

# Why Corporate Social Responsibility is failing children

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**Save the Children fights for children in the UK and around the world who suffer from poverty, disease, injustice and violence. We work with them to find lifelong answers to the problems they face.**

**Save the Children UK is a member of the International Save the Children Alliance, the world's leading independent children's rights organisation, with members in 28 countries and operational programmes in more than 100.**

**The Corporate Responsibility (CORE) Coalition works to make changes in UK company law to minimise companies' negative impact on people and the environment and to maximise companies' contribution to sustainable societies.**

**The CORE coalition represents more than 130 civil society groups including Amnesty International UK, Friends of the Earth and Action Aid.**

Published by  
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First published 2007

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Typeset by Grasshopper Design Company

Printed by Printflow Ltd

This publication is printed on paper sourced from sustainable forests.

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# Executive summary

In the last decade, voluntary corporate social responsibility (CSR) strategies have become the primary means of tackling problems such as poor labour standards, aggressive marketing of products for children, and environmental harm resulting from company action or inaction. Save the Children and The Corporate Responsibility (CORE) Coalition have become increasingly concerned that, while governments around the world increasingly favour these approaches, such strategies may have only limited application.

This paper reviews three familiar voluntary codes for companies – the International Marketing Code for Breastmilk Substitutes, the Extractive Industries Transparency Initiative (EITI), and the Ethical Trading Initiative (ETI) – and finds some striking results, with serious concerns raised by all three cases. In particular, this report found:

- violations of all three of the codes, even by company leaders whose rhetoric and policies purport to support the aims of the codes
- a catch-22 situation, where market drivers contradict the principles of voluntary codes
- a failure to enforce sanctions for violations of the codes under the established governance schemes
- governments fail to support the codes sufficiently to enable their full implementation and enforcement.

The report concludes that the codes have worked effectively only in instances where there has been strong government involvement through legislation and enforcement. While voluntary initiatives have made some progress in encouraging more ethical corporate practice, there are serious limitations as to what voluntarism can achieve. In spite of this, governments have been reluctant to review the

efficacy of voluntary approaches, and business leaders often fail to acknowledge that legislation may in fact be a more effective means of upholding higher social and environmental standards for companies.

Based on their findings, Save the Children and The Corporate Responsibility (CORE) Coalition make the following recommendations:

1. Voluntary, multi-stakeholder initiatives should be seen only as a way of encouraging dialogue and developing best practice. They must always be accompanied by a public policy strategy to ensure that minimum rules and standards are sought in the medium to long term.
2. The next generation of CSR should see company leaders aligning their lobbying strategies with their CSR strategies.
3. The enforcement regimes of all codes must be strengthened to penalise companies who have signed up to voluntary codes of conduct, but failed to meet their stated aims within an accepted time-frame.
4. Governments must promote laws that underpin codes of conduct at national level, such as through labour laws or transparency laws.
5. Overarching frameworks of company law must place responsibility on companies to act to the highest standards wherever in the world they operate and to provide access to justice for victims of corporate abuse.
6. Governments and companies should support and implement international measures that can reinforce codes of conduct, such as the UN Human Rights Norms for Business<sup>1</sup> and the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprise.<sup>2</sup>



# Introduction

*“The most effective strategy for reconciling private business goals and public social purposes remains what it has always been, namely effective government regulation... CSR should not be regarded as a long-term substitute for the rule of law.”*

David Vogel, ‘The limits of the market for virtue’

There has been an increasing reliance in recent years on a voluntary approach to corporate accountability. Minimal government intervention, self-enforcement of voluntary codes and standards by companies, and monitoring by external stakeholders has become the norm. But the debate has also become polarised, as flags have been firmly planted on both sides of the voluntary/regulatory debate: non-governmental organisations (NGOs), on the one hand, have called for greater regulation of the corporate sector while government and industry, on the other, have preferred a non-interventionist approach that places the onus on companies themselves to behave responsibly. Many of these arguments, however, are based on rhetoric rather than on solid evidence of whether or not voluntary corporate social responsibility (CSR) is an effective means of ensuring corporate accountability, thereby securing the rights of all members of society, including children, as well as protecting the environment.

In this report, Save the Children and The Corporate Responsibility (CORE) Coalition review three familiar voluntary codes for companies: the International Marketing Code for Breastmilk Substitutes, the Extractive Industries Transparency Initiative (EITI), and the Ethical Trading Initiative (ETI).

Save the Children in particular has been directly involved in the monitoring and, in some cases, the establishment of these voluntary initiatives, as have many of CORE’s supporters. Save the Children’s participation in these initiatives has raised a number of concerns. First, in spite of the media attention paid

to these schemes, only a limited number of companies, or only the ‘usual suspects’, choose to get involved in voluntary initiatives. Secondly, for those companies who do join, there is often little or no follow-through on commitments. Finally, there appears to be little evidence of sanctions against companies who violate the principles of the codes.

Indeed, Save the Children and CORE’s experience has shown that codes of conduct, and other voluntary CSR schemes, are either cast aside by companies because they lack adequate enforcement regimes, or they are applied only in limited circumstances. Furthermore, unless there are serious financial and/or legal risks associated with failing to adhere to such codes, they hold no legitimacy for businesses and their suppliers, ultimately putting the world’s most vulnerable people, including children, at risk.

Based on the experience with these initiatives, and as outlined in this report, Save the Children and CORE have concluded that voluntary CSR initiatives are not ends in themselves: specific regulatory actions can, and should, *strengthen* voluntary CSR commitments, reinforcing ethical values in a competitive market. The changes discussed in this report include a call for mandatory social and environmental reporting,<sup>3</sup> enhanced directors’ duties,<sup>4</sup> and access to justice for affected communities.<sup>5</sup>

In spite of the evident weaknesses of voluntary codes, there has been little appetite within the UK government or in the European Commission to re-examine the voluntary approach to corporate accountability. On the spectrum of a voluntary versus a regulatory approach, the positions of both the UK government and the European Commission are clear: both define CSR as voluntary measures adopted by business over and above minimum legal requirements. Gordon Brown has said: “The better, and in my

opinion the correct, modern model of regulation... is based on trust in the responsible company.”<sup>6</sup>

But this ‘trust-based’ approach seems to be wildly out of touch with what the general public expects and wants from government in relation to corporate accountability. A MORI/IPSOS poll taken in 2006 showed that 90 per cent of UK voters believe the government should set out enforceable rules to ensure that companies are socially responsible.<sup>7</sup>

While voluntary CSR has had some positive outcomes, for example, improved dialogue among different stakeholders, its value is ultimately limited. Save the Children and the nine million people who supported The Corporate Responsibility (CORE) Coalition in its calls for greater corporate accountability agree that the bar must be raised. The message from these voices is clear: voluntary CSR initiatives are not enough and must be bolstered by regulation and enforcement.



# Case study I: International Code on Marketing of Breastmilk Substitutes (the Code)

*“I shouldn’t be standing in front of you, on the 25 year anniversary of the Code, telling you so little has changed and that companies continue to encourage mothers to spend money they don’t have on manufactured food most of them don’t need. I shouldn’t be standing in front of you because it shouldn’t still be happening. But it is, because the voluntary code clearly isn’t working, and children are dying as a result.”*

Jasmine Whitbread, Chief Executive Officer,  
Save the Children UK

Voluntary efforts to stop aggressive tactics for marketing breastmilk substitutes go back a long way – long before the advent of the corporate social responsibility (CSR) movement. More than 25 years ago, the International Code of Marketing of Breastmilk Substitutes (the Code) was adopted at the World Health Assembly (WHA). It was a groundbreaking commitment by the world’s governments to tackle the challenge of promoting and protecting breastfeeding, both in the developed and the developing world.<sup>8</sup>

## What is the issue?

Breastfeeding saves lives. It has positive effects on the health of children; reduces the risk of infections such as diarrhoea, chest, ear and urinary tract infections, flu and meningitis; and protects children against a host of chronic diseases, from allergies to Type 1 diabetes. Even in the UK, a bottle-fed baby is up to 10 times more likely to be hospitalised with gastro-intestinal illness than a breastfed one.<sup>9</sup> Furthermore, the United

Nations Convention on the Rights of the Child recognises the fundamental role that breastfeeding plays in fulfilling the right of every child to the highest attainable standard of health.

But today, over 25 years on from the adoption of the Code, almost 1.4 million children are dying every year because they haven’t been adequately breastfed.<sup>10</sup> Aggressive marketing of breastmilk substitutes by the corporate sector is part of the problem. It does not entirely account for the fact that only 39 per cent of children globally are exclusively breastfed for four months and even fewer for six months,<sup>11</sup> but there is considerable scientific evidence linking commercial promotion with reduced breastfeeding and knock-on impacts on child survival.<sup>12</sup>

## The voluntary response

The Code aims to contribute “to the provision of safe and adequate nutrition for infants, by the protection and promotion of breastfeeding, and by ensuring the proper use of breastmilk substitutes, when these are necessary, on the basis of adequate information and through appropriate marketing and distribution”.<sup>13</sup>

Under the Code, companies are prohibited from promoting products such as infant formula, follow-on formula and bottles, and from employing marketing tactics deemed to undermine breastfeeding. Companies must follow these principles in all of their countries of operation, whether the principles of the Code are enshrined in national law or not.

## The Code in practice

Despite the seemingly clear guidelines, flagrant breaches of the Code continue across the infant feeding industry. In 2005/06, in the UK alone, almost £6 million was spent by leading manufacturers on the marketing of baby milk. This is almost three times what the UK government spent on promoting breastfeeding in the UK in the same year.<sup>14</sup>

Ongoing monitoring of the implementation of the Code has found that widespread violations continue. A review of the implementation of the Code in 2006 summarised the violations as follows:

- Companies forge links with health professionals and doctors and offer incentives, prize schemes and research funding.
- Other products, such as baby food and drink, are promoted for infants younger than six months, who, it is recommended, should be exclusively breastfed.
- Retailers, including supermarkets and pharmacies and which account for almost 75 per cent of all sales, use special offers and promotions schemes to advertise in-store.
- In developing countries where enforcement of the Code is weak, companies indiscriminately advertise breastmilk substitutes.
- Product labels are not provided in local languages, posing a serious health risk to mothers and babies.
- Companies provide 'educational materials' on children's nutrition and growth through telephone and support lines, as well as through public health centres, pharmacies and hospitals in developing countries.

These violations have persisted, despite the fact that governments have been supportive of the Code – at least symbolically: the main responsibility for implementing and monitoring the Code is on national governments. Since 1981, almost three-quarters of the 193 countries that adopted the Code have taken measures to implement it, supported by the International Baby Food Action Network (IBFAN)

and UNICEF. Some countries, including Brazil, India and Sri Lanka, have translated most of the Code and its subsequent resolutions into national law. Most countries, including the UK, Bangladesh and Botswana, have only implemented some provisions of the Code as law, implemented the Code as a voluntary measure, or currently have laws in draft form.<sup>15</sup>

The failure of the Code to stem aggressive marketing of breastmilk substitutes has not been for lack of pressure from consumers. The long-standing boycott of Nestlé, led by campaign group Baby Milk Action, is an example of this consumer pressure. According to Baby Milk Action, Nestlé continues to flout the code, especially in markets outside the UK. "Our analysis shows that Nestlé's policy of compliance with the International Code is nothing more than a concerted effort to simply avoid many of the core provisions of this Code. Nestlé's interpretations skate on the periphery of the International Code to satisfy the casual observer. Anyone familiar with the provisions of the Code and other [World Health Assembly] WHA resolutions will have to agree that the Nestlé Instructions fall short in the dozen areas described."<sup>16</sup>

Strong pressure on companies through investor means has also had limited effect to date. The ethical investment vehicle, FTSE4Good, once excluded baby food companies from its index. FTSE4Good recently revised this by developing a set of criteria to determine whether or not baby food companies should be included in their index. Companies did not have to demonstrate full Code compliance, only that they had put management systems in place to reach, eventually, full compliance. By 2006, one company, Novartis, through its baby food division Gerber, had met these criteria.<sup>17</sup> The other industry heavyweights have had, to date, limited or no engagement with FTSE on this matter. However, Novartis' entry into the index has, indeed, catalysed renewed interest by some companies. This may or may not lead to further positive engagement of key players with the FTSE4Good in the coming months.

## What next?

Twenty-five years on, the aspirations of the Code still remain elusive in most countries. At best, the Code provides a benchmark for best practice, and at worst is a symbol of the failure of voluntary self-enforcement by companies to ensure children's rights are upheld.

Brazil provides an example of what can be accomplished when international rules are upheld and fully incorporated into law. Here, the Code, as well as subsequent resolutions by the WHA, have been embedded into regulation and are monitored by the government's health inspectorate (ANVISA) and IBFAN. According to research by Baby Milk Action, violations that happen elsewhere in the world simply do not happen in Brazil.

Campaigners continue to call for stronger regulations restricting the aggressive marketing of baby milk products, and for stronger regulation of the baby food

industry as a whole. Examples include: calling for the institution of a global, legally enforced code; lobbying EU member states to go further than the new EU Directive in tightening their national legislation on marketing of breastmilk substitutes; and calling on governments that haven't fully incorporated the Code into national legislation to do so.<sup>18</sup>

In addition, the long history of the baby milk campaign, and the persistence of the aggressive marketing of breastmilk substitutes for infant feeding in spite of the Code, highlight the need for legal frameworks in the those countries in which companies' headquarters are based – for example, the UK, US, Switzerland and France.

Examples of how broader reforms in laws governing corporate accountability can also help to ensure that mothers and babies are protected from commercial promotion of breastmilk substitutes are shown in Table 1.

**Table 1**

| <b>Proposed broader reforms</b>  | <b>Examples of how reforms could bolster the Code and improve accountability</b>   |
|--|--|
| <p><b>1. A legal requirement for companies to report on their social and environmental impact throughout the supply chain</b></p> <p>Alongside their annual financial reports, all large and medium-sized public and private companies should be legally required to report on their social and environmental impacts in a way that is proportionate to their size and complexity.</p>                       | <p>Companies in the infant feeding industries would have to include regular reporting on how they comply with the Code.</p>  |
| <p><b>2. Increased directors' duties</b></p> <p>Company directors would have a duty to take reasonable steps to minimise, mitigate and manage any significant adverse impacts on workers, local communities and the environment.</p>   | <p>Company directors would be required to reveal any violations of the Code, such as aggressive marketing tactics, wherever they operate in the world. Where these duties fail to be implemented, home country governments would have the authority to place appropriate financial or criminal charges on directors.</p> |
| <p><b>3. Parent company accountability and access to justice</b></p> <p>This would give greater rights to affected communities to seek compensation for human rights or environmental abuses committed by companies or their subsidiaries. If unable to access justice in their home country, communities should also have the right of redress in the country where the parent company is incorporated.</p> | <p>Communities who are negatively affected by marketing of infant formula milk would be able to gain redress through the parent company in instances where local justice systems are weak and where the Code itself has failed to be implemented into local law.</p>   |

# Case study 2: The Extractive Industries Transparencies Initiative (EITI)

The Extractive Industries Transparency Initiative (EITI) was announced by UK Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg in September 2002. Its inception came in response to the Publish What You Pay (PWYP) campaign. PWYP was founded by a group of NGOs, including Save the Children UK and now comprising more than 300 anti-corruption and development NGOs from more than 50 countries worldwide. The campaign calls for greater transparency in the oil, gas and mining sectors.

## What is the issue?

Extractive industries generate enormous revenues for a number of countries: in fact they are important to over 50 developing countries that are home to 3.5 billion people. In Africa, for example, about three-quarters of the continent's trade relates to natural resource industries.<sup>19</sup>

As evidenced by the development experience in Botswana and Norway, revenues from extractive industries, when effectively spent, have the potential to bring about dramatic improvements in children's lives.<sup>20</sup> When spent on public investments such as health and education services, they can help lift poor children out of poverty. But this has not been the experience for a number of natural resource-dependent states: 12 of the world's 25 most mineral-dependent states, and six of the world's 25 most oil-dependent states, are classified by the World Bank as "highly-indebted poor countries".<sup>21</sup> Work done by Oxfam America found a "strong negative correlation between a country's level of mineral dependence and its [Human Development Index] HDI ranking: the more that states rely on exporting minerals, the worse their standard of living is likely to be."<sup>22</sup>

Revenues from extractive industries have also frequently fuelled corruption, exacerbated conflict and weakened economic development, with devastating impacts on children's lives. "Worldwide, it is estimated that so-called 'resource wars' have killed or displaced over 20 million people and raised at least \$12 billion a year for rebels, warlords and repressive governments. And it is children who bear the brunt of the resulting destruction and displacement."<sup>23</sup>

## The voluntary response

The EITI is a multi-stakeholder, voluntary initiative that seeks to improve the transparency of oil, gas and mining companies' payment to governments (for example, taxes, royalties, bonuses and other fees) and of government receipts for this income in resource-rich developing countries. This initiative rests on the assumption that revenue transparency is essential for citizens of resource-rich developing countries to hold their governments to account for the way they spend revenue from oil, gas and mining. The EITI seeks to achieve the following:

- regular publication of all material oil, gas and mining payments by companies to governments ('payments') and all material revenues received by governments from oil, gas and mining companies ('revenues') are regularly publicised to a wide audience in a publicly accessible, comprehensive and comprehensible manner.
- where such audits do not already exist, payments and revenues are the subject of a credible, independent audit, applying international auditing standards.
- payments and revenues are reconciled by a credible, independent administrator, applying international auditing standards and with publication of the administrator's opinion regarding that reconciliation, including discrepancies, should any be identified.

- this approach is extended to all companies, including state-owned enterprises.
- civil society is actively engaged as a participant in the design, monitoring and evaluation of this process and contributes towards public debate.

A public, financially sustainable work plan for all of the above is developed by the host government (in other words, the resource-rich country), with assistance from the international financial institutions where required, including measurable targets, a timetable for implementation and an assessment of potential capacity constraints.

## The initiative in practice

The EITI has been held up as an example of best practice for multi-stakeholder initiatives and is often described as ‘ground-breaking’. On the surface, its progress has been impressive: since its launch in 2002, 23 resource-rich countries, the majority of which are in Africa, have signed up to the initiative. At the international level, 24 companies have signed up as ‘supporters’ of EITI, including 13 of the 50 largest oil and gas companies in the world and 11 of the world’s largest mining conglomerates.<sup>24</sup> Key donor governments such as the UK, the US, Germany, the Netherlands, Norway and, most recently, Canada have provided their public support for the initiative, both financially and by encouraging companies to adhere to the guidelines. Furthermore, the EITI International Advisory Group (now constituted as the EITI Board) and Secretariat have devoted extensive work to developing guidelines, criteria and governance structures essential to the EITI.

Nonetheless, the initiative has not yet had significant impact on the ground. Little more than 25 per cent of the top 50 oil and gas companies have signed up to the initiative. This means that almost three-quarters of the major players in the oil and gas industry – many of which are state-owned or private companies from non-G8 countries – are not engaged in EITI at all. On the mining side, while 11 major mining companies are formally signed up to EITI, the initiative has predominately focused on oil and gas,

meaning virtually no progress on publishing payments from mining companies to governments under EITI has been made to date.

Even among those companies who have signed up to support the initiative, almost none have actually published any information about their payments to governments. Of the 24 companies involved in EITI, only three have taken any unilateral steps towards full disclosure for every country of operation. Talisman, a Canadian oil company, and Newmont, a US-based mining firm, now provide a complete breakdown of fiscal contributions (royalties, taxes and material payments) to governments wherever they operate. In its 2005 Sustainability Report, Statoil, the Norwegian state-owned oil company, published its payments to governments. But Henry Parham, International Coordinator for the PWYP Coalition says: “Five years on, very few companies are more transparent about payments to governments than before the launch of EITI.”

The prevailing opinion among companies is that the resource-rich countries themselves must lead the process of implementing EITI, and the companies will then follow. In an interview on the Total website, Jean-François Lassalle, Vice-President, Public Affairs, Exploration & Production at Total, summarised this view: “The principle of transparency may be fundamental, but so too is the sovereignty of states.”<sup>25</sup>

However, it will not come as any surprise that the governments of several resource-rich poor countries do not have the capacity or, in some cases, the inclination to improve transparency in their oil and mining industries. Only national governments in Nigeria, Azerbaijan and, most recently, Ghana and Kazakhstan have initiated extensive and lengthy reforms of their extractive industries, which will require companies to publish their payments to governments. Nigeria, for example, is in the process of creating a law to make it a requirement for companies to publish their payments. But progress on EITI in all of the other implementing countries has been slow, at best.

According to a report from PWYP and Revenue Watch Institute, as of October 2006 the majority

of EITI countries were a long way off from implementing the EITI fully. Many countries had not even taken rudimentary steps towards implementing it. At the time the report was written, of the 21 governments who had endorsed the initiative, only two – Azerbaijan and Nigeria – had published fully audited and reconciled EITI reports. Eight countries had not taken the initial step of appointing an in-country person to lead the process, and eleven countries had failed even to draft an approved work-plan.<sup>26</sup>

Wider problems have also limited the ability of the EITI to function effectively. The success of the EITI relies on significant involvement by civil society as an external watchdog to both corporate and state actors. But worrying trends have emerged even in countries that have indicated their support for the EITI, with a number of high-profile arrests of civil society actors involved in campaigning for greater transparency. In April 2006 in the Republic of Congo, Brice Mackosso, a human rights defender, and Christian Mounzeo, who are co-ordinators of their local PWYP Coalition were detained, it is widely believed, as a result of their work on revenue transparency. Most recently, Sarah Wykes, a British campaigner for Global Witness, was detained in Angola on unclear charges broadly related to an allegation of violating national security while meeting local civil society organisations concerned with transparency of oil revenues.

## What next?

While the PWYP Coalition remains supportive of EITI (the coalition's international co-ordinator holds a seat on the recently-formed EITI Board, for example), coalition members, including Save the Children, are demanding more. David Ugolor, President of the African Network for Environmental and Economic Justice, and a PWYP member from Nigeria, says: "Global and mandatory measures are the only lasting and effective solution to this global problem. Voluntary processes do not guarantee that the EITI will be successful at the global level or at a country level, especially in places like Nigeria."

PWYP continues to recommend that mandatory payment disclosure be adopted in order to solve a number of problems plaguing the EITI, including the need to:

- level the playing field between competitors, preventing more transparent companies from being undercut by less socially minded competitors
- eliminate concerns about confidentiality clauses and disaggregation of data
- de-politicise the issue of payments disclosure in countries with governments not committed to transparency
- eliminate the double standard between levels of transparency in the developed and developing world.

As well as supporting other mechanisms for mandatory disclosure, Save the Children UK and PWYP have been involved in calling for changes to international accounting standards and stock market listings that would require oil, gas and mining companies to disclose their payments to governments as part of their regular financial reporting and as a condition of listing on regulated markets. Such mechanisms would complement and reinforce at international level the gains made by EITI at country level.

With this in mind, PWYP is looking for broader support from oil, gas and mining companies, as well as large investors, for mandatory disclosure of payments to be incorporated into the international system. Although it has been difficult to find these allies to date, there have been murmurings from some important corners. For example, Insight Investment, a large institutional investor with investments of £3.7 billion in European extractive companies, has said: "Given the likely difficulty of achieving effective host government-led revenue transparency in all fifty resource-dependent countries, it would... seem prudent for home governments to give further consideration to mandating payments disclosure through national legislation."<sup>27</sup>

Helpfully, the German government has indicated that EITI should go further along the regulatory

route, recognising that a solely voluntary approach is flawed.<sup>28</sup>

However, by and large, there is widespread resistance to pursuing a mandatory disclosure approach to EITI. Chevron's position at the EITI Plenary meeting in October 2006 highlights the challenges PWYP will face in gaining broader support for mandatory disclosure: "As we reach out to new members, it must be clear to them that EITI is a voluntary initiative

dedicated solely to promoting revenue transparency. It must also be clear that we respect the sovereign rights of participating countries and the sanctity of commercial contracts as enshrined in the EITI principles."<sup>29</sup>

Table 2 gives examples of how broader reforms in corporate accountability could contribute to greater transparency and accountability in the extractive industries.

**Table 2**

| <b>Proposed broader reforms</b>  | <b>Examples of how reforms could bolster the EITI and improve accountability</b>  |
|--|---|
| <p><b>1. A legal requirement for companies to report on their social and environmental impact throughout the supply chain</b><br/>           Alongside their annual financial reports, all large and medium-sized public and private companies should be legally required to report on their social and environmental impacts in a way that is proportionate to their size and complexity.</p>                       | <p>A requirement for oil, gas and mining companies to publish their payments to governments would be built into all reporting requirements on a mandatory basis.</p>                              |
| <p><b>2. Increased directors' duties</b><br/>           Company directors would have a duty to take reasonable steps to minimise, mitigate and manage any significant adverse impacts on workers, local communities and the environment.</p>   | <p>Directors would have a legal requirement to mitigate complicity in opaque transactions with governments, and in the resulting social and environmental implications of those transactions.</p> |
| <p><b>3. Parent company accountability and access to justice</b><br/>           This would give greater rights to affected communities to seek compensation for human rights or environmental abuses committed by companies or their subsidiaries. If unable to access justice in their home country, communities should also have the right of redress in the country where the parent company is incorporated.</p> | <p>Communities affected by the lack of transparency in oil and mining industries could seek legal action in the country in which a parent company is based.</p>                                   |

# Case study 3: Ethical Trading Initiative (ETI)

*“Corporate codes are not a substitute for effective government legislation – that is, labour laws that protect workers’ rights, including their right to freedom of association and collective bargaining – and their effective enforcement.”*

ETI Impact Assessment<sup>30</sup>

The Ethical Trading Initiative (ETI) was established in 1998 as a multi-stakeholder partnership of civil society, trade unions and companies to address the poor working conditions of people working in international supply chains. It began with a corporate membership of only 12 companies, but less than a decade later it boasts one of the highest participation rates of any of the focused CSR schemes, with 39 corporate sector members (with a total turnover of £100 billion) and a further 21 other members drawn from trade unions and civil society. Many of these 39 companies are brand names easily recognisable from the British high street, with an estimated supply chain network of over 20,000 suppliers across 100 countries.<sup>31</sup>

## What is the issue?

The ETI was set up against the backdrop of the increasing failure of governments in many developing countries to protect the rights of their workers with adequate national legislation and enforcement measures.<sup>32</sup> In the past ten years or more, the trends towards increasing levels of trade liberalisation have been accompanied by widespread exploitation of workers in developing countries. Children are victims of this exploitation both directly, through child labour, and indirectly, as members of families who rely on wages for their livelihood. The International Labour Organisation (ILO) reports that there are 218 million working children aged 5–17 around the world.<sup>33</sup> According to Anti-Slavery International, about 5 per cent of these, or 12.3 million children, are

employed directly in export industries that support multinationals.<sup>34</sup> Although Save the Children and The CORE Coalition recognise the reality of working children’s lives, they find it unacceptable that 126 million children continue to be involved in hazardous work.

Children are also vulnerable members of the millions of working families unable to make ends meet. According to research carried out by the UN’s Economic and Social Council, 1.4 billion people in the global labour force do not earn enough to lift themselves and their families above the \$2-a-day poverty line. Among those, 485 million workers and their families live below the \$1-a-day poverty line.<sup>35</sup>

## The voluntary response

The ETI was conceived to encourage companies to improve labour standards in their supply chains by, for example, providing a living wage to workers and ensuring that child labour was only undertaken within the rules of the ILO Core Labour standards.

The outcomes of the ETI have included the development of a base code of practice based on international labour standards.<sup>36</sup> When they join the ETI, companies commit to implementing the ETI Base Code in all or part of their supply chain.

## The Base Code in practice

In October 2006 the ETI published the results of an impact assessment of the implementation of labour codes by ETI member companies. This study showed that, despite some progress, workers’ conditions in the supply chains of major retail and brand-name companies continued to be poor, and furthermore found that progress had been unacceptably slow in



several specific areas. Examples of failures identified in the impact assessment include:

- Workers' fundamental human rights, recognised by the United Nations International Labour Organisation, to join a trade union and negotiate conditions are often ignored.
- In reviewing the payment of a living wage at 25 sites, the ETI impact assessment researchers concluded firmly, "[that] in general codes had had almost no impact in terms of ensuring workers receive a living wage".<sup>37</sup>
- Crucially, Base Code implementation has brought few benefits to date to those workers with the worst conditions, including sub-contractors, casual and other informal workers, and suppliers use more casual and contract labour to cope with extreme fluctuations in orders.

Like other voluntary CSR schemes, the ETI has also been slow to penalise companies who fail to meet the terms of membership, preferring to give member companies a chance to address these (often complex) issues in their supply chains. Levi Strauss & Co was recently suspended from membership because of its refusal to adopt the living wage provision of the ETI Base Code, but this seems to be an isolated incident.

Save the Children and The CORE Coalition are also aware of instances where members of the ETI have violated basic principles of human and environmental rights. ASDA is a long-time member of the ETI and is wholly owned by Walmart, which in 2003 had 39 class-action lawsuits in 30 US states pending against it for violations of overtime laws.<sup>38</sup> In June 2004 Walmart lost the largest class-action lawsuit in history, in which 1,600,000 women proved that they had suffered gender discrimination as employees of the company since 1998.<sup>39</sup> Elsewhere, regarding the living wage provision, the US-based National Labor Committee found workers for Walmart suppliers in China's Guangdong Province working 130 hours a week for an average of 16.5 cents an hour.<sup>40</sup> These cases do raise questions about whether companies (parent companies or wholly-owned subsidiaries) who violate the Base Code consistently should be able to remain within the ETI.

In another instance, CORE Coalition member, Action Aid, investigated working conditions on South African fruit farms supplying ETI member, Tesco, in 2005. Their research found that women were earning poverty wages below the living wage, were living in dismal housing that would fail to meet the ETI code and were exposed to hazardous pesticides without protective equipment.<sup>41</sup>

## What next?

The ETI impact assessment report ultimately concluded that codes of conduct were most effective when implemented alongside a strong legislative framework. "In many cases the suppliers and buyers we interviewed made more reference to national law than to the specifics of the codes. In all the case studies some suppliers said codes had increased their awareness of labour laws."<sup>42</sup>

Peter Williams, the NGO Caucus Co-ordinator for the ETI, highlights the important role that the ETI plays in providing a forum to engage with companies over their business practices. But he also argues that the ETI, in its voluntary form, is not enough. As a tangible example of how a voluntary CSR initiative can be used to leverage changes in legislation, Williams points to the important role that ETI member companies, under pressure from NGOs and unions, played in enacting the Gangmasters (Licensing) Act 2004 and in changes made in 2004 to the National Minimum Wage Regulations 1999. These regulatory changes have improved the rights and working conditions of hundreds of thousands of seasonal farm workers, home-workers and piece-rate factory workers across the UK.

The challenge now is to explore how the principles of the ETI can be bolstered by regulations for the benefit of workers not just in the UK but across international supply chains.

Examples of how broader reforms in corporate accountability could contribute to greater accountability in ethical trading are shown in Table 3 overleaf.

**Table 3**

| <b>Proposed broader reforms</b>  | <b>Examples of how reforms could bolster the EITI and improve accountability</b>  |
|--|---|
| <p><b>1. A legal requirement for companies to report on their social and environmental impact throughout the supply chain</b><br/>                     Alongside their annual financial reports, all large and medium-sized public and private companies should be legally required to report on their social and environmental impacts in a way that is proportionate to their size and complexity.</p>                       | <p>Information on the conditions of workers in multinational supply chains would be more accessible.</p>  |
| <p><b>2. Increased directors' duties</b><br/>                     Company directors would have a duty to take reasonable steps to minimise, mitigate and manage any significant adverse impacts on workers, local communities and the environment.</p>   | <p>Companies would be required to implement factors embedded in the ETI Base Code throughout their supply chain; when poor conditions are found, such as those in South African farms, companies would be required to rectify the situation; and where this fails to happen, company directors could be held personally accountable for breaking host country law and international agreements in relation to labour standards.</p> |
| <p><b>3. Parent company accountability and access to justice</b><br/>                     This would give greater rights to affected communities to seek compensation for human rights or environmental abuses committed by companies or their subsidiaries. If unable to access justice in their home country, communities should also have the right of redress in the country where the parent company is incorporated.</p> | <p>Companies would better mitigate breaches of labour standards in the first instance, given the greater chance of legal action by affected workers.</p>  |

# Conclusions

*“Where the society judges that something is so crucial there should be at least a minimum standard, then we should legislate for it.”*

Malcolm Wicks, Labour MP for Croydon North<sup>43</sup>

While voluntary initiatives have created some inroads towards more ethical corporate practice, Save the Children and CORE’s research has found there to be serious limits to what voluntary initiatives can achieve. Across all three of the case studies they found:

- violations of all three of the codes, even by company leaders whose rhetoric and policies purport to support the aims of the codes
- a catch-22 situation, where market drivers contradict the principles of voluntary codes
- a failure to enforce sanctions for violations of the codes under the established governance schemes
- governments fail to support the codes sufficiently to enable their full implementation and enforcement.

Save the Children and CORE’s research concludes that codes have worked effectively only in instances where there has been strong government involvement through legislation and enforcement.

It is true that multi-stakeholder voluntary initiatives can create a forum for dialogue between divergent stakeholders, as well as help to drive best practice on the ground and thus inform the rights of workers or civil society. However, as this report shows, voluntary initiatives only go so far. Companies who are considered CSR leaders continue to be targeted by NGOs because the rhetoric of voluntary initiatives, even with the best intentions, is not matched by the reality in many cases. It is often those leading companies who, were they to acknowledge openly the limitations of voluntary initiatives, could have more

influence on government intervention for greater corporate accountability.

These findings are supported by research conducted elsewhere. Rhys Jenkins, a professor of development studies at the University of East Anglia, recently raised concerns regarding over-stated claims about poverty-related impacts of CSR in particular. “The evidence presented... suggests that CSR is unlikely to have a significant impact on poverty in the South, except in a limited number of rather specific cases.”<sup>44</sup> Similarly, a report from the International Network for Economic Rights states that: “While the CSR movement had made some inroads through voluntary measures, [it] lacked international legitimacy and adequate accountability mechanisms.”<sup>45</sup>

At a political level, there is increasing support for voluntarism coupled with stronger legal regimes. Achim Steiner, executive director of the UN Environment Programme (UNEP), said that now “is the ‘right time’ for governments to introduce mandatory corporate social responsibility (CSR) reporting”. At a press conference in Amsterdam in October 2006 he also said: “We need to liberate business by providing it with the regulation that it needs to do something differently.”<sup>46</sup> Richard Howitt, Labour MEP, agrees, saying he “would like to see companies perform integrated social, environmental and financial audits, which would be backed by regulation”.<sup>47</sup>

Civil society groups have long called for more broad-sweeping changes to regulations, in order to improve corporate accountability for social and environmental impact. Crucially, in some cases, these calls are also coming from industry and investors as well. There are now a number of leading companies calling for stronger policy leadership: one example is the

Corporate Leaders Group on Climate Change, which includes chief executive officers from the UK's top companies, and which has supported setting stronger targets on climate change for industry as well as policies to help implement these; another is the Business Leaders Initiative on Human Rights, which has publicly supported the UN Norms on Business and Human Rights.

At best, codes work to reinforce existing laws or to drive changes to regulations, which can and must be the longer-term goal. For this reason, in addition to the regulatory issues specific to each case study

presented in this report, we have also sought to demonstrate how broader changes to legal and environmental reporting, enhanced directors' duties and parent company accountability, accompanied by access to justice, would help to provide a regulatory backbone to corporate responsibility more generally. These measures could be a signpost for the way in which all companies must behave in the interests of all stakeholders. This would reduce concerns expressed about competition and be more likely to offer a level playing field. However, like all laws, these must also be backed up by implementation and enforcement.

# Recommendations

Based on these findings, Save the Children and The Corporate Responsibility (CORE) Coalition recommend the following with regard to voluntary CSR initiatives:

1. Voluntary, multi-stakeholder initiatives should be seen only as a way of encouraging dialogue and developing best practice. They must always be accompanied by a public policy strategy to ensure that minimum rules and standards are sought in the medium to long term.
2. The next generation of CSR should see company leaders aligning their lobbying strategies with their CSR strategies.
3. The enforcement regimes of all codes must be strengthened to penalise companies who have signed up to voluntary codes of conduct, but failed to meet their stated aims within an accepted time-frame.
4. Governments must promote laws that underpin codes of conduct at national level, such as through labour laws or transparency laws.
5. Overarching frameworks of company law must place responsibility on companies to act to the highest standards wherever in the world they operate, and to provide access to justice for victims of corporate abuse.
6. Governments and companies should support and implement international measures that can reinforce codes of conduct, such as the UN Human Rights Norms for Business<sup>48</sup> and the Organisation for Economic Co-operation and Development (OECD) Guidelines on Multinational Enterprise.<sup>49</sup>

# Notes

<sup>1</sup> Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 26 August 2003, E/CN.4/Sub.2/2003/12/Rev.2

<sup>2</sup> OECD Guidelines for Multinational Enterprises, [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)

<sup>3</sup> Alongside their annual financial reports, all large and medium-sized public and private companies should be legally required to report on their social and environmental impacts in a way that is proportionate to their size and complexity.

<sup>4</sup> Company directors would have a duty to take reasonable steps to minimise, mitigate and manage any significant adverse impacts on workers, local communities and the environment.

<sup>5</sup> This would give greater rights to affected communities to seek compensation for human rights or environmental abuses committed by companies or their subsidiaries. If unable to access justice in their home country, communities should also have the right of redress in the country where the parent company is incorporated.

<sup>6</sup> Gordon Brown, speaking at the 2005 CBI Conference, <http://news.bbc.co.uk/1/hi/business/4479138.stm>

<sup>7</sup> The Corporate Responsibility (CORE) Coalition and Trade Justice Movement press release, 3rd April 2006, [http://www.corporate-responsibility.org/module\\_images/COREfinalpressrelease31.03.06.doc](http://www.corporate-responsibility.org/module_images/COREfinalpressrelease31.03.06.doc)

<sup>8</sup> While the World Health Assembly recommendations were not legally binding, they nonetheless carried moral or political weight, as they constitute the judgement on a health issue of the collective membership of the highest international body in the field of health. See Shubber, S, 'The International Code', *Digest of Health Legislation*, Vol. 36, No. 4, 1985, p 884

<sup>9</sup> [http://www.ibfan.org/site2005/Pages/article.php?art\\_id=23&ciui=1](http://www.ibfan.org/site2005/Pages/article.php?art_id=23&ciui=1)

<sup>10</sup> Save the Children, *A Generation On*, Media Briefing, 2006

<sup>11</sup> [http://www.who.int/child-adolescent-health/New\\_Publications/NUTRITION/ISBN\\_92\\_4\\_159429\\_2.pdf](http://www.who.int/child-adolescent-health/New_Publications/NUTRITION/ISBN_92_4_159429_2.pdf)

<sup>12</sup> Save the Children, *A Generation On*, Media Briefing, 2006

<sup>13</sup> To reference the full Code, follow <http://www.ibfan.org/english/resource/who/fullcode.html>

<sup>14</sup> Save the Children, *A Generation On*, Media Briefing, 2006

<sup>15</sup> For further information see IBFAN, *State of the Code by Country 2006*, 2006 [http://www.ibfan.org/site2005/abm/paginas/articles/arch\\_art/298-11.pdf](http://www.ibfan.org/site2005/abm/paginas/articles/arch_art/298-11.pdf)

<sup>16</sup> Yeong Joo Kean, 'Nestlé and the International Code: Where do they differ?', *International Code Documentation Centre*, 2005 [http://www.ibfan.org/site2005/Pages/article.php?art\\_id=247&ciui=1](http://www.ibfan.org/site2005/Pages/article.php?art_id=247&ciui=1)

<sup>17</sup> Save the Children, *A Generation On*, Media Briefing, 2006

<sup>18</sup> For further information see IBFAN, *State of the Code by Country 2006*, [http://www.ibfan.org/site2005/abm/paginas/articles/arch\\_art/298-11.pdf](http://www.ibfan.org/site2005/abm/paginas/articles/arch_art/298-11.pdf)

<sup>19</sup> See background to Publish What You Pay at <http://www.publishwhatyoupay.org/english/background.shtml>

<sup>20</sup> Save the Children, *Lifting the Resource Curse*, 2003, pp 8–9

<sup>21</sup> Oxfam America, *Extractive Sectors and the Poor*, October 2001, p 7

<sup>22</sup> Oxfam America, *Extractive Sectors and the Poor*, October 2001, p 8

<sup>23</sup> Save the Children, *Lifting the Resource Curse*, 2003, p 7

<sup>24</sup> Based on rank by 2004 Oil Equivalent Reserves, OGJ 200, *Oil & Gas Journal*, 4 September, 2006

<sup>25</sup> [http://www.total.com/en/corporate-social-responsibility/Ethical-Business-Principles/Interview-Lassalle\\_9127.htm](http://www.total.com/en/corporate-social-responsibility/Ethical-Business-Principles/Interview-Lassalle_9127.htm)

<sup>26</sup> Publish What you Pay and Revenue Watch Institute, *Eye on EITI: Civil Society Perspectives and Recommendations on the Extractives Industries Transparency Initiative*, October 2006, London and New York, p 3

<sup>27</sup> Insight Investment, *Revenue Transparency Discussion Paper*, December 2005, p 4

- <sup>28</sup> Speech of Erich Stather, State Secretary at the German Federal Ministry for Economic Co-operation and Development (BMZ), 31 August 2006
- <sup>29</sup> Keynote remarks delivered by Chevron Vice-Chairman Peter Robertson, at the Third EITI Plenary Conference, Oslo, Norway, 16 October, 2006, <http://www.eitioslo.no/Speeches/speech+chevron.htm>
- <sup>30</sup> Stephanie Barrientos and Sally Smith, 'The ETI Code of Labour Practice: do workers really benefit? Main findings and recommendations from an independent assessment for the Ethical Trading Initiative', *Institute for Development Studies*, 2006
- <sup>31</sup> Stephanie Barrientos and Sally Smith, *op cit*, p 9
- <sup>32</sup> Stephanie Barrientos and Sally Smith, *op cit*, p 7
- <sup>33</sup> International Labour Organisation, 'The End of Child Labour Within Reach', *International Labour Conference Report I (B)*, 2006
- <sup>34</sup> Anti-Slavery International, <http://www.antislavery.org/homepage/antislavery/childlabour.htm>
- <sup>35</sup> UN Department of Economic and Social Council, *Report of the Secretary-General on Promoting Full Employment and Decent Work for All*, E/CN.5/2007/2, February 2007, p 3
- <sup>36</sup> Further information on the ETI Base Code can be found at [http://www.ethicaltrade.org/Z/lib/base/code\\_en.shtml](http://www.ethicaltrade.org/Z/lib/base/code_en.shtml)
- <sup>37</sup> Stephanie Barrientos and Sally Smith, 'The ETI Code of Labour Practice: do workers really benefit? Main findings and recommendations from an independent assessment for the Ethical Trading Initiative', *Institute for Development Studies*, 2006, p 16
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- <sup>39</sup> Karen Gullo and Margaret Cronin Fisk, 'Walmart Loses Bid to Block Group Suit in Bias Case', *Bloomberg News*, 6 February 2007. Also see [http://walmartwatch.com/issues/labor\\_relations/](http://walmartwatch.com/issues/labor_relations/) for information on other legal challenges against Walmart in the US, both settled and pending.
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