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# China's Energy Investments and the Corporate Social Responsibility Imperative

WOJTEK MACKIEWICZ WOLFE\* AND  
ANNETTE S. LEUNG EVANS\*\*

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## I. Introduction

The China National Petroleum Company (CNPC) is technically a private corporation. However, CNPC is a state oil company of the People's Republic of China, a central state-owned enterprise that is the direct successor to the Ministry of Petroleum Industry.<sup>1</sup> Although there is an official split between the Chinese Communist Party (CCP) and the Chinese national oil companies, observers such as Erica Downs recognize that they do maintain a symbiotic relationship: many of the key company executives also hold positions in the Central Committee of the CCP.<sup>2</sup>

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The views expressed in this article are those of the authors, and do not reflect the views of their respective employers.

\* Assistant Professor, Political Science, Rutgers University. Prof. Wolfe is also the author of *Winning the War of Words: Selling the War on Terror from Afghanistan to Iraq*, published in 2008 by Praeger Security International. His areas of research include US foreign policy, US-China relations, and East Asian politics. Prof. Wolfe is currently writing a book on China's energy diplomacy.

\*\* J.D., L.L.M. (Temple). Ms. Leung Evans has also studied at Temple University Japan (Tokyo) and at Hong Kong University. She specializes in cross-border transactions involving Asian corporations. Having previously practiced in the area of commercial acquisitions and finance at a Philadelphia law firm, Ms. Leung Evans is currently an attorney with ARAMARK Corporation, where she focuses on commercial contracting. Ms. Leung Evans would like to thank Professor Sophie Smyth for her valuable comments on early drafts of this paper.

<sup>1</sup> China National Petroleum Corporation, "History", online: <[www.cnpc.com.cn/en/aboutcnpc/companyprofile/history/default.htm](http://www.cnpc.com.cn/en/aboutcnpc/companyprofile/history/default.htm)> [CNPC, "History"].

<sup>2</sup> Erica S. Downs, "China's 'New' Energy Administration" (2008) *The China Business Review*

There is some degree of independence, however. CNPC is administered by the Chinese government through the State-owned Assets Supervision and Administration Commission of the State Council (SASAC).<sup>3</sup> SASAC describes itself as acting similarly to a private shareholder or investor under *The Company Law of the People's Republic of China*,<sup>4</sup> therefore representing the interests of the state only indirectly through SASAC's influence over management, corporate governance, and performance of a subject company.<sup>5</sup> It is intended to separate the ownership interests of the Chinese state from management of state-owned enterprises.<sup>6</sup> More specifically, SASAC's role is to safeguard the role of economic interests in management decisions, providing an institutional buffer from the Chinese government's regulatory, political policy-making functions.<sup>7</sup> Ultimately, the ruling Communist Party envisions privatization of most state-owned enterprises, explicitly including the infrastructure and utility sectors.<sup>8</sup>

Therefore, while CNPC policy reflects policies of the Chinese government because of its status as a state-owned enterprise, it must remain mindful of private sector concerns such as economic returns because of the mission of SASAC and CNPC's potential privatization. CNPC therefore has a multifaceted nature that makes it a unique case study for the role of corporate social responsibility (CSR) norms and public international law in shaping the practices of multinational corporations.

How the management of CNPC navigates these tensions will have consequences that extend beyond direct CNPC corporate practices. Following a corporate reorganization in 1998 and the creation of PetroChina as a private Joint Stock Limited Company under Chinese law, CNPC became the majority shareholder of PetroChina.<sup>9</sup> PetroChina is currently the largest public company in China by market value and the third largest public oil and gas operations sector company in the world.<sup>10</sup> While PetroChina is careful to publicly distance itself from the control that can be exerted by

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<sup>3</sup> State-owned Assets Supervision and Administration Commission of the State Council, People's Republic of China, "Central SOEs" (19 June 2008), online: <[www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html](http://www.sasac.gov.cn/n2963340/n2971121/n4956567/4956583.html)>.

<sup>4</sup> [27 October 2005] Order of the President of the People's Republic of China, No. 42 (entered into effect 1 January 2006), online: <[www.fdi.gov.cn/pub/FDI\\_EN/Laws/law\\_en\\_info.jsp?docid=50878](http://www.fdi.gov.cn/pub/FDI_EN/Laws/law_en_info.jsp?docid=50878)> [*Company Law*].

<sup>5</sup> State-owned Assets Supervision and Administration Commission of the State Council, People's Republic of China, "Main Functions and Responsibilities of SASAC", online: <[www.sasac.gov.cn/n2963340/n2963393/2965120.html](http://www.sasac.gov.cn/n2963340/n2963393/2965120.html)>.

<sup>6</sup> Li Rongrong, "Welcome Remarks", online: <<http://www.sasac.gov.cn/n2963340/n2963363/2965107.html>>.

<sup>7</sup> Jiangyu Wang, "Dancing with Wolves: Regulation and Deregulation of Foreign Investment in China's Stock Market" (2004) 5 *Asian-Pacific L. & Pol'y J.* 1 at 59.

<sup>8</sup> *Ibid.*

<sup>9</sup> CNPC, "History", *supra* note 1.

<sup>10</sup> Forbes, "The Global 2000" (20 April 2011), online: <[www.forbes.com/global2000/list?industry=All&state=All&country=All](http://www.forbes.com/global2000/list?industry=All&state=All&country=All)> (PetroChina is sixth on Forbes' global list of the largest publically listed companies, the highest of any Chinese company. Within the oil and gas operations sector, it is behind only ExxonMobil and Royal Dutch Shell.).

CNPC due to its controlling interest,<sup>11</sup> shareholders in Chinese joint stock limited companies have power over the company's operational guidelines and investment plans, as well as approval rights over annual financial budgets.<sup>12</sup> Even without day-to-day influence regarding PetroChina operations, CNPC can still have an effect on the ultimate direction of its operational policies. Therefore, it is useful to examine CNPC's own internal policies as an indication of the kinds of policies that might be encouraged at the PetroChina subsidiary level.

Evidence shows that private corporate groupings are gaining strength in China,<sup>13</sup> and these corporate groupings are attracting increasingly significant public exposure. This article will argue that these two shifts may lead to increased following of CSR norms by China's multinational corporations. As a state-owned enterprise, CNPC faces a unique set of pressures with regards to the implementation (or non-implementation) of CSR norms. This article will explore these pressures, and discuss how CNPC can respond to them. CSR is a broad concept that addresses a company's responsibility to engage in social issues beyond purely economic, legal and technical operational requirements.<sup>14</sup> It requires attention to the social, environmental, ethical and local economic implications of the company's policies and actions.<sup>15</sup> CSR defines how a company should serve the interests of societal stakeholders, rather than the business-oriented interest of maximization of economic investment returns for traditional shareholders.<sup>16</sup> The societal stakeholders who are the target of CSR include individuals and groups, local to or with an interest in where a company operates, as well as end-user customers of a company. In recent years, CSR has moved beyond an exhortation to act in an ethical manner into a call for participation in international development initiatives.<sup>17</sup> Even while the actual positive impact of CSR activities on development is under debate, corporations' perceived need to engage in such activities is less controversial.<sup>18</sup> As a state-owned enterprise, CNPC faces an especially difficult task in balancing global public and political support for CSR norms with the policies of the Chinese government.

The trend towards CSR is part of a larger evolution in the treatment of corporations in public international law. This article will use the example of

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<sup>11</sup> PetroChina Company Limited, "The Relationship Between CNPC and the Company" (2008), online: <[www.petrochina.com.cn/Ptr/Investor\\_Relations/Corporate\\_Governance\\_Structure/gszljg\\_6.htm](http://www.petrochina.com.cn/Ptr/Investor_Relations/Corporate_Governance_Structure/gszljg_6.htm)>.

<sup>12</sup> *Company Law*, *supra* note 4, Arts. 38, 100.

<sup>13</sup> Barry Naughton, "SASAC and Rising Corporate Power in China" (12 March 2008) 24 *China Leadership Monitor*, online: <[www.hoover.org/publications/china-leadership-monitor/article/5668](http://www.hoover.org/publications/china-leadership-monitor/article/5668)>.

<sup>14</sup> Krista Bondy, Dirk Matten & Jeremy Moon, "Multinational Corporation Codes of Conduct: Governance Tools for Corporate Social Responsibility?" (2008) 16 *Corp. Governance* 294 at 295.

<sup>15</sup> *Ibid.*

<sup>16</sup> Jennifer Oetzel, Kathleen A. Getz & Stephen Ladek, "The Role of Multinational Enterprises in Responding to Violent Conflict: A Conceptual Model and Framework for Research" (2007) 44 *Am. Bus. L.J.* 331 at 335.

<sup>17</sup> Jędrzej G. Frynas, "Corporate Social Responsibility and International Development: Critical Assessment" (2008) 16 *Corp. Governance* 274.

<sup>18</sup> *Ibid.* at 279.

CNPC—as a state-owned enterprise, neither a purely public nor a purely private multinational corporation—to touch on broader changes in the way corporations govern and are governed. The traditional subjects of public international law have been states; only relatively recently have entities such as international organizations begun to attain incidents of international legal personality.<sup>19</sup>

Understanding the unique pressures facing CNPC's management with respect to CSR and its potential obligations in public international law—and therefore gaining insight into CNPC's possible response to these pressures—is important for a number of reasons. The activities of CNPC and of PetroChina affect many in China and in the (often developing) areas in which these corporations undertake resource extraction and transportation. One example of this impact is particularly pressing. CNPC's first major foreign oil and gas exploration project was in Sudan,<sup>20</sup> in which it continues to operate more projects than in any other African country.<sup>21</sup> Sudan is also the largest single foreign state in China's oil investment portfolio,<sup>22</sup> and Chinese investment accounts for 40% of Sudanese oil production, much of which is sold on the world market.<sup>23</sup> Since China's domestic crude oil reserves are limited, CNPC has little choice but to increase its international oil supply exploration and investments. At the present time, Africa provides the largest influx of CNPC's business along with energy deals in the Middle East and Central Asia. In an effort to secure these investments, the Chinese government has become a significant supplier of arms to the Sudanese government in its long-standing civil war in Darfur, and may even be the largest supplier.<sup>24</sup> The humanitarian crisis in Sudan is severe and continuing,<sup>25</sup> and has been characterized as “a massive campaign of ethnic violence,” involving war crimes and crimes against humanity, and arguably extending to the commission of genocide.<sup>26</sup>

On the one hand, the Chinese government has been criticized for its practical and diplomatic support of the Sudanese government's most controversial activities,<sup>27</sup> including the way it has influenced UN Security

<sup>19</sup> Allison D. Garrett, “The Corporation as Sovereign” (2008) 60 Me. L. Rev. 129 at 130.

<sup>20</sup> China National Petroleum Corporation, 2007 *Annual Report*, at 46, online: <<http://www.cnpc.com.cn/Resource/english/images1/pdf/07AnnualReport/2007PDF.pdf>> [CNPC, 2007 *Annual Report*].

<sup>21</sup> *Ibid.* at 49.

<sup>22</sup> Peter S. Goodman, “China Invests Heavily in Sudan's Oil Industry-Beijing Supplies Arms Used on Villagers” *Washington Post* (23 December 2004) A1.

<sup>23</sup> International Crisis Group, “China's Thirst for Oil” (Asia Report No. 153, 9 June 2008) at 24, online: <[www.crisisgroup.org/~media/Files/asia/north-east-asia/153\\_china\\_s\\_thirst\\_for\\_oil.ashx](http://www.crisisgroup.org/~media/Files/asia/north-east-asia/153_china_s_thirst_for_oil.ashx)>.

<sup>24</sup> *Ibid.* at 29; Goodman, *supra* note 22; Amnesty International, “Sudan: Arms Continuing to Fuel Serious Human Rights Violations in Darfur” (8 May 2007), online: <[www.amnesty.org/en/library/info/AFR54/019/2007](http://www.amnesty.org/en/library/info/AFR54/019/2007)>.

<sup>25</sup> For a listing of recent UN documents regarding the situation in Sudan, see United Nations Sudan Information Gateway, “Document Database: Latest Documents”, online: <<http://www.unsudanig.org/library/index.php?fid=documents>>.

<sup>26</sup> Leilani F. Battiste, “The Case for Intervention in the Humanitarian Crisis in the Sudan” (2005) 11 Ann. Surv. Int'l & Comp. L. 49 at 49-50.

<sup>27</sup> Goodman, *supra* note 22.

Council sanctions and resolutions in response to early reports of the Darfur conflict.<sup>28</sup> SASAC, on the other hand, claims a commitment to sustainable economic development and the pursuit of international development goals, through its promulgation of the *World Economic Development Declaration (Zhuhai Declaration)*.<sup>29</sup> The *Zhuhai Declaration* expresses a series of sustainable development principles intended to achieve international development in accordance with the Millennium Development Goals.<sup>30</sup> The question therefore is how to reconcile these competing positions: against the backdrop of accusations of human rights abuses by the Chinese government, how can—and why should—the state-owned CNPC act in a manner reflecting CSR obligations?

This article examines the adequacy of CNPC's CSR policies. This article does not attempt to critically review particular international norms with respect to CNPC, or even argue that they are binding in law on CNPC; rather, it explores the potential applicability of existing norms to CNPC's specific situation. However, it will be argued that CNPC should amend its CSR policies to incorporate international law guidelines generally, including but not limited to the existing set of CSR norms. Part II will discuss the various motivations for compliance with CSR regimes: market-based, domestic regulatory/civil liability, and international regulatory and quasi-regulatory. The third part will examine the particular set of incentives for CNPC to comply with various global CSR standards, while the next part will discuss the concrete steps that CNPC should take in implementing these standards. Finally, the paper will conclude by reflecting on the future of CNPC with respect to CSR.

## II. CNPC's Motivations for Compliance

There are a variety of norms that CNPC can draw upon in order to build its corporate social responsibility policies. However, this does not answer the question of why CNPC should be concerned with compliance with those standards in the first place.

Ralph Steinhardt posits four potential regimes that motivate multinational corporations to comply with human rights standards: (1) market-based regimes, where conforming to standards provide a competitive advantage; (2) domestic regulatory regimes, where local law requires compliance with standards; (3) civil liability regimes, where the threat of civil

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<sup>28</sup> International Crisis Group, *supra* note 23 at 25.

<sup>29</sup> Zhuhai, China, 7 November 2003, online: <[www.cicpmc.org/en/detail.asp?id=3114&Channel=4&ClassID=25](http://www.cicpmc.org/en/detail.asp?id=3114&Channel=4&ClassID=25)>; Li Rongrong, "Aggressively Advance SOE Reform and Development, Enhance China's Sustainable Economic Development and Overall Social Progress" (Address delivered to the World Economic Development Conference, Zhuhai, China, 7 November 2003), online: <<http://www.sasac.gov.cn/n2963340/n2964712/3049653.html>> (Mr. Li spoke in his capacity as the Chairman of SASAC).

<sup>30</sup> Jemal-ud-din Kassum, "Growth With Equity in an Integrated World" (Address delivered to the World Economic Development Conference, Zhuhai, China, 6 November 2003), online: <<http://go.worldbank.org/YA5SYF1YL0>> (Mr. Kassum spoke for the World Bank in his capacity as the Vice-President, East Asia and Pacific).

litigation incentivizes compliance; and (4) international regulatory and quasi-regulatory regimes, where international non-governmental and inter-governmental organizations use formal and informal tools to reduce human rights violations by corporations.<sup>31</sup> Each of these regimes is capable of incentivizing compliance not only with the core set of international human rights conventions, but also with standards under international law such as CSR norms, as well as the general pursuit of development goals. CNPC has suffered, or may suffer, specific consequences that align with each of these broad motivational regimes.

### 1. *The Market-based Regime*

The market-based regime relies on the assumption that CSR can provide a competitive advantage among market competitors. The consumers that drive market-based regimes now include sophisticated investors interested in “sustainable” business, a concept that encompasses attention to human rights<sup>32</sup> and environmental responsibility.<sup>33</sup> Consumers may also directly affect a business by refusing to purchase products produced by companies that do not comply with human rights standards.<sup>34</sup> The effects of the market-based regime on CNPC’s CSR compliance are limited, however, due to CNPC’s long-standing (albeit declining) insulation from relevant market forces.

This mechanism for regulation is faced with obvious difficulties when applied to CNPC. First, state ownership insulates CNPC from the effect of purely competitive markets. In addition, CNPC sells its products with a domestic focus and acts as a direct seller to individual consumers primarily in China.<sup>35</sup> Meanwhile, international trading activities are carried out as an indirect operation through the PetroChina subsidiary.<sup>36</sup> CNPC, then, benefits from a captive and controlled market that may be less responsive to CSR efforts and other corporate activities than a company that sells to a broader consumer base that is potentially more concerned with such considerations.

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<sup>31</sup> Ralph G. Steinhardt, “Soft Law, Hard Markets: Competitive Self-Interest and the Emergence of Human Rights Responsibilities for Multinational Corporations” (2008) 33 *Brooklyn J. Int’l L.* 933 at 934-35.

<sup>32</sup> *Ibid.* at 941-42.

<sup>33</sup> World Bank, Environment and Social Development Unit (EASES) of the East Asia and Pacific Region and Environment Department (ENV), *Corporate Environmental and Social Responsibility in the East Asia and Pacific Region: Review of Emerging Practice* (May 2006) at iv, online: <[www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2008/02/04/000020953\\_20080204141244/Rendered/PDF/423030PAPER0EA1ponsibility01PUBLIC1.pdf](http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2008/02/04/000020953_20080204141244/Rendered/PDF/423030PAPER0EA1ponsibility01PUBLIC1.pdf)>.

<sup>34</sup> David Weissbrodt & Muria Kruger, “Current Developments: Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (2003) 97 *Am. J. Int’l L.* 901 at 902.

<sup>35</sup> One example is CNPC’s network of over 17 000 service stations throughout China: China National Petroleum Corporation, “Marketing & Trading”, online: <[www.cnpc.com.cn/en/aboutcnpc/ourbusinesses/marketingtrading/Marketing\\_and\\_Trading.htm](http://www.cnpc.com.cn/en/aboutcnpc/ourbusinesses/marketingtrading/Marketing_and_Trading.htm)>.

<sup>36</sup> *Ibid.*; International Crisis Group, *supra* note 23 at 25 (“to make it more difficult for activists to target the company with divestment measures or other forms of sanctions”, CNPC ensured that “its listing on the New York Stock Exchange–PetroChina–excludes overseas investments from its portfolio, making it difficult for international shareholders to affect those operations.”).



Furthermore, CNPC is largely insulated from international consumer boycotts of its goods. Like other national oil companies, CNPC is in a less precarious position than other multinational corporations producing consumer goods. Boycotting a single national oil company is nearly impossible within the confines of the global energy market. In the United States, for instance, gasoline from different importers is combined at the pipeline and bulk terminal level, meaning that different consumer outlets often purchase their petroleum products from the same source.<sup>37</sup> Furthermore, local consumer outlets are unlikely to be owned directly by a national oil company, so that boycotting or protesting a local gas station will not affect the parent company whose brand the gas station carries.<sup>38</sup> Therefore, as a practical matter, boycotting a particular oil company from a consumer point of view is unlikely to be effective and unlikely to be a sought-after consumer impact strategy.

But this market insulation from consumer-based CSR pressures may be deteriorating. As Chinese consumers become increasingly media-savvy, CNPC cannot continue to rely on its status as a state oil company for its direct-to-consumer success. For CNPC, the example of Russia's Lukoil Oil Company is instructive because it shows a way to promote future economic success through (a) the recognition that CSR norms can be expected in the future to create stronger consumer-based market incentives for compliance; and (b) careful planning of CSR initiatives, to ensure that one's corporation is prepared to capitalize on these market incentives. The policies of Lukoil suggest that in addition to the consumer market benefits of taking on a similar stance as Lukoil and following a CSR scheme, CNPC may also find similar positive effects in its labor and operating market.

Much like the creation of CNPC, Lukoil was created as a state-owned oil company, in the USSR in 1991.<sup>39</sup> While Lukoil acquired a United States retail oil company in Getty Petroleum Marketing, Inc. in 2000,<sup>40</sup> it did not enter the US consumer market under the Lukoil name until three years later.<sup>41</sup> In the intervening time period, Lukoil recognized the role of CSR norms in the American consumer marketplace by creating a CSR code and program, which included attaining certifications and undertaking audits.<sup>42</sup> It released

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<sup>37</sup> U.S. Energy Information Administration, "Oil: Crude and Petroleum Products Explained" (19 February 2010), online: <[http://www.eia.doe.gov/energyexplained/index.cfm?page=oil\\_home](http://www.eia.doe.gov/energyexplained/index.cfm?page=oil_home)>.

<sup>38</sup> See e.g. Derrick Ho, "BP Boycotts Hurt Local Stations; Gas Giant Offers Help" *CNN.com* (12 June 2010), online: <[http://articles.cnn.com/2010-06-12/us/bp.protest.atlanta\\_1\\_gas-station-retail-gasoline-storage-terminals?\\_s=PM:US](http://articles.cnn.com/2010-06-12/us/bp.protest.atlanta_1_gas-station-retail-gasoline-storage-terminals?_s=PM:US)> (describes ineffective protests against British Petroleum in the wake of the Gulf of Mexico oil disaster).

<sup>39</sup> Lukoil Oil Company, "Company History: 2000-1991", online: <[www.lukoil.com/static\\_6\\_5id\\_2132\\_.html](http://www.lukoil.com/static_6_5id_2132_.html)>.

<sup>40</sup> *Ibid.*; Lukoil Oil Company, "Lukoil to Acquire Getty in First Acquisition of Publicly Held US Company by a Russian Corporation" (3 November 2000), online: <[www.lukoil.com/press.asp?div\\_id=1&id=399&year=2000](http://www.lukoil.com/press.asp?div_id=1&id=399&year=2000)>.

<sup>41</sup> Lukoil Oil Company, "President Vladimir Putin of Russia Visits Lukoil Gas Station in NYC" (26 September 2003), online: <[http://www.lukoil.com/press.asp?div\\_id=1&id=2143&year=2003](http://www.lukoil.com/press.asp?div_id=1&id=2143&year=2003)>.

<sup>42</sup> Lukoil Oil Company, "Lukoil Sustainability Report for Operations in the Russian Federation:

its first formal CSR report in 2005 and upon publication of its second report, explicitly stated that the program was intended to “ensure more efficient performance and social protection of employees.”<sup>43</sup> Lukoil has also acknowledged the role of environmental responsibility and the importance of protecting individuals from harm, both elements of CSR, and the close relationship in economic terms between these elements and its attainment of broader strategic development goals.<sup>44</sup>

Regardless of whether CNPC's future desire to change is driven by moral standards or higher profit margins, there are two market-based factors that are currently pulling China and CNPC toward CSR compliance. The first has already been observed: out of a need for improved logistical capabilities in sub-Saharan Africa, China's national oil companies have increased their local infrastructure finance investments. CNPC needs to be able to transport its product in countries that do not always have basic infrastructure capabilities.<sup>45</sup> The resulting investments, while responding to market pressures, also have the effect of promoting sustainable development.

The second market-based factor currently driving CSR compliance underlines CNPC's complex role as a private corporation that, through its state ownership, is nonetheless subject to a significant level of state influence. After China's experience leading up to the 2008 Summer Olympics, there are signs that China is beginning to take notice of how its foreign direct investment activities impact public perception. The country's public image was internationally tarnished by anti-China protests carried out against the country's Olympic torchbearers.<sup>46</sup> The protests grew and eventually armed security was required. China's “Journey of Harmony” turned into an international spectacle, drawing attention to issues such as Tibetan independence, tensions with ethnic minorities, Taiwanese independence and the genocide in Sudan.<sup>47</sup> These activities have increased the sensitivity of China's leadership to the perception of their foreign policies abroad, and perhaps resulted in increased efforts to communicate China's perspective on these issues.<sup>48</sup>

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2003-2004” (1 September 2005), online: <[www.lukoil.com/materials/doc/reports/Social/Report-eng.pdf](http://www.lukoil.com/materials/doc/reports/Social/Report-eng.pdf)>.

<sup>43</sup> Lukoil Oil Company, “Lukoil Published Its Second Social Report” (3 September 2007), online: <[www.lukoil.com/press.asp?div\\_id=1&id=2763&year=2007](http://www.lukoil.com/press.asp?div_id=1&id=2763&year=2007)>.

<sup>44</sup> Lukoil Oil Company, “Lukoil Presents Main Principles of Strategic Development up to 2016, Including Increase of Daily Hydrocarbon Production to 4 MLN BOE” (18 October 2006), online: <[www.lukoil.com/press.asp?div\\_id=1&id=2587&year=2006](http://www.lukoil.com/press.asp?div_id=1&id=2587&year=2006)>.

<sup>45</sup> Vivien Foster et al., “Building Bridges: China's Growing Role as Infrastructure Financier for Sub-Saharan Africa” (2009) 5 *Trends and Policy Options*.

<sup>46</sup> John Burns, “Protests of China Make Olympic Torch Relay an Obstacle Course” *The New York Times* (7 April 2008).

<sup>47</sup> See e.g. International Crisis Group, *supra* note 23 at 27; Nicholas Kristof, “China's Genocide Olympics” *The New York Times* (24 January 2008); Human Rights Watch, “China: Lhasa Torch Relay Tarnishes Olympic Movement” (17 June 2008), online: <[www.hrw.org/en/news/2008/06/16/china-lhasa-torch-relay-tarnishes-olympic-movement](http://www.hrw.org/en/news/2008/06/16/china-lhasa-torch-relay-tarnishes-olympic-movement)>; Human Rights Watch, “China: Police Detain Would-Be Olympic Protesters” (13 August 2008), online: <[http://china.hrw.org/press/news\\_release/china\\_police\\_detain\\_would\\_be\\_olympic\\_protesters](http://china.hrw.org/press/news_release/china_police_detain_would_be_olympic_protesters)>.

<sup>48</sup> International Crisis Group, *ibid.*, fn. 216 (“The Darfur outcry” associated with the 2008 Beijing Olympics “has heightened China's awareness of the complexity of influences on U.S. policy. It



It is significant that the response from China's political leadership coincided with changes by CNPC to its CSR policies. Politically and militarily, China stepped up its campaign to improve the country's image on foreign direct investments in Sudan;<sup>49</sup> CNPC followed in step by increasing the reporting of its social and corporate responsibility efforts. CNPC's homepage now explicitly includes such efforts in its corporate philosophy: "While providing energy, we strive for harmonious relationships between operation and the environment, and corporate and community interests."<sup>50</sup> Furthermore, CNPC now offers an "Environment & Society" section highlighting their contributions to the environment, health, safety and public welfare. Of particular interest is the section "Support for Education in Sudan," highlighting its efforts at improving children's education through the building of new schools and the supplementary funding of local educational programs.<sup>51</sup>

The fact that CNPC is willing to invest in the sustainable development of Sudan may seem to stand in tension with the "race to the bottom" hypothesis, which states that multinational corporations will simply seek the lowest labour market costs. However, this must be viewed in light of the gains that arise from improvements in local living standards. Although it may appear counter-intuitive, the race to the bottom approach has shown to ultimately increase costs, through the consequences of poor quality control and inefficient labour.<sup>52</sup> Indeed, Nike's recent approach to CSR shows benefits beyond simply going through the CSR motions; it now actively promotes CSR norms.<sup>53</sup> Multinational corporations have increasingly been interested in improving living standards in developing countries where their workforces are located.<sup>54</sup> Initial steps taken by multinational corporations

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has learned that the government cannot temper the positions of advocacy and lobbying groups and that the best way to deal with them is to reach out to them directly. Chinese diplomats in Washington are trying public diplomacy with a wide variety of NGOs, activist groups, lawmakers and journalists to highlight the steps Beijing has taken to end the conflict."); "China's Xinhua Launches 24-hour Global News Channel in English, Cnc" *MercoPress South Atlantic News Agency* (2 July 2010), online: <<http://en.mercoPress.com/2010/07/02/china-s-xinhua-launches-24-hour-global-news-channel-in-english-cnc>>.

<sup>49</sup> International Crisis Group, *ibid.* at 27-29.

<sup>50</sup> China National Petroleum Company, "Environment & Society", online: <[www.cnpc.com.cn/en/environmentandsociety/](http://www.cnpc.com.cn/en/environmentandsociety/)>.

<sup>51</sup> Online: <[www.cnpc.com.cn/en/environmentandsociety/public/case/Support+for+education+in+Sudan.htm](http://www.cnpc.com.cn/en/environmentandsociety/public/case/Support+for+education+in+Sudan.htm)> [CNPC, "Support for Education in Sudan"].

<sup>52</sup> The "race to the bottom" hypothesis was intuitively pleasing to many analysts and rings true for states experiencing early stages of globalization. However, overwhelming evidence suggests that manufacturing and production costs actually increase, due to poor quality control. Multinational corporations learned this the hard way in the early 1990's. Most evidence supports the idea that increased CSR adoption leads to greater profitability. For a brief overview and literature list see Daniel W. Drezner, "The Race to the Bottom Hypothesis: An Empirical and Theoretical Review" (Tufts University, The Fletcher School, December 2006), online: <[www.danieldrezner.com/policy/RTBreview.doc](http://www.danieldrezner.com/policy/RTBreview.doc)>.

<sup>53</sup> "Nike, Inc. Corporate Responsibility Report FY07-09" (30 May 2007), online: <[www.nikebiz.com/crreport/pdf](http://www.nikebiz.com/crreport/pdf)>.

<sup>54</sup> John Micklewright & Anna Wright, "Private Donations for International Development", UNU-WIDER Discussion Paper No. 2003/82 (December 2003) at 16, online: <[www.wider.unu.edu/stc/repec/pdfs/rp2003/dp2003-82.pdf](http://www.wider.unu.edu/stc/repec/pdfs/rp2003/dp2003-82.pdf)>; William B. Werther, Jr. & David Chandler, *Strategic*

such as Walmart and Proctor & Gamble indicate that more corporations now recognize that investing in the domestic infrastructure and improving local quality of life improves their bottom line in the long-term.<sup>55</sup> Western oil companies have also recognized the benefits of following CSR norms.<sup>56</sup>

In contemporary times, consumers have become increasingly concerned with whether companies operating in developing countries are exploiting their workers.<sup>57</sup> Together, these two forces have led to a rise in the CSR movement that encourages support for international development aid.<sup>58</sup> Participating in CSR is not only consumer-friendly, but also supportive of economic growth of the company. In encouraging the growth of stable society in the countries where they are located, multinational corporations also benefit by being able to attract better local employees.<sup>59</sup> CSR and human rights obligations can positively affect a company's employee recruitment and retention efforts, its reputation among various stakeholders and its legitimacy within a local community.<sup>60</sup> As a result, the company may "reduce employee turnover rates, increase the willingness of good employees to relocate, help avoid loss of assets or interruption of cash flow, reduce insurance risk premiums, or improve relations with the community or host government,"<sup>61</sup> thereby decreasing spending and increasing profits. The reputational gains from participating in CSR activities within a host country can also result in increased business access and opportunities for expansion.<sup>62</sup>

In summary, then, a number of factors limit the current market-based incentives for CSR compliance by CNPC. As a state-owned corporation, its exposure to market pressures is limited. CNPC's direct-to-consumer operations are limited to the Chinese domestic market, where CSR currently plays a relatively minimal role in consumer choices. Meanwhile, international consumer boycotts of national oil companies are practically difficult. However, there are signs that the market pressures on CNPC for CSR compliance will increase in the future: Chinese consumers are becoming increasingly concerned with such matters; there are some signs that the Chinese government may be increasingly sensitive to global public perceptions; and CNPC's increasing investments in developing areas such as Sudan present an inherent market incentive for initiatives consistent with CSR norms and development.

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*Corporate Social Responsibility: Stakeholders in a Global Environment*, 2nd ed. (Thousand Oaks, CA: SAGE Publications, 2011) at 92.

<sup>55</sup> The Corporate Council on Africa, "Walmart Joins CCA: U.S. Corporate Giant Expanding into Africa" (16 December 2010), online: <[www.africacncl.org/\(4oqzhm55ovjlkq55azbjuhio\)/reader.aspx?viewmode=pressrelease&content\\_id=930bd7ad-875a-4a4c-a99e-4d5d27f213ba](http://www.africacncl.org/(4oqzhm55ovjlkq55azbjuhio)/reader.aspx?viewmode=pressrelease&content_id=930bd7ad-875a-4a4c-a99e-4d5d27f213ba)>.

<sup>56</sup> Peter Hulm, International Trade Centre "CSR: A Must for Big Firms in Africa" *International Trade Forum* (2007, Issue 1), online: <[www.tradeforum.org/news/fullstory.php/aid/1132](http://www.tradeforum.org/news/fullstory.php/aid/1132)> (Interview with Ann Pickard, Shell Exploration and Production Africa).

<sup>57</sup> *Ibid.*

<sup>58</sup> Micklewright & Wright, *supra* note 54 at 17.

<sup>59</sup> Weissbrodt & Kruger, *supra* note 34 at 902.

<sup>60</sup> Oetzel, Getz & Ladek, *supra* note 16 at 336-337.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

## 2. Domestic Regulatory and Civil Liability Regimes

Under Steinhardt's model, domestic regulatory and civil liability regimes can also motivate compliance with international standards.<sup>63</sup> These include not only regulatory and civil liabilities imposed by the law of the state of incorporation, but also liabilities that may arise in the law of the various jurisdictions in which a multinational corporation operates or invests. These regimes can only be effective if the relevant government enforces the rule of law, both enforcing regulatory requirements itself, and ensuring a functional civil litigation process. Otherwise, there is no reason why a company would be concerned about complying with unenforced local statutes and court judgments. Further, a civil liability regime is not possible unless the host government permits standing, whether statutory or otherwise, for third parties to enforce public policy, perhaps as simply as by adding a right for private parties to sue corporations for noncompliance with existing regulatory regimes, instead of relying solely on government initiative to investigate and impose penalties for noncompliance.

Similar to the market-based regimes, the current pressures for CSR compliance placed on CNPC by domestic regulatory and civil liability regimes are weak. There is little realistic chance of enforcement in China, in the jurisdictions where CNPC operates, from third party states, or by private parties. But the inherent incentive for CNPC to develop the rule of law in the places where it operates suggests that domestic regulatory and civil liability regimes could become stronger in the future.

In China, the 2006 *Company Law* requires at Art. 5 that "[w]hen undertaking business operations, a company shall comply with the laws and administrative regulations, social morality and business morality. It shall act in good faith, accept the supervision of the government and the general public, and bear social responsibilities."<sup>64</sup> The extent to which this imposes an enforceable obligation is contested, however: "Some scholars understand it as an exhortatory rather than mandatory provision," and in practice this is currently its effect, due to a lack of access to legal remedies.<sup>65</sup> Publicly traded companies in China are also subject to a *Code of Corporate Governance* that requires such companies to consider stakeholder interests including those of the community, as well as to pursue sustainable development.<sup>66</sup> However, given that "the Chinese legal system is notorious for the gap between the law on the books and the law in practice,"<sup>67</sup> and the complicity of the Chinese government in exporting weapons to Sudan in violation of United Nations

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<sup>63</sup> Steinhardt, *supra* note 31 at 934-935.

<sup>64</sup> *Supra* note 4. See also Li-Wen Lin, "Corporate Social Responsibility in China: Window Dressing or Structural Change?" (2010) 28 (1) Berkeley J. Int'l L. 64 at 71 [Lin, "Window Dressing"]; Li-Wen Lin, "Corporate Social Accountability Standards in the Global Supply Chain: Resistance, Reconsideration, and Resolution in China" (2007) Cardozo J. Int'l & Comp. L. 321 at 359 [Lin, "Resistance"].

<sup>65</sup> Lin, "Window Dressing", *ibid.* at 96.

<sup>66</sup> Lin, "Resistance", *supra* note 64 at 359-60.

<sup>67</sup> Lin, "Window Dressing", *supra* note 64 at 96.

arms sanctions during the Darfur genocide,<sup>68</sup> relying on Chinese domestic enforcement as a route to compliance with international CSR norms is problematic. However, CSR norms are gaining a steadily more prominent place in Chinese business. Although they have not been completely implemented, the various CSR initiatives are leading to increasing levels of awareness.<sup>69</sup>

Third party states do not offer much promise of enforcement, either. Reliance on enforcement by third party states is particularly unrealistic in the CNPC case, given the past history of the international response to genocide allegations in Sudan. Despite findings that Talisman Energy (a transnational oil company 40% owned by CNPC, traded in the United States and headquartered in Canada) was likely complicit in the 1998-1999 Darfur events, the United States and Canada declined to impose sanctions on the company and most of its equity owners, including CNPC.<sup>70</sup> It seems unlikely that domestic regulation of CNPC in accordance with CSR norms could arise from states other than China.

Regulatory regimes in the various jurisdictions in which a multinational corporation operates or invests are also a potential source of regulatory incentives for CSR compliance. While many of the jurisdictions in which CNPC operates—such as Sudan—may have weak regulatory regimes, particularly for complex multinational corporations such as CNPC, it is in the multinational company's interest to encourage the development of the rule of law in regions where it conducts business. The rule of law increases predictability and efficiency with respect to enforceability of contracts and protection of private property rights, including those relating to intellectual property.<sup>71</sup> A corporation can promote rule of law by, for example, refusing to pay bribes to local government officials,<sup>72</sup> complying with "well-considered" local laws,<sup>73</sup> or providing funding and training in support of rule of law efforts.<sup>74</sup> Once codified statutes and a consistent judicial process

<sup>68</sup> See the discussion on this topic above. See also Hannibal Travis, "Genocide in Sudan: The Role of Oil Exploration and the Entitlement of the Victims to Reparations" (2008) 25 *Ariz. J. Int'l & Comp. L.* 1 at 50-51.

<sup>69</sup> Lin, "Window Dressing", *supra* note 64 at 100.

<sup>70</sup> Travis, *supra* note 68 at 44-45.

<sup>71</sup> Robert McCorquodale, "Business, the International Rule of Law and Human Rights" in McCorquodale, ed., *The Rule of Law in International and Comparative Context* (London: British Institute of International and Comparative Law, 2010) 27 at 35-36, citing among others Allan Gerson, "Peace Building: The Private Sector's Role" (2001) 95 *Am. J. Int'l L.* 101 at 111 (the rule of law is critical for "securing investment, defining property rights, forming contracts, and preventing default on debts, and otherwise to aid in reducing the avoidable risks of investment."). See also "How the Private Sector Can Promote the Rule of Law - The General Counsel Perspective" *Metropolitan Corporate Counsel* (May 2006) 38, online: <[www.metrocorpocounsel.com/pdf/2006/May/38.pdf](http://www.metrocorpocounsel.com/pdf/2006/May/38.pdf)> ["Private Sector Can Promote the Rule of Law"].

<sup>72</sup> Timothy L. Fort & Cindy A. Schipani, "An Action Plan for the Role of Business in Fostering Peace" (2007) 44 *Am. Bus. L.J.* 359 at 366.

<sup>73</sup> Donald O. Mayer, "Corporate Governance in the Cause of Peace: An Environmental Perspective" (2002) 35 *Vand. J. Transnat'l L.* 585 at 603.

<sup>74</sup> "CEELI, the Rule of Law and The Corporate Role" *Metropolitan Corporate Counsel* (May 2006) 50, online: <<http://www.metrocorpocounsel.com/pdf/2006/May/25.pdf>>.

exist, a company is then obliged to abide by the local legal system when doing business in a host country.<sup>75</sup> Additionally, supporting rule of law is part of many existing CSR instruments, such as the *Voluntary Principles on Security and Human Rights (VPs)*,<sup>76</sup> and is implicit in the anti-corruption principle of the United Nations *Global Compact*.<sup>77</sup>

### 3. International Regulatory and Quasi-Regulatory Regimes

Finally, through processes of acculturation in the international CSR community, participation in international regulatory and quasi-regulatory schemes can also directly motivate compliance with CSR norms. These include the *Social Accountability 8000* protocol (SA8000),<sup>78</sup> the VPs, the UN *Global Compact*, the *Sustainability Reporting Guidelines (SRG)*,<sup>79</sup> and the *Oil and Gas Industry Guidance on Voluntary Sustainability Reporting (GVSR)*.<sup>80</sup> Although none of these instruments are legally binding in an enforceable way, by providing voluntary and public standards, they help to build a normative community among multinational corporations. They also enable increased market pressures for CSR compliance, by making it possible for a company's CSR policies to be evaluated objectively with a standards-based qualification that consumers and investors can rely on—a consistent reporting mechanism allowing for an “apples to apples” comparison between companies. In addition, compliance with reporting standards built into the *Global Compact* and similar regimes provides additional information to the market about a company's commitment to sustainable business. With the third-party confirmation available through regulatory and quasi-regulatory schemes, consumers and investors can reward compliant companies through market investment.

CNPC learned this lesson during its attempted public stock offering, which could not be completed because of allegations of noncompliance with human rights standards.<sup>81</sup> Instead, CNPC was forced to restructure the offering through the creation of PetroChina, which was offered with promises that funds raised would not be used in Sudan.<sup>82</sup> Going forward,

<sup>75</sup> “Private Sector Can Promote the Rule of Law”, *supra* note 71 at 38.

<sup>76</sup> (December 2000), online: <[www.voluntaryprinciples.org/files/voluntary\\_principles\\_english.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf)> (One section of the principles speaks to “Interactions Between Companies and Public Security”).

<sup>77</sup> (26 July 2000), online: <[www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html](http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html)> (Principle 10 is that “Businesses should work against corruption in all its forms, including extortion and bribery.”).

<sup>78</sup> Social Accountability International, *Social Accountability 8000* (2008), online: <[www.sa-intl.org/\\_data/n\\_0001/resources/live/2008StdEnglishFinal.pdf](http://www.sa-intl.org/_data/n_0001/resources/live/2008StdEnglishFinal.pdf)>.

<sup>79</sup> Global Reporting Initiative, *Sustainability Reporting Guidelines* (2006), online: <[www.globalreporting.org/NR/rdonlyres/A1FB5501-B0DE-4B69-A900-27DD8A4C2839/0/G3\\_GuidelinesENG.pdf](http://www.globalreporting.org/NR/rdonlyres/A1FB5501-B0DE-4B69-A900-27DD8A4C2839/0/G3_GuidelinesENG.pdf)>.

<sup>80</sup> International Petroleum Industry Environmental Conservation Association (IPIECA), American Petroleum Institute (API) & International Association of Oil and Gas Producers (OGP), *Oil and Gas Industry Guidance on Voluntary Sustainability Reporting*, 2nd ed. (December 2010), online: <[www.api.org/ehs/performance/upload/voluntary\\_sustainability\\_reporting\\_guidance\\_2010.pdf](http://www.api.org/ehs/performance/upload/voluntary_sustainability_reporting_guidance_2010.pdf)>.

<sup>81</sup> Goodman, *supra* note 22.

<sup>82</sup> *Ibid.*

CNPC could be well served in the global marketplace by adhering to externally-created CSR standards. These international regulatory and quasi-regulatory regimes can impose strong incentives for compliance. Given its controversial past, a commitment to internationally-recognized norms could reform CNPC's image to that of a socially responsible company. The Sudan issue remains significant enough for China's leaders and CNPC that they have a strong incentive from international regulatory regimes to show themselves as being increasingly responsible in their investment and development projects in Sudan. While it is possible that international public backlash against China's initial activities in Sudan may simply be a detour, it is more likely that the continued longevity of the issue provides the necessary stimulus for greater CSR. Furthermore, with the increased focus on Sudan's bid for WTO membership, CNPC will find it difficult to decrease its CSR efforts without significant political capital loss to the CCP.

The review of Steinhart's four potential regimes for motivating compliance with human rights and CSR standards has demonstrated that these regimes do not exert equal pressure in CNPC's case. While the market argument will clearly be an issue of increasing significance for CNPC in the future, particularly as seen in the PetroChina stock offering concerns, at the current time neither the market-based regime nor the pressures exerted by regulatory and liability regimes are a significant force for CSR compliance. Moving forward, it may be more useful to consider CNPC's motivations for CSR compliance within the framework of CNPC's concern regarding public perception: a concern that can perhaps be addressed via voluntary participation in international quasi-regulatory compliance regimes. The external market pressures that encourage CSR compliance—which will only grow more salient in the future as Sudan continues to seek accession to the World Trade Organization and further recognition on the world stage—coincide with internal pressures within the CNPC to subject it to the sanctioning effects of international norms.<sup>83</sup>

### **III. Available CSR Norms that Can be Implemented by CNPC**

CNPC can draw on a number of private and semi-public initiatives to guide its CSR programs. Purely private initiatives have grown out of broad efforts between a large number of diverse commercial enterprises, or cooperation within specific industries. International organizations like the UN have also weighed in with multilateral suggestions that partially reflect input from non-governmental interests, such as the UN *Global Compact* described below. Private corporations can also take their CSR cues from international development programs created by the public and non-governmental organization sectors, particularly in the form of the Millennium Development Goals which, as discussed below, were promulgated with the idea that private industry can and should be involved

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<sup>83</sup> Victor Mosoti, "The Legal Implications of Sudan's Accession to the World Trade Organization" (2004) 103 *African Affairs* 269.



in pursuing development activities. The availability of *SA8000*, the *VPs*, and the *Global Compact* provides a framework for CNPC's CSR efforts by concretely defining the principles CNPC can adopt in order to demonstrate its commitment to the idea of sustainable business. These are existing norms that can potentially provide guidance to CNPC's CSR implementations, but each must be evaluated to their applicability and practicality for CNPC.

The *SA8000* protocol is a private initiative that uses international human rights norms and labour laws to create an auditable international standard for companies. The standard was created by Social Accountability International, a non-governmental organization advised by a broad range of stakeholders from trade unions, other non-governmental organizations, government representatives and business members.<sup>84</sup> Participation in *SA8000* is voluntary and can take the form of certification via independent auditing against the protocol, or participation in the "Corporate Program," which is intended to assist companies with implementation of *SA8000* principles in company operations.<sup>85</sup> Certification in accordance with *SA8000* is a distinguishing characteristic that allows consumers and others to easily identify human rights compliance by a subject company.<sup>86</sup> The Corporate Program gives member companies access to resources that can enable it to better understand and more effectively integrate *SA8000* into corporate policies.<sup>87</sup> In addition, Social Accountability International offers relevant training programs to support CSR programs in compliance with *SA8000*.<sup>88</sup>

A company that chooses to comply with *SA8000* has the ability to show third parties that its concern for workers' rights and workplace conditions meets certain minimum standards drawn from such sources as the *Universal Declaration of Human Rights* and the various conventions of the International Labour Organization.<sup>89</sup> *SA8000* is applicable to companies of all sizes, locations and industries,<sup>90</sup> and addresses issues relating to child labour, forced and compulsory labour, health and safety, freedom of association, discrimination, disciplinary practices, working hours, remuneration, and management systems.<sup>91</sup> While there are only 18 member companies at this time, and no member companies from the energy sector,<sup>92</sup> over 2400 facilities

<sup>84</sup> Social Accountability International, "About Us", online: <<http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=472>>; Social Accountability International, "Who We Are: SAI Advisory Board", online: <<http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=494&grandparentID=472&parentID=490>>.

<sup>85</sup> Social Accountability International, "SA8000 Certification", online: <<http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=617&parentID=473>> [SAI, "SA8000 Certification"].

<sup>86</sup> Steinhart, *supra* note 31 at 941.

<sup>87</sup> SAI, "SA8000 Certification", *supra* note 85.

<sup>88</sup> See Social Accountability International, "SAI Training Programs", online: <<http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=553&parentID=473&nodeID=1>>.

<sup>89</sup> *SA8000*, *supra* note 78 at 4.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.* at 3.

<sup>92</sup> Social Accountability International, "Member Companies", online: <<http://www.sa-intl.org/index.cfm?fuseaction=Page.viewPage&pageId=906&parentID=473&nodeID=1>>.

have been certified in compliance with SA8000 as of the end of 2010, including 37 facilities classified as part of the energy industry.<sup>93</sup>

While the lack of participation from companies in CNPC's sector suggests that the SA8000 principles may not be adequately tailored to CNPC's needs, there would be great reputational gains from "getting in on the ground floor" with this initiative. Even though oil companies have not embraced the SA8000 initiative, CNPC may find the SA8000 protocol useful because there are available resources for implementation, because it is a compilation of multiple workers' rights standards, and because it is objectively auditable for compliance.

On the other hand, there are CSR initiatives more specifically tailored to CNPC's needs. The VPs are a CSR standard specific to the extractive and energy sector.<sup>94</sup> Created by a consortium of governments, extractive/energy sector corporations and non-governmental organizations, the VPs are intended to address human rights specifically and CSR generally, and provide guidelines for discussing, promoting and protecting human rights interests through the activities of a range of stakeholders.<sup>95</sup> The VPs acknowledge the varying roles and responsibilities of government and corporate stakeholders with respect to human rights, as well as the potential impact of non-governmental organizations and other, less formal interest groups.<sup>96</sup> Corporate adherents of the VPs are expected to work in conjunction with host governments to ensure law and order, as well as security for government, corporations and private citizens.<sup>97</sup>

Primary responsibility belongs to governments, which are responsible under the VPs to maintain rule of law in accordance with international human rights standards.<sup>98</sup> However, companies that adopt the VPs are expected to support local authorities in complying with the standards, and to work to mitigate potential human rights abuses. As an example, adopting companies are meant to promote three principles in their use of private security:

- (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the *Universal Declaration of Human Rights* and the *ILO Declaration on Fundamental Principles and Rights at Work*.<sup>99</sup>

In addition to encouraging policies that further compliance with relevant international norms, the VPs also require companies to actively monitor and

<sup>93</sup> Social Accountability International, "SA8000 Certified Facilities: As of December 31st, 2010", online: <[http://www.saasaccreditation.org/certifaclists/2010\\_Q4/Q4%20Certs%20List,%20Public%20List.xls](http://www.saasaccreditation.org/certifaclists/2010_Q4/Q4%20Certs%20List,%20Public%20List.xls)>.

<sup>94</sup> VPs, *supra* note 76, "Introduction".

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*, "Interactions between Companies and Private Security".

report human rights abuses to government authorities, to proactively prevent future human rights abuses by pressuring local government to investigate and take action when violations do occur, and to ensure that company-provided equipment is not used in the violation of human rights.<sup>100</sup> Equipment in this context refers to the tools provided to security forces, including lethal and non-lethal weapons.<sup>101</sup> Companies providing equipment are required under the VPs to comply with relevant law with respect to the equipment and to mitigate any potential human rights abuses that may occur if the equipment is misappropriated or diverted in transport.<sup>102</sup> When a host country is unable to satisfactorily protect human rights, the VPs call on companies to engage private security forces to act as local police, subject to the same principles that apply to official government forces.<sup>103</sup>

The VPs are especially important because they reflect a broad consensus of industrialized countries, influential non-governmental organizations, and leading multinational corporations participating in the extractive and energy sectors (including such companies as BP, Chevron, ConocoPhillips, ExxonMobil, Hess Corporation, Marathon Oil, Occidental Petroleum Corporation, Shell and Statoil).<sup>104</sup> The two-pronged approach of the VPs, addressing both the needs of private industry in protecting their operations and the “human rights and fundamental freedoms” of local communities, speaks to commercial and individual interests.<sup>105</sup> For a company to be recognized as a participant, it must implement the VPs in a transparent manner and engage in dialogue to further the goals of the VPs with other governmental, non-governmental and corporate participants.<sup>106</sup> Therefore, a participant of the VPs not only maintains the ability to protect its interests in a host country, but it can do so within an internationally recognized framework and community dedicated to furthering both security concerns and human rights within the context of the energy sector.

The special tailoring of the VPs to the energy sector's specific operations could be especially useful to CNPC. But for CNPC, compliance with the VPs may be problematic given the allegations of its participation in the Sudanese government abuses described above. The focus on providing and supporting security services in compliance with human rights standards is a particular concern because true fulfillment of the VPs by CNPC would require it to proactively address the ongoing human rights violations in Darfur. CNPC could no longer hide behind a division between its actions and the actions of the Chinese government directly, nor could it claim compliance with the VPs merely through examination of its internal policies: the VPs implore

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*, “Risk Assessment”.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*, “Interactions between Companies and Private Security”.

<sup>104</sup> International Business Leaders Forum & Business for Social Responsibility, “Participants”, online: Voluntary Principles <[www.voluntaryprinciples.org/participants/](http://www.voluntaryprinciples.org/participants/)>.

<sup>105</sup> International Business Leaders Forum & Business for Social Responsibility, “Amendments Approved at VPs 2009 Oslo Plenary” (May 2009), online: <[www.voluntaryprinciples.org/files/vp\\_amendments\\_200905.pdf](http://www.voluntaryprinciples.org/files/vp_amendments_200905.pdf)>.

<sup>106</sup> *Ibid.* at 1-2.

companies to influence the activities of external actors. However, given that the VPs have been adopted by a range of leaders in the energy industry, CNPC should strongly consider compliance with the standards in order to gain increased legitimacy in global markets.

Beyond generally private international initiatives like SA8000 and the VPs, the UN has spearheaded the *Global Compact*, which collects “universally accepted principles” for the sustainable conduct of business in an increasingly globalized world.<sup>107</sup> The principles speak to support of human rights, compliance with labour standards, environmental responsibility and anti-corruption efforts.<sup>108</sup> The human rights principles, like SA8000 and the VPs described above, draw from the *Universal Declaration of Human Rights* to guarantee individual rights to equality, life, and security, as well as personal, economic, social and cultural freedom.<sup>109</sup> The labour standards follow the *ILO Declaration of Fundamental Principles and Rights at Work*, which addresses worker rights to unionize, as well as the elimination of forced labour, child labour, and discriminatory employment practices.<sup>110</sup> The environmental responsibility standards are intended to promote public-private cooperation through the types of partnerships encouraged by the UN Environment Programme’s existing environmental law initiatives, and in compliance with the goals set forth in the multiple existing treaties for environmental protection.<sup>111</sup> Finally, the anti-corruption principle speaks to the rule of law issues that can undermine sustainable development, with a focus on why controlling corruption is beneficial from both an ethical and a business stance.<sup>112</sup>

Corporate participation in the *Global Compact* is voluntary. It requires only a written letter of commitment from a company’s Chief Executive Officer and an annual financial contribution in support of *Global Compact* initiatives, with a suggested amount based on the company’s annual sales/revenues.<sup>113</sup> Participating companies are expected to incorporate the guiding principles of the *Global Compact* into all levels of their regular business processes, provide aid towards fulfillment of development goals including the Millennium Development Goals, and publicize and advocate compliance with the *Global Compact*.<sup>114</sup> In return, the company receives the benefit of an established, recognized CSR framework, the ability to participate in a community of like-minded stakeholders engaged in pursuing similar objectives, and access to resources to support sustainable development efforts.<sup>115</sup>

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<sup>107</sup> United Nations, “Overview of the UN Global Compact” (30 April 2011), online: <<http://www.unglobalcompact.org/AboutTheGC/>>.

<sup>108</sup> *Global Compact*, *supra* note 77.

<sup>109</sup> *Ibid.*, “Human Rights”.

<sup>110</sup> *Ibid.*, “Labour”.

<sup>111</sup> *Ibid.*, “Environment”.

<sup>112</sup> *Ibid.*, “Transparency and Anti-corruption”.

<sup>113</sup> United Nations *Global Compact*, “Business Participation”, online: <[http://www.unglobalcompact.org/HowToParticipate/Business\\_Participation/index.html](http://www.unglobalcompact.org/HowToParticipate/Business_Participation/index.html)>.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

The Communication on Progress produced by each participating company on an annual basis is a continuing assertion of intent to comply with the *Global Compact*, a description of activities in support of the *Global Compact* principles, and an assessment of the success of these activities.<sup>116</sup> As of 23 May 2011, there were 114 global oil producers participating in the *Global Compact* and filing Communications on Progress.<sup>117</sup> While the *Global Compact* claims that it is the world's largest corporate citizenship and sustainability initiative,<sup>118</sup> CNPC is not included on the participant list. However, according to the UN, over 100 business participants in China are currently compliant with *Global Compact* requirements in terms of filing Communications on Progress, including China Power Investment Corporation, China Petroleum & Chemical Corporation (Sinopec), and PetroChina Company Limited.<sup>119</sup>

Since PetroChina participates in the *Global Compact*, CNPC, as controlling shareholder of PetroChina, apparently does not have any objection to participation.<sup>120</sup> There are few limitations on the types of entities that can participate in the *Global Compact*: the UN does not specify that only certain types of businesses may commit<sup>121</sup> and also permits public sector organizations<sup>122</sup> and cities<sup>123</sup> as stakeholders. CNPC cannot use its state-owned enterprise status as an excuse for not committing to the *Global Compact*. Indeed, SASAC itself could potentially become a participant, bound by the *Global Compact* principles for all of the state-owned enterprises that it operates. There appears to be little reason for CNPC to not join the *Global Compact*.

<sup>116</sup> United Nations *Global Compact*, "Progress and Disclosure" (25 February 2011), online: <[www.unglobalcompact.org/COP/index.html](http://www.unglobalcompact.org/COP/index.html)>.

<sup>117</sup> See United Nations *Global Compact*, "Participant Search", online: <[www.unglobalcompact.org/participants/search](http://www.unglobalcompact.org/participants/search)>.

<sup>118</sup> United Nations *Global Compact*, "Participants and Stakeholders: UN Global Compact Participants" (30 June 2009), online: <[www.unglobalcompact.org/ParticipantsAndStakeholders/index.html](http://www.unglobalcompact.org/ParticipantsAndStakeholders/index.html)>.

<sup>119</sup> See United Nations *Global Compact*, "Participant Search", *supra* note 117.

<sup>120</sup> It is important to note while CNPC originally excluded overseas investments from PetroChina, the latter now participates in international oil and energy investments. See, for example, its recent investment in a large-scale Canadian natural gas project: PetroChina, "PetroChina to Acquire 50 Percent Interest in Encana's Cutbank Ridge Business Assets for C\$5.4 Billion" (10 February 2011), online: <[www.petrochina.com.cn/Ptr/News\\_and\\_Bulletin/News\\_Release/PetroChina\\_to\\_Acquire\\_50\\_Percent\\_Interest\\_in\\_Encana's\\_Cutbank\\_Ridge\\_Business\\_Assets\\_for\\_C\\$5.4\\_Billio.htm](http://www.petrochina.com.cn/Ptr/News_and_Bulletin/News_Release/PetroChina_to_Acquire_50_Percent_Interest_in_Encana's_Cutbank_Ridge_Business_Assets_for_C$5.4_Billio.htm)>.

<sup>121</sup> See United Nations *Global Compact*, "Business Participation", *supra* note 113.

<sup>122</sup> United Nations *Global Compact*, "Participants and Stakeholders: Public Sector Organizations", online: <[http://www.unglobalcompact.org/ParticipantsAndStakeholders/public\\_sector.html](http://www.unglobalcompact.org/ParticipantsAndStakeholders/public_sector.html)>.

<sup>123</sup> *Ibid.*, "Participants and Stakeholders: Cities", online: <[www.unglobalcompact.org/ParticipantsAndStakeholders/cities.html](http://www.unglobalcompact.org/ParticipantsAndStakeholders/cities.html)>.

#### IV. How CNPC Could Comply with International CSR Norms

CNPC can benefit from the ongoing evolution of CSR norms that seek to expand the relationship between states and corporations in promoting human rights. As these norms grow, CNPC does not need to take a one-size-fits-all approach but can look at specific areas of relevance in the host states.

The principles contained in the *VPs* and the *Global Compact* are general, so CNPC may find it useful to look to international development regimes for practical guidance on implementation of business operations in a socially responsible manner. The connection between development and human rights is supported by the World Bank's role as a development financing institution<sup>124</sup> with a primary goal of carrying out the Millennium Development Goals (MDGs).<sup>125</sup> As described above, CSR initiatives such as the *Global Compact* are also concerned with the fulfillment of the MDGs. The MDGs are

...the world's time-bound and quantified targets for addressing extreme poverty in its many dimensions—income poverty, hunger, disease, lack of adequate shelter, and exclusion—while promoting gender equality, education, and environmental sustainability. They are also basic human rights—the rights of each person on the planet to health, education, shelter, and security as pledged in the *Universal Declaration of Human Rights* and the *UN Millennium Declaration*.<sup>126</sup>

Implementing the MDGs is not merely a task for governments; the private sector is explicitly expected to provide resources in support of the goals.<sup>127</sup> Jeffrey Sachs, who directed the UN Millennium Project that promulgated the MDGs,<sup>128</sup> has argued that the private sector should contribute to business development, as well as invest in health, education and nutrition as a complement to public development efforts.<sup>129</sup>

To this end, the various guidelines associated with the MDGs provide private sector organizations with a rich source of practical steps toward the implementation of the kind of goals that provide the basis for CSR principles. In order to meet the MDGs, the UN has called on the private sector to partner with other international organizations to form development strategies.<sup>130</sup> The UN also has requested the private sector to provide funding

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<sup>124</sup> World Bank Group, "About Us" (4 October 2010), online: <<http://go.worldbank.org/3QT2P1GNH0>>.

<sup>125</sup> *Ibid.*, "About Us: The Challenge", online: <<http://go.worldbank.org/DM4A38OWJ0>>.

<sup>126</sup> UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (New York: United Nations Development Programme, 2005), online: <<http://www.unmillenniumproject.org/documents/MainReportComplete-lowres.pdf>>.

<sup>127</sup> See *ibid.* at xix (Target 18 of the MDGs is to, "in cooperation with the private sector, make available the benefits of new technologies, especially information and communications technologies." This Target is part of Goal 8, "Develop a global partnership for development").

<sup>128</sup> *Ibid.* at inside cover.

<sup>129</sup> Jeffrey D. Sachs, *The End of Poverty: Economic Possibilities of Our Time* (New York: Penguin, 2006) at 252.

<sup>130</sup> *Supra* note 127; UN Department of Public Information, "Goal 8: Develop a Global Partnership



to meet shortfalls in official development assistance from current donor countries.<sup>131</sup> Therefore, partnerships encouraged for the purposes of pursuing the MDGs are not limited to those between developed and developing states or between developing states and non-governmental organizations.<sup>132</sup> Corporations can participate in providing access to health and education and developing infrastructure and services.<sup>133</sup> Their expertise is also invaluable for facilitating technology transfer, research and development, as well as research and development addressed at prevention and treatment of infectious disease.<sup>134</sup>

Private actors should participate in the pursuit of the MDGs for both moral reasons<sup>135</sup> and business reasons, as discussed above. Like CSR's intended results, development offers market-oriented incentives—it increases the wealth of potential customers,<sup>136</sup> stabilizes the health and social environment of potential workers, and promotes a transparent, functional, and less corrupt government marked by rule of law.

There are a variety of ways in which the private sector can use efforts to advance the MDGs to provide an overarching framework for CSR initiatives. Four areas of corporate activity have been suggested by the World Economic Forum's Global Governance Initiatives: core business activity, public-private partnerships, philanthropy, and advocacy.<sup>137</sup> Even without actively participating in development, a company can further the MDGs simply by doing business in a sustainable manner, such as by following the practices described in the Global Compact outlined above.<sup>138</sup> Second, the partnerships between private actors and governmental or non-governmental entities that the UN encourages as part of fulfilling the MDGs permit development initiatives to take advantage of business resources and skills for goods and services development, as well as business funds to apply towards facilities

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for Development" DPI/2517 N (September 2008), online: <<http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/Goal%20%20FINAL.pdf>>.

<sup>131</sup> UN Department of Public Information, *ibid.* at 1-2.

<sup>132</sup> *Ibid.* at 2.

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> Although private actors may also note the difficulty of defining morality, particularly when attempting to determine moral standards across cultural divides. See Norman Bowie, "New Directions in Corporate Social Responsibility; Moral Pluralism and Social Responsibility" (1991) 34 Bus. Horizons 56 at 63 (describing moral pluralism as the disagreement among people regarding what is right and wrong); Lawrence E. Mitchell & Theresa A. Gabaldon, "What Are the Ways of Achieving Corporate Social Responsibility?: If I Only Had a Heart: Or, How We Can Identify a Corporate Morality" (2002) 76 Tul. L. Rev. 1645 (acknowledging the problems with defining morality and arguing for a definition of "basic goodness" that can be found among people of similar cultural background).

<sup>136</sup> The first MDG is to eradicate extreme poverty and hunger, including by decreasing by half the number of people living under \$1 per day and achieving full and productive employment for all people. United Nations, "Goal 1: Eradicate Extreme Poverty & Hunger", online: <<http://www.un.org/millenniumgoals/poverty.shtml>>. Increased income will permit potential customers to spend beyond subsistence needs.

<sup>137</sup> Lisa Dreier, "Case Study: World Economic Forum – Business Partnerships for the MDGs" *Alliance* (1 September 2005) 31-32.

<sup>138</sup> *Ibid.* at 31.

construction.<sup>139</sup> Third, philanthropy is not limited to individual donations, but can include corporate activity. As suggested by the UN, corporate grants can fill funding gaps to support both public-private partnership activity and infrastructure and capacity-building.<sup>140</sup> Finally, corporate advocacy plays an important role by raising awareness and support for policies that further the MDGs.<sup>141</sup>

For practical guidance on how to comply with international obligations under the *SA8000* standard, the *VPs*, the *Global Compact* and various reporting guidelines described above, CNPC can adopt the MDGs as a set of concrete targets for its sustainable business goals. It can then consider how other entities pursue MDGs and similar development initiatives. By adjusting its core business policies in accordance with the *Global Compact*, as well as the *VPs*, CNPC would be able to conduct sustainable business simply in the course of its everyday operations. The *Global Compact* principles do not speak to specifics in implementation, but their integration into policy is still important because they can control the direction of decision-making within a company by changing its core business culture.

CNPC claims that its Sudan programs already include partnerships with local hospitals, orphanages and schools, as well as financial support for governmental projects.<sup>142</sup> If that is the case, then CNPC should extend these programs by continuing to engage in public-private partnerships. Public-private partnerships in general present opportunities for development initiatives to meet local priorities, increased accountability to stakeholders, and the potential to create sustained development continuing after the partnership ends. Further, public-private partnerships are a useful tool to align private efforts with public objectives. In light of general uncertainty that corporate programs are successful in meeting development goals,<sup>143</sup> CNPC should also consider expanding its development programs to formal partnerships with non-governmental agencies present in Sudan and focusing on addressing poverty and other aspects of the MDGs. Funneling CSR funding through such agencies and through public entities on the ground, instead of duplicating efforts, can enable CNPC to take advantage of their existing expertise and to support current programs that are already successful. Such partnerships are closely connected to the philanthropic activities suggested in the Global Governance Initiative. Rather than participating in specific development and CSR activities, CNPC can simply adjust its core business practices and provide funds to other entities providing on the ground development and human rights support. However, CNPC needs to manage the risk that the Sudanese government may disapprove of the activities of those non-governmental agencies and, if CNPC affiliates itself with those agencies, the Sudanese government may

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<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.* at 31-32.

<sup>141</sup> *Ibid.* at 32.

<sup>142</sup> CNPC, "Support for Education in Sudan", *supra* note 51.

<sup>143</sup> Frynas, *supra* note 17 at 279.

remove or restrict CNPC's rights to conduct its oil business within the country. If it seeks to remain involved in Sudan, which surely it does, CNPC must walk a tightrope between cooperating with local government demands and upholding CSR principles.

Finally, CNPC needs to increase its corporate advocacy efforts if it is to meet the Global Governance Initiatives. Participating in advocacy for pursuit of the MDGs aligns with the VPs and their requirements that companies promote human rights and workers' rights.<sup>144</sup> This prong is an especially important commitment for CNPC to make because of the existing allegations with respect to its activities in Sudan. By restructuring its planned public stock offering, CNPC was able to sidestep direct protests regarding its involvement in human rights abuses,<sup>145</sup> but it will continue to face market resistance until it publicly speaks out in favor of socially responsible practices. That is, CNPC could benefit from being more openly verbal in its diplomatic efforts to promote socially responsible practices and rule of law by host country governments. Participation in CSR programs that meet the standards of international organizations and the most responsible multinational corporations, including their commitments to influence host government attitudes, can be an effective way for CNPC to show its commitment to sustainable business practices.

CNPC should implement similar policies, both for the development projects it funds, and for those it participates in directly as part of its CSR program. Its initiatives should not be used as an opportunity to support related or favored businesses, but rather should be open to a transparent, competitive bidding process. In addition, CNPC might consider using its development-related projects as a way to encourage local business development, a strategy that can ultimately benefit the broader local community beyond the discrete goals of a project. The bidding process for these projects should be designed to combat fraud and corruption; at the same time, CNPC needs to be careful not to permit suppliers with a reputation for or history of fraud and corruption to participate in its projects. It should perform due diligence on all potential suppliers—examining their operational policies, and management and ownership structures, to ensure that they are not engaged in fraudulent or corrupt activities. CNPC should also ensure that suppliers comply with the standards of responsible business that CNPC adopts for itself. It needs to be especially mindful in its dealings with the Sudanese government, and may find it wise to use SASAC to put operational distance between itself and the official actions of the Chinese government with respect to Sudan.

In addition to adopting relevant norms, CNPC needs to be transparent about its progress towards compliance. It is not enough to adopt CSR policies; CNPC must also show what it is (and is not) doing in pursuit of those goals. Otherwise, CNPC's claimed efforts will not be visible to investors and consumers for their independent examination and critique. To

<sup>144</sup> VPs, *supra* note 76, "Interactions between Companies and Public Security".

<sup>145</sup> Goodman, *supra* note 22.

this end, CNPC has released Corporate Social Responsibility Reports since 2006.<sup>146</sup> The 2008 report includes a stated mission of pursuing sustainable development,<sup>147</sup> and addresses environmental protection, employee rights, poverty alleviation and education support among its topics.<sup>148</sup>

CNPC's Reports are putatively produced in compliance with the guidelines set out in the *SRG* and the *GVSR*.<sup>149</sup> However, neither the *SRG* nor the *GVSR* provide specific, substantive rules or principles that a company should adhere to; instead they are reporting guidelines, intended to assist companies with being transparent about their sustainability efforts. Therefore, it is difficult to determine the usefulness of CNPC's self-reporting.

The *SRG* are issued by the Global Reporting Initiative as part of a reporting framework for economic, environmental and social performance. They provide a comprehensive outline of the types of information that a company should disclose with respect to sustainability initiatives, including background information about the company and an assessment of its success in meeting economic, environmental, labor, human rights, society and product responsibility performance indicators.<sup>150</sup>

The *GVSR* is issued by three trade associations: the International Petroleum Industry Environmental Conservation Association, the American Petroleum Institute, and the International Association of Oil and Gas Producers. It is an industry-specific guideline for reporting on environmental, health and safety, social and economic performance,<sup>151</sup> but it is explicitly voluntary and disclaims status as an industry standard for compliance with any reporting requirements.<sup>152</sup>

By using the *SRG* and the *GVSR*, CNPC therefore is not avoiding reporting on its sustainability initiatives and compliance with various human rights, labor, and environmental norms. However, self-reporting alone only reflects a company's self-analysis of its current programs. It does not provide an independent source of analysis, and it does not provide a standard to which the company should aspire in its future activities. In order to show its commitment to international norms, CNPC should consider opening itself to third party auditing under *SA8000*, or explicitly adopting the external obligations created by the *VPs* and the *Global Compact*.

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<sup>146</sup> China National Petroleum Corporation, "Corporate Social Responsibility Report 2008", inside cover, online: <[www.cnpc.com.cn/Resource/english/images1/pdf/08%20CSR%20Report/CSR%20Report%202008.pdf](http://www.cnpc.com.cn/Resource/english/images1/pdf/08%20CSR%20Report/CSR%20Report%202008.pdf)>.

<sup>147</sup> *Ibid.* at 6.

<sup>148</sup> *Ibid.* at 1.

<sup>149</sup> *Ibid.*, inside cover. See *Sustainability Reporting Guidelines*, *supra* note 79; *Oil and Gas Industry Guidance on Voluntary Sustainability Reporting*, *supra* note 80.

<sup>150</sup> *SRG*, *ibid.* at 19-36.

<sup>151</sup> *GVSR*, *supra* note 80 at para. 1.1.

<sup>152</sup> *Ibid.* at para. 1.5.

## V. Conclusion: The Next Steps for CNPC

CSR is an area of global governance that is rapidly evolving. Developments occurring shortly before this article went to press include the UN Guiding Principles on Business and Human Rights, which articulate an integrated system of government and corporate efforts to assure implementation and enforcement of human rights regimes.<sup>153</sup> The Guiding Principles are intended to collect existing practices and norms and place them into a single context so that they can be analyzed as a whole, thereby offering guidance for implementation in individual, fact-specific situations. CNPC can use a similar approach in evaluating its CSR approach and determining how it should proceed.<sup>154</sup> CNPC must take into account its own unique pressures, including internal corporate goals and state influence, in order to decide the extent to which a CSR regime would be beneficial to its organization and in what way that sort of regime could be implemented.

CNPC should not merely look to international legal norms for guidelines on what to do and how to do it; it should also engage in partnerships that can take advantage of expertise and experience of organizations already on the ground. The communities of like-minded corporations and other entities that exist as part of the *VPs*, the *Global Compact* and the MDGs can be a resource for CNPC to locate opportunities for public-private partnerships and relationships with other private or non-governmental organizations engaged in human rights compliance and development aid. Participating in communities of interest surrounding CSR will provide CNPC with practical support as well as enhance its reputation as a counterpart to leading multinational corporations.

While CNPC is technically a state-owned enterprise, if the Chinese government and SASAC intend to show that they are capable of operating the company as a private enterprise responding to economic and not political drivers, then CNPC should be operated in compliance with international legal norms with respect to CSR and related concepts. Ultimately, CNPC needs to frame its activity in foreign countries in terms of compliance with international rules and norms even if it is not formally bound to those obligations. Even if all it does is “talk the talk” of a responsible, globalized corporation observing human rights and development best practices, it will eventually begin to “walk the talk.” By making statements about acting or planning to act in a certain way, CNPC creates a social expectation that it will actually follow through on its claims—and such expectations can eventually become, effectively, obligations for corporations. If CNPC wants to compete

<sup>153</sup> Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (21 March 2011) UN Doc. No. A/HRC/17/31, online: <[www.ohchr.org/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)>.

<sup>154</sup> *Ibid.* at 5.

on the world stage, then it must comply with its assertions regarding how it will act in the future or risk being dismissed as merely parroting the language of CSR without taking on the work such policies require. Participation in existing international compliance regimes will require CNPC to increase transparency levels to allow the public to assess CNPC's progress towards meeting international rules and norms. In addition, schemes such as the VPs and the *Global Compact* will give CNPC a support structure and community within which it can increase compliance with relevant norms.

Even if CNPC does not voluntarily assume membership in these non-binding international normative communities, there is an argument that international legal norms may have an influence over CNPC's operations: through China's accession to treaties, through industry/commercial norms that become *de facto* standards required for doing business in the oil and gas industry, or even through specific contractual obligations. As long as CNPC remains owned by the Chinese government, it will be subject to more scrutiny under traditional international "hard" law than purely private multinationals, because at least in the sphere of public perception (if not clearly in the legal sphere) its actions can be considered the actions of the Chinese state. Further, merely by being present in developing countries, CNPC will necessarily face the inter-related problems of governance, under-development, and poverty currently present in such countries, and may be forced to become involved in order to support and protect its business activities. It cannot do business in a vacuum and must acknowledge the role its presence can and should play. In the end, CNPC benefits by voluntarily conducting itself to the level of states' obligations under international law—particularly international human rights law—because doing so increases the legitimacy of the company as a member of the international business community and increases certainty in its business operations, both as an employer and as a contractual party.