

**Agreements on International Responsible Business Conduct**

Advisory Report 14/04 | April 2014

**Agreements on International Responsible Business Conduct**

Presented to the Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs

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## **The Social and Economic Council of the Netherlands**

The Social and Economic Council of the Netherlands (Sociaal-Economische Raad, hereafter SER or Council) advises government and parliament on the outlines of national and international social and economic policy and on important legislation in the social and economic sphere. The Council is also responsible for the enforcement of certain laws.

The SER was founded in 1950 pursuant to the Industrial Organisation Act (*Wet op de bedrijfsorganisatie*). Employers, employees, and independent experts are all represented on the Council. The SER is an independent body that is funded by Dutch industry.

Several permanent and temporary committees support the SER in carrying out its functions. Some permanent committees may at times also carry out their mandate independently.

Please visit the SER's home page at [www.ser.nl](http://www.ser.nl) and its section in English. It offers a host of information, such as on the composition of the SER and its committees. Each of the nearly 1000 Dutch language advisory reports that have been published since 1950 are also available on the website. Some reports or abstracts thereof are equally available in English. In addition, advisory reports that have been published recently in Dutch are available in printed form.

This is an English translation of the SER advisory report<sup>1</sup>: IMVO-convenanten 2014, 69 pp., ISBN 978-94-6134-062-7. In case of discussions about the accuracy of the English translation or interpretation of this text, the official Dutch text prevails.

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<sup>1</sup> This translation constitutes an abbreviated version of the original advisory report. Annexes to the Dutch report have not been translated and are excluded from this report.

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## Summary

Due to economic globalisation, the production of the jeans we wear and the cell phones we use no longer takes place in the Netherlands, but in locations where comparative advantage allows for lower production cost. This presents opportunities and risks for producing companies and consumers alike. It entails that an internationally operating Dutch company may become directly or indirectly involved in child labour, unsafe working conditions, land grabbing, or damage to vulnerable ecosystems. Often, these complex issues arise in emerging markets or developing countries in which governments do not sufficiently protect rights. In such situations, companies can only contribute part of the solution. Cooperating with other partners enhances the chance of success.

The Dutch government, employer and employee associations, consumers, and civil society organisations (CSOs) expect companies to do business with respect for human rights and the environment. Internationally, these responsibilities are enshrined in the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights (UNGPs). According to these guiding documents, companies are expected to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts (due diligence).

Many companies and industry sectors are making positive contributions to international responsible business conduct and sustainable supply chain management. Nonetheless, violations of fundamental rights or environmental pollution regularly happen worldwide, sometimes with fatal consequences. Moreover, the Netherlands has a large number of industry sectors in which production-related social risks that may entail a breach of the OECD Guidelines are high. The presence of risk does not equate to breaches taking place. However, it does imply that companies will have to carry out their due diligence accordingly.

Agreements on international responsible business conduct offer companies the opportunity to work jointly at the sector level in conjunction with the government and other parties to address specific complex problems in a structured and solution-oriented manner and thus to increase their leverage. These agreements are concluded by several parties to achieve measurable results that are based on the abovementioned international standards. Their aim is twofold: First, to achieve substantial improvement of specific risks for groups facing adverse impacts within an ambitious yet realistic time frame of three to five years. Second, to offer shared solutions to address problems that companies cannot solve entirely by themselves. This twofold aim clearly offers added value for those potentially experiencing any adverse impacts, as well as for companies wishing to address the risk of adverse impacts.

In order to achieve the most effect, it is important to acknowledge that the initiative to form sector agreements should originate as much as possible with the industry. Where the initiative does not originate from the industry, other parties may want to encourage the industry to do so. A joint approach aimed at structural change through agreements on international responsible business conduct enables moving from “naming and shaming” to “knowing and showing”.

Each agreement’s content, form, parties, and means of dispute resolution need to be customised to the context of the sector in question. A distinction can be made between parties concluding the agreement on the one hand and stakeholders on the other. Parties to the agreement are expected to contribute to the solution of the problem. Stakeholders constitute a larger group and are not

necessarily a party to the agreement. Even when they are not a party, they should be involved by means of meaningful dialogue. Considering that the implementation of core labour standards remains problematic in many industry sectors worldwide, it is expected that employer associations and trade unions will frequently be parties to the agreement.

Evaluations of previous initiatives have highlighted core elements of effective agreements on international responsible business conduct that are also reflected in the OECD Guidelines and the UNGPs. The parties should address these in order to achieve results. The Social and Economic Council of the Netherlands (Sociaal-Economische Raad, hereafter SER or Council) advises the government to use the features listed below as frame of reference in supporting the process towards such agreements and participation therein:

- Conduct meaningful stakeholder dialogues (direct consultation with potentially negatively affected stakeholders);
- Parties should agree on a governance structure. Experience suggests that a governance structure guaranteeing independence and equal representation of parties yields more results for the groups potentially experiencing adverse impacts;
- The agreement is based on the identification of risks by means of the due diligence process. Where needed, this will be followed by a thorough process of prioritisation of risks;
- Analysis of the levels at which the various facets of the issue can be addressed most effectively (at the sector level or below it, nationally, at the level of the European Union (EU), or internationally);
- In solving the problem, due regard will be given to ways to link this with opportunities for sustainable growth and innovation;
- The agreements builds on existing national and international sector initiatives and identifies and addresses gaps in existing initiatives;
- Commitment to structural change (“beyond auditing”), including agreement on the cost of improving risky situations and remedy;
- The UNGPs require the realisation of access to remedy;
- The agreements should as SMART (specific, measurable, ambitious, realistic, and time-bound) and results-oriented as possible;
- Transparency on progress is achieved by regular reporting;
- Mutual trust and a constructive attitude are the foundation. Parties agree on how to approach monitoring and communication with the public during the process;
- Parties agree on how to deal with possible disputes regarding progress and/or results.

As part of its duty to protect human rights, the government can contribute to the effective functioning of agreements on international responsible business conduct in several ways. First, it should foster policy coherence with respect to, inter alia, international responsible business conduct, sustainable development, trade and development cooperation, and sustainable procurement. Second, the government can support processes leading to the establishment of agreements on international responsible business conduct. Third, by becoming a party to such agreements. In this role, the government should focus its efforts on removing obstacles at the governmental level, capacity building, improving access to remedy, “OECD- and UNGP-proofing” existing initiatives, and scaling up relevant agreements to the international level.

If the government (financially) contributes to an agreement on international responsible business conduct, the terms that apply for private sector instruments should be equally applicable to these agreements, in line with earlier SER advisory reports, where observance of the OECD Guidelines is a precondition. In addition, the SER recommends linking the agreements with opportunities for sustainable growth and innovation. This could happen by linking them to policies for leading industry sectors, green deals, a circular economy, and the post-2015 development goals.

The parties in the SER feel a responsibility in promoting international responsible business conduct in general and with regards to the realisation of agreements on international responsible business conduct in particular. This advisory report is in line with the process in which the SER Committee on international responsible business conduct has been fulfilling an agenda-setting role since 2008. The parties in the SER aim for the conclusion of the first ten agreements on international responsible business conduct by 2016. In that year, the SER will also evaluate the progress and results of the agreements. Where necessary and desired, the SER will join others in providing a platform for sector learning. In addition, parties in the SER aim for the top-100 companies in the Netherlands to report on due diligence, in line with the European Commission's proposal. The annual Transparency Benchmark of the Ministry of Economic Affairs (*Transparantiebenchmark*) will be adapted to reflect the above as per the SER's request.

This advisory report was produced by the SER in response to the request for advice of the Minister for Foreign Trade and Development Cooperation, Lilianne Ploumen, and the Minister of Economic Affairs, Henk Kamp, of November 2013. It was prepared by the SER Committee on international responsible business conduct on the basis of consultations with, amongst others, experts, industry sectors, and CSOs.

**Advisory Report**



## 1 Agreements on International Responsible Business Conduct as New Tools in an Ongoing Process

Due to economic globalisation, the production of the jeans we wear and the cell phones we use no longer takes place in the Netherlands, but in locations where comparative advantage allows for lower production cost. This presents opportunities for producing companies and consumers, as well as risks. Especially when a company is doing business internationally, the risks are often different than we are used to in the Netherlands. For example, a company may become directly or indirectly involved in severe violations of labour standards. These can include child labour, life-threatening working conditions, or excessive working hours in production or transport. Other issues may be the threatening and intimidation of trade unionists, land grabbing, or damage to vulnerable ecosystems. It often involves complex situations associated with structural and societal factors, which are linked to the state of development of emerging markets and developing countries.

To avoid such risks, the Dutch government, employer and employee associations, consumers, and civil society organisations (CSOs) expect companies to do business with respect for human rights and the environment. Internationally, these responsibilities are enshrined in the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the United Nations Guiding Principles on Business and Human Rights (UNGPs), and the International Labour Organization's (ILO) fundamental labour standards forming part thereof<sup>2</sup>. These guidelines and the 'responsibility to respect' therein are aimed at preventing violations of human rights, labour rights, and the environment and contains operational principles<sup>3</sup> that provide guidance on how to implement these standards in policy and practice.

A key component of the guidelines is 'due diligence'. It refers to the process by which companies identify, prevent, mitigate and account for how they address their actual and potential adverse impacts. The concept of due diligence puts the rights of stakeholders, such as employees and local communities, centre stage and focuses on potential and actual risks of adverse impacts on them, rather than on risks to the company<sup>4</sup>.

Since 2008, the employer and employee associations in the SER have committed to developing various activities to implement the above mentioned guidelines via the Council's Committee on International Responsible Business Conduct.

Many companies and industry sectors are making positive contributions to international responsible business conduct and the interpretation of due diligence. The market, with parties such as business and individual clients, investors, employers, and job applicants, in some cases acts as a driver of international responsible business conduct and companies are increasingly becoming more sensitive to environmental concerns, working conditions, and human rights in their supply chains. Also, there is a growing trend towards corporate reporting on societal impacts.

Despite these positive developments, great challenges remain. Knowledge of the international standards mentioned above is limited and violations of fundamental rights or environmental pollution regularly happen worldwide, sometimes with fatal consequences. It often involves complex

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<sup>2</sup> See <http://mneguidelines.oecd.org/text/> for the OECD Guidelines for Multinational Enterprises, for the UNGPs, see [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) and consult <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> for the ILO Declaration on Fundamental Principles and Rights at Work.

<sup>3</sup> See UNGPs 16-23.

<sup>4</sup> See UNGPs 17 and 18 on risks to rights-holders.

situations in emerging markets and developing countries where governments do not adequately discharge their 'duty to protect' and in which companies can at most contribute part of the solution to the problem at hand. Joint action by market participants increases the chances of devising solutions and operationalizing and structurally implementing the guidelines. In addition, companies have expressed their need for guidance for the concrete implementation of due diligence. Agreements on international responsible business conduct as discussed in this advisory report are in line with the process of due diligence.

The SER Committee on international responsible business conduct has committed to providing in-depth information and practical guidance on the further implementation of the international standards in relation to a number of topics over the period of 2013-2015. In 2013, the Committee focused on due diligence. In discussing the topic, it placed an emphasis on human rights-related risks, including labour rights. The thematic report "Due Diligence" summarizes the results<sup>5</sup>. Important aspects of the due diligence work programme included the development of an online step-by-step due diligence tool,<sup>6</sup> a project with Shift, which involved holding workshops with companies to provide guidance on identifying, prioritising (where necessary), and addressing risks of involvement in human rights violations<sup>7</sup> and the development of a code of practice with the Netherlands Standardization Institute (NEN) to integrate due diligence into existing risk management systems<sup>8</sup>. On March 6<sup>th</sup> 2014 the SER, the Netherlands Ministry of Foreign Affairs, the Global Compact, and the Dutch National Contact Point of the OECD Guidelines (NCP) organised a working conference on due diligence, which offered workshops for and by companies and stakeholders.<sup>9</sup>

This advisory report is a natural next step in self-regulation in the area of international responsible business conduct. It befits the agenda-setting role the SER Committee on international responsible business conduct has assumed since 2008. By its very nature, international responsible business conduct is a joint process during which societal expectations are given effect through dialogue. This offers the best prospects for results.

The OECD Guidelines and the UNGPs place the responsibility to implement the mentioned international standards on companies, while confirming the state's 'duty to protect'. Dialogue with employee representatives and other relevant stakeholders is important at every step of the due diligence process. After all, given the diverse aspects relating to international supply chains and given their complexity, a meaningful stakeholder dialogue provides the best opportunity to effectively carry out due diligence. Stakeholders include, amongst others, directly or indirectly and potentially and actually affected rights-holders. They include employees and trade unions as their representatives, local communities, and non-governmental organisations (NGOs) active in the fields of human rights, development cooperation, the environment, and consumer protection.

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<sup>5</sup> For both the English and Dutch versions, see <http://www.ser.nl/nl/publicaties/overige/2010-2019/2014/themarapportage-due-diligence.aspx>.

<sup>6</sup> Website currently only available in Dutch, see <http://www.ser.nl/nl/themas/imvo/mvo-ricomanagement.aspx>

<sup>7</sup> [http://www.ser.nl/~media/files/internet/publicaties/overige/2010\\_2019/2014/themarapportage-due-diligenceshift-ser-workshop.ashx](http://www.ser.nl/~media/files/internet/publicaties/overige/2010_2019/2014/themarapportage-due-diligenceshift-ser-workshop.ashx)

<sup>8</sup> <https://www.nen.nl/NEN-Shop/Nieuws-over-ISO-26000-duurzaamheid/Praktijkrichtlijn-MVO-Due-Diligence-gepubliceerd.htm>

<sup>9</sup> <http://www.ser.nl/en/publications/news/20140306-due-diligence.aspx>

Where the company has sufficient leverage to prevent and address adverse impacts, the company itself can create entry points to ensure this. The more problems become complex and structural and the further they are located in the supply chain and in society, the more cooperation with other actors is needed to address them. The new tool of agreements on international responsible business conduct can be a way for industry sectors and companies to organise this cooperation, thereby offering added value compared to existing efforts. On November 6<sup>th</sup> 2013 the Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs requested the SER to give advice on sector agreements:

“The aim of this ‘sector risk analysis’ is to identify the industry sectors where product-related societal risks are high and where company policies regarding such risks need strengthening. Government will enter into dialogue with identified sectors on agreements on international responsible business conduct. As part of these agreements, companies voluntarily commit to certain results or efforts. Government commits to offering the kinds of support that will help companies with this. Also on behalf of the Minister of Economic Affairs, I request the SER to give advice on how to effectively conclude, form, and implement these agreements with industry sectors, while giving due regard to the role of Civil Society Organisations (CSOs) and the government, both in the Netherlands as well as in producing countries.”

The Minister of Foreign Affairs has further specified that the ministers are asking the SER to address in its advisory report: 1) How sector agreements on international responsible business conduct could be formed in order to make them attractive to companies, while being robust and providing results and 2) which division of labour among the parties involved would be most effective in pursuit of this. In addition, the Council was requested to explicitly consider the role the NCP could play as a facilitator or dispute resolution mechanism as part of such agreements, as suggested in the Dutch National Action Plan on Business and Human Rights<sup>10</sup>.

The Council chooses to give advice on the broad outlines of the questions asked. Should the results of the Sector Risk Analysis, carried out by KPMG at the request of government, lead to new insights, the Council will supplement the advice provided in this report.

This advisory report was prepared by the SER Committee on international responsible business conduct<sup>11</sup>. To benefit the advisory report, an expert meeting was held in December 2013 on the topic of lessons learned from agreements in the area of the environment and energy and various initiatives in the textiles sector. In January 2014, a consultation gathered several industry organisations and CSOs, including MVO Platform and IDH Sustainable Trade Initiative. These organisations were invited to give their views on the questions discussed in this report. In addition, the Council’s secretariat conducted a literature review and expert interviews.

The parties in the SER would like to thank the government for requesting this advisory report. They believe that they, too, have a responsibility for international responsible business conduct in general and the implementation of agreements on international responsible business conduct in particular.

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<sup>10</sup> [business-humanrights.org/media/documents/dutch-national-action-plan-dec-2013.pdf](http://business-humanrights.org/media/documents/dutch-national-action-plan-dec-2013.pdf).

<sup>11</sup> In addition to employer and employee representatives, the following advising members are part of the Committee in their personal capacity: Frans Evers (NCP), Herman Mulder (NCP), Willem Lageweg (MVO Nederland), Joseph Oldenzel (Bangladesh Accord Foundation), Joseph Wilde-Ramsing (SOMO/OECD Watch), and David Vermijs.

The parties also commit to evaluating progress and results of the agreements on international responsible business conduct in two years (2016).

## **2 Added Value for Affected Stakeholders**

Agreements on international responsible business conduct are a new tool in the application of due diligence. This chapter illustrates the SER's understanding of these agreements and their added value for affected stakeholders and companies.

### **2.1 What does the SER mean by an agreement on international responsible business conduct?**

Agreements on international responsible business conduct offer industry sectors and companies the opportunity to give effect to their *responsibility to respect* and to take the initiative in assuming and reinforcing this responsibility jointly with their peers and stakeholders and thus to increase their leverage. Agreements on international responsible business offer government the opportunity to give effect to its 'duty to protect'.

According to the SER, agreements on international responsible business conduct have a twofold aim. Firstly, to achieve substantial improvement of specific risks for groups facing adverse impacts, such as workers in the supply chain and local communities in areas where resources are extracted, within an ambitious yet realistic time frame of three to five years. Secondly, finding shared solutions at the sector level to specific risks of adverse impacts thereby offering solutions to companies to address problems they cannot solve entirely by themselves.

This twofold aim offers added value for those potentially experiencing any adverse impacts, as well as companies wishing to address the risk of adverse impacts.

Parties commit to achieving tangible results in terms of international responsible business conduct. The agreements are based on the existing objectives and standards contained in the UNGPs and the OECD Guidelines. The international responsible business conduct agreements constitute a sector-specific or cross-sector contribution to the implementation of the OECD Guidelines and the UNGPs by specific sectors and companies. In order to effectively address issues and seize opportunities it is necessary that all relevant parties make a substantial contribution to mitigating the risks of adverse impact, each according to their own capacities.

Agreements on international responsible business conduct form part of a broad-based societal process to foster responsible business conduct, in which many actors pursue many different initiatives. The approach of these agreements is novel in the sense that they constitute agreements by one or several industry sectors with one or more parties, such as government and stakeholders, to address concrete problems which companies cannot solve by themselves.

Agreements on international responsible business conduct will be most effective when there is ownership of the agreement by the parties in a specific sector, when there is trust between those parties, and when those parties exhibit a learning attitude which allows them to try new approaches and to learn from them. Setting up a platform for exchange is useful to encourage learning between sectors. Knowledge institutions and other relevant organisations should also be involved in this platform.

Process elements geared towards affected groups are important to achieve these results. Besides audits, other measures are required to achieve structural change, such as capacity-building with suppliers and encouraging social dialogue on the work floor<sup>12</sup>.

Agreements on international responsible business conduct as discussed above cannot be concluded without a thorough analysis of the risks and context of the sector. This includes a prioritisation of risks on the basis of the severity and likelihood of their impact. Such a process requires sufficient time. In addition, an analysis of the levels at which the various aspects of the problem could best be addressed is required (sector or sub-sector, national, EU or international levels).

Agreements on international responsible business conduct give practical effect and implementation to the existing international standards on responsible business conduct. They do not create new standards.

The OECD Guidelines and the UNGPs (including the ‘operational principles’) continue to be fully applicable to Dutch companies, regardless of whether or not they participate in an international responsible business conduct agreement. An adverse impact on human rights can never be offset by a positive impact elsewhere.

## **2.2. Added Value of Agreements on International Responsible Business Conduct**

Responsible business conduct and sustainability are increasingly becoming a business imperative to be well-positioned in consumer markets, the labour market, financial markets, and in business-to-business markets<sup>13</sup>. The expectations contained in the OECD Guidelines and the UNGPs reflect a trend as part of which international responsible business conduct has shifted from “nice to do” to “need to do”. Nonetheless, it can be difficult for individual companies to effectively operationalize this, considering the great diversity of aspects related to responsible business conduct and the complexity of international supply chains. The initial results of the KPMG’s Sector Risk Analysis indicate that the Netherlands has a large number of industry sectors in which production-related societal risks that may entail a breach of the OECD Guidelines are high. This risk assessment is based on the fact that a large share of industry sectors in the Netherlands purchases significant amounts from countries with high risks of negative production-related impacts on people and the environment. Obviously, the mere existence of risks does not equate to breaches taking place. Yet, it does have implications for the due diligence companies are expected to carry out.

Agreements on international responsible business conduct offer companies the opportunity to work jointly at the sector level in conjunction with the government and other parties to address the specific problems and opportunities identified in a structured and solution-oriented manner. By providing scale and partnerships, companies can increase their leverage to address risks of adverse impacts through these agreements.

It is important to acknowledge that the initiative for international responsible business conduct agreements should originate as much as possible from the industry. When the industry takes the initiative to conclude such agreements with several parties and where it has ownership, the chances of effectiveness will be increased. Where the initiative does not originate from the industry, other

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<sup>12</sup> Shift (2013) *From Audit to Innovation: Advancing Human Rights in Global Supply Chains*.

<sup>13</sup> VNO-NCW and MKB Nederland (2012) *Onze gemeenschappelijke toekomst: Integrale visie op duurzame ontwikkeling en maatschappelijk verantwoord ondernemen*.

parties may want to encourage the industry to do so. A joint approach aimed at structural change enables moving from “naming and shaming” to “knowing and showing”. Furthermore, the benefits that apply to broader responsible business conduct policies also apply to the agreements on international responsible business conduct: more sustainable relations with suppliers and other business partners, product innovation, reputational gains, less work stoppage and other conflicts, increasing attractiveness for investors, better employee morale, and better legal and internal compliance. Adequate human rights due diligence should also help companies limit legal claims, since it is one way to demonstrate that all reasonable measures have been undertaken to avoid involvement in human rights violations<sup>14</sup>.

In addition, the process of concluding an international responsible business conduct agreement can help companies and industry sectors share experiences and expectations regarding due diligence.

The process can:

- Help identify and prioritise risks and opportunities;
- Provide support in the implementation of due diligence;
- Provide a platform on which companies and stakeholders share knowledge and good practices and exchange ideas on specific questions and challenges.

The form and operationalization of international responsible business conduct agreements depends on the specific situation within the industry sector and identified risks. Within the parameters set by the OECD Guidelines and the UNGPs companies can look for ways to shape the implementation of these standards and to explore how international responsible business conduct agreements can provide added value.

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<sup>14</sup> See commentary to UNGP 17.

### **3 Government's Contributions to the Effective Functioning of Agreements on International Responsible Business Conduct**

The Dutch government has the duty to protect human rights, not only by respecting these rights, but also by preventing their violation by other societal actors, including companies. This obligation is confirmed in the UNGPs ('duty to protect'). Where human rights are concerned, the involvement of the government in international responsible business conduct agreements constitutes a concrete implementation of this duty.

The government can contribute to the effective functioning of international responsible business conduct agreements in three ways: a) by including international responsible business conduct agreements as a tool in its broader policy; b) by facilitating the process that leads to the establishment of the agreements; and c) by participating in the agreements as a party.

#### **3.1 Broader Policy**

International responsible business conduct agreements form part of a broader policy of the government, industry, trade unions and other stakeholders in the area of sustainable development and trade and development cooperation, all of which can contribute to the implementation of the promises made in the agreements. As part of broader government policy the government can contribute by, inter alia:

- Fostering a level playing field for international business;
- Bilateral policy targeted at promoting an 'enabling environment' for sustainable growth;<sup>15</sup>
- 'International responsible business conduct diplomacy' as part of economic diplomacy, for example, by convincing countries with which trade relations are maintained of the importance of protecting human rights;
- Support for responsible business conduct in trade and investment policy;
- Policy coherence by applying the state's duty to protect in sustainable procurement;
- Policy coherence in multilateral and bilateral relations and coordination of international (donor) efforts;
- Support of embassies for companies' international responsible business conduct efforts;
- Implementation of the Dutch National Action Plan on Business and Human Rights;
- Fostering transparency and reporting on responsible business conduct.

With an annual purchasing volume of about € 60 billion, the Dutch government is a significant purchaser. Many of the procured products stem from countries with increased risks of adverse impacts (consider, for example, occupational clothing, electronic devices, timber, etc.). The 'responsibility to respect', which the government expects of companies, applies equally to the government in its role as a purchaser. In other words, procurement and invitations to tender must be entirely based on the OECD Guidelines. If the government expects companies to comply with high standards, it should lead by example. Some market participants have indicated that the government continues to largely base purchasing choices on price alone and that the decision to award a contract

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<sup>15</sup> See, for example, SER (2011) Advisory Report *Development through Sustainable Enterprise*, available at [www.ser.nl/~media/files/internet/talen/engels/2011/2011\\_10.ashx](http://www.ser.nl/~media/files/internet/talen/engels/2011/2011_10.ashx) (English language abstract of full advisory report). Full advisory report SER (2011) *Advies Ontwikkeling door duurzaam ondernemen* in Dutch available at <http://www.ser.nl/nl/publicaties/adviezen/2010-2019/2011/b30143.aspx>.



often does not or hardly takes account of responsible business conduct criteria. The SER considers this an undesirable state of affairs, which discourages the changes expected in company behaviour.

### **3.2 Facilitating the Process**

Facilitating the process which leads to the establishment of international responsible business conduct agreements (b) includes providing targeted process support as a convenor and facilitator, including for industry sectors which are not included in KPMG's Sector Risk Analysis.

### **3.3 Participating in International Responsible Business Conduct Agreements**

According to the SER, when participating in international responsible business conduct agreements as a party to the agreement, the government should (c) concentrate its efforts on collectively increasing leverage to prevent and address adverse impacts, by inter alia:

- Making targeted contributions to overcoming obstacles at the level of the government faced by companies and stakeholders in pursuit of the shared goal. This particularly concerns government-to-government (G2G) policies, such as establishing bilateral relations and multilateral fora to promote the aims of international responsible business conduct agreements through international agenda-setting, fostering cooperation, supporting countries where production takes place and resources are extracted in strengthening and complying with relevant laws, and encouraging governments to ratify core ILO conventions;
- Capacity-building with companies and stakeholders, amongst others by supporting initiatives that promote the empowerment, training, and awareness-raising of managers and staff, communities, and others concerned in the supply chain and by promoting social dialogue;
- Supporting (the development of) improvement plans directed at, amongst others, circumstances in the supply chain;
- Improving access to remedy and supporting companies and stakeholders in their search for appropriate ways to grant access thereto;
- Reviewing in how far existing initiatives that receive government funding or other support are "OECD- and UNGP-proof" and addressing any apparent shortcomings;
- Where an international approach is required, taking the necessary measures at an appropriate level (EU, OECD).

Once industry sectors decide to sign international responsible business conduct agreements, they make a commitment to comply with the standards contained in the OECD Guidelines and they further agree to implement this framework. If the government (financially) contributes to international responsible business conduct agreements (for example, by financing a secretariat), the same conditions apply as to private sector instruments. This is consistent with the UNGPs' 'duty to protect'<sup>16</sup> and follows from an earlier SER advisory report. In 2011, the SER advised the government that it should actively review compliance with the OECD Guidelines across all provisions when deploying resources. Sufficient transparency by means of international responsible business conduct

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<sup>16</sup> UNGP 4: "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence."

reporting, appropriate due diligence, and accessible and effective grievance mechanisms are very important in this respect.<sup>17</sup>

When the desired results of international responsible business conduct agreements do not materialize, the government can always consider employing policy alternatives that flow from its 'duty to protect'.

According to the SER, it is obvious that as the "guardian" of the OECD Guidelines, the NCP should be involved in international responsible business conduct agreements. This could form part of the NCP's informative and facilitating role. Parties can opt to involve the NCP in international responsible business conduct agreements, for example as a mediator of disputes. Within the framework of international responsible business conduct agreements, parties can further determine this with the NCP. This requires the NCP to have a sufficient budget and capacities. The SER intends to come back to the potential role of the NCP in international responsible business conduct agreements during the announced review of the government decree establishing the NCP.

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<sup>17</sup> SER (2011) Advisory Report *Development through Sustainable Enterprise* and SER (2012) Advisory Report *The Shifting Balance of Economic Power* (English language abstracts of full Dutch language advisory reports).

#### 4 Customisation: Parties, Content, Form, and Dispute Resolution

Industry sectors can differ in many aspects, such as the severity of risks, number of players, size, relationship with foreign parties, level of influence of Dutch companies, existing initiatives, where the sector stands in terms of responsible business conduct, etc. The specific context of different sectors requires room to tailor international responsible business conduct agreements to an industry sector or within sectors and/or its supply chains. The OECD Guidelines and the UNGPs offer room to parties in the sector to determine with whom agreements are concluded, what they contain, and which form they will take. However, the guidelines do require that those directly impacted are engaged with in a meaningful manner.

A distinction can be made between parties concluding the agreement, and those that are stakeholders. Those that are party to the agreement are expected to contribute to the solution of the problem. Considering that the implementation of core labour standards remains problematic in many industry sectors worldwide<sup>18</sup>, employer associations and trade unions will obviously frequently be parties to the agreement. Stakeholders constitute a larger group, which are not necessarily party to the agreement. Even when they are not, they must be involved with the international responsible business conduct agreements by means of meaningful dialogue.

The sector-specific priorities determine the appropriate level of the agreement (who concludes it and who contributes what), which goals (outcome) and key performance indicators (KPIs) (output) are targeted, and which form the parties decide to give to the agreement. Depending on the sector-specific priorities, the involved parties, and the severity of the risks, various forms of agreements are conceivable, such as public-private-partnerships, sustainability standards, joint programmes to make supply chains more sustainable, or a legally binding agreement. Parties in the industry sector can also agree on how to deal with potential disputes on progress and/or results.

In this context, the SER would also like to point out that strong social partners and well-functioning social dialogue contribute to sustainable growth and full employment in developing countries. They foster good governance, the alignment of social and economic goals, and the promotion of full employment. A well-functioning social dialogue, advanced by independent and professional social partners, allows society to limit the societal costs of reforms and to use the gains of economic growth to the benefit of vulnerable groups in society. Important preconditions for this are: respect for the core labour rights of freedom of association and collective bargaining, and independent, professional, and representative social partners. The Dutch social partners have been supporting social partners and social dialogue in developing countries for some time<sup>19</sup>.

Independent trade unions must be able to represent employees. Access to the workplace is essential for trade unions to gain their own insights into potential risks. This has added value for companies as well. Possible corrective action can be taken before the risk becomes an issue in the media and the corporate reputation is damaged.

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<sup>18</sup> This has become apparent through ILO reports, the number of complaints to NCPs concerning labour standards, and KPMG's Sector Risk Analysis.

<sup>19</sup> SER (2011) Advisory Report *Development through Sustainable Enterprise*.

## 5 Formulating Goals and Achieving Results within an International Governance Gap

In international responsible business conduct, the international governance gap is a fundamental and crucial condition<sup>20</sup>. This gap limits the possibilities of enforcing the international standards and principles on which the international responsible business conduct agreements are based, due to lacking international jurisdiction and binding international law.

In this context, the Netherlands do not always have sufficient leverage. The international responsible business conduct agreements in the Netherlands should therefore focus on scaling up existing initiatives and linking domestic efforts with relevant international agreements, such as United Nations (UN) initiatives and particularly those at the ILO. This aspect concerns a special responsibility of the government as a party to international responsible business conduct agreements.

A concrete example of this would be that Dutch parties work to commit a certain percentage of the companies in a sector to signing an international agreement within a period of two years, such as the Accord on Fire and Building Safety in Bangladesh, Fear Wear Foundation or comparable international agreements. Parties in the Netherlands can contribute to this by developing model agreements and finding European and international partners.

The international networks and initiatives of trade unions, employer associations, and other stakeholders – such as the International Organisation of Employers (IOE), the International Trade Union Confederation (ITUC), the Business and Industry Advisory Committee (BIAC) and Trade Union Advisory Committee of the OECD, OECD Watch, International Framework Agreements, Fair Wear Foundation, FNV Mondiaal, CNV International, Dutch Employers Cooperation Program (DECP) – can play an important role in this, in conjunction with other parties working on the role of the private sector in sustainable development, such as the IDH Sustainable Trade Initiative, CSR Netherlands, the Global Compact, the Dutch Sustainable Growth Coalition, and the World Business Council for Sustainable Development.

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<sup>20</sup> See, for example, SER (2012) Advisory Report *international responsible business conduct: Final Evaluation* (English language abstract of full Dutch language advisory report), available at [www.ser.nl/~media/files/internet/talen/engels/2012/2012\\_imvo.ashx](http://www.ser.nl/~media/files/internet/talen/engels/2012/2012_imvo.ashx). Original report SER (2012) *Eindevaluatie SER-initiatief Internationaal Maatschappelijk Verantwoord Ondernemen*, p. 80, available at [www.ser.nl/~media/files/internet/publicaties/overige/2010\\_2019/2012/b30952/b30952.ashx](http://www.ser.nl/~media/files/internet/publicaties/overige/2010_2019/2012/b30952/b30952.ashx).

## 6 Linking Risks with Opportunities

“[In 2050, the] leading companies are those that, through their core businesses, help society manage the world’s major challenges. They have worked through the radical transformation of both internal corporate values and external market restructuring that has occurred in the four decades leading up to 2050, a transformation that many other companies have not survived but in which multitudes of new ones have been spawned.”<sup>21</sup>

In chapter 2, the Council addressed the added value of international responsible business conduct agreements for companies and industry sectors. To enhance the effectiveness of international responsible business conduct, ways of linking the prevention of risks of adverse impacts on human rights and the environment with opportunities for sustainable growth, innovation, and business opportunities are increasingly sought.

The SER advises to make this tangible as part of international responsible business conduct agreements, for example, by linking such agreements with policy for leading industry sectors, green deals, biodiversity, a circular economy, CO<sub>2</sub>-reduction, and the post-2015 development goals. In this way, international responsible business conduct agreements can form an important component of a national agenda that anticipates the opportunities afforded to the Netherlands by worldwide sustainable development and links them with the responsibility to prevent adverse impacts on others. Consequently, international responsible business conduct agreements also enhance the competitiveness of Dutch companies and improve the country’s branding.

In this context, the sector programmes of IDH Sustainable Trade Initiative and CSR Netherlands are also of interest. In total, both organisations are currently guiding 20 industry sectors in their programmes which, on the one hand, pay attention to the OECD Guidelines and, on the other hand, allow entrepreneurs to improve their long-term market position.

A recent evaluation of several of the IDH Sustainable Trade Initiative’s programmes has indicated that a significant improvement in the living conditions of a large amount of farmers (amongst others in the cocoa, cotton, and tea sectors) in producing countries is attainable. In the meantime, IDH Sustainable Trade Initiative and CSR Netherlands have acquainted many companies with issues related to the environment, human rights, and other responsible business conduct topics. Furthermore, these programmes foster sector and cross-sector learning. The SER appreciates the stimulating role these programmes have played and regards them as important initiatives for international responsible business conduct agreements to build on.

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<sup>21</sup> World Business Council for Sustainable Development (2010) *Vision 2050: The New Agenda for Business*, p. 7.

## 7 Core Elements of Effective Agreements on International Responsible Business Conduct

Agreements on international responsible business conduct commit parties to a result. Firstly, they help to achieve substantial improvement on specific risks for groups facing adverse impacts, such as workers in the supply chain and local communities in areas where resources are extracted, within an ambitious yet realistic time frame of three to five years. Secondly, finding shared solutions to specific risks of adverse impacts at the sector level helps companies to address problems they cannot solve entirely by themselves.

To achieve results, it is important that parties to an international responsible business conduct agreement and those participating in the process leading up to it take care that the following core elements are respected.

The SER advises the government to use the core elements listed below as a frame of reference when supporting the process leading up to the establishment of international responsible business conduct agreements and when participating in international responsible business conduct agreements. These elements have partly emerged from the evaluation of previous initiatives.

- A meaningful stakeholder dialogue, whereby a wider group is involved through dialogue with the international responsible business conduct agreements. The UNGPs indicate that companies should inform themselves about the issues of potentially affected stakeholders through direct consultation. If such consultation is not possible, companies should consult credible, independent experts – including experts on human rights, independent trade unions, and other civil society actors;
- Those participating in the international responsible business conduct agreement as a party are expected to contribute to the solution of the problem. In light of the value of strong social partners and the importance of responsible business conduct to workers, trade unions will often be a party to the agreements. For each agreement, the combination of parties will also depend on the specific risks and where those occur;
- Parties should also agree on which governance structure they wish to see. Experience with other initiatives has taught that a governance structure guaranteeing independence and equal representation of parties yields more results for the groups potentially experiencing adverse impacts;
- The international responsible business conduct agreement is based on the identification of risks by means of a due diligence process. Where needed this is followed by a thorough process of prioritisation of risks (on the basis of the severity and likelihood of the impact), both within the company's own operations as well as in the supply chain;
- Analysis of the levels at which the various aspects of the issue can be addressed most effectively (sector, sub-sector, national, EU or international levels) and how an international responsible business conduct agreement in the Netherlands can contribute to this. Often, these agreements will deal with risks taking place abroad. Therefore, by definition the scope to address these risks effectively is different than for risks in Dutch situations. Effective international responsible business conduct agreements therefore require careful consideration of which aspects of the solution can be realised nationally and which require an international approach. Where possible, solutions should build on existing national and international initiatives;

- In the solutions, due regard will be given to ways to link this with opportunities for sustainable growth and innovation;
- Connecting with and building on existing national and international sector initiatives and identifying and addressing gaps in existing ones;
- Working on structural change (“beyond auditing”), including agreeing on the cost of improvement of risky situations and providing remedy;
- The UNGPs ask companies to provide access to remedy<sup>22</sup>. In doing so, the effectiveness criteria for grievance mechanisms should be respected. Grievance mechanism should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue. Remedy is important to those affected. It can also have a significant preventative effect;<sup>23</sup>
- Where possible, specific agreements should be SMART and results-oriented (specific, measurable, ambitious, realistic, and time-bound);
- Transparency on progress via periodic reporting;
- The starting point is mutual trust and a constructive attitude that allows parties to discuss whether the agreement is being met. Parties should agree on monitoring progress. The feedback of directly affected stakeholders is very important in this regard<sup>24</sup>. Also, parties should agree on how to communicate with the public during the process;
- Parties should also agree on how to deal with possible disagreements on progress and/or results. Depending on the specific types of agreements, options include: a complaints procedure or arbitration committee at the level of the industry sector, agreements with the NCP on mediation, civil law proceedings, or binding arbitration. A combination of the former options is also conceivable.

Concluding agreements on international responsible business conduct takes time. Once an active commitment to conclude an international responsible business conduct agreement has been made, parties will need six to twelve months to conduct a good risk analysis and conclude effective agreements on how to limit the risk of adverse impacts. Experience with other initiatives has taught that an impartial convenor and process support are very important in this.

To determine which specific risks the agreement should address, it is recommendable that parties should at a minimum go through the following steps: identifying, where needed prioritising, and determining how to address risks. In doing so, parties can utilize the lessons learned in the SER/Shift project “Identifying and Prioritizing Human Rights Risks” and the online due diligence tool developed by the SER<sup>25</sup>. Identifying and prioritising risks of adverse impacts on people and the environment from the perspective of potentially affected stakeholders requires knowledge and time. Information from the Sector Risk Analysis conducted by KPMG and other sources, such as the CSR Risk Check<sup>26</sup>

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<sup>22</sup> UNGP 22: “Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.” UNGP 30: “Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.”

<sup>23</sup> See UNGP 31.

<sup>24</sup> See UNGP 20b.

<sup>25</sup> See [http://www.ser.nl/~media/files/internet/publicaties/overige/2010\\_2019/2014/themarapportage-due-diligence-shift-ser-workshop.ashx](http://www.ser.nl/~media/files/internet/publicaties/overige/2010_2019/2014/themarapportage-due-diligence-shift-ser-workshop.ashx) and <http://www.ser.nl/nl/themas/imvo/mvo-risicomanagement.aspx> (website currently only available in Dutch).

<sup>26</sup> See <http://www.mvorisicochecker.nl/en>.

offer a starting point to take stock of risks. However, this information needs to be verified by internal and external stakeholders within the industry sector and beyond it. Next to this, it is important to conduct a solid analysis of the industry sector's specific challenges, the degree and type of implication of Dutch companies in the identified risks, the balance of power within the industry sector and the supply chain (who has leverage?), existing national and international initiatives and how the Dutch government, Dutch companies, and other parties can address the problem.

There are a number of examples industry sectors can consult for the process of concluding an international responsible business conduct agreement.

In addition, an important aspect of achieving results is that international responsible business conduct agreements should reflect market mechanisms, such as drivers internal to companies (for example, higher productivity, risk management) and competition (reputation, innovation, market opportunities). This will increase the added value of international responsible business conduct agreements to companies and industry sectors and therefore contribute to achieving results.



## 8 Aspirations and Recommendations

This advisory report fits in with the established practice of the SER Committee on International Responsible Business Conduct, which has been fulfilling an agenda-setting role since 2008. By its nature, international responsible business conduct is a joint process, which gives effect to social expectations of business through dialogue. This offers the best opportunities to achieve results. The parties in the SER call upon Dutch companies and industry sectors to proactively apply due diligence and to initiate a process to determine where they can increase their leverage by means of international responsible business conduct agreements within the framework laid out above. The main points are:

- To achieve the most effect, it is important to acknowledge that the initiative to form a sector agreement should originate as much as possible from the industry;
- The UNGPs indicate that companies should inform themselves about the issues of potentially affected stakeholders through direct consultation. In this advisory report, a distinction is made between parties concluding the international responsible business conduct agreements and stakeholders that are involved by means of meaningful dialogue. Parties to an agreement are expected to contribute to the solution of problems. Considering that the implementation of core labour standards remains problematic in many industry sectors worldwide, employer associations and trade unions will frequently be parties to the agreement;
- Implementing existing international guidelines and an approach aimed at structural change through international responsible business conduct agreements enables moving from “naming and shaming” to “knowing and showing”. This is in line with international developments;
- Where the initiative to conclude international responsible business conduct agreements does not automatically originate from the industry, other parties may want to encourage them to do so;
- The approach outlined above requires that each of the parties involved with international responsible business conduct makes a suitable contribution and that the government facilitates this process. This is in line with the SER activities in the area of international responsible business conduct.

The parties in the SER believe that they carry a responsibility with respect to international responsible business conduct in general and in shaping international responsible business conduct agreements in particular. Specifically, the SER intends to give effect to this responsibility through the following aspirations:

1. In two years' time (2016), the SER's international responsible business conduct Committee will evaluate the progress and results of international responsible business conduct agreements. The parties in the SER aim for the conclusion of the first ten international responsible business conduct agreements by 2016. However, quality should be the guiding principle of this process. Concluding good, representative agreements takes time. As part of the announced evaluation, the SER will monitor the creation of international responsible business conduct agreements and periodic reporting by industry sectors. The SER will also respond to questions posed by the industry sectors;
2. Where required and desired, the SER will join other parties that provide a platform for sector level learning, such as industry sector associations, IDH Sustainable Trade Initiative, the Fair Wear Foundation, MVO Nederland and relevant knowledge institutions, and undertake activities to promote exchange and learning among industry sectors;

3. In the time period of 2014-2015, the SER Committee on International Responsible Business Conduct will, amongst others, devote further attention to the third pillar of the UNGPs, access to remedy, the role of various parties in this, and the development of best practices in this area;
4. In 2014 and 2015, the SER Committee will continue to engage in various activities on the topic of due diligence, such as the continuation and further development of the online due diligence tool and the development of a code of practice on integrating due diligence into existing management systems (assignment by the SER to the Netherlands Standardization Institute);<sup>27</sup>
5. Following the government's aspiration that 90% of the 600 largest companies in the Netherlands explicitly cite the OECD Guidelines as the point of reference for their international activities in their annual reports, the SER calls upon these companies to actively communicate on the results of their due diligence processes. The social partners in the SER strive for the top-100 companies in the Netherlands to report on the application and results of their due diligence processes, both for their own operations and their supply chains, as part of their sustainability reporting. As per the SER's request, the Transparency Benchmark of the Ministry of Economic Affairs (*Transparantiebenchmark*) will be adapted to provide insights into this. In doing so, the Netherlands are effectively preparing for the European Commission's proposal for a new Directive on non-financial reporting.<sup>28</sup> This Directive must be implemented into Dutch legislation by the end of 2016.

The SER advises the government, as part of its 'duty to protect', to contribute to the conclusion and implementation of international responsible business conduct agreements in the following ways:

1. The government should focus its efforts on removing obstacles at the governmental level that are faced by companies and stakeholders in achieving the collective results;
2. The government can offer the role of impartial convenor and process support, while giving due regard to the abovementioned core elements as point of reference;
3. The government supports improvement plans, capacity-building, and awareness-raising among employers, employees, and other stakeholders;
4. The government assesses in how far existing initiatives are "OECD- and UNGP-proof" and addresses potential shortcomings;
5. The government enables effective international responsible business conduct agreements by pursuing effective and consistent policies in related areas, such as international responsible business conduct; sustainable development; trade and development cooperation, including foreign financial instruments (*'financieel buitenland instrumentarium'*); and sustainable procurement;

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<sup>27</sup> See SER (2014) Rapport *Themarapportage due diligence*, available in Dutch and English at <http://www.ser.nl/nl/publicaties/overige/2010-2019/2014/themarapportage-due-diligence.aspx>.

<sup>28</sup> "[In February 2014,] [t]he European Parliament and the Council have reached agreement on an amendment to existing accounting legislation to improve the transparency of certain large companies on social, environmental and diversity matters. [...] Companies concerned [large public-interest entities with more than 500 employees] will need to disclose information on policies, risks and results as regards environmental matters, social and employee-related aspects, respect for human rights, anti-corruption and bribery issues, and diversity on boards of directors." (European Commission – STATEMENT/14/29 of February 26<sup>th</sup>, 2014). This agreement builds on the proposed Directive of the European Commission COM/2013/207/FINAL, Strasbourg, April 16<sup>th</sup>, 2013.

6. The government has a guiding role in bringing the international responsible business conduct agreements to the international level and to conclude international agreements at the EU and international levels;
7. The government links international responsible business conduct agreements with policies for leading industry sectors, green deals, biodiversity, a circular economy, CO<sub>2</sub>-reduction, and the post-2015 development goals.

The Hague, April 25<sup>th</sup>, 2014

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