Privatisation of Labour Standards under Corporate Social Responsibility and Social Reporting in New Zealand

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I. Introduction

The protection of labour rights has traditionally been the responsibility of governments, first starting at national level and then gradually becoming a subject in the international arena. With globalisation, as the influence and reach of corporations have grown, labour standards have become stagnated. In order to deal with and address this problem, first, the essay demonstrates how labour standards, the so called second generation rights, can be better dealt with privately by bringing them under the ambit of corporate social responsibility. And secondly, how voluntary social reporting can be an effective means for corporations to demonstrate social responsibility for the protection of labour standards within the private sector, both internationally and in New Zealand.

II. Dealing with Labour Standards Privately

Labour Standards[1] seek to promote a regime whereby workers' rights are protected and balanced against profit maximisation by corporations. In order to demonstrate how labour standards can be better dealt with privately, it is important to look at the concept of sustainable development, the notion of corporate social responsibility and social reporting very closely.

III. The Sustainable Corporation

Before embarking on an explanation of what a sustainable corporation might be, it is important to first look at the meaning of 'sustainable development.' There are many definitions but the landmark definition first appearing in 1987 states, 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'[2] It has been suggested that the current form of capitalism is not sustainable because it is driven only by economic factors and not social or environmental concerns.[3] However, sustainable development seeks to create a balance between economic, social and environmental issues so that in the long term, the

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1 Currently there are four core labour standards, eight fundamental Conventions and four priority Conventions, which promote labour standards globally. See International Labour Organisation, *Core Labour Standards Handbook: Guidelines, Handbooks and Manuals* (2006) and International Labour Organisation, *Rules of the Game: A Brief Introduction to International Labour Standards* (2005) 12–13.

2 The World Commission on Environment and Development [WCED], *Our Common Future* (1987) 8.

3 A Henriques and J Richardson (eds), *The Triple Bottom Line, Does It All Add Up?: Assessing the Sustainability of Business and CSR* (2004) 73.

environment has been interfered with as little as possible, stakeholders' trust has been earned and the business has been profitable.[4] *Agenda 21* recognises the crucial role business and industries, including transnational corporations, could play towards sustainable development.[5]

Our Common Future (commonly known as the Bruntland Report) gave anecdotal suggestions as to what a sustainable corporation might look like. An interpretation of the text reveals that the following characteristics must be present if a corporation has grasped the concept of sustainable development. A sustainable corporation is one that:[6] (1) Recognises the need to share managerial skills and the technical know how with host countries; (2) Pursues profit seeking objectives within a framework of long term sustainable development; (3) Helps strengthen the bargaining posture and response of host countries; (4) Contributes to the economic development of the least developed countries; (5) Follows the same environmental standards in host countries as they do in home countries; (6) Shares information with the host countries; (7) Complies with international measures such as codes of conduct dealing with objectives of sustainable development; and (8) Deals with all problems and takes special responsibilities where required.

A. *The Business Case for Sustainable Development*

There are many cases that can be made for sustainable development:[7] moral, ethical, religious and environmental. However, for the purpose of this essay, the focus will be on the business case, which seeks to explain why a company may opt to contribute towards sustainable development. The business case for sustainable development rests upon ten building blocks:[8] (1) The market, which ought to be fully utilized;[9](2) The right policies and frameworks, be they legal and/or regulatory, which govern and encourage sustainable progress;[10] (3) Eco-efficiency;[11](4) Corporate social responsibility;[12] (5) Transformation, in accordance with a broader corporate vision (as

4 New Zealand Business Council for Sustainable Development [NZBCSD], *Our Mission and Aims* available at <http://nzbcsd.org.nz/mission.asp>.

5 Note that at this time sustainable development only concerned itself with environmental issues. The social dimension came into play later. UNEP, *Agenda 21* (1992) [Chapter 30: Strengthening the Role of Business and Industry] available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=52&ArticleID=78&l=en>.

6 WCED above n 2 at 85–87. Also see Sustainable Business Network, *What is a Sustainable Business* (2007) available at <http://www.sustainable.org.nz/resource.asp?id=90>.

7 World Business Council for Sustainable Development [WBCSD], *The Business Case for Sustainable Development: Making a Difference Toward the Johannesburg Summit 2002 and Beyond* (2001) 2 available at <http://basd.free.fr/docs/documents/business-case.pdf>.

8 C Holliday, Jr. S Schmidheiny and P Watts, *Walking the Talk: The Business Case for Sustainable Development* (2002) 40, 58–60, 83, 103, 125–126, 150, 174–175, 193, 218, 241–242.

9 The market has to be open, competitive and rightly framed so that efficiency and innovation, which are both necessities for sustainable human progress, can be achieved and comparative advantage honoured. An example of this is free trade.

10 One of the ways sustainable progress can be measured is through triple bottom line reporting by the business sector.

11 Eco efficiency has been defined as being 'achieved by the delivery of competively priced goods and services that satisfy human needs and bring quality of life, while progressively reducing ecological impacts and resource intensity throughout the life cycle, to a level at least in line with the Earth's estimated carrying capacity.' WBCSD, *Eco-Efficiency: Creating More Value with Less Impact* (2000) 9 available at <www.wbcsd.org/includes/getTarget.asp?type=d&id=ODkwMQ>. Internalising costs is one of the ways of promoting eco efficiency for example via the polluter pays principle which simply means that if one pollutes, one has to pay.

12 This concept is dealt with in detail in the later part of this essay.

moulded by sustainable development);[13] (6) Moving from stakeholder dialogues to partnerships;[14] (7) Informing and providing choice to the 'green' and/or ethical consumer;[15] (8) Innovation;[16] (9) Reflecting the worth of the earth through pricing mechanisms, efficiency and conservation;[17] and (10) Making markets work for all by pursuing poverty reduction and/or contribution towards economic growth.[18] While these building blocks are theoretical, a practical experience as to the business case for sustainability has been offered by the Shell Company. These are:[19] protection of the 'licence to operate,' cost reduction and increase of return on capital, reduction of negative impacts of corporate operations, entry into new markets, improvement in market position, innovation, new partnerships, improved corporate reputation, increase in shareholder value, acquisition of consumer trust and confidence, and employee retention and effectiveness. Hence both theory and practice support the business case for sustainable development. In order to implement the goals of sustainable business practices it is important to '[a]ctively promote corporate responsibility and accountability … and support continuous improvement in corporate practices in all countries.'[20] One way these goals can be met is through triple bottom line reporting.

B. Triple Bottom Line

Traditionally, corporations have been expected to report only on financial matters. 'Triple bottom line' reporting (also referred to as 'sustainable development reporting' or 'sustainability reporting') was coined by John Elkington to refer to the notion that corporations wanting to become sustainable or contribute towards sustainable development had to move away from the single practice of doing just financial reporting and recognise their responsibilities towards society and the environment and commit to environmental and social reporting.[21] While there is some mandatory

13 Engagement with social reporting is a very good way for a corporate to demonstrate that it recognizes its wider responsibility towards its employees and other stakeholders and not only concerned with serving the shareholders' financial interests.

14 Partnership with stakeholders is an area where businesses still lack experience. A good example is forming partnerships with NGOs which can create trust between the local community and the company.

15 'Green' and ethical consumerism is on the rise. Such consumerism is important because it achieves sustainability through the market by: improving the quality of life; reducing negative impacts of production; and increasing the shareholder value of sustainable corporations. Hence information sharing plays an important role.

16 Innovation is not about consuming less but differently and that is efficiently. For example, we can consume more electricity but by producing less carbon.

17 A classic example of this is when dealing with the issue of climate change, whereby we become efficient, conservative and adopt policies like the polluter pays principle.

18 Sharing profits with its employees by paying decent wages is one of the best ways that businesses can make a contribution towards poverty reduction.

19 Shell, *Contributing to Sustainable Development: A Management Primer* (2001) 23.

20 This is one of the goals in the WSSD's Plan of Implementation. WSSD 2002, *Plan of Implementation of the WSSD* (2002) para 45 available at <www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf>.

21 R Gray and M Milne, 'Sustainability Reporting: Who's Kidding Whom?' (2002) 81 *Chartered Accountants Journal* 66, 67.

triple bottom reporting requirements in some countries,[22] there is no comprehensive legislation concerned with accounting, reporting and auditing of a triple bottom line report.

Triple bottom line is about managing risks involved in the operation of the business. This includes management of social risks, which inter alia concern labour standards. A classic example of the kind of disastrous impacts due to failure to take precautions (as demanded by labour standards) can have on businesses as has been demonstrated by the *Bhopal* case.[23] Strategic management of social risks is made easier with social accounting, which makes social accounting good for bottom line. According to the Shell Company, what is good for bottom line is good for corporations because it creates shareholder value, increases our ability to attract and retain the best people, and enhances the confidence of investors who provide capital for corporations and expect a fair return.[24] Social accounting and reporting is governed by the concept of corporate social responsibility.

C. Corporate Social Responsibility

Whether corporations have an obligation to behave in a socially responsible manner in addition to making profits has been a subject of debate in America since 1932.[25] While the traditional 'profit maximization' perception remains, there is growing awareness that corporations have a wider responsibility, a social responsibility, labelled as 'corporate social responsibility' or CSR.[26] CSR has been defined as: 'the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life.'[27]

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22 On 15 May 2001, France became the first country in the world to make triple bottom line reporting mandatory for its companies. By application of the Code of Commerce, the following social information must appear in the report of the Board or of the Executive Board: Total workforce, recruitment, redundancies and their motives, overtime, sub contracted labour, and (if need be) information relating to staff reduction and employment safeguard plans, to the efforts made for staff redeployment, reemployment and subsequent accompanying measures; Organisation of working hours, duration for full time and part time wage earning employees, absenteeism and its motives; Wages and their evolution, welfare costs, the professional equality between women and men; Industrial relations and the assessment of collective bargaining agreements; Health and safety conditions; Training; Employment and integration of disabled workers; Company benefits and social schemes; and Importance of sub contracting. The European Business Campaign, *France – Empowering Stakeholders: France Meets Growing Demands for Information on the Social and Environmental Performance of Companies* available at <http://www.csrcampaign.org/publications/Excellencereport2002/France/>. Due to the inability to read and interpret French in English, this article was heavily relied on for the interpretation of the French law.

23 *Union Carbide Corporation v Union of India* (1989) 1 SCC 674. Also M Memon, *Documents and Court Opinions on Bhopal Gas Leak Disaster Case* (1991).

24 Shell above n 19.

25 J Tolmie, 'Corporate Social Responsibility' (1992) 15 *University of New South Wales Law Journal* 268.

26 G Frynas and S Pegg (eds), *Transnational Corporations and Human Rights* (2003) 8.

27 WBCSD, *Corporate Social Responsibility: Making Good Business Sense* (2000) 10 available at <www.inggroup.com.au/pdf/csr2000.pdf>.

Today the argument in favour of good treatment and high wages for workers constitutes socially responsible behaviour[28] with an 'enlightened self interest' (as stated by BP's chief executive Lord John Browne).[29]

1. *The Debate on Corporate Social Responsibility*

There are two major issues of concern regarding the concept of CSR: (1) whether companies can really be socially responsible and if so, (2) whether they should be allowed to regulate themselves.

A rather extreme view is that 'companies cannot be socially responsible';[30] that the concept of corporate social responsibility is unattainable because the ultimate aim is profit maximisation. The other not so extreme view recognises that while some tangible social and environmental benefits are gained through CSR, CSR has very limited scope to protect social and environmental interests from corporate harm because there is no imperative for corporations to put their shareholder's financial interests above other stakeholders.[31]

However, there is nothing in corporate law which states that all other responsibilities ought to be ignored in discharging those owed to shareholders. Hence, the concept of CSR goes beyond the traditional 'profit maximization' viewpoint by its broader outlook of the corporation's impact on society and the environment. This is because corporations will often find that their freedom to do business is being increasingly constrained by emerging social movements.[32] An ideal example is the worldwide abolishment of slavery. The emerging consensus within the global civil society around the values of labour standards and the social expectation they generate has evolved faster than the corporate response.[33] What the concept of corporate social responsibility aims to do is to fill the gap that has been created between social expectations and corporate performance. It further aims to reduce the negative externalities of corporate operations which it has on the social and the environmental dimensions of sustainable development. In other words the notion of CSR compels corporations to bear the responsibility of 'corporate citizenship,' which denotes that, like citizens, corporations also have duties as well as rights.

Business drivers for corporate social responsibility are diverse, comprising economic and ethical reasons.[34] The main driver for CSR is improved corporate reputation.[35] Reputation is a corporation's most important asset.[36] Protection of reputation facilitates the necessary consumer and governmental 'consent' to enter into new markets.[37] Damage to reputation can have not only short term profitability impacts but also impact on long term expansion plans. Once damaged, it can be

28 Socially responsible behaviour can be described as, 'an action which goes beyond the legal or regulatory minimum standard with the end of some perceived good rather than the maximisation of profits.' C Slaughter, 'Corporate Social Responsibility: A New Perspective' (1997) 18 *The Company Lawyer* 316, 321.

29 T Burke and J Bakan, 'Corporate Social Responsibility: The Debate' (2005) 35 *The Ecologist* 28, 29.

30 Henriques above n 3 at 73.

31 Burke above n 29.

32 J Elkington, *Cannibals with Forks: The Triple Bottom Line of the 21st Century Business* (1998) 86.

33 Frynas above n 26 at 85.

34 KPMG, *International Survey of Corporate Responsibility Reporting 2005* (2005) 5 available at <ec.europa.eu/employment_social/soc-dial/csr/060403/kpmgsurvey2005_en.pdf>.

35 S John and S Thomson, *New Activism and the Corporate Response* (2003) 131.

36 A Weiss, Managing Corporate Reputation (2000) available at <http://www.pwc.com/extweb/indissue.nsf/docid/36DF551F67A0291C85256A3900083554>.

37 John above n 35 at 132.

very difficult for a company to clean up its image. One example is the Shell Company which suffered a bad reputation after the Nigerian government hung nine environmental activists in a joint effort by the government and Shell to suppress a movement for environmental justice, recognition of human rights and economic justice.[38] As a result of bad publicity, the Royal Dutch/Shell Group of Companies revised its 1976 Statement of General Business Principles in 1997 to reflect greater concern for social and environmental issues.[39] There is a range of activism that can take place against such corporate behaviour, such as: [40] online campaigning, telephone campaigns, emails or displays in public arenas and through the media, legal action, boycotts, and lobbying and tactics used not only to target the corporations but anyone associated with them – including directors and shareholders. For example a corporation, engaged in abusing labour standards could experience what is termed as the 'spotlight effect'.[41] When a corporation enjoys a good reputation, other drivers of CSR include:[42] increased sales and market share, strengthened brand positioning, increased ability to attract, motivate and retain employees, decreased operating costs and increased appeal to investors and financial analysts. An obligation to act bona fide in the best interests of the corporation is a basic fiduciary duty of any director of any corporation.[43] That obligation is owed to the shareholders of the corporation[44] whose interests are benefited by any increase in shareholder value or other benefit. Therefore, it should be a director's duty to take CSR into account.

The other view is that CSR has managed to convince people that because corporations are socially responsible, corporations can and should be trusted to self regulate.[45] It has been argued that CSR can never be a substitute for effective legal regulation because when a company is not regulated the company's financial interest takes over everything.[46] It has been stated that it is virtually implausible that a corporation could be responsible in an irresponsible system where no laws are passed to make corporations act in 'responsible' ways.[47]

However, not all legal regulation is effective. Companies will be able to and could be trusted to regulate themselves through the adoption of voluntary codes of conduct and through social reporting (as will be discussed in the following chapter). The benefit of CSR over regulation is that it will be better able to identify and deal with social problems the corporation itself creates.[48] In the case of labour, companies will be better able to incorporate labour standards codes in the company's voluntary code of conduct, which will better suit the needs of its employees. CSR could conform to suit individual needs of each corporation's employees and be well informed of what those needs are. Flexibility would allow codes of conduct to be modified with the changing needs

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38 Essential Action, *Shell in Nigeria: What are the Issues?* available at <http://www.essentialaction.org/shell/issues.html#Why%20boycott>.

39 Frynas above n 26 at 111.

40 John above n 35 at 6, 7, 9, 266–269.

41 'Spotlight effect' is when corporations realize that the benefits of lower cost labour have been weighed against the bad publicity and consumer backlash that their engagement in human rights abuses could generate. Debora Spar, 'The Spotlight and the Bottom Line: How Multinationals Export Human Rights' (1998) 77 *Foreign Affairs* 7.

42 P Kotler and N Lee, *Corporate Social Responsibility: Doing the Most Good for Your Company and Your Cause* (2005) 10–11.

43 J Farrar, *Corporate Governance in Australia and New Zealand* (2001) 103–105.

44 Farrar ibid at 106.

45 Burke above n 29 at 29.

46 The state intends to protect the other stakeholders' interests in the company through regulation.

47 Henriques above n 3 at 73.

48 Tolmie above n 25 at 276.

of employees and changing times. CSR offers speedy responses to any problems that employees may face. Regulation of corporate practices may not offer the remedy needed. In fact, CSR is more focused on precautionary measures rather than remedy based approaches, which makes it more appealing to both the corporations and the stakeholders.

The European Union (EU) has issued a White Paper on CSR[49] in which it has concluded that so far a voluntary approach is preferable. In some cases, voluntary standards do become the precursor of legislation especially if standard practices are widely accepted and practiced. Ultimately, an effective labour rights regime will comprise binding international laws and an international agency with real enforcement powers. However, since that is not the case at the moment, a voluntary mechanism may well work. What is needed is not a regulatory regime for CSR but a standardised approach which can achieve sustainable development. The World Business Council for Sustainable Development and the International Chamber of Commerce believe that businesses can deliver sustainability through corporate self regulation[50] which can be done with the adoption of codes of conduct and social reporting.

D. Corporate Codes of Conduct

Currently there is no international law on the regulation of the Transnational Corporations (TNCs). What are in place are private codes of conduct. A private 'code of conduct' is a written policy, or statement of principles, intended to serve as the basis for a commitment to particular corporate conduct.[51] Such codes of conduct have strengths and limitations. Strengths are:[52] they work effectively for corporations where law enforcement is weak, they avoid the process of drafting an international code, the standards set reflect the needs and values of the company and they promote good reputation of the company. Common criticisms include:[53] inadequate or lack of enforcement, compliance and monitoring mechanisms, they often do not involve any penalties for non compliance and a code of conduct for a particular TNC may not be applicable across the board especially if it means additional costs. However, it is useful to note that, in the long run, such costs may outweigh the benefits obtained from having a good reputation. The International Labour Organisation (ILO) has found that the proliferation of such diverse private codes of conduct addresses some, but not all, core labour standards.[54] Creating a labour rights regime fully effective in upholding all core labour standards remains far from achievable. For codes of conduct to be effective, they must be properly implemented and verified. The verification should be developed and performed following carefully defined standards and rules to apply to the organisations and individuals undertaking the so called 'social auditing' (which will be covered in more detail in the later part of this

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49 Communication of the Commission on the EU strategy to promote CSR, *Corporate Social Responsibility: a Business Contribution to Sustainable Development* Commission of the European Communities, 2 July 2002. available at <http://ewindows.eu.org/Industry/Reporting/cec__corporate_responsibility/csr_eu_strategy.pdf>.

50 CorpWatch, Holding Corporations Accountable, *NGOs to Monitor Business Group's Plans for Earth Summit II* (2001) available at <http://www.corpwatch.org/article.php?id=929>.

51 M Urminsky (ed), *Self-Regulation in the Workplace: Codes of Conduct, Social Labeling and Socially Responsible Investment* (2001) Management and Corporate Citizenship Programme Job Creation and Enterprise Development Department 13 available at <http://www.ilo.org/dyn/empent/docs/F1936481553/1_mcc_wp.pdf>.

52 Frynas above n 26 at 61.

53 Frynas above n 26 at 62, 63 & 181.

54 ILO, *Corporate Codes of Conduct* available at <http://www.itcilo.it/english/actrav/telearn/global/ilo/code/main.htm>.

essay). While social auditing can solve the problem of implementation and monitoring of such codes, standardisation will help ensure that international labour standards are realised through these voluntary private codes of conduct.

1. *Standardisation of Corporate Codes of Conduct*

On 15 January 1999, the European Parliament adopted a Resolution on 'EU standards for European enterprises operating in developing countries: towards a European Code of Conduct' calling for a European corporate code of conduct to contribute to a greater standardisation of voluntary codes of conduct. Such a code would be based on international standards and the establishment of a European Monitoring Platform, including provisions on complaint procedures and remedial action.[55] Currently there are no international standards on corporate codes of conduct. Codes of conduct on labour standards should be built on those being promoted by the ILO. However, codes should not be restricted to the ILO labour standards. Rather they should be considered as an absolute minimum. A socially responsible corporation would go beyond such standards (since the ILO standards are adopted by ILO only through consensus) to safeguard its employees rights.

Social reporting would not be difficult if the codes of conduct were imposed on corporations by law. However, because they are voluntary, the expectation is that corporations will be transparent and accountable in demonstrating to the general public just how socially responsible they really are! This is so even if the codes of conduct were self imposed and standardised. Hence, the importance of social reporting.

E. Corporate Social Reporting

In the late 1960s and early 1970s, many different concepts were developed in the United States and some of the EU countries under the headings of 'corporate social accounting' and 'corporate social audit.'[56] The intention at the time was to systematically collect, regularly document, and publicly discuss socially relevant information about business activities. However these terms often led to false expectations. They tended to be misinterpreted as referring to a kind of completely quantifiable societal impact accounting.[57] To avoid misunderstanding and to expand the scope of the models, the broader and more flexible term 'social reporting' was introduced.[58]

Traditional reporting and accounting are based on the entity concept (the economic nature of the organisation) and assumes the concept of going concern (that the entity will continue to operate indefinitely).[59] However, while social reporting does not ignore the entity concept, it does not assume going concern either, as it is through the concept of corporate social responsibility that a corporation seeks the 'licence to operate.' Social accounting aims to assess the impact of a corporation on people, both internally and externally; i.e. all its stakeholders. Coverage of social topics is discussed by almost two thirds of the corporations, generally, in one or more of four areas: [60]

55 *Resolution on EU standards for European enterprises operating in developing countries: towards a European Code of Conduct* [1999] OJ C 104/180.

56 A Antal et al, *Corporate Social Reporting Revisited*, (FS II 02–105) (2002) 1 available at <http://skylla.wz-berlin.de/pdf/2002/ii02-105.pdf>.

57 Antal et al ibid at 1–2.

58 Antal et al ibid at 2.

59 Gray above n 21 at 68.

60 KPMG above n 34 at 5.

core labour standards, working conditions, community involvement and philanthropy.[61] While the majority of companies express their commitment to these issues, reporting social performance remains sketchy. There are several limitations to the existing studies on corporate social disclosures. First, most of the studies involve social disclosures through annual reports and press releases rather than stand alone social reports.[62] Second, when corporations disclose information in general, it may be strategically oriented to repair lost goodwill or to improve reputation rather than to be transparent and accountable to the general public.[63] The aim of the social reports are (supposedly) to achieve corporate social responsiveness by promoting:[64] informed corporate decisions with full understanding of the implications of any action or behaviour, accountability to the general public through 'optimal truthful disclosure',[65] an understanding of stakeholder expectations and a measurement of progress towards meeting those expectations. Overall, such a reporting system will allow corporations to pursue their profit objective but not in a manner that is responsive to the expectations of society.

1. *Towards Mandatory Social Reporting?*

Voluntary measures do not necessarily make a system unsustainable or irresponsible. However social reporting should not be about the public relations of corporations, glossy reports or extra curricular activities.[66] Social reporting should be about fundamental analysis of the impact a corporation has on the society in which it operates and on the other stakeholders (in this case employees) and bringing about change in behaviour in the interests of sustainable development.[67] Although voluntary social reporting is on the rise, if the regime fails to address societal expectations in order to determine corporations' social responsibilities, then a mandatory system may be necessary. For a voluntary social reporting regime to work, it must be a generally accepted practice, widespread and with reporting of the highest standards.

The EU's Social Policy Agenda 2006–2010[68] has already called for social reform. For its agenda on CSR, the European Commission will bring forward proposals to establish mandatory social reporting for all EU companies in their operations in the EU and globally. The EU is of the view that voluntary initiatives are not enough to reverse the unsustainable impacts of corporate activities or to meet the standards set by existing global initiatives. The EU feels that it must take strong action to adopt binding legislation on CSR. This would ensure that all EU companies respect agreed international norms and standards for achieving sustainable development. It is crucial that

61 Philanthropy is a company's financial contribution towards resolving a social problem. Craig Sasse and Ryan Trahan, 'Rethinking the New Corporate Philanthropy' (2007) 50 *Business Horizons* 29.

62 D Hess and T Dunfee, *The Kasky-Nike Threat to Corporate Social Reporting: Implementing a Standard of Optimal Truthful Disclosure as a Solution* available at <http://lgst.wharton.upenn.edu/dunfeet/Documents/Articles/Kasky-Nike%20TWDfinal1-2005.pdf>.

63 Hess ibid.

64 D Hess, 'Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness' (1999) 25 *Journal of Corporate Law* 41.

65 Hess above n 62.

66 Solidar Briefing, *Corporate Social Responsibility: International Action for International Change* (2003) 1 available at <http://www.solidar.org/English/pdf/CSR%20International.pdf>.

67 Solidar Briefing ibid at 1.

68 Social Platform, *Social Policy Agenda 2006–2010: Proposals from the Social Platform* (2004) available at <http://www.cev.be/Documents/Social%20Policy%20Agenda%202006-2010%20SocPlatform.pdf>.

business activities urgently and significantly reduce their negative impacts and work to increase positive benefits.

Advantages of legislation are:[69] less exploitation of labour, less bribery and corruption, legal consequences for breaches of legal obligations, promotion of a level playing field, good for business (such as reputation, human resources, branding and making it easier to locate in new communities), could help to improve profitability, growth and sustainability, some areas such as downsizing could help to redress the balance between companies and their employees, difficult for rogue companies to compete through lower standards and the wider community would benefit as companies reach out to the key issue of underdevelopment around the world.

Disadvantages of legislation are:[70] additional bureaucracy with rising costs for observance and costs of operation could rise above those required for continued profitability and sustainability. Critics already argue that the CSR of companies is simply to make a profit (and legislation would increase the vocalization of these concerns) and reporting criteria in its constant evolution vary so much by company.

Hence a mandatory system may not necessarily be the answer at this stage. What is suggested for now is that the experiments with mandatory reporting systems currently underway in Europe be closely studied in order to determine the more viable option. However, since voluntary social reporting is still widely practiced by those who do so, Hess has suggested that the way to achieve stakeholder expectations in such a system is through public policy supporting the production and integrity of corporate social reports, which can be achieved through:[71] (1) greater standardization, (2) third party assurance and (3) liability rules for false or misleading statements. All these will be explored in turn.

2. *Standardised Reporting*

Currently there are no agreed set of international guidelines for corporate social reporting. The European Commission's Green Paper on the development of a European framework for encouraging corporate social responsibility advocates reaching an international consensus on reporting. It acknowledges that a 'global consensus needs to evolve on the type of information to be disclosed, the reporting format to be used, and the reliability of the evaluation and audit procedure.'[72] Currently, few corporations do social reporting and those that do may be inconsistent in doing so. Even if they do report, the report may not cover every aspect of workers' rights and working conditions. Poor standards of reporting means that either the information disclosed in the report is done strategically, which does not properly reveal the extent to which the corporation is complying with labour standards and/or the report cannot be accurately interpreted. In other words, the quality of the social reports may not compare with the standard of financial reporting obligations and disclosure. One explanation offered for there being no standard for social reporting is because the nature of each report depends upon the variety of issues it covers, the range of stakehold-

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69 M Hopkins, *Corporate Social Responsibility: an Issues Paper*, Policy Integration Department World Commission on the Social Dimension of Globalization, International Labour Office, Working Paper No. 27, (2004) 7 available at <http://www.ilo.org/public/english/bureau/integration/download/publicat/4_3_285_wcsdg-wp-27.pdf>.

70 Hopkins ibid at 8.

71 Hess above n 62.

72 Commission of the European Communities, *Green Paper: Promoting a European Framework for Corporate Social Responsibility* (2001) available at <http://portal.etsi.org/public-interest/Documents/policy%20documents/SocialResponsibility/com2001_366.pdf>.

ers for whom it is intended and what the reporting organisation is trying to achieve.[73] However, standardisation is inevitable if the problem of strategic disclosure is to be overcome. Standardisation requires that all social reports contain disclosurure on specified matters, thereby preventing selective disclosure. It also requires reports to be presented in a manner that allows for comparison with other corporations' social reports. Once reports are standardised, the corporations would not be able to omit any information unfavourable to the company in any given time. It also requires consistent reporting over time. Social reporting is not a 'one off rubber stamp.'[74] For this purpose, Global Reporting Initiative (GRI) could be used as a standard social reporting format.

GRI[75] is an international social auditing and reporting mechanism which has pioneered triple bottom line reporting.[76] Its guidelines provide a framework of appropriate indicators of performance that identify and require corporations to report on many of the issues that have been identified as important to stakeholder groups.[77] GRI separates corporate performance into economic, environmental and social indicators. Social performance indicators concern an organisation's impacts on the social systems within which it operates.[78] They are grouped into three clusters:[79] labour practices (e.g., diversity, employee health and safety), human rights (e.g., child labour, compliance issues) and broader social issues affecting consumers, communities, and other stakeholders (e.g., bribery and corruption, community relations). However, because many social issues are not easily quantifiable, GRI requests qualitative information where appropriate. Social reporting on labour standards can be further standardized with the adoption of Social Accountability 8000 (SA8000) where specific disclosures regarding labour standards are required.

SA8000 Standard is primarily concerned with workplace practices and the need for companies to comply with national labour laws and international labour standards. It was in response to the diversity of codes of conduct that Social Accountability International developed a system for independently verifying corporate compliance with labour standards, based on key elements of the ILO's conventions and the management systems of the International Organisation for Standardisation.[80] It specifies that a social report on labour standards should include:[81] child labour, forced labour, health and safety, collective bargaining, discrimination, disciplinary practices, compensation, and management systems.

GRI and SA8000 are complementary.[82] While GRI provides companies with specific indicators and an overall reporting structure for economic, environmental and social performance, SA8000 adds elements necessary for social auditing and helps companies track progress of workplace performance. To date, nearly 1,000 organisations in over sixty countries are involved with

73 Henriques above n 3 at 24.

74 Solidar Briefing above n 66 at 2.

75 The GRI Guidelines are essentially becoming the equivalent of Generally Accepted Accounting Principles for social reporting.

76 D Leipziger, *The Corporate Responsibility Code Book* (2003) 425.

77 S Cooper, *Corporate Social Performance: A Stakeholder Approach* (2004) 11.

78 Global Reporting Initiative, *Sustainability Reporting Guidelines 2002* (2002) 51 available at <www.epeat.net/Docs/GRI_guidelines.pdf>.

79 Cooper ibid.

80 Commission of the European Communities above n 72 at 17.

81 Social Accountability International, *Overview of SA8000* (2007) available at <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=473>.

82 Social Accountability International, *GRI SA 8000 Comparison (Case Study)* (2005) available at <http://www.sa-intl.org/index.cfm?fuseaction=document.showDocumentByID&nodeID=1&DocumentID=61>.

sustainability reporting using the GRI guidelines[83] and there are currently 1,315 SA8000 certified facilities in sixty three different countries and seventy different industries, employing 647,203 labourers.[84]

3. *Audit of Social Reports*

For any reporting to be meaningful, there has to be some independent accountability mechanisms or standards in place to hold company reporting in check. Such standards should provide clear guidance to auditors on their roles and responsibilities while at the same time increasing the credibility of the social reports.[85] The purpose of social auditing is for a corporation to assess its social performance in relation to society's expectations. Independent assurance remains a valuable part of reporting. Hence the auditors of social reports are to be independent from the corporation. The percentage of social reports that are independently audited is quite low. However, according to KPMG, the number of reports with assurance statements have increased.[86]

Social auditor independence requires specific standards. Initiatives such as the Institute of Social and Ethical AccountAbility's AA1000.[87] Standards such as AA1000 Assurance Standard, for social or sustainability report auditing, should be taken into account. Launched only on 25 March 2003, in 2004 a reported 101 organisations and assurance providers were using the AA1000 Assurance Standard. The AA1000 Assurance Standard is based upon three so called 'Assurance Principles':[88] 'materiality',[89] 'completeness'[90] and 'responsiveness'.[91] For the Association of Chartered Certified Accountants Awards for Sustainability Reporting 2005, the winners of both the 'best sustainability report' and the 'best social report' were members and users of the AA1000 Assurance Standard.[92] It has already been suggested that the AA1000 Assurance Standard fundamentally complements the GRI (and the SA8000) by providing a basis for independent third parties to assure and verify sustainability, or more specifically social reporting, in order to prevent publication of misleading reports.

83 Global Reporting Initiative, *About GRI–What We Do* (2007) available at <http://www.globalreporting.org/AboutGRI/WhatWeDo/>.

84 Social Accountability International, *SA8000–Certified Facilities Summary Statistics* (2007) available at <http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageID=745>.

85 Hess above n 62.

86 Social Accountability International above n 34 at 5.

87 Institute of Social and Ethical AccountAbility, *AA1000 Series: AA1000 Assurance Standard* (2003). available at <http://www.accountability21.net/default.aspx?id=122>.

88 Institute of Social and Ethical AccountAbility ibid.

89 The report covers all the areas of performance that enables stakeholders to judge the organisation's sustainability performance.

90 The information disclosed has to be complete and accurate enough to assess and understand the organisation's performance in all these areas.

91 The organization has to respond coherently and consistently to stakeholders' concerns and interests.

92 Institute of Social and Ethical AccountAbility, *News and Events: AccountAbility Members and AA1000AS Adopter among the winners at this year's ACCA Awards for Sustainability Reporting* (23 February 2005) available at <http://www.accountability.org.uk/news/default.asp?id=150>.

4. *Liability for Misleading Reports*
Misleading statements can be classified as false advertisements, for which a corporation could incur liability as in *Kasky v Nike*.[93] However, damage to a company's reputation, a highly valuable asset, can mean more damage than any liability imposed by a court. Hence I would disagree that there ought to be laws for misleading reports. Problems can be overcome by social auditor independence plus activism (as has been discussed earlier). This is so as not to discourage voluntary social reporting which is so widely practiced by corporations and are on the rise, not only globally but in New Zealand as well.

IV. Impact of CSR on New Zealand Corporations

There are fifteen statutory provisions in the NZ legislation that have grasped the concept of CSR by imposing an obligation upon Crown entities to exhibit a 'sense of social responsibility.'[94] While local councils do not have to exhibit a sense of social responsibility, they have a legal obligation to promote 'social responsibility.'[95] Of these fifteen statutes, only four talk about the principle of being a 'good employer.'[96] The 'good employer' provisions provide that an employer, as necessary for fair and proper treatment of employees in all aspects of their employment, must provide:[97] good and safe working conditions, an equal employment opportunities programme, impartial selection of suitably qualified persons for appointment, and opportunities for the enhancement of the abilities of individual employees. The 'good employer' must also recognise:[98] the aims and aspirations and employment requirements, the cultural differences of ethnic or minority groups, employment requirements of women, employment requirements of persons with disabilities, aims and aspirations of Maori people, employment requirements of Maori people and the need for greater involvement of Maori people in the Public Service. While not all statutory reference to the principle of being a 'good employer' is defined, reference to this principle currently appears in a variety of public, private and local Acts and are included in a number of Bills currently under consideration by Parliament. It is important to note however, that this obligation is seen outside the concept of corporate social responsibility since social responsibility is generally attributed to serve the interests of the local community members in which these entities operate, not the employees that they

93 *Kasky v Nike* 27 Cal 4th 939 (SCt Cal, 2002).

94 Crown Research Institutes Act 1992 s 5(1)(f); Health and Disability Services Act 1993 s 11(3)(a); Housing Corporation Amendment Act 2001 s 3B(a)(i); Housing Restructuring (Income Related Rents) Amendment Act 2000 s 3(1)(a); Land Transport Management Amendment Act 2004 s 68(2); Local Government Act 2002 s 59(1)(c); Local Government (Auckland) Amendment Act 2004 s 8(2); New Zealand Public Health and Disability Act 2000 s 22(1)(g); Public Trust Act 2001 s 9(e); Racing Act 2003 s 9(2)(b); Radio New Zealand Act 1995 s 8(1); Reserve Bank of New Zealand Act 1989 s 169; Southland Electricity Act 1993 s 4(1)(c); State Owned Enterprises Act 1986 s 4(1)(c); Television New Zealand Act 2003 s 12(3)(c).

95 Standards Amendment Act 2006 s 10(1)(f).

96 Local Government Act 2002 s 59(1)(b); Local Government (Auckland) Amendment Act 2004 s 8(3)(f); New Zealand Public Health and Disability Act 2000 s 22(1)(k); and Health and Disability Services Act 1993 s 11(3)(c).

97 First appeared in State Sector Act 1988 s 56(2) and later adopted by other legislations as well the most recent being Lawyers and Conveyancers Act 2006, Schedule 5, s (7)(2).

98 Ibid.

employ.[99] While the private business sector is not obligated by the concept of social responsibility, their behaviour is governed by the principles of 'good employer' and 'good faith.'[100]

The business sector is not expressly required by law to be a 'good employer.' However, it has been held by Judge Colgan that the principle of being a 'good employer' applies 'expressly or by common law, as much to non State sector employers as to the public service.'[101] The principle of being a good employer requires that they act in 'good faith.' which affects all aspects of the employment environment and the employment relationship.[102] The principle of 'good faith' has not been defined statutorily but it certainly goes beyond the mutual obligation not to breach 'trust and confidence' of their employees.[103] The duty of good faith 'requires the parties to an employment relationship to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive, communicative, and supportive.'[104]

Hence, while the concept of corporate social responsibility has not been expressly extended to legally govern employment relations both within the business and public sectors, it is not fully absent from legislation and can be implied to operate under the principles of 'good employer' and 'good faith'. In fact under the Crown Entities Act some employers are actually required to include in their annual report information to demonstrate compliance with the obligation to be a good employer.[105] While New Zealand businesses do not have a similar obligation[106] except for financial reporting,[107] nevertheless this does not prevent local businesses from demonstrating that they can be socially responsible.

A. *Codes of Conduct for New Zealand Businesses?*

There are very few local businesses who have adopted codes of conduct for dealing with employment relations in New Zealand. The reason is that the labour regime in New Zealand is heavily regulated via seventeen pieces of legislation in total.[108] Hence a voluntary measure is not required as legal obligations owed to employees are already imposed on the business sector. Nevertheless, because local businesses setting up businesses abroad are not bound by legal obligations to be a

99 Crown Research Institutes Act 1992 s 5(1)(e); Housing Restructuring (Income Related Rents) Amendment Act 2000 s 3(1)(d); Local Government Act 2002 s 59(1)(b); New Zealand Public Health and Disability Act 2000 s 22(1)(k); Public Trust Act 2001 s 9(d); Reserve Bank of New Zealand Act 1989 s 168; Southland Electricity Act 1993 s 4(1)(b); State Owned Enterprises Act 1986 s 4(1)(b).

100 Employment Relations Amendment Act (No 2) 2004 s 4(1).

101 *French v Chief Executive of the Department of Corrections* [2002] 1 ERNZ 325, 349 para 98.

102 Employment Relations Act 2000 ss 3 & 4.

103 Employment Relations Amendment Act (No 2) 2004 s 5(1)(1A)(1)(a).

104 Charles Baird, 'Back Toward Surfdom in New Zealand' (2004) 54 *Freeman* 47.

105 Crown Entities Act 2004 s 151(1)(g).

106 The only information legally required regarding employees in the annual reports are employees' remuneration. Companies Act 1993 211(1)(g).

107 As required under the Financial Reporting Act 1993.

108 The labour regime is governed by: Accident Rehabilitation and Compensation Insurance Act 1992; Accident Insurance (Transitional Provisions) Act 2000; Disabled Persons Employment Promotion Act 1960; Employment Relations Act 2000; Equal Pay Act 1972; Fair Trading Act 1986; Health and Safety in Employment Act 1992; Holidays Act 2003; Human Rights Act 1993; Industry Training Act 1992; Minimum Wage Act 1983; Parental Leave and Employment Protection Act 1987; Privacy Act 1993; Protected Disclosures Act 2000; State Sector Act 1988; Volunteers Employment Protection Act 1973; and Wages Protection Act 1983.

'good employer' and to act in 'good faith' off shore, they may want to engage in social reporting to demonstrate that they are socially responsible both at home and abroad. Even though New Zealanders are more concerned with New Zealand's 'clean green' image than with social reporting because of the tight labour regime in New Zealand, they may still expect that social reports on labour standards are made available to them if local companies are based in overseas countries especially in those with low labour standards. Therefore, accountability for labour rights may not necessarily be in regard to employment issues at home but abroad. More so in the developing countries. So far, New Zealand examples of social indicators regarding employees include:[109] staff satisfaction, lost time injuries, health and safety, staff pride, investment in sabbatical fellowships, staff training, perception of work flexibility, staff turnover, workforce diversity and perceptions of job security. These are but a few of the social indicators identified by SA8000. Even if local businesses do not have voluntary codes of conduct, those thinking of setting up business abroad should think about adopting standardised codes of conduct that incorporate labour standards so they can engage in standardised social reporting.

B. Standards of Social Reporting in New Zealand

Social reporting in New Zealand remains voluntary.[110] Thus there is no set of guidelines for standardised social reporting on labour standards. The social reporting regime within the business sector in New Zealand is actively encouraged and supported by the New Zealand Business Council for Sustainable Development (NZBCSD) and the Ministry for the Environment. The NZBCSD, in collaboration with the Ministry for the Environment, has produced 'Business Guide to Sustainable Development Reporting: Making a Difference for a Sustainable New Zealand' (Business Guide to Sustainable Development Reporting)[111] as a guideline to help New Zealand businesses in the preparation of triple bottom line or sustainable development reports. This Guide employs the principles of GRI for development of indicators for accounting and reporting and the AA1000 framework for generating stakeholder engagement.[112] Out of 54 members of NZBCSD, 19 companies are actively involved in sustainable development reporting.[113] An overview of the four case studies, chosen by the NZBCSD for sustainable development reporting, show either a mere reference to workplace standards policy and its assessment in general,[114] or include specific social

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109 NZBCSD, *Sustainable Development Indicators from GRI* (2007) available at <http://www.nzbcsd.org.nz/sdr/content.asp?id=80>.

110 A review of the Financial Reporting Act 1993 did propose that it may be appropriate to set standards for non financial measures be reported however this has not eventuated as yet. Ministry of the Environment, *III: Financial Reporting Standards*, (2004) [79] available at <http://www.med.govt.nz/templates/MultipageDocumentPage____3740.aspx#P291_66882>. Also The Warehouse has demanded legislative actions to make sustainable development reporting mandatory however this has been opposed by a taskforce of the Institute of Chartered Accountants of New Zealand. New Zealand Business Roundtable, *Making Sense of Sustainable Development* (2002) 2 available at <http://www.nzbr.org.nz/documents/speeches/speeches-2002/making_sense_development.pdf>.

111 NZBCSD, *Business Guide to Sustainable Development Reporting: Making a Difference for a Sustainable New Zealand* (2002) available at <http://www.nzbcsd.org.nz/sdr/SDR_Guide.pdf>.

112 NZBCSD ibid at 18 and 19.

113 NZBCSD, Sustainable Development: Member Involvement (2007) available at <http://www.nzbcsd.org.nz/sdr/content.asp?id=95>.

114 The Warehouse, *2006 Society and Environment* (2006) 19-22 available at <http://www.thewarehouse.co.nz/Content.aspx?id=100000285>.

performance indicators regarding labour standards or policy, ranging from one to seven pages,[115] indicating that even with the guidelines, sustainable development reports are far from reaching any standards in New Zealand yet. However, it is expected that the content of Sustainability Reports will bend towards more quantitative reporting over time, to enable comparisons to be made against a previous year's reports or comparative organisations.[116]

C. Fonterra – A Local Case Study

Fonterra Co-Operative Group Ltd (Fonterra) is New Zealand's largest company and exporter. It offers a wide range of employment opportunities in over 140 countries, with more than 20,000 roles across the globe. It signed an agreement committing itself to international labour standards for its employees in 2002, which applies to Fonterra and to its subsidies globally.[117] Upon signing this agreement, Fonterra's chief executive Craig Norgate said, 'Our company is focussed on the highest possible standards of … social performance. We see no contradiction between [financial, environmental and social] measures of performance. They are entirely complementary ... '[118] The agreement commits Fonterra to:[119] respect the principles in various key ILO Conventions including the right to freedom of association and collective bargaining for all its employees, provide safe and healthy working conditions for its employees and shall not use child labour, forced or compulsory labour or discriminate against any person in respect of their employment, provide affected employees' trade unions with relevant information and to consult with these unions when it contemplates changes to business activities likely to result in a loss of jobs. The New Zealand Council of Trade Union's president Ross Wilson said that the agreement was 'an important signpost to the sort of behaviour being expected of responsible corporations operating on a multinational scale.'[120]

Fonterra has also adopted a business code of conduct titled 'The Way We Work – Fonterra's Business Code of Conduct',[121] which deals with values and principles in all business matters

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115 Urgent Couriers Limited, *Sustainable Development Report for Urgent Couriers Limited* (2001) 8–14 available at <http://www.nzbcsd.org.nz/_attachments/Urgent%5FCouriers%5FSDR%2Edoc>; Landcare Research Mannaki Whenua, *2006: Annual Report* (2006) available at <http://www.landcareresearch.co.nz/publications/annualreport_0506/>; Sanford Limited, *Sustainable Development Report 2003* (2003) 70–76 available at <http://www.nzbcsd.org.nz/_attachments/Sanford%5F2003%5FSDR%2Epdf>; and MWH New Zealand Ltd, *Sustainable Development Report Year Ending December 2004* (2004) 5–9 available at <http://www.mwhglobal.co.nz/Files/MWHSusDevReport2004.pdf>.

116 J Leong and M Werner, 'Profit vs. Passion: Triple Bottom Line Reporting' (2005) 1 *Ianorth&south New Zealand & the World of Internal Auditing: a Newsletter for Internal Auditors in New Zealand* 4 available at <http://www.iianz.co.nz/members/resources/Newsletter%20September2005.pdf>.

117 Fonterra Co-operative Group Ltd, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco, and Allied Workers' Association and New Zealand Dairy Workers Union Incorporated, *Fonterra and International and New Zealand Unions Sign Agreement on Labour Standards and Changes in Business Activities Affecting Employment* (2002) available at <http://www.nzbcsd.org.nz/_attachments/union%5Fagreement%2Epdf>.

118 C Norgate, 'Remarks at Signing of Agreement with IUF and New Zealand Dairy Workers' Union' (Speech delivered at the Beehive Foyer, Parliament Buildings, Wellington, 8 April 2002) available at <http://www.nzbcsd.org.nz/_attachments/Norgate%5FUnion%5FSpeech%2Epdf>.

119 Norgate ibid.

120 M Dearnaley, 'Global Giant Signs for Workers' Rights', New Zealand Herald (Auckland), 10 April 2002.

121 This code is not available online but see Fonterra, *Corporate Governance: Ethics* (2007) available at <http://www.fonterra.com/wps/wcm/connect/fonterracom/fonterra.com/Our+Business/Fonterra+at+a+Glance/Financial+and+Statutory+Information/Corporate+Governance/Ethics>.

including employment issues such as: moral courage and leadership, dignity and respect, work environment and hours of work, fair treatment and diversity, harassment, health and safety, child labour and privacy. This Code of Conduct is not limited to any particular country or plant but governs Fonterra's ethical conduct in all its operations and does not act as a substitute for its policies.[122] While it is clear that Fonterra has taken steps to become socially responsible towards its employees, it has not taken similar steps to make optimal truthful disclosure.

A review of Fonterra's 2005–2006 Annual Report reveals that while Fonterra has made reference to its Code of Conduct, it has not identified any social indicators to disclose its social performance in a meaningful way.[123] In other words, Fonterra is not engaging in social reporting or sustainable development reporting in accordance with the guidelines provided under Business Guide to Sustainable Development Reporting despite being involved in the sustainable development reporting initiative undertaken by the NZBCSD. Since there is no significant disclosure, meaningful social independent auditing is also inevitably absent.

Therefore, while Fonterra has signed up for labour standards, has voluntarily adopted a Code of Conduct and has made efforts to include a social performance dimension in its annual report, it is still far from producing a comprehensive sustainable development report, as would be desirable especially if Fonterra wants to compete within a framework of sustainable development. However, actions taken by Fonterra so far are indicative of a climate change for local businesses in New Zealand operating abroad, who want to be seen as socially responsible because they know that it makes business sense to do so.

V. Conclusion

While labour standards have found a new protector, the corporations have also discovered an added value for business in the 21st century. High on the corporate agenda will be a focus on sustainable development, triple bottom line reporting, auditor independence and socially responsible business practices. The ethics of the voluntary codes of conduct and social accountability and reporting, which now constitute a key feature of globalisation, will not go away. Rather the need for accountability and transparency will continue to grow. The faster the corporations close the gap between societal expectations and its performance, the more likely it will be able to sustain itself long term. The essence of the 'business case' for corporations is to be socially responsible and the privatisation of labour standards.

122 Fonterra, *2005–2006 Annual Report* (2006) 41 available at <http://www.fonterra.com/wps/wcm/connect/06a3ed00452c4bd39baedf873d7e2c80/05-06FonterraAnnualReportFinal.pdf?MOD=AJPERES>.

123 Fonterra ibid.