

TERRE DES HOMMES NETHERLANDS AND PRIVATE SECTOR

'A WORLD IN WHICH CHILDREN ARE NO LONGER EXPLOITED.
WE WILL CONTINUE OUR WORK UNTIL THIS IS ACCOMPLISHED'



INTRODUCTION

This paper explores different opportunities for Terre des Hommes Netherlands (TdH NL) to cooperate with the private sector and forms guidance for our strategy 2016-2020. It consists of two parts:

1. our position with regards to cooperation with private sector; and
2. strategies for TdH NL to promote child rights due diligence within the private sector.

For the purposes of this position paper, 'private sector' refers to established companies with clear organisational structures.

Cooperation with the private sector is an emerging topic in the international development aid sector. It is clear that business activities have a direct or indirect impact on the living conditions of children. Companies create jobs and provide economic opportunities, but a value chain can also negatively impact the social and natural environment. Decent labour conditions and proper payments for parents, for example, can improve child development, whereas the depletion of the earth's resources and pollution have adverse consequences for a child's future. While child labour or other forms of exploitation of children can be an acceptable way of doing business for some companies,

others actively address these issues by, for example, implementing CSR programs that provide education or health support in the region.

Generally, companies are expected to run business according to the rules of Corporate Social Responsibility (CSR) as stated in the UN Guiding Principles on Business and Human Rights (UNGPR)¹. A key factor herein is due diligence.

Due diligence means an obligation for companies to recognise the risks of human rights violations (and other CSR tenets), to avoid them, and to take responsibility for any violations. The same is valid for children's rights. It is the responsibility of companies to do everything possible to ensure that the value chains are free of child labour and other forms of child exploitation. TdH NL wants to make sure that the companies we are involved with take due diligence with regards to human rights and children's rights violations seriously. In order to do so, TdH NL has to take a clear position with regard to cooperation with private sector.

1 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, UN 2011 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

1. OUR POSITION WITH REGARDS TO COOPERATION WITH PRIVATE SECTOR

TdH NL prevents child exploitation, removes children from exploitative situations, and ensures that these children can grow up in a safe environment. The UN Convention on the Rights of the Child is a leading guideline for the activities of TdH NL. Together with partners in the East Africa and Asia regions, TdH NL initiates research, monitors state policy of the Netherlands and the countries in which we are active, and engages in lobby and advocacy aiming to ground children's rights in national and international policy in the Netherlands and the regions. Each child must be given all possibilities to fully develop and be protected against any form of exploitation. The private sector also has to respect the rights of the child according to international norms and agreements. Therefore, TdH NL also monitors their activities and, by doing so, aims to stimulate their due diligence.

TdH NL is firmly committed to one of the basic principles of the Sustainable Development Goals: **'leave no one behind'**. The more companies that introduce human rights and children's rights into their policies, the more children will be freed from child labour and other forms of exploitation. TdH NL will therefore try to stimulate as many companies as possible to adhere to child rights due diligence.

WHAT DOES TDH NL WANT TO ACHIEVE THROUGH COOPERATION WITH THE PRIVATE SECTOR?

In the **Theory of Change** of TdH NL, the private sector has a special role to play: as a strategic partner which respects the rights of children, especially the rights of vulnerable or abused children. TdH NL wants companies to actively work on making their value chains free of child labour and other forms of exploitation.

TdH NL has the following goals in its cooperation with the private sector:

- **Engage in dialogue with companies about CSR to ensure respect for children's rights as formulated by the UNGP and Children's Rights and Business Principles.**
- **cooperate with companies to find solutions for children's rights issues in value chains, e.g. in the form of CSR roadmap development and implementation.**
- **access new forms of funding for implementation of TdH programmes.**

In each case dialogue is key. Through initial dialogues with the private sector, TdH NL wants to address children's rights and evaluate companies' current CSR policies and implementation thereof.

By sharing its expertise, TdH NL wants to sensitise companies to child rights violations. Besides, TdH NL wants to ensure that companies include an improvement of children's welfare and respect for children's rights within their company goals, and implement it actively. Where possible, TdH NL will offer its own expertise, or the expertise of partner organisations, for advice and implementation of CSR.

In order to ensure that TdH NL remains close to its mission and vision, TdH NL developed Engagement Criteria for Private Sector Partners. The selection framework is generally based on the ASN Bank's human rights policy model, and specifically on the Children's Rights and Business Principles developed by the UN Global Compact, UNICEF and Save the Children.

In general, these guidelines illustrate that TdH NL does not want to cooperate or be funded by companies which are unwilling to respect human rights and children's rights, as well as the natural environment. The arms and tobacco sectors are, by definition excluded from cooperation with TdH NL. For other high risk sectors, the approach will be limited to sharing information on CSR, child rights due diligence and sensitising companies to children's rights violations. The possibilities for other forms of cooperation will be subject to a case-by-case assessment in accordance with the TdH NL step-by-step approach. The KPMG CSR Report, which identifies high risk sectors, will serve as a guidance for TdH NL.

Furthermore, companies with which TdH NL wants to cooperate must express at the Board level their intention to ensure CSR due diligence as set down in the UNGP, with a special focus on prohibition of child labour and other forms of exploitation. (Terre des Hommes Netherlands Code of Conduct on Corporate Social Responsibility for Cooperating Companies)

STAGES OF COOPERATION

Based on the engagement criteria, TdH NL will clearly define the role it can play in its engagement with individual companies. By providing a clear definition of the role TdH NL will play in each individual case, the organisation aims to guarantee its impartiality and

independence. The choice of the role will depend on the level of the risk of children's rights violations within the value chain of the company, as well as the company's intention (and current activities) to address this risk. The choice of the role will follow the guidelines outlined in the Engagement Criteria for Private Sector Partners and includes an assessment of the company and its CSR compliance by TdH NL. The following roles are possible:

- TdH NL can sensitise, advise and train companies on child rights focused CSR.
- TdH NL can support the implementation of CSR within the company and its value chain, e.g. through the CSR roadmap, including advising companies on the added value of CSR (and therefore stimulating CSR investment).
- TdH NL can facilitate audits of CSR processes.
- TdH NL can be a beneficiary of businesses where the risk of child exploitation and abuse are determined to be very low.
- TdH NL can advocate for changes of practice by certain private sector actors by, for example, funding research and publications on the impact of their work. This will mainly be done through our implementing partners, who can also conduct audits and training.

Depending on the corporate sector, and based on the assessment of company's approach to CSR, it will be possible for TdH NL to adjust its role in engagement with individual companies.

TDH NL' INTENTIONS

- TdH NL wants to convince companies that a value chain free from child labour and other forms of exploitation has long term benefits for individual human beings, for communities and the company itself. (People, Planet, Profit).
- TdH NL wants companies to play an active role in the field of detection, abolition and prevention of child labour and other forms of child exploitation within their own procurement and value chain. TdH NL would like to broaden the vision of companies and convince them that actively combating child exploitation within the whole value chain - starting from purchase, through production to sales - makes the brand stronger and profitable in the long term.
- TdH NL will engage Audit Organisations to check the transparency of the candidate-partners. The

companies which are in dialogue with TdH NL have to be open for external unannounced audits.

- TdH NL would like companies to use their information, processes and positions within communities for combating child trafficking for sexual and other purposes. Companies in the financial sector could use their data for detection of child exploitation, specifically trafficking, and to stop such transactions in case of suspicious or potentially criminal transactions.
- TdH NL wants to support companies which can serve as examples of socially responsible companies² without losing sight of economical goals (profits).
- TdH NL wants to find funding for its projects based on terms of reference which explicitly include respect for human rights, children's rights and environment.

In all of these cases it is important to clarify to companies that investing in the abolition of child exploitation is **value added and profitable**.

Terre des Hommes makes use of a **Code of Conduct on Corporate Social Responsibility for companies cooperating with Terre des Hommes Netherlands ("Code of Conduct")**, to be signed by candidate partners. This Code of Conduct adheres to the actual norms of TdH NL child rights due diligence. The Code of Conduct includes:

- Memorandum of Understanding stating the company's willingness to protect children's rights and to keep the value chain free of child labour and other forms of child exploitation;
- Declaration of the company to be fully transparent in reporting about the efforts to eliminate child labour and other forms of exploitation within the value chain;
- Declaration of the company to be ready for external and unannounced audits by auditors specialised in human rights approach to CSR.

² A social enterprise is an organisation that applies commercial strategies to maximise improvements in human and environmental well-being - this may include maximising social impact rather than profits for external shareholders. Social enterprises can be structured as a for-profit or nonprofit, and may take the form (depending in which country the entity exists and the legal forms available) of a co-operative, mutual organization, a disregarded entity,[1] a social business, a benefit corporation, a community interest company or a charity organisation.

CROSS-SECTOR INITIATIVES

In order to ensure a holistic and successful approach, TdH NL not only works directly with the private sector but also with consumers and the government.

TdH NL engages in advocacy towards the **government and parliament**. The government is ultimately responsible for the protection of children's rights within national and foreign policy. The UN Committee on the Rights of the Child formulates clear recommendations concerning business and State responsibilities on children's rights within its Concluding Observations. TdH NL will advocate for implementation of these recommendations in the Netherlands and in the countries involved.

LOBBY, ADVOCACY AND KNOWLEDGE SHARING

Under the three strategies, there is a range of specific lobby and advocacy as well as knowledge sharing activities that can be implemented by TdH NL.

IMPLEMENTATION OF CHILD RIGHTS PROTECTION & KNOWLEDGE SHARING

- Create a (model) value chain where children's rights are respected.
- Provide training /sensitisation to company management and staff.
- Inform consumers about the wrongs within value chains, and mobilise consumers to critically look at products. TdH NL will initiate research and use reports as base for public campaigns.

LOBBY & ADVOCACY TOWARDS GOVERNMENT

- Active involvement in the process of creating sector covenants addressing children's rights due diligence.
- Lobby for strong government tools to hold companies accountable for their due diligence agreements. Advocate for effective monitoring of compliance.
- Lobby for implementation of measures in situations when companies do not comply with CSR / due diligence.
- Lobby for implementation of international agreements relevant for different corporate sectors.
- Lobby for extending the Dutch Guidelines on Annual Reporting so that companies are obliged to be more open about the whole value chain, including the presentation of a list of evidence.³
- Advocacy for the establishment of a formal

³ EU directive 2014/95/EU regarding Corporate Social Responsibility. There are 'soft' obligations for the biggest companies only. More information: http://ec.europa.eu/finance/company-reporting/non-financial-reporting/index_en.htm

complaint mechanism with the authority to impose appropriate measures (e.g. fines).

- Advocacy towards government to monitor its National Action Plans on Business and Human Rights.

RESEARCH AS THE EVIDENCE-BASE

Addressing companies and informing consumers about violations of children's rights within value chains requires an evidence base. TdH NL will collect evidence from local partners and research, and use it for public campaigns and in communications with companies. It is focused on awareness raising, not stigmatising. TdH NL wishes to engage in dialogue with companies in order to **introduce best practices within value chains. Best practices mean: procurement and value chains free of child labour and other forms of child exploitation, value chains where people receive liveable wages and where children go to school, value chains within communities where protection of children is implemented and where there is respect for the natural environment.**

THE DUTCH GOVERNMENT AS ADDRESSEE

The Dutch government supports CSR and believes that due diligence is the primary responsibility of businesses. The government wants the private sectors to agree on covenants. In 2016 ten covenants were to be signed but this was not realised. For the time being, only two covenants have been agreed to, in the textile and banking sectors. Covenants are not binding for the whole industry, only for signatory companies on an intent basis. Before coming into force, covenants have to be signed by at least 35 individual companies, declaring their intention to respect the provisions of the covenants and to develop an Action Plan. TdH NL will address the Dutch government when state obligations on implementation of CSR are not realised and the UN CRC Concluding Observations and Recommendations⁴ are not met. TdH NL advocates for the implementation of an effective monitoring system and to make due diligence mandatory if necessary (addressing the accountability of private sector).

PRIVATE SECTOR AS ADDRESSEE

When entering into new dialogues with selected companies, TdH NL will stimulate cooperation not only to outline their due diligence and CSR on paper,

⁴ Country Specific Recommendations of UN CRC for Netherlands. More information: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=NLD&Lang=EN

but to actively tackle child labour and other forms of exploitation within the value chain.

CONCLUSIONS

- TdH NL takes a **very strong stance** towards combating child labour and other forms of child exploitation.
- TdH NL will define its **role (and restrict or alternate it if necessary)** when entering into a dialogue with an individual company. TdH NL can give advice on CSR and children's rights, support in implementation, facilitate auditing, be a beneficiary, and advocate for change.
- TdH NL enters into **dialogue with companies** that declare themselves willing to actively tackle child labour and other forms of exploitation, that want to improve their transparency and that are open for audits, in order to fulfill the goals of due diligence and those of TdH NL.
- Partners have to sign the Code of Conduct: **companies declare to be willing to be transparent, to actively tackle child labour and other forms of child exploitation and be open for external audits.**
- TdH NL **makes use of its own expertise or will engage reliable experts to advise companies** willing to create value chains free of child labour and other forms of child exploitation.
- Although TdH NL is not looking seeking confrontation with the private sector, it will **publish reports or research results which prove practices of child labour and other forms of child exploitation in order to raise awareness.**
- TdH NL will **inform consumers** about the wrongs within value chains with the purpose of putting pressure on companies (and governments).



2. NGO STRATEGIES TO PROMOTE CHILD RIGHTS DUE DILIGENCE

FRAMEWORK

TdH NL relies on national and international agreements⁵ concerning human rights and companies responsibility for human rights. According to the UNGP, **states have an obligation to protect human rights and companies have a responsibility to respect these rights.** (UN Protect, Respect and Remedy Framework). A company's obligations towards children are formulated in the Children's Rights and Business Principles which set out actions to respect and support children's rights. According to the Principles, respecting and supporting children's rights requires businesses to both (i) prevent harm and (ii) actively safeguard children's interests.

ILO Conventions 138 and 182 concern specifically protection of children at work. ILO 138 describes the minimum age for admission to employment and work, and ILO 182 focuses on the eliminations of the worst forms of child labour.

Sustainable Development Goal 8.7 obliges states and companies to: "Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms".

(DUTCH) CORPORATE SOCIAL RESPONSIBILITY

It is a (Dutch) company's own Corporate Social Responsibility to respect human rights and children's rights in other countries, in the same way as they are respected in the Netherlands.⁶ The Dutch government assumes that (Dutch) companies use the OECD Guidelines (based on UNGP) as a framework for their CSR. According to the government, companies should be aware of the footprint of their activities in communities where the companies operate. Responsibility for due diligence is part of good entrepreneurship but, as the Dutch government states, which due diligence process is most effective for each separate company, depends also on the size of the company, character of trade

5 Agreements include: Conventions: ILO 138 (1973); ILO 182 (1999), Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises, NL policy: National Action Plan (NAP) Business and Human Rights, Tweede Kamer [Dutch Parliament] (2013–2014) 26 485, nr. 174. General Comment 16 Children Rights Committee on State Obligations Regarding the Impact of the Business Sector on Children's Rights.

6 Defined in the National Action Plan Business and Human Rights, Ministry of Foreign Affairs, 2014.

relationships, the sectors and countries where companies work.

In a perfect due diligence situation, companies should work sustainably, taking care of people and the environment. 'People' concerns both the company's own personnel and the people in the communities where the company works and who experience the impact of company activities. The government does not give any legal completion to the duty of care: the companies are supposed to take full responsibility for mapping and avoiding risks of human rights violations, as well as for taking proper measures to prevent child labour, abuse or exploitation.⁷

The Dutch Transparency Benchmark provides insight on the transparency of social reporting of the 485 largest companies. As of 2017, in accordance with EU law, companies with more than 500 employees will have to report on environmental, social and employee-related, human rights, anti-corruption, and bribery matters.⁸

In 2014, by order of the Dutch government, KPMG published a CSR risk assessment report, 'MVO Sector Risico Analyse', which identified the thirteen sectors that have the most CSR-related risks. The government stimulates and facilitates these sectors to agree on CSR covenants, which are agreements concerning a joint policy on CSR due diligence. The covenant negotiations are intended to create an opportunity to find solutions for complex CSR risks through cooperation between sector members, civil society organisations, trade unions, and Dutch authorities. Several covenants are now in the pre-discussion phase, and some are already in the phase of text negotiations, which are confidential. Once the final text is agreed, the covenant is open for signatures. With a minimum of 35 signatures, it enters into force. Signing a covenant obliges a company to formulate a Plan of Action on CSR. The covenants are based on the UN Guiding Principles on Business and Human Rights.

The Dutch government also organises Roundtable advisory meetings for stakeholders to support the formation of covenants. TdH NL participates in the Stakeholders Round Table but is not (yet) involved in the confidential negotiations on specific covenants.

7 Based on the UN Global Compact

8 Stated in the PE-47-2014-REV-EN DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2013/34/EU AS REGARDS DISCLOSURE OF NON-FINANCIAL AND DIVERSITY INFORMATION BY CERTAIN LARGE UNDERTAKINGS AND GROUPS

CHILD RIGHTS FOCUSED DUE DILIGENCE

Despite the many international and national laws and regulations on the responsibility to protect and respect human rights⁹, child exploitation within a corporate context has not yet been eradicated. **Therefore, TdH-NL aspires to stimulate companies to actively improve and guarantee their child rights due diligence. This is in accordance with goal 17 of the sustainable development goals, advocating for a global partnership for sustainable development.** The strategy to stimulate companies to conduct their businesses in line with the Human Rights and Business Principles can take different forms. This part of the position paper maps these different strategies and their limitations.

According to Mc Williams (2015), Corporate Social Responsibility (CSR) is defined as:

*“Actions of firms that **contribute to social welfare**, beyond what is required for profit maximization.”*

The idea of value creation in the fields of people, planet

9 United Nations. (2011). Ruggie Principles; ILO. (1973). ILO Convention no. 138 on the Minimum Age for Admission to Employment and Work; ILO. (1999). ILO Convention no. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; OECD. (2011). Guidelines for international enterprises.

and profit is often used synonymously. Human rights are an important aspect of CSR and are subsumed under the concept of human rights due diligence. The UN (2011) defines human rights due diligence as:

*“An ongoing risk management process.... in order to identify, prevent, mitigate and account for how (a company) addresses its adverse human rights impacts. It includes four key steps: **assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.**”*

Human rights due diligence is based on, and supported by, different international conventions and regulations. These conventions and regulations are:

- Convention on the Rights of the Child.
- ILO Convention no. 138 on the minimum age for admission to employment and work.
- ILO Convention no. 182 on the worst forms of child labor.

Due to these regulations, companies of all sizes have the responsibility to respect and protect universal human rights in general, and child rights in particular. This is further specified in the different international regulations that link child rights and human rights due diligence, as shown in table 1.

Table 1. International regulations on child rights

| UNGPS (2011) | OECD GUIDELINES (2011) | GLOBAL COMPACT |
|---|--|--|
| <p>Focus on business enterprises, regardless of their size, sector, location, ownership and structure.¹</p> <p>Business enterprises have the responsibility to respect human rights and requires that business enterprises:</p> <ol style="list-style-type: none"> Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. <p>Business enterprises should also have:</p> <ol style="list-style-type: none"> A policy commitment to meet their responsibility to respect human rights; A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; Processes to enable the remediation of any adverse human rights impacts. | <p>Focus on MNCs.</p> <p>MNCs should:</p> <ol style="list-style-type: none"> Contribute to the effective abolition of child labour, and take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur. <p>Implementation supported by NCPs. NCPs also mediation function.</p> | <p>Focus on responsible companies.</p> <p>Responsible companies should:</p> <ol style="list-style-type: none"> Support and respect the protection of internationally proclaimed human rights. Make sure that they are not complicit in human rights abuses. Uphold the effective abolition of child labour. |

In general, companies should **avoid causing, contributing to, or being linked to adverse human rights impacts**. Besides that, companies have the responsibility to reverse a **negative social impact** if this is present.¹⁰ This can be ensured by policy commitments to meet the responsibility to protect human rights, a human rights due diligence process by which the company is also responsible for the value chain, and processes to enable the remedying of any adverse human rights impacts.

A critical note should be placed on the non-binding character of these international regulations. Only Multinational Corporations (MNCs) can be held accountable for violations of these international regulations if there is a complaint submitted at National Contact Points (NCPs).¹¹ This results in the voluntary character of CSR and human rights due diligence for all other companies, as pointed out by Prof. de Waard (2016).

The implementation of these international regulations on CSR and human rights due diligence is supported by ISO26000, an international framework for the implementation of CSR that guides companies that wish to improve their social impact. The respect and protection of human rights are an important aspect of this implementation framework.

The Children's Rights and Business Principles (UNICEF, 2009) have specified the responsibility of businesses to respect and protect children's rights, within their human rights due diligence responsibility. According to the Principles, all companies should:

- “Meet their responsibility to **respect children's rights** and commit to supporting the human rights of children”;
- “Contribute to the **elimination of child labour**, including in all business activities and business relationships”;
- “Provide **decent work** for young workers, parents and caregivers”;
- “Ensure the **protection and safety of children** in all business activities and facilities”;
- “Ensure that **products and services are safe**, and seek to support children's rights through them”;
- “Use **marketing and advertising that respect and support children's rights**”;
- “**Respect and support children's rights in relation to the environment and to land acquisition and use**”;

10 Defined in the Convention of the Rights of the Child. (1990); ILO. (1973); ILO. (1999).

11 Concluded in the OECD (2011).

- “**Respect and support children's rights in security arrangements**”;
- “**Help protect children** affected by emergencies”;
- “**Reinforce community and government efforts** to protect and fulfill children's rights.”

STRATEGIES TO STIMULATE COMPANIES' CHILD RIGHTS DUE DILIGENCE

As described in the introduction, many international regulations are currently in place to stimulate the positive impact of businesses on human and children's rights. This is important because MNCs are able to directly influence the labor rights of their own employees, and indirectly those within their value chain. However, in many countries child exploitation is still the rule rather than the exception. According to the ILO (2013), **168 million children worldwide** are involved in child labour, of which **85 million** are involved in hazardous work. A good example of this are the thousands of children involved in the first stage of mica processing, as observed in the SOMO report ‘Beauty and the Beast’. Therefore, TdH NL aspires to encourage companies to actively improve and guarantee their *child rights due diligence*.

NGOs can use different strategies in order to actively stimulate corporate social responsibility in general, and *child rights due diligence* in particular. Prof. Winston (2002) identified eight different strategies, arranged from the least to most confrontational. These strategies are:

1. “**Dialogue aimed at promoting the adoption of voluntary codes of conduct**”, by which attention is raised for the business case of CSR without external monitoring;
2. “**Advocacy of social accounting and independent verification schemes**”, by which companies cannot be trusted to self-monitor their social performance;
3. “**The filing of shareholders resolutions**”, by which large pension funds can exert considerable economic as well as moral influence at annual shareholder meetings;
4. “**Documentation of abuses and moral shaming**”, by which public criticism is linked to their brand name and their corporate reputation;
5. “**Calls for boycotts of company products or divestment of stock**”, by which companies experience adverse effects on what they consider to be their primary economic mission: the ability to return a profit on investment;
6. “**Advocacy of selective purchasing laws**”, by which a stronger form of economical pressure is exerted;

7. “**Advocacy for government-imposed standards**”, by which NGOs focus their efforts on enacting legislation at the national, or preferable the international, level by imposing enforceable legal obligations on MNCs;
8. “**Litigations seeking punitive damages**”, by which companies are held accountable in courts for human rights violations committed by them or their business partners.

The effectiveness and related risks of the most implemented strategies is analyzed within different studies and will be discussed below.

First of all, the dialogue aimed at promoting the adoption of voluntary codes of conduct is a mechanism adopted by NGOs and businesses to address complex social problems. The knowledge and resources of companies and NGOs can be combined in order to create shared value and combat these complex social problems (Barroso-Mendez, et al., 2014). In an ideal situation, the success of these partnerships should be guaranteed in order to solve complex problems such as child labour (Chowdhry & Beeman (2001). However, in reality, there are many limitations to this strategy that can have a negative influence on its effectiveness. One main limitation, as perceived by NGOs, is the fact that companies monitor their own compliance (Barroso-Mendez, et al., 2014). This means it is possible for companies to easily gain legitimacy (green-washing), without being held accountable. In other words, strategies of dialogue can lead to legitimacy for companies without combatting child labour.

Second, social accounting and verification schemes are developed in order to address the lack of accountability in self-monitoring by companies. Civil society and accountants should be especially alert in the case of voluntary social accounting of companies. Even when detailed information is offered by companies, civil society and accountants should be aware of the possibility of greenwashing. **Detailed information is not necessarily an equivalent of transparency** (de Waard, 2011). Therefore, social accounting can also lead to legitimacy for companies without combatting child labour.

Another phenomenon of social accounting and verification schemes is the development of certificates. These certificates have the objective to provide consumers with information on corporate social responsibility - such as child rights due diligence - to address the

lack of complete information on the behavior of companies (Basu et al., 2006). In order to create credible information on companies' CSR efforts, they should be audited by credible external auditors (Barroso et al., 2014). One of the main current criticisms of certification and labelling concerns the amount of labels. For example, there are currently at least six labelling initiatives that target child labour (Hilowitz, 2010). Due to the different regulations on these labels and certificates, both suppliers and consumers lose sight of their meaning (Cramers, 2005). This can result in the opportunistic behavior and the use of certain certificates to gain legitimacy. A second limitation of labelling is the quality of monitoring and auditing. Poor monitoring capacity is a huge bottleneck to credible labels (Ballet et al., 2014). Therefore, the observation that child labour was not present during checks, does not guarantee the absence of child labour. This also makes monitoring a highly risky task for NGOs (de Waard, 2016).

The last limitation of labels is that if they are effective, it is likely that children are displaced from the export sector to the domestic sector (Baland & Duprez, 2009). Due to these limitations, labelling and certification can also give legitimacy to companies, without combatting child labour. Besides that, if companies have unfairly received certificates, this can reduce the legitimacy of the issuing organisation.

The strategy 'documentation of abuses and moral shaming' is one of the most widely employed tactics by NGOs regarding companies that violate CSR guidelines. However, there is no **coherent evidence of the effectiveness of this strategy**. Some scholars argue that companies are sensitive to public criticism when their brand name and reputation is linked to unsavory social practices, and that consumers will punish firms that are perceived as insincere (Winston, 2002, Hill & Becker-Olsen, 2006). However, other scholars argue that socially responsible consumer behavior is less evident (Mohr et al., 2005). Therefore, the effects on consumer behavior are not clear, resulting in an unpredictable result in terms of combating child labour.

Calls for boycotts are widely criticised for their **counterproductive effects**. This is mainly due to the fact that trade sanctions reduce the incomes of the poorest families in exporting countries. Boycotts can then cause the opposite of the intended result, and lead to increased incidences of child labour (Baland & Duprez, 2009). Besides, the price of products tainted by child

labour is usually lower than the price of certified products, which is attractive for consumers (Basu & Zarghamee, 2009). Due to these counterproductive effects, child labour is likely to increase or shift to the worst forms of child labour (Ballet et al., 2014).

Finally, concerning the strategy 'advocacy for government-imposed standards', there are already a few (international) government-imposed standards. However, those remained highly voluntarily. A new development within this strategy is the start of **Covenants aiming to institutionalize CSR**, signed by governments, companies and NGOs. For example, within the Netherlands, the first Covenant was signed on 9 March 2016 to stop child labour within the textile and clothing sector (Stop Kinderarbeid, 2016). **Non-compliance is regulated** by a dispute commission and the Dutch Arbitration Institute, which have the mandate to impose sanctions. These Covenants are therefore an interesting development in the area of *child rights due diligence* and have the potential to create child labour free zones.

There has been less research carried out on the effectiveness of filing of shareholders resolutions, conducting advocacy for selective purchasing of laws, and engaging in litigations seeking punitive damages.

In conclusion, the study carried out on the effectiveness of the different strategies to stimulate CSR and *child rights due diligence* shows that there is not one convincing strategy for TdH NL to undertake. **Each of the strategies have advantages and disadvantages, which should be separately evaluated for each company.** Generally speaking however, the effects of the more confronting strategies, such as naming and shaming, are contested, and it is widely questioned if naming and shaming has a strong effect on the social behavior of companies and the buying behavior of consumers. Nonetheless, **naming before shaming** can be used as an incentive to initiate dialogue with companies.

TDH NL STRATEGIC CHOICES

Having assessed the effectiveness, and in particular the risks involved, of several NGO strategies for promoting child right due diligence, it is important for TdH NL to define its strategy.

Key in doing so will be estimating, per case, **the sincerity and willingness** of the company to work towards child rights due diligence. The general motivation to form a cross-sector partnership can be legitimacy-, competency-, resource- or society oriented (Gray &

Stites, 2013), or it can be altruistic or focused on pursuing self-interest (Selsky & Parker, 2005). Based on the estimated motivation, the strategy to **engage** with or **confront** companies will be made. Although engaging with companies can create mutual value, there remains the possibility that companies are primarily seeking legitimacy, and any potential noncompliance can affect the reputation and legitimacy of the NGO, as discussed above.

PRIVATE SECTOR ENGAGEMENT

There is a growing sense that boundaries between sectors are blurring and traditional sector solutions alone cannot address certain challenges. Learning and borrowing from organisations in other sectors is therefore key. This could take the form of 1) gaining a critical, external perspective on the sector's own activities 2) finding new ways to acquire expertise and access to necessary resources 3) discovering means of coping with turbulence in their environments and 4) gaining a competitive advantage (Selsky & Parker, 2005). Also, from an institutional perspective the key issue is the actual and possible role and function of partnerships in a (global) environmental governance regime (Van Huijstee et al., 2007). The benefits for TdH NL to engage with the private sector can include:

- A direct impact on the issue at hand, e.g. stopping child exploitation and creating a child-friendly society.
- Financial benefits: direct financial contributions, or in the form of new market opportunities.
- Impact on Reputation; e.g. in the form of increased public awareness, branding, etc.
- Access to information and a learning process; e.g. interpersonal and administrative skills, technical skills in the issue area, reflective skills that can modify mind-sets and habits, and social learning that can lead to needed innovations (Selsky & Parker, 2005). It can also lead to learning of new ways of framing the problem and potential solutions (Gray & Stites, 2013).
- Direct capacity building and skill development, particularly management and professional knowledge and by creating a better understanding of corporate operating mechanisms (Harangozo & Zilahy, 2012).
- Opportunities to change rules and regulations, and adjust governance.
- Raising awareness on children's rights, also going beyond the direct engagement to other actors, such as suppliers and customers.
- Stimulation of business innovation to find child

friendly solutions. Parties can gain insight in the views of the others and learn from each other, accumulating knowledge, stimulated creativity and generating solutions together (Van Huijstee et al., 2007).

Although TdH NL realises that companies cannot guarantee a value chain free from child labour, TdH NL is only willing to cooperate with companies that can demonstrate their due diligence activities and their intention to eradicate the worst forms of child labour and other forms of exploitation. TdH NL will provide (sensitising) training to companies that cannot (yet) meet this precondition. The willingness of companies

to combat child labour is thus a priority, and will be a leading factor in defining TdH NL's role and strategy for engagement. Partnerships with these companies can result in reducing child labour in the value chain, the creation of child friendly communities, and the existence of a more safe environment to work, all based on respect and protection for children.¹² **This is a challenging way forward, but definitely worth trying!**

12 This is in accordance with the Dutch CSR Covenants traject in which the government, companies and CSOs work together to create a positive impact. Currently, the first CSR Covenant is signed for the textile sector. Besides that the development agenda from the Dutch ministry transits from aid to trade, in which companies and sustainable value chains gain importance (Algemene Rekenkamer, 2016).



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