THE YEAR IN REVIEW
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Committee on Corporate Social Responsibility

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This article summarizes developments in selected jurisdictions in the field of corporate social responsibility during 2013.[1] Developments in four industry sectors (textile, oil and gas, information and communication technology, and employment and recruitment) are also reviewed.

I. Africa

A. AFRICAN DEVELOPMENT BANK

In April 2013, the Board of the African Development Bank Group approved the African Development Bank Group Strategy for 2013–2022, the Governance Strategic Framework and Action Plan (2014–2018) (GAP II).[2] GAP II is a follow-up to the Governance Strategic Direction and Action Plan, 2008 – 2012 (GAP I), which was adopted in 2008. If fully and effectively implemented, GAP II has the potential to bring about significant changes not only to how the African Development Bank operates but also to the way business is done in Africa. The African Development Bank considers a new governance strategy important because "Africa is getting to a position to use its own resources for development, but needs a strong governance framework to put them into effective use."[3] "The vision of

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1. For developments during 2012, see Mikhail Reider-Gordon et al., *Corporate Social Responsibility*, 47 INT'L LAW. 183 (2013). For developments during 2011, see Uche Ewelukwa Ofodile, *Corporate Social Responsibility*, 46 INT'L LAW. 181 (2012).

2. AFRICAN DEVELOPMENT BANK GROUP, GOVERNANCE STRATEGIC FRAMEWORK AND ACTION PLAN (GAP II) (2014-2018) (2013), *available at* http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/2014-2018%20-%20Governance%20Strategic%20Direction%20and%20Action%20Plan%20(GAP%20II).pdf.

3. *Id.* at viii.

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GAP II is that Africa is governed by transparent, accountable and responsive governments including strong institutions capable of driving inclusive and sustainable growth."[4]

From the standpoint of corporate social responsibility, GAP II has three core objectives: (i) "strengthening governments' capacity for transparent and accountable use of public resources and citizens' ability to hold governments to account";[5] (ii) improving outcomes in the sectors [infrastructure, basic social services, and natural resources], and citizen[ ]s' ability to monitor them"[6]; and (iii) "promoting a business enabling environment which supports Africa's socio-economic transformation, job creation and financial inclusion."[7] Essentially, GAP II is built around three strategic pillars: "(i) public sector and economic management (PSEM), (ii) sector governance and (iii) investment and business climate."

Regarding sector governance, the African Development Bank aims to mainstream "governance in its sector operations . . . especially in natural resources and infrastructure."[8] The expected outcome is "[i]mproved natural resources management, institutional infrastructure, and basic social services delivery supporting inclusive and green growth; as measured by improved Revenue Watch Institute (RWI) resource governance index."[9] The major work-streams planned are the following: "[s]trengthening transparency, accountability, and value chain development in [natural resource management]; reducing mispricing and illicit financial flows in [natural resource management]; strengthening [public-private participation] policy . . . and regulatory frameworks for infrastructure development; and improving fiduciary standards including anti-corruption practices in infrastructure projects e.g. through e-procurement."[10]

GAP II has the potential to transform the business environment in Africa. It remains to be seen whether and to what extent GAP II can positively influence the activities of corporations operating in Africa, particularly emerging market multinationals from countries such as Brazil, Russia, India, China, and South Africa (the BRICS).

B. South Africa

On October 15, 2013, South Africa's Minister of Mineral Resources gave notice of her intention to make Technical Regulations for Petroleum Exploration and Exploitation (Proposed Regulation) under section 107(1) of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002).[11] Members of the public had thirty days from the date of the publication of the notice to submit written input and comments to the minister.

The purpose of the Proposed Regulation is "[t]o augment the Mineral and Petroleum Resources Development Regulations so as to prescribe standards and practices that will

4. *Id.*
5. *Id.*
6. *Id.* at ix.
7. *Id.*
8. *Id.* at 11.
9. *Id.* at 7.
10. *Id.*
11. Proposed Technical Regulations for Petroleum Exploration and Exploitation, Government Notice 1032 of 2013 (GN) (S. Afr.), *available at* http://www.dmr.gov.za/publications/summary/218-hydraulic-fracturing/1025-gazetted-proposed-technical-regulations-for-petroleum-exploration-and-exploitation.html. The South African Cabinet approved the proposed Technical Regulation on October 9, 2013.

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ensure safe exploration and exploitation of petroleum."[12] The Proposed Regulation applies "to all onshore, and, to the extent applicable, offshore exploration and production operations and must be read with the Act, the Regulations thereto and any other relevant legislation."[13] The Proposed Regulation is divided into five chapters: Chapter 1 on General Provisions, Chapter 2 on Site Assessment, Selection, and Preparation, Chapter 3 on Well Design and Construction, Chapter 4 on Operations and Management, and Chapter 5 on Well Suspension and Abandonment.

Chapter 2 of the Proposed Regulation calls for an environmental impact assessment, an assessment of the geology and geohydrology of the affected area prior to well design, and a water resource assessment as well as an assessment of related seismicity. Regarding the environmental impact assessment, article 3(1) stipulates, "[w]herever exploration or production activities are being planned that could have an impact on natural resources, or sensitive areas, appropriate studies must be undertaken to assess the potential impacts of such activities on the environment over the full life cycle of the operations." In article 3(2), the Proposed Regulation lays out a long list of elements that must be included in an appropriate impact prediction study. Chapter 2 also addresses Site Containment, providing that a holder of an exploration or production grant, as defined in the Proposed Regulation, "must at all times, prevent the contamination of the environment by providing a suitably designed impermeable site underlay system and site drainage arrangements."[14] Chapter 4 addresses five key issues: (1) Management of Hydraulic Fracturing, (2) Management of Water, (3) Management of Waste, (4) Management of Pollution Incidents, and (5) Management of Air Quality.

C. Ghana

On July 18, 2013, Ghana's Parliament passed the Ghana Investment Promotion Centre Bill, 2013 (GIPC Act). The goals of the GIPC Act are to "provide for the Ghana Investment Promotion Centre as the agency of Government responsible for the encouragement . . . of investments in Ghana; and to provide for the creation of an attractive incentive framework and a transparent, predictable and facilitating environment for investments in Ghana and for related matters." If and when signed by the Ghanaian President, the GIPC Act will repeal and replace the Ghana Investment Promotion Centre Act 478 of 1994. "Enterprise" is defined as "an industry, project, undertaking or business or an expansion of that industry, undertaking, project, or business or any part of that industry, undertaking[,] project or business other than the exploration and extraction of petroleum and other minerals."[15]

The GIPC Act does not directly address corporate social responsibility. But it addresses labor and employment issues, vests considerable supervisory and investigative powers in the Ghana Investment Promotion Centre (Centre),[16] and provides a list of offenses and penalties applicable to enterprises. Regarding labor and employment issues,

12. *Id.* ch. 1.
13. *Id.* art. 2(1).
14. *Id.* art. 8(1).
15. Ghana Investment Promotion Centre Bill, 2013 art. 42, at 23, *available at* http://www.ghanatrade.gov.gh/file/Ghana%20Investment%20promotion%20bill.pdf.
16. *Id.* art. 23(1) (stipulating that enterprises doing business in Ghana must be registered with the Centre).

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article 33(1) stipulates that "[a]n enterprise registered under this Act shall abide by the applicable labour legislation." Article 33(2) further stipulates that "[l]abour relations between an enterprise owned by an investor and the employees of the enterprise may be regulated by agreements made between the enterprise and the employees, but the agreements shall not establish standards lower than the mandatory requirements under the laws of Ghana."

The GIPC Act vests in the Centre the power and responsibility to "monitor" enterprises to which the GIPC Act applies in order to "ensure compliance" with the GIPC Act.[17] Pursuant to article 39, an enterprise commits an offense if that enterprise, *inter alia*, "fails to register or renew its registration with the Centre,"[18] "engages in an activity other than that for which that enterprise has been registered,"[19] "deliberately or negligently submits false or misleading information to the Centre,"[20] "refuses without lawful excuse to admit an officer or a designated person into the business premises of that enterprise or otherwise obstructs an officer or a designated agent of the Centre in the performance of that officer's or agent's functions,"[21] or "refuses or neglects to give any information which the Centre reasonably requests."[22]

D. Nigeria

On July 18, 2013, the President of Nigeria presented the Petroleum Industry Bill 2012 (PIB) to the Seventh Session of the Nigerian National Assembly for debate and assent.[23] If passed, the PIB will introduce radical changes to the oil industry and the energy sector in Nigeria. The stated purpose of the PIB is "to provide for the establishment of a legal . . . and regulatory framework" for the institutions and regulatory authorities for the Nigerian petroleum industry; and to establish [g]uidelines for the operation of upstream and downstream sectors."[24] Part VII of the PIB is titled "Health, Safety and Environment" and addresses issues such as "[r]esponsibility over the environment" (section 289); "[c]ompliance with health regulations" (section 290); "[c]onduct of operations" (section 291); "[o]bligations of licensee, lessee and contractors" (section 292); "[d]uty to restore the environment" (section 293); "[u]tilisation of good oil field practices" (section 295); and "[c]ompensation" (section 296).[25]

The PIB is controversial at best and has seen several revisions since 2008 when it was first introduced. Whether it will be passed in 2014 is anyone's guess.

17. *Id.* art. 37(1).
18. *Id.* art. 39(a).
19. *Id.* art. 39(b).
20. *Id.* art. 39(d).
21. *Id.* art. 39(e).
22. *Id.* art. 39(f).
23. Dare Agbelese, *Senate's Joint Committee on PIB Holds Public Hearings (Day 1)*, PETROLEUM INDUSTRY BILL (July 19, 2013), http://www.petroleumindustrybill.com/2013/07/19/senates-joint-committee-on-pib-holds-public-hearings-day-1/#.UtGyO55dXIY.
24. The Petroleum Industry Bill 2012, at 12 (Nigeria), *available at* http://www.nigeria-law.org/Legislation/LFN/2012/The%20Petroleum%20Industry%20Bill%20-%202012.pdf.
25. *Id.* at 149–52.

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II. Australian Stock Exchange Corporate Governance Council Considers Adoption of a Reporting Principle Related to Corporate Social Responsibility

On August 16, 2013, the Australian Stock Exchange (ASX) Corporate Governance Council released its Review of the Corporate Governance Principles and Recommendations, which included a draft of the third edition of the Principles and Recommendations.[26] The Principles and Recommendations were last reviewed in 2007, and the ASX Corporate Governance Council determined that it was time to review the guidelines in light of recent national and international developments in corporate governance.[27] As part of the recommendations, the ASX Corporate Governance Council adopted Recommendation 7.4, which would require a listed company to disclose "whether, and if so how, it has regard to economic, environmental and social sustainability risks."[28] The proposed principle was based on the increasing attention investors are paying toward environmental and social issues as well as reporting requirements adopted at earlier dates in countries like South Africa, Hong Kong, Brazil, Singapore, and the United Kingdom.[29]

III. India: The Two Percent Corporate Social Responsibility Provision in India's Companies Act 2013

A. Introduction

Raising living standards in rural India has always been a challenge, and, traditionally, the heavy lifting has fallen to government and non-governmental organizations. Now, another sector of society will share responsibility: India's large profitable companies. With the Companies Act 2013 (Companies Act) passed by both houses of India's parliament and assented to by India's president,[30] India is set to become one of the first countries in the world[31] to mandate business contributions to charity, normally a voluntary practice otherwise known as corporate social responsibility (CSR).[32] Although there is some debate about whether applicable companies can sidestep the spending requirements

26. ASX Corporate Governance Council, Review of the Corporate Governance Principles and Recommendations 1–2 (Aug. 16, 2013), *available at* http://www.asx.com.au/documents/asx-compliance/cgc-3rd-edition-consultation-paper.pdf.
27. *Id.*
28. *Id.* at 19.
29. *Id.* at 20.
30. Umakanth Varottil, *Companies Act, 2013 Receives Presidential Assent*, IndiaCorpLaw (Sept. 3, 2013, 10:53 AM), http://indiacorplaw.blogspot.com/2013/09/companies-act-2013-receives.html.
31. Only a very small group of countries currently mandate CSR spending. The tiny island nation of Mauritius has, since 1995, required that every profitable company contribute 2 percent of their net profits to a CSR fund that the company establishes. *See* Gov't of Mauritius, Introduction to Corporate Social Responsibility 1 (2009), *available at* http://www.nef.mu/csr/documents/guidelines/INTRODUCTION TO CORPORATE SOCIAL RESPONSIBILITY.pdf; *Corporate Social Responsibility*, National Empowerment Found., http://www.nef.mu/csr/ (last visited Feb. 16, 2014); Income Tax Act of 1995, at 50L (Mauritius), *available at* http://mra.gov.mu/download/ITA1995withGN58of2012.pdf.
32. *See* Shreyasi Singh, *India's Companies Act: Legally Enforced Corporate Social Responsibility*, The Diplomat (Aug. 27, 2013), http://thediplomat.com/2013/08/indias-companies-act-legally-enforced-corporate-social-responsibility/.

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by preparing public reports on their CSR activities, the message from the Companies Act is clear: India's large, profitable companies will be expected to contribute profits to charity, or they will be publicly shamed into doing so.

The Companies Act has generated a great deal of controversy, and many companies and commentators wonder how certain provisions of the Companies Act will be interpreted and implemented in the years to come. These inevitable clarifications also present an opportunity to encourage companies to more closely align their CSR spending with the development priorities of the country. The Companies Act already offers guidance on areas of spending and requires spending in the local areas where the companies operate.[33] A push for further focus on spending, particularly on the education and employment of India's women and girls, could have a substantial impact on India's rural development prospects.

B. The 2013 Act: Mandatory Corporate Social Responsibility Reporting–Spending Encouraged

The most recent revisions to the Companies Act, found in clause 135 of the 2013 version, require that companies of a certain size or profitability contribute at least 2 percent of their average net profits made during the three preceding financial years to CSR projects.[34] For the Companies Act to apply, a company must have either (1) a net worth of rupees 500 *crore* (approximately U.S. $90 million) or more, (2) a turnover of rupees 1,000 *crore* (approximately U.S. $180 million) or more, or (3) a net profit of rupees 5 *crore* (approximately U.S. $900,000) or more.[35] Eligible companies[36] must form CSR committees, composed of three or more directors, one of whom must be an independent director. The CSR committees then must develop company-wide CSR policies, which will include proposed CSR spending and monitoring.[37]

The company's board then must approve the CSR policies, monitor progress and compliance with the law, and prepare a report concerning the company's CSR activities.[38] If a company fails to spend according to the priorities of the Companies Act, the board as a whole will be required to report on the reasons for this failure.[39] Many interpret this "comply or explain" provision as an indication that the CSR spending is voluntary: companies can either spend the required amount to comply with the law, or they can spend nothing at all and explain their inaction to the government, without suffering a financial

33. *See* Grant Thornton India LLP, Implications of Companies Act, 2013: Corporate Social Responsibility 4 [hereinafter *Implications of Companies Act*], *available at* http://gtw3.grantthornton.in/assets/Companies_Act-CSR.pdf.

34. Companies Act, 2013, No. 18, Acts of Parliament, 2013, § 135 (India), *available at* http://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf.

35. *Id.*

36. The draft rules for the Act allow for limited exceptions for some highly-regulated sectors and for export-oriented companies that gain 75 percent of their revenue in foreign exchange or through operations in a Special Economic Zone. *See* Ministry of Corporate Affairs, Draft Rules Under the Companies Act, 2013: Companies (Cost Records and Cost Audit) Rules, 2013, at 7 (2013), *available at* http://ncbfeedback.mca.gov.in/Cost_Rules_Modified_18-11-13_on_discussion_of_CAB_Officers.pdf.

37. Companies Act, 2013, No. 18 at § 135.

38. *Id.* Neither the Companies Act nor the draft rules proposed by the Ministry of Corporate Affairs address what the precise contents of these reports must be.

39. *Id.*

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penalty.[40] Although the reporting provision is mandatory—with financial[41] and even criminal penalties[42] for non-compliant companies and their officers—the spending provision alone appears to be voluntary.[43]

The law offers guidance, in schedule VII, on where companies should focus their CSR spending. These areas include "(i) eradicating extreme hunger and poverty; (ii) promotion of education; (iii) *promoting gender equality and empowering women*; (iv) reducing child mortality and improving maternal health; (v) combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases; (vi) ensuring environmental sustainability; (vii) employment enhancing vocational skills; (viii) social business projects"; and (ix) contribution to certain funds and other matters as may be consistency.[44]

The law also requires that companies spend only on CSR projects in India,[45] and it urges companies to develop or contribute to projects in the areas where their operations are based.[46] It also allows companies to spend by funding local, established, non-profit organizations operating in the community.[47] As many of India's largest companies are mining and energy companies operating primarily in rural, underdeveloped areas of the country, this small provision could dramatically improve the lives of India's rural poor.[48]

C. Responses to the Companies Act

1. *Positive Responses*

Many commentators have welcomed the new Companies Act, viewing it as a mechanism to provide focus and stability in a fractured CSR environment with unpredictable funding. Subaskar Sitsabeshan, of the environmental non-profit The Climate Group, said, "this bill has the potential to play a catalytic role in bringing together many corporates under an umbrella to address some of these [environmental] issues collabora-

40. *See* Nishith Desai Assocs., Corporate Social Responsibility & Social Business Models in India: A Legal & Tax Perspective 10–11 (Nov. 2013), *available at* http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Corporate_Social_Responsibility___Social_Business_Models_in_India.pdf.

41. "Failure to explain is punishable by a fine on the company of not less than 50,000 rupees (about U.S. $900) and up to 25 lakh rupees (about U.S. $46,000)." Kordant Philanthropy Advisors, The 2% CSR Clause: New Requirements for Companies in India 2 (2013), *available at* http://www.kordant.com/assets/2-Percent-India-CSR-Report.pdf.

42. The Companies Act allows for sentences of up to ten years for auditors who engage in fraud. *See* Companies Act, 2013 § 447.

43. *Id.* § 135. The only punishment for not spending as required is preparation of a report, and it is only when a company fails to prepare a CSR report that it is subject to monetary penalties.

44. Companies Act, 2013, at sch. VII (p. 294) (emphasis added).

45. *Implications of Companies Act*, *supra* note 33, at 5.

46. *Id.* at 4.

47. *Id.*

48. *See* Krishna Kant & M. Saraswathy, *Listed Companies Liable to Put Aside Rs 8,100 cr in FY13 for CSR*, Bus. Standard (Oct. 7, 2013, 12:50 PM), http://www.business-standard.com/article/companies/listed-companies-liable-to-put-aside-rs-8-100-cr-in-fy13-for-csr-113100600288_1.html.

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tively for much greater impacts."[49] Harsh Goenka, Chairman of the industrial conglomerate RPG Enterprises, believes the Companies Act will lead companies to spend according to the needs of the country, not according to their own personal or family preferences, as has traditionally been the case in India.[50]

Others stakeholders in the CSR space also have praised the Companies Act. Non-profit organizations praised the passage of the Companies Act as finally encouraging large companies to open their wallets to help develop the surrounding society.[51] The CSR community also estimates that more than 50,000 jobs will be created in the field as a result of the Companies Act.[52] Others are optimistic that the very expertise that has given some companies a competitive advantage could be used to benefit society by, for example, having an oil company's engineers focus on environmental cleanup activities.[53]

2. *Negative Responses*

Criticisms of the 2013 Companies Act generally mirror the criticisms of any legislation mandating that particular entities take specific actions. Many have argued the CSR spending requirement is a tax and thus reduces efficiency.[54] Others claim that the Companies Act forces businesses to do the government's job and that it conflicts with the constitutional right to freely engage in any occupation.[55]

Other commentators say that the requirement jeopardizes the flexibility of the normal CSR process, which is voluntary and can be adjusted according to the economic realities facing the company.[56] Some claim that India's Corporate Affairs Ministry already has extensive national voluntary guidelines, or NVGs, which exhort not only CSR spending but also a broader perspective, which minimizes a company's negative impact on society and the environment.[57] Although it seems clear that, as mentioned earlier,[58] the Compa-

49. Subaskar Sitsabeshan, *Indian Businesses Will Soon Have to Spend 2% of Their Earnings on CSR by Law*, THE CLIMATE GRP. (Oct. 30, 2013), http://www.theclimategroup.org/what-we-do/news-and-blogs/indian-businesses-must-spend-2-of-their-earnings-on-csr/.

50. Harsh Goenka, *Why It Is a Good Idea to Mandate Corporate Social Responsibility*, THE ECON. TIMES (Sept. 1, 2012, 4:48 AM), http://articles.economictimes.indiatimes.com/2012-09-01/news/33535456_1_net-profit-companies-bill-crore-last-year.

51. *See generally* PARTNERS IN CHANGE, SECTION 135 (THE NEW COMPANIES ACT 2013) CSR SPENDING ESTIMATES-BSE TOP 100 (2013), *available at* http://www.ngobox.org/wp-content/uploads/2013/10/CSR-Spending-by-BSE-100-and-BRRs-Analysis-Partners-in-Change.pdf.

52. *CSR to Make Available 50,000 More Jobs in the Sector: Experts*, BUS. STANDARD (Oct. 13, 2013), http://www.business-standard.com/article/economy-policy/csr-to-make-available-50-000-more-jobs-in-the-sector-experts-113101300181_1.html.

53. *See* Syed Mafiz Kamal, *The "2%" Impact of India's Companies Bill: "Creative Capitalism" for Development*, INDEP. SKIES MAG. (Sept. 16, 2013), http://independentskies.com/the-2-impact-of-indias-companies-bill-creative-capitalism-for-development/.

54. *See* Aneel Karnani, *Mandatory CSR in India: A Bad Proposal*, STANFORD SOC. INNOVATION. REV. (May 20, 2013), http://www.ssireview.org/blog/entry/mandatory_csr_in_india_a_bad_proposal.

55. *See* Shashank Sharma, *Making CSR Mandatory in India - A Flawed Approach*, 3 INT'L J. OF SOC. SCI. & HUMANITY 33, 33 (2013), *available at* http://www.ijssh.org/papers/188-G10016.pdf.

56. *See* Akhila Vijayaraghavan, *5 Reasons Why the New Indian Companies Bill Negates the Power of CSR*, CSRWIRE (Sept. 20, 2013, 9:30 AM), http://www.csrwire.com/blog/posts/1024-5-reasons-why-the-new-indian-companies-bill-negates-the-power-of-csr.

57. *See* Poonam Madan, *CSR Law Too Narrow in Scope*, HINDU BUS. LINE (Oct. 16, 2013), http://www.thehindubusinessline.com/opinion/csr-law-too-narrow-in-scope/article5240851.ece.

58. *See supra* notes 10–14 & accompanying text.

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nies Act does allow companies merely to explain in a report why they did not comply, the Companies Act does not, in any way, require that companies seek to minimize their environmental impacts.[59]

D. Opportunities to Align Goals

1. *Practical Considerations*

In addition to the principle-based concerns above, other commentators have more practical questions about the Companies Act, concerns that could prompt the government to improve the Companies Act through rule-making. First, some believe that the CSR provisions are effectively toothless, as there are no penalties for non-compliance beyond the requirement that corporate boards write reports detailing why their company was unable to meet the 2 percent goal.[60] The validity of this criticism could turn on the threshold at which the Indian government approves of companies' CSR reports. Second, other analysts wonder whether the list of possible areas of CSR spending in schedule VII is exhaustive[61] and whether the funds could go to religious organizations doing charity work.[62] In response to this latter criticism, the Indian Minister for Corporate Affairs, Sachin Pilot, recently told the press, "the government would not like to say where [companies] must spend."[63]

2. *Room for Rule-Making*

Other practical concerns are well-founded and could require additional rule-making that also could encourage companies to invest in female education and employment projects. Vedang Mishra and Hrishikesh Datar raised one such issue when they noted that, absent further clarification of the categories set out in schedule VII, companies could meet the spending objectives by categorizing normal business spending as "employment enhancing vocational skills" and "social business projects," two of the Schedule VII categories.[64] A. Didar Singh, the Secretary General of the leading Indian business advocacy organization, recently stated in an op-ed that he hopes the final rules for the Companies Act permit companies to count, as CSR spending, the environmental remediation already required of some companies by the Ministry of Environment and Forests.[65] The Indian

59. India's environmental laws do make such requirements, however. *See, e.g.*, The Environment (Protection) Act, 1986, No. 29 of 2003, India Code (2012), vol. 1, *available at* http://envfor.nic.in/legis/env/env1.html.
60. *See* Kamal, *supra* note 53.
61. *See, e.g.*, KPMG, Companies Act 2013: New Rules of the Game 23 (2013), *available at* http://www.kpmg.com/IN/en/Documents/KPMG_Companies_Act_2013.pdf.
62. *See* Ashish Sinha, *India Inc May Get Relief on CSR Spending*, Fin. Express (Aug. 5, 2013, 2:52 PM), http://www.financialexpress.com/news/india-inc-may-get-relief-on-csr-spending/1151077.
63. Puja Mehra, *Government Clarifies on CSR Spending*, The Hindu (Nov. 6, 2013, 11:28 AM), http://www.thehindu.com/business/Industry/government-clarifies-on-csr-spending/article5320157.ece.
64. *See* Vedang Mishra & Hrishikesh Datar, *New Company Law: Doing Business with the "Compulsory" Corporate Responsibility*, Your Story (Aug. 14, 2013), http://yourstory.com/2013/08/new-company-law-doing-business-with-the-compulsory-corporate-social-responsibility/.
65. A. Didar Singh, *CSR: A Winning Proposition*, Hindu Bus. Line (Sept. 15, 2013), http://www.thehindubusinessline.com/opinion/csr-a-winning-proposition/article5131620.ece.

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government may need to use a regulatory clarification to guard against the threat of profitable companies "greenwashing"[66] in this way to get around the CSR requirements.

With such rule-making, the government could ensure that companies do not claim that hiring new employees solely for the benefit of their businesses is a qualifying CSR activity. In so doing, the government could specify that new employment must occur in traditionally underserved areas or for a historically marginalized group (including women in rural areas).

This guidance on spending would also give the government a chance to align companies' spending priorities with those of the international community. In both developed and emerging markets, the standard for funding of development projects is contained in the United Nation's Millennium Development Goals (MDGs).[67] The Indian government has generally embraced the United Nation's eight MDGs, and schedule VII hews closely to the MDGs.[68] Some consultants have suggested that companies align their required CSR with the MDGs.[69]

E. Conclusion

With the Companies Act, the Indian government has taken a substantial—and controversial—step in the direction of encouraging development efforts from all sectors of the Indian society. As India's groundbreaking law is further clarified and implemented, India has an opportunity to further align its development goals, particularly regarding rural women's empowerment, with the CSR goals of its largest and most profitable companies. With such a profound need and the progress that could come from investing in rural women's empowerment, India should take this opportunity to use the coming wave of CSR spending to improve the lives of millions of rural Indian women.[70]

IV. European Union Takes Action to Encourage Corporate Social Responsibility

In February 2013, as part of the renewed 2011–2014 EU strategy for CSR, the European Parliament adopted two resolutions related to CSR and the promotion of CSR transparency: "Corporate Social Responsibility: accountable, transparent and responsible business behaviour and sustainable growth" and "Corporate Social Responsibility: pro-

66. "Greenwashing" is the marketing tactic, generally used by companies and politicians, of claiming that a product or practice is environmentally sound when in fact the product or practice is no better for the environment than an alternative and is in some cases much worse. *See Greenwashing*, INVESTOPEDIA, http://www.investopedia.com/terms/g/greenwashing.asp (last visited Feb. 23, 2014).

67. *Millennium Development Goals: Background*, UNITED NATIONS, http://www.un.org/millenniumgoals/bkgd.shtml (last visited Feb. 23, 2014).

68. *Towards Achieving Millennium Development Goals, India 2013*, GOV'T OF INDIA, Oct. 17, 2013, at 14–17, *available at* http://mospi.nic.in/mospi_new/upload/MDG_pamphlet29oct2013.pdf.

69. *Getting Ready for Upcoming Act and Social Responsibility: What Should Companies Do?*, SAFRG RES. (June 2013), http://www.safrg.org/uploads/getready4csr.pdf.

70. *See* Robert B. Fitzpatrick & Andrew J. Hass, *India–the 2% CSR Provision in India's Companies Act 2013*, THE INT'L EMP. LAW., Dec. 12, 2013, *available at* http://intemploy.blogspot.com/2013/12/india-2-csr-provision-in-indias.html.

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moting society's interests and a route to sustainable and inclusive recovery."[71] The first resolution emphasizes the need for regulation, encourages the European Commission to continue to promote CSR and to implement a strategy for ensuring the promotion of CSR after 2014, and emphasizes that the development of CSR requires a multi-stakeholder approach.[72] The second resolution calls for, *inter alia*, human rights and supply chain due diligence, the European Union to assist developing countries in promoting environmental regulations, and the European Union to play a role in promoting CSR around the world.[73]

In April 2013, the European Commission proposed an amendment to existing accounting regulations in order to promote CSR by requiring mandatory reporting.[74] Under the proposal, companies with more than 500 employees would be required to include environmental and social information in their annual reports.[75] Companies would also be required to report on boardroom diversity, their diversity policy, and the implementation and results thereof.[76] If the company does not have a diversity policy, then it would be obliged to explain the reason why. The reporting requirements would not require overly detailed information and would allow companies flexibility to report more detailed information.[77] Companies also could omit certain categories of reporting if they explain why that particular area is irrelevant for their business.[78] The proposed reporting requirements would allow companies to report in a way that is easiest, and they could choose either international or national reporting guidelines.[79]

V. The Textile Industry

A. Resolution on Textile Factory Fires

On January 17, 2013, the European Parliament adopted a resolution on casualties in textile factory fires, notably in Bangladesh.[80] The Resolution expressed its sorrow at the loss of life suffered in the factory fires in Bangladesh and called on the governments of Bangladesh and Pakistan to continue with thorough investigations into the recent events

71. Press Release, European Commission, Commission Moves to Enhance Business Transparency on Social and Environmental Matters (Apr. 16, 2013), *available at* http://europa.eu/rapid/press-release_IP-13-330_en.htm.
72. European Parliament, *Report on Corporate Social Responsibility: Accountable, Transparent and Responsible Business Behaviour and Sustainable Growth*, A7-0017/2013, paras. 54–58 (Jan. 28, 2013), *available at* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0017+0+DOC+PDF+V0//EN&language=EN.
73. European Parliament, *Report on Corporate Social Responsibility: Promoting Society's Interests and a Route to Sustainable and Inclusive Recovery*, A7-0023/2013, paras. 86–98 (Jan. 29, 2013), *available at* http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0023+0+DOC+PDF+V0//EN&language=EN.
74. Press Release, *supra* note 71, at 1.
75. *Id.*
76. *Id.*
77. *Id.*
78. *Id.*
79. *Id.*
80. European Parliament Resolution of 17 January 2013 on Recent Casualties in Textile Factory Fires, Notably in Bangladesh, Eur. Parl. Doc. (2012/2908(RSP)), *available at* http://www.europarl.europa.eu/oeil/popups/summary.do?id=1244092&t=e&l=en.

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and "to put in place measures to prevent a recurrence of the tragedies, including full compliance by all manufacturers with health and safety legislation . . . and the establishment of an effective and independent system of labour inspections and inspections of industrial buildings."[81] The Resolution "[u]rges all stakeholders to combat the corruption in the supply chain . . . including collusion between safety inspectors and factory owners."[82] Most important, the Resolution "[c]alls on major international garment brands to critically investigate their supply chains and to cooperate with their subcontractors to improve occupational health and safety standards."[83]

Regarding the activity of the EU Commission, the Resolution calls on the EU Commission to "actively [ ] promote mandatory responsible business conduct among [EU] companies operating abroad, with a special focus on ensuring strict compliance with all their legal obligations, in particular international standards and rules in the areas of human rights, labour and the environment."[84] The Resolution further calls on the European External Action Service "to ensure that EU trade officers, if based in EU delegations, are given regular training on CSR issues, in particular with respect to the implementation of the United Nations Protect, Respect and Remedy Framework, and that EU delegations function as EU contact points for complaints concerning EU companies and their subsidiaries.[85]

B. The Accord on Fire and Building Safety in Bangladesh (2013)

The Accord on Fire and Building Safety in Bangladesh 2013 (Accord) is a comprehensive agreement signed on May 13, 2013, by more than seventy brand name retailers and directed at making all garment factories in Bangladesh safe workplaces. The Accord is a binding legal document. Signatories agree to "establish a fire and building safety program in Bangladesh for a period of five years." The Accord covers "all suppliers producing products for the signatory companies." Pursuant to the agreement, signatories shall require designated suppliers to "accept inspections and implement remediation measures in their factories." Governance of the Accord is vested in a Steering Committee appointed by signatories "with equal representation chosen by the trade union signatories and company signatories (maximum of three seats each) and a representative from and chosen by the International Labor Organization (ILO) as a neutral chair." Any disputes between the parties to, and arising under, the terms of the Accord shall first be decided by a majority vote of the Steering Committee. But upon request by either party to the dispute, the decision of the Steering Committee "may be appealed to a final and binding arbitration process." The Accord requires the Steering Committee to appoint a qualified Safety Inspector, someone with "fire and building expertise and impeccable credentials, and who is independent of and not concurrently employed by companies, trade unions or factories."[86]

81. *Id.* para. 3.
82. *Id.* para. 4.
83. *Id.*
84. *Id.* para. 8.
85. *Id.* para. 11.
86. Accord on Fire and Building Safety in Bangladesh, para. 8 (May 13, 2013), *available at* http://www.bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf.

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The Steering Committee also is required to appoint a Training Coordinator who "shall establish an extensive fire and building safety training program."

The Accord provides a complaint process, a transparency and reporting process, and a funding structure that is quite unique. The Accord mandates the Safety Inspector to establish "a worker complaint process and mechanism that ensures that workers from factories supplying signatory companies can raise in a timely fashion concerns about health and safety, risks, safely and confidentially, with the Safety Inspector."[87] Regarding transparency, the Steering Committee is required to "make publicly available and regularly update information on key aspects of the programme."[88] Signatory companies assume responsibility for funding activities of the Steering Committee and other mechanisms established pursuant to the Accord "with each company contributing equitable share of the funding in accord with a formula to be established in the Implementation Plan."[89]

It is unfortunate that it took several fatal textile factory fires for corporations in the textile industry in Bangladesh to agree to a concrete and enforceable agreement to improve conditions in the textile sector in the country. The long-term effectiveness of the Accord also remains to be seen. Nonetheless, the Accord offers a useful model that can be used to successfully bring about changes in sectors where accountability is still low and impunity still very high. It is likely the Accord will be studied closely in the coming years.

VI. Sector Specific Guidance on Corporate Social Responsibility

A. Introduction

On June 17, 2013, the European Commission published guidance on the corporate social responsibility to respect human rights for enterprises in three business sectors: (1) Employment and Recruitment Agencies (E&R Agencies), (2) Information and Communication Technology (ICT), and (3) Oil and Gas. The guides apply the United Nations Guiding Principles on Business and Human Rights (Guiding Principles) to the specific context of the three business sectors. All three guides were written by the Institute for Human Rights and Business and Shift.[90] It is expected that the guides would be useful to companies of all sizes and have global applicability. All three guides cover respect for all internationally recognized rights. The three guides are similarly structured and are in three parts. Part 1 (About This Guide) discusses the objectives, scope, audience, and structure of each guide. Part 2 analyzes human rights impacts of activities in each sector. Part 3 offers practical guidance on how to put respect for human rights into practice in each of the three sectors. Six key issues are addressed in Part 3: (1) "Developing a Policy Commitment and Embedding Respect for Human Rights," (2) "Assessing Human Rights Impact," (3) "Integrating and Acting," (4) "Tracking Performance," (5) "Communicating Performance," and (6) "Remediation and Operational-Level Grievance Mechanism."

87. *Id.* para. 18.
88. *Id.* para. 19.
89. *Id.* para. 24.
90. Shift is an independent, non-profit center for business and human rights practice. *See Who We Are — Shift Project*, Shift Project, http://www.shiftproject.org/page/who-we-are (last visited Feb. 23, 2014). The Institute for Human Rights and Business describes itself as "a global centre of excellence and expertise on the relationship between business and internationally proclaimed human rights standards." *See* Inst. for Hum. Rts. & Bus., http://www.ihrb.org/ (last visited Feb. 23, 2014).

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B. The Oil and Gas Sector Guide

The guide for the oil and gas sector is titled *Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights* (Oil and Gas Guide). The aim of the Oil and Gas Guide is "to help [Oil and Gas] companies 'translate' respect for human rights into their own systems and company cultures."[91] The focus of the Oil and Gas Guide is on upstream activities of Oil and Gas companies throughout the project lifecycle from pre-feasibility, through feasibility, development (including construction), implementation (including production), to decommissioning and post-closure. Part 2 of the Oil and Gas Guide (Human Rights and the Oil and Gas Sector), analyzes the human rights in the Oil and Gas Sector and offers an analytical framework for assessing potential impacts of companies' activities on stakeholder groups.

C. The Employment and Recruitment Agencies Sector Guide

The *Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights* (E&R Agency Guide) is intended for "companies involved in the recruitment of 'direct hire employees' for client companies" as well as companies that supply "agency workers" to user enterprises.[92] While recognizing the potentially positive impacts of E&R Agencies in well-functioning labor markets in matching individuals with available job opportunities, the E&R Agency Guide offers numerous examples of the kinds of negative impacts that E&R Agencies may have on human rights. Using a matrix, the E&R Agency Guide successfully shows (1) that "[d]ifferent types of activities (including recruitment and employment services) can have quite distinct impacts on different human rights,"[93] (2) that "[n]egative impacts can happen at all stages of the recruitment and employment process,"[94] and (3) that "[d]ifferent kinds of negative impacts can fall on different groups" and that "[i]mpacts can be more severe where individuals are vulnerable or marginalized."[95]

D. The ICT Sector Guide

The *ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights* (ICT Sector Guide) looks at the ICT sector as a whole and covers actors and activities ranging from "telecommunications and Web-based services through software, and electronic device and component manufacturing."[96] Part 2 (Human Rights and the ICT Sector) dwells on the positive as well as negative impact that ICT companies have and can

91. European Commission, Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, at 5 (2013), *available at* http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-oag-hr-business_en.pdf.
92. European Commission, The Employment & Recruitment Agencies Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, at 6 (2013), *available at* http:/ / ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-era-hr-business_en.pdf.
93. *Id.* at 13.
94. *Id.*
95. *Id.*
96. European Commission, The ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights, at 6 (2013), *available at* http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business_en.pdf.

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have on human rights and identifies four main areas in which State action (or inaction) can cause challenges for ICT companies: (1) "Responding to the Fast Pace of Change";[97] (2) "Protecting Rights to Privacy and Freedom of Expression";[98] (3) "Government Request to ICT Companies"; and (4) "Absent, Weak, or Poorly Enforced Labor Laws."[99] Part 2 also offers a useful matrix that provides examples of the kinds of negative impacts that ICT companies may have and the stakeholder groups that different ICT activities are likely to impact.

E. Conclusion

CSR guides that focus on specific sectors offer practical tools to companies wishing to put human rights principles into practice in the specific context of a given sector. It is too early to tell just how effective the guidance will be in shaping the activities of companies in the three sectors that are the target of the guidance. To the extent the guidance merely applies the United Nations Guiding Principles, critics are likely to dismiss it as not going far enough. Moreover, to the extent the guides take particular account of the experience of EU companies, their usefulness to companies in non-EU countries, particularly companies in emerging markets and other developing countries, remains to be seen. Nonetheless, the sector-specific guidance on CSR is a welcomed development and may prove to be a useful tool for companies as well as the CSR community.

97. *Id.* at 10.
98. *Id.*
99. *Id.*

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