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## **Contextualising the business responsibility to respect: how much is lost in translation?**

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### **I. Introduction**

As the work of the UN Special Representative (UNSR) for business and human rights moves towards its conclusion in mid-2011, the 'responsibility to respect' principles have received widespread endorsement from businesses, NGOs and governments. The corporate responsibility to respect is based on an account of 'negative' responsibility, namely the imperative that business should 'at least do no harm'.<sup>1</sup> There has been broad-based support for this proposition that business should respect (but not necessarily protect or promote) internationally recognised human rights.

The Protect-Respect-Remedy Framework articulates non negotiable goals, but endorses flexible means for achieving these goals. The UNSR's final report states clearly that "the responsibility to respect human rights applies fully and equally to all business enterprises".<sup>2</sup> But the report also acknowledges that the translation of these general principles into specific obligations governing business activity will need to differ according to context and that "[w]hen it comes to means for implementation ... one size does not fit all".<sup>3</sup> What is needed is flexibility—the capacity to take account of particular circumstances to ensure that all business, irrespective of circumstance, can fulfil their responsibility to respect human rights.

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<sup>1</sup> Deployment of such a positive/negative distinction by the UN Special Representative's 'responsibility to respect' framework is explicit in Human Rights Council, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development; Protect, Respect and Remedy: A Framework for Business and Human Rights," in *Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises*, John Ruggie (Human Rights Council, 2008)., p.9: "To respect rights essentially means not to infringe on the rights of others – put simply, to do no harm".

<sup>2</sup> ———, "Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework," (United Nations Human Rights Council, 2011)., p.21

<sup>3</sup> Ibid., p.5

However, close scrutiny needs to be paid to how this flexibility is manifest both in code development and implementation. Clearly, there are benefits to a flexible approach. Flexibility can help ensure that demands placed on businesses are both reasonable and feasible given prevailing conditions. This in turn can strengthen both the legitimacy and enforceability of regulatory standards governing business activity. However, the practical task of translating general standards into varying local contexts is complex and contested, especially when dealing with business responsibilities for indirect forms of harm. These contests mean that flexibility can undermine the achievement of human rights. As we have discussed in more detail elsewhere,<sup>4</sup> human rights abuses often result from business interaction with other actors and institutions in their external environment. Varying contextual environments therefore have an important bearing on defining the specific obligations required of businesses to avoid *indirect* harm. There is significant room for disagreement regarding what business obligations are both reasonable and feasible to demand in any particular locale. In diverse arenas, and under conditions of uncertainty and political contestation, there is a risk that flexibility can result in a ‘watering down’ of general principles to the lowest common denominator.

The central goal of this chapter is to understand why and under what conditions this loss or watering down is likely to arise, and how regulatory standards for business and human rights might be designed to enable the responsibility to respect principle to be applied in context-sensitive ways, without losing regulatory force. The complex and politically contested reasons why overarching regulatory principles can get ‘lost in translation’ when applied in practice have important implications for understanding how the corporate responsibility to respect can be meaningfully implemented across widely varying regulatory contexts. This chapter takes an important first step in unpicking how watering down occurs, though much analytical work remains to be done.

Our empirical analysis draws its insights from multiple, intersecting academic literatures. In Section II below we tease out the various contributions from political science,<sup>5</sup> regulatory<sup>6</sup> and aspects of postcolonial<sup>7</sup> literatures that can provide a nuanced appreciation of context,

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<sup>4</sup>Samantha Balaton-Chrimes, Fiona Haines, and Kate Macdonald, "Holding the Invisible Hand to Account? Beyond Individual Corporate Responsibility for Human Rights " in *Australian Political Science Association* (Melbourne: 2010), Kate Macdonald, "Re-Thinking “Spheres of Responsibility”: Business, Human Rights and Institutional Action," *Journal of Business Ethics* 99, no. 4 (2011).

<sup>5</sup>Philip Alston, ed., *Non State Actors and Human Rights* (Oxford: Oxford University Press, 2005), Stephen Kobrin, "Private Political Authority and Public Responsibility: Transnational Politics, Transnational Firms, and Human Rights " *Business Ethics Quarterly* 19, no. 3 (2009).

<sup>6</sup> See e.g. Neil Gunningham and Peter Grabosky, *Smart Regulation: Designing Environmental Policy* (Oxford: Clarendon Press, 1998), Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992), Christine Parker, *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge: Cambridge University Press, 2002), Neil Gunningham and Richard Johnstone, *Regulating Workplace Safety: System and Sanctions* (New York: Oxford University Press, 1999).

<sup>7</sup>Antony Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities," *Third World Quarterly* 27, no. 5 (2006), ———, *Imperialism, Sovereignty, and the Making of International Law / Antony Anghie*, Cambridge Studies in International and Comparative Law: 37 (Cambridge, UK ; New York : Cambridge University Press, c2004., 2004).

and through which the moral and practical ambiguities underlying the demand for sensitivity to context are drawn out. Caution is required, however, since whilst these literatures can communicate with one another, they also inhabit separate spheres so that terms and conversations within each sphere may appear similar, but can also carry specific meanings that are not easily translated between settings.<sup>8</sup>

Translation of business responsibilities from principle to practice involves at least two steps. The first step is from internationally recognised human rights to guidelines or standards detailing corresponding business responsibilities. The second is the translation of the principles as found in the guidelines into everyday practice. The UNSR's framework account of a business responsibility to respect all internationally recognised human rights involves the first kind of translation from rights to responsibilities.<sup>9</sup> Likewise, private regulatory standards for business and human rights involve translation of this kind. Although most private regulatory codes do not address the full range of internationally recognised human rights, their goal is to translate those rights they do target into regulatory standards that codify corresponding business obligations.

The UNSR's final report explicitly recognises the important ways in which principles of business responsibility are institutionalised through a diverse range of private regulatory codes aimed at improving business practice, involving: "commitments undertaken by industry bodies, multi-stakeholder and other collaborative initiatives, through codes of conduct, performance standards, global framework agreements between trade unions and transnational corporations, and similar undertakings".<sup>10</sup> These codes address a wide range of issues, including labour rights standards, occupational health and safety (OHS), social services and infrastructure, environmental protection, cultural and indigenous rights and 'fair' terms of market exchange. Once business responsibilities have been codified at the level of general guidelines and/or more specific regulatory standards, these duties then need a further phase of translation, in order to shape everyday decision-making and local practices of transnational businesses. This is the second step in the translation of principle into practice, and that on which this chapter focuses.

Our empirical analysis is based on data relating to the content and the implementation of existing private regulatory systems that govern the impact of transnational business enterprises on social and labour dimensions of human rights. The widespread and established nature of these systems makes them suitable objects of investigation for exploring how

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<sup>8</sup> A specific example is the use of the term 'continuous improvement' in the regulatory literature (see for example Gunningham and Johnstone, *supra* note 6, pp 41-4) which requires companies to improve specific standards over time as technology and work processes develop. This is quite different from the term 'progressive realisation', which is used in international law and human rights literatures to refer to the process where a business is understood as non-compliant with a particular standard but with an understanding that it will reach the required standard over time. Yet, these terms are sometimes used interchangeably.

<sup>9</sup>The difficulties involved in this translation from rights to responsibilities are discussed by several other chapters in this volume (eg. Knox, Mares).

<sup>10</sup> *Supra* note 2, p.26

general principles regarding a business responsibility to respect are being translated into varying local contexts.

To analyse code content (Section III), we conducted a detailed coding analysis of 33 existing private standards systems relating specifically to business responsibilities for human rights, including labour rights (see Appendix 1). We focused on codes centred on human rights which had a significant international profile and market penetration.<sup>11</sup> We excluded codes that specialised in only one area of regulation (e.g. OHS or unions), or that operated only at the level of single companies.

Analysis of the codes was complemented by research into their interpretation and implementation on the ground in the tea sector in India, outlined below in Section IV. This enabled us to examine whether the provision of context-sensitive flexibilities within regulatory codes operated to strengthen the contribution of regulatory codes to human rights compliance, or allowed businesses to water down or avoid their responsibilities. To examine implementation, we undertook field based research on two major regulatory standard systems, identified as among the most extensively developed with regard to context-sensitive provisions: Fairtrade Labelling Organisation (FLO) and Rainforest Alliance.

As we explain, the extent to which context-sensitive flexibilities within regulatory codes operated to strengthen or dilute their effectiveness in enhancing human rights realisation depended both on the way flexibilities were formulated in code content (explored in section III), and dynamics of code interpretation and implementation (section IV).

## **II. Context-sensitive standards and the elusive art of translation: exploring the relevant debates**

Debates about the merits of applying general norms to diverse social and institutional contexts are familiar to both regulatory and human rights scholars. Further, the substance of their respective debates lies along similar continua with those arguing for universal norms (or regulatory goals) at one end and those arguing for different norms or regulatory goals to apply in different contexts at the other. Between these two poles lie arguments from those who promote flexibility in the means utilised to achieve regulatory goals or requisite standards, but view the required standards themselves as non-negotiable – at least in the medium to long term.<sup>12</sup> Yet, at the same time universal application of norms – albeit with

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<sup>11</sup> In selecting regulatory codes to analyse, we have aimed to analyse the whole relevant ‘population’, as we conceptualise it, though given the plurality and heterogeneity of these standards, it is difficult to draw clear conceptual or empirical boundaries around our ‘population’. To help resolve conceptual ambiguities about how to define human rights standards in the context of MNCs, we conceptualised our population as including any standards that addressed three or more categories of internationally recognised human rights. To address the lack of consistent information from private standards organisations about numbers of accredited firms, we drew on other academic and grey literature, as well as discussions with staff from some private standards organisations and other experts in the field to identify the most influential and widely adopted standards.

<sup>12</sup>Gunningham and Johnstone, *supra* note 6; Ayres and Braithwaite, *supra* note 6; John Braithwaite, *Regulatory Capitalism: How It Works, Ideas for Making It Work Better* (Cheltenham: Edward Elgar, 2008), M.K. Sparrow,

flexible means – raises concerns about ‘imperialism’, and fears that contemporary dynamics of ‘soft’ legal transplant may be yet another expression of colonial power relations.

Political demands from activists and some (often western) governments for a non-negotiable set of human rights norms that apply to business comprise a significant element of this literature.<sup>13</sup> Despite this demand, there remains significant uncertainty about what strategies would enable human rights principles to be adapted sensitively to varying contexts. Further, when *indirect* harms flowing from business practice are taken into account, sensitivity to context is critical in understanding the specific ways business interacts with the community, shapes community development and affects economic sustainability.<sup>14</sup> Yet there is currently little detailed understanding of how varying social and institutional contexts affect the capacities of different actors to discharge responsibilities for human rights.

The regulatory literature contains analogous debates (and uncertainties). For a substantial portion of this literature, the regulatory goals in question are assumed to be both necessary and non-negotiable. Safe workplaces or an unpolluted environment, for example, are understood as fundamental indicators of effective regulatory regimes. Debate is centred instead on the most effective means for achieving compliance, and how the context and the character of the particular regulated enterprise itself (e.g. its size, the orientation of its organisational ‘culture,’ position in the contracting hierarchy and so on) affect compliance capacity. Views differ regarding the value (or otherwise) of prescriptive rules,<sup>15</sup> process standards<sup>16</sup> or various iterations of enforced self regulation or ‘meta’ regulation.<sup>17</sup> The comparative regulatory literature takes this a step further to explore the way regulatory strategies in one economic, political and cultural context may be inappropriate and ineffective in another.<sup>18</sup> Direct imposition of a particular regulatory approach from an alien economic and political context has been argued to act as a legal “irritant” contributing to ongoing entrenchment of disadvantage.<sup>19</sup>

The international reach of private regulatory codes and their cross-national enforceability also resonates with elements within the postcolonial literature. For some, international laws,

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*The Regulatory Craft: Controlling Risks, Solving Problems and Managing Compliance* (Washington DC: Brookings Institution Press, 2000).

<sup>13</sup> For an overview see Peter Utting, "Rethinking Business Regulation: From Self-Regulation to Social Control," in *UNRISD Technology Business and Society Programme Paper Number 15* (Geneva: UNRISD, 2005).

<sup>14</sup> Balaton-Chrimes, Haines, and Macdonald, *supra* note 4; Macdonald, *supra* note 4

<sup>15</sup> For a discussion see Julia Black, *Rules and Regulators* (Oxford: Clarendon Press, 1997).

<sup>16</sup> C Coglianese and D.Lazer, "Management-Based Regulation: Prescribing Private Management to Achieve Public Goals," *Law and Society Review* 37, no. 4 (2003), Gunningham and Johnstone, *Regulating Workplace Safety: System and Sanctions*.

<sup>17</sup> Ayres and Braithwaite, *supra* note 12; C. Parker, *The Open Corporation: Effective Self Regulation and Democracy* (Cambridge: CUP, 2002).

<sup>18</sup> See generally the essays in David Nelken and Johannes Feest, *Adapting Legal Cultures / Edited by David Nelken and Johannes Feest*, Oñati International Series in Law and Society (Oxford : Hart, 2001).

<sup>19</sup> See Gunther Teubner, "Legal Irritants: Good Faith in British Law or How Unifying Law Ends up in New Divergences," *The Modern Law Review* 61, no. 1 (1998).

regulations, codes and standards are argued to continue the colonial ‘civilising mission’.<sup>20</sup> This perspective can alert us to the moral complexities surrounding private regulation. It cautions actors (particularly liberal activists from the west and north) to be wary of advancing another form of colonial imperialism, albeit this time through promotion of a (private) regulatory regime aimed at protecting human rights. This is difficult territory since such moral sensibility sits uncomfortably with demands for the realisation of absolute standards. Further, engendering what might be termed ‘postcolonial guilt’ in fair-trade regimes also may provide leverage for local actors to invoke existing economic and other constraints<sup>21</sup> to push for retention of an (oppressive) status quo.

Each of these literatures draws attention to the importance of human rights (or regulatory aims) in *general* terms, but suggests very real challenges to meaningful and practical translation of the general to specific goals on the ground. The political science literature highlights the political and social contestation surrounding the translation; the post-colonial literature highlights the moral complexity; while the regulatory literature engages with the practical challenges confronting goals of effective enforcement. Together, these literatures prompt us to evaluate how principles can be both accepted as legitimate *and* result in improved human rights outcomes.

The UNSR Framework inhabits a ‘middle ground’, a place recognizable from the debates above: one where the goals are non-negotiable but means to achieve those goals can be flexible. The UNSR’s framework is clear about the universal applicability of core regulatory goals, stating that “all business enterprises have the same responsibility to respect human rights wherever they operate”.<sup>22</sup> However, the need to adjust interpretations of business responsibility to local contexts is also explicitly recognised at various points throughout the UNSR’s final report.<sup>23</sup> The report suggests that the means through which a business enterprise meets its responsibility to respect human rights” will vary depending on both internal characteristics of different business enterprises, and features of the external context.

Both internal firm level characteristics and external contextual issues are addressed in the Framework. With regard to *internal* firm characteristics, the size of a given firm as well as the extent to which it operates individually or as part of a corporate group are identified as relevant variables. Discussion of *external* context, too, contains some specificity. There are various references to the need for any given business to take into account “the nature and context of its operations”,<sup>24</sup> variations in “operational context”, and variations across

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<sup>20</sup> Anghie, "The Evolution of International Law: Colonial and Postcolonial Realities.", ———, *Imperialism, Sovereignty, and the Making of International Law* / Antony Anghie. See also Fiona Haines, *Globalization and Regulatory Character: Regulatory Reform after the Kader Toy Factory Fire* ed. David Nelken, *Advances in Criminology* (Dartmouth: Ashgate, 2005).

<sup>21</sup> Constraints that clearly may be shaped by the demands made by global business networks.

<sup>22</sup> *Supra* note 2, p.21

<sup>23</sup> For example: “the Guiding Principles are not intended as a tool kit, simply to be taken off the shelf and plugged in. While the Principles themselves are universally applicable, the means by which they are realised will reflect the fact that we live in a world of 192 United Nations Member States, 80,000 transnational enterprises, 10 times as many subsidiaries and countless millions of national firms”. See *Ibid.*, p. 5

<sup>24</sup> *Ibid.*, p. 16

economic sectors in considering what specific practices the responsibility to respect principle demands.<sup>25</sup> Moreover, the UNSR has stated clearly that “business enterprises may be involved with adverse human rights impacts” not only as a result of their own activities, but also “as a result of their business relationships with other parties”,<sup>26</sup> so that the business responsibility to respect extends to cases in which businesses “contribute to abuse through the relationships connected to their activities, such as with business partners, suppliers, state agencies and other non state actors”.<sup>27</sup> The report goes further here to discuss the degree of leverage that businesses can exercise over other actors in their external environment.<sup>28</sup>

In places, the UNSR’s final report goes further still, detailing examples of what businesses should (and should not) do to be compliant with the responsibility to respect principle. In relation to interactions with governments, for example, it is stated that “Business enterprises should not undermine States’ abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes”.<sup>29</sup> More broadly, it is suggested that “Leverage may be increased by, for example, offering capacity building or other incentives to the related entity, or collaborating with other actors”.<sup>30</sup>

Nonetheless, there remains significant room for interpretation of how companies are obliged to behave. There is no doubt that the UNSR takes the need for context-sensitivity seriously, but what this means in practice remains ambiguous. While a range of useful illustrative examples of contextual variation are offered, clear principles or procedural guidelines for determining how responsibilities should be adapted to contexts in which businesses confront varying capacities and constraints remain elusive.<sup>31</sup>

### **III. Code content – translating principles into rules**

In light of such ambiguity, how, then, are business obligations for human rights currently being codified? Our analysis of private regulatory codes can help us understand how

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<sup>25</sup>Ibid., p.14

<sup>26</sup>Ibid., p.14

<sup>27</sup>\_\_\_\_\_, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development; Protect, Respect and Remedy: A Framework for Business and Human Rights.". The UNSR’s final report gives further clues regarding which external actors businesses have responsibilities towards, with particular emphasis placed on business partners. Explanatory notes to page 14 indicate that “For the purpose of these Guiding Principles a business enterprise’s ... ‘business relationships’ are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”

<sup>28</sup> Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise’s leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences. Supra note 2, p.19.

<sup>29</sup>Ibid., p.13

<sup>30</sup>Ibid., p. 18

<sup>31</sup>The final report is not completely silent in relation to procedural approaches to resolving ambiguities around contextual operationalisation. Repeatedly throughout the report there is reference to the need to draw on consultation and expertise to resolve such matters, for example: “In assessing how best to respond, [businesses] will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives” (Ibid., p.21)

adaptation of general principles to varying contexts is currently being approached, and whether such ambiguity has demonstrable consequences in terms of either strengthening or weakening regulatory outcomes. In the analysis below, we identify the most common methods whereby regulatory standards are made sensitive to context. The most important of these is some form of progressive realisation provision within a particular code. In some cases progressive realisation is codified directly, via acknowledgement that demanding immediate fulfilment of regulatory goals is not feasible and/or reasonable, together with specification of some means of indicating what progress towards regulatory goals is expected over a given timeframe. In other cases, the principle of progressive realisation is codified by spelling out specific obligations businesses should undertake in the presence of barriers to full compliance.

### ***Direct codification of progressive realisation***

Direct codification of the principle of progressive realisation is a common means through which existing private regulatory standards try to deal with the mediating influence of social conditions and constraints across varying local contexts. Progressive realisation provisions explicitly recognise that there may be constraints internal and/or external to the firm that prevent full and immediate compliance. Firms may find that their efforts to avoid participation in harmful social practices are undermined by regulatory, market or wider social constraints. Such constraints might result from government policy, such as constraints on union rights and freedoms; from market competition; or from pervasive social norms, such as entrenched patterns of employment discrimination against minority groups.

Progressive realisation provisions provide flexibilities to enable compliance over time, whilst seeking to define the reasonable limits of business responsibility for ongoing processes of change.<sup>32</sup> For example, private standard-setting schemes such as FLO or Rainforest Alliance have developed separate minimum and ‘progress’ standards, laying out defined timelines over which processes of capacity building and organisational change can be undertaken to help overcome both internal and external constraints.

Provisions of this kind were quite widespread in our data, though by no means standard practice. 18 of the 38 codes we analysed included provisions for progressive realisation in some form, though the principle was implemented in quite different ways. Fixed timeframes could be specified, such as with FLO where six year audit cycles demanded compliance with increasing numbers of standards. In some cases, such as Rainforest Alliance, a cumulative or points system operated allowing companies to fall short on some standards that they found particularly difficult, so long as they compensated in other areas.

These progressive realisation provisions can operate either to extend or delimit business responsibility. On the one hand they can let business ‘off the hook,’ enabling businesses to

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<sup>32</sup>Richard Locke, Fei Qin, and Alberto Brause, "Does Monitoring Improve Labor Standards?: Lessons from Nike" *MIT Sloan Research Paper No. 4612-06*(2006).

repeatedly refuse to address the hardest categories of issues, such as union capacity and freedom in highly politicised environments. On the other hand, some progressive realisation provisions made it clear that constraints were no excuse for non-compliance in the longer term; those standards demanding full compliance with *all* provisions required over a fixed and auditable timeframe would fall into this category. In this latter case, however, at the end of this specified timeframe the progressive realisation provisions effectively come to an end, leaving the standards open to the charge of contextual insensitivity over the medium term.

Despite these sometimes extensive provisions for progressive realisation, the practical demands they impose on business remain ambiguous. In particular, they are weakened by the absence of clear statements of principle about the kinds of costs and risks businesses can reasonably be asked to incur in contributing to progressive realisation of challenging principles, how costs and risks vary depending on the different capacities of different firms, and over what timeframes it is therefore reasonable to expect fulfilment of human rights outcomes of different kinds to be achieved. Further, statements about what processes businesses should put in place to resolve these questions lacked clarity.

### ***Codifying specific obligations designed to build capacity for compliance***

Most existing codes recognise the risk that businesses may invoke progressive realisation provisions continually thereby failing to build their capacity for full compliance in the longer term. To address this risk, codes can require some form of internal system be put in place to manage progression to full compliance. For example, the ISO26000 draft standards require businesses to “develop a plan for addressing some social responsibility issues in the short term and some over a longer period of time. Such a plan should be realistic and should take into account the capabilities of the organization, the resources available and the priority of the issues”. The particular content of these kinds of provisions varies depending on the outcomes being pursued, and the nature of the constraints that are expected to be confronted.

Internal management systems also were commonly required to build capacity in avoiding business contribution to human rights harm. 33 out of 38 standards have process standard requirements of some kind. 13 codes specifically codify business responsibilities for carrying out formal human rights risk assessments. For example, such issues were codified within the IFC Performance Standards and the OECD Guidelines on Multinational Enterprises.

In other cases, standards specified directly how businesses should conduct their relationships (especially with sub-contractors in supply chains). The most common example here was standards requiring businesses to carry out due diligence to identify important sources of indirect harm arising from their supply chain or other business partnerships. 24 of the 38 standards we analysed included requirements for due diligence of this kind. However, emphasis remained on obligations to *identify* risks, with little articulation of actions required to confront risks.

The nature of the relationship between businesses and governments was also addressed by some codes. While such provisions were less common, 8 of the 38 codes included standards relating to payment of taxes, lobbying, avoidance of bribery and corruption, and so on. The Global Compact cites ‘contribution to the public debate’ as one of the ways in which companies can support and respect human rights. Similarly, the OECD Guidelines on MNEs emphasise the importance of government policy frameworks in supporting human rights compliance, and acknowledge that businesses should not undermine institutional and policy conditions favourable to human rights compliance. For example, its principles suggest that companies should “Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives, or other issues”;<sup>33</sup> “Contribute to the development of environmentally meaningful and economically efficient public policy, for example, by means of partnerships or initiatives that will enhance environmental awareness and protection”;<sup>34</sup> and “Abstain from any improper involvement in local political activities”.<sup>35</sup>

Similarly, the Global Reporting Initiative aims to “focus attention on the impacts organizations have on the communities in which they operate, and disclos[e] how the risks that may arise from interactions with other social institutions are managed and mediated ... In particular, information is sought on the risks associated with bribery and corruption [and] undue influence in public policy-making.” In a small number of private codes businesses have also committed to transparent disclosure of lobbying positions or receipt of government assistance as part of their corporate social responsibility programs.<sup>36</sup>

Broader, almost quasi-governmental responsibilities were specified in a number of codes that encapsulated the ethic of progressive realisation. For example, 26 out of the 38 standards specified that business should contribute in varying ways to social services and infrastructure within their local communities. These typically involved obligations to provide or facilitate housing, educational or health facilities, or to maintain these to a certain level. Responsibilities to facilitate or provide employment opportunities for wider community members were also present. However, in the context of high levels of poverty, poor educational and health provision, and so on, most standards did not require that businesses provide social services and infrastructure at a level that might be considered fully compliant with social and economic rights. Rather, the principle governing these obligations was for business to make some ongoing contribution to maintaining these conditions, but within the constraints of local context. In other words, these business obligations seem (implicitly) to be interpreted as contributing to longer term processes of progressive rights realisation, in interaction with the roles and obligations of other local actors.

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<sup>33</sup> OECD Guidelines for Multinational Enterprises 2011, Principle A5. General Policies, p.17

<sup>34</sup> Ibid. Principle 8, Environment, p.42

<sup>35</sup> Ibid. Principle 15, General Policies, p.18

<sup>36</sup> It should however be noted that there remains an important qualitative distinction between disclosure and guarantee of sound practices.

These provisions can strengthen the contribution of regulatory codes to human rights realisation in so far as they require business to take on some responsibility for broader social problems. But they can also weaken regulatory effectiveness if their demands on business overstretch what companies are sustainably capable of delivering, and/or ask business to take on roles that are not appropriate to their particular status as business-oriented organs of society.<sup>37</sup> Excessive obligations regarding provision of social infrastructure around farms could contribute to hollowing out state provision – reinforcing problematic forms of dependency and reproducing paternalistic relationships between farm owners and agricultural workers. Further, strategies of defiance or creative compliance can develop around regulatory demands considered illegitimate. Yet, if the standards are not sufficiently demanding, they risk a ritualistic approach to progressive realisation where existing practice that falls well below regulatory goals is legitimised instead.

The principle of progressive realisation remains important as a means of adapting business responsibilities to varying contexts, and thereby helping to minimise problems of empty symbolism and ritualism when standards are infeasible, or problems of perceived illegitimacy when standards are perceived to be unreasonably demanding. Yet, within the majority of the codes there remains a striking absence of a clear principled account of how to assess reasonable burdens and timeframes appropriate to particular capacities and constraints. Without this specificity, internal management systems and due diligence procedures can fail to build sufficient capacity to engender full compliance. The codes, important as they are, leave the possibility for little meaningful change to occur on the ground.

#### **IV. The interpretation and implementation of codes – translating rules into behaviour**

In the presence of persistent ambiguities both within the UNSR's responsibility to respect framework, and existing private regulatory codes for business and human rights, how then are these standards being implemented on the ground within regulated sectors? Based on our analysis of code interpretation and implementation in the Indian tea sector, we analyse both how context-responsive provisions are working to strengthen the purposes of the regulatory schemes (that is, to help ensure appropriate business contributions to the protection of human rights), and are being used to water down the business contribution to human rights realisation. Overall, these ambiguities within codes were resolved in very ad hoc ways. Whether the inclusion of contextual flexibilities strengthened or weakened standards depended on the informal dynamics of negotiation between standard setting organisations, auditors and producers at the local level regarding appropriate standard interpretation and implementation.

Our analysis focused on two schemes: Fairtrade Labelling Organisation (FLO) and Rainforest Alliance. FLO operates across multiple sectors (mainly but not exclusively agriculture), and

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<sup>37</sup> The UNSR's final report emphasises that the framework is grounded on an affirmation of the view of business enterprises as "specialised organs of society performing specialised functions". See *Supra* note 2, p.6.

authors and manages several different sets of standards that focus on a range of commodities, and are adapted for different production arrangements: small producers, hired labour and contract labour. Our analysis focuses on the hired labour standards that apply to tea plantations in India.<sup>38</sup> FLO certified businesses are audited by FLO-CERT, an independent auditing body. Like FLO, Rainforest Alliance authors and manages standards which are applied in a number of agricultural sectors across many different countries. Rainforest Alliance only works with one standard – the Sustainable Agriculture Network standard (SAN) – though this encompasses several addendums and interpretation guidelines adapted to different commodities and production countries. We focus on the generic SAN standard as it applies to the Indian tea sector.<sup>39</sup>

Both FLO and Rainforest Alliance have fairly extensive provisions addressing how to adapt business obligations to varying regulatory contexts. Both include extensive provisions for progressive realisation; require businesses to contribute in some way to ensuring worker access to adequate forms of social services and infrastructure where government provision is not forthcoming; and incorporate modest obligations for remediation when business obligations have not been met. For example, Rainforest Alliance standards require buyers to provide some training and technical assistance to producers lacking capacity. FLO also offers some programs to assist producers with compliance in cases of demonstrated need.

The tea sector in India was an appropriate case study for a number of reasons. Despite the presence of law and regulation to curb abuse of human rights, tea workers in India have suffered considerably from the establishment of the first plantations by the British in the colonial era to the present. The Plantation Labour Act 1949 stipulates a range of social services that must be supplied by plantations for workers, such as housing, education and medical care. Yet the standard of these services usually remains low.<sup>40</sup> Legislative provisions at the state level prescribe a minimum wage for workers; nevertheless, the plantation worker minimum wage is lower than the minimum wage for non-plantation workers. Further, minimum wages on plantations vary between states: wages in the North-East Indian states of Assam and West Bengal are half the level of those in South Indian states of Kerala and Tamil Nadu. The dramatic fall in the price of tea in the early 2000s has increased the economic pressure on plantations and small farmers, increasing hardship for workers. Recent crises

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<sup>38</sup> Tea in India is also produced, to a lesser extent, on small farms, however very few of these are organised into cooperatives, and there is only one cooperative certified to the FLO Small Producers Organisation (Tea) standard.

<sup>39</sup> At the time of research, Rainforest Alliance was in the process of developing interpretation guidelines for tea in India, in consultation with businesses and environmental NGOs in the country.

<sup>40</sup> Anna Morser, "A Bitter Cup: The Exploitation of Tea Workers in India and Kenya Supplying British Supermarkets," (London: War on Want, 2010), Susan Van der wal, "Sustainability Issues in the Tea Sector: A Comparative Analysis of Six Leading Producing Countries," (Amsterdam: SOMO, 2008), Samantha Goddard, "Tea Break: Crisis Brewing in India," (London: ActionAid UK, 2005), J Neilson and B. Pritchard, *Value Chain Struggles: Institutions and Governance in the Plantation Districts of South India* (Oxford: Blackwell, 2008).

such as this compound society-wide challenges of a caste system and the historically embedded 'social system' of plantations.<sup>41</sup>

Our field research was based in Tamil Nadu, and to a lesser extent Kerala, with some business and NGO interviews in Chennai, Bangalore and Kolkata. Overall, we interviewed 92 individuals from 51 organisations across the Indian tea sector. These included interviews with estate workers, smallholders, representatives of unions and other activist organisations, lawyers, estate managers, trading companies, government regulators, industry bodies, auditors, and representatives of standard setting schemes.

In the analysis below, we focus on implementation of provisions for progressive realisation of standards, as the most important form in which private standards facilitate responsiveness of obligations to regulatory context. In the tea sector in India, progressive realisation provisions apply within both the Rainforest Alliance and FLO standards. Several such regulatory standards were singled out by tea producers we spoke with as being particularly problematic. These were standards governing: minimum or living wages; provision of social infrastructure for plantation workers; and environmental protection of certain kinds. We documented widespread resistance among producers to acceptance of and compliance with these standards. Because these resistance strategies we observed are of potentially broad relevance it is useful to outline them in some detail.

### *Elements of resistance strategies*

Resistance strategies were built on several inter-related (somewhat inconsistent) claims made by local businesses. First, interviewees would conspicuously affirm businesses' commitment to the general regulatory principles founded on a universal commitment to realising human rights. At the same time, businesses would then question the specific regulatory standards through which these recognised rights were being translated into auditable obligations.

The discrediting of standards occurred in two somewhat contradictory ways. First, some businesses claimed that local regulations made these international demands redundant, arguing that existing state and local regulatory obligations imposed were sufficiently effective in protecting universal human rights-based standards. Producers argued that the general principles of rights protection codified within private regulatory standards were already being implemented by virtue of local regulatory systems. Most producers affirmed the strength of existing national regulations and their equal or in some cases superior rigour to that of international standards. For example, the President of a major Planters Association asserted that:

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<sup>41</sup> Sharit Kumar Bhowmik, "The Plantation as a Social System," *Economic and Political Weekly* 15 (1980). Neilson and Pritchard, *Value Chain Struggles: Institutions and Governance in the Plantation Districts of South India*.

“The enforcement of the [Plantations] Act is very foolproof – everything is there – everything is being implemented by the Inspector of Plantations. They are empowered with all necessary powers to prosecute management, even to criminally prosecute management. ... The following of Acts is compulsory – it doesn’t matter if it is difficult, you have no answer to that – just because you are finding it difficult doesn’t mean it can be ignored – you have to follow the Act and follow the Legislation.”<sup>42</sup>

At the same time, though, it was argued that specific FLO or Rainforest Alliance standards were unrealistic and/or inappropriate to the local context. External constraints were commonly invoked to show the infeasibility of implementing these standards. Despite putting a strong case for the redundancy of international regulatory codes early in his interview, for example, the President of the Planters’ Association later argued: “certain provisions are impractical, creating problems for citizens, even law abiding citizens”. Both government and international standards were open to challenge. The president continued “Whenever any difficulties are faced by management or employers in implementing certain provisions we will take up the case with government, saying that we can’t implement it, and that we are facing difficulties.”

Wage levels were a particular issue here. On this important and politically charged issue, resistance involved two distinct elements. First, the distinction between legal minimum wages and ‘living wages’ – the latter concept being given formal expression in regulatory standards such as those of FLO – was not acknowledged by local actors. Within local debates about wages, discussion shifted immediately from living wages to the Indian state and the local politics of setting minimum wages. Discussion of what is or should comprise a living wage in the Indian context was conspicuous by its absence.

With the focus of debate thus narrowed, arguments about the infeasibility of increasing legal minimum wages within the local context were invoked. Government-defined minimum wage setting has been deeply politicised in the Indian tea sector. The local trade publication the *Planters’ Chronicle* documents the extensive debate concerning wages. While on the one hand businesses publicly affirm the general principle of protecting minimum wages, there is significant debate regarding how this principle should be interpreted and implemented. One editorial in the *Planters’ Chronicle* claims that the “plantation industry is strangled by the promulgation of a politically engineered minimum wage without taking into consideration the capacity of the plantation sector to pay it”, going on to argue that the definition of minimum wages must consider prevailing market conditions.<sup>43</sup>

Specific environmental standards—specifically buffer zones around plantations – were also targets for criticism. The claim that “the aim of this [environmental requirement] is to make production unsustainable; to make business unsustainable” was expressed at a Rainforest Alliance local stakeholder forum that included 20 or so tea plantation managers held in Ooty

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<sup>42</sup> Interview with author, 7<sup>th</sup> July, 2010

<sup>43</sup> *Planters’ Chronicle*, July 2008, p.3

(a major tea growing district of Tamil Nadu).<sup>44</sup> Again, the importance of local standards was emphasised.

“The purpose of the standard is to come up with local standards relevant to how we do things here – to develop local indicators. These are global standards and they are not taking that into account”.

Various elements at play here comprised a strategy that might be considered a ‘judo move’, which can wrestle realisation of human rights to the ground. First, criticism was pre-empted through claims that rights were already being realised through the application of local law. Secondly, the superiority of local law as a means of regulating local practice was bolstered by de-legitimising ‘foreign’ or ‘international’ demands as (a) insensitive and (b) likely to result in pushing business to the brink of insolvency under prevailing economic conditions. The claims of redundancy on the one hand, and contextual inappropriateness on the other, sit in some tension with one another. However, they share in common assumptions about the superior legitimacy and authority of locally authored regulatory standards. Both claims assume that locally authored standards are able to respond to context more effectively than international standards, since they can better understand and accommodate contextual capacities and constraints. This ‘judo move’ was facilitated by a postcolonial sensibility in which ‘outsiders’ are reluctant to challenge established local practice.

### *The ‘judo move’ in action*

Debate around standards regulating business contributions to the provision of social infrastructure illustrate how this resistance strategy was deployed. Relatively minor issues were invoked as a means of questioning the authority and overall credibility of the standards’ authorship and local relevance. For example, at the Rainforest Alliance event we attended in Ooty,<sup>45</sup> one plantation manager commented that the national standards in the Plantation Labour Act (PLA) were generally higher than the Rainforest Alliance standards in regard to provision of housing, but that the Rainforest Alliance standards included reference to the provision of heating, furniture and so on for plantation labourers – provisions that are not in the PLA. One planter read out from the standard a provision demanding heating for cold climates, and everyone laughed. Much laughter was also generated by the issue of the requirement for sufficient supplies of toilet paper, leading to a relatively uncontested conclusion that this provision should be removed, since it was irrelevant in the local context. This discussion set a tone whereby the difficulty of adapting general standards to local contexts was generally acknowledged within the room, putting the international standard setters – who were all too aware of their own deficiencies in understanding local context (and yet clearly committed to the principle of responding to it) – on the back foot.

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<sup>44</sup> 16th July, 2010

<sup>45</sup> 16th July, 2010

Yet, discussion then moved quickly onto more controversial issues, such as OHS regulations prohibiting women from applying chemicals. Several plantation managers at the forum stated that local practices allowed all workers to apply chemicals at certain times. Further, the viability of local production practices, where women dominate the labour force, required that this be permitted to continue. Someone asked: “what if there are no other labourers to do it – what do you do, close down the plantation?” The Rainforest Alliance representative stayed firm on this point arguing “It is difficult for us to dilute the standards on these things” but affirmed that individual farms could choose not to comply on this issue and simply receive fewer points on the scheme’s progressive compliance metric. The representative continued “[so]you can take the non-conformity, though I know that’s not a satisfying solution.”

Invoking the existence of context-specific constraints in these ways operated as a further means of resisting the implementation of international standards. Contested interpretations of the balance between business capacity to make changes on the one hand, and external constraints that they can’t control on the other, played a central role in determining how these dynamics were resolved. Universal principles sitting behind the standards were not questioned (or glossed over in the case of living wages), yet the demands for sensitivity to local context in interpreting general principles upset automatic translation of general principles into specific obligations on business, creating spaces within which implementation could be resisted.

In other cases, reference to the ‘imperialist’ nature of the codes’ international authorship was even more explicit. For example, in an article in the *Planters’ Chronicle*, an article on international certifying agencies (such as Fairtrade and Rainforest Alliance) asserted:

“The certifying agencies as such are institutions that are capitalising on the poverty of the farmers and the guilt of conspicuous consumption of the highly affluent in the western world... As far as India is concerned it has much better labour protective legislation than the US, China and many of the European Countries... Does it mean that there are no unethical practices in the developed countries? Does it also mean that those who are not certified in the developing countries are following unethical practices? Does it not imply such an inference? If so it is a clear case of defamation and the certifying agencies should be made to pay compensation to all other producers who are following the laws of the land and providing the required welfare measures to their workers.”<sup>46</sup>

In this way, the legitimacy of the authorship of the international standards was widely questioned, enabling resistance of specific demands placed on businesses, without the universal applicability of the overarching human rights norms being called into question.

### ***Lost in translation?***

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<sup>46</sup> Planters’ Chronicle, February 2009, p.29

Counter strategies able to be employed by representatives of standards bodies are also important to consider. Lack of specificity and interpersonal dynamics are important to understand here. Lack of specificity in the codes, discussed above, made counter-arguments by these representatives difficult to mount. In practice, it was often extremely challenging to specify the reasonable limits of business responsibility for institutional change. It was unclear under what conditions existing constraints should count as ‘indemnities’ from responsibility (on the grounds that ‘ought implies can’), or under what conditions businesses could instead reasonably be required to engage in processes of capacity building and institutional change.

Interpersonal dynamics also were important. Resistance strategies deployed by business were strengthened by the anxiety of international standard setting representatives not to impose themselves ‘imperialistically’ in situations they didn’t fully understand. The ‘judo move’ described above was capable of invoking feelings of ‘postcolonial guilt’ in local standard setting bodies. For example, one staff member from Rainforest Alliance who we interviewed commented:

“We want to be sensitive; we don’t want to throw our weight around in an area like this that we don’t really understand – we defer to the collective bargaining agreement on labour issues. There are vocal and strong trade unions here – we can’t start getting involved in things like negotiating wages – you could get bogged down in a quagmire with all those kinds of things ... You can get mired in that stuff – we are just a small team here. We know our limits and want to stay focused on action”.<sup>47</sup>

In another case, core staff of one standard setting organisation explicitly rejected the notion that international standard setting bodies could operate as legitimate forums for settling sector wide issues such as wages and overtime. One FLO staff member argued:

“There’s nothing I can do about it because it’s all something that government is involved in... there are unions that are involved in it, tea management is involved in it. It’s not just one tea management, one union and one estate. The entire tea sector is involved. In fact currently the wage decision is under dispute with the High Court – the tribunal award has been disputed by the tea management and the case is going in the High Court. ...There is no role for anybody in fact, no role for anybody from fair trade I think, because the law of the land does take its own course.”<sup>48</sup>

Overall, then, contestation and resistance surrounding the definition and interpretation of standards played an important role in shaping dynamics of code implementation, influencing what degree of compliance can realistically be expected to result from private regulatory standards. When considering whether the inclusion of contextual flexibilities strengthens or weakens private standards systems, it may well be important to consider not only formal provisions within code content, but also the informal dynamics through which interpretation

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<sup>47</sup> July 16<sup>th</sup>, 2011

<sup>48</sup> 19<sup>th</sup> July, 2010

and implementation is negotiated between businesses, standard setting organisations and other stakeholders.

## **V. Conclusions: Implications for the business responsibility to respect and refining the art of translation**

The UNSR's Framework clearly recognises the value of human rights responsibilities of business being adapted to accommodate the varying social and institutional environments in which transnational businesses operate. Similar principles of contextual-responsiveness are embodied within the multiple private regulatory codes that currently exist to regulate the human rights impacts of transnational business activity. However, in the absence of clear principles and procedures to regulate the translation of general principles into varying contexts, the context-specific human rights obligations of transnational business remain deeply ambiguous. The under-specification of business obligations provides an opening to allow some businesses to resist their human rights obligations at various stages of the regulatory process, in particular during processes of interpretation and implementation of codified regulatory standards. Further, resistance strategies are enhanced when the legitimacy of the codes' authorship is widely questioned.

As a result, there is a persistent risk that regulatory efficacy will be 'lost in translation', as contestation over the definition of specific business responsibilities is resolved in inconsistent and ad hoc ways. Yet the potential benefits of context-responsiveness in implementation means that it isn't possible to simply read across codes and judge which are responding to context in ways that strengthen regulatory effectiveness, and which operate to allow companies off the hook.

What, then, does our analysis suggest for how the UNSR's responsibility to respect principles might be operationalised in context-responsive ways that strengthen rather than weaken the regulatory purposes of the responsibility to respect framework? First, these regulatory systems require clearer substantive principles to regulate how relevant contextually-variant capacities, burdens and constraints are to be identified and weighed.<sup>49</sup> This is a significant challenge and will require robust collaboration and negotiation between code setting bodies and relevant industries. Ultimately, however, codes need to make more explicit which aspects of local context are to be taken into account in operationalising standards of progressive realisation.<sup>50</sup>

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<sup>49</sup>We have elaborated elsewhere normative principles that could provide some basis for clarifying some of the ambiguities discussed above. See for example Macdonald, *supra* note 4.

<sup>50</sup>One possible short-cut to this end that has been used in some existing cases is to benchmark progressive realisation obligations against businesses identified as the best in a particular location or region. One informative example in this respect is the ILO's WISE program, discussed in Fiona Haines, *The Paradox of Regulation: What Regulation Can Achieve and What It Cannot* (Cheltenham: Edward Elgar, 2011), pp. 164-166. In other cases, wage rates and/or requirements regarding provision of social infrastructure have been audited with reference to local or regional standards. See for example discussion of the Starbucks Cafe Practices program in Kate Macdonald, "Globalising Justice within Coffee Supply Chains? Fair Trade, Starbucks and the Transformation of Supply Chain Governance," *Third World Quarterly: Special Issue on 'Beyond CSR? Business, Poverty and Social Justice'* 25, no. 7 (2007).

A first step is the clarification of procedures that can establish these substantive principles. Yet clear processes for resolving contestation around standard interpretation are absent from many existing regulatory schemes. Clearer procedures through which contestation about context specific interpretations of regulatory principles can be resolved in particular cases are important, as highlighted by Melish and Meidinger's chapter in this volume. There are examples of leadership on this issue. Some private regulatory initiatives have established quite extensive processes of producer consultation in particular locations, for example via formal regional bodies in the case of FLO, or via more ad hoc yet regular consultative forums in the case of Rainforest Alliance. These offer at least some means of informal deliberation through which negotiations around standards' interpretation can occur.

Moreover, the result of these deliberations needs to be shared to develop greater clarity around what can, and cannot, be expected through the certification process. Such consultation can provide an important basis for pushing back against the 'judo move' we described above. Working from areas of agreement (specifically agreement on commitment to human rights) can help build common understanding of how to realise these rights. This process is more than just talk. It can provide a forum to share concrete examples—from industry, workers and from standard setting bodies—of how resource constrained businesses in developing contexts can meet human rights standards in an effective but cost-conscious way. This in turn may help reduce resistance to the external imposition of international standards based on perceptions of these standards as new expressions of a colonial project. Building processes of setting and implementing private regulatory standards that enable greater influence for businesses, farmers and workers in producing countries could take the force out of at least some of these resistance strategies, and increase the capacity of private international standard setters to push back against such resistance.

It is no coincidence that the kinds of issues we are highlighting here go to the heart of the most political aspects of the institutional arrangements through which regulatory standards are managed. The contestation and resistance documented above highlight the deeply political character of these kinds of private regulatory standards, which press businesses to accept potentially burdensome responsibilities for supporting public regulatory goals. Not only can these responsibilities be costly in terms of resources and time, but they can require companies to go well beyond local norms (for example in paying living not minimum wages), and to give up significant forms of control, subjecting themselves in quite intrusive ways to interventions by affected stakeholders. It is not surprising then that businesses may seek to resist and limit such obligations where possible.

Given this, our conclusions highlight not only what is missing from existing approaches, but also one of the most serious obstacles to promoting regulatory processes of this kind: that is, the need to confront deeply political problems of entrenched power relations, conflicting interests, and competing claims of legitimacy. One of the most politically appealing features of the responsibility to respect framework is almost certainly the modest character of the demands that it places on powerful businesses and governments. This follows as much from

what is *underspecified* within the framework as the substance of what the framework clarifies. By advocating clearer business responsibilities for realising human rights, the framework at least affirms the values and purposes of those seeking deeper social transformation. But by leaving key details of such obligations underspecified, the framework's formulation ensures that it does not pose any serious challenges to existing distributions of social power and resources.

In this sense, the UNSR's responsibility to respect framework is perhaps giving greater weight than is usually recognised to context of a rather different kind: the context of the prevailing *political* environment. The UNSR's framework needs to survive in this international political environment if it is to have the opportunity go to work as a framework of transnational business regulation. While current ambiguities regarding the distribution of regulatory burdens may mean that much is lost in translation from the perspective of regulatory efficacy, such ambiguities may play an important role in enabling the regulatory standards to survive within an inhospitable political environment. This is a trade-off that both regulatory and human rights scholars would do well to take more seriously.

## **Appendix 1: Standards analysed in coding**

1. 4C Code of Conduct and related docs
2. Business Social Compliance Initiative Code of Conduct
3. Electronic Industry Code of Conduct
4. Equator Principles
5. Ethical Tea Partnership
6. Ethical Trading Initiative
7. Fairtrade Labelling Organisation - Generic Hired Labour, Generic Contract Production, Generic Small Producer, Generic Trade
8. Fair Wear Foundation Code of Labor Practices
9. FLA Workplace Code of Conduct
10. Flower Label Program International Code of Conduct
11. Forestry Stewardship Council Principles and Criteria
12. Global Social Compliance Programme
13. International Council on Mining and Metals Sustainability Framework 10 Principles
14. ICTI CARE Process: International Toy Industry's Ethical Manufacturing Programme
15. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy
16. International Finance Corporation's Performance Standards on Social and Environmental Sustainability
17. OECD Guidelines for Multinational Enterprises
18. Rainforest Alliance Sustainable Agriculture Standard, including Addendum and Local Interpretation Guidelines
19. SA8000
20. UTZ Certified 'Good Inside' Coffee, Coca, Tea Farms, Tea Factories
21. Worker Rights Consortium / United Students Against Sweatshops
22. World Fair Trade Organization 10 Principles of Fair Trade
23. Worldwide Responsible Accredited Production (WRAP)

24. Principles and Criteria for Sustainable Palm Oil
25. Monash Castan Centre & International Business Leaders Forum 'Human Rights Translated'
26. IFC Performance Standards Guidelines
27. FLA Guide to Best practice in hiring, termination, disciplinary procedures and resolving grievances
28. Global Compact
29. Flower Label Program Guidelines for the socially and environmentally responsible production of cut flowers, ferns, plants and foliage
30. SA8000 Guidelines
31. Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance
32. International Confederation of Free Trade Unions Code of Labour Practice
33. Voluntary Principles on Security and Human Rights

ISO 26000 was still in draft form at the time of writing, and though investigated, was not included in the full coding.



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