

Corporate Social Responsibility

UCHE EWELUKWA OFODILE, SARAH ALTSCHULLER, ANNA DOLIZE,
AND MICHAEL FESSLER*

I. International Legal Development: Multilateral Organizations

A. THE U.N. SPECIAL REPRESENTATIVE ON HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS

On March 21, 2011, John Ruggie, the U.N. Special Representative on Human Rights, Transnational Corporations, and Other Business Enterprises, issued his final report to the U.N. Human Rights Council entitled *Guiding Principles on Business and Human Rights: Implementing the United Nations' 'Protect, Respect, and Remedy' Framework* (Guiding Principles).¹ Appointed initially for two years, he was given the mandate to “identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights.”² On April 7, 2008, at the end of his initial mandate, he submitted his report, entitled *Protect, Respect and Remedy: A Framework for Business and Human Rights* (UN Framework).³ The U.N. Framework rests on

* Professor Uche Ewelukwa of the University of Arkansas-Fayetteville served as committee editor for this report on international law developments during 2011. She contributed the sections on multilateral organizations, litigation in international courts, and developments in the European Union and Asia. Sarah Altschuller, Foley Hoag L.L.P., also contributed to the section on U.S. litigation. Anna Dolize, S.J.D. candidate at Cornell Law School, contributed the section on GDF Suez and three international union federations. Michael Fessler of Chicago contributed the section on Canada. Any opinions expressed are those of the authors in their personal capacities and do not represent the views of their respective organizations. For developments in 2010, see Sarah A. Altschuller, Amy K. Lehr, & Andrew J. Orsmond, *Corporate Social Responsibility*, 45 INT'L LAW. 179 (2011). For developments in 2009, see Sarah A. Altschuller, Amy Lehr & Suzanne A. Spears, *Corporate Social Responsibility*, 44 INT'L LAW. 213 (2010).

1. Human Rights Council, Report of the Special Representative of the Secretary-General on Human Rights and Transnational Corporations, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31, Mar. 21, 2011, available at <http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf> [hereinafter Guiding Principles].

2. Comm'n on Human Rights Res. 2005/69, Human Rights and Transnational Corporations and Other Business Enterprises, 59th Mtg., at 1 (Apr. 20, 2005), available at http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-69.doc [hereinafter Resolution 2005/69].

3. The Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, U.N. Doc. A/HRC/8/5 (April 7, 2008), available at <http://www.reports-andmaterials.org/Ruggie-report-7->.

three pillars: the duty of the State to “protect” against human rights abuses by third parties; the responsibility of corporations to “respect” human rights; and the need for access to effective remedies for victims.

In June 2008, the Council unanimously adopted the U.N. Framework. Through Resolution 8/7, the Council extended this mandate for an additional three years, through June 2011.⁴ The new mandate tasked the Special Representative with providing concrete recommendations on the practical implications of the three pillars and their interrelationships.⁵ The result of the renewed mandate is the Guiding Principles.

The Thirty-One Guiding Principles are broken down into three parts: (1) the state duty to protect human rights; (2) the corporate responsibility to respect human rights; and (3) access to remedy.⁶ The Guiding Principles “apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.”⁷ Principles 11 through 24 address the corporate responsibility to respect human rights. According to Principle 11, business enterprises should respect human rights, meaning that “they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”⁸ According to the accompanying commentary, “the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate”⁹ and “exists independently of States’ abilities and/or willingness to fulfill their own human rights obligations.”¹⁰ Moreover, the responsibility “exists over and above compliance with national laws and regulations protecting human rights.”¹¹

According to Principle 12, the responsibility of business enterprises to respect human rights refers to “internationally recognized human rights” understood, “at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work.”¹²

B. U.N. HUMAN RIGHTS COUNCIL RESOLUTION ON RIGHTS AND TRANSNATIONAL CORPORATIONS AND OTHER ENTERPRISES

With Resolution 17/4, adopted without a vote on June 16, 2011, the Council unanimously endorsed the Guiding Principles.¹³ The Council also “decide[d] to establish a Working Group on the issue of human rights and transnational corporations and other

4. Human Rights Council Res. 8/7, Mandate of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, 28th Mtg., at 2 (June 18, 2008), available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf.

5. *Id.*

6. Guiding Principles, *supra* note 1, at 2.

7. *Id.*

8. *Id.* ¶ 11.

9. *Id.* ¶ 11 (Commentary).

10. *Id.*

11. *Id.*

12. *Id.* ¶ 12.

13. Human Rights Council, Resolution 17/4: Human Rights and Transnational Corporations and Other Business Enterprises, 17th Sess., 33rd Mtg., A/HRC/RES/17/4, at 4 (July 6, 2011), available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>.

business enterprises, consisting of five independent experts, of balanced geographical representation, for a period of three years.”¹⁴ The Working Group has the mandate to, *inter alia*, “promote the effective and comprehensive dissemination and implementation of the Guiding Principles,”¹⁵ “identify, exchange and promote good practices and lessons learned on the implementation of the Guiding Principles and to assess and make recommendations thereon,”¹⁶ “conduct country visits and to respond promptly to invitations from States,”¹⁷ “integrate a gender perspective throughout the work of the mandate and to give special attention to persons living in vulnerable situations, in particular children,”¹⁸ and “report annually to the Human Rights Council and the General Assembly.”¹⁹ Members of the Working Group were appointed on September 30, 2011 and formally commenced their role on November 1, 2011.²⁰ Pursuant to paragraph 12 of Resolution 17/4, the Council also decided to establish a Forum on Business and Human Rights (Forum on Business). The role of the Forum on Business is “to discuss trends and challenges in the implementation of the Guiding Principles and promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups, as well as identifying good practices.”²¹

C. UPDATED OECD GUIDELINES FOR MNES

On May 25, 2011, the forty-two governments that adhere to the *Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises* (Guidelines) adopted the 2011 Update of the Guidelines.²² The last time the Guidelines were reviewed was in 2000. The Guidelines form part of the *OECD Declaration and Decisions on International Investment and Multinational Enterprises* and are non-binding.²³ The 2011 Update introduces a separate chapter on human rights (Chapter 4), and also addresses workers and wages (Chapter 5), climate change (Chapter 6), and stakeholder engagement.

While welcoming the changes in the 2011 Update, human rights organizations expressed disappointment “in relation to a number of missed opportunities, and the resulting gaps and shortcomings in the revised text.”²⁴ In particular, concerns have been raised

14. *Id.* ¶ 6.

15. *Id.* ¶ 6 (a).

16. *Id.* ¶ 6 (b).

17. *Id.* ¶ 6 (d).

18. *Id.* ¶ 6 (f).

19. *Id.* ¶ 6 (j).

20. *Human Rights and Business*, UN WORKING GROUP ON HUMAN RIGHTS AND BUSINESS, http://www.humanrightsbusiness.org/?f=human_rights_and_business_working_group (last visited Feb. 13, 2012).

21. Res 17/4, *supra* note 13, at ¶ 12.

22. *New OECD Guidelines to Protect Human Rights and Social Development*, OECD (May 25, 2011), http://www.oecd.org/document/19/0,3746,en_21571361_44315115_48029523_1_1_1_1,00.html.

23. *OECD Declaration and Decisions on International Investment and Multinational Enterprises*, OECD, <http://www.oecd.org/daf/investment/declaration> (last visited Jan. 6, 2011).

24. Public Statement, Amnesty Int’l, *The 2010-11 Update of the OECD Guidelines for Multinational Has Come to an End* (May 23, 2011), at 1, available at <http://www.amnesty.org/en/library/info/IOR30/001/2011/en>.

in regards to the Guidelines' institutional arrangements and implementation procedures.²⁵ To Amnesty International, "the revised Guidelines constitute a significant first step,"²⁶ but "fail to provide guidance on key aspects of what would constitute an adequate impact assessment process."²⁷

D. INTERNATIONAL FINANCE CORPORATION SUSTAINABILITY FRAMEWORK

On May 12, 2011, the Board of Directors of the International Finance Corporation (IFC) approved an updated *Policy on Environmental and Social Sustainability and Performance Standards* and *Policy on Disclosure of Information* (collectively, the Sustainability Framework).²⁸ According to the IFC, the Sustainability Framework "is designed to help clients avoid and mitigate adverse impacts and manage risk as a way of doing business in a sustainable way."²⁹ The updated Sustainability Framework will become effective on January 1, 2012.³⁰

IFC's Performance Standards on Environment and Social Sustainability (Performance Standards) are globally recognized and "are now considered to be a leading benchmark for environmental and social risk management for private sector investors."³¹ Increasingly, the Performance Standards are "often essential pre-requisites for companies to raise funds, particularly from international markets."³² There are eight Performance Standards: Performance Standard 1 (Assessment and Management of Environmental and Social Risks and Impacts); Performance Standard 2 (Labor and Working Conditions); Performance Standard 3 (Resource Efficiency and Pollution Prevention); Performance Standard 4 (Community Health, Safety, and Security); Performance Standard 5 (Land Acquisition and Involuntary Resettlement); Performance Standard 6 (Biodiversity Management and Sustainable Management of Living Natural Resources); Performance Standard 7 (Indigenous Peoples); and Performance Standard 8 (Cultural Heritage).³³ Changes have been introduced to IFC's Policy on Environmental and Social Sustainability, to all eight performance standards, and to the Policy on Disclosure of Information.

II. U.S. Litigation—Litigation under the Alien Tort Statute

In October, the U.S. Supreme Court granted certiorari in *Kiobel v. Royal Dutch Petroleum Co.*³⁴ In *Kiobel*, the Second Circuit Court of Appeals held that corporations cannot be sued under the Alien Tort Statute (ATS) for violations of customary international law.

25. *Id.* at 2 (observing that "the greatest shortcomings by far relate to the feeble progress made on the institutional arrangements and implementation procedures of the Guidelines").

26. *Id.* at 1.

27. *Id.* at 2.

28. Int'l Fin. Corp. [IFC], *Update of IFC's Policy and Performance Standards on Environmental and Social Sustainability, and Access to Information Policy*, at vi (Apr. 24, 2011), available at [http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Board-Paper-IFC_SustainabilityFramework-2012/\\$FILE/Board-Paper-IFC_SustainabilityFramework-2012.pdf](http://www.ifc.org/ifcext/policyreview.nsf/AttachmentsByTitle/Board-Paper-IFC_SustainabilityFramework-2012/$FILE/Board-Paper-IFC_SustainabilityFramework-2012.pdf) [hereinafter Updates of IFC's Policy and Performance Standards].

29. *Id.* at iii.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 1-2.

34. *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010), cert. granted, 132 S. Ct. 472 (2011).

Subsequently, in February, the Second Circuit Court of Appeals denied plaintiffs' petition for a rehearing en banc.³⁵ *Kiobel* is one of a series of cases arising from claims that Royal Dutch Petroleum was complicit in human rights abuses against the Ogoni people in Nigeria. Three related cases (the Wiwa cases) settled on the eve of trial in June 2009 for \$15.5 million.³⁶

Because *Sosa v. Alvarez-Machain*³⁷ left the question of corporate liability under the ATS unsettled, the grant of certiorari in *Kiobel* was widely anticipated. Since the Second Circuit's ruling, the Seventh Circuit and the D.C. Circuit have both issued decisions finding that corporate liability is proper under the ATS.³⁸ The Eleventh Circuit has also upheld corporate liability under the ATS.³⁹

The Supreme Court also granted certiorari in *Mohamed v. Rajoub*,⁴⁰ in which the D.C. Circuit held that non-natural persons were not proper defendants under the Torture Victims Protection Act (TVPA). In *Mohamed*, plaintiffs had sought damages against the Palestine Liberation Organization and Palestinian Authority. The Supreme Court directed that *Kiobel* and *Mohamed* be argued in tandem.⁴¹

In July 2011, the Seventh Circuit dismissed plaintiffs' claims in *Flomo v. Firestone*, but held that "corporate liability is possible" under the ATS.⁴² The court found "[i]nternational law imposes substantive obligations and the individual nations decide how to enforce them."⁴³ The court limited corporate liability for violations of customary international law "to cases in which the violations are directed, encouraged, or condoned at the corporate defendant's decisionmaking level."⁴⁴ In *Flomo*, Liberian children working at the Firestone Natural Rubber Company's rubber plantation brought a lawsuit under ATS, alleging that they worked in hazardous conditions that violated customary international law. The court upheld the dismissal of plaintiffs' claims, finding that the conditions under which the children were alleged to have worked did not provide "an adequate basis for inferring a violation of customary international law."⁴⁵

Also in July 2011, the D.C. Circuit Court of Appeals reinstated a lawsuit brought against Exxon Mobil Corp. by Acehese villagers, alleging that the company and its Indonesian subsidiary were liable for killings, torture, and other human rights abuses committed by the Indonesian military.⁴⁶ In a lengthy 2-1 decision, the D.C. Circuit held that companies are proper defendants under the ATS.⁴⁷ In reinstating plaintiffs' claims, the

35. *Kiobel v. Royal Dutch Petroleum Co.*, 642 F.3d 268 (2d Cir. 2011) (en banc) (denying rehearing), cert. denied, 132 S. Ct. 248 (2011).

36. Ingrid Wuerth, *Wiwa v. Shell: The \$15.5 Million Settlement*, 13 ASIL INSIGHT 14 (Sept. 9, 2009), available at <http://www.asil.org/insights090909.cfm>.

37. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 724 (2004).

38. *Flomo v. Firestone Nat. Rubber Co.*, 643 F.3d 1013, 1021 (7th Cir. 2011); *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 41 (D.C. Cir. 2011).

39. *Romero v. Drummond Co.*, 552 F.3d 1303, 1315 (11th Cir. 2008).

40. *Mohamed v. Rajoub*, 634 F.3d 604, 606 (D.C. Cir. 2011).

41. *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491, 2011 WL 4905479 (Oct. 17, 2011); *Mohamed v. Rajoub*, No. 11-88, 2011 WL 3055314 (Oct. 17, 2011).

42. *Flomo*, 643 F.3d at 1021.

43. *Id.* at 1020.

44. *Id.* at 1020-21.

45. *Id.* at 1024.

46. *Doe*, 654 F.3d at 15.

47. *Id.* at 41.

D.C. Circuit stated “neither the text, history, nor purpose of the ATS supports corporate immunity for torts based on heinous conduct allegedly committed by its agents in violation of the law of nations.”⁴⁸ The Court noted that the *Kiobel* decision “overlooks the key distinction between norms of conduct and remedies,”⁴⁹ and found that while international law provides the norms of conduct applicable in ATS cases, federal common law governs the available remedies.⁵⁰ The Court also agreed with plaintiffs that aiding and abetting is a proper theory of liability under the ATS. Notably, the Court found that the proper standard for an aiding and abetting theory of liability is “knowing assistance that has a substantial effect on the commission of the human rights violation.”⁵¹

In October 2011, the Ninth Circuit overturned a district court’s dismissal of plaintiffs’ claims for genocide and war crimes in *Sarei v. Rio Tinto*.⁵² The case involved allegations stemming from Rio Tinto’s mining operations in Papua New Guinea. Finding that corporations are proper defendants in ATS cases, the Ninth Circuit reversed the dismissal.⁵³

In June 2011, the U.S. District Court for the Southern District of Florida declined to dismiss certain claims brought by Colombian plaintiffs against Chiquita Brands International (Chiquita) alleging that the company knew, or should have known, that its material support for the United Self-Defense Forces of Colombia (AUC), a paramilitary organization, would lead to the death or torture of their family members.⁵⁴

In March 2007, Chiquita admitted that it had provided payments to the AUC to ensure the protection of Chiquita employees and banana plantations in Colombia. At the time of its admission, the company agreed to pay a \$25 million fine for providing funds to an organization on the U.S. list of terrorist organizations and to cooperate in an investigation by the U.S. Department of Justice.⁵⁵ After Chiquita’s admission, cases were filed against Chiquita in several jurisdictions. Plaintiffs brought claims pursuant to the ATS and the TVPA. Plaintiffs also brought state law tort claims under the laws of Florida, New Jersey, Ohio, and the District of Columbia, as well as several claims under Colombian law.

In its June order, the District Court upheld plaintiffs’ ATS claims for torture, extrajudicial killing, war crimes, and crimes against humanity. In so doing, the District Court recognized certain theories of indirect liability under the ATS, including aiding and abetting and conspiracy. The Court dismissed several other ATS claims, including terrorism claims, material support for terrorism, and for cruel, inhuman, and degrading treatment, finding that these claims were not actionable under the ATS. The Court upheld plaintiffs’ TVPA claims for torture and extrajudicial killing. Finally, the Court dismissed plaintiffs’ state law claims, as well as claims brought under Colombian law.⁵⁶

48. *Id.* at 15.

49. *Id.* at 50.

50. *Id.* at 51 (citing *Sosa*, 542 U.S. at 724).

51. *Id.* at 32, 39.

52. *Sarei v. Rio Tinto*, No. 02–56256, 2011 WL 5041927 (9th Cir. 2011); *Sarei v. Rio Tinto*, 650 F. Supp. 2d 1004, 1032 (C.D. Cal. 2009).

53. *Sarei*, 2011 WL 5041927, at *6.

54. *In re Chiquita Brands Intern., Inc. Alien Tort Statute and S’holder Derivative Litig.*, 792 F. Supp. 2d 1301, 1351–52 (S.D. Fla. 2011).

55. *Id.* at 1310.

56. *Id.* at 1359.

In May 2011, the Ninth Circuit reversed the lower court's decision to dismiss *Bauman v. DaimlerChrysler Corp.*⁵⁷ The case involved allegations by residents of Argentina stating that Mercedes-Benz Argentina collaborated with state security forces to kidnap, detain, torture, or kill plaintiffs and their relatives during Argentina's "Dirty War." Plaintiffs asserted claims under both the ATS and the TVPA. The Ninth Circuit found that personal jurisdiction was proper and that California had an interest in "furthering fundamental substantive social policies."⁵⁸ The Court stated that "American federal courts, be they in California or any other state, have a strong interest in adjudicating and redressing international human rights abuses."⁵⁹

In February 2011, the District Court for the Southern District of New York entered an order dismissing, with prejudice, plaintiffs' claims in *Abdullahi v. Pfizer*.⁶⁰ The case involved allegations that Pfizer conducted nonconsensual testing of Trovan, an experimental drug, during a meningitis outbreak in Nigeria in 1996. Earlier in the month, plaintiffs and Pfizer had filed a stipulation of dismissal after the parties reached an agreement to settle all claims.⁶¹ The Nigerian plaintiffs sued under the ATS, alleging that Pfizer's testing was done on children without their parents' informed consent. Eleven children died because of their participation in the drug trial.⁶² In 2009, the Second Circuit held that plaintiffs could sue Pfizer under the ATS for "violation of the norm of customary international law prohibiting medical experimentation on human subjects without their consent."⁶³

III. Litigation in International Courts

A. GOLDCORP INC., GUATEMALA'S INDIGENOUS GROUPS, AND THE MARLIN MINE LITIGATION

The Marlin mine saga implicating Goldcorp, a Vancouver-based mining company, continued in 2011. On May 20, 2010, the Inter-American Commission on Human Rights granted precautionary measures in favor of the members of eighteen indigenous Mayan communities in Guatemala and requested that the Guatemalan government suspend operations at the mine because of its adverse environmental effects.⁶⁴ Although the Guatemalan government initially announced in June 2010 that operations at the Marlin mine would be suspended, the cessation was never implemented.

In a March 30, 2011 letter to the President of Guatemala, Alvaro Colom Caballeros, some members of the U.S. Congress expressed concern "about the human rights impact of

57. *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 912 (9th Cir. 2011).

58. *Bauman*, 644 F.3d at 927.

59. *Id.*

60. Order, *Abdullahi v. Pfizer, Inc.* (S.D.N.Y. Feb. 28, 2011) (No. 01-cv-8118).

61. Stipulation of Voluntary Dismissal, *Abdullahi v. Pfizer, Inc.*, 2011 WL 590872 (S.D.N.Y. Feb. 18, 2011) (No. 01-cv-8118).

62. *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 169 (2d Cir. 2009).

63. *Id.* at 187.

64. PM 260-07—*Communities of the Maya People (Sipakense and Mam) of the Sipacapa and San Miguel Ixtahuacán Municipalities in the Department of San Marcos, Guatemala*, IACHR, <http://www.oas.org/en/iachr/indigenous/protection/precautionary.asp> (last visited Feb. 13, 2012).

the establishment of large-scale industrial gold-mining operations in Guatemala,⁶⁵ and urged the Guatemalan President to “suspend operations at the Marlin mine and address the ongoing human rights, health and environmental concerns of the indigenous communities.”⁶⁶ Operated by Goldcorp’s wholly owned subsidiary, Montana Explorada de Guatemala S.A. (Montana), the Marlin mine has been controversial since it became operational in 2004. The petition for precautionary measures alleged that in November 2003, Guatemala’s Ministry of Energy and Mines granted Montana a twenty-five-year mining concession over an area in the municipalities of Sipacapa and San Miguel Ixtahuacán, where the mine is located, without the informed consultation of the affected communities. The petition also alleged that Montana’s mining operation has produced grave pollution in the Tzalá River and its tributaries.

Judged by information available on the company’s website, Goldcorp appears to have no immediate plans to abandon the Marline mine project.⁶⁷ In September 2011, the Global Development and Environment Institute at Tufts University released a report by economists Lyuba Zarsky and Leonardo Stanley on the economic benefits and environmental risks of the Marlin mine.⁶⁸ The report concluded that, overall, long-term environmental risks significantly outweigh the economic benefits of the mine.

B. CHEVRON CHALLENGES A DECISION OF AN ECUADORIAN COURT IN A HIGH-PROFILE ENVIRONMENTAL POLLUTION CASE

On February 14, 2011, Judge Nicolás Zambrano in Lago Agrio, a provincial capital in Ecuador, handed down a multibillion dollar judgment against Chevron Corp. (Chevron) in a long-running environmental pollution case (Lago Agrio judgment).⁶⁹ In the February decision, Judge Zambrano concluded that Texaco Petroleum Co. (Texaco) had caused extensive damage to the environment and indigenous groups in Ecuador and also found that Chevron, which had acquired Texaco in 2001, could be held liable for Texaco’s actions.⁷⁰ Judge Zambrano ordered Chevron to pay \$8.646 billion in damages and granted punitive damages for 100% of \$8.646 billion if Chevron failed to issue a “public apology” to the plaintiffs within fifteen days of the judgment.⁷¹ Furthermore, Judge Zambrano also ordered Chevron to pay \$860 million (ten percent of the damages) to the Amazon Defense

65. *US Members of Congress Letter to Guatemalan President Colom Calling for Suspension of Goldcorp’s “Marlin” Mine in Guatemala*, RIGHTS ACTION (Apr. 7, 2011), http://www.rightsaction.org/articles/Congressional_letter_on_Marlin_mine_040711.html.

66. *Id.*

67. GOLD CORPO/GUATEMALA, MARLINE MINE FACT SHEET (Summer 2011), available at http://www.goldcorp.com/Theme/GoldCorp/files/factsheets_media/Goldcorp_FactSheet_Marlin.pdf.

68. LYUBA ZARSKY AND LEONARDO STANLEY, SEARCHING FOR GOLD IN THE HIGHLANDS OF GUATEMALA: ECONOMIC BENEFITS AND ENVIRONMENTAL RISKS OF THE MARLIN MINE 42 (2011), available at http://ase.tufts.edu/gdae/policy_research/marlinemine.pdf.

69. Judgment, Provincial Court of Justice, *Maria Aguinday Otros v. Chevron Corp.* (Feb. 14, 2011) (No. 002-2003), available at <http://chevrontoxico.com/assets/docs/2011-02-14-judgment-Aguinda-v-ChevronTexaco.pdf>.

70. Simon Romero and Clifford Krauss, *Ecuador Judge Orders Chevron to Pay \$9 Billion*, N.Y. TIMES, Feb. 14, 2011, at A4, available at <http://www.nytimes.com/2011/02/15/world/americas/15ecuador.html>.

71. *Chevron Corp. v. Donziger*, 768 F. Supp. 2d 581, 621 (S.D.N.Y. 2011), *vacated sub nom. Chevron Corp. v. Naranjo*, 11-1150-CV(L), 2011 WL 4375022 (2d Cir. 2011).

Coalition (ADF), the group that formed to represent the plaintiffs.⁷² Because Chevron did not issue a public apology as ordered by the judge, the current value of the Ecuadorian judgment is about \$18 billion.

Chevron has called the 188-page ruling by the Ecuadorian court “illegitimate and unenforceable.”⁷³ On February 1, 2011, in anticipation of an adverse ruling in Ecuador, Chevron brought an action in the U.S. District Court, Southern District of New York, seeking a preliminary injunction to bar the enforcement of the Ecuadorian judgment outside Ecuador.

On March 7, 2011, District Court Judge Kaplan, in a 127-page decision,⁷⁴ enjoined the Ecuadorian plaintiffs from enforcing, anywhere in the world, the \$8.646 billion judgment obtained in Ecuador. The injunction was in response to a February 1, 2011 complaint that Chevron filed. In the complaint, Chevron asserted nine claims including substantive and conspiracy claims under the Racketeering Influenced and Corrupt Organizations Act and state torts claims relating to fraud. Chevron also sought a declaratory judgment that the Lago Agrio judgment is not entitled to enforcement in the United States or anywhere else and moved for a preliminary injunction restraining enforcement of the judgment outside Ecuador.

In granting the preliminary injunction, the District Court concluded that Chevron would suffer immediate and irreparable injury if the judgment was enforced outside Ecuador.⁷⁵ The court also found that Chevron had shown the requisite likelihood of success on its claim that Ecuador does not provide impartial tribunals and due process.

On September 19, 2011, the Second Circuit vacated, in its entirety, the preliminary injunction that Judge Kaplan had issued. In its ruling,⁷⁶ a three-judge Second Circuit panel also stayed Chevron’s claim for a declaratory judgment ruling that the judgment of the Ecuadorian Court is unenforceable; a hearing on the case was set for November 14. But the Second Circuit denied the Ecuadorian plaintiff’s petition for a writ of mandamus seeking to compel the recusal of District Judge Kaplan on the ground of bias. An opinion addressing the appeals is expected in due course.⁷⁷

C. THE BELO MONTE DAM PROJECT LITIGATIONS

On April 1, 2011, the Inter-American Commission on Human Rights granted precautionary measures in favor of members of the several indigenous communities of the Xingu River Basin in Pará, Brazil.⁷⁸ The Commission asked Brazil to “stop any construction

72. *Id.*

73. Press Release, Chevron, *Illegitimate Judgment against Chevron in Ecuador Lawsuit* (Feb. 14, 2011), http://www.chevron.com/chevron/pressreleases/article/02142011_illegitimatejudgmentagainstchevroninecuadorlawsuit.news.

74. *Donzinger*, 768 F. Supp. 2d at 600, 638-39.

75. *Id.* at 627.

76. Order, *Chevron Corp. v. Naranjo*, 2011 WL 4375022 (2d Cir. Sept. 19, 2011) (11-1150-CV(L)).

77. The Second Circuit issued its short-form order on September 19 and stated that an opinion addressing the issues will follow “in due course.” *Id.*

78. *PM 382/10—Indigenous Communities of the Xingu River Basin, Pará, Brazil*, IACHR, <http://www.oas.org/en/iachr/indigenous/protection/precautionary.asp> (last visited Feb. 13, 2012).

work from moving forward until certain minimum conditions are met.”⁷⁹ If completed, the dam will “be the third largest in the world, after China’s Three Gorges and the Itaipu project on the Brazil-Paraguay border.”⁸⁰ Critics claim that the “dam will displace 30,000 river dwellers, partially dry up a 62-mile stretch of the Xingu River, and flood large areas of forest and grass land.”⁸¹

Despite the April 1, 2011 decision, on June 1, 2011, Brazil’s environment agency, the Institute of Natural Resources and the Environment (Ibama), approved the dam construction.⁸² In a September 2011 ruling, a Brazilian Judge ordered construction to be suspended on the controversial hydroelectric dam, citing the risk that fish stocks in the Xingu River would be damaged.⁸³

It remains to be seen what Norte Energia S.A. (Norte), the consortium that won the auction to build and operate the dam, will do. On its website, Norte claims that the construction of the power plant “will not lead to the flooding of indigenous lands,”⁸⁴ that the “lands will be left untouched by the dam,”⁸⁵ and that the project “envisage[s] the relocation of about 5,000 families.”⁸⁶ Operations are scheduled to begin in February 2015.

IV. Development in the Different Regions

A. EUROPEAN UNION: EUROPEAN PARLIAMENT RESOLUTION ON CSR AND EUROPEAN COMMISSION STRATEGY FOR CSR

1. *European Parliament*

On June 8, 2011, the European Union Parliament adopted a resolution on corporate social responsibility.⁸⁷ The Parliament “stresse[d] that no directive regulating CSR and enforcing respect for it should be adopted at EU level”⁸⁸ and noted that “compliance with strict environmental standards by businesses from the EU in third countries should be regarded as just as important as respect for the rights of employees.”⁸⁹ Furthermore, the Parliament called on the EU Commission to “systematically include a chapter on sustaina-

79. *Id.* The Inter-American Commission demanded that Brazil engage in meaningful prior consultation with affected communities and “adopt measures to protect the life and physical integrity of the members of the indigenous peoples in voluntary isolation of the Xingu Basin.” *Id.*

80. Tom Phillip, *Brazilian Judge Orders Construction of Amazon Dam to Stop*, *GUARDIAN* (Sept. 29, 2011), <http://www.guardian.co.uk/environment/2011/sep/29/brazilian-judge-monte-bello-dam/print>.

81. *Brazil Approves the Belo Monte Hydroelectric Dam*, *GUARDIAN* (June 1, 2011), <http://www.guardian.co.uk/environment/2011/jun/01/brazil-belo-monte-dam>.

82. *Id.*

83. Phillip, *supra* note 80.

84. *Belo Monte Hydroelectric Power Plant to Conserve Indigenous Lands*, NORTE ENERGIA, <http://en.norteenergiasa.com.br/2011/06/14/belo-monte-hydroelectric-power-plant-to-serve-indigenous-lands/> (last visited Jan. 20, 2012).

85. *Id.*

86. *Id.*

87. *External Dimension of Social Policy, Promoting Labour and Social Standards and European Corporate Social Responsibility*, EUR. PARL. DOC. 2010/2205(INI) (2011), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0260+0+DOC+XML+V0//EN>.

88. *Id.* at ¶ 31.

89. *Id.* at ¶ 36.

ble development, containing a legally binding CSR clause, in the free trade and investment agreements it negotiates with third countries.”⁹⁰ The European Parliament also called on the Commission:

[T]o introduce amendments to its Proposal for a Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2010/0383 (COD)) to enable claimants to sue a subsidiary domiciled in a third country, together with the European parent corporation, through the creation of additional grounds of jurisdiction.⁹¹

2. European Commission

On October 25, 2011, the EU Commission released *A Renewed EU Strategy 2011-14 for Corporate Social Responsibility* (Strategy for CSR).⁹² The EU Strategy for CSR is in five parts: (1) Introduction; (2) Evaluation of the Impact of European Policy on CSR; (3) A Modern Understanding of Corporate Social Responsibility; (4) An Agenda for Action 2011-2014; and (5) Conclusion. To the EU Commission, the Strategy for CSR is timely because, despite progress made in Europe in the realm of CSR, considerable challenges remain: “[o]nly 15 out of 27 EU Member States have national policy frameworks to promote CSR.”⁹³

In the Strategy for CSR, the Commission articulates a modern understanding of CSR. The Commission now defines CSR as “the responsibility of enterprises for their impacts on society.”⁹⁴ Previously, the Commission had defined CSR as “a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis.”⁹⁵ Strategy for CSR stresses the broad and multidimensional nature of CSR today. According to the EU Commission:

CSR at least covers human rights, labour and employment practices (such as training, diversity, gender equality and employee health and well-being), environmental issues (such as biodiversity, climate change, resource efficiency, life-cycle assessment and pollution prevention), and combating bribery and corruption. Community involvement and development, the integration of disabled persons, and consumer interests, including privacy, are also part of the CSR agenda.⁹⁶

B. ASIA (INDIA): NATIONAL VOLUNTARY GUIDELINES FOR BUSINESSES

In July 2011, the Ministry of Corporate Affairs of India released the *National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business* (National Volun-

90. *Id.* at ¶ 40.

91. *Id.* at ¶ 38.

92. EUROPEAN COMM’N, A RENEWED EU STRATEGY FOR CORPORATE SOCIAL RESPONSIBILITY (2011), available at http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=7010 [hereinafter Strategy for CSR].

93. *Id.* at 6.

94. *Id.*

95. EUROPEAN COMM’N, PROMOTING A EUROPEAN FRAMEWORK FOR CORPORATE SOCIAL RESPONSIBILITY (2001), available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0366en01.pdf.

96. Strategy for CSR, *supra* note 92, at 7.

tary Guidelines). The National Voluntary Guidelines is a revision of the *Corporate Social Responsibility Voluntary Guidelines* released in December 2009. The National Voluntary Guidelines “are designed to be used by all businesses irrespective of size, sector or location and therefore touch on the fundamental aspects – the ‘spirit’ - of an enterprise.”⁹⁷ Although “[i]t is expected that all businesses in India, including multi-national companies that operate in the country, would consciously work towards following the Guidelines,”⁹⁸ they are not binding in nature.

C. CANADA

Though narrowly defeated in the House of Commons of Canada late last year, Bill C-300, the *Corporate Accountability of Mining, Oil, and Gas Corporations in Developing Countries Act*, has attracted widespread international attention in the legal and business community.⁹⁹ The purpose of Bill C-300,¹⁰⁰ reinstated this year in the 40th Parliament, 3rd Session, “is to ensure that corporations engaged in mining, oil or gas activities and receiving support from the Government of Canada act in a manner consistent with international environmental best practices and with Canada’s commitments to international human rights standards.”¹⁰¹ Approximately three-quarters of the world’s mining and exploration companies are headquartered in Canada.

Bill C-300 would require that the Minister of Foreign Affairs and the Minister of International Trade issue guidelines that articulate corporate accountability standards within twelve months of coming into force. Canadian mining, oil, or gas companies operating overseas would need to comply with these guidelines to receive support from government agencies, including the Department of Foreign Affairs and International Trade, Export Development Canada, and the Canadian Pension Plan, all of which offer considerable political or financial support and facilitate the investments of Canadian extractive companies in developing countries.¹⁰² The legislation would also establish complaint mechanisms, where anyone, regardless of nationality, could submit a complaint regarding the overseas operations of a Canadian extractive company. As long as the complaint was not deemed frivolous, vexatious, or in bad faith, an investigation of a company’s compliance with the guidelines and a public report on the findings of the complaint would be issued.¹⁰³

97. *Id.* at 5.

98. *Id.*

99. Marcus Gee, *For Canadian Companies Overseas, A Corporate Heart of Darkness*, GLOBE & MAIL (Mar. 23, 2011), <http://www.theglobeandmail.com/news/national/time-to-lead/for-canadian-companies-overseas-a-corporate-heart-of-darkness/article1952557/>.

100. Implementing a number of key recommendations from Advisory Group Report, Canadian Extractive Sector Advisory Group, Amnesty International Canada, National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries (Mar. 29, 2007), available at http://www.amnesty.ca/themes/resources/business/Advisory_Group_Report_03202007.pdf.

101. Corporate Accountability of Mining, Oil and Gas Corporations in Developing Countries Act, 2009, House of Commons of Canada, Bill [C-300] cl. 3, available at <http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=3658424&File=33> [hereinafter Bill C-300].

102. *Bill C-300 Backgrounder*, AMNESTY INT’L CAN., <http://www.amnesty.ca/files/CNCA%20C-300%20Q&A.pdf> (last visited Jan. 20, 2012).

103. Bill C-300, *supra* note 101, § 4(3).

The likely consequences of enacting Bill C-300 as law have drawn considerable differences in opinions. Opponents argue that Bill C-300 would impose serious burdens on the extractive industry by allowing corporations based in countries with no commitment to corporate social responsibility to more readily compete for business and encourage current Canadian companies to consider relocating to jurisdictions where an unfair advantage would presumably exist.¹⁰⁴ Similarly, opponents believe that the complaint mechanism would be abused, and that any investigation, regardless of the outcome, would cause significant damage to the important business concept of “national brand” identity, tarnishing Canada’s well-deserved reputation for good corporate citizenship. Supporters, however, say Bill C-300 would restore national reputation by promoting more responsible behavior by Canadian corporations operating internationally and making them more attractive to investors and host governments. Proponents contend that poor human rights practices have challenged the notion “that Canadian companies are doing well, operate with integrity, and are much better than other nation’s [sic] companies.”¹⁰⁵ Time will tell the future of Bill C-300, and whether it will lift the bar for other countries to advance human rights around the world.

D. UNITED STATES

On August 1, 2011, Rep. Carolyn Maloney [D-NY14] introduced *H.R. 2759: Business Transparency on Trafficking and Slavery Act* to the U.S. House of Representatives.¹⁰⁶ The aim of the bill is to “require companies to include in their annual reports to the Securities and Exchange Commission a disclosure describing any measures the company has taken during the year to identify and address conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the company’s supply chains.”¹⁰⁷ The bill expresses the sense of Congress that “the legislative and regulatory framework to prevent goods produced through forced labor, slavery, human trafficking, and the worst forms of child labor from passing into the stream of commerce in the United States is gravely inadequate.”¹⁰⁸

104. John Manley, *Bill C-300 Would Impose Serious Burdens on Canada’s Mining Industry*, HILL TIMES (Sept. 27, 2010), <http://www.ceocouncil.ca/publication/bill-c-300-would-impose-serious-burdens-on-canadas-mining-industry>.

105. John McKay, *CCCE President John Manley Should Read the 17 Months of Testimony from the House Foreign Affairs Committee Before Commenting on the Issue*, HON. JOHN MCKAY PC, MP (Oct. 5, 2010), http://www.johnmckaymp.on.ca/newsshow.asp?int_id=80679.

106. Business Transparency on Trafficking and Slavery Act, H.R. 2759, 112th Cong. 1 (2011), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_cong_bills&docid=f:h2759ih.txt.pdf (bill introduced by “Mrs. Maloney (for herself, Mr. Smith of New Jersey, Ms. Speier, and Mr. McGovern”).

107. *Id.*

108. *Id.* § 1(c)(2).

V. Sector Specific Developments

A. MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS

In 2011, the OECD released the *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* (Guidance).¹⁰⁹ The objective of the Guidance is “to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices,”¹¹⁰ and “to cultivate transparent mineral supply chains and sustainable corporate engagement in the mineral sector with a view to enabling countries to benefit from their natural mineral resources and preventing the extraction and trade of minerals from becoming a source of conflict, human rights abuses, and insecurity.”¹¹¹ The Guidance “provides a framework for detailed due diligence as a basis for responsible global supply chain management of tin, tantalum, tungsten, their ores and mineral derivatives, and gold.”¹¹² It contains a special “Supplement on Tin, Tantalum and Tungsten.”¹¹³ In November 2011, the OECD released, for public comments, the Draft Gold Supplement to the Guidance.¹¹⁴ The OECD plans to add supplements on other minerals to the Guidance in the future.

On May 25, 2011, OECD Ministers adopted a *Recommendation of the Council on the Due Diligence Guidance*.¹¹⁵ OECD Ministers recommended “that Members and non-Member adherents to the Declaration on International Investment and Multinational Enterprises actively promote the observance of the Guidance by companies operating in or from their territories and sourcing minerals from conflict-affected or high-risk areas”¹¹⁶ OECD Ministers also instructed the Investment Committee and the Development Assistance Committee “to monitor the implementation of the Recommendation and to report to Council no later than three years following its adoption and as appropriate thereafter.”¹¹⁷

B. OTHER COMMODITIES

1. *The Model Mine Development Agreement*

On April 4, 2011, the International Bar Association released MMDA 1.0, the Model Mine Development Agreement.¹¹⁸ MMDA 1.0 is “designed to help negotiators and draft-

109. OECD, OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS (2011), available at <http://www.oecd.org/dataoecd/62/30/46740847.pdf>.

110. *Id.* at 3.

111. *Id.*

112. *Id.* at 12.

113. *Id.* at 31-60.

114. OECD, OECD DUE DILIGENCE GUIDANCE FOR RESPONSIBLE SUPPLY CHAINS OF MINERALS FROM CONFLICT-AFFECTED AND HIGH-RISK AREAS: DRAFT FINAL SUPPLEMENT ON GOLD (2011), available at <http://www.oecd.org/dataoecd/54/39/49187571.pdf>.

115. OECD, *Recommendation of the Council on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*, available at [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=c/min\(2011\)12/final&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=c/min(2011)12/final&doclanguage=en).

116. *Id.* at 3.

117. *Id.*

118. INT'L BAR ASS'N, MMDA 1.0: MODEL MINE DEVELOPMENT AGREEMENT (2011), available at http://www.mmdaproject.org/presentations/MMDA1_0_110404Bookletv3.pdf.

ers by stimulating them to think about some of the difficult issues of legality, fairness, and balance presented by large foreign natural resource investment, particularly in developing countries.”¹¹⁹ The MMDA 1.0 is not a Mining Code, an Exploration Agreement, or a Community Level Agreement.¹²⁰ According to the authors, MMDA 1.0 is based on the belief that “[l]ong-term stability comes when all interests benefit from an agreement, and when the agreement contributes to both business success and the sustainable development of the societies in which mines operate.”¹²¹ MMDA 1.0 covers a wide range of issues including Tenure (Article 2), Financial (Articles 3–9), Rights and Obligations (Articles 10–27), and Other Terms and Conditions (Articles 28–38).

Article 2.4 (Obligations Prior to Construction) requires that the relevant company, prior to commencing construction, submit several documents to the state including a Feasibility Study, Environmental Assessment and Environmental Management Plan, and Social Impact Assessment and Action Plan. Article 10 (Mutual Obligation) is also significant. For example, Article 10.3(a) states:

The Parties each commit themselves to the protection and promotion of the human rights of all individuals affected by the Project, as those rights are articulated in the United Nations’ 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and Applicable Law.¹²²

MMDA 1.0 addresses corruption by requiring the relevant company to agree that it is subject to the anti-bribery and anti-corruption provisions of Applicable Law and of the jurisdictions in which the company is organized or conducts business,¹²³ and committing to transparency in accord with the Extractive Industries Transparency Initiative criteria.¹²⁴

Company Obligations (Article 20–27) addresses other concerns that host communities and civil society groups typically express in relation to mining concessions, such as Local Community Development, Community Health, Labor Standards, Employment and Training of Local Citizens, Mining Closure and Post-Closure Obligations, as well as Rights of Citizens.

MMDA 1.0 provides potential users, both in industry and government, and interested civil society organizations, with a useful tool for negotiating mining agreements. The jury is still out on whether MMDA 1.0 effectively addresses all the environmental, social, and governance issues implicated in large, foreign natural resource investment and whether it is fair and balanced from the point of view of mining corporations, developing countries, and communities typically affected by mining projects. It remains to be seen whether and to what extent MMDA 1.0 will be used in practice.

119. *Id.* at iii.

120. *Id.* at iv.

121. *Id.* at iii.

122. *Id.* § 10(3)(a).

123. *Id.* § 10.4.1.

124. *Id.* § 10.4.3.

2. *The Responsible Investor's Guide to Commodities*

*The Responsible Investor's Guide to Commodities*¹²⁵ was released in September 2011 and is the product of a project led by onValues Ltd.¹²⁶ The goal of the project was to “improve the understanding of environmental, social and governance (ESG) issues in commodity investments with a view to identifying and promoting best practice in this area.”¹²⁷ The Guide covers investment in a broad range of commodities including investment in commodity derivatives (Chapter 4), investment in physical commodities (Chapter 5), and investments in agriculture and farmland (Chapter 8). The “Principles for Responsible Investment in Farmland,” a voluntary set of principles developed by a group of institutional investors, forms an integral part of the Guide.¹²⁸

VI. Other Developments: GDF Suez International Framework Agreement with Three Unions Federations

On November 16, 2011, “the management of GDF Suez signed a global agreement on fundamental rights, social dialogue and sustainable development . . . with three international union federations – the International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM), the Building and Woodworkers International (BWI) and Public Services International (PSI).”¹²⁹ GDF Suez is an energy company, which boasts 219,100 employees across seventy countries and annual revenue of 84.5 billion Euros.¹³⁰ The seven-page agreement details the company’s obligations and aspirations in three areas: (1) responsibly towards employees; (2) the company’s relationship to the environmental sustainability; and (3) the place of the agreement in relation to other instruments, laws, and the ongoing social dialogue.¹³¹

This agreement is now part of up to eighty International Framework Agreements (IFAs) which have been concluded between the Global Union Federations and Multinational Enterprises.¹³² IFA is defined as “an instrument negotiated between a multinational enterprise and a Global Union Federation (GUF) in order to establish an ongoing relationship between the parties and ensure that the company respects the same standards in all the countries where it operates.”¹³³ IFAs are growing in importance and are used mainly

125. IVO KNOEPFEL AND DAVID IMBERT, *THE RESPONSIBLE INVESTOR'S GUIDE TO COMMODITIES: AN OVERVIEW OF BEST PRACTICES ACROSS COMMODITY-EXPOSED ASSET CLASSES* (Sept. 2011), available at http://www.unpri.org/publications/commodities_2011.pdf.

126. See *About Us*, ONVALUES.CH, <http://www.onvalues.ch/about-us.html> (last visited Jan. 6, 2012).

127. KNOEPFEL & IMBERT, *supra* note 125, at 6.

128. *Id.* Appendix 4, at 45.

129. Frederic Turlan, *GDF Suez Launches International Social Dialogue*, EIRONLINE (Aug. 3, 2011), <http://www.eurofound.europa.eu/eiro/2011/01/articles/eu1101011i.htm>.

130. *GDF Suez—Profile*, GDFSUEZ.COM, <http://www.gdfsuez.com/en/group/profile/profile/> (last visited Jan. 6, 2011).

131. GDF SUEZ, *GLOBAL AGREEMENT ON FUNDAMENTAL RIGHTS, SOCIAL DIALOGUE AND SUSTAINABLE DEVELOPMENT 2-4* (2010), available at <http://www.bwint.org/pdfs/GDFgobagreeEN.pdf>.

132. See *SHAPING GLOBAL INDUSTRIAL RELATIONS: THE IMPACT OF INTERNATIONAL FRAMEWORK AGREEMENTS* (Konstantinos Papadakis ed., 2011).

133. *International Framework Agreements: A Global Tool for Supporting Rights at Work*, INT'L LABOR ORG. [ILO] (Jan. 31, 2007), http://www.ilo.org/global/about-the-ilo/press-and-media-centre/news/WCMS_080723/lang-en/index.htm.

in ensuring protection of labor standards. IFAs are understood as a possible way to protect labor standards and avoid competition between workers of different countries caused by global movement of capital.¹³⁴ Global Unions are international labor groups that organize themselves by sector of industry or commerce and work to advance the principles of the trade union movement.¹³⁵ IFAs are different from codes of conduct and corporate social responsibility in the sense that they constitute a negotiated agreement between the multinational enterprise and the labor union on a global level.¹³⁶ The earliest IFA was concluded in 1989 between the French food company Danone and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Associations (IUF).¹³⁷

IFAs greatly differ in their contents. Some simply include general statements about basic trade union rights, while others contain relatively elaborate contents on training, staff development, and international human rights. But all IFAs maintain the provisions of most of the International Labor Organization conventions, particularly obligations related to the freedom of association, collective bargaining, forced labor, and discrimination.¹³⁸ IFAs remain largely European in nature, although recently an increasing number of non-European companies have signed them. Outside Europe, twelve companies that have signed the agreements are based in the United States, Japan, South Africa, and Brazil.¹³⁹ There is scholarly debate on the influence and implementation of IFAs.¹⁴⁰

134. Lone Riisgaard, *International Framework Agreements: A New Model for Securing Workers Rights?*, 4 *INDUS. REL.* 44, 709 (2005), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1468-232X.2005.00408.x> pdf (arguing that, overall, IFAs can serve as important tools in protecting labor rights transnationally).

135. JAMES ATLESON ET AL., *INTERNATIONAL LABOR LAW: CASES AND MATERIALS ON WORKERS' RIGHTS IN THE GLOBAL ECONOMY* 676 (2008).

136. LIVE TORRES & STEIN GUNNES, *GLOBAL FRAMEWORK AGREEMENTS: A NEW TOOL FOR INTERNATIONAL LABOUR* 8 (2003), available at http://www.fao.no/lit/global_framework.pdf.

137. INT'L ORG. OF EMP'RS, *INTERNATIONAL FRAMEWORK AGREEMENTS: AN EMPLOYERS' GUIDE 1* (2007), available at http://www.ioe-emp.org/fileadmin/user_upload/documents_pdf/papers/guides/english/guide_2007august_ifasrevi.pdf.

138. *Id.*

139. DIMITRIS STEVIS, ILO, *INTERNATIONAL FRAMEWORK AGREEMENTS AND GLOBAL SOCIAL DIALOGUE: PARAMETERS AND PROSPECTS* (2010), available at http://ilo.org/wcmsp5/groups/public/@ed_emp/documents/publication/wcms_122176.pdf.

140. See, e.g., Sarah Coleman, *Enforcing International Labor Agreements in U.S. Courts: A Contract Analysis*, 41 *COL. HUM. RTS. L. REV.* 601, 603 (2010) (arguing that IFAs can be enforced by U.S. federal courts as labor agreements under Section 301 of the National Labor Relations Act).

