

Documentation

Project Presentation and International Seminar of the Research Project 'Codes of Conduct and Monitoring'

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Introduction:

Codes of Conduct and Monitoring – International Seminar at Hamburg University of Economics and Politics, October 4 and 5

The working group (Dr. Ronald Köpke, Dr. Wolfgang Röhr and Gaby Runge) of the research project on “Codes of Conduct and Monitoring” (director of the CoC Project Prof. Dr. Jürgen Hoffmann) at Hamburg University for Economics and Politics organised an International Seminar, which took place on 4 and 5 October 2001, in cooperation with the Hans Boeckler Foundation. Around 70 participants from 15 countries (Germany, Belgium, the Netherlands, U.K., Switzerland, Romania, Poland, El Salvador, Costa Rica, India, Colombia, China, Peru, USA and Canada), from Universities, NGOs, Trade Unions and Companies assisted to this event. The aim was to present and discuss the final report of the research project.

The project presentation consisted of an analysis of the challenges of globalisation (Jürgen Hoffmann/ HWP), the results from the survey with German enterprises (Ronald Köpke/ HWP), legal and hard law measures (Eva Kocher/ HWP), the U.S. debate in the thirties (Sebastian Siegele/ FHTW-Berlin), Gender and Monitoring (Ma. Carolina Quinteros/ GMIES, El Salvador), and of the debate over the Gas and Oil Industry (Gaby Runge/ HWP).

In addition, the MP Sigrid Skapelis-Sperk presented the report by the Inquiry Commission on Globalisation of Trade and Investment of the German Parliament, and explained the latter’s approach to the issue of Codes of Conduct.

The Southern representatives in particular, but also the German companies, contributed important and interesting statements to the debate.

Monina Wong from the Hong Kong Christian Industrial Committee emphasized that institutionalised external or internal Monitoring of private Standards is impossible, as long as workers themselves are not sufficiently empowered to monitor labour conditions.

In the frame of the contribution to the HWP report made by her, Carolina Quinteros, from the Independent Monitoring Group of El Salvador, stated that state-independent third party agents from “civil society”, as well as trade unions and companies need to participate immediately in the Monitoring process. To the organizations that carry out such Independent Monitorings belongs a new type of

women's organizations that develop a more integral view on local labour conditions in export plants.

Ramón Barrantes, from the Costa Rican banana worker's union COLSIBACR, explained how unions forced Chiquita to respect social minimum standards, including the freedom of association and the right to collective bargaining.

Jochen Overmeier from the garment retailer C&A stressed that companies are working to improve labour conditions in its supplier chain, but that NGOs will never get direct access to the company's decision making.

Ineke Zeldenrust from the European Clean Clothes Campaign, and Lynda Yanz from the Canadian Maquila Solidarity Network, responded that companies in Germany will also have to disclose their monitoring practices to consumers. The subject of the final discussion was the German Roundtable on Codes of Conduct, of which Ineke Zeldenrust gave an overview on the European experiences.

On October 6, the HWP research-working group organised an informal meeting for NGO and trade union representatives at the Lutheran University in Hamburg in cooperation with the Dutch SOMO institute and the CCC secretary from Amsterdam.

Some of the contributions and discussions, including current documentation, are available on print. Finally, we would like to thank all the speakers, participants and supporters from the different universities, companies, trade unions, the Hamburg University for Economics and Politics, the Hans-Böckler-Foundation and NGOs for their contribution to a very successful seminar.

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Opening speech/welcoming

Dear Ladies and Gentlemen, Dear Colleagues,
on behalf of the Hamburg University of Economics and Politics, the HWP, I want to welcome you to this conference on Codes of Conduct and Monitoring.

To open this seminar is a duty I am very happy to comply with. At least it compelled me to do something I like to do, but often do not take time to do: to read a research report, the one you will discuss during these two days. At the end of this seminar you will know, that it is a very stimulating report, even for someone who is not an expert in the field.

In its mission statement the HWP has put down something like its own Codes of Conduct. They oblige us inter alia to work for democratic and just structures in the economic and social sphere and to develop the international orientation of our university. We teach many courses in the field of international economic, legal and social relations. On the Master level we have two specific international programs. I want to invite you to visit our Home Page and examine these programs; you will find them extremely commendable.

The research project that will be discussed during this seminar fits well into the principle issues of the HWP. The process of globalisation has weakened the normal process of regulation by national and even transnational political organisations. The debate on Codes of Conduct and Monitoring is a necessary answer to these changes. I don't have to tell you that the basic mechanism of any fair and democratic process, like political responsibility and legitimacy, have to be newly defined and established. What concerns justice, international justice, we can go back to the rationale of the development in western societies during the last century: Without a firm basis of social and economic security and justice there will be no free and liberal economic and social development and no constant, flexible, rapid and adequate adjustments to economic and social change by individuals, communities, regions and nations.

You will discuss these issues in one field under many perspectives. Just let me add one remark concerning the field I am working in, social security law. Don't be afraid, it will be very short.

This year in June the European Court has ruled, that all member states have to open their social security systems and their markets of health and social services to suppliers from other member states. Member States are not allowed to adhere to their special, national but have to respect the international standards of medical treatment. Who will fix these standards that will influence the general wellbeing? The WHO will not and cannot. Who else has the legitimacy to do so by what kind of process and what power to bind ? These are problems you have to deal with as well. However, in your case of codes of conduct, the process of implementation, of controlling and monitoring a long transnational chain of production and distribution is more complicated.

These problems have to be discussed, regulated and controlled by all groups concerned. Therefore I welcome the representatives of so many different countries and different groups, especially from North and South America, Asia and Eastern Europe. And I appreciate that you will have a scientific discussion in its proper sense, by analysing the practical issues in some fields as well, especially textile products.

Following me are two men whom I want to thank very much. First Frank Gerlach of the Hans Böckler Foundation. This foundation has sponsored the research and this seminar. It is a foundation of the German unions. We are grateful to the foundation in many ways, as traditionally we co-operate with it in various fields. This subject is very important, our co-operation has produced - I think - very remarkable results and I hope we can continue working in this field with your support. Secondly I want to thank my colleagues Jürgen Hoffmann, Ronald Köpke and Wolfgang Röhr. They have done the research work and prepared this seminar. You all know that they have done a lot of good work.

Finally I want to wish all of you very interesting lectures and discussions, stimulating personal talks and some time to meet Hamburg.

Thank you.

Frank Gerlach

Hans-Böckler-Stiftung – HBS

Opening speach/welcoming

Ladies, Gentlemen and Colleagues

On behalf of the Hans-Böckler-Stiftung I should very much like to welcome you to our conference on “Codes of Conduct and Monitoring – Options for German stakeholders”. As you can see from the conference invitation, this event is taking place within the framework of the “Codes of Conduct and Monitoring” project, which is sponsored by the Hans-Böckler-Stiftung.

The Hans-Böckler-Stiftung, as a foundation of the German Trade Union Federation, is, so to speak, a product of the German model, as it is for the most part financed from the often profit-related stipends paid to union members who represent the workforce on company supervisory boards. Alongside many other activities, we finance research projects and conferences on what we consider to be relevant issues. As a foundation of the German Trade Union Federation, we consider that, as a non-profit-making institution, we also have a responsibility. Through our work, we seek to address the concerns and interests of employed and unemployed alike, as well as those who are marginalized in our society This has implications for research in many subject areas. Research must relate to realistic scenarios and deal with problems which are central to this society and can, indeed, sometimes even tear it apart.

The thrust of the research project sponsored by the Hans-Böckler-Stiftung can be clearly identified from the full title: “Codes of Conduct and their Independent Monitoring as a New Form of Social Regulation of Multinational Corporations – Perspectives for Trade Unions and NGOs”.

It is quite clear to us that, as an export oriented economy and open society, Germany is involved in the process of what is commonly known as globalisation. We therefore cannot and do not wish to limit the direction of our research to merely ‘domestic problems’, but must increasingly address international issues. These undoubtedly include the core issues of world economic order and for this reason we have sponsored the “Codes of Conduct” project presented to you here. In this respect, we

are making the basic assumption that, contrary to the frequently maintained political or neo-liberal standpoint, globalisation represents a process where not everybody is a winner. In many countries, it is only under very difficult circumstances that it is possible to participate in the international economic process. As a result, the gulf between rich and poor countries increases, as do social tensions. Research results have identified many of the reasons behind such negative development but the will to change the situation at both political and corporate level often leaves much to be desired.

The pressure is therefore increasing from below, as demonstrations against the effects of globalisation or the establishment of Attac clearly show. However, demands for an improvement in the standard of living of the “victims” of globalisation are easier to formulate than put into practice. Interest groups and those holding the reigns of power often stand in the way. This by no means applies only to the so-called “first world”; it can also be seen in fast developing countries and others belonging to the poorest in the world. They want to prevent the implementation of minimum standards, which includes the right to establish and join unions. In this respect, the argument often put forward is that standards aligned to ILO conventions represent the first world’s ‘hidden protectionism’. It is supposed to prevent undesirable competition. A firmer dialogue is indeed required here, so that common positions can be established. However, in principle we must keep clear in our minds that basic rules and minimum standards are required in the interests of the workforce. These are by now as good as generally accepted in the abstract, as the list of states which have signed up to the ILO conventions demonstrates. However, the practical problems usually start when this type of regulation is to be implemented locally and compliance is to be monitored.

Why the implementation of this type of regulation meets with such difficulties, even when companies have decided to commit themselves on a voluntary basis, is a little researched field. The issues of certification and monitoring should therefore be investigated and the practical problems relating to the implementation of minimum standards should be addressed in detail. This is of particular importance, not least because in research, as in political discussion, such problems are not always granted the level of significance they deserve. For unions - organisations with a traditionally

international approach - the freedom of association set out in the ILO conventions and the right to collective bargaining, for example, are inalienable pre-requisites, which in many countries and companies are simply not realised.

The Hans-Böckler-Stiftung therefore supports projects such as that under discussion here today and undertaken by Jürgen Hoffmann, Roland Köpke and Wolfgang Röhr. It will also continue to sponsor similar projects in the future. Underlying the focus of our research policy is a systematic and socially oriented methodology, which assumes that in addition to the market, we also require complementary additional coordination mechanisms, in order to be in a position to steer the problems and issues which come to a head in the context of forced globalisation. The fact that we need such mechanisms should, by now, not be in dispute. However, the question remains open as to what exactly those mechanisms might be and how such requirements for steering global market processes can be implemented.

In this respect, I look forward with great interest to hearing the suggestions and ideas emanating from this conference, which may well have an impact on the future work of the Hans-Böckler-Stiftung. I also look forward to a lively and controversial discussion, as without that, we will most certainly not find sustainable solutions to the issues under debate today.

Thank you for your kind attention.

Jürgen Hoffmann
Hamburg University of Economics and Politics (HWP).

The process of globalisation, exit options and Codes of Conduct as a means of re-embedding of capital in a global perspective

Looking at the literature, there are two arguments prevailing in the discussion on globalisation: on the one hand there is the ‘strong globalisation hypothesis’ (e.g. Altvater/Mahnkopf 1999), which predicts the removal of all market limits, threatening unions with irresolvable organisational problems. Alternatively, the ‘weak globalisation hypothesis’ (e.g. Hirst/Thompson 1996) all too often dismisses globalisation as a fairy-tale invented by capital, with a political programme, which amounts to a mantra that ‘nothing fundamental has changed, so let’s remain the same’. Although I do not fully accept the strong globalisation hypothesis, we have to be aware that: changes, in some cases radical, have indeed occurred and are occurring through the internationalisation of commodities, money and productive capital (see Hoffmann 2001). This gives more exit-options to capital owners and management strategies, and as there does not exist a regulatory function like the “Hobbesian” nation-state on the international level, this is giving way to a process of “disembedding” of capital.

These changes are in part attributable to new means of transport, information transmission and communication, and national policies of deregulation, partly under the influence of international organisations, such as the IMF and the WTO. Deregulated, more flexible global markets, in conjunction with new information and communication technologies (ICTs), make possible continuous cost and performance comparisons on a global scale (through ‘benchmarking’). The nature of international competition is increasingly moving away from complementary trade (based on an international division of labour) to substitutional trade, implying more intense competition. It is precisely this that is putting high-skilled, high-quality and high-wage production locations under pressure. Moreover, deregulated financial markets and the volume of global speculative capital (Susan Strange: “casino capitalism”) offer not only extended exit options for investing liquid assets, they also increase the instability

on the global market and enforce a change in the relationship between banks and companies. Economic relations, particularly in countries in which more or less co-operative, consensus-oriented or statist models of capitalism predominate, which work on the basis of actors holding long-run expectations, are now coming under competitive pressure from more flexible, models of market capitalism in which short-term expectations predominate. The latter's corporate cultures (shareholder capitalism) are more compatible with globalised, flexibilised world markets. Besides the increasing competition and qualitative changes in international trade relations and the deregulation of international financial markets, there is a third element which underpins the strong globalisation hypothesis: the building up of internationally integrated production sites. The development of post-fordist structures of production in connection with the modern transport and information and communication technologies (ICTs) enable management to pursue strategies of outsourcing and global sourcing and to build up international productive networks to take advantage of differences in (wage) costs and regulatory social systems.

One consequence of this is that these three aspects of the globalisation process threaten to erode the socio-economic basis for national regulatory social security systems, labour relations and trade union policies by taking advantage of exit options on behalf of the international active companies. Despite the evidence that firms remain tied to their local environments (production sites, suppliers and markets, cf. Pries 2001), the combination of corporate strategies on internal and external flexibilisation within internationalised markets (global sourcing) threatens to pull apart, or at least to erode, the regional networks composed of labour-intensive small, of medium and (capital-intensive) large-sized firms. This fragmentation potentially undermines the basis for the taxation, social insurance and training systems in some countries. In theory, if not necessarily in practice, national regulatory and political systems are held to ransom by the exit options enjoyed by capital (cf. Hoffmann et al. 2002).

But although it is true that the globalisation process has increased the exit options of all three forms of capital (commodity, money and productive capital), at the expense of union negotiating power and regulatory social security systems, in practice not all

firms can take advantage of these exit options. And many of those who would be able to take advantage of it do face high opportunity costs (Hübner 1998). As is the case with all social actors, firms act in a context of uncertainty, and the form taken by globalisation increases the instability of economic relations. Firms, as economic actors, respond by deploying security-enhancing strategies. This is even true of the financial markets, where self-help and support funds have been developed, alongside traditional forms of insurance, in order to reduce risk. More generally, firms develop strategy and action patterns going beyond purely economic rationale that socially embed corporate action in co-operative, hierarchical and/or market-oriented steering and control frameworks (e.g. normative concepts of bargaining between firms and financiers, suppliers, unions/employees, customers and governments – cf. Ruigrok and van Tulder 1995). Their action subsequently becomes dependent on the social and labour-related constraints, in turn recurrently confirming these structures through the action chosen: they thus become ‘path dependent’.

In this context the development of “**Codes of Conduct**” (**CoC**) is rating twofold:

(1.) On behalf of labour and consumers as social actors, Codes of Conduct might serve as forms of re-embedding capital in international, deregulated markets, forcing companies to take over core labour standards and environmental requirements as standards of production and products. In this way Codes of Conduct are forms or instruments of re-embedding capital and thus constitute a substitute for the absence of regulatory systems in internationalised markets.

(2.) On the other hand – on behalf of the company or the firm as collective actors – Codes of Conduct can serve as means of coping with zones of uncertainty (Crozier/Friedberg 1979) that those actors are confronted with in internationalised markets. And paradoxically enough, it is especially those companies that have taken over short-term orientated shareholder value attitudes as company culture that are vulnerable: a bad consumer image in markets due to bad working conditions or child work in countries of the Third World might lead to severe loss of market shares and profit reductions and thus to a bad performance in stock exchange markets. Or labour disputes might interrupt production, thus producing a slump in profitability.

All this might explain why – in our sample – most of those German companies which accepted Codes of Conduct did this without any pressure from NGOs, consumers associations or trade unions; alternatively they were seeking to anticipate and cope with potential pressure by adopting CoCs. Although trade unions were for a long time sceptical of CoCs, because of the voluntaristic or even syndicalistic approach (agreement on the level of the company or firm without legal forms of monitoring), they are now much more open, because CoCs are increasingly becoming an instrument of re-embedding capital in spheres which are of increasing importance due to the process of internationalisation, and where trade unions realised that they are structurally weak because of the lack of labour market borderlines. And this is where “morally based” arguments – as used by NGOs and consumer associations – are often more effective to force companies to take such social or environmental demands into account. This is why trade unions nowadays are much more open for coalitions with NGOs on the international level, and I think the seminar today and tomorrow, financed by a union-owned foundation – the Hans-Böckler-Stiftung – and organized by the members of the HWP - CoC research project of that foundation, is paradigmatic for these trends and might give a new momentum in favour of those tendencies.

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Codes of Conduct and Monitoring: The 'German Approach' to Codes of Conducts

The intention of the HWP research project on Codes of Conduct and Monitoring was to analyse the process of adaptation of private standards in Germany and its consequences, and to give an input to the international debate, in conjunction with our Southern counterparts, where possible.

I.) A "German Approach"?

One of our basic assumptions used to be that in the sectors in which codes of conduct are relevant, 'self regulation' was an indication of the changes taking place in the international regulation system, concretely speaking, of a general weakening of tripartite regulation. This assumption is generally regarded as indisputable at international level, causing in no way a flustered contradiction within Anglo-American boundaries. In Germany, however, it appears to be different. When coming to present results, we asked ourselves whether it was possible to establish a specific "German approach" or a specific adaptation process of private regulation. In respect of German "industrial relations", private regulation via codes of conduct seems at a first glance like a glaciis that is out of place in the system. The way of dealing with codes of conduct in the Anglo-American sphere, and also in other European countries (in the U.K. and in the Netherlands), is different not only in terms of the debate, but also in terms of the practical application and of the roles of the different stakeholders. This "German approach" can be roughly described with two concepts:

- a. In general, there are stronger reservations and larger scepticism in Germany towards private forms of regulation than in other countries. The basis of both of these elements is that in spite of the deregulating effect as a result of the German reunification, the corporate model of negotiation is still now as successful as ever. The 'Rheinische Kapitalismus' (Hoffmann 2000) – (capitalism of the Rhine) is still in place in spite of the 'Europeanisation' and 'Globalisation' processes, and is not in the

slightest becoming eroded or undergoing a transformation. In the German structure of social partnerships, there is hardly the equivalent to an opening into the system for new actors and new instruments that is beyond the traditional model of negotiation, according to an internationally discussed multipolarity¹. In Germany, a system or a similar structure of conflict and dialogue - like it exists in the USA, that is under pressure by an interacting network of companies and consumers, human right activists - is almost out of the question. German companies describe the setting of standards, according to codes of conduct, more as a preventative measure. The process of standard-setting through minimum norms in codes has almost been completed at international and national level. In fact, it is the result of a global interplay among experts and their counterparts. However in Germany, the type of agreeing over standards (standard setting) has a special link to the traditional form of social acceptance. So that while in the Anglo-American bounds the so-called 'multi-stakeholder approach' is presented as a relatively new method, the different forms of consensus between the traditional social partners are an inherent element of German corporatism, which is partially being expanded for example in the context of the 'German round table for codes of conduct'. Although in a limited way, NGOs are participating for the first time in the processes of agreement over standards in production plants and companies. Trade unions in particular have expressed their reservations in view of such a democratic opening towards a not-a-very legitimate partner, while globally-operating companies are receptive to other actors, regarding tariff rules and negotiations or other similar agreements not established by the State: On the one hand, companies regard NGOs as opponents of their 'public performance'. At the same time, they try to turn them into instruments for their purposes, which, for example, partly works in the context of pilot projects for monitoring in other European countries. On this setting, companies can be described as proactive in the discussion over working conditions provided by suppliers. Trade unions have great difficulty with this fact, and see the new players in the field of representation of social interests more as competitors. One particular problem for trade unions is the unclear legal obligation required

¹ For example, within the context of ILO Programme Voluntary Private Initiatives

by the informal dialogue process, which tools and different mentalities of negotiation and routine of the representatives of trade union's interests could emerge and actually overburden the union. The same goes for the worker's councils and board members, who - with a couple of exceptions - amidst the mayhem of the daily running of the factory, do not reckon with any active posts which would precisely ensure the implementation of minimum standards for suppliers, or perhaps this is not even possible. A tight spot of the debate over social standards, according to the classical model of regulation, is the potential danger of losing working conditions in the exporting sector out of sight of the OECD countries, or that these are interpreted wrongly. We are already undergoing a similar development in the informal sectors of the German and European labour markets. That is why our plea is that the topic of codes of conduct should not be regarded as a temporary measure on its way to integration with the existing regulation system (key words: re-embedding and development of framework agreements). The privatisation of world policy, of social regulation is a continuous development, which, in our opinion, will gain a lot more in importance in the future, what Saskia Sassen called "a certain shift from law to rules". It does not mean that we share the abstract optimism that, as a result, corporate governance will take the place of global governance, with which the social question of globalisation will be answered anew. On the other hand, and in contrast to this, a single approach to short-term solutions and pilot projects could run the risk of losing out of sight the real regulation problem, to which the codes of conduct make reference. A dramatic aspect of this is the fact that the international labour movement concretely embodied in real people, in the trade unions, on the shop floors of export and world-market factories, practically does not exist. Compliance with social minimum standards cannot be centrally organised and controlled through representatives of the trade unions secretariats in the North.

- b. Simultaneously, the 'German approach' is surprisingly characterised for its pragmatical approach and solutions, in spite of the widespread absence of agreements with civil society's networks or with its new players. To a certain extent it follows the example of the Ethical Trading Initiative in Great Britain.

Projects for the implementation of social standards, according to the provisions of 'Public Private Partnership' by the Federal Ministry for Economic Cooperation, should be emphasised in this context, which, however, still lack a systematic evaluation. We suggest beginning with these evaluations as soon as possible. Qualifying on the issue of practical solutions, we have to note that, thus far, only a small group of avant-garde active companies participate in the development of setting of standards and monitoring in specific sectors. The large majority of small, and above all middle-size companies (except the German shoe provider Deichmann), which hold global activities, are not involved. The implementation of the system is cost-intensive and takes place by and large there, where quality management is already applied. On this aspect, it is internationally observed that QM and environmental standards will be brought together. Whoever happens to afford a QM system will not be able to afford a social and environmental management system as well, or at least will try to withdraw as much as possible from the debate on the implementation of social standards.

II.) Some results from the survey on companies

We developed the following theses, resulting from the survey carried out on companies active in the German market:

- I. An standardisation is taking place in all companies surveyed.*
- II. The question of monitoring is thoroughly determined in the practice. Mostly is about a combination of internal and external monitoring.*
- III. The participation of trade union, workers' councils and NGOs is marginal.*

Departing from these three theses, seven specific statements that partly agree with the relevant inventories, are significant. However, these show specific shades at some points. For this reason we resort to the typology employed:

| <i>Typology</i> | | |
|--|---|--|
| Type | Objective/ Problem | Examples |
| Suppliers - Code TYPE I | Regulation of labor conditions of suppliers and sub-suppliers | ADIDAS Salomon Ltd., KARSTADT/ Quelle Ltd.,C&A, Otto Group |
| Statement of business principles / Standards of Engagement TYPE II | Environment and rights of ethnic minorities etc. | EXXON Mobil, Shell, British Petroleum |
| Code of Conduct in global companies Type III | Standard for employees of global companies | BASF, Bayer |

Thesis I

As a general rule, codes of conduct of the 1st type² (supplier codes) are orientated towards the main supplier(s) and sub-supplier. The domestic industry is not usually an issue, meaning that it is not relevant for those who set standards.

Thesis II

Codes of conduct of the first type (I) are designed for the conditions of supply and, therefore, have limitations in the extent of their legal obligation. Codes of the second type (II) are in contrast, even more non-committal, even though an immediate recourse to this level of regulation is possible in principle.

Thesis III

² compare graphics in paragraphs 1 and 2.

Self-imposed obligations is the general rule in the field of codes. A higher level of obligation is partially created through the integration of quality, social and environmental management.

The analysed Framework Agreements (trade union participation) do not contain any higher standards than private, unilateral codes. This also extends to the framework agreements with the participation of the trade unions.

Thesis IV

Players outside TNCs play a small direct role in the development of the codes. An exception in the frame of the test methods (PPP pilots) are trained by the State (in this case the Federal Ministry for Economic Cooperation (BMZ) / and the GTZ) and only in a very marginal way by NGOs or trade union/ workers' councils. All stakeholders wish for a stronger commitment by the State players.

Thesis V

The working policy of the regulation is subject to a general standardisation. The Core Labour Conventions or Standards are, as a rule, part of the codes of conduct, while a living wage and, specifically the terms of gender, are not taken into account.

Thesis VI

Further regulations are found specially in type II of the code (fair business practices and combating corruption), meanwhile health and safety at work are included virtually in all codes.

Thesis VII

The combination mentioned above of internal and external monitoring will be complemented in the best of cases through other test methods. Monitoring does not play any role in the German debate.

Reasons for implementing of codes after the survey

Companies with a bad public image as a result of their practices, like ADIDAS Salomon AG, Karstadt / Quelle AG, Otto Group, or PUMA AG, admit that the most important reason for developing a code is, in the first place, social corporate

accountability (Category 1 = very important and 2 = important). Public criticism and avoidance of public opinion were mentioned as second in significance. While for the Otto Group any future public criticism was thought to be very important, for Karstadt AG it was of lesser importance. A parallel introduction of a quality management system, in the context of developing a code, is assessed in many different ways. Economic factors were surprisingly, in our opinion, indicated as less relevant for developing a code.

II.) Preliminary answers and theses to specific problem areas

1. Statements on Monitoring

As there is no correlation thus far with the concept of independent monitoring, a standardisation of the terminology is taking place in the whole of Europe. Instead of independent monitoring as a task for third players, 'independent verification' or 'verification' is still very much in place. What is meant by it is that, based on the experience from their methods, local third players may comment part of the monitoring reports that would have been prepared by the economic examiners and auditing agencies. This standardisation of the discourse is also finding its expression in the publications of the Clean Clothes Campaign. Representatives of the international textile workers' federation openly demand a clear disassociation from the concept 'independent monitoring'. Such a vehement abjection is a clear indication of competition vis-à-vis independent monitors. This debate is less relevant for the German reality in the practice. However, the fading-out of an independent monitoring represents a problem of methodology for policy consultants: the principle based on the competition of 'best practices' is eliminated, or the experiences in other contexts are shortened before they come in useful as a positive mechanism for German players. This is also valid for the German round table on Codes of Conduct. In spite of this, the debate needs to be differentiated from the practices by German companies or other TNCs active in Germany; and if you don't see the difference, it can come to mock fights.

The compilation and evaluation of the issue of monitoring is the most wide-reaching part of this report, result of our research. Some recommendations are given with this regard:

1. Opening to the monitoring of companies is possible, it creates a feeling of trust;
2. Pilot projects facilitate this opening;
3. Pilot projects need to have a definite aim, to verify and to improve the entire monitoring system of the tested companies;
4. Independent monitoring is possible in principle. As soon as the local partner and supply countries want to take on this option, they should be given the adequate support to do so;
5. As for the pilot projects by the CCC and the ETI there is no comprehensive long-term evaluation available yet. The evaluation by SOMO Institute, presented yesterday (on October 2 and 3 in Brussels), is the first contribution thus far. Some of these pilot projects refer to large difficulties. For this reason, the development of new approaches should not necessarily orientate themselves on these projects, and the term 'Pilot' should be replaced as soon as possible by means of the establishing of long-term systems.
6. The question of whether it is necessary to follow the model of ETI with the participation of NGOs, trade unions and companies in order to have a German umbrella organisation for projects for the implementation of social standards, appears rather questionable to us if we take account of the current conditions. The initiatives organised by sectors in Germany: like in the gas and oil industry, toys and clothes industry, as well as bananas and cut flowers, are fragmented and are not suitable for standardisation.

1.1 Specific developments on monitoring in the agricultural export area

1. The issue of the social standards is winning in importance in the agricultural exporting sectors through the codes of conduct.
2. Approaches for independent monitoring and verification, in contrast to commercial certification, are even more at the beginning than the industrial sectors.
3. Collective bargaining and freedom of association are, in this connection, just as difficult to realise as in the industrial sectors;

4. The wages are even more difficult to audit through season and immigrant workers as in the industry.
5. An integration of occupational health and safety aspects go even closer here with environmental aspects (use of pesticides) etc. Strategic aspects of corporate accountability play a role as well, which relate to the 'fourth players' (use of pesticides from chemical companies like Bayer). Up until now there is hardly any strategical potential between initiatives of worker's councils and the campaigns by Northern consumers that could get to the bottom of the matter (campaigns against the dangers of Bayer, critical shareholders).

1.2 Monitoring and the Problem of a 'Living Wage':

The debate on wages that secure an existence as Code standards is extremely polarised and, in the course of making this debate operational, finds itself at the same time in the dynamic of the 'from-one-other-to-each-other' movement. Stakeholders' experts and counter-experts are getting closer to this process. In this debate, the conception of 'minimum wage' stand in contradiction to that of a 'living wage'.

Companies explicitly avoid the concept of 'wages that secure an existence' in their codes. The reason they give is that 'wages that secure an existence' are difficult to define, audit and implement.

'Living wage clauses' are a rationalisation approach and indispensable as a standard for codes. Below this strategical claim, elaborating a frame for making the 'living wage clause' operational is a task of all stakeholders dealing with the implementation, application and supervision of codes: as a way of example, within the context of ETI there is empirical experience available. Three elements are necessary to establish the general conditions for operability: unity over the principles, a definition and a method (see Steele, David - ETI).

German companies, in particular - which let their goods be produced in countries like China, where the local partner like a trade union and NGOs are not in existence - increases the transparency of their inquiring methods in the context of the 'living wage clause'.

2. Framework agreements with the participation of trade unions

It is particularly difficult to understand a direct comparison between unilateral and multilateral codes with bilateral (professional secretariat - TNC) and trilateral framework agreements (professional secretariat / national trade unions and TNC), which are a party to trade unions (Faber Castell, Freudenberg, Chiquita, Telefónica etc). Framework agreements are significantly about the strategic dealings with the issue of minimum standards and private setting of standards outside the existing scope of traditional trade union instruments. At the same time, trade unions have a different opinion about dealing with codes. However, there is the shared assumption that, in the negotiation of agreements over minimum wages, trade union participation is generally preferred to codes. It is in fact, from the trade union point of view, a strategically obvious option, which, however, still does not allow statements over a larger effectiveness of framework agreements vis-à-vis unilateral codes. To enlighten these theses we have summarised some of the problem areas of the framework agreements:

- Amongst those companies with framework agreements there are hardly any with a complex chain of suppliers. The net product takes place within the company and its subsidiaries.
- Instruments for supervising, sanctioning and improving standards are less precisely defined in the framework agreements than in unilateral standards by companies in the German market, where monitoring forms an integral part of the conditions of supply and quality management (Otto Group, Karstadt/Quelle AG).
- In framework agreements, monitoring and verification are usually left for companies and private auditors. It does not change anything in the classic division of labour between auditing companies and company representatives.
- Verification activities with the participation of trade union representatives, as a general rule, restrict themselves to 'fact-finding missions' and not to a systematic 'reporting system', in which secretariats, trade unions of the North

and local trade unions participate. There is a lack of resources and trade union structures for this.

- There is a lack of systematic evaluations in the framework agreements.
- There is little demand for dialogue structures on the side of trade unions, workers' and board committees. Global dialogue structures are a field for networks active on transnationals and NGOs, or for a relatively small section of trade unions.
- Nevertheless the conclusion of framework agreements may serve to reactivate the transnational debate in trade unions, as Stefan Rueb argued, for example.

3. Gender and Monitoring

In the context of the codes of conduct, we do not see the "gender debate" as a secondary aspect, but as an integral part of monitoring codes of conduct. Particularly, the demands and methods of the different stakeholders need to be critically seen, besides requiring a thorough revision.

The relevance of the use of gender-specific instruments for the improvement of the working situation in the exporting sectors is based on arbitrary empiricism: 70-80% of those working in sectors relevant to codex are women (f. ex. 70% in the flower exporting industry, 80% in the clothes exporting sector), which has significant consequences above all for the representation of interests: the classical model of collective bargaining is not to be used only for repression in a situation of conflict. However, this type of conflict situation - classical representation of company interests - will be categorised under this stereotype. According to our thesis, it particularly has to do with the inability to organise young women between 16 and 35, the usual age for women workers in factories producing for the world market and in agricultural production. On the basis of this, we discussed in detail the specific assumptions from the international discussion: one of this assumptions has been named in the ILO 'Core Labour Standards' as the 'gender blind' principle. Both approaches narrow down the perspective of social interest representation exclusively to the 'shop floor'. The problematic nature of the reproductive sector in the new worker's communities

continues to be widely neglected. In particular, because of this gender blindness, new structures have been created for the representation of interests, which, as a result, developed from the beginning a rather positive connection with the ethic principles and codes of conduct and links to consumers in the North. That in the core of the work of these organisations there is no room in their agenda for any spectacular strikes, is a fact that passes completely unnoticed by Northern Human Rights and consumer campaigners, who direct their attention towards the factories for the world markets, but who would, nevertheless, prefer to track down some of the old and new kind of internationalism there.

Companies and auditors will have to deal with the problem that manuals and auditing methods, in particular in the area of work and health protection, deal in a totally insufficient way with the complex interdependence between the symptoms and multiple burdens of women workers. In talks with experts we had the impression that the problem was not at all seen as one relating to auditing. Without an integral occupational health examination of the connection between production and reproduction, any declarations over the symptomatic nature is simply not possible. Had we continued investigating further on these aspects, we would surpassed the sphere of our research project. For this reason, we refrained from broadening the debate on the frame of the research report. We opted for a case study on the new approaches to interest representation in Central America, which above all may be informative / useful to trade unions.

4. Undermining of valid standards through self-regulation?

An sceptical thesis, particularly in unilateral codes states that they reduce national and international social standards: *“In absence of authoritative independent interpretative and enforcement institutions to determine the proper balance between international and national requirements, international standards will evidently be undermined.”* (Ines Trigo de Sousa 2000, 20).

In the context of the application of codes it is firstly and mostly about compliance with national labour laws and about the strengthening of national supervisory bodies (Labour and Health Ministries). Exporters and suppliers, with a few exceptions, are obliged to keep to the national labour laws. These define on the whole, in Latin America for example, higher standards than in the USA, which has

not even ratified ILO's Core Labour Conventions, neither, hitherto, the revised OECD Guidelines. The application of labour laws is valid also for the so-called 'export processing zones' in which the vast part of the codex-relevant production takes place - One stereotype of the North is displayed on these 'extra-legal spaces'. The maintaining and improvement of minimum standards is dependent on: 1. the strength of the national supervisory body made weak by the structural adjustment and privatisation process, 2. The strength of the monitoring capacity of these societies – that is, their 'civil society' – including the 'empowerment' of its workers, and 3. The quality of the monitoring and auditing system related to the private code. The important players to be protected by the primate of empowerment are surely some trade unions as well as some international networks, particularly the LARIC alliance from Hong Kong (Labour Rights in China) and the Maquila Solidarity Network from Canada.

5. Classification of international Soft Law

The aim of the various 'International Soft Laws', such as the OECD Guidelines, the UN Global Compact, the UN's Draft Code of Conduct, is the setting of standards of a relevant network of supranational institutions. In the course of this, the standards created by these laws are guided by ILO's core labour conventions.

International Soft Law is the connecting piece between private unilateral codes and supranational regulation. In no way, it is an immediate step towards an re-embedding of social standards. At least such an interpretation leads to an underestimation of the dynamics of private regulation: codes of conduct refer to regulation vacuums as well as to the new constellation of players. They are less the result of the supranational discussion that has been taking place since the seventies over a fair economic system, but are being used at the moment as an instrument for the setting of standards, since this international debate for a fair economic system landed in a deadlock, thanks the processes of globalisation and privatisation. International Soft Law is in the process of setting again the dynamics; a guiding but also antagonising factor in the discourse of self-regulation. In no way however is international soft law pushing the debate on private standards to the front. It rather paves the way for the private setting of standards.

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Codes as a form of self regulation The National Industrial Recovery Act in the U.S. and at it's failure 1933 – 1935

"(...) With the codes in effect, and properly enforced, industry finds itself protected from the chiseler, from design-steal pirates, from labor-sweaters, and from below-cost-sellers, who, in the past, made profits practically impossible and general conditions in industry intolerable for management and labor alike. Codes raise wages and shorten hours. (...)"

Malcom Muir, former president of McGraw-Hill Publishing Co.Inc. and former division administrator of the NRA, 1934 at the annual meeting of the U. S. Chamber of Commerce (Textile World, 1934, p. 1049). This statement from 1934 shows that the idea to protect production and trading from unfair competition, wage dumping, child labor as well as guarantee the rights of collective bargaining and freedom of coalition through self regulation isn't as new as it seems today.

In June 1933, in the midst of the depression, the U.S. government under President Franklin D. Roosevelt pushed the National Industrial Recovery Act (NIRA) through Congress and established the National Recovery Administration (NRA). This early New Deal legislation sought to end unfair and destructive competition by authorizing industry-based codes which contained provisions for minimum wage, maximum working hours and collective bargaining. The agency ultimately established 557 basic codes and 208 supplementary codes that affected 22 million workers (Encyclopaedia Britannica, 2001). Other sources claim 7,000 codes for different types of business and industry (Reynolds, 1997)

The NIRA was called for by business leaders, for instance the president of General Electric (Reynolds, 1997). Consequently the authorities which developed the individual codes for each industry section, were dominated from the onset by business executives of large firms. Less than 10 % of these organizations included representatives of labor, only 2 % had consumer delegates (Fleischmann and Tyson 1997, p. 4, in reference to Hawley, 1966).

Developing the codes was an opportunity for business to establish minimum prices, something which was illegal under existing anti trust laws. In addition, the

codes allowed firms to protect themselves against foreign competition by displaying NRA's Blue Eagle label which was originally intended to prove the compliance with the codes. This and patriotic appeals clearly show the protectionist character of the NIRA.

Although the codes reflected the interests of big business, they nevertheless did improve labor conditions in some industries and helped trade unions to organize. In May 1935, however, the U.S. Supreme Court declared industrial codes unconstitutional (Fleischmann & Tyson, 1997, p. 18). At this time, the NRA had already lost much of its popularity because the codes were implemented at the expense of small business and consumers. The former didn't have the resources for the change and the latter had to pay artificially high prices.

But this weren't the only reasons for failure. In contrast to most traditional code of conducts, social labelling programs or workers right's clauses, the great majority of the NRA codes included no-selling-below-cost provisions and demanded an implementation of cost accounting methods from the companies. It was seen as impossible to control the compliance to minimum price and minimum wage regulations or violations of the codes concerning fair trade practices without cost accounting.

Just as in many developing countries today, U.S. business at that time barely used any modern methods of calculating or estimating costs. A lot of managers didn't even know whether the low market prices caused by the extreme overcapacity still covered their manufacturing costs. This was particularly the case in the apparel industry -- just as it is today, as the author of this paper can attest, as an apparel industry professional.

In this industry in particular, offering products below costs forces competitors to do the same which can cause to a vicious circle which, in turn, usually leads to wage dumping, child and forced labor. In the long run, this process can impoverish entire regions and countries. Continuous below-cost selling is generally an indication for the violation of core worker's rights.

In 1934 Percy C. Magnus, president of the New York Board of Trade asked: *"Can the vicious circle of lower prices, lower standards of living, and still lower prices be stopped by any process within our control, (...)?"* (Textile World, 1934, p. 1256)

Companies had high hopes that the NRA would help to establish an uniform cost accounting method, not just to make the no-selling-below-cost provisions applicable, but also to make their businesses more efficient. This was seen as a quid-pro-quo for business. Yet, from that perspective too, the NRA failed. Although it offered opportunities for executives of large companies or accounting firms, their differing interests kept them from developing a workable accounting system. In this sense, the NIRA had already become obsolete, even without the Supreme Court decision.

Today, the issues of overcapacity, selling-below-cost practise and the lack of modern cost accounting methods aren't widely discussed in the context of social standards. But when you have to deal with real-life cases to implement social standards -- no matter whether they are code of conducts, labelling programs, international worker's rights clauses or national labour laws -- these issues can't be avoided.

Take the garment industry in China, where I did some social audits in early 2001. Most of the managers of the business we audited didn't have sufficient skills to do serious cost accounting or even cost estimating. Originally, we had planned to collect some financial data to study how expensive the implementation of social standards would be for local garment businesses and their importers. But the data we found was incomplete or non-existent. Yet, you need such data to develop realistic implementation programs.

Only in few cases we could clearly establish that the products' selling price had any relation to the wages paid. In many cases, it took us hours just to find out whether the wages are in compliance to the Chinese labor law. How can you negotiate fair corrective action plans for each individual production site when the basic data for developing realistic steps is sorely missing? How can you prove that the lack of compliance with social standards is the result of greed or ignorance? Currently, the answer purely depends on the experience and gut feeling of auditors and monitoring groups.

If we want to succeed in preventing violations of basic, internationally-recognized worker's rights, we have to solve this dilemma: having to implement social standards in the context of an underdeveloped business infrastructure.

This is why code of conducts must include no-selling-below-cost provisions based on modern cost accounting. They would force transitional companies to think anew about cutting their prices, realizing that suppliers are setting their offer prices regularly below cost. It would also force management to implement cost accounting methods and the results would at least give them a basis to reject an order if expenses are not covered. Even more importantly, in doing so, they would realize that violating their worker's basic rights is one of the most expensive economical mistakes they can make and that labor as a cost factor is overrated compared to other costs. Audited manufacturers have to be taught that modern cost-accounting methods make them more efficient -- and these gains in efficiency more than compensate the additional costs they incur by complying with social standards. It should not be forgotten that cost accounting is a crucial part of the business infrastructure in developed countries and contributes much to productivity and competitiveness.

The NIRA shows that developing and implementing no-selling-below-cost provisions will be a very difficult job. The NRA tried to assert an Uniform Formula for cost determination, but there was a controversy about two regulatory approaches: to have minimum prices fixed by the NRA or in negotiations between the companies. Furthermore, there was no agreement how to define minimum prices. Should a factory set their minimum price based on their own production costs (and, in this case, on which costs) or should there be a generally binding minimum price for all producers of one product? The solutions discussed were overly complicated, not practicable or not legal.

Today we are faced with similar problems. It will be necessary, for example, to clarify which wage calculation should be the basis of no-selling-below-cost provisions: the minimum wage stipulated by the national labor laws, a living wage or the actually paid wage? National and international trading laws must also be taken into account. In different regions there are different ratios between direct productions costs, indirect costs and macro costs.

At the same time, however, the situation is much better than in the 30s. Highly sophisticated cost accounting methods with clear definitions of all relevant cost factors now exist. Based on these methods it should be possible to develop no-selling-below-costs codes and programs which meet the demands of different

countries, regions, industries and production sites. In addition, we now have some experience how self-regulation and competition can co-exist. Last, but not least, there is more time. In the 30s, the NRA was given two years to come up with a workable solution.

It is important not to underestimate the link between administrative aspects such as accounting methods and social standards as well as basic worker's rights. To pay attention to the former will help to succeed in the efforts to implement the latter.

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Assessing Codes of Conduct: The Limits of Consumer Power

Approximately one third of world trade is intra-corporate trade and another third involves at least one transnational corporation. Thus, corporate codes of conduct (written guidelines that serve as a basis for transnational corporations' behavior toward state institutions, workforces, suppliers, and the environment in the respective host country) are of great potential relevance. The ongoing debate on the scope of corporate social responsibility is especially important since violations of workers' rights, human rights, and democratic rights have been found at subsidiaries and suppliers of transnational corporations.

The OECD agreed on guidelines for multinational corporations in 1976 (*Declaration on International Investment and Multinational Enterprises* - with labor issues being one of several areas covered), and in 1977 the ILO followed with its *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*. Neither the OECD nor the ILO, however, expended significant resources on promoting their guidelines and on implementing complaint procedures. In the 1990s, the OECD even pursued the opposite course by drafting the Multilateral Agreement on Investment (MAI), which explicitly included no social responsibilities for corporations. The temporary failure of the MAI may have increased willingness to combine the protection of investments with a social code of conduct for transnational corporations.

On June 27, 2000, after the most comprehensive revision in 25 years of the Guidelines for Multinational Enterprises, the OECD adopted a new code. More than ever before, representatives of the public had been requested to comment on drafts. The Trade Union Advisory Committee (TUAC), along with many NGOs, had advocated tougher language, stronger implementation mechanisms, and an increased role for the so-called "National Contact Points." These serve to promote the guidelines in OECD member countries and, in theory, to receive complaints on violations of the code. In fact, this has rarely ever happened. In the end, the

resistance of the Business and Industry Advisory Committee (BIAC) and of the Mexican government against a more mandatory nature of the code was not overcome. The guidelines remain mere recommendations – but, in a departure from past practice, they are being promoted, e.g., by the German Ministry for Economic Cooperation and Development (cf. <http://www.oecd.org/daf/investment/guidelines/mnetext.htm>).

Because the OECD and ILO recommendations have rarely been followed so far and because at the same time working conditions have been worsening in many production facilities in the South, unions, human rights advocates, and development policy groups have begun public campaigns to pressure transnational corporations into adopting codes of conduct. Advocates of codes of conduct such as the Clean Clothes Campaign usually point to the resistance against legally binding global rules for transnational corporations, and stress that, in contrast to the concept of a WTO social clause, codes hold the corporations headquarters' accountable for working conditions at their suppliers and subsidiaries. Codes of conduct, they argue, cover the whole chain of production. Codes also provide an opportunity for public involvement in consumer campaigns and other pressure tactics. Moreover, they are an example of participatory development policy in that they provide for an inclusion of the workforces affected in the formulation and implementation of the codes (Ascoly et al. 2001).

The extent to which *codes of conduct* can be effectively used depends on their concrete form. The long-term efficiency of this instrument is especially questionable if implementation is left to companies. Seeing as no company has yet adopted a code of conduct truly voluntarily but only in response to public pressure, there is no reason to believe that a code's long-term implementation can be secured without further pressure.

International competition serves as a permanent incentive for companies not to implement costly monitoring mechanisms, especially since the adherence to higher standards does not significantly increase sales (Elliott/Freeman 2001). Only the threat of sales losses resulting from public pressure regarding violations of labor

rights encourages companies to respect higher standards. Some companies, such as Disney, have successfully avoided becoming the target of consumer campaigns by steadfastly denying any wrongdoing and by simply not issuing a code of conduct, which could have served as a standard to which they could have been held (ibid.: 21).

For several reasons it is questionable whether long-term public pressure can be sustained. Social movements have developed cyclically and when they have not succeeded at the high-point of their mobilization capacity in establishing the concessions they had won in the form of laws, their successes have remained rather temporary phenomena. This is likely to apply especially to strategies based on consumer behavior. Even on consumer decisions that directly affect their well-being, many consumers return to their buying habits quickly, after an initial panic. A return to old purchasing habits is even more likely in the case of public criticism that is based not on the product but on the production process, because consumers are less affected personally. In Germany, child labor is regarded with moral indignation – except by neoclassical economists – and thus criticism that a product was manufactured with child labor will continue to receive broad attention. However, the denial of the rights of freedom of association and collective bargaining will result in less moral indignation, especially since fewer and fewer people use those rights even in OECD countries. A ‘postmodern’ mobilization of consumer concern, based not on material interests but on altruism, may also lead to paternalism toward the affected workforces and to an arbitrary selection of objectives. Upholding public pressure will also be made difficult by the great number of different codes of conduct, which may confuse consumers. Without a supervisory body or monitoring agency with adequate resources, organizations advocating improved working conditions in the “world” factories will face difficulties convincing the public again and again that a specific transnational corporation is violating its own code of conduct. Companies reacting especially sensitive to public criticism, and therefore willing to adopt codes of conduct, are also those with the highest advertising budgets.

Compared with the economic power of transnational corporations and the political and police power of state institutions, the power of consumer organizations is rather

modest. In theory the customer is king, but purchasing decisions are actually based more on price signals, habits, and advertising, than on the appeals of advocacy organizations. Even though competition among companies causes them to react sensitively even to small changes in market share, the labor practices of one company is, first, most often not much better than the next, so that consumers do not really have alternatives. Second, the rules of competition also provide a strong incentive to choose the least costly reaction to public criticism. And the least costly solution is not necessarily the discontinuation of bad labor practices but could be effective public relations. Joined with the employees' organizations, NGOs are potentially stronger than they are on their own but, for one, these two currents of corporate critics can easily be played off against each other (e.g., in the case of the Apparel Industry Partnership in the United States; Scherrer/Greven 2001: 96-100); and second, unions have so far made only limited efforts to mobilize their members around cross-border solidarity.

At this time, however, it is too early to conclude whether company codes are merely tools for avoiding real improvements in working conditions or whether they provide criteria for a public assessment of company behavior. If no further steps follow, however, the current voluntary codes of conduct will be counterproductive, especially if they

- unilaterally prescribe working conditions for the respective workforces, with no participatory role for employees;
- contain vague formulations and/or ignore ILO conventions;
- are not integrated in factory procedures, and are not made accessible for the respective workforces;
- do not allow the external monitoring of working conditions.

But even if uniform codes of conduct that explicitly refer to core ILO conventions and include external monitoring can be realized, the following problems should not be overlooked:

Monitoring problems especially should not be taken lightly. These problems lie first of all in the complexities of supplier chains. In the toy industry, which is concentrated in Southern China near Hongkong, the Hongkong office of a U.S. toy corporation negotiates with so-called middlemen, who in turn negotiate with toy manufacturers or

with intermediates. About one contract per day is signed (Murray 1998: 32-33; Illi 2000).

An in-plant grievance procedure cannot replace independent monitoring. Employees under the threat of extreme exploitation are not in the position to make use of such a procedure. To have a chance of success, the person lodging a complaint requires

- access to information concerning the code of conduct;
- an understanding of what constitutes a violation of the code, and of the criteria used for evaluating the complaint;
- the necessary means to research and appropriately document the complaint;
- the mastering of the language in which the complaint will be dealt with;
- and most importantly, the assurance of not suffering negative consequences for filing the complaint.

The form of external monitoring increasingly preferred by corporations, i.e., audits by agencies certified according to the SA 8000 standard, can overcome these problems only in a limited way.

NGOs will not have the financial resources for more than spot-check monitoring. In addition, there is the danger that monitoring commissions will come to be regarded as substitutes for unions, or that there is competition between different monitoring groups (cf. Köpke 2001). In fact, competition between monitoring groups has started to be a problem for transnational corporations, or so they claim. "We don't know who to talk to," said Jochen Overmeyer of C&A at the HWP workshop on "Codes of Conduct" in Hamburg (October 4-5, 2001). This is ironic, since transnationals are the most powerful source of opposition to any internationally (or nationally, for that matter) binding rules on working conditions and labor rights.

A common problem of all instruments designed to improve working conditions in a country by using world trade is that they potentially lead to a split of the respective labor law regime into export industry and national segments (the employees in export processing zones are, however, often worse off). In the case of codes of conduct, this problem is exacerbated because they lead to additional differences within the export sector. Workforces not producing for transnational corporations and/or not

producing consumer products would not enjoy the protection of a code of conduct, and would not be the subject of supportive consumer campaigns.

Additional problems of the instrument of codes of conduct are: Codes targeted at corporations could divert attention from the responsibility of governments for the economic and social well-being and development of their societies. They could also lead business to assume that they can satisfy their responsibilities by adhering to a code.

Finally, there may be non-intended consequences. For example, the limitation of exploitative homework may affect women's access to employment, and the prohibition of child labor may push children into dangerous informal employment sectors. There is also the danger that if a transnational corporation discontinues its relationship with a supplier based on violations of its code ("cut and run"), the pressure on workforces of other suppliers grows not to make violations public. This danger can be offset by a commitment of the transnational corporation to assist the management of the supplier in the improvement of conditions and to discontinue its relationship only when all means of persuasion and pressure are exhausted. There is thus a need for supporting measures.

Compared with the "enabling" strategies of codes of conduct (as well as social labeling), internationally binding rules about adherence to core labor rights, including effective sanction mechanisms, i.e., a *workers' rights clause in the WTO*, are clearly preferable. Such a workers' rights clause would not just affect brand-name companies that heavily invest in image but all export companies in WTO member countries. As the adoption of ILO core labor rights within the WTO would go along with their ratification in the context of the ILO, WTO members would also be encouraged to respect these rights with regard to producers for the respective domestic market. The sanction mechanism for exporters penalizes the short-term advantage resulting from non-adherence to these rights. Therefore, workers' rights clauses promise a *higher rate of compliance*. This higher rate, in turn, contributes to the development that countries tolerating violations can point less and less to their competitors' behavior as a justification of their own. Compared with codes of conduct

(as well as social-labeling initiatives), which can be established without consultation with the respective country of production, the multilateral character of the WTO also leads to an improved consideration of developing countries' interests. At the same time, multilateralism provides security against protectionist abuse. Because of the strong opposition to a workers' rights clause in the WTO, the other strategies should be pursued further. In the end, however, there is no way around a reform of the WTO system.

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Legal and Hard Law measures related to private standards - The German Case

Codes of Conduct are usually seen as opposed to binding social minimum standards. Although they do provide for the application of certain social minimum standards in transnational productive and commercial activities, they are, at first view, only internal rules to the company with the effect, that the company itself can decide on if and how to implement them. Nevertheless, the need for such company-only standards is widely acknowledged, as they are seen as a compensation for the lack of binding international law in the area.

I will now argue that, if we take a closer look, rules of national law can be found that transform international law as well as generally acknowledged basic minimum standards or even internal company rules such as Codes of Conduct into binding legal standards. However, we must not expect explicit regulation of international commercial activities and rather look for general rules of private law. I will mainly use German law to show how general rules can be used for providing a legal framework for the implementation of Codes of Conduct and other social minimum standards.

For this purpose, we can depart from two perspectives: Firstly, we can look at human rights and/or constitutional rights as well as rules of private law that protect workers' physical health. Secondly, consumer law and fair trading law can be examined and construed in a way as to provide for the indirect enforcement of social minimum standards.

The Human Rights Approach

German tort law as well as the tort law of any legal system does protect everyone's rights to physical integrity. The problems in applying it to activities of transnational economical activities outside Germany is rather one of international private law and international procedural law. Under international private law or international procedural law, respectively, we understand the national legal rules on conflict of law that define which legal system to apply in cases with international implications.

Jurisdiction of German Courts

The issue of international procedural law, or rather the issue of the jurisdiction of German courts is hardly worth discussing. According to Art. 2 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, German courts do have jurisdiction to decide in any case where a company based in Germany is being sued.

Application of German Tort Law

Issues of conflicts of substantial law are harder to discuss. Whether German tort law can be applied (or whether the tort law of the country where the worker was injured has to be applied) depends on whether you can prove that an act committed in Germany such as an entrepreneurial decision caused the injury. If you find a way to pierce the corporate veil in these terms, you could actually be successful and get compensation before a German court.

Barriers to Justice

I will now not go into further details concerning German tort law or even the respective rules in Anglo-American, especially US-American law. In general, the legal rules of tort law in Germany are as apt and adequate to cover cases of violations of workers' integrity in transnational production as the respective rules in American law are. So why haven't there been cases in Germany such as the USA have had?

I think it is not only the (at least compared to US-American law) lower sums of compensation that can be achieved here. It is rather due to the lack of an infrastructure of public-interest litigation in Germany. German procedural law doesn't offer any incentives for a law firm to take up public interest cases the way US-American law does. Just let me mention the main differences in lawyers' practice: Contrary to the so-called American Rule, according to which it is up to each party to pay his/her representative, in German civil procedure the loser takes it all (the loser has to pay all the costs), which means the financial risk of litigation is a lot higher. Secondly, while in the USA it is possible to stipulate contingent fees and thus shift the risk of losing on the lawyer, German law prohibits this kind of contract. It also

invalidates „quota-litis“-contracts and orders lawyers to be paid minimum fees that are strictly fixed by the law and may not be waived. The fees are even relatively lower where the total amount of money involved is higher. Lastly: There is no such thing as a class action. In total: Why should a law firm want to take up a difficult public interest case concerning lots of people?

The Competition Law Approach

My second concern is with the implementation of social minimum standards via consumer and fair trading law. This option arises out of the fact that goods produced in Third-World-Countries will usually also be sold and traded in the industrial countries (such as Germany). Consequently, it could be examined if a violation of social minimum standards in the production process constitutes a violation of consumers' rights and/or co-competitors' rights, as well.

Unfair Competition

Art. 1 of the German Act on Unfair Competition (UWG) says that whenever commercial activities don't respect good faith and morals in competition, co-competitors and certain associations can bring claims for damages or injunctions. There have been few decision on the question whether a disrespect of social minimum standards aimed at protecting workers constitutes unfair trading for the purposes of this rule. However, the Federal Civil Court has been clear enough in declaring that an entrepreneurial action that restricts itself to the production process will usually not be regarded a commercial trading activity. Thus, infringements of labour law standards constitute unfair competition only when the violation takes place in the commercial activity of selling itself. For example, violations of working time rules won't necessarily be considered unfair competition, but a violation of the rules on the closing time for shops or a violation of the prohibition for bakeries to bake at night, could be unfair trading.

Infringement of minimum standards on wages or on health and safety will be seen as a commercial activity only in exceptional cases, the Federal Civil Court (BGH) held. This means it would have to be proven that there is a broad and systematic violation the profits of which are deliberately used to calculate the prices of the products more

favourably.

We could easily apply these principles to cases of infringements of minimum standards of international and foreign law, although there haven't been cases yet (except for the one I will mention shortly). What the courts could question in these cases is the assumption that an act which merely takes advantage of an international gradient in the level of protection without violating any legal norms should already be considered unfair competition. The Federal Civil Court, in 1980 at least allowed the idea, under certain prerequisites, in a case where a producer of asbestos had purchased a considerable part of his products in South Korea, where the level of health and safety at work was lower than in Germany which made it possible for him to undercut co-competitors' prizes. As the production was legal according to South-Korean law, the court didn't see any unfair competition, but recognized there would have been, had there been a common international understanding on basic moral standards in the area, such as an international Convention signed by a considerable number of states. Consequently, it can constitute unfair trading in German law if international minimum standards, although not legally binding, are disrespected in order to gain competitive advantages.

Unfair and Misleading Advertisement

Competition law can also cover the reverse constellation: Is it misleading or unfair advertisement if a company praises its products in virtue of its respect for certain social minimum standards or its conclusion of a Code of Conduct? German civil courts have taken a rather strict and moralizing position on the issue. Certainly, an advertisement will be misleading if the company doesn't in practice respect the rules it advertises to comply with. But even further, the courts demand that advertising an image be accompanied by a certain degree of information on what „sensitive to the environment“ (just to mention an example) actually is supposed to mean. This will be an important issue if companies should, in the future, advertise their respect of certain social minimum standards or their adherence to certain monitoring procedures or use accredited „social“ certificates or labels.

But there is even a further aspect to consider: German courts have also been reluctant to accept so-called „emotionalizing“ advertisement. For example, institutions

that employ people with disabilities for social purposes may not advertise their products as an achievement of a social institution, because, in the eyes of the Federal Civil Court, consumers' compassion and feelings of social responsibility would then be commercially exploited. This is just one example for the distrust of commercial motives among German jurists and their moralizing assessment of commercial activities. Last year, the Federal Constitutional Court (BVerfG) has at least partially criticized this jurisdiction when allowing the Benetton-advertisement-campaign that used images of child work and HIV-positive people. The Federal Constitutional Court stated that the image of a company may actually be advertised independently of a specific product; it then makes use of the freedom of expression. Due to these decisions, this Court is expected, this year still, to loosen the rules on the advertisement of social labels („Umwelt-Engel“).

Overcoming barriers to justice?

What could also be interesting for us is that the Act on Unfair Competition also gives consumer associations standing to sue. They could bring claims against firms that advertise misleadingly or claims against companies that sell products carrying competitive advantages arising out of a systematic violation of social minimum standards. The above-mentioned barriers to justice the victims face will not be overcome this way, but at least there is now a way on which consumer activists can act out on consumer responsibility for the working conditions in the production of the products they consume.

Propositions for Law Reform

Now, which conclusions can we draw from this analysis?

Firstly: German substantive law is not in itself hostile to litigation on transnational production involving German companies. But cases will have to be organized to force the German legal system to get used to the idea of this kind of litigation and accept the fact that respect of social minimum standards in transnational production is a legal issue even if there aren't any explicit rules.

Secondly, legislation could support the existing legal framework by providing

procedural ways to tackle the issue of social minimum standards in transnational production. Consumer associations have already proposed the introduction of some kind of class action or collective action in cases where a great number of people are injured by a certain entrepreneurial activity. Similar measures could be helpful in cases where workers' rights and integrity abroad are infringed because of actions by a Germany-based company. Other measures could include the facilitation of public-interest-lawyering by changing the law on lawyers' fees and contracts.

Thirdly, a policy of social labelling should be established by building up an infrastructure of certificates and monitoring. The possible role of public authorities and the law in the building up of a labelling system will still have to be discussed. Nevertheless, public authorities and the law could help enhance public consciousness and competition in the field, by, for example, linking public purchasing and tendering with social criteria (the admissibility of which I examined in the paper submitted to the research, but will not talk about now).

And lastly: Why not also strengthen the individual consumer's rights? There already is an individual right to cancel a contract that was concluded due to deliberate misleading advertisement. This right could be extended to cases where a consumer finds out that contrary to earlier assumptions social minimum standards had not been respected in the production of the purchased good. Such an individual right could be used collectively by groups of consumers and thus provide an efficient political means, as well.

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Comments on Eva Kocher's presentation: „Legal and Hard Law Measures Related to Private Standards“

I would just like to draw your attention to three systematically different approaches to the law when analysing the effects of voluntary codes of conduct.

Law as a means of implementing strategies

The first approach looks at law as a means of implementing strategies. This is the domain of contract law, the law of unfair competition concerning the use of social labels and of such laws setting the procedures in which such labels may be awarded. Law in this dimension enables a corporation to implement a code of conduct which it voluntarily has set up against its subsidiary companies and against other companies in the supply chain. Penalty clauses referring to child labour, discrimination, etc., could be inserted into standard term contracts. And, of course, such clauses serve as warning to contract partners that the ongoing contractual relationship is in jeopardy in case there are violations. Where such clauses are not inserted into a contract but where there are generally accepted international social standards such as contained in the ILO conventions on core workers rights, contracts could be voided in case a contract partner does not adhere to these standards and this contravention is closely linked to the contractual performance. In many cases, though, these core workers rights will be implemented in national laws which will provide for sanctions in case of violation. Even where there is no standard set by an international institution but where a general practice of multinational enterprises evolves in setting similar standards in their codes this could determine the standard of public morals in international trade contracts. Non-adherence to such standards could make such contracts void.

The new German law of obligations which will come into force on 1 January 2002 contains several instruments which could be used in implementing a code by a company against suppliers. §280 BGB in its new version (German Civil Code) awards a claim for damages where a contract partner is in breach of his contractual obligation. Where code principles have been translated into contractual clauses such obligations are covered by this norm. §324 BGB gives the right to terminate the

contract in case of a breach of an essential side obligation, i.e. which is not the primary performance obligation. In her research paper Eva Kocher pointed out that § 434 BGB is problematic where consumers raise claims arguing the defective quality of a product produced under conditions that violate international labour standards as the courts have been rather reluctant to see such a violation as a defect of the product itself. From the point of view of a company that sells the product this is different. Because a public accusation that it sells products produced by child labour might directly affect the market conditions for these products. In this case § 434 BGB would be definitely applicable.

And I would like to stress the importance of legal procedures for the award of social labels or for setting up something like a social audit comparable to the EU Ecological Audit Regulation (Regulation EC 1836/93). Eva Kocher has pointed out initiatives by trade unions to sign contracts with companies to monitor their social performance. Voluntary participation in a legally regulated social audit would enable the undertaking to publicise such participation although, as in the Eco-Audit Regulation, it might not be used in advertisements for and packaging of products. Whereas social labels could be used even though, as Eva Kocher has shown, there are some competition law problems that might be solved after a Federal Constitutional Court ruling in a pending case.

Law as a means of enforcing international standards

The second approach looks upon law as a means of enforcing international standards against undertakings that refer to them in their codes or against undertakings that do not even profess to comply with such standards. This second approach probably is less effective and much more cumbersome than the first approach which enables negotiation processes that lead to feasible strategies by global corporations. For this second approach I agree with Eva Kocher that tort law (suing for damages in case of violation of individual rights), law of public procurement and competition law are the most promising areas to explore. I have almost nothing to add to Eva Kocher's analysis.

I agree that tort law provides remedies only in a few cases, where directly injured persons bring their case before the courts of the parent company's seat state. But where this is the case codes of conduct can play an important role. As it is

necessary to prove that the injury was caused by an action or omission on the part of the parent company, a code stating the duties of the parent company may be used to establish a duty of care towards the employees of the subsidiary. An inactive parent company then could be held responsible for not having acted where it should have. In this sense, widely used similar codes of conduct are a factor in setting the standards for a duty of care of parent companies.

Codes of conduct as a means of developing International Law and of Contract Law

As guidelines such as the OECD-Guidelines are voluntary international agreements they are easier to achieve than legally binding agreements of international law. Compromise is less beset with reservations and hence easier to be reached. But as shown above, standards set by international, though unenforceable, agreements can inform the content of codes used by multinational enterprises and in this way change conventionally accepted morals of international trade.

In international law, agreements such as the OECD Guidelines for Multinational Enterprises contain the 'obligation' of such enterprises to develop a national outlook, furthermore the 'obligation' to abide by the laws of the country in which the undertaking operates. States that have signed this agreement, therefore, accept that subsidiaries of parent companies with a seat in the regulating state are subject only to the law of the host state regarding their activities in the host state. This is a confirmation of the principle of territoriality against any form of intervention from outside i.e. the state of the seat of the parent company. This also refers to social standards. But, if both countries are party to an agreement on social standards, such as an ILO agreement, then there is a legal basis for the state of the parent company to enact laws, concerning the behaviour of multinational enterprises, that are in conformity with the ILO agreement on social standards but regulate extra-territorial behaviour. I.e. it is legally admissible to penalise acts of bribery by own nationals in other states, or sanction the use of child labour in other states or any violation of human rights in other states. According to the nationality principle states may regulate the actions of their own nationals in foreign countries if there is a substantial connection between the subject matter and the jurisdiction of the regulating state.

Such a substantial connection is given in this case as there is a legitimate interest of the state to ensure that its own nationals abide by internationally accepted standards.

It becomes more difficult where a state wants to regulate actions of foreigners in a foreign state. Here the accepted standard is that a state acts 'in excess of its own jurisdiction when its measures purport to regulate acts which are done outside its territorial jurisdiction by persons who are not its own nationals and which have no, or no substantial, effect within its territorial jurisdiction.'³ All depends on the definition of what an effect is that the regulated act needs to have in the regulating state. But this limitation is transcended by the universality principle. In the Barcelona Traction Case the International Court of Justice⁴ has declared that there are obligations in international law against the international community as a whole. Such obligations are *ius cogens*, binding upon all states independent of the acknowledgment by an individual state. The prohibition of slavery and race discrimination as well as the safeguard of basic human rights fall under this category. In this way, the conformity to international law of norms such as the US Alien Tort Claims Act of 1789 can be established which, as Eva Kocher points out, has recently been resorted to in law suits in the US against multinationals with a seat outside of the US. But such measures would raise considerable political problems because of their extra-territorial impact. Furthermore, as Eva Kocher argues, such procedures can only supply remedies in exceptional cases as, indeed, the multinational corporation has to be directly involved in such sanctioned activities. To me it seems that the legal importance of non-binding agreements such as the OECD-Guidelines lies in that they establish widely accepted international standards that make it difficult for any state to undercut. They form the international platform on which the setting of national standards has to be argued.

³ UK Attorney General Sir John Hobson, citation in: Brownlie, *Principles of Public International Law*, 5th ed. Oxford 1998, p. 312

⁴ ICJ Rep. 1970, p.32

Jane Turner
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Codes of conduct and the gender deficit

I come from a non-academic background from a small NGO that works collaboratively with women's organisations in Central America. CAWN works to raise awareness of, and support for, the work of women's organisations in the region. Currently, our main focus is on women's labour rights and gender-based violence. Through dialogue and systematic consultation with partners in Central America CAWN is developing an advocacy role in the UK in particular to influence campaigns and initiatives on labour rights to include a crucial gender and Southern perspective in their work.

Where are the women?

This feminist and women's movements throughout the world have played an important role in highlighting the importance of need to change gender relations in order to address gender inequalities and the pressing need to increase women's meaningful participation at all levels of society. However, in the world of economics, trade and labour rights, issues that particularly effect women have been consistently excluded from debates and this has lead to the development of policies and actions which often have a negative impact on women.

Gender difference is simply ignored for example one of the basic demands from women's groups for many years has been that work such as child care and housework currently carried out mainly by women, is quantified in national output statistics. This has not happended. An example, is the gender differentiated impact of Structural Adjustment policies. Women bore a disproportionate burden of these policies in several ways including higher levels of maternal mortality when access to public services is reduced.

Until these issues are addressed economic policies will continue to be based on a male biased analysis of the world perpetuating gender inequality.

“Workers”

Several years ago the then Director of the ILO admitted that when the ILO spoke about “workers” more often than not they were talking about men in formal employment. Today the ILO office in the context of an internal issue has begun to take the work of the promotion of gender equality more seriously. It has developed an Action Plan on Gender Equality and Gender Mainstreaming in the workplace and plans to monitor the impact of the activities in the coming year. However, it is not clear if the ILO will extend this process further to tackle the deficiencies of international labour legislation on addressing specific concerns of women workers such as sexual harrassment.

In terms of labour rights despite the increase in women’s participation in the labour market over the last three decades, women workers concerns are often not articulated. Trade Unions the traditional labour organisations and “workers” representatives have been slow at taking up issues that are priorities to women. Although women constitute a significant portion of trade union membership particularly in the health and education sectors – sometimes as high as 60%, at leadership level they are often absent. There are a whole range of reasons why this is the case that Carolina will go into more depth about but they include

- women have less free time than men due to family responsibilities: child care, housework. E.g. In the UK 79% of women are still primarily responsible for domestic work.
- A male union culture and environment – the notion that working in the union is a 24 hour job, often involving the use of sexist language and low interest in issues which are a priority to women.

As a result of difficulties encountered by trade unions to represent women workers particularly in Central America there has been an upsurge of interest by women’s organisations in the concerns and problems faced by women workers however, these groups often do not have access to the same forums as trade unions where they can influence debates.

Codes of conduct and gender

Codes of conduct fail to address issues which are a priority to women workers. The implementation of codes is not gender sensitive and monitoring processes tend to be void of gender sensitivity

- The development of the majority of codes of conduct has happened in the North with little consultation of any Southern workers let alone women workers in the South. As a result most codes are deficient in addressing issues which are a priority to women.
- Many codes of conduct are based on the ILO Core Labour Standards which as mentioned earlier are gender blind For example the base code of the Ethical Trading Initiative.

Barrientos et al in recent research looking at different codes of conduct which apply to the horticultural industry in Kenya, South Africa and Zambia found that despite high levels of female employment 52-75%. Codes of conduct usually fail to address most gendered employment needs. The issues of interest to women such as child care, reproductive rights, safe transportation and sexual harassment are overlooked.

CAWN has been working collaboratively with women's organisations in Central America who are trying to bring into the debate and practice around codes of conduct an often-excluded gender and Southern perspective. The function and legitimacy of their role in the development and monitoring of codes of conduct stems from their general approach and, more specifically, from their role in facilitating the direct participation of women workers in the design and implementation of codes. Overall, the experience of some of the key women's organisations in Central America suggests that compliance with codes of conduct can potentially promote the interests of women workers in the maquila sector. However, codes of conduct are one of several tools that women's organisations use to improve the implementation of national and international labour legislation.

Their experience also highlights the fact that the potential benefits of codes can only be fully realised if certain key conditions are met.

- Firstly, it is crucial for workers to be aware of their rights contained in the company code of conduct, and national and international labour legislation.
- Secondly, women workers and/or their representatives must be actively involved at all stages of the process including the design, communication, monitoring and implementation of codes. Assuming these basic conditions are met, codes can be used as a tool by women's organisations as part of their broader strategies to improve the lives of women workers.

However, there are still a great many hurdles to overcome if the potential benefits of codes are to be realised on any significant scale.

- First and foremost, the importance and value of the contribution and perspectives of women workers in the South must be recognised by all the individuals and institutions involved in the process, including the organisations promoting ethical trade, such as the ETI, campaigning organisations in the North, and trade unionists in both North and South. International solidarity has an important role to play, but this must be based on a two-way exchange of information, including consultation with women workers and women's groups.

In addition, the business sector must prove its commitment to fair and equal treatment of workers by supporting independent and transparent forms of monitoring and the involvement of civil society organisations, including women's groups, in the monitoring process. Resources are also needed for documenting, comparing and evaluating the impact of codes and monitoring processes in a range of different contexts so as to highlight both the strengths and limitations of codes and build these insights into future policies and approaches.

Many aspects of the approach and strategies adopted by women's groups in Central America can, and should, serve as a model for others seeking to promote the interests of women workers in export processing zones around the world. MEC's success in getting its own Ethical Code approved and adopted in Nicaragua, CODEMUH's use of codes as a tool for empowering women workers in the domestic, as well the employment, sphere, and the use of effective negotiation and alliance-building strategies by both groups, are just a few examples. Recent and ongoing initiatives involving these women's groups and others in the Central America region may also provide a valuable model for the development of transparent, independent

and gender-sensitive forms of monitoring. It is up to all those genuinely committed to the advancement of women's interests to learn from and act upon these examples and provide their support in ways that enhance, rather than undermine, the efforts of women's organisations in Central America and beyond.

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New frontiers for labor activity: The case of codes of conduct in Central America and the action of women's organizations

The corporate codes of conduct are business tools aimed at assuring the consumer that the product has been manufactured with certain norms of social responsibility on the part of the companies. On other occasions, these codes have been taken up by a variety of activist organizations that managed to convert them into tools for demanding that the company comply with its own codes. The codes of conduct are instruments for action within the global chains of production and consumption. The fundamental issue in this international activism is the politicization of the consumers and this is achieved in conjunction with each country's institutional resources, within the national contexts of treatment of labor demands. When we look at them from the South, represent a profound criticism of the role of the national state by civil society in the protection of the rights of its working population, and signify an increase in non-governmental mechanisms for resolution of labor conflicts. These non-governmental mechanisms are prioritizing the participation of private enterprise as the central player in obtaining the well-being of the working population, as well as validating of the presence of new labor players which are not the classic labor parties (company and union), but rather span a broad range of women's and human rights organizations, consumer groups, etc.

The problem of representation and inclusion of interests in the *maquila*

Some studies indicate that the men and women workers continue to consider the unions as institutions of defense of the workers. The unions have not been sensitive to the situation of women nor have they designed strategies that allow for their massive affiliation, either. The unions are mostly made up of men. The percentages for affiliation are further reduced in examining the percentage of participation in the union leadership. For El Salvador, this figure is 13%, while in Nicaragua, it is 30%. In any case, women in the union leadership are always a minority. Added to this figure is the fact that most of the women in leadership are in charge of the slots for education, secretaries for "women's affairs", etc. and not necessarily in the posts where the major union policies are defined or in collective bargaining, when it exists.

In general terms, male trade unionists consider the non-participation of women as the women's problem and not one of the union. An investigation on the subject carried out in El Salvador, maintains that the problem of the participation of women in the unions has the following characteristics:

- a) An operational logic that does not adapt to female roles nor respond to their interests...and (that) imposes a separation between public life (the union) and private life (the home), which demands sacrificing personal and family life in favor of union service.
- b) The predominance of disrespectful and sexist procedures among male trade unionists which create a context of constant sexual harassment for the women trade unionists, and often makes them extremely vulnerable.
- c) The absence of specified support so that women trade unionists can lessen the burden of reproductive work in their families, which constitutes the main reason why union service means an increase in their responsibilities, for the majority of women who attempt it his greater physical and emotional burden that women trade unionists must take on marks a significant difference in terms of the real possibilities for a man and a woman to develop in the union realm and places women in a situation of disadvantage.
- d) Hegemony of masculine practices in the exercise of power which translate into authoritarian, centralizing, rigid, not always democratic behavior, which does not conceive of a space for the emotional. Some sustain this power by taking on a passive role and avoiding all struggle for power. While others do so exercising power through masculine practices, or "hiding" the existing discrimination and undervaluing the "typically feminine" vindications such as day care centers and time for lactation (Martínez/ Quinteros, 1997).

The women's organizations in the area of labor action

The participation of non-union organizations in labor matters is carried out in areas in which the unions have not been able to access. The unions are no longer the only players who do work in the *maquilas* on demands, and they will not be the only ones charged with monitoring the respect for labor laws and the defense of the men and

women workers. So, the labor actor that arises in the *maquilas* is not exclusively union.

The most active non-union organizations in the region are the women's and human rights groups. The women's organizations in particular have begun to carry out direct action in defense of labor rights and alternative mechanisms of organization of the women *maquila* workers. The emphases have been placed on rights and situations that are not part of the traditional vindications: protection for maternity, sexual harassment, child labor, empowerment of women within the organizations, double workday for women workers, among others.

For these organizations, the *maquilas* present a new proletariat that must be taken care of taking into account not just the problems they share with industrial workers, but also the specificities of their gender. In addition, in Honduras and Nicaragua new forms of organization of these workers have taken place, with structures less rigid than the unions and oriented at training in the areas of gender and human rights. In Nicaragua, stemming from this new way of bringing women workers together, they are also proposing an alternative style of representation for women workers and the defense of their labor rights, carried out directly by a women's organization before the government and national businessmen. In these groups, union rights are not part of their agenda, although in Honduras they have intervened in more than a few collective and union conflicts.

The non-union organizations have also been immersed in one way or another in the problems of politicization, party politics and lack of autonomy that has characterized the Latin American social movement. In the case of Central America, these organizations also share with the unions the limitations imposed on them by the armed conflicts and political situation in the region. This is the case of the women's and human rights organizations.

The human rights organizations were affected by the situation and the Central American political conflicts in the eighties. During these years they found themselves immersed in the struggles for the rights to life and liberty, and the denunciations of the violations of fundamental human rights. As the region entered into a more stable phase, the areas of work moved towards the second and third generation rights, and this is how these organizations began to enter into labor matters and specifically in the *maquilas*. In addition, many of the claims reported in these factories violate not

only labor and/or union rights, but human rights, regarding the respect for the dignity of the person. Accusations of physical mistreatment and sexual harassment are not uncommon in this environment.

The women's organizations in Central America are relatively new. Some authors maintain that the eighties was the historical moment in which the organizations we know today arose and developed. In all the countries of the region, except for Honduras and Costa Rica, these organizations arise linked to revolutionary movements and in support of the popular struggles. "The women's movement arose in the bosom of other movements, blurred and with little development of identity" (Montenegro, 1997). Later, we saw movement in the direction of independence from the political parties, but many of these organizations continue to maintain the rhythm and methods of work that they learned during their party activity.

Among the factors that fomented this search for autonomy we can identify the following: the weakening of the popular movement, the crisis of the parties of the left and the political-ideological paradigms, the economic crisis, international cooperation, as well as a favorable regional environment. Some organizations broke away completely from the political forces that brought them into being. Others, however, maintain a certain level of relationship, although with a constant critical posture regarding the little inclusion and obstacles still placed by mixed organizations to women's demands and the participation of women in the hierarchies of these organizations.

It is in this context and at this level of development of the women's organizations that they begin to take interest in the subject of the women workers in the *maquilas*. Within the style of work of these organizations, not only the labor situation of these women is of concern, but also the specific question of gender subordination. In this way, they combine actions of protest and denunciation with training and conscientization of women.

It is necessary to point out that movement or women's organizations is not equivalent to feminist organizations or movement (just as neither of these is synonymous with "feminine" movement). There are notable tensions and differences between the two. These differences have to do basically with the conceptions of exercise of power, the way to build democracy and the state of subordination of women, as well as the political and organizational experiences (the work with and inside the mixed groups,

for example); and the work methods. The positions adopted regarding subjects such as work in mixed spaces, freedom of sexual option and abortion still constitute points of disagreement.

The relationship between union and non-union organizations is extremely complicated. Each one comes from different traditions and therefore maintains different styles of work. Unions have been a basic part of the forms of representation of interests in industrial societies, which are organized around production, work and politics. The corresponding actors (the “working class”, the political parties, etc.) act according to this framework and the union becomes the organization that symbolizes and gives expression to the corresponding basic struggles. The unions have considered themselves representatives of the basic contradictions of current capitalist societies and legitimate representatives of the interests of the workers (in the masculine). The unions have basically been masculine spaces of power, not only in terms of the membership and composition of their governing boards, but also in terms of ways of exercising power. The women’s and human rights organizations, on the other hand, are becoming part of another type of movement in which the inclusion of interests occurs around demands that are not related to work but to expressions of identities: ethnic origin, gender, nationality, etc. and even, around more globalized phenomena such as ecology and human rights. That is, with all those categories which in the past were considered as subjective-private or demographical qualities. The women’s organizations and those that come out of the feminist movement, for example, typically maintain informal organizational structures and have a strong resistance to authoritarian exercises of power. In many cases, a certain tendency can even be seen towards separatism and seclusion. This is understandable since, when women participated in the political and union struggles, their needs were kept in second place and their own struggles subordinated. The women who work in mixed spaces, such as unions, meet resistance not only to the incorporation of their demands and particular needs, but also to participation itself and the exercise of positions in the hierarchy of these organizations (Sojo 1985). The collective action that can be seen is broad in terms of the actors involved (new actors) and the struggles (universalist). Although this is a phenomenon located in the more industrialized countries, it has also had its repercussions in the Central American area. The women’s organizations have also acted on their own in other

types of actions: independent monitoring, training, organization, political lobbying and formation of regional networks.

Independent monitoring

Non-governmental monitoring in *maquiladora* clothing companies has been carried out in the United States since the nineties, mainly in the city of Los Angeles. Close to 77% of the total clothing *maquiladoras* in this city have been monitored under this system and private verification has become a big business for auditing firms, which carry out an average of 10,000 audits per year (Bonacic/ Esbenshade 2000). But the monitoring carried out by organizations of civil society is a more recent activity. In general terms, independent monitoring refers to a non-governmental mechanism of checking compliance with the national labor laws and the code of conduct of the contracting company in a specific *maquila*. Through this effort, the involvement of the transnational firms that are at the head of the chains of the clothing industry is sought for checking on the working conditions under which their products are made. Independent monitoring has its first expression through the Mandarin case in 1996⁵, but the next year a similar experience is set up in Honduras, in a factory with Korean capital, called Kimi of Honduras. In both cases, the monitoring was conducted by non-union organizations in the local civil society. In Honduras, a feminist organization participated, which placed the priority to protect pregnant women in the discussions. Despite the differences between the monitoring of Mandarin and Kimi, the general characteristics of both cases can be stated thus:

- **They are transnationalized actions.** In one sense, they are initiatives promoted by the movement of anti-sweatshop activists in the North, especially in the US. In this model, international pressure has been fundamental in convincing the multinationals so that, they in turn,

⁵ Mandarin is a factory with Taiwanese capital installed in El Salvador, which in 1995 dismissed more than 300 persons that had formed a union. The actions of the national actors protesting the dismissal and supporting the union members were not successful inside the country. Not only did the Salvadoran government not respond to the complaints, but it accused the national activists of “treason against the country” for promoting actions that would make other *maquiladora* investors flee and leave thousands of people without work. The national activists quickly found support from activists in the United States, who promoted a broad campaign against the GAP stores in the United States (this was Mandarin’s principal client). Little by little, due to the insistence of the denunciations, GAP began to give into the pressure. Instead of withdrawing from the country (as it originally planned), it actively collaborated towards the March 1996 signing of an agreement in which Mandarin consented to rehire those dismissed, not limit their freedom to organize, and accept independent monitoring of the working

pressure their contractors to accept, first the violation of union rights and later, the monitoring of the compliance with agreements, laws and respective codes. In another, being a way of contributing to the corporate responsibility of the transnational companies, their fields of action are outside the national borders, although the demands are remitted to a factory located in the South. Independent monitoring acts—like the fishbowl initiatives—in the global territory of the chains of clothing production.

- **They are actions that question the role of the State in the protection of labor rights.** The fact that non-governmental organizations take on tasks that are originally the responsibility of the government reflects the weakness of the mechanisms of protection of men and women workers, and is one more indication of the growing politicization of civil society. This could be different for different national situations and different contexts within the chain in which these actions are framed. While in El Salvador it was more effective to place a demand on GAP rather than on the Ministry of Labor, in Honduras it was more profitable to make a claim against the *Bipartita* or the *Tripartita* than JC Penney.
- **They are non-union actions.** Although union issues detonated them and local and international unions are participating players, it is the NGO's that promote and implement them. Independent monitoring constitutes a new area of work for the NGO's interested in labor issues and a non-union initiative in areas in which the unions have not had the space to act.
- **They require novel instruments of social auditing,** previously used in private auditing companies. The NGO's find themselves in a new area of work and facing new demands for professionalization. In addition, the codes of conduct (non-governmental initiatives) become an instrument of verification and then, a new tool for vindication actions.
- **It entails the coordination and interaction of several actors,** beyond the actors directly involved in the specific factory, these efforts demand

conditions in the factory. Ultimately, the dismissed workers began to return in October 1996 and the

extensive contacts and relations in and outside the country. For Central American societies, this means the incorporation of new mechanisms of labor action to be used in the national institutional networks for the defense and protection of the labor rights of the citizenry. Which, in turn, requires the involvement of other relevant labor players within the national spaces, especially in the unions.

- **It is limited in terms of multiplying effects and influence.** The cases studied tell of the resistance and obstruction capacities of the transnational companies and local *maquilas*, even when their clients are pressured. Although they are sometimes sensitive to pressure, at others they do not respond favorably. The possibility for multiplying the experiences is limited by this resistance. As far as influence, the information compiled allows us to see that although it is possible to assure the compliance with laws and codes of conduct and, through it, an improvement in working conditions, including the right to the freedom of union organizing, independent monitoring does not lead to the strengthening of the unions. This happens through the intervention of other actors beyond the reach of independent monitoring.
- **It presents the possibility for incorporating and vindicating non-traditional demands and ones that are specific to the working population in the *maquilas*.** Both in El Salvador as well as in Honduras, the monitoring organizations focus on the situation of women workers in these factories. In Honduras the protection for maternity for the women already working in the factory was highlighted and in El Salvador, the repeal of the pregnancy tests for the women who wanted to enter the factory was achieved. In addition, in both cases, a strict monitoring of claims of sexual harassment and mistreatment towards women workers was carried out, matters which previously did not form part of the more traditional union vindications, for example.

Organization and political influence

Some women's organizations in the region devote themselves specifically to the work of organizing women in the *maquilas* and to political influence. The first activities tended towards promoting the organization of these women, in order to train them in a variety of topics such as labor rights, reproductive rights, reproductive health, domestic violence, etc. These women's labor claims began to reach the organization. This is how they later came to belong to the Central American Network of Women in Solidarity with the Women Workers of the *Maquilas*, and began dealing with the subject of the code of ethics and lobbying the government in order to obtain their signature on it.

Conclusions

With what we have seen so far, we can say that the non-union organizations of Central America are the ones which, to date, have undertaken the greatest number of activities within the globalized chains of clothing production. Among these organizations, the women's groups (whether self-defined as feminist or not) and those of human rights are the most active. The participation of these organizations has a definite influence on the formation of local networks of collective action in three areas. On one hand, it incorporates **new actors into the scene**, which may easily become a factor of conflict among the new actors and the more traditional ones (unions, for example). But, most importantly, it deeply questions the "*monopoly on labor representation*", at least for the labor realms that are filled with a working population which the unions have not managed to reach: women, youth, populations without a history of political participation and with very unstable employment. On the other, they become involved in **vindication actions located in the globalized realms of the production of merchandise** (clothes, in this case), surpassing the national levels and local institutions. The organizations participating in the new actions insist on contributing to the strengthening of the local channels for protection of labor rights and conflict resolution, but it cannot be denied that actions that highlight the participation of transnational firms in the resolution of conflicts and the signing of codes of ethics that reinforce the rights already protected by national law, deeply question the ability of the local institutions to respond to the labor problems of the working population of globalized industries. Lastly, the new actions and new

actors promote **novel vindications**. The labor demands are restated and enriched since they propose to extend labor rights to working sectors that were not the object of union vindications before: women and minors. The poor working conditions are re-examined as human rights problems and the violations of labor and union rights are placed in the category of violations of basic human rights. Indeed, labor rights are formally set forth as basic human rights in international law, but it is within these new actions that this formality is brought to public discussion and becomes a fundamental argument for the campaigns in demand of corporate responsibility. The handling of labor demands in terms of human rights also has notable consequences for collective labor action. First, it signifies appealing to a concept of “global citizenry”, which is transnationalized and of course calls for the intervention of actors beyond national boundaries. Second, the discussion does not appear to be centered on salaries or economic matters, which could calm the fears of some businessmen and facilitate the lines of communication and negotiation with them. But certainly there is a risk of leaving the discussion of the distribution of profit and production condition aside, both fundamental issues and ones, which make a difference in the daily lives of the men and women workers.

In summary, globalization also means a change in the forms of collective action at on world-wide level. This is already well-known among the transnational activists who for a number of years have been acting on different aspects such as human rights, women’s rights and more recently workers rights (specifically, since the nineties). However, the impact that these new forms of action will have on the countries of the South, where the production is assembled, is less well known. Calling into question the traditional labor representation “monopolized” by the unions, the effectiveness of the governments in guaranteeing the rights of their working citizenry and of the private enterprise located inside the national territory, imply, in essence, a total questioning of the traditional labor players (unions, government and private enterprise).

The globalized industries (like that of clothing) present a logic that surpasses the way in which the issue of labor citizenry and the treatment given to labor vindications have been seen up till now. The possibilities that this has for improving working conditions in the South is still a subject for speculation, but it can be already

said that there is an ever greater tendency for the needs of an emergent proletariat (young women) to be met with greater emphasis on their specific conditions.

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Codes of Conduct in the Gas- and Oil Industry

Introduction

Much has been said and will be said tomorrow about Codes of Conduct relating to labour issues. Workers rights are also tackled in the Codes of Conduct for companies busy in oil operations, but here the main focus is on human rights and environmental protection. The reason for this is that, far more than just the workers' rights, other components including the social and natural environment of sites where oil is explored and produced, are involved.

The major oil consumers are the industrialised nations, oil-exporting countries are mainly the so-called developing countries. The economies of these countries, most of which are non-democratic, are most often largely dependent on oil revenue. They are countries often plagued with poor human right records and grossly inadequate environmental regulation and monitoring. Whether you look at the pollution of soil, water and air in Siberia or the civil war in Sudan, you find negative impacts of oil production everywhere, causing serious ecological and socio-economic problems and even devastation.

In most countries Transnational Corporations (TNCs) are involved in oil operations. These companies belong to the wealthiest in the world.

Before we can estimate whether Codes of Conduct can serve as a tool to cope with the problems caused by oil operations, we will need a deeper look, not only into how oil companies work on and with Codes of Conduct, but also on the role oil plays in a country's economy and politics. I will try to highlight some relevant aspects, taking the example of Nigeria. But prior to this, I will present to you a short overview of Codes of Conduct in the oil industry.

Codes of Conduct in the Oil and Gas Industry – An Overview

As already pointed out, the Codes of Conduct in the oil industry – like in the extractive sector in general – try to invent minimum standards, for example, related to working conditions or corruption. However, their main focus is on the protection of human rights and natural environment. And, like Codes of Conduct in other industrial sectors, they are worked out and published by TNCs, international organizations, trade unions, NGOs and/or mutually between them. Some examples:

- Invited by the US and the British government and after discussions with trade unions and NGOs, seven TNCs operating in the oil and mining sector (Shell, Texaco, Chevron, BP, Conoco, FreeportMcMoRan and Rio Tinto) recognise – by signing the ‘Voluntary Principles on Security and Human Rights’ – *„the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society [...] can play in advancing these goals”* (U. S. Department of State 2000). These principles focus on the awareness, that in cases of conflict, neither the companies’ own nor national security forces abuse human rights or national law.
- Some TNCs discuss topics such as corporate social responsibility, sustainable development and dialogue with stakeholders within associations like the Prince of Wales Business Leaders Forum (PWBLF) or the World Business Council for Sustainable Development (WBCSD). The latter started the ‘Mining, Minerals and Sustainable Development Project’ (MMSD), a two-year project supposed to identify, *„how mining and minerals can best contribute to the global transition to sustainable development“* (International Institute for Environment and Development 2001).
- Oil companies do have Codes of Conduct on their own. Shell, for example, apart from signing various principles, has its own Code of Conduct. A glimpse into Shell’s ‘General Business Principles’ – first published in 1976 – shows that it focuses on economic efficiency and profitability; monitoring is not mentioned. However, after discussions with NGOs, the latest version from 1997 addresses human rights as well as sustainable development.
- The first (and as far as I know until now the only) oil company that signed (in 1998) an agreement with a trade union, the International Federation of Chemical, Energy, Mine and General Workers’ Union (ICEM), covering its worldwide activities, is the Norwegian Statoil. In addition to basic workers rights, the parties agreed on *„support for fundamental human rights“* and recognise the impact that oil production *„may have upon the natural and human environment“* (ICEM 1998).
- During the year 1997 a real boom of NGO-initiated Codes of Conduct regarding the oil sector took place: Conservation International published their ‘Approaches to Minimizing the Environmental and Social Impact of Oil Development in the Tropics’, Friends of the Earth set up a ‘Draft Model Code for Mining Projects’ and a network of Australian NGOs worked out ‘Principles for the Conduct of Company

Operations within the Minerals Industry'. The result of a process started with a workshop of German NGOs – initiated by Bread for the World –, that also took place in 1997, are meanwhile the 'Principles for the Conduct of Company Operations within the Oil and Gas Industry'. These principles – hereafter called the NGO-model-code –, at the time being, represent the most comprehensive and far-reaching Code of Conduct for the oil and gas industry. Its focus is on four key issues: participation, environmental standards, human rights and monitoring. At the end of last year, Bread for the World invited interested stakeholders – representatives of international organizations, the science community, trade unions, environmental, human rights and church-based NGOs as well as the oil industry (Shell, Texaco, Petronas, Eni/Agip, Lundin Oil) – to attend a round table conference to once more discuss this NGO-model-code. Three weeks ago (in September 2001) a meeting of European NGOs took place in order to establish a European NGO-network on oil issues.

- While the negative impact of oil production in Nigeria was the decisive background for NGOs to get involved in the discussion on Codes of Conduct, Nigerian organizations did not work out their own Codes of Conduct and are sceptical vis-à-vis this instrument. To understand this, as well as the chances and obstacles of Codes of Conduct, we need a deeper look into the role oil plays in Nigerian politics and economy.

Oil in Nigeria: A case study

At least through the struggle and the subsequent death of the Nigerian human rights activist and environmentalist Ken Saro-Wiwa, the world public became aware of the devastation oil production is causing in the Niger Delta. As Clive Wicks, Head of the International Programme at the WWF put it (in 1996): „*The oil industry competes with agriculture and housing for rain fed agricultural land. [...] Indeed oil exploitation [...] destroy vast areas of mangrove swamps while simultaneously polluting the waters*“. When the Ogoni – a people living in the Niger Delta – started their struggle, infrastructure in the Niger Delta was very poor. In the area populated by the Ogoni, for example, you hardly found roads, electricity or water from the tap. 80% of the Ogoni could not read or write, 85 % did not have a job, there was 1 medical doctor for 70.000 people. Life expectancy was lower than the Nigerian average of 54 years. (There may have been slight changes in these figures, but the situation has not really

changed.) The Ogoni could be rich, because the value of oil produced in Ogoniland is estimated at billions of US\$, but only the damages of oil production are left to them. The money went into the coffers of corrupt leaders (military and civilian) and the oil companies, of which Shell is not the only one operating in the Niger Delta, but the biggest and with its more than 6.000 km of non-buried pipelines, 86 pump stations and more than 1.000 drilling holes the most visible one. In the eyes of many people in the Delta, 'Shell' is a synonym for 'oil company' or even for the 'government'.

The conflict between the Ogoni and the oil companies, especially Shell, started after the Ogoni were no longer willing to accept their unfavourable living conditions. They organized themselves, founded the MOSOP in 1990, asked the government for co-determination of Ogoni affairs and a fair share of the oil revenue, and demanded compensation from the oil companies for environmental damages caused by their operations. Their demands were not met. Ken Saro-Wiwa, MOSOP president, succeeded in drawing the world's attention to the Niger Delta. The Ogoni's peaceful protests against the government and Shell increased. Shell, on the other hand, denied any responsibility, asked the regions' governor for support, and withdrew its personnel from the area. During the government's 'Operation Restore Order in Ogoniland', that started in April 1994, the area was militarily shut down. Special troops went in and after only some months, thousands of Ogoni were dead, maltreated, raped, their houses burnt-down and tens of thousands fled their homeland. On 10th November 1995, Ken Saro-Wiwa, John Kpuinen, Barinem Kiobel, Saturday Dobe, Paul Levura, Nordu Eawu, Felix Nuate, Daniel Gbokoo and Baribor Bera were executed, after having been sentenced to death by an unfair, military tribunal. Shell – the company that contributes to more than half of the government revenue – did not use its influence to try to rescue the 'Ogoni 9' as requested by several NGOs, neither did Shell – in contrast to the rest of the world – openly question the legitimacy of the jurisdiction, not until today.

Oil is the prevailing factor of Nigerian politics and economy. It accounts for more than 80 % of the government revenue and over 90 % of the country's foreign exchange earnings. With a daily production of 2 Mio. Barrel, Nigeria belongs to the world's biggest oil producers. Most of its oil is exported to the USA and Western Europe. In the country itself there is shortage of petrol due to badly maintained and ineffective refineries.

Nigeria's population of round about 120 million people belong to more than 250 ethnic groups and are mainly muslim in the north, and christian in the south.

Since independence from Great Britain in 1960, Nigeria has been ruled for a period of 30 years by various military regimes. In 1999 the country got, for the third time in its history, a civilian government. While the head of state – whether military or civilian – was always (with only one exception) from one of the three major ethnic groups which account for more than 2/3 of the population, the Niger Delta, where 90 % of Nigeria's oil is produced, is inhabited by minority ethnic groups. Since the oil, its control as well as the oil-bearing land became – according to decrees – the sole property of the state, favouring the major ethnic groups, the people in the Delta are not only deprived of their income but at the same time their needs and demands are neglected by the central government. The government sent military forces into the Delta, when demands for a fair share of the oil revenue arose. And most of the oil money was transferred by corrupt leaders and their fellows into foreign accounts, instead of investments within the country and especially in the Niger Delta.

After Nigeria's latest dictator, Sani Abacha, died suddenly in 1998, the elected president, Olusegun Obasanjo, was able to bring in back some of the stolen money and set up commissions to investigate into corruption and human rights abuses. The oil-revenue-share of the oil producing federal states was increased from between 1,5 and 3 % to 13 %. But the Niger Delta is not really calming down. People do not fully trust Obasanjo. He ruled the country as Head of a military junta from 1976 to 1979, the period, when by means of the 'Land Use Decree' the oil-rich areas were expropriated. Doubts against Obasanjo are strengthened, because he also sends military forces into the Delta to 'solve' conflicts and to protect oil installations. People in the Delta report, that Shell tries to come back to Ogoniland, utilizing military protection and a strategy of 'Divide and rule'. And, contrary to former statements not to work under military protection, in the meantime „Officials of Shell [...] admit that their major installations are now under military guard” (IRIN 08.11.2000).

These are the conditions under which oil companies in Nigeria operate and the population has to cope with. When talking about Codes of Conduct – being an instrument of civil society – the situation as described, providing many hindrances to establish a powerful civil society, have to be kept in mind. As Isaac Osuoka, a Niger Delta activist and Nigerian representative of the South-NGO-network Oilwatch, summarizes the situation: *„In the underdeveloped oil bearing countries, the reality is not just a case of lack of participation by local populations but the lack of power to participate”* (Osuoka 2001).

Confronted with the negative impact of oil production, but denied the political and/or economical participation, not even being able to boycott petrol, the means that the people in the Delta use for their struggle ranges from peaceful protests to the seizing of oil facilities. The government answers both with military force. Yet, „[] *genuine security for lives and property, including industry installations can best be guaranteed with a democratic and representative setting where rights are respected and community livelihood is protected from the destructive impact of the oil and gas industry*“ (Osuoka 2001). Therefore, following after the Ogoni, other minority groups in the Delta are demanding democracy and the rule of law, recognition of the land as their property and a fair share of oil revenue and royalties. Their demands are – in addition to the Codes of Conduct – not only addressing the oil companies, but especially the government. As long as profound rights are not respected, oil companies can continue their activities „*with total disregard and in contempt for local populations*“, Isaac Osuoka believes. This may explain, among other things, why Nigerian organizations do not come up with own Codes of Conduct. But if Northern NGOs work on Codes of Conduct, the population affected by oil production must be involved in the process of their development, „*[o]r it will be another project imposed on us by Europe*“ (Osuoka 2001) – as Osuoka points out.

It would take too much time to present details here, but looking closely at the Shell Business Principles as well as at the situation in Nigeria, it must be concluded, that not only the contents of Shell’s Business Principles and the NGO-model-Code differ in crucial points from each other, but also the behaviour of Shell in Nigeria regarding relevant social and ecological aspects does not comply with their own principles, or with the other Codes signed by Shell neither does it come near the NGO-model-code. Shell, in 1998, expressed its hope, “*to show that its basic interests of business and society are entirely compatible – that there does not have to be a choice between profits and principles*” (Shell 1998). – The reality shows a different picture.

Conclusion

Hence, are Codes of Conduct useless? Should NGOs refrain from discussing them and instead put their energy on other items? – No! Even if it is only to prevent TNCs from using Codes as a PR-instrument, NGOs (as well as trade unions) should not refrain from targeting Codes of Conduct in the Oil industry.

Due to the industrialized world's dependence on oil to run their economies and due to the oil producing countries' dependence on oil revenue (and its combination with corruption and undemocratic structures), discussion as well as implementation of Codes of Conduct within the oil industry is far more difficult than talking about Codes of Conduct for example in textile industry.

But, difficulties are there to be met. NGO-business-dialogue, for example, lead to the implementation of human rights in the Shell Principles, and Codes of Conduct can go further than legally claimable Codes, and as such serve as „benchmarks for best practice“. It goes without saying, that, as long as there is no independent monitoring, this alone will not do, but has to be backed by lobbying the public, carrying out media and information campaigns as well as protests to pressurize on TNCs that their words are followed by facts. Due to the oil companies' economic power and thus political influence (as it is the case in Nigeria) –, „[t]he regular repetition of companies' phrase [] that they will not get involved in local or national politics [] is neither credible nor sufficient“, thus the NGO-model-code demands, that TNCs „should not be excluded from openly and publicly advocating particular courses of action for Governments of those countries in which they conduct activities, but such involvement should be at any time transparent“ (Bread for the World 2000).

And at least as long as it is investments and operations of western companies, that cause damages anywhere in the world, western NGOs and trade unions have the right and the duty to get engaged, effectively involving the people affected by oil production, and the organizations representing them, in the process of developing Codes of Conduct.

Bianca Kühl

Codes of Conduct – Experiences in the Indonesian Garment Industry

By the early 1980s the textiles and garment industry embarked on a major export drive. It increased in exports from an unimportant level in 1980 to 1.6 m tonnes worth US\$ 6,4bn in 1999, making the industry the second largest earner of foreign exchange after petroleum. Textiles exports (excluding footwear and leather) could recover after a downfall to US\$1.8 bn in 1998, due to the Crisis Monetaire in Asia that hurt Indonesia especially hard, to an expected US\$ 8bn in 2000 (Indonesia Q3 2000, 31).

The Indonesian textile industry employs about 1,189,225 people in about 2649 companies (nearly 95% are on Java) (API, unpublished statistics). An estimated number of 3.5 million people worked in the clothing industry in 1998. Most of the workers are young unskilled women for whom this employment means a first step into independence or which makes them the breadwinner of the family. The unemployment rate of those over 15 years of age is between 25-40%. One important issue for Indonesia's industry and workforce is the new labour law, which is under preparation in parliament and supposed to pass in November. A lot of questions are unclear and unsatisfactory for all stakeholders at the moment.

Labour activities in Indonesia

Until 1998 the only trade union in Indonesia was the All-Indonesia Workers' Union (SPSI) who was more or less a state-owned yellow union. Then Indonesia signed the ILO Convention 98. Since the trade union act 21/2000 passed a lot of new unions have been established. The result today is that we can find 58 national trade unions, and an uncountable number of regional and plant level unions. Just 10 people are needed to set up a plant level union. With the experience of the "oder baru"- the new time - Indonesian workers do not trust the already existing trade unions and set up their own plant level unions. Most of them are not trained on what it means to set up a trade union in a democratic way. It is therefore not surprising that until today the most frequent tactics of oppositional groups have

been strikes, marches and demonstrations instead of collective bargaining and dispute settlement.

Referring to the ILO Jakarta office, the number of workers' strikes doubled from 1999 to 2000. Trade unions are growing fast in number, but this does not mean that the number of memberships is rising with the same speed. There is no reliable data on the number of members that the different unions have.

Neither is there a common understanding between trade unions in the same branch or on the same plant level. Strikes are rarely coordinated. The unions just work together when discussing national issues like the minimum wage (RMU). A national networking cannot be found at the moment. New trade unions on the plant level do not trust the already existing ones because they fear that there are still the same people in charge as there were under Soeharto. It is true that most of today's national trade union leaders have already been in high positions in the "order baru", but there are also a lot who want to change the trade union and make it a real democratic organization. Therefore a lot of new organizations develop on the plant level but are at the current stage not strong and big enough to form a regional or even a national trade union.

The training on basic labour rights and collective bargaining is most of the time offered by labour related NGOs most of them run by Christians. They are able to train the workers independently of the already existing trade unions, and an important point is that they do it free of charge. It seems that a lot of trade unions ask fees from the participants for the education courses they offer. Maybe this sounds strange to us but the reality refers to the fact that most of the plant level unions do not collect the membership fees properly or are not willing to give them to the regional and national offices.

Therefore, at the moment, employers find themselves in a situation where they have to deal with more than one union on the plant level, and it is up to them which union they recognize or not. Therefore a lot of companies have started to establish their own in-house unions – also called yellow unions.

Nearly all the trade unions and NGOs in Indonesia face one problem in common; they depend on funding from European, American and Japanese donors who more or less try to get involved with the detailed work. The idea to build up a network is there but it does not seem possible either because of personal interests or

because of different ideas of how to reach an aim. State agencies like the ministry of manpower and the courts have proven extremely incompetent and ineffective in monitoring complaints of labour code violations, frequently turning a blind eye to violations within the FTZs in order to protect the interests of foreign investment. Also, most parliament members and high government officials have got silent capital in the manufacturing industry.

Conditions in the various factories within the same FTZ can be very different. Working conditions vary considerably from one production line to another. But the problems a lot of leaders of plant level unions face are not so different. Intimidations, sexual harassment, and shifting from one work place to another within the factory are quite common. The “Annual Survey of Violations of Trade Union Rights 2000” by the ICFTU states that there have been significant improvements since the Soeharto administration, but still there are reports of army involvements in disputes, and the laws that allowed the army to intervene have not been repealed. Regulating state agencies such as the Ministry of Manpower have been both unable and unwilling to enforce labour laws until now. The role of the media is not very positive for the labour movement either. Labour is an issue only sometimes, and just when strikes and demonstrations are concerned. Detailed reports are missing.

The women’s organizations in the area of labour action

Indonesia is a Muslim country. The role of the women – especially the married women - is mainly limited to family life, be it with make-up and jeans or with jilbab. Nevertheless, the young women today learn to fight for their rights. And it looks like the presumption is true; meaning that where women workers lead the collective bargaining negotiations the results for the workers in the factory are better. Quite often I heard from the women that they would prefer to vote for a woman as a plant level leader because in case of disputes with the management they seem to be stronger and not as easily corrupted as their male colleagues. However, because of the restriction through society and the beliefs of the majority of the women in their traditional role, men are still in the leading positions in the trade unions. Nevertheless, through training about their rights and duties as labourers, women become aware of this situation and think about possible ways to change it.

Action based on the use of Code of Conduct - International Campaigning in the Ngadinah case

One case of women workers leading a plant level union and being accused for violating the labour law is Ngadinah. On the 8th of September 2000, after lunch time, 150-200 workers of 8000 of the adidas producer PT. Panarub left the factory building because someone had switched off the electricity panel. There have been reports from the two trade unions in this factory, SPTSK and PERBUPAS, that there have been problems concerning the working conditions before. PERBUPAS was at that time asking the management for facilities such as an office. This had already been given to the majority union SPTSK.

Around the same time last year, the ministerial degree 150/2000 on the settlement of labour dismissal and the stipulation of severance pay, gratuity and compensation in companies was implemented. This degree offers dismissed or resigning workers compensation paid by the company. The management of PT. Panarub did not agree with the ministerial degree and did not want to implement it in the factory. Nevertheless there were workers who wanted to resign and asked for compensation. This dispute ended with switching off the electricity and the workers leaving the dark factory.

At that time, Ngadinah was the secretary of the plant level of PERBUPAS. Obviously she was helping a friend to get out of the factory and a supervisor who saw this situation interpreted it the way that she was forcing her to leave the factory. The real strike started the next day, when buses that brought workers to the factory were blocked, and the passengers were not allowed to go to work. Also they held a free forum at the factory gate. The majority union SPTSK claimed that they did not join this strike. Nevertheless they could not be satisfied with the working situation in the factory either, because on the 12th of September they and PERBUPAS signed a Collective Agreement with the management. There it was stated that “the Management will not intimidate, suspend or dismiss the workers who were participating in the strike on the 8-12th September 2000 as long as they did not do anything that violated the law.”

In the meantime the police investigated in this case, and on 23rd of April Ngadinah was arrested and charged with “violence on force or provoking others to use force” and “committing unpleasant acts”. The latter still refers to a law which was

established by the Dutch colonists. After 29 days in a prison in Tangerang, Ngadinah was released and at a press conference she said that she was criminalized as a trade unionist and a victim of new era labour politics.

In her speech Ngadinah mentioned the weaknesses of the actual Indonesian labour law: The “government position in protecting the labour is not clear”. In her case their function was not in use and the government just protected the employer. Until today the democratisation process has not reached the workers. Although they have certain rights today compared to the “oder baru”, they are not able to make them work for them. Still trade union activities are considered as criminal acts and still the employers pay for the oppression of the labour and the trade unions. In former times, the militaries carried out this task. Today, the employers find people for this purpose somewhere else. The fact that Ngadinah was acquitted of all charges on the 30th of August 2001 does not prove that the police and judges have learned in the meantime how to conduct a case in a fair way, but that the pressure put on adidas and maybe also on PT. Panarub through national and international campaigning, the support of the ILO and the media have had a certain effect. On the 18th of Mai 2001 adidas wrote a letter to the Minister of Manpower and Transmigration asking him to assure “that Miss Ngadinah is being treated fairly and in line with the Conventions of the ILO”. For the first time, the investigation from different sides allowed a worker in Indonesia to win a comparable case in court.

Conclusion

Compared to Central America we can not yet – or belum, as the Indonesians always say when something has not happened yet – say which are the main organizations in Indonesia that undertake the greatest number of activities in the globalized chains of clothing productions. Those who are active are NGOs, mostly with a Christian background, but also the trade unions are involved. We cannot say that their roles differ a lot because all NGOs I met support the idea of trade unions in general and no NGO claimed that someone else could take over the role of the trade unions. Nevertheless, the weakness of the trade unions in Indonesia is also linked to the NGOs, because most of the time the NGOs try to convince the participants of their workshops to set up their own plant level union and not to join an already existing one and transform this one from the inside to a real and democratic trade union.

Another problem for the trade unions dealing with codes of conduct is above all the implementation. P.T. Panarub states that the plant level union should implement the code of conduct of adidas, but how could they? Adidas does not get involved in the implementation on the plant level, and the management of the factory tries to put the ball to the trade unions' court. As long as this point is not clear, the workers won't benefit from the code of conduct, although the idea is good.

Another point in the globalized world is the fact that the supplier that produces for adidas cannot be sure that they will still produce for them in one or two years. So why should they put money in something that might just last a few month. And why invest in better working standards when it is so easy to get rid of those workers who ask for better conditions because another 10 are waiting in front of the gate to take over the job.

The question to discuss about the issue of codes of conduct are:

- What does the described situation in Indonesia mean for the future of Codes of Conduct?
- Shall Codes of Conduct and the implementation be done by the companies itself or isn't there a need to train and involve other organisations?
- Which role does the government in the producer countries take over? What when the Ministry of Manpower / Ministry of Labour does not function properly?

Ineke Zeldenrust

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FROM CODE TO COMPLIANCE

Five concrete European experiences
with monitoring and verification in the
garment industry

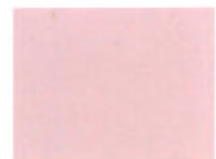
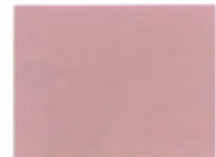
3 October 2001

national initiatives

CCC involvement multi-stakeholder
initiatives:

- The Netherlands: Fair Wear Foundation
- UK: The Ethical Trading Initiative
- Sweden: Swedish project on independent verification
- France: Ethique sur l'etiquette with French retailers
- Switzerland: The Swiss CCC Project on independent monitoring

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national initiatives

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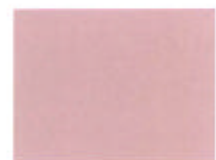
national initiatives

Co-operation between retailers, suppliers, business federations, trade unions, and NGOs

With the aim to:

- generate experience on monitoring and verification
- determine what good models for monitoring and verification should look like
- find out how code compliance can be achieved

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national initiatives

SOMO - CCC project to co-ordinate exchange and experiences from these projects:

“ European Initiatives on Monitoring and Verification of codes of conduct in the Garment and Sportswear Industry”

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national initiatives

NL: Fair Wear Foundation

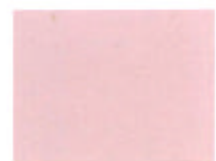
- agreement 1999

Who is involved?

- > Industry associations: MITEX and MODINT
- > Dutch trade union confederations
- > CCC Netherlands, Novib and Max Havelaar

- aim for company certification
- Pilots starting in India, Poland, Romania Indonesia and Madagascar

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national initiatives

NL: Fair Wear Foundation

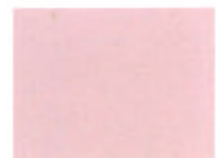
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national initiatives

UK: Ethical Trading Initiative

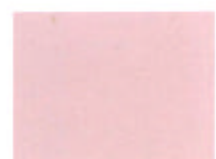
- launched in 1998

Who is involved?

- > 19 companies; M&S, Pentland, Littlewoods
- > International trade union confederations
- > 18 NGOs

- focus on testing different monitoring models
- Pilots in South Africa (wine), Zimbabwe (horticulture), China (garments)

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national initiatives

SW: The Swedish project on independent verification

- launched in 1998

Who is involved?

- > Swedish retailers: H&M, Lindex, KappAhl, Indiska
 - > Swedish trade union: LO and Industrifacket
 - > Fair Trade Center
- testing how independent verification can be organised
 - Pre-studies and pilots in India, Bangladesh, China

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national initiatives

FR: Ethique sur L'Ethiquette

- started in 1997

Who is involved?

- > French retailers (Auchan) and retailer's association
 - > Trade union CFDT
 - > Ethique sur L'Ethiquette
- pilot in Madagascar

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national initiatives

CH: The Swiss pilot project on independent monitoring

- started in March 2000

Who is involved?

- >Mabrouc, Switcher, Migros and Charles Veillon
- >Swiss CCC

- pilots starting in India and China

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national initiatives

CH: The Swiss pilot project on independent monitoring

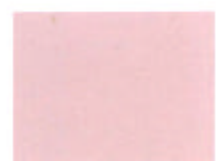
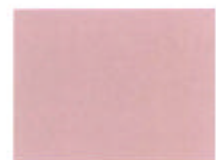
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Who is involved?

- >Mabrouc, Switcher, Migros and Charles Veillon
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- pilots starting in India and China

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national initiatives

Similarities and differences in pilot projects:

- country studies, pre-studies
- multi-stakeholder pilot group
- different auditors and audit teams
- one pilot, more than one factory/supplier

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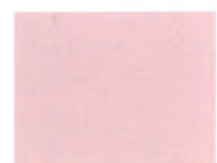


Findings

no final conclusions as projects are still underway:

- ETI new garment pilot in Sri Lanka
- NL: FWF starting pilots in production countries
- CH: pilots in start-up phase
- SW: project ended; proposal for a monitoring and verification body
- FR: Madagascar pilot postponed, new pilot in Asia?

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key issues

Monitoring and verification: processes are linked:

- similar tools are being used
- use of 'social audits' for both purposes
- ongoing overlapping processes
- combination of private commercial auditors and NGO/Trade union involvement

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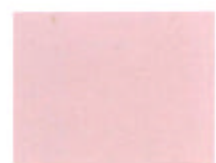


key issues

Management systems:

- information gathering at supplier and retailer level
- need for information provision and education at all levels
- handbook or monitoring guide for companies

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key issues

- roles for stakeholders and relationships between stakeholders
- terminology: more clarity about the terms used is needed
- transparency and confidentiality
- corrective actions
- complaints procedures

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Future work

Proposed future work of SOMO/CCC:

- continue to track the European initiatives
- aim for harmonisation of terminology and methodology
- Develop tools for monitoring and verification:
 - > terminology guide
 - > overview complaints systems models
 - > Research manual on conducting country studies
 - > case studies on how to structure co-operation

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Stefan Wengler
Foreign Trade Association of the German Retail Trade (AVE)/ Cologne

The PPP-Project AVE/ GTZ (Agency for Technical Cooperation)
concerning the Monitoring of Social Standards in India

1. Initial situation

- In the middle of the 90s criticism was increasingly voiced as concerns the lacking company ethics in retail trade
- Thereupon, beginning of the setting up of company internal Codes of Conduct of varying contents
- Lowest common denominator with the scope of the AVE: completion of the buying conditions in as far as the supplier assures that the products supplied were not produced by exploitative child labour or inadmissible forced labour

2. AVE Declaration to ensure social standards

- Passed in November 1999 by the board of directors of the AVE
 - Contents of the declaration largely orientated by the relevant ILO conventions, namely
 - no forced labour or prison labour that is in violation of human rights
 - establishment of and compliance with a regulatory framework for occupational health and safety
 - prohibition of child labour
 - prohibition of workplace practices, conditions and working hours which violate human rights and labour law
 - adequate remuneration
 - prohibition of discrimination on the basis of personal characteristics (e.g. race, sex, religion etc.)
 - the right to form associations and to conduct collective negotiations.

3. Further steps

- Agreement among AVE Member firms that requirements have to be monitored

- therefore: Creation of an efficient, credible and, if possible, uniform monitoring system (joint action). Therefore

- reduction of cost by avoidance of double audits
- systematic qualification of import markets
- improved inclusion of the small-size and medium-sized enterprises (SME's)

4. Realization of the Pilot Project India together with the GTZ

- In April 2000 decision of the AVE board to effect pilot audits within the framework of the PPP programme according to the Otto Versand system
- Financing of the project by GTZ, AVE and participating AVE Member firms in equal shares
- Complete coordination and execution of the project by the management consulting firm Systain on behalf of the AVE
- Operational (strategic) project participation for GTZ by IGEP (Indo German Export Promotion Project)

5. Execution phase of the AVE/GTZ Project

- At the beginning training of the suppliers participating in the AVE Project
- Training of the auditors and co-auditors
- Audits of the production plants as inventory of the respective social performance
- If necessary, agreement on corrective-action-plans
- Coaching of suppliers and sub-suppliers in the correction phase
- Execution of re-audits

6. Results

- During the fixed period from 25 August until 19 September 2000 instead of 50 planned audits only 26 audits. The reason being:
 - Retreat of several sub-suppliers
 - Complexity of the audit (unclear legal position, absence of documentation, size of enterprises)

- None out of 26 audited suppliers fulfilled unreservedly the standard criteria (12 times need of improvement, 14 times considerable need of improvement).

Most frequent violations of:

- Minimum wage regulation
 - Overtime regulation
 - Social-security liability (by wage on piece-work basis)
-
- Realization of 24 first audits and 26 re-audits in the second execution phase until 1 April 2001
 - With regard to the first audits, better results than in the first realization phase, however, all in all not yet satisfactory.
 - With regard to the re-audits, a clear improvement of the social performance of the suppliers was noticed.
 - All in all better social standards of those suppliers which were assisted by the importing trading enterprises; therefore, necessity of an accompanying coaching undisputed.

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