

What happened when Nestlé was reported for violating the UN Global Compact and OECD Guidelines for Multinational Enterprises?

Abstract

The *UN Global Compact* and the *OECD Guidelines for Multinational Enterprises* seek to improve compliance of businesses with human rights norms and other international standards. A coalition of organisations registered complaints in June 2009 regarding Nestlé S.A. to the Global Compact Office and the Swiss National Contact Point (NCP) for the *OECD Guidelines*. Both stressed they are responsible for voluntary initiatives and that they are only prepared to promote 'dialogue'. Although the UN Global Compact Office has powers to exclude companies, it stated: "*Of course, abuses of the 10 Principles do occur; however we believe that such abuses only indicate that it is important for the company to remain in the Compact and learn from its mistakes.*" It is suggested that this international regulatory framework is both ineffective at holding corporations to account and is misused for public relations purposes. Alternatives are proposed.

Overview

The *UN Global Compact* (UNITED NATIONS GLOBAL COMPACT OFFICE, 2010a) is a voluntary initiative promoting 10 principles to corporations. The *OECD Guidelines for Multinational Enterprises* (OECD, 2008) are recommendations directed at corporations. Both stress they are voluntary systems and they have been promoted as an alternative to enforceable regulatory measuresⁱ. The OECD (Organisation for Economic Cooperation and Development) involves 30 leading industrialised economiesⁱⁱ (not including China or Russia) that "*work together to address the economic, social and environmental challenges of globalisation.*" (OECD, 2008).

Both the *UN Global Compact* and *OECD Guidelines* reference existing human rights and environmental measures. Nestlé is a leading advocate of both initiatives (NESTLÉ, 2010a, page 84, 85). Its *Creating Shared Value* reports are posted on the Global Compact site (UNITED NATIONS GLOBAL COMPACT OFFICE, 2010b) and its 2007 report was even launched at a joint UN Global Compact/Nestlé event, implying official endorsement of the Nestlé reports (NESTLÉ, 2008).

Accordingly on 11 June 2009 the UK civil society organisation Baby Milk Action submitted a complaint alleging that the reports posted on the UN Global Compact Office site and launched at the joint event were misleading and that Nestlé was, in truth, responsible for egregious violations of the *Global Compact Principles*. Baby Milk Action cited the *Integrity Measures* that accompany the *Principles* and called for Nestlé to be excluded for the violations and for bringing the initiative into disrepute by using it in its public relations campaign to divert criticism so that violations may continue (BABY MILK ACTION, 2009a).

The complaint submitted by Baby Milk Action was presented in the publication *Nestlé's UN Global Compact cover up: How Nestlé's Shared Value reports cover up malpractice and bring the UN voluntary initiative for corporate responsibility into disrepute* (NESTLÉ

CRITICS, 2009) which included information from various civil society organisationsⁱⁱⁱ alleging violations in the areas of:

- aggressive marketing of baby milks and foods and undermining of breastfeeding, in breach of international standards;
- trade union busting and failing to act on related court decisions;
- failure to act on child labour and slavery in its cocoa supply chain;
- exploitation of farmers, particularly in the dairy and coffee sectors;
- environmental degradation, particularly of water resources;

In response, the Global Compact Office stressed that the initiative is voluntary and that it

is not a mediation, dispute resolution, or adjudicative body, nor is it an enforcement agency. Rather, its integrity measures are designed to facilitate communication and dialogue. (UNITED NATIONS GLOBAL COMPACT OFFICE, 2009a)

Baby Milk Action pointed out that it and the other organisations were already in 'dialogue' with Nestlé and that Nestlé was refusing to make necessary changes, or had made promises that were not being delivered. Nestlé response to the complaint showed that its position was unchanged. Baby Milk Action asked the UN Global Compact Office to review the evidence submitted and its communications with Nestlé as called for under the *Integrity Measures*, with a view to excluding Nestlé. The Global Compact argued it was not its role to conduct such a review and commented:

Of course, abuses of the 10 Principles do occur; however we believe that such abuses only indicate that it is important for the company to remain in the Compact and learn from its mistakes. (UNITED NATIONS GLOBAL COMPACT OFFICE, 2010c)

Baby Milk Action informed the UN Global Compact Office that, while it would continue to copy the Office into its ongoing 'dialogue' with Nestlé and encourage the Office to exclude Nestlé, the correspondence with the Office had demonstrated that it was incapable or unwilling to take any action to stop the violations and that far from improving corporate behaviour it was, in this instance at least, complicit in allowing violations to continue by providing legitimacy to misleading reports - which it refused to evaluate - and public relations cover.

The complaint submitted to the UN Global Compact Office was also sent to the UK National Contact Point (NCP) for the *OECD Guidelines for Multinational Enterprises*. Although Nestlé S.A. is a Swiss company, when Baby Milk Action has written to its Chief Executive over past years and decades regarding company practices, responses generally came from Nestlé (UK). This was the basis for approaching the UK NCP. However the UK NCP forwarded the complaint to the Swiss NCP. The Swiss NCP first indicated that it was unwilling to receive a copy of the complaint sent to the UN Global Compact Office and requested that the breaches of human rights and other instruments be related to the *Guidelines*. It also suggested a focused, specific complaint be registered, rather than evidence of systematic violations. Further, it asked Baby Milk Action to agree to keep any communications made with Nestlé on the matter confidential. Baby Milk Action refused to do this on the basis that it and other civil society organisations were

already campaigning on the issues and Nestlé had published its own responses on websites and elsewhere.

On 27 November 2009, Baby Milk Action sent a specific complaint to the Swiss NCP regarding Nestlé's latest global marketing strategy for breastmilk substitutes, which had been included in the original complaint (BABY MILK ACTION, 2009b). Nestlé is marketing breastmilk substitutes with the claim that they 'protect', whereas babies fed on them are more likely to become sick than breastfed babies and, in conditions of poverty, more likely to die. The Swiss NCP was asked to take whatever action it could to stop these violations of the Guidelines. There followed a protracted discussion by email and letter in which the Swiss NCP reiterated it was a voluntary system aiming to promote dialogue. Baby Milk Action again pointed out that it was already in 'dialogue' with Nestlé and asked what communicating through the Swiss NCP was intended to add. The Swiss NCP suggested it could assist with 'mediation' and 'negotiation', which Baby Milk Action suggested may be appropriate in a labour dispute, but the specific provision Nestlé was violating, the *International Code of Marketing of Breastmilk Substitutes*, had been adopted by the World Health Assembly. Baby Milk Action argued that it was for the Assembly to adopt further Resolutions if it wished to update the Code, not for a civil society organisation to 'negotiate' its provisions with Nestlé.

The Swiss NCP also rejected the suggestion that companies should abide by the Code independently of government measures, although this is explicitly stated in the Code. Baby Milk Action also pointed out that the Assembly adopted the Code as a 'minimum requirement', that human rights are meant to be universal and that the Nestlé 'protect' marketing strategy is global, hence the need to invoke measures at an international level.

The Swiss NCP asked Baby Milk Action to provide copies of the labels. Baby Milk Action suggested it was more appropriate to put the request to Nestlé, situated close to the Swiss NCP, as the labels were being rolled out around the world and the company would be able to provide the latest versions. The Swiss NCP refused to do so and said it was closing the case and did not wish to be copied in on further correspondence between Baby Milk Action and Nestlé. Baby Milk Action raised the logos at the Nestlé shareholder meeting on 15 April 2010 and Chief Executive of Nestlé Nutrition, Richard Laube, stated that the logos had been rolled out in 120 countries.

The lack of concrete action from the authorities responsible for handling complaints of violations of the *UN Global Compact* and *OECD Guidelines* demonstrates that they do not provide an effective framework for addressing corporate breaches of widely accepted principles. In part this is due to the voluntary nature of the measures. In part it is due to the way the authorities have interpreted their duties. As such these initiatives have little or nothing to offer campaign organisations, particularly those that already have effective ways to prompt companies to respond to their communications. The way Nestlé, and possibly other companies, use their stated support for the initiatives to try to divert criticism, and the role that the UN Global Compact Office in particular plays in promoting, and apparently endorsing, company publications, means that far from helping to stop malpractice, the initiatives are facilitating the continuation of malpractice.

A Task Force of the United Nations System Standing Committee on Nutrition has looked at global obligations of states and international agencies in relation to the human right

to adequate food. Baby Milk Action's Campaigns and Networking Coordinator, Mike Brady (the author of this article), was a member specifically charged with making recommendations with regard to corporate accountability. These appear in the book *Global Obligations for the Right to Food* produced by the Task Force and edited by Professor George Kent of the University of Hawaii (KENT, 2008). The failure of existing regulatory systems at the international level as demonstrated by this case study, should give added impetus to reforming the system at the international level for ensuring corporate accountability.

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ⁱ See the European Commission's justification for rejecting a European Parliament white paper calling for a regulatory framework with stronger measures later in the article.

ⁱⁱ The OECD member countries are: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Commission of the European Communities takes part in the work of the OECD.

ⁱⁱⁱ Information for the submission was drawn from Baby Milk Action (marketing of breastmilk substitutes, water pumping in São Lourenço, Brazil), International Labor Rights Forum (child slavery and labour in the cocoa supply chain, Labour rights abuses in Colombia), Union of Filipino Employees (Labour rights abuses in the Philippines), Corporate Accountability International (Conflicts with communities over water resources), Attac Switzerland (Spying on campaign organisations), with additional information drawn from *Food Inc.* published by the UK Food Group (reference in the submission, treatment of dairy and coffee farmers).