

## Chapter 2

# The Importance of National, Regional Laws and Globally Enforceable International Agreements: The Case of Port Talbot and the XL Pipeline Project

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### **ABSTRACT**

*As well as highlighting the importance of effectively engaging different actors and implementing and enforcing rules, principles and standards, at various levels, this chapter contrasts the pyramids of regulatory and punitive strategies, Nestle's pyramid of Shared Value, and Carroll's pyramid of Corporate Social Responsibility in deriving an optimal mix of how regulation should be applied. In deriving such a regulatory mix and recommendation, acknowledgement is accorded to Ayres and Braithwaite's argument that "the greatest challenge facing regulatory design is not to be found at the apex of the pyramid of regulatory strategies – where a variety of well-tested punitive strategies exist – nor at the base of the pyramid, where there is experience of successes and failures of the free market, but that the need for innovation is at the intermediate levels of the pyramid of regulatory strategies. In so doing, the Enforced Self-Regulation Model which involves and incorporates the role of governments in self-regulation, is implemented in recommending desired regulatory designs.*

*Human beings are part of the environment.*

*Any harm done to the environment therefore, is harm done to humanity.*

*Humans are not authorized to abuse (the environment), much less destroy it,*

*Economic and social exclusion is a complete denial of human fraternity and a grave offense against human rights and the environment.*

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*-Address given by Pope Francis before the United Nations General Assembly on the 25<sup>th</sup> September 2015 following an unprecedented historic speech before the Joint Meeting of the United States Congress on the 24<sup>th</sup> September 2015, in which environmental issues constituted one of the key issues raised.*

## **FOREIGN DIRECT INVESTMENT AS SHARED VALUE RESOURCE OR THREAT TO THE ENVIRONMENT?**

The benefits of international co-operation, which are enhanced through the redress of issues relating to international investment and multi-national enterprises (MNEs), according to the OECD Guidelines, include (OECD, 2011:7):

- Improving the foreign investment climate
- Encouraging positive contribution which MNEs can make to economic, social and environmental progress; and
- Minimizing and resolving difficulties which may arise from the operations of MNEs

Based on general policies stated in the 2011 OECD Guidelines for MNEs (OECD, 2011:19), enterprises are required to take full account of established policies in countries in which they operate – as well as:

- Contribute to economic, environmental and social progress with a view to achieving sustainable development;
- Respect internationally recognized human rights of those affected by their activities;
- Encourage local capacity building through close cooperation with the local community;
- Encourage human capital formation through the creation of employment opportunities;
- Refrain from seeking exemption which is not envisaged in the statutory or regulatory framework related to human rights, environmental, health, safety or other issues;
- Support and uphold corporate governance principles;
- Develop and apply effective self-regulatory practices and management systems which foster an environment and relationship founded on confidence and mutual trust between enterprises and the societies in which they operate;
- Promote awareness of and compliance by workers employed by MNEs as regards company policies;
- Engage with relevant stakeholders in order to promote meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects and other activities that may significantly impact local communities
- Abstain from any improper involvement in local political activities.

In consolidating on the OECD's observations, international cooperation also serves as a means of addressing legal obstacles which emanate from the social, environmental, institutional, political environments and frameworks in which MNEs operate, and which may considerably hinder the maximal realization of corporate social objectives and the above-mentioned contributory benefits of MNEs.

A number of disclosure initiatives have been carried out by companies such as Nestle – as disclosed in its 2013 Summary Report (Nestle, 2013:5) which also provides a highlight of performance indica-

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