reflects the social imperatives and the social consequences of business success. Thus, CSR (and its synonyms) empirically consists of clearly articulated and communicated policies and practices of corporations that reflect business responsibility for some of the wider societal good’<sup>47</sup>

### **1.8.2.2 Other aspects of the notion of CSR**

The notion of CSR finally presents some specific features that are inherent to its substance, and thus differentiates it as a unique concept.

#### **1.8.2.2.1 CSR and the concept of Triple Bottom Line**

The notion of Triple Bottom Line refers to the inclusion of a social and an environmental item into the traditional, economic bottom line of a corporation.<sup>48</sup> The notions of CSR and Triple Bottom Line are inherently intertwined, with CSR providing the theoretical background as well as practical tools for the implementation of a Triple Bottom Line:

‘Corporate Social Responsibility (CSR) is the alignment of business operations with social values, integrating the interests of stakeholders - all those affected by a corporation's conduct - into the corporation's business policies and actions. CSR focuses on the social, environmental, and financial success of a corporation - the so-called triple bottom line - with the goal being to positively impact society while achieving business success.’<sup>49</sup>

The Triple Bottom Line approach has progressively been established as a core and indispensable aspect of business operations.<sup>50</sup> As such, CSR is expected, on the one hand to be systematic and consistent (not just occasional) and, on the other hand, to be conceived as an integral and measurable/quantifiable part of the corporate management culture. This has

---

<sup>47</sup> Matten D & Moon J ‘ “Implicit” and “Explicit” CSR: A conceptual framework for a comparative understanding of corporate social responsibility’ (2008) 33 (2) *Academy of Management Review* 405.

<sup>48</sup> Norman W & MacDonald C ‘Getting to the bottom of “Triple Bottom Line” ’ (2003) *Press, Business Ethics Quarterly* 1.

<sup>49</sup> Sundar P *Corporate social responsibility: An idea whose time has come* (2004) PR Pundit’s Eighth Public Relations Workshop 1.

<sup>50</sup> Norman W & MacDonald C ‘Getting to the bottom of “Triple Bottom Line” ’ (2003) *Press, Business Ethics Quarterly* 2.

resulted in a new generation of business practices and procedures based on the necessity to publish, measure and report the extent and effectiveness of a corporate triple bottom line.<sup>51</sup>

#### **1.8.2.2.2 The scope of CSR**

CSR activities are traditionally deployed in some specific area. The primary field of action of corporation social commitments mostly entails human rights, the environment and labour and employment rights.<sup>52</sup> However, CSR initiatives are also concerned with topics such as: sustainable development, fair trade, poverty alleviation, financing of scientific or medical research, fight against diseases and illness in affected and/or concerned communities, fight against negative corporate lobbying, against corruption and money laundering activities, fight against human trafficking, drug trafficking and finally the issues of corporate governance and democracy as well as business in war torn regions .<sup>53</sup>

### **1.8.3 Summary of terminology**

#### **1.8.3.1 Differentiating CSR from similar and/or related concepts and acronyms**

When dealing with the issue of the definition of CSR, one is usually confronted by a multitude of terms employed, either interchangeably to the concept of CSR or as a reference to a relevantly associated concept.<sup>54</sup> Does this abundance of terminology imply the technical necessity to offer a precise and effective understanding of CSR as a unique concept within the broader theoretical framework relating to the role of business in society? Does it rather illustrate the complexity of the notion of CSR which translates into the difficulty to find a unique formulation which, un-controversially, outlines the essential characteristics of CSR?

---

<sup>51</sup> Levy DL & Kaplan R 'CSR and theories of global governance: Strategic contestation in global issue arenas' in Crane A et al (ed) *The Oxford Handbook of CSR* (2008)112.

<sup>52</sup>Sundar P *Corporate social responsibility: An idea whose time has come* (2004) PR Pundit's Eighth Public Relations Workshop 1.

<sup>53</sup> Hence the wide range of topics and issues addressed by the multiples international instruments institutionalising CSR, such as, The UN Global Compact, The OECD Guidelines for Multinational Enterprises, The International Labour Organisation 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy', The ISO and its ISO 26000:2010 Guidance on social responsibility, The WTO and the Geneva Social Observatory (GSO) Statement on Transnational Corporations and Related Business Enterprises with regard to Human Rights.

<sup>54</sup> Murray A & Halper S *Corporate Social Responsibility: Topical Bibliographies* (2013) 1 notes that 'CSR issues can be defined in terms of Corporate Citizenship, Corporate Social Responsibility, Business in Society, Sustainable Development or Business Ethics - and all of these are useful search terms when exploring the literature'.

Both questions lead to affirmative answers when one proceeds to the following scrutinising of the notion of CSR as compared to these similar and/or related concepts and acronyms.

### **1.8.3.1.1 Related concepts**

Various adjacent concepts are commonly used in order to presents specifics aspects of a broader concept of CSR. These concepts are usually utilised in order to put an emphasis on a particular approach of the CSR theory; thus they are neither exclusive nor contradictory. They are in fact complementary in the sense that they individually highlight a particular aspect of CSR as a whole.<sup>55</sup> Thus the case for concepts such as:

#### **a) Corporate Social Investment (CSI)**

CSI refers to a corporation voluntary investment into societal causes, the purpose of which is to uplift communities affected, concerned by or involved in the operations of the corporation. Bruyn describes CSI activities as follows:

‘Social investments introduce noneconomic criteria into investment decisions and thus change the order of business. Social investors are interested in the impact of their investment on people as well as in making profit. They believe they can maintain economic returns on their capital while expressing a social concern about corporate conduct, that by investing only in socially responsible they can have an effect on corporate behaviour, and that social criteria can provide incentives for business to function more reliably in the public interest’<sup>56</sup>

The following conception of CSI further clarifies the form and the motives of CSI as a corporate initiative: ‘This term relates to charitable projects that are mostly external to the core business activity and in most cases serve the purpose of creating a positive image of the company among stakeholders’<sup>57</sup>

#### **b) Corporate Governance**

---

<sup>55</sup> ‘CSR is an umbrella term overlapping with some, and being synonymous with other, conceptions of Business-Society relations.’ See Matten D & Moon J ‘ “Implicit” and “Explicit” CSR: A conceptual framework for a comparative understanding of corporate social responsibility’ (2008) 33 (2) *Academy of Management Review* 405.

<sup>56</sup> Bruyn ST *The Field of Social Investment* (1987) 1.

<sup>57</sup> Hönke J et al *Fostering Environmental Regulation? Corporate Social Responsibility in Countries with Weak Regulatory Capacities: The case of South Africa* (2008)5.

The concept of corporate governance has been institutionalised in South Africa by the King Report on Corporate Governance (King I) which as early as 1994 established the necessity for an integrated approach to corporate governance that included and acknowledged the interests of a wide range of corporate stakeholders. In 2002, the King Report on Corporate Governance for South Africa (King II) emphasized the necessity for good corporate governance to be illustrated by a move from a single to a triple bottom line:

‘[...] successful governance in the world in the 21st century requires companies to adopt an inclusive and not exclusive approach. The company must be open to institutional activism and there must be greater emphasis on the sustainable or non-financial aspects of its performance. Boards must apply the test of fairness, accountability, responsibility and transparency to all acts or omissions and be accountable to the company but also responsive and responsible towards the company’s identified stakeholders.’<sup>58</sup>

Notice 1183 of 2004 of the South African Department of Trade and Industry (DTI) offers a relevant definition of corporate governance that explores its relationship with the topic of CSR:

‘holding the balance between economic and social goals with the result that corporate governance should be seen as the system by which organizations are or ought to be governed and controlled with the contribution of and for the benefit of all stakeholders, including shareholders, employees, creditors, suppliers and the society at large.’<sup>59</sup>

### **c) Corporate Citizenship**

Defining the concept of corporate citizenship, Drucker asserts that: ‘[corporate] citizenship means active commitment. It means responsibility. It means making a difference in one’s community, one’s society, and one’s country.’<sup>60</sup> The idea of corporate citizenship has evolved as the result of the transposition of moral and ethical obligations - normally reserved to individuals (natural persons) – to corporations (juristic person). Corporations are henceforth considered to be citizens within the broad society, hence the advent of concept such as corporate citizenship, ethical business and business ethics. The emergence of the notion of corporate citizenship is rooted on the ‘implication that a company should be

---

<sup>58</sup> King M *King Report on Corporate Governance for South Africa* (2002) 20 Section 41.

<sup>59</sup> The Department of Trade and Industry ‘South African Company Law for the 21st Century Guidelines for Corporate Law Reform’ Notice 1183 of 2004 in *Government Gazette* 26493 of June 2004) 21.

<sup>60</sup> Drucker P *Post Capitalist Society* (1993) 168.

regarded as an individual, having both rights and responsibilities'.<sup>61</sup> This translates into a duty for corporations, not only to respect laws and regulations, but also to behave ethically, as moral agents in a society, because 'it is no longer acceptable for a corporation to experience economic prosperity in isolation from those agents impacted by its actions. A firm must now focus its attention on both increasing its bottom line and being a good corporate citizen'.<sup>62</sup>

#### **d) Corporate Philanthropy**

Corporate philanthropy refers to corporate charitable giving and other philanthropic activities undertaken by corporations and usually takes multiple forms: 'Corporate philanthropy is not just limited to monetary donations made by corporations. Many corporations encourage philanthropic activities by their employees and customers through various forms of collaboration'.<sup>63</sup>

According to Porter and Kramer corporate philanthropy is unique as it usually takes the form of strategic acts of charity, hence the link between corporate philanthropy and corporate strategy. The authors therefore propose and discuss the merit of the more accurate concept of corporate 'strategic philanthropy'.<sup>64</sup>

An explicit differentiation between CSR and corporate philanthropy is nevertheless offered by Blowfield and Murray: '[W]hat distinguishes much of contemporary corporate responsibility from corporate philanthropy is that today's corporations are becoming involved in implementing policies and programmes that, rather than only giving back to the community, affect core management practices.'

#### **e) Business Ethics**

Similarly to the concept of corporate citizenship, the notions of business ethics and ethical business emerged as the result of the transposition of individual ethical values to juristic

---

<sup>61</sup> Justice DW 'Corporate social responsibility: Challenges and opportunities for trade unionists' in International Labour Organisation *Corporate Social Responsibility: Myth or reality? - Labour Education* (2003)1(130) 2.

<sup>62</sup>D'Amato A et al *Corporate Social responsibility and Sustainable business, Guide to leadership tasks and Functions* (2009) 1.

<sup>63</sup> Carroll AB & Shabana KM 'The business case for corporate social responsibility: A review of concepts, research and practice' (2010) 12 (1) *International Journal of Management Reviews* 85-105.

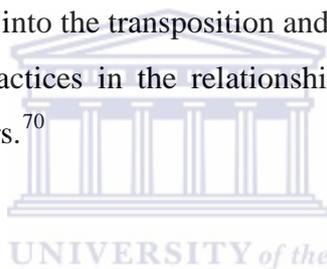
<sup>64</sup> Porter ME & Kramer MR 'The competitive advantage of corporate philanthropy' (2002) 80 (12) *Harvard Business Review* 58.

persons, such as, public and private organizations and corporations.<sup>65</sup> According to Carroll, the notion of business ethics refers to the duty of corporations to act justly and with honesty in the conduct of their business activities.<sup>66</sup> Olowski describes the rapport between the concepts of CSR and business ethics as follows:

‘Although the CSR movement is at the crest of a well-established tradition of business ethics, it represents a new perspective on traditional notions of morality in the business world. CSR draws on the above justifications, but it proposes behavioral expectations of businesses that go beyond the conventional idea that businesses’ sole moral obligation is to comply with legal regulations and to act honestly.’<sup>67</sup>

### **f) Corporate Sustainability / Corporate Sustainability and Responsibility**

Sustainability in the business context refers to voluntary corporate activities characterised by the inclusion of social and environmental concerns in business operations.<sup>68</sup> In practice, corporate sustainability translates into the transposition and the implementation of sustainable development<sup>69</sup> principles and practices in the relationship and the interactions between a corporation and all its stakeholders.<sup>70</sup>



#### **1.8.3.1.2 Alternate Acronyms**

Different terminologies and/or acronyms are often utilised in order to express divergent understandings of the essence and substance of CSR. These concepts and acronyms usually convey different theories on the definition, nature and quintessence of CSR. Even though usually conflicting in their understanding of CSR, these different acronym/terminologies are, however, not necessarily exclusive.<sup>71</sup>

---

<sup>65</sup> Epstein EM ‘The Good Company: rhetoric or reality? Corporate social responsibility and business ethics’ (2006) 44 (2) *American Business Law Journal* 211.

<sup>66</sup> Carroll AB ‘Corporate social responsibility: Evolution of a definitional construct’ (1999) 38 (3) *Business and Society* 272.

<sup>67</sup> Olowski LJ *Corporate Social Responsibility: Its History, Ethical Justification, and Abuses in the Business World* (2006) 6.

<sup>68</sup> Van Marrewijk M ‘Concepts and definitions of CSR and corporate sustainability: Between agency and communion’ (2003) 44 *Journal of Business Ethics* 102.

<sup>69</sup> Cf Section 1.8.3.2.3 for the definition of Sustainable Development.

<sup>70</sup> Van Marrewijk M ‘Concepts and definitions of CSR and corporate sustainability: Between agency and communion’ (2003) 44 *Journal of Business Ethics* 102.

<sup>71</sup> ‘CSR is an “essentially contested concept,” being “appraisive” (or considered as valued), “internally complex,” and having relatively open rules of application’. See Matten D & Moon J ‘ “Implicit” and “Explicit” CSR: A conceptual framework for a comparative understanding of corporate social responsibility’ (2008) 33 (2) *Academy of Management Review* 405.

### **a) Corporate Social Accountability**

‘Accountability is one of the processes whereby a leader, company, or organization seeks to ensure integrity. In a global stakeholder society, accountability is among the key challenges of organizations. Responsible leaders are concerned with reconciling and aligning the demands, needs, interests, and values of employees, customers, suppliers, communities, shareholders, nongovernmental organizations (NGOs), the environment, and society at large.’<sup>72</sup>

### **b) Corporate Social Responsiveness and Corporate Social Performance**

According to Carroll’s account of the historical evolution of the concept of CSR, the notions of corporate social responsiveness and corporate social performance are derivative concepts that emerged during the 1970s and were illustrative of the highlighted focus of the CSR movement during these periods. The CSR concept as utilised during the 1960s emphasised the accountability of corporation; CSR was then viewed as a corporate societal obligation. However, during the early 1970s, the theory evolved in order to establish the concept of corporate social responsiveness, the focus of which is to highlight the necessity for corporations to actively react to societal issues and concerns by taking responsive actions leading to corporate societal activities. The mid 1970s witnessed the advent of the concept of Corporate Social Performance focusing on the result, namely the societal outcome, of corporate activities.<sup>73</sup>

### **c) Corporate Self-Regulation**

Presented as an alternative to the traditional regulation of business activities by legislation, corporate self-regulation conveys the idea of corporate attempts to avoid mandatory regulation by adopting voluntary mechanisms of self-regulation and self-monitoring, such as CSR.<sup>74</sup>

## **1.8.3.2 Theoretical background of terminology similar and/or related to CSR**

---

<sup>72</sup> D’Amato A et al *Corporate Social Responsibility and Sustainable Business, Guide to Leadership Tasks and Functions* (2009) 6.

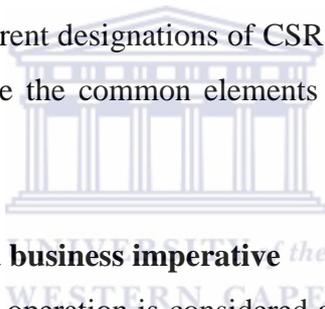
<sup>73</sup> Carroll AB *A CSR journey, looking back, looking forward* (2012) 5th international CSR Conference-Humboldt-Universität zu Berlin 5.

<sup>74</sup> See Murray J *Corporate social responsibility: an overview of principles and practices* (2004) 7.

At this stage of the quest for a concise and comprehensive definition of a CSR, it becomes important to proceed to a precise differentiation between the broad ranges of terms similar and/or related to CSR. The profusion of terms and notions similar and/or related to CSR is an indication of the divergence of opinion about the true essence of CSR. It is indeed tricky to reach an agreement on an appellation when the substance itself, of the CSR phenomenon is not agreed upon:

‘The term [social responsibility] is a brilliant one; it means something, but not always the same thing, to everybody [...]. Thus, a precisising definition of CSR is as elusive as its exact nature and role in the business-society relations. Such absence of a specific and widely agreed definition makes CRS vulnerable to confiction interpretation by stakeholders.’<sup>75</sup>

Numerous terms are actually used in order to capture and label the theories behind the concept of CSR. Each of these terms is distinct and specifically highlights one particular aspect of the CSR theory. In order to assess the theoretical background of CSR terminology, it is important to recap these different designations of CSR, highlight the specificities of each appellation and finally summarise the common elements observed between these different concepts.



#### **1.8.3.2.1 The ‘Social’ aspect as a business imperative**

The social aspect of any business operation is considered as important as the operation itself and deemed unavoidable. The following terms emphasise this social aspect:

- a) As the necessity to consider and address societal concerns and issues and be accountable to the community: Corporate Social Responsibility, Corporate Social Accountability.
- b) As the necessity to implement societal awareness and proactively address community concern: Corporate Social Responsiveness.
- c) As an important and inevitable aspect to consider while auditing the overall performance of corporation: Corporate Social Performance, Corporate Social Reporting.<sup>76</sup>

---

<sup>75</sup>Masaka D ‘Why Enforcing Corporate Social Responsibility (CSR) is Morally Questionable’(2008) 13 (1) *Electronic Journal of Business Ethics and Organization Studies* 14.

<sup>76</sup> CSR reporting is the ensemble (and the result) of voluntary reporting and disclosure mechanisms and measures implemented by corporations in order to publish their social initiatives. These measures are usually voluntary, but might sometimes have a mandatory aspect resulting from the adherence to various CSR instruments and initiatives (such as the Global Reporting Initiative) or the listing on a specific, CSR inclined

### **1.8.3.2.2 The surge of a new generation of investors**

The evolution and the globalisation of the theory and practices of CSR has also been characterised by the consolidation of the principle of the sustainability and the responsibility of investments as an important item on the agenda of investors. This has resulted in the proliferation of responsible investment indices in stock exchanges worldwide,<sup>77</sup> and the emergence of a new generation of investors concerned with the reputability, in term of social responsibility, of the corporations and projects into which they are investing their funds. Prospective investors are increasingly becoming interested in the social aspect of business operation and are insisting on investing only in business with a positive societal impact. Corporations are also increasingly keen to invest funds in societal activities; this explains the surge of notions such as:

- a) Corporate Social Investment,
- b) Sustainable Investment,
- c) Responsible Investment

### **1.8.3.2.3 Sustainable Development and the role of business in society**

The emergence of the concept of sustainability has also contributed to the emergence of a new set of terminologies in the debate about the role of business in society. The inclusion and preponderance of the concept of sustainability in the global agenda of corporations demonstrate the effective translation of the international developmental goal of sustainability into a business imperative, thus the recurrence of notions such as:

- a) Sustainable Development

‘Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’<sup>78</sup>

- b) Sustainable Responsible Business
- c) Corporate Sustainability and Responsibility

---

Index (such as the FTSE4Good or the JSE SRI Index ): ‘Corporate social reports are addressed to different stakeholders such as shareholders, consumers and creditors. They are intended to convey information about the company’s performance and prospects in relation to social and environmental issues.’ Nehme M & Wee CKG ‘Tracing the historical development of corporate social responsibility and corporate social reporting’ (2008) 15 *James Cook University Law Review* 47.

<sup>77</sup> Such as the FTSE4Good, the Dow Jones Sustainability Group Index or the JSE SRI Index

<sup>78</sup> Brundtland GH *Our common future* (1987) 27.



UNIVERSITY *of the*  
WESTERN CAPE

## CHAPTER TWO

### ORIGINS AND EVOLUTION OF THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY

#### 2.1 Introduction

The preliminary chapter of this thesis had a double purpose: first, to define the concept of CSR and determine its essence and principal characteristics, and secondly, to establish the framework of the research in order to outline the background and scope of the research project, highlight the research questions and objectives, and determine the research methodology to be adopted. The present chapter expands upon the theoretical analysis of the concept of CSR initiated in the previous chapter. The objective of this chapter is to explore the history of CSR in order to understand the dynamics of its evolution and trace the various factors that have contributed to its transformation from pioneering ideas and precursory practices to its current form.

The aim of this chapter, therefore, is to gain an understanding of all the different forces and elements which are essential in catalysing and influencing the development of CSR as a theory and as a practice. The interest of such an approach lies in the fact that a thorough analysis of the dynamics of the evolution of CSR could highlight all the elements, factors and circumstances of a national context which are essential to the creation of a national CSR framework with specific characteristics, and subsequently facilitate the analysis of the impact of a national context on the implementation of international CSR instruments (such as, the MNC code of conduct).

This chapter, therefore, intends to trace the origins of the concept of CSR, and retrace its evolution from its earliest manifestation up to its contemporary expression. The thesis, however, departs from the traditional approach that usually considers the 1950s as the starting point of CSR.<sup>79</sup> In fact, even though one could easily agree with the position that considers

---

<sup>79</sup> Archie B. Carroll stands as the foremost proponent of this notion of the modern era of CSR, and suggests that Bowen should be called the 'Father of Corporate Social Responsibility'. cf Carroll AB 'Corporate Social Responsibility: Evolution of a definitional construct' (1999) 38 (3) *Business and Society* 291. This position has also been defended by previous authors, such as, Keith Davis and Robert L Blomstrom Cf Davis K & Blomstrom RL *Business and Society: Environment and Responsibility* 3ed (1975) 10. More recently, this position has been supported by authors, such as, Aurelien Acquier and Jean Pascal Gond. cf Acquier A & Gond

CSR to be a product of the 20<sup>th</sup> century - and more specifically the year 1953, the publication date of Bowen's seminal work on CSR<sup>80</sup> - it is necessary to keep in mind the fact that CSR did not come - *ex nihilo* - into sudden existence, without any theoretical foundation or pioneering idea.<sup>81</sup>

The emergence during the 1950s of the notion of CSR, therefore, should be regarded as the mere culmination of a process initiated and matured over centuries (or even millennia) of business existence and operations within communities. The natural interactions and interrelations between business and society have provided the context for the enunciation and discussion of principles relating to the role and responsibility of business in society. Rhys Jenkins in fact argues that CSR in many ways 'is only the latest manifestation of a longstanding debate over the relationship between business and society'.<sup>82</sup>

The present investigation into the genesis, history and evolution of CSR, therefore, necessarily translates into an analysis of the historical evolution of the role and impact of business in society. This analysis is to be divided into two consecutive sequences based on two assumptions: First, that Bowen is the father of the modern era of CSR,<sup>83</sup> and secondly, as was indicated above, that modern CSR is just the culmination and/or formalisation of pioneering theories and practices that have led the way to the formulation of the concept of CSR.<sup>84</sup>

This chapter, therefore, will first focus on the analysis of these pioneering theories, activities and practices and the process of their evolution into CSR. Secondly, the chapter will focus on the modern aspect of CSR, its genesis during the 1900s, its concrete formulation by Bowen in

---

JP 'Aux sources de la responsabilité sociale de l'entreprise: à la (re)découverte d'un ouvrage fondateur: Social Responsibilities of the Businessman d'Howard Bowen' (2007) 10 (2) *Finance Contrôle Stratégie* 6.

<sup>80</sup> Bowen HR *Social responsibility of the businessman* (1953).

<sup>81</sup> Isabelle Daugareilh in fact considers CSR to be the modern, formal expression of an age-old idea. Daugareilh I (ed) *Responsabilité sociale de l'entreprise transnationale et globalisation de l'économie* (2011) Introduction. In a 2009 article Daugareilh also observes that in 1953 Bowen only formalised a notion of CSR that already existed at least since the beginning of the 20th century. Cf Daugareilh I 'Responsabilité sociale des entreprises transnationales: Analyse critique et prospective juridique' (2009) 27 (1) *Cuadernos de relaciones laborales* 94.

<sup>82</sup> Jenkins R 'Globalization, Corporate Social Responsibility and poverty' (2005) 81 (3) *International Affairs* 526.

<sup>83</sup> The notion of modern CSR refers to CSR in its contemporary form and definition and, therefore, encompasses contemporary CSR tools and initiatives and various instruments and institutions implementing CSR.

<sup>84</sup> 'The concept of corporate social responsibility (CSR) has a long and varied history. It is possible to trace evidences of the business community's concern for society for centuries. Formal writing on social responsibility, however, is largely a product of the 20<sup>th</sup> century.' Carroll AB 'Corporate Social Responsibility: Evolution of a definitional construct' (1999) 38 (3) *Business and Society* 268.

1953, and its evolution up to its most contemporary expression. This will be achieved using a chronological approach that emphasises the logical development and evolution of the theory of the role of business in society through the ages. Thus this chapter has the following parts:

- A summary of historical facts and events retracing the emergence of disparate theories, principles, precepts and regulations concerning the role, mission and impact of business in society.
- An analysis of specific theories and regulations logically linked to the theory of CSR
- An overview of the emergence and evolution of capitalism/mercantilism and its impact on the societal perception of the role and impact of business in society.
- An overview of the impact of the Industrial Revolution on the perceived role/impact of business in society.
- An analysis of the evolution of modern CSR from Bowen up to its contemporary formulation.

## **2.2 Historical perspective on the interaction between business and society**

### **2.2.1 Perspectives on the role and impact of business in society**

Whether as the small merchant during the Babylonian empire, the executives of the Dutch East India Company, or the shareholders of a modern corporation, business people have come to realise that a business's operations are normally embedded in a particular society whose principles, values and regulations ultimately and necessarily impact on the business approach to relating and interacting with the various communities in which they operate.<sup>85</sup> The dynamics of CSR are therefore 'socio-culturally embedded' considering that 'business actors are constrained and enabled by their institutional settings'.<sup>86</sup>

Each society usually moulds the corporate vision of the role and responsibility of businesses in the community, based on a set of values formally or informally established in such society. This in fact can be considered as an extension of the theory of social embeddedness of the economy as developed by Polanyi (1886-1964).<sup>87</sup> According to Stiglitz, Polanyi's view is

---

<sup>85</sup> Servayre AM & Said SR 'Integrating national contexts into theoretical frameworks for a better understanding of corporate social responsibility practices: The case of the emerging countries.' (2010) 16 (38) *Revue Internationale de Psychosociologie* 261.

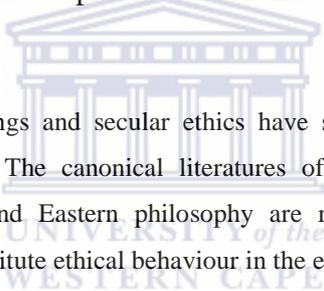
<sup>86</sup> Servayre AM & Said SR 'Integrating national contexts into theoretical frameworks for a better understanding of corporate social responsibility practices: The case of the emerging countries.' (2010) 16 (38) *Revue Internationale de Psychosociologie* 261.

<sup>87</sup> Polanyi K *The Great Transformation* (1944).

that before the 19th century, economy was always embedded in society. The term ‘embeddedness’ as utilised by Polanyi ‘expresses the idea that the economy is not autonomous, as it must be in economic theory, but subordinated to politics, religion, and social relations’.<sup>88</sup>

Yet, from the biblical account of businesses taking their operations into the vicinity of the sacred temple in Jerusalem during the Roman Imperial Period<sup>89</sup> to contemporary corporate scandals portraying corporate disregard of basic societal values and interests,<sup>90</sup> it seems that businesses have generally been more interested in achieving economic and financial success than to promote the interest and values of the community, and often even at the expense of societal values.

Socially established values and precepts, either religious or ethical, are thus crucial as they usually put an emphasis on the importance for businesses to accommodate societal concerns and find a compromise between the corporate bottom line and societal values. Epstein states that:



‘For millennia, religious teachings and secular ethics have sought to nurture socially beneficial economic behaviour. The canonical literatures of virtually every religious tradition as well as Western and Eastern philosophy are replete with precepts and admonitions regarding what constitute ethical behaviour in the economic realm.’<sup>91</sup>

Therefore, even though being a concept only formally coined during the 20th century, CSR has been preceded by historical attempts to determine the extent of the social responsibility of business; as well as more elaborated theory and regulation of the role and impact of business in society.<sup>92</sup>

---

<sup>88</sup> Stiglitz J ‘Foreword’ in Polanyi K *The Great Transformation: The Political and Economic Origins of Our Time* 2ed (2001) 7. For Polanyi developments on the social embeddedness of economic activity see Part II Chapter 4 (Societies and Economic Systems) and Chapter 5 (Evolution of the Market Pattern) in Polanyi K *The Great Transformation* (1944).

<sup>89</sup> The Holy Bible, John 2:14-16, or Mark 11:15-17, Luke 19:45-46, Matthew 21:12-13.

<sup>90</sup> Such scandals include Nestlé S.A.’s introduction and marketing of breast milk substitutes into Third World countries during the 1970s. cf Hartley RF *Business Ethics, Mistakes and Successes* (2005) 171. Or the Royal Dutch Shell Company collusion with a dictatorial regime, its alleged implication in the death of Ken Saro Wiwa in 1995 and the perpetration of other human rights abuses by the Nigerian dictatorship during the 1980s and 1990s. cf Na’allah AR *Ogoni’s Agonies: Ken Saro-Wiwa and the Crisis in Nigeria* (1998) 38.

<sup>91</sup> Epstein EM ‘The Good Company: rhetoric or reality? Corporate social responsibility and business ethics’ (2006) 44 (2) *American Business Law Journal* 207.

<sup>92</sup> Daugareilh I (ed) *Responsabilité sociale de l’entreprise transnationale et globalisation de l’économie* (2011) Introduction.

A review of the abundant literature dealing with the origins of CSR reveals that for many researchers the concept of CSR should not be referred to as a social approach to business only recently developed. Nehme and Koon Ghee Wee have noted that '[e]ven though there is not one definition for Corporate Social Responsibility, a concern with this notion has existed for centuries'.<sup>93</sup> The supposed novelty of the concept of CSR is in fact questioned by these authors who have researched the economic history of humanity in order to unveil historical facts that could and should be considered as pioneers and precursors to the modern notion of CSR.

Corporations, also, usually outline the genesis of CSR as a stage in the historical evolution of corporate perception of the purpose of business activities, with reference to corporate initiatives towards society that were undertaken before the advent of the concept of CSR :

'Corporate social responsibility (CSR) is a relatively recent phenomenon for companies and their stakeholders. However, we cannot ignore its historical roots. Many companies, especially in industry, developed social and environmental policies and practices a long time ago. These practical and historical dimensions still remain absent from the academic literature on CSR.'<sup>94</sup>

CSR, as it is currently known, is, therefore, suggested to have originated from societal practices having existed for centuries or even millennia. In fact, a review of the literature dealing with the origins of CSR reveals that it is commonly accepted that many ancient civilizations had developed systems similar to the modern notion of CSR.<sup>95</sup>

---

<sup>93</sup> Nehme M & Wee CKG 'Tracing the historical development of corporate social responsibility and corporate social reporting' (2008) 15 *James Cook University Law Review* 129.

<sup>94</sup> Loison MC, Pezet A & Berrier C *Corporate Social Responsibility before CSR: Practices at the Company Aluminium du Cameroun, 1950s-1970s* (2007) 2.

<sup>95</sup> Werther and Chandler highlight the fact that various ancient civilisations had already established that societal concern was to be an important aspect of business activities: 'The need for social responsibility among businesses is not a new concept. Ancient Chinese, Egyptian, and Sumerian writings often delineated rules for commerce to facilitate trade and ensure that the wider public's interests were considered. Ever since, public concern about the interaction between business and society has grown in proportion to the growth of corporate activity'. Werther WB & Chandler D *Strategic corporate social responsibility: stakeholders in a global environment* (2010)9. Zairi also observes that concerns about the sustainability and impact of business activities on the environment are in fact nothing new: 'The history of social and environmental concern about business is as old as trade and business itself. Commercial logging operations for example, together with laws to protect forests, can both be traced back almost 5,000 years. [...] By the time of the Greek and Roman empires, we can see new concerns arising about issues such as pollution and occupational health'. Zairi M 'Towards sustainable excellence: making CSR and governance the catalysts for driving competitiveness' (2011) 6 (1) *Current Issues of Business and Law* 3.

Asongu substantiates these positions and specifically highlights the fact that ‘the history of social and environmental concerns about business is as old as trade and business itself’.<sup>96</sup> He then proceeds to demonstrate that the societal acknowledgment of the necessity for businesspeople to share their wealth, profits, skills and knowledge with the community is a model that existed in ancient African societies:

‘Talking to individuals, thinkers and business people in Africa, we found out that the CSR concept is very much part of their business history. Our research found that hunters in the Southern Cameroons, as well as other parts of Africa were expected to bring part of their catch to the chief (traditional rulers). Farmers in Eastern Nigeria (Igboland) brought their first harvest for the famous communal “New Yam Festival.” Professional craftsmen were seen as custodians of history and many of their artworks were kept in the palaces of the chiefs (they were not paid for such pieces of arts). In all parts of Africa that we talked to people, we found out that vital professionals such as doctors were not allowed to charge exorbitant fees for their services. In fact their fees were normally so nominal that no one could say s/he was unable to pay. All these points to the fact that in traditional African societies, businesses were seen first and foremost as providing benefits for the whole society, and the individual businessperson came only second place’.<sup>97</sup>

The emergence of the notion of CSR has necessitated a set of theoretical foundations. These could in fact be traced to ancient institutions, such as, the code of Hammurabi or traditions inherited from various civilisations that have existed in human history. The purpose of the following sections is to highlight specific examples of historical institutions and schools of thought that have paved the way for the emergence of the concept of CSR.

### **2.2.2 The Code of Hammurabi (18th century BC)**

The Hammurabi Code is one, if not the oldest, example of a set of codified rules formally enunciated and implemented by a ruling entity<sup>98</sup>. It is usually agreed amongst academics that the Hammurabi Code provides the earliest formal expression of a responsibility imposed on businesses for the societal consequences of their activities.<sup>99</sup> The Hammurabi Code, in fact, illustrates one of the earliest instances of what is now legally regarded as ‘criminal

---

<sup>96</sup> Asongu JJ ‘The History of Corporate Social Responsibility’ (2007) 1(2) *Journal of Business and Public Policy* 8.

<sup>97</sup> Asongu JJ ‘The History of Corporate Social Responsibility’ (2007) 1(2) *Journal of Business and Public Policy* 9.

<sup>98</sup> Horne CF ‘Introduction’ in King LW (Translator) *The Code of Hammurabi* (1915) 1.

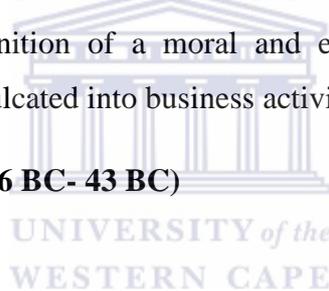
<sup>99</sup> Nehme M & Wee CKG ‘Tracing the historical development of corporate social responsibility and corporate social reporting’ (2008) 15 *James Cook University Law Review* 143.

negligence' and the application of this precept to the consequences of business activities.<sup>100</sup> For instance, sections 229 to 233 regulate the consequences of the negligence or poor service delivery of a builder<sup>101</sup> while section 235 deals with the detrimental consequences of the activities of a shipbuilder.<sup>102</sup>

Johns observes that the Hammurabi Code undertook to regulate the consequences of carelessness and neglect not only as a result of individuals' civil interaction but also of those pertaining to commercial and businesses activities.<sup>103</sup> Such a severe implementation of the concept of business accountability in fact represented a 'curious extension of the *talio*'<sup>104</sup> to business activities.<sup>105</sup>

According to Luthans and Hodgetts, the spirit underpinning trade-related sections of this Code clearly illustrates how King Hammurabi undertook to precisely define the rights, duties and subsequent responsibility of persons involved in business activities.<sup>106</sup> The Hammurabi code, therefore, should be considered as the ancestor of CSR because it constitutes the first institutional attempt at the definition of a moral and ethical aspect – and the relevant responsibility- that should be inculcated into business activity.<sup>107</sup>

### 2.2.3 Marcus Tullius Cicero (106 BC- 43 BC)



---

<sup>100</sup> Prince JD 'The Code of Hammurabi' (1904) 8 (3) *The American Journal of Theology* 608.

<sup>101</sup> King LW (Translator) *The Code of Hammurabi* (1915) Sections 229 - 233.

<sup>102</sup> King LW (Translator) *The Code of Hammurabi* (1915) Section 235.

<sup>103</sup> 'On the other hand carelessness and neglect were severely punished, as in the case of the unskilful physician, if it led to loss of life or limb his hands were cut off, a slave had to be replaced, the loss of his eye paid for to half his value; a veterinary surgeon who caused the death of an ox or ass paid quarter value; a builder, whose careless workmanship caused death, lost his life or paid for it by the death of his child, replaced slave or goods, and in any case had to rebuild the house or make good any damages due to defective building and repair the defect as well. The boat-builder had to make good any defect of construction or damage due to it for a year's warranty' Cf Johns CWH 'Babylonian Law: The Code of Hammurabi' (1910) 11 *Encyclopaedia Britannica* 3.

<sup>104</sup> The author here refers to the '*lex talionis*' principle of an eye for an eye, a life for a life, which is the underlying principle of the Hammurabi Code. See sections 196 and 197 of the Hammurabi Code. See also Prince JD 'The Code of Hammurabi' (1904) 8 (3) *The American Journal of Theology* 605-606.

<sup>105</sup> Johns CWH 'Babylonian Law: The Code of Hammurabi' (1910) 11 *Encyclopaedia Britannica* 5.

<sup>106</sup> 'One of the earliest indications that rulers felt the need to lay down clear guidelines for social behaviour (to check the freedoms of individuals who might cause others to suffer) was in Babylon, where the ruler Hammurabi (18th century BCE) drew up a code which laid down (amongst other things) wage-levels and other responsibilities, for those involved in production and trade'. Luthans F, Hodgetts RM & Thompson K.R *Social Issues in Business* (1972) 41.

<sup>107</sup> 'Construed broadly as moral reflection on commerce, business ethics is probably as old as trade itself. If law is a rough guide to widely-held moral intuitions, the Code of Hammurabi (1700s B.C.), prescribing prices and tariffs and laying down both rules of commerce and harsh penalties for noncompliance, evidences some of civilization's earlier attempts to establish the moral contours of commercial activity.' Marcoux A 'Business Ethics' in Zalta EN (Ed) *The Stanford Encyclopedia of Philosophy* (2008) 2.

In *De Officiis* (44 BC) while discussing ‘duties’, Cicero formally addresses ethical issues pertaining to the responsibility of business people in the community and develops principles that are fundamental to the modern notion of CSR. Cicero discusses the following example that illustrates the ethical responsibilities of a businessperson when confronted with a situation of conflict between his individual interests and those of society at large:

‘Suppose that there is a food-shortage and famine at Rhodes and the price of corn is extremely high. An honest man has brought the Rhodians a large stock of corn from Alexandria. He is aware that a number of other traders are on their way from Alexandria – he has seen their ships making for Rhodes, with substantial cargoes of grain. Ought he to tell the Rhodians this? Or is he to say nothing and sell his stock at the best price he can get?’<sup>108</sup>

Assessing the dilemma from an ethical perspective, Cicero dismisses the arguments of Diogenes the Stoic philosopher, who considers that the trader should try to get the best price for his corn as long as he respects the law and avoids telling lies and untruths to Rhodians.<sup>109</sup> Cicero in fact asserts that the trader ought to act in the interest of society at large and tell the Rhodians the truth, establishing the necessity for business to act responsibly and always balance its interests with those of society.<sup>110</sup>

According to Lutz, the approach of Cicero to the solution of this dilemma could be considered as a pioneering idea to the concept of business ethics and CSR because it establishes the principle ‘that acting in the interest of the community does not require sacrificing self-interest, but instead requires identifying self-interest with the common good’.<sup>111</sup>

## **2.3 Economic and societal transformations and the historical evolution of CSR**

### **2.3.1 The advent of societal activism against corporations**

---

<sup>108</sup> Grant M (Translator) *Cicero’s De Officiis* (1960) Chapter 6 Book III.

<sup>109</sup> ‘According to Diogenes, on the other hand, the seller must declare the defects of his wares as far as the law of the land requires, but otherwise – provided he tells no untruths – he is entitled, as a seller of goods, to sell them as profitably as he can.’ Grant M (Translator) *Cicero’s De Officiis* (1960) Chapter 6 Book III.

<sup>110</sup> ‘You ought to work for your fellow-men and serve the interests of mankind. These are the conditions under which you were born, these are the principles which you are in duty bound to follow and obey – you must identify your interests with the interests of the community, and theirs with yours. How, then can you conceal from your fellow-men that abundant supplies and benefits are due to reach them shortly?’ Grant M (Translator) *Cicero’s De Officiis* (1960) Chapter 6 Book III.

<sup>111</sup> Lutz DW *Rival philosophical foundations of the good company* (2006) Sixth International Symposium on Catholic Social Thought and Management Education 6.

The advent of social activism against corporations should be considered as the first logical (if not historical) step toward the conceptualisation of the notion of CSR as we know it today. When considered as a societal reaction against the ills of corporate activities (hence the subsequent activism for an improved corporate awareness and responsiveness towards societal values and concerns<sup>112</sup>) the roots of the contemporary CSR movement are to be traced back to early instances of social activism.

Indeed, it has been mentioned in the literature that CSR, understood ‘in terms of activism aimed at companies perceived as acting against the general interest’<sup>113</sup>, was already existent and frequent during the pre-industrial revolution period, and entailed criticism of the activities of the British East India Company,<sup>114</sup> as well as the activism and protestation of disgruntled shareholders of the Dutch East India Company during the period 1603- 1622.<sup>115</sup>

The most relevant case of societal activism pioneer to modern CSR activism, however, is the case of consumer boycotts of slave harvested sugar in England in 1790. This event is nowadays recalled as the first large-scale consumer boycott.<sup>116</sup> As a direct consequence of this boycott, sugar importers were forced to switch to free-labour sources. More importantly, confronted with such a phenomenal societal reaction against corporate abuse of societal values, the British government was moved into taking action against slavery.<sup>117</sup>

---

<sup>112</sup> Ralph Hamann asserts that there actually is ‘an uneasy tension between the contemporary notion of corporate citizenship and the origins of some of the first truly multinational corporations – such as the British and Dutch East India Companies, which were founded on the systematic exploitation of African slaves and primary resources. Yet even in the days of the East India Companies, questions were being asked about their social responsibilities [...] and this arguably contributed to their demise.’ Hamann R ‘Introducing corporate citizenship’ in Hamann R, Woolman S & Sprague C (ed) *The business of sustainable development in Africa* (2008) 1-2.

<sup>113</sup> Dutta PK & Banerjee AK ‘Moral and Ethical issues-Corporate Social Responsibility’ (2010) 1 (4) *Asian Journal of Professional Ethics & Management* 24-25.

<sup>114</sup> Henriques A ‘Ten Things You Always Wanted to Know About CSR (But Were Afraid to Ask) - Part One: A Brief History of Corporate Social Responsibility’ (2003) *Ethical Corporation Magazine* 3.

<sup>115</sup> De Jongh details how directors and shareholders of the Dutch East India Company confronted each other on the issue of the exercise of control rights by shareholders. The confrontation erupted when shareholders ‘complained about the numerous conflicts of interests that had been arising between the various directors and the VOC. They accused the directors of abuse of power, short-selling and self-enrichment.’ De Jongh M *Shareholder Activism at the Dutch East India Company 1622-1625* (2009) Conference on the Origins & History of Shareholder Advocacy 2.

<sup>116</sup> Arndt M ‘An Ode to the Money-Spinner’ (2003) *Business Week* 22–23.

<sup>117</sup> ‘Within a few years, more than 300,000 Britons were boycotting sugar, the major product of the British West Indian slave plantations. Nearly 400,000 signed petitions to Parliament demanding an end to the slave trade. ... In 1792, the House of Commons became the first national legislative body in the world to vote to end the slave trade.’ Hochschild A ‘How the British Inspired Dr. King’s Dream’ (2005) *New York Times* 21.

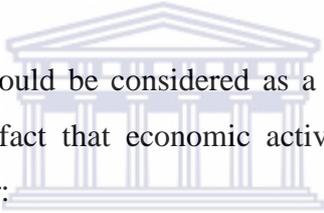
The following sections analyses relevant economic and societal theories which have, to a certain extent, contributed to the conceptualisation of the contemporary notion of CSR.

### 2.3.2 Adam Smith

Adam Smith<sup>118</sup> is usually unlikely to be referred to as a proponent of CSR because of his seminal work of conceptualisation of the basics and fundamental precepts of capitalist theory, namely, the concepts of free market, *laissez-faire* and liberalism. In fact, his magnum opus *An Inquiry into the Nature and Causes of the Wealth of Nations*<sup>119</sup> (usually referred to as *The Wealth of Nations*) is regarded as a fundamental work of classical economy.<sup>120</sup>

Smith's writings and theories have also been widely referred to in the academic debate over the necessity for and/or relevance of CSR.<sup>121</sup> The truth is that Adam Smith's contribution to the CSR debate ought to be read in the light of his theoretical approach to the moral aspect of economic activities.

On the one hand, Adam Smith could be considered as a fervent partisan of self-interested capitalism as he points out the fact that economic activities are first and foremost self-interested in the following manner:

  
UNIVERSITY of the  
WESTERN CAPE

‘It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.’<sup>122</sup>

On the other hand, in *The Theory of Moral Sentiment* Adam Smith had previously highlighted the fact that even though the interests of the individual were indeed necessarily separated from those of the greater community, the interests of society, instinctively and inherently prevailed over those of individuals: ‘The wise and virtuous man is at all times willing that his

---

<sup>118</sup> Adam Smith (5 June 1723- 17 July 1790)

<sup>119</sup> Smith A *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776).

<sup>120</sup> Schumpeter J *Economic Doctrine and Method* (2013) 9-10.

<sup>121</sup> See Windsor D ‘Corporate Social Responsibility: Three Key Approaches’ (2006)43(1) *Journal of Management Studies* 93-114. Heal G ‘Corporate Social Responsibility: An Economic and Financial Framework’ (2005) 30 *The Geneva Papers* 387-409. Brown JA & Forster WR ‘CSR and Stakeholder Theory: A Tale of Adam Smith’ (2013)112 (2) *Journal of Business Ethics* 301-312. Carrasco I ‘Moral traits of Adam Smith's theories in corporate social responsibility evolution’ in Galindo Martin MA & Spiller CN (ed) *Issues in Economics Thought* (2010) Nova Science Publishers: New York.

<sup>122</sup> Smith A *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) Book I, Chapter II, 19.

own private interest should be sacrificed to the public interest of his own particular order or society.’<sup>123</sup>

Adam Smith’s praise of the ‘invisible hand’<sup>124</sup>, therefore, needs to be envisaged, not necessarily as in praise of self-interested capitalism without any regard to societal concerns, but as an optimistic perception of the interplay between individual and collective interests as they interact in the economic and business sphere. Adam Smith in fact believes that left to itself, without any external interference, market forces will instinctively work towards the accomplishment of the greatest interest of the community, which does not necessarily translate into the achievement of the sum of individual self-interests involved. Corporate social responsibility, therefore, is instinctive to the individual and is intrinsic to economic activities as deployed in society.<sup>125</sup>

In conclusion, it would appear then that Adam Smith’s writings provided future generations with some insight into the intrinsic nature of the social responsibilities of businesspeople. According to Lutz, Smith’s works could, in fact, be seen as pioneering the modern theory of CSR.<sup>126</sup>

Stu Woolman, however, emphasises the argument that Adam Smith highlighted an idealistic relationship, between business and society, conducted against the background of a set of ethical values voluntarily adopted by a community of individuals.<sup>127</sup>

### 2.3.3 Utilitarianism and the theory of CSR

---

<sup>123</sup> Smith A *The Theory of Moral Sentiment* (1759) Part VI, Chapter 3, Section II.

<sup>124</sup> See Bevan D & Werhane P ‘The Inexorable Sociality of Commerce: The Individual and Others in Adam Smith’ (2014) *Journal of Business Ethics* 1-9.

<sup>125</sup> ‘By directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good’ Smith A *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) Book IV, Chapter 1, 364.

<sup>126</sup> ‘He is just as much a father of corporate social responsibility as he is of Anglo-American capitalism, because he accepts the modern dichotomy of egoism and altruism.’ Lutz DW *Rival philosophical foundations of the good company* (2006) Sixth International Symposium on Catholic Social Thought and Management Education 12.

<sup>127</sup> ‘Adam Smith articulated a vision of social relations in which no economy, let alone a capitalistic economy, could get off the ground unless it was underpinned by a community in which most citizens placed a significant degree of trust, loyalty, and confidence in their fellow citizens.’ Woolman S ‘Truly enlightened self-interest: Business, human rights and the UN Global Compact’ in Hamann R, Woolman S & Sprague C (ed) *The business of sustainable development in Africa* (2008) 37.

The utilitarian theory was introduced and/or influenced by the writings of thinkers, such as, David Ricardo (1772-1823), Jeremy Bentham (1748-1832), James Mill (1773-1836) and his son John Stuart Mill (1806-1873).

The utilitarian theory's main argument is the Principle of Utility, described by Bentham as the greatest happiness for the greatest amount of people.<sup>128</sup> Individuals interacting in a community should opt for actions that are consistent with the greatest interest of the community. The interest of the community is described as the sum of the interests of its members; thus an action is right if it produces the greatest amount of good for the greatest number of people.<sup>129</sup>

The application of these precepts to the issue of CSR implies that the objectives of a corporation should be not only to realise profits but also to pursue the greatest good of the community:

'In a utilitarian theory of justice, actions are neither good nor bad in themselves, but only in terms of what they bring about, captured in Bentham's (1789) view that 'good' acts are those that bring the greatest happiness to the largest number of people. A good act is, therefore, one that maximizes utility and minimizes disutility, not in individual terms, but a total sum of utility that will result in a surplus of pleasure over pain. Thus, in the context of corporate responsibility, it is the aggregate benefit of a company's actions that matters, rather than any disbenefit to particular individuals or entities.'<sup>130</sup>

However, this consequentialist approach<sup>131</sup> to the relevance of the Principle of Utility in the decision of a company to engage in CSR is criticised for being inconsistent with the underlying principles of CSR. Hence the deontologist (or non-consequentialist)<sup>132</sup> approaches of utilitarianism as a business case for CSR:

'Utilitarianism is often criticized for its apparent claim that individual rights can be subverted to the greater good of society and that, therefore, people are to be treated as a means to an end. For example, applying utilitarianism in the context of corporate responsibility makes it possible to justify the laying off of large numbers of employees and reducing the wages of workers, provided

---

<sup>128</sup> Bentham J *An Introduction to the Principles of Morals and Legislation* (1879) Chapter I: Of the Principle of Utility 1-7.

<sup>129</sup> Bentham J *An Introduction to the Principles of Morals and Legislation* (1879) Chapter I: Of the Principle of Utility 2-4.

<sup>130</sup> Blowfield M & Murray A *Corporate Responsibility: A Critical Introduction* (2008) 62-63.

<sup>131</sup> Blowfield M & Murray A *Corporate Responsibility: A Critical Introduction* (2008) 62.

<sup>132</sup> Blowfield M & Murray A *Corporate Responsibility: A Critical Introduction* (2008) 63.

that these acts maximize the total happiness of the majority of those affected by the company. Those who expect corporate responsibility to be about active citizenship and doing more than paying taxes, obeying the law, and engaging in philanthropy would certainly hope to see more active engagement with society than this.<sup>133</sup>

### 2.3.4 The input of religion on the development of the theory of CSR

The purpose of this section is to investigate how religious institutions might have directly intervened in the historical process of conceptualisation and development of the notion of CSR. At a personal level, religious faith certainly influenced and prompted certain corporate barons into engaging in philanthropic activities and subsequently CSR, instilling in them a sense of responsibility toward community and society. Indeed, by following religious principles, businesspeople have historically embraced their personal duties and responsibilities as individuals in the community and have conveyed them into their professional world.<sup>134</sup> Religious precepts have been transposed into business activities, and thus business ethical and corporate social responsibilities have become an expression of religious faith.<sup>135</sup>

#### 2.3.4.1 Catholic social thought and CSR

The Catholic position on the interaction between business and society was originally detailed in '*Rerum Novarum*'.<sup>136</sup> In '*Rerum Novarum*' Pope Leo XIII presented the Catholic Church's approach to the responsibility of business in society and enunciated basic principles to be implemented in order to allow a cohesive interaction between business and the community with the aim of realising social justice and improving the living and working conditions of

---

<sup>133</sup> Blowfield M & Murray A *Corporate Responsibility: A Critical Introduction* (2008) 63.

<sup>134</sup> 'For many religious peoples, religion is not a private matter without any involvement in work and business. In fact, religion generally provides a road map for life that believers cannot put aside when they are involved in productive work, commerce, or any other aspect of business.' Mele D 'Religious foundations of business ethics' in Epstein MJ and Hanson KO (Ed) *The Accountable Corporation: Business Ethics* (2006) 12.

<sup>135</sup> See this extract from the Babylonian Talmud, Shabbat 31a): 'In the hour when an individual is brought before the heavenly court for judgment, the person is asked: Did you conduct your business affairs honestly?' cited by Epstein EM 'Contemporary Jewish Perspectives on Business Ethics' (2000)10(2) *Business Ethics Quarterly* 523. See also Schwartz MS 'A Jewish Approach to Business Ethics' (2012) 2 (10) *Philosophy Study* 756. Cf also this Latin inscription seen at the Sponza Palace, Dubrovnik, Croatia: 'Falsifying and cheating with the weights is forbidden. While I am weighing the goods, God is measuring me.' Reported in Epstein EM 'The Good Company: rhetoric or reality? Corporate social responsibility and business ethics' (2006) 44 (2) *American Business Law Journal* 207.

<sup>136</sup> Pope Leo XIII *Rerum Novarum: Encyclical Letter of Pope Leo Xiii on the Condition of the Working Classes* (1891).

the working classes: notably, the Principle of Distributism<sup>137</sup> and the Principle of Dignity of Work.<sup>138</sup>

These principles enunciated by Pope Leo XIII were to be substantiated by Pope Pius XI in an Encyclical Letter marking the 40th anniversary of the original Encyclical Letter<sup>139</sup> and further corroborated by Pope John Paul II on its 100th anniversary.<sup>140</sup>

Catholic social thought offers a vision of the role of business in society that entails detailed prescriptions on the duties and responsibilities of a corporation toward its stakeholders<sup>141</sup> and is in fact the product of the adaptation to the context of the 19th century of ideas developed by ancient philosophers and Catholic thinkers.<sup>142</sup> Catholic social thought, as such, has paved the way to the modernisation of the concept of CSR.<sup>143</sup>

#### 2.3.4.2 The religious principles of ‘trusteeship’ and ‘stewardship’



---

<sup>137</sup>The Principle of Distributism asserts the necessity for social and economic structures to promote wide ownership of corporations. The Catholic social teaching advocated economic distributism, which recommended for corporations to produce welfare not only for their shareholders but more importantly for society as a whole. Pope Leo XIII *Rerum Novarum: Encyclical Letter Of Pope Leo Xiii On The Condition Of The Working Classes* (1891) 17.

<sup>138</sup>The Principle of Dignity of Work asserts that economic justice ought to be considered as a societal imperative and the purpose of the economy must be to serve people, not for people to serve the economy. Therefore, employers should contribute to the common good, not only through the services or products they provide, but also by creating jobs that uphold the dignity and rights of workers. Employers must not "look upon their work people as their bondsmen, but... respect in every man his dignity as a person ennobled by Christian character." Pope Leo XIII *Rerum Novarum: Encyclical Letter Of Pope Leo Xiii On The Condition Of The Working Classes* (1891) 20.

<sup>139</sup> Pope Pius XI *Quadragesimo Anno: Encyclical Letter of Pope Pius XI on the Reconstruction of the Social Order* (1931).

<sup>140</sup>"The purpose of a business firm is not simply to make a profit, but is to be found in its very existence as a community of persons who in various ways are endeavouring to satisfy their basic needs, and who form a particular group at the service of the whole of society." Pope John Paul II *Centesimus Annus: Encyclical Letter of Pope John Paul II on the Hundredth Anniversary of Rerum Novarum* (1991) 42.

<sup>141</sup>Acquier A, Gond JP & Igalens J 'Des fondements religieux de la responsabilité sociale de l'entreprise à la responsabilité sociale de l'entreprise comme religion' (2005) 166 *Cahiers du CRG* 6. (Own translation from French).

<sup>142</sup>Catholic social thought 'belongs to the perennial philosophy (*philosophia perennis*) of the best of classical Greek and Roman thinkers, especially Plato, Aristotle and the Stoics, as well as subsequent Catholic philosophers such as Augustine, Albertus Magnus and Thomas Aquinas.[...]One central concept within the perennial philosophy is that of community. For human persons to belong to communities is natural. One characteristic of a community is that there is no conflict between the good of the individual members and the good of the community as a whole. Consequently, to be ethical, to promote the common good, is good for oneself.' Lutz DW *Rival philosophical foundations of the good company* (2006) Sixth International Symposium on Catholic Social Thought and Management Education 1.

<sup>143</sup>Acquier A, Gond JP & Igalens J 'Des fondements religieux de la responsabilité sociale de l'entreprise à la responsabilité sociale de l'entreprise comme religion' (2005) 166 *Cahiers du CRG* 10.

The religious principles of ‘charity’ and ‘stewardship’ profoundly influenced Andrew Carnegie<sup>144</sup> into engaging in philanthropic activities,<sup>145</sup> and underpinned seminal theories initially conceptualised the notion of CSR.<sup>146</sup> Carnegie considered these two fundamental principles as essential to the societal efficiency of capitalism as he believed that industrialists needed to embrace the principles of charity<sup>147</sup> and stewardship<sup>148</sup> as the cornerstone of their vision of the role, duties and responsibility of business in society.<sup>149</sup>

Carnegie’s principles of ‘charity’ and ‘stewardship’ were in fact the expression of the transposition into the business sphere of the Protestant principles of ‘public service’ and ‘trusteeship’.<sup>150</sup> These principles were based on the belief that

‘property is not an absolute and unconditional right and can only be justified to the extent that the private administration property enhances the welfare of the community. Every property owner has a duty to meet the needs of the society as a whole, to the extent that he must answer for his actions before God and society’.<sup>151</sup>

#### **2.3.4.3 Quaker input into the materialisation of CSR**

The economic landscape of the 19<sup>th</sup> century in England was progressively transformed by the Quaker approach to business. Quaker businesspeople initiated and actively participated in philanthropic and societal campaigns, investing their wealth and involving their businesses in projects as diverse as anti-slavery campaigns, advocacy for prison reform, and social justice

---

<sup>144</sup> Refer to Section 2.3.3.1 for details on Andrew Carnegie and his relevance to the history of CSR.

<sup>145</sup> Carnegie A ‘The Gospel of Wealth’ (1889) 148 (391) *North American Review* 653–665.

<sup>146</sup> McMahon TF ‘The Contributions of Religious Traditions to Business Ethics’ (1985) 4 *Journal of Business Ethics* 344-346.

<sup>147</sup> ‘The charity principle required more fortunate members of society to assist its less fortunate members, including the unemployed, the disabled, the sick, and the elderly. These “have nots” could be assisted either directly or indirectly, through such institutions as churches, settlement houses, and other community group.’ Asongu JJ ‘The History of Corporate Social Responsibility’ (2007) 1(2) *Journal of Business and Public Policy* 12.

<sup>148</sup> ‘The stewardship principle requires businesses and wealthy individuals to see themselves as the stewards, or caretakers, of their property. Carnegie’s view was that the rich hold their money “in trust” for the rest of society. Holding it in trust for society as a whole, they can use it for any purpose society deems legitimate.’ Asongu JJ ‘The History of Corporate Social Responsibility’ (2007) 1(2) *Journal of Business and Public Policy* 12.

<sup>149</sup> Carnegie A ‘The Gospel of Wealth’ (1889) 148 (391) *North American Review* 665.

<sup>150</sup> Bowen HR *Social responsibility of the businessman* (1953)48-49. See also Acquier A, Gond JP & Igalens J ‘Des fondements religieux de la responsabilité sociale de l’entreprise à la responsabilité sociale de l’entreprise comme religion’ (2005) 166 *Cahiers du CRG* 5.

<sup>151</sup> Acquier A, Gond JP & Igalens J ‘Des fondements religieux de la responsabilité sociale de l’entreprise à la responsabilité sociale de l’entreprise comme religion’(2005) 166 *Cahiers du CRG* 2. (Own translation from the French ) See also McMahon TF ‘The Contributions of Religious Traditions to Business Ethics’ (1985) 4 *Journal of Business Ethics* 341-349.

projects.<sup>152</sup> The proactive attitude of the Cadbury brothers toward societal issues and concerns<sup>153</sup> was regarded as an expression of their Quaker faith<sup>154</sup> and has survived the centuries and still underpins their current approach to CSR.<sup>155</sup>

### **2.3.5 CSR theory and the societal awareness and responsiveness of businesspeople**

Facing growing criticism from society for their self-interested approach to business, few industrialists and businesspeople reacted by adopting a socially aware and socially responsive attitude which led the way to the Victorian philanthropy of the 19th century and ultimately, the maturation in the 20th century of the CSR construct.<sup>156</sup>

The notions of ‘benevolent capitalism’<sup>157</sup>, ‘compassionate capitalism’ and ‘virtuous capitalism’<sup>158</sup> were coined in order to illustrate the change of attitude - by few industrialists - towards societal concerns, and which resulted in the effective implementation of socially aware business models as precursors of the modern notion of CSR. Such change of attitude toward the issues and concerns faced by society could be illustrated by the examples individually set during that period by businessmen such as Carnegie, Rockefeller or Cadbury.

#### **2.3.5.1 Andrew Carnegie (1835-1919)**

In 1889, Carnegie, a prominent US industrialist, published *Gospel of Wealth* where he, inter alia, discussed the role and impact of business in society. In this book, Carnegie enunciated the principles of ‘charity’ and ‘stewardship’ as essential aspects of the role wealthy businesspersons should play in their communities.

---

<sup>152</sup>The early Quaker businesses in the Victorian era ‘deemed the wellbeing of their employees and the society they lived in as essential to the success of the business.’ Mendibil K et al *How can CSR practices leads to successful innovation in SMES?* (2007)1.

<sup>153</sup> See Section 2.3.4.3

<sup>154</sup>The many generations of Cadburys that had guided the firm were staunch members of the Religious Society of Friends (Quakers) and the company’s policies had reflected the founders’ religious roots.[...]This mixture of business and civic activism was not unusual among members of the Religious Society of Friends. In the 19th century, Quakers were not allowed to enter Oxford and Cambridge, which in the 19th century were closely linked with the Church of England. This barred entry into to the established professions such as law and medicine. Instead, Quaker energies and talents were often directed towards business and social reform.’ Chatterjee S & Elias J *Cadbury, an Ethical Company Struggles to Insure the Integrity of Its Supply Chain* (2007) 6-7.

<sup>155</sup> Kennedy C *The Merchant Princes* (2000) 111.

<sup>156</sup> Blowfield M & Murray A *Corporate Responsibility: A Critical Introduction* (2008) 34-36.

<sup>157</sup>Henriques A ‘Ten Things You Always Wanted to Know About CSR (But Were Afraid to Ask) - Part One: A Brief History of Corporate Social Responsibility’ (2003) *Ethical Corporation Magazine* 7.

<sup>158</sup> Cadbury was referred to as ‘an exemplar of compassionate capitalism’ and as a figurehead of ‘virtuous capitalism’. Blowfield M & Murray A *Corporate Responsibility: A Critical Introduction* (2008) 51.

Carnegie primarily argued that the life of a wealthy industrialist should be divided into two distinctive parts. First, the businessman should focus his energies, resources and skills to the gathering and accumulation of wealth. Secondly, he should devote the rest of his life to the subsequent re-distribution of this wealth to benevolent causes profitable to the community and society as a whole. According to Carnegie, philanthropy, therefore, was essential in making the life of an accomplished businessman worthwhile:

‘Money can only be the useful drudge of things immeasurably higher than itself. [...]My aspirations take a higher flight. Mine be it to have contributed to the enlightenment and the joys of the mind, to the things of the spirit, to all that tends to bring into the lives of the toilers of Pittsburgh sweetness and light. I hold this the noblest possible use of wealth’<sup>159</sup>

It is noteworthy how Carnegie decidedly illustrated his theories by devoting considerable amounts to charitable and philanthropic causes. He voluntarily provided the capital for purposes of public and social interest in areas as diverse as education and the promotion of literacy, scientific research, or political activism.<sup>160</sup>

### **2.3.5.2 John Davison Rockefeller (1839-1937)**

Rockefeller’s approach to corporate philanthropy differed from Carnegie’s in that he did not wait to be a wealthy businessman before he started giving back to his community. Indeed, it has been reported that as from his first salary, Rockefeller started making contributions to his church for up to ten per cent of his wages,<sup>161</sup> and as his fortune grew, he consistently supported many church based institutions.<sup>162</sup>

Rockefeller adopted a systematic model of targeted philanthropy by creating foundations with the specific purpose of realising major contributions in areas, such as, medicine, education, and scientific research. For instance, these foundations pioneered the development of medical research, and played a major role in the eradication of hookworm and yellow fever.<sup>163</sup>

It is important to point out that both Rockefeller’s and Carnegie’s vision of the role of business in society entailed the acknowledgment of the necessity for wealthy businesspeople

---

<sup>159</sup>Carnegie *A Carnegie Memo to Himself* (1968) 1.

<sup>160</sup> For the extent and the details of Carnegie philanthropic contributions, see Nasaw D *Andrew Carnegie* (2006). Cf also Carnegie *A Autobiography of Andrew Carnegie* (1920).

<sup>161</sup>Chernow R *Titan: The Life of John D. Rockefeller, Sr* (1998)6.

<sup>162</sup> Martin A *John D. Rockefeller* (1999) 23 *Encyclopedia Americana* 7.

<sup>163</sup>Fosdick RB *The story of the Rockefeller Foundation* (1989) 22.

to re-invest their wealth in philanthropic and charitable causes. Such an approach to the social responsibility of business is, however, inherently flawed by the fact that it fails to establish a connection between the activities of the philanthropist both as an individual and as a businessperson.

Carnegie's and Rockefeller's philanthropy was basically about re-investing in society a wealth acquired using means and practices that held the potential of being harmful to the various stakeholders of their corporation or even society as a whole. For instance, Rockefeller's Standard Oil was dismantled in a pioneering anti-trust judgment by a US court in 1911,<sup>164</sup> illustrating the possible discrepancy between the philanthropic activities of the industrialist as an individual and his practices as a corporate executive or businessman. Carnegie's reputation as a philanthropist also endured severe criticism regarding his handling - or the lack of it - of the 1892 Homestead Steel Strike in his main plant in Pennsylvania. A labour dispute between the National Amalgamated Association of Iron and Steel Workers of the United States and the Carnegie Steel Company degenerated into a bloody strike that lasted 143 days and claimed ten lives.<sup>165</sup>

### **2.3.5.3 The Cadbury brothers**

#### **Richard Barrow Cadbury (1835 –1899)**

#### **George Cadbury (1839 –1922)**

The Cadbury brothers' conception and implementation of the responsibility of the businessperson to society differed from that of Carnegie and Rockefeller in the sense that they integrated these societal concerns into their approach to business activities, thus the advent of corporate social responsiveness. An example of the Cadbury brothers' approach to their social responsibility as businesspeople is illustrated by the fact that in 1908 they ended a business relationship with a Sao Tome based cocoa supplier in order to distance themselves from negative practices, such as slavery and forced labour.<sup>166</sup> The Cadbury brothers'

---

<sup>164</sup>*Standard Oil Co. Of New Jersey v United States* (1911) 221 US SC 1.

<sup>165</sup>Ingham JN 'Fork Frick and the Amalgamated: The Homestead Lockout of 1892 in Historical Perspective' (1993) 31 *Labour/Le Travail* (Spring 1993) 331.

<sup>166</sup>Chatterjee S & Elias J *Cadbury: An Ethical Company Struggles to Insure the Integrity of Its Supply Chain* (2007) 9.

implementation of their self-imposed societal responsibility is in fact considered as the oldest case of practical CSR in the making.<sup>167</sup>

## 2.4 Genesis of modern CSR

### 2.4.1 From corporate philanthropy to corporate social responsibility

The philanthropic and charitable activities of business barons of the 19th century is usually considered as having pioneered the development of modern CSR by establishing the necessity for businesspersons to give back to their community by re-investing their wealth in societal causes.<sup>168</sup>

However, critics have dismissed the relevance of the philanthropic approach of these industry barons, arguing that the positive role of business in society should not only or principally translate into making charitable donations in a paternalistic and benevolent approach.<sup>169</sup> The role and responsibility of business in society is in fact about treating the community right while doing business and making money. It is about integrating societal awareness into the systemic operation of business activities.<sup>170</sup>

This was a new attitude to business that differed from that of Carnegie and Rockefeller and was more comparable to Cadbury's societal responsiveness. It is, however, interesting to note that this inclusion of social and ethical values into daily business practices is stipulated to have been observed as early as 1868 in Japan.<sup>171</sup>

---

<sup>167</sup>Katsoulakos P & Katsoulakos Y *A multi-dimensional view of corporate responsibility* (2006) 6.

<sup>168</sup> See Asongu JJ 'The History of Corporate Social Responsibility' (2007) 1(2) *Journal of Business and Public Policy* 1. The author analyses and discusses the history of CSR from its roots in the Hammurabi Code to its modern and contemporary expression, and highlights the contribution of early industrialists, such as, Carnegie and Rockefeller.

<sup>169</sup> Chatterji A & Listokin S 'Corporate Social Irresponsibility' (2007) 3 *Democracy: A Journal of Ideas* 54.

<sup>170</sup> 'In the late nineteenth century, commentators bemoaned the decline of "the personal responsibility on which the integrity of democratic institutions depends" in private business, and they urged the business community not to undermine social values through their new brand of rapacious capitalism. And to an extent, it worked. Turn-of-the-century business leaders like Andrew Carnegie and John D. Rockefeller believed they were stewards of a social contract between business and society and as such were required—through philanthropy and good management—to hold society's resources in trust in order to increase total social welfare (apparently this social contract did not curtail all ruthless business practices). Business stewardship was insufficient, however, to deal with the social needs created by the Great Depression[...]' Chatterji A & Listokin S 'Corporate Social Irresponsibility'(2007) 3 *Democracy: A Journal of Ideas* 54.

<sup>171</sup> 'Roots of Corporate Social Responsibility may also be found in Japan with the Meiji restoration in 1868 with the development of concepts such as shobaido (the way of doing business) and shonindo (the way of the merchant).In ancient Japan during the Edo era (1603-1868), merchants were relegated to the bottom of societal hierarchy, only above the outcast members of society — this hierarchy only began to crumble when a former

Nonetheless, the formal genesis of modern CSR is formally traceable only up to the beginning of the 20th century. It evolved from the philanthropic activities of industrialists, such as, Carnegie and Rockefeller, as well as the responsiveness to societal concerns of multinationals, such as, the Eastman Kodak Company, the Hewlett-Packard Company or Johnson and Johnson.<sup>172</sup> The dissemination of these practices subsequently led to the emergence of a new set of theories and writing questioning the role of business in society as well as the social responsibility that should be imposed upon businesses.<sup>173</sup> The genesis of modern CSR culminated with the maturation of the various principles underpinning the theory of CSR, and the formal enunciation of the modern theory of CSR as from the 1950s.

## **2.4.2 Context and impact of a concise formulation of the concept of CSR**

### **2.4.2.1 Dawn of modern CSR as a countermovement to stakeholder demands on businesses**

In *The Great Transformation*, Polanyi not only suggests that economic activities are embedded in society but also asserts that societal relations are determined by the economic context of the society.<sup>174</sup> Polanyi's theories of the social embeddedness of an economy and the ensuing principle of countermovement are illustrative of the historical genesis and evolution of CSR, from its roots in the corporate philanthropy of the 19<sup>th</sup> century via the enunciation of the theory of modern CSR in the 1950s and up to the most recent arguments

---

merchant, Baigan Ishida, developed the concept of shonindo (the way of merchant) in combination with an ethical system called shingaku (heart learning), which held honest merchants on the same moral plane to the well-respected samurai (warriors). It is also interesting to note that with the modern Japanese word kaisha (company), when the syllables are reversed, shakai, it means society — implying a kind of mirror relationship between the two.' Nehme M & Wee CKG 'Tracing the historical development of corporate social responsibility and corporate social reporting' (2008) 15 *James Cook University Law Review* 129.

<sup>172</sup>Katsoulakos P & Katsoulakos Y *A multi-dimensional view of corporate responsibility* (2006) 7.

<sup>173</sup> Authors such as Berle and Means as early as 1932 questioned the concentration of economic power by corporations: 'The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state - economic power versus political power, each strong in its own field. The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation. Where its own interests are concerned, it even attempts to dominate the state. The future may see the economic organism, now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organization. The law of corporation, accordingly, might well be considered as a potential constitutional law for the new economic state, while business practice is increasingly assuming the aspect of economic statesmanship.' Berle A & Means G *The Modern Corporation and Private Property* (1967)313.

<sup>174</sup> 'Instead of economy being embedded in social relations, social relations are embedded in the economic system.' Polanyi K *The Great Transformation: The Political and Economic Origins of Our Time* 2ed (2001) 60.

between those against and in favour of a regulation of CSR.<sup>175</sup> CSR, therefore, ought to be regarded as the result of the interaction between business and society:

‘Polanyi’s (1944) insights into societal responses to the failures of 19th century market liberalism provide valuable historical context for understanding contemporary CSR.[...]The rise of CSR can be understood as a contemporary double-movement against global neoliberals. Soaring disparities in income, the emergence of global environmental problems, and the outsourcing of increasingly skilled operations to developing countries, are all leading to demands for protection against the anarchy of unregulated market forces. In Polanyi’s terms, CSR is an attempt to establish a more socially embedded form of economic governance.’<sup>176</sup>

Practically, this means that CSR has emerged and is evolving as a continuous re-adjustment of the primary purpose of business activities so as to incorporate societal concerns into the corporate bottom line. Thus this ‘desire to encourage, nay require, corporations to assume greater responsibilities for their actions can be traced back over many decades, and reflects growing concerns regarding the power and influence of corporations over people’s lives and even the independence and integrity of governments.’<sup>177</sup>

It is about redefining the role of business in society in order to meet the expectations of society, and businesses along with the State and others institutions are expected to play a more significant role in addressing issues and concerns of their communities:

‘Beginning in the 1950s there was a sharp shift in public mood toward more social concern, and this mood was reflected in extensive social demands the public made on its institutions. Since business interacts with much of society, perhaps more of these demands were made on business than any other institution.’<sup>178</sup>

#### **2.4.2.2 Bowen’s ‘Social Responsibility of the Businessman’**

---

<sup>175</sup> ‘Since the rise of the corporation in its modern form in the late nineteenth century, this debate has ebbed and flowed, through periods when corporations extend their control and periods in which society attempts to regulate the growth of corporate power and corporations attempt to re-establish their legitimacy in the face of public criticism.’ Jenkins R ‘Globalization, Corporate Social Responsibility and poverty’ (2005) 81 (3) *International Affairs* 526.

<sup>176</sup> Levy DL & Kaplan R ‘CSR and Theories of Global Governance: Strategic Contestation in Global Issue Arenas’ in Crane A et al (ed) *The Oxford Handbook of CSR* (2008)449.

<sup>177</sup> Fisher C & Lovell A *Business Ethics and Values: Individual, Corporate and International Perspectives* 2ed (2009) 296.

<sup>178</sup> Davis K & Blomstrom RL *Business and Society: Environment and responsibility* 3ed (1975) 4.

Historically, it is important to recall the context and circumstances of the publication of *Social Responsibility of the Businessman*<sup>179</sup> in order to highlight the direct implication of a religious institution in developing the CSR theory

Indeed, Acquier and Gond<sup>180</sup> effectively demonstrated that, as a literary project, *Social Responsibility of the Businessman* was in fact the product of an order by the then Department of the Church and Economic Life of the Federal Council of the Churches of Christ in America in 1949. *Social Responsibility of the Businessman*, therefore, was not the product of a spontaneous urge to express a conviction by an academic but an essay tailor-made and developed in order to present the American Protestant Church's own approach to the duties and responsibilities of businesses. A series of books was sponsored and produced with the purpose to develop doctrinal precepts on the interaction between society and businesses as compared to those proposed by the Catholic Church in its Encyclical Letters.<sup>181</sup> Nonetheless, Bowen's book constituted the foremost formal identification of the principles underpinning the modern theory of CSR. This initial conceptualisation of CSR, however, evolved through the decades up to its current formulation.

## 2.5 Evolution of modern CSR

In order to summarise the evolution of modern CSR from its conception in 1953 up to its current formulation the thesis adopts an approach that presents CSR as featuring a dual structure:

- On the one hand, there is the *conceptual* starting point that constitutes the backbone of the CSR premise: CSR as an abstract set of theories.
- On the other hand, there is an *operational* perception of CSR as a management strategy that determines its business practices and activities: CSR as an empirical corporate attitude.

### 2.5.1 Evolution of the concept of CSR

---

<sup>179</sup> Bowen HR *Social responsibility of the businessman* (1953).

<sup>180</sup> Acquier A & Gond JP 'Aux sources de la responsabilité sociale de l'entreprise: à la (re)découverte d'un ouvrage fondateur: Social Responsibilities of the Businessman d' Howard Bowen' (2007) 10 (2) *Finance Contrôle Stratégie*.

<sup>181</sup> Acquier A & Gond JP 'Aux sources de la responsabilité sociale de l'entreprise: à la (re)découverte d'un ouvrage fondateur: Social Responsibilities of the Businessman d' Howard Bowen' (2007) 10 (2) *Finance Contrôle Stratégie* 13.

### 2.5.1.1 Bowen and the enunciation of the CSR theory

Bowen's *Social Responsibility of the Businessman* historically was at the forefront of an emerging academic literature discussing the issue of CSR.<sup>182</sup>

The CSR theory initially generated intense criticism amongst its opponents. According to these proponents of the classical theory of the enterprise, market forces, as deployed in a free market economy, ought to be the only regulators of corporate responsiveness to societal concerns. For instance, an employer's commitment to voluntarily implement working conditions and labour practices that are in excess of the legal requirement should be a result of the interplay of forces in the employment relationship (more likely via collective bargaining). It should not (and could not) be regarded as a responsibility for the considered company.

The most fervent opponent of CSR was Milton Friedman whose theories rejected the core principles of CSR. In his book, *Capitalism and Freedom*, Friedman dismisses the idea of corporate social responsibility on the principal ground that the first responsibility of a manager is to realise profits and increase the value of the shareholders' investment while respecting the law, nothing more.<sup>183</sup>

Friedman further considers that the optimal efficiency of realising such goals is inhibited by distortive philanthropic activities the effect of which is to impede the profitability of a company<sup>184</sup>. It is, therefore, unethical, undemocratic, and unfair<sup>185</sup> to investors to divert private investment into realising goals beyond the principal business imperative.<sup>186</sup>

On the other hand, some academics either corroborated Bowen's ideas or proposed their variants of the principles underpinning CSR. For instance, according to George A Steiner, social responsibility and social power are correlated. Companies usually occupy a powerful

---

<sup>182</sup> See Eells R *Corporate Giving in a Free Society* (1956), Heald M "Management's Responsibility to Society: The Growth of an Idea" (1957)31(4) *Business History Review*, Head M *The Social Responsibilities of Business: Company and Community, 1900-1960*(1970), Selekman BM *Moral Philosophy for Management* (1959); Davis K 'Can business afford to ignore social responsibilities?'(1960) 2 (3) *California Management Review*, and finally McGuire JW *Business and Society* (1963).

<sup>183</sup> 'There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.' Friedman M *Capitalism and Freedom* (1962) 133.

<sup>184</sup> Friedman M *Capitalism and Freedom* (1962) 130.

<sup>185</sup> Friedman M *Capitalism and Freedom* (1962) 134-136.

<sup>186</sup> 'Few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate official of a social responsibility other than to make as much money for their stockholders as possible.' Friedman M *Capitalism and Freedom* (1962) 133.

and dominant position in the community (as employers, tax-payers, goods and services providers, skills incubators, and fund distributors) and, therefore, they should normally and necessarily be subject to a social responsibility.<sup>187</sup>

Another position was proposed by Cartun, who asserted that a business should normally be regarded as a citizen because it is primarily a legal entity, and as such is a juristic person that should indeed be considered as any other legal person, natural or artificial.<sup>188</sup>

In a 1973 publication, Robert Holmes presented a spectrum of theoretical positions addressing the social responsibility of companies.<sup>189</sup> The interest of this publication lies in the fact that it proposes an exploration of all the different interpretations of the relevance, as a business imperative, of corporate social responsibility:

- At the one extreme is Friedman's vigorous stance against social responsibility: according to him a corporation's unique social responsibility is to maximise profit for shareholders.
- Then there is the position that agrees that a company *might* be socially responsible but only if the implementation of such social responsibility is consistent with profit maximisation.
- The next position actually pleads for social responsibility as long as the business imperative of profit generation is preserved: a company *should* be socially responsible if the implementation of this social responsibility is consistent with profit maximisation.
- Then there is the position that emphasises the necessity of social responsibility and considers that a company *might* be socially responsible even in the case of a proven inconsistency between the business imperative and the implementation of such social responsibility.
- Finally there is the other extremist position that makes social responsibility an obligation for any company: companies must be socially responsible even if such CSR commitment is inconsistent with profit maximisation.

---

<sup>187</sup> 'Each business has responsibilities in some ways commensurate with its powers.' Steiner GA 'Social policies for business' (1972) 15 (2) *California Management Review* 22.

<sup>188</sup> Cartun WP 'Fact and Fiction of Social Responsibility' (1973) *S.A.M Advanced Management Journal* 36.

<sup>189</sup> Holmes RL 'The concept of Corporate Responsibility' in Cicovacki P & Holmes RL (ed) *The Ethics of Nonviolence: Essays by Robert L. Holmes* (2013) 60.

### 2.5.1.2 Evolution of theories on the definition of CSR

As a result of the continuous controversy regarding the quintessence and justifiability of CSR, the original formal definition of the concept as proposed by Bowen has also gradually evolved. Carroll outlines the historical evolution of the concepts defining CSR as follows:<sup>190</sup>

- 1950s: the decade marks the emergence of the modern era of CSR where an initial definition of CSR is set out by Bowen: ‘It refers to the obligations of businessmen to pursue those policies, to make those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society.’<sup>191</sup>
- 1960s: the notion of CSR becomes the subject of numerous debates regarding its essence and characteristics. The decade is marked by a ‘significant growth in attempts to formalize or, more accurately, state what CSR means.’<sup>192</sup>
- 1970s: Proliferation of new definitions of CSR where multiple studies and research are dedicated to CSR and result in the enunciation of numerous theories defining CSR from different perspectives.
- 1980s: There is less emphasis on academic research on the definition of CSR even though a few more definitions are proposed. The decade is characterised by the prominence of empirical research and the development of alternative themes, such as, business ethics, corporate social performance<sup>193</sup> and the notion of stakeholder.<sup>194</sup>
- 1990s: The notion of CSR is now considered as the cornerstone of an alternative thematic framework introducing new concepts, such as, corporate citizenship or corporate social responsiveness.<sup>195</sup>

### 2.5.2 Modern CSR in practice

---

<sup>190</sup> Carroll AB ‘Corporate Social Responsibility: Evolution of a definitional construct’ (1999) 38 (3) *Business and Society* 268-295.

<sup>191</sup> Bowen HR *Social responsibility of the businessman* (1953) 6.

<sup>192</sup> Carroll AB ‘Corporate Social Responsibility: Evolution of a definitional construct’ (1999) 38 (3) *Business and Society* 270.

<sup>193</sup> See 1.8.3.1.2 above for the definition of these concepts.

<sup>194</sup> See 1.8.1.2.1 above for the definition of this concept.

<sup>195</sup> See 1.8.3 above for the definition of these concepts.

At the operational level, the history of CSR is marked by a series of important events that have determined the pace and the direction of the evolution of the practice of CSR. According to Chatterji and Listokin, the international reaction to the involvement of multinational corporations in South Africa during Apartheid resulted into one of the first instances of CSR in practices.<sup>196</sup> The importance of the divestment movement that, during the 1970s and the 1980s, originated from the anti-apartheid movement against South Africa lies in the fact that it established the corporation as a social institution subject to the responsibility to respond to societal needs, concerns and issues.<sup>197</sup>

From its inception during the 1970s up to the 1990s and the advent of democracy in South Africa, the international divestment campaign targeted multinationals with financial interests in South Africa as they were expected to act responsibly by withdrawing their operations from South Africa. However, as noted by Du Toit, divestment was an option unlikely to succeed considering the enormous financial interest at stake for both the Apartheid government and the multinationals involved in South Africa:

‘The call for disinvestment highlighted a fundamental dynamic of the system. Apartheid had created an economy based on “one of the most vicious forms of labour exploitation in the history of capitalism”. On the one hand it offered highly profitable investment opportunities for employers, foreign as well as local, for as long as the government could maintain political control. On the other hand foreign investment was a vital source of economic and political strength to the regime.’<sup>198</sup>

International companies with commercial interests in South Africa - and therefore dealing with (financially supporting) the Apartheid government - reacted to the international outcry against the Apartheid regime and the call for disinvestment from South Africa by trying to present a more positive image of their involvement in South Africa. Du Toit relevantly notes that ‘companies seeking to justify their presence in South Africa did so, *inter alia*, by adopting codes of conduct to establish their credentials as agents of progressive change’.<sup>199</sup> It is indeed in such context that the ‘Sullivan Principles’ were adopted in 1977.<sup>200</sup>

---

<sup>196</sup> Chatterji A & Listokin S ‘Corporate Social Irresponsibility’ (2007) 3 *Democracy: A Journal of Ideas* 54.

<sup>197</sup> Chatterji A & Listokin S ‘Corporate Social Irresponsibility’ (2007) 3 *Democracy: A Journal of Ideas* 54.

<sup>198</sup> Du Toit D ‘Self-regulated Corporate Social Responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview’ (2009) 30 *Industrial Law Journal* 2228.

<sup>199</sup> Du Toit D ‘Self-regulated Corporate Social Responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview’ (2009) 30 *Industrial Law Journal* 2228.

<sup>200</sup> For details on the Sullivan Principles see Chapter Three , Section 3.3.2.1

The CSR practices of corporations progressively evolved as a result of corporate reactions and responses to various events and corporate disasters:

‘Historical[ly], [...]CSR follows a logic of accumulation of knowledge[...], and the institutionalisation of practice and it has developed alongside landmark events linked to environmental preoccupations (e.g. the nuclear accident at Chernobyl in 1986) or economic, financial and social scandals (e.g. Enron, Marks and Spencer, Danone).’<sup>201</sup>

## 2.6 CSR in the new millennium

As from the beginning of the new millennium, the evolution of CSR has been marked by the introduction of international instruments designed by specialised international institutions with the objective of proposing a particular definition and characterisation of CSR. The purpose of these international instruments usually relates to the achievement of specific goals, such as, the containment of the ever increasing powers of Multinational Corporations or the achievement of sustainable development<sup>202</sup>:

‘The present concept of CSR appeared during the second half of the 1990s, after the Rio Conference on Environment and Sustainable Development of 1992, where the United Nations (UN) invited multinational enterprises to assume a commitment towards society and the environment by including in their commercial agreements provisions to protect basic Human Rights, Workers’ Rights and the Environment. This CSR concept is closely linked to the Notion of sustainable development defined by the World Commission on Environment and Development (Brundtland Commission) in 1987 as: “...development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.’<sup>203</sup>

This momentum eventually led to the adoption of various international CSR instruments, such as, the UN Global Compact and the ISO 26000:2010 Guidance on social responsibility. Corporations also began showing an interest in the practice of CSR as a tool of self-regulation:

---

<sup>201</sup> Servayre AM & Saïd SR ‘Integrating national contexts into theoretical frameworks for a better understanding of corporate social responsibility practices: The case of the emerging countries.’ (2010) 16 (38) *Revue Internationale de Psychosociologie* 261.

<sup>202</sup> Cf Chapter 1, Section 1.3.2.3 for the definition of Sustainable Development.

<sup>203</sup> Miraglio M et al *International Instruments and Corporate Social Responsibility* (2007) 2.

'The increased liberalization of international trade, expansion of foreign direct investment and the emergence of massive cross-border financial flows of the last two decades have led to significant changes in the way the world economy is organized and governed. In this context of globalization, the private sector has started to play an increasingly important role in areas of work that were previously considered the preserve of public sector actors and civil society such as social policy and the environment, thus contributing to the spread of self-regulation practices and public-private partnerships.'<sup>204</sup>



---

<sup>204</sup> Miraglio M et al *International Instruments and Corporate Social Responsibility* (2007) 2.

## CHAPTER 3

### THE GLOBAL FRAMEWORK OF CSR

#### 3.1 Introduction:

The aim of this chapter is to provide a comprehensive overview of the global framework of CSR. The chapter starts with an overview of the historical process of globalisation of CSR with a presentation of international initiatives, legal instruments and institutions at the core of the global CSR framework. The interest and relevance of this chapter lies in the fact that a thorough analysis of the dynamics of the process of globalisation of CSR will highlight the essential characteristics as well as core elements of the global framework of CSR. Thus, it facilitates the comparative analysis of specific characteristics of the national framework of CSR in selected countries.<sup>205</sup> Analysing the global framework of CSR is also a necessary preliminary step to the analysis of corporate codes of conduct, such as multinational corporations' CSR instruments.



#### 3.1.1 The globalisation of CSR

The purpose of this introduction is to describe the historical context and the processes that have led to the emergence of international CSR instruments and institutions underpinning the current global CSR framework. Historically, international CSR instruments emerged as the outcome of a process that began with the realisation of the impact (on a global scale) of corporate activities on society. Indeed, during the 1960s and up to the 1970s, researchers and policymakers witnessed an increase in the power of corporations - especially huge multinational corporations—within society. Businesses were able to accumulate and control immense financial assets which conferred incommensurable economic power on them; and even allowed them to be able to counterbalance the power of governments and states.<sup>206</sup> Corporations were moreover alleged to be prone to misuse and/or abuse of these powers in

---

<sup>205</sup> A comparative analysis of the CSR framework of Cameroon, France and South Africa is to be found in Chapter 4.

<sup>206</sup> 'The mid-1970s has seen a dawning realisation of how company power was extending beyond economic to political, cultural and social areas. Since then, the continuous evolution of company activities and power seem to have radically restructured the equilibrium of their relations with the State and society.' Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 183.

order to further their financial interests while disregarding societal interests and challenging social values and governmental institutions.<sup>207</sup>

In 1967, Berle and Means published *The Modern Corporation and Private Property*, a book that highlighted the extent of corporate economic power as compared to other traditional sources of power within society, as well as the ensuing confrontation:

‘The rise of the modern corporation has brought a concentration of economic power which can compete on equal terms with the modern state - economic power versus political power, each strong in its own field. The state seeks in some aspects to regulate the corporation, while the corporation, steadily becoming more powerful, makes every effort to avoid such regulation. Where its own interests are concerned, it even attempts to dominate the state. The future may see the economic organism, now typified by the corporation, not only on an equal plane with the state, but possibly even superseding it as the dominant form of social organisation.’<sup>208</sup>

The issues that arose from the increase of such corporate economic power were mostly related to the question of the effectiveness of the current international legal system (and the relevant institutions) as regulators of the activities of corporations. The attitude of corporations toward societal issues, concerns and values as decried by critics did not necessarily constitute illegal activities and were usually, to a certain extent, conducted within the context of applicable laws, rules and regulations.<sup>209</sup> Even where it was not the case, stakeholders were usually confronted by the practical impossibility to effectively monitor, control and redress the compliance of these corporations with the rule of the law.<sup>210</sup>

The first generation of international CSR instruments was therefore initiated in an attempt to harness and control the economic power of corporations and subsequently redefine the impact of corporate activities on its various stakeholders. The Organisation for Economic Co-

---

<sup>207</sup> ‘Until the 1970s, despite regulation and legislation, business continued largely along an autonomous path, ignoring its critics and listening only to its shareholders, to whom it felt somewhat responsible.’ Hopkins M *Corporate social responsibility: An issues paper* (2004) 3.

<sup>208</sup> Berle A & Means G *The Modern Corporation and Private Property* (1967) 13.

<sup>209</sup> For instance, the introduction and marketing of breast milk substitutes by Nestlé S.A. into developing countries during the 1970s did not constitute illegal activities per se. It however generated intense criticism from various stakeholders who publicly questioned the societal values of Nestlé. It also resulted in a broad campaign for a global boycott of Nestlé S.A. products that surely affected the company and led to the emergence of a corporate culture of societal responsiveness. Hartley RF *Business Ethics, Mistakes and Successes* (2005) 171.

<sup>210</sup> Such as in the case of transnational corporation complicity in human rights abuse perpetrated by government, rebels and other militia in developing countries. Famous case includes the alleged complicity of the Royal Dutch Shell Company in the death of Ken Saro Wiwa in 1995 and the perpetration of other human rights abuses by the Nigerian dictatorship during the 80s and 90s. See Na’allah AR *Ogoni's Agonies: Ken Saro-Wiwa and the Crisis in Nigeria* (1998) 38.

operation and Development (OECD) published 'Guidelines for Multinational Enterprises' in 1976. The purpose of this non-enforceable document was to invite multinational enterprises into an international framework proposing to provide a set of voluntary principles promoting responsible business attitudes and conduct consistent with applicable laws.<sup>211</sup> The next year, the International Labour Organisation (ILO) produced its 'Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy'<sup>212</sup> that dealt with the labour and employment aspects of CSR. The first sentence of the Introduction of the 1977 ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy reads:

'In the 1960s and 1970s, the activities of multinational enterprises (MNEs) provoked intense discussions that resulted in efforts to draw up international instruments for regulating their conduct and defining the terms of their relations with host countries, mostly in the developing world. Labour-related and social policy issues were among those concerns to which the activities of MNEs gave rise.'<sup>213</sup>

The emergence of international CSR instruments coincided with the advent of theories advocating for the introduction of CSR into the traditional legal framework; theories that encountered steady resistance from various interests groups.<sup>214</sup> Indeed, the idea of the implementation of a legal framework regulating CSR did not flow seamlessly, and actually generated conflict between regulatory and deregulatory forces.<sup>215</sup>

The momentum pushing toward the legal implementation of CSR as a counterbalance to transnational corporations' immense economic powers grew gradually and led to yet another attempt to formally regulate CSR. In 1996, a bid to introduce a social clause<sup>216</sup> into the World Trade Organisation (WTO) legal framework during the Singapore WTO Ministerial

---

<sup>211</sup> OECD *Preface of the OECD Guidelines for Multinational Enterprises* (1976)9.

<sup>212</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977).

<sup>213</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) 1.

<sup>214</sup> Letnar Čerňič J 'Corporate responsibility for Human Rights: A critical analysis of the OECD Guidelines for multinational enterprises' (2008) 3(1) *Hanse Law Review* 77.

<sup>215</sup> Hopkins M *Corporate social responsibility: An issues paper* (2004)19-20 notes for instance that '[t]here have been several other attempts to establish a social clause at the international level, but these have so far resulted in failure. For example, the European Commission endeavoured to include a social clause with the African, Caribbean and Pacific countries covered by its Lomé Convention. But the Convention, signed in 1975, refers only to respect for human rights, without a follow-up or control mechanism.' Hopkins M *Corporate social responsibility: An issues paper* (2004)19-20.

<sup>216</sup> Chan A & Ross RJS 'Racing to the bottom: international trade without a social clause' (2003) 24 (6) *Third World Quarterly* 1011 describes a social clause as follows: 'Linking trade concessions to compliance with internationally recognised labour standards is referred to as a 'social clause'. The social clause is usually depicted as causing division between the (rich) global North and the less-industrialized global South'.

Conference failed. This clause if formally adopted was meant to achieve the linking of labour standards with trade liberalisation, but the negotiation aborted due to the controversies and confrontations between various opposing stakeholders groups.<sup>217</sup>

However, despite the failure of an OECD bid to introduce an international multilateral agreement with the purpose of globally promoting and protecting the interests of multinational corporations,<sup>218</sup> and the successful adoption by the ILO of its 1998 'Declaration on Fundamental Principles and Rights at Work', the failure of the previously mentioned attempts to introduce CSR into the international legal framework generated two consequences.

First, it resulted in the eviction of societal and environmental issues from the international legal framework. In fact, according to Daugareilh, the social issue was then effectively discarded from the international agenda.<sup>219</sup> Secondly, it cleared the way for the imposition of corporate self-regulation as the path toward CSR. This could be illustrated by the emergence of a new category of player (the private corporation), and the institutionalisation of a new category of international CSR instruments, that is, corporate, NGO and multiple stakeholders CSR initiatives.<sup>220</sup>

However, on the eve of the new millennium, the interest in CSR was globally rekindled with the growing interest in the notion of sustainable development.<sup>221</sup> The UN published its Millennium Development Goals (MDGs) as a set of attainable objectives the achievement of which could contribute to the amelioration of the existence of the most disfavoured

---

<sup>217</sup> 'The relationship of labour standards to trade liberalisation will continue to be an issue at the WTO due to (i) continuing pressure by leading industrialised countries;(ii) the raising of the issue in relation to WTO work, for example, on labelling and investment; (iii) continuing criticism of the WTO from consumer organisations, trade unions and other concerned groups for failure to consider the social aspects of trade liberalisation.' Leary VA 'The WTO and the Social Clause: Post-Singapore' (1997) 1 *European Journal of International Law* 120.

<sup>218</sup> Between 1995 and 1997 the OECD initiated secret negotiations aimed at the facilitation and introduction of a *Multilateral Agreement on Investment* (MAI), the purpose of which was to formally enact and provide for the implementation of specific investment rights aimed at the protection of the interests of transnational corporations against those of the receiving states as well as affected and concerned communities. The project was abandoned when it was publicly revealed, and thus exposed to growing criticism from various stakeholders, such as, concerned states (members or not of the OECD), NGOs involved in consumer protection, human rights, social justice and environmental advocacy, trade unions etc. See Neumayer E 'Multilateral Agreement on Investment: Lessons for the WTO from the failed OECD-negotiations' (1999) 46(6) *Wirtschaftspolitische Bloetter* 618-619; Smythe E 'Your Place or Mine? States, International Organisations and the Negotiation of Investment Rules' (1998) 7 (3) *Transnational Corporations* 86-87.

<sup>219</sup> Daugareilh I *Responsabilité sociale de l'entreprise transnationale et globalisation de l'économie* (2011) XII.

<sup>220</sup> Such as the creation of the World Business Council for Sustainable Development in 1995 and of the Global Reporting Initiative in 1997.

<sup>221</sup> See 1.3.2.3 above for the definition of 'sustainable development'.

individuals on the planet.<sup>222</sup> The MDGs actually conferred a specific action/role needed to be played by corporations in order to achieve these goals. Businesses were urged to redefine their vision of the contribution of businesses to society in order to include the MDGs into their business approaches.<sup>223</sup>

Corporations acknowledged these calls and began engaging in multi-stakeholder initiatives aimed at the conception of a global framework of CSR within which corporations would contribute to the achievement of the MDGs.<sup>224</sup> This resulted in the creation of international CSR institutions, such as the UN Global Compact (2000),<sup>225</sup> and a surge of international instruments, such as the European Union Green Paper ‘Promoting a European Framework for Corporate Social Responsibility (2001)’. A wide range of international institutions aimed at the effective and practical implementation of CSR were also created, hence the emergence as a growing trend of Stock Exchange Social and Environmental Performance Indexes,<sup>226</sup> of CSR networks and CSR forums, and CSR-focussed standards:

‘The past ten years has witnessed enormous developments in the field of corporate sustainability. Thousands of companies around the world have established commitments and policies to integrate and diffuse universal principles in the areas of human rights, labour, the environment, and anti-corruption. The growth of the UN Global Compact certainly reflects the ever-increasing adoption of corporate sustainability principles and tenets by companies of all sizes, sectors, and geographies. Reinforcing this trend has been the upward movement of corporate sustainability oversight and execution within organisations – many more chief executive officers and boards of directors are leading the agenda.’<sup>227</sup>

---

<sup>222</sup> Business Leaders Initiative for Human Rights *The Millennium Development Goals and Human Rights, Companies taking a rights-aware approach to development* (2010)10-11.

<sup>223</sup> Annan K *An Appeal to World Business: UN Secretary General proposes Global Compact on Human Rights, Labour and Environment* (1999) UN Secretary General Speech at the World Economic Forum Annual Meeting: Davos, 31 January 1999. UN Press Release SG/SM/6881 <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html> (accessed 5 June 2014).

<sup>224</sup> Thus this reaction of a representative of business interests: ‘The private sector is the engine for employment creation, bringing goods and services to rich and poor alike and playing a host of other critical functions within societies. To what extent it performs these roles responsibly and in ways that contribute to sustainable economic and social development for all will have a huge impact on whether countries are able to achieve the MDGs, and whether we can finally claim to live in a world where every person’s human rights are protected and fulfilled.’ Business Leaders Initiative for Human Rights *The Millennium Development Goals and Human Rights, Companies taking a rights-aware approach to development* (2010) 5.

<sup>225</sup> See 3.2.3.1 below for a presentation of the UN Global Compact.

<sup>226</sup> See 3.3.2.3 below for definition and examples of Stock Exchanges Social and Environmental Performance Indexes.

<sup>227</sup> United Nations Global Compact *Blueprint for Corporate Sustainability Leadership* (2010) 1.

The proliferation during the 2000s of CSR instruments illustrates the fact that CSR was then becoming a corporate trend, perhaps due to the fact that corporations worldwide were suffering a crisis characterised by a low level of reputation and a lack of trust from the public, probably due to a contemporary series of corporate scandals.<sup>228</sup>

### **3.1.2 The global CSR framework: A heterogeneous selection of CSR instruments and initiatives**

The global framework of CSR is composed of a heterogeneous selection of CSR initiatives, and disparate CSR instruments and institutions, the only similarity amongst these being the underpinning CSR purpose. CSR instruments and institutions at the global level are therefore quite eclectic and could be differentiated on the basis of a wide selection of criteria, such as:

- The CSR approach: Is the instrument dedicated to CSR rating, CSR monitoring or CSR reporting? Is it a CSR standard or a CSR guideline?
- The promoting entity and the parties involved: Are they governmental or intergovernmental, NGOs or corporations? Is it a multi-stakeholder initiative?
- The nature of the instrument/institution: Is it a CSR network, a CSR code of conduct, a CSR platform or coalition, a CSR legal or soft law instrument?
- The legal/official dimension of the CSR institution/instrument: Is the adherence to/compliance with the CSR institution/instrument voluntary, coercive or conditional?
- The enforceability of the CSR instrument: Is the CSR instrument based on a set of enforceable laws and regulations? Does the instrument create a set of legally enforceable CSR principles?<sup>229</sup>

Ultimately, in order to efficiently analyse and characterise these various institutions and instruments, the thesis utilises the most common of the above-mentioned criteria, namely, the distinction between public (governmental and intergovernmental CSR initiatives), on the one hand, and private initiatives (mostly from corporations and NGOs) on the other.

---

<sup>228</sup> Hopkins M *Corporate social responsibility: An issues paper* (2004) 3.

<sup>229</sup> OECD *Annual Report on the OECD Guidelines for Multinational Enterprises 2008: Employment and Industrial Relations* (2009) 237-238.

## **3.2 Public initiatives: governmental and intergovernmental CSR initiatives**

This section is dedicated to an overview of the main international CSR initiatives by governmental and/or intergovernmental institutions. The overview of these CSR initiatives will entail both a summary and a discussion of the prominent features of each instrument or institution.

### **3.2.1 Framework within the OECD**

The OECD is an international economic organisation the aim of which is to provide a forum where governments can effectively cooperate in order to find solutions to global economic and societal issues. The OECD mission principally entails the promotion of economic and developmental policies aimed at improving the economic and social wellbeing of the world population. This analysis starts with a review of OECD CSR initiatives as the OECD in 1976 was a pioneer in introducing international CSR instruments.

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

The OECD Guidelines for Multinational Enterprises is a set of legally non-binding Guidelines, annexed to the OECD Declaration on International Investment and Multinational Enterprises, adopted by the OECD in 1976 and further revised in 1979, 1982, 1984, 1991 2000 and 2011.

These Guidelines are recommendations jointly addressed by governments to multinational enterprises. Compliance with the Guidelines is essentially voluntary, thus non-enforceable. The purpose of this instrument is to provide principles and standards of good practice consistent with applicable laws.<sup>230</sup>

The aim of the OECD Guidelines for Multinational Enterprises is to provide multinational corporations operating in or from countries adhering to the Declaration with a set of principles and standards implementing responsible business conduct in the following areas: employment, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition and taxation.<sup>231</sup>

---

<sup>230</sup> See Title I: Concepts and Principles, Section 1 of OECD *The OECD Guidelines for Multinational Enterprises* (1976) 12.

<sup>231</sup> OECD *The OECD Guidelines for Multinational Enterprises* (1976) 5.

The particularity of the Guidelines is ‘that this set of norms applies both to the member states in charge of implementing them and to the multinational enterprises whose activities these Guidelines are supposed to govern (whether they operate on the territory of a member country or are based there)’.<sup>232</sup>

According to Letnar Čerňič ‘the OECD Guidelines for Multinational Enterprises are the only corporate responsibility instrument formally adopted by States. They remain the most prominent Interstate document on various aspects of corporate responsibility and the role of international investment’.<sup>233</sup>

In fact the Guidelines encourage corporations to implement its standards and principles, not only when operating in OECD countries, but also anywhere else in the world. In addition it is compulsory for OECD countries to establish National Contact Points (NCPs); entities whose primary responsibilities are to ensure the promotion and the follow-up of the Guidelines at the national level.<sup>234</sup>

NCP tasks normally entail handling all enquiries and matters related to the Guidelines in a specific country, controlling and monitoring the implementation of the Guidelines, as well as investigating complaints about a company operating in, or headquartered, in that particular country. NCPs are usually either constitutive of a relevant government department; or are independent structures reuniting government officials, trade unions and employers unions representatives and relevant NGOs.<sup>235</sup>

Considering the role played by NCPs, John Evans, the General Secretary of the Trade Union Advisory Committee to the OECD (TUAC), questions the voluntary and legally non-binding aspect of the OECD Guidelines:

---

<sup>232</sup> Queinnec Y *The OECD Guidelines for Multinational Enterprises: An evolving legal status* (2007)7.

<sup>233</sup> Letnar Čerňič J ‘Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational enterprises’ (2008) 3(1) *Hanse Law Review* 77. The OECD itself also presents the Guideline as ‘the only international instrument covering all main areas of business ethics (including human rights, labour relations, environment, corporate governance and corruption) that has been developed multilaterally and agreed by governments....The Guidelines are extensively used as a benchmark for company conduct and by rating agencies and stock exchanges to assess responsible business conduct.’ OECD A “global charter”/ “legal standard”: an inventory of possible policy instruments (2009) 76.

<sup>234</sup> OECD *Decision C (2000)96/FINAL of the Council on the OECD Guidelines for Multinational Enterprises* (2000)1-2.

<sup>235</sup> OECD *The OECD Guidelines for Multinational Enterprises* (1976)68, 71-74.

'The Guidelines may not be binding in a legal sense at the international level, but they are not optional for corporations. If companies could simply pick and choose among the provisions of the Guidelines or subject them to their own interpretations, then they would have no value. Nor does their application depend on endorsement by companies. The OECD's Guidelines are the only multilaterally endorsed and comprehensive rules that governments have negotiated, in which they commit themselves to help solve problems arising with corporations. Most importantly, the ultimate responsibility for enforcement lies with governments. The key therefore is implementation.'<sup>236</sup>

Notwithstanding debates concerning the effectiveness of the OECD's Guidelines, it is essential to note that the introduction in 1976 of this instrument was inherently a positive and innovative step toward the creation of a global CSR framework.

### **3.2.1.2 Other OECD initiatives**

Although the OECD Guidelines for Multinational Enterprises constitutes the OECD's main contribution to the international CSR framework, it is however to be noted that the OECD also provides the following CSR instruments:

#### **3.2.1.2.1 The OECD Principles of Corporate Governance**

The OECD Principles of Corporate Governance pursues the OECD objective of strengthening the institutional and regulatory framework for corporate governance.<sup>237</sup>

Adopted in 1999 and revised in 2004, it contains a set of non-binding recommendations issued by OECD member countries. The OECD considers the integrity of businesses and markets to be central to the vitality and stability of the economy. Thus the necessity to instil good corporate governance into business practice to facilitate growth and financial stability, and underpin market confidence, financial market integrity and economic efficiency is recognised by the OECD.<sup>238</sup>

Corporate governance principles offered by the OECD Principles of Corporate Governance mostly relate to the rules and practices that govern the relationship between corporate managers and shareholders and corporate stakeholders such as employees and creditors.<sup>239</sup>

The principles apply to financial and non-financial companies and are directed to

---

<sup>236</sup> Evans J 'OECD Guidelines – one tool for corporate social accountability' (2003)1(130) *Labour Education: Corporate Social Responsibility: Myth or reality*26-27.

<sup>237</sup> OECD A "global charter"/ "legal standard": *an inventory of possible policy instruments* (2009)77.

<sup>238</sup> OECD *Policy brief: The OECD Principles of Corporate Governance* (2004)1.

<sup>239</sup> OECD *Policy brief: The OECD Principles of Corporate Governance* (2004)1.

governments, regulators, stock exchanges investor, corporations, trade unions and other stakeholders.

### **3.2.1.2.2 The OECD Guidelines on Corporate Governance of State-Owned Enterprises**

Adopted in 2005, the OECD Guidelines on Corporate Governance of State-Owned Enterprises aims to improve the transparency, accountability and economic efficiency of state-owned enterprises world-wide.<sup>240</sup>

## **3.2.2 CSR Framework within the ILO**

### **3.2.2.1 The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**

Following a negotiation process that involved the ILO main constituents (member states, employees and employers' representatives) the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration) was adopted in 1977<sup>241</sup> and updated in 2000<sup>242</sup> and 2006<sup>243</sup>.

Even though the MNE Declaration is voluntary and does not have any legal value per se, its 'tripartite' characteristic positions it as a cornerstone of the global framework of CSR for the following reasons:

First, because of the global reach of this instrument, as the MNE Declaration is one of the pioneering instruments that institutionalise CSR at the global level. Secondly, because of its content as the MNE Declaration is one of the few CSR instruments that comprehensively define the fundamental principles underpinning labour and employment related aspect of CSR. Finally, because of its broad scope and inclusive nature as:

'The MNE Declaration is the only ILO instrument that contains recommendations for enterprises in addition to governments and employers' and workers' organisations. In the context of CSR, its added value resides in the fact that it was adopted with the agreement of

---

<sup>240</sup> OECD A "global charter"/ "legal standard": an inventory of possible policy instruments (2009)78.

<sup>241</sup> ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977).

<sup>242</sup> ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (2000).

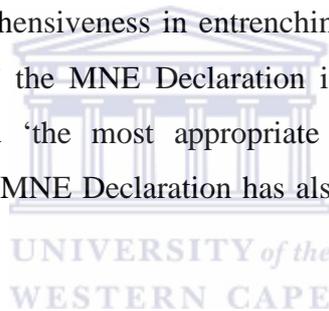
<sup>243</sup> ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (2006).

governments and employers' and workers' organisations. Today, it is seen as the main voluntary instrument as regards the labour dimension of CSR.<sup>244</sup>

Adopted with the agreement of representatives of workers, employers and governments, the MNE Declaration principally focusses on the implementation of labour rights and working conditions favourable to workers.<sup>245</sup> It acknowledges the importance of social dialogue and recognises the positive contribution multinational corporations can make to economic and social development and to 'minimize and resolve the difficulties to which their various operations may give rise'<sup>246</sup>

The MNE Declaration, which draws on ILO Conventions, offers voluntary guidelines<sup>247</sup> devoted to social policy and based on international labour principles.<sup>248</sup> They cover five principal topics: general policies,<sup>249</sup> employment<sup>250</sup> and training<sup>251</sup>, conditions of work and life<sup>252</sup>, and industrial relations.<sup>253</sup>

Mostly acclaimed for its comprehensiveness in entrenching labour and human rights in the international CSR framework,<sup>254</sup> the MNE Declaration is usually considered as the most prominent CSR instrument and 'the most appropriate ILO norm for corporate social responsibility'.<sup>255</sup> However, the MNE Declaration has also been criticised for its ineptitude



---

<sup>244</sup> Miraglio M et al *International Instruments and Corporate Social Responsibility* (2007)13.

<sup>245</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977)1-4.

<sup>246</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) clause 2.

<sup>247</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) clause 7.

<sup>248</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) clause 5.

<sup>249</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) Clauses 8-12.

<sup>250</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) Clauses 13-28.

<sup>251</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) Clauses 29-32.

<sup>252</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) Clauses 33-40.

<sup>253</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) Clauses 41-59.

<sup>254</sup> 'Letnar Čerňič J 'Corporate Responsibility for Human Rights: Analysing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (2009) 6 (1) *Miskolc Journal of International Law* 26.

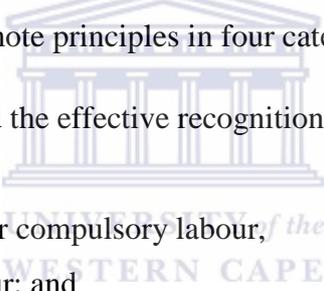
<sup>255</sup> Daugareilh I 'Corporate norms on CSR and International norms' in Javillier JC (ed) *Governance, international law and corporate societal responsibility* (2007) 68.

in generating effective results in terms of reducing corporate abuse of its workforce, and for its inability to generate the emergence of legally binding instruments.<sup>256</sup>

### **3.2.2.2 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up**

Adopted in 1998 the ILO Declaration on Fundamental Principles and Rights at Work<sup>257</sup> principally differs from the 1977 MNE Declaration in that it only involves and addresses ILO member states<sup>258</sup> and therefore does not provide principles directly intended for corporations. Nevertheless, as highlighted by the International Organisation of Employers: ‘Whereas ILO Conventions apply only to those member States which ratify them; the Declaration is relevant to all member States by virtue of their membership and Constitutional obligations towards the ILO. As such, the Declaration represents a political commitment by governments to respect, promote and realise the Declaration’s principles.’<sup>259</sup>

Whether or not they have ratified the relevant Conventions, the 1998 Declaration commits member states to respect and promote principles in four categories of rights:

- 
- a) freedom of association and the effective recognition of the right to collective bargaining;
  - b) the elimination of forced or compulsory labour;
  - c) the abolition of child labour; and
  - d) the elimination of discrimination in respect of employment and occupation.<sup>260</sup>

In order to ensure its effective implementation, the 1998 Declaration is equipped with two follow-up mechanisms:

---

<sup>256</sup>‘The ILO Tripartite Declaration of Principles for Multinational Enterprises and Social Policy that was published in 1977 may also be perceived to be ineffective. It is unusual that a Declaration which was published almost 30 years ago and deemed successful in content, has until today not been transformed into binding principles. Furthermore, as an instrument, the Declaration could be perceived to be toothless as systematic labour abuses appear not to have decreased since its introduction. The ILO could support initiatives to create minimum CSR standards, as it is likely that a legally binding instrument will have more impact than such a voluntary instrument.’ Linnik M & Thorsen SS ‘ILO and CSR: Minimum human rights standards for corporations’ in Javillier JC (ed) *Governance, international law and corporate societal responsibility* (2007) 87.

<sup>257</sup> International Labour Organisation *Declaration on Fundamental Principles and Rights at Work* (1998) International Labour Office: Geneva.

<sup>258</sup> *ILO Declaration on Fundamental Principles and Rights at Work* (1998) Articles 1- 2.

<sup>259</sup> International Organisation of Employers *The ILO Declaration on Fundamental Principles and Rights at Work: IOE Position Paper* (2006) 1. See also Vega Ruiz ML & Martinez D *Fundamental Principles and Rights at Work: Value, Viability, Incidence and Importance as Elements for Economic Progress and Social Justice* (2002) 9.

<sup>260</sup> *ILO Declaration on Fundamental Principles and Rights at Work* (1998) Article 2.

- a) The Review of Annual Reports from member States that have not ratified one or more of the eight core Conventions.<sup>261</sup> The purpose of the Review of these Annual Reports is to annually assess efforts made by these countries in accordance with the 1998 Declaration.
- b) The Global Report: its purpose is to every year conduct a global report successively analysing each of the four fundamental principles during a four year cycle period.<sup>262</sup> The purpose of the Global Report is to provide an overview, on a global scale, of the level of implementation of the 1998 Declaration and the fundamental principles contained therein, such as to highlight issues and/or regions in need of greater attention.

### 3.2.2.3 Other ILO initiatives

Besides the adoption of international instruments promoting labour related aspects of CSR, the ILO has also been involved in various initiatives aimed at the effective implementation of CSR principles, namely:

#### 3.2.2.3.1 The Decent Work Agenda

The Decent Work Agenda is an international initiative that draws on ILO Conventions, which are regarded as part of international law. Via the Decent Work Agenda, the ILO collaborates with various partners, and stakeholders, including the UN, for the realisation of the following objectives: creating jobs, guaranteeing rights at work, extending social protection, and promoting social dialogue.<sup>263</sup> The aim of the Decent Work Agenda is to pioneer ways in which the concept of decent work could be effectively promoted and applied in ILO member countries, the overall objective being to strengthen national capacities in order to integrate the decent work agenda into national policies.<sup>264</sup>

The Decent Work Agenda entails the promotion of an effective integration of economic and social objectives and a well-orchestrated combination of these objectives in the areas of

---

<sup>261</sup> ILO Declaration on Fundamental Principles and Rights at Work (1998) Section II of the Follow up.

<sup>262</sup> ILO Declaration on Fundamental Principles and Rights at Work (1998) Section III of the Follow up.

<sup>263</sup> Burchell B et al 'The quality of employment and decent work: definitions, methodologies, and ongoing debates' (2013) *Cambridge Journal of Economics* 4.

<sup>264</sup> Bellace JR 'Achieving social justice: the nexus between the ILO's Fundamental Rights and Decent Work' (2011)15(1) *Employee Rights & Employment Policy Journal* 5.

Also see ILO *The ILO Decent Work Pilot Programme (DWPP) 2000 – 2005: Country Brief* (2006) 1.

employment promotion, rights at work, social protection and social dialogue.<sup>265</sup> It is in fact understood that via the implementation of effective Decent Work policies and measures (at both national and corporate level) organisations can play a real role in alleviating poverty by providing safe, decent and humane work.<sup>266</sup>

### **3.2.2.3.2 The Better Work Programme**

Initiated in 2007, the Better Work Programme is a product of the cooperation between the ILO, the World Bank and the International Finance Corporation (IFC) and is primarily aimed at improving labour standards and competitiveness in the global supply chain.<sup>267</sup>

The Better Work Programme essentially promotes and supports the implementation by multinationals of ILO core international labour standards as well as national labour law. Therefore, 'Better Work involves both the development of global tools and the implementation of country-level services, with a focus on scalable and sustainable solutions that build cooperation between governments, employers' and workers' organisations and international buyers'.<sup>268</sup>

### **3.2.2.3.3 ILO Declaration on Social Justice for a Fair Globalisation**

Also a product of a tripartite consultation between government, employee and employer representatives, the ILO Declaration on Social Justice for a Fair Globalisation<sup>269</sup> commits members to the Decent Work Agenda, via the promotion of employment (by creating a sustainable institutional and economic environment), the development and enhancement of measures of social protection, the promotion of social dialogue and tripartite engagement, and the respect for, and promotion and realisation of fundamental principles and rights at work.<sup>270</sup>

The ILO Declaration on Social Justice for a Fair Globalisation therefore proposes a holistic and integrated approach that acknowledges the fact that the above-mentioned

---

<sup>265</sup> Bellace JR 'Achieving social justice: the nexus between the ILO's Fundamental Rights and Decent Work' (2011)15(1) *Employee Rights & Employment Policy Journal* 5.

See also ILO *The ILO Decent Work Pilot Programme (DWPP) 2000 – 2005: Country Brief* (2006) 1.

<sup>266</sup> Noon P (ed) *Corporate Social Responsibility: Negotiator's Guide* (2008) 1.

<sup>267</sup> ILO & International Finance Corporation (IFC) *Better Work Programme Overview* (2007)1.

<sup>268</sup> ILO & International Finance Corporation (IFC) *Better Work Programme Overview* (2007)1.

<sup>269</sup> International Labour Organisation *Declaration on Social Justice for a Fair Globalization* (2008).

<sup>270</sup> ILO *The ILO and CSR: Why Responsible Business Conduct Matters* (2009) 8.

strategic objectives are inseparable, interrelated and mutually supportive and subsequently confirms the role of international labour standards as a useful means of achieving them.<sup>271</sup>

The ILO Declaration on Social Justice for a Fair Globalisation, while calling for the implementation of multi-stakeholder partnerships specifically including multinational corporations, nevertheless affirms the relevance and pertinence of previous ILO instruments, (such as the 1977 MNE Declaration) to the contemporary challenges of a now globalised economy.<sup>272</sup>

### **3.2.3 Framework within the United Nations (UN)**

#### **3.2.3.1 The UN Global Compact**

First unveiled by Kofi Annan in an address to the World Economic Forum in 1999,<sup>273</sup> the UN Global Compact was officially launched in July 2000. As the main UN CSR initiative, the Global Compact is nowadays regarded as ‘the most prominent corporate citizenship initiative’<sup>274</sup> and constitutes the world's ‘most respected platform’<sup>275</sup> of corporate citizenship. The UN Global Compact indeed primarily seeks to: ‘[m]ainstream the ten principles in business activities around the world’<sup>276</sup> and ‘[c]atalyse actions in support of broader UN goals, such as the Millennium Development Goals (MDGs)’.<sup>277</sup>

##### **3.2.3.1.1 The UN Global Compact Ten Principles**

Initially, the Global Compact was thought of as a set of principles to be instilled in the corporate approach to their responsibility toward the global society. The UN approach into realising this objective entailed encouraging businesses into adopting and implementing

---

<sup>271</sup> ILO *Declaration on Social Justice for a Fair Globalisation* (2008) 2.

<sup>272</sup> ILO *Declaration on Social Justice for a Fair Globalisation* (2008) 7-8.

<sup>273</sup> Kofi Annan was then the UN Secretary-General.

<sup>274</sup> Hamann R ‘Introducing corporate citizenship’ in Hamann R, Woolman S & Sprague C (eds) *The Business of Sustainable Development in Africa* (2008)4.

<sup>275</sup> Leisinger KM “Capitalism with a human face: the UN Global Compact” (2007) 28 *The Journal of Corporate Citizenship* 113.

<sup>276</sup> UN Global Compact ‘Overview of the UN Global Compact’ available at <http://www.unglobalcompact.org/Aboutthegc/index.html> (accessed 25 February 2014)

<sup>277</sup> UN Global Compact ‘Overview of the UN Global Compact’ available at <http://www.unglobalcompact.org/Aboutthegc/index.html> (accessed 25 February 2014)

sustainable and socially responsible business principles, and to report on the implementation of these principles.<sup>278</sup>

The Global Compact therefore emerged as a multi-stakeholder initiative (involving the UN, businesses, governments and even cities) expected to reciprocally benefit all parties. On the one hand, the Global Compact involves businesses in the achievement of societal goals (such as the UN MDGs) via the adoption and implementation of principles related to human rights, labour standards and the environment. On the other hand, the business world will also benefit from an effective realisation of these goals.<sup>279</sup>

Principles constituting the Global Compact include:

### **Human Rights**

Businesses should:

Principle 1: Support and respect the protection of internationally proclaimed human rights; and

Principle 2: Make sure that they are not complicit in human rights abuses.

### **Labour Standards**

Businesses should uphold:

Principle 3: The freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: The elimination of all forms of forced and compulsory labour;

---

<sup>278</sup> In a speech at the Davos World Economic Forum on January 31 1999, relevantly entitled *An appeal to world business*, Kofi Annan laid the basis of a needed collaboration between the UN and the business world: 'Now, I want to challenge the leaders of the community to go a step further. I am asking them to join me in a global compact of shared values and principles, which can give a human face to the global market.[...]I am asking corporate leaders to embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices.' Annan K *An appeal to world business: UN Secretary General proposes global compact on human rights, labour and environment* World Economic Forum Annual Meeting (1999) 2.

<sup>279</sup> 'This compact of ten principles is intended to ensure that businesses do not forget that a community based upon compassion and care is, ultimately, the necessary precondition for successful business itself. The alternative is too bleak to consider; a war of all against all in which the majority of humanity is exploited in the service of those few individuals and corporation that have access to the levers of political, legal, military and economic power.' Woolman S 'Truly enlightened self-interest: business, human rights and the UN Global Compact' in Hamann R, Woolman S & Sprague C (eds) *The business of Sustainable Development in Africa* (2008) 37.

Principle 5: The effective abolition of child labour; and

Principle 6: The elimination of discrimination in employment and occupation.<sup>280</sup>

### 3.2.3.1.2 Global Compact as an institutional framework

In order to promote and coordinate and, to a certain extent, monitor the implementation of the Global Compact Ten Principles, the UN has created the Global Compact Office and the UN Global Compact Board. The overall mission of both institutions is to coordinate Global Compact initiatives throughout the world.<sup>281</sup>

The Global Compact Office is actually the UN entity responsible for the overall management and coordination of the Global Compact initiative, including the management of the Global Compact's name and logo, and the Global Compact Integrity Measures.<sup>282</sup>

As such, the Global Compact Office is assigned to the realisation of the following objectives:

- i. To make the Global Compact and its principles part of business strategy and operations everywhere;
- ii. To facilitate cooperation among key stakeholders by promoting partnerships and other collective action in support of UN goals.
- iii. To promote the Global Compact Ten Principles, and undertakes work on a range of corporate citizenship and CSR issues, including business and human rights, anti-corruption and partnerships for development.<sup>283</sup>

---

<sup>280</sup> These are the remaining four principles that complete the list of the ten principles of the Global Compact:

**Environment**

Businesses should:

Principle 7: Support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote environmental responsibility; and

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

**Anti-Corruption**

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery. See UN Global Compact 'Overview of the UN Global Compact' <http://www.unglobalcompact.org/abouttheGc/TheTenprinciples/index.html> (accessed 11 March 2014).

<sup>281</sup> UN Global Compact *The Global Compact's Next Phase* (2005) 1-8.

<sup>282</sup> UN Global Compact 'Internships with the Global Compact' available at [http://www.unglobalcompact.org/AboutTheGC/Internship\\_at\\_the\\_Global\\_Compact/index.html](http://www.unglobalcompact.org/AboutTheGC/Internship_at_the_Global_Compact/index.html) (accessed 25 February 2014)

<sup>283</sup> UN Global Compact 'Internships with the Global Compact' available at [http://www.unglobalcompact.org/AboutTheGC/Internship\\_at\\_the\\_Global\\_Compact/index.html](http://www.unglobalcompact.org/AboutTheGC/Internship_at_the_Global_Compact/index.html) (accessed 25 February 2014)

The Global Compact Office is supported in this task by six UN agencies, namely

- i. The UN High Commissioner for Human Rights;
- ii. The UN Environment Programme;
- iii. The ILO;
- iv. The UN Development Programme;
- v. The UN Industrial Development Organisation; and
- vi. The UN Office on Drugs and Crime.

The UN Global Compact Board is a multi-stakeholder body uniting four constituency groups: business, civil society, labour and the United Nations. Its objective is to provide ‘ongoing strategic and policy advice for the initiative as a whole and making recommendations to the Global Compact Office, participants and other stakeholders’.<sup>284</sup>

### 3.2.3.1.3 Critical assessment of the Global Compact

The Global Compact is mostly a CSR network and forum for discussion, and thus lacks any tool for monitoring and enforcement. Daugareilh notes that the Global Compact is indeed purely voluntary, has no mechanism for accountability, and is expressed in ‘very “soft” language, without any threat of sanctions or disapproval, simply requiring companies to state that they have joined it’.<sup>285</sup>

As such, it is therefore important to highlight the following characteristics of the Global Compact:

- i. Its institutions are not actual regulatory bodies;
- ii. Businesses’ commitment to the Global Compact Ten Principles is voluntary; and
- iii. Compliance with the Ten Principles by a participating company is virtually non-enforceable.<sup>286</sup>

---

<sup>284</sup> UN Global Compact ‘The UN Global Compact Board’ [http://www.unglobalcompact.org/AboutTheGC/The\\_Global\\_Compact\\_Board/index.html](http://www.unglobalcompact.org/AboutTheGC/The_Global_Compact_Board/index.html) (accessed 25 February 2014)

<sup>285</sup> Daugareilh I ‘Corporate norms on CSR and international norms’ in Javillier JC (ed) *Governance, International Law and Corporate Societal Responsibility* (2007) 47.

<sup>286</sup> Rasche A & Waddock S ‘Global sustainability governance and the UN Global Compact: a rejoinder to critics’ (2014) *Journal of Business Ethics* 7-8.

Even though usually acclaimed for its comprehensiveness in institutionalising CSR on a global scale, the Global Compact has also been criticised for various weaknesses, which mostly undermine its strength and successes in realising its objectives:

‘Since its inception, the Global Compact has been on the receiving end of considerable criticism from civil society and other actors. The Compact was not only seen as “lacking teeth”, but also as a mechanism for “bluewashing” corporations that could project a socially responsible image through their association with the UN.’<sup>287</sup>

Another weakness of the Global Compact is the overgeneralisation of the Ten Principles. The Ten Principles established by the Global Compact are indeed flawed by the lack of a substantial regulatory input susceptible of immediate implementation, and the non-existence of a specific framework providing for an objective interpretation of the principles.<sup>288</sup> Hence, the Global Compact is also criticised for the fact that it promotes unilateral corporate approaches to implementing CSR values and principles, and therefore undermines the input of concerned stakeholders, such as, employees or affected communities.<sup>289</sup>

Organised labour, for instance, acknowledges the positive contribution of the Global Compact as an instrument promoting better corporate behaviour, but contests its effectiveness as a sustainable solution for the problems faced by workers’ organisations.

‘For the trade union movement, it can contribute to the realisation of global social dialogue. However, too many Global Compact activities promote unilateral management approaches and not enough activities result in genuine dialogue that solves problems and resolves disputes. Companies must not be allowed to benefit from the positive image that comes from identification with the Global Compact without also being required to engage the appropriate parties concerning their behavior.’<sup>290</sup>

Ultimately, the Global Compact is perceived as susceptible to realising effects contrary to its primary objectives. The liberal approach that the UN adopts in the Global Compact is supposedly prone to be exploited by corporations in order to further their commercial interests:

---

<sup>287</sup> Utting P & Zammit A *Beyond Pragmatism: Appraising UN-Business Partnerships* (2006) 8.

<sup>288</sup> Christian Aid, Amnesty International UK & Friends of the Earth ‘*Flagship or Failure? The UK’s Implementation of the OECD Guidelines and Approach to Corporate Accountability*’ (2005) 30.

<sup>289</sup> Voegtlin C & Pless NM ‘Global governance: CSR and the role of the UN Global Compact’ (2014) *Journal of Business Ethics* 2-3.

<sup>290</sup> International Confederation of Free Trade Unions *The Social Responsibilities of Business in a Global Economy* (2004) 7.

'Instead of bringing social values into the market, the Global Compact threatens to bring commercialism into the UN. It rewards rhetoric rather than deeds, and it undermines our efforts to bring a measure of corporate accountability, rather than purely voluntary responsibility, into the intergovernmental arena.'<sup>291</sup>

### **3.2.3.2 Other UN CSR initiatives**

Under the leadership of former Secretary General, Kofi Annan, the UN prioritised cooperation between the UN and the corporate world in an effort to regroup the various stakeholders of the world economy into working toward the achievement of the MDGs. Various initiatives were then undertaken that solicited the contribution of businesses toward finding suitable solutions to the multiple issues then faced by the global economy. Utting & Zammit describe this period as marked by the emergence of a new model characteristic of the new direction taken by the international community, that is, public-private partnerships aimed at the achievement of international development.<sup>292</sup>

#### **3.2.3.2.1 Voluntary Principles on Security and Human Rights**

Adopted in 2000, the aim of the Voluntary Principles on Security and Human Rights (VPs) is to engage businesses, governments and NGOs in a constructive dialogue on security and human rights issues in the energy and extractive sector.<sup>293</sup>

The VPs are based on international human rights standards and are meant to illustrate and implement the extractive industry's acknowledgement of its duty to promote and protect essential human rights.<sup>294</sup>The purpose of the VPs is therefore to help extractive companies

---

<sup>291</sup> Global Compact Counter-Summit *Joint Civil Society Statement on the Global Compact and Corporate Accountability* (2004) 2.

<sup>292</sup> 'In the field of international development, different decades seem to usher in new champions of change: the developmental state in the 1960s and 1970s; free-market forces and nongovernmental organisations (NGOs) in the 1980s and 1990s. The new millennium has offered up a hybrid variant: public-private partnerships (PPPs). ... [T]he UN has emerged as one of the principal proponents of PPPs. These are generally defined as initiatives where public-interest entities, private sector companies and/or civil society organisations enter into an alliance to achieve a common purpose, pool core competencies, and share risks, responsibilities, resources, costs and benefits.' Utting P & Zammit A *Beyond Pragmatism: Appraising UN-Business Partnerships* (2006) 1.

<sup>293</sup> Voluntary Principles Secretariat *Voluntary Principles on Security and Human Rights* (2000) Voluntary Principles Secretariat: Boston.

<sup>294</sup> Pitts C 'Voluntary Principles on Security and Human Rights' in Hale T & Held D *Handbook of Transnational Governance: Institutions and Innovations* (2011) 357-359.  
See also, Voluntary Principles Secretariat *Voluntary Principles on Security and Human Rights* (2000) 1.

maintain the safety and security of their operations within an operating framework that effectively ensures the respect for human rights and fundamental freedoms.<sup>295</sup>

The VPs are nevertheless non-binding and unenforceable and merely offer guidance to companies in maintaining the safety and security of their operations while ensuring respect for human rights and humanitarian law.<sup>296</sup>

### 3.2.3.2.2 UN Principles for Responsible Investment

Launched in 2006, the UN Principles for Responsible Investment (UNPRI) is a multi-stakeholder initiative the aim of which is to offer a set of aspirational and voluntary guidelines to corporate and investment entities wishing to address environmental, social, and corporate governance (ESG) issues:

‘The Principles provide a framework for achieving better long-term investment returns, and more sustainable markets. They offer a path for integrating environmental, social and governance criteria into investment analysis and ownership practices. If implemented, they have tremendous potential to more closely align investment practices with the goals of the United Nations, thereby contributing to a more stable and inclusive global economy.’<sup>297</sup>

UNPRI signatories undertake to respect and promote six Fundamental Principles articulated as follows:

1. We will incorporate ESG issues into investment analysis and decision-making processes.
2. We will be active owners and incorporate ESG issues into our ownership policies and practices.
3. We will seek appropriate disclosure on ESG issues by the entities in which we invest.
4. We will promote acceptance and implementation of the Principles within the investment industry.
5. We will work together to enhance our effectiveness in implementing the Principles.
6. We will each report on our activities and progress towards implementing the Principles.’<sup>298</sup>

The UNPRI are however voluntary and merely aspirational thus not enforceable and do not constitute a legal obligation per se for its signatories. Moreover, the UNPRI are broad guidelines without a minimum entry requirement or an absolute performance standard for

---

<sup>295</sup>Smith G & Angell D ‘Foreword’ in Voluntary Principles Secretariat *Voluntary Principles on Security and Human Rights: Implementation Guidance Tools* (2012) 3.

<sup>296</sup>Pitts C ‘Voluntary Principles on Security and Human Rights’ in Hale T & Held D *Handbook of Transnational Governance: Institutions and Innovations* (2011) 361-362.

<sup>297</sup>Annan K *Principles for Responsible Investment* (2006) 3.

<sup>298</sup>United Nations *UN Principles for Responsible Investment* (2006) 2.

responsible investment.<sup>299</sup> However, it needs to be pointed out that the UNPRI are enforceable to a certain extent as UNPRI signatories are under an obligation to report to the UNPRI Secretariat on the measures taken and the extent to which they are implementing the Principles, and failure to do so could result to the relevant entity being delisted.<sup>300</sup>

### **3.2.3.2.3 Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights**

The Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights (the Norms) were considered to be ‘the most comprehensive, clear and complete standards developed in relation to socially responsible corporate behaviour’.<sup>301</sup> The motivation for the creation of the norms evolved from the realisation that transnational corporate activities had the potential to generate a dual societal impact:

‘[T]he capacity to foster economic well-being, development, technological improvement and wealth, as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities.’<sup>302</sup>

Developed by the UN Sub-Commission on the Promotion and Protection of Human Rights and approved as a Draft by the UN in 2003, the norms therefore constituted a UN bid to formally regulate CSR globally. In fact, according to its stated objectives, the purpose of the draft norms was to introduce mandatory human rights norms and principles applicable to multinational corporations in their activities across the globe.<sup>303</sup> Indeed, Article 1 of the Norms stated: ‘Within their respective spheres of activity and influence, transnational

---

<sup>299</sup> Richardson BJ *Socially Responsible Investment Law: Regulating the Unseen Polluters* (2008) 400-401.

<sup>300</sup> United Nations ‘PRI launches new Reporting Framework’ (2014) <http://www.unpri.org/press/pri-launches-new-reporting-framework/> (accessed 9 June 2014).

<sup>301</sup> Lynch P *Human Rights and Corporate Social Responsibility* (2006) 6.

<sup>302</sup> See Preamble of *United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* (2003) 3.

<sup>303</sup> UN Commission on Human Rights *Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights* (2005) para 18.

corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights.<sup>304</sup>

Interestingly, the Norms also imposed upon States an obligation to provide a legal framework that facilitates the monitoring and enforcement of the respect for human rights by MNCs operating in their territories.<sup>305</sup> The Norms nevertheless emphasised its intention not to replace or supersede the regulatory function of States but to play a corollary role to the national legal framework regulating the human rights aspects of transnational corporations' activities.<sup>306</sup>

The principal objective of the Norms would have been to provide a mandatory legal framework promoting and protecting human rights against corporate abuse. However, as noted by Moder, the Norms did not actually create new human rights or enact new principles on the promotion of human rights, but merely attempted to provide a formal, mandatory aspect to already existing voluntary and non-enforceable principles.<sup>307</sup>

The core rights established by the Norms were:

- i. The right to equal opportunity and non-discriminatory treatment;
- ii. The right to security of person;
- iii. The rights of workers and their families;
- iv. Consumer rights and protections;
- v. Environmental rights and standards;
- vi. The respect for national sovereignty and human rights,
- vii. The prohibition of corruption; and
- viii. Fundamental rights to development (food and drinking water, housing, highest attainable physical and mental health standards etc).

---

<sup>304</sup> Article 1 of the United Nations *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* (2003).

<sup>305</sup> See Article 17 of the Norms which expressly imposes on states the obligation to 'establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises'.

<sup>306</sup> Lynch P *Human Rights and Corporate Social Responsibility* (2006)15.

<sup>307</sup> Moder KH *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights: Background Paper* (2005) 1.

Finally, the Norms also imposed on corporation the obligation to recognise, respect and promote notions of ‘public interest’, and ‘development objectives’ and the principles of transparency and accountability.<sup>308</sup>

In conclusion, it is to be noted that the main weakness of this otherwise comprehensive instrument remained the fact that it did not succeed in acquiring a formally enforceable, legal status. The Norms merely existed as a draft and were still in the process of being established as an international legal instrument. In June 2011, the UN Human Rights Council, instead of formally endorsing the mandatory principles contained in the Norms, merely vouched for the formation of a new soft law UN instrument, namely, the ‘Guiding Principles for Business and Human Rights’.<sup>309</sup>

#### **3.2.3.2.4 UN Guiding Principles for Business and Human Rights**

The UN Guiding Principles for Business and Human Rights is a voluntary set of guiding principles for global business ‘designed to provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity’.<sup>310</sup> The creation of the UN Guiding Principles for Business and Human Rights highlights the failure of the UN Commission on Human Rights’ bid to gather international approval for the establishment via the Draft Norms of a set of binding corporate human rights principles.

John Ruggie, the Special Representative of the UN Secretary-General for Business and Human Rights, defined the policies underpinning the new Guiding Principles as a framework promoting a triple objective: ‘Protect, Respect, and Remedy’. The purpose of the ‘Protect, Respect, and Remedy’ framework is: to establish the duty of States to implement legal and institutional frameworks effectively protecting against human rights abuses committed by third parties including corporations; to establish the responsibility, for corporations, to respect

---

<sup>308</sup> UN *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (2003) Articles 1-14.

<sup>309</sup> Bachmann SD & Miretski PP “Global Business and Human Rights - The UN ‘Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’ - A Requiem” (2012)17(1) *Deakin Law Review* 13.

<sup>310</sup> Bachmann SD & Miretski PP ‘Global Business and Human Rights - The UN “Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” – A Requiem’ (2012) 17(1) *Deakin Law Review* 1.

human rights; and finally the need to provide victims of human rights abuses with greater access to effective judicial and non-judicial remedies.<sup>311</sup>

In order to implement the ‘Protect, Respect, and Remedy’ framework, Ruggie recommended an approach that facilitated a compromise between regulatory and deregulatory forces via the adoption of a ‘smart mix’ of voluntary and legislative instruments: ‘States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.’<sup>312</sup>

### 3.2.4 The European Union framework on CSR

The European Union (EU) CSR framework is characterised by the fact that its approach to the issue of CSR is inspired by elements of the international CSR framework. The international CSR framework in this instance refers to UN institutions such as the Global Compact, as well as CSR initiatives by UN entities, such as the ILO and the OECD. In fact, EU CSR initiatives were until recently perceived as an attempt to adopt and adapt UN endorsed CSR principles and standards into the European context.<sup>313</sup>

Nonetheless, it is interesting to note that before the advent of the CSR framework, the European legal system already addressed various issues relevant to the topic of CSR. This does not necessarily suggest that CSR was already regulated in the European context; it merely indicates that national and regional regulations providing for the issues of human

---

<sup>311</sup> “The Framework rests on three pillars. The first is the State duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The second is the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The third is the need for greater access by victims to effective remedy, both judicial and non-judicial. Each pillar is an essential component in an inter-related and dynamic system of preventative and remedial measures: the State duty to protect because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business in relation to human rights; and access to remedy because even the most concerted efforts cannot prevent all abuse.’ Ruggie J *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011) 4.

<sup>312</sup> Ruggie J *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011) 8.

<sup>313</sup> Paragraph 3.2 of European Commission *Commission Communication of 25 October 2011 on ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’ 681 final* (2011) COM.

rights or the environment already dealt with various issues relevant to CSR.<sup>314</sup> Various CSR institutions also firstly emerged in Europe as voluntary instruments dealing with various aspects of the broad notion of CSR: for instance, socially responsible corporate activities were already promoted by instruments, such as, the European Employment Strategy, the EU-Ecolabels, as well as the Eco-Management and Audit Scheme.<sup>315</sup>

The following overview of CSR in the European regional context analyses the timeline of EU CSR initiatives, the underpinning policies and their contextual and theoretical significance.

#### **3.2.4.1 European Union Green Paper on CSR**

At the beginning of the new millennium, the EU identified the need to adopt an official approach to CSR, as well as a CSR framework addressing CSR issues at the regional level. In July 2001, the European Commission published its Green Paper<sup>316</sup> on ‘Promoting a European Framework for Corporate Social Responsibility’. Despite being later revised in 2002, the 2001 EU Green Paper will encapsulate and represent for a decade the official approach to CSR as adopted by the European Commission, till the advent of the 2011 ‘*Renewed EU Strategy 2011-14 for Corporate Social Responsibility*’.

The interest of the EU Green Paper primarily lies in the fact that it offers a comprehensive definition of the concept of CSR from a European perspective.<sup>317</sup> The EU Green Paper intends to determine all significant characteristic of CSR, as relevant to the EU context. The voluntary aspect of CSR is considered to be an essential characteristic of CSR.<sup>318</sup>

Thus the EU Green Paper highlights the followings criteria as essential in the definition of CSR:

- ‘- The voluntary nature (i.e. going beyond the legal obligations imposed on the enterprise) of the relevant practices;

---

<sup>314</sup> Augenstein D *Study of the Legal Framework on Human Right and the Environment Applicable to European Enterprises Operating Outside the European Union* (2010)77.

<sup>315</sup> MacLeod S ‘Corporate Social Responsibility within the European Union Framework’(2005) 23 (3) *Wisconsin International Law Journal* 541-542.

<sup>316</sup> European Commission *Green Paper of 18 July 2001 on “Promoting a European framework for Corporate Social Responsibility”* “366 final (2001) COM.

<sup>317</sup> See Paragraph 2 ‘What is corporate social responsibility?’ of European Commission *Green Paper of 18 July 2001 on ‘Promoting a European Framework for Corporate Social Responsibility’* 366 final (2001) COM.

<sup>318</sup> ‘Proposals should build on the voluntary nature of corporate social responsibility and identify ways in which it can contribute to achieving sustainable development and a more effective way of governance.’ See para 90 of European Commission *Green Paper of 18 July 2001 on ‘Promoting a European framework for Corporate Social Responsibility’* 366 final (2001) COM.

- the sustainable nature of the relevant commitment (CSR is not the sum total of ‘media coups’ but a sustainable commitment based on a new form of corporate governance);
- partnership (in accordance with fairly non-specific modalities) between those involved within and outside the enterprise on the subjects that concern them;
- the need for transparency in this context (it is not enough simply to ‘say’ something, if it cannot actually be ‘proved’, elements of proof must at least be provided).<sup>319</sup>

The European Communication of 25 October 2011 adopted a ‘renewed’ approach to CSR that entailed a new definition of CSR as well as a new position on the issue of the regulation of CSR, and effectively replaced the 2001 EU Green Paper.

### 3.2.4.2 European Union CSR Communications

From May 2001 to March 2006, the EU produced various Communications with the dual purposes of clarifying the EU definition of CSR and proposing CSR implementation measures.

In 2001, the EU clarified its CSR position in two specific Communications: the ‘Communication on the E.U. Role in Promoting Human Rights and Democratisation in Third Countries’<sup>320</sup> and the ‘Communication on Promoting Core Labour Standards and Improving Social Governance in the Context of Globalisation’.<sup>321</sup>

The European Communication of 15 May 2001<sup>322</sup> presented the EU strategy for sustainable development as well as concrete measures the European Commission proposed to introduce. For instance, all publicly quoted companies with at least 500 staff members are invited to publish a ‘triple bottom line report’ in their annual reports to shareholders that measures their performance against economic, environmental and social criteria.<sup>323</sup>

---

<sup>319</sup> Segal JP, Sobczak A & Triomphe CE (ed) *Corporate social responsibility and working conditions* (2003) 1.

<sup>320</sup> European Commission *Commission Communication of 8 May 2001 on ‘The European Union’s Role in Promoting Human Rights and Democratisation in Third Countries’* 252 final (2001) COM.

<sup>321</sup> European Commission *Commission Communication of 18 July 2001 on ‘Promoting Core Labour Standards and Improving Social Governance in the Context of globalisation.’* 416 final (2001) COM.

<sup>322</sup> European Commission *Commission Communication of 15 May 2001 on ‘A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development’* 264 final (2001) COM.

<sup>323</sup> European Commission *Commission Communication of 15 May 2001 on ‘A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development’* 264 final (2001) COM.

Besides further refining the definition of CSR, the European Communication of 2 July 2002 proposed a strategy aimed at the promotion of CSR at community level.<sup>324</sup>

The European Communication of 22 March 2006 essentially promoted and encouraged a multi-stakeholder approach to CSR implementation. It therefore called on governments to actively participate by cooperating on CSR issues and by encouraging companies to commit to develop such action. The Communication also urged companies to launch CSR initiatives and effectively communicate with their stakeholders in order to improve transparency.<sup>325</sup>

### 3.2.4.3 European Parliament CSR Resolutions

The European Parliament has also adopted various Resolutions with direct impact on the regional CSR policy.

The 2003 European Parliament Resolution reaffirmed the voluntary basis of CSR,<sup>326</sup> and noted the importance of CSR for the achievement of sustainable development; hence the necessity to support corporate initiatives relevant to the sustainable development objective of the EU.<sup>327</sup>

The European Union Parliament Resolution '*Corporate social responsibility: a new partnership*' of 2006, while staying within the framework of the CSR policy already implemented by the EU, nevertheless adopted a more proactive approach to CSR implementation. This Resolution in fact establishes a synergy between CSR and the traditional approach to corporate legal liability.<sup>328</sup> The European Parliament subsequently highlights the need of EU regulations that effectively support CSR and recommends the

---

<sup>324</sup> European Commission *Commission Communication of 2 July 2002 on 'Corporate Social Responsibility: A Business Contribution to Sustainable Development'* 347 final (2002) COM.

<sup>325</sup> European Commission *Commission Communication of 22 March 2006 on 'Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility'* 136 final (2006) COM.

<sup>326</sup> Resolution Points 3, 7, and 8 of European Parliament *Résolution du Parlement européen sur la communication de la Commission concernant la responsabilité sociale des entreprises: Une contribution des entreprises au développement durable* (COM (2002) 347 – 2002/2261(INI)) (2003).

<sup>327</sup> Resolution Point 15 of European Parliament *Résolution du Parlement européen sur la communication de la Commission concernant la responsabilité sociale des entreprises: Une contribution des entreprises au développement durable* (COM (2002) 347 – 2002/2261(INI)) (2003).

<sup>328</sup> Paragraphs 5, 32 and 42 of European Parliament *Corporate social responsibility: a new partnership, 2006/2133(INI)* (2007).

assessment of the impact such initiatives could have on the environment, and human and social rights.<sup>329</sup>

Other CSR relevant Resolutions of the European Parliament include:

- a) The European Parliament Resolution on CSR in international trade agreements, the purpose of which is to promote the inclusion of a CSR clause in all trade agreements that the EU is to enter into.<sup>330</sup>
- b) The European Parliament Resolutions of 6 February 2013 on CSR: promoting society's interests and a route to sustainable and inclusive recovery.<sup>331</sup>
- c) The European Parliament Resolutions of 6 February 2013 on CSR: accountable, transparent and responsible business behaviour and sustainable growth.<sup>332</sup>

#### **3.2.4.4 European Union Multi-stakeholders CSR institutions**

In order to effectively implement CSR, the EU has also encouraged dialogue and cooperation between stakeholders, hence the following initiatives:

- a) Launch in October 2002 of the 'Multi-Stakeholder Forum on CSR', bringing together representatives from employee and employer organisations, governmental institutions, NGOs and business networks, with the EU participating as moderator.
- b) Launch in March 2006 of an 'Alliance on Corporate Social Responsibility', a joint initiative between the European Commission and the business community.

#### **3.2.4.5 The European Communication of 25 October 2011**

In 2011 the European Commission adopted a 'renewed' approach to CSR that entailed a new definition of CSR as well as a new position on the issue of the regulation of CSR.<sup>333</sup> CSR is

---

<sup>329</sup> Paragraph 26, 27, 30, and 35 of European Parliament *Corporate social responsibility: a new partnership, 2006/2133(INI)* (2007).

<sup>330</sup> European Parliament *Corporate social responsibility in international trade agreements 2009/2201(INI)* (2010).

<sup>331</sup> European Parliament *Corporate social responsibility: promoting society's interests and a route to sustainable and inclusive recovery* (2013).

<sup>332</sup> European Parliament *Corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth* (2013).

<sup>333</sup> European Commission *Commission Communication of 25 October 2011 on 'A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' 681 final* (2011) COM.

considered to be inherent to the role of business in society.<sup>334</sup> Thus the European Communication of 25 October 2011 was essentially geared toward a regulationist approach to CSR that is characterised by the erosion of the voluntary aspect of CSR as entrenched in the 2001 Green Paper.<sup>335</sup>

At the policy level, the 2011 CSR Communication of the EU indicated a break from the UN CSR framework's influence on EU CSR policies, especially considering the fact that the UN had just failed to formally adopt the mandatory Draft Norms and had subsequently adopted yet another voluntary and non-enforceable CSR instrument (The Guiding Principles).

This change of direction of the EU CSR policy is illustrated by its transition to a CSR framework that limits the voluntary aspect of CSR and recommends the formal regulation of CSR.<sup>336</sup> Nevertheless the 2011 CSR Communication also endorses corporate self-regulation as essential for the development of an effective CSR framework,<sup>337</sup> and ultimately recommends, as a compromise, a desirable mix of legislative and voluntary initiatives as a viable solution to the promotion and implementation of CSR:

'The development of CSR should be led by enterprises themselves. Public authorities should play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation, for example to promote transparency, create market incentives for responsible business conduct, and ensure corporate accountability.'<sup>338</sup>

The EU's new CSR approach generated mixed reactions from concerned parties. The erosion of the voluntary aspect of CSR in the new EU definition of the concept encountered severe criticism from the business community.<sup>339</sup> However, corporate stakeholders and traditional

---

<sup>334</sup> Roberts JM & Markley AW 'CSR: New EU strategy threatens U.S. and European companies' (2011) <http://www.heritage.org/research/reports/2011/11/csr-new-eu-strategy-threatens-us-and-european-companiesn> (accessed 9 June 2014).

<sup>335</sup> See Introduction of European Commission *Commission Communication of 25 October 2011 on 'A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' 681 final* (2011) COM. See also Roberts JM & Markley AW 'CSR: New EU strategy threatens U.S. and European companies' (2011) <http://www.heritage.org/research/reports/2011/11/csr-new-eu-strategy-threatens-us-and-european-companiesn> (accessed 9 June 2014).

<sup>336</sup> European Commission *Commission Communication of 25 October 2011 on 'A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' 681 final* (2011) COM.

<sup>337</sup> European Commission *Commission Communication of 25 October 2011 on 'A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' 681 final* (2011) 9-10.

<sup>338</sup> Paragraph 3.4 of European Commission *Commission Communication of 25 October 2011 on 'A Renewed EU Strategy 2011-14 for Corporate Social Responsibility' 681 final* (2011) COM.

<sup>339</sup> 'Since 2001, the Commission has consistently and coherently underpinned the voluntary approach of EU CSR policy, but is now departing from this very important principle of voluntary participation. Eurochambres strongly underlines the importance of the voluntary approach, firmly believing that the concept of

CSR advocates welcomed this new approach, highlighting its potential impact on the effective implementation of the CSR principles and standards usually accepted:

‘Being a general concept, we concede that CSR cannot be and should not be imposed by law as such. However, the role of public authorities should not be limited to supportive actions and the development should not only be driven by business. The recognition of the States' duty to protect human rights and the confirmation of public authorities' legitimacy to act in the CSR debate is an important and necessary step to create foundations on which successful CSR policies can be built.’<sup>340</sup>

### 3.2.5 The International Organisation for Standardisation (ISO) and CSR

The ISO has over the years formulated various standards dealing with specific aspects of corporate activity relevant to CSR, namely:

-ISO 9000: Series of standards on quality management<sup>341</sup>

-ISO 14000: Series of standards on Environmental management<sup>342</sup>

- ISO 31000: Series of standards on Risk management<sup>343</sup>

However, the ISO's main contribution to the global framework of CSR was achieved with the publication in 2010 of the ISO 26000 the purpose of which is to define international CSR standards.<sup>344</sup> Since the publication of the ISO 26000, several international approaches to the definition of CSR have relied on ISO 26000 standards. The EU position on CSR, for instance, refers to ISO standards. The 2011 EU Communication on CSR assigns a vital role to the recent ISO 26000 as an important item of the international framework on CSR.<sup>345</sup> The EU

---

CSR cannot replace the prescriptive enforcement of law and is by its very nature beyond the remit of legal compliance. Once CSR is attributed with a prescriptive, legal form, it can no longer be defined as CSR.’ Eurochambres *Commission Communication - A Renewed EU Strategy 2011-14 for Corporate Social Responsibility: Position Paper* (2012) 3.

<sup>340</sup> The European Coalition for Corporate Justice *CSR Communication-Going beyond Words: Time to Act* (2011)3.

<sup>341</sup> International Organization for Standardization *ISO 9000 - Quality management* [http://www.iso.org/iso/home/standards/management-standards/iso\\_9000.htm](http://www.iso.org/iso/home/standards/management-standards/iso_9000.htm) (accessed 6 June 2014).

<sup>342</sup> International Organization for Standardization *ISO 14000 - Environmental Management* <http://www.iso.org/iso/home/standards/management-standards/iso14000.htm> (accessed 6 June 2014).

<sup>343</sup> International Organization for Standardization *ISO 31000 - Risk management* <http://www.iso.org/iso/home/standards/iso31000.htm> (accessed 6 June 2014).

<sup>344</sup> International Organization for Standardization *ISO 26000: Guidance on corporate social responsibility* (2010).

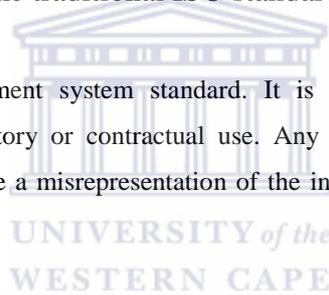
<sup>345</sup> See para 4.8.1: ‘Focusing on internationally recognised CSR principles and guidelines’. This paragraph precisely highlights the intention of the EU to ‘[m]onitor the commitments made by European enterprises with

CSR approach is subsequently usually tested against the ISO standards,<sup>346</sup> even though its heavy reliance on ISO 26000 has been criticised.<sup>347</sup>

The UN Global Compact<sup>348</sup> has also acknowledged the importance of the ISO 26000 as a tool ‘to build local capacity to advance universal principles in business – particularly in developing countries – which is a critical step in mainstreaming the business-society agenda everywhere and achieving a level global playing field for all businesses’.<sup>349</sup> The Global Compact therefore considers its mission purpose to be connected to the objectives of ISO 26000.<sup>350</sup>

The aim of *ISO 26000: Guidance on social responsibility* is to provide guidance on how businesses and organisations can operate in a socially responsible way. This means acting in ‘an ethical and transparent way that contributes to the health and welfare of society’.<sup>351</sup> Nonetheless, ISO 26000 merely provides guidance rather than stating requirements concerning CSR. Therefore, unlike traditional ISO standards, it cannot be certified:

‘ISO 26000 is not a management system standard. It is not intended or appropriate for certification purposes or regulatory or contractual use. Any offer to certify, or claims to be certified, to ISO 26000 would be a misrepresentation of the intent and purpose and a misuse of



---

more than 1.00 employees to take account of internationally recognised CSR principles and guidelines, and take account of the ISO 26000 Guidance Standard on Social Responsibility in its own operations’. Commission of the European Communities *A Renewed EU Strategy 2011-14 for Corporate Social Responsibility* (2011) 13.

<sup>346</sup> Eurochambres *Commission Communication - A Renewed EU Strategy 2011-14 for Corporate Social Responsibility: Position Paper* (2012) 5.

<sup>347</sup> ‘Finally, the commission’s new strategy on CSR raises concerns by assigning a prominent role to the ISO 26000 Guidance Standard on Social Responsibility, which was introduced by the ISO in November 2010. Serious questions surround ISO 26000, including issues concerning the process that was used by the ISO to fashion ISO 26000, the overly broad definition of the concept of CSR adopted by ISO 26000, and the appropriateness of ISO as a private body to define extensive and detailed principles of social responsibility for companies, governments, and civil society organisations (all of which are purportedly within the scope of ISO 26000)’ Roberts JM & Markley AW ‘CSR: New EU strategy threatens U.S. and European companies’ (2011) <http://www.heritage.org/research/reports/2011/11/csr-new-eu-strategy-threatens-us-and-european-companies> (accessed 9 June 2014).

<sup>348</sup> See 3.2.3.1 above.

<sup>349</sup> United Nations Global Compact *An Introduction to Linkages between UN Global Compact Principles and ISO 26000 Core Subjects* (2010) 1.

<sup>350</sup> ‘The release of “ISO 26000: Guidance standard on social responsibility” gives a boost to ongoing efforts by the UN Global Compact to establish widespread common understanding of corporate responsibility principles. ISO 26000 and the UN Global Compact are connected by a fundamental belief that organisations should behave in a socially responsible way.’ United Nations Global Compact *An Introduction to Linkages between UN Global Compact Principles and ISO 26000 Core Subjects* (2010) 1.

<sup>351</sup> ISO *ISO 26000: Social responsibility* <http://www.iso.org/iso/home/standards/management-standards/iso26000.htm> (accessed 28 February 2014)

this International Standard. As ISO 26000 does not contain requirements, any such certification would not be a demonstration of conformity with this International Standard.<sup>352</sup>

Indeed, the objective of ISO 26000 is to clarify the concept of CSR, and subsequently assist businesses and organisations in translating these principles into effective actions. ISO 26000 is therefore an international CSR instrument aimed at all types of organisations regardless of their activity, size or location, and purported to globally promote the exchanges of best practices relating to social responsibility.<sup>353</sup>

ISO 26000 aims to provide corporations with guidance on CSR with regard to various issues: the definition of CSR; the basic principles of CSR; the core issues of social responsibility; the mechanism of integration and implementation of CSR practices; the identification of and engagement with corporate stakeholders; and, finally, the communication of CSR commitments as well as reporting on CSR performance.<sup>354</sup>

As to its content, ISO 26000 specifically deals with the following core topics of CSR: organisational governance; human rights; labour practices; the environment; fair operating practices; consumer issues; and community involvement and development.<sup>355</sup>

### **3.2.6 Prominent national initiatives**

In order to conclude the examination of public initiatives at the core of the international framework of CSR, it is imperative to discuss a few prominent national CSR initiatives relevant to the global framework of CSR. Indeed, a number of CSR initiatives implemented in a national context have evolved into acquiring a global status for various reasons, such as, their comprehensiveness and global relevance, their effectiveness in addressing specific CSR issues, or even simply because of the sphere of influence of the promoting government. Examples of these national CSR instruments and institutions include:

#### **3.2.6.1 The King Reports on Corporate Governance**

The King Reports on Corporate Governance<sup>356</sup> are innovative codes of corporate governance issued in South Africa by the King Committee on Corporate Governance in three reports

---

<sup>352</sup> ISO *Discovering ISO 26000* (2010)4.

<sup>353</sup> ISO *Discovering ISO 26000* (2010) 2-3.

<sup>354</sup> ISO *Discovering ISO 26000* (2010) 3.

<sup>355</sup> ISO *Discovering ISO 26000* (2010) 5-7.

dated 1994 for King I,<sup>357</sup> 2002 for King II<sup>358</sup> and 2009 for King III<sup>359</sup>. The King Reports have been praised as ‘the most effective summary of the best international practices in corporate governance’.<sup>360</sup>

### 3.2.6.2 The US Model Business Practices

The US Model Business Practices were established in the United States of America in 1996 on the initiative of the US Department of Commerce, to act as a voluntary set of guidelines for corporations. The aim was to recognise the positive role of US business in upholding and promoting universal standards of human rights.<sup>361</sup>

Inspired by the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises, the US Model Business Practices addressed issues, such as, health and safety, forced labour, child labour, non-discrimination, freedom of association, collective bargaining, environmental protection, competition, bribery and improper benefits, improper involvement in local political activities, free expression, political coercion, and community development.

However, the US Model Business Practices have been criticised for the fact that they only act as a reference point and do not include an implementation mechanism. Companies are encouraged to develop their own codes of conduct as appropriate to their individual and specific situations but relevant to and consistent with the US Model Business Practices.<sup>362</sup>

## 3.3 CSR instruments and institutions by private role players

The purpose of this section is to analyse CSR instruments and institutions developed by private and non-governmental international institutions. Considering the fact that a multitude of non-governmental CSR initiatives co-exist across the globe, this thesis does not attempt to

---

<sup>356</sup> See 4.2.4.2.2 below

<sup>357</sup> King M *King Report on Corporate Governance* (1994).

<sup>358</sup> King M *King Report on Corporate Governance for South Africa* (2002).

<sup>359</sup> King M *The King Code of Governance Principles and the King Report on Governance* (2009).

<sup>360</sup> Banhegyi S *Management: Fresh Perspectives* (2007)317.

<sup>361</sup> The United States Council for International Business ‘Corporate Responsibility Initiatives: The US Model Business Practices’ <http://www.uscib.org/index.asp?documentID=2579> (accessed 7 March 2014).

<sup>362</sup> Scherer AG & Smid M ‘The downward spiral and the US Model Business Principles - why MNEs should take responsibility for the improvement of world-wide social and environmental conditions’ (2000) 40 (4) *Management International Review* 362.

provide an exhaustive list of all these CSR instruments and institutions, but only of the most prominent of these CSR initiatives as relevant to this thesis.

### 3.3.1 NGO and other corporate stakeholders' initiatives

#### 3.3.1.1 AccountAbility

Created in London in 1995, AccountAbility is an independent not-for-profit NGO that globally promotes corporate accountability and sustainable business practices.<sup>363</sup>

As such, the purpose of AccountAbility is to become a

‘leading global organization providing innovative solutions to the most critical challenges in corporate responsibility and sustainable development [...] helping corporations, non-profits and governments embed ethical, environmental, social, and governance accountability into their organizational DNA’.<sup>364</sup>

In order to achieve that mission purpose, AccountAbility has spread its activities across three areas:

- a) **Research:** the AccountAbility Institute initiates and implements CSR related research. Its research focusses on the following topics: organisational accountability, responsible competitiveness, collaborative governance and citizen participation, governance, organisational design, stakeholder engagement, partnerships and alliances, supply chain management, and ‘base of the pyramid’ strategies.<sup>365</sup>
- b) **Services:** AccountAbility provide consultation services to businesses, civil institutions, government bodies, partnerships and multilateral organisations. The purpose of these consultations is to improve the performance of these organisms in the areas of corporate responsibility, sustainable development, and governance. The topics covered are diverse and principally relate to strategy and governance, stakeholder engagement, CSR reporting, performance management systems, and program management.<sup>366</sup>

---

<sup>363</sup> AccountAbility A21: *Development as Accountability, Accountability Innovators in Action* (2007) 2.

<sup>364</sup> AccountAbility Institute *Insights from Corporate Responsibility Leaders* (2012) 1.

<sup>365</sup> AccountAbility Institute *Insights from Corporate Responsibility Leaders* (2012) 16.

<sup>366</sup> AccountAbility Institute *Insights from Corporate Responsibility Leaders* (2012) 16.

- c) **Standards:** The foremost contribution of AccountAbility to the creation of a global framework of CSR consists in the publication as from 1999 of the AA1000 AccountAbility Framework Standard.<sup>367</sup>

Developed through a multi-stakeholder consultation process, AccountAbility's AA1000 series are 'principles-based standards to help organisations become more accountable, responsible and sustainable' addressing 'issues affecting governance, business models and organisational strategy, as well as providing operational guidance on sustainability assurance and stakeholder engagement'.<sup>368</sup> The AA1000 series of standards offers the AccountAbility Principles for Sustainable Development, fundamental principles of corporate social accountability that are pivotal to the overall CSR theory: <sup>369</sup>the Foundation Principle of Inclusivity<sup>370</sup>, the Principle of Materiality<sup>371</sup> and the Principle of Responsiveness<sup>372</sup>

The AA1000 Series of Standards consist of the following standards:

- a) The **AA1000 AccountAbility Principles Standard (AA1000APS)** provides organisations with a framework that facilitates the task to identify priorities and respond to sustainability challenges.<sup>373</sup>
- b) The **AA1000 Assurance Standard (AA1000AS)** provides a methodology for assurance practitioners to evaluate the nature and extent of an organisation's adherence to the AccountAbility Principles.<sup>374</sup>

---

<sup>367</sup> AccountAbility Institute *Insights from Corporate Responsibility Leaders* (2012) 16.

<sup>368</sup> AccountAbility Institute *Insights from Corporate Responsibility Leaders* (2012) 16.

<sup>369</sup> 'The foundation principle of Inclusivity is necessary for the achievement of Materiality and Responsiveness. Together the three principles support the realisation of accountability. Inclusivity is the starting point for determining materiality. The materiality process determines the most relevant and significant issues for an organisation and its stakeholders. Responsiveness is the decisions, actions and performance related to those material issues.' AccountAbility *AA1000 AccountAbility Principles Standard 2008* (2008) 9.

<sup>370</sup> 'For an organisation that accepts its accountability to those on whom it has an impact and who have an impact on it, inclusivity is the participation of stakeholders in developing and achieving an accountable and strategic response to sustainability.' AccountAbility *AA1000 AccountAbility Principles Standard 2008* (2008) 10.

<sup>371</sup> 'Materiality is determining the relevance and significance of an issue to an organisation and its stakeholders. A material issue is an issue that will influence the decisions, actions and performance of an organisation or its stakeholders.' AccountAbility *AA1000 AccountAbility Principles Standard 2008* (2008) 12.

<sup>372</sup> 'Responsiveness is an organisation's response to stakeholder issues that affect its sustainability performance and is realised through decisions, actions and performance, as well as communication with stakeholders.' AccountAbility *AA1000 AccountAbility Principles Standard 2008* (2008) 14.

<sup>373</sup> AccountAbility *AA1000 AccountAbility Principles Standard 2008* (2008).

<sup>374</sup> AccountAbility *AA1000 Assurance Standard 2008* (2008).

- c) The **AA1000 Stakeholder Engagement Standard (AA1000SES)** provides a framework that helps organisations to ensure that stakeholder engagement processes are purpose driven, robust and deliver results.<sup>375</sup>

### 3.3.1.2 The Global Reporting Initiative and its Sustainability Reporting Guidelines

The Global Reporting Initiative (GRI) was created in 1997 by the Tellus Institute and the NGO CERES (Coalition for Environmentally Responsible Economies) with the support of the UN Environment Programme (UNEP).

The objective of the GRI is to entrench sustainability reporting in the corporate culture as a basic corporate practice as important and indispensable as financial reporting. The process of producing sustainability reports is usually referred to as corporate social reporting, triple bottom line reporting, ecological footprint reporting, and environmental, social and governance (ESG) reporting. The GRI defines sustainability reporting as

‘the practice of measuring, disclosing, and being accountable to internal and external stakeholders for organisational performance towards the goal of sustainable development.[...] A sustainability report should provide a balanced and reasonable representation of the sustainability performance of a reporting organisation – including both positive and negative contributions’.<sup>376</sup>

The GRI also has published the Sustainability Reporting Guidelines (SRG), a set of global standards for sustainability reporting. The SRG was first published as a draft in 1999. Published in May 2013, the G4 Sustainability Reporting Guidelines is the latest version of the SRG. The G4 is presented as a combination of two complementary documents: a manual that establishes essential GRI reporting principles and standard disclosures together with a separate implementation manual the purpose of which is to clearly outline and explain the reporting process:

‘The GRI Sustainability Reporting Guidelines (the Guidelines) offer Reporting Principles, Standard Disclosures and an Implementation Manual for the preparation of sustainability reports by organisations, regardless of their size, sector or location. The Guidelines also offer an

---

<sup>375</sup> AccountAbility *AA1000 Stakeholder Engagement Standard* (2011).

<sup>376</sup> Global Reporting Initiative *G3 Sustainability Reporting Guidelines* (2006)3.

international reference for all those interested in the disclosure of governance approach and of the environmental, social and economic performance and impacts of organisations.’<sup>377</sup>

### 3.3.1.3 The Ethical Trading Initiative

The Ethical Trading Initiative (ETI) is the fruit of the collaboration between the British Department for International Development and a group of UK companies, NGOs and trade union organisations. Established in the UK in 1998, the ETI is a joint project of British corporations and authorities reacting to reports of human rights abuses and labour malpractices observed in the supply chain of globally established brands.<sup>378</sup>

The ETI is a multi-stakeholders alliance of companies, trade unions and voluntary organisations and its primary objective is to protect labour and employment rights in the global supply chain of transnational corporations. As such, the ETI aims to promote decent working conditions as well as fair and ethical labour practice in the interest of workers across the globe.<sup>379</sup>

The ETI focus is on the achievement of this objective via the effective implementation of codes of labour practice within the framework of internationally established instruments, such as the ILO conventions:

‘The purpose of the ETI is to promote improved conditions for workers through the implementation of codes of labour practice based on national law and international labour standards. By becoming a member of ETI, a company commits itself to adopt and implement the ETI Base Code and to undertake activities intended to promote respect for workers’ rights and to achieve real improvements in working conditions within their supply chain. Member companies should give special attention to the rights of workers most vulnerable to abusive labour practices, notably women, home workers, agency workers, temporary workers, migrant workers and smallholders.’<sup>380</sup>

Companies that join the ETI have to adopt the ETI Base Code in full and are also required to sign up to ETI's Principles of Implementation setting out approaches to ethical trade that

---

<sup>377</sup> Global Reporting Initiative *G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures* (2013) 5.

<sup>378</sup> Albareda L ‘Ethical Trading Initiative’ in Idowu SO *et al* (eds) *Encyclopedia of Corporate Social Responsibility* (2013) 1080.

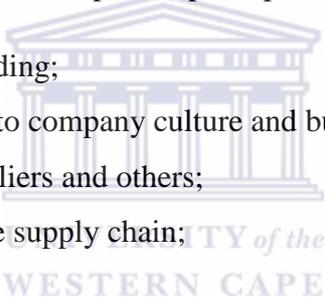
<sup>379</sup> Albareda L ‘Ethical Trading Initiative’ in Idowu SO *et al* (eds) *Encyclopedia of Corporate Social Responsibility* (2013) 1079.

<sup>380</sup> ETI *The ETI Principles of Implementation* (2009)1.

member companies should follow as mandatory guidelines.<sup>381</sup> The ETI Base Code was designed and adopted as an international code of conduct offering minimum standards that all ETI members have to respect and integrate in their own corporate codes of conduct.<sup>382</sup> The Base Code is derived from the standards of the ILO, and is an internationally recognised code of labour practice. It provides ETI members with a framework for the implementation of working conditions and labour rights in accordance with internationally agreed standards.<sup>383</sup>

The Base Code covers the following topics: eradication of forced, bonded, involuntary, and prison labour; eradication of child labour; freedom of association and the right to collective bargaining; safe and hygienic working conditions; decent wages and working hours; eradication of discrimination as well as harsh or inhumane treatment; and the provision of regular employment.<sup>384</sup>

The ETI's Principles of Implementation provide guidelines for the implementation of the Base Code. It provides corporation with specific principles related to:

- 
- a) Commitment to ethical trading;
  - b) Integrating ethical trade into company culture and business practices;
  - c) Capacity building for suppliers and others;
  - d) Identifying problems in the supply chain;
  - e) Improvement actions; and
  - f) Transparency.<sup>385</sup>

The importance of the ETI lies in the fact that the Base Code and its Principles of Implementation do generate soft law principles of global governance. This indeed is an interesting illustration of the appropriation, by private entities, of the regulatory function of the State(s).<sup>386</sup>

---

<sup>381</sup> Ethical Trading Initiative *The ETI Principles of Implementation* (2009)1.

<sup>382</sup> Ethical Trading Initiative *The ETI Base Code* (2012)3.

<sup>383</sup> ETI *ETI Base Code Appendices: International Standards and Definitions* (2009)1-2.

<sup>384</sup> ETI *The ETI Base Code* (2012)1-3.

<sup>385</sup> Ethical Trading Initiative *The ETI Principles of Implementation, Final Text 19 February 2009*

<sup>386</sup> Private actors increasingly influence global governance and generate transnational rules and regulations. By creating soft law, they adopt governance tasks that were traditionally in the responsibility of sovereign states. These modes of "private governance" are quite disputed. Some hope that by including private actors, democracy on a global level can be enhanced. Others fear that private governance circumvents democratically legitimated governments and that private regulation competes with national and international law. Thus, questions arise about the legitimisation of private actors and about the democratic legitimacy of private go

Schaller notes that one of the recurrent flaws observed in private mechanisms of governance is the inefficient integration of all stakeholders in the decision process. Thus the ‘main criticism in regard to ETI is that suppliers and workers are not integrated sufficiently’.<sup>387</sup> The efficiency of ETI mechanisms of control, monitoring and accountability is also of concern:

‘Another potential threat of private governance is that accountability cannot be ensured. Even though ETI surely shows some deficits with regard to transparency as well as the ensuring of accountability to workers and Southern suppliers, there are still informal control mechanisms that hold ETI members accountable, and ETI provides a broad range of information about its work.’<sup>388</sup>

#### **3.3.1.4 The Fair Labor Association**

The Fair Labor Association (FLA) was created in 1999 as a multi-stakeholder initiative between several corporations, civil society organisation, as well as various universities and colleges. The FLA was initially created as a task force set up by former US President, Bill Clinton, in reaction to reports indicating the use of child labour and the practice of sweatshop factories by major US apparel and footwear brands. The objective of the task force was to find collaborative solutions for the improvement of working conditions in the apparel and footwear industries.<sup>389</sup> This initial task force subsequently evolved into the FLA and is now headquartered in Washington, DC, with offices in China, Switzerland and Turkey.

The FLA operates as a platform where concerned and /or interested parties collaboratively work towards improving labour rights and working conditions at the global level, specifically addressing the issues of sweatshop factories and the monitoring of the global supply chain of affiliated corporations.<sup>390</sup>

---

vernance.’ Schaller S *The Democratic Legitimacy of Private Governance. An Analysis of the Ethical Trading Initiative* (2007) 2.

<sup>387</sup>Schaller S *The Democratic Legitimacy of Private Governance. An Analysis of the Ethical Trading Initiative* (2007) 43.

<sup>388</sup> Schaller S *The Democratic Legitimacy of Private Governance. An Analysis of the Ethical Trading Initiative* (2007) 44.

<sup>389</sup> MacDonald K ‘Fair Labor Association’ in Hale T & Held D (eds) *The Handbook of Transnational Governance: Institutions and Innovations* (2011) 243-244.

<sup>390</sup> FLA *FLA Charter* (2013) 3.

The principal instruments underpinning the FLA activities are the FLA *Workplace Code of Conduct and Compliance Benchmarks*<sup>391</sup> and the FLA *Principles of Fair Labor & Responsible Sourcing*:<sup>392</sup>

The FLA currently operates as a CSR monitoring and verification platform that focusses on labour and employment aspects of corporate activities. Corporations voluntarily join the FLA and commit not only to implement the FLA *Workplace Code*, but also to establish internal systems for monitoring workplace conditions as well as maintaining labour and employment standards throughout their global supply chains.<sup>393</sup>

'The FLA Workplace Code of Conduct defines labor standards that aim to achieve decent and humane working conditions. The Code's standards are based on International Labor Organisation standards and internationally accepted good labor practices. Companies affiliated with the FLA are expected to comply with all relevant and applicable laws and regulations of the country in which workers are employed and to implement the Workplace Code in their applicable facilities. When differences or conflicts in standards arise, affiliated companies are expected to apply the highest standard. The FLA monitors compliance with the Workplace Code by carefully examining adherence to the Compliance Benchmarks and the Principles of Monitoring. The Compliance Benchmarks identify specific requirements for meeting each Code standard, while the Principles of Monitoring guide the assessment of compliance. The FLA expects affiliated companies to make improvements when Code standards are not met and to develop sustainable mechanisms to ensure ongoing compliance.'<sup>394</sup>

The FLA, in collaboration with its affiliates, monitors the implementation of the FLA Code by member corporations, verifies strict compliances with the guidelines and principles set by the FLA Code of Conduct, and, finally develops and shares global best labour practices amongst members, partners and affiliates.<sup>395</sup>

The FLA mission also entails conducting independent and unannounced audits of factories and plants to evaluate compliance by a member corporation with the principles set by the FLA Code. A further objective of these unannounced audits of factories is to verify companies' internal systems and to assess the efforts made in order to comply with the FLA Code. When the result of the audits reveals a consistent and comprehensive compliance with

---

<sup>391</sup> FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011)

<sup>392</sup> FLA *FLA Principles of Fair Labor & Responsible Sourcing* (2013)

<sup>393</sup> FLA *FLA Charter* (2013) 12-13.

<sup>394</sup> FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) 3.

<sup>395</sup> FLA *FLA Charter* (2013) 3-4.

the FLA Code, the FLA awards accreditation that acknowledges substantial labour compliance efforts by a corporation, internally and throughout their supply chain.<sup>396</sup>

The FLA however has been criticised for the weakness of its Code, its lack of enforcement measures,<sup>397</sup> as well as the potential for a conflict of interest arising from the fact that the FLA's funding mainly originates from corporations it is meant to independently monitor and accredit.<sup>398</sup>

### 3.3.2 Corporate initiatives

#### 3.3.2.1 The Sullivan Principles and the Global Sullivan Principles

The international opposition to the Apartheid regime in South Africa provided the context for the emergence of 'one of the first modern CSR campaigns'<sup>399</sup> and eventually led to the creation in 1977 of the Sullivan Principles. In fact, in reaction to the racist and segregationist policies of the Apartheid government, the international community launched a vast campaign calling for the international isolation of South Africa. Companies with investment in South Africa were subsequently targeted in a global call for disinvestment from South Africa, and were now faced with a cruel dilemma: to respond to calls for divestment by withdrawing from a country with a huge potential, where large investment had already been made or to stubbornly disregard these calls and continue business as usual?<sup>400</sup>

For targeted corporations, the interests at stake were considerable and resulted in the necessity for these corporations to find a compromise that would allow them to continue their operations in South Africa without giving the impression that they were condoning or supporting Apartheid policies:

---

<sup>396</sup> FLA 2012 Annual Public Report (2013) 8.

<sup>397</sup> 'The power to exclude non-compliant companies from the association is the only significant enforcement mechanism at the disposal of the FLA. Beyond this, consequences of non-compliance ultimately depends on how a range of external factors (employees, consumers, shareholders, regulators, business partners and so on) interpret and respond to the 'de-legitimising' signal sent by such exclusion.' MacDonald K 'Fair Labor Association' in Hale T & Held D (ed) *The Handbook of Transnational Governance: Institutions and Innovations* (2011) 246.

<sup>398</sup> Anner M 'Corporate social responsibility and freedom of association rights: the precarious quest for legitimacy and control in global supply chains' (2012) 40 (4) *Politics & Society* 615-618.

<sup>399</sup> Chatterji A & Listokin S 'Corporate social irresponsibility' (2007) 3 *Democracy: A Journal of Ideas* 54.

<sup>400</sup> Curtis F 'Foreign disinvestment and investment – South Africa: 1960-1986' in Konczacki ZA, Parpart JL & Shaw TM (eds) *Studies in the Economic History of Southern Africa Volume 2* (2013)195-200.

‘International revulsion at the excesses of apartheid, however, made it inevitable that the role of foreign companies in South Africa would come under the spotlight. In Europe, companies such as Shell and Barclays Bank became prime targets of the anti-apartheid movement. This, in turn, had consequences that might not have been expected: companies seeking to justify their presence in South Africa did so, *inter alia*, by adopting codes of conduct to establish their credentials as agents of progressive change. These experiences undoubtedly helped to lay a basis for the evolution of CSR in later years.’<sup>401</sup>

Initiated by US corporations and developed by the Reverend Leon Sullivan in 1977,<sup>402</sup> the Sullivan Principles recommended the implementation of the following principles by corporations with interests in South Africa:

- a) Non-segregation between races in all eating, comfort, and work facilities.
- b) Equal and fair employment practices for all employees.
- c) Equal pay for all employees doing equal or comparable work for the same period of time.
- d) Initiation and development of training programs that will prepare, in substantial numbers, blacks and other non-whites for supervisory, administrative, clerical, and technical jobs.
- e) Increasing the number of blacks and other non-whites in management and supervisory positions.
- f) Improving the quality of life for blacks and other non-whites outside the work environment in such areas as housing, transportation, school, recreation, and health facilities.
- g) Working to eliminate laws and customs that impede social, economic, and political justice (added in 1984).<sup>403</sup>

Even though hundreds of companies formally adopted the Sullivan Principles, the Rev Sullivan himself criticised these principles as ‘as not going far enough’<sup>404</sup>, primarily because

---

<sup>401</sup> Du Toit D ‘Self-regulated corporate social responsibility: the impact on employment relations at European corporations in South and Southern Africa: a preliminary overview’ (2009) 30 *ILJ* 2228.

<sup>402</sup> Rev Leon Sullivan, an African-American minister, was at that time a Board member of General Motors, then one of the largest corporations in the United States as well as the largest employer of blacks in South Africa. Waters Jr RA *Historical Dictionary of United States-Africa Relations* (2009) 263.

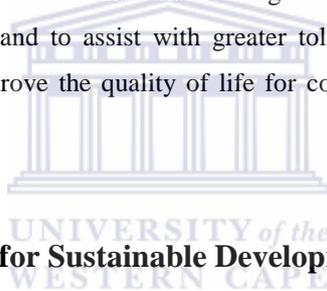
<sup>403</sup> Sullivan LH *The Sullivan Principles* (1984)1.

<sup>404</sup> Herlinger C ‘Leon Sullivan dies at 78’ *Christianity Today* 1 April 2001 <http://www.christianitytoday.com/ct/2001/aprilweb-only/4-30-44.0.html> (accessed 27 February 2014).

they were unable on their own to pressurise the South African government into changing its policies.<sup>405</sup> The Rev Sullivan therefore began advocating, during the 1980s, for the imposition of sanctions against South Africa and for effective divestment and withdrawal of transnational corporations from the country. Eventually, most of the companies having formally adopted the Sullivan Principles, as well as others transnational corporations, withdrew their operations from South Africa.

In 1999, the Global Sullivan Principles were adopted with the purpose of adapting the initial Sullivan Principles to contemporary issues. The purpose of the Global Sullivan Principles is to instil societal responsibility, human rights and social justice principles into corporate codes of conduct:

‘The objectives of the Global Sullivan Principles are to support economic, social and political justice by companies where they do business; to support human rights and to encourage equal opportunity at all levels of employment, including racial and gender diversity on decision making committees and boards; to train and advance disadvantaged workers for technical, supervisory and management opportunities; and to assist with greater tolerance and understanding among peoples; thereby, helping to improve the quality of life for communities, workers and children with dignity and equality.’<sup>406</sup>



### 3.3.2.2 World Business Council for Sustainable Development

The foremost contribution of the World Business Council for Sustainable Development (WBCSD) to the global framework of CSR is informal as it has produced one of the most cited definitions of CSR: ‘Corporate Social Responsibility is the continuing commitment by business to contribute to economic development while improving the quality of life of the workforce and their families as well as of the community and society at large.’<sup>407</sup> This definition of CSR proposed by the WBCSD has been referred to in the CSR literature as one of the most successful attempt to define CSR.<sup>408</sup>

---

<sup>405</sup> Herlinger C ‘Leon Sullivan dies at 78’ *Christianity Today* 1 April 2001 <http://www.christianitytoday.com/ct/2001/aprilweb-only/4-30-44.0.html> (accessed 27 February 2014).

<sup>406</sup> Sullivan LH *The Global Sullivan Principles* (1999)1.

<sup>407</sup> World Business Council for Sustainable Development *Corporate Social Responsibility: Meeting Changing Expectations* (1999)3.

<sup>408</sup> Even though finding some limitations to the definition of CSR as offered by the WBCSD, Hopkins presents it as one of the ‘prominent definition of CSR’. Hopkins M *Corporate Social Responsibility and International Development: Is Business the Solution?* (2007) 25.

Taking its inspiration from the proceedings of the 1992 Rio Earth Summit - UN Conference on Environment and Development (UNCED) - the WBCSD was created in 1995 as an international business network the aim of which is to develop closer cooperation between business, government and all other organisations concerned with sustainable development and the interrelation between business and the environment.<sup>409</sup>

The WBCSD's vision is to act as a catalyst that encourages corporations to embrace CSR and sustainable development principles.<sup>410</sup> Its approach is to act as a forum for discussion and as a research organisation, providing a platform for businesses to explore the concept of sustainable development, share relevant knowledge, experiences and best practices, and advocate corporate positions on these various issues in a variety of forums.<sup>411</sup>

### 3.3.2.3 Emergence of CSR focussed Stock Market Indexes

The emergence of stock market indices focussing on companies' social and environmental performance illustrates the growing interest in corporate social reporting and corporate social investment as viable approaches to the implementation of CSR. These 'market-based initiatives focus on the role of investors as potential drivers of sustainable business practices, particularly in the form of socially responsible investment (SRI) funds'.<sup>412</sup> Examples of these CSR focused Stock Market Indexes are abundant and include, inter alia:

- a) The London based FTSE4Good;
- b) The French ASPI;
- c) The German NaturAktien-Index;
- d) The US Dow Jones Sustainability Indices; and
- e) The Socially Responsible Investment (SRI) Index of the South African JSE.

Hamann highlights the fact that besides setting up socially responsible investment funds, stock markets are also emphasising the importance of CSR by promoting the implementation of essential corporate governance principles as a key requirement for listing companies:

---

<sup>409</sup> Commission of the European Communities *Promoting a European Framework for Corporate Social Responsibility* (2001) 28.

<sup>410</sup> World Business Council for Sustainable Development *Corporate Social Responsibility: The WBCSD's journey* (2002) 6.

<sup>411</sup> World Business Council for Sustainable Development *Corporate Social Responsibility: Meeting Changing Expectations* (1999) 2.

<sup>412</sup> Hamann R 'Introducing corporate citizenship' in Hamann R, Woolman S & Sprague C (eds) *The business of sustainable development in Africa* (2008)4.

‘An important role has also been played by corporate governance and risk management guidelines, which are often included in the larger stock exchanges’ listing requirements. So, for instance, the JSE in South Africa requires adherence to core components of the internationally respected King 2 Report on Corporate Governance in South Africa, [...], and the Nigerian Stock Exchange has a code on corporate governance adopted in 2004’<sup>413</sup>

### 3.4 Conclusion

After having examined the concept, and explored the history of CSR, in Chapter One and Two, the purpose of this Chapter Three was to offer a comprehensive overview of the global framework of CSR. Indeed, this chapter has presented the historical process leading to the globalisation of CSR and has provided an analysis (and discussion) of core CSR instruments and institutions constituting the cornerstone of the global framework of CSR.

The purpose of this thesis is to analyse the impact of a national context on the legal dimension and the effectiveness of MNCs codes of conduct thus this analysis of the global framework of CSR has served a double purpose:

Firstly, it has provided an overview of international CSR principles, CSR instruments and CSR institutions susceptible to have an impact on the processes of adoption of MNCs codes of conduct and therefore influence the content or the form of these corporate instruments.<sup>414</sup> Secondly, this chapter also offers a theoretical background against which the thesis will comparatively analyse the national framework of CSR in the context of selected countries.<sup>415</sup>

---

<sup>413</sup> Hamann R ‘Introducing corporate citizenship’ in Hamann R, Woolman S & Sprague C (eds) *The Business of Sustainable Development in Africa* (2008)4.

<sup>414</sup> See Chapter 5 below.

<sup>415</sup> See Chapter 4 below

## CHAPTER 4

### NATIONAL FRAMEWORK FOR CORPORATE SOCIAL RESPONSIBILITY IN SOUTH AFRICA, CAMEROON, AND FRANCE

#### 4.1 Introduction

Chapter 4 of the thesis analyses CSR in Cameroon, France and South Africa, with the purpose of highlighting the essential characteristics of the national framework for CSR in these countries. The chapter therefore intends to, in each of these countries, analyse and discuss CSR instruments and institutions, relevant regulations and various CSR initiatives.

It is important at this stage to highlight the fact that just as international CSR instruments and institutions are diverse and heterogeneous,<sup>416</sup> national CSR instruments and institutions are country specific and usually feature characteristics that are expressive of the uniqueness of their national context.<sup>417</sup> For instance, while discussing country specific interpretations of CSR, Cramer highlights the fact that national expectations in terms of CSR are usually divergent precisely because of country-specific characteristics, such as, the socio-cultural context as well as the political–social situation:

‘The political–social situation in a country plays a large role in what is expected from companies [...] with regard to corporate social responsibility. Something that is obvious in one country can be a very important topic of discussion in another. This is the result of differences in:

- The social problems that are given priority in a certain country
- The relationship between (multinational) companies and the local government
- The relationship between (multinational) companies and their stakeholders (including social organisations) and the role of the citizens.’<sup>418</sup>

CSR instruments, institutions and regulations<sup>419</sup> constituting a national CSR framework are therefore embedded in, and typical of, a specific national context. Various elements of a specific national context are indeed instrumental in determining and influencing the

---

<sup>416</sup> See 3.1.2 above.

<sup>417</sup> Cramer J *Corporate Social Responsibility and Globalisation: An Action Plan for Business* (2006) 68-69.

<sup>418</sup> Cramer J *Corporate Social Responsibility and Globalisation: An Action Plan for Business* (2006) 68-69.

<sup>419</sup> In the context of this chapter, CSR instruments, institutions and regulations encompass elements of both ‘soft law’ (not legally enforceable and merely voluntary CSR principles and instruments) and ‘hard law’ (legally enforceable CSR principles and instruments).

particularity and distinctiveness of corporate and governmental approaches to CSR<sup>420</sup>, namely:

- governmental policies orientation and priorities,
- the historical context,
- the political context,
- the economic and financial context,
- the sociological context,
- the impact of industrial relations,
- national development issues and priorities,
- the development level of the country,
- the effectiveness of legal and institutional structures, and
- the existence and effectiveness of monitoring structures and other corporate watchdogs.

Considering the diversity and wide variety of the national framework for CSR encountered across the globe, it is not immediately evident why South Africa, France and Cameroon were selected as countries whose CSR frameworks are particularly interesting in the context of this thesis. In fact one may ask the following questions. What are the criteria for the selection of these countries as the focus of the thesis? How are the CSR frameworks in South Africa, France and Cameroon particularly relevant to this research project? The answers to these questions are to be found in three considerations that are specifically relevant as factors determining the essence of a country's CSR context.

First, South Africa, France and Cameroon represent a wide spectrum of countries with different levels of socio-economic development. These three countries are representative of three different categories usually encountered in the official classification of countries according to various indexes and criteria.<sup>421</sup> According to UN Development Programme (UNDP) Human Development Reports,<sup>422</sup> France ranks 20 out 187 countries, and is

---

<sup>420</sup> Cramer J *Corporate Social Responsibility and Globalisation: An Action Plan for Business* (2006) 68-69.

<sup>421</sup> Such as the Human Development Index, a composite statistic of life expectancy, education, and income indices utilised by the UN Development Programme in order to rank and classify countries of the world into four tiers of human development, according to their development levels: Very high human development, High human development, Medium human development and Low human development.

<sup>422</sup> UN Development Programme *Human Development Report 2013 - The Rise of the South, Human Progress in a Diverse World* (2013).

therefore considered a country with a Very High Human Development Index. South Africa ranks 118 out of 187 countries, and is classified as a country with a Median Human Development Index. Cameroon ranks 152 out of 186 countries, and is therefore classified as a country with a Low Human Development Index.<sup>423</sup>

Secondly, these three countries also represent different levels of socio-political and institutional advancement. Cameroon is a country situated in Central Africa and therefore belongs to the Sub-Saharan Africa geographical region, a region consistently characterised by the weakness of social and governmental institutions and a volatile political context.<sup>424</sup> These countries are also generally characterised by fragile economic and social structures, as well as weak legal and institutional frameworks.<sup>425</sup> Such countries are predominantly hosts to foreign direct investment and are generally eager to attract MNCs and therefore prone to easily compromise on social issues.<sup>426</sup>

As a West European country, France is a traditional democracy, a founding member of the EU, and characterised by its political stability and the existence of an advanced framework of legal and political institutions.<sup>427</sup> Corporate activities, in such a context, are usually effectively monitored by the simultaneously orchestrated action of governmental and non-governmental institutions, and well-established traditional corporate watchdogs (such as, the media and / or civil society organisations).<sup>428</sup>

---

<sup>423</sup>UN Development Programme *Human Development Report 2014 - Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience* (2014)159-166. See also UN Development Programme *Human Development Report 2013 - The Rise of the South, Human Progress in a Diverse World* (2013) 144-146.

<sup>424</sup> See Smit A (ed) *Shaping Corporate Social Responsibility in Sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013)10. See also Dickerson CM 'Corporate social responsibility: lessons from the South on law and business norms' (2009) 24 *Research in Law and Economics* 132-134.

<sup>425</sup>The majority of these countries are challenged by poverty and the conditions that are generally associated with it, namely, poor infrastructure, inefficient national health systems, low levels of education, high levels of corruption, and environmental stress. This is the dark side of the sub-Saharan Africa picture.'Smit A (ed) *Shaping Corporate Social Responsibility in Sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013)10.

<sup>426</sup>Dickerson CM 'Corporate social responsibility: lessons from the South on law and business norms' (2009) 24 *Research in Law and Economics* 133.

<sup>427</sup> See Lavaud P 'France country chapter' in Berruga B (ed) *A Guide to CSR in Europe: Country Insights by CSR Europe's National Partner Organisations* (2009) 16-18.

<sup>428</sup> See Lavaud P 'France Country Chapter' in Berruga B (ed) *A Guide to CSR in Europe: Country Insights by CSR Europe's National Partner Organisations* (2009) 16-18.

South Africa is an emerging economic power, thus presents characteristics of both developing and developed countries.<sup>429</sup> South Africa is a vibrant emerging democracy, equipped with an effective framework of legal and political institutions striving to adapt and implement democratic principles and practices into a very particular South African context.<sup>430</sup>

Thirdly, the selected countries each have CSR frameworks which are inherently characterised by interesting country specific features determining the uniqueness of each country's national CSR instruments and institutions:

- The French context illustrates the role and the impact of well-functioning democratic structures on the establishment of CSR instruments and institutions. The French example also highlights the relevance and effectiveness of a regionally integrated CSR approach as a catalyst for the elaboration and effective implementation of a comprehensive CSR framework at both national and regional levels.<sup>431</sup>
- The South African context illustrates the relevance of the historical context as a determinant of governmental elaboration and implementation of a structured CSR framework, especially in the context of an emerging economy still battling with socio-economic and developmental issues and priorities.<sup>432</sup>
- The Cameroonian context is characterised by the absence of a formal CSR framework; hence the scarcity of CSR instruments and institutions, either governmental or corporate. The Cameroonian context, therefore, illustrates the relevance and impact of the existence of a formal CSR framework for the effective implementation of corporate codes of conduct.<sup>433</sup>

---

<sup>429</sup> Popp D *Built-in or Bolted-on: Corporate Social Responsibility in Sub-Saharan Africa, A Survey on Promoting and Hindering Factors* (2009) 104.

<sup>430</sup> Babarinde OA 'Bridging the economic divide in the Republic of South Africa: A Corporate Social Responsibility perspective' (2009) 51(4) *Thunderbird International Business Review* 356.

<sup>431</sup> See Delbard O 'CSR legislation in France and the European regulatory paradox: an analysis of EU CSR policy and sustainability reporting practice' (2008) 8(4) *Corporate Governance* 397-405. See also Orbie J & Babarinde O 'The social dimension of globalization and EU development policy: promoting core labour standards and corporate social responsibility' (2008) 30(3) *European Integration* 459-477.

<sup>432</sup> See Hamann R 'South Africa: The role of history, government, and local context' in Idowu SO & Filho WJ (ed) *Global practices of corporate social responsibility* (2009).

<sup>433</sup> Dickerson CM 'The Cameroonian experience under OHADA: business organizations in a developing economy' (2007) 112(2) *Business and Society Review* 191-213. See also Dickerson CM 'Corporate Social Responsibility: Lessons from the South on Law and Business norms' (2009) 24 *Research in Law and Economics* 131-157.

## 4.2 CSR in South Africa

### 4.2.1 Historical context of CSR in SA

An analysis of CSR in South Africa cannot be dissociated from an in-depth review of South African history. The political history of the country is a factor determining and explaining the specificity of the South African social, political and institutional context.<sup>434</sup> As noted by Hanks, Hamann & Sayers, the South African regulatory framework and the CSR framework are by-products of the country's historical circumstances:

'South Africa's historical legacy includes racially skewed participation and ownership of the economy, structural unemployment, widespread poverty, and low levels of education and training. Such factors have also contributed to significant health challenges, foremost of which is the HIV/AIDS epidemic. Although these challenges are not unique to South Africa, the country's history has given them a particular character and severity that shapes the definition and implementation of CSR-related activities.'<sup>435</sup>

An overview of the South African CSR framework is therefore to be preceded by an analysis of the historical context of its emergence. The historical evolution of CSR in South Africa is ideally divided into three specific phases that follow the major stages of the political history of South Africa.

First, one needs to investigate the nature of the relationship between business and society in Apartheid South Africa and subsequently proceed to present the historical context of the emergence of the first CSR initiatives in South Africa.

Secondly, an analysis of the transition period will highlight how specific corporate and governmental policies and initiatives have given shape, during the transition, to the initial CSR framework that emerged during the advent of democracy in South Africa.

Finally, an overview of the contemporary South African CSR framework will focus on the analysis of all relevant South African CSR policies, instruments and institutions.

---

<sup>434</sup> Ralph Hamann asserts that '[i]n South Africa, the context and definition of CSR has been significantly influenced by the legacy of colonialism and Apartheid, with big business having been implicated in this history'. Hamann R 'South Africa: The role of history, government, and local context' in Idowu SO & Filho WI (ed) *Global Practices of Corporate Social Responsibility* (2009)436.

<sup>435</sup>Hanks J, Hamann R & Sayers V *Corporate Social Responsibility and the UN Global Compact in South Africa 2007: Report of the Global Compact Network of South Africa* (2007) 6.

#### 4.2.2 Business and Society during Apartheid South Africa

This section focusses on the analysis of the relationship between business and society in Apartheid South Africa. In the context of this thesis, this period also includes the era during which the dawn of the democratic transition generated the emergence of a new set of socio-political institutions.

Any historical account of the relationship between business and society in Apartheid South Africa is very controversial considering the number of racial, socio-political and financial issues involved. Nevertheless, discussion of the role businesses actually played in South African society during Apartheid usually revolves around the following topics:

- The inherent incompatibility between, on the one hand, the practices, policies and institutions of the Apartheid regime and, on the other hand, a possible social responsibility of companies operating in SA during (and therefore directly or indirectly backing) the Apartheid regime. Corporations operating in South Africa during Apartheid could in fact be considered to have been actively (or at least morally) responsible for colluding and collaborating with the Apartheid regime for obvious bottom line imperatives. This resulted in the establishment of a ‘symbiotic relationship between the white controlled state and racial capitalism’<sup>436</sup> and therefore the unlikelihood of CSR in South Africa during Apartheid.<sup>437</sup>
- The possible existence, in the South African legal framework during Apartheid, of provisions dealing with the social responsibility of corporations.<sup>438</sup>

---

<sup>436</sup> Natrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 16. See also Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4* (1998) chap 2, para 6.

<sup>437</sup> In November 1997 during submissions to the Special Hearing on the Role of the Business Sector of the Truth and Reconciliation Commission, Professor Sampie Terreblanche further confirmed and precisely deciphered the nature of the symbiotic relationship between businesses and the state during apartheid: ‘These forms of collaboration create and promote a context that leads to the systematic execution of gross human rights violations. It contributes to the emergence of an economic and political structure – a culture and a system which gives rise to and condones certain patterns of behaviour.’ This position was substantiated by the testimony of COSATU representatives: ‘Indeed, the historical record does not support business claims of non-collaboration. A vast body of evidence points to a central role for business interests in the elaboration, adoption, implementation and modification of apartheid policies throughout its dismal history.’ Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4* (1998) chap 2, para 20-21.

<sup>438</sup> See Havenga M ‘The Company, the Constitution, and the stakeholders’ (1997)5(4) *Juta’s Business Law* 134-139. See also Esser I & Dekker A ‘The dynamics of corporate governance in South Africa: Broad Based Black Economic Empowerment and the enhancement of good corporate governance principles’ (2008) 3(3) *Journal of International Commercial Law and Technology* 157-69.

- The emergence of pioneering CSR activities, instruments and institutions in South Africa during the Apartheid era.<sup>439</sup>

#### 4.2.2.1 CSR in the Apartheid socio-political context

As an official governmental policy underpinned by a formal set of legislation, Apartheid existed in South Africa as from 1948,<sup>440</sup> and was progressively deconstructed during the mid-1980s up till the mid-1990s. Turning points of this process included the abolishment of the pass laws in 1986,<sup>441</sup> the organisation of South Africa's first democratic election in 1994, and the advent of the new Constitution in 1996.

Considering the nature and extent of the alleged corporate collusion with the Apartheid regime during these dark moments of South African history, the idea of CSR in the South African context during Apartheid is questioned, based on the inherently 'socially irresponsible' behaviour of corporations which prioritised shareholder interests over societal concerns and therefore decided to invest or remained in SA during Apartheid.<sup>442</sup>

Finding answers to the following questions is therefore central to the debate concerning possible manifestations of CSR in the South African context during Apartheid. Could CSR have existed in the South African context during Apartheid? Did CSR actually emerge during Apartheid South Africa? Did businesses contribute to the downfall of the Apartheid regime, or were corporations guilty of collusion and cooperation with the Apartheid regime?

Such questions were at the core of the South African Truth and Reconciliation Commission's (TRC) approach to its inquiry into the role and responsibilities of business during Apartheid

---

<sup>439</sup>See Alpers M *Foundations for a New Democracy: Corporate Social Investment in South Africa* (1995).

<sup>440</sup> After winning the South African general (parliamentary) election of 26 May 1948, DF Malan of the National Party spearheaded the movement official conception and legalisation of Apartheid. This resulted in the subsequent enactment of the main Apartheid legislation including: the Prohibition of Mixed Marriages Act of 1949, the Population Registration Act of 1950, the Group Areas Act of 1950, the Immorality Amendment Act of 1950, the Separate Representation of Voters Act of 1951, the Pass Laws Act of 1952, the Reservation of Separate Amenities Act of 1953, the Natives Resettlement Act of 1954, and the Group Areas Development Act of 1955. See Clark NL & Worger WH *South Africa: The Rise and Fall of Apartheid 2 ed* (2014) 45-56.

<sup>441</sup> The pass law were repealed by the Identification Act No 72 of 1986.

<sup>442</sup> It has been argued that the Apartheid regime in SA enjoyed a mutually beneficial relationship with business. Bilchitz therefore asserts that 'South Africa's apartheid history often saw complicity between corporate power and an evil regime'. According to Bilchitz, such collusion and complicity between business and government enabled the apartheid regime to survive so long despite the international outcry and isolation. In fact, corporations operating in SA enjoyed great financial benefit despite the calls for divestment while supporting the apartheid regime (willingly or not, formally or not). Bilchitz D 'Corporate Law and the Constitution: Towards binding human rights responsibilities for corporations' (2008) 125 *South African Law Journal* 771.

South Africa. In doing so, the South African TRC paved the way for the establishment, as a core principle of CSR, of corporate accountability for direct or indirect, active or passive, collusion with regimes and governments guilty of human rights abuses.<sup>443</sup>

The TRC inquiry probed corporate participation in governmental Apartheid practices and abuses, corporate incitement and sponsoring of human rights abuses committed by the State, and corporate passivity and lack of intervention when confronted by the societal reality of Apartheid.<sup>444</sup> During the TRC hearings, corporate representatives were largely of the view that not only did the role of business in society not include a moral purpose,<sup>445</sup> but that corporations were also usually unable and not prepared to confront the State in order to convey and implement corporate societal concerns.<sup>446</sup>

In its conclusions, the TRC investigated the role and responsibilities of business during Apartheid<sup>447</sup> and determined three different levels of accountability depending on the nature of the business involvement with the Apartheid regime:

‘The TRC divided the culpability of business into three categories:[...]First order involvement: direct participation in formulating oppressive policies or practices that resulted in cheap labour and high profits.[...] Second order involvement: knowledge that firms’ products or services would be used for morally unacceptable purposes.[...] Third order involvement: indirect benefits to “ordinary” firms operating within the racial structures of Apartheid . While regarding the first two categories as more reprehensible,

---

<sup>443</sup> [T]he South African TRC appears to be the first truth commission anywhere in the world to have both examined the role of business and recommended restitutive taxation. Truth commissions in Latin America and Eastern Europe were tightly focused on gross human rights violations by military regimes and communist dictatorships. The South African TRC seems to be the only truth commission that took seriously the idea that simply by virtue of operating within the context of a repressive regime, business should bear some accountability for it.’ Nattrass N ‘The Truth and Reconciliation Commission on Business and Apartheid: A critical evaluation’ (1999) 98 *African Affairs* 376.

<sup>444</sup> ‘Because apartheid was a system under which the majority of South Africans suffered economic deprivation and discrimination, one important area of enquiry of the TRC was the role of the business sector during the apartheid regime. Whilst it was easy to focus predominantly on the perpetrators of gross violations of human rights, the business sector was seen as responsible for broad structural support of the regime.’ Fig D *Corporations and moral purpose: South Africa’s Truth and Reconciliation Commission and business responsibility for apartheid* (2009)3.

<sup>445</sup> Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4* (1998) Paragraph 144.

<sup>446</sup> Before the TRC, a Sanlam corporate representative stated that ‘Any notion that business could have acted as a watchdog of the government as far as human rights violations are concerned is totally unrealistic. Business was unable to act in that way in the past and will not be able to do so in the future... government is so powerful and dominant that a business organisation will seriously jeopardise its prospects of success by crossing swords with politicians.’ Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4* (1998) para 142.

<sup>447</sup> Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4* (1998) para 156.

it felt that some third order involvement businesses also bankrolled opposition parties and resistance movements. Not all business collaborated to the same extent.<sup>448</sup>

This position advocated by the TRC has been argued about, during the TRC<sup>449</sup> and beyond. On the one hand, it is agreed that the role of business during Apartheid South Africa was inherently incompatible with the idea of CSR. Hamann, for instance, notes that:

‘Though there is much debate about the extent and manner of this involvement [...] it is clear for instance that mining companies played a role in initiating important aspects of the colonial and subsequent Apartheid system, predicated upon their need for cheap, relatively unskilled labor for the mining of deep, low-grade ores. This resulted in the development of core elements of the South African State racist policies [...].’<sup>450</sup>

Hamann’s position is further highlighted by the followings examples provided by Natrass:

‘The Chamber of Mines (COM) actually drafted the pass laws that were introduced in the old Transvaal Republic in 1895 (van der Horst, 1942: 133). The COM also supported the 1913 Land Act (which restricted black ownership to 13% of the land), saying that it would ensure that “the surplus of young men, instead of squatting on the land in idleness, earn their living by working for a wage” (quoted in Lipton, 1986: 119-120). The state, both pre-war and under Apartheid, in turn supported the COM in its monopsonistic recruitment of labour throughout Southern Africa, by making absconding from mining contracts illegal, and by brutally suppressing African trade unions.’<sup>451</sup>

However, these arguments were mitigated by business representatives who argued, during the TRC hearings, that Apartheid actually had negative consequences for businesses and harmed the economy as it ‘raised the costs of doing business, eroded South Africa’s skill base and undermined long-term productivity and growth’.<sup>452</sup>

It has also been argued that the nature of the relationship between businesses and the State during Apartheid was not circumstantial to that period but merely typical of the core

---

<sup>448</sup>Fig D *Corporations and moral purpose: South Africa’s Truth and Reconciliation Commission and business responsibility for apartheid* (2009)10.

<sup>449</sup>See chap two Institutional Hearing: Business and Labour in Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4*(1998)18-58.

<sup>450</sup>Hamann R ‘South Africa: The role of history, government, and local context’ in Idowu SO & Filho WI (ed) *Global practices of corporate social responsibility* (2009)436.

<sup>451</sup> Natrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 9.

<sup>452</sup>Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4* (1998) chap 2.

characteristics of a non-temporal South African socio-political context. Natrass N & Seekings assert that state-business relations<sup>453</sup> ‘in South Africa were, and continue to be, shaped by racial policies: during Apartheid , white business (especially Afrikaans business) was promoted at the cost of black business; and in the post-Apartheid era affirmative action and BEE policies are benefitting a new black elite’.<sup>454</sup>

It is also argued that Apartheid era business circumstances, which constituted the basis of the TRC condemnation of the role of business in South African society, are still observable in current South African society:

‘The other notable impact of government policy on the structure of ownership and control in post-Apartheid South Africa is BEE, a policy which, like the pro-Afrikaner business stance of the Apartheid government, seeks to alter the distribution of assets and income in the direction of particular groups, in this case, black business. And, just as the old white corporate sector had maintained power and control over vast swathes of the Apartheid industrial economy through inter-locking directorships and shareholdings, the new black elite is tightly connected, serves on each other’s boards and is closely connected to the national government.’<sup>455</sup>

#### **4.2.2.2 CSR in the legal framework of Apartheid South Africa**

Notwithstanding the above controversy regarding the inherent incompatibility between CSR principles and Apartheid policies and practices, it is essential to find answers to the following question pertaining to the history of the legal framework of CSR in South Africa: Did the legal framework, during Apartheid South Africa , contain provisions -directly or indirectly- aimed at the realisation of CSR?

This section therefore focusses on an analysis of the South African legal system with the purpose of identifying any laws, statutes and regulations that may have provided for (or at least facilitated) CSR during the Apartheid era.

It is important to clarify at the outset that the South African legal system is a unique mix of customary and indigenous laws, English legislation and common law as well as Roman-

---

<sup>453</sup>In this article the authors use the acronym SBR to refer to ‘state-business relations’ See Natrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 4.

<sup>454</sup>Natrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 9.

<sup>455</sup>Natrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 30.

Dutch law. For the greater part of the duration of Apartheid in South Africa, corporate activities were regulated by a legal framework largely borrowed from English legislation as well as English Common Law.<sup>456</sup>

The South African Companies Act 46 of 1926 was therefore largely inspired by the English Joint Stock Acts of 1844 and 1856 and South African courts were very receptive to - and inclined to apply - English jurisprudence.<sup>457</sup> The Companies Act 46 of 1926 did not contain any provision –directly or indirectly - referring to the issue of CSR, and this is understandable as the concept of CSR did not exist yet.

As for the South African common law, in the *Amalgamated Society of Woodworkers of SA & Another v Die 1963 Ambagsaalvereniging*<sup>458</sup>, The Supreme Court of South Africa upheld the English common law position that negated stakeholder interest and established shareholder profit maximisation as the sole purpose of a company.<sup>459</sup>

In 1969, Beuthin conducted an extensive analysis of management practices relevant to the social responsibility of corporations and noted the emergence of a ‘modern managerial technique of management’<sup>460</sup> which already encompassed stakeholder responsiveness. Instigated by companies’ directors, this approach to the fiduciary duties of a director denoted a managerial inclination to agree and keep pace with ‘a maturing public opinion which acknowledges today that the modern company should function not simply as an economic machine designed to churn out profits for its shareholders, but rather as an institution which owes social responsibilities to a wide circle of interests’.<sup>461</sup>

However, after analysing several English and South African courts cases where judges had to decide on the validity of directors’ fiduciary actions aimed at the realisation of a stakeholder interest - as opposed to shareholders’ interests, Beuthin remarked that such charitable acts of directors toward groups other than company shareholders were approved of by South African

---

<sup>456</sup>Wille G, Du Bois F & Bradfield G *Wille's Principles of South African Law* 9 ed (2007) 33.

<sup>457</sup>Mongalo T ‘South Africanizing Company Law for a modern competitive global economy’ (2004)121 *South African Law Journal* 93-95.

<sup>458</sup> *Amalgamated Society of Woodworkers of SA & Another v Die 1963 Ambagsaalvereniging* 1967 (1) SA 586 (T)

<sup>459</sup> *Amalgamated Society of Woodworkers of SA & Another v Die 1963 Ambagsaalvereniging* 1967 (1) SA 586 (T).

<sup>460</sup>As opposed to the ‘old classical approach of management’ that prioritised shareholders profits maximisation. See Beuthin RC ‘The range of a company’s interests’ (1969) 86(1) *South African Law Journal* 164.

<sup>461</sup>Beuthin RC ‘The range of a company’s interests’ (1969) 86(1) *South African Law Journal* 164.

courts only in some specific circumstances, namely, when the promotion of a stakeholder interest was based on the ultimate purpose of maximising shareholder interest.<sup>462</sup>

This was the test that was applied in *Amalgamated Society of Woodworkers of SA & Another v Die 1963 Ambagsaalvereniging*. De Vos J held that ‘the power of a corporate body to donate a major asset cannot be lightly inferred [. . .] donations should [. . .] be limited to such donations as are reasonably incidental to the carrying on of the activities of the donor or which are for the benefit of the donor’.<sup>463</sup> Thus Beuthin concludes: ‘So the legal justification for gifts, and indeed for everything that the company may do for employee or anyone else, is the ultimate benefit of the shareholders.’<sup>464</sup>

The Companies Act No. 61 of 1973, even though entailing several reforms, did not divert from its English roots and was therefore still based on the principles of English company law.<sup>465</sup> Esser and Decker highlight the fact that the reforms implemented by this act did not contain any provision directly pertinent to the issue of CSR.<sup>466</sup>

Croucher mitigates this view by drawing attention to a slight but perceptible connection between the Companies Act of 1973 and general CSR theory. While conceding that the Act only prioritised shareholders’ interests and did little to protect and further stakeholders’ interests,<sup>467</sup> Croucher nevertheless underlines the fact that stakeholders’ interests and concerns were not completely non-existent in the 1973 Companies Act. Croucher in fact argues that the Act actually acknowledged and therefore protected stakeholder interests in specific instances, such as in case of corporate insolvency.<sup>468</sup>

Havenga also argues that the South African legal framework, after the inception of the Companies Act of 1973, possibly dealt with, and provided for, issues related to corporate

---

<sup>462</sup> See Beuthin RC ‘The range of a company’s interests’ (1969) 86(1) *South African Law Journal* 161.

<sup>463</sup> *Amalgamated Society of Woodworkers of SA & Another v Die 1963 Ambagsaalvereniging* 1967 (1) SA 586 (T) at 594. Similar reasoning had earlier been applied by English courts, for instance in *Hampson v Price's Patent Candle Company* (1876) 45 L.J. Ch. 437.

<sup>464</sup> Beuthin RC ‘The range of a company’s interests’ (1969) 86(1) *SALJ* 166.

<sup>465</sup> Mongalo T ‘South Africanizing Company Law for a modern competitive global economy’ (2004)121 *SALJ* 96.

<sup>466</sup> Esser I & Dekker A ‘The dynamics of corporate governance in South Africa: Broad Based Black Economic Empowerment and the enhancement of good corporate governance principles’ (2008) 3(3) *Journal of International Commercial Law and Technology* 160.

<sup>467</sup> Croucher R & Miles L ‘Corporate governance and employees in South Africa’ (2010) 10 (2) *Journal of Corporate Law Studies* 6.

<sup>468</sup> Croucher R & Miles L ‘Corporate governance and employees in South Africa’ (2010) 10 (2) *Journal of Corporate Law Studies* 373-374.

governance as well as (even though indirectly ) the social responsibility of corporations when materialised in charitable acts, gifts, and donations made by directors.<sup>469</sup>

Havenga proceeds to highlight the fact that the Companies Act of 1973 contributed to the edification of a South African framework of CSR by establishing a legal framework of directors' fiduciary duties that tolerated corporate philanthropy when materialised in discretionary acts of charity and donations made by corporate directors. Acts of charity and donations were deemed *intra vires* (and therefore valid) in some specific instances, even though traditionally regarded as *ultra vires* (invalid) acts of management.<sup>470</sup>

The new company law regime provided a legal basis for a future CSR framework by allowing directors to legally engage in CSR activities. Directors' fiduciary duties under the Act of 1973 allowed (or at least tolerated) gratuities, charitable acts and donations made by corporate directors, thereby departing from the English common law that disapproved of and rejected directors' acts of philanthropy, because they were deemed to be opposed to the purpose of a company.<sup>471</sup>

#### **4.2.2.3 Pioneering CSR activities during Apartheid South Africa**

This section focusses on a review of CSR-related activities in South Africa during Apartheid. Although the motives as well as the significance of these pioneering CSR activities of corporations during Apartheid are questionable , it has been argued that these pioneering CSR activities were in fact an expression of the gradual inclusion of societal concerns into the corporate bottom line, notwithstanding the controversial South African context: 'Big business has been implicated in human rights abuses committed under Apartheid but the Apartheid history gave rise to early manifestations of voluntary initiatives to contribute to government policy changes and social development.'<sup>472</sup>

According to Alperson, the idea of CSR effectively entered the South African theoretical context in 1972 when Meyer Feldberg, a professor of business at the University of Cape Town, argued there for, and 'exhorted business leaders to learn from the model of their US

---

<sup>469</sup>Havenga M 'The company, the Constitution, and the stakeholders' (1997)5(4) *Juta's Business Law* 135-136.

<sup>470</sup>See Section 32, 33 and 36 of the Companies Act 61 of 1973.

<sup>471</sup>Havenga M 'Directors' fiduciary duties under our future company law regime' (1997) 9 *South African Mercantile Law Journal* 315-316.

<sup>472</sup> Van Niekerk J 'South Africa Country Chapter' in Smit A (ed) *Shaping Corporate Social Responsibility in Sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013) 196.

counterparts to get involved in the communities in which they operated, sold the products or drew employees’.<sup>473</sup>

In 1973, another milestone of the South African CSR landscape was established when the first of a series of corporate social investments by South African companies during Apartheid was realised. The Anglo American and De Beers Chairman’s Fund was constituted as a fully-fledged department of these corporations. This social investment initiative was implemented with the stated purpose of investing in community upliftment projects and subsequently realising a significant societal impact by operating as an agent of change and development.<sup>474</sup>

However, such corporate social investment initiatives during Apartheid have been criticised not only for being hypocritical but also for not being systematically enshrined in the prevailing corporate culture: ‘CSI is easily criticised for its “add-on” nature, without much influence on companies’ core business. This was especially the case during Apartheid; when such philanthropic initiatives co-existed with obvious human rights violations.’<sup>475</sup>

The Urban Foundation was established in 1976 as a ‘private sector initiative to address critical urban development issues in volatile townships nationwide’<sup>476</sup>. Although usually considered as having had a positive impact, the motives behind the creation of the Urban Foundation have been questioned. The Urban Foundation was referred to as the materialisation of corporate attempts to find acceptable solutions for dealing with the then volatile socio-political context without compromising business activities.<sup>477</sup>

A vast divestment campaign was nevertheless launched internationally against corporations operating in South Africa. The divestment campaign originated from the non-binding Resolution 1761, November 1962, of the UN General Assembly that established the UN Special Committee against Apartheid and called for imposing economic and other sanctions

---

<sup>473</sup>Alperson M *Foundations for a New Democracy: Corporate Social Investment in South Africa* (1995) 4.

<sup>474</sup>Oppenheimer N *See What Is Right ... and Be Brave: Farewell Address to Anglo American* (2011) 11.

<sup>475</sup>Hanks J, Hamann R & Sayers V *Corporate Social Responsibility and the UN Global Compact in South Africa 2007: Report of the Global Compact Network of South Africa* (2007) 7.

<sup>476</sup>Alperson M *Foundations for a New Democracy: Corporate Social Investment in South Africa* (1995) 5.

<sup>477</sup>Fig D *Corporations and moral purpose: South Africa’s Truth and Reconciliation Commission and business responsibility for apartheid* (2009)7.

against South Africa<sup>478</sup>. Due to opposition within the UN General Assembly these calls were unsuccessful.<sup>479</sup>

The divestment campaign eventually culminated in worldwide protests and boycotts directed against corporations operating in South Africa. The divestment campaign led to different responses from targeted corporations and therefore had different impacts on the nature and the extent of corporate responsiveness to societal issues and concerns.

Many corporations, attracted by the high financial incentives of operating in SA during Apartheid, refuted the idea of divestment and chose to remain and operate in SA. These corporations, in order to distance themselves from the Apartheid regime's practices and policies, endeavoured to adopt a stance that positioned business as an agent of change in the Apartheid context. This was the purpose, for instance, of the Sullivan Principles, adopted in 1977 by American companies operating in SA.<sup>480</sup>

On the other hand, the mounting international pressure for divestment culminated in the mid-80s with several foreign corporations deciding to divest from SA, supposedly as a gesture expressing their acknowledgment of their societal responsibilities toward the international and South African communities. These included major American corporations, such as, General Motors Corporation and IBM, as well as Barclays Bank in the United Kingdom.<sup>481</sup>

The decision of several foreign companies to divest from SA during the height of the divestment campaign has been probed to determine the real motives for the decision to divest. Posnikoff argues that these corporations' decisions to divest from SA could have been based on business considerations as the divestments actually resulted in greater profits for the concerned corporations.<sup>482</sup>

#### **4.2.3 CSR during the SA political transition**

The transition era in South Africa was characterised by the adoption, by corporations, of a new approach to the social responsibility of business. During the Apartheid era, CSR initiatives were deemed to have been mostly triggered by various considerations outside the

---

<sup>478</sup> UN General Assembly *Resolution 1761(XVII) of 6 November 1962* - Item 87 (1962).

<sup>479</sup> Orkin M *Sanctions Against Apartheid* (1989)1-35.

<sup>480</sup> For an analysis and discussion of the Sullivan Principles see Chapter 3, Section 3.3.2.1

<sup>481</sup> Curtis F *Foreign Disinvestment and Investment – South Africa: 1960-1986* in Konczacki ZA, Parpart JL & Shaw TM (ed) *Studies in the Economic History of Southern Africa* Vol 2 (2013) 195-200.

<sup>482</sup> Posnikoff JF 'Disinvestment from South Africa: They did well by doing good' (1997) 15(1) *Contemporary Economic Policy* 84.

scope of genuine corporate societal responsiveness.<sup>483</sup> During the political transition, the CSR landscape in SA was characterised by corporate interest in dealing with the societal issues faced by South African communities. The resulting involvement of South African businesses in the effort - and the processes - that led to the advent of a political transition in South Africa denoted an evolution of corporate approaches to CSR, linked to the development observed in the political sphere: ‘This shift in democratic political governance was paralleled in the corporate governance world with the intention of bridging the traditional economic gap between black and white South Africans.’<sup>484</sup>

#### **4.2.3.1 Business and society during the SA political transition**

The transition period was characterised in South Africa by a consistently volatile socio-political climate marred by political instability as well as repeated clashes and acts of violence between different communities and political groups.<sup>485</sup> This resulted in a context not conducive to business and therefore generated business apprehension about what loomed ahead for South Africa.

Stigson’s adage, ‘Business cannot succeed in a society that fails’,<sup>486</sup> was relevantly illustrated in the South African context during the political transition via corporate involvement in the political processes for the purpose of leading South Africa through a peaceful transition, thereby maintaining a socio-political context conducive to business, and preserving the viability and sustainability of the South African economy, a prosperous market they intended not to lose to political instability and uncertainty:

‘The crisis of the mid-1980s led business to deepen its dialogue with the ANC. As the Cold War ended; the erstwhile devotion of the ANC to Soviet models began to recede. Business realised that the inclusion of the ANC in a political settlement was a key element in overcoming the growing political crisis in South Africa. Such a move, would, it felt, place the economy on a new footing, bringing an end to disinvestment and sanctions, and ushering in a new era of stable profitability. If business could help shape the transition, it would ensure the continuity of

---

<sup>483</sup> Babarinde OA ‘Bridging the economic divide in the Republic of South Africa: A corporate social responsibility perspective’ (2009) 51(4) *Thunderbird International Business Review* 360.

<sup>484</sup> Van Niekerk J ‘South Africa Country Chapter’ in Smit A (Lead Author) *Shaping Corporate Social Responsibility in sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013) 179.

<sup>485</sup> See Harshe R ‘Understanding transition towards Post-Apartheid South Africa’ (1993) 28 (38) *Economic and Political Weekly* 1980-1983.

<sup>486</sup> Stigson B *Business and the Sustainable Development Landscape* (2009) 51.

institutions and markets, and persuade the ANC to move from its adherence to a mixed economy towards gathering forces of global liberalisation.’<sup>487</sup>

The CSR landscape during the South African transition era was therefore effectively characterised by a convergence between shareholders’ and stakeholders’ interests, hence the multiplication of multi-stakeholders’ initiatives organised and/or facilitated by corporations, for the purpose of addressing societal issues and negotiating industrial relations.<sup>488</sup>

Nattrass & Seekings assert that by sponsoring and participating in essential institutions of the transition period, such as, the Consultative Business Forum (CBM) and the National Business Initiative (NBI), businesses played a pivotal role in ‘facilitating the democratic transition through engaging directly with anti-Apartheid activists and creating a momentum for the development of tripartite institutions for social dialogue at local and national levels.’<sup>489</sup>

#### **4.2.3.2 The foundations of the contemporary CSR framework**

The purpose of this section is to analyse the basic principles and policies, from a corporate and/or official perspective, that are at the core of the South Africa CSR framework.

##### **4.2.3.2.1 Corporate Approaches**

Corporate approaches to CSR in the South African context were essentially influenced by the following factors and principles:

First, corporations prioritised corporate social investment as the preferred CSR model and terminology in the South African context.<sup>490</sup> The corporate shift from a CSR to a CSI approach resulted from the unwillingness of South African businesses to accept any responsibility, thus accountability, for the societal issues faced by South African society during Apartheid.<sup>491</sup>

---

<sup>487</sup>Fig D *Corporations and moral purpose: South Africa’s Truth and Reconciliation Commission and business responsibility for apartheid* (2009) 7.

<sup>488</sup>Nattrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 8.

<sup>489</sup>Nattrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 4.

<sup>490</sup>Fig D ‘Manufacturing amnesia: Corporate social responsibility in South Africa’ (2005) 8I (3) *International Affairs* 601 argues that ‘[b]usiness in South Africa therefore generally eschews the notion of ‘corporate social responsibility’, despite the wide use of this term among practitioners and in the literature. Instead, it favours concepts of ‘corporate social investment’ and ‘corporate citizenship’: concepts that ask no questions about legacy, memory, history, justice, or moral and ethical responsibilities’.

<sup>491</sup> Fig D *Corporations and Moral Purpose: South Africa’s Truth and Reconciliation Commission and Business Responsibility for Apartheid* (2009)15.

Secondly, the establishment of corporate governance as a vehicle for CSR, and the advent in 1994 of the *King Report on Corporate Governance*<sup>492</sup> constituted landmarks in the evolution of the South African CSR framework; and the *King Codes* have progressively determined corporate approaches to CSR.<sup>493</sup>

Thirdly, corporate environmental awareness and responsiveness emerged as a parallel manifestation of CSR in South Africa. Contrasting with previous CSR approaches that resulted in the neglect of environmental issues, a broader view of CSR emerged that fully incorporated environmental issues and concerns into the CSR agendas of South African corporations.<sup>494</sup>

Finally, it is also important to analyse the impact of depatriation on CSR in South Africa. In the South African context, the concept of depatriation refers to formerly South African corporations that have globalised their operations and thus have begun operating from multiple countries<sup>495</sup>; or companies which have actually delocalised their operations by seeking listings on foreign countries' stock exchanges<sup>496</sup> for the purpose of attracting capital and clients as well as gaining access to credit.<sup>497</sup>

In both cases, the exposure of these corporations to the global market, its trends and pressures, had a huge impact on the evolution of the South African CSR framework. Depatriated corporations' transposition into the South African context of foreign and international CSR principles, instruments and institutions ultimately provided the basis and paved the way for the elaboration of a purely South African CSR framework:

'[T]he companies that have been featuring most prominently in the South African CSR discourse are the "depatriated" companies, i.e., formerly South African companies that have moved their registration and primary listing overseas (most commonly London) [...].

---

<sup>492</sup> King M *King Report on Corporate Governance* (1994).

<sup>493</sup> Series of *Codes of Corporate Governance* issued in South Africa by the King Committee on Corporate Governance in three successive Reports dated 1994(*King I*), 2002(*King II*) and 2009(*King III*).

<sup>494</sup> Hanks J, Hamann R & Sayers V *Corporate Social Responsibility and the UN Global Compact in South Africa 2007: Report of the Global Compact Network of South Africa* (2007)7.

<sup>495</sup> Such as Sasol (petrochemicals), which has spread into Europe, the United States and the Gulf; Sappi and Mondi (pulp and paper), which are active in the United States and Europe; and Eskom (power utility) and MTN (mobile communication), which are more oriented towards investment in Africa. Fig D 'Manufacturing amnesia: Corporate Social Responsibility in South Africa' (2005) 8I (3) *International Affairs* 611.

<sup>496</sup> Fig D 'Manufacturing amnesia: Corporate social responsibility in South Africa' (2005) 8I (3) *International Affairs* 599-617.

<sup>497</sup> Fig D 'CSER and Development in South Africa' in UNRISD *Corporate Social Responsibility and Development: Towards a New Agenda?* (2003) 11.

The move to one of the primary stock exchanges is widely seen to have created a strong impetus to establish CSR policies and enhance public reporting at minimum, because of the more comprehensive Corporate governance and risk management requirements of the Stock exchanges and greater stakeholder expectations and shareholder activism in ‘Northern’ countries.’<sup>498</sup>

#### 4.2.3.2.2 Official approaches

Faced with the challenge of restoring a South African society deeply affected by the social, political and economic remnants of the Apartheid system, the new institutions had the purpose to achieve social justice and fairness in a South African context for so long marred by social injustice, inequalities and discrimination.<sup>499</sup>

The policies implemented by the new institutions were therefore aimed at the promotion of social justice as the cornerstone of the role to be played by all societal institutions, including businesses and corporate executives. Thus ‘CSR in post-Apartheid South Africa is strongly influenced by a socio-political mandate of nation building, and therefore characterised by national priorities such as transformation and affirmative action, education, job creation, skills and development and HIV/Aids’.<sup>500</sup>

First, this resulted in the emergence of affirmative action, employment equity, and substantive equality as a set of constitutional imperatives justified by the historical legacy of the country.<sup>501</sup> These constitutional imperatives constituted the cornerstone of the South African CSR framework, underpinning the progressive formulation of legislation addressing social and transformation issues, as well as Black economic empowerment.<sup>502</sup>

Secondly, the political transition resulted in the enactment of a set of legislation and regulations instituting the core elements of the SA CSR framework while addressing specific

---

<sup>498</sup>Hamann R ‘South Africa: The role of history, government, and local context’ in Idowu SO & Filho WI (ed) *Global Practices of Corporate Social Responsibility* (2009)442.

<sup>499</sup>Fig D ‘CSER and Development in South Africa’ in UNRISD *Corporate Social Responsibility and Development: Towards a New Agenda?* (2003) 10.

<sup>500</sup>Van Niekerk J ‘South Africa Country Chapter’ in Smit A *Shaping Corporate Social Responsibility in sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013) 196.

<sup>501</sup> See ss 8(2) and 8(3) of Interim Constitution of the Republic of South Africa, Act 200 of 1993. These principles therefore constituted the backbone of South African legislation after the transition and have generated several CSR inclined Acts, such as, the Employment Equity Act, the Skills Development Act, the Skills Levy Act, the Preferential Procurement Policy Framework Act and the Broad-Based Black Economic Empowerment Act.

<sup>502</sup> Section 4 chap 5 of King M *King Report on Corporate Governance for South Africa* (2002)114.

issues, such as the need to implement the ILO's standards and principles relating to decent work.<sup>503</sup>

Finally, the TRC recommendations on business played a role in shaping the current CSR framework. In fact, after concluding its inquiry into the role businesses played in South Africa during Apartheid, the TRC made several recommendations to the State on how to deal with business responsibility to South African society. An important feature of these recommendations is the fact that the TRC avoided advocating for formal reparations to be imposed on business for their role during Apartheid. The TRC instead recommended that businesses should engage in a process of corrective action, and participate in State-instituted actions aimed at holistically redressing the injustices of Apartheid at a national level. The TRC therefore influenced the South African CSR framework by making recommendations on approaches to dealing with corporate stakeholders' issues and concerns.<sup>504</sup>

The resulting regulatory framework promoted the active contribution of corporations to the achievement of a new and prosperous SA and therefore opposed the idea of legal action aimed at gaining reparations from corporations for their role during Apartheid. This explains the proactive opposition of the South African government to Apartheid litigation seeking reparations from corporations for their role during Apartheid.<sup>505</sup>

Although it could be regarded as an outcome of extensive corporate lobbying during the transition process, the South African government's unwillingness to pursue or allow third party lawsuits against corporations, was supposedly entrenched in the ideals, promoted during the transition, of reconciliation and socio-economic transformation, and resulted in the attribution of a specific role needed to be played by business in the reconstruction and development of South Africa.<sup>506</sup>

A core element and principal characteristic of the South African CSR framework is the role officially attributed to business in the task of reconstruction and development of the new South African society. South African company law actually regulates specific aspects of the

---

<sup>503</sup> Ndhlovu TP 'Corporate social responsibility and corporate social investment: The South African case' (2011) 12 *Journal of African Business* 73.

<sup>504</sup> See Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 5* (1998) Chapter 8.

<sup>505</sup> Maduna PM *Justice Minister Declaration on Apartheid Litigation in the USA* (2003)

<sup>506</sup> Maduna PM *Justice Minister Declaration on Apartheid Litigation in the USA* (2003) Para 8.1.

social responsibility of corporations, imposing racial redress and socio-economic transformation as priority and /or compulsory business objectives.<sup>507</sup>

#### **4.2.4 The South African CSR framework**

The CSR framework that emerged during the South African political transition displayed key characteristics that emphasised its uniqueness. Indeed, the South African CSR framework is a highly institutionalised CSR framework, based on governmentally promoted principles and policies.<sup>508</sup> It is also a CSR framework that is characterised by the prevalence of multi-stakeholder initiatives encompassing corporate and governmental collaboration on societal issues.<sup>509</sup>

##### **4.2.4.1 CSR in South African Law**

The aim of this section is to list aspects of the South African legal system that are relevant to CSR and are therefore - directly or indirectly- part of the South African CSR framework.

###### **4.2.4.1.1 The Constitution of the Republic of South Africa, 1996**

The South African Constitution<sup>510</sup>, as the essential law of the country, directly and indirectly offers a constitutional basis for CSR.

First, the Bill of Rights of the Constitution<sup>511</sup> promotes rights that are quintessential for the very idea of CSR, especially labour and employment rights<sup>512</sup>, as well as environmental rights<sup>513</sup>, making South Africa one of the few countries in the world to have entrenched environmental rights in its Constitution.<sup>514</sup>

---

<sup>507</sup>Juggernath S, Rampersad R & Reddy K 'Corporate responsibility for socio-economic transformation: A focus on broad-based black economic empowerment and its implementation in South Africa' (2011) 5 (20) *African Journal of Business Management* 8233.

<sup>508</sup> Juggernath S, Rampersad R & Reddy K 'Corporate responsibility for socio-economic transformation: A focus on broad-based black economic empowerment and its implementation in South Africa' (2011) 5 (20) *African Journal of Business Management* 8233.

<sup>509</sup>Hanks J, Hamann R & Sayers V *Corporate Social Responsibility and the UN Global Compact in South Africa 2007: Report of the Global Compact Network of South Africa* (2007) ii. See also Hamann R 'Introducing corporate citizenship' in Hamann R, Woolman S & Sprague C (ed) *The Business of Sustainable Development in Africa* (2008) 10.

<sup>510</sup> Constitution of the Republic of South Africa, 1996.

<sup>511</sup> Sections 7-39 (chap 2) of the Constitution of the Republic of South Africa, 1996.

<sup>512</sup> Including s13: Slavery, servitude and forced labour, s 17 : assembly, demonstration, picket and petition ; s22 : Freedom of trade, occupation and profession; and s23: Labour relations

<sup>513</sup> s 24 of the Constitution of the Republic of South Africa, 1996.

<sup>514</sup>Boddenberg M & Aletter F 'The Development of Corporate Social Responsibility in South Africa' in Aletter F, von der Burg K & Zanella I(ed) *Corporate Social Responsibility in South Africa as practiced by South African and German Companies* (2010) 12.

Havenga points to the fact that the principle of horizontal application of the Constitution<sup>515</sup> particularly enhances the CSR relevance of the Bill of Rights as it becomes compulsory for corporations to respect and implement rights and principles entrenched in the Bill of Rights. The legal framework regulating corporate activities also needs to comply with the values enshrined in the Constitution.<sup>516</sup>

Esser and Dekker also assert the CSR relevance of the Constitution by highlighting the fact that core aspects of the South African CSR framework originate from and are based on constitutional provisions. The BEE legislation, for instance, is based on the equality clause contained in section 9 of the Constitution, while many other pieces of CSR relevant legislation serve the purpose of implementing principles enshrined in the Constitution,<sup>517</sup> namely, the Employment Equity Act,<sup>518</sup> the Preferential Procurement Policy Framework Act,<sup>519</sup> and the Skills Development Act.<sup>520</sup>

Finally, Mongalo believes that the Constitution actually initiated the process of acknowledgement and recognition of the notion and idea of corporate stakeholder as part of the South African business scene.<sup>521</sup>

#### **4.2.4.1.2 South African labour and employment legislation**

Labour and employment laws and regulations created during the transition primarily focussed on the implementation of core labour and employment rights enshrined in the Bill of Rights.<sup>522</sup> This resulted in a labour and employment legislative framework based on the cardinal principles of substantive equality and affirmative action, and the enactment of several CSR relevant laws and regulation, such as the Basic Conditions of Employment Act

---

<sup>515</sup> The principle of the horizontal application of the Constitution is entrenched in s 8 of the Constitution of the Republic of South Africa, 1996. This principle has also been established by the South African Constitutional Court in *Du Plessis & others v De Klerk & another* 1996 (3) SA 850 (CC).

<sup>516</sup> Havenga M 'The company, the constitution, and the stakeholders' (1997) 5 (4) *Juta's Business Law* 135.

<sup>517</sup> Esser I & Dekker A 'The dynamics of corporate governance in South Africa: Broad Based Black Economic Empowerment and the enhancement of good corporate governance principles' (2008) 3(3) *Journal of International Commercial Law and Technology* 162.

<sup>518</sup> The Employment Equity Act 55 of 1998.

<sup>519</sup> The Preferential Procurement Policy Framework Act 5 of 2000.

<sup>520</sup> The Skills Development Act 97 of 1998.

<sup>521</sup> Mongalo T 'South Africanizing company Law for a modern competitive global economy' (2004)121 *SALJ* 114.

<sup>522</sup> Specifically the following sections of the Constitution: s 13: Slavery, servitude and forced labour; s 17: assembly, demonstration, picket and petition; s 22: Freedom of trade, occupation and profession; and s 23: Labour relations.

75 of 1997, the Employment Equity Act 55 of 1998 and the Skills Development Act 97 of 1998.

The Labour Relations Act 66 of 1995 (LRA) to a certain extent is also CSR relevant. Employees' rights as corporate stakeholders are promoted and protected by the LRA which institutes a workplace forum<sup>523</sup> as an important institution within the corporation, with specific prerogatives and a consultative role.<sup>524</sup> One of the reasons for the enactment of the LRA was to 'promote employee participation in decision-making through the establishment of workplace forums'.<sup>525</sup>

#### **4.2.4.1.3 The Companies Act 71 of 2008**

Even though the Companies Act No. 71 of 2008 does not directly address the issue of CSR, this Companies Act differentiates itself from the previous Act as it recognises the need to deal with and provide for the societal aspects of corporate activities.<sup>526</sup>

The Act therefore refers to the societal purpose of corporations in the South African community.<sup>527</sup> It ultimately provides for the creation, by South African corporations, of social and ethics committees,<sup>528</sup> the purpose of which is to 'monitor and report on their activities with regard to social and economic development, promotion of equality and development of the communities in which they operate'.<sup>529</sup>

The Act also refers to the principles of transparency, responsible management, accountability and proper corporate governance as now playing a pivotal role in modern business practice.<sup>530</sup>

---

<sup>523</sup> Wood G & Mahabir P 'South Africa's Workplace Forum system: A stillborn experiment in the democratisation of work?' (2003) 32 (3) *Industrial Relations Journal* 230 describe workplace forums as 'plant level consultative bodies, focusing on practical issues such as the terms and organisation of work, but not on issues that normally fall within the ambit of collective bargaining, such as wages and conditions of employment. In addition, they have a joint decision making role in areas such as disciplinary and grievance proceedings, unless otherwise regulated by a collective agreement'.

<sup>524</sup> See chap V of the Labour Relations Act 66 of 1995.

<sup>525</sup> See Preamble of the Labour Relations Act 66 of 1995.

<sup>526</sup> Section 7(d) of the Companies Act 71 of 2008 'reaffirm the concept of the company as a means of achieving economic and social benefits [...]'.  
<sup>527</sup> See Section 7(b) (iii) and Section 7 (d) of the Companies Act 71 of 2008.

<sup>528</sup> Section 72 of the Companies Act 71 of 2008. See also Regulation 43 of the Companies Regulations 2011

<sup>529</sup> Juggernath S, Rampersad R & Reddy K 'Corporate responsibility for socio-economic transformation: A focus on broad-based black economic empowerment and its implementation in South Africa' (2011) 5(20) *African Journal of Business Management* 8236.

<sup>530</sup> See Section 7(b) (iii), Section 7 (h) and Section 7 (j) of the Companies Act 71 of 2008.

More importantly, the Act confirms the adoption of the enlightened shareholder value model as the basis of the relationship between shareholders and stakeholders. The enlightened shareholder value model is based on two essential premises: its priority aim is to further the interests of corporate shareholders; yet this approach also emphasises the need to consider corporate stakeholders' interests because addressing stakeholders' interest is essential for the long term best interests of shareholders.<sup>531</sup>

#### **4.2.4.1.4 The B-BBEE legal and policy frameworks**

The BEE legislation constitutes the core South African institutional CSR instrument and is a pivotal tool for the entrenchment of corporate social awareness and responsiveness in South African corporate culture.<sup>532</sup>

The BEE legislation entails the followings Acts and Codes:

- a) The Broad-Based Black Economic Empowerment Strategy Document of the Department of Trade and Industry (DTI) of 2003;
- b) The Broad-Based Black Economic Empowerment Act No. 53 of 2003;
- c) The Broad-Based Black Economic Empowerment Amendment Act No. 46 of 2013; and
- d) The Code of Good Practice on Black Economic Empowerment of 2007.<sup>533</sup>

#### **4.2.4.1.5 The Department of Trade and Industry Notice 1183 of 2004**

In May 2004, the DTI issued a Notice establishing the need for reform of South African company law.<sup>534</sup> The principal contribution of this Notice was to pioneer a change of direction for the policies underpinning the legal framework regulating corporate activities. This DTI Notice emphasises the need, as a constitutional and legislative imperative, to promote and protect corporate stakeholders' interests:

---

<sup>531</sup>Stein C *The most significant changes to South Africa's Company Laws brought about by the Companies Act, 2008* (2012) 12.

<sup>532</sup> See Juggernath S, Rampersad R & Reddy K 'Corporate responsibility for socio-economic transformation: A focus on broad-based black economic empowerment and its implementation in South Africa' (2011) 5 (20) *African Journal of Business Management* 8233.

<sup>533</sup> DTI *Department of Trade and Industry Notice 112 of 2007: Code of Good Practice on Broad-Based Black Economic Empowerment* (2007).

<sup>534</sup>DTI *Department of Trade and Industry Notice 1183 of 2004: South African Company Law for the 21st Century, Guidelines for Corporate Law Reform* (2004).

'This formulation seeks to recognise that if company law is to remain congruent with the Constitution and consequential legislation, the interests of shareholders should be balanced with those of other stakeholders when this is appropriate and/or required by the Constitution and related legislation. South Africa's legislative framework therefore reflects the recognition that the company is a social as well as an economic institution, and accordingly that the company's pursuit of economic objectives should be constrained by social and environmental imperatives, some of which are provided for in legislative enactments.'<sup>535</sup>

The DTI Notice 1183 of 2004 also enhances corporate governance as a tool for CSR via the establishment of social responsiveness, accountability and transparency as the cornerstones of a reformed company law.<sup>536</sup>

#### **4.2.4.2 CSR in South African Domestic 'Soft Law'**

In this section, the thesis explores CSR instruments and institutions which constitute soft law, namely, voluntary and/or non-enforceable instruments as well as CSR institutions without any directly enforceable prerogatives.

##### **4.2.4.2.1 The Johannesburg Stock Exchange Socially Responsible Investment Index**

The Johannesburg Stock Exchange (JSE) was a pioneer, both on the African continent and in an emerging market, in the establishment of a CSR index<sup>537</sup>, similar to the FTSE4GOOD<sup>538</sup> and the Dow Jones Sustainable Index.<sup>539</sup>

The JSE Socially Responsible Investment Index (SRI) was launched in 2004 after a lengthy creation process fully sponsored by the JSE. The aim of the JSE SRI is to establish three concerns listed corporations ought to address in order to integrate sustainability into their

---

<sup>535</sup>DTI Department of Trade and Industry Notice 1183 of 2004: *South African Company Law for the 21st Century, Guidelines for Corporate Law Reform* (2004) 25.

<sup>536</sup>See Chapter 3 (The general principles of new company law) of DTI Department of Trade and Industry Notice 1183 of 2004: *South African Company Law for the 21st Century, Guidelines for Corporate Law Reform* (2004).

<sup>537</sup> Sonnenberg D & Hamann R 'The JSE Socially Responsible Investment Index and the state of sustainability reporting in South Africa' (2006)23(2) *Development Southern Africa* 305.

<sup>538</sup> The FTSE4GOOD is an Index Series created by the FTSE Group of the London Stock Exchange. The aim of FTSE4GOOD indices is to assess companies and measure their corporate responsibility performance against internationally established standards.

<sup>539</sup>The Dow Jones Sustainable Index is also an Index Series the purpose of which is to assess and measure the sustainability of corporations listed in the Dow Jones Global Total Stock Market Index.

business practices, namely, economic sustainability, environmental sustainability and social sustainability.<sup>540</sup>

Accordingly, the JSE SRI has the following purpose, as stated by the JSE:

- identify those companies listed on the JSE that integrate the principles of the triple bottom line and good governance into their business activities;
- provide a tool for a broad holistic assessment of company policies and practices against globally aligned and locally relevant corporate responsibility standards;
- serve as a facilitation vehicle for responsible investment for investors looking for non-financial risk variables to include in investment decisions, as such risks do carry the potential to have significant financial impacts;
- contribute to the development of responsible business practice in South Africa and beyond.<sup>541</sup>

The JSE also highlighted the relevance and importance of corporate governance as a tool for achieving sustainability and therefore referred to the principles promoted by the *King Report on Corporate Governance for South Africa (2002)* (“*King II*”)<sup>542</sup> as quintessential to each of the JSE SRI’s three concerns.<sup>543</sup>

An assessment of the effectiveness of the JSE SRI in realising its stated objectives reveals mixed views amongst scholars. On the one hand, the JSE’s pioneering steps into successfully adapting the JSE SRI to a very particular South African context are hailed. Sonnenberg & Hamann are of the view that the JSE SRI is the ‘first comprehensive, formal and regular corporate sustainability benchmark to be used in South Africa and indeed in Africa. As such, it is hoped that it will, over time, encourage and enable companies and their stakeholders to improve corporate policies, management systems, and reporting’.<sup>544</sup>

---

<sup>540</sup> Johannesburg Stock Exchange *JSE SRI Index: Background and Selection Criteria* (2013) 2.

<sup>541</sup> Johannesburg Stock Exchange *JSE SRI Index: Background and Selection Criteria* (2013) 2.

<sup>542</sup> Section 4.2.4.2.2 below.

<sup>543</sup> Johannesburg Stock Exchange *JSE SRI Index: Background and Selection Criteria* (2003) 3.

<sup>544</sup> Sonnenberg D & Hamann R ‘The JSE Socially Responsible Investment Index and the State of Sustainability Reporting in South Africa’ (2006)23(2) *Development Southern Africa* 319.

On the other hand, the JSE SRI has been criticised for its voluntariness as well as the negative impact of its lack of monitoring and enforcement measures and/or structures.<sup>545</sup> The JSE SRI nevertheless is an important CSR instrument as it creates the context for CSR principles to be instilled into corporate activities.

#### 4.2.4.2.2 The King Reports on Corporate Governance

Initially a corporate initiative,<sup>546</sup> the *King Reports on Corporate Governance* have evolved into becoming globally recognised instruments, comprehensively adopted and progressively implemented by corporate, governmental and multi-stakeholder institutions.<sup>547</sup>

The *King Reports* have from the very outset been non-legislative and therefore voluntary and non-enforceable instruments.<sup>548</sup> Compliance to the *King Reports* is however compulsory for corporations listed on the JSE<sup>549</sup>, even though ‘clauses are not mandatory, but they take a “comply/apply or explain” approach that somewhat forces corporations to apply CSR programs or justify why they have not adopted them’.<sup>550</sup>

Published in 1994, the *King Report on Corporate Governance (King I)* was a pivotal instrument for the conception and definition of principles of sustainable and responsible corporate governance. Esser notes that *King I*’s ‘purpose was to create the highest standard of corporate governance in South Africa. It resulted in a [...] set of principles recommended as integral to good governance.’<sup>551</sup> *King I* established the basic principles of corporate governance and recommended specific standards of conduct for boards and directors of listed companies, banks, as well as various categories of state-owned enterprises.<sup>552</sup> *King I*

---

<sup>545</sup>Bond P ‘Social Movements and Corporate Social Responsibility in South Africa’ (2008) 39(6) *Development and Change* 1038.

<sup>546</sup>The *King Reports* were initiated in 1993 by the Institute of Directors in South Africa which tasked Mervyn E. King, a retired judge of the South African Supreme Court, to chair a Committee on Corporate Governance. See West A ‘Theorising South Africa’s Corporate Governance’ (2006) 68 (4) *Journal of Business Ethics* 435. See also Vaughn M & Ryan LV ‘Corporate Governance in South Africa: a bellwether for the continent?’ (2006) 14 (5) *Corporate Governance: An International Review* 505–506.

<sup>547</sup>Andreasson S ‘Understanding Corporate Governance Reform in South Africa: Anglo-American Divergence, the King Reports, and Hybridization’ (2011) 5 (4) *Business & Society* 655-658.

<sup>548</sup>Unlike, for instance, the American *Code of Corporate Governance* which has been codified by the Congress (in the Sarbanes–Oxley Act of 2002) and is therefore legally enforceable. Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) 6-7.

<sup>549</sup>Du Toit D ‘Self-regulated Corporate Social Responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview’ (2009)30 *Industrial Law Journal* 2237.

<sup>550</sup>Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) 6.

<sup>551</sup>Esser IM ‘The protection of stakeholder interests in terms of the South African King III Report on Corporate Governance: an improvement on King II?’ (2009) 21 (2) *SA Mercantile Law Journal* 189.

<sup>552</sup>See chap 20 of King M *King Report on Corporate Governance* (1994).

addressed both financial and regulatory aspects of corporate governance while advocating for an integrated approach to governance that involved all corporate stakeholders.<sup>553</sup>

The *King Report on Corporate Governance for South Africa (King II)* was published in 2002 in order to address lacks and shortcomings of *King I*. First, *King II* introduced new sections on essential topics such as the topics of sustainability<sup>554</sup>, the role of the corporate board<sup>555</sup>, and the topic of risk management<sup>556</sup>. Secondly, *King II* widened its sphere of application in order to include government departments, national, provincial or local government administration falling under the Local Government: Municipal Finance Management Act<sup>557</sup>, public institutions or functionaries exercising a power or performing a function in terms of the Constitution, or exercising a public power or performing a public function in terms of any legislation, excluding courts or judicial officers.<sup>558</sup> Most importantly, *King II* highlighted the concept of Triple Bottom Line as an essential element of sustainable corporate governance:

‘There is a move from the single to the triple bottom line, which embraces the economic, environmental and social aspects of a company’s activities: The economic aspect involves the well-known financial aspects as well as the non-financial ones relevant to that company’s business. The environmental aspects include the effect on the environment of the product or services produced by the company. The social aspects embrace values, ethics and the reciprocal relationships with stakeholders other than just the shareowners.’<sup>559</sup>

In 2009, the *King Code of Governance Principles* and the *King Report on Governance (King III)* were published as a step toward the modernisation of the principles contained in the preceding reports.<sup>560</sup> *King III* introduces reforms for the purpose of widening the scope and the impact of its principles, thereby making the *King Reports* applicable to all entities (public,

---

<sup>553</sup> See chap 20 of King M *King Report on Corporate Governance* (1994) Sections 1- 13. See also Esser IM ‘The protection of stakeholder interests in terms of the South African King III Report on Corporate Governance: an improvement on King II?’ (2009) 21 (2) *SA Mercantile Law Journal* 189-190.

<sup>554</sup> *King II* makes provisions for sustainability and sustainability reporting issues. See King M *King Report on Corporate Governance for South Africa* (2002) 91-124.

<sup>555</sup> See King M *King Report on Corporate Governance for South Africa* (2002) 46-51.

<sup>556</sup> *King II* includes a section that provides for risk management. See King M *King Report on Corporate Governance for South Africa* (2002) 73-85.

<sup>557</sup> Local Government: Municipal Finance Management Act 56 of 2003

<sup>558</sup> King M *King Report on Corporate Governance for South Africa* (2002). Section 1.1.3 of the Code of Corporate Practices and Conduct.

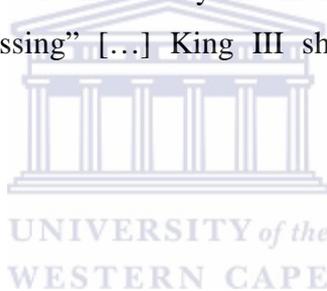
<sup>559</sup> King M *King Report on Corporate Governance for South Africa* (2002)10-11.

<sup>560</sup> Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) 5.

private and non-profit).<sup>561</sup> *King III* institutionalise integrated reporting,<sup>562</sup> and specifically establishes a framework of principles as core fundamentals of integrated reporting and disclosure, including the principles of transparency, and accountability and the principle of financial disclosure .<sup>563</sup>

Although generally celebrated for their comprehensiveness in establishing a sound corporate governance framework that has been globally adopted, the *King Reports* have also been criticised, mostly for their ineffectiveness in enforcing the implementation of their principles by participating corporations. The clauses of *the King Reports* are not mandatory and are therefore not enforceable.<sup>564</sup>

The ‘apply or explain’ approach adopted by the *King III* has been criticised for its inefficiency in upholding the objectives of the *King Code* thus it has been suggested that the ‘King III should be changed from a voluntary set of recommendations to a compulsory legislative concept, similar to the Sarbanes-Oxley Act in the United States, in order to avoid “box-ticking” and “window dressing” [...] King III should be better aligned with the Companies Act.’<sup>565</sup>



## 4.3 CSR in Cameroon

### 4.3.1 Characteristics of the Cameroonian CSR framework

Addressing the issue of CSR in Cameroon constitutes a challenge quite dissimilar to the challenges faced when analysing CSR in France and South Africa. In France and South Africa, the notion of CSR is deeply entrenched in the socio-political context, essentially

---

<sup>561</sup> Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) 17 reads ‘In contrast to the King I and II codes, King III applies to all entities regardless of the manner and form of incorporation or establishment and whether in the public, private sectors or non-profit sectors. We have drafted the principles so that every entity can apply them and, in doing so, achieve good governance. All entities should apply the principles in the Code and consider the best practice recommendations in the Report.’

<sup>562</sup> Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) 107-111. Eccles RG, Schulschenk J & Serafeim G ‘Capturing the Link between Non-financial and Financial Performance in One Space’ in Malan D & Van der Lugt C *Making Investment Grade: The Future of Corporate Reporting* (2012) 43 .

<sup>563</sup> See Principles 9-1 to 9-3 in Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) 107-111.

<sup>564</sup> Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) 6-7.

<sup>565</sup> Van Vuuren C J & Schulschenk J *Perceptions and practice of King III in South African Companies* (2003) 23.

because of specific historical or regional factors (South Africa and France, respectively) explaining the presence of the CSR concept in academic, corporate and political discourse, and the inclusion of CSR in corporate and governmental policy frameworks. Cameroon is mostly characterised by the non-existence of a structured CSR framework and the absence of CSR in the governmental policy framework.

In 2009, a socio-politic and economic development blueprint was published that highlighted governmental priorities, policies and strategies for the achievement, by 2035, of a specific set of developmental goals and the subsequent transformation of the country into an emerging economy.<sup>566</sup> In this working paper, the Cameroonian government designed a policy framework meant to address essential societal issues and concerns as developmental priorities.<sup>567</sup>

Although several instances of co-operation and collaboration between the Cameroonian government and various institutions (public and private, national and international) are designed in order to achieve various economic and political goals, social issues are nonetheless specifically assigned for State intervention only. Co-operation between State and business is only envisaged as business orientated co-operation for the achievement of economic, financial and industrial objectives.<sup>568</sup>

Such omission to include a role to be played by corporations in the process of achievement of specific societal goals is in fact in accordance with the stated objectives of this governmental policy and strategy blueprint, namely, to attract and retain foreign investors.<sup>569</sup> The exclusion of any reference to corporate social responsibility in this official policy and strategy document denotes an underlying governmental objective of attracting, and retaining, international investors; hence the necessity to design a stockholder friendly business environment in Cameroon.<sup>570</sup>

---

<sup>566</sup> Ministry of Economy, Planning and Regional Development *Cameroon Vision 2035* (2009).

<sup>567</sup> Ministry of Economy, Planning and Regional Development *Cameroon Vision 2035* (2009) 17-24.

<sup>568</sup> Ministry of Economy, Planning and Regional Development *Cameroon Vision 2035* (2009) 42-44.

<sup>569</sup> Ministry of Economy, Planning and Regional Development *Cameroon Vision 2035* (2009) 11.

<sup>570</sup> Dickerson CM 'Corporate Social Responsibility: Lessons from the South on Law and Business norms' (2009) 24 *Research in Law and Economics* 135.

The CSR framework in Cameroon is, accordingly, essentially unstructured, non-regulated and non-monitored and the absence of an appropriate CSR legal and institutional framework actually creates a context favourable to corporate social irresponsibility.<sup>571</sup>

#### **4.3.2 The foundations of the Cameroonian CSR framework**

When compared to France or South Africa, the Cameroonian CSR framework is still embryonic as Cameroonian governmental institutions have not yet undertaken to develop or provide the framework for the development of CSR instruments and institutions,<sup>572</sup> hence the non-existence of CSR instruments and institutions entrenched in the legal and regulatory framework.

A few CSR initiatives are nonetheless beginning to emerge as the result of societal initiatives on the part of various entities, such as, foreign corporations and MNCs, international institutions and organisations, civil society and NGOs, as well as and finally academic institutions.<sup>573</sup> These usually are the outcome, on the one hand, of corporate voluntary initiatives, and, on the other hand, of the importation into the national context of global corporate and institutional CSR models. The combination of both factors results in Cameroon becoming the mere recipient of an array of CSR initiatives from international as well as local corporations, institutions and NGOs. The same applies to most parts of Sub-Saharan Africa.<sup>574</sup>

##### **4.3.2.1 MNCs as CSR agents in Cameroon**

Considering that the Cameroonian legal and institutional framework does not provide for - or at least accommodate – CSR, it is significant to note the pivotal role played by MNCs operating in the country. CSR practices and principles have emerged in Cameroon as a result of the societal activities of various MNCs which have pioneered the field locally.

---

<sup>571</sup>Serres F 'Responsabilité Sociale des Entreprises: L'entreprise entre développement durable et droit au développement ou comment sortir de l'« éthique en toc »?' (2011) *Lettres Actualités Droits-Libertés* 7 July 2011 <http://www.rives-asso.com/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=74&cntnt01pagelimit=25&cntnt01returnid=57> (accessed 26 March 2014).

<sup>572</sup>Wong A & Yameogo KSU *Les responsabilités sociétales des entreprises en Afrique francophone* (2011) 90.

<sup>573</sup>Wong A & Yameogo KSU *Les Responsabilités Sociétales des Entreprises en Afrique Francophone* (2011) 90.

<sup>574</sup>Groch M 'Corporate Social Responsibility in Sub-Saharan Africa's Development' (2008) *The Metropolitan Corporate Counsel* 60.

Loison et al for instance argue that the company Aluminium du Cameroun (Alucam) pioneered the field of CSR in Cameroon as early as the 1950s:

‘The aluminium industry was, at an early stage, confronted with both globalization and societal issues. Indeed, the context of international investment was favourable to the conception and implementation of strategies, which, beyond economic interest, contained social and environmental dimensions. Aluminium du Cameroun (Alucam) was created in 1957 as a subsidiary of the French group Pechiney. Since its creation, this primary aluminium producing plant has systematically applied a policy that simultaneously integrated economic, environmental and social facets.’<sup>575</sup>

According to Loison et al, Alucam’s contribution to the advent of CSR in the Cameroonian context entailed the pioneering implementation of a Triple Bottom Line approach that resulted in stakeholder driven investment and managerial initiatives.<sup>576</sup> The corporation is reported to have considerably invested in its social and human capital, also integrating environmental issues and concerns into the core of its corporate strategy.<sup>577</sup>

#### **4.3.2.2 Other CSR agents in the Cameroonian context**

Various other institutions are contributing to the emergence of a CSR framework in Cameroon. Role players instrumental in the conception of a Cameroonian CSR framework include:

##### **4.3.2.2.1 International institutions**

The transposition into Cameroon of CSR instruments and institutions promoted by various international institutions, public and private, is often the basis for the development of local CSR initiatives:

‘The way donors operate also contributes to introducing CSR, as donors require funding recipients to respect their environmental and social policies, which are often rooted in international best practice (e.g. the International Finance Corporation [IFC], World Bank and African Development Bank). So companies benefitting from funding commit in principle to operating in accordance with their donors environmental and social practices,

---

<sup>575</sup>Loison MC, Pezet A & Berrier C *Corporate Social Responsibility before CSR: Practices at the Company Aluminium du Cameroun, 1950s-1970s* (2007) 3.

<sup>576</sup> Loison MC & Pezet A *La Triple Bottom Line ; Une nécessité historique, un concept mouvant : Le cas Alucam (1952-2007)* (2009)4.

<sup>577</sup> See Laparra M &Grinberg I *Alucam, un destin africain – 50 ans d’aluminium au Cameroun : 1957-2007* (2007).

even within Cameroon. An example of this is the IFC's performance standards for environmental and social sustainability, effective from 01 January 2012.<sup>578</sup>

#### **4.3.2.2 Civil society**

Civil society is active in the promotion of CSR in Cameroon, often engaging corporations and, governmental institutions as well as relevant communities on societal issues. One such civil society initiative is the 'Club of Emerging Leaders for Africa' (CELA), an organisation of young African CSR practitioners and scholars. The activities of CELA culminated in 2009 with the completion of a research report on the CSR performance of various industries in countries, such as, Cameroon, Senegal and the Ivory Coast and the subsequent publication of an 'Indice CELA D'Evaluation de la Responsabilité Sociétale des Entreprises En Afrique', namely, an index for the evaluation of CSR in Africa.<sup>579</sup>

#### **4.3.2.3 Conclusion**

A review of the emergence and evolution of CSR activities in Cameroon reveals the recentness of corporate commitment to CSR. From a historical perspective, pioneering CSR activities, instruments and institutions emerged in the Cameroonian context as the result of the combination of the following factors:

- corporate reaction and proactivity when confronted with lawsuits and widespread criticism regarding controversial aspects of their corporate activities; and<sup>580</sup>
- isolated occurrences of corporate awareness and responsiveness to societal concerns.

### **4.3.3 CSR framework in Cameroon**

#### **4.3.3.1 CSR in the Cameroonian legal framework**

Corporate activities in Cameroon are governed by a unique combination of national and regional laws. Cameroon is a founding member of the OHADA Treaty<sup>581</sup> and has thus far

---

<sup>578</sup>Smit A (ed) *Shaping Corporate Social Responsibility in Sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013) 36.

<sup>579</sup> Club of Emerging Leaders for Africa *Indice CELA D'Evaluation de la Responsabilité Sociétale des Entreprises En Afrique* (2009).

<sup>580</sup> See Section 4.3.2.1 above.

<sup>581</sup> The OHADA legal system was created in Mauritius in 1993 by the Treaty on the Harmonisation of Business Law in Africa. This Treaty was amended in 2008 in Quebec by the Treaty on Revisions to the Treaty on the Harmonisation of Business Law in Africa. Originally agreed between the OHADA's 14 founding countries, this Treaty is the founding document of the OHADA which currently has 17 members, namely, Benin, Burkina

introduced and provided for the implementation of OHADA Uniform Acts<sup>582</sup> as part of its national legal system. Because the OHADA Uniform Acts does not yet provide for all aspects of business and commercial activities, national legislation provides an underpinning legal background that supplements the OHADA Uniform Acts in regulating commercial corporate activities in Cameroon.<sup>583</sup>

There is no specific mention of CSR in Cameroonian national laws and regulations dealing with corporate activities. CSR is only addressed - indirectly and incidentally- in specific aspects of national legislation dealing with various related issues,<sup>584</sup> such as the 1996 Act on the protection and management of the environment.<sup>585</sup>

The Cameroonian government has recently endeavoured to decisively act against contraventions of this Act; hence the hefty fines imposed on 139 corporations for pollution or lack of compliance with national environmental regulations.<sup>586</sup>

As regards regional legislation, it has been established that the OHADA Uniform Acts do not directly address the issue of CSR, nor do they directly refer to the concept of CSR.<sup>587</sup> Serres nevertheless argues that the OHADA Uniform Acts contain several provisions that promote and protect the interest of stakeholders (such as creditors and employees) and also regulate corporate governance with stakeholders' interests in mind.<sup>588</sup>

---

Faso, Cameroon, Central African Republic, Chad, Comoros, and Republic of the Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, Togo, and the Democratic Republic of Congo. As an acronym, OHADA stands for 'Organisation pour l'Harmonisation en Afrique du Droit des Affaires', ['Organisation for the Harmonisation of Business Law in Africa'] thus the objective of the OHADA is to supersede national legislation regulating business operations in these countries. See Mouloul A *Comprendre l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires* (2008) 16-23.

<sup>582</sup> See OHADA *Les Actes Uniformes de l'OHADA* (2014) <http://www.ohada.org/actes-uniformes.html> (accessed 25 August 2014) for a list and a presentation of OHADA Uniforms Acts.

<sup>583</sup> Dickerson CM 'Harmonizing business laws in Africa: OHADA calls the tune' (2005) 44(1) *Columbia Journal of Transnational Law* 19.

<sup>584</sup> Smit A (ed) *Shaping Corporate Social Responsibility in sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013)38.

<sup>585</sup> Loi n° 96/12 du 5 août 1996 portant loi-cadre relative à la gestion de l'environnement.

<sup>586</sup> From MNC such as TOTAL to local corporations, SMEs and even public entities. See Bahri-Domon Y et al 'Le gouvernement sanctionne 139 pollueurs' (2012) 3 *Investir au Cameroun : De grandes ambitions dans la croissance verte* 14.

<sup>587</sup> Authors, such as, Dickerson and Serres, have examined the OHADA legal framework for any direct reference to CSR, with no success. See Dickerson CM 'Corporate social responsibility: Lessons from the South on law and business norms' (2009) 24 *Research in Law and Economics* 131-157; Serres F 'Responsabilité Sociale des Entreprises: L'entreprise entre développement durable et droit au développement ou comment sortir de l'éthique en toc?' (2011).

<sup>588</sup> Serres F 'Responsabilité Sociale des Entreprises: L'entreprise entre développement durable et droit au développement ou comment sortir de l'éthique en toc ?' (2011) 8-9.

That the OHADA Uniform Acts do not refer to the issue of CSR could be explained by the intention of the OHADA's member State parties when entering into the agreement from which the OHADA Uniform Acts originated, namely, to create a business environment that is free of legal, societal and political uncertainties and therefore inclined to attract international investors.<sup>589</sup>

The primary agenda of the OHADA is to contribute to economic development via the attraction of foreign investors.<sup>590</sup> This objective is translated into the creation of a business environment that furthers the economic interests of corporate shareholders, and therefore easily tolerates, and is even prone to generate, corporate practices contrary to CSR principles.<sup>591</sup>

Dickerson nevertheless acknowledges the fact that the OHADA Uniform Acts provide for the promotion of good corporate governance as well as the prevention of abuse of power by corporate executives.<sup>592</sup> Moreover, the OHADA Uniform Acts also interpret the 'social interest' of corporations as entrenching various stakeholders' interests.<sup>593</sup>

The legal framework of CSR in Cameroon is practically non-existent or, at best, inherently flawed by the fact that it is unstructured and inefficient; hence the prevalence in Cameroon of corporate malpractices and socially irresponsible behaviour.<sup>594</sup>

#### 4.3.3.2 CSR instruments and institutions

The Cameroonian framework of CSR is constituted by an embryonic network of CSR instruments and initiatives. The following sections attempt to regroup these CSR instruments and initiatives in four categories according to the entities from which they originate.

---

<sup>589</sup>Kirsch M 'Historique de l'Organisation pour l'harmonisation en Afrique du droit des affaires (OHADA)' (1998) 108 *Recueil Penant* 130-131.

<sup>590</sup>Lohoues-Oble J 'L'apparition d'un Droit International des Affaires en Afrique' (1999) 3 *Revue internationale de droit compare* 544-47. See also Le Boulanger P 'L'arbitrage et l'harmonisation du droit des affaires en Afrique' (1999) 3 *Revue de L'arbitrage* 541-591.

<sup>591</sup>Thus, a government that to all evidence protects foreign business entities' investments but not their own host-country workers defines by its behaviour a pro-capital, anti-labor role for business organizations. Its national laws may appear to guarantee workers' rights, but if the political will to enforce them is lacking, the laws are, as a functional matter, non-existent.' Dickerson CM 'Corporate Social Responsibility: Lessons from the South on Law and Business norms' (2009) 24 *Research in Law and Economics* 135-136.

<sup>592</sup>In the provisions contained in ss 29, ss 130 and 131, and ss 110 and 385, respectively of the OHADA Uniform Act of 1997 on Company Law.

<sup>593</sup>Dickerson CM 'Corporate Social Responsibility: Lessons from the South on Law and Business norms' (2009) 24 *Research in Law and Economics* 138.

<sup>594</sup>Capron M 'La RSE en Afrique : l'arbre qui cache la forêt ?' (2010)9 *Altermondes Hors-Série* 1-4.

#### 4.3.3.2.1 Corporate CSR instruments and institutions

The CSR instruments listed in this section were initially promoted and/or adopted by either local, foreign or multinational corporations operating in Cameroon.

##### 4.3.3.2.1.1 The Groupement Inter-patronal du Cameroun ‘Code of Ethics’

The Groupement Inter-patronal du Cameroun (GICAM) is Cameroon’s main employers’ federation and it pioneered the CSR field in 2004 via the conception and adoption of a ‘Code of Ethics’.

The GICAM ‘Code of Ethics’ (GCE)<sup>595</sup> is a concretisation of the GICAM conviction that businesses have an unavoidable economic and social role to play in society;<sup>596</sup> and that such role translates into the necessity to promote a business culture based on respect for essential societal pillars, such as, moral values, human rights and the environment.<sup>597</sup> The objective of the GCE is therefore to encourage businesses to promote values and principles which are conducive to their growth as well as to the welfare of their employees and the entire community.<sup>598</sup> Even though very succinctly, the GCE therefore covers most topics essential to the notion and practice of CSR, such as the protection of labour rights and human rights, as well as the promotion of non-discrimination (section 4); the fight against corruption (section 6); the protection of the environment (section 8); and the social responsibility of corporations (section 9).

The GCE was adopted on 14 May 2004 at the General Assembly of the GICAM and has been constituted as a GICAM founding document. All corporations operating in Cameroon, whether members or not of the GICAM are welcome to adhere to the GCE and are expected to comply with its provisions.<sup>599</sup> The GCE nevertheless clearly states that its provisions are not constitutive of hard law;<sup>600</sup> thus it is a voluntary and non-enforceable CSR instrument.

##### 4.3.3.2.1.2 GICAM HIV-AIDS Programs

---

<sup>595</sup> Groupement Inter-patronal du Cameroun *Code éthique du GICAM* (2004).

<sup>596</sup> Ousmanou S ‘Pour un management teinté d’éthique : Premières vues sur le projet du code éthique du GICAM’ (2004) 25 *Le Bulletin du Gicam* 10-11.

<sup>597</sup> See Preamble, Groupement Inter-patronal du Cameroun *Code éthique du GICAM* (2004)3.

<sup>598</sup> See Preamble, Groupement Inter-patronal du Cameroun *Code éthique du GICAM* (2004)3.

<sup>599</sup> Groupement Inter-patronal du Cameroun *Code éthique du GICAM* (2004) Section 2.

<sup>600</sup> Groupement Inter-patronal du Cameroun *Code éthique du GICAM* (2004) Section 11(a).

The *Plateforme de coordination Groupe d'Entreprises contre le VIH-Sida* (PCGE)<sup>601</sup> program was launched in 2000 by the GICAM as a platform for 'Cameroonian enterprises' co-ordinated programme fighting against the HIV-AIDS pandemic.<sup>602</sup>

This GICAM contribution to the fight against HIV AIDS was introduced as a CSR initiative implementing Cameroonian employers' commitment to fight the HIV-AIDS pandemic while taking care of already infected and/or affected workers.<sup>603</sup> It later evolved into becoming the Coalition de la Communauté des Affaires contre le Sida, le Paludisme et la Tuberculose (CCA/SIDA)<sup>604</sup> a public-private partnership created in 2006 that entailed a collaborative effort uniting corporations, relevant public entities and NGOs in the fight against HIV, tuberculosis and malaria.<sup>605</sup>

#### 4.3.3.2.1.3 The French Corporations CSR Charter

During the 25th France/Africa Summit of 2010<sup>606</sup> French corporations elaborated and adopted a CSR Charter establishing essential principles relevant to their social, environmental and economic responsibilities towards communities in all African countries where they operated.<sup>607</sup> This CSR Charter is promoted and supported by the French government, and it promises a new era in the promotion and protection of various stakeholders' interests on the continent.<sup>608</sup>

#### 4.3.3.2.2 CSR initiatives from International Institutions

This section explores international CSR instruments, mostly from international institutions, which have successfully been adopted and adapted into Cameroon.

---

<sup>601</sup> PCGE is an acronym that stands for *Plateforme de coordination Groupe d'Entreprises contre le VIH-Sida*

<sup>602</sup> Wong A & Yameogo KSU *Les responsabilités sociétales des entreprises en Afrique francophone* (2011)40.

<sup>603</sup> Wong A & Yameogo KSU *Les responsabilités sociétales des entreprises en Afrique francophone* (2011)40.

<sup>604</sup> CCA/SIDA is an acronym that stands for Coalition de la Communauté des Affaires contre le Sida, le Paludisme et la Tuberculose.

<sup>605</sup> Sida-Entreprise Cameroon: Country Report (2014) *Sida-Entreprise* [http://www.sidaentreprises.org/fr/page.php?id\\_rub1=43&id\\_rub2=104&col=4](http://www.sidaentreprises.org/fr/page.php?id_rub1=43&id_rub2=104&col=4) (accessed 26 March 2014)

<sup>606</sup> XXVème Sommet des Chefs d'Etat d'Afrique et de France held in Nice(France) during May/June 2010.

<sup>607</sup> Idrac AM 'La responsabilité sociétale des entreprises : pour une démarche gagnant-gagnant' (2010) French Secretary of State for Foreign Trade Report on the *Charte RSE adoptée lors du Sommet Afrique-France par les entreprises françaises* <http://www.e-sud.fr/groupe/telechargements/Charte%20RSE%20adoptee%20lors%20du%20Sommet%20Afrique.pdf> (accessed 25 August 2014)

<sup>608</sup> Idrac AM 'La responsabilité sociétale des entreprises : pour une démarche gagnant-gagnant' (2010) French Secretary of State for Foreign Trade Report on the *Charte RSE adoptée lors du Sommet Afrique-France par les entreprises françaises* <http://www.e-sud.fr/groupe/telechargements/Charte%20RSE%20adoptee%20lors%20du%20Sommet%20Afrique.pdf> (accessed 25 August 2014)

#### **4.3.3.2.2.1 The West Africa Cocoa/Commercial Agricultural Program to Combat Hazardous and Exploitative Child Labor**

The West Africa Cocoa/Commercial Agricultural Program to Combat Hazardous and Exploitative Child Labor (WACAP) was established in 2003 by the ILO in collaboration with the U.S. Department of Labor and key players of the global chocolate industry. The programme operates in five African countries, including Cameroon<sup>609</sup> and mostly focusses on issues of child labour, forced labour and slavery.<sup>610</sup>

#### **4.3.3.2.2.2 The African Development Bank**

The African Development Bank (ADB) has designed a range of institutional CSR instruments for the purpose of ensuring the social and environmental sustainability of its investments. The overall purpose of these instruments is to make it mandatory for borrowers to provide comprehensive reports indicating the inclusion and subsequent implementation of social and environmental concerns into their projected investments.<sup>611</sup>

### **4.4 CSR in France**

#### **4.4.1 Introduction**



The purpose of this section is to analyse the history and dynamics of CSR in France, and to discuss the adaptation and contextualisation of European CSR instruments and institutions into the French context, while highlighting the characteristics of the French CSR framework as expressed in France specific CSR instruments and institutions.

#### **4.4.2 Historical overview of French CSR framework**

In accordance with the recommendation of the 1975 *Sudreau Commission Report*,<sup>612</sup> the French legislature implemented several reforms, including the enactment in 1977 of the

---

<sup>609</sup>These countries are Ghana, Ivory Coast, Guinea, Cameroon and Nigeria.

<sup>610</sup> ILO & IPEC *West Africa Cocoa/Commercial Agricultural Program to Combat Hazardous and Exploitative Child Labor (Cameroon, Cote d'Ivoire, Ghana, Guinea and Nigeria) - Terminal Evaluation Report (2006) 10.*

<sup>611</sup>African Development Bank *Environmental & Social Assessment Procedures (2014) 1-3.* These instruments include Environmental and Social Management Plans (ESMP), Environmental and Social Assessment Procedures (ESAP), Strategic Environmental and Social Assessments (SESAs), Environmental and Social Impact Assessments (ESIAs) and Resettlement Action Plans (RAPs).

<sup>612</sup> See Sudreau P *Rapport du Comité d'étude pour la réforme de l'entreprise (1975).* The Sudreau Commission was established in 1974 by then French President Valéry Giscard d'Estaing, and its purpose was to formulate recommendations pertaining to a reform of the legal framework regulating corporations.

Social Assessment Act<sup>613</sup>, the purpose of which was to improve labour rights and working conditions in France.<sup>614</sup>

The Social Assessment Act emphasised the need to include non-financial data in corporate reports, and required listed companies to report on social data.<sup>615</sup> Corporations were henceforth required to annually report on the societal and environmental impact of their activities as well as the impact of corporate practices on various stakeholders, such as, employees and concerned communities.<sup>616</sup>

The provisions of the Social Assessment Act were integrated into the French Labour Codes as the Act mostly focused on employees' labour rights and working conditions and dealt with issues related to wages, safety and security, training and employer-employee professional relations.<sup>617</sup> It also provided for the mandatory participation of employees and employees' representatives in the processes that results in the publication of social assessment reports.<sup>618</sup>

The regulation of corporate reporting is of utmost importance in France, as the State approach is to establish a compromise between apparently divergent goals: to attract investors and boost the economy while promoting societal and environmental aspects of corporate activities: 'For the French government, investment has been an important way to develop the economy and enlarge employment. The government perceives CSR as a manner to promote social and environmental issues as well as augment competitiveness and stimulate investors.'<sup>619</sup>

The French approach to CSR is based on a framework of governmental policies, the main purpose of which is to ensure the competitiveness of the French economy without sacrificing social issues and concerns. Corporations are therefore expected (though not compelled) to

---

<sup>613</sup> Loi 77-769 du 12 juillet 1977 relative au Bilan Social de l'entreprise (The Social Assessment Act 77-769 of 1977).

<sup>614</sup> Chatriot A 'La réforme de l'entreprise : Du contrôle ouvrier à l'échec du projet modernisateur' (2012) 2(114) *Vingtième Siècle - Revue d'histoire* 192.

<sup>615</sup> Section 1 of the Social Assessment Act 77-769 of 1977. See also Lavaud P 'France Country Chapter' in Berruga B (ed) *A Guide to CSR in Europe: Country Insights by CSR Europe's National Partner Organisations* (2009) 16.

<sup>616</sup> Section 1 to Section 4 of the Social Assessment Act 77-769 of 1977.

<sup>617</sup> Article L438-3 of the Labour Code as amended by Section 1 of the Social Assessment Act 77-769 of 1977.

<sup>618</sup> Article L438-1 and Article L438-5 of the Labour Code as amended by Section 1 of the Social Assessment Act 77-769 of 1977.

<sup>619</sup> Mahjoub Lassaad B & Khamoussi H 'Determinants of Communication about Corporate Social Responsibility: Case of French Companies' (2012) 3(5) *International Journal of Contemporary Business Studies* 50.

engage in CSR activities and are required (compelled) to report on the social aspects of their activities,<sup>620</sup> especially with the advent in 2001 of the New Economic Regulations Act.<sup>621</sup>

Article 116 of the New Economic Regulations Act expands the scope of the 1977 Social Assessment Law and institutionalises the compulsory and mandatory aspect, for listed companies, of social and environmental reporting.

The French government also undertook to play an active role in the actual implementation of CSR and therefore opposed corporates' request for voluntariness in the designing and implementation of CSR policies, progressively assuming the role of a self-proclaimed advocate of CSR, protecting and promoting corporate stakeholders' interests.<sup>622</sup>

#### **4.4.3 Characteristics of the French CSR framework**

##### **4.4.3.1 The French CSR framework in the EU context**

The French CSR framework is underpinned by the EU CSR framework; hence the relevance and applicability in France of EU CSR instruments and institutions, such as, the 2001 EU Green Paper on CSR, European Parliament CSR Resolutions as well as EU CSR Communications.<sup>623</sup>

An essential role is played by the EU in the conception of CSR policies and the adoption of CSR instruments and institutions at national level. The French CSR framework is consequently subjected to EU guidance, via the local impact of EU policies, laws and regulations relevant to CSR.<sup>624</sup>

##### **4.4.3.2 Social Dialogue and Employee Protection in the French CSR framework**

---

<sup>620</sup> Delbard O 'CSR legislation in France and the European regulatory paradox: an analysis of EU CSR policy and sustainability reporting practice' (2008)8 (4) *Corporate Governance: The international journal of business in society* 400-403.

<sup>621</sup> Act No 2001-420 of 15 May 2001 on new economic regulations (Translated from the French Loi n° 2001-420 du 15 Mai 2001 relative aux Nouvelles Regulations Economiques). See also 4.4.4.1.2 below.

<sup>622</sup> Antal AB & Sobczak A 'Corporate social responsibility in France: A mix of national traditions and international influences' (2007) 46(9) *Business & Society* 14.

<sup>623</sup> See Section 3.2.4

<sup>624</sup> For instance, commenting on the environmental aspect of CSR, Delbard notes: 'Since it launched its first action plan for the environment in 1972, the European Union has been developing a unique supranational policy in the field of the environment. A typical case of command and control approach, the EU environment policy consists today of more than 300 directives, decisions and regulations, some of which directly affecting the corporate world. Companies operating in the EU are indeed subjected to several environmental regulations'. Delbard O 'CSR legislation in France and the European regulatory paradox: an analysis of EU CSR policy and sustainability reporting practice' (2008) 8(4) *Corporate Governance* 397.

Despite the fact that human and environmental rights and concerns are well covered by the French CSR framework, a major characteristic of the French approach to CSR resides in the fact that employees are a ‘traditional focus of CSR in France’<sup>625</sup> and are therefore the main beneficiaries of French CSR initiatives.

Employees are considered to be pivotal stakeholders of corporations and as such are at the epicentre of the French CSR framework.<sup>626</sup> Social dialogue is thus considered to be quintessential to French CSR, and this explains the existence of a comprehensive network of framework agreements negotiated and concluded between corporations (local, European and multinational) and sectoral unions, under the supervision of governmental authorities.<sup>627</sup>

#### 4.4.3.3 French official approach to CSR

A major characteristic of the French CSR framework, that essentially differentiates France from most European countries, is the highly institutionalised approach to CSR. The French State views CSR as a national priority considering its impact on the implementation of national policies; thus the institutionalisation of CSR principles and instruments. This institutional approach to CSR in France is deemed to be an expression of an inherently French notion of CSR that is embedded in French legal, social and political traditions:

‘Its civil law legal tradition and its socialist system of policy significantly influence the vision of CSR within the country. Indeed, it implies a strong participation of the State in the economy (in philanthropy, regulation, promotion of social well-being) and mistrust towards private actors to provide general goods.’<sup>628</sup>

The institutionalisation of CSR in France has progressively generated the following characteristics of the French CSR framework. First, CSR instruments and institutions in France, unlike traditional CSR instruments and institutions which are usually merely based on ‘soft law’ principles, are deeply embedded in the legal system regulating corporate activities:

‘In most cases, socially responsible practices are regarded as commitments that have only purely moral value and are incapable of producing any legal effects. An analysis of French

---

<sup>625</sup>Antal AB & Sobczak A ‘Corporate social responsibility in France: A mix of national traditions and international influences’ (2007) 46(9) *Business & Society* 21.

<sup>626</sup>Gond JP et al *Corporate Social Responsibility Influence on Employees* (2010) 4.

<sup>627</sup>Antal AB & Sobczak A ‘Corporate Social Responsibility in France: A Mix of National Traditions and International Influences’ (2007) 46(9) *Business & Society* 20-21.

<sup>628</sup>Young S & Marais M *CSR reporting: an institutional perspective* (2011) 8.

positive law, however, shows that social responsibility is exercised within an increasingly precise legal framework, particularly because the law encourages undertakings to adopt standards of social responsibility.’<sup>629</sup>

Secondly, the French CSR framework is characterised by intense State activism and interventionism. The State is vested with the duty to promote and protect the public interest in general, and the interests of corporate stakeholders in particular; hence the erosion of the principle of voluntariness of corporate societal awareness and responsiveness:

‘[...] the traditional French conception of the role of the State as the embodiment of a rationality that expresses the public interest and, as such, the guarantor of a superior social responsibility (rather than a responsibility that merely complements that of the other actors) is very remote from the ideas of the freethinking Anglo-Americans. Whereas the latter display suspicion of centralised authority and are more likely to place their trust in voluntary initiatives by civil society, the pattern of mistrust in France is reversed. The State and the Law are regarded as the guarantors of a principle of social responsibility that applies to all, while many initiatives emanating from civil society are perceived as campaigns - useful, perhaps, but nevertheless suspected of concealing vested interests.’<sup>630</sup>

Finally, CSR is attributed an important role in the French framework of policies defining the State approach to development challenges. Confronted with conflicting social and economic imperatives, the French State has prioritised the liberalisation of the economy with the goal of attracting investors. CSR is thus envisaged as a tool for the realisation of social objectives at a national level. As such, CSR is perceived to have the potential to catalyse corporate voluntary contributions to the realisation of social and environmental national objectives.<sup>631</sup>

Internationally, French central and diplomatic authorities have decentralised to MNCs an important CSR function relating to socio-economic assistance to populations in emerging and developing countries. When operating in foreign territories, especially in emerging and developing countries, French MNCs are encouraged to implement State - engineered CSR

---

<sup>629</sup>Segal JP et al ‘CSR in France’ in Segal JP, Sobczak A & Triomphe CE (ed) *Corporate social responsibility and working conditions* (2003) 81.

<sup>630</sup>Segal JP et al ‘CSR in France’ in Segal JP, Sobczak A & Triomphe CE (ed) *Corporate Social Responsibility and Working Conditions* (2003) 80.

<sup>631</sup>Mahjoub Lassaad B & Khamoussi H ‘Determinants of communication about corporate social responsibility: Case of French companies’ (2012) 3(5) *International Journal of Contemporary Business Studies* 50.

programmes and objectives with the purpose of implementing a ‘roadmap for a French policy of promoting social responsibility (CSR) as part of an economic diplomacy’.<sup>632</sup>

Such a vision of CSR as a tool of economic diplomacy is based on a transposition from the State to MNCs of the active duty of protection and promotion of corporate stakeholders’ interests in foreign and especially emerging and developing, countries.<sup>633</sup> This results in the promotion of CSR globally, using formal and official channels, such as the *Organisation Internationale de la Francophonie* (OIF). For example, via the organisation in 2008 in Morocco of a seminar on the specific aspects of CSR in the Francophone context and the signing of several CSR Declarations concluding work on the subject during the various Francophone Head of States Summits: namely, the Quebec Declaration on CSR<sup>634</sup> in October 2008 during the Quebec Summit<sup>635</sup> and the Kinshasa Declaration<sup>636</sup> on CSR in October 2012 during the Kinshasa Summit.<sup>637</sup>

#### **4.4.3.4 A focus on CSR Reporting and CSR Communication**

French CSR is underpinned and governed by a European CSR framework based on the principle of voluntariness of CSR. Active State participation is seen as a major characteristic of the French CSR framework, which leads to the question: How does the French CSR framework reconcile the voluntariness of CSR with the necessity of State participation and interventionism in matters related to corporate stakeholders’ interests, which normally translate into the regulation of CSR?

At the core of the French approach to CSR is the emphasis on CSR reporting and communication. State activism and interventionism do not translate into a substantive regulation of CSR that creates and imposes an obligation, for corporations, to engage in CSR

---

<sup>632</sup>Ministère Français des Affaires Étrangères ‘Feuille de route pour une politique française de promotion de la responsabilité sociale des entreprises (RSE) en tant qu’élément d’une diplomatie économique’(2013) Télégramme circulaire adressé à l’ensemble des ambassades de France le 18 février 2013.

<sup>633</sup> ‘Duty of States - Responsibility of Multinational: Prevent and Remedy to violations of human and environmental rights’ translated from the French ‘Devoir des États – responsabilité des multinationales : prévenir et remédier aux violations des droits humains et de l’Environnement’ See Doucin M, French Ambassador in charge of CSR and bioethics, representative of the Deputy Minister In charge of Development, at a CSR Colloquium organised at the French National Assembly, December 2012

<sup>634</sup> International Organization of La Francophonie *Human Rights at the core of Corporate Social Responsibility* (2012).

<sup>635</sup> XII Francophone Head of States Summit, 17-19 October 2008, Québec, Canada.

<sup>636</sup> Organisation internationale de la Francophonie *Déclaration de Kinshasa* (2012).

<sup>637</sup> XIV Francophone Head of States Summit, 13-14 October 2012 in Kinshasa, DRC.

activities.<sup>638</sup> France rather implements an approach that - provided conventional human rights, as well as social and environmental laws and regulations are respected - acknowledges the voluntary aspect of CSR, but imposes an obligation on corporations to formally report and openly communicate on their social and environmental performance.<sup>639</sup>

Orbie and Babarinde consider France to be part of a group of European countries (alongside Belgium and The Netherlands) which has enacted legislation to ensure compliance with CSR.<sup>640</sup> However, one should note that the legal framework in France does not create an obligation for corporations to engage in CSR activities. The French Parliament only ‘enacted a law that mandated all French corporations to report on the sustainability of their social and environmental performance’.<sup>641</sup>

#### **4.4.4 The French CSR framework: instruments and institutions**

##### **4.4.4.1 ‘Hard law’ CSR instruments**

The purpose of this section is to identify relevant laws and regulations providing for various aspects of CSR.

###### **4.4.4.1.1 Act No 2001-152 of 19 February 2001 on employee savings**

Article 21 of Act No 2001-152 of 19 February 2001 establishes the requirement for pension and employees’ saving funds to specify which social, environmental or ethical considerations have been taken into account by the fund’s management company when investing in stocks

---

<sup>638</sup> Delbard O ‘CSR legislation in France and the European regulatory paradox: an analysis of EU CSR policy and sustainability reporting practice’ (2008)8 (4) *Corporate Governance: The international journal of business in society* 400.

<sup>639</sup> Delbard O ‘CSR legislation in France and the European regulatory paradox: an analysis of EU CSR policy and sustainability reporting practice’ (2008)8 (4) *Corporate Governance: The international journal of business in society* 403.

<sup>640</sup>Orbie J & Babarinde O ‘The Social dimension of globalization and EU development policy: Promoting core labour standards and corporate social responsibility’ (2008) 30(3) *European Integration* 470.

<sup>641</sup>Orbie J & Babarinde O ‘The Social Dimension of Globalization and EU Development Policy: Promoting Core Labour Standards and Corporate Social Responsibility’ (2008) 30(3) *European Integration* 470. See also Section 4.4.2 above and Section 4.4.4.1 below on further details on the legal framework regulating CSR reporting in France.

and securities.<sup>642</sup> It also indicates that pension and employees' saving funds' annual reports must indicate how these considerations have been taken into account and implemented.<sup>643</sup>

#### **4.4.4.1.2 Act No 2001-420 of 15 May 2001 on new economic regulations**

Act No 2001-420 of 15 May 2001 on new economic regulations was enacted for the purpose of reforming France's economic regulations. Act No 2001-420 therefore creates or modifies provisions in several codes, laws and regulations providing for different aspects of economic activity, primarily addressing the issues of financial regulation,<sup>644</sup> corporate regulation,<sup>645</sup> and competition regulation.<sup>646</sup>

Article 116 of Act No 2001-420 of 15 May 2001 has the purpose of reformulating and confirming the principles established by the Social Assessment Law of 1977.<sup>647</sup> The aim of this section is to establish corporate social reporting as a corporate governance requirement that is explicitly enforced by legislation.<sup>648</sup>

#### **4.4.4.1.3 The Environment Charter of February 2005**

The 2005 Environment Charter<sup>649</sup> introduces environmental rights into the French constitutional framework and this results in environmental protection principles being afforded the status of constitutional rights.

#### **4.4.4.1.4 The Grenelle Act I of 2009**

The Grenelle Act I of 2009<sup>650</sup> was adopted following the recommendation of the Grenelle de l'Environnement.<sup>651</sup> Sections 53 and 54 of the Act specifically establish an obligation for corporations to report on the social and environmental aspect of their activities.

---

<sup>642</sup> Article L214-39 of the Monetary and Financial Code as amended by Act No 2001-152 of 19 February 2001 on employee savings. See also Bantekas I 'Corporate Social Responsibility in International Law' (2004) 22(2) *Boston University International Law Journal* 326.

<sup>643</sup> Article L214-39 of the Monetary and Financial Code as amended by Act No 2001-152 of 19 February 2001 on employee savings. See also Sobczak A & Martins LC 'The impact and interplay of national and global CSR discourses: insights from France and Brazil' (2010) 10 (4) *Corporate Governance* 447-448.

<sup>644</sup> See Part I on Financial Regulations of Act No 2001-420 of 15 May 2001 on new economic regulations.

<sup>645</sup> See Part III on Corporate Regulations of Act No 2001-420 of 15 May 2001 on new economic regulations.

<sup>646</sup> See Part II on Competition Regulations of Act No 2001-420 of 15 May 2001 on new economic regulations.

<sup>647</sup> See Section 4.4.2 above.

<sup>648</sup> Article L225-102-1 of the Commercial Code, as created by Art 116 of Act No 2001-420 of 15 May 2001 on new economic regulations. See also Bantekas I 'Corporate Social Responsibility in International Law' (2004) 22(2) *Boston University International Law Journal* 327.

<sup>649</sup> Constitutional Law n° 2005 - 205 of March 1, 2005.

<sup>650</sup> Law n°2009-967 of the 3<sup>rd</sup> August 2009 on the Implementation of the recommendations of the 'Grenelle de l'Environnement'

#### **4.4.4.1.5 The Grenelle II Act of 2010**

The Grenelle II Act of 2010<sup>652</sup> updates and expands the scope of the legal requirement of social and environmental reporting already defined by the Grenelle Act I of 2009.

Section 225 of this Act specifically elaborates on mandatory information to be included in a corporate social and environmental report.

Section 226 extends the scope of applicability of the integrated reporting requirement, and includes public entities and all subsidiaries of large and/or multinational corporations.

Section 224 develops and elaborates on Article L 214-12 of the French Monetary and Financial Code and extends the CSR reporting obligations of investment and asset management companies. In their annual reports, these corporations have to specify the social, environmental and good corporate governance principles underpinning their corporate activities.

#### **4.4.4.2 ‘Soft law’ CSR instruments**

Several non-enforceable CSR instruments exist in France. These ‘soft law’ CSR instruments are usually either the product of corporate and civil society CSR initiatives or the result of governmental non-legislative and non-institutional CSR initiatives. ‘Soft law’ CSR instruments in France include, but are not limited to the following.

##### **4.4.4.2.1 The National Strategy on Sustainable Development**

Adopted by the French government in July 2010, the National Strategy on Sustainable Development<sup>653</sup> involves public and private actors and defines strategies and policies for the achievement of specific CSR and sustainable development goals.

##### **4.4.4.2.2 The CSR Charter of French Corporations in Africa**

Adopted during the 25th Annual Africa-France Summit held in Nice on 31 May and 1 June 2010, the CSR Charter of French Corporations<sup>654</sup> in Africa expresses the willingness of

---

<sup>651</sup> The Grenelle de l’Environnement was a National multi-stakeholder forum organised under the auspice of the French government in 2007. It brought together representatives of the government, corporations, trade unions, civil society and various stakeholders’ organisations and aimed to discuss issues related to Integrated Reporting as well as public and corporate policies on sustainability, CSR and the environment. Essential elements of the French CSR framework were formulated based on the recommendation of this forum. See Bozonnet JP & Halpern C ‘The environmental policy assumption revisited: Explaining trends in environmental concerns in France between 1971 and 2008’ (2013) 11(1) *French Politics* 48-72.

<sup>652</sup> Law n° 2010-788 of 12 July 2010 on the national commitment to the environment.

<sup>653</sup> Stratégie Nationale de Développement Durable (SNDD).

French corporations to contribute to the development of Africa via the implementation of specific social and environmental commitments.<sup>655</sup>

#### **4.4.4.2.3 Sustainable Development Charter**

Adopted in 2006 by a group of public entities and corporations, the Sustainable Development Charter<sup>656</sup> entails the commitment, by public entities and corporations, to design, manage and implement a sustainable development policy and strategy framework.

#### **4.4.4.2.4 The Bilan Sociétal**

The Bilan Sociétal<sup>657</sup> is a CSR rating and assessment tool created in 1996 by the Centre des jeunes dirigeants de l'économie sociale (CJDES),<sup>658</sup> an emerging CSR organisation bringing together and representing employers and entrepreneurs involved in the social economy and social investment sector.<sup>659</sup>



---

<sup>654</sup> Conseil Français des Investisseurs en Afrique *Charte RSE des entreprises françaises en Afrique* (2010)1.

<sup>655</sup> Doucin M & Sery M *La Responsabilité Sociale des Entreprises, l'engagement de la France* (2010) 6.

<sup>656</sup> Club développement durable des établissements publics et entreprises publiques *Charte développement durable des établissements publics et entreprises publiques* (2006).

<sup>657</sup> French for Societal Assessment.

<sup>658</sup> Centre des jeunes dirigeants de l'économie sociale.

<sup>659</sup> See Bodet C & Picard P 'Le Bilan Sociétal© : de la prise en compte des intérêts contradictoires des parties prenantes à la responsabilité sociétale'(2006) 5 *Développement durable et territoires*. <http://developpementdurable.revues.org/1615> (accessed 26 August 2014)

## CHAPTER 5

### CSR AND CORPORATE CODES OF CONDUCT

#### 5.1 Introduction

The first part of the thesis focussed on the analysis of CSR. It dealt with the definition, the origins and the historical evolution of CSR in the two initial chapters. The third and fourth chapters analysed the contemporary framework of CSR as established on a global scale, as well as in the context of selected countries. This second part of the thesis focusses on an analysis and a comparative assessment of selected MNCs' codes of conduct. These codes of conduct are to be tested, first, against CSR instruments dealing with labour and employment issues, and secondly, against the legal framework regulating labour rights and working conditions internationally and within the context of selected countries.

In order to fulfil the purpose of this research, the comparative assessment of these codes of conduct is to be done using a methodological approach that highlights the legal dimension and relevance of MNC codes of conduct when transposed into different countries' contexts. Hence the purpose of this chapter is to conduct an initial comparative analysis - at the global level - of corporate codes of conduct in order to assess their intrinsic CSR content and legal dimension, before their introduction into the context of any specific country.

The interest of the analysis in this chapter lies in its dual purpose, namely, to assess the extent of the protection afforded by MNCs codes of conduct to specific labour and employment rights; and identify the limitation of these codes of conduct in effectively promoting the implementation of fair labour practices and decent working conditions, as established by the ILO's Decent Work Agenda,<sup>660</sup> the ILO's Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,<sup>661</sup> and the ILO's Declaration on Fundamental Principles and Rights at Work,<sup>662</sup> amongst other instruments.

---

<sup>660</sup> See 3.2.2.3.a above.

<sup>661</sup> See 3.2.2.1 above.

<sup>662</sup> See 3.2.2.2 above.

Chapter 5 therefore focusses on a comparative analysis of selected MNCs' codes of conduct, first, against the international legal framework regulating labour rights and working conditions, and secondly, against international CSR instruments dealing with labour and employment issues.

### **5.1.1 Aim of the chapter**

The principal aim of this chapter is to assess the content of the codes of conduct of British American Tobacco p.l.c., Nestlé S.A. and Total S.A. in terms of international CSR instruments providing for labour and employment relations. These codes of conduct are also to be analysed against the background of relevant international legal instruments dealing with labour rights and working conditions.

Such an exercise however needs to be preceded by a theoretical analysis and discussion of the concept of 'corporate code of conduct' in order to fully comprehend its essence. This results in the chapter being divided into four specific sections, namely:

- a) a theoretical analysis of the concept 'corporate code of conduct';
- b) an analysis of the code of conduct of British American Tobacco p.l.c. (BAT) ;
- c) an analysis of the code of conduct of Nestlé S.A. ;
- d) an analysis of the code of conduct of Total S.A. ; and
- e) a comparative assessment of the content of the code of conduct of BAT, Total S.A. and Nestlé S.A. against both international CSR and international legal frameworks dealing with labour rights and working conditions.

### **5.1.2 Scope of the chapter**

The scope of the comparative analysis in this chapter is relevant to the overall scope of the thesis, and therefore encompasses:

- a) three specifically selected corporations;
- b) a particular set of corporate documentation to be explored; and
- c) a relevant set of international legal instruments as well as international CSR instruments to be consulted as items of comparison.

#### **5.1.2.1 Selected Multinational Corporations**

The chapter focusses on the analysis of codes of conducts published by three specific multinational corporations, namely, BAT, Nestlé S.A. and Total S.A.<sup>663</sup>

### 5.1.2.2 Selected Corporate Documentation

The thesis focusses on the analysis of corporate codes of conduct, namely, corporate publications conveying a corporate approach to CSR and therefore embedding a CSR policy specific for a particular MNC.

The scope of the thesis is limited to self-imposed and unilaterally adopted codes of conduct of MNCs. This restriction is indeed essential for the relevance of this research due to the fact that codes of conduct exist in several different forms, and main categories of codes of conduct include:<sup>664</sup>

- a) Multi-stakeholder codes of conduct are usually instruments resulting from a consultation or negotiation process between a corporation and its various stakeholders.
- b) Industry codes of conduct resulting from the concerted action of a group of corporations operating in the same industry (and even affiliated industries).
- c) Codes produced and/or promoted by various organisations and institutions: governmental (UN Global Compact)<sup>665</sup> and nongovernmental (ETI),<sup>666</sup> national (King Code of Corporate Governance)<sup>667</sup> and international (OECD Guidelines for Multinational Enterprises).<sup>668</sup>
- d) Codes of conduct unilaterally adopted by individual corporations, as an expression of a corporate individual approach to CSR. This is the specific category of codes of conduct to be analysed in the context of this thesis. The previous categories of codes of conduct might only be used as items of comparison.

---

<sup>663</sup> See 1.8.2 above.

<sup>664</sup> Glinski C 'Corporate codes of conduct: moral or legal obligation?' in McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007) 120.

<sup>665</sup> See 3.2.3.1 above.

<sup>666</sup> See 3.3.1.3 above.

<sup>667</sup> See 4.2.4.2.2 above.

<sup>668</sup> See 3.2.1.1 above.

It is necessary to clarify the fact that corporate codes of conduct often have different denominations in different companies,<sup>669</sup> but normally present the same characteristics relevant to their nature and purpose: a set of self-imposed guidelines precisely detailing the basic business principles a corporation voluntarily commits to abide by.<sup>670</sup>

The chapter, and the thesis, focusses on the analysis of documents and publications where corporate CSR principles and commitments are entrenched, such as, codes of conduct, codes of good practice, codes of ethics, and codes of business principles.

### 5.1.2.3 Specific content of corporate codes of conduct

The content of corporate codes of conduct usually revolves around specific themes relevant to the broad notion of CSR. Codes of conduct are nevertheless very diverse: their content usually differs according to the nature as well as the immediate priorities of each industry and corporation.<sup>671</sup> Corporate codes of conduct therefore provide for issues ranging from labour and employment to environmental protection principles, from human rights to corporate governance and supply chain monitoring principles, from the prevention of corruption and money laundering activities to social investment and fair trade principles.

### 5.1.2.4 Specific items of comparison

In the context of this chapter, corporate codes of conduct are to be compared, first, against the international legal framework regulating labour rights and working conditions, and secondly, against international CSR instruments dealing with labour and employment issues.

The following, previously discussed, international CSR and legal instruments are to be utilised as items of comparison:

<b>CSR Instruments and Institutions dealing with labour rights and working conditions</b>
<b>CSR instruments by international public role players</b>
1. The UN Global Compact 10 Principles
2. The UN Guiding Principles for Business and Human Rights
3. The OECD Guidelines for Multinational Enterprises
4. The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
5. The ISO 26000 CSR Standard

<sup>669</sup> A corporate code of conduct can also be called ‘code of ethics’, ‘code of business standards’, ‘code of good practice’.

<sup>670</sup> OECD *Corporate Responsibility: Private Initiatives and Public Goals* (2001) 32.

<sup>671</sup> Mullerat R *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st Century* (2010) 258-260.

<b>CSR instruments by private or multi-stakeholder role players</b>
1. The FLA Workplace Code of Conduct and Compliance Benchmarks
2. The FLA Principles of Fair Labor & Responsible Sourcing
3. The ETI Base Code & ETI Principles of Implementation
4. The Global Sullivan Principles
5. The International Confederation of Free Trade Unions Basic Code of Labour Practice
<b>International legal instruments providing for labour rights and working conditions</b>
1. Relevant ILO conventions
2. Relevant ILO recommendations and protocols
3. The UN Declaration of Human Rights
4. The International Covenant on Economic, Social and Cultural Rights (Articles 6-8)
5. The International Covenant on Civil and Political Rights
6. Other relevant international legal instruments

## 5.2 Corporate codes of conduct: A theoretical framework

Before a comparative analysis of selected MNC codes of conduct is initiated, it is important to first explore the concept of ‘corporate code of conduct’ in order to better understand the meaning, history, purpose and diversity of corporate codes of conduct, and ultimately discuss contemporary issues related to the legal dimension of codes of conduct.

### 5.2.1 The concept of corporate codes of conduct

#### 5.2.1.1 Definition

The notion of ‘corporate code of conduct’ is very broad and usually refers to very diverse instruments implemented in very dissimilar contexts, hence the complexity of the task of defining an instrument with many different features.<sup>672</sup> In order to present a thorough and comprehensive definition of the notion of ‘corporate code of conduct’ - a definition that will only entail elements of the concept that are relevant to the scope of this thesis - it appears necessary to adopt an approach that engages with the notion in its broadest meaning and

---

<sup>672</sup> Rudolph PH ‘The history, variations, impact and future of self-regulation’ in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 369.

progressively moderate it in order to reach its most accurate meaning as relevant to the scope of the research.

The following description of codes of conduct, proposed by Kolk and van Tulder, offers a broad overview of the content, purpose, target and actors of corporate codes of conduct:

‘Codes of conduct [...] encompass guidelines, recommendations or rules issued by entities within society (adopting body or actor) with the intent to affect the behaviour of (international) business entities (target) within society in order to enhance corporate responsibility. In this definition, the adopting body can be any societal actor, whereas firms are always the target. It should be noted that firms might design codes for other purposes than for the sake of their own ethical behaviour and corporate responsibility. It is highly conceivable that codes adopted by firms are in essence meant to influence other societal actors: regulators, customers, communities, suppliers and contractors, competitors or shareholders. The possibility that codes may serve other purposes than social responsibility as such is relevant when analysing their properties and substance.’<sup>673</sup>

The interest of this definition lies in the fact that its broad scope makes it a generic definition of the concept of ‘codes of conduct’. This definition sums up the basic features of codes of conduct in a holistic approach that does not actually establish the specific characteristics of each different category of codes of conduct.

The next definition is offered by the Organisation for Economic Co-operation and Development (OECD). This definition moves a step further into refining the concept of ‘corporate code of conduct’ as relevant to this thesis: ‘Codes of conduct are voluntary expressions of commitment that set forth standards and principles for business conduct.’<sup>674</sup> Although still generic, this definition actually emphasises the voluntary aspect of codes of conduct. Voluntariness is fundamental and highly relevant to the topic of this research as it is an essential characteristic of the notion and practice of CSR.<sup>675</sup>

Jenkins, Pearson and Seyfang finally provide a clear framework for the definition of ‘corporate codes of conduct’ that highlights all essential characteristics of corporate codes of conduct. From their perspective, corporate codes of conduct are:

---

<sup>673</sup> Kolk A & van Tulder R *International Codes of Conduct: Trends, Sectors, Issues and Effectiveness* (2002) 11.

<sup>674</sup> OECD *Corporate Responsibility: Private Initiatives and Public Goals* (2001)32.

<sup>675</sup> McLeay F ‘Corporate codes of conduct and the human rights accountability of transnational corporations: A small piece of a larger puzzle’ in De Schutter O (ed) *Transnational Corporations and Human Rights* (2006) 222.

- a) self –regulatory corporate instruments;
- b) voluntarily adopted and thus theoretically non-enforceable;
- c) the expression of a corporate commitment to uphold and implement specific societal values and principles; and
- d) values and principles usually entrenched in international hard and soft law instruments establishing universally agreed upon social, human and environmental rights and responsibilities.<sup>676</sup>

### 5.2.1.2 Historical overview and purpose of corporate codes of conduct

From a historical perspective, the origins and evolution of, and purpose, of corporate codes of conduct are interconnected themes and as such are to be discussed altogether.

Codes of conduct historically emerged, and evolved, as a result of corporate response to issues and constraints encountered in the global market. Corporate codes of conduct were initially concrete materialisations of a corporate attempt to resolve various issues arising in the business-society relationship.<sup>677</sup>

At the enterprise level, the publication of codes of conduct by corporations has become a common business practice<sup>678</sup> due to several intertwined factors. Codes of conduct have been in existence as early as the 1970s<sup>679</sup> and the dynamics explaining the emergence of these corporate instruments are a result of the global outcry against - and persistent criticism of – controversial corporate practices during a period historically characterised by recurring corporate scandals involving human rights and environmental abuses.<sup>680</sup>

In reaction to expectations of corporate stakeholders, and being increasingly faced with a wide range of business pressures, corporations conceived codes of conduct: as mechanisms

---

<sup>676</sup>Jenkins RO, Pearson R & Seyfang G *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (2002) 1-21.

<sup>677</sup> Rudolph PH ‘The history, variations, impact and future of self-regulation’ in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 365.

<sup>678</sup> Schrage EJ *Promoting International Worker Rights through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State* (2004) 4.

<sup>679</sup> Mullerat R *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st Century* (2010) 253-255. See also Jenkins RO, Pearson R & Seyfang G *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (2002) 1-3.

<sup>680</sup> Mullerat R *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st Century* (2010) 91-92. See also 2.5.2 above.

for incorporating CSR and Triple Bottom Line principles into business models, but also in order to address a particular set of legal or reputational issues.<sup>681</sup>

The emergence of corporate codes of conduct can also be interpreted as a preventive measure by corporations attempting to show good faith, avert negative criticism, and possibly avoid the regulation of various aspects of corporate activities.<sup>682</sup> Rudolph, for instance, considers that the enactment in 1991 of the US Federal Sentencing Guidelines, which provided for leniency in the sentencing of corporations that had a programme to prevent and detect violation of the law, provided a stimulus for the development of codes of conduct by several corporations.<sup>683</sup> The US Federal Sentencing Guidelines of 1991 listed seven criteria that were to be assessed in order to determine the existence within a corporation of a programme for the purpose of preventing and detecting violation of the law. Amongst these criteria were ‘the existence of standards or codes of conduct, training or other communication regarding the standards, and the designation of a high-level individual to oversee compliance’.<sup>684</sup>

One needs to highlight the fact that, even though codes of conduct already existed as early as the 1970s, the upsurge in and proliferation of corporate codes of conduct that were observed from the mid-1980s to the 1990s historically coincided with global deregulatory tendencies often expressed then. Private regulatory initiatives were sought to fill the regulatory void that resulted from the weakening, on a global scale, of the powers and function of national and international traditional regulatory institutions, such as States and international institutions.<sup>685</sup> The subsequent incursion by corporations into the regulatory function of the State provided the framework for the conception and publication of corporate codes of conducts, then presented as corporate attempts to instil order and accountability into the global market.<sup>686</sup>

---

<sup>681</sup> Rudolph PH ‘The history, variations, impact and future of self-regulation’ in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 365.

<sup>682</sup> Schrage EJ *Promoting International Worker Rights through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State* (2004) 9.

<sup>683</sup> Rudolph PH ‘The history, variations, impact and future of self-regulation’ in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 368.

<sup>684</sup> United States Sentencing Commission *2002 US Federal Sentencing Guidelines: Recommended Conditions of Probation – Organizations* (2002) chap 8, section 8D1.4.

<sup>685</sup> Keller H ‘Codes of conduct and their implementation: the question of legitimacy’ in Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008) 12.

<sup>686</sup> Keller H ‘Codes of conduct and their implementation: the question of legitimacy’ in Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008) 12.

This historical phenomenon has been described as corporate ‘norm-entrepreneurship’<sup>687</sup> and the ‘global civil regulation’ movement,<sup>688</sup> and resulted from the interaction of several factors against the background of the globalisation of markets and economies.

Schrage considers that the historical emergence of corporate codes of conduct is linked to the following triple effect of globalisation:

First, the globalisation of international human rights standards and the expansion of the scope of responsibilities for human rights violations that resulted in private actors being progressively subjected to stricter levels of scrutiny.<sup>689</sup>

Secondly, the globalisation of international trade and investment is characterised by a greater economic integration between countries, as well as the growing influence of multinational corporations, especially in developing countries, considering the fact that developing countries were usually unable or unwilling (for various socio-political and economic reasons) to strictly regulate and control the activities of MNCs.<sup>690</sup>

Finally, the globalisation of communication makes possible the effective monitoring of MNC activities across the globe, and the efficient dissemination on a global scale of reports highlighting corporate malpractices.<sup>691</sup>

Considering the above factors, corporate codes of conduct ultimately emerged as a result of growing external pressure for increased accountability imposed on the global scale on corporations.<sup>692</sup>

### **5.2.1.3 The diversity of corporate codes of conduct**

---

<sup>687</sup> Flohr A et al *The Role of Business in Global Governance, Corporations as Norm-Entrepreneur* (2010) 10, 52.

<sup>688</sup> Vogel D ‘The private regulation of global corporate conduct: Achievements and limitations’ (2010) 49(1) *Business & Society* 69-70.

<sup>689</sup> Schrage EJ *Promoting International Worker Rights through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State* (2004) 4.

<sup>690</sup> Schrage EJ *Promoting International Worker Rights through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State* (2004) 4-5.

<sup>691</sup> Schrage EJ *Promoting International Worker Rights through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State* (2004) 6.

<sup>692</sup> Schrage EJ *Promoting International Worker Rights through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State* (2004) 7-9.

The concept of 'corporate codes of conduct' refers to a diverse array of corporate instruments. Its diversity is manifested through the difference in the purpose, content, form, presentation and finally the parties involved in codes of conduct.<sup>693</sup>

According to Jenkins, even though very diverse and taking several different forms, codes of conduct regulating corporate activities can be classified in five different categories: trade association codes, multi-stakeholder codes, model codes, inter-governmental codes and finally company codes.<sup>694</sup>

The scope of this thesis has been restricted to only include self-imposed and unilaterally adopted corporate codes of conduct,<sup>695</sup> yet one can still observe an extensive array of distinctive features that differentiate corporate codes of conduct, such as the wording and the content of the code, its scope and purpose, the code's addressees and recipients, and the code's approach to stakeholder involvement.<sup>696</sup> It has been argued that the existence of such a diverse range of corporate codes of conduct actually denotes a strong and healthy divergence of commitment and management practices regarding corporate codes of conduct.<sup>697</sup>

Ferguson, on the other hand, highlights the fact that the persistence of such diversity in the content, scope and wording of corporate codes of conduct undermines the potential comparability of CSR standards and principles across corporations and industries. Such diversity could also act as a constraint on the implementation of monitoring and verification mechanisms.<sup>698</sup>

Pearson and Seyfang have consequently suggested the need for a progressive standardisation of codes of conduct: 'There is clearly a need for more standardization of codes, partly to make compliance easier for suppliers of several firms, and also to encourage second-tier

---

<sup>693</sup> Lundblad C 'Some legal dimensions of corporate codes of conduct' in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 386.

<sup>694</sup> Jenkins R *Corporate Codes of Conduct: Self-Regulation in a Global Economy* (2001)20. See 5.1.2.2 above for further details on these different categories of codes.

<sup>695</sup> See 5.1.2.2 above.

<sup>696</sup> Mullerat R *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st century* (2010) 256-257. See also Keller H 'Codes of conduct and their implementation: the question of legitimacy' in Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008) 17.

<sup>697</sup> OECD *Corporate Responsibility: Private Initiatives and Public Goals* (2001)9.

<sup>698</sup> Ferguson C *A Review of UK Company Codes of Conduct* (1998) 9-11.

firms, who do not have the resources to develop their own codes, but want to adopt a “ready-made” code.’<sup>699</sup>

### **5.2.2 A critical analysis of the concept of corporate codes of conduct**

The purpose of this section is, from a general theoretical perspective, to analyse and discuss specific issues related to the relevance, effectiveness and legal dimension of corporate codes of conduct.

#### **5.2.2.1 Relevance and effectiveness of corporate code of conducts**

The publication, by corporations, of corporate codes of conduct generates several issues and controversies, notably concerning the relevance and effectiveness of, as well as the risk and consequences associated with, a possible transfer of the regulatory function from governmental and intergovernmental institutions to private actors of national and international law.<sup>700</sup>

Horrigan demonstrates that corporate self-regulation (as manifested by the adoption and publication of corporate codes of conduct) usually denotes corporate preventive action which has the purpose of averting or delaying the institutional introduction of a stricter regulatory framework.<sup>701</sup> Thus the underpinning purpose of corporate codes of conduct is to establish self-regulation as an alternative to the creation by national and institutional institutions of a regulatory framework to fill the regulatory void that exists in the area of CSR.<sup>702</sup>

Various scholarly positions are nevertheless presented that promote different points of view regarding the relevance and effectiveness of corporate codes of conduct in regulating CSR.

Despite warning against the risks associated with the proliferation of corporate codes of conduct, Kolk & van Tulder are confident that corporate codes of conduct are a potential alternative to the traditional approach to the regulation of international trade and business.<sup>703</sup>

Sobczak similarly highlights the potential benefits of corporate codes of conduct and argues

---

<sup>699</sup> Pearson R & Seyfang G ‘New hope or false dawn?: voluntary codes of conduct, labour regulation and social policy in a globalizing world’ (2001) 1(1) *Global Social Policy* 56.

<sup>700</sup> See Jenkins RO, Pearson R & Seyfang G *Corporate Responsibility and Labour Rights: Codes of Conduct in the Global Economy* (2002) 3-7.

<sup>701</sup> Horrigan B *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices across Government, Law and Business* (2010) 169-170.

<sup>702</sup> Horrigan B *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices across Government, Law and Business* (2010) 169-170.

<sup>703</sup> Kolk A & van Tulder R *International Codes of Conduct: Trends, Sectors, Issues and Effectiveness* (2002) 3.

that codes of conduct are in fact effective when regarded as a supplement to labour and employment law:

'Labour and employment law no longer has a monopoly on regulating labour relations and is facing a crisis as its effectiveness is questioned. Codes of conduct adopted by companies to recognise their social responsibility for the global supply chain are instruments that can usefully complement labour and employment law.'<sup>704</sup>

From this perspective, the effectiveness of self-regulation is based on the premise that a code of conduct actually allows and facilitates the regulation of corporate practice along the supply chain of an MNC, especially in instances where local regulation is unable to offer a regulatory framework encompassing minimum international labour standards and principles.<sup>705</sup>

Jenkins has conducted an evaluation of corporate codes of conduct that assesses and balances both the limitations, and benefits, of corporate codes of conduct. The author notes that corporate codes of conduct are essentially beneficial because the adoption and publication of codes of conduct by corporations usually generate positive benefits for corporate stakeholders and provide a point of leverage on corporate behaviour.<sup>706</sup> Jenkins argues that the corporate act of adopting and publishing a code of conduct denotes a corporate acknowledgment of its societal accountability, and more importantly, 'the acceptance by firms of responsibility for the activities of their suppliers as well as their own subsidiaries'.<sup>707</sup>

However, Jenkins also highlights the fact that the practice of corporate codes of conduct has the potential to undermine the regulatory function of the State, and could undermine the position of traditional trade union organisations. This is especially true considering that corporate codes of conduct usually do suffer from various limitations, such as, a limited scope and often vague content, the lack of independent monitoring, and the selective inclusion of international labour human rights and environmental standards and principles.<sup>708</sup>

---

<sup>704</sup> Sobczak A 'Are codes of conduct in global supply chains really voluntary? From soft law regulation of labour relations to consumer law' (2006) 16 (2) *Business Ethics Quarterly* 167.

<sup>705</sup> Sobczak A 'Are codes of conduct in global supply chains really voluntary? From soft law regulation of labour relations to consumer law' (2006) 16 (2) *Business Ethics Quarterly* 168-169.

<sup>706</sup> Jenkins R *Corporate Codes of Conduct: Self-Regulation in a Global Economy* (2001)28.

<sup>707</sup> Jenkins R *Corporate Codes of Conduct: Self-Regulation in a Global Economy* (2001)29.

<sup>708</sup> Jenkins R *Corporate Codes of Conduct: Self-Regulation in a Global Economy* (2001)28-30.

Regarding the specific issue of the effectiveness (or the lack thereof) of corporate codes of conduct in protecting and promoting the interest of targeted stakeholders, the performance of codes of conduct has been linked to the intrinsic characteristics of each individual code.<sup>709</sup> Thus, after conducting a thorough analysis of the effectiveness of various corporate codes of conduct in improving the working conditions as well as the labour and employment rights of employees, Murray summarised the characteristics of both an effective and an ineffective code of conduct.

According to Murray, on the one hand, a code of conduct can operate equitably and effectively when workers are involved in the processes of determination and implementation of the code. The code content reflects the needs of, and empowers workers; guaranteeing core ILO labour standards as absolute minimum. The corporation adopting the code is genuinely committed to its implementation and therefore provides the resources, training, monitoring and reporting mechanisms necessary for the effectiveness of the code. Corporate interaction with employees and workers directly dependent upon the company through subcontracting and other arrangements is transparent, and corporate adherence to the code is independently verified by qualified assessors.<sup>710</sup>

On the other hand, Murray asserts that codes of conduct are unlikely to be effective, and may even become harmful and counterproductive, when the code unilaterally imposes outcomes on the workforce, and stifles the processes of worker participation and negotiation at the workplace; is vaguely worded and/or ignores international standards; has no real impact on actual company operations, policies or people; and the company's labour practices are closed to external audit.<sup>711</sup>

### **5.2.2.2 The legal dimension of corporate codes of conduct**

The legal dimension of corporate codes of conduct has been addressed from several different perspectives: from a straightforward analysis of the legal status of a corporate code of conduct to a discussion of the juridical implications of a corporate decision to adopt and publish a code of conduct or a comparative assessment of the content of codes of conduct against the background of the relevant legal framework.

---

<sup>709</sup> Murray J *Corporate Codes of Conduct and Labor Standards* (1998) 4.

<sup>710</sup> Murray J *Corporate Codes of Conduct and Labor Standards* (1998) 4.

<sup>711</sup> Murray J *Corporate Codes of Conduct and Labor Standards* (1998) 4-5.

With regard to the legal dimension of corporate codes of conduct, the central issue at stake should be to assess the effectiveness of corporate codes of conduct in realising their quintessential purpose, namely, to self-regulate corporate activities in the specific area of the societal duties, responsibilities and accountability of corporations.<sup>712</sup>

From a theoretical perspective, a discussion of the legal dimension of corporate codes of conduct is to be embedded in the broader theoretical framework discussing the essence of corporate social responsibility as either a mandatory or a voluntary corporate practice.<sup>713</sup> It has been argued that corporate codes of conduct are essentially voluntary instruments which may have a potentially enforceable legal dimension in some specific context.<sup>714</sup>

The issue of the enforceability of corporate codes of conduct is, for instance, provided for by the French legal framework. In fact, a corporate code of conduct is most likely to be recognised as a legal (and therefore enforceable) instrument based on a French judge's interpretation and/or application of the principle that unilateral commitments ought to generate contractual obligations in French civil and, particularly, contract law.<sup>715</sup>

The principle of unilateral commitment, initially conceptualised by the leading French civil law scholar, Izorche,<sup>716</sup> has been repeatedly applied by the French Supreme Court (Cour de Cassation).<sup>717</sup> The principle provides for the conversion, in specific circumstances, of a natural obligation<sup>718</sup> into a legally enforceable civil obligation and has been applied by the

---

<sup>712</sup> Keller H 'Codes of conduct and their implementation: the question of legitimacy' in Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008)4.

<sup>713</sup> Roselle J 'The Triple Bottom Line: building shareholder value' in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 134.

<sup>714</sup> See Glinski C 'Corporate codes of conduct: moral or legal obligation?' in McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007) 119-148.

<sup>715</sup> 'Corporate codes of conduct are usually considered as ethical commitments without any legal effect. At best, they form part of the category of soft law, and constitute norms without legally binding effect [...]. However, at least in the French legal context, the theory of the unilateral commitment [...] recognises the legal effects of these codes, be they adopted unilaterally by the management or discussed with the workers' representatives or other stakeholders.' Sobczak A 'Are codes of conduct in global supply chains really voluntary? From soft law regulation of labour relations to consumer law' (2006) 16 (2) *Business Ethics Quarterly* 171.

<sup>716</sup> Izorche ML *L'avènement de l'engagement unilatéral en droit privé contemporain* (1989).

<sup>717</sup> See Cour de Cassation / Chambre Civile I, Arrêt du 28 mars 1995 / 1995-10-10 in *Bulletin Civil* 1995, I, n° 352, 246. See also Cour de Cassation / Chambre Civile 1, Arrêt du 4 janvier 2005.

<sup>718</sup> Natural obligations are established by Article 1235 of the French Civil Code of 1804. Brabant S, Kirk A & Proust J 'States, sanctions and soft law: an analysis of differing approaches to business and human rights frameworks' in Weiler T & F Baetens *New Directions in International Economic Law: In Memoriam Thomas Wälde* (2011) 394 defines natural obligation as 'an intermediary category of obligation sitting between legal and moral obligation' and which is traditionally considered to be purely voluntary and therefore non-enforceable.

French Supreme Court in order to determine the legal dimensions and the implications of a corporate code of conduct.<sup>719</sup>

The following paragraphs explore various positions on the legal dimension and enforceability of corporate code of conduct as envisaged from a global perspective. It has been argued that corporate legal accountability for CSR commitment is highly unlikely because CSR inherently is a voluntary initiative.<sup>720</sup> Thus corporate codes of conduct are viewed as voluntary self-regulatory norms that do not and can neither generate legal accountability nor contain legal obligations.<sup>721</sup> However, this position has been moderated by several authors suggesting various theories and mechanisms that could lead to the establishment or the endorsement of a legal dimension of corporate codes of conduct.

Keller, for instance, argues that corporate codes of conduct, in essence, are regulatory instruments as they do generate norms for the public interest.<sup>722</sup> Keller asserts that corporate codes of conduct are private instruments of self-regulation with a public interest goal: '[T]hey constitute informal instruments, which, nevertheless, perform a public function, i.e. the protection and enhancement of social and ecological values.'<sup>723</sup> The OECD also shares this view and has several times labelled the practice of corporate codes of conduct as private initiatives for public goals.<sup>724</sup>

It has also been argued that codes of conduct are enforceable corporate instruments entailing a specific legal dimension. Lundblad is of the view that corporate codes of conduct are corporate instruments prone to generate various direct and indirect legal consequences:

'It can be safely assumed that the typical originator of a Code of Conduct does not intend to incur legally binding obligations as a result thereof. The intent to be bound is usually decisive when Courts or other bodies administering justice are asked to determine legal issues relative to

---

<sup>719</sup> Brabant S, Kirk A & Proust J 'States, sanctions and soft law: an analysis of differing approaches to business and human rights frameworks' In Weiler T & Baetens F *New Directions in International Economic Law: In Memoriam Thomas Wälde* (2011) 394.

<sup>720</sup> See 1.8.2.1 above.

<sup>721</sup> Parker C 'Meta-regulation: legal accountability for corporate social responsibility' in McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007)207.

<sup>722</sup> Keller H 'Codes of conduct and their implementation: the question of legitimacy' in Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008) 3-5.

<sup>723</sup> Keller H 'Codes of conduct and their implementation: the question of legitimacy' in Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008) 5.

<sup>724</sup> OECD *Corporate Responsibility: Private Initiatives and Public Goals* (2001) 1-2.

different forms of expression of will. Yet legal relevance may be attributed to Codes of Conduct notwithstanding lack of such intent. These may be indirect and they may be direct.’<sup>725</sup>

For instance, a corporate code of conduct could generate legal obligations in the case of a contractual commitment to adhere to a code of conduct as required by a specific regulator, such as a stock exchange. A corporate code of conduct could also generate legal obligations via the contractual relevance of codes of conduct in resolving disputes concerning the nature, and the extent, of the duties of each party in the relationship between a corporation and its employees or supply-chain.<sup>726</sup>

Sobczak also advocates the enforcement of corporate codes of conduct (especially the labour related content of codes of conduct) via the transposition to labour law of mechanisms from other branches of the law, notably consumer law and competition law.<sup>727</sup> Such an approach was observed in *Kasky v. Nike Inc.*<sup>728</sup> where CSR representations made by Nike Inc. were successfully challenged before the California Supreme Court. Nike Inc. was sued for unfair and deceptive practices, under California’s false advertising and unfair competition laws and regulations, relating to its allegedly erroneous advertisement of the labour practices in several of its overseas suppliers’ factories in Asia.<sup>729</sup>

After this initial, theoretical, phase discussing the concept of ‘codes of conduct’, the chapter will now focus on a comparative analysis of the codes of conduct of British American Tobacco p.l.c., Nestlé S.A. and Total S.A. The content of these codes of conduct is to be assessed, first, against the international legal framework regulating labour rights and working conditions, and secondly against international CSR instruments dealing with labour and employment issues.

---

<sup>725</sup> Lundblad C ‘Some legal dimensions of corporate codes of conduct’ in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 390.

<sup>726</sup> Lundblad C ‘Some legal dimensions of corporate codes of conduct’ in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 391-399.

<sup>727</sup> Sobczak A ‘Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft Law Regulation of Labour Relations to Consumer Law’ (2006) 16 (2) *Business Ethics Quarterly* 170.

<sup>728</sup> *Kasky v Nike Inc* (2002)27 Cal Court 4th 939 [119 Cal Rptr 2d 296,4sp 3 d 243].

<sup>729</sup> *Kasky v Nike Inc* (2002)27 Cal Court 4th 939 [119 Cal Rptr 2d 296,4sp 3 d 243].

## 5.3 The British American Tobacco p.l.c. Code of Conduct

### 5.3.1 Introduction

#### 5.3.1.1 An overview of CSR in the tobacco industry

The tobacco industry is a very controversial, and much criticised, industry which is persistently targeted by campaigns, lawsuits and pressure from various stakeholders, including civil society organisations, lobby groups and private individuals.<sup>730</sup> The tobacco industry therefore has to deal with the following CSR relevant issues and challenges: legal and regulatory issues related to sustainable tobacco farming (such as indigenous land expropriation) working conditions on tobacco farms, forced labour and slavery, child labour).<sup>731</sup>

From this perspective, CSR of the tobacco industry is considered to be an oxymoron. CSR commitments of these corporations are deemed inherently flawed considering the societal impact of their corporate activities. Thus the tobacco industry is often viewed as an inherently controversial industry because of its impact on the local as well as the global community, which mostly translates into global health issues and concerns.<sup>732</sup>

Similarly to other tobacco companies, BAT has a vested interest in promoting and implementing CSR as it plays a crucial role of legitimising their activities. The importance of CSR for the tobacco industry is reinforced by the fact that societal activism against and criticism of these corporations are not any more limited to health issues, but now also entrench labour and employment, human rights and environmental issues and concerns.<sup>733</sup>

#### 5.3.1.2 The BAT code of conduct

---

<sup>730</sup> Chapman S 'Advocacy in action: extreme corporate makeover interruptus: Denormalising tobacco industry corporate schmoozing' (2004) 13 *Tobacco Control* 445–447.

<sup>731</sup> World Health Organization *Tobacco Industry and Corporate Social Responsibility ... an Inherent Contradiction* (2004).

<sup>732</sup> Hirschhorn N 'Corporate social responsibility and the tobacco industry: hope or hype?' (2004) 13 *Tobacco Control* 451. See also World Health Organization *Tobacco Industry and Corporate Social Responsibility ... an Inherent Contradiction* (2004).

<sup>733</sup> Imaralu D 'On corporate social responsibility and the BAT Foundation' (2012) *Ventures Online edition of 6 May 2012* <http://www.ventures-africa.com/2012/05/on-corporate-social-responsibility-and-the-bat-foundation/> (accessed 26 May 2014).

The BAT CSR code of conduct is not assembled into one single document but is constituted by the following set of interrelated and interdependent documents, each focussing on a specific aspect of BAT CSR policy:

- a) BAT Child Labour Policy (February 2000);
- b) BAT Statement of Business Principles (August 2010);
- c) BAT Employment Principles (March 2011);
- d) BAT Integrated Environmental, Health and Safety Policy Manual (April 2011);
- e) BAT Standards of Business Conduct (September 2011);
- f) BAT Group Environmental Policy (May 2012);
- g) BAT International Marketing Principles (November 2012);
- h) BAT Philosophy for Supplier Partnerships; and
- i) BAT Biodiversity Statement.

Having regard to the scope of the thesis, this chapter only analyses BAT CSR publications dealing with labour and employment issues, or having a direct or indirect impact on the labour rights and working conditions on BAT farms, and in factories and plants (as well as corporations in the BAT supply chain).

### **5.3.2 Labour rights and working conditions in the BAT code of conduct**

#### **5.3.2.1 The BAT Standards of Business Conduct**

The BAT Standards of Business Conduct<sup>734</sup> is an internal code of conduct with the purpose to determine BAT employees' actions and behaviour during the course of their professional activities on behalf of BAT. This code therefore specifically establishes what the corporation expects from each employee in terms of honesty, integrity and societal responsibility at work.<sup>735</sup>

The BAT Standards of Business Conduct is not essentially relevant to this research as it is a code of conduct that is to be implemented by BAT employees, as opposed to an external code

---

<sup>734</sup> British American Tobacco p.l.c. *Standards of Business Conduct* (2011)

<sup>735</sup> 'Our Standards of Business Conduct express the high standards of business integrity that we require from our employees worldwide. They are based on our beliefs and values and underpin our commitment to honesty, integrity and transparency by applying those principles to the specific situations that arise in our day-to-day business life.' British American Tobacco p.l.c. *BAT Standards of Business Conduct* (2011)3.

of conduct that establishes principles that the corporation (as an individual entity) commits to implement in its relationship with various stakeholders, including its workforce.

### 5.3.2.2 The BAT Statement of Business Principles

The BAT Statement of Business Principles is a code of conduct that determines the corporation's actions as a societal entity. As such, the purpose of the BAT Statement of Business Principles is to establish its official CSR position. It determines three specific business principles that constitute the cornerstone of the BAT CSR vision, namely, the principles of mutual benefit, responsible product stewardship and good corporate conduct.<sup>736</sup> Each of these principles is underpinned by a set of core beliefs, the purpose of which is to clearly establish BAT's vision of its societal responsibilities and correlated commitments. Amongst these BAT core beliefs are specific provisions destined to ensure BAT's commitment to protect labour and employment rights,<sup>737</sup> enhance working conditions<sup>738</sup> and promote effective communication and collaboration between BAT and its employees (amongst other stakeholders)<sup>739</sup>.

However, the enunciation of these core beliefs, as presented in the BAT Statement of Business Principles, does not actually result in clearly defined CSR commitments, as they mostly are formulated in vague and overgeneralised wording and therefore do not induce any specific commitment or responsibility for BAT.<sup>740</sup>

BAT, however, also offers an online version of its Statement of Business Principles<sup>741</sup> where these core beliefs are thoroughly elaborated, resulting in a more comprehensive set of CSR principles that more accurately define BAT's duties, responsibilities and commitment towards its employees (and various others stakeholders).

---

<sup>736</sup> British American Tobacco p.l.c. *Statement of Business Principles* (2010) 1-2.

<sup>737</sup> Principle of Good Corporate Conduct, Core belief No 3: 'We believe that universally recognised fundamental human rights should be respected' British American Tobacco p.l.c. *Statement of Business Principles* (2010) 4.

<sup>738</sup> Principle of Mutual Benefit, Core belief No 3: 'We believe in creating inspiring working environments for our people'. British American Tobacco p.l.c. *Statement of Business Principles* (2010) 3.

<sup>739</sup> Principle of Mutual Benefit, Core belief No 2: 'We believe in engaging constructively with our stakeholders'. British American Tobacco p.l.c. *Statement of Business Principles* (2010) 3.

<sup>740</sup> An example of a vague commitment is the abovementioned Principle of Mutual Benefit, Core belief No 3: 'We believe in creating inspiring working environments for our people'. An example of an overgeneralised commitment is BAT's promise to encourage 'a universal respect for high business standards in every country' where they operate. Principle of Good Corporate Conduct GCC 1 at <http://www.bat.com/oneweb/framework.nsf/F/GCC1?opendocument> (accessed 26 May 2014).

<sup>741</sup> British American Tobacco p.l.c. The BAT Business Principles and Framework for CSR <http://www.bat.com/oneweb/framework.nsf/F/MB1?opendocument> (accessed 26 May 2014)

For instance, under the heading ‘We believe in creating inspiring working environments for our people’ (Principle of Mutual Benefit MB3),<sup>742</sup> BAT refers to the BAT Employment Principles as the guideline for BAT employment policies. The aim of the BAT Employment Principles is reportedly to ‘follow good employment practices’ and ultimately ‘nurture first-class people’ who ‘derive personal fulfilment’ from their employment at BAT.<sup>743</sup>

From this perspective, BAT commits to:

- ‘Seek to ensure that our work places are run in accordance with our Employment Principles. [...]
- Provide regular, reliable and relevant information about our business and industry through a wide range of two-way communication channels;
- Actively promote the free flow of ideas and information amongst employees.
- Making clear what we expect of them and providing them with feedback on their performance;
- Developing and delivering high quality learning initiatives appropriate to the needs of the individual.<sup>744</sup>

In term of stakeholder engagement, BAT commits to

- Identify and engage with our stakeholders consistently, transparently and as inclusively as possible;
- Proactively seek the views of our stakeholders and provide opportunities for other interested parties to share their views and concerns with us;
- Translate the expectations of our stakeholders into action wherever we see it as reasonable and feasible. [...]
- Identify stakeholders with whom we think we can work to find sustainable solutions to the issues associated with our business;
- Clearly state our views in dialogue. [...]
- Seeking ways to engage that best suit the different needs of our stakeholders.<sup>745</sup>

BAT also acknowledges its duty to promote, protect and improve all universally recognised fundamental human rights for all its employees, thereby committing to:

---

<sup>742</sup> British American Tobacco p.l.c. The BAT Business Principles and Framework for CSR.

<sup>743</sup> British American Tobacco p.l.c. ‘Principle of Mutual Benefit MB3’ at <http://www.bat.com/oneweb/framework.nsf/F/MB3?opendocument> (accessed 26 May 2014).

<sup>744</sup> ‘Principle of Mutual Benefit MB3’ at <http://www.bat.com/oneweb/framework.nsf/F/MB3?opendocument> (accessed on 26 May 2014).

<sup>745</sup> Principle of Mutual Benefit MB2 at <http://www.bat.com/oneweb/framework.nsf/F/MB2?opendocument> (accessed 26 May 2014).

- ‘Encourage our companies worldwide to subscribe to our Employment Principles, which embody universally recognised workplace related human rights;
- Review our Employment Principles to ensure their continued alignment with developments in this area. [...]
- Encourage our suppliers and commercial partners, where possible, to adopt similarly high standards to our own. [...]
- Encouraging our Group companies to lead by example.’<sup>746</sup>

Finally, BAT also commits to:

- ‘Strive to be a leading local employer and to contribute to local economic development.’<sup>747</sup>
- Strive only to work with principal business partners who are committed to high standards of business conduct.’<sup>748</sup>
- Encouraging a universal respect for high business standards in every country where our Group companies operate.’<sup>749</sup>

### 5.3.2.3 BAT Employment Principles

The purpose of the BAT Employment Principles is to develop a set of rules and guidelines to be implemented by all the BAT group’s companies, subsidiaries and supply chain companies when dealing with labour, employment and other workplace related human rights issues.<sup>750</sup>

This document establishes and explains the specific duties and commitments of the BAT group (including its supply chain), and of its employees, as well as mutual responsibilities to of both the corporation and its employees.

The BAT Employment Principles entrenches the following principles and commitments.

#### 5.3.2.3.1 The principle of diversity

---

<sup>746</sup> Principle of Good Corporate Conduct GCC 3 at <http://www.bat.com/oneweb/framework.nsf/F/GCC3?opendocument> (accessed 26 May 2014).

<sup>747</sup> Principle of Mutual Benefit MB4 at <http://www.bat.com/oneweb/framework.nsf/F/MB4?opendocument> (accessed 26 may 2014).

<sup>748</sup> Principle of Good Corporate Conduct GCC 1 available at <http://www.bat.com/oneweb/framework.nsf/F/GCC1?opendocument> (accessed 26 May 2014).

<sup>749</sup> Principle of Good Corporate Conduct GCC 1 at <http://www.bat.com/oneweb/framework.nsf/F/GCC1?opendocument>(accessed 26 May 2014).

<sup>750</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 1-2.

BAT asserts to be dedicated to provide equal opportunity to all of its employees and commits to ensuring a diverse and representative workforce profile through the promotion of employment equity.<sup>751</sup>

In practice, this principle translates into a commitment not to

‘discriminate when making decisions on hiring, promotion or retirement on the grounds of the employees’ or candidates’ race, colour, gender, age, social class, religion, smoking habits, sexual orientation, politics, or disability – subject to the inherent requirements of the role to be performed’.<sup>752</sup>

Notwithstanding this commitment to diversity, BAT also commits to duly observe ‘national legislation relative to positive discrimination’ and this commitment highlights the relevance of the national context, as issues of workplace diversity and employment discrimination are differently addressed in different national contexts.<sup>753</sup>

#### **5.3.2.3.2 The principle of openness and responsiveness**

BAT acknowledges the fact that it has a duty of openness and responsiveness toward its employees that should especially be implemented in the context of internal communications. This translates into BAT’s commitment ‘to be open and transparent and to provide regular, reliable and relevant business and industry related information, through a wide range of internal communication channels to allow access for all employees’.<sup>754</sup>

BAT also endeavours to implement openness and responsiveness in ‘relationships and partnerships’. It therefore commits to respect and promote both freedom of association and freedom of non-association rights as well as worker representation rights.<sup>755</sup>

Commitments made by BAT under this heading do not, strictly speaking, constitute CSR considering the fact that the protection of freedom of association rights, freedom of non-association rights, and worker representation rights are solidly entrenched in international labour law.<sup>756</sup>

#### **5.3.2.3.3 The ‘freedom through responsibility’ principle**

---

<sup>751</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3.

<sup>752</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3.

<sup>753</sup> See 6.3.1 below.

<sup>754</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3.

<sup>755</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3.

<sup>756</sup> See 5.6.4.1 below.

The ‘freedom through responsibility’<sup>757</sup> principle establishes that BAT, as an MNC, has the following responsibilities, and subsequent commitments:

The duty to improve ‘Fairness at Work’, which in this case translates into the BAT commitment to institute effective and comprehensive grievance and disciplinary procedures, strictly controls the use of temporary and casual labour such as to conform to local labour laws and practices and ultimately avoid unfair labour practices. An example of an unfair labour practice particularly denounced by BAT is the use of casual labour for the purpose of avoiding an employee or employees receiving company and government benefits.<sup>758</sup>

The duty to ensure ‘Dignity at Work’ reflects BAT’s commitment to strive toward the eradication of workplace bullying and workplace harassment.<sup>759</sup>

BAT makes the commitment, when restructuring becomes unavoidable, to take responsible restructuring measures taking into account employees’ best interests, in accordance with local laws and regulations and as deemed appropriate to the context, location and situation.<sup>760</sup>

BAT also makes the commitment to oppose and act against any type of exploitation, especially child labour, forced labour, bonded or involuntary labour, as well as the unlawful use of immigrant labour.<sup>761</sup>

Finally, BAT also commits to influence companies in its supply chain as much as possible, to ensure the implementation of its employment principles, with a focus on the specific issues of child labour, forced or immigrant labour, unlawful discrimination, harassment or bullying, the institution of a transparent grievance procedure, and finally the improvement of working conditions.<sup>762</sup>

#### **5.3.2.3.4 The physical and material wellbeing principle**

The physical and material wellbeing principle translates into BAT’s commitment to improve the physical and material wellbeing of its workforce by instituting reasonable working hours

---

<sup>757</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 4.

<sup>758</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3-4.

<sup>759</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3-4.

<sup>760</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 4.

<sup>761</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 4.

<sup>762</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 6.

and family friendly policies, as well as establishing, and complying with, occupational health and safety internal policies and procedures.<sup>763</sup>

#### **5.3.2.3.5 The fair, clear and competitive remuneration principle**

The principle of fair, clear and competitive remuneration expresses BAT's commitment to offer employees fair, clearly defined and competitive remuneration and benefits.<sup>764</sup>

It is to be noted that the BAT Employment Principles do not include indications as to how these principles are to be effectively implemented, enforced and monitored.

#### **5.3.2.4 Additional CSR documents**

BAT has also published additional CSR documents in order to emphasise and elaborate on specific items of its employment CSR commitments.

##### **5.3.2.4.1 The BAT Child Labour Policy**

The BAT Child Labour Policy<sup>765</sup> emphasises BAT's commitment to prevent child labour activities in its factories, plantations as well as along its supply chain. BAT therefore commits to:

‘comply with all relevant and applicable local and international labour regulations, treaties, conventions and principles relating to the protection, welfare and health & safety of children. Furthermore, the Company will not employ any person deemed by local or international laws, conventions or regulations to be a child in any capacity in any industrial operation under its control.’<sup>766</sup>

##### **5.3.2.4.2 The BAT Philosophy for Supplier Partnerships**

The BAT Philosophy for Supplier Partnerships<sup>767</sup> establishes core principles underpinning the relationship between BAT and its suppliers as relevant to the implementation of BAT's business principles, as well as its employment principles.

##### **5.3.2.4.3 The BAT Integrated Environmental, Health and Safety Policy Manual**

---

<sup>763</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 7.

<sup>764</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 7.

<sup>765</sup> British American Tobacco p.l.c. *BAT Child Labour Policy* (2000).

<sup>766</sup> British American Tobacco p.l.c. *BAT Child Labour Policy* (2000)1.

<sup>767</sup> British American Tobacco p.l.c. *BAT Philosophy for Supplier Partnerships* (2014).

The BAT Integrated Environmental, Health and Safety Policy Manual clearly determines BAT's duties and commitments in terms of occupational health and safety, and establishes procedures for the implementation of these commitments.<sup>768</sup>

## **5.4 The Total S.A. Corporate Code of Conduct**

### **5.4.1 Introduction**

#### **5.4.1.1 CSR in the oil and gas industry**

Total S.A. (Total) is an oil and gas company and a chemicals manufacturer involved in extractive, industrial and commercial operations on a global scale. Being a major player in the oil and gas industry is also synonymous with accrued international visibility and consequently vulnerability to criticism and controversy.

CSR and sustainability issues and concerns exist in all industries, yet the sensitive nature of such issues and concerns is more emphasised in the oil and gas industry for this is an industry which has been labelled as 'sinful' in terms of CSR as it is recurrently negatively 'involved with emerging environmental, social, or ethical issues'.<sup>769</sup>

For Total S.A., as well as any other major player in the oil and gas industry, CSR is increasingly becoming an essential aspect of corporate activity. These corporations are aware of the importance, if not to be a socially responsible corporation, at least to appear like one; thus the necessity to adopt (and publicise) CSR policies and publicly commit to various CSR principles.<sup>770</sup>

#### **5.4.1.2 The Total S.A. code of conduct: a framework of corporate publications**

The Total S.A. corporate code of conduct is not presented in a single document, but actually results from the combination of several interconnected and interdependent documents that each focusses on various aspects of the Total S.A. CSR policy, namely:

- a) The Total Safety Health Environment Quality Charter (September 2009);
- b) The Total Human Rights Internal Guide (June 2011); and

---

<sup>768</sup> British American Tobacco p.l.c. *BAT Integrated Environmental, Health and Safety Policy Manual* (2014).

<sup>769</sup> Cai Y, Jo H & Pan C 'Doing well while doing bad? CSR in controversial industry sectors' (2012) 108 (4) *Journal of Business Ethics* 467.

<sup>770</sup> Cai Y, Jo H & Pan C 'Doing well while doing bad? CSR in controversial industry sectors' (2012) 108 (4) *Journal of Business Ethics* 467-469.

c) The Total Code of Conduct and Ethics Charter (December 2011).

In accordance with the scope of this thesis, this section will only engage with items dealing with labour and employment or having a direct or indirect impact on the labour rights and working conditions of the Total S.A. global workforce (including its supply chain).

## **5.4.2 Labour rights and working conditions in the Total S.A. Code of Conduct**

### **5.4.2.1 The Total S.A. Code of Conduct and Ethics Charter**

In a foreword to the Total Code of Conduct, De Margerie, Total S.A. Chairman and CEO, acknowledges the necessity of a framework of ethical business principles and commitments that entrench a culture of ethical business within the corporation for the achievement of strong and sustainable growth and long term viability.<sup>771</sup> De Margerie consequently establishes three core values that underpin the Total S.A. CSR and ethical commitment:

‘Respect, the source of sustainable, trust-based operations and relations.

Responsibility toward others and in our jobs.

Exemplary behaviour, which underpins the internal and external credibility of our actions and initiatives.’<sup>772</sup>

Based on these core values, the objectives of the Total Code of Conduct are to establish core ‘business principles’,<sup>773</sup> as well as ‘rules of individual behaviour’<sup>774</sup> that should determine and regulate the actions of Total S.A. employees and representatives on a global scale. Another objective of the Total Code of Conduct is to institute an ‘ethics committee’,<sup>775</sup> the role of which is to oversee the implementation of the code of conduct and report to the CEO and chairman, and an ‘ethics charter’<sup>776</sup> that summarises Total S.A. CSR commitments to its various stakeholders.

However, this code of conduct lacks clarity as to the substance of Total S.A.’s CSR commitments. For instance, the code does not reveal Total S.A.’s commitment in the specific

---

<sup>771</sup> Total S.A. *The Total Code of Conduct and Ethics Charter (2011)* 3.

<sup>772</sup> Total S.A. *The Total Code of Conduct and Ethics Charter (2011)* 4.

<sup>773</sup> Total S.A. *The Total Code of Conduct and Ethics Charter (2011)* 5-10.

<sup>774</sup> Total S.A. *The Total Code of Conduct and Ethics Charter (2011)* 11-14.

<sup>775</sup> Total S.A. *The Total Code of Conduct and Ethics Charter (2011)* 15-20.

<sup>776</sup> Total S.A. *The Total Code of Conduct and Ethics Charter (2011)* 20-23.

areas of labour rights and working conditions, even though it specifically attempts to address labour and employment issues.

#### **5.4.2.1.1 Business Principles**

First, as a ‘general principle’ Total S.A. commits to comply with all applicable laws, regulations and decisions of the UN and the EU concerning employment.<sup>777</sup> It also commits to continuously uphold respect for human rights standards within its sphere of activity.<sup>778</sup> It finally strives to uphold various international CSR instruments, such as, the principles of the Universal Declaration of Human Rights, key conventions of the International Labour Organisation, the OECD Guidelines for Multinational Enterprises, and the principles of the UN Global Compact.<sup>779</sup>

Secondly, Total S.A. defines a set of principles and commitments that are to determine the relationship between the corporation and its employees:

‘We pay particular attention to our employees’ working conditions, respecting individuals, avoiding discrimination, and protecting their health and safety. We include our employees in our development by encouraging the distribution of information, dialogue and consultation. We respect their personal lives. We recruit personnel solely on the basis of our requirements and the specific capabilities of individual applicants. We develop their professional skills and careers without discrimination regarding race, gender, or affiliation with a political, religious, or union organization or minority group. All employees have an annual performance review with management, at which objectives are set, performance assessed and career development discussed. Career development is facilitated by appropriate training.’<sup>780</sup>

Total S.A. finally commits to ensure that suppliers, service providers and business partners all adhere to principles equivalent to those entrenched in this code of conduct as well as human rights standards, and to directly address host countries’ authorities in order to express Total S.A.’s position concerning specific human rights and employment issues and concerns.<sup>781</sup>

Total S.A., however, does not provide information specifically indicating how these principles and commitments are to be effectively implemented, enforced and monitored.

---

<sup>777</sup> Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) 6.

<sup>778</sup> Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) 6.

<sup>779</sup> Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) 7.

<sup>780</sup> Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) 8.

<sup>781</sup> Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) 9-10.

#### **5.4.2.1.2 Total Ethics Charter**

Introduced as a section of the Total Code of Conduct, the Total Ethics Charter summarises and emphasises Total S.A.'s specific commitment towards corporate stakeholders (including employees) and the global community: 'In particular, Total is accountable to [...] its employees, with attention to their professional development and the promotion of health and safety in the workplace.'<sup>782</sup>

#### **5.4.2.2 The Total Human Rights Internal Guide**

The Total Human Rights Internal Guide is a practical tool that supplements the Total Code of Conduct. Its purpose is to provide Total S.A.'s employees with clear and detailed instructions on how to address potential human rights issues and concerns that may arise during the day-to-day operation of the corporation.<sup>783</sup>

The guide is divided into two booklets, Booklet One offers a comprehensive overview of Total S.A.'s legal obligations and CSR commitments related to various human rights topics: Human rights in the workplace, human rights and security, and human rights and local communities.<sup>784</sup> Booklet Two is mostly a compendium of theoretical case studies specifically highlighting Total S.A.'s views on the duties and responsibilities of any of its staff members when facing various situations where human rights are at risk of being violated?

As regards labour rights and working conditions as a general principle Total S.A. commits to adhere to all fundamental International Labour Organisation conventions covering the main human rights in the workplace while observing local laws and international standards in the countries where it operates.<sup>785</sup>

Total S.A. also commits to building a corporate culture based on the following principles: the prohibition of discrimination; the prohibition of forced labour and child labour; the rejection of any form of harassment; the promotion of freedom of opinion and expression; the

---

<sup>782</sup> Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) 21.

<sup>783</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)2.

<sup>784</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)9.

<sup>785</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)10.

promotion of collective bargaining and freedom of association; and finally the amelioration of working conditions.<sup>786</sup>

### **5.4.2.3 The Total Safety Health Environment Quality Charter**

The Total Safety Health Environment Quality Charter is a succinct document that establishes ten fundamental principles at the core of Total's Safety, Health and Environment policy. The overall purpose of Total's Safety Health Environment Quality Charter is to clearly determine Total S.A.'s duties and commitments in term of occupational health and safety as well as the environment and quality.<sup>787</sup>

## **5.5 The Nestlé S.A. Corporate Code of Conduct**

### **5.5.1 Introduction**

#### **5.5.1.1 An overview of CSR approaches and practices of Nestlé S.A.**

Nestlé S.A. is a Swiss multinational company, headquartered in Vevey, Switzerland. The corporation deals in nutritional, snack food and health-related consumer goods. Historically, Nestlé S.A. has experienced the negative impact of societal activism and criticism of its corporate reputation, corporate legitimacy and, ultimately, corporate performance, having been at the centre of one of the first worldwide boycott campaigns that spearheaded the emergence of corporate social responsiveness on a global scale. During the 1970s and the 1980s criticism grew over Nestlé's marketing of breast milk substitute in Third World countries and quickly evolved into a global boycott campaign targeting Nestlé S.A. products.<sup>788</sup>

The boycott campaign, the remnants of which still persist today, successfully coerced Nestlé S.A. and other key industry players into adopting the International Code of Marketing of Breast-milk Substitutes; thus pioneering the practice of an industry code of conduct. Learning from this experience, Nestlé S.A. has progressively developed a comprehensive framework of CSR instruments, dealing with various sustainability issues.

---

<sup>786</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)10-11.

<sup>787</sup> Total S.A. *The Total Safety Health Environment Quality Charter* (2009).

<sup>788</sup> Hartley RF *Business Ethics, Mistakes and Successes* (2005)171. See also 2.2.1 and 3.1.1 above.

### **5.5.1.2 The Nestlé S.A. Code of Conduct: a framework of corporate publication**

Similar to codes of conduct analysed above, the Nestlé S.A. Code of Conduct is not presented in a single document, but actually results from the combination of several interconnected and interdependent documents each of which focusses on various aspects of Nestlé S.A. CSR policy. However, within the scope of this thesis, this section of this chapter will only engage with items dealing with labour and employment or having a direct or indirect impact on the labour rights and workings conditions in Nestlé S.A. factories as well as within the Nestlé S.A. supply chain.

These are therefore the different elements of the Nestlé S.A. Code of Conduct with labour and employment content:

- a) The Nestlé Human Resources Policy (October 2002);
- b) The Nestlé Code of Business Conduct (November 2007);
- c) The Nestlé Policy on Safety and Health at Work (2008);
- d) The Nestlé Corporate Business Principles (June 2010);
- e) The Nestlé Supplier Code (August 2010); and
- f) The Nestlé Employee Relations Policy (September 2010).

### **5.5.2 Labour rights and working conditions in the Nestlé S.A. Code of Conduct**

#### **5.5.2.1 The Nestlé Code of Business Conduct**

As an internal code of conduct, the Nestlé Code of Business Conduct lays down rules and principles that should constitute the basis of Nestlé's employees' actions. In accordance with that purpose, the Nestlé Code of Business Conduct clarifies Nestlé's corporate policy on various issues, namely: compliance with laws, rules and regulations; conflicts of interest; insider trading; antitrust and fair dealing; confidential information; fraud; protection of company assets; accounting; and bribery and corruption.<sup>789</sup>

The purpose of the Nestlé Code of Business Conduct is to establish specific values and principles that the Nestlé S.A. Corporation commits to uphold during the course of its

---

<sup>789</sup> 'This Code of Business Conduct specifies and helps the continued implementation of the Corporate Business Principles by establishing certain non-negotiable minimum standards of behaviour in key areas.' Nestlé S.A. *The Nestlé Code of Business Conduct* (2007) 1.

activities. These are core principles defining and determining the actions and behaviour of all Nestlé S.A. employees, partners and representatives.<sup>790</sup>

The Nestlé Code of Business Conduct also establishes rules and principles providing for the sensitive topics of discrimination and harassment in the workplace.<sup>791</sup> Section 12 of the Code confirms Nestlé S.A.'s commitment to uphold and protect diversity in the workplace, and 'respects the personal dignity, privacy and personal rights of every employee'. The corporation commits to maintain 'a workplace free from discrimination and harassment'.<sup>792</sup>

The Nestlé Code of Business Conduct, however, does not address the issue of its enforcement and/or monitoring; hence it does not provide mechanisms for the implementation and enforcement of its principles.

### **5.5.2.2 The Nestlé Corporate Business Principles**

The purpose of the Nestlé Corporate Business Principles is to establish the core business principles that constitute the cornerstone of Nestlé's CSR policies. These corporate business principles are grouped into principles and commitments toward specific corporate stakeholders, and are underpinned by a framework of international CSR and hard law instruments.

In this publication, Nestlé S.A. commits to ten business principles with the purpose to enhance Nestlé's corporate relationship with essential stakeholders, and to determine Nestlé's corporate practice in the following specific areas: consumers; human rights and labour practices; and Nestlé S.A. staff, suppliers and customers and the environment.<sup>793</sup>

The Nestlé Corporate Business Principles document, however, is merely a framework document; thus it does not get into the details of Nestlé's CSR commitments, but rather refers to specific instruments dealing with the various aspects of Nestlé S.A. CSR commitments to

---

<sup>790</sup> 'The nature of this Code is not meant to cover all possible situations that may occur. It is designed to provide a frame of reference against which to measure any activities. Employees should seek guidance when they are in doubt about the proper course of action in a given situation, as it is the ultimate responsibility of each employee to "do the right thing", a responsibility that cannot be delegated. Employees should always be guided by the following basic principles: avoid any conduct that could damage or risk Nestlé or its reputation; act legally and honestly; put the Company's interests ahead of personal or other interests. For the purposes of this Code, references to "employees" include employees, associates, officers and directors of Nestlé S.A. and its subsidiaries'. Nestlé S.A. *The Nestlé Code of Business Conduct* (2007) 1.

<sup>791</sup> Nestlé S.A. *The Nestlé Code of Business Conduct* (2007) 7.

<sup>792</sup> Nestlé S.A. *The Nestlé Code of Business Conduct* (2007) 7.

<sup>793</sup> Nestlé S.A. *The Nestlé Corporate Business Principles* (2010) 6-7.

its stakeholders. For instance, concerning the issue of labour rights and working conditions, the human rights and labour practices chapter of the Nestlé Corporate Business Principles refers to its adherence to the UN Global Compact's ( UNGC)<sup>794</sup> guiding principles on human rights and labour,<sup>795</sup> the eight fundamental Conventions of the International Labour Organisation,<sup>796</sup> the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,<sup>797</sup> and finally, the OECD Guidelines for Multinational Enterprises<sup>798</sup>.

Sections of the Nestlé Corporate Business Principles with possible impact on labour rights and working conditions of Nestlé S.A. employees include 'Principle 5: Our people, leadership and personal responsibility'. In this section, the Nestlé Corporate Business Principles document refers to Nestlé's key CSR documents specifically addressing CSR issues related to labour rights and working conditions, namely the Nestlé Code of Business Conduct and the Nestlé Human Resources Policy. The Nestlé Corporate Business Principles also refers to the Nestlé Policy on Safety and Health at Work<sup>799</sup>, as well as the Nestlé Supplier Code<sup>800</sup>, two Nestlé S.A. CSR documents with potential impact on labour rights and working conditions.<sup>801</sup>

### 5.5.2.3 The Nestlé Human Resources Policy

The purpose of the Nestlé Human Resources Policy is to provide core guidelines that 'constitute a sound basis for efficient and effective HR Management in the Nestlé S.A. Group around the world'.<sup>802</sup> These are flexible and dynamic human resource principles, the spirit of which is to be respected under all circumstances, even though their implementation needs to be 'inspired by sound judgment, compliance with local market laws and common sense, taking into account the specific context'.<sup>803</sup>

This document offers a framework of policies underpinning Nestlé S.A.'s approach to various labour and employment issues. The contribution of the Nestlé Human Resources Policy is to

---

<sup>794</sup> See 3.2.3.1 above.

<sup>795</sup> Nestlé S.A. *The Nestlé Corporate Business Principles* (2010) 9.

<sup>796</sup> See Nestlé S.A. *The Nestlé Corporate Business Principles* (2010)9.

<sup>797</sup> See 3.2.2.1 above.

<sup>798</sup> See 3.2.1.1 above

<sup>799</sup> See 5.5.2.6 below.

<sup>800</sup> See 5.5.2.6 below.

<sup>801</sup> Nestlé S.A. *The Nestlé Corporate Business Principles* (2010)10-11.

<sup>802</sup> Nestlé S.A. *The Nestlé Human Resources Policy* (2002)3.

<sup>803</sup> Nestlé S.A. *The Nestlé Human Resources Policy* (2002)3.

broadly shape Nestlé's policy position concerning specific human resources issues. It therefore provides basic principles for dealing with employees, recruitment and employment, work-life balance, remuneration, professional development, industrial relations and human resource organisation.<sup>804</sup>

#### **5.5.2.4 The Nestlé Employee Relations Policy**

The Nestlé Employee Relations Policy addresses issues related to the relationship between Nestlé S.A. as an employer and its employees. It therefore contains a set of principles and policies for the purpose of implementing Nestlé's priority commitments concerning individual and collective labour and employment rights.<sup>805</sup>

The Nestlé Employee Relations Policy establishes the core principles that determine the nature of the employer-employee relationship at Nestlé. It ultimately leads to specific CSR commitments concerning the enhancement of collective dialogue and negotiations with employee unions and other representatives' associations,<sup>806</sup> the development and upholding of an open dialogue with external stakeholders on labour matters,<sup>807</sup> employees' freedom of association and the effective recognition of the right to collective bargaining,<sup>808</sup> and finally, the continuous improvement of the working conditions of its workforce, giving special attention to the following labour priorities:

- 'Respect the right of our employees to establish and join organizations of their own choosing and engage in constructive negotiations.
- Offer competitive wages and benefits that allow our employees to cover their needs according to local standards of living.
- Respect Corporate guidelines regarding "temporary employees" based on which temporary staff shall only be used in circumstances where it is justified by the temporary nature of the job and will not result in unjustifiable differences in employment conditions.
- Respect Corporate guidelines regarding "outsourced activities" which indicate that only those activities which are non-core to the business may be outsourced and that the people performing them will be treated fairly at all times.

---

<sup>804</sup> Nestlé S.A. *The Nestlé Human Resources Policy* (2002)4-15.

<sup>805</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010)2.

<sup>806</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010)4.

<sup>807</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010)5.

<sup>808</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010)4.

- Implement the Corporate guidelines regarding working time for our employees to assure a safe and healthy workplace and a working environment respectful of their family lives.
- Treat every employee with dignity and without any tolerance for discrimination, harassment or abuse.<sup>809</sup>

#### **5.5.2.5 The Nestlé Policy on Safety and Health at Work**

The Nestlé Policy on Safety and Health at Work provides broad policies as well as guidelines and principles dealing with health and safety measures. These policies are meant to underpin the development of effective corporate processes forecasting, preventing and addressing health and safety risk at Nestlé's plants globally.<sup>810</sup>

#### **5.5.2.6 The Nestlé Supplier Code**

The Nestlé Supplier Code intends to ensure the implementation of Nestlé S.A.'s framework of CSR principles and commitments along the Nestlé S.A. supply chain. The Supplier Code establishes 'non-negotiable minimum standards' that Nestlé's suppliers, their employees, agents and subcontractors have to respect and adhere to when conducting business. These non-negotiable minimum standards deal with the issues of business integrity, sustainability, the environment, supplying farmers, safety and health, and finally, labour standards.<sup>811</sup>

Labour rights and working conditions are comprehensively dealt with in Section 1 (Human Rights) as well as Section 2 (safety and health). Nestlé S.A.'s suppliers are under an obligation to comply with Nestlé S.A. policies concerning the following issues: prison and forced labour, child labour, working hours, wages and benefits, fair and equal treatment, non-discrimination, freedom of association and collective bargaining, safety and health, and workplace environment.<sup>812</sup>

In the Supplier Code, Nestlé S.A. commits to ensure the effective implementation of its CSR principles by suppliers and reserves the right to verify a supplier's compliance with the Code. Where Nestlé S.A. becomes aware of any actions or conditions not in compliance with the

---

<sup>809</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010)3.

<sup>810</sup> Nestlé S.A. *Nestlé Policy on Safety and Health at Work* (2008).

<sup>811</sup> Nestlé S.A. *The Nestlé Supplier Code* (2013)1.

<sup>812</sup> Nestlé S.A. *The Nestlé Supplier Code* (2013)1-4.

Code, Nestlé S.A. reserves the right to ‘verify compliance with the Code through internal or external assessment mechanisms’.<sup>813</sup> A supplier’s failure to improve its practices in order to meet the standards set by the Supplier Code could ‘impact directly the ability of the Supplier to do business with Nestlé’.<sup>814</sup>

## **5.6 Assessment of the content of the BAT, Total S.A. and Nestlé S.A. Corporate Codes of Conduct**

The purpose of this section is to assess the content of the BAT, Total S.A. and Nestlé S.A. Codes of Conduct when compared with international CSR instruments dealing with labour rights and working conditions, against the background of the relevant international legal framework.

Before engaging in such exercise, it is necessary to define the scope of the comparison to be deployed in this section of the chapter. The first objective of this comparison is to assess the compliance and consistency of labour and employment rights and standards entrenched in MNCs’ codes of conduct when compared with relevant international CSR instruments. BAT, Total S.A. and Nestlé S.A.’s Corporate Codes of Conduct are therefore to be assessed against relevant CSR and soft law instruments, established by various international public and private role players, and dealing with (and providing for) labour rights and working conditions on a global scale.<sup>815</sup>

The second and central objective of this comparison is to determine the legal dimension and implications of labour and employment related CSR principles and commitments entrenched in the BAT, Total S.A. and Nestlé S.A. Corporate Codes of Conduct. In order to achieve that purpose, relevant items of the content of these Corporate Codes of Conduct are to be scrutinised in terms of international legal instruments dealing with (and providing for) labour rights and working conditions, including but not limited to the following :

- a) Relevant ILO conventions and recommendations and protocols;
- b) Relevant UN conventions (such as the UN Convention on the Rights of the Child of 1989);
- c) The UN Declaration of Human Rights of 1948;

---

<sup>813</sup> Nestlé S.A. *The Nestlé Supplier Code* (2013)1.

<sup>814</sup> Nestlé S.A. *The Nestlé Supplier Code* (2013)1.

<sup>815</sup> See 5.1.2.4 above.

- d) The UN International Covenant on Economic, Social and Cultural Rights; and
- e) The UN International Covenant on Civil and Political Rights of 1966.

Given the fact that the purpose of the thesis is to assess the impact of corporate codes of conduct on labour rights and working condition in MNCs, the scope of the present analysis is therefore to be limited to labour and employment related CSR principles and commitment contained in these codes. Hence the need to establish a list of relevant labour and employment rights are at the core of this comparison process, providing a substantial basis for the assessment of these CSR instruments. As such, the comparative assessment of these codes of conduct is to encompass the analysis of core labour issues established by the ILO's Declaration on Fundamental Principles and Rights at Work.<sup>816</sup> The thesis also intends to include an analysis of equally significant, and internationally established, labour and employment principles dealing with working conditions<sup>817</sup> and employment security issues.<sup>818</sup>

## **5.6.1 Elimination of child labour and protection of children**

### **5.6.1.1 Child labour in international law**

Several instruments have been adopted by the international community for the purpose of preventing and combatting child labour. The following instruments constitute the cornerstone of the current international framework prohibiting and/or regulating child labour.

#### **5.6.1.1.1 The ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment**

The ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment sets the basic minimum age for admission to employment at 15,<sup>819</sup> and prohibits the recruiting of children to do hazardous work before the age of 18.<sup>820</sup> The Convention, however, allows

---

<sup>816</sup> See 3.2.2.2 above.

<sup>817</sup> This includes the following topics: duration of work (maximum working hours/ work-life balance); pay, remuneration and compensation (minimum wage); social security rights; harassment and abuses (sexual, physical, verbal, psychological); rights to dignity and respect; occupational health and safety; and supply chain monitoring.

<sup>818</sup> This includes the following topics: recruitment , promotion and demotion ,dismissal, employment contract, vocational guidance and training, temporal work , seasonal work, migrant work, and outsourcing and restructuring

<sup>819</sup> Section 2.3 of the ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment.

<sup>820</sup> Section 3.1 of the ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment.

children aged between 13 and 15 to do light work provided their health and safety is not threatened, nor their education or vocational orientation and training hindered.<sup>821</sup> Possible exceptions are established for developing countries where children may start general employment at 14<sup>822</sup> and light work between 12 and 14.<sup>823</sup>

#### **5.6.1.1.2 The ILO Convention 182 of 1999 on the Worst Forms of Child Labour**

The purpose of the ILO Convention 182 of 1999 on the Worst Forms of Child Labour is to call for 'immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency'.<sup>824</sup> The Convention, therefore, strongly prohibits the use or recruitment of children under the age of 18<sup>825</sup> for the following purposes: sale and trafficking of children, slavery and similar practices,<sup>826</sup> prostitution, pornography, illicit activities (especially drug production and trafficking), and ultimately any work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.<sup>827</sup>

#### **5.6.1.1.3 The UN Convention on the Rights of the Child of 1989**

The UN Convention on the Rights of the Child of 1989 establishes that a child<sup>828</sup> is 'to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development'.<sup>829</sup>

#### **5.6.1.1.4 The International Covenant on Economic, Social and Cultural Rights of 1966**

Article 10.3 of the International Covenant on Economic, Social and Cultural Rights of 1966 requires Member States to take action for the protection of children against economic and social exploitation and clearly prohibits the employment of children for work that is harmful

---

<sup>821</sup> Section 7.1 of the ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment.

<sup>822</sup> Section 2.4 of the ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment.

<sup>823</sup> Section 7.4 of the ILO Convention 138 of 1973 on the Minimum Age for Admission to Employment.

<sup>824</sup> The ILO Convention 182 of 1999 on the Worst Forms of Child Labour.

<sup>825</sup> Section 2 of the ILO Convention 182 of 1999 on the Worst Forms of Child Labour.

<sup>826</sup> Such as debt bondage, serfdom, forced or compulsory labour, and the forced or compulsory recruitment of children for use in armed conflict.

<sup>827</sup> Section 3 of the ILO Convention 182 of 1999 on the Worst Forms of Child Labour.

<sup>828</sup> The Convention defines a 'child' as an individual below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. See Art 1 of the UN Convention on the Rights of the Child of 1989.

<sup>829</sup> Article 32 of the UN Convention on the Rights of the Child of 1989.

to their morals or their health, dangerous to their life or likely to hamper their normal development.<sup>830</sup>

### 5.6.1.2 Child labour in international CSR instruments

Child labour is an item that is often found in CSR instruments dealing with labour rights and working conditions. Child labour is in fact one of the few issues that is addressed by most, if not all, international CSR instruments providing for labour issues.

The UN Global Compact calls for the effective abolition of child labour.<sup>831</sup>

The OECD Guidelines for Multinational Enterprises assert that enterprises should contribute to the effective abolition of child labour.<sup>832</sup>

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy emphasises the role corporations are to play in the eradication of child labour:

‘Multinational enterprises, as well as national enterprises, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour and should take immediate and effective measures within their own competence to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.’<sup>833</sup>

The ISO 26000 CSR standard determines specific actions and procedures to be implemented by corporations in order to address the issue of child labour and thereby contribute to the effective abolition of child labour.<sup>834</sup>

The FLA Workplace Code of Conduct states: ‘No person shall be employed under the age of 15 or under the age for completion of compulsory education, whichever is higher.’<sup>835</sup>

The ETI Base Code, in section 4, asserts that ‘child labour shall not be used’ and does suggest various procedures and mechanisms aimed at facilitating the rehabilitation of child workers.<sup>836</sup>

---

<sup>830</sup> Article 10.3 of the International Covenant on Economic, Social and Cultural Rights of 1966.

<sup>831</sup> Principle 5 of the UN Global Compact *The Global Compact 10 Principles* (2004).

<sup>832</sup> Section 4(1) (b) of *The OECD Guidelines for Multinational Enterprises* (1976).

<sup>833</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) para 36.

<sup>834</sup> ISO *ISO 26000: Guidance on Social Responsibility* (2010) para 6.3.10.2.

<sup>835</sup> FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011), section V.

<sup>836</sup> ETI *The ETI Base Code* (2012) Section 4.

The Global Sullivan Principles require companies to operate ‘without unacceptable worker treatment such as the exploitation of children’.<sup>837</sup>

And finally, the International Confederation of Free Trade Unions (ICFTU) Basic Code of Labour Practice emphasises the prohibition of child labour based on ILO instruments.<sup>838</sup>

### **5.6.1.3 Child labour in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct**

The prohibition of child labour is a core - internationally established - labour principle and as such is prominently entrenched in the international legal framework. It is also an issue that is comprehensively addressed in international CSR instruments dealing with labour rights and working conditions. During the analysis of the codes of conducts of BAT, Total S.A. and Nestlé S.A., it was observed that these MNCs are usually keen to commit to this principle in their CSR approaches, usually referring or adhering to international legal or CSR instruments combating child labour at the global level.

The elimination of child labour is in fact an important component of the ILO’s Decent Work Agenda thus the pre-eminent presence of principles and commitments supporting the international community’s prohibition of child labour in the Codes of Conducts of BAT, Total S.A. and Nestlé S.A., as well as the creation by these MNCs of CSR instruments specifically addressing the issue of child labour.<sup>839</sup> BAT, Total S.A. and Nestlé S.A. also put an emphasis on the monitoring of child labour activities in their respective supply chains, and the subsequent adoption of CSR instruments aimed at addressing this issue in the supply chain of these MNCs.<sup>840</sup>

## **5.6.2 Slavery, forced and compulsory labour**

### **5.6.2.1 Slavery, forced and compulsory labour in international law**

#### **5.6.2.1.1 The UN Universal Declaration of Human Rights of 1948**

The UN Universal Declaration of Human Rights of 1948 (UDHR) provides for the prohibition of slavery<sup>841</sup> as well as other form of forced and compulsory labour.<sup>842</sup>

---

<sup>837</sup> Sullivan LH *The Global Sullivan Principles* (1999) Principle 2.

<sup>838</sup> International Confederation of Free Trade Unions *Advocacy in action: extreme corporate makeover interruptus: Denormalising tobacco industry corporate schmoozing* (1997) para 5.

<sup>839</sup> Such as, the BAT Child Labour Policy of February 2000 and the Total Human Rights Internal Guide.

<sup>840</sup> Such as, the Nestlé Supplier Code which focusses on the prevention and eradication of child labour in Nestlé’s supply chain.

<sup>841</sup> Article 4 of the UN Universal Declaration of Human Rights of 1948 provides: ‘No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.’

<sup>842</sup> See Arts 23 and 24 of the UN Universal Declaration of Human Rights of 1948.

#### **5.6.2.1.2 The UN International Covenant on Civil and Political Rights of 1966**

The UN International Covenant on Civil and Political Rights prohibits slavery,<sup>843</sup> servitude,<sup>844</sup> and forced and compulsory labour.<sup>845</sup>

#### **5.6.2.1.3 The ILO Forced Labour Convention 29 of 1930**

The ILO Forced Labour Convention 29 of 1930 clearly defines the concept of forced and compulsory labour,<sup>846</sup> determines the exceptions to the concept,<sup>847</sup> and establishes a regulatory framework for the purpose of the implementation of the prohibition of forced and compulsory labour.<sup>848</sup>

#### **5.6.2.1.4 The ILO Abolition of Forced Labour Convention 105 of 1957**

The ILO Abolition of Forced Labour Convention 105 of 1957 prohibits the use of forced and compulsory labour,<sup>849</sup> and limits and regulates the right of ratifying States to use or allow the use of compulsory labour.<sup>850</sup>

#### **5.6.2.1.5 ILO Declaration on Fundamental Principles and Rights at Work and its follow-up**

The objective of the ILO Declaration on Fundamental Principles and Rights at Work is to establish fundamental labour standards and principles which are to be upheld by ILO Member States by the sole virtue of their membership of the ILO.<sup>851</sup> This instrument therefore differs from the ILO conventions as it engages all Member States without requiring a specific ratification process.<sup>852</sup>

As for its substance, this ILO Declaration establishes four fundamental and non-negotiable labour standards that Member States are committed to implement in their national contexts,<sup>853</sup> including ‘the elimination of all forms of forced or compulsory labour’.<sup>854</sup> The

---

<sup>843</sup> Section 8.1 of the UN International Covenant on Civil and Political Rights of 1966.

<sup>844</sup> Section 8.2 of the UN International Covenant on Civil and Political Rights of 1966.

<sup>845</sup> Section 8.3 of the UN International Covenant on Civil and Political Rights of 1966.

<sup>846</sup> Article 2(1) of the ILO Forced Labour Convention 29 of 1930.

<sup>847</sup> Article 2(2) of the ILO Forced Labour Convention 29 of 1930.

<sup>848</sup> Articles 3 to 33 of the ILO Forced Labour Convention 29 of 1930.

<sup>849</sup> Articles 1 and 2 of the ILO Abolition of Forced Labour Convention 105 of 1957.

<sup>850</sup> Articles 1 and 2 of the ILO Abolition of Forced Labour Convention 105 of 1957.

<sup>851</sup> Articles 1(a), 1(b) and 2 of the ILO Declaration on Fundamental Principles and Rights at Work (1998).

<sup>852</sup> Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work (1998).

<sup>853</sup> See 3.2.2.2 above.

<sup>854</sup> Article 2 (b) of the ILO Declaration on Fundamental Principles and Rights at Work (1998).

ILO Declaration on Fundamental Principles and Rights at Work therefore establishes the duty for ILO Member States to eliminate ‘all forms of forced or compulsory labour’.<sup>855</sup>

### **5.6.2.2 Slavery, forced and compulsory labour in international CSR instruments**

Consistent with the international legal framework, slavery and all forms of forced and compulsory labour are prohibited by all international CSR instruments and institutions. The 1976 OECD Guidelines for Multinational Enterprises, for instance, establish the duty for MNCs to ‘contribute to the elimination of all forms of forced or compulsory labour’.<sup>856</sup> This principle has been echoed by subsequent CSR instruments issued by international public role players, such as, the UN Global Compact<sup>857</sup> and the recent ISO 26000 CSR standard.<sup>858</sup>

CSR instruments promoted by international private role players have also largely institutionalised the abolition of slavery as well as forced and compulsory labour. The ETI Base Code, for instance, clearly stipulates that ‘[e]mployment is freely chosen’.<sup>859</sup> Thus ‘[t]here is no forced, bonded or involuntary prison labour’ and ‘[w]orkers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice’.<sup>860</sup> These principles are also contained in the ICFTU Basic Code of Labour Practice.<sup>861</sup>

Finally, the FLA Code of Conduct addresses all forms of forced labour and enumerates several possible forms of forced labour.<sup>862</sup>

### **5.6.2.3 Slavery, forced and compulsory labour in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct**

---

<sup>855</sup> Article 2 (b) of the ILO Declaration on Fundamental Principles and Rights at Work (1998).

<sup>856</sup> OECD *The OECD Guidelines for Multinational Enterprises* (1976)17.

<sup>857</sup> Principle 4 of the UN Global Compact targets ‘the elimination of all forms of forced and compulsory labour’.

<sup>858</sup> ‘An organization should not engage in or benefit from any use of forced or compulsory labour. No work or service should be exacted from any person under the threat of any penalty or when the work is not conducted voluntarily. An organization should not engage or benefit from prison labour, unless the prisoners have been convicted in a court of law and their labour is under the supervision and control of a public authority. Further, prison labour should not be used by private organizations unless performed on a voluntary basis, as evidenced by, among other things, fair and decent conditions of employment.’ ISO *ISO 26000: Guidance on Social Responsibility* (2010) Section 6.3.10.2.

<sup>859</sup> Section 1 of *The ETI Base Code* (2012).

<sup>860</sup> Sections 1(1) and 1(2) of *The ETI Base Code* (2012).

<sup>861</sup> See para 5 (Provisions) of the ICFTU Basic Code of Labour Practice.

<sup>862</sup> FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) 4.

Slavery, forced and compulsory labour form part of the issues which are seemingly uniformly addressed in the international legal framework, the international CSR framework and, finally, MNC Codes of Conduct.

The Codes of Conduct of BAT, Nestlé S.A. and Total S.A. are consistent in their rejection of any direct or indirect use of slavery or any type of forced or compulsory labour. For instance, the BAT Employment Principles prohibits the use of forced labour as well as the exploitation or the unlawful use of immigrant labour. The company considers that ‘[b]onded or involuntary labour is completely unacceptable, as is the requirement to surrender identity papers or pay deposits as a condition of employment’.<sup>863</sup> The BAT Philosophy for Supplier Partnerships also prohibits the use of forced or illegal immigrant labour by corporations within BAT’s supply chain.<sup>864</sup>

Nestlé S.A. similarly forbids the use of forced labour, directly in its immediate operations<sup>865</sup> or by any corporation within its supply chain.<sup>866</sup>

The Total Human Rights Internal Guide also deals with the issue of forced labour and mostly refers to relevant international hard and soft law instruments, with a commitment to implement such international measures in all Total S.A. operations.<sup>867</sup>

### **5.6.3 The principle of equality and the prohibition of workplace discrimination**

The principles of equality and non-discrimination are essential labour standards at the core of the international legal framework regulating industrial relations. These are complex concepts, deriving from the international established precept of the necessity to treat all human as equal regardless of their race, gender, religion, or sexual orientation.<sup>868</sup>

#### **5.6.3.1 The principle of equality and the prohibition of discrimination in international law**

Equality and non-discrimination in the workplace are fundamental labour rights closely regulated by an array of international legal instruments. These instruments usually originate from, or are based on, the pioneering international human rights instrument that has

---

<sup>863</sup> British American Tobacco p.l.c. *BAT Employment Principles* (2011)4.

<sup>864</sup> British American Tobacco p.l.c. *BAT Philosophy for Supplier Partnerships* (2014)6.

<sup>865</sup> Nestlé S.A. *The Nestlé Corporate Business Principles* (2010)6-7.

<sup>866</sup> Nestlé S.A. *The Nestlé Supplier Code* (2013)1.

<sup>867</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)14.

<sup>868</sup> This principle historically originates from The UN Universal Declaration of Human Rights of 1948. Article 1 of the UN UDHR reads: ‘All human beings are born free and equal in dignity and rights.’

established the status of equality and the prohibition of discrimination as essential human rights, namely, the UN Universal Declaration of Human Rights of 1948.<sup>869</sup> The following instruments are central to the international framework regulating equality and discrimination in the workplace.

#### **5.6.3.1.1 The UN International Covenant on Civil and Political Rights of 1966**

The UN International Covenant on Civil and Political Rights of 1966 establishes the rights to equality and non-discrimination as essential human rights. Article 26 reads:

‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, .colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’<sup>870</sup>

#### **5.6.3.1.2 The UN International Covenant on Economic, Social and Cultural Rights of 1966**

The UN International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>871</sup> emphasises the right to equality and non-discrimination in the specific context of industrial relations and therefore ‘recognize[s] the right of everyone to the enjoyment of just and favourable conditions’.<sup>872</sup>

Just and favourable working conditions as defined by the ICESCR entail ‘fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work’.<sup>873</sup>

The ICESCR also provides for an ‘equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.’<sup>874</sup>

---

<sup>869</sup> Articles 1, 2 and 7 of the UN Universal Declaration of Human Rights of 1948.

<sup>870</sup> Article 26 of the UN International Covenant on Civil and Political Rights of 1966.

<sup>871</sup> The UN International Covenant on Economic, Social and Cultural Rights of 1966

<sup>872</sup> Article 7 ICESCR.

<sup>873</sup> Article 7(a) (i) ICESCR.

<sup>874</sup> Article 7(c) ICESCR.

### **5.6.3.1.3 ILO instruments dealing with and providing for equality and non-discrimination**

The ILO has over the years developed a framework of compulsory (conventions) and non-compulsory (recommendations) instruments addressing the issue of equality and discrimination in the workplace. These instruments are the following: ILO Convention Concerning Discrimination in Respect of Employment and Occupation,<sup>875</sup> ILO Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,<sup>876</sup>, ILO Recommendation Concerning Discrimination in Respect of Employment and Occupation,<sup>877</sup> and ILO Recommendation Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.<sup>878</sup>

### **5.6.3.2 The principle of equality and the prohibition of discrimination in international CSR instruments**

The principles of equality and the prohibition of discrimination are some of the few labour and employment rights unanimously and consistently embedded in international CSR instruments. As such, the principles of equality and the prohibition of discrimination are prominently entrenched in leading international CSR instruments.

The UN Global Compact is committed to the promotion of the principle of equality and therefore dedicates its Principle 6 to the elimination of ‘discrimination in respect of employment and occupation’.<sup>879</sup>

The approach of the OECD Guidelines for Multinational Enterprises to the issues of equality and non-discrimination is to provide MNCs with a set of guidelines inspired by ILO instruments on equality and discrimination.<sup>880</sup> This results in a comprehensive framework of guidelines that establishes and elaborates on the principle of non-discrimination in the workplace:

---

<sup>875</sup> ILO Convention No C111 of 1958.

<sup>876</sup> ILO Convention No C100 of 1951.

<sup>877</sup> ILO Recommendation No R111 of 1958.

<sup>878</sup> ILO Recommendation No R90 of 1951.

<sup>879</sup> Principle 6, UN Global Compact *The Global Compact 10 Principles* (2004).

<sup>880</sup> The OECD Guidelines for Multinational Enterprises formally refers to the following instruments as providing the substance for its guidelines on discrimination: the ILO Declaration on Fundamental Principles and Rights at Work (1998) as well as the ILO Convention Concerning Discrimination in Respect of Employment and Occupation, No C111 of 1958. See OECD *The OECD Guidelines for Multinational Enterprises 2011 Edition* (2011) 39.

‘Enterprises should[...]be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.’<sup>881</sup>

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy<sup>882</sup> and the ISO 26000 CSR Standard<sup>883</sup> similarly provide corporations with guidelines on the prohibition of discrimination in employment. These two instruments’ approach to the issues of equality and non-discrimination are both also based on relevant ILO conventions and recommendations on discrimination.

The ISO CSR 26000 Standard in fact deals with the issue of discrimination from a human rights perspective and therefore refers to international hard and soft law instruments providing for the protection of human rights, generally and in the specific context of the workplace.<sup>884</sup>

The topics of equality and the prohibition of discrimination are also thoroughly addressed by CSR instruments and CSR codes of conduct proposed by international private or multi-stakeholder parties:

The FLA Workplace Code of Conduct and Compliance Benchmarks entails the promotion of the principle of non-discrimination,<sup>885</sup> and further develops a set of Compliance Benchmarks the purpose of which is to clearly establish the content and extent of the principle of non-discrimination in employment.<sup>886</sup>

---

<sup>881</sup> OECD *The OECD Guidelines for Multinational Enterprises 2011 Edition* (2011) 35.

<sup>882</sup> Paragraph 22 ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977).

<sup>883</sup> Sections 6.3.7.1 and 6.3.7.2 of *ISO 26000: Guidance on Social Responsibility* (2010).

<sup>884</sup> ‘Organizations should [...] respect international norms of behaviour such as those laid down in the Universal Declaration of Human Rights and other instruments.’ Section 3(3) (2) *ISO 26000: Guidance on Social Responsibility* (2010).

<sup>885</sup> ‘No person shall be subject to any discrimination in employment, including hiring, compensation, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, social group or ethnic origin.’ FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011)4.

<sup>886</sup> FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) 14-16.

The ETI Base Code<sup>887</sup> and the Global Sullivan Principles<sup>888</sup> also advocate the promotion of equality at work and the prohibition of discrimination.

### **5.6.3.3 The principle of equality and the prohibition of discrimination in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct**

Similarly to the topics of child labour and slavery and forced labour, workplace equality and non-discrimination are also issues consistently addressed by the Codes of Conduct of BAT, Total S.A. and Nestlé S.A.

The BAT Employment Principles document elaborates on the position of BAT regarding the issues of discrimination and equality. BAT has developed several employment principles to proactively take a stance with regards to the implementation of diversity and equality as well as the prevention of discrimination within the BAT global network of companies<sup>889</sup> and its global supply chain.<sup>890</sup>

The Total Code of Conduct and Ethics Charter convey Total S.A.'s commitment to implement a set of basic business principles based on international standards. The Total Code of Conduct and Ethics Charter therefore include the commitment that Total S.A. will

‘recruit personnel solely on the basis of our requirements and the specific capabilities of individual applicants. We develop their professional skills and careers without discrimination regarding race, gender, or affiliation with a political, religious, or union organization or minority group’.<sup>891</sup>

Total's commitment not to partake in discriminative practices does not apply to affirmative action measures implemented by national or local laws, such as, the Employment Equity Act in South Africa, considering that Total also undertake to ‘observes local laws and

---

<sup>887</sup>: ‘There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.’ Section 7(1) *The ETI Base Code* (2012).

<sup>888</sup> Principle 2 of the Global Sullivan Principles requires corporations to commit to ‘[p]romote equal opportunity for our employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs ...’.

<sup>889</sup> Namely the BAT employment principle of diversity, the principle of equal opportunity, and the principles of fairness and dignity at work. British American Tobacco p.l.c. *Employment Principles* (2011)3-4.

<sup>890</sup> ‘Whilst we are not responsible for standards of employment practice throughout our supply chain, we seek to influence our business partners to avoid: ... Any form of unlawful discrimination, harassment, abuse or bullying.’ British American Tobacco p.l.c. *Employment Principles* (2011) 6. See also British American Tobacco p.l.c. *BAT Philosophy for Supplier Partnerships* (2014) 6.

<sup>891</sup> Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) 8.

international standards in the countries where it operates'.<sup>892</sup> The Total Human Rights Internal Guide also contains further practical guidelines for the effective implementation of Total S.A.'s commitment to prevent and prohibit discrimination in the workplace.<sup>893</sup>

Finally, the Nestlé Code of Business Conduct establishes rules and principles relating to discrimination and harassment. These principles are based on Nestlé's commitment to achieve and maintain a workplace free from discrimination and harassment.<sup>894</sup> This commitment is apparently an essential labour priority for Nestlé, considering that it has been included in most CSR publication of the corporation, including the Nestlé Employee Relations Policy, the Nestlé Supplier Code and the Nestlé Human Resources Policy.

#### **5.6.4 Freedom of association, collective bargaining, and industrial relations rights**

Several interrelated issues and topics are analysed under this heading, namely freedom of association and the right to organise, collective bargaining rights, the right to strike, consultation rights and the right to open, free and transparent communication, the examination of grievances and settlement of industrial disputes.

##### **5.6.4.1 Freedom of association, collective bargaining, and industrial relations rights in International Law**

Freedom of association, the right to collective bargaining and other related industrial relations rights are part of a framework of essential labour rights and freedoms regulated by the ILO. The ILO has in fact adopted several conventions and recommendations the purpose of which is to effectively establish fundamental rights at work.

Freedom of association, the right to organise and collective bargaining rights are protected by ILO Convention 87 of 1948 on Freedom of Association and Protection of the Right to Organise and ILO Convention 98 of 1949 on the Right to Organise and Collective Bargaining.

---

<sup>892</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)10.

<sup>893</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)10.

<sup>894</sup> 'Nestlé respects the personal dignity, privacy and personal rights of every employee and is committed to maintaining a workplace free from discrimination and harassment. Therefore, employees must not discriminate on the basis of origin, nationality, religion, race, gender, age or sexual orientation, or engage in any kind of verbal or physical harassment based on any of the above or any other reason. Employees who feel that their workplace does not comply with the above principles are encouraged to raise their concerns with the HR Department.' Nestlé S.A. *The Nestlé Code of Business Conduct* (2007) 7.

The right to strike is not directly regulated and protected by a specific ILO convention or recommendation, even though it has been incidentally provided for in various ILO instruments.<sup>895</sup> The jurisprudence of the ILO Committee on Freedom of Association, as early as 1952, establishes the right to strike as a fundamental right of workers and of workers' organisations.<sup>896</sup> The ILO's position is that 'the right to strike is an intrinsic corollary of the right of association protected by Convention No. 87'.<sup>897</sup> Furthermore, the International Labour Conference, in several resolutions, has emphasised the recognition of the right to strike in Member States.<sup>898</sup> The ILO Resolution Concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation, for instance, recommended the adoption of legislation for the purpose of 'ensuring the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers'.<sup>899</sup> The ILO Resolution Concerning Trade Union Rights and Their Relation to Civil Liberties also urged action to be taken by the International Labour Office to ensure full and universal respect for broadly defined trade union rights including the right to strike;<sup>900</sup> this is essentially relevant with the current context at the ILO that is characterised by the fact that the right to strike is under attack by employer representatives at the International Labour Organisation.<sup>901</sup>

The right to strike is also provided for in various international instruments, such as the CESCRC, which contains a clause that specifically establishes and protects the right to strike.<sup>902</sup>

Various other ILO instruments also provide freedom of association, collective bargaining and related industrial relations rights, namely, the Workers' Representatives Convention

---

<sup>895</sup> 'The Abolition of Forced Labour Convention, 1957 (No. 105), prohibits the use of forced or compulsory labour "as a punishment for having participated in strikes" (Article 1, subparagraph (d)); and the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), first mentions strikes in paragraphs 4 and 6, then states in paragraph 7 that no provision it contains "maybe interpreted as limiting, in any way whatsoever, the right to strike"...' Gernigon B, Odero A & Guido H *ILO Principles Concerning the Right to Strike* (2000)7.

<sup>896</sup> The ILO Committee on Freedom of Association Report No 2, Case No 28 UK-Jamaica (1952) para 68.

<sup>897</sup> *ILO Freedom of Association and Collective Bargaining: General Survey of the Reports* (1994). See also Gernigon B, Odero A & Guido H *ILO Principles Concerning the Right to Strike* (2000)8.

<sup>898</sup> Gernigon B, Odero A & Guido H *ILO Principles Concerning the Right to Strike* (2000)7-8.

<sup>899</sup> International Labour Conference *Record of Proceedings of the 40th Session of the International Labour Conference* (1957) 783.

<sup>900</sup> International Labour Conference *Record of Proceedings of the 54th Session of the International Labour Conference* (1970) 735-736.

<sup>901</sup> International Trade Union Confederation *Employers Attack on ILO System and the Rule of Law* (2014) <http://www.ituc-csi.org/employers-attack-on-ilo-system-and?lang=en> (accessed 16 October 2014).

<sup>902</sup> Article 8(1) (d) of the ICESCR.

135 of 1971, the Workers' Representatives Recommendation 143 of 1971, the Collective Bargaining Convention 154 of 1981, the Collective Bargaining Recommendation 163 of 1981, the Collective Agreements Recommendation 91 of 1951, and the Consultation (Industrial and National Levels) Recommendation 113 of 1960.

#### **5.6.4.2 Freedom of association, collective bargaining, and industrial relations in international CSR instruments**

Principle 3 of the UN Global Compact expresses one of the Global Compact's purposes to strive for the promotion on a global scale of freedom of association and collective bargaining.<sup>903</sup> However, the Global Compact does not refer to the right or freedom to strike or any other industrial relations issues.

The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy address the issue of industrial relations and provide guidelines as to MNCs' relevant duties and responsibilities in host countries.<sup>904</sup> It should be noted that the ILO Tripartite Declaration primarily advocates for uniformity and consistency between MNCs' industrial relation standards and corporate practice in each national context: 'Multinational enterprises should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned.'<sup>905</sup>

The implementation of the principle contained in paragraph 41 of the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy is likely to have two specific and foreseeable consequences highly relevant to the research hypothesis at the core of this thesis. First, the implementation by MNCs of paragraph 41 could result in the contextualisation of MNCs' industrial relation practices, thus the implementation by MNCs of different labour standards depending on the level of protection each national context affords to industrial relation rights.

Secondly, paragraph 41 of the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy can also be construed as having the potential to generate a 'race to the bottom' in terms of the CSR practices of MNCs, because the ILO

---

<sup>903</sup> Principle 3 UN Global Compact *The Global Compact 10 Principles* (2004).

<sup>904</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) para 41 to 44.

<sup>905</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) para 41.

Tripartite Declaration only advocates for a minimum standard of industrial relations (not less favourable than those observed by comparable employers in the country concerned) and this is contrary to the essence of CSR (as a corporate practice above the minimum legal requirement).

The ILO Tripartite Declaration provides guidelines concerning the freedom of association and the right to organise,<sup>906</sup> collective bargaining<sup>907</sup> and consultation rights,<sup>908</sup> and finally standards and principles for the examination of grievances and the settlement of industrial disputes.<sup>909</sup> These guidelines are nevertheless subject to the provisions of each national legal system; hence the potential for a race to the bottom concerning the implementation of international CSR principles providing for freedom of association, collective bargaining, and industrial relations.

The Global Sullivan Principles provide guidelines promoting fair and responsible industrial relations between corporations and employees, and exhorting corporations to respect employees' freedom of association.<sup>910</sup>

The purpose of the FLA Workplace Code of Conduct is to achieve decent and humane working conditions on a global scale via the introduction of labour standards. As such, the FLA Workplace Code of Conduct establishes the duty for employers to recognize and respect the right of employees to freedom of association and collective bargaining.<sup>911</sup> The FLA further establishes that '[e]mployers shall respect all laws, rules and procedures protecting the rights of workers to organize, bargain collectively, and participate in strikes consistent with ILO principles and jurisprudence'.<sup>912</sup>

The FLA Workplace Code of Conduct and Compliance Benchmarks also offers a framework of fundamental principles with an accompanying compliance benchmark that clearly determines employers' duties regarding the promotion of fair industrial relations,

---

<sup>906</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 42-48.

<sup>907</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 49-56.

<sup>908</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) para 57.

<sup>909</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 58 and 59.

<sup>910</sup> Sullivan LH *The Global Sullivan Principles* (1999) Principle 3.

<sup>911</sup> FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Principle 6.

<sup>912</sup> FLA *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) para ER.26.

as well as the protection of employees' right to organise, bargain and participate in legal strikes.<sup>913</sup> The FLA Workplace Code of Conduct is in fact the only major international CSR instrument referring to or addressing the right to strike.

The ETI Base Code provides for the protection of freedom of association, collective bargaining, and industrial relations rights. The ETI Base Code states that freedom of association and the right to collective bargaining are to be respected,<sup>914</sup> and proposes the following principles dealing with the responsibility of employers concerning the respect and protection of industrial relations rights:

2.1 Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.

2.2 The employer adopts an open attitude towards the activities of trade unions and their organisational activities.

2.3 Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.

2.4 Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.<sup>915</sup>

Sub-clause 6.3.10 of the ISO 26000, dealing with human rights issues at work, asserts that freedom of association, collective bargaining, and industrial relations rights are part of a set of fundamental principles and rights at work which are to be specifically addressed by employers.<sup>916</sup>

Sub-clause 6.4.5 of the ISO 26000 proposes a framework of socially responsible labour practices that is to be implemented by employers in order to realise effective social dialogue<sup>917</sup> in the workplace and therefore promote freedom of association, collective bargaining, and related industrial relations rights.<sup>918</sup>

---

<sup>913</sup> FLA compliance benchmarks paras FOA.1 to FOA.24.

<sup>914</sup> ETI *The ETI Base Code* (2012) Principle 2.

<sup>915</sup> ETI *The ETI Base Code* (2012) Principles 2.1 to 2.4.

<sup>916</sup> ISO *ISO 26000: Guidance on Social Responsibility* (2010) sub-clause 6.3.10.

<sup>917</sup> ISO *ISO 26000: Guidance on Social Responsibility* (2010) sub-clause 6.4.5.1 provides the following definition of 'social dialogue': 'Social dialogue includes all types of negotiation, consultation or exchange of information between or among representatives of governments, employers and workers, on matters of common interest relating to economic and social concerns. It could take place between employer and worker

### **5.6.4.3 Freedom of association, collective bargaining, and industrial relations in the Nestlé S.A., Total S.A. and BAT Codes of Conduct**

The Nestlé Corporate Business Principles briefly confirm Nestlé's commitment to uphold freedom of association, collective bargaining and other industrial relations rights. In order to implement this commitment, Nestlé S.A. asserts its commitment to the relevant principles provided by various international instruments, especially Principle 3 of the UN Global Compact establishing freedom of association and collective bargaining rights.<sup>919</sup>

However, the Nestlé Human Resources Policy is the principal CSR instrument establishing Nestlé S.A.'s commitment to 'uphold the freedom of association of its employees and the effective recognition of the right to collective bargaining'.<sup>920</sup>

The Nestlé Employee Relations Policy similarly entails a commitment by Nestlé S.A. to work toward the promotion of collective dialogue and collective negotiation; this entails not only the promotion of collective bargaining rights, but also Nestlé's duty to ensure that 'direct and frequent communication is established at the workplace between management and ... employees, both union members and non-union members'.<sup>921</sup> Nestlé S.A. also commits to achieve an 'external open social dialogue' involving communities, authorities, and local and international stakeholders.<sup>922</sup>

The Nestlé Supplier Code creates a duty, for all companies within the Nestlé S.A. supply chain, to respect and implement Nestlé S.A.'s industrial relations commitments, hence 'the Supplier should grant its employees the right to Freedom of Association and Collective Bargaining in accordance with all applicable laws and regulations.'<sup>923</sup>

The Total Human Rights Internal Guide is Total S.A.'s principal CSR instrument dealing with collective bargaining and the freedom to organise. Without elaborating on Total S.A.'s specific approach to the issue, the Total Human Rights Internal Guide asserts Total

---

representatives, on matters affecting their interests, and could also include governments, where broader factors, such as legislation and social policy, are at stake.'

<sup>918</sup> ISO 26000: Guidance on Social Responsibility (2010) sub-clause 6.4.5.

<sup>919</sup> Nestlé S.A. *The Nestlé Corporate Business Principles* (2010)9.

<sup>920</sup> Nestlé S.A. *The Nestlé Human Resources Policy* (2002)14.

<sup>921</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010) 4.

<sup>922</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010)5.

<sup>923</sup> Nestlé S.A. *The Nestlé Supplier Code* (2013)2.

S.A.'s adherence to ILO conventions dealing with fundamental rights at work, including freedom of association, and collective bargaining rights.<sup>924</sup>

Even though various business principles upheld by BAT could be considered to be relevant to the promotion of freedom of association, collective bargaining, and industrial relations rights, BAT's various CSR instruments do not address these issues specifically. The BAT Employment Principles offer a set of rules and guidelines to be followed by all the BAT group's companies, subsidiaries and supply chain companies when dealing with labour, employment and other workplace related issues. The BAT Employment Principles, for instance, defines a principle of openness and responsiveness that embodies BAT's approach to industrial relations. The principles of openness and responsiveness, in the context of employment relationships and partnerships, result in BAT's commitment to respect and promote both freedom of association and freedom of non-association rights as well as worker representation rights.<sup>925</sup> The effectiveness of this commitment is nevertheless potentially constrained by BAT's approach that prioritise actions taken 'within the framework of applicable law, regulations, the prevailing labour relations and practices, and company procedures',<sup>926</sup> especially considering the fact that law and regulation relevant to the promotion of these rights may not exist or may not be comprehensive in a specific country when compared to others.

The BAT Statement of Business Principles also establishes several business principles potentially relevant to freedom of association, collective bargaining, and industrial relations rights. For instance, as an element of the Principle of Mutual Benefit MB3, BAT has emphasised the importance of stakeholder engagement, and this is to a certain extent relevant to the issue of collective bargaining considering that employees are also stakeholders of a corporation.

'Our responsibility is to provide opportunities for our stakeholders to raise their concerns and expectations with us in dialogue and for us to listen with an open mind. [...] We share responsibility with our stakeholders to achieve constructive engagement through all parties acting in good faith and with open-minded consideration of the views of the participants. [...] We will: Identify and engage with our stakeholders consistently, transparently and as inclusively as possible;

---

<sup>924</sup> Total S.A. *The Total Human Rights Internal Guide* (2011)10-11.

<sup>925</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3.

<sup>926</sup> British American Tobacco p.l.c. *Employment Principles* (2011) 3.

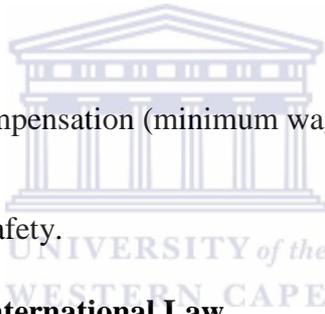
Proactively seek the views of our stakeholders and provide opportunities for other interested parties to share their views and concerns with us.<sup>927</sup>

Finally, it is noteworthy that the right to strike is not addressed by, and is not even mentioned in, any of these corporate codes of conduct. The right to strike is also absent from international CSR instruments and is not significantly addressed by the international legal framework. It is therefore submitted that the fact that these MNCs codes of conduct abstain to address such an important issue (the right to strike) amounts to a missed opportunity for these codes of conduct to achieve their intrinsic objectives, namely to provide for the implementation of fair and decent working conditions above the minimum legal requirement as established by relevant international hard and soft law instruments.

### 5.6.5 Working conditions

Several interrelated issues and topics are analysed under this heading, namely:

- a) Duration of work;
- b) Pay, remuneration and compensation (minimum wage);
- c) Social security rights; and
- d) Occupational health and safety.



#### 5.6.5.1 Working conditions in International Law

Working conditions and related labour and employment issues are comprehensively provided for in the ILO framework of conventions and recommendations. The international legal framework dealing with working conditions and related labour and employment issues is therefore underpinned by an extensive set of core ILO instruments providing for, inter alia, wages and compensation,<sup>928</sup> social security rights,<sup>929</sup> occupational health and safety,<sup>930</sup> and duration of work.<sup>931</sup>

---

<sup>927</sup> British American Tobacco p.l.c. *The BAT Business Principles and Framework for CSR* available online at <http://www.bat.com/oneweb/framework.nsf/F/MB2?opendocument> (accessed 30 May 2014)

<sup>928</sup> ILO Protection of Wages Convention of 1949 (No. 95), ILO Minimum Wage Fixing Convention of 1970 (No. 131),

<sup>929</sup> ILO Social Protection Floors Recommendation 202 of 2012, ILO Social Security (Minimum Standards) Convention, 1952 (No. 102), ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118), ILO Maintenance of Social Security Rights Convention, 1982 (No. 157)

<sup>930</sup> Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), Occupational Safety and Health Convention, 1981 (No. 155), Occupational Health Services Convention, 1985 (No. 161), Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

### 5.6.5.2 Working conditions in international CSR instruments

In the section dealing with labour and employment rights, it was noted that the UN Global Compact 10 Principles entail principles only promoting the four core labour standards identified by the ILO's Declaration on Fundamental Principles and Rights at Work.<sup>932</sup> The UN Global Compact 10 Principles do not provide for the protection of labour and employment rights relating to working conditions and therefore do not deal with the following issues: duration of work, wages, social security rights, and occupational health and safety.

Unlike the UN Global Compact, the ILO Tripartite Declaration deals with working conditions in MNCs and therefore provides MNCs with specific guidelines concerning their CSR duties in the areas of wages and conditions of work,<sup>933</sup> and occupational safety and health.<sup>934</sup>

Summarising MNCs' duties concerning working conditions, the Global Sullivan Principles encourage corporations to make clear and unambiguous commitment regarding wages<sup>935</sup> and health and safety at work.<sup>936</sup>

The FLA Workplace Code of Conduct enunciates fundamental CSR principles to which MNCs should commit regarding duration of work,<sup>937</sup> wages and compensation,<sup>938</sup> and

---

<sup>931</sup> Hours of Work (Industry) Convention, 1919 (No. 1) , Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) , Forty-Hour Week Convention, 1935 (No. 47) , Reduction of Hours of Work Recommendation, 1962 (No. 116), Weekly Rest (Industry) Convention, 1921 (No. 14) , Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) , Night Work Convention, 1990 (No. 171) , Part-Time Work Convention, 1994 (No. 175)

<sup>932</sup> See 3.2.2.2 above.

<sup>933</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 33-34.

<sup>934</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 37-40.

<sup>935</sup> Sullivan LH *The Global Sullivan Principles* (1999) Principle 4 reads 'Compensate our employees to enable them to meet at least their basic needs ...'.

<sup>936</sup> Sullivan LH *The Global Sullivan Principles* (1999) Principle 5 reads 'Provide a safe and healthy workplace; protect human health and the environment ...'.

<sup>937</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Principle 8 provides : 'Employers shall not require workers to work more than the regular and overtime hours allowed by the law of the country where the workers are employed. The regular work week shall not exceed 48 hours. Employers shall allow workers at least 24 consecutive hours of rest in every seven-day period. All overtime work shall be consensual. Employers shall not request overtime on a regular basis and shall compensate all overtime work at a premium rate. Other than in exceptional circumstances, the sum of regular and overtime hours in a week shall not exceed 60 hours.'

<sup>938</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Principle 9 reads: 'Every worker has a right to compensation for a regular work week that is sufficient to meet the worker's basic needs and provide some discretionary income. Employers shall pay at least the minimum wage or the appropriate prevailing wage,

health and safety at work.<sup>939</sup> These fundamental principles are substantiated by an extensive framework of compliance benchmarks that specifically details employers' duties and commitments relating to the implementation of relevant CSR principles.<sup>940</sup>

The ETI Base Code provides concise guidelines and principles summarising employers' duties concerning the provision of safe and fair working conditions, especially the provision of a safe and hygienic working environment,<sup>941</sup> the payment of living wages and benefits,<sup>942</sup> the practice of decent working hours,<sup>943</sup> and the prohibition of harsh or inhumane treatment, including physical abuse or discipline, the threat of physical abuse, sexual or other harassment, and verbal abuse or other forms of intimidation.<sup>944</sup>

The ISO 26000 extensively addresses the promotion of favourable working conditions and therefore provides corporations with general principles as well as detailed guidelines on MNCs' actions concerning two core subjects: conditions of work and social protection<sup>945</sup> and health and safety at work.<sup>946</sup>

### **5.6.5.3 Working conditions in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct**

BAT, Total S.A. and Nestlé S.A. are uniformly silent concerning their CSR commitments relating to the promotion of fair and decent working conditions in the workplace. In fact, the only issue that is thoroughly dealt with and provided for in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct is that of health and safety at work. Each of these companies has a specific CSR document showcasing corporate principles and commitment

---

whichever is higher, comply with all legal requirements on wages, and provide any fringe benefits required by law or contract. Where compensation does not meet workers' basic needs and provide some discretionary income, each employer shall work with the FLA to take appropriate actions that seek to progressively realize a level of compensation that does.'

<sup>939</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Principle 7 reads : 'Employers shall provide a safe and healthy workplace setting to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employers' facilities.'

<sup>940</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Compliance benchmarks HSE.1 to HSE.27.3 (Health and safety at work) Compliance benchmarks HOW.1 to HOW.19.2 ( duration of work) and Compliance benchmarks C.1 to C.19 ( wages and compensation).

<sup>941</sup> *ETI The ETI Base Code* (2012) Principles 3.1 to 3.5.

<sup>942</sup> *ETI The ETI Base Code* (2012) Principles 5.1 to 5.3.

<sup>943</sup> *ETI The ETI Base Code* (2012) Principles 6.1 and 6.2.

<sup>944</sup> *ETI The ETI Base Code* (2012) Principle 9.1.

<sup>945</sup> *ISO ISO 26000: Guidance on corporate social responsibility* (2010) Sub-Clause 6.4.4.

<sup>946</sup> *ISO ISO 26000: Guidance on corporate social responsibility* (2010) Sub-Clause 6.4.6.

concerning the promotion and the implementation of a safe, healthy and hygienic working environment.<sup>947</sup>

The BAT, Total S.A. and Nestlé S.A. Codes of Conduct do not effectively communicate on the nature, extent and/or content of their CSR commitments providing for the amelioration of the working conditions of their workforces. This often results either in equivocal commitment deprived of any substantial content (such as: ‘We believe in creating inspiring working environments for our people’)<sup>948</sup> or sometimes a simple referral to an international CSR instrument dealing with working conditions or a relevant ILO convention.<sup>949</sup> Only in a few instances are the BAT, Total S.A. and Nestlé S.A. Codes of Conduct relatively explicit in their CSR commitment concerning the working conditions of their employees. For instance, Nestlé S.A. commits to promote a ‘continuous improvement of the working conditions’ in its plants and factories, with a focus on the following ‘corporate labour priorities’: wages and benefits, working time, and harassment or abuse.<sup>950</sup>

### **5.6.6 Employment security**

Several interrelated issues and topics are analysed under this heading, namely:

- a) Recruitment, promotion and demotion, and dismissal
- b) Employment contracts;
- c) Vocational guidance and training;
- d) Seasonal work, temporary work, and migrant work; and
- e) Outsourcing and restructuring

#### **5.6.6.1 Employment security in international law**

Employment security is a topic that has been extensively addressed by the ILO framework of conventions and recommendation. The international legal framework dealing with working conditions and related labour and employment issues is therefore underpinned by

---

<sup>947</sup> Namely, the BAT Integrated Environmental, Health and Safety Policy Manual (April 2011), the Total Safety Health Environment Quality Charter (September 2009) and the Nestlé Policy on Safety and Health at Work (2008).

<sup>948</sup> British American Tobacco p.l.c. *Statement of Business Principles* (2010) 2.

<sup>949</sup> ‘The Company complies with the laws applicable in the countries in which it operates and adheres to the eight fundamental Conventions of the International Labour Organization (ILO), the OECD (OECD) Guidelines for Multinational Enterprises, the UN Global Compact and the ILO Declaration on Multinational Enterprises and Social Policy. Therefore, the Company promotes relevant international initiatives in view of continuously improving working conditions.’ Nestlé S.A. *The Nestlé Employee Relations Policy* (2010) 1.

<sup>950</sup> Nestlé S.A. *The Nestlé Employee Relations Policy* (2010) 3.

an extensive set of core ILO instruments providing for, inter alia, recruitment, promotion and demotion, dismissal, employment contract, vocational guidance and training, seasonal work, and migrant work.<sup>951</sup>

#### **5.6.6.2 Employment security in international CSR instruments**

The UN Global Compact only provides principles relevant to ILO defined core labour standards and fundamental rights at work, and therefore does not address the topic of employment security.

Unlike the UN Global Compact, the ILO Tripartite Declaration deals with the issue of employment security. It provides MNCs with specific guidelines concerning their duties in the area of employment promotion,<sup>952</sup> and security and stability of employment, especially in the context of changes in operations, including those resulting from mergers, take-overs or transfers of production.<sup>953</sup> This section of the ILO Tripartite Declaration also addresses the issues of vocational training and guidance,<sup>954</sup> social security<sup>955</sup> and dismissal procedures.<sup>956</sup>

The Global Sullivan Principles only briefly address the issue of employment security, yet establishes that employers should commit to improve the skills of their employees, via vocational training,<sup>957</sup> especially when dealing with workers from disadvantaged backgrounds.<sup>958</sup>

---

<sup>951</sup> Including the following conventions : ILO Termination of Employment Convention 158 of 1982 ; ILO Migration for Employment Convention 66 of 1939; ILO Migration for Employment Convention 97 of 1949; ILO Migrant Workers (Supplementary Provisions) Convention 143 of 1975; ILO Human Resources Development Convention 142 of 1975; ILO Paid Educational Leave Convention 140 of 1974; ILO Private Employment Agencies Convention 181 of 1997 and ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention 159 of 1983.

<sup>952</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 13-20.

<sup>953</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 24-28.

<sup>954</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) paras 29-32.

<sup>955</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) para 25.

<sup>956</sup> ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) para 27.

<sup>957</sup> 'Provide the opportunity to improve their skill and capability to raise their social and economic opportunities' Sullivan LH *The Global Sullivan Principles* (1999) Principle 4.

<sup>958</sup> 'Seek to provide training and opportunities for workers from disadvantaged backgrounds.' Sullivan LH *The Global Sullivan Principles* (1999) Principle 7.

The FLA Workplace Code of Conduct does not particularly focus on the issue of employment security. Only its first Principle contains some element relevant to the topic: ‘Employers shall adopt and adhere to rules and conditions of employment that respect workers and, at a minimum, safeguard their rights under national and international labour and social security laws and regulations.’<sup>959</sup>

The FLA subsequently supplies compliance benchmarks providing employers with guidelines for the implementation of employment security principles in the following areas: recruitment and hiring/employment decisions,<sup>960</sup> employment agency recruitment practices,<sup>961</sup> general principles on the use of contract, contingent or temporary workers,<sup>962</sup> apprenticeship,<sup>963</sup> contract of employment, and rules concerning the termination of employment.<sup>964</sup>

Similarly to the FLA Workplace Code of Conduct, the ETI Base Code does not particularly focus on the issue of employment security and stability and only offers one general guideline relating to the provision of regular employment.<sup>965</sup>

‘To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice. Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, subcontracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.’<sup>966</sup>

The ISO 26000 provides for employment security and stability and has designed a framework of principles and standards to underpin corporate labour practice in the specific areas of

---

<sup>959</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Principle 1.

<sup>960</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Compliance benchmarks ER.3.1 and ER.3.2.

<sup>961</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Compliance benchmarks ER.5.1 and ER.5.10.

<sup>962</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Compliance benchmarks ER.7.1 and ER.7.2.

<sup>963</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Compliance benchmark ER.13.

<sup>964</sup> *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Compliance benchmark ER.19.

<sup>965</sup> *ETI The ETI Base Code* (2012) Principle 8.

<sup>966</sup> *ETI The ETI Base Code* (2012) Principles 8.1 and 8.2.

employment and employment relationships,<sup>967</sup> human development and training in the workplace,<sup>968</sup> and, finally, employment creation and skills development.<sup>969</sup>

### **5.6.6.3 Employment security in the BAT, Total S.A. and Nestlé S.A. Codes of Conduct**

Employment security is one of the least addressed labour issues in corporate codes of conduct and this is clearly apparent from the BAT, Total S.A. and Nestlé Codes of Conducts. The topic of employment security is dealt in these Codes of Conduct using elusively broad principles or cross-references to similarly unspecific international instruments. The resulting effect is for these Codes of Conduct to only entrench insubstantial and equivocal commitments,<sup>970</sup> without any practical input as to establishment of employment security and the amelioration of the labour rights and working conditions of these corporations' workforces.

## **5.7 Conclusion**

Codes of conduct are instruments the purpose of which is to materialise a corporation CSR vision into a tangible set of duties and commitments. This chapter entailed a theoretical analysis of the concept of code of conduct, followed by a comparative assessment of selected MNC's codes of conduct against relevant international CSR as well as legal instruments providing for the implementation of fair labour practices and decent working conditions.

A major observation made during the analysis of these codes of conduct pertained to the fact that the elimination of child labour, slavery, and workplace discrimination are the principal labour and employment issues which are consistently and uniformly provided for by corporate codes of conduct. It is to be noted that the prohibition of child labour, slavery, and workplace discrimination are also fundamental rights at work, effectively addressed by the international framework of hard and soft law instruments providing for labour and

---

<sup>967</sup>ISO ISO 26000: *Guidance on Social Responsibility* (2010) sub-clause 6.4.3.

<sup>968</sup>ISO ISO 26000: *Guidance on Social Responsibility* (2010) sub-clause 6.5.

<sup>969</sup>ISO ISO 26000: *Guidance on Social Responsibility* (2010) sub-clause 6.8.5.

<sup>970</sup> See for instance BAT employment principles concerning temporary workers: 'Temporary labour is an important element of the overall employment mix and essential to meet the local business requirement and cycles. Where this form of labour is used we will act at all times to conform to local labour laws and practices. BAT companies do not have a policy of engaging in the use of casual labour to avoid an employee receiving company and government benefits.' British American Tobacco p.l.c. *Employment Principles* (2011) 4.

employment rights,<sup>971</sup> thus the inadequate use of the concept of CSR when referring to these corporations commitment to implement otherwise legally enforceable labour and employment rights.<sup>972</sup>

It is also observed that British American Tobacco p.l.c., Nestlé S.A. and Total S.A. codes of conduct elude providing clear guidelines elaborating on their respective CSR commitments concerning various issues pertinent to working conditions, employment security, and labour relations. It is submitted that the fact that these MNCs codes of conduct fail to effectively address such important issues result in a missed opportunity for these codes of conduct to achieve their intrinsic objectives, namely to provide for the implementation of fair and decent working conditions above the minimum legal requirement as established by relevant international hard and soft law instruments.

Finally, it has also been observed that MNC's Codes of Conduct, when they do provide for labour and employment issues, mostly repeat principles already established by relevant international legal provisions. It is submitted that such lack of proactivity in effectively addressing relevant labour issues insufficiently provided for by the international legal framework results in these MNC's codes of conduct hardly adding to the existing international legal framework, thus actually falling short of achieving the objectives of the ILO's Decent Work Agenda.

---

<sup>971</sup> Such as ILO conventions and the ILO's Decent Work Agenda

<sup>972</sup> See 5.6.1.1, 5.6.2.1 and 5.6.3.1 above.

## CHAPTER 6

### **COMPARATIVE ANALYSIS OF THE CODES OF CONDUCT OF BRITISH AMERICAN TOBACCO Plc, NESTLÉ S.A., AND TOTAL S.A. IN THE NATIONAL CONTEXTS OF CAMEROON, FRANCE AND SOUTH AFRICA, RESPECTIVELY**

The primary purpose of this chapter is to analyse the national contexts of Cameroon, France and South Africa in order to determine the unique characteristics of each country relating to core labour and employment issues. These national contexts are therefore to be assessed in order to highlight the factors that are essential for the protection, promotion and implementation of labour and employment rights in each of these countries. Elements of each national context that is to be assessed include laws and regulations providing for labour and employment issues, as well as relevant elements of the industrial context and institutional framework.

The second purpose of this chapter is to comparatively assess the interaction between the above-mentioned elements of each national context with CSR commitments of selected MNCs as established in their respective Codes of Conduct.<sup>973</sup> In each national context, the objective of such comparative analysis is dual and entails an assessment, first, of the possible impact of the national context on the relevance, effectiveness, and legal dimension of labour and employment CSR commitments of selected MNCs. Secondly, it entails an assessment of the impact of MNCs' labour and employment CSR commitments on the effective and consistent implementation of essential labour and employment rights for their employees in each of these national contexts.

The scope of the comparison in this chapter only encompasses the following core labour and employment issues:<sup>974</sup>

- a) Elimination of child labour and protection of children ;
- b) Slavery, forced labour and compulsory labour;
- c) The principle of equality and the prevention and/or prohibition of workplace discrimination;
- d) Freedom of association, collective bargaining, and industrial relations;

---

<sup>973</sup> See 5.3 to 5.5 above.

<sup>974</sup> See 5.6 above.

- e) Working conditions entailing the following issues: duration of work; pay, remuneration and compensation (minimum wage); social security rights, occupational health and safety; and
- f) Employment security, entailing the following issues: recruitment, promotion and demotion; dismissal; employment contract; vocational guidance and training; temporary work, seasonal work, migrant work, outsourcing and restructuring.

## **6.1 Elimination of child labour and protection of children**

### **6.1.1 Cameroon**

#### **6.1.1.1 The context**

The abuse and exploitation of children is a rampant issue faced by Cameroonian authorities as the country is regularly cited in reports of child trafficking activities from and to various countries of the Central and West African regions.<sup>975</sup> Child labour is a widespread phenomenon in Cameroon and the use of child labour is observed in various industries, from agriculture to informal trading and domestic work.<sup>976</sup> Child labour in Cameroon hence is a common occurrence that is becoming a norm deeply entrenched in the Cameroonian socio-cultural context.<sup>977</sup>

#### **6.1.1.2 The Constitution and relevant international instruments**

Laws and regulations prohibiting child labour and providing for the protection of children<sup>978</sup> against abuses in labour and employment relations are not directly embedded in the Constitution of the Republic of Cameroon Act No 96/06 of 1996 (the Cameroonian Constitution). The Cameroonian Constitution does not directly refer to - nor deal with - child labour; the only provisions that directly benefit child protection are in the Preamble of the

---

<sup>975</sup> International Labour Office *Report of the Committee of Experts on the Application of Conventions and Recommendations* (2013) 301& 389.

<sup>976</sup> United States Department of Labour *2012 Findings on the Worst Forms of Child Labor in Cameroon* (2013) 1-2.

<sup>977</sup> Understanding Children's Work (UCW) Programme *UCW Country Report on Child Labour and Youth Employment - Comprendre le Travail des Enfants et l'Emploi des Jeunes au Cameroun* (2012) 48-52.

<sup>978</sup> The Cameroonian legal system distinguishes between children and adult by providing for three specific instances of legal majority: Article 80 (4) of the Penal Code provides that criminal majority is attained at the age of 18; Article 488 of the Civil Code provides that civil majority is attained at the age of 21; and Article 11 of Act n°91/020 of 1991 laying down conditions governing the election of members of Parliament and article 12 of Act No. 92/010 of 17 September 1992 on conditions for the election and replacement of the President of the Republic provides that political majority is reached at the age of 20.

Constitution that amongst other basic individual rights establishes a duty for the State to specifically protect children<sup>979</sup> and ensure that children are not deprived of education.<sup>980</sup>

The Cameroonian Constitution nevertheless provides a framework of rights, entrenched in various international legal instruments and conventions to which Cameroon is party, which guarantees the protection of children against abuses and exploitation. It directly refers to the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights.<sup>981</sup> The latter instrument specifically establishes a duty for the State to protect children against abuses and discrimination.<sup>982</sup>

The Cameroonian legal framework also provides for the applicability in Cameroon of all international legal instruments (such as, conventions and declarations) duly and formally ratified by the relevant authority.<sup>983</sup> As such, most international legal instruments dealing with child labour are applicable in the Cameroonian legal system as per the Cameroonian Constitution. These include international instruments, such as, the UN Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as relevant ILO Conventions addressing the issue of child labour.<sup>984</sup>

### **6.1.1.3 Laws and regulations**

The Cameroonian labour legislative and regulatory framework entrenches fundamental provisions the purpose of which are to establish and protect the right of children not to be coerced into employment or abused when in an employment relationship.

Section 86(1) of the Cameroonian Labour Code clearly stipulates that '[n]o child shall be employed in any enterprise, even as an apprentice, before the age of 14 (fourteen) years,

---

<sup>979</sup> Preamble of the Constitution of the Republic of Cameroon Act No 96/06 of 1996 (the Cameroonian Constitution): 'The Nation shall protect and promote the family which is the natural foundation of human society. It shall protect women, the young, the elderly and the disabled'.

<sup>980</sup> Preamble of the Cameroonian Constitution: 'The State shall guarantee the child's right to education. Primary education shall be compulsory'.

<sup>981</sup> Preamble of the Cameroonian Constitution.

<sup>982</sup> Article 18(3) of the African Charter on Human and Peoples' Rights: 'The State shall ensure the elimination of every discrimination against women and also ensure the protection of the right of women and the child as stipulated in international declaration and conventions'.

<sup>983</sup> Article 45 Constitution of Cameroon.

<sup>984</sup> See Section 5.6.1.1 above.

except as otherwise authorized by order of the Minister in charge of Labour, taking into account local circumstances as well as the task the child may be asked to accomplish'.<sup>985</sup>

Section 87 of the Cameroonian Labour Code further requires employers to provide child workers with age suitable tasks and also prohibits the utilisation of child workers for physically abusive tasks.<sup>986</sup>

The elimination of child labour and the protection of children and young persons is a topic which has gathered extensive support from Cameroonian official institutions. Thus several legal instruments have been developed, over the years, for the purpose of facilitating the effective implementation of international law principles pertaining to child labour. A brief overview of the most important of these instruments follows.

#### **6.1.1.4.1 Ministerial Order No 17/MTLS/DGRE**

Ministerial Order No 17/MTLS/DGRE is currently integrated into the Cameroonian Labour Code<sup>987</sup> and provides for the regulation of the employment of children above the age of 14. This instrument establishes a list of tasks and professions deemed too dangerous for and therefore prohibited to children. It also defines specific working conditions and working environments which are considered to be incompatible with children's right to a standard of living adequate for the children's physical, mental, spiritual, moral and social development. For instance, this Ministerial Order determines the maximum weight of items a child can be asked to carry when in a profession that entails the physical handling, lifting, carrying, or transporting of parcels.<sup>988</sup>

#### **6.1.1.4.2 Ministerial Decree No 2001/109/PM**

Ministerial Decree No 2001/109/PM is a regulatory measure issued by the Prime Minister that provides for the creation of various public institutions to organise and coordinate mentoring activities for minors and set up rehabilitation and reinsertion programme for various categories of children considered to be at risk of exploitation and abuse.<sup>989</sup>

---

<sup>985</sup> Section 86(1) of the Labour Code Act No 92/007 of 14 August 1992.

<sup>986</sup> Section 87(2) of the Labour Code.

<sup>987</sup> See Sections 176(1) and 176(2) of the Labour Code.

<sup>988</sup> See the Ministerial Order No 17/MTLS/DGRE of 27 May 1969 on Child Labour.

<sup>989</sup> Ministerial Decree No 2001/109/PM of 20 March 2001.

#### **6.1.1.4.3 Ministerial Order No 00785/DGSN/CAB**

Ministerial Order No 00785/DGSN/CAB creates a police special task force for tracking and investigating various instances of child abuse, especially child labour and child trafficking, in collaboration with the Interpol Central Office in Cameroon.<sup>990</sup>

#### **6.1.1.4.4 Ministerial Order No 068/MINT/SS**

Ministerial Order No 068/MINT/SS of 28 November 2005 creates a national committee overseeing the implementation of the ILO's International Programme on the Elimination of Child Labour (IPEC).<sup>991</sup>

#### **6.1.1.4.5 Act No 2005/015**

Act No 2005/015 of 29 December 2005<sup>992</sup> deals with the issue of the elimination of child trafficking. This Act defines a child as any individual under the age of 18<sup>993</sup> and provides a comprehensive definition of prohibited practices pertaining to child labour and child trafficking.<sup>994</sup> This Act also provides for severe sanctions, including imprisonment and fines, for the perpetrator of child labour, child trafficking and other related offences.<sup>995</sup>

It is submitted that the Cameroonian legislation on child labour is comprehensive and well equipped to prevent and combat child labour and child trafficking activities. The lack of implementation and monitoring mechanisms nevertheless undermine the effectiveness of such legislative framework.

#### **6.1.1.5 CSR instruments and institutions**

Cameroonian civil society is also proactively involved in various campaigns for the elimination of child labour; this has resulted in the advent of several initiatives from NGOs and corporations, as well as various multi-stakeholder initiatives.

Notable CSR initiatives include the West Africa Cocoa/Commercial Agricultural Program to Combat Hazardous and Exploitative Child Labour (WACAP), a multi-stakeholder programme established in 2003 by the ILO in collaboration with the US Department of Labor

---

<sup>990</sup> Decision No 00785/DGSN/CAB of 2 December 2005.

<sup>991</sup> Ministerial Order No 068/MINT/SS of 28 November 2005.

<sup>992</sup> Act No 2005/015 of 29 December 2005.

<sup>993</sup> Section 2(a) of Act No 2005/015 of 29 December 2005

<sup>994</sup> Sections 2(b) to 2(f) of Act No 2005/015 of 29 December 2005.

<sup>995</sup> Sections 3 to 6 of Act No 2005/015 of 29 December 2005.

and key corporate and institutional players of the global chocolate industry.<sup>996</sup> This programme mostly focuses on the elimination of Child Labour and Forced Labour and has focused its operation in five cocoa producing African countries including Cameroon.<sup>997</sup>

## **6.1.2 France**

### **6.1.2.1 The context**

According to various international reports on human rights, France is a country where instances of child labour are scarce.<sup>998</sup> As a traditional democracy with sound and effective instruments and institutions dealing with and providing for the prevention of child abuse, French society has to a certain extent managed to contain the phenomenon of child labour even though isolated instances of child labour (especially domestic child labour) and child trafficking are reported.<sup>999</sup> This state of affairs has been achieved via the establishment of a legal framework that regulates the employment of children and young persons, thus preventing the general occurrence of child labour. In order to enforce employers' compliance with child labour legislation, inspectors from the Ministry of Labour routinely investigate workplaces. When infractions are discovered, inspectors can impose penalties and may initiate criminal prosecutions against employers. Employers convicted of using child labour may be punished with up to five years imprisonment and a EUR 75 000 fine.<sup>1000</sup>

### **6.1.2.2 The Constitution and relevant international instruments**

The current French Constitution of 1958 confers constitutional status on the principles established by the Preamble of the previous French Constitution of 1946.<sup>1001</sup>

---

<sup>996</sup> Salaam-Blyther T, Hanrahan C & Cook N *Child Labor in West African Cocoa Production: Issues and U.S. Policy* (2005) 16-17.

<sup>997</sup> Salaam-Blyther T, Hanrahan C & Cook N *Child Labor in West African Cocoa Production: Issues and U.S. Policy* (2005) 16-17.

<sup>998</sup> See UNICEF *Childinfo - Monitoring the Situation of Children and Women: France Statistics* (2014) *Childinfo/UNICEF* [http://www.unicef.org/infobycountry/france\\_statistics.html](http://www.unicef.org/infobycountry/france_statistics.html) (accessed 27 June 2014). See also US Department of States *Country Reports on Human Rights Practices for 2013: France* (2014) US Department of States - Bureau of Democracy, Human Rights and Labor: Washington DC. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (accessed 27 June 2014).

<sup>999</sup> Bougard C *Etre esclave en France - Un phénomène social en expansion* (2013) 17. See also Agora Vox *Encore un nouveau cas d'esclavage domestique, d'une enfant, en France*(2014) <http://www.agoravox.fr/actualites/societe/article/encore-un-nouveau-cas-d-esclavage-130766> (accessed 27 June 2014).

<sup>1000</sup> See US Department of States *Country Reports on Human Rights Practices for 2013: France* (2014) US Department of States - Bureau of Democracy, Human Rights and Labor: Washington DC. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (accessed 27 June 2014).

<sup>1001</sup> See Preamble of the Constitution of the Republic of France of 1958.

The French legal framework provides for the issue of child labour as the State has a duty, entrenched in the French Constitution, to ensure that children and other vulnerable groups are effectively protected. The Preamble of the French Constitution of 1946 establishes a basic duty for the State to protect workers, especially vulnerable groups (including children), to ensure their right to health and safety at work, their right to rest and their right to social security.<sup>1002</sup>

The French Constitution of 1958 also provides for the applicability in France of international legal instruments duly ratified by the relevant French authority.<sup>1003</sup> France is a signatory to (and has so far ratified) all significant international instruments providing for the protection of children's rights.<sup>1004</sup>

It is submitted that the national context in France is also particularly favourable to children's rights as French authorities have set up a monitoring structure,<sup>1005</sup> and have rolled out implementation mechanisms<sup>1006</sup> in order to ensure that children's rights are effectively implemented and monitored nationwide.

### **6.1.2.3 Laws and regulations**

Laws and regulations pertaining to the elimination of child labour and the protection of children and young persons in labour and employment relations are effectively entrenched in the French labour and employment legal framework.

The French Labour Code provides strict rules, with several exception and limitations, that regulate the rights of children in employment relationships and provide, inter alia, for the minimum age for work, the duration of work for children, as well as the nature of the tasks to

---

<sup>1002</sup> Article 11 of the Preamble of the Constitution of the Republic of France of 1946.

<sup>1003</sup> Article 55 of the Constitution of the Republic of France of 1958 states that 'treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party'.

<sup>1004</sup> See Section 5.6.1.1 above.

<sup>1005</sup> For instance, an Ombudsman for children rights was created in France in 2000. The Ombudsman for children rights (Défenseur des Enfants in French) is an independent administrative authority whose primary purpose is to ensure that the UN Convention on the Rights of the Child of 1989 is duly and effectively implemented in France. The mission of the Children Ombudsman is therefore to promote and protect children rights, and fight for the elimination of all sorts of children abuses and maltreatment. See Act No 2000-196 of March 6<sup>th</sup> 2000 establishing a Children Ombudsman.

<sup>1006</sup> The French government has installed various mechanisms in order to supervise and oversee the effective implementation of the UN Convention on the Rights of the Child of 1989. For instance, the French government has to submit a yearly report to the parliament with clear details and figures on the implementation of the UN Convention on the Rights of the Child of 1989.

be performed by children in employment.<sup>1007</sup> The following are the essential principles regulating the employment of minors in France.

The law prohibits the employment of children under the age of 16 except in specifically listed instances of apprenticeship or traineeship.<sup>1008</sup> Children aged 15 are allowed to start employment as trainees and/or apprentices in specific industries, provided they have completed their first cycle of secondary education.<sup>1009</sup>

Children from 14 to 16 can only be employed during school holidays, provided they are to be required only to perform light work that is suitable to their ages, and with enough time to rest. Such employment, however, first needs to be approved by a labour inspector after a formal application has been made by the prospective employer of such a minor.<sup>1010</sup>

The law prohibits the employment of minors under the age of eighteen in order to perform dangerous or hazardous jobs<sup>1011</sup> or tasks entailing the preparation, handling, or sale of written material, posters, drawings, and other materials, the sale, supply, exhibit, display, or distribution of which is contrary to public morality and/or constitute a criminal offence.<sup>1012</sup>

The law also prohibits the employment for night work of children under the age of 18, including those in traineeship or apprenticeship.<sup>1013</sup>

### **6.1.3 South Africa**

#### **6.1.3.1 The context**

South Africa is a country where patterns of child labour activity are regularly reported, as children are actively involved in market<sup>1014</sup> and non-market economic activities<sup>1015</sup> across a diversified range of industries, in both rural and urban contexts.<sup>1016</sup>

---

<sup>1007</sup> See Atwill N *Children's Rights: France* (2014) US Library of Congress. <http://www.loc.gov/law/help/child-rights/france.php> (accessed 23 October 2014).

<sup>1008</sup> Article L. 211-1 of the French Labour Code.

<sup>1009</sup> Article L117-3 (M) of the French Labour Code.

<sup>1010</sup> Article L. 211-1 of the French Labour Code.

<sup>1011</sup> Article R.234-1 to R.234-23 of the French Labour Code.

<sup>1012</sup> Article R234-2 of the French Labour Code.

<sup>1013</sup> Article L3163-1, Article L3163-2 and Article L3163-3 of the French Labour Code.

<sup>1014</sup> Market economic activities in this context refer to children working for a wage, salary, commission or payment in kind, children running or doing a business or children working unpaid in a household business. See Department of Labour *Child labour and other work-related activities in SA* (2010) 3.

<sup>1015</sup> Non-market economic activities in this context includes farming activities to produce food for household use or looking after livestock, fetching water or fuel for household use, production of other goods for household use, construction or major repair work on own home, plot, cattle post or business, and catching of fish, prawns,

South Africa is nevertheless a country where great achievements in the fight against child labour and the promotion of children's rights in general have been realised. Notable examples include the introduction of children rights into the Bill of Rights, the criminalisation of child labour and the enactment of a specific Act with the main purpose of better protecting children's right and interests, namely, the Children's Act of 2005.

### 6.1.3.2 The Constitution and relevant international instruments

The prohibition of child labour is entrenched in the South African Constitution and further regulated by an array of legislative and regulatory measures. The Bill of Rights, Chapter 2 of the South African Constitution, particularly intends to promote and protect children rights, establishing a duty for the State to protect children against all sorts of exploitation and abuses, including child labour.

Section 28 (1) of the Constitution reads:

'Every child has the right [...]

(d) to be protected from maltreatment, neglect, abuse or degradation;

(e) to be protected from exploitative labour practices;

(f) not to be required or permitted to perform work or provide services that:

(i) are inappropriate for a person of that child's age; or

(ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development [...].<sup>1017</sup>

The South African legal framework also includes relevant international instruments promoting and protecting children rights,<sup>1018</sup> provided the provisions of these instruments are consistent with the South African Constitution.<sup>1019</sup>

### 6.1.3.3 Laws and regulations

---

shells, wild animals or other food for household consumption. See Department of Labour *Child labour and other work-related activities in SA* (2010) 3.

<sup>1016</sup> Department of Labour *Child labour and other work-related activities in SA* (2010) 6-7.

<sup>1017</sup> Section 28 (1) of the Constitution of the Republic of South Africa, 1996.

<sup>1018</sup> See 5.6.1.1 above.

<sup>1019</sup> See section 231(1) – (5) of the Constitution of the Republic of South Africa, 1996. Section 231(4) reads: 'Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.'

The prohibition of child labour, as well as the protection of children against abuses in employment relations, is also deeply entrenched in the South African legal framework. The following laws and regulations are therefore essential instruments of the State strategy for the eradication of child labour.

#### **6.1.3.3.1 The Children's Act**

The purpose of the Children's Act 38 of 2005 is to give effect to children's rights as provided for by the Constitution.<sup>1020</sup> This Act defines the concept of child labour,<sup>1021</sup> and expands the umbrella concept of 'exploitation' to include child labour, slavery and other related offences.<sup>1022</sup> The Children's Act also establishes processes and provides measures and remedies to be implemented when dealing with instances of child labour.<sup>1023</sup>

#### **6.1.3.3.2 The Basic Conditions of Employment Act**

Chapter 6 of the Basic Conditions of Employment Act 75 of 1997 (BCEA) deals with the prohibition of the employment of children and forced labour and accordingly establishes a set of rules preventing and prohibiting the employment of children under 15 years.<sup>1024</sup> The only exception to this principle is entrenched in the Minister of Labour's Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities which allows the employment of a child under the age of 15, provided the prospective employer has applied for and obtained a permit from the Department of Labour that allows him to employ children for work in the performing arts industry.<sup>1025</sup>

The BCEA permits but strictly regulates the employment of children of 15 years or older.<sup>1026</sup> Section 43 (2) of the BCEA notably prohibits the employment of children aged 15 to 18 to do work inappropriate for their age or work that places them at risk. The BCEA also broadens

---

<sup>1020</sup> Section 2 of the Children's Act 38 of 2005.

<sup>1021</sup> Section 1(1) of the Children's Act provides that child labour means 'work by a child which- (a) is exploitative, hazardous or otherwise inappropriate for a person of that age; and (b) places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development'.

<sup>1022</sup> According to section 1(1) of the Children's Act exploitation 'in relation to a child, includes all forms of slavery or practices similar to slavery, including debt bondage or forced marriage; sexual exploitation; servitude; forced labour or services; child labour prohibited in terms of section 141; and the removal of body parts'.

<sup>1023</sup> A child who is a victim of child labour is identified by the Children's Act as a 'child in need of care and protection' and the Act therefore provide specific measure to be implemented such as to effectively assist such a child. The Act in fact provides for the case to be investigated by social workers and depending of the result of such investigation the child could either be removed from the situation or family (section 151) or assisted by social services such as to improve his or her situation (section 150).

<sup>1024</sup> Section 43 and 46 of the Basic Conditions of Employment Act 75 of 1997.

<sup>1025</sup> See 6.1.3.3.3 below.

<sup>1026</sup> Section 44 of the BCEA.

the scope of the prohibition of child labour by establishing a connection between minimum school-leaving age and minimum age for work. Thus it becomes illegal to employ children under the minimum school-leaving age, if this minimum school-leaving age as established by any law is 15 or older.<sup>1027</sup>

Another important input of the BCEA lies in the fact that it directly criminalises child labour, making it a criminal offence to use,<sup>1028</sup> or even facilitate the use by a third party of, child labour.<sup>1029</sup>

#### **6.1.3.3 Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities**

The Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities<sup>1030</sup> was published by the Minister of Labour in terms of section 55(1) read with section 55(6) (b) of the BCEA. It applies to all employers who have been granted a permit to employ child workers younger than 15 years of age<sup>1031</sup> and provides a set of stringent rules, principles and limitations that govern the employment of children under 15 for the performance of advertising, artistic and cultural activities.

Sectoral Determination 10 establishes strict rules concerning remuneration and minimum wages, working hours, number of leave days, and protection and termination rules for children working in the performance of advertising, artistic and cultural activities. It requires the obtaining of a permit from the Department of Labour prior to the employment of children under 15 and prohibits employers who have not been granted such a permit from employing children.<sup>1032</sup>

#### **6.1.3.4 Governmental institutions**

The South African government has created the Child Labour Programme of Action (CLPA) for the purpose of facilitating and monitoring the effective implementation of legal and

---

<sup>1027</sup> Section 43(1) (b) of the BCEA.

<sup>1028</sup> Section 43(3) of the BCEA.

<sup>1029</sup> Section 46 of the Basic Conditions of Employment Amendment Act of 1997 reads: ‘ It is an offence to—  
(a) assist an employer to employ a child in contravention of this Act; or

(b) discriminate against a person who refuses to permit a child to be employed in contravention of this Act.

<sup>1030</sup> Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities, GNR 882 in GG 26608 of 29 July 2004.

<sup>1031</sup> Section 1 (2) of the Sectoral Determination 10 for Children in the Performance of Advertising, Artistic and Cultural Activities.

<sup>1032</sup> Section 1 (3) of the Sectoral Determination 10 for Children in the Performance of Advertising, Artistic and Cultural Activities.

institutional instruments prohibiting and regulating child labour. The CLPA is a national policy and strategy blueprint for the elimination of child labour in South Africa.<sup>1033</sup>

The CLPA was first adopted in September 2003 by a multi-stakeholder group including key government departments, particularly those responsible for labour, social development, education, policing and prosecution, justice, and provincial and local government, under the guidance of the Department of Labour.<sup>1034</sup>

#### **6.1.4 Conclusion**

It is observed that child labour is an issue that is comprehensively addressed by the legal frameworks of Cameroon, France and South Africa. In all three countries the legal framework provides for the effective protection of children against employment abuses and exploitation. It is therefore submitted that the CSR approaches of BAT, Total S.A. and Nestlé S.A. to the issue of child labour<sup>1035</sup> not only do not complement the national legislation regulating child labour in Cameroon, France or South Africa, but are redundant.

It is submitted that, whereas CSR codes of conduct are meant to commit to standards exceeding the minimum legal requirement, the CSR commitments of BAT, Total S.A. and Nestlé S.A. pertaining to child labour merely amount to a commitment to comply with principles that are effectively established by national and international laws.<sup>1036</sup> Such commitment is also not necessarily voluntary<sup>1037</sup> as these principles are legally enforceable in Cameroon, France and South Africa.

## **6.2 Slavery, forced labour and compulsory labour**

### **6.2.1 Cameroon**

#### **6.2.1.1 The context**

Cameroon is considered to be a high risk country for the occurrence of slavery and forced labour<sup>1038</sup> and it has been reported that several practices amounting to slavery and/or forced

---

<sup>1033</sup> Department of Labour *The National Child Labour Programme of Action for South Africa* (2012) 1.

<sup>1034</sup> Department of Labour *The National Child Labour Programme of Action for South Africa* (2012) 1.

<sup>1035</sup> See 5.6.1.3 above.

<sup>1036</sup> See 5.3.2.4(a) above for BAT; 5.5.2.6 for Nestlé S.A.; and 5.4.2.2 for Total S.A.

<sup>1037</sup> See 2.2.1 above on the characteristic of CSR

<sup>1038</sup> According to the 2013 Global Slavery Index Cameroon is ranked 20th out of 162 surveyed countries worldwide, with the highest prevalence of modern slavery. The Walk Free Foundation *The Global Slavery Index 2013* (2013) 8.

labour are observed on a daily basis.<sup>1039</sup> Slavery is also often disguised as traditional or cultural practices, especially in the Great North provinces where hereditary slavery is a common phenomenon.<sup>1040</sup> It has also been reported that indigenous populations are often victims of slavery, specifically the Baka tribes that are routinely subjected to forced labour by Bantu tribes.<sup>1041</sup>

### 6.2.1.2 The Constitution and relevant international instruments

The Cameroonian Constitution does not formally and directly prohibit slavery, but rather establishes the applicability in the Cameroonian context of various international instruments providing for the prohibition of slavery, forced labour and related activities. This is realised via a direct reference - in the Preamble of the Constitution - to key international human rights instruments,<sup>1042</sup> but also via the constitutional provision establishing the applicability in the national context of international instruments duly approved or ratified by the relevant authority.<sup>1043</sup>

The Preamble of the Cameroonian Constitution also entrenches various rights and freedom highly relevant to the issue of slavery. These include the following principles:

'Freedom and security shall be guaranteed to each individual [...] No person may be compelled to do what the law does not prescribe [...], every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment.'<sup>1044</sup>

Based on the constitutional provisions discussed in the previous section,<sup>1045</sup> several international instruments dealing with slavery and forced labour are applicable in Cameroon,

---

<sup>1039</sup> According to 2013 United States Department of State report on slavery, Cameroon is a source, transit, and destination country for various victims of modern slavery, including children and women subjected to forced labor, sex trafficking and prostitution, as well as generalised compulsory labour in various sectors such as mining and agriculture. See United States Department of State 2013 *Trafficking in Persons Report – Cameroon* (2013)1.

<sup>1040</sup> United States Department of State 2013 *Trafficking in Persons Report – Cameroon* (2013)1.

<sup>1041</sup> ILO *Indigenous and Tribal Peoples' Rights in Practice: a Guide to ILO Convention No. 169* (2009) 157. See also Sinang JJ *Forced Labor of Baka Pygmies in Southeastern Cameroon: A Case of Ignored Slavery* International Conference on Congo Basin Hunter-Gatherers (2010) 9.

<sup>1042</sup> Including the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights.

<sup>1043</sup> Article 45 Cameroonian Constitution.

<sup>1044</sup> Preamble of the Cameroonian Constitution.

<sup>1045</sup> See 6.1.1.2 above.

including the African Charter on Human and Peoples' Rights<sup>1046</sup> and the Universal Declaration of Human Rights.<sup>1047</sup> The Cameroonian legal provisions preventing and combatting slavery and forced labour entrench most international instruments dealing with slavery, including the UN International Covenant on Civil and Political Rights that resolutely prohibits slavery,<sup>1048</sup> servitude,<sup>1049</sup> and forced and compulsory labour<sup>1050</sup>, the ILO Forced Labour Convention 29 of 1930, the ILO Abolition of Forced Labour Convention 105 of 1957 and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up of 1998.

### 6.2.1.3 Laws and regulations

The Cameroonian legal system provides for the prevention and prohibition of slavery and forced labour in relevant laws and regulations, namely, the Labour Code<sup>1051</sup> and the Penal Code.<sup>1052</sup> It is also to be noted that, in 2011, an anti-trafficking code, the principal purpose of which is to address the issues of slavery and forced labour, was implemented in Cameroon.<sup>1053</sup>

Section 2 of the Labour Code formally prohibits forced or compulsory labour,<sup>1054</sup> defines the concept of forced or compulsory labour,<sup>1055</sup> and establishes limitations and restrictions on the prohibition of forced or compulsory labour.<sup>1056</sup>

The Cameroonian Penal Code<sup>1057</sup> deals with the issues of slavery and forced labour and provides for a range of criminal penalties for relevant criminal offences. Section 292 of the

---

<sup>1046</sup> Article 5 of the African Charter on Human and Peoples' Rights of 1981 reads: 'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited'.

<sup>1047</sup> Article 4 of the Universal Declaration of Human Rights of 1948 reads 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms'.

<sup>1048</sup> Article 8.1 of the UN International Covenant on Civil and Political Rights of 1966.

<sup>1049</sup> Article 8.2 of the UN International Covenant on Civil and Political Rights of 1966.

<sup>1050</sup> Article 8.3 of the UN International Covenant on Civil and Political Rights of 1966.

<sup>1051</sup> The Labour Code Act No 92/007 of 1992.

<sup>1052</sup> The Penal Code Act No 67/LF/1 of 1967.

<sup>1053</sup> See Act No 2011/024 of the 14th December 2011 on the Fight against Human Trafficking and Human Trade.

<sup>1054</sup> Section 2(3) of the Labour Code.

<sup>1055</sup> Section 2(4) of the Labour Code reads 'Forced or compulsory labour shall mean any labour or service imposed on an individual under the menace of any penalty, being a labour or service which the individual himself has not voluntarily offered to perform.'

<sup>1056</sup> Section 2(5) of the Labour Code notably excludes from the scope of this definition any labour imposed on an individual as the result of a judicial conviction, in case of force majeure (such as during war or during various instances of - or threat of - natural disaster). It also excludes from the scope of this definition any work or service of a purely military nature imposed on an individual during conscription or compulsory military service.

Cameroonian Penal Code defines the concept of forced labour and establishes the relevant penalty for the perpetrator of such offence. Section 293 provides for severe penalties for an individual convicted of slavery and other slavery related crimes, such as, human trafficking. The 2011 Act on the Fight against Human Trafficking and Human Trade<sup>1058</sup> was enacted for the specific purpose of addressing the issue of human trafficking and slavery in Cameroon. This Act adopts a decisive stance against the enslavement of individuals and establishes a framework of severe penalties, with the purpose to deter offenders and therefore prevent the occurrence of human trafficking and slavery.<sup>1059</sup>

## 6.2.2 France

### 6.2.2.1 The context

Historically, France, with other European countries, was at the forefront of the slave trade that, between the 15th and 19th centuries, globalised the use of, and the trade in, slaves.<sup>1060</sup> During this period, the transatlantic slave trade became a highly profitable commercial activity that contributed to the economic development of Europe and both American continents,<sup>1061</sup> while dispossessing Africa of its human capital.<sup>1062</sup> Slavery was progressively abolished in France between 1794 and 1848 and the trade in, and use of, slaves are since then illegal and prohibited.<sup>1063</sup>

The abolition of slavery in France has recently been reinforced via an innovative feature of the French legal system that allows French authorities to more effectively address the global issue of slavery. In fact, France is one of the few countries that grant their judicial authorities a universal jurisdiction<sup>1064</sup> on issues relating to the various violations of human rights.<sup>1065</sup> Victims and prosecutors of human rights violations are therefore entitled to approach the

---

<sup>1057</sup> Penal Code Act 67/LF/1 of 1967.

<sup>1058</sup> Act No 2011/024 of 14 December 2011 on the Fight against Human Trafficking and Human Trade.

<sup>1059</sup> Section 4 of the Act on the Fight against Human Trafficking and Human Trade prescribes a penalty of 10 to 20 years' imprisonment, penalties that are sufficiently stringent and commensurate with those prescribed for other serious offenses, such as rape. Section 5 prescribes penalties ranging from 15 to 20 years' imprisonment if the trafficking victim is 15 years of age or younger, if violent pretexts are used to coerce the victim, or if the victim sustains serious injuries as a result of trafficking. Section 3 prescribes penalties for debt bondage ranging from five to 10 years' imprisonment.

<sup>1060</sup> Rawley JA & Behrendt SD *The Transatlantic Slave Trade: A History - Revised Edition* (2006) 91-128.

<sup>1061</sup> See Klein HS *The Atlantic Slave Trade* (2010) 1-6.

<sup>1062</sup> Klein HS *The Atlantic Slave Trade* (2010) 129.

<sup>1063</sup> Jennings LC *French Anti-Slavery: The Movement for the Abolition of Slavery in France* (2006) vii.

<sup>1064</sup> For a definition and discussion of the concept of universal jurisdiction, see Hesenov R 'Universal jurisdiction for international crimes - A case study' (2013) 19 (3) *European Journal on Criminal Policy and Research* 275.

<sup>1065</sup> Giles HL, Sulzer J & Bourgoïn S 'France - Country Chapter' in Pearlroth A & Ferstman C (ed) *Universal Jurisdiction in the European Union: Country Study* (2001) 12.

French courts in order to prosecute specific human rights violations that normally fall beyond the scope of French jurisdiction and territorial competency.<sup>1066</sup> This principle is primarily meant to facilitate the prosecution, on a global scale, of gross human rights violation (such as genocide, crimes against humanity, extrajudicial executions, war crimes, torture and forced disappearances),<sup>1067</sup> but it has been argued that the principle of universal jurisdiction could and should also be implemented in order to prosecute slavery and slavery related crimes.<sup>1068</sup>

Notwithstanding these measures, slavery is a phenomenon which has not totally disappeared in France - and the rest of Europe - as French society is still faced with the issue of modern slavery which entails human trafficking, forced prostitution and forced labour practices.<sup>1069</sup> This situation was, until recently, exacerbated by the fact that the French legal framework did not directly address the issue of slavery. For instance, the current French Constitution does not mention slavery, and the French labour and employment legislation also does not specifically address the issue of slavery.

French authorities have recently undertaken to revamp the legal framework dealing with slavery and forced labour following a decision by the European Court of Human Rights (ECHR) that found that the French government was failing to provide adequate protection to victims of slavery.<sup>1070</sup> France has therefore tightened its criminal approach to the prosecution of slavery via the introduction of Act No 2013-711,<sup>1071</sup> with the purpose to provide an updated definition of the concept of slavery inclusive of modern day slavery practices; to introduce enslavement, forced labour and servitude as new offences in the Penal Code; to provide criminal penalties for similar or related practices; and finally (and more importantly), to confer on the crime of slavery the status of a crime against humanity.<sup>1072</sup>

---

<sup>1066</sup> See section 689 and Sections 689-1 to 689-13 of the Criminal Procedure Code Act 57-1426 of 31 December 1957.

<sup>1067</sup> Giles HL, Sulzer J & Bourgoïn S 'France - Country Chapter' in Pearlroth A & Ferstman C (ed) *Universal Jurisdiction in the European Union: Country Study* (2001) 12.

<sup>1068</sup> Morris MH 'Universal jurisdiction in a divided world: Conference Remarks' (2001) 35 *New England Law Review* 341. See also Kravtman YS 'Universal jurisdiction – Historical roots and modern implications' (2005) 2 *Brussels Journal of International Studies* 94-129.

<sup>1069</sup> Bales K *Disposable People: New Slavery in the Global Economy* (2012) 3.

<sup>1070</sup> In *Siliadin v France* Application No 73316/01, ECHR 2005-VII.

<sup>1071</sup> Loi n° 2013-711 du 5 Août 2013 portant diverses dispositions d'adaptation dans le domaine de la justice en application du droit de l'Union européenne et des engagements internationaux de la France. (Act No. 2013-711 of 5 August 2013 concerning several implementing provisions with regard to justice in line with European Union law and the international obligations of France).

<sup>1072</sup> Article 212-1 of the French Penal Code as modified by Article 15 of Act No. 2013-711.

### 6.2.2.2 The Constitution and relevant international instruments

The French Constitution of 1958 does not include any reference to slavery or the prohibition of slavery and/or forced labour. The Preamble of the French Constitution of 1946<sup>1073</sup> does not directly address the issue of slavery and forced labour, despite the fact that it entrenches several labour and employment rights.<sup>1074</sup> The Preamble of the 1946 Constitution nevertheless refers to the human right principles established by the French Declaration of the Rights of Man and of the Citizen of 1789. The 1789 Declaration was enacted several decades before the formal abolition of slavery in France, and it therefore does not prohibit slavery or forced labour despite the fact that the text of the Declaration highlights freedom and equality as two intrinsic and inalterable human rights.<sup>1075</sup>

European law also plays an important role in the French legal framework addressing the issues of slavery and forced labour. As a country member of the Council of Europe, France has ratified the European Convention on Human Rights.<sup>1076</sup> The purpose of this Convention is to protect essential rights and freedoms, while prohibiting practices, such as slavery, that encroach on these rights and freedoms.<sup>1077</sup> The implementation and enforcement of the European Convention on Human Rights of 1950 is overseen by the European Court of Human Rights (ECHR) as this instrument is essential in creating a framework for the prevention, prohibition and prosecution of slavery and forced labour.<sup>1078</sup>

France has also ratified the European Social Charter of 1961<sup>1079</sup> that guarantees the protection, amongst other social rights, of essential labour and employment rights.

France is a party and a signatory to key international instruments addressing the issue of slavery and forced labour<sup>1080</sup> and these instruments are deemed to be an integral part of the French legal framework.<sup>1081</sup>

---

<sup>1073</sup> See 6.1.2.2 above.

<sup>1074</sup> See sections 5 - 11 of the Preamble of the 1946 Constitution.

<sup>1075</sup> Section 1 of the Declaration of the Rights of Man and of the Citizen of 1789 reads 'Men are born free and remain free and equal in rights'.

<sup>1076</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms CETS No.: 005 of 1950 as amended by Protocols No. 11 and No. 14.

<sup>1077</sup> See Preamble of the European Convention on Human Rights.

<sup>1078</sup> Article 4 of the European Convention on Human Rights of 1950 addresses the issue of slavery and related practices. Articles 4(1) and 4(2) prohibit slavery, servitude, forced and compulsory labour. Article 4(3) establishes the scope of such prohibition and provides limitations to the definition of concept of forced and compulsory labour.

<sup>1079</sup> European Social Charter of 1961, CETS No 35 Turin 18.X.1961.

### 6.2.2.3 Laws and regulations

France has only recently begun to take steps for the effective inclusion of laws and regulations prohibiting and combatting slavery and forced labour in its national legal framework. This process was initiated following the *Siliadin v France* case in which the ECHR condemned France for the weakness of the French legal framework in addressing the issues of slavery and modern day slavery.<sup>1082</sup>

In 2013, with the purpose of updating its legal framework via the adoption into the French legal framework of the European legal disposition addressing the issue of modern day slavery, the French parliament enacted Act No 2013/711 of 2013.<sup>1083</sup> This Act provides for the integration into the French criminal law of key provisions of relevant European instruments, namely, the Directive of the European Parliament and of the Council on Preventing and Combatting Trafficking in Human Beings and Protecting its Victims.<sup>1084</sup> This Directive is based on the principles of the 2005 Warsaw Convention on Action against Trafficking in Human Beings,<sup>1085</sup> and it establishes minimum rules concerning the definition of criminal offences and sanctions in the area of human trafficking. The Directive also provides for improving the prevention of human trafficking and better protecting human trafficking victims.<sup>1086</sup>

Act No 2013/711 of 2013 provides for amendments to the Penal Code and the Criminal Procedure Code to create new offences or introduce updated definitions and penalties for slavery and forced labour and various relevant infractions. Article 224-1 of the Penal Code defines, provides penalties for, and regulates the prosecution of, the crime of slavery. Article 225-4 of the Penal Code does the same for human trafficking. Article 212-1 of the Penal Code confers on slavery the criminal qualification of being a crime against humanity

---

<sup>1080</sup> See 5.6.2.1 above.

<sup>1081</sup> Article 55 of the French Constitution establishes the applicability and the legal status in France of duly ratified international legal instruments.

<sup>1082</sup> *Siliadin v France* Application No 73316/01, ECHR 2005-VII.

<sup>1083</sup> Act No. 2013-711 of 5 August 2013 concerning several implementing provisions with regard to justice in line with European Union law and the international obligations of France.

<sup>1084</sup> Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011].

<sup>1085</sup> Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005.

<sup>1086</sup> Articles 14 & 18 of Directive 2011/36/EU.

Article 2-22 of the Criminal Procedure Code facilitates the prosecution of slavery and servitude, forced and compulsory labour, as well as human trafficking. Initially lacking a mechanism for the protection of victims of slavery and related practices, the French legal system is progressively being updated in order to better implement the EU framework of measures combatting slavery, thus the enhanced effectiveness of the French legislation providing for these issues.

### **6.2.3 South Africa**

#### **6.2.3.1 The context**

The South African legal framework addresses the issue of slavery and forced labour and provides a framework of laws and regulations prohibiting slavery and practices akin to slavery or forced labour.<sup>1087</sup> Despite these measures, South African society is still confronted with the issue of slavery and forced labour as modern slavery and human trafficking practices are becoming a matter of national concern.<sup>1088</sup> It has, in fact, been observed that South Africa has become, if not a destination, at least a pivotal transit point, for human trafficking syndicates operating globally.<sup>1089</sup> Several instances of enslavement of women and children for sexual purposes and domestic labour are also being reported in the country.<sup>1090</sup>

In conclusion, even though modern slavery and human trafficking practices in South Africa are not as widespread and common as in other parts of the continent, trends have emerged that point to the generalisation of forced labour and human trafficking, often involving foreign nationals as victims or perpetrators.<sup>1091</sup>

#### **6.2.3.2 The Constitution and relevant international instruments**

---

<sup>1087</sup> See 6.2.3.2 & 6.2.3.3 below.

<sup>1088</sup> Gallinetti J & Kassan D 'Trafficking of children in Africa: an overview of research, international obligations and existing legal provisions' in Sloth-Nielsen J (ed) *Children's Rights in Africa: A Legal Perspective* (2008) 240-242.

<sup>1089</sup> Du Preez L & Marais A 'A legal approach to human trafficking in South Africa' in Delener N et al (ed) *Fulfilling the Worldwide Sustainability Challenge: Strategies, Innovations, and Perspectives for Forward Momentum in Turbulent Times* (2011) 783.

<sup>1090</sup> Gallinetti J & Kassan D 'Trafficking of children in Africa: an overview of research, international obligations and existing legal provisions' in Sloth-Nielsen J (ed) *Children's Rights in Africa: A Legal Perspective* (2008) 240-241.

<sup>1091</sup> Fitzgibbon K 'Modern-day slavery? The scope of trafficking in persons in Africa' (2003) 12(1) *African Security Studies* 83.

The South African Bill of Rights creates a constitutional framework that facilitates the prohibition of slavery, forced labour and other related activities. Section 13 of the Constitution clearly and formally prohibits slavery, servitude and forced labour.<sup>1092</sup>

The international legal framework addressing the issue of slavery<sup>1093</sup> is totally applicable in the South African legal context due to the provisions of section 231 of the Constitution.<sup>1094</sup> As a member of the African Union, South Africa is also party to the 1981 African Charter on Human and Peoples Rights that establishes the prohibition of slavery and forced labour as a core human rights principle.<sup>1095</sup>

### **6.2.3.3 Laws and regulations**

Slavery and forced labour are practices prohibited by South African law. The Basic Conditions of Employment Act prohibits the use of slave and forced labour and proactively makes it an offence to cause, demand or impose forced labour for one's own or someone else's benefit.<sup>1096</sup>

The South African legal framework also offers the option to prosecute slavery and forced labour via relevant legislation dealing with the issue from diverse perspectives:

Sections 281-291 of the Children's Act 38 of 2005 criminalise the trafficking and exploitation of children.

Sections 70-72 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 criminalise and provide sanctions and remedies for human trafficking and enslavement activities with a sexual purpose.<sup>1097</sup>

---

<sup>1092</sup> Section 13 of the Constitution of the Republic of South Africa, 1996 reads: 'No one may be subjected to slavery, servitude or forced labour'.

<sup>1093</sup> See 5.6.2.1 above.

<sup>1094</sup> See 6.1.3.2 above.

<sup>1095</sup> Article 5 of the African Charter on Human and Peoples Rights of June 27, 1981.

<sup>1096</sup> Section 48 of the Basic Conditions of Employment Act 75 of 1997 reads :

'(1) Subject to the Constitution, all forced labour is prohibited.

(2) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subsection (1).

(3) A person who contravenes subsection (1) or (2) commits an offence.'

<sup>1097</sup> Section 70-72 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

## 6.2.4 Conclusion

It is observed that similarly to child labour, slavery is also an issue that is comprehensively addressed by the legal frameworks of Cameroon, France and South Africa. In all three countries the legal framework provides for the effective prohibition of slavery and forced labour and also provides measures for the containment of similar and related practices. It is therefore submitted that the CSR approaches of BAT, Total S.A. and Nestlé S.A. to the issue of slavery and forced labour<sup>1098</sup> offer principles that merely replicate legal obligations already existing in the Cameroonian, French and South African legal framework.

It is submitted that the CSR commitments of BAT, Total S.A. and Nestlé S.A. pertaining to slavery and forced labour<sup>1099</sup> do not add substance to the relevant national and international legal frameworks prohibiting slavery and forced labour in each of the relevant countries, whereas CSR codes of conduct are meant to commit to standards exceeding the minimum legal requirements in order to holistically improve employees' working conditions.

## 6.3 The principle of equality and the prevention and/or prohibition of workplace discrimination

### 6.3.1 Cameroon

#### 6.3.1.1 The Constitution and relevant international instruments

The Cameroonian Constitution is underpinned by fundamental human rights principles established by relevant international instruments.<sup>1100</sup> International instruments providing for equality and non-discrimination at work,<sup>1101</sup> therefore, constitute the backdrop to the legal and constitutional frameworks providing for the prohibition, prevention and elimination of workplace discrimination in Cameroon.<sup>1102</sup>

---

<sup>1098</sup> See 5.6.2.3 above.

<sup>1099</sup> See 5.6.2.3 above.

<sup>1100</sup> The Preamble of the Cameroonian Constitution reads: '*We, people of Cameroon, Declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights; Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto [..]*'.

<sup>1101</sup> See 5.6.3.1 above.

<sup>1102</sup> Article 45 of the Cameroonian Constitution.

The Cameroonian constitutional framework promotes equality as an essential right afforded to all citizens.<sup>1103</sup> The Constitution also establishes that ‘the State shall guarantee all citizens of either sex the rights and freedoms set forth in the Preamble of the Constitution’,<sup>1104</sup> thereby providing for the elimination of gender based discrimination in the workplace.

### 6.3.1.2 Laws and regulations

The Cameroonian Labour Code entrenches a definition of ‘worker’ that creates a wide scope for the application of the Code. Section 1(2) of the Labour Code reads:

‘In this act, "worker" shall mean any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the "employer". For the purpose of determining whether a person is a worker, non-account shall be taken of the legal status of the employer, nor that of the employee.’

The Cameroonian Labour Code also states that the right to work is an essential right afforded to all citizens, and consequently establishes a duty for the State, not only to assist and support everyone applying for employment, but most importantly to ensure job security for all citizens without discrimination.<sup>1105</sup>

The Labour Code prohibits workplace discrimination based on trade union membership, trade union non-membership or employees’ participation in trade unions.<sup>1106</sup> The Labour Code also addresses the issue of salary discrimination and establishes the principle of equal pay for equal work, prohibiting any salary discrimination based on origin, sex, age, status and religion.<sup>1107</sup>

It is submitted that equality and non-discrimination at work are issues not comprehensively provided for by the Cameroonian labour legislation; the Cameroonian Labour Code does not holistically address the issue of workplace discrimination but rather establishes an assorted

---

<sup>1103</sup> The Preamble of the Cameroonian Constitution: ‘*We, people of Cameroon, Declare that the human person, without distinction as to race, religion, sex or belief, possesses inalienable and sacred rights; [...] all persons shall have equal rights and obligations. The State shall provide all its citizens with the conditions necessary for their development; the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law; [...] no person shall be harassed on grounds of his origin, religious, philosophical or political opinions or beliefs, subject to respect for public policy[...]*’.

<sup>1104</sup> Preamble of the Cameroonian Constitution.

<sup>1105</sup> Section 2 (1) of the Labour Code Act 92/007 reads: ‘The right to work shall be recognized as a basic right of each citizen. The State shall therefore make every effort to help citizens find and secure their employment.’

<sup>1106</sup> Sections 4(2) and 19 of the Labour Code.

<sup>1107</sup> Section 61(2) of the Labour Code.

set of principles dealing with various aspects and addressing specific instances of possible workplace discrimination.

Anti-discrimination principles pertaining to equality at work are nevertheless also to be found in various laws and regulations enacted for the specific purpose of offering legal protection to particularly vulnerable groups and minorities.

Act 83/13 of 1983 on the protection of persons with disabilities establishes a duty for the State to guide and support, train and employs persons with disabilities.<sup>1108</sup> This Act also establishes that the State, any individual, and the family of a person with disabilities have a duty, to ensure the disabled person's access to employment as well as job security.<sup>1109</sup>

Act 2010/002 on the protection and promotion of persons with disabilities was enacted in order to improve the protection the law affords to persons with disabilities. This Act provides for severe criminal penalties, including imprisonment and/or fines to be imposed on employers and corporations discriminating against persons with disabilities in terms of recruitment and remuneration.<sup>1110</sup> Public and private enterprises are also urged, when possible, to offer suitable available position to persons with disabilities, provided the disability does not interfere with the person's ability to perform in a specific position.<sup>1111</sup>

Finally, the Cameroonian legal framework criminalises workplace discrimination; thus the Cameroonian Penal Code provides for criminal penalties punishing workplace discrimination based on race and religion.<sup>1112</sup>

### **6.3.1.3 Workplace discrimination in the Cameroonian context**

Despite the fact that Cameroon is a signatory to key international instruments addressing the issue of workplace discrimination, legislation adapting these international instruments to the national framework is either absent, or weakened by the lack of implementation and monitoring mechanisms.<sup>1113</sup> The context in Cameroon is therefore characterised by the deficiencies of the legal framework in addressing the issue of workplace discrimination, and

---

<sup>1108</sup> Section 3(1) of Act 83/13 of 21 July 1983 on the protection of persons with disabilities.

<sup>1109</sup> Section 3 (2).

<sup>1110</sup> Section 45 of Act 2010/002 of 13 April 2010 on the protection and promotion of persons with disabilities.

<sup>1111</sup> Section 7.

<sup>1112</sup> Section 242 of the Penal Code.

<sup>1113</sup> Miendjiem IL *ILO Working Paper 65 - Etude Nationale sur la Discrimination en Matière d'Emploi et de Profession et Proposition d'un Plan National d'Action au Cameroun* (2011) 33-35.

this results in the accrued vulnerability of various groups and minorities not adequately protected by anti-discrimination laws, namely, victims of sexual harassment and discrimination based on HIV status or sexual orientation.<sup>1114</sup> Laws and regulations are progressively being adopted in order to provide for the protection of these vulnerable minorities, and persons with disabilities have notably seen a reinforcement of the legal framework protecting their rights.<sup>1115</sup>

The Cameroonian context is finally characterised by the lack of an effectively implemented legal framework regulating the employment of foreign nationals for the purpose of striking a balance between two potentially conflicting imperatives: On the one hand, the necessity to ensure the stability of the labour market and guarantee employment security for nationals, and on the other hand the necessity to prevent and prohibit unfair discrimination against migrant and/or foreign workers.<sup>1116</sup>

Taking advantage of the lack of efficient implementation and monitoring mechanisms supporting the existing legal framework regulating the employment of foreign workers in Cameroon,<sup>1117</sup> MNCs often fail to implement internationally established best practice principles pertaining to the protection of nationals, in host countries, against undue competition from foreign/expatriate workers; and the promotion of workplace equality between national and foreign/expatriate workers.<sup>1118</sup> In the Cameroonian context, several labour market disruptions often occur as a result of controversial labour and employment practices by MNCs, such as:

---

<sup>1114</sup> Miendjiem IL *ILO Working Paper 65 - Etude Nationale sur la Discrimination en Matière d'Emploi et de Profession et Proposition d'un Plan National d'Action au Cameroun* (2011) 35.

<sup>1115</sup> See 6.3.1.4 below.

<sup>1116</sup> The Labour Code briefly deal with the employment of foreigners in articles 27(2) to 27(4) and article 113. The legal framework only provides a few relevant instruments, including Law No. 97/012 of 10 January 1997 establishing conditions for the entry, stay and exit of foreigners, Decree No. 2000/286 of 12 October 2000 specifying the conditions for the entry, stay and exit of foreigners in Cameroon, Decree No. 93/571 of 15 July 1993 establishing conditions for the employment of foreign national workers for certain occupations or for certain levels of professional skills.

<sup>1117</sup> The lack of efficient implementation and monitoring mechanisms supporting the existing legal framework regulating the employment of foreigners in Cameroon was recently identified, by the prime Minister and the Minister of labour, as major governmental concerns due to the possible negative impact of transnational labour migration on employment security and the stability of the local labour market. See *Ghogomu PM Communiqué à l'issue du Conseil de Cabinet du Jeudi 30 Octobre 2014*(2014) 4.

<sup>1118</sup> Such as the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the OECD Guidelines for Multinational Enterprises.

- The institutionalisation of workplace inequality and discrimination in employment conditions between nationals and foreign/expatriate workers. Mostly suffered by nationals working for MNCs operating in Cameroon, discrimination often results from the use, by MNCs, of controversial wage scale policies that generate considerable (and often unreasonable) differences in salary and benefits between foreign/expatriate workers and nationals occupying the same position.<sup>1119</sup>
- The reluctance to ensure the transfer of relevant professional skills to nationals of the host country is also emphasised by MNCs preference for the employment of foreign/expatriate workers in executive and skilled positions, instead of developing local talent or maintaining nationals in positions previously occupied before the entry of the foreign MNC.<sup>1120</sup> This often translates into instances of unfair discrimination relating to the employment and the promotion of host country nationals as it has been observed that MNCs favours employing foreign nationals for executive positions, often at the expense of suitably and better qualified national postulants.<sup>1121</sup>

It is thus submitted that the codes of conduct of British American Tobacco p.l.c., Nestlé S.A. and Total S.A. are missing the opportunity to fulfil their intrinsic purpose of providing voluntary commitments to implement measures above the minimum legal requirement, at both national and international level.

An effective CSR code of conduct ought to provide remedies for the imperfections of a particular legal framework, by appropriately dealing with and providing for specific issues encountered in each national context where the MNC operates. Considering the above-mentioned issues, the codes of conduct of British American Tobacco p.l.c., Nestlé S.A. and

<sup>1119</sup> In the case *AES Sonel employee (Mr. Edouard Teumagnie) v AES corporation* before the US OECD National Contact Point, it was revealed that after the US MNC AES took control of SONEL, several Cameroonian executives were replaced by expatriate workers with salaries 25 time higher than Cameroonian counterparts in similar or higher position and with similar or higher professional skills. See US Department of State *U.S. NCP Initial Assessment: Edouard Teumagnie and AES Corporation* (2012) 1-2. See also OECD Watch *AES Sonel employee vs AES corporation- Case overview* (2014) 1.

<sup>1120</sup> See US Department of State *U.S. NCP Initial Assessment: Edouard Teumagnie and AES Corporation* (2012)1-2; see also OECD Watch *AES Sonel employee vs AES corporation- Case overview* (2014) 1.

<sup>1121</sup>In a case before Cameroonian courts , the US MNC Herakles Farms was fined USD 4.600 000 by the Limbé Court of First Instance for racially discriminating against a highly qualified and experienced Cameroonian employee by demoting him from an executive position in order to replace him with an expatriate worker with less qualification and experience. See Achobang C Herakles Farms Practices Racial Discrimination (2014) <http://www.modernghana.com/news/511596/1/herakles-farms-practices-racial-discrimination.html> (accessed 1 December 2014), see also Cultural Survival Campaign Update– Cameroon: Local Courts Fine Herakles Farms for Racial Discrimination(2014) <http://www.culturalsurvival.org/news/campaign-update-cameroon-local-courts-fine-herakles-farms-racial-discrimination> (accessed 1 December 2014).

Total S.A. could therefore implement a proactive labour and employment CSR stance that effectively commits to avoid discriminating against nationals in host countries. British American Tobacco p.l.c., Nestlé S.A. and Total S.A. could also, in their codes of conduct, commit to transfer skills to national in host countries, via the optimal utilisation of the country workforce through the training and the promotion of local workers for skilled or executive positions, without illegally discriminating against foreign and expatriate workers, yet without prioritising the employment of foreign/expatriate workers.

MNC CSR codes of conduct should integrate a duty for the MNC to implement internationally established best practices principles, especially in a context where the national legal framework does not effectively provide for or overlooks a specific issue. MNCs have the opportunity to resort to CSR codes of conduct to establish specific rules addressing crucial issues, such as the issue of the balance between the rights of foreign and national workers. If included in CSR codes of conduct, such disposition could have an important impact on the elimination of workplace discrimination and the promotion of employment security.



### **6.3.2 France**

#### **6.3.2.1 The context**

In 1946, after the Second World War, the French legislature established a set of core principles that ought to underpin the French Constitution as well as all national institutions.<sup>1122</sup> The principle of equality, along with the principle of freedom and the principle of brotherhood / fraternity were reintroduced into the Constitution of the Republic of France of 1946<sup>1123</sup> and the Constitution of the Republic of France of 1958 as essential cornerstones of French democracy.<sup>1124</sup>

---

<sup>1122</sup> Burbank J & Cooper F 'Empire, droits et citoyenneté, de 212 à 1946' (2008) 3 *Annales. Histoire, Sciences Sociales* 495-496. See also Paragraph 1 of the Preamble of the French Constitution of 1946.

<sup>1123</sup> Paragraph 1 of the Preamble of the French Constitution of 1946.

<sup>1124</sup> See Article 1 and Article 2 of the French Constitution of 1958.

The principles of equality and non-discrimination are cardinal values underpinning the French vision of democracy and had been established by previous French human rights instruments, including the Declaration of the Rights of Man and Citizen of 1789.<sup>1125</sup>

Labour and employment discrimination is nonetheless a very sensitive topic in France, with instances of employment discrimination being regularly reported. Discrimination based on race or religion is a specific issue faced by French society in general, and is observable in the workplace. Immigrant communities and descendants of immigrant families are considered to be typical victims of employment discrimination.<sup>1126</sup>

The national context in France is thus characterised by the existence of governmental institutions the purposes of which are to facilitate the protection of individuals against workplace discriminatory practices, to support or coordinate actions aimed at the elimination of workplace discrimination in general, or to simply act as mechanisms for monitoring and enforcing the implementation of anti-discrimination laws and regulations.<sup>1127</sup>

### **6.3.2.2 The Constitution and relevant international instruments**

The French Constitution addresses the issue of discrimination and the principle of equality is firmly entrenched in the French constitutional framework. The Preamble of the French Constitution of 1946 provides several principles the purpose of which is to prevent the occurrence of, and to prohibit discriminatory practices. The Preamble of the French Constitution of 1946 therefore proclaims the right to equality to be amongst the ‘inalienable and sacred rights’ the law affords each and every individual.<sup>1128</sup> It also establishes gender equality as a core element of French democracy,<sup>1129</sup> and clearly prohibits workplace discrimination based on an employee’s origin, opinions or beliefs.<sup>1130</sup>

---

<sup>1125</sup> Section 1 of the Declaration of the Rights of Man and Citizen of 1789.

<sup>1126</sup> Brinbaum Y ‘Transition professionnelle et emploi des descendants d’immigrés en France’(2013) *Revue Européenne des Sciences Sociales* 33-63.

<sup>1127</sup> Including the Agence Nationale pour la Cohésion Sociale et l’Egalité des Chances (Acsé) created by Act 2006-396 of 31March 2006; as well as the Défenseur des Droits, an independent administrative authority created in 2008.

<sup>1128</sup> Paragraph 1 of the Preamble of the French Constitution of 1946.

<sup>1129</sup> Paragraph 3 of the Preamble of the French Constitution of 1946.

<sup>1130</sup> Paragraph 5 of the Preamble of the French Constitution of 1946.

Equality and non-discrimination are overarching principles that serve as lodestars for the assessment of the constitutionality of French legislation, as well as for the assessment of the actions of persons and institutions.<sup>1131</sup> In addition, France is a party to key international instruments promoting equality and prohibiting discrimination,<sup>1132</sup> thus the applicability in France of these instruments by virtue of section 55 of the Constitution of the Republic of France of 1958.

### 6.3.2.3 Laws and regulations

France is a European Union country member, thus the French legal framework addressing the issue of equality and non-discrimination is underpinned by relevant European legislation. The European Union has developed a framework of legal instruments dealing with the issue of discrimination which has progressively been introduced into the French national legal system.

Act 2008/496<sup>1133</sup> provides rules and principles to bring French legislation in line with the European legal framework dealing with workplace discrimination. This Act provides for the definition<sup>1134</sup> and prohibition of workplace discrimination<sup>1135</sup> and introduces into the French legal framework the following instruments from the European Council and the European Parliament addressing the issue of the prevention and prohibition of workplace discrimination:

- a) Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;
- b) Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;
- c) Directive 2006/54/EC of the European Parliament and of the European Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

---

<sup>1131</sup> Article 1 of the French Constitution of 1958.

<sup>1132</sup> See 5.6.3.1 above.

<sup>1133</sup> Act 2008/496 of 27 May 2008 on various provisions for the adaptation to European Union law in the field of efforts to combat discrimination.

<sup>1134</sup> Article 1.

<sup>1135</sup> Article 2.

Act No 2008/496 of 27 May 2008 also amends several sections of the French Labour Code addressing the issue of discrimination for the purpose of creating a legal framework that provides for both the prohibition of workplace discrimination,<sup>1136</sup> as well as the regulation of acceptable instances of discrimination in the workplace.<sup>1137</sup>

The French legal framework finally provides for the criminalisation of workplace discrimination, as Article 225-2 and Article 432-7 of the Penal Code specifically prohibit and provide criminal penalties for workplace discrimination. However, Article 225-3 of the Penal Code establishes exceptions to and limitations on the prohibition of discrimination by the Penal Code, including discrimination based on age, sex or physical appearance when required by an inherent requirement of the job.<sup>1138</sup>

Despite the existence of a comprehensive legal framework, underpinned by European instruments, providing for the regulation of most aspects of workplace equality, it has been observed that issues persist that need to be specifically addressed by French legislative and regulatory authorities. The establishment, in particular, of secularism<sup>1139</sup> as an essential value of the French society<sup>1140</sup> generates outcomes, both negative and positive, that transcends the political context and extends to other components of French society; this explains the interest of the issue of the implementation of secularism in the workplace.<sup>1141</sup>

Within the context of an employment relationship, the necessity to enforce French secularism laws in the workplace often contradict the equally important duty to respect individuals' freedom of religion, thus the necessity for corporations to aim for, and attain, compromise between these two sets of rights.<sup>1142</sup>

---

<sup>1136</sup> See Article L1132-1 of the Labour Code Act 2007-329 of 2007.

<sup>1137</sup> See Article L1133-1 Labour Code Act 2007-329 of 2007 regulating discrimination due to inherent requirements of the job, Article L1133-4 on positive discrimination toward disabled workers, Article L1142-2 that provides for limitation to the prohibition of gender discrimination.

<sup>1138</sup> Article 225-3(3) of the Penal Code.

<sup>1139</sup> Secularism, a translation of the French concept of 'laïcité', refers to the principle of the separation between State and Religion. In such system, religion does not exert an influence on the organisation and functioning of the State as well as on the elaboration of laws by the legislature. See Tarhan G 'Roots of the Headscarf Debate: Laicism and Secularism in France and Turkey' (2011) 4 *Journal of Political Inquiry* 1.

<sup>1140</sup> Laicism and secularism are important values of the French society, established by the Declaration of the Rights of Man and Citizen of 1789 and the Constitutions of 1946 and 1958; and regulated by a framework of laws and regulation, notably Law of the 9 December 1905 on the Separation of Church and the State.

<sup>1141</sup> Schwartz R 'La laïcité dans l'entreprise' in Waquet P *13 Paradoxes en Droit du Travail* (2012) 229.

<sup>1142</sup> Schwartz R 'La laïcité dans l'entreprise' in Waquet P *13 Paradoxes en Droit du Travail* (2012) 229-233.

The French legal framework providing for secularism in the workplace lacks in effectiveness as it does not provides clear and effective principles for the realisation of a balance between employees' right to freedom of religion, employers' duty not to discriminate against individuals based on their religion, and the corporation's obligation to comply with the legal framework providing for the secularism of the French society.<sup>1143</sup> The French judicial system has had to be relied upon by individuals and organisations seeking clarity on the legal implications of secularism, thus French courts are inundated with an ever increasing number of cases and are therefore at the forefront of the development of legal principles providing for the implementation of secularism and the prohibition of discrimination in the workplace.<sup>1144</sup>

As a complement to a deficient legal framework, CSR codes of conduct are in the position to provide a medium for corporations to effectively address the issue of secularism in the workplace by committing to develop and implement principles promoting the best interest of employees while taking into consideration the corporation's duty to uphold national legislation, including judicial decisions.<sup>1145</sup>



### 6.3.3 South Africa

#### 6.3.3.1 The context

Discrimination is a very sensitive issue in South African society and the official position on the issue of workplace equality reflects essential values and principles entrenched in the Constitution and considered to be the cornerstones of South African democracy, namely, the notions of social justice, non-racialism, non-sexism, equal protection of the law, and the need to redress the injustices of the past and achieve equality in society.<sup>1146</sup>

---

<sup>1143</sup> See Antonmattei PH 'Religion et laïcité dans l'entreprise-Le port de signes religieux dans l'entreprise : Au-delà de Baby Loup.' (2013) 1611 *Semaine Sociale Lamy* 9-13. See also Jourdan D 'Religion dans l'entreprise, égalité de traitement et discrimination' (2013) 1611 *Semaine Sociale Lamy* 13-16.

<sup>1144</sup> Notably the *Mme Fatima X, épouse Y v Association Baby Loup* of 25 June 2014, Court of Cassation No 13–28.369. See Langlaude S 'Mme Fatima X, épouse Y v Association Baby Loup No 13–28.369: Cour de cassation (Court of Cassation, France), Assemblée plénière (Plenary Assembly): Lamanda (President), Truchot (Speaker): 25 June 2014' (2014) 3(3) *Oxford Journal of Law and Religion* 521.

<sup>1145</sup> Jourdan D 'Religion dans l'entreprise, égalité de traitement et discrimination ' (2013) 1611 *Semaine Sociale Lamy* 15-16.

<sup>1146</sup> See the Preamble of the Constitution of the Republic of South Africa, 1996.

The South African context is therefore characterised by the existence of an extensive set of laws, regulations and policies addressing the issue of equality in the workplace and providing for the prevention and prohibition of discrimination. Considering the country's historical legacy,<sup>1147</sup> the issue of equality in the workplace in South Africa is approached not only as a mere prohibition of unfair discrimination, but also as affirmative action for the purpose of redressing past societal imbalances in order to benefit previously disadvantaged groups.<sup>1148</sup>

### **6.3.3.2 The Constitution and relevant international instruments**

The Constitution of the Republic of South Africa, 1996 contains an essential constitutional principle providing for workplace equality. Section 9 of the Bill of Rights establishes the principle of equality,<sup>1149</sup> and provides for affirmative action.<sup>1150</sup> Section 9 of the Bill of Rights also prohibits discrimination, listing an extensive range of prohibited grounds of discrimination.<sup>1151</sup>

### **6.3.3.3 National legislation**

The South African context is conducive to the promotion of workplace equality and protection against workplace discrimination, as the South African legislature has enacted a set of laws with the purpose to implement the constitutional principles of equality and non-discrimination.

#### **6.3.3.3.1 The Employment Equity Act**

The Employment Equity Act 55 of 1998 (EEA) is the principal South African legislation implementing constitutional principles on the issue of discrimination and equality in the workplace:

---

<sup>1147</sup> See 4.2.3.2.2 above.

<sup>1148</sup> The Preamble of the Employment Equity Act 55 of 1998 reads 'Recognising that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws[...]'.

<sup>1149</sup> Section 9 (1) of the Constitution of the Republic of South Africa, 1996 reads: 'Everyone is equal before the law and has the right to equal protection and benefit of the law.'

<sup>1150</sup> Section 9 (2) of the Constitution of the Republic of South Africa, 1996 reads: 'Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.'

<sup>1151</sup> Section 9 (3) of the Constitution of the Republic of South Africa, 1996 reads: 'The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. See also Section 9 (4) 'No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination'.

'The purpose of this Act is to achieve equity in the workplace by

(a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and

(b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.'<sup>1152</sup>

As such, the EEA is considered to potentially be 'one of the most critical pieces of labour legislation in South Africa'<sup>1153</sup> as it provides for the prohibition of unfair discrimination;<sup>1154</sup> and for the regulation of affirmative action in the workplace.<sup>1155</sup> The EEA also creates the Commission for Employment Equity with the purpose to research, and to report to, and advise, the Minister of Labour on issues pertinent to the scope of the EEA.<sup>1156</sup>

#### **6.3.3.3.2 The Labour Relations Act**

The Labour Relations Act 66 of 1995 (LRA) provides for the prohibition of discrimination. Section 5 of the LRA provides for the protection of employees and persons seeking employment against discrimination based on their affiliation with a trade union or their participation in the activity of a workplace forum. Section 5(3) of the LRA also prohibits advantages or benefits offered to employees and employment seekers for not exercising any of their rights as conferred by the LRA.

Section 67(4) establishes the right of employees not to be discriminated against and dismissed because of their participation in a protected strike.

Section 187 of the LRA establishes grounds for automatically unfair dismissals, thus providing a list of prohibited unfair discrimination grounds.<sup>1157</sup> Unfair discrimination leading to a dismissal therefore results in an automatically unfair dismissal, except that 'a dismissal may be fair if the reason for dismissal is based on an inherent requirement of the particular job'.<sup>1158</sup>

---

<sup>1152</sup> Section 2 of the EEA.

<sup>1153</sup> Du Toit D 'Protection against unfair discrimination: Cleaning up the Act?' (2014) 35 *ILJ* 2623.

<sup>1154</sup> Chapter 2 of the EEA.

<sup>1155</sup> Chapter 3 of the EEA.

<sup>1156</sup> Sections 28-33 of the EEA.

<sup>1157</sup> Section 187(1)(f) .

<sup>1158</sup> Section 187(2).

### 6.3.3.3 The Basic Conditions of Employment Act

The BCEA,<sup>1159</sup> even though not directly addressing the issue of equality in the workplace, nevertheless does entail principles relevant to the issue of discrimination.

The aim of Section 26 of the BCEA is to protect women against direct or indirect discrimination in the workplace during or after their pregnancy or while nursing a child:

Section 26 of the BCEA requires employers to offer suitable, alternative employment to pregnant women and those who have recently given birth and are required to perform night work, work that is hazardous to her health or the health of her child, or work that poses a danger to her safety or that of her child.<sup>1160</sup> The BCEA also states that the terms and conditions of the alternative employment should be no less favourable than the particular employee's ordinary terms and conditions of employment. The BCEA finally extends this protection from pregnancy through a period of six months after the birth of the child.<sup>1161</sup>

### 6.3.3.4 Governmental institutions

The national context in South Africa is also particularly characterised by the existence of governmental institutions created for the specific purpose of ensuring that constitutional principles relating to discrimination and equality are effectively implemented. These include the South African Human Rights Commission,<sup>1162</sup> the Commission for Gender Equality,<sup>1163</sup> and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.<sup>1164</sup> These 'State Institutions Supporting Constitutional Democracy'<sup>1165</sup> are directly created by the Constitution, and the rules pertaining to their roles; functioning and prerogatives are embedded into the Constitution and effectively enforceable.<sup>1166</sup>

### 6.3.4 Conclusion

Workplace discrimination and the principle of equality are extensively provided for by the legal frameworks of Cameroon, France and South Africa. In all these countries the legal

---

<sup>1159</sup> The Basic Conditions of Employment Act 75 of 1997

<sup>1160</sup> Sections 26(1) and 26(2).

<sup>1161</sup> Sections 26(1) and 26(2) of the BCEA. See also Dupper O 'Maternity protection in South Africa: An international and comparative perspective'(2001) 12 *Stellenbosch Law Review* 432.

<sup>1162</sup> Section 184 of the Constitution of the Republic of South Africa, 1996.

<sup>1163</sup> Section 187 of the Constitution of the Republic of South Africa, 1996.

<sup>1164</sup> Sections 185-186 of the Constitution of the Republic of South Africa, 1996.

<sup>1165</sup> Chapter 9 of the Constitution of the Republic of South Africa, 1996.

<sup>1166</sup> Section 181 of the Constitution of the Republic of South Africa, 1996.

framework provides for the prohibition of workplace discrimination and measures are implemented to ensure that equality at work is achieved. It is therefore submitted that the CSR approaches of BAT, Total S.A. and Nestlé S.A. to non-discrimination and workplace equality<sup>1167</sup> merely replicate legal provisions already available in Cameroon, France or South Africa, whereas CSR codes of conduct are meant to commit to standards exceeding the minimum legal requirements. The principle of the voluntariness of CSR is also not met considering that the CSR commitments of BAT, Total S.A. and Nestlé S.A. pertaining to the issue of workplace discrimination<sup>1168</sup> actually equate with principles which are legally enforceable in Cameroon, France and South Africa by virtue of national or international legal instruments. It has been observed that the legal frameworks in these countries are far from perfect and are often flawed in their approaches (or the lack thereof) in dealing with specific issues, such as, the balance between secularism and freedom of religion in the workplace in France, or the necessity to find a balance between employment security rights and the prohibition of discrimination based on nationality in Cameroon. It is therefore submitted that these MNC codes of conduct could play a role for the improvement, for their workforce, of these deficiencies of the national legal framework in France in Cameroon.

#### **6.4 Freedom of association, collective bargaining, and industrial relations**

##### **6.4.1 Cameroon**

##### **6.4.1.1 The Constitution and relevant international instruments**

The Cameroonian Constitution provides for the protection of labour relations rights, including freedom of association, and the rights of individuals to assembly, to create or join trade unions and to strike.<sup>1169</sup> The Constitution, however, does not address the issue of the right or freedom to bargain collectively nor does it establish other labour relations rights, such as the employer's right to lock-out.

Cameroon has ratified most international instruments providing for labour relations rights including ILO Convention 11 of 1921 on the Right of Association (agriculture); ILO Convention 87 of 1948 on Freedom of Association and the Protection of the Right to Organise; ILO Convention 98 of 1949 on the Right to Organise and Collective Bargaining;

---

<sup>1167</sup> See 5.6.3.3 below.

<sup>1168</sup> 5.6.3.3 below.

<sup>1169</sup> The Preamble of the Cameroonian Constitution provides that: 'the freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism, as well as the right to strike shall be guaranteed under the conditions fixed by law'.

and ILO Convention 135 of 1971 on Workers' Representatives. These instruments are therefore applicable in the Cameroonian context.

#### **6.4.1.2 National legislation**

The Cameroonian labour legislation provides for industrial relations rights, establishing specific rights and freedoms for both employers and employees, including the freedom of association, the right to organise and the right to create, join and/or participate in the activities of a trade union or employers' association.<sup>1170</sup>

However, the employees' right to organise as entrenched in the Cameroonian Labour Code is subjected to administrative authority. In fact, the legal existence of a trade union is subject to the issue of a certificate of registration by the Registrar of Trade Unions. The Registrar of Trade Unions is a government official with the discretionary authority to allow the creation of a trade union,<sup>1171</sup> or cancel the certificate of registration of a trade union without which the trade union cannot legally exist.<sup>1172</sup>

The Labour Code provides a list of grounds that may justify the Registrar of Trade Unions' decision to cancel the registration of a trade union.<sup>1173</sup> It is submitted that these grounds are vulnerable to political and administrative interference with the employees' right to organise, considering that Article 3 of the Labour Code provides that workers only have the right to create trade unions 'the purpose of which is to study, defend, develop and protect their interest, particularly those of an economic, industrial, commercial or agricultural nature; as well as the social, economic, cultural and moral development of their members'. Article 3 therefore prohibits actions and activities of trade unions which are deemed to be beyond the scope of the statutory purpose of a trade union; it is the role of the Registrar of Trade Unions

---

<sup>1170</sup> Article 4(1) of the Labour Code Act 92/007 provides that '[w]orkers and employers have the right to join a union of their choice within the context of their profession or industry.' Article 3 of the Labour Code further provides that '[t]he law recognizes the right of workers and employers, without any restriction whatsoever and without prior authorization, to freely form trade union the purpose of which is to study, defend, develop and protect their interest, particularly those of an economic, industrial, commercial or agricultural nature; as well as the social, economic, cultural and moral development of their members. Any activity that is not likely to promote these objectives remains prohibited to trade unions.'

<sup>1171</sup> Article 6(1) of the Labour Code.

<sup>1172</sup> Article 6(2) of the Labour Code.

<sup>1173</sup> Article 13 (1) of the Labour Code provides that '[t]he registrar may cancel the registration of a trade union or employers' association if it is established: (a) that the certificate of the registration was obtained by fraud; (b) that the registered union or association has willfully violated any provision of this law or carried out non-statutory activities; (c) that the registered union or association has ceased to exist.'

to unilaterally decide on the relevance of the activity and purpose of a trade union with regards to its statutory purpose.

Decree No 93/576 of 15 July 1993 establishing the form of the certificate of registration of a trade union, and Decree No 93/574 of 15 July 1993 on the form of trade unions eligible for the registration process, further regulate the right to organise in the Cameroonian context and provide for the procedure of registration of a trade union as well as the form of a trade union's certificate of registration.

Article 157 of the Labour Code establishes employees' right to strike and employers' rights to lock-out, and provides for the definition of a protected strike and lock-out. Article 165 provides for sanctions for illegal strikes and lock-outs.

Chapter 2 of the Labour Code also entails a framework of provisions regulating collective disputes and offers measures for the conciliation<sup>1174</sup> and arbitration<sup>1175</sup> of collective disputes.

Finally, collective bargaining is provided for and regulated by both the Labour Code of 1992 and a set of relevant regulations.<sup>1176</sup> The notion of collective bargaining is defined by Article 52 of the Labour Code, and Chapter 4 of the Labour Code provides for the regulation of the processes of collective bargaining and collective agreements.<sup>1177</sup>

#### **6.4.1.3 Freedom of association, collective bargaining, and industrial relations in the Cameroonian context**

The Cameroonian context provides an illustration of dissimilarity between internationally established labour standards and national legislation providing for labour and employment. It is submitted that the existence of considerable discrepancies between national legislation and international standards creates the potential for MNC codes of conduct to improve labour and employment conditions in host countries via a commitment to abide by - and implement - international labour standards in areas where a specific national legal framework provides limited protection in terms of internationally established labour standards.

---

<sup>1174</sup> Articles 158-160 of the Labour Code.

<sup>1175</sup> Articles 161-164 of the Labour Code.

<sup>1176</sup> Including Decree No. 93/578 of 15 July 1993 determining substantial and procedural principles regulating collective bargaining agreements and Decision No. 097 / MINETPS / CAB of 20 August 2003 on the establishment, composition and functioning of the Synergy Committee for the Promotion of Social Dialogue.

<sup>1177</sup> Articles 52-60 of the Labour Code.

Considering Article 13 of the Cameroonian Labour Code, Pougoué and Tchakoua argue that this provision establishes the legality of an undue interference of political and/or administrative authorities in trade union activities.<sup>1178</sup> Pougoué and Tchakoua assert that it is unfortunate that the Cameroonian legal framework, instead of subjecting trade union activities to judicial scrutiny rather confer to an administrative institution, namely the trade union registrar, the role to independently and discretionarily review trade union activities, coupled with the power to cancel the certificate of registration and therefore disband trade unions.<sup>1179</sup>

It is submitted that MNCs have the potential, via their codes of conduct, to have a positive impact on the labour rights of their workforce, especially when such codes of conduct are to be implemented in a national context providing less protection than international law with regard to specific labour and employment rights. This could be done, for example, by committing to promote effective labour relation rights in countries, such as Cameroon, with a heightened potential of labour relations rights violations considering that a legal provision subjects freedom of association and trade union rights to an unwelcome scrutiny from an administrative authority answerable to a political authority.<sup>1180</sup>

It is submitted that British American Tobacco p.l.c., Nestlé S.A. and Total S.A. could undertake, in their codes of conduct, to respect international labour standards pertaining to freedom of association and other trade union rights, and therefore commit to engage in mutually beneficial social dialogue involving all relevant stakeholders in order to prevent the occurrence of an undue incursion of administrative and/or political authorities in trade union activities. These MNCs could in fact also commit not to partake in controversial State-Business relationships that often result in corporations seeking the intervention of governmental authorities in order to disrupt the natural course of social dialogue and collective bargaining, and/or end an on-going industrial action from employees' trade union,

---

<sup>1178</sup> Pougoué PG & Tchakoua JM 'Le difficile enracinement de la négociation en droit de travail camerounais' (2000) 00 *Afrilex* 8.

<sup>1179</sup> Pougoué PG & Tchakoua JM 'Le difficile enracinement de la négociation en droit de travail camerounais' (2000) 00 *Afrilex* 8.

<sup>1180</sup> See Temngah JN 'The Evolution of Trade Unionism and the Prospects for Alternatives to the Labour Question' in Yenshu Vubo E (ed) *Civil Society and the Search for Development Alternatives in Cameroon*(2008) 68-70.

whereas responsible corporations ought to only seek the state's intervention as a legitimate stakeholder of the industrial relation process.

Discussing the effectiveness of industrial relations in Cameroon, Pougoué and Tchakoua also observe that the collective bargaining process in Cameroon is dysfunctional and presents several flaws that undermine its purpose. Pougoué and Tchakoua assert that due to a very challenging regulatory context, collective bargaining actually struggles to take roots in the dynamics of industrial relation in Cameroon.<sup>1181</sup>

Employee representatives are usually unable to effectively negotiate with employers, especially during the processes of dismissal for economic and/or operational motives, as they are not entitled access to financials reports as well as other operational documents that could provide them with information on the actual situation of the corporation.<sup>1182</sup> It is submitted that codes of conduct ought to entail a commitment by MNCs operating in Cameroon to voluntarily empower unions and employees' representatives, allowing them to be able to effectively negotiate on behalf of the corporation's workforce. MNCs should not merely commit to respect local laws; they should also take the more proactive stance of committing to offer their employees the opportunity to enjoy internationally established standards of collective bargaining rights. Thus MNCs' codes of conduct ought to entail MNCs' commitment to create parallel or supplementary mechanisms facilitating the implementation of labour rights in a challenging regulatory context.<sup>1183</sup>

## 6.4.2 France

### 6.4.2.1 The Constitution and relevant international instrument

The Preamble of the French Constitution of 1946 establishes industrial relations rights, including the right to join a trade union,<sup>1184</sup> the right to strike,<sup>1185</sup> and also make provisions

---

<sup>1181</sup> Pougoué PG & Tchakoua JM 'Le difficile enracinement de la négociation en droit de travail camerounais' (2000) 00 *Afrilex* 1-2.

<sup>1182</sup> Pougoué PG & Tchakoua JM 'Le difficile enracinement de la négociation en droit de travail camerounais' (2000) 00 *Afrilex* 1-2.

<sup>1183</sup> See The World Bank Group *Company Codes of Conduct and International Standards: An Analytical Comparison* (2003) 11.

<sup>1184</sup> Paragraph 6 of the Preamble of the French Constitution of 1946.

<sup>1185</sup> Paragraph 7 of the Preamble of the French Constitution of 1946.

for the right of employees to participate to collective bargaining.<sup>1186</sup> Fundamental international instruments providing for these labour relations rights<sup>1187</sup> are also applicable in France by virtue of Article 55 of the Constitution of the Republic of France of 1958.

#### 6.4.2.2 Laws and regulations

The French legal framework establishing and regulating industrial relations rights is entrenched in the Labour Code Act 2007-329 of 2007 and a set of regulations providing for the implementation of these rights.

The French Labour Code recognises employees' right to create,<sup>1188</sup> join and participate in the activities of a trade union.<sup>1189</sup> Article L2111-1 broadens the scope of this right to include certain categories of government employees, notably government employees contracted under private law conditions.<sup>1190</sup> The legal framework in France recognises the right to strike of employees in the private and public sectors and only excludes a few categories of essential workers and security personnel, such as, soldiers<sup>1191</sup> and police officers.<sup>1192</sup> Employees are also protected against dismissal or discrimination based on their exercise of their right to strike.<sup>1193</sup>

Collective bargaining plays an important part in the dynamics of French industrial relations, thus the French labour framework focuses on promoting and facilitating collective bargaining. The right to collectively bargain is entrenched in and protected by the Labour Code. The Labour Code establishes the right for employees to directly and collectively negotiate working conditions at company, industry and/or national levels.<sup>1194</sup>

In order to ensure the effective implementation of collective bargaining rights, a National Commission for Collective Bargaining<sup>1195</sup> has been created by the French Labour Code. Its

---

<sup>1186</sup> Paragraph 8 of the Preamble of the French Constitution of 1946.

<sup>1187</sup> See 5.6.4.1 above.

<sup>1188</sup> Article L2141-4 of the Labour Code Act 2007-329 of 2007 (French Labour Code).

<sup>1189</sup> Article L2141-1 of the French Labour Code as amended by Article 6 of Act No 2008-496 of 27 May 2008.

<sup>1190</sup> Article L2111-1 of the French Labour Code

<sup>1191</sup> Article L4121-4 of the Defence Code, Order No. 2004-1374 of 20 December 2004 and Act No. 2005-1550 of 12 December 2005.

<sup>1192</sup> Article L411-4 of the Internal Security Code; Order No. 2012-351 of 12 March 2012.

<sup>1193</sup> Article L2511-1 of the Labour Code.

<sup>1194</sup> Articles L2281-1 and L2281-2 of the French Labour Code.

<sup>1195</sup> Translated from its French name Commission Nationale de la Négociation Collective.

purpose is to oversee the legal and regulatory aspects of collective agreements and to provide the Labour Minister with advice on how to improve collective bargaining.<sup>1196</sup>

### **6.4.3 South Africa**

Labour relations rights are well entrenched in the South African Constitution<sup>1197</sup> and labour legislation, and this is easily explained considering the important role played by trade unions in South Africa's political history.<sup>1198</sup>

#### **6.4.3.1 The Constitution and relevant international instruments**

Section 23 of the Bill of Rights deals with labour relations rights and therefore provides for both employees and employers' rights to form, join and participate in the activities of trade unions and employers' organisations, respectively.<sup>1199</sup> The right of assembly and demonstration is established by section 17 of the Bill of Rights that reads: 'Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.' Section 18 of the Bill of Rights establishes the freedom of association as an essential constitutional right. These constitutional rights are substantiated by a framework of international legal instruments providing for and regulating industrial relations rights.<sup>1200</sup>

#### **6.4.3.2 National legislation**

The Labour Relations Act 66 of 1995 (LRA) is the principal legal instrument providing for labour relations rights. Issues pertaining to the right to strike, as well as trade unions and collective bargaining rights for both employers and employees, are therefore addressed by the LRA, the purpose of which is to

'give effect to [...] the Constitution; to regulate the organisational rights of trade unions; to promote and facilitate collective bargaining at the workplace and at sectoral level; to regulate the right to strike and the recourse to lock-out in conformity with the Constitution; to promote employee participation in decision-making through the establishment of workplace forums'.<sup>1201</sup>

The LRA also creates several institutions facilitating and/or promoting collective bargaining. The role of these institutions is to facilitate interaction between employers and employees

---

<sup>1196</sup> Article L2271-1 of the Labour Code.

<sup>1197</sup> Section 23 of the Bill of Rights.

<sup>1198</sup> Du Toit D 'Collective Bargaining and Worker Participation' (2000) 21 *ILJ* 1544.

<sup>1199</sup> Section 23(2) and Section 23(3) of the Bill of Rights.

<sup>1200</sup> See 5.6.4.1 above.

<sup>1201</sup> Introduction of the LRA.

during the exercise of labour relations rights. Hence, the relevance and the importance of the roles played by institutions, such as, the Commission for Conciliation, Mediation and Arbitration,<sup>1202</sup> workplace forums,<sup>1203</sup> bargaining councils, and statutory councils.<sup>1204</sup>

#### 6.4.4 Conclusion

Freedom of association, collective bargaining, and labour relations rights are amongst the issues which are thoroughly provided for by the legal frameworks in Cameroon, France, South Africa, as well as internationally. The legal frameworks regulating these rights nevertheless vary in each of these national contexts and mostly differ as to their nature and scope.

Trade union rights for, instance, are comprehensively protected in South Africa and France but are vulnerable to administrative interference in Cameroon. The right to strike also, even though protected across all three legal frameworks, is not significantly addressed by the codes of conduct of BAT, Total S.A. and Nestlé S.A.<sup>1205</sup>

The CSR commitments of BAT, Total S.A. and Nestlé S.A. pertaining to freedom of association, collective bargaining, and industrial relations<sup>1206</sup> merely replicate principles entrenched in relevant international CSR and hard law instruments.<sup>1207</sup> Because they do not provide for any voluntary and substantial commitments to uphold specific industrial relation rights, it is submitted that the codes of conduct of BAT, Total S.A. and Nestlé S.A. are

---

<sup>1202</sup> Section 112 to Section 126 of the LRA. Benjamin P *Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)* Working Paper 47 (2013) 1 asserts that one of the aspect of the dual role of the CCMA is to 'mediate unresolved collective bargaining disputes ranging from disputes involving single employers to disputes arising out of sectoral bargaining in major sectors of the economy'.

<sup>1203</sup> Section 78 to Section 94 of the LRA. See Benjamin P *Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)* Working Paper No. 47 (2013) 30.

<sup>1204</sup> Bargaining councils are provided for by sections 27 to 38 of the LRA and statutory councils are regulated by sections 39 to 48 of the LRA. Coleman N *Towards New Collective Bargaining, Wage and Social Protection Strategies in South Africa - Learning from the Brazilian Experience* Working Paper 17 (2013) 69-70 argues that 'in relation to collective bargaining, the mix between voluntarism and state regulation tilted strongly in favour of voluntarism, and ultimately depended on the preparedness of employers to set up centralised bargaining forums. The compromise contained in the Labour Relations Act was therefore to result in an unwieldy combination, which would entrench, rather than challenge, the fragmented nature of South Africa's labour market, and labour relations framework. [...] The compromise in the Labour Relations Act (LRA) was to establish voluntarist bargaining councils as the main forum for collective bargaining, plus statutory councils, which had an element of "compulsion"'.

<sup>1205</sup> See 5.6.4.3 above.

<sup>1206</sup> See 5.6.4.3 above.

<sup>1207</sup> See 5.6.4.1 and 5.6.4.2 above.

deficient in their ability to effectively improve labour relations rights as enforced by the legal framework in these national contexts.

It is submitted that BAT, Total S.A. and Nestlé S.A. could effectively fulfil a CSR objective by introducing, in their CSR codes of conduct, a commitment to improve labour relations rights of their workforces, with a special focus on collective bargaining rights.<sup>1208</sup> In fact, considering the limited scope of application of the established collective bargaining framework, the effectiveness of collective bargaining as a tool for the promotion of workers interests is not optimally achieved globally, and within the context of several countries, including South Africa and Cameroon.<sup>1209</sup>

Despite the existence of an efficient legal framework promoting collective bargaining in South Africa, the South African collective bargaining context is also affected by a flaw that is observed globally, namely the absence of an inclusive bargaining structure covering the majority of workers, including informally employed workers or employees of SMEs, categories which are usually excluded from the collective bargaining processes.<sup>1210</sup> It has been argued that the above-mentioned shortcomings of collective bargaining create the opportunity for non-state actors, such as MNCs, to implement responsive regulation as a vehicle for the promotion of workers' rights;<sup>1211</sup> thus the desirability of BAT, Total S.A. and Nestlé S.A.'s commitment, in their codes of conduct, to create and implement inclusive bargaining structures for the purpose of facilitating the effectiveness of the collective bargaining process.

## **6.5 Working conditions**

### **6.5.1 Cameroon**

#### **6.5.1.1 The context**

The Cameroonian Labour Code of 1992 contains provisions aimed at ensuring that safe, fair and decent working conditions are implemented in the workplace. The Labour Code is

---

<sup>1208</sup> See Harrington AR 'Corporate Social Responsibility, Globalization, the Multinational Corporation, and Labor: An Unlikely Alliance' (2011) 75 *Albany Law Review* 494.

<sup>1209</sup> See ILO *Social Dialogue Indicators -International Statistical Inquiry 2008-09* (2011)11-14.

<sup>1210</sup> Du Toit D 'Situating domestic work in a changing global labour market' in Du Toit D (ed) *Exploited, undervalued - and essential: Domestic workers and the realisation of their rights* (2013) 23-24. See also Coleman N *Towards New Collective Bargaining, Wage and Social Protection Strategies in South Africa - Learning from the Brazilian Experience* Working Paper 17 (2013) 50.

<sup>1211</sup> See Du Toit D 'Situating domestic work in a changing global labour market' in Du Toit D (ed) *Exploited, undervalued - and essential: Domestic workers and the realisation of their rights* (2013) 21-26.

supplemented in this task by relevant legislation. The effectiveness of these legal instruments is nevertheless considered to be impeded by the societal impact of a combination of factors, including alarming unemployment rates, employment insecurity and the underemployment of youth.<sup>1212</sup>

### **6.5.1.2 The Constitution and international instruments**

The Cameroonian Constitution does not provide for the promotion of fair and decent working conditions. The Constitution only contributes indirectly to the amelioration of working conditions by referring to relevant international instruments, and by establishing the applicability in Cameroon of all international instruments duly ratified by the relevant national authority.<sup>1213</sup>

### **6.5.1.3 Laws and regulations**

#### **6.5.1.3.1 Duration of work**

Article 80 of the Cameroonian Labour Code regulates the duration of work, providing the following principles: The maximum duration of work is 40 hours per week,<sup>1214</sup> irrespective of the age or gender of the worker,<sup>1215</sup> except for work in agricultural and farming activities. The work week in agricultural and farming activities is a maximum of 48 hours.<sup>1216</sup>

Night work of women and children is prohibited,<sup>1217</sup> with exceptions being made for women holding managerial positions or whose job descriptions do not involve manual labour.<sup>1218</sup> The Labour Code also provides for the regulation of rest time and provides rules for the minimum period of rest for women and children<sup>1219</sup> as well as other workers.<sup>1220</sup>

Duration of work and rest periods are further regulated by Decree No 95/677/PM of 18 December 1995 which provides for exceptions to the statutory duration of work.

#### **6.5.1.3.2 Pay, remuneration and compensation**

---

<sup>1212</sup> ILO *Cameroon- Decent Work Country Programme (DWCP) 2010-2015* (2014) 1-2.

<sup>1213</sup> Article 45 of the Cameroonian Constitution.

<sup>1214</sup> Article 80(1) of the Labour Code.

<sup>1215</sup> Article 80(3) of the Labour Code.

<sup>1216</sup> Article 80(2) of the Labour Code.

<sup>1217</sup> Article 82(2) of the Labour Code.

<sup>1218</sup> Article 82(3) of the Labour Code.

<sup>1219</sup> Article 82(1) of the Labour Code.

<sup>1220</sup> Article 88(1) of the Labour Code.

Title 4 of the 1992 Labour Code deals with wages, providing for the regulation of a minimum wage,<sup>1221</sup> salary deductions<sup>1222</sup> and salary claims;<sup>1223</sup> and establishing the principle of ‘equal wages for equal work’, thereby preventing salary discrimination in Cameroonian workplaces.<sup>1224</sup>

Article 1 of Decree No 2008/2115/PM, revaluing the guaranteed minimum wage (SMIG),<sup>1225</sup> establishes a minimum monthly salary of 28.216 FCFA per month.<sup>1226</sup> The guaranteed minimum wage is further defined<sup>1227</sup> and regulated by Decree No 0021/MINTSS/SG/DRP/SDCS of 2008 that expands the scope of application of the SMIG to include all categories of employees, in all sectors of activity.<sup>1228</sup>

Decree No 94/197/PM provides rules and procedures pertaining to salary deductions with the intention of protecting employees’ earnings.<sup>1229</sup>

#### **6.5.1.3.3 Occupational health and safety**

Title 6 of the 1992 Labour Code contains several articles providing for the regulation of health and safety in the workplace.<sup>1230</sup> The Labour Code nonetheless only offers broad guidelines, and detailed principles addressing occupational health and safety issues are provided for by regulation,<sup>1231</sup> including Decree No 051/MINTSS/S6/DSST of 2009 dealing with occupational diseases and Decree No 93/210/PM of 1993 providing for the establishment and functioning of a National Commission on Occupational Health and Safety.

#### **6.5.1.3.4 Social security rights**

The Cameroonian Labour Code of 1992 does not address the issue of social security, and only provides random provisions addressing specific aspects of social security in

---

<sup>1221</sup> Article 62(1) of the Labour Code.

<sup>1222</sup> Articles 75-77 of the Labour Code.

<sup>1223</sup> Articles 70-73 of the Labour Code.

<sup>1224</sup> Article 61(2) of the Labour Code.

<sup>1225</sup> Acronym based for the official French term for guaranteed minimum wage: Salaire Minimum Interprofessionnel Garanti (SMIG).

<sup>1226</sup> Decree No 2008/2115/PM of 24 June 2008 revaluing the guaranteed minimum wage. On 25 July 2014, the SMIG was increased to 36 270F FCFA via a decree from the Prime Minister Office.

<sup>1227</sup> Article 1 of Decree No 0021/MINTSS/SG/DRP/SDCS of 30 June 2008 establishing the scope of application of the guaranteed minimum wage (SMIG).

<sup>1228</sup> Article 2 of Decree No 0021/MINTSS/SG/DRP/SDCS of 30 June 2008 establishing the scope of application of the guaranteed minimum wage (SMIG).

<sup>1229</sup> Decree No 94/197/PM of 9 May 1994 on salary deductions.

<sup>1230</sup> Articles 95-103 of the Labour Code.

<sup>1231</sup> See article 98(3), 99(2), 99(4) and 100(3) of the Labour Code.

Cameroon.<sup>1232</sup> The legal framework providing for social security rights in Cameroon is therefore essentially underpinned by an assortment of laws and regulations addressing social security issues; including Act No 67 / LF / 07 of 1967 establishing a Family Benefits Code, Act No. 67 / LF / 08 of 1967 creating the National Social Security Fund (Caisse Nationale de Prévoyance Sociale) as an independent body in charge of managing social security in Cameroon, and Act 69 / LF / 18 of 1969 establishing an old age, disability and death social insurance scheme.

## **6.5.2 France**

### **6.5.2.1 The Constitution and international instruments**

The French Constitution provides for the promotion of fair and decent working conditions. The Preamble of the 1946 Constitution establishes the foundations of the rights to social security, health and safety at work, rest, and leisure activities. It also provides for the protection of vulnerable workers, namely, children, women and older persons.<sup>1233</sup>

The Constitution of 1958 also indirectly contributes to the amelioration of working conditions in France by establishing the applicability in France of duly ratified and relevant international instruments providing for working conditions.<sup>1234</sup>

### **6.5.2.2 National legislation**

The French context is characterised by the existence of a framework of legislation supplemented by several industry and/or nationwide collective agreements providing for issues related to working conditions.

#### **6.5.2.2.1 Duration of work**

Working hours in France are provided for by Article L3121-10 of the Labour Code establishing a 35 hour work week.<sup>1235</sup> The Labour Code deals extensively with working

---

<sup>1232</sup> For instance, article 84(5) of the Labour Code provide for social security rights of women during maternity leave. Article 104(1) defines the role /mission and provides for the organisation and functioning of a Labour and Social Insurance Administration within governmental structures.

<sup>1233</sup> The Preamble of the Constitution of the Republic of France of 1946, para 10 & 11 reads: 'The Nation shall provide the individual and the family with the conditions necessary to their development. It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society.'

<sup>1234</sup> See 5.6.5.1 above.

<sup>1235</sup> Article L3121-10 of the Labour Code.

hours and provides for legal working hours, maximum working hours, overtime, compensation for overtime, night work, and duration of work for children.<sup>1236</sup>

#### **6.5.2.2.2 Pay, remuneration and compensation**

Book II of Part III of the Labour Code provides for the regulation of salaries and benefits, prohibiting salary discrimination<sup>1237</sup> and establishing principles for the calculation of a minimum wage<sup>1238</sup> that is considered to be amongst the highest in Europe and within OECD members.<sup>1239</sup>

#### **6.5.2.2.3 Occupational health and safety**

Occupational health and safety is comprehensively provided for by the French legal framework.

Part IV of the French Labour Code exclusively addresses the issue of occupational health and safety; thus it contains a framework of provisions regulating workplace health and safety in detail.<sup>1240</sup>

#### **6.5.2.2.4 Social security rights**

Social security is a fundamental right entrenched in the French Constitution and provided for and regulated by the French legal framework.<sup>1241</sup> The Social Security Code<sup>1242</sup> is the main instrument providing for the regulation of social security in France. The Social Security Code deals with all aspects of social security rights in France, in correlation with relevant and applicable European social security instruments.<sup>1243</sup> The Social Security Code is

---

<sup>1236</sup> See Part III, Book I, Title I & II of the Labour Code as updated and modified by Act No. 2008-789 of 20 August reforming social democracy and working hours.

<sup>1237</sup> Article L3221-2 of the Labour Code.

<sup>1238</sup> Article L3231-2 to Article L3231-12 of the Labour Code.

<sup>1239</sup> Eurostat *Minimum Wages: Eur/Month-January 2014*(2014) European Commission at <http://epp.eurostat.ec.europa.eu/tgm/graph.do?tab=graph&plugin=0&language=en&pcode=tps00155&toolbox=type> (accessed 25 September 2014).

<sup>1240</sup> See Book I to Book VIII of Part IV of the French Labour Code.

<sup>1241</sup> See para 10 & 11 of the Preamble of the Constitution of the Republic of France of 1946.

<sup>1242</sup> The French Social Security Code is in fact a collection of legislative and regulatory dealing with social security.

<sup>1243</sup> Notably Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems; as well as Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

supplemented by specialised Codes dealing with specific social security rights, such as, the Code on Rural and Sea Fishing Affairs<sup>1244</sup> that provides for social security rights of farmers and farmworkers; and the Code of Social Action and Families<sup>1245</sup> that provides social assistance to unemployed individuals and disadvantaged families.

### **6.5.3 South Africa**

#### **6.5.3.1 The Constitution and relevant international instruments**

The South African Constitution, 1996 contains principles directly providing for the promotion of fair and decent working conditions. Section 23(1) provides for the right to fair labour practices and section 27 (1) (c) provides that everyone has the right to have access to ‘social security, including, if they are unable to support themselves and their dependents, appropriate social assistance’.<sup>1246</sup>

Section 27(2) of the Constitution places a positive obligation upon the state to take all reasonable legislative and other measures to achieve the progressive realisation’ of the right of access to social security.

The South African Constitution also contributes to the amelioration of working conditions by establishing the applicability in South Africa of duly ratified international instruments<sup>1247</sup> providing for fair and decent working conditions.<sup>1248</sup>

#### **6.5.3.2 National legislation**

Working conditions in South Africa are primarily provided for by the BCEA. The legal framework also provides for the regulation of working conditions, in specific industries, by collective agreements<sup>1249</sup> or a sectoral determination.<sup>1250</sup> A sectoral determination is a legal instrument determined by the Minister of Labour, in accordance with the BCEA, for the

---

<sup>1244</sup> Updated version of 23 October 2014.

<sup>1245</sup> Decree No. 56-149 of 24 January 1956 codifying legislation on family and social assistance

<sup>1246</sup> See Malherbe K & Wakefield L ‘The effect of women’s care-giving role on their social security rights’ (2009)13(2) *Law, Democracy & Development* 47.

<sup>1247</sup> Section 231 (4) of the Constitution of the Republic of South Africa, 1996.

<sup>1248</sup> See 5.6.5.1 above.

<sup>1249</sup> Section 23 of the LRA.

<sup>1250</sup> Section 51(1) of the BCEA.

purpose of establishing basic conditions of employment for employees in a specific sector not yet regulated by a collective agreement.<sup>1251</sup>

### 6.5.3.2.1 Duration of work

Chapter II of the BCEA provides for the regulation of working hours,<sup>1252</sup> establishing a maximum working week of 45 hours<sup>1253</sup> and providing for overtime,<sup>1254</sup> meal intervals,<sup>1255</sup> and daily and weekly rest periods.<sup>1256</sup>

Chapter III of the BCEA provides for different types of leave and recognises and regulates employees' rights to annual leave,<sup>1257</sup> sick leave,<sup>1258</sup> maternity leave<sup>1259</sup> and family responsibility leave.<sup>1260</sup>

Despite its comprehensiveness and its extensive coverage of employees' rights relating to the duration of work and leaves, the BCEA presents a major flaw as it omits to provide for paid maternity leave. Pregnant employees are well protected against discrimination in the workplace and are entitled to maternity leave<sup>1261</sup> as well as maternity benefits offered by the Unemployment Insurance Fund (UIF).<sup>1262</sup> The South African legal framework does not create an obligation for employers to offer paid maternity leave to workers, thus employers have the latitude to decide whether or not to provide paid leave to their workers, and this often results in employees facing a loss of income for the period of their maternity leave.<sup>1263</sup>

The lack of statutory provision for paid maternity leave highlights the potential of CSR codes of conduct to voluntarily promote decent and better working conditions than those provided

---

<sup>1251</sup> Section 51 of the BCEA.

<sup>1252</sup> Chapter 2, Section 66 of the BCEA.

<sup>1253</sup> Section 9 of the BCEA.

<sup>1254</sup> Section 10 of the BCEA.

<sup>1255</sup> Section 14 of the BCEA.

<sup>1256</sup> Section 15 of the BCEA.

<sup>1257</sup> Sections 20-21 of the BCEA.

<sup>1258</sup> Section 22 of the BCEA.

<sup>1259</sup> Section 25 of the BCEA.

<sup>1260</sup> Section 27 of the BCEA defines family responsibility leave as a leave an 'employee is entitled to take—

(a) when the employee's child is born;

(b) when the employee's child is sick; or

(c) in the event of the death of—

(i) the employee's spouse or life partner; or

(ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.'

<sup>1261</sup> Section 25(7) of the BCEA.

<sup>1262</sup> In terms of the Unemployment Insurance Act 63 of 2001.

<sup>1263</sup> Kehler J 'Women and Poverty: The South African Experience' (2001) 3 (1) *Journal of International Women's Studies* 49.

for by the minimum legal requirement. It is therefore submitted that BAT, Total S.A. and Nestlé S.A., in their respective codes of conduct, could undertake to offer paid maternity to their employees.

#### **6.5.3.2.2 Pay, remuneration and compensation**

Chapter 4 of the BCEA regulates wages and provides rules for the calculation of remuneration,<sup>1264</sup> methods and procedures for the payment of remuneration,<sup>1265</sup> as well as for salary deductions.<sup>1266</sup> Minimum rates of remuneration vary from industry to industry and are regulated by sectoral determinations established by the Minister of Labour.<sup>1267</sup> Sectoral determinations only exist in a few specific industries;<sup>1268</sup> thus the vulnerability of workers employed in an industry not covered by a sectoral determination, unless such industry, or any specific corporation, is regulated by a collective agreement.

The recent Employment Equity Amendment Act<sup>1269</sup> establishes the principle of equal pay for equal work, and provides for the prohibition of salary discrimination.<sup>1270</sup>

#### **6.5.3.2.3 Occupational health and safety**

The Occupational Health and Safety Act 85 of 1993 (OHSA) regulates health and safety in the workplace. The purpose of OHSA is to

‘provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to establish an advisory council for occupational health and safety; and to provide for matters connected therewith’.<sup>1271</sup>

---

<sup>1264</sup> Section 35 of the BCEA.

<sup>1265</sup> Section 32 of the BCEA.

<sup>1266</sup> Section 34 of the BCEA.

<sup>1267</sup> Section 55(4) of the BCEA.

<sup>1268</sup> Nine in total, including the domestic work sector, contract cleaning, private security sector, wholesale and retail, farm worker sector, forestry sector, taxi sector, learnerships, and finally Children in the performance of advertising, artistic and cultural activities. See UCT Development Policy Research Unit *Addressing the Plight of Vulnerable Workers: The Role of Sectoral Determinations* (2010) 84.

<sup>1269</sup> The Employment Equity Amendment Act No. 47 of 2013

<sup>1270</sup> Section 3(b) of the Employment Equity Amendment Act No. 47 of 2013.

<sup>1271</sup> Preamble of the Occupational Health and Safety Act 85 of 1993.

OHSA thus establishes a comprehensive framework of health and safety requirements underpinned by the international framework of hard and soft law instruments providing for occupational health and safety.

#### **6.5.3.2.4 Social security rights**

Social security rights are entrenched in the Constitution<sup>1272</sup> and regulated by the Social Assistance Act 13 of 2004, the South African Social Security Agency Act 9 of 2004, Compensation for Occupational Injuries and Diseases Act 130 of 1993, Pension Funds Act 24 of 1956 and the Unemployment Insurance Act 63 of 2001.

Malherbe and Wakefield note:

‘South African social security can generally be divided into two branches: social assistance and social insurance. Social assistance in South Africa refers to tax based, flat rate and means tested benefits administered by the state and payable to select categories of persons in need of income support, for example, grants paid to older persons. Social insurance, on the other hand, comprises of contributory schemes that provide income related benefits to employees in the event of a specific social risk occurring, for example, unemployment benefits payable upon loss of employment, or benefits payable upon retirement.’<sup>1273</sup>

A major flaw of the social security system in South Africa (as well as other African countries, such as Cameroon) is the ‘employment-centred’ approach that focuses on formal employment and results in the exclusion of informal employment from the scope of application of the social security system.<sup>1274</sup>

Another important shortcoming of the South African social security system pertains to the lack of a comprehensive approach to providing social security benefits to workers. A pertinent example in this case is the failure by the South African legal framework to ensure the effectiveness of the retirement funding system via the establishment of a statutory obligation for workers to join and contribute to a retirement fund,<sup>1275</sup> unlike Cameroon and

---

<sup>1272</sup> Section 27 of the Constitution of the Republic of South Africa, 1996.

<sup>1273</sup> Malherbe K & Wakefield L ‘The effect of women’s care-giving role on their social security rights’ (2009)13(2) *Law, Democracy & Development* 47.

<sup>1274</sup> Malherbe K ‘Implementing domestic workers’ social security rights in a framework of transformative constitutionalism’ in Du Toit D (ed) *Exploited, undervalued - and essential: Domestic workers and the realisation of their rights* (2013) 119-120.

<sup>1275</sup> Malherbe K ‘Implementing domestic workers’ social security rights in a framework of transformative constitutionalism’ in Du Toit D (ed) *Exploited, undervalued - and essential: Domestic workers and the realisation of their rights* (2013) 132.

France where such statutory obligations are established. The South African social security legal framework is also characterised by the absence of a positive duty for employers to establish or join retirement funds for their employees, as well as the absence of statutory measures to compel occupational fund members to preserve their savings, and this often results in workers lacking adequate savings on retirement.<sup>1276</sup>

It is submitted that BAT, Total S.A. and Nestlé S.A.'s CSR codes of conduct could illustrate these MNCs' CSR commitment to improve the working conditions of their workforces via a commitment to provide effective social insurance coverage to their employees by securing occupational retirement fund membership for all employees.

#### **6.5.4 Conclusion**

Occupational health and safety is the only issue pertaining to working conditions that is provided for by the codes of conduct of BAT, Total S.A. and Nestlé S.A.<sup>1277</sup> Issues pertaining to the duration of work, pay, remuneration and compensation (minimum wage) and social security rights are not covered by these codes of conduct.<sup>1278</sup> The legal frameworks in Cameroon, France and South Africa provide for the regulation of these issues and relevant international instruments<sup>1279</sup> are locally applicable in accordance with specific provisions of each country's Constitution.<sup>1280</sup> It is therefore submitted that the codes of conduct of BAT, Total S.A. and Nestlé S.A. have little effect on the amelioration of working conditions for BAT, Total S.A. and Nestlé S.A. employees in Cameroon, France and South Africa.

### **6.6 Employment security**

#### **6.6.1 Cameroon**

##### **6.6.1.1 The Constitution and relevant international instruments**

---

<sup>1276</sup> Malherbe K 'Implementing domestic workers' social security rights in a framework of transformative constitutionalism' in Du Toit D (ed) *Exploited, undervalued - and essential: Domestic workers and the realisation of their rights* (2013) 132-133.

<sup>1277</sup> See 5.6.5.3 above.

<sup>1278</sup> See 5.6.5.3 above.

<sup>1279</sup> See 5.6.5.1 above.

<sup>1280</sup> Namely Section 45 of the Cameroonian Constitution, Section 55 of the French Constitution and Section 231 of the South African constitution.

Employment security is a topic that is not specifically addressed by the Cameroonian Constitution. The Preamble of the Cameroonian Constitution only briefly refers to the issue of employment security by providing: ‘Every person shall have the right and the obligation to work.’<sup>1281</sup> Cameroon is nevertheless a signatory to essential international instruments and ILO conventions promoting job security as an essential labour right.<sup>1282</sup>

### 6.6.1.2 Laws and regulations

The following sections of the Labour Code provide for the recognition and regulation of the right to job security in Cameroon. The Cameroonian Labour Code recognises citizens’ right to employment security and establishes the right to work as a fundamental right afforded to all citizens.<sup>1283</sup> The Labour Code also imposes on the State a duty to ensure employment security for all citizens.<sup>1284</sup>

When dealing with an employment contract and its provisions, the Labour Code acknowledges the possibility for an employer and an employee to enter into a contract of employment that may be concluded for a specified or unspecified duration.<sup>1285</sup> The Labour Code also limits the use of fixed term contracts; thus a worker therefore automatically becomes a permanent worker if his or her fixed term contract is renewed more than once.<sup>1286</sup>

The Cameroonian Labour Code nevertheless allows the use of categories of workers generally afforded less protection against job insecurity and instability, namely occasional,<sup>1287</sup> seasonal<sup>1288</sup> and temporary workers.<sup>1289</sup> These categories of workers are excluded from the scope of application of Article 25 of the Labour Code.<sup>1290</sup>

---

<sup>1281</sup> Preamble of the Constitution of the Republic of Cameroon Act No 96/06 of 1996.

<sup>1282</sup> See ILO *Cameroon- Decent Work Country Programme (DWCP) 2010-2015* (2014).

<sup>1283</sup> Article 2 of the Labour Code.

<sup>1284</sup> Article 2 of the Labour Code.

<sup>1285</sup> Article 25(1) of the Labour Code.

<sup>1286</sup> Article 25(3) of the Labour Code.

<sup>1287</sup> Articles 25(4)(b) describes occasional work as ‘an occasional job aimed at coping with unexpected growth in the activities of the company as a result of certain economic conditions or entailing urgent works to prevent imminent accidents, organizing emergency measures or repairing company equipment, facilities or buildings which are dangerous for the workers’.

<sup>1288</sup> Articles 25(4) (c) describes seasonal work as ‘a seasonal job generated by the cyclical or climatic nature of company activities’.

<sup>1289</sup> Articles 25(4) & 25(5) of the Labour Code.

<sup>1290</sup> Article 25(4) of the Labour Code.

The Labour Code allows for the abovementioned categories of workers to be hired and placed with an employer by labour brokers,<sup>1291</sup> provided certain minimum conditions are met. The protection afforded to temporary, seasonal and occasional workers by the Labour Code only entails the prohibition of the employment for a period exceeding one year, by the same employer, of a fixed term worker from a labour broker.<sup>1292</sup>

The contracts between an employee and the labour broker and between the labour broker and the employer using the services of such employee must both be written.<sup>1293</sup> Employers are allowed to use the services of labour brokers only for temporary jobs, and only in the specific instances provided for in Article 25 (4) of the Labour Code.<sup>1294</sup>

The Labour Code strictly regulates the practice of probationary hiring and limits the duration of the probation period - including all renewals - to a statutory maximum period of six months for general employees and eight months for managerial staff.<sup>1295</sup> However, time elapsed during the recruitment procedure, including time spent travelling to the location of employment and time spent during the training and placement of the worker, is not to be included in the maximum duration of the probation period.<sup>1296</sup> The continuation of the employment relationship beyond such period without the conclusion of a new contract transforms the probation contract into a contract of permanent employment.<sup>1297</sup>

The Labour Code also provides for the protection of other vulnerable categories of employees, such as, apprentices<sup>1298</sup> and employees working for a third party doing sub-contracted or outsourced work for a main employer. In case of the insolvency of the third party, and depending on the relevant circumstances, the main employer may be liable for the salary of these employees<sup>1299</sup> and possibly all the duties and obligations of the insolvent third party toward these employees.<sup>1300</sup>

---

<sup>1291</sup> Article 26(1) of the Labour Code. Labour brokers are labelled 'temporary job contractor' by the Labour Code.

<sup>1292</sup> Article 26(6) of the Labour Code.

<sup>1293</sup> Article 26(5) & Article 26(6) of the Labour Code.

<sup>1294</sup> Article 26(3) of the Labour Code.

<sup>1295</sup> Article 28(2) of the Labour Code.

<sup>1296</sup> Article 28(3) of the Labour Code.

<sup>1297</sup> Article 28(5) of the Labour Code.

<sup>1298</sup> Article 45-47 of the Labour Code.

<sup>1299</sup> Article 49(2) of the Labour Code.

<sup>1300</sup> Article 49(1) of the Labour Code.

The following regulations are relevant to the issue of employment security, and supplement the Labour Code in dealing with issues such as dismissal, demotion, or the termination of the employment contract:<sup>1301</sup> Order No 015/MTPS/SG/CJ of 26 May 1993 on the conditions and duration of the notice period; Order No 016/MTPS/SG/CJ of 26 May 1993 providing for the allocation and calculation of severance pay; Order No 017/MTPS/SG/CJ of 26 May 1993 providing for the probationary period; and Decree No 021/MTPS/SG/CJ of 26 May 1993 providing for the termination of employment for economic reasons.

The Cameroonian legal framework providing for employment security rights is flawed due to the fact that it has not managed to prevent the current trend of massive importation of unskilled labour by MNC entering the Cameroonian market, often in contradiction with contractual obligations contained in investment agreements entered into with Cameroonian authorities.<sup>1302</sup> Chinese and Vietnamese MNCs operating in Cameroon have recently been accused of massively importing unskilled labour into Cameroon, thereby causing disruption of the labour market and compromising job security expectations of nationals.<sup>1303</sup>

Considering that Cameroonian authorities are yet to find a lasting and effective solution to the issue of importation of unskilled labour by MNCs,<sup>1304</sup> CSR codes of conduct could provide an alternative to traditional regulation as instruments through which relevant MNCs could undertake to correct the deficiencies of the local legal framework. It is submitted that by committing not to exploit the deficiencies of the local legal framework, MNCs CSR codes of conduct could contribute to the improvement of the labour market, and improve employment security in host countries.

## 6.6.2 France

### 6.6.2.1 The Constitution and relevant international instruments

---

<sup>1301</sup> Chapter 1 of Part 3 of the Labour Code provide for the regulation of the employment contract.

<sup>1302</sup> Konings PJJ *The politics of neoliberal reforms in Africa: State and civil society in Cameroon* (2011) 179.

<sup>1303</sup> Aninpah Khan S & Menjo Baye F *China-Africa Economic Relations: The Case of Cameroon* (2008) 9. See also *Business in Cameroon Telephone Company, Viettel Cameroon, accused of importing labour heavily from Vietnam* (2014) <http://www.businessincameroon.com/telecom/3105-4858-telephone-company-viettel-cameroon-accused-of-importing-labour-heavily-from-vietnam> (accessed 2 December 2014).

<sup>1304</sup> Ghogomu PM 'Communiqué à l'issue du Conseil de Cabinet du Jeudi 30 Octobre 2014'(2014) Services du Premier Ministre Office : République du Cameroun. [http://www.spm.gov.cm/uploads/media/COMMUNIQUE\\_CONSCAB\\_OCTOBRE\\_2014\\_FINAL.pdf](http://www.spm.gov.cm/uploads/media/COMMUNIQUE_CONSCAB_OCTOBRE_2014_FINAL.pdf) (accessed 1 December 2014).

Paragraph 5 of the Preamble of the 1946 Constitution states that '[e]ach person has the duty to work and the right to employment' and is considered to be establishing a constitutional right to work/right to employment in France.<sup>1305</sup>

### 6.6.2.2 Laws and regulations

Part I of the French Labour Code contains a framework of measures providing for the regulation of the employment relationship between employer and employee.

The Labour Code provides for issues related to the recruitment of job applicants;<sup>1306</sup> the duration of the contract of employment;<sup>1307</sup> the transfer of the contract of employment<sup>1308</sup> and the termination of employment, including dismissals<sup>1309</sup> and retrenchments for redundancy, economic and/or operational reasons.<sup>1310</sup> Title V of Part I of the French Labour Code also provides for a stricter regulation of the employment relationship between employers and temporary or seasonal workers, as well as workers hired from labour brokers. The Labour Code is supplemented by collective agreements in different sectors of activity, as well as relevant legislative and regulatory instruments.<sup>1311</sup>

French labour legislation provides effective measures for the purpose of ensuring employment security and labour market stability,<sup>1312</sup> yet unemployment rates remains high in France, especially for young individuals.<sup>1313</sup> It has been established that young immigrants and descendants of immigrants in France are more likely to become or remain unemployed due to the impact of latent discrimination and racism observed in the French society.<sup>1314</sup>

---

<sup>1305</sup> Astier I 'Droit à l'emploi et magistratures sociales : vers une politique des situations ?' (2000) 44/45 *Droit et Société* 149.

<sup>1306</sup> Articles L1221-6 to L1221-9.

<sup>1307</sup> Articles L1221-1 to L1221-5.

<sup>1308</sup> Articles L1224-1 to L1224-4.

<sup>1309</sup> Article L1231-1 to L1232-14.

<sup>1310</sup> Article L1233-1 to Article L1233-91.

<sup>1311</sup> These includes Act 2014-384 of 2014 on real economy, the 2011 Convention on the Contract for employment securitisation, Decree No. 2013-554 of 27 June 2013 on the procedure for collective retrenchment for economic reasons, and Decree No. 2008-715 of 2008 on various measures relating to the modernisation of the labour market.

<sup>1312</sup> Especially considering that the French labour market better managed to absorb the impact of the 2008 recession and currently is in a better situation than several European counterparts. See Bentolila S et al 'Two-Tier Labour Markets in the Great Recession: France Versus Spain.' (2012) 122 (562) *The Economic Journal* 155-187.

<sup>1313</sup> Cahuc P et al 'Youth unemployment in old Europe: the polar cases of France and Germany' (2013) 2(18) *IZA Journal of European Labor Studies* 2-3.

<sup>1314</sup> Aeberhardt R et al 'Wages and employment of French workers with African origin' (2010) 23 (3) *Journal of Population Economics* 903-904.

The French legal framework does provide several measures for the purpose of preventing and curbing employment discrimination targeting disadvantaged minorities,<sup>1315</sup> yet it has been suggested that MNCs ought to contribute to the promotion of employment security for disadvantaged minorities by taking proactive CSR stances that address the barriers faced by young immigrants and descendants of immigrants when seeking employment. It has been argued that it is in fact a corporation's social responsibility to adapt their recruiting practices to the local context for the purpose of facilitating the recruitment of young immigrants and descendants of immigrants.<sup>1316</sup> It is submitted that MNCs' CSR codes of conduct could therefore serve as instruments for the implementation of recruitment principles that proactively address the issue of employment security faced by young immigrants and descendants of immigrants and other disadvantaged groups, by voluntarily instituting mechanisms levelling the playing field thus allowing a fairer integration of these minorities into employment.

### **6.6.3 South Africa**

#### **6.6.3.1 The Constitution and relevant international instruments**

Section 23(1) of the Constitution entrenches the right to fair labour practices and this constitutional principle has an overarching scope that provides employees and job applicants with protection against unfair labour practices<sup>1317</sup> in relation to employment security, and against unfair dismissals.<sup>1318</sup>

#### **6.6.3.2 Laws and regulations**

Employment security is well provided for by the South African legal framework. The LRA is the principal instrument providing for employment security in the South African workplace.

---

<sup>1315</sup> See 6.3.2 above.

<sup>1316</sup> Stokkink D & Maurice-Demourieux N 'RSE, diversité et intégration des migrants : Enjeux européens.' (2011)28 *Diversités et Citoyennetés- La Lettre de l'IRFAM* 14-17.

<sup>1317</sup> Article 186(2) of the LRA defines an unfair labour practice as 'any unfair act or omission that arises between an employer and an employee involving –(a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee; (b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;(c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act'.

<sup>1318</sup> Article 186(1) of the LRA.

The LRA addresses the issues of unfair suspension;<sup>1319</sup> transfer of contract of employment;<sup>1320</sup> and dismissal,<sup>1321</sup> including unfair dismissals.<sup>1322</sup> The LRA also provides for the regulation of the activities of temporary employment services.<sup>1323</sup>

The BCEA also plays an important role as it provides for several aspects of employment security, including the termination of an employment relationship.<sup>1324</sup>

The Skills Development Act 97 of 1998 and the Employment Services Act 4 of 2014 play a crucial role in employment security as it aims to improve the employability of the South African workforce.<sup>1325</sup>

Cheadle asserts that the South African approach to employment security, as implemented in both the LRA and the BCEA, ought to be underpinned by the principle of regulated flexibility, the purpose of which is to strike a balance between employers' interest in flexibility and employees' interest in employment security.<sup>1326</sup>

The effective implementation of the principle of regulated flexibility in the South African context would result in effective employment security protection being provided to those who need it most due to their vulnerability.<sup>1327</sup> It has in fact been observed that the protection offered by the South African legal framework to certain categories of workers is deficient as the BCEA omits to provide for vulnerable categories of workers, such as employees working less than 24 hours a month for an employer.<sup>1328</sup>

Such a reduced scope of application of the BCEA is in contrast with globally observed current trends of labour casualisation<sup>1329</sup> and has the potential to generate negative outcomes for employees when faced by unscrupulous employers aiming to avoid compliance with

---

<sup>1319</sup> Section 186 (2)(b) of the LRA.

<sup>1320</sup> Section 197.

<sup>1321</sup> Sections 185-197 LRA.

<sup>1322</sup> Sections 187-188 & 189.

<sup>1323</sup> Section 198.

<sup>1324</sup> Section 36-42.

<sup>1325</sup> Section 2(1) of the Skills Development Act 97 of 1998.

<sup>1326</sup> Cheadle H 'Regulated Flexibility: Revisiting the LRA and the BCEA' (2006) 27 *Industrial law Journal* 668.

<sup>1327</sup> Cheadle H 'Regulated Flexibility: Revisiting the LRA and the BCEA' (2006) 27 *Industrial law Journal* 663-664.

<sup>1328</sup> The BCEA expressly exclude employees working less than 24 hours a month for an employer from its scope of application. See BCEA Section 6 (1) (c) on the 'Regulation of working time', Section 19 (1) on the regulation of 'Leave', Section 28(1) on 'Particulars of employment and remuneration' and section 36 on the regulation of the 'Termination of employment'.

<sup>1329</sup> Standing G 'Economic insecurity and global casualization: Threat or promise' (2008) 88 *Social Indicators Research* 19.

BCEA requirements.<sup>1330</sup> In fact, the issue of employment security and labour market stability may be exacerbated in South Africa due to the possible casualisation of employment by employers seeking to escape the scope of application of the BCEA, thus this is an issue that ought to be addressed in corporate codes of conducts.<sup>1331</sup>

The externalisation of labour by employer seeking to use ‘cheap labour’ via labour brokers and sub-contractors is also a major issue that affect the employment security and overall working conditions of the South African workforce:

‘There can be no doubt that the combination of casualisation and labour broking is one of the forces destabilising standard employment in South Africa and it has been called “the motor for the development of externalisation” and that the reforms currently called for are long overdue. Not only does it promote job insecurity and erode basic standards, but it marginalises the potential balancing power of trade unions and collective bargaining.’<sup>1332</sup>

It is submitted that MNCs CSR commitments could include a commitment to avoid lowering working conditions by avoiding compliance with the BCEA through the casualisation or externalisation of labour, and more importantly, the commitment to improve employment security and employment stability of the MNC workforce.

#### 6.6.4 Conclusion

Employment security is one of the labour issues least addressed by the Codes of Conduct of BAT, Total S.A. and Nestlé,<sup>1333</sup> whereas employment security is comprehensively provided for by the national legal frameworks of Cameroon, France and South Africa, including international legal instruments<sup>1334</sup> applicable in these countries in accordance with the provisions of each country’s Constitution.<sup>1335</sup> It is therefore submitted that the Codes of Conduct of BAT, Total S.A. and Nestlé S.A. do not add substance to the legal framework regulating employment security rights in these countries, and therefore do not impact on the

---

<sup>1330</sup> Bodibe O *The extent and effects of casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe* (2006) 10-12.

<sup>1331</sup> Barrientos S & Visser M\_ ‘South African Horticulture: Opportunities and Challenges for Economic and Social Upgrading in Value Chains’ (2013) *Social Sciences Research Network* 1-44. See also Bodibe O *The extent and effects of casualisation in Southern Africa: Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe* (2006) 67-68.

<sup>1332</sup> Le Roux R *World of Work: Form of Engagement in South Africa* (2009)24.

<sup>1333</sup> See 5.6.6.3 above.

<sup>1334</sup> See 5.6.6.1 above.

<sup>1335</sup> Namely Section 45 of the Cameroonian Constitution, Section 55 of the French Constitution and Section 231 of the South African Constitution.

achievement of employment security of BAT, Total S.A. and Nestlé workers in Cameroon, France and South Africa.



## CHAPTER 7

### CONCLUSION

#### 7.1 INTRODUCTION

The purpose of this chapter is to revisit and reflect on the various issues discussed throughout the thesis and present the researcher's submissions and recommendations relating to the thesis research questions and hypotheses. In this final chapter, findings and observations made throughout the evolution of the research are also to be highlighted and summarised.

The thesis' central research problem refers to the issue of the impact of MNCs' CSR codes of conduct on labour rights and employment conditions. Assessing the effectiveness of a MNC's code of conduct in its purpose of improving working conditions and promoting labour rights of a MNC workforce across the globe was the essential issue at the centre of this thesis.<sup>1336</sup>

The thesis primarily attempted to address four research questions, namely:

- How, and to which extent, does a CSR code of conduct affect the legal dimension of the relationship between a MNC and its workforce?
- What are the legal dimension and implications of a MNC code of conduct?
- Are multinational labour-orientated CSR commitments measuring up to relevant CSR standards, principles and instruments and the corresponding legal rules, at both national and international level?
- Are MNCs CSR codes of conduct relevant when assessed against the national context (CSR and legal framework) of selected countries?<sup>1337</sup>

The thesis examined British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s CSR commitments relating to labour and employment issues, in an effort to reach a comprehensive understanding of the legal dimension and the relevance of these MNCs CSR codes of conduct when assessed against national and international CSR and legal frameworks providing for

---

<sup>1336</sup> See 1.1 to 1.7 above.

<sup>1337</sup> See 1.3 above.

labour and employment issues. Hence the thesis encompassed a comparative analysis of labour and employment related CSR principles included in British American Tobacco p.l.c., Nestlé S.A. and Total S.A. codes of conduct, in order to:

- a) On the one hand, assess the extent of their compliance with CSR standards and principles set by national and international CSR instruments and institutions.
- b) On the other hand, determine their legal dimension and relevance when assessed against the background of international labour standards and national labour legislation in South Africa, Cameroon and France.<sup>1338</sup>

## **7.2 SUMMARY OF THESIS**

The thesis focused initially on establishing the theoretical framework of CSR, by providing a comprehensive definition of the concept, and by retracing the origin and evolution of CSR. The thesis then proceeded to analyse the national CSR frameworks in France, Cameroon and South Africa, as well as globally. The thesis finally focused on a comparative analysis of the British American Tobacco p.l.c., Nestlé S.A. and Total S.A. codes of conduct when transposed into the national contexts in France, Cameroon and South Africa; or when analysed against the background of the relevant international CSR and legal framework providing for labour rights and fair working conditions.

### **7.2.1 Theoretical framework**

Chapter one, after having defined the framework of the research,<sup>1339</sup> also examined the notion of CSR in order to understand its quintessence and capture its substance in a formal definition. Defining CSR initially seemed to be an arduous task due to the existence of a multiplicity of similar and /or related concepts usually utilised, either interchangeably with the concept of CSR or as a reference to totally different concepts nonetheless relevant to the issue of CSR.<sup>1340</sup> Another notable constraint to the effective definition of CSR resulted from the multiplicity of approaches proposing a theoretical or practical definition of CSR, as well

---

<sup>1338</sup> See 1.1 to 1.4 above

<sup>1339</sup> See 1.1 to 1.7 above

<sup>1340</sup> See 1.8.3 above.

as the absence of a universally established characterisation of CSR; hence the proliferation of CSR definitions each focussing on divergent aspects of the concept.<sup>1341</sup>

The thesis differentiated CSR from similar and related concepts and expressions by analysing the characteristics of each of these concepts and expressions; and, most importantly, by highlighting the three core elements of the concept of CSR, namely:

- a) the principle of CSR as a corporate' voluntary commitment/action;<sup>1342</sup>
- b) the principle of CSR as a corporate commitment or action that goes beyond the minimum legal requirement;<sup>1343</sup> and
- c) the principle of the societal dimension of CSR as a corporate initiative that is characterised by the inclusion of stakeholder interests into the traditional bottom line of the corporation.<sup>1344</sup>

Chapter Two then retraced the history of the emergence and evolution of CSR, highlighting historical phases that have led to the conception of the notion of CSR, with an emphasis on prominent individuals, institutions and events that have contributed to the definition of contemporary CSR. The objective of this chapter was to analyse the dynamics of the evolution of CSR, such as to gain an understanding of the different factors that have influenced (and could further determine) the evolution of CSR as a concept and as a practice. It was thus demonstrated that the contemporary notion and practice of CSR is the outcome of a longstanding process of conceptualisation of the relationship between business and society;<sup>1345</sup> that takes its roots in the most distant origins, such as the Hammurabi Code,<sup>1346</sup> and have evolved in accordance with several determining factors, such as:

- a) the impact of several historical events that have catalysed the evolution of CSR;<sup>1347</sup>
- b) the theoretical contribution of various authors and school of thoughts;<sup>1348</sup> and
- c) the pioneering practices of notable businesspersons.<sup>1349</sup>

---

<sup>1341</sup> See 1.8.1 above.

<sup>1342</sup> See 1.8.1.2.3 and 1.8.2.1.1 above.

<sup>1343</sup> See 1.8.1.2.3 and 1.8.2.1.2 above.

<sup>1344</sup> See 1.8.1.2.1 and 1.8.2.1.3 above.

<sup>1345</sup> See 2.2.1 above.

<sup>1346</sup> See 2.2.2 above.

<sup>1347</sup> See 2.3.1 above.

<sup>1348</sup> See 2.3.2 to 2.3.4 above.

<sup>1349</sup> See 2.3.5 above.

## 7.2.2 CSR in practice at national and international levels

Chapter Three retraced the recent history and analysed the processes of the globalisation of modern CSR as from the 1970s period during which modern CSR blossomed and expanded globally, until the emergence of the current international CSR framework.<sup>1350</sup> This chapter also analysed the global framework of CSR, and proceeded with a discussion of essential CSR instruments and institutions constituting the global framework of CSR. The emergence and globalisation of modern CSR<sup>1351</sup> was found to have resulted in an international CSR framework characterised by the existence of a multitude of international CSR instruments and institutions, reuniting different actors, public and private, dealing with several different aspects of CSR.<sup>1352</sup>

The analysis of a selection of international CSR instruments and institutions revealed that the global framework of CSR was underpinned by overarching CSR principles resulting from the theoretical definition of the notion of CSR; thus, voluntariness was highlighted as a principal characteristic of international CSR instruments; despite the occurrence of several attempts to institutionalise CSR as a compulsory corporate duty.<sup>1353</sup>

Chapter Four analysed the emergence and evolution of CSR in the national context of selected countries, with the purpose of establishing the significant features of each national CSR framework. The analysis of the French, Cameroonian and South African CSR frameworks revealed that essential characteristics of each of these national CSR frameworks are determined by each country's specific national context. Each country's CSR framework is characterised by the impact of several factors on the existence of CSR instruments and institutions, notably the impact of the socio-economic and political context, and governmental developmental priorities.<sup>1354</sup>

The CSR framework in Cameroon is underdeveloped, almost inexistent, and therefore characterised by the absence of nationally established CSR instruments and institutions providing corporations aiming to engage in CSR activities with benchmarks and guiding

---

<sup>1350</sup> See 3.1.1 above.

<sup>1351</sup> See 2.4 above.

<sup>1352</sup> See 3.1.2 above.

<sup>1353</sup> See 3.1.1 and 3.2.3.2.c above.

<sup>1354</sup> See 4.1 above.

principles;<sup>1355</sup> hence the accrued pertinence, in such context, of the core characteristics of CSR as a voluntary corporate initiative above the minimum legal requirement and aiming to uphold stakeholders interest.

CSR in France is well established due to two principal factors: first, the integration of the French CSR framework into the broader context of the European CSR framework,<sup>1356</sup> thus the applicability in France of the comprehensive European framework of CSR instruments and institutions.<sup>1357</sup> Secondly, French authorities have recurrently provided for the development of an institutionalised CSR framework characterised by the proactivity of the State and the existence of well-established CSR instruments and institutions.<sup>1358</sup> Finally, the emphasis on CSR reporting and CSR communication as a measure aiming to strike a balance between the intrinsic CSR principle of voluntariness and the French policy of state participation and interventionism in matters related to corporate stakeholders' interests, which normally would translate into the regulation of CSR.<sup>1359</sup>

The South African CSR framework illustrates the relevance of the historical factor as a core determinant of the nature of the South African CSR framework. The political history of the country is in fact the main factor explaining the specificity of the South African social, political and institutional context,<sup>1360</sup> and was essential in determining the content and the characteristics of the South African Constitution of 1996, that in turn underpins the national CSR framework.<sup>1361</sup>

The TRC recommendations that businesses should engage in a process of corrective actions, and participate in state-instituted actions aimed at holistically redressing the injustices of Apartheid also played a role in shaping the current South African CSR framework. South African post-apartheid socio-economic policies were primarily aimed at the promotion of social justice as the cornerstone of the role to be played by all societal institutions, including

---

<sup>1355</sup> See 4.3.1 above.

<sup>1356</sup> See 4.4.3.1 above.

<sup>1357</sup> See 3.2.4 above.

<sup>1358</sup> See 4.4.3.3 above.

<sup>1359</sup> See 4.4.3.4 above.

<sup>1360</sup> See 4.2.1 above.

<sup>1361</sup> See 4.2.4.1.1 above.

businesses and corporate executives, thus the advent of a CSR framework relevant to these objectives.<sup>1362</sup>

### 7.2.3 CSR in selected MNCs Codes of conduct

Chapter Five proceeded with an analysis of the concept of corporate code of conduct,<sup>1363</sup> followed by a presentation of the codes of conduct of British American Tobacco p.l.c., Nestlé S.A. and Total S.A.

In order to assess their legal dimension and relevance, globally and within the context of selected countries, British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s CSR commitments pertaining to the labour rights and working conditions of their workforces were comparatively assessed:

- a) On the one hand, against international CSR instruments providing for labour and employment issues, against the background of relevant international CSR and legal instruments;<sup>1364</sup> and,
- b) On the other hand, against the CSR and legal framework providing for labour and employment issues in France, Cameroon and South Africa respectively.<sup>1365</sup>

The thesis focused on the analysis of provisions in these codes of conduct dealing with core labour and employment rights as established by the ILO's Declaration on Fundamental Principles and Rights at Work, as well as equally significant, and internationally established, labour and employment principles regarding working conditions and employment security issues.<sup>1366</sup>

## 7.3 FINDINGS

It was found that British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s CSR commitments pertaining to labour and employment rights, as included in their respective codes of conduct, were in contradiction with core characteristic of the notion of CSR,

---

<sup>1362</sup> See 4.2.3.2 above.

<sup>1363</sup> See 5.2.1 above.

<sup>1364</sup> See 5.6 above.

<sup>1365</sup> See Chapter 6 above.

<sup>1366</sup> See 5.6 above at page 34.

considering that CSR principles are deemed to be voluntary commitments,<sup>1367</sup> exceeding the minimum legal requirement a corporation is subjected to.

### **7.3.1 CSR as a voluntary commitment beyond the minimum legal requirement**

It is submitted that British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s CSR commitments pertaining to labour rights and working conditions are not constitutive of CSR in the strict sense of the notion of CSR as they are not above the minimum legal requirement, but are mostly commitments to merely respect the law. These CSR commitments are, at best, equivalent to legal provisions entailed in hard law instruments entrenching labour and employment rights at the international level and within the context of each of these countries.

### **7.3.2 Labour and employment rights in MNCs' CSR codes of conduct**

Legal provisions pertaining to fundamental rights at work,<sup>1368</sup> are reliably provided for by the legal framework in each of the three countries studied and internationally, yet these are also the issues which are most comprehensively (and consistently) referred to in British American Tobacco p.l.c., Nestlé S.A. and Total S.A. codes of conducts without these corporations actually making commitment to implement specific policies based on labour principles going beyond the minimum legal requirement. It is also observed that British American Tobacco p.l.c., Nestlé S.A. and Total S.A. codes of conduct elude providing clear guidance concerning their respective positions on various issues pertinent to working conditions and employment security, except for the issue of health and safety at work that is well provided for.

It is submitted that the legal framework, in each of these countries, actually offers better protection to labour and employment rights and promote better working conditions than British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s codes of conduct. These codes of conducts, in fact, are often unsubstantial in their approach to each corporation's labour and employment CSR commitments. Thus British American Tobacco p.l.c., Nestlé S.A. and Total S.A. employees therefore benefit more from the protection offered by the legal framework, in any of these countries, than from a possible reliance on these MNCs' commitments relating

---

<sup>1367</sup> See 1.8.1.2.3 and 1.8.2.1.1 above.

<sup>1368</sup> See 3.2.2.2 above.

to the protection, the promotion, and the implementation of labour rights and the amelioration of the working conditions of their workforce.

### 7.3.3 CSR codes of conduct and national context

How can employees benefit from a MNCs CSR code of conduct when it has been established that MNCs CSR code of conduct merely promote principles already implemented by national and international legal frameworks? It is important at this stage to find an answer to this question considering that British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s codes of conduct mostly fail to address essential labour and employment issues not provided for by the relevant labour and employment legislation.

It is submitted that MNC codes of conduct have the potential to positively impact on labour rights and working conditions of a corporation's workforce when such codes of conduct are implemented in a national context providing less protection than international law with regard to specific labour and employment rights. Examples of this would be the promotion of workplace equality in countries where gender discrimination is still institutionalised or even legalised, or the promotion of labour relation rights in countries where undemocratic governments may repress various labour relations rights, such as the freedom of association or the right to strike.<sup>1369</sup>

This perspective on the relevance of MNC codes of conduct when transposed into specific national contexts is pertinent when considering the fact that, unlike principles pertaining to fundamental rights at work that are entrenched in the national legal framework of all ILO member states, principles pertaining to other significant issues<sup>1370</sup> are less comprehensively protected due to the inconsistency in the level of protection they are afforded in different national context.

For fundamental rights at work, the interaction between MNC codes of conduct and the national context is therefore minimal, because these issues are comprehensively provided for by nationally and internationally established legal instruments. Thus, regardless of the

---

<sup>1369</sup> See 7.4 below for specific recommendations pertaining to how MNCs' codes of conduct could potentially address relevant labour and employment issues in the national context of Cameroon, France and South Africa, respectively.

<sup>1370</sup> Such as decent working conditions and employment security rights, occupational health and safety and social security rights, and the right to strike.

national context (France, Cameroon or South Africa), British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s CSR commitments relating to fundamental rights at work will not have a greater impact on the conditions of their workforce than national legislation, precisely because these issues are closely monitored and strictly regulated by both international and national legislatures or regulators; unless these MNCs, in their codes of conduct, begin to progressively address urgent or essential issues, insufficiently or ineffectively provided for by the national frameworks in France, Cameroon or South Africa.

The selected MNC's CSR commitments have a greater potential to have an impact on their workforce in relation to labour and employment issues that are differently provided for by different national legislation establishing and implementing divergent labour policies. British American Tobacco p.l.c., Nestlé S.A. and Total S.A. have the opportunity, via their codes of conduct, to harmonise or standardise their employment policies across all countries where they operate, therefore offering better working conditions and labour rights to employees in countries where the national legal framework provide labour and employment rights at a lower level than those provided by relevant international labour standards. However, it is observed that British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s codes of conduct elude, for instance, to provide for the right to strike, as well as other pertinent labour and employment rights providing for decent working conditions and employment security.

## **7.4 RECOMMENDATIONS**

In conclusion, it is important to discuss the possible impact of effective MNC CSR codes of conduct when transposed into the national context of selected countries. In chapter 6 the thesis critically assessed the national legislative frameworks in Cameroon, France and South Africa in order to highlight the relevance of an MNC's code of conduct when such a CSR instrument is adapted to the national context for the purpose of achieving one of the intrinsic elements of a CSR code of conduct, namely to voluntarily make a contribution to the establishment of decent working conditions and the effective promotion of labour rights.

MNCs' codes of conduct are voluntary instruments expressing corporations' commitments pertaining to specific issues. One of the thesis's aims is to make recommendation on how

these instruments could improve labour rights of MNCs' workforces, by addressing shortcomings of the national labour framework, within their own workplaces and when possible, in each country where these MNCs operate. Several dysfunctionalities and shortcomings have been identified in the legal framework providing for labour rights and working conditions in Cameroon, France and South Africa. Thus it is submitted that MNCs' codes of conduct, in each of these national contexts, could make effective and relevant contributions

- by committing not to exploit the deficiencies of the local legal framework and therefore to avoid a race to the bottom when operating in host countries where labour legislation creates labour standards inferior to those established by international instruments or the legal framework in the home country of the MNC;
- by committing to complement deficient legal systems in host countries considering that MNCs' codes of conduct ought to positively impact on the labour rights and working conditions of their workforce by providing remedies for the rectification of the imperfections of a particular national legal framework;
- by committing to create parallel or supplementary mechanisms facilitating the implementation of labour rights in a challenging regulatory context;
- by committing to always respect international labour standards especially when ILO standards are above the minimum legal requirement in a specific national context;
- by committing to voluntarily empower employees' unions and representatives and voluntarily promote decent working conditions, also when this means better conditions than those provided for by the minimum legal requirement.

The purpose of the following section is to illustrate how the abovementioned MNCs' approaches to their CSR responsibilities, if entrenched in their codes of conduct, could positively impact on labour right and working conditions in the national context of Cameroon, France and South Africa.

#### **7.4.1 Cameroon**

Considering the issues of discrimination against Cameroonian nationals working for MNCs operating in Cameroon, it was highlighted that such discrimination is facilitated by the lack of efficient implementation and monitoring mechanisms supporting the existing legal

framework regulating the employment of foreigners in Cameroon.<sup>1371</sup> It is submitted that the codes of conduct of British American Tobacco p.l.c., Nestlé S.A. and Total S.A. could implement a proactive labour and employment CSR stance that effectively commits to avoid discriminating against nationals in host countries. It is also recommended that British American Tobacco p.l.c., Nestlé S.A. and Total S.A., in their codes of conduct, commit to transfer skills to nationals in host countries and promote the optimal utilisation of the country's workforce through the training of local workers for skilled or executive positions, without unfairly discriminating against foreign/expatriate workers, yet without prioritising the employment of foreign/expatriate workers.

It was also observed that the Cameroonian collective bargaining system is dysfunctional and inefficient as it does not empower employees' representatives engaged in collective bargaining processes.<sup>1372</sup> It is submitted that MNC codes of conduct ought to entail a commitment by MNCs operating in Cameroon to voluntarily empower unions and employees' representatives, allowing them to effectively negotiate on behalf of the corporations' workforce. In their codes of conduct, British American Tobacco p.l.c., Nestlé S.A. and Total S.A. should not merely commit to respect local laws but should take the more proactive stance of offering their employees the opportunity to enjoy internationally established standards of collective bargaining rights via a commitment to create parallel or supplementary mechanisms facilitating the implementation of labour rights and the effectiveness of collective bargaining in such a challenging regulatory context.

Considering that the Cameroonian legal framework regulating freedom of association and trade unions is characterised by a heightened potential for labour relations rights violations due to interferences from administrative authorities,<sup>1373</sup> it is recommended that British American Tobacco p.l.c., Nestlé S.A. and Total S.A. undertake, in their codes of conduct, to respect international labour standards pertaining to freedom of association and other trade union rights. These MNCs could therefore commit to engage in mutually beneficial social dialogue, involving all relevant stakeholders, in order to prevent the occurrence of an undue incursion of administrative and/or political authorities in trade union activities.

---

<sup>1371</sup> See 6.3.1.3 above.

<sup>1372</sup> See 6.4.3 above.

<sup>1373</sup> See 6.4.3 above.

It was finally observed that the Cameroonian legal framework providing for employment security rights has not succeeded in preventing the current trend of massive importation of unskilled labour by MNCs entering the Cameroonian market.<sup>1374</sup> It is submitted that British American Tobacco p.l.c., Nestlé S.A. and Total S.A. codes of conduct could contribute to the improvement of employment security in Cameroon, by committing not to exploit the deficiencies of the local legal framework in order to import unskilled labour.

#### **7.4.2 France**

The thesis highlights the fact that the French legal framework providing for secularism in the workplace lacks effectiveness as it does not provide clear and effective principles for the realisation of a balance between employees' right to freedom of religion, employers' duty not to discriminate against individual based on their religion, and the corporation's obligation to comply with the legal framework providing for the secularism of the French society.<sup>1375</sup> It is submitted that, in order to complement a deficient legal framework, British American Tobacco p.l.c., Nestlé S.A. and Total S.A.'s CSR codes of conduct could provide a medium for these corporations to effectively address the issue of secularism in the workplace by committing to develop and implement principles respecting employees' basic rights, including the right to freedom of religion, while taking into consideration the corporations' duty to uphold national legislation, including judicial decisions.

The thesis also established that young immigrants and descendants of immigrants in France are more likely to become or remain unemployed due to the impact of latent discrimination and racism observed in French society.<sup>1376</sup> It is recommended that British American Tobacco p.l.c., Nestlé S.A. and Total S.A. contribute to the promotion of employment security for disadvantaged minorities by taking proactive CSR stances that address the barriers faced by young immigrants and descendants of immigrants when seeking employment, for instance via a commitment to implement recruitment practices that address the issue of employment security of disadvantaged minorities via the promotion of positive actions in favour of these disadvantaged minorities, within the limits allowed by French law.

---

<sup>1374</sup> See 6.6.1.2 above.

<sup>1375</sup> See 6.3.2.3 above.

<sup>1376</sup> See 6.6.2.3 above.

### 7.4.3 South Africa

It was established that the absence in South Africa of inclusive bargaining structures results in the limited effectiveness of collective bargaining and the restricted scope of application of established collective bargaining frameworks.<sup>1377</sup> It is submitted that British American Tobacco p.l.c., Nestlé S.A. and Total S.A., in their codes of conduct, could commit to create and implement inclusive bargaining structures for the purpose of ensuring the advent and the effectiveness of a holistic collective bargaining process. The creation of inclusive bargaining structures notably refers to the inclusion of all concerned and/or affected stakeholders in the bargaining and social dialogue processes, in line with established principles of corporate governance.

Concerning the issue of paid maternity leave, it was established that the South African legal framework does not create an obligation for employers to offer paid maternity leave to female workers and this often result in employees suffering a drastic reduction of income during pregnancy and after delivering a baby.<sup>1378</sup> It is submitted that BAT, Total S.A. and Nestlé S.A., in their respective codes of conduct, could undertake to offer paid maternity leave to their employees, thereby fulfilling the intrinsic mission of their CSR codes of conduct. Considering specific instances where paid maternity leave are provided for in collective agreements entered into by MNCs , it is to be highlighted that even when such benefits are bargained for,<sup>1379</sup> MNCs should actually base their practices on international CSR standards as a starting point, especially in respect of employees not covered by collective agreements.

The South African legal framework similarly does not create a positive duty for employers to establish retirement funds for their workforce.<sup>1380</sup> Thus, it is submitted that BAT, Total S.A. and Nestlé S.A., in their CSR codes of conduct, should commit to secure access to retirement funding in order to provide effective social insurance coverage to their employees. It nevertheless needs to be highlighted that South African corporations, especially larger one, often and voluntarily establish retirement fund for the benefit of their workforces, thus

---

<sup>1377</sup> See 6.4.4 above.

<sup>1378</sup> See 6.5.3.3.a above.

<sup>1379</sup> In such case, paid maternity leaves are contractual rights for employees and become contractual obligation for the relevant MNC , and therefore not constitutive of CSR. See 1.8.1.2.3 above.

<sup>1380</sup> See 6.5.3.3.d above.

BAT, Total S.A. and Nestlé S.A. have established retirement funds/pensions for their employees, notably the British American Tobacco Pension Fund and British American Tobacco Retirement Fund, the Nestlé (Defined Benefit) Pension Fund and the Nestlé (Defined Contribution) Pension Fund, and the Total South Africa Provident Fund and Total Oil Products Pension Fund.<sup>1381</sup>

It has finally been observed that the protection offered by the South African legal framework to certain categories of workers is deficient as the BCEA omits to provide for vulnerable categories of workers, such as, employees working less than 24 hours a month for an employer, thus creating the possibility for employers seeking to escape the scope of application of the BCEA, to simply implement labour casualisation methods that results in workers falling out of the scope of application of the BCEA.<sup>1382</sup> It is submitted that BAT, Total S.A. and Nestlé S.A.'s CSR codes of conduct could include a commitment, by these MNCs, to avoid lowering the working conditions of their workforce via practices having the effect of avoiding compliance with the BCEA through the casualisation of their workforces. MNCs in fact should commit to avoid controversial practices of labour casualisation and externalisation, including sub-contractors, labour brokers and outsourcing, which usually results in detrimental outcomes for concerned and affected employees.

UNIVERSITY of the  
WESTERN CAPE

**WORD COUNT: 108 269 Words**

---

<sup>1381</sup> See The Financial Services Board *Listing of Approved Retirement Funds* (2014) <https://www.fsb.co.za/Magic94Scripts/mgrqispi94.dll> (accessed 10 December 2014).

<sup>1382</sup> See 6.6.3.2 above

## BIBLIOGRAPHY

### ARTICLES

Acquier A & Gond JP 'Aux sources de la responsabilité sociale de l'entreprise: à la (re)découverte d'un ouvrage fondateur: Social Responsibilities of the Businessman d'Howard Bowen' (2007) 10 (2) *Finance Contrôle Stratégie* 5–35.

Acquier A, Gond JP & Igalens J 'Des fondements religieux de la responsabilité sociale de l'entreprise à la responsabilité sociale d+e l'entreprise comme religion'(2005) 166 *Cahiers du CRG* 1-31.

Aeberhardt R et al 'Wages and employment of French workers with African origin'(2010) 23 (3) *Journal of Population Economics* 881-905.

Andreasson S 'Understanding Corporate Governance Reform in South Africa: Anglo-American Divergence, the King Reports, and Hybridization' (2011) 5 (4) *Business & Society* 647-673.

Anner M 'Corporate Social Responsibility and Freedom of Association Rights: The Precarious Quest for Legitimacy and Control in Global Supply Chains' (2012) 40 (4) *Politics & Society* 609-644.

Antal AB & Sobczak A 'Corporate Social Responsibility in France: A Mix of National Traditions and International Influences' (2007) 46(9) *Business & Society* 9-32.

Antonmattei PH 'Religion et laïcité dans l'entreprise-Le port de signes religieux dans l'entreprise : Au-delà de Baby Loup. ' (2013) 1611 *Semaine Sociale Lamy* 9-13.

Arndt M 'An Ode to the Money-Spinner' (2003) *Business Week* 22–23.

Asongu JJ 'The History of Corporate Social Responsibility' (2007) 1(2) *Journal of Business and Public Policy* 1-18.

Astier I 'Droit à l'emploi et magistratures sociales : vers une politique des situations?' (2000) 44/45 *Droit et Société* 143-155.

Babarinde OA 'Bridging the economic divide in the Republic of South Africa: A Corporate Social Responsibility perspective' (2009) 51(4) *Thunderbird International Business Review* 355–368.

Bachmann SD & Miretski PP "Global Business and Human Rights - The UN 'Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' - A Requiem" (2012)17(1) *Deakin Law Review* 1-33.

Bahri-Domon Y et al 'Le gouvernement sanctionne 139 pollueurs' (2012) 3 *Investir au Cameroun : De grandes ambitions dans la croissance verte* 14.

Baker JC 'The International Infant Formula Controversy: A Dilemma in Corporate Social Responsibility' (1985) 4(3) *Journal of business ethics* 181-190.

Bantekas I 'Corporate Social Responsibility in International Law' (2004) 22 (2) *Boston University International Law Journal* 309-347.

Barrientos S & Visser M\_ 'South African Horticulture: Opportunities and Challenges for Economic and Social Upgrading in Value Chains' (2013) *Social Sciences Research Network* 1-44.

Bellace JR 'Achieving social justice: the nexus between the ILO's Fundamental Rights and Decent Work' (2011) 15(1) *Employee Rights & Employment Policy Journal* 5.

Bentolila S et al 'Two-Tier Labour Markets in the Great Recession: France Versus Spain.' (2012) 122 (562) *The Economic Journal* 155–187.

Besmer V 'The legal character of private codes of conduct: More than just a pseudo-formal gloss on corporate social responsibility' (2006) 2 *Hastings Business Law Journal* 279-306.

Beuthin RC 'The range of a company's interests' (1969) 86(1) *South African Law Journal* 155-178.

Bevan D & Werhane P 'The Inexorable Sociality of Commerce: The Individual and Others in Adam Smith' (2014) *Journal of Business Ethics* 1-9.

Bilchitz D 'Corporate Law and the Constitution: Towards binding human rights responsibilities for corporations' (2008) 125 *South African Law Journal* 754-789.

Bond P 'Social Movements and Corporate Social Responsibility in South Africa' (2008) 39(6) *Development and Change* 1037–1052.

Bozonnet JP & Halpern C 'The environmental policy assumption revisited: Explaining trends in environmental concerns in France between 1971 and 2008' (2013) 11(1) *French Politics* 48-72.

Brown JA & Forster WR 'CSR and Stakeholder Theory: A Tale of Adam Smith' (2013) 112 (2) *Journal of Business Ethics* 301–312.

Burbank J & Cooper F 'Empire, droits et citoyenneté, de 1812 à 1946' (2008) 3 *Annales. Histoire, Sciences Sociales* 495-531.

Burchell B et al 'The quality of employment and decent work: definitions, methodologies, and ongoing debates' (2013) *Cambridge Journal of Economics* 1-19.

Cahuc P et al 'Youth unemployment in old Europe: the polar cases of France and Germany' (2013) 2(18) *IZA Journal of European Labor Studies* 1-23.

Cai Y, Jo H & Pan C 'Doing Well While Doing Bad? CSR in Controversial Industry Sectors' (2012) 108 (4) *Journal of Business Ethics* 467-480.

Carnegie A 'The Gospel of Wealth' (1889) 148 (391) *North American Review* 653-665.

Capron M 'La RSE en Afrique : l'arbre qui cache la forêt ?' (2010) 9 *Altermondes Hors-Série* 1-4.

Carroll AB 'Corporate Social Responsibility: Evolution of a definitional construct' (1999) 38 (3) *Business and Society* 268-295

Carroll AB & Shabana KM 'The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice' (2010) 12 (1) *International Journal of Management Reviews* 85-105.

Cartun WP 'Fact and Fiction of Social Responsibility' (1973) *S.A.M Advanced Management Journal* 21-39.

Chan A & Ross RJS 'Racing to the bottom: international trade without a social clause' (2003) 24 (6) *Third World Quarterly* 1011-1028.

Chapman S 'Advocacy in action: extreme corporate makeover interrupted: Denormalising tobacco industry corporate schmoozing' (2004) 13 *Tobacco Control* 445-447.

Chatriot A 'La réforme de l'entreprise : Du contrôle ouvrier à l'échec du projet modernisateur' (2012) 2(114) *Vingtième Siècle - Revue d'histoire* 183 - 197.

Chatterji A & Listokin S 'Corporate Social Irresponsibility' (2007) 3 *Democracy: A Journal of Ideas* 52-63.

Cheadle H 'Regulated Flexibility: Revisiting the LRA and the BCEA' (2006) 27 *ILJ* 663-703.

Croucher R & Miles L 'Corporate Governance and Employees in South Africa' (2010) 10 (2) *Journal of Corporate Law Studies* 367-389.

Daugareilh I 'Responsabilité sociale des entreprises transnationales: Analyse critique et prospective juridique' (2009) 27 (1) *Cuadernos de relaciones laborales* 93-123.

Davis K 'Can business afford to ignore social responsibilities?' (1960) 2 (3) *California Management Review* 70-76.

Delbard O 'CSR legislation in France and the European regulatory paradox: an analysis of EU CSR policy and sustainability reporting practice' (2008) 8(4) *Corporate Governance* 397-405.

Dickerson CM 'Corporate Social Responsibility: Lessons from the South on Law and Business norms' (2009) 24 *Research in Law and Economics* 131-157.

Dickerson CM 'Harmonizing Business Laws in Africa: OHADA Calls the Tune' (2005) 44(1) *Columbia Journal of Transnational Law* 17-73.

Dickerson CM 'The Cameroonian Experience under OHADA: Business Organizations in a Developing Economy' (2007) 112(2) *Business and Society Review* 191-213.

Du Toit D 'Collective Bargaining and Worker Participation' (2000) 21 *ILJ* 1544-1575.

Du Toit D 'Self-regulated Corporate Social Responsibility: The impact on employment relations at European corporations in South and Southern Africa: A preliminary overview' (2009) 30 *ILJ* 2227-2252.

Du Toit D 'Protection against Unfair Discrimination: Cleaning up the Act?' (2014) 35 *ILJ* 2623 -2636.

Dupper O 'Maternity Protection in South Africa: An International and Comparative Perspective' (2001) 12 *Stellenbosch Law Review* 421-438.

Dutta PK & Banerjee AK 'Moral and Ethical issues-Corporate Social Responsibility' (2010) 1 (4) *Asian Journal of Professional Ethics & Management* 23-29.

Epstein EM 'Contemporary Jewish Perspectives on Business Ethics' (2000) 10 (2) *Business Ethics Quarterly* 523-541.

Epstein EM 'The Good Company: rhetoric or reality? Corporate social responsibility and business ethics' (2006) 44 (2) *American Business Law Journal* 207-222.

Esser I & Dekker A 'The dynamics of corporate governance in South Africa: Broad Based Black Economic Empowerment and the enhancement of good corporate governance principles' (2008) 3(3) *Journal of International Commercial Law and Technology* 157-69.

Esser I 'The protection of stakeholder interests in terms of the South African King III Report on Corporate Governance: an improvement on King II?' (2009) 21 (2) *SA Merc Law Journal* 188-201.

Evans J 'OECD Guidelines – one tool for corporate social accountability' (2003)1(130) *Labour Education: Corporate Social Responsibility: Myth or reality* 25-30.

Fig D 'Manufacturing amnesia: Corporate Social Responsibility in South Africa' (2005) 8I (3) *International Affairs* 599-617.

Fitzgibbon K 'Modern-day slavery? The scope of trafficking in persons in Africa' (2003) 12(1) *African Security Studies* 81-89.

Frankental P 'Corporate social responsibility - a PR invention?' (2001) 6 (1) *Corporate Communication: an International Journal* 18-23.

Groch M 'Corporate Social Responsibility in Sub-Saharan Africa's Development' (2008) *The Metropolitan Corporate Counsel* 60-61.

Harrington AR 'Corporate Social Responsibility, Globalization, the Multinational Corporation, and Labor: An Unlikely Alliance' (2011)75 (1) *Albany Law Review* 483-509.

Harshe R 'Understanding Transition towards Post-Apartheid South Africa' (1993) 28(38) *Economic and Political Weekly* 1980-1983.

Havenga M 'Directors' Fiduciary Duties Under Our Future Company law Regime' (1997) 9 *SA Merc Law Journal* 310-324.

Havenga M 'The Company, the Constitution, and the stakeholders' (1997)5(4) *Juta's Business Law* 134-139.

Heald M "Management's Responsibility to Society: The Growth of an Idea"(1957)31(4) *Business History Review* 375-384.

Heal G 'Corporate Social Responsibility: An Economic and Financial Framework' (2005) 30 *The Geneva Papers* 387-409.

Hesenov R 'Universal Jurisdiction for International Crimes - A Case Study' (2013) 19 (3) *European Journal on Criminal Policy and Research* 275-283.

Hirschhorn N 'Corporate social responsibility and the tobacco industry: hope or hype?' (2004) 13 *Tobacco Control* 447-453.

Hochschild A 'How the British Inspired Dr. King's Dream' *New York Times* 17 January 2005 20-22.

Hinson RE & Ndhlovu TP 'Conceptualising corporate social responsibility (CSR) and corporate social investment (CSI): the South African context' (2011)7(3) *Social Responsibility Journal* 332-346.

Ingham JN 'Fork Frick and the Amalgamated: The Homestead Lockout of 1892 in Historical Perspective' (1993) 31 *Labour/Le Travail* (Spring 1993)329-340.

Jenkins R 'Globalization, Corporate Social Responsibility and poverty' (2005) 81 (3) *International Affairs* 525-540.

Johns CWH 'Babylonian Law: The Code of Hammurabi' (1910) 11 *Encyclopaedia Britannica* 1-8.

Jourdan D 'Religion dans l'entreprise, égalité de traitement et discrimination ' (2013) 1611 *Semaine Sociale Lamy* 13-16.

Juggernath S, Rampersad R & Reddy K 'Corporate responsibility for socio-economic transformation: A focus on broad-based black economic empowerment and its implementation in South Africa' (2011) 5(20) *African Journal of Business Management* 8224-8234.

Kehler J 'Women and Poverty: The South African Experience' (2001) 3 (1) *Journal of International Women's Studies* 41-53.

Kirsch M 'Historique de l'Organisation pour l'harmonisation en Afrique du droit des affaires (OHADA)' (1998) 108 *Recueil Penant* 129-135.

Kraytman YS 'Universal Jurisdiction – Historical Roots and Modern Implications' (2005) 2 *Brussels Journal of International Studies* 94-129.

Langlaude S 'Mme Fatima X, épouse Y v Association Baby Loup No 13-28.369: Cour de cassation (Court of Cassation, France), Assemblée plénière (Plenary Assembly): Lamanda (President), Truchot (Speaker): 25 June 2014' (2014) 3(3) *Oxford Journal of Law and Religion* 521.

Leary VA 'The WTO and the Social Clause: Post-Singapore' (1997) 1 *European Journal of International Law* 118-122.

Le Boulanger P 'L'arbitrage et l'harmonisation du droit des affaires en Afrique' (1999) 3 *Revue de l'arbitrage* 541-591.

Letnar Černič J 'Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational enterprises' (2008) 3(1) *Hanse Law Review* 71-100.

Letnar Černič J 'Corporate Responsibility for Human Rights: Analysing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (2009) 6(1) *Miskolc Journal of International Law* 24-34.

Lohoues-Oble J ' L'apparition d'un Droit International des Affaires en Afrique' (1999) 3 *Revue internationale de droit compare* 543 - 591.

MacLeod S 'Corporate Social Responsibility within the European Union Framework'(2005) 23 (3) *Wisconsin International Law Journal* 541-551.

McMahon TF 'The Contributions of Religious Traditions to Business Ethics' (1985) 4 *Journal of Business Ethics* 341-349.

Martin A John D. Rockefeller (1999) 23 *Encyclopedia Americana* 7.

Mahjoub Lassaad B & Khamoussi H 'Determinants of Communication about Corporate Social Responsibility: Case of French Companies' (2012) 3(5) *International Journal of Contemporary Business Studies* 49-60.

Malherbe K & Wakefield L 'The effect of women's care-giving role on their social security rights' (2009) 13(2) *Law, Democracy & Development* 47-70.

Masaka D 'Why Enforcing Corporate Social Responsibility (CSR) is Morally Questionable' (2008) 13 (1) *Electronic Journal of Business Ethics and Organization Studies* 13-21.

Matten D & Moon J "Implicit" and "Explicit" CSR: A conceptual framework for a comparative understanding of corporate social responsibility' (2008) 33 (2) *Academy of Management Review* 405.

Mongalo T 'South Africanizing Company Law for a modern competitive global economy' (2004) 121 *South African Law Journal* 93-116.

Morris MH 'Universal Jurisdiction in a Divided World: Conference Remarks' (2001) 35 *New England Law Review* 337-361.

Nattrass N 'The Truth and Reconciliation Commission on Business and Apartheid: A critical evaluation' (1999) 98 *African Affairs* 373-391.

Nehme M & Wee CKG 'Tracing the historical development of corporate social responsibility and corporate social reporting' (2008) 15 *James Cook University Law Review* 129-168.

Ndhlovu TP 'Corporate Social Responsibility and Corporate Social Investment: The South African Case' (2011) 12 *Journal of African Business* 72-92.

Neumayer E 'Multilateral Agreement on Investment: Lessons for the WTO from the failed OECD-negotiations' (1999) 46 (6) *Wirtschaftspolitische Bloetter* 618-628.

Norman W & MacDonald C 'Getting to the Bottom of "Triple Bottom Line"' (2003) *Press, Business Ethics Quarterly* 1.

Orbie J & Babarinde O 'The Social Dimension of Globalization and EU Development Policy: Promoting Core Labour Standards and Corporate Social Responsibility' (2008) 30 (3) *European Integration* 459-477.

Ousmanou S 'Pour un management teinté d'éthique : Premières vues sur le projet du code éthique du GICAM' (2004) 25 *Le Bulletin du Gicam* 10-11.

Pearson R & Seyfang G 'New Hope or False Dawn? Voluntary Codes of Conduct, Labour Regulation and Social Policy in a Globalizing World' (2001) 1(1) *Global Social Policy* 49-78.

Porter ME & Kramer MR 'The competitive advantage of corporate philanthropy' (2002) 80 (12) *Harvard Business Review* 57-68.

Posnikoff JF 'Disinvestment from South Africa: They did well by doing good' (1997) 15(1) *Contemporary Economic Policy* 76-86.

Pougoué PG & Tchakoua JM 'Le difficile enracinement de la négociation en droit de travail camerounais' (2000) 00 *Afrilex* 1-19.

Prince JD 'The Code of Hammurabi' (1904) 8 (3) *The American Journal of Theology* 601-609.

Ramlall S 'Corporate social responsibility in post-apartheid South Africa' (2012) 8(2) *Social Responsibility Journal* 270-288.

Rasche A & Waddock S 'Global Sustainability Governance and the UN Global Compact: A Rejoinder to Critics' (2014) *Journal of Business Ethics* 1-8.

Reis P 'Les normes sociales privées : De l'engagement volontaire à la contrainte ?' (2011) *Critique(s) du droit* 391- 409.

Richardson BJ *Socially Responsible Investment Law: Regulating the Unseen Polluters* (2008) Oxford University Press: New York.

Scherer AG & Smid M 'The Downward Spiral and the US Model Business Principles - Why MNEs Should Take Responsibility for the Improvement of World-Wide Social and Environmental Conditions' (2000) 40 (4) *Management International Review* 351-371.

Schwartz MS 'A Jewish Approach to Business Ethics' (2012) 2 (10) *Philosophy Study* 754-766.

Servayre AM & Said SR 'Integrating national contexts into theoretical frameworks for a better understanding of corporate social responsibility practices: The case of the emerging countries.' (2010) 16 (38) *Revue Internationale de Psychosociologie* 255-269.

Smythe E 'Your Place or Mine? States, International Organizations and the Negotiation of Investment Rules' (1998) 7 (3) *Transnational Corporations* 85-120.

Sobczak A & Martins LC 'The impact and interplay of national and global CSR discourses: insights from France and Brazil' (2010) 10 (4) *Corporate Governance* 445-455.

Sobczak A 'Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft Law Regulation of Labour Relations to Consumer Law' (2006) 16 (2) *Business Ethics Quarterly* 167-184.

Sonnenberg D & Hamann R 'The JSE Socially Responsible Investment Index and the State of Sustainability Reporting in South Africa' (2006) 23 (2) *Development Southern Africa* 305-320.

Standing G 'Economic insecurity and global casualization: Threat or promise' (2008) 88 *Social Indicators Research* 15-30.

Steiner GA 'Social policies for business' (1972)15 (2) *California Management Review* 17-24.

Stokkink D & Maurice-Demourieux N 'RSE, diversité et intégration des migrants : Enjeux européens.' (2011)28 *Diversités et Citoyennetés- La Lettre de l'IRFAM* 14-17.

Tarhan G 'Roots of the Headscarf Debate: Laicism and Secularism in France and Turkey' (2011) 4 *Journal of Political Inquiry* 1-32.

Utting P 'Corporate Social Responsibility' (2007) 1A-E *Encyclopedia of Globalisation* 218-227.

Van Marrewijk M 'Concepts and definitions of CSR and corporate sustainability: Between agency and communion' (2003) 44 *Journal of Business Ethics* 95–105.

Vaughn M & Ryan LV 'Corporate Governance in South Africa: A bellwether for the continent?'(2006) 14 (5) *Corporate Governance: An International Review* 504–512.

Voegtlin C & Pless NM 'Global Governance: CSR and the Role of the UN Global Compact' (2014) *Journal of Business Ethics* 1-13.

Vogel D 'The Private Regulation of Global Corporate Conduct: Achievements and Limitations' (2010) 49(1) *Business & Society* 68-87.

West A 'Theorising South Africa's Corporate Governance' (2006) 68 (4) *Journal of Business Ethics* 433-448.

Windsor D 'Corporate Social Responsibility: Three Key Approaches' (2006)43(1) *Journal of Management Studies* 93-114.

Wood G & Mahabir P 'South Africa's Workplace Forum system: A stillborn experiment in the democratisation of work?' (2003) 32 (3) *Industrial Relations Journal* 230-243.

Zairi M 'Towards sustainable excellence: making CSR and governance the catalysts for driving competitiveness' (2011) 6 (1) *Current Issues of Business and Law* 2-11.



## **BOOKS**

Aletter F, von der Burg K & Zanella I *Corporate Social Responsibility in South Africa as practiced by South African and German Companies* (2010) GTZ: Johannesburg.

Alperson M *Foundations for a New Democracy: Corporate Social Investment in South Africa* (1995) Ravan Press: Johannesburg.

Aninpah Khan S & Menjo Baye F *China-Africa Economic Relations: The Case of Cameroon*(2008) African Economic Research Consortium : Nairobi.

Augenstein D *Study of the legal framework on Human Right and the Environment applicable to European enterprises operating outside the European Union* (2010) European Commission & University of Edinburgh: Edinburgh.

Bales K *Disposable People: New Slavery in the Global Economy* (2012) University of California Press: London.

Banhegyi S *Management: Fresh perspectives* (2007) Pearson Education South Africa: Cape Town.

Bentham J *An Introduction to the Principles of Morals and Legislation* (1879) Clarendon Press: Oxford.

Berle A & Means G *The Modern Corporation and Private Property* 2 ed (1967) Harcourt, Brace & World: New York.

Blowfield M & Murray A *Corporate Responsibility: A Critical Introduction* (2008) Oxford University Press: New York.

Bodibe O *The extent and effects of casualisation in Southern Africa : Analysis of Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe* (2006) Naledi : Johannesburg

Bougard C *Etre esclave en France - Un phénomène social en expansion* (2013) L'Harmattan : Paris.

Bowen HR *Social responsibility of the businessman* (1953) Harper and Brothers: New York.

Bruyn ST *The Field of Social Investment* (1987) Cambridge University Press: Cambridge.

Carnegie A *Autobiography of Andrew Carnegie* (1920) Constable & CO: London.

Chernow R *Titan: The Life of John D. Rockefeller, Sr* (1998) Random House: New York.

Clark NL & Worger WH *South Africa: The Rise and Fall of Apartheid* 2 ed (2014) Routledge: New York.

Cramer J *Corporate Social Responsibility and Globalisation: An Action Plan for Business* (2006) Greenleaf Publishing: Sheffield.

Crane A et al (ed) *The Oxford Handbook of CSR* (2008) Oxford University Press: New York.

Cryan D et al *Introducing capitalism* (2009) Totem Books: London.

Daugareilh I (ed) *Responsabilité sociale de l'entreprise transnationale et globalisation de l'économie* (2011) Bruylant : Bruxelles.

Davis K & Blomstrom RL *Business and Society: Environment and responsibility* 3ed (1975) McGraw-Hill Book Company: New York.

De Schutter O (ed) *Transnational Corporations and Human Rights* (2006) Hart Publishing: Portland.

Dowd D *Capitalism and its economics: A critical history* 2ed (2004) Pluto Press: London.

Drucker P *Post Capitalist Society* (1993) Harper Business: New York City.

Eells R *Corporate Giving in a Free Society* (1956) Harper & Bros: New York.

Fisher C & Lovell A *Business Ethics and Values: Individual, Corporate and International Perspectives* 2 Ed (2009) Prentice Hall/Financial Times: Upper Saddle River.

Flohr A et al *The role of business in global governance, Corporations as Norm-Entrepreneur*. (2010) Palgrave Macmillan: Hampshire.

Fosdick RB *The story of the Rockefeller Foundation* (1989) Transaction Publishers: New York.

Freeman RE *Strategic Management: A stakeholder Approach* (1984).MA: Pitman: Boston.

Friedman M *Capitalism and Freedom* (1962) University of Chicago Press: Chicago.

Gernigon B, Odero A & Guido H *ILO Principles concerning the right to strike* (2000) International Labour Office: Geneva.

Grant M (Translator) *Cicero's De Officiis* (1960) Penguin Books: Middlesex.

Habisch A et al *Corporate Social Responsibility across Europe* (2005) Springer: Berlin.

Hamann R, Woolman S & Sprague C (ed) *The business of sustainable development in Africa* (2008) Unisa Press: Pretoria.

Hartley RF *Business Ethics, Mistakes and Successes* (2005) John Wiley & Sons: Hoboken.

Heald M *The Social Responsibilities of Business: Company and Community, 1900-1960* (1970) The Press of Case Western Reserve University: Cleveland.

Hopkins M *Corporate Social Responsibility and International Development: Is Business the Solution?* (2007) Earthscan: London.

Horrigan B *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (2010) Edward Elgar Publishing: Cheltenham.

Izorche ML *L'avènement de l'engagement unilatéral en droit privé contemporain* (1989) Atelier national de reproduction des thèses: Lille.

Javillier JC (ed) *Governance, international law and corporate societal responsibility* (2007) Institut international d'études sociales: Geneva.

Jenkins RO, Pearson R & Seyfang G *Corporate responsibility and labour rights: codes of conduct in the global economy* (2002) Earthscan: London.

Jennings LC *French Anti-Slavery: The Movement for the Abolition of Slavery in France* (2006) Cambridge University Press: Cambridge.

Kennedy C *The Merchant Princes* (2000) Hutchinson: London.

King LW (Translator) *The Code of Hammurabi* (1915) Forgotten Books: New York.

Kinnicutt S & Mirvis P (ed) *Corporate Citizenship around the World, How local flavor seasons the global practice* (2008) GERN: Boston.

Klein HS *The Atlantic Slave Trade* (2010) Cambridge University Press: New York.

Konings PJJ *The politics of neoliberal reforms in Africa: State and civil society in Cameroon* (2011) Langaa Research : Bamenda.

Laparra M & Grinberg I *Alucam, un destin africain – 50 ans d'aluminium au Cameroun : 1957-2007* (2007) Athéna/CNRS : Aix-en-Provence.

Luthans F, Hodgetts RM & Thompson K.R *Social Issues in Business* (1972) Macmillan: New York.

McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007) Cambridge University Press: Cambridge.

McGuire JW *Business and Society* (1963) McGraw-Hill: New York.

Mongalo T *Modern Company Law for a Competitive South African Economy* (2010) Juta Law: Cape Town.

Mouloul A *Comprendre l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires* (2008) Nouvelle imprimerie du Niger : Niamey.

Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) Kluwer Law International: The Hague.

Mullerat R *International Corporate Social Responsibility: The role of corporations in the economic order of the 21st century* (2010) Kluwer Law International: Alphen aan den Rijn.

Na'allah AR *Ogoni's Agonies: Ken Saro-Wiwa and the Crisis in Nigeria* (1998) Africa World Press: Trenton.

Nasaw D *Andrew Carnegie* (2006) The Penguin Press: New York.

Noon P (ed) '*Corporate Social Responsibility: Negotiator's Guide*' (2008) Prospect: London.

Orkin M *Sanctions Against Apartheid* (1989) David Philip Publisher: Claremont.

Pennings F, Konijn Y & Veldman A *Social Responsibility in Labour Relations: European and Comparative Perspectives* (2008) Kluwer Law International: Alphen aan den Rijn.

Polanyi K *The Great Transformation* (1944) Rinehart: New York.

Polanyi K *The Great Transformation: The Political and Economic Origins of Our Time* 2ed (2001) Beacon Press: Boston.

Rawley JA & Behrendt SD *The Transatlantic Slave Trade: A History - Revised Edition* (2006) University of Nebraska Press: Lincoln.

Schumpeter J *Economic Doctrine and Method* (2013) Routledge: London.

Segal JP, Sobczak A & Triomphe CE (ed) *Corporate social responsibility and working conditions* (2003) European Foundation for the Improvement of Living and Working Conditions: Dublin.

Selekman BM *Moral Philosophy for Management* (1959) McGraw-Hill: New York.

Smit A (Ed) *Shaping Corporate Social Responsibility in sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013) GIZ GmbH: Bonn.

Smith A *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) Strahan & Cadell: London.

Smith A *The Theory of Moral Sentiment* (1759) Kincaid & Bell: Edinburgh.

Sudreau P *Rapport du Comité d'étude pour la réforme de l'entreprise* (1975) La documentation française: Paris.

Waters Jr RA *Historical Dictionary of United States-Africa Relations* (2009) Scarecrow Press: Lanham.

Werther WB & Chandler D *Strategic corporate social responsibility: stakeholders in a global environment* (2010) Sage Publication: Thousand Oaks.

Wille G, Du Bois F & Bradfield G *Wille's Principles of South African Law* 9 ed (2007) Juta & Co: Cape Town.

Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008) Springer: Berlin.

Wong A & Yameogo KSU *Les responsabilités sociétales des entreprises en Afrique francophone* (2011) Éditions Charles Léopold Mayer: Paris.

Zerk JA *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (2006) Cambridge University Press: Cambridge.

## CHAPTERS IN BOOKS

Albareda L 'Ethical Trading Initiative' in Idowu SO et al (eds.) *Encyclopedia of Corporate Social Responsibility* (2013) Springer: Berlin.

Boddenberg M & Aletter F 'The Development of Corporate Social Responsibility in South Africa' in Aletter F, von der Burg K & Zanella I (ed) *Corporate Social Responsibility in South Africa as practiced by South African and German Companies* (2010) GTZ: Johannesburg.

Brabant S, Kirk A & Proust J 'States, Sanctions and Soft Law: An Analysis of Differing Approaches To Business and Human Rights Frameworks' in Weiler T & F Baetens *New Directions in International Economic Law: In Memoriam Thomas Wälde* (2011) Koninklijke Brill: Leiden.

Carapinha R & De Jongh D 'The Meaning and Nature of Corporate Citizenship in South Africa' in Kinnicutt S & Mirvis P (ed) *Corporate Citizenship around the World: How local flavor seasons the global practice* (2008) GERN: Boston.

Carrasco I 'Moral traits of Adam Smith's theories in corporate social responsibility evolution' in Galindo Martin MA & Spiller CN(ed) *Issues in Economics Thought* (2010) Nova Science Publishers: New York.

Curtis F 'Foreign Disinvestment and Investment – South Africa: 1960-1986' in Konczacki ZA, Parpart JL & Shaw TM (eds) *Studies in the Economic History of Southern Africa* Vol 2 (2013) Routledge: New York.

Daugareilh I 'Corporate norms on CSR and International norms' in Javillier JC (ed) *Governance, international law and corporate societal responsibility* (2007) Institut international d'études sociales: Geneva.

Du Preez L & Marais A 'A Legal Approach to Human Trafficking in South Africa' in Delener N et al *Fulfilling the worldwide sustainability challenge: Strategies, innovations, and perspectives for forward momentum in turbulent times* (2011) Global Business and Technology Association: Istanbul.

Du Toit D 'Situating domestic work in a changing global labour market' in Du Toit D (ed) *Exploited, undervalued - and essential: Domestic workers and the realisation of their rights* (2013) Pretoria University Law Press: Pretoria.

Eccles RG, Schulschenk J & Serafeim G 'Capturing the Link between Non-financial and Financial Performance in One Space' in Malan D & Van der Lugt C *Making Investment Grade: The Future of Corporate Reporting* (2012) United Nations Environment Programme: Cape Town.

Gallinetti J & Kassan D 'Trafficking of children in Africa: an overview of research, international obligations and existing legal provisions' in Sloth-Nielsen J (ed) *Children's Rights in Africa: A Legal Perspective* (2008) Ashgate Publishing: Aldershot.

Giles HL, Sulzer J & Bourgoin S 'France-Country Chapter' in Pearlroth A & Ferstman C (ed) *Universal Jurisdiction in the European Union: Country Study* (2001) REDRESS-FIDH : London.

Glinski C 'Corporate codes of conduct: moral or legal obligation?' in McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007) Cambridge University Press: Cambridge.

Hamann R 'Introducing corporate citizenship' in Hamann R, Woolman S & Sprague C (ed) *The business of sustainable development in Africa* (2008) Unisa Press: Pretoria.

Hamann R 'South Africa: The role of history, government, and local context' in Idowu SO & Filho WI (ed) *Global practices of corporate social responsibility* (2009) Springer: Berlin.

Holmes RL 'The concept of Corporate Responsibility' in Cicovacki P & Holmes RL (ed) *The Ethics of Nonviolence: Essays by Robert L. Holmes* (2013) Bloomsbury: New York.

Horne CF 'Introduction' in King LW (Translator) *The Code of Hammurabi* (1915) Forgotten Books: New York.

Justice DW 'Corporate social responsibility: Challenges and opportunities for trade unionists' in International Labour Organisation *Corporate Social Responsibility: Myth or reality?* *Labour Education* (2003)1(130) International Labour Organisation: Geneva.

Keller H 'Codes of Conduct and their Implementation: the Question of Legitimacy' in Wolfrum R & Röben V (ed) *Legitimacy in International Law* (2008) Springer: Berlin.

Lavaud P 'France Country Chapter' in Berruga B (ed) *A Guide to CSR in Europe: Country Insights by CSR Europe's National Partner Organisations* (2009) CSR Europe: Bruxelles.

Levy DL & Kaplan R 'CSR and Theories of Global Governance: Strategic Contestation in Global Issue Arenas' in Crane A et al (ed) *The Oxford Handbook of CSR* (2008) Oxford University Press : New York.

Linnik M & Thorsen SS 'ILO and CSR: Minimum human rights standards for corporations' in Javillier JC (ed) *Governance, international law and corporate societal responsibility* (2007) Institut international d'études sociales: Geneva.

Lundblad C 'Some legal dimensions of corporate codes of conduct' in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) Kluwer Law International: The Hague.

MacDonald K 'Fair Labor Association' in Hale T & Held D (ed) *The Handbook of Transnational Governance: Institutions and Innovations* (2011) Polity Press: Cambridge.

Malherbe K 'Implementing domestic workers' social security rights in a framework of transformative constitutionalism' in Du Toit D (ed) *Exploited, undervalued - and essential: Domestic workers and the realisation of their rights* (2013) Pretoria University Law Press: Pretoria.

Marcoux A 'Business Ethics' in Zalta EN (ed) *The Stanford Encyclopedia of Philosophy* (2008) Stanford University: Stanford.

McLeay F 'Corporate codes of conduct and the Human Right accountability of Transnational Corporations: A small piece of a larger puzzle' in De Schutter O (ed) *Transnational Corporations and Human Rights* (2006) Hart Publishing: Portland.

Mele D 'Religious foundations of business ethics' in Epstein MJ & Hanson KO (Ed) *The Accountable Corporation: Business Ethics* (2006)12.

Olson JF 'South Africa moves to a global model of corporate governance but with important national variations' in Mongalo T(ed) *Modern Company Law for a Competitive South African Economy* (2010) Juta Law: Cape Town.

Parker C 'Meta-regulation: legal accountability for corporate social responsibility' in McBarnet D (ed) *The New Corporate Accountability, Corporate Social Responsibility and the Law* (2007) Cambridge University Press: Cambridge.

Pitts C 'Voluntary Principles on Security and Human Rights' in Hale T & Held D *Handbook of Transnational Governance: Institutions and Innovations* (2011) Polity Press: Cambridge.

Roselle J 'The Triple Bottom Line: Building Shareholder Value' in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) Kluwer Law International: The Hague.

Rudolph PH 'The history, variations, impact and future of self-regulation' in Mullerat R (ed) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) Kluwer Law International: The Hague.

Schwartz R 'La laïcité dans l'entreprise' in Waquet P *13 Paradoxes en Droit du Travail* (2012) Editions Lamy : Paris.

Segal JP et al 'CSR in France' in Segal JP, Sobczak A & Triomphe CE (ed) *Corporate social responsibility and working conditions* (2003) European Foundation for the Improvement of Living and Working Conditions: Dublin.

Smith G & Angell D 'Foreword' in Voluntary Principles Secretariat *Voluntary Principles on Security and Human Rights: Implementation Guidance Tools* (2012) Voluntary Principles Secretariat: Boston.

Stiglitz J 'Foreword' in Polanyi K *The Great Transformation: The Political and Economic Origins of Our Time* 2ed (2001) Beacon Press: Boston.

Temngah JN 'The Evolution of Trade Unionism and the Prospects for Alternatives to the Labour Question' in Yenshu Vubo E (ed) *Civil Society and the Search for Development Alternatives in Cameroon*(2008) CODESRIA: Dakar.

Van Niekerk J 'South Africa Country Chapter' in Smit A (Lead Author) *Shaping Corporate Social Responsibility in sub-Saharan Africa: Guidance Notes from a Mapping Survey* (2013) GIZ GmbH: Bonn.

Woolman S 'Truly enlightened self-interest: Business, human rights and the UN Global Compact' in Hamann R, Woolman S & Sprague C (ed) *The business of sustainable development in Africa*(2008) Unisa Press: Pretoria.

## MONOGRAPHS, WORKING PAPERS AND DISCUSSION PAPERS

Berruga B (ed) *A Guide to CSR in Europe: Country Insights by CSR Europe's National Partner Organisations* (2009) CSR Europe: Bruxelles.

Benjamin P *Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)* Working Paper 47 (2013) ILO: Geneva.

Brundtland GH *Our common future* (1987) UN-The Brundtland Report: New York.  
Carnegie A *Carnegie Memo to Himself* (1968) Carnegie Libraries / Ontario Ministry of Tourism and Culture.

Chatterjee S & Elias J Cadbury *An Ethical Company Struggles to Insure the Integrity of Its Supply Chain* (2007) Yale case 07-039: Yale School of Management.

Christian Aid, Amnesty International UK & Friends of the Earth *Flagship or failure? The UK's implementation of the OECD guidelines and approach to corporate accountability* (2005) Christian Aid, Amnesty International UK & Friends of the Earth: London.

Cliffe Dekker Attorneys *King Report on Corporate Governance for South Africa: What it means to you* (2002) Cliffe Dekker Attorneys: Johannesburg.

Club of Emerging Leaders for Africa *Indice CELA D'Evaluation de la Responsabilité Sociétale des Entreprises En Afrique* (2009) Club of Emerging Leaders for Africa: Paris.

Coleman Neil *Towards New Collective Bargaining, Wage and Social Protection Strategies in South Africa - Learning from the Brazilian Experience* Working Paper 17 (2013) Global Labour University: Leibniz.

D'Amato A et al *Corporate Social responsibility and Sustainable business, Guide to leadership tasks and Functions* (2009) Center for Creative Leadership: Greensboro.

Daugareilh I & Kosher E *Social regulation of European transnational companies: ESTER Comparative report* (2006) CNRS/COMPTRASEC: Bordeaux.

Department of Environmental Affairs and Tourism *People - Planet - Prosperity: A National Framework for Sustainable Development in South Africa* (2008) Department of Environmental Affairs and Tourism: Pretoria.

Doucine M & Sery M *La Responsabilité Sociale des Entreprises, l'engagement de la France* (2010) Ministère des Affaires Etrangères et Européennes/Bureau de l'Ambassadeur en charge de la bioéthique et de la responsabilité sociale des entreprises: Paris.

Eurochambres *Commission Communication - A renewed EU strategy 2011-14 for Corporate Social Responsibility: Position Paper* (2012) Eurochambres: Brussels.

Ferguson C *A Review of UK Company Codes of Conduct* (1998) Department for International Development/ Social Development Division: London.

Fig D *Corporations and moral purpose: South Africa's Truth and Reconciliation Commission and business responsibility for apartheid* (2009) 3 International Research Network on Business, Development and Society: Copenhagen.

Frydman B & Lewkowicz G *Les codes de conduite : source de droit global?* (2012) 2 Centre Perelman de Philosophie du Droit : Bruxelles.

Global Compact Counter-Summit *Joint Civil Society Statement on the Global Compact and Corporate Accountability* (2004) Global Policy Forum: New York.

Gond JP et al *Corporate Social Responsibility Influence on Employees* (2010) 54 International Centre for Corporate Social Responsibility: Nottingham.

Hanks J, Hamann R & Sayers V *Corporate Social Responsibility and the United Nations Global Compact in South Africa 2007: Report of the Global Compact Network of South Africa* (2007) National Business Initiative/UNGC Focal Point: Johannesburg.

Henriques A *Ten Things You Always Wanted to Know About CSR (But Were Afraid to Ask) - Part One: A Brief History of Corporate Social Responsibility* (2003) Ethical Corporation Magazine: London.

Hönke J et al *Fostering Environmental Regulation? Corporate Social Responsibility in Countries with Weak Regulatory Capacities: The case of South Africa* (2008) 9 SFB-Governance Working Paper Series 5.

Hopkins M *Corporate social responsibility: An issues paper* (2004) 27 International Labour Office / World Commission on the Social Dimension of Globalization: Geneva.

Jenkins R *Corporate Codes of Conduct: Self-Regulation in a Global Economy* (2001) 2 United Nations Research Institute for Social Development (UNRISD): Geneva.

Johannesburg Stock Exchange *JSE SRI Index: Background and Selection Criteria* (2003) Johannesburg Stock Exchange: Johannesburg.

Johannesburg Stock Exchange *JSE SRI Index: Background and Selection Criteria* (2013) Johannesburg Stock Exchange: Johannesburg.

Katsoulakos P & Katsoulakos Y *A multi-dimensional view of corporate responsibility* (2006) 4CR working Papers: The 4CR strategic approach to corporate responsibility.

Kolk A & van Tulder R *International codes of conduct: Trends, sectors, issues and effectiveness* (2002) Rotterdam School of Management/Department of Business-Society Management: Rotterdam.

KPMG *Corporate Governance and King 3* (2009) KPMG: Johannesburg.

Le Roux R *World of Work: Form of Engagement in South Africa* (2009) Institute of Development and Labour Law/University of Cape Town: Cape Town.

Loison MC & Pezet A *La Triple Bottom Line ; Une nécessité historique, un concept mouvant : Le cas Alucam (1952-2007)* (2009) DRM/Université Paris-Dauphine : Paris.

Loison MC, Pezet A & Berrier C *Corporate Social Responsibility before CSR: Practices at the Company Aluminium du Cameroun, 1950s-1970s* (2007) DRM/Université Paris-Dauphine: Paris.

Lynch P *Human Rights and Corporate Social Responsibility* (2006) Corporations and Markets Advisory Committee: Sydney.

Maduna PM *Justice Minister declaration on Apartheid litigation in the USA* (2003) Republic of South Africa/Ministry of Justice and Constitutional Development: Pretoria.

Mendibil K et al *How can CSR practices leads to successful innovation in SMES?* (2007) RESPONSE Project (Responsible and Sustainable Innovation for European SMEs): Strathclyde.

Miendjiem IL *Etude nationale sur la discrimination en matière d'emploi et de profession et proposition d'un plan national d'action au Cameroun* ILO Working Paper 65 (2011) ILO : Geneva.

Miraglio M et al *International Instruments and Corporate Social Responsibility* (2007) Sustainable Development through the Global Compact Project, Italian Ministry of Foreign Affairs/ ILO International Training Centre: Turin.

Murray A & Halper S *Corporate Social Responsibility: Topical Bibliographies* (2013) British Library- Social sciences Collection Guides.

Murray J *Corporate Codes of Conduct and Labor Standards* (1998) International Labour Office/ ACTRAV Bureau for Workers' Activities: Geneva.

Murray J *Corporate social responsibility: an overview of principles and practices* (2004) 34 International Labour Office/Policy Integration Department: Geneva.

Nattrass N & Seekings J *State, Business and Growth in Post-Apartheid South Africa* (2010) 34 Research Programme Consortium on Improving Institutions for Pro-Poor Growth IPPG: Manchester.

Olowski LJ *Corporate Social Responsibility: Its History, Ethical Justification, and Abuses in the Business World* (2006) Rockhurst University: Kansas City.

Oppenheimer N *See what is right ... and be brave: Farewell Address to Anglo American* (2011)11 The Brenthurst Foundation: Johannesburg.

Pope John Paul II *Centesimus Annus: Encyclical Letter of Pope John Paul II on the Hundredth Anniversary of Rerum Novarum* (1991) Catholic Truth Society: London.

Pope Leo XIII *Rerum Novarum: Encyclical Letter of Pope Leo Xiii on the Condition of the Working Classes* (1891) Catholic Truth Society: London.

Pope Pius XI *Quadragesimo Anno: Encyclical Letter of Pope Pius XI on the Reconstruction of the Social Order* (1931) Catholic Truth Society: London.

Popp D *Built-in or bolted-on: Corporate Social Responsibility in sub-Saharan Africa, A survey on promoting and hindering factors* (2009) GTZ South Africa: Pretoria.

Queinnec Y *The OECD Guidelines for Multinational Enterprises: An evolving legal status* (2007) Sherpa: Paris.

Ruggie J *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) United Nations: New York.

Salaam-Blyther T, Hanrahan C & Cook N *Child Labor in West African Cocoa Production: Issues and U.S. Policy* (2005) Congressional Research Service - The Library of Congress: Washington DC.

Schaller S *The Democratic Legitimacy of Private Governance. An Analysis of the Ethical Trading Initiative* (2007) Institute for Development and Peace/University of Duisburg-Essen: Duisburg.

Schrage EJ *Promoting International Worker Rights Through Private Voluntary Initiatives: Public Relations or Public Policy? A Report to the U.S. Department of State* (2004) University of Iowa Human Rights Center: Iowa City.

Stein C *The most significant changes to South Africa's Company Laws brought about by the Company Act 2008* (2012) Bowman Gilfillan Attorneys: Johannesburg.

Thomas G & Nowak M *Corporate Social Responsibility: A definition* (2006)<sup>62</sup> Graduate School of Business/Curtin University of Technology: Perth.

Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 5* (1998) Truth and Reconciliation Commission of South Africa/Government Printer: Cape Town.

Tutu D et al *Truth and Reconciliation Commission of South Africa Report: Volume 4* (1998) Truth and Reconciliation Commission of South Africa/Government Printer: Cape Town.

UCT Development Policy Research Unit *Addressing the Plight of Vulnerable Workers: The Role of Sectoral Determinations* (2010) South African Department of Labour: Pretoria.

Utting P & Zammit A *Beyond Pragmatism: Appraising UN-Business Partnerships* (2006) 1 Markets, Business and Regulation / United Nations Research Institute for Social Development: Geneva.

Van Vuuren C J & Schulschenk J *Perceptions and practice of King III in South African Companies* (2003) Institute of Directors in Southern Africa/ Albert Luthuli Centre for Responsible Leadership: Pretoria

Vega Ruiz ML & Martinez D *Fundamental Principles and Rights at Work: Value, Viability, Incidence and Importance as Elements for Economic Progress and Social Justice* (2002) ILO Working Paper 9: Geneva.

Visser W *The ages and stages of CSR: Towards the Future with CSR 2.0* (2011) 3 CSR International: London.

## **CONFERENCE PROCEEDINGS**

Annan K *An Appeal to World Business: UN Secretary General proposes Global Compact on Human Rights, Labour and Environment* (1999) UN Secretary General Speech at the World Economic Forum Annual Meeting: Davos, 31 January 1999. UN Press Release SG/SM/6881 <http://www.un.org/News/Press/docs/1999/19990201.sgsm6881.html> (accessed 5 June 2014).

Annan K *Principles for Responsible Investment* (2006) UN Secretary General Speech at the Launch of the UN Principles for Responsible Investment, New York 27 April 2006.

Carroll AB *A CSR journey, looking back, looking forward* (2012) 5th International CSR Conference, Humboldt-Universität zu Berlin, Berlin 4-6 October 2012.

De Jongh M *Shareholder Activism at the Dutch East India Company 1622-1625* (2009) Conference on the Origins & History of Shareholder Advocacy, Yale School of Management, Millstein Center for Corporate Governance and Performance, 6-7 November 2009.

Fig D 'CSER and Development in South Africa' in UNRISD *Corporate Social Responsibility and Development: Towards a New Agenda?* (2003) Summaries of Presentations from the UNRISD CSR Conference, Geneva 17-18 November 2003.

Freeman RE *The role of CSR in the new narrative of business* (2012) 5th International CSR Conference, Humboldt-Universität zu Berlin, Berlin 4-6 October 2012.

International Confederation of Free Trade Unions *The Social Responsibilities of Business in a Global Economy* (2004) Final Resolution1, Eighteenth World Congress ICFTU, Miyazaki, December 2004.

Lutz DW *Rival philosophical foundations of the good company* (2006) Sixth International Symposium on Catholic Social Thought and Management Education, University of St Thomas (Angelicum), Roma 5-7 October 2006.

Moder KH *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights: Background Paper* (2005) Friedrich Ebert Stiftung Side-Event at the 60th session of the UN-Commission on Human Rights, Geneva 25 March 2005.

Sinang JJ *Forced Labor of Baka Pygmies in Southeastern Cameroon. A Case of Ignored Slavery* (2010) International Conference on Congo Basin Hunter-Gatherers, Montpellier, 22-24 September 2010.

Stigson B *Business and the Sustainable Development Landscape* (2009) V100 Business Forum: Alberta Venture's V100 Business Forum in Edmonton and Calgary, 19-20 October 2009.

Sundar P *Corporate Social Responsibility: An Idea Whose Time Has Come* (2004) PR Pundit's Eighth Public Relations Workshop, The Trident, Gurgoan, National Capital Region, New Delhi March 23 2004.

Young S & Marais M *CSR reporting: an institutional perspective* (2011) Second Finance and Governance Conference, La Trobe University, Melbourne 28-29 April 2011.

## INTERNATIONAL LEGAL AND INSTITUTIONAL MATERIAL

AccountAbility *A21: Development as Accountability, Accountability Innovators in Action* (2007) AccountAbility: London.

AccountAbility *AA1000 AccountAbility Principles Standard 2008* (2008) AccountAbility: London.

AccountAbility *AA1000 Assurance Standard 2008* (2008) AccountAbility: London.

AccountAbility *AA1000 Stakeholder Engagement Standard* (2011) AccountAbility: London.

AccountAbility Institute *Insights from Corporate Responsibility Leaders* (2012) AccountAbility: London.

African Development Bank *Environmental & Social Assessment Procedures* (2014) African Development Bank Group: Abidjan.

Club développement durable des établissements publics et entreprises publiques *Charte développement durable des établissements publics et entreprises publiques* (2006) Club développement durable des établissements publics et entreprises publiques : Paris.

Conseil Français des Investisseurs en Afrique *Charte RSE des entreprises françaises en Afrique* (2010) CIAN : Nice.

Department of Labour *Child labour and other work-related activities in SA* (2010) Department of Labour: Pretoria.

Department of Labour *The National Child Labour Programme of Action for South Africa* (2012) Department of Labour: Pretoria.

Ethical Trading Initiative *ETI Base Code appendices: international standards and definitions* (2009) Ethical Trading Initiative.

Ethical Trading Initiative *The ETI Base Code* (2012) Ethical Trading Initiative.

Ethical Trading Initiative *The ETI Principles of Implementation* (2009) Ethical Trading Initiative.

European Commission *Commission Communication of 15 May 2001 on "A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development"* 264 final (2001) COM.

European Commission *Commission Communication of 18 July 2001 on 'Promoting core labour standards and improving social governance in the context of globalisation.'* 416 final (2001) COM.

European Commission *Commission Communication of 2 July 2002 on "Corporate Social Responsibility: A business contribution to Sustainable Development"* 347 final (2002) COM.

European Commission *Commission Communication of 22 March 2006 on "Implementing the partnership for growth and jobs: Making Europe a pole of excellence on corporate social responsibility"* 136 final (2006) COM.

European Commission *Commission Communication of 25 October 2011 on "A renewed EU strategy 2011-14 for Corporate Social Responsibility"* 681 final (2011) COM.

European Commission *Commission Communication of 8 May 2001 on 'The European Union's Role in Promoting Human Rights and Democratisation in Third Countries'* 252 final (2001) COM.

European Commission *Green Paper of 18 July 2001 on "Promoting a European framework for Corporate Social Responsibility"* 366 final (2001) COM.

European Parliament *Corporate social responsibility in international trade agreements 2009/2201(INI)* (2010) EU Parliament: Strasbourg

European Parliament *Corporate social responsibility: a new partnership, 2006/2133(INI)* (2007) EU Parliament: Strasbourg.

European Parliament *Corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth* (2013) EU Parliament: Strasbourg.

European Parliament *Corporate social responsibility: promoting society's interests and a route to sustainable and inclusive recovery* (2013) EU Parliament: Strasbourg.

European Parliament *Résolution du Parlement européen sur la communication de la Commission concernant la responsabilité sociale des entreprises: Une contribution des entreprises au développement durable (COM(2002) 347 – 2002/2261(INI))* (2003) EU Parliament: Strasbourg.

Fair Labor Association *2012 Annual Public Report* (2013) Fair Labor Association: Washington.

Fair Labor Association *FLA Charter* (2013) Fair Labor Association: Washington.

Fair Labor Association *FLA Principles of Fair Labor & Responsible Sourcing* (2013) Fair Labor Association: Washington.

Fair Labor Association *FLA Workplace Code of Conduct and Compliance Benchmarks* (2011) Fair Labor Association: Washington.

Global Reporting Initiative *G3 Sustainability Reporting Guidelines* (2006) Global Reporting Initiative.

Global Reporting Initiative *G4 Sustainability Reporting Guidelines: Reporting Principles and Standard Disclosures* (2013) Global Reporting Initiative.

Groupement Inter-patronal du Cameroun *Code éthique du GICAM* (2004) Groupement Inter-patronal du Cameroun : Douala.

ILO & IPEC *West Africa Cocoa/Commercial Agricultural Program to Combat Hazardous and Exploitative Child Labor (Cameroon, Cote d'Ivoire, Ghana, Guinea and Nigeria) - Terminal Evaluation Report* (2006) ILO: Abuja.

ILO *Cameroon- Decent Work Country Programme (DWCP) 2010-2015* (2014) Country Office for Angola, Cameroon and Sao Tome & Principe: Yaoundé.

ILO Committee on Freedom of Association Report No 2, Case No 28 UK-Jamaica (1952) ILO: Geneva.

Institute of Directors in Southern Africa *King III reporting in terms of the JSE Listings Requirements* (2013) Institute of Directors in Southern Africa: Johannesburg.

Institute of Directors in Southern Africa *King Report on Governance for South Africa 2009* (2009) Institute of Directors in Southern Africa: Johannesburg.

International Confederation of Free Trade Unions ICFTU/ITS *Basic Code of Labour Practice*(1997) International Confederation of Free Trade Unions : Brussels.

International Labour Conference *Record of Proceedings of the 40th Session of the International Labour Conference* (1957) International Labour Conference: Geneva.

International Labour Conference *Record of Proceedings of the 54th Session of the International Labour Conference* (1970) International Labour Conference: Geneva.

International Labour Office *Indigenous and tribal peoples' rights in practice: a guide to ILO Convention No. 169* (2009) International Labour Office: Geneva.

International Labour Office *Report of the Committee of Experts on the Application of Conventions and Recommendations* (2013) International Labour Office: Geneva.

International Labour Organisation *Corporate Social Responsibility: Myth or reality? - Labour Education* (2003)1(130) International Labour Organisation: Geneva.

International Labour Organisation *Declaration on Fundamental Principles and Rights at Work* (1998) International Labour Office: Geneva.

International Labour Organisation *Declaration on Social Justice for a Fair Globalization* (2008) International Labour Office: Geneva.

International Labour Organisation *Freedom of Association and Collective Bargaining: General Survey of the Reports* (1994) International Labour Office: Geneva.

International Labour Organisation *Social Dialogue Indicators -International Statistical Inquiry 2008-09* (2011) ILO: Geneva

International Labour Organisation *The ILO and CSR: Why Responsible Business Conduct Matters* (2009) International Labour Office: Geneva.

International Labour Organisation *The ILO Decent Work Pilot Programme (DWPP) 2000 – 2005: Country Brief* (2006) International Labour Office: Geneva.

International Labour Organisation *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977) International Labour Office: Geneva.

International Labour Organisation & International Finance Corporation (IFC) *Better Work Programme Overview* (2007) International Labour Organization & International Finance Corporation: Geneva.

International Organization for Standardization *Discovering ISO 26000* (2010) International Organization for Standardization.

International Organization for Standardization *ISO 26000: Guidance on corporate social responsibility* (2010) International Organization for Standardization: Geneva.

International Organization of Employers *The ILO Declaration on Fundamental Principles and Rights at Work: IOE Position Paper* (2006) International Organization of Employers: Geneva.

International Organization of La Francophonie *Human Rights at the core of Corporate Social Responsibility* (2012) International Organization of La Francophonie: Paris.

King M *King Report on Corporate Governance* (1994) King Committee on Corporate Governance: Johannesburg.

King M *King Report on Corporate Governance for South Africa (2002)* King Committee on Corporate Governance: Johannesburg.

King M *The King Code of Governance Principles and the King Report on Governance (2009)* King Committee on Corporate Governance: Johannesburg.

OECD *Annual Report on the OECD Guidelines for Multinational Enterprises 2008: Employment and Industrial Relations* (2009) Publishing: Paris.

Organisation for Economic Co-operation and Development *A “global charter”/ “legal standard”: an inventory of possible policy instruments* (2009) OECD Publishing: Paris.

Organisation for Economic Co-operation and Development *Corporate Responsibility: Private Initiatives and Public Goals* (2001) OECD Publishing: Paris.

Organisation for Economic Co-operation and Development *Decision C (2000)96/FINAL of the Council on the OECD Guidelines for Multinational Enterprises* (2000) OECD Publishing: Paris.

Organisation for Economic Co-operation and Development *Policy brief: The OECD Principles of Corporate Governance* (2004) OECD Publishing: Paris.

Organisation for Economic Co-operation and Development *The OECD Guidelines for Multinational Enterprises* (1976) OECD Publishing: Paris.

Organisation for Economic Co-operation and Development *The OECD Guidelines for Multinational Enterprises 2011 Edition* (2011) OECD Publishing: Paris.

Organisation for Economic Co-operation and Development *The OECD Guidelines on Corporate Governance of State-Owned Enterprises* (2005) OECD Publishing: Paris.

Organisation for Economic Co-operation and Development *The OECD Principles of Corporate Governance* (1999) OECD Publishing: Paris.

Organisation internationale de la Francophonie *Déclaration de Kinshasa* (2012) Organisation internationale de la Francophonie: Paris.

Sullivan LH *The Global Sullivan Principles* (1999) The Sullivan Foundation.

The European Coalition for Corporate Justice *CSR Communication-Going beyond words: time to act* (2011) The European Coalition for Corporate Justice.

The Walk Free Foundation *The Global Slavery Index 2013* (2013) The Walk Free Foundation: Dalkeith.

The World Bank Group *Company Codes of Conduct and International Standards: An Analytical Comparison*(2003) The World Bank Group: Washington D.C.

UN Commission on Human Rights *Report of the United Nations High Commissioner on Human Rights on the Responsibilities of Transnational Corporations and Related Business Enterprises with Regard to Human Rights* (2005) United Nations: New York.

UN Development Programme *Human Development Report 2013 - The Rise of the South, Human Progress in a Diverse World* (2013) UNDP: New York.

UN Development Programme *Human Development Report 2014 - Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience* (2014) UNDP: New York.

UN General Assembly *Resolution 1761(XVII) of 6 November 1962 - Item 87 (1962)* United Nations: New York.

UN Global Compact *The Global Compact's Next Phase* (2005) United Nations: New York.  
Understanding Children's Work (UCW) Programme *UCW Country Report on Child labour and Youth employment - Comprendre le travail des enfants et l'emploi des jeunes au Cameroun* (2012) Understanding Children's Work (UCW) Programme: Roma.

United Nations Global Compact *An Introduction to linkages between UN Global Compact Principles and ISO 26000 Core Subjects* (2010) United Nations: New York.

United Nations Global Compact *Blueprint for Corporate Sustainability Leadership* (2010) United Nations: New York.

United Nations Global Compact *The Global Compact 10 Principles* (2004) United Nations: New York.

United Nations *UN Guiding Principles for Business and Human Rights* (2011) United Nations: New York.

United Nations *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* (2003) United Nations: New York.

United Nations *UN Principles for Responsible Investment* (2006) United Nations: New York.

United States Department of Labour *2012 Findings on the Worst Forms of Child Labor in Cameroon* (2013) United States Department of Labour- Bureau of International Labor Affairs: Washington DC.

United States Department of State *2013 Trafficking in Persons Report – Cameroon* (2013) United States Department of State: Washington.

Voluntary Principles Secretariat *Voluntary Principles on Security and Human Rights: Implementation Guidance Tools* (2012) Voluntary Principles Secretariat: Boston.

Voluntary Principles Secretariat *Voluntary Principles on Security and Human Rights* (2000) Voluntary Principles Secretariat: Boston.

World Business Council for Sustainable Development *Corporate Social Responsibility: Meeting Changing Expectations* (1999) World Business Council for Sustainable Development: Geneva.

World Business Council for Sustainable Development *Corporate Social Responsibility: The WBCSD's journey* (2002) World Business Council for Sustainable Development: Geneva.

World Health Organization *Tobacco Industry and Corporate Social Responsibility ... an Inherent Contradiction* (2004) World Health Organization: Geneva.

## **CORPORATE PUBLICATIONS**

### **BRITISH AMERICAN TOBACCO p.l.c. PUBLICATIONS**

British American Tobacco p.l.c. *Annual Report 2012* (2012) British American Tobacco p.l.c.: London.

British American Tobacco p.l.c. *BAT Child Labour Policy* (2000) British American Tobacco p.l.c.: London.

British American Tobacco p.l.c. *BAT Integrated Environmental, Health and Safety Policy Manual* (2014) British American Tobacco p.l.c.: London.

British American Tobacco p.l.c. *BAT Philosophy for Supplier Partnerships* (2014) London.

British American Tobacco p.l.c. *Employment Principles* (2011) British American Tobacco p.l.c.: London.

British American Tobacco p.l.c. *Standards of Business Conduct* (2011) British American Tobacco p.l.c.: London.

British American Tobacco p.l.c. *Statement of Business Principles* (2010) British American Tobacco p.l.c.: London.

British American Tobacco p.l.c. *Who we are: Our business in 2013* (2013) British American Tobacco p.l.c.: London.

### **NESTLÉ S.A. PUBLICATIONS**

Nestlé S.A. *The Nestlé Code of Business Conduct* (2007) Nestlé S.A.: Vevey.

Nestlé S.A. *The Nestlé Corporate Business Principles* (2010) Nestlé S.A.: Vevey.

Nestlé S.A. *The Nestlé Employee Relations Policy* (2010) Nestlé S.A.: Vevey.

Nestlé S.A. *The Nestlé Human Resources Policy* (2002) Nestlé S.A.: Vevey.

Nestlé S.A. *The Nestlé Policy on Safety and Health at Work* (2008) Nestlé S.A.: Vevey.

Nestlé S.A. *The Nestlé Supplier Code* (2013) Nestlé S.A.: Vevey.

## **TOTAL S.A. PUBLICATIONS**

Total S.A. *The Total Code of Conduct and Ethics Charter* (2011) Total S.A.: Paris.

Total S.A. *The Total Human Rights Internal Guide* (2011) Total S.A.: Paris.

Total S.A. *The Total Safety Health Environment Quality Charter* (2009) Total S.A.: Paris.

## **CASES AND DETERMINATIONS**

### **CAMEROON**

Arrêt de la Cour d'Appel de Douala-Cameroun No 127/S du 04 Février 1994.

Arrêt de la Cour Suprême du Cameroun No 15 du 14 Novembre 1967.

Arrêt de la Cour Suprême du Cameroun No 18 du 27 Novembre 1962.

Arrêt de la Cour Suprême du Cameroun No 53 du 15 Avril 1982.

*Brasserie v Messie Ndzesse Gaspar* 1987 CS 85/S.

### **EUROPEAN UNION**

*Siliadin v France* Application No 73316/01, ECHR 2005-VII.

### **FRANCE**

Cour de Cassation / Chambre Civile I, Arrêt du 28 mars 1995 / 1995-10-10 in *Bulletin Civil* 1995, I, n° 352, 246.

Cour de Cassation / Chambre Civile 1, Arrêt du 4 janvier 2005.

*L'Office français de la fondation pour l'éducation à l'environnement en Europe & others v Mrs X & Y, Société Rina & Total SA* 2012 Cass, Crim, 10-82/938.

*Mme Fatima X, épouse Y v Association Baby Loup* of 25 June 2014, Court of Cassation No 13-28.369.

*Pancenko v Lettonie* 1999 CEDH 40772/98.

## **SOUTH AFRICA**

*Amalgamated Society of Woodworkers of SA & Another v Die 1963 Ambagsaalvereniging* 1967 (1) SA 586 (T).

*Du Plessis & others v De Klerk & another* 1996 (3) SA 850 (CC).

## **UNITED KINGDOM**

*Hampson v Price's Patent Candle Company* (1876) 45 LJ 437.

## **UNITED STATES OF AMERICA**

*Kasky v Nike, Inc.* (2002) 27 California Supreme Court 4th 939, 119 Cal Rptr.

*Standard Oil Co. Of New Jersey v United States* (1911)221 US SC 1.

## **STATUTES, REGULATIONS AND LEGISLATIVE INSTRUMENTS**

### **CAMEROON**



Act No 2005/015 of 29 December 2005.

Act No 2011/024 of 14 December 2011 on the Fight against Human Trafficking and Human Trade.

Constitution of the Republic of Cameroon Act No 96/06 of 1996.

Decision No 00785/DGSN/CAB of 2 December 2005.

Decision No. 097 / MINETPS / CAB of 20 August 2003 on the establishment, composition and functioning of the Synergy Committee for the promotion of social dialogue.

Decree No. 93/571 of 15 July 1993 establishing conditions for the employment of foreign national workers for certain occupations or for certain levels of professional skills.

Decree No 93/576 of 15 July 1993 establishing the form of the certificate of registration of a trade union.

Decree No. 93/574 of 15 July 1993 on the form of trade unions eligible to the registration process.

Decree No. 93/578 of 15 July 1993 determining substantial and procedural principles regulating collective bargaining agreements.

Decree No. 2000/286 of 12 October 2000 specifying the conditions for the entry, stay and exit of foreigners in Cameroon.

Law n° 96/12 of 5 August 1996 on environmental management.

Law No. 97/012 of 10 January 1997 establishing conditions for the entry, stay and exit of foreigners.

Ministerial Decree No 2001/109/PM of 20 of March 2001.

Ministerial Order No 068/MINT/SS of 28 November 2005.

Ministerial Order No 17/MTLS/DGRE of 27 May 1969 on Child Labour.

Ministry of Economy, Planning and Regional Development *Cameroon Vision 2035* (2009)  
Republic of Cameroon/Department of Prospective and Strategic Planning: Yaoundé.

Penal Code Act No 67/LF/1 of 12 June 1967.

The Labour Code Act No 92/007 of 14 August 1992.

The OHADA Uniform Act organizing Insolvency and Liquidation Proceedings of 1998.

The OHADA Uniform Act relating to Commercial Companies and Economic Interest Group of 1997.

The OHADA Uniform Act relating to General Commercial Law of 1997.

The OHADA Treaty on Revisions to the Treaty on the Harmonisation of Business Law in Africa of 2008.

The OHADA Treaty on the Harmonisation of Business Law in Africa of 1993.

## **FRANCE**

Act No 2000-196 of 6 March 2000 establishing a Children Ombudsman.

Act No 2001-152 of 19 February 2001 on employee savings.

Act No 2001-420 of 15 May 2001 on new economic regulations.

Act No 2008-496 of 27 of May 2008.

Act No. 2005-1550 of 12 December 2005 amending various provisions on Defence.

Act No. 2008-496 of 27 May 2008 on various provisions for the adaptation to European Union in the field of efforts to combat discrimination.

Act No. 2008-789 of 20 August reforming social democracy and working hours.

Act No. 2013-711 of 5 August 2013 concerning several implementing provisions with regard to justice in line with European Union law and the international obligations of France.  
Civil Code of 1804.

Commercial Code.

Constitution of the Republic of France of 27 October 1946.

Constitution of the Republic of France of 4 October 1958.

Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14, Rome, 4.XI.1950.

Council of Europe Convention on Action against Trafficking in Human Beings, Warsaw, 16.V.2005.

Criminal Procedure Code Act No 57-1426 of 31 December 1957.

Declaration of the Rights of Man and Citizen of 1789.

Decree No. 56-149 of 24 January 1956 codifying the laws regarding family and social assistance.

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [OJ L 101 of 15.4.2011].

Law of 9 December 1905 on the Separation of Church and the State.

Monetary and Financial Code.

Order No 2004-1374 of 20 December 2004 on the legislative part of the Defence Code.

Order No 2012-351 of 12 March 2012 on the legislative part of Internal Security Code.

The Grenelle Act I 2009-967 of 2009.

The Labour Code Act 2007-329 of 2007.

The New Economic Regulation Act 2001-420 of 2001.

The Social Action and Family Code Act 2008-1249 of 2008.

The Social Assessment Act 77-769 of 1977.

## **SOUTH AFRICA**

Constitution of the Republic of South Africa, 1996.

Department of Trade and Industry *Department of Trade and Industry Notice 112 of 2007: Code of Good Practice on Broad-Based Black Economic Empowerment* in *Government Gazette* 29617 of 9 February 2007.

Department of Trade and Industry *Department of Trade and Industry Notice 1183 of 2004: South African Company Law for the 21st Century, Guidelines for Corporate Law Reform* in *Government Gazette* 26493 of 23 June 2004.

Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities, GNR 882 in *GG* 26608 of 29 July 2004.

The Basic Conditions of Employment Act 75 of 1997.

The Basic Conditions of Employment Amendment Act 20 of 2013.

The Broad-Based Black Economic Empowerment Act 53 of 2003.

The Children's Act 38 of 2005.

The Code of Good Practice on Broad-Based Black Economic Empowerment of 2007.

The Companies Act 46 of 1926.

The Companies Act 61 of 1973.

The Companies Act 71 of 2008.

The Employment Equity Act 55 of 1998.

The Labour Relations Act 66 of 1995.

The Preferential Procurement Policy Framework Act No 5 of 2000.

The Skills Development Act 97 of 1998.

## **UNITED KINGDOM**

The Joint Stock Companies Act of 1844

The Joint Stock Companies Act of 1856

## **UNITED STATES OF AMERICA**

United States Sentencing Commission *2002US Federal Sentencing Guidelines: Recommended Conditions of Probation – Organizations* (2002)

## **INTERNATIONAL INSTRUMENTS**

The ILO C102 Social Security (Minimum Standards) Convention No. 102 of 1952.

The ILO C105 Abolition of Forced Labour Convention No. 105 of 1957.

The ILO C118 Equality of Treatment (Social Security) Convention No. 118 of 1962.

The ILO C120 Hygiene (Commerce and Offices) Convention No. 120 of 1964.

The ILO C122 Employment Policy Convention No. 122 of 1964.

The ILO C131 Minimum Wage Fixing Convention No. 131 of 1970.

The ILO C135 Workers' Representatives Convention No. 135 of 1971.

The ILO C138 Minimum Age for Admission to Employment Convention No. 138 of 1973.

The ILO C148 Working Environment (Air Pollution, Noise and Vibration) Convention No. 148 of 1977.

The ILO C154 Collective Bargaining Convention No. 154 of 1981.

The ILO C155 Occupational Safety and Health Convention No. 155 of 1981.

The ILO C157 Maintenance of Social Security Rights Convention No. 157 of 1982.

The ILO C161 Occupational Health Services Convention No. 161 of 1985.

The ILO C173 Protection of Workers' Claims (Employer's Insolvency) Convention No. 173 of 1992.

The ILO C182 Worst Forms of Child Labour Convention No. 182 of 1999.

The ILO C187 Promotional Framework for Occupational Safety and Health Convention No. 187 of 2006.

The ILO C29 Forced Labour Convention No. 29 of 1930.

The ILO R091 Collective Agreements Recommendation No. 91 of 1951.

The ILO R113 Consultation (Industrial and National Levels) Recommendation No. 113 of 1960.

The ILO R143 Workers' Representatives Recommendation No. 143 of 1971.

The ILO R163 Collective Bargaining Recommendation No. 163 of 1981.

The UN International Covenant on Economic, Social and Cultural Rights adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966.

The UN Convention on the Rights of the Child of 1989 adopted by the United Nations General Assembly Resolution 44/25 of 20 November 1989.

The UN International Covenant on Civil and Political Rights adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966.

The UN Universal Declaration of Human Rights adopted by the United Nations General Assembly Resolution 217 A (III) of 10 December 1948.

## **ONLINE PUBLICATIONS AND INTERNET SOURCES**

Achobang C Herakles Farms Practices Racial Discrimination (2014) <http://www.modernghana.com/news/511596/1/herakles-farms-practices-racial-discrimination.html> (accessed 1 December 2014).

Agora Vox *Encore un nouveau cas d'esclavage domestique, d'une enfant, en France*(2014) <http://www.agoravox.fr/actualites/societe/article/encore-un-nouveau-cas-d-esclavage-130766> (accessed 27 June 2014).

Atwill N *Children's Rights: France* (2014) US Library of Congress. <http://www.loc.gov/law/help/child-rights/france.php> (accessed 23 October 2014).

Bodet C & Picard P 'Le Bilan Sociétal© : de la prise en compte des intérêts contradictoires des parties prenantes à la responsabilité sociétale'(2006) 5 *Développement durable et territoires*. <http://developpementdurable.revues.org/1615> (accessed 26 August 2014).

British American Tobacco p.l.c. *The BAT Business Principles and Framework for CSR* (2010) available online at <http://www.bat.com/oneweb/framework.nsf/F/MB1?opendocument> (accessed 28 May 2014).

Business in Cameroon *Telephone Company, Viettel Cameroon, accused of importing labour heavily from Vietnam* (2014) <http://www.businessincameroon.com/telecom/3105-4858-telephone-company-viettel-cameroon-accused-of-importing-labour-heavily-from-vietnam> (accessed 2 December 2014).

Cambridge Business English Dictionary *Corporate Social Responsibility* Cambridge University Press, available online at <http://dictionary.cambridge.org/dictionary/business-english/corporate-social-responsibility> (accessed 18 November 2014).

Cultural Survival *Campaign Update– Cameroon: Local Courts Fine Herakles Farms for Racial Discrimination*(2014) <http://www.culturalsurvival.org/news/campaign-update-cameroon-local-courts-fine-herakles-farms-racial-discrimination> (accessed 1 December 2014).

Eurostat *Minimum Wages: Eur/Month-January 2014*(2014) European Commission at <http://epp.eurostat.ec.europa.eu/tgm/graph.do?tab=graph&plugin=0&language=en&pcode=tps00155&toolbox=type> (accessed 25 September 2014).

Ghogomu PM 'Communiqué à l'issue du Conseil de Cabinet du Jeudi 30 Octobre 2014'(2014) Services du Premier Ministre Office : République du Cameroun. [http://www.spm.gov.cm/uploads/media/COMMUNIQUE\\_CONSCAB\\_OCTOBRE\\_2014\\_FINAL.pdf](http://www.spm.gov.cm/uploads/media/COMMUNIQUE_CONSCAB_OCTOBRE_2014_FINAL.pdf) (accessed 1 December 2014).

Herlinger C 'Leon Sullivan Dies at 78' *Christianity Today* 1 April 2001 available at <http://www.christianitytoday.com/ct/2001/aprilweb-only/4-30-44.0.html> (accessed 27 February 2014).

Idrac AM 'La responsabilité sociétale des entreprises : pour une démarche gagnant-gagnant' (2010) French Secretary of State for Foreign Trade Report on the *Charte RSE adoptée lors du Sommet Afrique-France par les entreprises françaises* available at <http://www.e-sud.fr/groupe/telechargements/Charte%20RSE%20adoptee%20lors%20du%20Sommet%20Afrique.pdf> (accessed 26 March 2014).

OHADA *Les Actes Uniformes de l'OHADA* (2014) <http://www.ohada.org/actes-uniformes.html> (accessed 25 August 2014).

International Organization for Standardization *ISO 26000: Social responsibility* available at <http://www.iso.org/iso/home/standards/management-standards/iso26000.htm> (accessed 28 February 2014).

OECD Watch *AES Sonel employee vs AES corporation - Case overview* (2014) [http://oecdwatch.org/cases/Case\\_284](http://oecdwatch.org/cases/Case_284) (accessed 1 December 2014).

Roberts JM & Markley AW 'CSR: New EU Strategy Threatens U.S. and European Companies' (2011) <http://www.heritage.org/research/reports/2011/11/csr-new-eu-strategy-threatens-us-and-european-companiesn> (accessed 9 June 2014).

Serres F 'Responsabilité Sociale des Entreprises: L'entreprise entre développement durable et droit au développement ou comment sortir de l'« éthique en toc »?' (2011) *Lettres Actualités Droits-Libertés* 7 July 2011 available at <http://www.rives-asso.com/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=74&cntnt01pagelimit=25&cntnt01returnid=57> (accessed 26 March 2014).

Stein C, *The most significant changes to South Africa's Company Laws brought about by the Companies Act, 2008*, a BG Bowman Gilfillan Attorneys publication available at <http://www.bowman.co.za/FileBrowser/ContentDocuments/NewCompanies-Act-Brochure.pdf> (accessed on 9 May 2013).

International Labour Organisation *Introduction to International Labour Standards: Conventions and Recommendations* (2014) available at <http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (accessed 30 May 2014).

Imaralu D 'On Corporate Social Responsibility and the BAT Foundation' (2012) *Ventures Online edition of the 6 may 2012* <http://www.ventures-africa.com/2012/05/on-corporate-social-responsibility-and-the-bat-foundation/>(accessed 26 May 2014).

International Trade Union Confederation *Employers Attack on ILO System and the Rule of Law* (2014) <http://www.ituc-csi.org/employers-attack-on-ilo-system-and?lang=en> (accessed 16 October 2014).

Sida-Entreprise Cameroon: Country Report (2014) *Sida-Entreprise* available at [http://www.sidaentreprises.org/fr/page.php?id\\_rub1=43&id\\_rub2=104&col=4](http://www.sidaentreprises.org/fr/page.php?id_rub1=43&id_rub2=104&col=4) (accessed 26 March 2014).

The United States Council for International Business 'Corporate Responsibility Initiatives: The US Model Business Practices' <http://www.uscib.org/index.asp?documentID=2579> (accessed 7 march 2014).

The Financial Services Board *Listing of Approved Retirement Funds* (2014) <https://www.fsb.co.za/Magic94Scripts/mgrqispi94.dll> (accessed 10 December 2014).

UN Global Compact 'Overview of the UN Global Compact' available at <http://www.unglobalcompact.org/Aboutthegc/index.html> (accessed 25 February 2014).

UN Global Compact 'Internships with the Global Compact' available at [http://www.unglobalcompact.org/AboutTheGC/Internship\\_at\\_the\\_Global\\_Compact/index.html](http://www.unglobalcompact.org/AboutTheGC/Internship_at_the_Global_Compact/index.html) (accessed 25 February 2014).

UN Global Compact 'The UN Global Compact Board' available at [http://www.unglobalcompact.org/AboutTheGC/The\\_Global\\_Compact\\_Board/index.html](http://www.unglobalcompact.org/AboutTheGC/The_Global_Compact_Board/index.html) (accessed 25 February 2014).

UNICEF *Childinfo - Monitoring the Situation of Children and Women: France Statistics* (2014) Childinfo/UNICEF [http://www.unicef.org/infobycountry/france\\_statistics.html](http://www.unicef.org/infobycountry/france_statistics.html) (accessed 27 June 2014).

US Department of States *Country Reports on Human Rights Practices for 2013: France* (2014) US Department of States - Bureau of Democracy, Human Rights and Labor: Washington DC. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (accessed 27 June 2014).

United Nations *PRI launches new Reporting Framework* (2006) available at <http://www.unpri.org/press/pri-launches-new-reporting-framework/> (accessed 11 March 2014).

United Nations *PRI launches new Reporting Framework* (2014) <http://www.unpri.org/press/pri-launches-new-reporting-framework/> (accessed 9 June 2014).

US Department of State *U.S. NCP Initial Assessment: Edouard Teumagnie and AES Corporation* (2012) <http://www.state.gov/e/eb/oecd/usncp/links/rls/197766.htm> (accessed 1 December 2014).