

**Corporate Social Responsibility –  
How Does This Idea Play Out In Reality Behind Nike`s Logo?  
A Case Study of the Potential and Shortcomings of Corporate  
Social Responsibility as an Idea**

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## **Summary**

In chapter 2 I analyzed the case against Nike, which can be described as abusive and exploitative conditions in factories. The June 1996 edition of Life Magazine featured an article about child labor, which revealed that Nike soccer balls were sowed by underage children in Pakistan. The cover had a picture of a 12 year old boy sowing Nike soccer balls. This child labor scandal turned out to be the tip of the iceberg. I wanted to show that the factories could justifiably be labelled as sweatshops. Workers were paid starvation wages. Excessive and forced overtime was a major problem in factories. Some workers were even subject to verbal and physical abuse by factory managers. These were the conditions workers faced at the time Nike established CSR as a function.

In chapter 3 my focus of analysis was civil society's response to exploitative and abusive conditions in Nike factories. The child labor scandal in Pakistan spurred very strong reactions in the United States. Nike was subject to protests and boycotts from students and consumers. The press continued to criticize Nike for the conditions workers in its factory base faced. Some academics have also been highly critical of Nike. The anti-Nike movement was born at this time as a grassroots response to sweatshop conditions in Nike contracted factories. It includes intellectuals in that students have staged protests on campus and some professors have voiced moral support of the anti Nike movements. Anti-globalization critics chose Nike as a target because Nike is the biggest and most visible company of the sportswear industry. Nike's initial response to sweatshop allegations was to decline responsibility for working conditions in the factory base on the basis that Nike did not own the factories. The child labor scandal in Pakistan, 1996, represented a turning point in because Nike was forced to accept responsibility for conditions in factories.

The subject of chapter 4 is an analysis of how Nike's CSR strategy has developed since the child labor scandal to date. An important point was that Nike established CSR as a company function in response to activist pressure as a result of damaging information in the media. Hence, I found that Nike sees a PR case for CSR. Nike has divided the company's history of corporate responsibility into three phases: The first phase (1996-2001) marked the establishment of CSR as a function. Nike claims that the second phase (2001-2006) was marked by social interaction, and that the third and current one (2006-2010) is marked by transformation. I have analyzed each one of these phases to put the searchlight on whether

there has been any progress in terms of labor treatment as a result of Nike`s corporate responsibility initiatives.

Nike`s factory base has been subject to extensive monitoring. This willingness to monitor compliance with, and hence enforce, Nike`s Code of Conduct did represent a progress in itself. It marked some progress that Nike was willing to cooperate with NGOs about corporate responsibility in factories. In 2003 Nike lost a lawsuit against a labor activist, Marc Kasky. The outcome was that Nike is required to tell the truth in all official communication when doing business in California. Kasky believes that the outcome encouraged Nike to promote some measures of corporate responsibility because Nike learned that the company has to tell the truth about practices in factories. In Nike`s last phase of corporate responsibility, Nike introduced the Management Verification Audits (MAVs), which are a thorough monitoring vehicle in order to understand causes of non-compliance issues in factories. My research found that these MAVs represented at least some progress because they at least indicated a willingness to get to the bottom of non-compliance issues. Nike has set ambitious targets by fiscal year 2011. The most important one is to eliminate excessive overtime in contract factories. The achievement of this goal is crucial for workers` well being in factories because excessive overtime has been a long standing and pressing issue in Nike`s factory base

In chapter 5 I analyzed the issue of wages in factories. Starvation wages has been a pressing problem in factories, and I wanted to investigate if there has been any progress as for this issue. My findings show that the progress has been limited in this area. Nike rejects the claim of its critics to ensure a living wage in factories. Nike`s response is that wages should be set according to the local minimum wage, or the prevailing industry wage, whichever is higher. My research indicates that the pressure for short term profit maximization has been, and is, the most pertinent cause of poverty wages. I found that there is indication of some progress when it comes to correction of the issue of non-payment or underpayment of the wages that the workers are due. If Nike accomplishes its goal to implement tailored Human Resource systems in all of its focus factories, that could be effective in addressing non-payment or underpayment of wages according to Nike`s wage standards. Nike`s corporate responsibility vision says that workers be invested in and treated as a commodity. Nike`s most important means to increase productivity, and hence wages, is that of lean manufacturing, which Nike believes to be of great promise for worker empowerment. However, research warns that there is no direct correlation between this method of production, better working conditions, and increased wages. Nevertheless, there is

indication that lean production methods can result in better labor treatment, and increased wages in some factories with good management strategies.

My final issue of investigation was monitoring of compliance with Nike`s Code of Conduct. I wanted to investigate if Nike`s system of monitoring of non-compliance issues has contributed to create any progress in factories. I analyzed the impact of Nike`s internal monitoring measures. My first subject of investigation was the SHAPE audits, which is a basic monitoring device performed by field production staff in factories. Then I analyzed the more thorough and elaborate MAV audits. Then I switched my investigation to the impact of Nike`s external monitoring (monitoring performed by organizations that Nike has cooperated with). Nike participated in a social, collaborative initiative called the Global Alliance for workers and communities. I investigated an analysis by the Thai Labour Campaign regarding the Global Compact`s research of factories in Thailand owned by the company Lian Thai. Nike participates in the initiative Fair Labor Association (FLA), which has a Code that is stricter than Nike`s initial Code. Nike committed to monitor and report compliance with the FLA`s Code. I analysed the impact of Nike`s cooperation with the FLA on the basis of FLA`s report from the period 08.01.2001-07.31.2002. Finally, there was a strike at the Kuk Dong factory. The factory was monitored by the organization Veritè. I analyzed the implications of Veritè`s findings in the light of the fact that the workers eventually won the right to have an independent union, which was one important progress.

## **Thanksgiving**

I thank my supervisor Mark Luccarelli for his help and guidance throughout the process of my research project. I thank Marc Kasky for inviting me to his San Francisco residence for an interview, and providing me with valuable inside information about his victory over Nike in the Kasky lawsuit. I thank the Norwegian Consulate General in San Francisco for granting me the opportunity to take on an internship for the Consulate the fall of 2007, and for allowing me some time to do research for my master paper during my internship. I thank the Berkeley professor David Vogel for our conversation in his office at U.C.Berkeley. Finally, my thanks go to my parents, Arne and Torild, for their love and support.

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## **Chapter 1 Introduction chapter**

I wake up every morning, jump in the shower, look down at the symbol (the Nike logo), and that pumps me up for the day. It's to remind me every day what I have to do, which is "Just Do It"<sup>1</sup>

The above quote illustrates how some individuals are devoted fans of Nike and its famous slogan, Just Do It. I describe in brief how Nike has developed and grown as a company: Nike was originally created in 1964 as a partnership between the late University of Oregon track coach Bill Bowerman and one of his students Phil Knight (Nike founder). The company was first called Blue Ribbon Sports (BRS). The initial idea was to manufacture production of running shoes in factories in Japan and sell them on the American market. In 1971, BRS changed the name to Nike, inspired by the Greek goddess of victory.<sup>2</sup> Since 1971 Nike has grown from a U.S. based footwear distributor to the world's most prominent marketer of athletic footwear, apparel and equipment. In the Fiscal Year ending May 2007, Nike's earnings were \$16, 3 billions, an increase of \$ 1, 3 billion from the previous year.<sup>3</sup>

Two components have been instrumental in Nike's growth: First, Nike has outsourced production to low cost countries, such as Vietnam, China and Indonesia. An important fact is that Nike does not own any of the factories that produce its items. Second, the core of Nike's public relations strategy has been the sponsoring of world famous athletes, such as Michael Jordan, Tiger Woods and Lance Armstrong. Nike's headquarters is located near Beaverton, Oregon. The company's mission statement is "to bring inspiration and innovation to every athlete in the world"<sup>4</sup>. Nike has its own understanding of what an athlete is, which is reflected in Bill Bowerman's motto: "If you have a body, you're an athlete."<sup>5</sup> This motto shows that Nike's mission according to the company is to sell sports clothes, shoes and apparel to everyone who exercises. The "just do it"<sup>6</sup> slogan captures that Nike always has marketed itself as a dynamic, trendy and innovative company.

Nike is surrounded by controversy. Anti-globalization activists have accused Nike of exploiting child labor and sweatshop conditions in factories. There is an organized and international anti-Nike movement that was at its peak from 1996-2001.

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<sup>1</sup> This is a quote by the internet entrepreneur Carmine Colletton, describing how he feels energized by the Nike logo tattooed on his navel. Naomi Klein, *No Logo* (Harper Perennial, 2000, Toronto): 52.

<sup>2</sup> These facts were found on [http://www.nikebiz.com/company\\_overview/facts.html](http://www.nikebiz.com/company_overview/facts.html)

<sup>3</sup> [http://www.nikebiz.com/company\\_overview/facts.html](http://www.nikebiz.com/company_overview/facts.html)

<sup>4</sup> For Nike's presentation of what it stands for see [http://www.nikebiz.com/company\\_overview](http://www.nikebiz.com/company_overview)

<sup>5</sup> [http://www.nikebiz.com/company\\_overview](http://www.nikebiz.com/company_overview)

<sup>6</sup> <http://www.nikebiz.com>



The anti-Nike movement has been known for slogans such as “Nike – just don’t do it”, as opposed to “Nike – just do it”<sup>7</sup>. It features prominent activists, like the author of the influential bestseller “No Logo” Naomi Klein and the director and activist Michael Moore. On the other hand, Nike supports several civil society organizations, ranging from important organisations and different collaborative social initiatives. I want to review in brief what organisations and initiatives Nike supports. Nike has endorsed the United Nations initiative Global Compact. The Global Compact is a voluntary initiative that was established by the United Nations. It is a framework for companies that comply to align business with ten universally accepted principles in the areas of human rights, labor, the environment and anti-corruption.<sup>8</sup>

Furthermore, Nike endorses the San Francisco based international organisation Business for Social Responsibility, which is a world leader within the field Corporate Social Responsibility (CSR), and works to make an impact on society as an “intermediary between business and civil society”<sup>9</sup> The mission of Business for Social Responsibility is to “Build a more just and sustainable global economy by working with the business community.”<sup>10</sup> Nike is a founding member of the Fair Labor Association (FLA), which is a collaborative social initiative designed to improve conditions in factories that sell items to multinational corporations. Companies that have joined the Fair Labor Association (FLA) have complied with a system of independent monitoring and verification to ensure that the Fair Labor Association’s (FLA) Workplace Standards are upheld.<sup>11</sup> Nike does give corporate responsibility strategic priority. The company has published three corporate responsibility reports, its first in 2001, the second in 2004 and the final one in 2006.<sup>12</sup> What is clear is that Nike’s corporate responsibility strategy has developed as a result of cooperative efforts between Nike and civil society organizations, such as Business for Social Responsibility.

The controversy surrounding Nike as the biggest company in the sportswear industry brings up the subject of my case study; the conditions that the worker in Nike’s global supply chain face. By “supply chain” I mean Nike’s factory base worldwide.

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<sup>7</sup> Klein, *No Logo*, p 354

<sup>8</sup> <http://www.globalcompact.org/>

<sup>9</sup> <http://www.bsr.org>

<sup>10</sup> Business for Social Responsibility Report 2007: Our role in designing a sustainable future  
<http://www.bsr.org/files/BSR-Report-2007.pdf>

<sup>11</sup> <http://www.fairlabor.org/>

<sup>12</sup> The three reports are found on Nike’s website <http://www.nikebiz.com/>

I will investigate Nike's corporate responsibility activities and initiatives with an eye for determining whether civil society has managed to reform Nike. Has Nike changed its behavior in accordance with the standards of social responsibility? Or has the linkage with civil society organizations provided an elaborate public relations cover for Nike? As Nike claims to be a responsible company, I want to research whether the workers that produce Nike gear are treated in a socially responsible manner in factories. My hypothesis is that while civil society, that is the press, the anti Nike movement and the corporate responsibility community, may have successfully lobbied for some betterment in factories, insufficient wages is the main obstacle in civil society's bid to push for further improvements. Nike is the subject of my case study because the company has received enormous media attention, and because it is an interesting company as Nike's treatment of workers divides proponents and critics of globalization. I chose to research Corporate Social Responsibility (CSR) as an idea because I sincerely believe that companies have a moral responsibility to behave ethically. I am passionate about CSR because I strongly believe that corporations should adapt to an excellent ethical conduct, not because that might pay, but because it is the right thing to do. Therefore I research how, and under what circumstances Corporate Social Responsibility (CSR) can be successful in substantially improving conditions in factories, and hence change the lives of some humans in factories for the better.

### **CSR as an Idea**

H.R. Bowen was the first scholar to formulate a doctrine about the social responsibilities of businesses. He may be considered the father of CSR as an idea.

Bowen stated a *Doctrine of Social Responsibility*:<sup>13</sup>

The term *Doctrine of Social Responsibility* refers to the idea, now widely expressed, that voluntary assumption of social responsibility by businessmen is, or might be, a practicable means toward ameliorating economic problems and attaining more fully the economic goals we seek

Professor Ramon Mullerat defines CSR as:

a concept whereby companies voluntarily decide to respect and protect the interests of a broad range of stakeholders while contributing to a cleaner environment and a better society through an active interaction with all. CSR is the voluntary commitment by business to manage their roles in society in responsible ways<sup>14</sup>

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<sup>13</sup> Howard R Bowen, *The social responsibilities of businessmen*, (Harper & Brothers Publishers, 1953, New York): p. 6

<sup>14</sup> Ramon Mullerat, *The global responsibility of business Corporate Social Responsibility the Corporate governance of the 21<sup>st</sup> century*, edited by Ramon Mullerat (The Hague: Kluwer, International Bar Association Series, 2005):1-17.

CSR is a new concept. There are many different definitions. My research is based upon the Doctrine of Social Responsibility as well as Mullerat`s definition above. I use Bowen`s Doctrine because it was the first doctrine about corporate responsibility. Mullerat`s definition complements the Doctrine of Social Responsibility because it gives a more timely description of the role of CSR in today`s business environment. An important point is that there is no universally agreed upon paradigm of what CSR is, or how CSR should be carried out. More importantly, there is no agreement about whether CSR can be effective or not. Although left of center scholars embrace the idea of corporate responsibility, they tend to be skeptical of the possibilities to change corporate behavior through CSR, as they believe that CSR mostly serves the purpose of window dressing. My analysis of how CSR plays out in reality in Nike`s factory base will shed light upon to what extent the skeptics are right.

I want to clarify that is optional to have a CSR strategy at all. A corporation may choose to increase profits, follow the law and social norms, and otherwise have no CSR measures. If a policy that previously was voluntary is made into a mandatory, legally binding standard, complying with the standard is following the law, not CSR. The article "Filling the empty shell: The public debate on CSR in Austria as a paradigmatic example of a political issue"<sup>15</sup> illustrates how the question of what should be CSR and what should be binding legal standards can be very divisive. The employer led organization CSR Austria wants to continue to structure the social responsibilities of business around voluntary measures. However, unions want legal minimum standards. The debate is about what companies should be legally obliged to do, and what should continue to be optional measures, and hence qualify as CSR.

Corporate responsibility is a very timely idea when it comes to environmental issues because the issue of global warming is high on the political agenda. There are ethical challenges related to corporate responsibility and the issue of climate. The production of bio diesel has increased as a result of increased corporate demand. Problem being, production of bio diesel has been listed as one of the causes of the food crisis that occurred this spring. How can corporate behavior be environmentally and socially sustainable? Outsourcing to growing economies, like China and India, happens to a larger extent and at a faster pace than ever before. That puts labor treatment in factories on the agenda in academia, politically and economically. Scandals, such as

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<sup>15</sup> Bernhard Mark-Ungericht and Richard Weiskopf, *Filling the empty shell: the public debate on CSR in Austria as a paradigmatic example of a political issue*, *Journal of Business Ethics* 70 (2007) p. 285-297

child labor or blatant abuses of workers, receive media attention when they occur, and may be psychologically damaging for the guilty company.

There was a big CSR conference in Oslo in March, 2007, that featured Kofi Annan and the previous Nobel Peace Prize winner Mohammad Yunus. The Telenor issue where under aged laborers were found in production, and two persons died in work related accidents in one of Telenor's daughter companies in Bangladesh shows that violations of workers' rights continue to be an important aspect of corporate responsibility. The quote below by the CEO of Business for Social Responsibility Aron Cramer illustrates how vital and timely CSR is in today's world: "The world is seemingly paying more attention to corporate responsibility than at any time in recent memory. It is our collective challenge to capture this opportunity."<sup>16</sup>

### **Why the CSR Community Should Embrace the Idea of the Triple Bottom Line**

Even if there is disagreement about what CSR should embrace exactly, I argue in favor of a Triple Bottom Line paradigm as a foundation of what exactly CSR should constitute. In the article *Getting to the bottom of "Triple Bottom Line"* Wayne Norman and Chris Mac Donald<sup>17</sup> analyze the triple bottom line paradigm. The idea behind the triple bottom line is that a corporation's ultimate success or health can and should be measured not just by the hard core financial bottom line, but also by its social and environmental performance. This means that supporters of the Triple Bottom Line believe that a corporation's performance should be measured toward two additional bottom lines: one of social behavior and one of environmental behavior. The Triple Bottom Line paradigm of CSR assumes collection of tangible data in order to measure how companies perform socially, environmentally and financially:

The components of "social performance" or "social impact" can be measured in relatively objective ways on the basis of standard indicators. These data can be audited and reported.<sup>18</sup> A social "bottom line" – that is, something analogous to a net social "profit/loss" – can be calculated using data from these indicators and a relatively uncontroversial formula that could be used for any firm<sup>19</sup>

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<sup>16</sup> Business for Social Responsibility, *Our role in designing a sustainable future*, (2007): p 22

<sup>17</sup> Chris Mac Donald, Wayne Norman, "Getting to the bottom of "triple bottom line" (pre-publication version March 2003) p.1-19, published version found in *Journal of Business Ethics Quarterly* (2004) [http://www.busesethics.ca/3bl/triple\\_bottom\\_line\\_abstract.html](http://www.busesethics.ca/3bl/triple_bottom_line_abstract.html)

<sup>18</sup> Mac Donald, Norman, *Getting to the bottom of " triple bottom line"*, p. 3

<sup>19</sup> Mac Donald, Norman, *Getting to the bottom of " triple bottom line"*, p. 4

Supporters of the triple bottom line assume a link between measurement and social performance: “Measuring social performance helps improve social performance, and firms with better social performance tend to be more profitable in the long-run.”<sup>20</sup>

The idea of a triple bottom line has been subject to criticism. One criticism expressed by the authors of *Getting to the bottom of “triple bottom line”* is that the standards that constitute a social bottom line and an environmental bottom line may be vague.

However, I argue in favor of a triple bottom line which at least constitutes basic social and environmental standards that everyone who favors corporate responsibility will endorse. There is universal agreement within the CSR community that the use of child labor is wrong. Furthermore, there is universal agreement that working conditions in factories should not be hazardous for the workers’ health and safety. My stand is that the triple bottom line as a benchmark of corporate responsibility should include the principles of the Global Compact initiative. Each one of the ten principles regarding human rights, labor, the environment and anti-corruption is universally accepted. The standards are tangible as well, which serves the need of data that can be counted and measured.

Below I discuss why the purpose of the Global Compact is compatible with the Triple Bottom Line. This is how the Global Compact sees its purpose: “As the world’s largest, global corporate citizenship initiative, the Global Compact is first and foremost concerned with exhibiting and building the social legitimacy of business and markets.”<sup>21</sup> If all corporations demonstrated a record of environmentally and socially sustainable business practices that would most certainly improve the social legitimacy of companies, which would benefit humanity. Nike claims that its goal is to integrate the Triple Bottom Line of corporate responsibility into all aspects of the company’s business. The success of the Triple Bottom Line depends on the willingness of companies to integrate CSR into their core business. Therefore I research how and under what circumstances the triple bottom line understanding of CSR can create needed improvements in factories, and hence change the lives of workers who truly need their jobs in Nike’s factory base.

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<sup>20</sup> Mac Donald, Norman, *Getting to the bottom of “triple bottom line”*, p. 4

<sup>21</sup> <http://www.unglobalcompact.org/>

## Nike & the Sweatshop

My research needs a definition of sweatshops because I argue that the sweatshop allegations by the anti Nike movement in the 1990s were legitimate. I investigate to what extent labor treatment in Nike contracted factories has improved from sweatshop conditions at the time Nike established corporate responsibility as a company function. The non-governmental organization Sweat Shop Watch tells us that a sweatshop is:

“A workplace that violates the law and where workers are subject to:

- Extreme exploitation, including the absence of a living wage or long work hours,
- Poor working conditions, such as health and safety hazards,
- Arbitrary discipline, such as verbal or physical abuse, or
- Fear and intimidation when they speak out, organize, or attempt to form a union.”<sup>22</sup>

The sweatshop issue raises controversies. In a *New York Times* article with the provocative headline “Let them sweat”<sup>23</sup> Nicholas D Kristof argues that we should buy products made in sweatshops because those who work in sweatshops want us to, given that sweatshop labor is the best option they have. Furthermore, he argues that sweatshops can represent a step in the right direction towards economic growth and greater stability in developing countries. Kristof even claims that well meaning anti sweatshop activists sometimes have done more harm than good, because boycotts tend to result in layoffs of workers. However, I argue that the efforts of the anti Nike movement have been instrumental in the progress that has occurred in Nike’s factory base as a result of CSR as a function.

My position on sweatshops is that humans in developing countries deserve dignity, not semi slavery. However, this stand raises a difficult question: It is a legitimate assumption that those who work in sweatshops want to keep their jobs merely because they lack better options. But how can the CSR community and civil society together push for betterment for those who work under the most horrendous, abusive and exploitative sweatshop conditions, without depriving them of the best option they have? Easy answers are elusive when it comes to globalization. However, my study of how Nike’s approach to corporate responsibility and the company’s CSR measures have developed as a result of public pressure will aim to find some possible answers to this question. I believe it is important for the legitimacy and credibility of

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<sup>22</sup> The definition is found on <http://www.sweatshopwatch.org>

<sup>23</sup> Nicholas D Kristof, *Let them sweat*, New York Times, June 25, 2002

CSR and the idea of a social bottom line to research this question. Successful measures in factories caused by the CSR movement with the support of civil society could change the lives of millions of workers who belong to the supply chains of multinational corporations. With this in mind, I proceed with the theoretical foundation of my case study, which essentially is about the potential and the challenges CSR faces as an idea.

### **An Institutional Theory of CSR**

John Campbell has developed an institutional theory of CSR. He has identified a set of propositions that analyze under what conditions corporations are likely to behave responsibly. Campbell argues that institutional conditions affect the relationship between economic conditions and corporate conduct. His theory discusses how the following institutional conditions impact corporate behavior: public and private regulation, independent monitoring, institutionalized norms, associative behavior among corporations and organized dialogues among corporations and stakeholders.<sup>24</sup> I chose Campbell's Institutional Theory because it makes an important new contribution to the CSR literature. I describe what the contributions are and how they will prove useful for my analysis.

The first contribution is that Campbell provides a minimum standard for responsible corporate behavior. The standard defines a behavioral threshold, below which corporations would be understood to act unethically. This is the definition:

I view corporations as acting in socially responsible ways if they do two things. First, they must not knowingly do anything that could harm their stakeholders – notably, their investors, employees, customers, suppliers, or the local community within which they operate. Second, if corporations do cause harm to their stakeholders, they must rectify it whenever the harm is discovered and brought to their attention<sup>25</sup>

I agree that corporations who knowingly cause harm without rectifying it act unethically. I will use this definition as a benchmark to analyze whether Nike shows the minimum level of responsibility that may reasonably be expected.

Another important contribution is that the theory brings something new to the CSR literature because it helps move CSR as an idea in a more theoretically oriented direction. It does so by offering an institutional theory that identifies responsible corporate behavior. This gives me a framework in order to analyze the potential of CSR to bring about improvement in the case of Nike. Are the institutional conditions that

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<sup>24</sup> John L. Campbell. "Why would corporations behave in socially responsible ways? An institutional theory of corporate social responsibility" *Academy of Management Review* (2007) 946-967

<sup>25</sup> Campbell, *Why would corporations behave in socially responsible ways? An institutional theory of corporate social responsibility*, p. 951.

encourage decent conduct present in Nike's case? This framework will prove useful in my discussion of obstacles in the way of progress through CSR. I am interested in how the absence of institutional conditions that encourage responsible behavior affects the possibilities of CSR to create needed change in factories? On the other hand, I base my treatment of the potential of CSR to create progress and social betterment in factories on Campbell's proposition number five which states that:

Corporations will be more likely to act in socially responsible ways if there are private, independent organizations, including NGOs, social movement organizations, institutional investors, and the press, in their environment who monitor their behavior, and when necessary, mobilize to change it.<sup>26</sup>

This is an important proposition for my analysis of Nike's collaboration with civil society organizations. Factories have been subject to extensive monitoring by Nike as well as by NGOs. Furthermore, this proposition has a wider scope than official monitoring of contractors' compliance with Nike's Code of Conduct, because it includes public scrutiny of corporate behavior by the press and NGOs. Therefore I want to use it as a foundation of my analysis of the anti Nike movement's critical scrutiny of Nike's labor treatment in factories. Moreover, this proposition implies that independent monitoring of the behavior of contractor companies that own the factories of Nike's base will make contractors, and hence factory owners, more inclined to treat workers better. I use it as a grounding to analyze whether independent monitoring has resulted in any betterment for Nike's worker population.

I use Campbell's institutional theory critically in order to defend my hypothesis that poverty-level wages is the main challenge for the success of CSR in factories. It is my belief that starvation wages has been the most serious problem in factories to date. Therefore I discuss why insufficient wages has been such a persistent social problem. Nike does not see a business case that favors a living wage because there is no proof that increased wages improve productivity, and hence contribute to increased profits. I proceed to discuss how Nike's rejection of the claim to provide a living wage affects the wage aspect of CSR in Nike's global chain of factories.

My research assumes a correlation between unhealthy economic environments in developing countries and starvation wages because workers who come from a background of poverty lack better options. Campbell's first proposition about economic conditions states that healthy economic environments decrease the probability of

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<sup>26</sup> Campbell, *Why would corporations behave in socially responsibly ways? An institutional theory of corporate social responsibility*, p. 958.



socially responsible behavior.<sup>27</sup> Countries that represent important markets for outsourcing in the apparel industry, such as China and Indonesia have unhealthy economies with a high number of people living below the poverty line, which is to say that companies can get away with paying starvation wages. I have now explained how my research uses the institutional theory of CSR.

### **The Multilevel Theory of CSR**

This theory provides an important analytical foundation in order to explain why companies embrace CSR initiatives.<sup>28</sup> Hence, the theory assumes that corporations exhibit the potential of CSR to create positive social change. The Multilevel Theory argues that corporations are under pressure to prioritize CSR by a number of different actors. Each actor is driven by motives that belong to one or more of three categories: instrumental, relational or moral. Furthermore, the theory analyzes the motives for CSR at multiple levels of analysis: the individual, the organizational, the national and the trans national level

I wanted one theory that focuses on how positive changes can happen by applying CSR. The Multilevel Theory serves that purpose because it focuses on how the motives of actors on different levels that can push corporations to engage in social change through CSR. Furthermore, I chose the Multilevel Theory because it brings several new contributions to CSR theory. The authors show how the multilevel theory brings the field of organizational justice into the CSR literature. This field has a lot to offer CSR as it “allows for a more socially centered treatment of CSR, as opposed to the more economic approach often taken.”<sup>29</sup> Second, the multilevel theory uses multiple needs theory as a framework within the field of organizational justice. Multiple needs open for considerations of moral obligations. That lays a foundation for a study of how a network of factors may “lead organizations to be more socially responsible and, if successful, to impact social change.”<sup>30</sup> Finally, the multilevel theory differs from other CSR theories as it considers the antecedents of CSR. In the authors’ words “we

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<sup>27</sup> Campbell, *Why would corporations behave in socially responsible ways? An institutional theory of corporate social responsibility*, p.947

<sup>28</sup> Ruth V Aguilera, Deborah E Rupp and Cynthia A Williams, “Putting the S back in corporate social responsibility: a multilevel theory of social change in organizations”, *Academy of Management Review* (2007): p.836-863.

<sup>29</sup> Aguilera, Rupp, Williams, *Putting the S back in corporate social responsibility: a multilevel theory of social change in organizations*: p.839.

<sup>30</sup> Aguilera, Rupp, Williams, *Putting the S back in corporate social responsibility: a multilevel theory of social change in organizations*: p.839

examine the factors that might lead various actors at various levels of analysis to push firms to engage in CSR”<sup>31</sup> I appreciate the multilevel theory’s contribution to move CSR as a field from a more narrow financial orientation toward an enhanced focus on the people aspect of CSR.

I chose three propositions in Multilevel Theory in order to follow up my main question about the potential contributions of CSR to improve conditions in Nike factories. The first proposition, (Proposition 2a) deals with how the motives of internal and external stakeholders can interlink and together push for CSR: “Internal and external organizational actors (shareholders, managers, consumers) shareholder interests, stakeholder interests, and stewardship interests will lead them to push firms to engage in social change through CSR”<sup>32</sup> This proposition is useful in two respects: First, it is useful in order to analyze whether the interlinking motives of important internal actors, such as managers, and important external actors, such as the press, have pushed for improvements. Second, it is useful in order to analyze whether interlinking of motives may continue to push for improvement.

The second proposition I consider is based upon motives among insider organizational actors: “A downward hierarchical ordering of motives among insider organizational actors will lead to stronger pressure on firms to engage in social change through CSR.”<sup>33</sup> The authors argue that although multiple motives may push for CSR, there is a hierarchy of motives within corporations. On top are the instrumental motives, to use CSR as a means to increase profits. By “downward” the authors mean that CEOs and executives prioritize CSR as a “top down” means to increase revenues all the way down the business chain. I will analyze if “a downward hierarchical ordering of motives” among prominent actors inside Nike have contributed to push for the changes that have happened to the labor area of Nike’s CSR practices.<sup>34</sup>

Then I proceed to analyze to what extent the motives of Nike executives may contribute to future improvements in factories. The final proposition I intend to use argues that: “An upward hierarchical ordering of motives among outsider organizational actors (i.e. consumers) will lead to stronger pressure on firms to engage in social change through

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<sup>31</sup> Aguilera, Rupp, Williams, *Putting the S back in corporate social responsibility: a multilevel theory of social change in organizations*: p.839

<sup>32</sup> Aguilera, Rupp, Williams: p.847

<sup>33</sup> Aguilera, Rupp, Williams, *Putting the S back in corporate social responsibility: a multilevel theory of social change in organizations*: p.848

<sup>34</sup> Aguilera, Rupp, Williams, *Putting the S back in corporate social responsibility: a multilevel theory of social change in organizations*: p.848

CSR.”<sup>35</sup> By “upward hierarchical ordering of motives” the authors mean that actors on the outside, such as consumers, the press, activists or NGOs, work to influence top executives to improve conditions at the bottom, such as in sweatshops. The main motives will be moral, followed by relational motives and, at the bottom of the hierarchy, instrumental motives. I want to analyse whether such an “upward hierarchy” of motives by outsider actors that belong to civil society has contributed to the improvements that have happened in factories that produce Nike items.

### **Combining the Institutional Theory and the Multilevel Theory**

The Institutional Theory and the Multilevel Theory complement each other nicely for my research purpose. The Institutional Theory provides an excellent framework for critique of Nike’s labor practices. It may be argued that Nike in the past has cynically taken advantage of conditions in developing countries that discourage ethical treatment of workers. Moreover, globalization critics are inclined to argue that Nike continues to take advantage of conditions that permit exploitative behavior in developing countries. The Multilevel Theory balances my criticism of Nike’s CSR practices in that it is inherently positive of the possibility of CSR to create progress and social betterment. Moreover, the Multilevel Theory gives my research a more people minded foundation in that it deals with how the motives of people inside and outside business organizations can push for changes that affect people on the bottom of the chain of corporations

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<sup>35</sup> Aguilera, Rupp, Williams, *Putting the S back in corporate social responsibility: a multilevel theory of social change in organizations*: p. 848

## Chapter 2 The Case Against Nike

This chapter discusses the case against Nike, based upon information about sweatshop conditions in factories presented to the public from 1996-2001. That period represents the peak years of damaging information about abusive and exploitative conditions in Nike's factory base. According to Naomi Klein, Nike's sweatshop scandals had been the subject of more than 1,500 opinion columns and news articles in 1999.<sup>36</sup> Nike has certainly received enormous attention by the press, NGOs and academics, due to the size, visibility and popularity of its brand. This analysis of Nike's poor labor treatment in the past lays a background for my analysis of civil society's success in lobbying for betterment. My analysis of how workers were treated during the peak years of damaging information helps understand why Nike was subject to intense criticism and public scrutiny because of the conditions of its factory base.

### Nike's Past Record of Sweatshop Conditions in Factories

I argue that Nike used sweatshop labor in the past, based upon Sweatshop Watch's definition, which tells us that a sweatshop is a factory that violates the law and where workers are subject to extreme exploitation, poor working conditions, arbitrary discipline and fear and intimidation.<sup>37</sup> As for the first criterion "Extreme exploitation, including the absence of a living wage or long work hours"<sup>38</sup>, Nike has been subject to child labor scandals in the past. Moreover, my research shows that poverty-level has been a long standing problem in Nike contracted factories. When it comes to the second criterion: "Poor working conditions, such as health and safety hazards"<sup>39</sup> the work in factories has been dangerous because Nike has not shown the proper concern for the workers' health and safety in the past. Furthermore, workers in Nike's factory base have been subject to verbal and sometimes physical abuse, which fits with Sweatshop Watch's third criterion: "Arbitrary discipline, such as verbal or physical abuse"<sup>40</sup>. Finally, union leaders and supporters have experienced "Fear and intimidation when they speak out, organize, or attempt to form a union."<sup>41</sup> My research shows that each one of the four criteria that define a sweatshop have been present in Nike's factory base. Nike has been subject to countless allegations on the Internet. Some of them are

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<sup>36</sup> Klein, *No Logo*, p.366

<sup>37</sup> <http://www.sweatshopwatch.org>

<sup>38</sup> <http://www.sweatshopwatch.org>

<sup>39</sup> <http://www.sweatshopwatch.org>

<sup>40</sup> <http://www.sweatshopwatch.org>

<sup>41</sup> <http://www.sweatshopwatch.org>

true, some of them may not be. My research is based upon the proven findings of professors, reporters and reliable, independent NGOs against Nike are legitimate, which serves as valid proof that Nike has a poor past record in factories. This implies that Nike's release of its first Corporate Responsibility report in 2001, (marking the beginning of Nike's CSR History), was a publicity tool to combat information about exploitative and abusive working conditions.

### Child Labor

The photo on the cover of the June 1996 issue of Life magazine showed a heartbreaking picture of Tariq, a 12 year old boy stitching together a Nike soccer ball in a Pakistani factory. The picture was related to an article about child labor in Pakistan. Nike actually admitted to mistakes about child labor in its first Corporate Responsibility Report released in 2001, saying that: "The child labor issue is full of challenges and surprises. By far our worst experience and biggest mistake was in Pakistan, where we blew it."<sup>42</sup> However, Phil Knight, Nike's founder tried to convince Nike's critics that he and Nike were against child labor and that the use of child labor had only ever happened by accident:

Children should study and go to school. We do everything we can to ensure that happens. Setting the highest age standards in the industry, and requiring independent certification that factories meet those standards, is our best practice to make it so<sup>43</sup>

But did the child labor scandal in Pakistan merely happen by accident? Although Knight claimed to support children's rights, the Life magazine article that revealed child labor in Nike factories in Pakistan, and especially the picture of a 12 year old on the cover turned out to be psychologically damaging to Nike's public reputation. Nike did not appreciate that shortly after the article was published; activists all across Canada and the U.S. were standing in front of Nike outlets, holding up the photo of Tariq. A professor of the University of Michigan, Eric Lorrاند criticizes Nike for the fact that their headquarters started production in Pakistan (which he points out to be a notorious country for child labor) with no measures whatsoever to monitor hiring practices by Nike contractors. Lorrاند has published questions and answers focused on Nike's poor record as for labor treatment in factories on his homepage,<sup>44</sup> which illustrates how

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<sup>42</sup> Nike's Corporate Responsibility Report Fiscal Year 2001 p. 37

[http://www.nikeresponsibility.com/pdfs/color/Nike\\_FY01\\_CR\\_report.pdf](http://www.nikeresponsibility.com/pdfs/color/Nike_FY01_CR_report.pdf)

<sup>43</sup> Nike (2001): p.38

<sup>44</sup> <http://www.personal.umich.edu/~lorrand/poli/nike/nike101-1.htm>

the fact that Nike items were made by children provoked academics. Facts about child labor in Asia, dated 1996, presented by the International Labor Office state that: Among the 40 million children aged 5-14 years in Pakistan 1996, 3.3 million, i.e. 8.3 per cent, were economically active. Medical equipment and carpets continue to be produced by children in Pakistan.<sup>45</sup> The numbers above confirm that Pakistan is notorious for child labor. These facts about Pakistan`s child labor record at the time of the Life article confirm Lorrard`s point that it was morally questionable of Nike to start production there.

The activist organization Campaign for Labor Rights has criticized Nike for its child labor sins in Pakistan. The website of Campaign for Labor Rights quotes Max White of Justice: Do It Nike (the latter is a coalition that has worked for improvements of labor treatment in Nike contracted factories):”

Nike went into Pakistan, knowing full well that child labor is an ages-old practice there and taking no precautions whatsoever to prevent the use of child labor in the production of its soccer balls. We have to conclude that Nike expected to profit from its Pakistani contractors' known usage of bonded child labor.<sup>46</sup>

It is a valid point that Nike entered Pakistan without taking precautions against the use of child labor. We will probably never know if Nike actually calculated how much it could expect to profit from contractors` use of bonded child labor, or if Nike simply did not care that contractors sometimes employed under aged children. Nevertheless, it is legitimate to conclude that the child labor scandal in Pakistan was not just an unfortunate accident. I do not trust Phil Knight to truly be against child labor

### Low Wages

I start this section with an analysis of the wage levels in Nike`s Indonesian factories. Indonesia has been an important country in Nike`s outsourcing strategy due to the access of cheap labor. By 1996 1/3 of Nike`s shoes were produced there. Executives have claimed that Nike`s presence in Indonesia has benefited the whole country. In 1994 Nike released the following statement:

As a player in Indonesia's economy, Nike is part of a plan that has succeeded in increasing per capita income ten-fold since 1970 while decreasing those living in poverty from 60% to 15% in the same period.... By supporting light manufacturing, Nike contributes to the increase of workers' skills, wages and capabilities.<sup>47</sup>

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<sup>45</sup> [http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD\\_BLOB?Var\\_DocumentID=6192](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=6192)

<sup>46</sup> [http://www.clrlabor.org/alerts/1998/soccer\\_balls.html](http://www.clrlabor.org/alerts/1998/soccer_balls.html)

<sup>47</sup> Peter Hancock, *The walking ghosts of West Java* by Peter Hancock, Inside Indonesia no 51, July-September 1997

Peter Hancock, a scholar who researched Nike factories in Indonesia from July 1996 until June 1997 argues that Nike's statement is questionable. First, Nike did not start full production in Indonesia until 1988. Second, Hancock claims that Nike's quote is propaganda and manipulation of government statistics. His study of two Indonesian factories gives evidence that women received wages that would keep them in poverty. In *The walking ghosts of West Java* Hancock describes how one woman who had worked for six months sewing Nike shoes and sportswear only received Rp 3,700 per day, which was below the legal regional wage of Rp 5,200 per day.<sup>48</sup> The woman's comment was that because she, unlike most of her friends, did not work seven days a week, she was not entitled to Indonesia's legal daily wage. Hancock refers to another worker he interviewed who was left in poverty when she had to leave the Nike factory after 2 years of labor because of a severe knee injury. The factory did not grant her sick pay or compensation for a permanent disability. This is a story of "extreme exploitation" Three years after Hancock's initial research; he revisited the two factories of his case study in Indonesia, arguing that "these women were all piecemeal workers earning very poor wages in a sector renowned for exploitative practices."<sup>49</sup>

The research paper *Strategic Public Relations, Sweatshops and the Making of a Global Movement* by B.G. Bullert makes some remarks about how Indonesian workers` (to a large extent women) have objected to Nike's exploitatively low wages:

In 1992, the minimum wage in Indonesia ranged from 50 cents a day to \$1.50 a day. A survey carried out in 1989 by the Asian-American Free Labor Institute found that 56 % of the companies were paying less than the Indonesian minimum wage. Subcontractors at Nike factories would avoid paying the minimum wage by keeping them at the training wage level for months or years at a time. Employees objected with their feet. According to the Indonesian government's own figures, there were 190 strikes in 1992, up from 130 in 1991 and 60 in 1990.<sup>50</sup>

The workers` strikes as a response to how Nike avoided paying the legal minimum wage shows that there was a limit to the "extreme exploitation" poor workers in Indonesia would accept. The fact that poor women in Indonesia, a developing country, went on strike as a protest against the factories wages, may be interpreted as a reliable sign that Nike has a record of "extreme exploitation".

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<sup>48</sup> Hancock, *The Walking Ghosts of West Java*

<sup>49</sup> Peter Hancock, *Women Workers Still Exploited*, Inside Indonesia no 62, April- June 2002

<sup>50</sup> B.G. Bullert, *Strategic Public Relations, Sweatshops and the Making of a Global Movement* (The Joan Shorenstein Center working paper series):1999, first in print in *Strategic Public relations*, 14(2000).

I turn to wages in factories in China that produce Nike items. China had been established as the most important market for production of Nike items prior to the peak years of bad publicity, 1996-2001. Estimates by the U.S. National Labor Committee (NLC) assume that Nike outsourced production to 50 contractors in China, employing more than 110,000 workers, in 2000.<sup>51</sup> Factories that produced shoes and sportswear for Nike in South Korea actually relocated to China due to lower costs of labor. An example is the Korean owned factory Sewon that left South Korea in 1989, relocating to greener pastures. In South Korea, 1989, a footwear worker earned \$600 U.S. a month, for six day, 55½-hour workweeks Sewon's direct labor costs in China were less than 9 percent of those in South Korea.<sup>52</sup> These are the statistics of the Sewon/Nike Wage after one year, including a fully loaded wage, all incentives, overtime and bonuses: 26 cents an hour, which would be \$2.31 a day, for a 9-hour day, constituting \$12.51 a week (for a 5½-day, 49-hour workweek), 54.22 a month, \$650.60 a year, which equals less than \$ 2 a day.<sup>53</sup> Although costs of living in China are significantly lower than in the U.S., these wages were so low that the workers could not be free from a life in poverty. The independent human rights organization Hong Kong Christian Industrial Committee carried out research on Nike's production in China between November 1999 and April 2000. The findings were the following: During the busy season, workers had to work 15-hour shifts, from 7:30 a.m. to 10:30 p.m., seven days a week; sometimes working all night. The average wage was 22 cents an hour. The workers were paid 12 cent premium for overtime hours. A 7-day, 83, 5 hour workweek paid nothing more than \$ 18, 06 a week.<sup>54</sup> These wages are at a subsistence level, in that workers did not die from starvation. Although workers survive on those wages, they were insufficient to provide a decent quality of life.

The report *Worker Rights in the Americas?: a Rare inside Glimpse* released in May 2001 by the National Labor Committee (NLC) is a unique, previously suppressed USAID-funded investigation. This research documents systematic repression of human and worker rights in El Salvador, government complicity and corruption. The reports concluded that eighty-five thousand maquila workers, mostly young women, who

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<sup>51</sup> NLC Report: Made in China. The Role of U.S. Companies in Denying Human and Worker Rights May 2000 Part 1: <http://www.nlcnet.org/article.php?id=265>

<sup>52</sup> NLC Report: Made in China. The Role of U.S. Companies in Denying Human and Worker Rights May 2000 Part 2: <http://www.nlcnet.org/article.php?id=266>

<sup>53</sup> NLC, *Made in China Part 2*, May 2000

<sup>54</sup> NLC, *Made in China Part 1*, May 2000



sowed garments for Nike, among other large corporations, such as Gap and Wal-Mart were “systematically denied their rights and paid wages of “abject poverty.”<sup>55</sup>

This report shows an evident correlation between excessive production goals and financial exploitation. At the Hermosa factory two lines each had to complete 1,500 Nike T-shirts per day. Workers were paid according to how many pieces they sowed. An example of how this was carried out is that women who specialized in attaching the sleeves to Nike T-shirts had to sew 2,000 sleeves in the 8.5 hour shift. Otherwise, they would neither meet their quota nor earn the minimum wage of \$4.80 a day. Hence, she was required to sew 235 sleeves an hour or *one every 15.3 seconds*, non-stop all day. This equalled as little as 11.5 cents for every bundle of 48 sleeves. This would be the equivalent of 0023958 cents for each operation. If the daily 2,000 sleeve quota was achieved, the women were paid an additional incentive of 11 and four-tenths cents for every bundle of 48 sleeves exceeding the regular 2000-piece goal.<sup>56</sup>

### Dangerous Working Conditions

The Hermosa factory did have a medical clinic. However, workers complained about lack of available medicines at the factory clinic. The workers felt that this poorly equipped factory clinic existed as a tool to deny them time off needed to access the by far more comprehensive health care available at the state Social Security clinics and hospitals. I should add that workers paid for access to the government’s Social Security health system through deductions in their pay checks. Workers who sowed Nike apparel at another factory in El Salvador, the Chi Fung Factory, who had to go to a public hospital for comprehensive care, were docked for missed working hours as they were required to “replace” those hours by working overtime without pay. This qualifies as “extreme exploitation” as well as a callous lack of concern for the health of workers with medical conditions. According to the National Labor Committee’s report about Worker Rights in the Americas the drinking water accessible the workers at the Hermosa factory was so filthy and unsafe that the bacteria levels exceeded international standards by 4,290 %!<sup>57</sup> This water contained human and animal fecal matter. Drinking it could cause severe respiratory, urinary tract, eye, ear and stomach infections. It was not even safe to wash with. The National Labor Committee, with the help of workers,

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<sup>55</sup> NLC Report *Worker Rights in the Americas: A Rare Inside Glimpse* May 2001: <http://www.nlcnet.org/reports.php?id=326#Min%20Labor%20Report>

<sup>56</sup> NLC, *Worker Rights in the Americas*, May 2001

<sup>57</sup> NLC, *Worker Rights in the Americas*, May 2001

tested the drinking water in the Chi Fung factory. The finding was that bacteria levels were 290 times greater than the internationally allowed standards. The water contained evidence of fecal contamination, likely due to animal run-off in the factory's well.<sup>58</sup>

### Abusive Working Conditions

Women seeking employment at Nike's Chi Fung factory in El Salvador were required to first undergo a urine analysis/pregnancy test at a medical laboratory and present the results. If a woman was tested positive, she was not hired. All female employees were forced to go through another pregnancy test at the Chi Fung's factory clinic fourteen days after they started work. Two to three days' wages, 125 colones (\$14.29) were deducted from the women's pay. If a woman tested pregnant, she was immediately fired. These practices represented an unconstitutional discrimination of women according to the Salvadoran Constitution, Article 3.<sup>59</sup> In September 2000, video surveillance cameras were installed in the Hermosa factory, pointed directly at the production lines as a means to pressure the workers. By this line supervisors could direct supervisors to yell at women who did not work fast enough, order them to work faster, or to stop workers from talking during working hours. The women felt it humiliating to be watched constantly. Workers in all factories producing for Nike who were interviewed for the research of the Workers' rights in Central America report complained about abusive treatment by supervisors who yelled and screamed at them to work faster. The supervisors yelled that "there are urgent orders to fulfil" and that the workers shouldn't be just "looking at the pieces or caressing them" but flying through the work."<sup>60</sup>

In October 1996, the CBS News program 48 Hours ran a series that documented abuses of workers in Vietnamese factories.<sup>61</sup> The CBS reported that on the International Women's Day March 8, 1996, 56 women in a Vietnamese factory were forced to run a distance of 4km around the factory grounds. 12 of them fainted and were taken to the hospital. The women's offence was that a few of them had worn outdoor shoes inside the factory. Unfortunately, this 48 Hours series about abuses of workers in Vietnamese factories is no longer available to the public. Nevertheless, I trust this to be a true story as it was documented on national television.

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<sup>58</sup> NLC, *Worker Rights in the Americas*, May 2001

<sup>59</sup> NLC, *Worker Rights in the Americas*, May 2001

<sup>60</sup> NLC, *Worker Rights in the Americas*, May 2001

<sup>61</sup> [http://www.crlrlabor.org/alerts/1997/nike\\_worker1.html](http://www.crlrlabor.org/alerts/1997/nike_worker1.html)

The columnist Bob Herbert's article *Brutality in Vietnam* says that Nike's spokeswoman at the time of this event labeled the event as "absolutely horrible."<sup>62</sup> This is evidence that Nike acknowledged that the event took place. Nonetheless, some of Nike's critics believed Nike only found the abuse horrible because it was presented to the public. Furthermore, my review of the story draws on descriptions of conditions in Vietnamese factories by Thuyen Nguyen, a representative of the Vietnam Labor Watch, which is a labor rights groups formed by Vietnamese Americans as a response to information about abuses in Nike's Vietnamese factories as seen on 48 hours in 1996.<sup>63</sup> The fact that the Vietnam Labor Watch was founded as a response to a series about abuses in factories on national television is an example of how media attention to horrible labor treatment in factories triggered organized activist pressure against Nike's labor practices. Thuyen Nguyen wrote a report based upon his research of conditions in Vietnamese factories in 1997.<sup>64</sup> Although Nguyen's report would have been of interest to my research in this chapter it is unfortunately no longer available on line.

#### Harassment of Workers who Tried to Form Unions

Workers in Nike factories in El Salvador were told repeatedly by management that a "trade union in the factory is not necessary" because the company "gives you incentives and all the social benefits according to the law." The workers were very clear that "The management is very strict and will never allow a union." (*Worker Rights in the Americas: A Rare Inside Glimpse*). Complete Denial of freedom of association was a major problem in factories in El Salvador, actually an anti-union policy was found, by which attempts at organization were repressed. Union leaders interviewed said it was very common for supervisors and chiefs of personnel to threaten workers with firings if belonging to or attempting to form a union. The names of workers who belonged to or at some point had belonged to a union organization were "blacklisted" by the management. The workers affirmed that the people who appear on these lists are not hired by similar contractor companies. This violated the Freedom of Association of El Salvador's constitution.<sup>65</sup>

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<sup>62</sup> Bob Herbert, *Brutality in Vietnam*, New York Times, March 28 2007

<sup>63</sup> <http://www.saigon.com/~nike/>

<sup>64</sup> [http://www.clrlabor.org/alerts/1997/nike\\_worker1.html](http://www.clrlabor.org/alerts/1997/nike_worker1.html)

<sup>65</sup> NLC, *Worker Rights in the Americas*, May 2001

Indonesia's legislation has allowed independent unions since July 1998. However, Tim Connor, a representative of the prominent aid organization Oxfam describes how workers' rights to unionize have been violated in the report *We are not machines*<sup>66</sup> I want to address how workers of the P.T. Nikomas Gemilang factory (a plant in Indonesia who produces for Adidas and Nike) who organized a demonstration for better wages December 17 and 18, 1999 were subject to intense intimidation and harassment.<sup>67</sup> Some of the workers who participated in the demonstration actually reported to fear for their lives. Julianto, one of the key demonstrators, was taken into an office by factory managers who shouted at him and told him he would be attacked by hired thugs that if he did not stop organising workers. This incident took place in the presence of an Indonesian soldier. Furthermore, Julianto was repeatedly approached by strangers who warned him that his life was at risk if he did not resign from the factory. Another Nikomas worker found his residence ransacked by a local gang after he had been subject to similar threats. By April 2000 each one of the twenty workers who had played a key role in organising the demonstration had been forced to resign because of this intimidation. Workers claimed that the Nikomas factory had a record of hiring thugs to frighten workers who engaged in union activities. The story above is a grave example of how workers' rights to speak up against illegitimate labor treatment have been violated.<sup>68</sup> Human rights organizations suggested that Nike establish a confidential procedure for workers to notify independent organisations if they receive any threats or discrimination for union activity. However, these requests were allegedly ignored by Nike at the time this report was published, in 2002.<sup>69</sup>

#### Why Female Workers can be More Vulnerable to Exploitation

David M. Boje, a scholar who is the author of the article *Nike, Greek goddess of victory or cruelty? Women's stories of Asian factory life*<sup>70</sup> argues that hiring young, unmarried women from the countryside makes it easier for Nike contractors to get away with abusive labor practices because women are expected to be submissive in Asian cultures.

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<sup>66</sup> Tim Connor, Oxfam, *We are not machines*, March 2002, p 11

<http://www.oxfam.org.au/campaigns/labour-rights/docs/notmachines.pdf>

<sup>67</sup> Oxfam, *We are not machines*, p 11

<sup>68</sup> Oxfam, *We are not machines*, p 11-13

<sup>69</sup> Oxfam, *We are not machines*, p 13

<sup>70</sup> David M Boje, "Nike, Greek goddess of victory or cruelty? Women's stories of Asian factory life" *Journal of Organizational Change Management*, Vol. 11 Issue 6 (1998)

The passage below sheds light upon why women in Asian cultures may be easy targets for “extreme exploitation” in factories:

In sum, religious and rural family tradition that fosters subservience to male authority, passive resistance to male domination, and an ethic of hard work in harsh conditions have equipped a generation of females to fit perfectly into capitalist wage employment. The combined result of tradition and repression is a class of women who are docile, non-rebels, low-wage earners, hard working, and raised culturally to tolerate male domination, unsafe conditions, verbal and sexual abuse.”<sup>71</sup>

As my research in this chapter has relied on a report about the conditions of factories in El Salvador, I want to add that the norm in Latin America is that men should provide for the family and that women should stay at home and take care of children. It is a legitimate point that macho culture, be it in China, Indonesia or El Salvador, makes female workers more vulnerable to exploitation by male factory managers. Finally, Boje goes so far as to label Nike as a “Greek goddess of cruelty”<sup>72</sup>. The upcoming chapters of my case study will determine whether civil society successfully has lobbied for such substantial progress that the labor treatment in Nike contract factories no longer represents cruelty in 2008.

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<sup>71</sup> David M Boje Nike, Greek goddess of victory or cruelty? Women’s stories of Asian factory life p. 2

<sup>72</sup> David M Boje Nike, Greek goddess of victory or cruelty?

### Chapter 3: Civil Society Reacts: Boycotts and Sweatshops

Just Don't Do It Just Don't Nike, Do It Just<sup>73</sup>

Above are some examples of how Nike's "just do it" slogan has been mocked by the anti-Nike movement. This chapter is dedicated to the growth of the anti Nike movement from the child labor scandal in Pakistan, 1996, until Nike lost a lawsuit against the labor activist Marc Kasky in the State of California, 2003. I discuss how the anti Nike movement grew into a large, international and organized response to Nike's record in factories, including activists, intellectuals and prominent NGOs, such as Oxfam International. My research of the anti Nike movement is followed by an analysis of how Nike has been subject to customer boycotts in the U.S. and in Europe. Finally, I discuss Nike's loss of the Kasky lawsuit. An important fact is that Nike declined responsibility for the conditions of its factory base in the early 1990s on the grounds that Nike did not own the factories. However, Nike was finally forced to accept responsibility for conditions in factories in 1996 after the child labor scandal in Pakistan. The analysis of this chapter provides an important background for my study of how Nike's CSR measures and approach to corporate responsibility have developed as a response to boycotts, protests and intense public scrutiny.

#### The Anti Nike Movement

Anti-corporate activism and criticism of the labor practices of the biggest corporations were timely when the child labor scandal occurred in 1996. Charles Kernaghan, representing the National Labor Committee told Congress on April 29, 1996, that the clothing line of the popular talk show host Kathie Lee Gifford was made by 13- and 14-year-olds who worked 20-hour days in factories in Honduras.<sup>74</sup> The Kathie Lee Gifford incident contributed to put the issue of sweatshops on the agenda in the mid/late 90's. Two years after the Lee Gifford scandal, in 1998, Phil Knight admitted that Nike and its logo, called the "swoosh" had "become synonymous with slave wages, forced overtime, and arbitrary abuse"<sup>75</sup> But why did Nike exactly become the most prominent target of anti sweatshop criticism and activism in the late 1990s? In the article *Activism,*

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<sup>73</sup> Klein, *No Logo*: 366

<sup>74</sup> Stephanie Strom, *A Sweetheart Becomes Suspect; Looking behind those Kathie Lee Labels*, New York Times June 27, 1996

<sup>75</sup> Graham Knight, *Activism, risk and communicational politics, Nike and the sweatshop problem, The debate over Corporate Social Responsibility*, p. 305, edited by George Cheney, Steven May, Juliet Roper, (Oxford, Oxford University Press, 2007)

*risk and communicational politics* the scholar Graham Knight argues that there are four main reasons why Nike became the ultimate anti globalization target:<sup>76</sup> First, some of the initial complains, especially about abusive management behavior, came from workers in Nike contracted factories according to Knight. Second, activists realized that they needed to choose a company that could afford the additional expenses of eliminating sweatshop conditions without putting its financial viability at stake. Moreover, as Nike is the biggest company in the sportswear industry (in terms of annual revenues), activists believed that targeting Nike as a market leader would be the most effective approach to put pressure on the sportswear industry to combat the sweatshop issue. Finally, Nike`s business model was instrumental to the company`s market success. This model emphasised corporate identity as well as PR strategy that integrated aspects of management and communication. An aspect of Nike`s identity and PR strategy was to champion disadvantaged people, especially women and racial minorities, through sport. Hence, Nike`s business model might have made the company more timid and sensitive to activist attacks

I analyze how Nike`s public image was hurt when critics presented a picture of Nike as a hypocrite and an abusive company profiting on semi-slavery. Nike`s legitimacy was under siege on two groundings: First, the company was confronted with a performance gap for failing to comply with basic labor standards and to respect workers` rights. Second, Nike was confronted with a credibility gap for failing to live up to its self proclaimed integrity.<sup>77</sup> Yet Nike`s integrity was attacked before the company established CSR as a function, one may draw some conclusions that most certainly apply to the success or failure of CSR. Corporate integrity is fragile because the more ethical a company claims to be, the bigger the blow to the company`s image if it is caught doing something inappropriate. In that case, the company`s self proclaimed image of integrity will give activists ammunition that can and will be used against it. CSR is a timid idea in this respect because if a company emphasises CSR, changes are that activists may debunk the company`s image of corporate responsibility if the company is caught in a scandal. The lesson is that corporations` willingness to walk the talk and practice as they preach will make or break the success and credibility of CSR as an idea and a business function. The upcoming chapters will examine to what extent

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<sup>76</sup> Knight, *Activism, risk and communicational politics, Nike and the sweatshop problem*, p. 306

<sup>77</sup> Knight, *Activism, risk and communicational politics, Nike and the sweatshop problem*, p. 307

the voices in Nike who are for corporate responsibility have been able to push for consistency between what Nike says and the reality in factories

The link between Nike's size and its possible vulnerability to activist pressure makes it vital to discuss the link between Nike's logo and the anti Nike movement. In 2008 Nike's logo is one of the world's most famous corporate trademarks. The research paper *Nike and Global Labour Practices*<sup>78</sup> offers some reflections about the power of Nike's logo, and the relation between the Nike "swoosh" and the anti Nike movement (Murphy/Mathew: 1-32). Murphy and Mathew quote the analysis of the sociologists Robert Goldman and Stephen Papsen about the influence of Nike's logo:

We live in a cultural economy of signs and Nike's swoosh is currently the most recognizable brand icon in that economy. The Nike swoosh is a commercial symbol that has come to stand for athletic excellence, hip authenticity, and playful self awareness. While the logo carries the weight of currency, Nike's "Just do it" slogan has become part of the language of everyday life.<sup>79</sup>

The anti Nike movement includes student activists who have campaigned against Nike on campus. Students at the University of Boulder, Colorado organized a fundraising that spelled out the difference between a legal minimum wage and a living wage. Participants paid an entrance fee of \$1.60 (one day's wage for a worker in Vietnam). The winner received \$2.10 (the price of three square meals in Vietnam). Nike's founder Phil Knight was invited to be a guest speaker at the Stanford University Business School in May 1997. Knight was expecting praise for his understanding of branding and his early use of outsourcing. However, the crowd of business students, who presumably favored free enterprise, chanted "Hey Phil, off the stage. Pay your workers a living wage", which shows that America truly was outraged by Nike's behavior in factories<sup>80</sup>. The anti Nike movement is at its strongest and most aggressive in Nike's home state of Oregon. Since the child labor incident was revealed in Pakistan, demonstrations outside the Portland Nike town have been among America's largest and most militant ones. Examples are an enormous, threatening Phil Knight doll with dollar signs for eyes and a twelve-foot Nike logo dragged by young children (for the sake of dramatizing child labor). Yet the anti-Nike movement is governed by non violence, a

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<sup>78</sup> David F Murphy and David Mathew, *Nike and Global Labour Practices*: A case study prepared for the New Academy of Business Innovation Network for Socially Responsible Business p 1-32

<sup>79</sup> Murphy/Mathew: *Nike and Global Labour Practices*: p.5

<sup>80</sup> Klein, *No Logo*, 299



protest in Eugene, Oregon, led to actions of vandalism, such as the tearing down of a fence protecting the construction of a new Nike Town.<sup>81</sup>

The article “Ideologically motivated activism – how activist groups influence corporate change activities”<sup>82</sup> by Frank den Hond and Frank G.A. De Bakker analyzes how activism may influence activities that contribute to social change within corporations. Den Hond and De Bakker argue that when the responsibility for addressing a wide range of social issues is transferred from the state to corporations, activist groups more than previously challenge firms to take up social issues. Hence, activist groups, such as groups that belong to the anti Nike movement, actually seek to influence the nature and level of corporate social change activities. What they aim for on a long term basis is to bring about substantial change, such as in the area of labor standards. To what extent the anti-Nike movement has been successful in this regard is off the subject of this paragraph. However, the article uses Burma as an example of successful activism: “For instance dozens of companies ceased their activities in Burma when pressured by activist groups whose motivation was to stimulate democracy and peace in this country ruled by, arguably, an oppressive and brutal junta”<sup>83</sup> The authors draw parallels to how activists have continued to pressure the sportswear industry: “Likewise, activist groups in the anti-sweatshop movement keep exerting pressure on major brand producers in the apparel and shoe industries to improve working conditions and wages in the industries’ international supply chains.”<sup>84</sup>

Activist groups that belong to the anti Nike movement are not the only ones that continue to exert a pressure on Nike. NGOs that Nike collaborates with, such as Business for Social Responsibility continue to lobby for improvements for workers in Nike factories.<sup>85</sup> There is a twofold collective effort going on trying to push for betterment in those factories. The anti Nike movement has been focusing on, and continues to focus on what they are against, rather than what they are for. My point exactly is that the actions by individuals and NGOs that represent the anti Nike movement have revolved around what they consider to be illegitimate labor practices in factories. The NGOs that collaborate with Nike have a more pragmatic position, as they

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81 Klein, *No Logo*, p. 365-379

82 Ideologically motivated activism – how activist groups influence corporate change activities

Frank den Hond and Frank G.A. De Bakker, *Academy of Management*: 901-924, 2007, Vol. 32 no 23

83 Hond/G.A. De Bakker,

*Ideologically motivated activism – how activist groups influence corporate change activities*, p 902

84 Hond/G.A. De Bakker

*Ideologically motivated activism – how activist groups influence corporate change activities*, p 904

85 <http://www.bsr.org>

work with Nike as a CSR partner, to lobby for the positive changes that they want to see in factories. In the introduction I described the most important NGOs that Nike has collaboration with. Furthermore, Nike engaged in a pilot project, ending in September 2000, launched by the NGO Global Alliance for Workers and Communities.<sup>86</sup> The following factories in Thailand that mainly produce Nike products were subject to an assessment study conducted by the NGOs Global Alliance for communities and workers and Thai Labour: Lian Thai, Pan Asia Footwear, Saha Union, Rana Shoe, and Liberty Garment. There is no question that Nike engages in collaboration with NGOs. The question is whether Nike sees such a significant case for CSR in the area of labor standards that BSR may contribute to much needed improvements in factories.<sup>87</sup>

### Customer Boycotts

There is some evidence that Nike has been subject to consumer boycotts globally due to Nike`s past record in factories. The website of the grassroots based organization Vietnam Labor Watch promotes a boycott against Nike<sup>88</sup>: Another website promotes a boycott against Nike in Canada, and the headline of the website is “the Nike boycott spreads across Alberta”<sup>89</sup> These websites indicate that Nike has been the target of organized boycotts. I have not been able to collect data about the size of Nike boycotts. However, Nike was substantially hurt financially in the last quarter of 1998. In his book *The Market for Virtue* the Berkeley professor David Vogel Nike experienced its first financial loss in thirteen years when Nike`s earnings fell by 69%. Nike laid off 1,600 employees. It was estimated that a part of this sales decline was caused by boycotts because of sweatshop allegations.<sup>90</sup> Financial woes made Phil Knight more humble toward Nike`s critics. A Harvard Business School case study concluded that “Nike`s fiscal woes did what hundreds of hard articles had failed to do: they took some of the bravado out of Phil Knight.”<sup>91</sup> In Knight`s speech to the National Press Club in May 1998 he admitted that: “The Nike product has become synonymous with slave wages,

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<sup>86</sup> <http://www.theglobalalliance.org/>

<sup>87</sup> [http://www.theglobalalliance.org](http://www.theglobalalliance.org/)

<sup>88</sup> <http://www.saigon.com/~nike>

<sup>89</sup> <http://www.geocities.com/athens/acropolis/5232/>

Noted: this website was last updated in 1999

<sup>90</sup> David Vogel, *The market for virtue: the potential and limits of corporate social responsibility*, Washington D.C.: Brookings Institutions Press, (2005): p.79

<sup>91</sup> Vogel, *the Market for Virtue*: p. 81

forced overtime, and arbitrary abuse. I truly believe that the American consumer does not want to buy products made in abusive conditions.”<sup>92</sup>

More generally, the authors of *Can Labor Standards Improve Under Globalization?*<sup>93</sup> Kimberly Ann Elliott and Richard B Freeman argue that there is evidence that customers want decent working conditions associated with the product they purchase. Elliott and Freeman discuss findings which indicate that some customers may be inclined to boycott companies with bad labor practices. Customers` willingness to pay more for decent working conditions was found in 4 forms:

- how shareholders and share prices respond to allegations that goods are produced under poor conditions
- experiments that give participants the choice between acting in their own narrow, selfish interest or taking the interests of others into consideration
- the responses of corporations to anti sweatshop campaigns; as well as
- surveys of customer preferences<sup>94</sup>

Elliott and Freeman discuss samples from two surveys conducted by the National Bureau of Economic Research. According to the first sample 46% of the consumers said they cared “a lot” about the conditions of the workers who make the clothes they purchase. 38% said they cared “somewhat”. Only 8% said they cared “a little”, and the same number, 8% answered “not at all or no response”. 81% were willing to pay more for an item if assured it was made under good working conditions. The average additional amount consumers were willing to pay for a \$10 item was \$2.80. And the average additional amount consumers were willing to pay for a \$100 item was \$15. The second sample showed that 84% of the consumers asked said they would choose an option to a T-shirt that students said was made under poor conditions. 65% said that they would not buy a T-shirt that was made under poor conditions at all. Those who said they would buy a T-shirt under poor conditions would do so at an average discount of \$4.30. However, 78 % said they would pay more if assured that the T shirt was made under good conditions. Those who said they would pay more would pay an average additional amount of \$1, 83<sup>95</sup>. These are the data presented from the samples that Elliott and Freeman discuss in *Can labor standards improve under globalization?*

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<sup>92</sup> Vogel, *the Market for Virtue*: p. 80

<sup>93</sup> Kimberly Ann Elliott, Richard B Freeman *Can Labor Standards Improve Under Globalization?* Institute for international economics, (Washington D.C.) 2003

<sup>94</sup> Elliott/Freeman, *Can Labor Standards Improve Under Globalization?* p.29

<sup>95</sup> Elliott/Freeman, *Can Labor Standards Improve Under Globalization?* p.31

How are these numbers applicable for my case study of Nike? Above all, the numbers indicate that a vast majority (in both samples a staggering 84%) does care to some degree about how people who produce their garments are treated. Two other surveys: one by the Marymount University's Center for Ethical Concerns (conducted in 1995, 1996 and 1999) and one by the University of Maryland's program on International Policy Attitudes both show that three of four customers asked said they would actually avoid stores if they knew that the products were produced under poor conditions. This confirms strongly the findings of the two samples that an overwhelming majority would respond negatively to facts about poor working conditions<sup>96</sup> I am assuming that this evidence that may be applicable when consumers buy sportswear.

However, it is interesting that the results from the second survey reveal what the authors describe as "a fundamental asymmetry in responses to information about good and bad working conditions"<sup>97</sup> Yet consumers said they would pay an average of \$1, 83 for the assurance that an item was made under decent conditions, this is less than half of the discount consumers asked for to buy an item made under poor conditions. The fact that the price response to information about poor conditions much exceeded the price response to information about good conditions complies with prospect theory. Prospect theory shows that potential losses are weighed more heavily than potential gains. This implies that companies may lose revenues if product lines are associated with abuse. On the other hand, corporations have modest space to increase prices for a product line made under excellent conditions.

Nevertheless, people may not behave consistently with what they say. Hence, survey evidence may not convince hard core skeptics. People who only care about themselves are usually not happy to admit their own selfishness. The Dictator's Game may fit this case to some extent. The only rule of this game is that whatever the boss decides goes. In experiments two selected players received an envelope each. One envelope contains \$100 and the other envelope is empty. Only an average of 20% of the players who got the \$100 kept the \$ 100. The typical behavior was to keep 40-60 % of the money. Hence, most people shared with others<sup>98</sup> under circumstances that allowed them to be completely selfish. Freeman and Elliott reason that:

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<sup>96</sup> Freeman/Elliott, *Can Labor Standards Improve Under Globalization?*, p.31

<sup>97</sup> Freeman/Elliott, *Can Labor Standards Improve Under Globalization?*, p.33

<sup>98</sup> Freeman/Elliott, *Can Labor Standards Improve Under Globalization?*, p.37

Both in experiments and in the social world, people behave as if they care for more than their own immediate pleasure. Thus, our presumption is that if people say they care about labor standards and that they are willing to pay a bit more for products made under good conditions and would shun products made under poor conditions, they are more likely to be telling the truth than deceiving the “surveyor”<sup>99</sup>

Ultimately, Nike`s case for CSR would be stronger, and Nike`s past case for using sweatshop labor would weaken, if there was direct evidence that customers reject sweatshop running shoes in favor of more costly running shoes made under decent conditions. Unfortunately, no such direct evidence exists.

The pro globalization economist Martin Wolf argues in his book “Why Globalization Works” that corporations cannot cope with bad publicity:<sup>100</sup>

Threatened by the blackmail of protesters, they will do almost anything to satisfy their critics. Occasionally, companies will be right to do so, for what they have done, or condoned, is a scandal. Sometimes, however, they will be wrong to do so, for what they are supposed to do, may hurt those they are supposed to help.<sup>101</sup>

Wolf reasons that it is not so that consumers are controlled by corporations. Quite the contrary, he argues that consumers control corporations. Wolf uses a story of how the British government and Shell abandoned a presumably legitimate plan to dump the Brent Spar oil platform at sea in favor of more expensive and more environmentally damaging onshore disposal.<sup>102</sup> This happened as a result of pressure from a group of Greenpeace activists in Germany as well as some hooligans. Wolf`s conclusion is that corporations are timid and vulnerable when it comes to consumer pressure. He quotes what the prominent globalization critic Naomi Klein remarked in *No Logo* about how brands are actually a source of corporate weakness: “brands, the source of so much wealth, is also, it turns out, the corporate Achilles` heel.”<sup>103</sup> The remainder of my thesis about how civil society has influenced Nike`s approach to corporate responsibility and its CSR measures will examine if Wolf is right.

### The Kasky Lawsuit

Below are the facts according to my interview with Marc Kasky. In 1997, Nike was aware of criticism and sweatshop allegations by anti-globalisation activists. Nike claimed that subcontractors enforced the Code`s standards regarding compensation, safety, no punishment and forced overtime. A management firm was hired to go to

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<sup>99</sup> Freeman/Elliott, *Can Labor Standards Improve Under Globalization*, p.37

<sup>100</sup> Martin Wolf, *Why globalization works*, Yale Nota Bene, New Haven 2005

<sup>101</sup> Wolf, *Why globalization works*, p.228

<sup>102</sup> Wolf, *Why globalization works*, p.228

<sup>103</sup> Klein, *No Logo*, p.343

Southeast Asia. The report came back, but Nike did not release it. The fact that the report was kept confidential because Nike considered it as potentially damaging to its reputation shows that Nike was not a very transparent company in 1997. Nonetheless, a Nike employee saw the report, and released it to the New York Times. Nike responded by a publicity campaign claiming the factories were not sweatshops and Nike was a “model corporate citizen”. California has a statute that allows constituencies to sue corporations on the grounds of fraud or false advertisement.<sup>104</sup> Kasky sued Nike on the grounds that California’s statute about fraud and false marketing should apply for all factual information designed to sell products, including press releases and interviews on television. The legal question was if the First Amendment right to free speech allowed such an interpretation of the California statute. The California Supreme Court ruled 6-3 in favor of Kasky in 2002, and the U.S. Supreme Court accepted this outcome in 2003.

Marc Kasky sued Nike because he wanted California’s constituencies to be entitled to know the truth about Nike’s labor practices.<sup>105</sup> His driving force was that people should have the right to truthful and correct information about corporations’ products and how they do business. In this perspective Kasky most certainly won a victory. Corporations that do business in California need to be more careful with facts. Misrepresentation is discouraged as corporate communications is made more leverage. Truthfulness may be checked. Nike’s loss of the Kasky lawsuit strengthened those inside Nike who were inclined to argue for ethical behavior because corporate management learned the lesson that lies may be used against Nike in a lawsuit. The Kasky lawsuit has been subject to much debate. In the article *Let Nike Stay in The Game* the columnist Bob Herbert argues that the First Amendment which gives Nike’s critics the right to label it as an exploitative, abusive and obnoxious company should give Nike the right to defend its labor practices.<sup>106</sup>

My stand is that I strongly favor the Freedom of Speech and agree with the outcome of the Kasky lawsuit. It is so that constituencies have an expanded right to sue corporation after the U.S. Supreme Court upheld the verdict of the Kasky lawsuit. However, Nike still has a legitimate right to defend its corporate behavior and labor practices in press releases and public appearances in the State of California. I believe it

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<sup>104</sup> These facts about the Kasky lawsuit are taken from an interview I conducted with Marc Kasky in San Francisco October 12, 2007, (see appendix)

<sup>105</sup> My interview with Marc Kasky in appendix

<sup>106</sup> Bob Herbert, *Let Nike Stay in The Game*, New York Times May 6, 2002

is a good thing that California's citizens have the right to check the truthfulness of companies' statements in press releases and public appearances. Companies should defend their behavior with the truth, not with lies. The next chapter about how Nike's CSR strategy has developed examines to what extent Nike changed its behavior for the better after they were battled by Marc Kasky in Court.

#### **Chapter 4: How Nike`s CSR Strategy has Developed 1996 – Present**

The Swedish author of the influential pro-globalization book *Till världskapitalismens försvar* Johan Norberg argues that big companies have to act respectably to survive because negative attention may cause loss.<sup>107</sup> Norberg claims that yet it takes decades to build favorable brand recognition, activists may tear down the brand in a few weeks. He argues that this makes it possible to push corporations to change behavior quickly if they do something inappropriate<sup>108</sup> How successful has civil society really been in improving Nike`s behavior and conditions in factories through CSR since the function was established in 1996? I challenge Norberg`s reasoning about how quickly activists can influence companies to change behavior. My suggestion is that Nike`s change of behavior has evolved over a decade since 1996. Therefore, Nike`s history is not one of overnight transformation of corporate behavior through CSR. Still, I suggest that Nike`s history shows that civil society to a large extent has been able to pressure Nike to improve its corporate behavior.

In chapter 3 about civil society`s reactions to sweatshop scandals I wanted to show how actors outside Nike have pushed for change in factories in this chapter. I take my treatment of the multilevel theory one step further. The actual impact of Nike`s CSR measures in improving factory conditions is the benchmark of civil society`s ability to push for substantial change through CSR. Therefore, I put the multilevel theory`s assumption that the public is capable of pushing for actual change through CSR to the test. Have conditions in factories changed so substantially that there is much hope for the future of CSR? That is what I want to find out exactly throughout this chapter. Furthermore, the institutional theory gives an important contribution to this chapter. I will see John Campbell`s proposition about public regulation in relation with Nike`s loss in Court against Marc Kasky. For a brief recap, Nike lost a lawsuit against the activist Marc Kasky in the Supreme Court of the state of California. The U.S. Supreme Court in Washington D.C. has not overturned this verdict.<sup>109</sup> I want to know if the Kasky lawsuit contributed to change the company`s behavior in any way.

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<sup>107</sup> Johan Norberg, *Till världskapitalismens försvar*, Stockholm, Timbro, 2001,

<sup>108</sup> Norberg, *Till världskapitalismens försvar*, p.200

<sup>109</sup> See my treatment of the Kasky lawsuit in chapter 3, and my interview with Marc Kasky in appendix



## **Nike`s Business Case for CSR and the Development of CSR**

Nike`s last Corporate Responsibility report *Innovate for a better world* sees the development of Nike`s CSR strategy divided into three phases since 1996.<sup>110</sup> The first phase (1996-2001) was a phase of establishing CSR as a function. The second phase (2001-2004) was, according to Nike, a phase of social interaction with organizations that belong to the CSR community. Finally, Nike sees the third and current phase (2005-2010) as one of integrating CSR into the company`s business model.<sup>111</sup> I accept Nike`s time table for the sake of my analysis because I want to measure Nike`s CSR efforts against the company`s description of its timetable. It will be of interest for my case study to research if Nike has lived, and lives up, to the descriptions of its corporate responsibility activities and measures.

My research about civil society`s reactions to illegitimate conditions in Nike factories showed that Nike did not see a case for business ethics, or care about factory conditions, until an estimated correlation was found between sweatshop allegations and lost revenues. This tells us that Nike had a negative and cynical motivation for establishing CSR as a company function solely for the purpose of risk management. Nike did not want to risk future sales declines due to scandals followed by boycotts. CSR was a new concept in the business community when Nike established the function. The story of how Nike accepted CSR as a PR vehicle in the late 1990`s could imply that CSR was born as a function because some companies endorsed the idea of corporate responsibility because they wanted to protect their brand images. This does not imply that those companies wanted to avoid scandals because of their conscience. However, what they wanted was to safeguard the value of their brands against lost revenues.

The second phase of Nike`s CSR history implies that Nike showed increased willingness to cooperate with civil society organizations and representatives because Nike saw a business incentive to improve its corporate image. I would like to discuss whether Nike`s interaction with civil society and the CSR community created any improvement in factories at all. At present, in the final phase of Nike`s CSR history, Nike claims to believe it will be a competitive advantage to integrate corporate responsibility into its core business model, whereas the triple bottom line of CSR serves

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<sup>110</sup> Nike`s Corporate Responsibility report Fiscal Year 2005/06 *Innovate for a better world* p. 17  
[http://www.nikeresponsibility.com/pdfs/color/Nike\\_FY05\\_06\\_CR\\_Report\\_C.pdf](http://www.nikeresponsibility.com/pdfs/color/Nike_FY05_06_CR_Report_C.pdf)

<sup>111</sup> Nike, *Innovate for a better world* (2005/06): p. 17

to deliver financial, social and environmental sustainability. The conditions in Nike`s factory base today shed light upon the substance of Nike`s current case for CSR.

### **Phase 1: 1996-2000: Nike Implements CSR as a Company Function**

When Nike`s General Manager in Jakarta was asked why claims about abusive labor treatment in Indonesian factories had not been under investigation in the early 1990s he replied “I don`t know what I need to know... They are our subcontractors. It`s not within our scope to investigate”<sup>112</sup> Although Nike`s Code of Conduct was drafted in 1992, critics were dissatisfied because there was little or no evidence that conditions had improved at the time of the child labor scandal in Pakistan.<sup>113</sup> Nike`s first corporate responsibility report in 2001 was a landmark in Nike`s history in that it symbolized a tremendous shift in how Nike countered its critics. Instead of continuing to disclaim responsibility for conditions in factories Nike did not own, Nike established corporate responsibility as a function in order to silence its critics. One of Nike`s responses to the child labor scandal was to be the first corporation to join the Apparel Industry Partnership, which was an initiative by a Clinton administration task force designed to foster collaboration and dialogue between the apparel and footwear industries and their critics. From 1996-2001 Knight announced a number of reforms, which included an increase of the minimum age of sneaker workers to 18 and apparel workers. Micro loans were made available. All suppliers were required to adopt American standards for clean air. Educational programs for workers` families were expanded. Finally Nike made the decision to allow labor and human rights groups allowed workers to participate in monitoring of Nike`s factory base.<sup>114</sup>

Moreover, the SHAPE audit was launched in 1997 as a monitoring measure. The goal of SHAPE audits is to provide a general image of the factory`s compliance with labor, environment, safety and health standards A SHAPE inspection was normally performed by Nike`s field-based production staff. SHAPE inspections would take about a day and occur between once or twice each year.<sup>115</sup> It may be argued that the SHAPE audits were a modest step in the right direction toward more responsible corporate behavior. If nothing else, the audits represented an increased willingness to monitor, and

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<sup>112</sup> Vogel: *the Market for Virtue*, p.78

<sup>113</sup> Vogel: *the Market for Virtue*, p.79

<sup>114</sup> Vogel: *the Market for Virtue*, p.77-82

<sup>115</sup> Does Monitoring Improve Labor Standards? Lessons from Nike MIT Sloan School of Management, MIT Sloan Working Paper No.4612-06, July 2006 Richard Locke, Fei Qin, and Alberto Brause: p 12-13

accept responsibility for working conditions in factories. Nevertheless, despite the measures described above that Nike implemented in response to its critics, the company did not promise to increase wages in this phase.<sup>116</sup> This is a very important fact because it shows that Nike was unwilling to make the most costly and most needed effort to improve exploitative conditions in factories at this time. It is evidence that the voices in Nike who saw CSR as a necessary evil to combat critics probably were the most dominant ones at this early stage of Nike's CSR history.

In 1997 the prominent civil rights advocate in the 1960's, and former Atlanta, Georgia major, Andrew Young was hired by Nike to conduct an, according to Young, independent evaluation of Nike's Code of Conduct and its application in 12 factories in Asia; Vietnam, Indonesia and China. It is debatable whether his evaluation was independent. One may ask how it could have been independent when he was hired to do it for profit. Nevertheless, Young's research included specific suggestions about how Nike could improve the application of the Code and possibly enhance it. Among Young's findings were that the 12 factories were well lit, clean, organized and adequately ventilated. Further, according to Young there were "no evidence or pattern of systematic abuse or mistreatment"<sup>117</sup> in the factories that he visited. His message was that working conditions in factories had been subject to improvement, but that Nike needed to do more. The conclusion of his report was: "It is my sincere belief that Nike is doing a good job in the application of its Code of Conduct, but Nike can and should do more"<sup>118</sup>

The report backfired on Nike. In the article *Mr. Young gets it wrong*<sup>119</sup> the columnist Bob Herbert criticises Young for deliberately ignoring the most blatant abuses faced by the Asian workers, who the report was designed to help. Young's report claims that no incidents of child labor were detected in the factories he visited. Herbert points out Young's failure to recognize that child labor has not been the main issue for Nike's critics. The critics focused on allegations that Nike's Asian factories used techniques ranging from enforced overtime to harsh discipline and sometimes physical abuse and that adult workers were paid starvation wages. Furthermore, Herbert criticises the report for being "disingenuous" on the issue of wages: It says that "It is not reasonable to argue that any one particular U.S. company should be forced to pay

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<sup>116</sup> Vogel, *The Market for Virtue*, 77-82

<sup>117</sup> Andrew Young's report was found on <http://www.calbaptist.edu/dskubik/young.htm#itinerary>

<sup>118</sup> See Andrew Young's report

<sup>119</sup> Bob Herbert, *Mr. Young Gets it Wrong*, N.Y. Times June 27, 1997

U.S. wages abroad while its direct competitors do not”<sup>120</sup> Herbert’s response was “Nike’s critics, including this one, argue that the company’s full-time overseas workers should be paid at least a subsistence wage for the areas in which they live. A dollar fifty a day is not subsistence wage in Ho Chi Minh City”<sup>121</sup>

Another critic was the reporter Stephen Glass in the article *the young and the feckless*<sup>122</sup> Glass criticized Young for lack of substantive recommendations, his only ones being that Nike consider independent labor monitoring, that Nike improve grievance procedures and that Nike distribute the Code of Conduct translated in the local language, so it could be accessible to workers who did not understand English. This criticism is legitimate. However, it should be noted that there are allegations on the internet that Glass` article contained factual lies. I cannot verify these allegations. But the implication seems to be that not all of Nike`s critics can be trusted to act with integrity. Finally, the report may justifiably be labelled as a slick and shallow PR move because it paid a civil rights leader, whose integrity America did not question, to whitewash Nike from criticism.

What was the impact of Nike`s initial CSR efforts? At least it represented a progress in itself that Nike accepted responsibility for the conditions of its factory base, and established CSR as a company function. Critics of CSR might argue that CSR`s true value comes only when it is enacted at any cost. The implication of this is that since Nike refused to promise to increase wages, the company clearly was not willing to enact CSR at any cost. It is not certain that there are any multinational corporations that want to commit to enact CSR at any cost. This is to say that left wing critics of CSR might even argue that since Nike, or corporate America as a whole, will not enact CSR at any cost CSR does not have true value in itself. Nonetheless, I believe that CSR has inherent value in itself because it is such an important idea for the future of humanity. If all companies demonstrated corporate responsibility that would certainly create a more sustainable globalization. My approach is that the true value of CSR as an idea and a function should be measured in its impact on society. The first phase of Nike`s corporate responsibility history laid the foundation for all upcoming CSR activities and measures. The impact of this foundation will be revealed through my

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<sup>120</sup> See the Young report

<sup>121</sup> Bob Herbert, *Mr. Young Gets it Wrong*, New York Times June 27, 1997

<sup>122</sup> Stephen Glass, *The Young and the Feckless*, New Republic September 15, 1997

analysis of how Nike's CSR strategy has played out in reality after the function was established to date.

## **Phase 2: 2001 – 2006: Nike Focuses its CSR Strategy on Social Interaction**

Nike claims that the company's key efforts during this second phase marked by "interaction" revolved around making the company's CSR work more systematic. Key efforts in this respect according to Nike were to work for excellence in its management auditing as well as in its global process for rating the status of safety, health and environment in factories. Furthermore, Nike focused on creating transparency and ratings as means to create social interaction. I should add that there was some fire fighting in Court during the trials of the Kasky lawsuit, which I discuss in my treatment of this second stage of Nike's CSR history. Moreover, I analyze if Nike's self proclaimed focus on interaction contributed to a foundation of improved conditions in factories through CSR.

According to Nike's Corporate Responsibility Report fiscal year 2004 Nike's CSR measures were focused on three strategic priorities throughout this phase of Nike's CSR history. Those priorities were ranging from charity, labor standards to environmental sustainability:

To effect positive, systemic change in working conditions within the footwear, apparel and equipment industries;  
To create innovative and sustainable products; and  
To use sport as a tool for positive social change and campaign to turn sport and physical activity into a fundamental right for every young person.<sup>123</sup>

The way Nike spelled out the company's priorities shows that Nike started a process of integrating CSR into its core business, in that the priorities link CSR to innovation and hence growth. There may not be a proven general link between corporate ethics and profits. Nonetheless, the fact that Nike started linking CSR with innovation in this phase shows that Nike came to believe that CSR would be profitable for the headquarters' bottom line. This implies that voices inside Nike who were inclined to argue in favor of corporate responsibility began a process of influencing the most cynical voices

In this paragraph I explain how Nike reformed its monitoring process in Fiscal Year 2003. Nike started a shift from independent monitoring of labor practices to a

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<sup>123</sup> Nike's Corporate Responsibility Report FY 2004 p.8  
[http://www.nike.com/nikebiz/gc/r/fy04/docs/FY04\\_Nike\\_CR\\_report\\_full.pdf](http://www.nike.com/nikebiz/gc/r/fy04/docs/FY04_Nike_CR_report_full.pdf)

new, internal monitoring process called the M-(for “management”) Audit.” This Management (M)-Audit is designed to uncover problems. Nike`s corporate responsibility report of 2004 says that problems identified through M-Audits have helped in integrating CSR in factories with Nike`s business strategy. Such Management (M)-audits include factory inspections, documentation checks as well as confidential on-site interviews with individual workers, supervisors and managers.<sup>124</sup> The 2004 report explains that approximately 90 % of the audits are announced, meaning that approximately 10 percent of the Management (M)-Audits are unannounced. Nike claims that announced audits tend to be the more effective ones. Although factories cannot prepare for audits without prior notice, Nike claims that much of the information needed assumes access to important records and persons within factory management.

M-audits are a systematic measure in that one M-audit covers over 80 issues. The 04 report says that there are 46 employees belonging to Nike`s compliance team who regularly conduct M-Audits. Further, the typical M-Auditor is a female (approximately 74 percent of the compliance staff who regularly conduct M-audits) under the age of 30, both reflecting the working population. Nike claims that they try to hire native auditors, because they have the advantages of being native in the local language and understanding the local culture. In 2003 and 2004, over 9,200 factory workers were interviewed in person as part of the M-Audit process. Each interview took roughly 30 minutes.<sup>125</sup> In this phase Nike complied to use independent monitoring conducted by the Fair Labor Association (FLA), which is a collaborative association including brands (such as Nike), universities and NGOs. The mission of FLA as a collaborative initiative “is to combine the efforts of industry, civil society organizations, and colleges and universities to protect workers` rights and improve working conditions worldwide by promoting adherence to international labor standards.”<sup>126</sup> Nike entered a three-year accreditation process with the Fair Labor Association (FLA) in 2003, which licensed independent Fair Labor Association (FLA) monitors to conduct unannounced audits of five percent of Nike supply chain each year. In 2003, this constituted 40 independent audits of Nike factories. The FLA would review audit findings, oversee remediation efforts and internal compliance processes, and report publicly on each of these

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<sup>124</sup> Nike (2004): p. 20-21

<sup>125</sup> Nike (2004): p.35-37

<sup>126</sup> <http://www.fairlabor.org/about>

activities. This process of accreditation by the FLA represented an independent review of Nike's internal systems and processes for managing compliance for all of Nike's product categories – apparel, footwear and equipment.

In fiscal year 2004, Nike's factories were subject to three monitoring measures: the SHAPE-audits, the M-audits as well as independent monitoring by the FLA in some factories on an annual basis. This brings up the questions of whether Nike's monitoring of working conditions actually contributed to improvements of conditions in factories at this phase of Nike's CSR history. Research shows that there are underlying problems in factories in developing countries that monitoring as a CSR measure does not solve. Jill Esbenshade's research in her book *Monitoring Sweatshops: Workers, Consumers, and the Global Apparel Industry*<sup>127</sup> concludes that Codes of Conduct and monitoring “to date have not significantly improved the situation for garment workers around the world”<sup>128</sup> A key point Esbenshade makes about private monitoring is that one of the most critical weaknesses of it is that it has normally not contributed to protect workers' right to unionize. History shows that unions have played an important role in improving conditions in factories. Another important point about monitoring is that although it may improve conditions, monitoring may not guarantee compliance. Nike's CR Report 04 writes that “The limitation of most monitoring tools is that they identify problems, but are often inadequate in identifying root causes.”<sup>129</sup> Finally, according to Esbenshade companies have become more reluctant to make bold claims about the excellence of the company's Code of Conduct and monitoring because of the shortcomings of monitoring as a means to correct problems.

But did something good still come out of the monitoring that took place in Nike's factory base at this time? At least Nike demonstrated willingness to monitor the conditions of its factory base. Despite the shortcomings and limitations of monitoring to improve working conditions, it is necessary a control device to ensure that the Code of Conduct be enforced in factories. Monitoring is also a necessary function in order to detect problems that the working population in Nike's supply chain faces and to track progress in correcting those problems. Although Esbenshade's reasoning above sheds critical light upon the potential of private monitoring to contribute to solve and correct problems in factories, I want to conclude that the M-audits might have been of a certain

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<sup>127</sup> Jill Esbenshade, *Monitoring Sweatshops: Workers, Consumers, and the Global Apparel Industry*, Temple University Press, Philadelphia, 2004, herein referred to as Esbenshade

<sup>128</sup> Esbenshade, *Monitoring Sweatshops: Workers, Consumers, and the Global Apparel Industry*, p.198

<sup>129</sup> Nike (2004): p.40

value. These audits were a thorough monitoring measure that provided Nike with an overview of problems of non-compliance with the Code in its chain of factories. Excessive overtime was identified as a pressing and extensive problem through the M-audits in this phase of Nike`s CSR history. In my treatment of Nike`s last phase of corporate responsibility I go into detail about how the overtime issue plays out in reality today. At this point I just want to suggest that it was a positive sign in terms of leverage and transparency when Nike admitted that excessive overtime was a serious problem in factories

Before I leave the second phase of Nike`s CSR history I discuss what Nike`s loss in the Kasky lawsuit implied for the later development of CSR as a company function since Nike was faced with a final defeat in Court, June, 26, 2003. The majority of the Court upheld the verdict of the California Supreme Court on the grounds that they decided not to address the Constitutional questions related to Kasky`s victory in the Court of California. As this verdict has not been overturned to date, Nike does not have a First Amendment licence to lie to the constituencies of California. September 12, 2003, Kasky and Nike announced a settlement of which Nike complied to pay \$1.5 million to the Washington, D.C.-based Fair Labor Association (FLA) for “program operations and worker development programs focused on education and economic opportunity.”<sup>130</sup> This settlement at the price of \$1.5 million was an inexpensive means of fire fighting for Nike`s headquarters. Yet Kasky and his lawyers wanted to move on, critics have labelled the settlement a “pittance”. Some activists felt that Nike got away from closer scrutiny for a petty amount of money.

The Kasky lawsuit does not proceed the M-audits that I described earlier. The M-audits had not been introduced as a monitoring device at the time Marc Kasky filed a lawsuit against Nike on the basis of a confidential report dated 1997 that had been leaked to the New York Times.<sup>131</sup> Hence, the majority of the battle in Court took place in the time line between the release of Nike`s first Corporate Responsibility report in 2001 and the implementation of the M-audits. In my presentation of the outcome of the Kasky lawsuit in chapter 3 I concluded that something good came out of the loss of the Kasky lawsuit because it strengthened the more ethical voices in Nike who were inclined to argue for corporate responsibility. I suggest one positive outcome of the Kasky lawsuit was that Nike realized a need to change corporate communications about

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<sup>130</sup> [http://www.reclaimdemocracy.org/nike/nike\\_settles\\_lawsuit.html](http://www.reclaimdemocracy.org/nike/nike_settles_lawsuit.html)

<sup>131</sup> See my interview with Mark Kasky in appendix and page 23, chapter 3.



conditions in factories. Next I review to what extent Nike`s communications about corporate responsibility changed after the company was battled in Court by Marc Kasky and his lawyers and what the implications of those changes would be for the development of CSR since.

When the report stating that the Code was poorly enforced in factories were leaked to the New York Times, Nike`s respond with a large scale PR campaign was not a step ahead CSR wise. Instead of using a PR campaign to “battle” its critics, Nike should have admitted to mistakes in factories. One may justifiably label Nike`s PR campaign as a slick, hollow and illegitimate response to damaging information about labor practices in the company`s supply chain. However, Nike was quiet about corporate responsibility during and after the Kasky lawsuit until its second corporate responsibility report was published in 2004. This period of silence might indicate that Nike realized that it would be wise of the company to refrain from presenting the treatment of humans in factories as better than it really was. At this time when Nike was silent about CSR in public, Nike still talked to civil society representatives and organizations behind the scenes. The implication is that Nike developed a somewhat more humble attitude toward its critics.

I suggest that the more ethical voices of company insiders realized that Nike had to demonstrate a more substantial commitment to corporate responsibility, and that CSR just for window dressing would not do in the long run, if Nike were to be respected for its corporate responsibility practices in factories. Under the assumption that my research accepts Nike`s time table, the shift in Nike`s CSR focus from social interaction to business integration implies a shift toward a more profound willingness to engage in CSR activities and to improve conditions in factories. After all, the business integration of CSR requires more effort than interacting with civil society and the CSR community. The substance of Nike`s CSR initiatives designed to create transformation in the final and current phase, will be the ultimate test of how much the Kasky lawsuit really influenced Nike to work for change in factories.

### **Phase 3: 2006-2010:**

#### **Nike Focuses on Transformation Through CSR**

Nike`s 2005/06 report describes “transformation” as an emphasis on CSR as a means to create systematic change through the integration of CSR into the company`s core business model. I want to analyze the current impact and future potential of the

measures that Nike claims to be designed to create systematic progress in factories through CSR. Nike lists the following issues as the main priorities of its self-proclaimed focus on transformation: “Focus on building excellence in factory remediation, developing a sustainable sourcing strategy, building business integration and accountability, increasing contract factory ownership of corporate responsibility” and finally “building industry coalitions”<sup>132</sup> These issues are closely interlinked CSR wise. Each one of the issues is clearly related to labor treatment in factories including “building a sustainable sourcing strategy” as it refers to social and environmental sustainability. Labor treatment in factories is the most prioritized area of Nike’s CSR strategy, because this is where Nike has received almost all negative publicity about its business practices.

In its latest Corporate Responsibility report Nike claims that the overall aim of CSR as a company function in factories is to “foster systemic change by building responsible competitiveness into our entire business model and enabling a win win for workers’ rights and for growth and profitability across our supply chain.”<sup>133</sup> Nike has set four key targets by fiscal year 2011 in order to foster such systematic change. The first target is to eliminate excessive overtime in contract factories. The second target is to implement tailored Human Resources (HR) systems in 100% of the focus factories of Nike’s supply chain. The third target is to implement freedom of association educational programs in 100% of focus factories. The fourth and final target is to lead multi-brand collaboration on compliance issues in 30% of Nike’s supply chain.<sup>134</sup> The four goals Nike has set by 2011 are ambitious and important. I believe Nike will accomplish each one of them, because a big, competitive company like Nike is inclined to set high, yet attainable goals. If Nike achieves the four goals above by 2011, that would represent a massive improvement in Nike factories since Nike lost the Kasky lawsuit in 2003. The remainder of this chapter discusses how Nike’s progress toward the goal to eliminate excessive overtime in contract factories to date and impediments to the freedom of association in detail.

I start my analysis of Nike’s goal to eliminate excessive overtime by fiscal year 2011 by showing how Nike’s leadership Code addresses this issue.

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<sup>132</sup> Nike, *Innovate for a Better World*, (2005/06): p. 17

<sup>133</sup> Nike, *Innovate for a Better World*, (2005/06): p. 18

<sup>134</sup> Nike, *Innovate for a Better World*, (2005/06): p. 16

(Contractor) certifies that it complies with legally mandated work hours; uses overtime only when employees are fully compensated according to local law; informs the employee at the time of the hiring if mandatory overtime is a condition of employment, and, on a regularly scheduled basis provides one day off in seven, and requires no more than 60 hours per week, or complies with local limits if they are lower.<sup>135</sup>

This standard of Nike's Code forbids factories to require workers to put in up to over 60 hours a week, even if the factories comply with local overtime laws. However, the numbers according to Nike's 2005/06 report showed that working hours were found to exceed legal limits in 55% of Nike's M-audits, and that hours were found to exceed the standards of Nike's leadership Code in 85% of the M-audits conducted.<sup>136</sup> This clearly shows that excessive overtime has been a widespread and long standing problem in Nike's factory base.

But what Nike has done to improve compliance with its overtime standards to date? In June 2005, Nike launched an Excessive Overtime Taskforce chaired by its current CEO, Mark Parker.<sup>137</sup> According to Nike's description of how the overtime issue plays out in Chinese Factories, 2008, it continues to be one of the most commonly cited labor-standards problems in China.. There are still instances across the industry of workers often putting in 360 hours per month, with some logging up to 400 hours, with no days off.<sup>138</sup> Excessive overtime has proven a tough problem to solve in the sportswear industry. In examining the root causes of excessive overtime, Nike has found the following issues in its supply chain according to its China update: inconsistent law enforcement, flawed factory management approaches and labor practices that had unintended consequences at the contract factory.<sup>139</sup> At least, Nike gained an understanding of the root causes of excessive overtime. In 2007 Nike worked with contracted footwear factories in China to develop a database for factories and Nike to track overtime hours and causes. This database has been rolled out to all contract footwear factories in Asia, and will be implemented in 2008 with key apparel factories. The data will be used to analyze and address causes of excessive overtime.<sup>140</sup> The above facts about how Nike addresses the issue of excessive overtime shows that Nike

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<sup>135</sup> Nike, *Innovate for a Better World ,China Supplement* (2008): p.21

[http://www.nikeresponsibility.com/pdfs/color/Nike\\_China\\_CR\\_Report\\_Supplement.pdf](http://www.nikeresponsibility.com/pdfs/color/Nike_China_CR_Report_Supplement.pdf)

<sup>136</sup> Nike (2005/06): p.30

<sup>137</sup> Nike (2005/06): p.17

<sup>138</sup> Nike, *China Supplement* (2008): p.21

<sup>139</sup> Nike, *China supplement* (2008): p 22

<sup>140</sup> Nike, *China supplement* (2008): p 22

does take important action steps in order to reach its goal to eliminate excessive overtime. If Nike achieves its goal to implement tailored Human Resource systems in focus factories in 2011 that could prove effective in reducing excessive hours focus in factories with improved tracking of working hours. If Nike succeeds in eliminating excessive overtime in contract factories in three years from now would represent a milestone for CSR as a function in factories.

I turn to discuss how the issue of freedom of association plays out in reality. The most apparent obstacle is the fact that China, which is Nike`s most important market of production,<sup>141</sup> has restricted the freedom of association by law. The only union allowed in China is the communist All China Federation of Trade Unions (ACFTU).<sup>142</sup> Play Fair 2008, a Chinese initiative to improve workers` rights in the sports industry from the past Beijing Games until the next Games in London, 2008, argues that sourcing from jurisdictions where freedom of association is restricted by law, such as China and Vietnam, has increased. Furthermore, dismissal of union leaders and upporters is reported to still be a problem in factories in countries that do not restrict freedom of association by law. In September, 2006, 1 week after the recruitment for a legally registered union at the Thai Garment Export factory that produces apparel for Nike, six union leaders were dismissed. However, the six of them were reinstated after investegation by the NGO Workers` Rights Consortium, which is an example that civil society investigation and scrutiny sometimes can do justice to humans who have been unfairly dismissed because they wanted to speak up for their rights.<sup>143</sup> Another problem in factories, according to Play Fair 2008, has been refusal to recognize and negotiate with unions by management. Finally, Play Fair 2008 argues that it is insufficient when worker commitees have been promoted as a substitute for unions in some factories, as worker commitees have a weaker voice than unions in issues that concern workers` well being.<sup>144</sup>

The above paragraph shows that there are severe impediments in the way of freedom of association. It implies that Nike may not be as proactive as is should be in defending workers` rights to unionize. It may not help much to educate workers in Chinese focus factories about the freedom of association when China restricts freedom

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<sup>141</sup> Nike, *China supplement* (2008): p.3

1/3 of Nike`s running shoes and sneakers are estimated to be made in China

<sup>142</sup> Play Fair Report, *Clearing the Hurdles*, (2008 ): p23

[http://www.playfair2008.org/docs/Clearing\\_the\\_Hurdles.pdf](http://www.playfair2008.org/docs/Clearing_the_Hurdles.pdf)

<sup>143</sup> <http://www.wcr.org/>

<sup>144</sup> Play Fair, *Clearing the hurdles*, (2008): p 24-25

of association. What we can hope is that educating workers in focus factories about freedom of association will make the workers it may concern more aware of and assertive about the rights that they do have in countries that allow union activities, such as Thailand and Indonesia. We can also hope that civil society investigation, such as that of the Star factory in Thailand, will be instrumental in reinstating dismissed union leaders and supporters.

Before I conclude my treatment of how Nike`s CSR efforts play out in reality to date I discuss the recent Hytex Incident in Malaysia, July, 2008. A reporter from the Australian Channel 7 claimed to be a buyer from the fashion industry. When he entered the factory area he interviewed laborers who worked in what he would describe as sheds. A number of the workers had their passports withheld by factory management, which is a classic example of modern slave labor. Moreover, the reporter found garnishing of wages as the wages were higher on the paper than in reality.<sup>145</sup> Nike investigated the reporter`s claims regarding the Hytex factory, and has commanded factory management to give all workers free, immediate and unrestricted access to their passports. Workers have been offered reimbursements for garnished wages and all workers who wished to go home were provided with return airfare. Nike deemed the conditions at the factory as unacceptable, but concluded that this did not qualify as trafficking.<sup>146</sup> The Hytex incidence shows that the reports from the outside sometimes are necessary in large supply chain, and that press can reveal abuses to the benefit of the workers. In conclusion to this chapter Nike`s corporate responsibility efforts and goal setting have improved quite significantly since the loss of the Kasky lawsuit to date. The progress that has occurred through corporate responsibility since the Kasky lawsuit is evidence that Nike`s loss in the Court of Law turned out to be instrumental in improving Nike`s behavior. The upcoming chapter about wages will show if CSR as an idea and a corporate function has been successful in increasing wages at all.

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<sup>145</sup> Tvangsarbeidere lager Nike T-skjorter  
<http://www.etiskhandel.no/Artikler /2558.html>

<sup>146</sup> Nike Press Release, August 1, 2008, Nike Inc Statement Regarding Hytex Contract Factory  
[http://www.nikebiz.com/media/pr/2008/08/01\\_statement.html](http://www.nikebiz.com/media/pr/2008/08/01_statement.html)

## **Chapter 5:**

### **The Potential of CSR to Increase Wages in Factories**

I start chapter 5 by analyzing the contemporary status of wages in Nike factories considering factors that contribute to low wages. Then I proceed with an analysis of the potential of CSR to increase wages. There are two important questions in this chapter: First, why does Nike's Code of Conduct avoid the issue of wages? Second, why is Nike unwilling to endorse the demands by globalization activists that the company should pay workers a living wage? In answering these questions I start with a brief overview of the living wage debate, and a brief presentation of how the wage issue plays out in reality. Then I present Nike's position on wages, based upon the wage standards of Nike's Code and how the company sees its position. This will be followed by a discussion of how the proper enforcement of the wage standards of Nike's Code of Conduct can increase wages. After I discuss Nike's Code of Conduct I analyze how the pressure for short term profit maximization affects wages. With this pressure to increase revenues on a short term basis in mind I discuss if there still is a business case that favors a living wage in factories. Then I discuss to what extent civil society's collective attention to the wage issue can influence Nike to ensure an increase of wages. Finally, I discuss whether Nike's corporate responsibility vision has a potential to contribute to increased wages.

#### The Living Wage Debate

The debate about whether companies should endorse the claim by anti sweatshop activists to provide for a living wage and what a living wage should constitute has been subject to much heated discussion. Investors and executives do not approve of the living wage claim on the grounding that wages should be determined merely by market forces. Throughout this chapter I want to show that market forces are not always sufficient in order to ensure a living wage in factories in developing countries. Another argument against the living wage claim is that if companies were to provide a living wage, they would have to pay more for the products that they buy, meaning that they would have to increase prices, which could mean loss of sales and loss of jobs in its supply chain. My stand is that should commit to a living wage in factories, even if that would mean increased expenses and loss of sales. If companies did not cut orders in developing

countries due to increases of wages, humans would not lose jobs. As far as the question of what constitutes a living wage is concerned, my research will be based upon this definition a living wage by Oxfam International: "one which for a full-time working week (without overtime) would be enough for a family to meet its basic needs and allow a small amount for discretionary spending."<sup>147</sup> Play Fair 2008, an initiative focusing on conditions in factories that produce sportswear and shoes for the Olympic Games 2008 makes a valid point: Nike, and initiatives that Nike participates in, such as the FLA, should focus on how to increase wages to at least meet a range of national living wage estimates. That would be a better approach than allowing poverty wages while the debate continues.<sup>148</sup> There is evidence that wages in Nike factories sometimes fall below such a national range, which I discuss in my section below about how the wage issue plays out in reality.

#### How the Wage Issue Plays out in Reality

A study conducted by Play Fair 2008 about conditions in factories that produce for Nike, among other big sportswear companies, present recent numbers about what wages workers are paid. I want to present the numbers that Play Fair 2008 found through its research. Soccer ball stitchers in Pakistan reportedly receive between US\$0.57 and US\$0.65 for each ball stitched. This rate has not changed in six years although the consumer price index rose by 40% over that period. Home based soccer ball stitchers in Jalandhar, India make \$0,35 - 0,88 each ball, depending on the type of ball. They stitch 2-4 soccer balls a day, meaning that they make 3, 52 a day, at the maximum. This rate has remained unchanged yet there is an inflation of 6,7% - 10%.<sup>149</sup> In Schenzhen, China, workers in the garment industry (including sportswear) make \$ 128-200 a month, including bonuses for attendance, overtime and production. The local consumer price index for food and rent has risen more than 10%.<sup>150</sup> Those wages clearly do not provide a living wage by the definition by Oxfam International. In chapter 4 I researched the issue of excessive overtime in depth. My findings showed that there is a clear connection between excessive hours in factories and poverty-level wages.

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<sup>147</sup> Oxfam International, *Offside* (2007): p.6

<http://www.oxfam.org.au/campaigns/labour/06report/docs/5792oxflrrweb.pdf>

<sup>148</sup> Play Fair Report, *Clearing the Hurdles*, (2008): p.33

[http://www.playfair2008.org/docs/Clearing\\_the\\_Hurdles.pdf](http://www.playfair2008.org/docs/Clearing_the_Hurdles.pdf)

<sup>149</sup> Play Fair, *Clearing the Hurdles*, (2008): p.31

<sup>150</sup> Play Fair, *Clearing the Hurdles*, (2008): p.30

A point made by Play Fair is that the buyer's purchasing practices do impact wages.<sup>151</sup> Nike, as the biggest buyer of the sportswear industry, has the power to change purchasing practices, and make sure that such changes result in increased wages. Finally, the Maquila Solidarity Network, a women's and labor rights organization points out that yet Nike's latest corporate responsibility report does focus on transparency, Nike remains silent on the issue of wages.<sup>152</sup> A representative of this organization said that "Nike is placing its faith in increased productivity to deliver wage increases, but that's a blind faith at best"<sup>153</sup> My preceding analysis in this chapter shows that increased productivity does not guarantee a living wage.

Before I leave the section about how the wage issue plays out in reality, and present Nike's position on wages, I address in brief the relation between wages and hour of work. The passage below acknowledges that there is merit in the argument that insufficient wages leads to excessive hours as well as the argument that young women can raise above poverty by working 14 or even 16 hours days:

Wages and hours of work are inextricably linked. Some suggest that workers are compelled to seek longer hours because their regular wages don't meet their basic needs. Others say workers want longer hours to earn more money to save because these are often short term jobs. There is truth in both sides, and there are many other factors.<sup>154</sup>

### Nike's Position on Wages

The starting point of my treatment of what Nike's position of wages will be how the company's Code of Conduct addresses the issue of wages:

(Contractor) certifies that it pays at least the minimum wage, or the prevailing industry wage, whichever is higher.<sup>155</sup> (Contractor) provides each employee with a clear, written accounting for every day period. The contractor provides each employee with all legally mandated benefits.<sup>156</sup>

The meaning of Nike's wage standards is that Nike requires nothing more of its contractors than compliance with local wage laws, and to pay the market wage if that happens to be higher than the minimum wage. This qualifies as CSR in that Nike has volunteered to add standards about wages in its Code, and to enforce

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<sup>151</sup> Play Fair (2008): 34

<sup>152</sup> <http://en.maquilasolidarity.org/en/node/629> published May 31 2007

<sup>153</sup> Quote by Maquila Solidarity Network representative Bob Jeffcock, May 31, 2007

<http://en.maquilasolidarity.org/en/node/629>

<sup>154</sup> Nike's CR Report FY06 China supplement

<sup>155</sup> Nike's Code of Conduct, found as an appendix of Andrew Young's report

<sup>156</sup> Nike's CR Report 05/06 China supplement: p 19, published in 2008,

[http://www.nikeresponsibility.com/pdfs/color/Nike\\_China\\_CR\\_Report\\_Supplement.pdf](http://www.nikeresponsibility.com/pdfs/color/Nike_China_CR_Report_Supplement.pdf)



those wage standards. However, it does not represent a proactive approach to corporate responsibility. It would be proactive if Nike added a standard that required contractors to pay a living wage to its Code.

Nike shares the common stand of multinational companies and investors in the living wages debate, which is that the legal minimum and prevailing industry wage in factories should be accepted as the norm. The quote below describes how this position allows poverty-level wages in factories: “Despite several steps forward in the effort to eliminate sweatshops, companies have remained silent on the issue of wages—accepting the legal minimum and prevailing industry wage as the standard, and leaving the vast majority of low wage workers in poverty and hunger”<sup>157</sup> The passage below shows that Nike’s official stand is that increased productivity would be a sufficient measure in order to combat poverty level wages. Although the reasoning below sounds vague the underlying message is certainly that Nike rejects the living wage claim.

We do not support artificial definitions of wages. Our view is linked to the understanding that wages are set, in most cases, by markets, and that markets tend to increase wages in those places where productivity is increasing. We look to ways of increasing productivity over the long term. If wages are to be set by non-market mechanisms, we believe they should be set by those with the power to do so on a broad scale, including governments, industrial relations bodies (through collective bargaining) and employers’ federations.<sup>158</sup>

Furthermore, like most other multinational companies, Nike rejects the living wage claim on the grounding that the company could lose sales due to increased prices, and that this could mean loss of jobs in its supply chain. I described this argument in the section about the living wage debate. I want to counter this argument to refuse to commit to paying a living wage with referring to findings of research about consumer behavior that I discussed in my chapter about civil society’s reactions to the sweatshop issue. I want to show how those findings can be applicable when it comes to the wage issue. Let me recap in brief, the findings of psychological experiments indicate that most consumers are willing to pay a little bit more for products made under decent conditions. According to surveys customers were on average willing to pay 15% more for a item priced \$100 under the assurance that it was made under good conditions.<sup>159</sup> This implies that consumers would be willing to pay \$115 for a pair of Nike sneakers originally

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<sup>157</sup> Nike (2001):39

<sup>158</sup> Nike (2004):60

<sup>159</sup> Elliott, Freeman *Can labor standards improve under globalization?* p. 33-35

priced \$100, for a guarantee that the workers were paid a living wage. The indication is that Nike could increase prices modestly to fund increased wages in factories without losing sales.

#### How Proper Enforcement of Nike`s Wage Standards Could Increase Wages

I research non-compliance with Nike`s wage standards, and how this deprives workers of the wages they are due according to the Code. This is interesting for my study of the wage issue because I want to research what corrective actions Nike takes when workers are not paid what they are due according to the Code, and how those actions can contribute to increase wages, if only just modestly so. The problem of underpayment or non payment of wages is sometimes caused by poor tracking systems of wages and sometimes caused by fraudulent management, Workers interviewed by Play Fair 2008 described lying to brand auditors as a “common practice.” Some of them even reported that they had been coached into giving false answers to auditors. Workers who complied and lied to inspectors recieved a RMB30 to 60 (US\$0.75-1.50) bonus; workers who told the truth were fined or fired.<sup>160</sup> At the Joyful Long factory, workers described how management produced false wage sheets for auditors, with inaccurate and misleading information about what workers were paid. Workers also reported a pressure about lying to auditors about working hours and wages. One worker told Play Fair researchers how she signed two wage record sheets when she received her pay: “One wage record sheet stated that I received RMB400 [US\$57], which reflected the reality. The other wage record sheet stated that I received RMB900 [US\$128]. That was for the brand auditors.”<sup>161</sup>

I now turn to what Nike has done in order to address this situation. In FY 2005/06 Nike returned over RMB 6,530 000 in back wages (US \$ 900 000) to workers in Chinese factories. This back payment of US \$ 900 000 serves as an indication of a modest progress since it shows that Nike is aware of the problem and at least taking some corrective measure. Furthermore, I assume that Nike`s goal to implement Human Resource systems in 100% of its focus factories by 2011 does include better tracking systems for wages. It is my hope that such Human Resources systems effectively will combat the non payment or

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<sup>160</sup> Play Fair, *Clearing the Hurdles*, (2008): p.35

<sup>161</sup> Play Fair, *Clearing the Hurdles*, (2008): p.34

underpayment caused by poor tracking. When it comes to management fraud, better tracking should detect manipulation and deliberately misleading information about wages, so that fraudulent managers can be held accountable. Of course, the above reasoning only goes for focus factories, as they are the only factories included by Nike's Human Resource goal. Nonetheless, if Nike reaches its Human Resource goal, and legitimate tracking systems are implemented in all focus factories, that could hopefully have a positive effect on the tracking systems of subcontracting factories that supply focus factories with parts of Nike shoes and apparel. I really hope that Nike will be successful in accomplishing this goal

### How the Pressure for Short Term Profit Maximization Affects Wages

This section intends to describe how the pressure for short term profit maximization is an important and persistent factor that prevents the needed increase of wages in factories.

While many U.S. CEOs are worried about the next three months, our global competitors are making long-term investments in their companies and in their economies... We've created an environment where a company's long-term value and health are all too easily sacrificed at the altar of meaningless short-term performance.<sup>162</sup>

The above passage refers to a phenomena described by Allen White of BSR as "market short termism"<sup>163</sup>, which means that short term profit maximization is given higher priority than long term thinking. White reasons that such market short-term orientation represents a barrier to the success of CSR because the success of CSR depends on a commitment to more long-term ethical values and consistent leadership with integrity:

In its most fundamental sense, CSR is about stewardship, trusteeship and inter-generational responsibility. Capital markets are driven by quarterly earnings expectations and, increasingly, by pressures from speculative financial instruments such as certain classes of hedge funds (in which shares of a company may be bought and sold within days). Taken together, this discourages companies from managing for the long term.<sup>164</sup>

What does this have to do with the issue of wages exactly? In order to pay all workers a living wage Nike needs to be willing to increase costs of production for the long term, which requires leadership for the long haul. In his article White compares short-termism with a grasshopper that just bounces and bounces without

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<sup>162</sup> Allen White, *The grasshoppers and the ants: why CSR needs patient capital*, BSR, San Francisco, (May 2006): [http://www.bsr.org/reports/BSR\\_AW\\_Patient-Capital.pdf](http://www.bsr.org/reports/BSR_AW_Patient-Capital.pdf)

<sup>163</sup> White, *The grasshopper and the ants: why CSR needs patient capital*

<sup>164</sup> White, *The grasshopper and the ants: why CSR needs patient capital*

building something for the long term, while CSR requires building a long term foundation, like the ants that build an anthill. Nike needs to be like the ant, not like the grasshopper in factories. Nike should show a long-term commitment to world-class conditions in factories by paying workers a living wage.

### Is there a Business Case that Favors a Living Wage?

The institutional theory of CSR is grounded in the following assumption about responsible corporate behavior: "The imperative of maximizing profit and shareholder value is the root cause that may prevent corporations from acting in socially responsible ways."<sup>165</sup> How exactly is this imperative to increase profits at any price the biggest overall impediment for a living wage in Nike factories? Research has failed to consistently prove a direct correlation between corporate ethics and profits. That is to say, there are profitable companies with an exploitative and abusive record of corporate responsibility. There are companies with a sincere ethical foundation that struggle financially. I am not suggesting that there are no profitable companies with integrity. Nevertheless, I want to show that CSR as a function may not automatically increase a company's bottom line. What is the implication of this? Even if Nike does see an overall business case for CSR, increasing wages in factories to the level of a living wage would be a business expense that may or may not result in increased profits. Hence, Nike is not inclined to see a business case in favor of paying a living wage in contract factories.

Let us take a look at findings about the correlation between corporate ethics and corporate responsibility. The professor Arie A Ullmann analyses this correlation in the article *Data in search of a theory: A critical examination of the relationships among social performance, social disclosure and economic performance of U.S. firms*.<sup>166</sup> In 1985 Ullmann pointed out that studies about whether social behavior affects financial performance had yet to produce consistent findings. Ullmann lists three main reasons for those inconsistencies: a lack in theory, inappropriate definitions of key terms and finally deficiencies in the empirical data bases currently available. However, even if those reasons were to

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<sup>165</sup> Campbell, *The institutional theory of CSR*, p.952

<sup>166</sup> Arie A Ullmann, *Data in search of a theory: A critical examination of the relationships among social performance, social disclosure and economic performance of U.S. firms*, *Academy of Management Review* Vol. 10, No.3 (1985):p.540-557.

be corrected, it is still not certain that there would be any consistent findings at all. Corporate behavior ranges from excellent to extremely bad. There are profitable and unprofitable companies at both sides of the scale. Then how is it possible to prove a consistent link between ethical behavior and profitability? Unfortunately, my research to this point gives indication that the more compelling case is for a link between unethical behavior and profit in the area of wages. I am not saying that there is no business case for CSR. Most companies do have Codes of Conduct, which shows that corporations are usually inclined to see a PR case for corporate responsibility. However, a PR case for CSR is insufficient to ensure all workers in factories a living wage.

I would like to draw on the article *Stakeholder influence capacity and the variability of financial returns to corporate social responsibility*<sup>167</sup> by Michael L Barnett. The author reasons that although “we have yet to amply demonstrate the financial merits of CSR”<sup>168</sup> research about CSR and profitability should consider the influence capacity of stakeholders. His research draws on stakeholder theory, which to date has been the main foundation in order to propose a correlation between corporate responsibility and financial performance. The implication is that if there is any chance of such a correlation, the strongest (most powerful) stakeholders will be the ones to propose CSR measures that are profitable and socially desirable. This does not indicate a business case for a living wage for workers sewing Nike sneakers in China or Thailand. Workers in Nike factories are stakeholders with little or no influence capacity as far as wages are concerned. Stakeholder theory does not offer them much hope as for wages. I have to conclude that to date there are no indications of even a modest business case for a living wage in Nike contracted factories.

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<sup>167</sup> Michael L Barnett, *Stakeholder influence capacity and the variability of financial returns to Corporate Social Responsibility*, *Academy of Management Review* Vol 32, No. 3 (2007): p.794 -816.

<sup>168</sup> Barnett, *Stakeholder influence capacity and the variability of financial returns to Corporate Social Responsibility*, p.813

### Can Civil Society Pressure Influence Nike to Increase Wages?

The backbone for my research of civil society's capacity to influence Nike to increase wages is society's collective attention to corporate responsibility. CSR is a very timely idea, both in Norway and in the U.S. Corporate responsibility is newsworthy because global warming is high on the agenda. What is more, the Telenor issue shows that the media indeed takes interest in labor scandals. Below the CEO of Business for Social Responsibility, Aron Cramer, describes how timely corporate responsibility is: "The world is seemingly paying more attention to corporate responsibility than at any time in recent memory. It is our collective challenge to capture this opportunity."<sup>150</sup> The world certainly pays attention to the wage issue in Nike factories. The Play Fair 2008 campaign, which aims to improve working conditions in the supply chains of the companies in the sportswear industry, is evidence of that. But is this attention enough when Nike is not willing to make a clear, unconditional commitment to even increase wages modestly? What I want to find out is if society's attention to the wage issue at least can give Nike an incentive to increase wages by finding ways to increase productivity. In that case, Nike will not make an explicit commitment to pay a living wage, but increase wages through increased productivity in order to boost the bottom line and silence critics. Can civil society's moral motives behind pushing for a living wage influence Nike to at least increase wages modestly, although Nike will not endorse the living wage claim? That is what the remainder of my analysis about whether specific factors can increase wages aims to find an answer to.

Moreover, the institutional theory of CSR assumes that public scrutiny will make companies more inclined to act in ethical ways.<sup>151</sup> Nike is one of the world's most visible companies. The search word "Nike" showed whopping 142 000 000 hits on Google.<sup>152</sup> In New York Times' article archive there are 4,715 articles about Nike since 1981.<sup>153</sup> My research in previous chapters has shown that the social progress that has taken place in Nike's factory base to date has been the result of public scrutiny by the press and the anti-Nike movement.

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<sup>150</sup> Business for Social Responsibility (2007) 22

<sup>151</sup> Campbell, *An institutional theory of Corporate Social Responsibility*, 758

<sup>152</sup> <http://www.google.no/>

<sup>153</sup> URL: <http://query.nytimes.com/search/query?query=Nike&srchst=nyt> date of search June 27, 2008

Although there is no business case for a living wage, the rest of this chapter will assume that Nike may be willing to increase wages modestly as a result of public scrutiny. There is a certain difference between having a business interest in wage increases and increasing wages as a result of public pressure. The former represents a positive motivation; the company wants to increase wages because its executives believe that will be good for business. The latter represents a negative motivation; the company does certainly not increase wages because it wants to, but solely because it has been under heavy pressure to do that. My analysis below about Nike`s corporate responsibility vision will analyze if this vision has a possibility to increase wages, not because Nike will embrace the living wage claim, but because it represents a greater willingness to invest in workers.

#### Can Nike`s Corporate Responsibility Vision Increase Wages?

Nike`s latest corporate responsibility report describes a comprehensive vision for how Nike believes good corporate responsibility practice looks like in the factories of Nike`s supply chain and in the industry as large.<sup>154</sup> As an assessment of Nike`s ability to make an impact on society Nike makes a separation between where the company “has direct control over change as opposed to the ability only to influence change.”<sup>155</sup> Nike`s vision states that “An internal marketplace builds up where business is flowing to best-of-class suppliers because of their price, quality, on-time delivery and corporate responsibility.<sup>156</sup> Worker is invested in, providing stability and economic opportunity.”<sup>157</sup> I interpret the second sentence of Nike`s corporate responsibility vision above as a promise that workers be invested in. This final section of my chapter about CSR and the wage issue will research to what extent, if any, this promise may contribute to increase wages even slightly when needed. In its first corporate responsibility report Nike reasons that: “Benefits also matter a great deal. More than a quarter of Nike contract workers worldwide, for example, are provided free housing by their factories. Many more are provided free or subsidized food and other benefits.

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<sup>154</sup> Nike (2005/06): p.19-20

<sup>155</sup> Nike (2005/06): p.24

<sup>156</sup> Nike (2005/06): p.24

<sup>157</sup> Nike (2005/06): p.20

Many have access to free clinics.”<sup>158</sup> I cannot deny that workers who are provided free housing and free or subsidized food may be able to save some money for parents, siblings or a future education. But, wouldn't it be better if workers had to provide their own food, pay their own rent, and were paid enough to support their legitimate needs and save some money? Wouldn't that give workers greater dignity and freedom? My position is that Nike should pay a wage which, excluding benefits allows women in factories to be self sufficient and raise above poverty. From this position, I will only look into whether wages excluding benefits have increased at all.

In Nike's latest corporate responsibility report Nike writes favorably about the concept of lean production, which is: “a philosophy of delivering the most value to the customer while consuming the fewest resources.”<sup>159</sup> Lean production relates to wages as Nike believes that “lean holds great promise for worker empowerment and the ability to build a higher-skilled, higher paid workforce.”<sup>160</sup> Nike's goal is to have 90% of its footwear come from lean production lines by the end of FY11.<sup>161</sup> Currently, lean production is Nike's primary means of increasing productivity, and hence wages, in factories. I want to look into if lean productivity is as effective in increasing wages as Nike presents it to be in improving working conditions, and increasing wages:

In a case study of two Mexican garment factories Richard Locke and Monica Romis<sup>162</sup> shed light on the potential benefits of lean production. Locke and Romis compare two production plants with obvious similarities: Both produce items for Nike (and other brands). Nike's auditing staff has given them comparable scores.<sup>163</sup> Workers were subject to the same minimum wage.<sup>164</sup> In both plants they were paid weekly.<sup>165</sup> However, there are notable differences: Workers in plant A received 21% higher wages than workers in plant B.<sup>166</sup> Plant

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<sup>158</sup> Nike (2001): 19

<sup>159</sup> Nike (2005/06): 26

<sup>160</sup> Nike (2005/06): 26

<sup>161</sup> Nike (2005/06): 26

<sup>162</sup> Richard Locke, Linda Romis, *Beyond Corporate Codes of Conduct: work organization and labor standards in two Mexican garment factories*, MIT Sloan School of Management Working Paper No. 4617-06, (August 7, 2006):1-53

<sup>163</sup> Locke/Romis, *Beyond Corporate Codes of Conduct: work organization and labor standards in two Mexican garment factories*, 1-3,11

<sup>164</sup> The minimum wage was US\$ 5.15 a day, see Locke/Romis p 12

<sup>165</sup> Locke/Romis, *Beyond Corporate Codes of Conduct: work organization and labor standards in two Mexican garment factories*, 13-14



A workers were more satisfied at work than plant B workers. In plant A workers participated in production planning, whilst workers in plant B did not. Workers in plant A worked 48 hours a week. Overtime was optional. In plant B, workers worked over 60 hours a week. Overtime was forced. Although there was union representation at both factories, the workers in plant A described a stronger worker voice than the workers of plant B. The findings indicate that lean production systems can contribute increase wages.<sup>167</sup> This is how the authors of the study of the two Mexican plants sum up their findings: "In sum, the differences in working conditions between Plants A and B seem to be the product not of geographic location, product mix, or nationality of ownership but instead the result of very different ways that work is organized."<sup>168</sup>

But is there legitimate evidence that lean production systems consistently increase wages? Play Fair`s research of factories in China shows that overtime sometimes has decreased through lean production methods. A problem that Play Fair points out, however, is that workers often face additional stress because they are expected to produce the same quotas, in a shorter time. A common pattern was that because many workers made smaller production bonuses because they could not meet the quotas in shorter time. Skilled workers who used to make production bonuses of RMB 400-500 (US\$ 50-71) a month were reported to receive RMB 100-200 (US\$ 14-28) in bonuses a month. Play Fair found this to be a common pattern in most of the Chinese factories studied in its report.<sup>169</sup> The study of the two Mexican factories makes a cautionary remark that lean production is not a cure all for improved working conditions and increased wages (next page):

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<sup>166</sup> Locke/Romis, *Beyond Corporate Codes of Conduct: work organization and labor standards in two Mexican garment factories* , 13

<sup>167</sup> Locke/Romis, *Beyond Corporate Codes of Conduct: work organization and labor standards in two Mexican garment factories*, 33

<sup>168</sup> Locke/Romis, *Beyond Corporate Codes of Conduct: work organization and labor standards in two Mexican garment factories*, 14-19

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Yet we should be careful not to conflate particular production systems (lean versus modular) with differences in workplace conditions. Although lean production lends itself to various human resource practices (increased training, autonomous work teams, etc.) there is no automatic link between this system of work organization and better working conditions. Yet we should be careful not to conflate particular production systems (lean versus modular) with differences in workplace conditions.<sup>169</sup>

### Conclusion

There is no evidence of a general trend that wages have increased overall in Nike`s factory base thanks to CSR. That is because Nike accepts the legal minimum wage and the prevailing industry wage as the basis of wages in factories and will not provide a living wage. In this key respect, short term profit maximization has the upper hand in the area of wages exactly. Further, the fact that there does not seem to be a business case in favor of a living wage as far as Nike is concerned strengthens the case for buying practices that sometimes keep wages at poverty-level. However, Nike`s monitoring initiatives, and better tracking systems for wages through tailored Human Resource management in focus factories, will be effective in addressing underpayment or non-payment of wages according to Nike`s wage standards. There is some indication that lean production systems, as I analyzed above, can contribute to increased wages in some factories. Although my research argues that increased productivity is not a cure all for higher wages, it can only be welcomed that Nike looks for ways to increase wages through improved productivity and better worker treatment. Finally, I conclude that as my treatment of the wage issue shows certain signs of improvement when it comes to the issue that has been the Achilles heel of CSR in factories, this shows that social progress through CSR is worth fighting for, although substantial and positive change can be a hard won achievement.

<sup>169</sup> Play Fair (2008):38-39

## Chapter 6

### To What Extent is Monitoring Effective as a CSR Measure?

Monitoring is the sweatshop opponents' great hope<sup>170</sup>

In this chapter I research the potential of monitoring as a means to improve working conditions in Nike factories. How much faith should those of us who endorse corporate responsibility and strongly reject sweatshops have in the ability of monitoring to contribute to needed improvements in Nike factories? I want to analyse the effects to date of the different kinds of monitoring that Nike contract factories have been subject to. I will investigate the effects of past and current monitoring initiatives. This discussion will start with an analysis of monitoring by Nike personell. Then I will put the searchlight on independent monitoring by NGOs that have had or have collaboration with Nike. In my discussion of the relation between monitoring and the wage issue in chapter 5, we saw that monitoring may also refer to public scrutiny.<sup>171</sup> Therefore I will discuss the effects of public scrutiny by the press, and then turn to scrutiny through activist pressure. The final issue I will discuss, as for the effect of different kinds of monitoring in the past, is the Kasky lawsuit. After this discussion of issues I will make an attempt to answer what kind of monitoring that has proven most effective in improving factory conditions. Finally, I review the potential of monitoring to improve factory conditions in the future.

My theoretical foundation will be John Campbell's proposition that independent monitoring of corporate behavior makes companies more likely to behave responsibly.<sup>172</sup> I will also draw proposition 2a of the multilevel theory, which assumes that the motives of actors within companies and those of outsider actors together will push for change through CSR.<sup>173</sup> I want to elaborate on the assumption of the multilevel theory that there is a hierarchical order of motives, with instrumental profit motives on top within companies, and moral, idealist motives from the grassroots as the most important driving force of civil society.<sup>174</sup> Can the motives of NGOs, or the press, continue to push for betterment in Nike

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<sup>170</sup> Kaufman Leslie, Gonzales David. *Labor standards clash with global reality*  
N. Y. Times April 24, 2001

<sup>171</sup> Campbell, *An institutional theory of Corporate Social Responsibility*, 958

<sup>172</sup> Campbell, *An institutional theory of Corporate Social Responsibility*, 958

<sup>173</sup> Aguilera, Ganapathi, Rupp and Williams: *A multilevel theory of corporate social responsibility*, 848

<sup>174</sup> Aguilera, Ganapathi, Rupp and Williams, *A multilevel theory of corporate social responsibility*: 848

factories through their monitoring? Will Nike`s instrumental motives make them inclined to use information collected through monitoring to actually improve conditions?

The authors of *Can labor standards improve under globalization* makes a separation between two kinds of groups that investigate labor conditions in global supply chains: The first group is the “vigilantes”, who are self-appointed activists that focus on the rights of the workers in factories. Examples of vigilante activists are Corporate Watch and the National Labor Committee. The second sort is the verifiers, who officially monitor the enforcement of companies` standards. Examples of verifiers are Nike`s compliance crew and the Fair Labor Association, which Nike hired to monitor factories.<sup>175</sup> Campbell`s proposition about monitoring happens to include the work of the vigilantes as well as the verifiers. My research has shown that social betterment in Nike`s factory base through CSR has been the result of the efforts of the “vigilantes” of the anti Nike movement and the press. In this chapter I want to research if the official monitoring that has been conducted by the verifiers has been successful in contribution to progress and improvement in factories.

#### The Effects of the Different Kinds of Past and Current Monitoring Initiatives

Before I start my analysis I first recap from chapter 4 what kind of official monitoring that has taken place in Nike factories. Second, I want to give a more detailed description of the current official monitoring than I did when I described Nike`s monitoring in brief in my analysis of Nike`s CSR strategy. First, Nike applied the SHAPE inspection in 1997, which is a basic monitoring tool usually performed by field production staff in factories. The goal of it has been to get a broad picture of the factory base of Nike`s supply chain.<sup>176</sup> The M-(for management) audit was introduced in FY 2003 as a system for internal monitoring. 46 employees monitor over 80 issues. The typical auditor is a native-speaking female under the age of 30. 90% of the M-audits are unannounced. The purpose of these audits is to uncover problems<sup>177</sup> As far as independent monitoring is concerned, a research team from the Global Alliance for Workers

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<sup>175</sup> Elliott/Freeman, *Can labor standards improve under globalization?*, 49

<sup>176</sup> Nike (2004):19, see chapter 4 of my research, p 35

<sup>177</sup> Nike (2004):20-21, see chapter 4 of my research, p 38

and Communities asked workers in Indonesia a set of questions about work issues and personal development.<sup>178</sup> Nike contract factories have been subject to independent monitoring from 2003-05 by the FLA (Fair Labor Association), of which Nike is a participating company.<sup>179</sup> Nike auditing until 2006 focused solely on indentifying non-compliance with Nike`s Code of Conduct. Has there been any correlation between this identification of non-compliance problems and any sound follow-up action to combat problems at all?

What kind of monitoring takes place in Nike contract factories today? SHAPE assessments are still conducted by contract manufacturers. Nike personell conducts a twofold monitoring program, which consists of in-depth environment, Safety and Health (ESH) and Management Audification Verification (MAV) audits. Nike claims that MAV auditing from 2006 - focuses on finding root causes of the following non-compliance issues: work hours, wages/benefits, grievance systems and freedom of association.<sup>180</sup> Is Nike`s self-proclaimed focus on monitoring as a device to find root causes of non-compliance likely to result in any betterment of conditions in factories whatsoever? My suggestion is that if Nike gains a proper understanding of such root causes that could be more successful in contributing to meaningful change in factories than traditional monitoring that merely focuses on detecting problems.

#### Internal Monitoring of Nike Contracted Factories

In this section I investigate whether or not the monitoring of working conditions by Nike`s staff has produced CSR valid results. Has there been any betterment, as far as these findings are concerned, because of monitoring? I will discuss Nike`s monitoring measures in chronological order. Nike`s first monitoring activities starting in 1997 with the SHAPE inspection. In chapter 4 I described the SHAPE audits as a monitoring device that focuses on auditing Environment, Safety and Health (ESH) practices in factories. I will move to an assessment of the M-audit, as it was introduced in 2003, followed by an analysis of FLA`s auditing. Then I discuss Nike`s MVA auditing from 2006 onwards. Finally, I narrow my analysis towards the findings of Nike`s Environment, Health and Safety (ESH) auditing.

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<sup>178</sup> Nike (2001):p.27 Note, this monitoring was conducted during the summer and fall of 2000,

<sup>179</sup> Nike (2004):p.22, see chapter 4 of my research p.39, (<http://www.fairlabor.org/> )

<sup>180</sup> Nike (2005/06):p.29-30

I do believe that is an important safety function as for corporate responsibility in Nike`s supply chain of factories. However, there are inherent differences between Environment Safety and Health (ESH) and labor as ESH auditing relates to safety assessments rather than labor treatment. My masterpaper is about the labor aspect of corporate responsibility.

Nike`s first CR report in 2001 describes the company`s initial monitoring efforts. It is a notable fact that Nike confessed that it did not do monitoring “well enough.”<sup>181</sup> An excellent example that confirms Nike`s confession is that BBC claimed to have proof that a Nike contractor in Cambodia used child labor. Three young workers who were filmed admitted that they were under 15. However, the Cambodian government claimed that that the three of them were old enough to work legally, and they continued to work.<sup>182</sup> Clearly Nike had a very poor system of compliance with the Code of Conduct when they just began production in a country with little and unreliable proof of age. Please note that its headquarters certainly did not flag this problem when the deciding to do business with contractors in Cambodia. However, after this issue in Cambodia was uncovered Nike and locally trained monitors worked with financial auditors. Nike claims that each one of 3,800 employee records was reviewed. Workers whose age was suspect were interviewed, according to Nike.<sup>183</sup> This may indicate that Nike did step up efforts against child labor. It seems to me that Nike did improve its enforcement of the Code`s ban on child labor, and its monitoring of this issue in Cambodia. But there is no reason to believe that Nike did that to be nice. Nike did so because they wanted to protect the company against more damaging information about child labor from this factory.

Nike`s first corporate responsibility report addresses monitoring in Kukdong International (herein referred to as Kukdong), a Nike contractor in the state of Puebla, Mexico. Workers at Kukdong went so far as to stop work in the first week of January, 2001. What was clear is that Nike`s monitoring failed to recognize crucial elements of the factory`s labor situation, which included reports of abuse and critical questions regarding wage calculations.<sup>184</sup> Nike claimed to have learned the lesson that: “Monitoring needs to look as much at background, local

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<sup>181</sup> Nike (2001): p.27

<sup>182</sup> Nike (2001): p.27

<sup>183</sup> Nike (2001): p.27

<sup>184</sup> Nike (2001): p.27

conditions and systems as at current issues within the factory walls”<sup>185</sup> The conclusion as for Nike`s monitoring at the time of its first CR report is that Nike`s internal monitoring in factories failed to even recognize the most pressing issues in factories. I do not have any indication that workers` well being improved overall as a result of Nike`s SHAPE audits, in this early phase of Nike`s CSR history from 1996 -2001.

Below I analyse whether Nike`s SHAPE-auditing might have contributed to any positive results at all in factories after Nike`s first corporate responsibility report was published. The company`s 2004 report does not provide me with much information about the findings of SHAPE audits. The only information found, besides my description of this inspection, is statistics about the number of SHAPE inspections performed in FY 2004. I would like to briefly review the numbers: 665 inspections were performed in the area of apparel, 183 in the area of equipment and finally 168 in the area of equipment. This is a total of 1,016 SHAPE audits of the contractors of Nike`s global supply chain. I would say that it is a weakness as for transparency that Nike`s 04 report does not enclose or address the findings of SHAPE audits. However, Nike`s 05/06 report discloses the company`s SHAPE audit tools with the publishing of the report, which is a small step in the right direction towards greater transparency.<sup>186</sup> I do not have a legitimate foundation to argue that the SHAPE audits alone caused any improvement in factories. Nevertheless, I argue that the SHAPE audits were a first step toward more comprehensive and thorough monitoring in factories. Therefore, my upcoming analysis will seek to examine if there is a positive correlation between the SHAPE audits and the introduction and development of the M-audits, from 2003 until today. I investigate if there is such a positive correlation, and if this correlation been helpful in creating any improvements in factories.

Nike established the M-audit in the second phase of its corporate responsibility history as an elaborate means to uncover problems. With this perspective I can analyse whether the uncovering of problems provided by M-audits have been or is currently helpful in correcting problems in factories. Let me start by showing some facts about M-audits at the time Nike`s second Corporate

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<sup>185</sup> Nike, (2001): p.27

<sup>186</sup> Nike, *Innovate for a Better World*, (2005/06): p.29

Responsibility report was published: In FY 03 and FY04 a total of 569 M-audits were conducted.<sup>187</sup> Nike reported the following priority areas as a result of data on the most severe issues of non-compliance: freedom of association, harassment, abuse and grievance procedures, payment of wages and hours of work.<sup>188</sup> In the next paragraph, I will show the results of these M-audits. The results will be my phramework to discuss if there has been any progress due to the implementation and development of M-audits.

As for the issue of freedom of association this was prohibited by law in 10-25% of the M-audited factories. Freedom of association was prohibited due to exclusive union agreement in 1-10% of the factories. This freedom was not provided when legal in 1-10% of the factories.<sup>189</sup> When it comes to harassment and abuse grievance systems the results of Nike`s initial M-audits were the following: Workers did not trust the grievance process in 25-50% of the audits. Workers reported abusive treatment (be it verbal, physical, psychological or sexual) in 25-50% of the audits. Finally, confidential grievance systems were not provided in 25-50% of the factories audited.<sup>190</sup> Let us recap the findings of these initial M-audits regarding hours of work. Work hours were found to exceed Nike standards in a staggering 50-100% of the audits. One day off in seven was not provided in 25-50% of them. Work hours exceeded legal limits in 25-50% of the cases. 10-25% of overtime refusals resulted in penalty, according to M-audits.<sup>191</sup> These are the findings with regards to wages: Overtime rates were found to be below legal minimum or the calculation was inaccurate in 10-25% of the audits. The wage calculation was inaccurate in 10-25% of the cases. 25-50% of the audits found one or more instance of wages below the legal minimum.<sup>192</sup> This certainly shows that there were systematic problems in Nike`s factory base.

A point when discussing these numbers is that not all contractors of Nike`s factory base were subject to M-audits. In Fiscal Year 2004 212,760 (the worker population of audited factories) out of 652,926 workers in Nike`s total (active and inactive) factory base were covered through M-audits, that is less than 1/3 of the

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<sup>187</sup> Nike,(2004):p.26

<sup>188</sup> Nike,(2004):p.33

<sup>189</sup> Nike,(2004):p.39

<sup>190</sup> Nike,(2004):p.42

<sup>191</sup> Nike,(2004):p.44

<sup>192</sup> Nike,(2004):p.45



factories.<sup>193</sup> But if the numbers of non compliance problems were even higher, it probably would not have mattered much, as the numbers showed such systematic and widespread problems Nike`s compliance rating gives each factory audited a rating on a scale from A to D, depending on the factory`s compliance score. Here are the results of Nike`s global compliance rating: 15% of the factories recieved an A score. 44% recieved a B score. 17% recieved a C score. 8% recieved a D score. 16% were unrated factories because of insufficient information and hence recieved an E ranking.<sup>194</sup> The real numbers of non-compliance for Nike`s entire factory base could well have been higher. However, I do not have evidence to assume that the factories with the most pressing conditions deliberately were not audited because Nike did not want to publish this information. Factories with a C or a D rating could probably have been the subject of reports by organisations that are critical of Nike. I want to suggest that Nike`s M-auditing of 1/3 of its factory chain provided a comprehensive picture of non-compliance problems. It can be argued that something good came out of Nike`s initial M-audits. Nike became increasingly aware of the scope of problems in factories, and how those problems affected workers.

### MAV Audit System

I discuss whether the development of the MAV-audit according to Nike`s last corporate responsibility report have produced any CSR-valid results.

I want to shed light on how much promise the root-cause analysis of Nike`s MAV auditing holds, not just for improving conditions for workers in Nike factories, but also for the monitoring aspect of CSR as an idea and as a field. Root-cause analysis is corporate language for monitoring that is designed to detect the deeper causes of non-compliance problems with Nike`s Code of Conduct. Nike`s MAV audit focuses its root-cause analysis on the following five areas: hours of work, wages, benefits, grievance systems and freedom of association.<sup>195</sup> Almost 40% of the management audits found that legally mandated benefits were not provided.

As for grievance systems, employee trust was low or not existing in about 65% of

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<sup>193</sup> Nike, (2004): p.20

<sup>194</sup> Nike, (2004): p.34

<sup>195</sup> Nike, (2005/06): p.29 Note: I will not elaborate further on wages or hours of work as I covered those issues in chapter 5. Hence my analysis will be narrowed to three issues; benefits, grievance systems and freedom of association.

them. They were reported to be ineffective in about 65% of the factories audited as well. The numbers for the issue of freedom of association found through these audits are not directly enclosed in Nike`s FY05/06 report. However, the compliance score of worker/management communication is reported to have increased a little from FY04 to FY06. In FY04 the compliance score in this area was closer to 65%, and in FY06 it was closer to 70%.<sup>196</sup> I want to briefly review the results of MAV-audits in 22 focus factories in China: 5 factories received an A rating, 6 received a B, 8 received a C, and 3 received a D.<sup>197</sup>

What do these numbers imply? The numbers disclosed in Nike`s last corporate responsibility report do not indicate a clear progress from the time Nike`s second report was published. Although details of the MAV-audits findings on freedom of association are not provided, the slight progress from a little over 65% to close to 70% in the area of worker-management dialogue may indicate a positive trend in the area of freedom of association. This clearly is clearly related to worker-management dialogue. However, it may be too early to tell after only two years. As for the results from the 22 Chinese contract factories, the facts that 5 out of 22 factories received an A-ranking, and 6 of them received a B-ranking, are particularly high numbers compared to the findings I showed from the other MAV-audits.<sup>198</sup> This high number probably stems from the fact that these were contract factories, not just ordinary factories, and hence subject to more attention from Nike. I think it is legitimate to say that the root-cause analysis version of the M-audits probably presents more accurate information than the initial version. The disclosure of non-compliance with the Code found through root-cause analysis may represent a progress when it comes to transparency. It can at least be a positive sign that the Maquila Solidarity Network, which is one of Nike`s critics writes that Nike`s last corporate responsibility report is “strong on transparency.”<sup>199</sup> In conclusion about M-audits, I believe root-cause analysis could potentially hold great promise, if and only if, Nike always shows willingness to follow up non-compliance issues with the right corrective action.

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<sup>196</sup> Nike, *Innovate for a Better World*, (2005/06): p.30

<sup>197</sup> Nike, *China supplement*, (2008): p.12

<sup>198</sup> Nike, *China supplement*, (2008):p.12

<sup>199</sup> May 31, 2007, <http://en.maquilasolidarity.org>

## External Monitoring of Nike Contracted Factories

“Watchdog groups say that only people outside of the company can win the trust of workers and evaluate complaints. “That is where you get problems that won't show up in paper records and interviews with management”<sup>200</sup>

There can be little doubt that successful monitoring depends on people who gain the workers` confidence. This section about independent monitoring will investigate if the monitoring done by independent organisations in Nike contracted factories has been more effective than Nike`s internal monitoring.

Number three, we publicly recognize the need for expanded monitoring, to include NGOs, and the need for a summary statement about this monitoring. We are not ready to announce how that will be done, but our current guess is that it will include a CPA firm, as well as health and social auditing by an NGO—one, two, or three. The specifics of this obviously will come sometime down the road, but we are working hard to put this into effect.<sup>201</sup>

The above quote shows what Nike`s founder Phil knight promised regarding independent monitoring ten years ago in his speech to the National Press Club.<sup>202</sup>

I want to analyze what kind of monitoring by external actors that has taken place in Nike contracted factories and the impact of those monitoring efforts since Knight`s speech.

I start by analyzing why Nike was criticized for hiring consulting companies, first PricewaterhouseCoopers (PwC) and then Ernst & Young from 1994 – 2001, to monitor compliance with the Code in factories.<sup>203</sup> The scholar Dara O`Rourke investigated PwC`s factory inspections in China and Korea. Further, O`Rourke evaluated PwC`s findings for a factory in Indonesia.<sup>204</sup> His findings were that although PwC inspections detected minor labor violations, they actually failed to detect the following severe violations: hazardous chemical use and other health and safety problems; barriers to freedom of association and collective bargaining, violations of overtime laws and wage laws as well as falsified timecards.<sup>205</sup> What is more, PwC`s auditing was criticized for a management bias as it relied on information provided by management, rather than

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<sup>200</sup> Leslie Kaufman and David Gonzales, *Labor standards clash with global reality* New York Times, April 24, 2001

<sup>201</sup> Global Exchange, Jim Connor, *Still waiting for Nike to do it*, (2001): p.13.  
<http://www.oxfam.org.au/campaigns/labour/06report/docs/5792oxflrrweb.pdf>

<sup>202</sup> This speech was held May 12, 2008, see Global Exchange, *Still waiting for Nike to do it*, p.13

<sup>203</sup> Global Exchange, *Still waiting for Nike to do it*, p.13

<sup>204</sup> Dara O`Rourke, *Monitoring the monitors: a critique of PwC labor monitoring*, Dept. of Urban Studies and Planning, Massachusetts Institute of Technology, (September 28, 2000):1-15.

<http://web.mit.edu/dorourke/www/PDF/pwc.pdf>

<sup>205</sup> O`Rourke, *Monitoring the monitors: a critique of PwC labor monitoring*, 2-3

the workers.<sup>206</sup> O'Rourke's analysis shows that monitoring that is conducted for profit may not be reliable. The profit motive gives auditors an incentive not to be sufficiently critical of the management and hence the conditions workers face in the client's factory base. In chapter 4 about the development of Nike's CSR-strategy to date I concluded that Andrew Young's report was a hollow PR move.<sup>207</sup> The Young report illustrates that auditing for profit does have its flaws as a monitoring device. This criticism of for profit monitoring of Nike contractors gives a background to discuss to what extent, if any, Nike's collaboration with the Global Alliance for workers and communities represented any progress in the area of monitoring. Please see below how the Global Alliance has been described:

The GA is an initiative that promotes collaboration among private, public and not for profit partners. Global brands offer GA the opportunity to work in their contract factories overseas, to influence local business practices and to promote the concept of corporate social responsibility in developing countries.<sup>208</sup>

Unfortunately at the present time, the Alliance is no longer active. When I accessed the website of this initiative, I could not find any information about the Alliance<sup>209</sup> presenting an obvious problem in my assessment of this initiative., The important point, however, is that the Global Alliance has not aimed to actually monitor labor standards in Nike factories. The Alliance has been clear about this point when labor rights groups asked it about its stand regarding labor violations in Nike contracted factories.<sup>210</sup> It is a legitimate point that Nike's cooperation with the Global Alliance did not qualify as monitoring in the strict sense of the word. What is more, the report *Still Waiting for Nike to do it*, by Tim Connor of the NGO Global Exchange, concludes: "As such Nike cannot claim that the Alliance represents involvement by NGOs in its monitoring program."<sup>211</sup>

However, John Campbell's (the father of the institutional theory), proposition

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<sup>206</sup> O'Rourke, *Monitoring the monitors: a critique of PwC labor monitoring*, p.3

<sup>207</sup> To recap, Young was hired by Nike to evaluate the application of the Code in 12 factories located in China, Indonesia and Vietnam in 1997. See my assessment in chapter 4 p 36 or <http://www.calbaptist.edu/dskubik/young.htm#itinerary>

<sup>208</sup> [http://www.sourcewatch.org/index.php?title=Global Alliance for Workers and Communities &print\\_able=yes](http://www.sourcewatch.org/index.php?title=Global_Alliance_for_Workers_and_Communities&print_able=yes)

<sup>209</sup> <http://www.theglobalalliance.org>

<sup>210</sup> O'Rourke, *Monitoring the monitors: a critique of PwC labor monitoring*, p.13

<sup>211</sup> Global Exchange, *Still waiting for Nike to do it*, p 13/14. The main NGO involved in the Global Alliance was the International Youth Foundation; a US based non-profit group working with and for corporations to promote the welfare of young people. This organization has no expertise in labor rights. Hence, it differs from the NGOs Nike's critics had in mind when they requested the participation of local NGOs in Nike's monitoring.

about monitoring addresses monitoring in the wider sense, as in ongoing attention to conditions in factories. In this regard it is relevant to discuss Nike's relationship with the Global Alliance. I have found the summary of a case study by the Thai Labour Campaign regarding the Global Alliance's assessment of the Lian Thai factory in Thailand.<sup>212</sup> I find it confusing to read because it is written in broken English by non-native speakers. Nevertheless, it should provide me with some legitimate indications. The findings of the case study point out that the most critical issues were ignored in the Alliance's assessment.<sup>213</sup>

But did some workers actually benefit from the assessment process by the Global Alliance at all? The most positive change, according to the Thai Labour Campaign was that the company owning the Lian Thai factory, for the first time, allowed a union to facilitate meeting inside the factory. Otherwise, the Campaign described a slight improvement in the relationship between the union and the company. However, the union did not accept new workers as members until they had passed the initial probation period. The reason for this was fear that new members who had not yet passed the probation period would be dismissed. The only practical betterment in these five factories according to the Campaign was that that the toilet facilities had been improved in one factory. However, the company owning the factories refused to follow the request of the workers that more toilets be built. Hence, the improvement of those restroom facilities was a very limited improvement.<sup>214</sup> What does the analysis of the Lian Thai and the four other factories imply? My interpretation is that a cooperation that merely puts the searchlight on conditions in factories can contribute to very modest improvements, in some factories, probably under some circumstances. I do not know exactly what the circumstances were in the case of the five Nike contracted factories in Thailand. Nevertheless, what turns out to be clear is that a cooperation that does not even monitor labor standards, and does not represent NGO involvement as such, cannot contribute to the profound and substantial changed needed in factories.

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<sup>212</sup> Lian Thai Industrial and the Global Alliance for Workers and Communities, Junya Yimprasert, Thai Labour Campaign, (8 September 2000): p.1-8, <http://www.cleanclothes.org/ftp/Lian-Thai2.PDF>

<sup>213</sup> The Lian Thai factory was one out of five factories in Thailand researched in a pilot project by the Global Alliance, Lian Thai (09.08.2000): p.1

<sup>214</sup> Lian Thai (09.08.2000): p.4. (This quote was taken from a speech made November 3, 1998)

But has Nike's participation in the Fair Labor Association (FLA) contributed to any betterment? Please read below what the former President Bill Clinton said in his endorsement of the Fair Labor Association (FLA) as a coalition of apparel and footwear companies, human rights, labor rights, and consumer advocates: "Today's agreement on fighting sweatshop practices is an historic step toward reducing sweatshop labor around the world and will give American consumers confidence that the clothes they buy are made under decent and humane working conditions."<sup>215</sup> With these big words by Mr. Clinton in mind, I would like to investigate whether the FLA has been successful in reducing sweatshop labor in factories that produce apparel and footwear for Nike.

The FLA has a workplace Code of Conduct, which is found on its website. This Code contains nine standards regarding forced labor, child labor, harassment or abuse, non-discrimination, health and safety, freedom of association and collective bargaining, wages and benefits, hours of work and finally overtime compensation.<sup>216</sup> It is important to understand that the FLA solely has monitored compliance with FLA's Code, not with Nike's Code. However, the FLA Code is very similar to Nike's initial Code of Conduct, as found in appendix to Andrew Young's report from 1997, in that they overlap in key respects. Nike's most recent Code<sup>217</sup> is more comprehensive, and stricter in some respects, than the company's initial Code. I want to compare The FLA Code with Nike's initial code. After this comparison I want to look into whether in Nike, in any way, has exceeded FLA's mandated obligations. Then I want to put the searchlight on Nike's current Code, as this is stricter than its initial Code. I want to research if Nike has improved its Code as a result of its FLA membership. My analysis will shed light upon whether some conditions actually have improved as a result of Nike's participation in the FLA, and hence as a result of the FLA's efforts in terms of external monitoring. My most important resource will be FLA's first public report which describes the initial efforts made by participating companies in implementing the FLA Workplace Code of Conduct.<sup>218</sup>

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<sup>215</sup> <http://www.fairlabor.org/about/history>

<sup>216</sup> FLA Workplace Code of Conduct, <http://www.fairlabor.org/conduct>

<sup>217</sup> The recent version of Nike's Code is the basis of each of the three official corporate responsibility reports. Nike's three reports show that the Code was revised before 2001, but I have not been able to find the exact date of which the Code was revised.

<sup>218</sup> FLA: Towards improving workers' lives. This report describes FLA's first implementation year which started August 1, 2001 and ended July 31, 2002

Nike's first Code and the FLA Code both contain four standards with an almost identical meaning. First, both Codes have a standard against the use of forced labor.<sup>219</sup> As for the use of child labor, both state that no person shall be hired under the age of 15 (or 14 when allowed according to local laws) or the age, at which mandatory schooling has ended, whichever is stricter.<sup>220</sup> Each Code also states that the employer shall provide standards that protect the health and safety of the workers.<sup>221</sup> Regarding the issue of wages and benefits, both say that employers shall pay at least the legal minimum wage or the prevailing industry wage, whichever is higher, and provide legally mandated benefits.<sup>222</sup> Finally, both require that workers be compensated in accordance with local laws for overtime.<sup>223</sup> These are clear and apparent similarities between the standards of the two Codes.

Now that I have described the similarities I want to shift my analysis to the actual differences. It is notable that the FLA Code is more comprehensive and concise than Nike's Code when it comes to certain labor standards. FLA's Code has specific standards regarding harassment or abuse, non-discrimination as well as the freedom of association and collective bargaining.<sup>224</sup> Nike's initial Code did not. All it said was:

Specifically, Nike seeks partners that share our commitment to the promotion of best practices and continuous improvement in management practices that recognize the dignity of the individual, the rights of free association and collective bargaining and the right to a workplace free of harassment, abuse or corporal punishment.<sup>225</sup>

This hardly qualified as a standard because it did not, in itself, commit Nike or contractors to enforce non discrimination, respect the dignity of the workers or the freedom of association. I would call it a written guideline. In this respect, Nike's participation in the FLA clearly represented a progress, because Nike committed to monitor important standards that Nike's Code certainly did not put teeth behind. Another important difference is that FLA's Code says that "employers

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[http://www.fairlabor.org/all/transparency/charts\\_2002/PublicReportY1.pdf](http://www.fairlabor.org/all/transparency/charts_2002/PublicReportY1.pdf)

<sup>219</sup> Nike's Code of Conduct according to the Young report, standard 1, and FLA Workplace Code of Conduct, standard 1, herein referred to as Nike Code and FLA Code

<sup>220</sup> FLA Code standard nr 2, Nike Code Standard nr 2

<sup>221</sup> FLA Code standard nr 5, Nike Code Standard nr 6

<sup>222</sup> FLA Code standard nr 6, Nike Code Standard nr 4 and 5

<sup>223</sup> FLA Code standard nr, Nike Code Standard nr

<sup>224</sup> See the full version of the FLA Code and the full version of Nike's initial code,

<sup>225</sup> Nike's Code as found in the Young report, bullet point 3

shall”, while Nike’s Code says that “contractor certifies”.<sup>226</sup> What does this mean when it comes to the issue of accountability? This shows that the contractors are accountable to Nike for the enforcement of Nike’s Code. The charter of the FLA explains how the companies that have joined the FLA are accountable to the Association. As a member of the FLA Nike has complied to undertake the following voluntary self-regulation according to Standard B of the charter:

To formally convey the Workplace Code (in the applicable local language) to its factories, and applicable licensees, contractors and suppliers, and communicate the Applicant’s commitment to comply with the Workplace Code to senior officers, managers and employees of both the Company, Retailer or Supplier (as the case may be) and its applicable licensees, contractors and suppliers.<sup>227</sup>

This means that Nike is accountable to the FLA for communication of the FLA’s Code of Conduct in factories. Further, Nike has complied to “adopt, and cause its applicable licensees, contractors and suppliers to adopt, the Workplace Code in the manufacture of its products”<sup>228</sup> and “to implement a system of internal monitoring that complies with the monitoring principles”<sup>229</sup>. The meaning of this clearly is that Nike has promised, through its participation in the FLA, to enforce and monitor the Code of the FLA. Now that I have clarified what Nike agreed to undertake through its membership, I want to investigate to what extent Nike’s acceptance of the FLA’s Code represented a progress in factories.

Nike’s participation in the FLA did represent a commitment to implement the human rights program of the FLA. This means that Nike did comply to fulfil a wide range of FLA company obligations. The obligations were as follows: to establish clear standards, create an informed workplace, develop an information database, establish program to train company monitors, conduct periodic visits and audits, provide employees with the opportunity to report non-compliance, establish relationships with labor, human rights, religious or other local groups and finally establish means of remediation.<sup>230</sup>

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<sup>226</sup> See the FLA Code and Nike’s initial Code

<sup>227</sup> The charter of the Fair Labor Organization

[http://www.fairlabor.org/var/uploads/File/FLA%20Charter\\_3.18.08\(1\).pdf](http://www.fairlabor.org/var/uploads/File/FLA%20Charter_3.18.08(1).pdf)

Herein referred to AS the FLA charter

<sup>228</sup> The FLA charter standard B

<sup>229</sup> The FLA charter standard C

<sup>230</sup> FLA (2001/02): 49-53



I have shown that Nike agreed to FLA codes. Now I present how Nike implemented the FLA codes, and how the FLA holds member companies responsible for them. When Nike became a member company of the FLA, Nike was required to submit a Monitoring Plan to the FLA that specifically described Nike`s programs for internal compliance with the FLA Code.<sup>231</sup> Nike has also complied to implement an internal compliance program in order to address non-compliance with the standards of the FLA Code.<sup>232</sup> Furthermore, as an FLA member Nike has agreed to subject factories to unannounced monitoring visits by independent FLA accredited monitors.<sup>233</sup> In 2003, FLA monitors conducted 40 audits of Nike`s factory base.<sup>234</sup> It is worth mentioning that Nike arranged training on sexual harassment in the workplace for more than 31,000 workers in Vietnam. Moreover, machine safety training took place in 6 factories, which involved more than 19,200 workers and supervisors. These training initiatives were supported by the FLA.<sup>235</sup> Overall, my analysis has shown that Nike`s FLA membership did represent some betterment through monitoring because this membership marks a commitment to self-regulation through the follow up of ethical standards for labor treatment in factories.

#### Kukdong - Internal Corporate Versus External Independent Monitoring

I want to research to what extent, if at all, Nike has shown a commitment beyond what is required by the FLA to take corrective action and improve conditions when non-compliance issues have risen. A significant case was the factory owned by Kukdong International in Mexico. Kukdong is a Korean company owning factories in Mexico, among other countries. The Kukdong incident took place at Kukdong`s main factory in Mexico. Therefore I`ll refer to it as the Kukdong factory. Let me recap in brief: In the first week of January 2001, workers at Kukdong went on strike. This strike was a response to the illegal firing of five workers as well as the fact that twenty workers were laid-off because they had complained about low wages and rotten food served in the factory cafeteria. A tense stand off during the ensuing days resulted in violence and ongoing tension

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<sup>231</sup> FLA Charter, p.20, [http://www.fairlabor.org/var/uploads/File/FLA%20Charter\\_3.18.08\(1\).pdf](http://www.fairlabor.org/var/uploads/File/FLA%20Charter_3.18.08(1).pdf)

<sup>232</sup> FLA Charter, p.21

<sup>233</sup> FLA Charter, p.22

<sup>234</sup> Nike,(2004): p38

<sup>235</sup> FLA, First Public Report: Towards Improving Workers` Lives , 08. 01.2001 – 07.31.2002, p. 50  
[http://www.fairlabor.org/all/transparency/charts\\_2002/PublicReportY1.pdf](http://www.fairlabor.org/all/transparency/charts_2002/PublicReportY1.pdf)

between management and workers. Nike's compliance staff visited the factory to address the situation shortly after the strike. Nike claims to have learned a valuable lesson from the Kukdong incident about where to improve its internal monitoring.<sup>236</sup> I want to research if Nike's internal monitoring did improve due to the lesson learned through the Kukdong incident. My most important resource will be a report by the organization Verité<sup>237</sup> that was commissioned by Nike to conduct independent auditing of the Kukdong factory.

The Verité report made specific recommendations about steps that Nike should take after the Kukdong incident to improve conditions in the Kukdong factory.<sup>238</sup> The report suggests specific corrective measures as for the following issues: child labor, harassment and abuse, discipline and termination, pregnancy issues, the freedom of association and collective bargaining, grievance procedures, the freedom of movement, personnel policies, workplace regulations, compensation and work hours and finally health and safety.<sup>239</sup> This list of issues in pressing and urgent need of corrective measures according to the report shows that the Kukdong incident during the first days of 2001 was really just the tip of the iceberg. The Kukdong factory was subject to very comprehensive monitoring, not only by Verité, but also by a PricewaterhouseCoopers auditor, by Arturo Justiniani Alcalde on behalf of the International Labor Rights Fund and finally a team from the Workers Rights Consortium.

The monitoring situation was a clash between corporate monitoring and independent non-profit monitoring, in that the Verité team as well as the representative of the International Labor Rights Fund represented independent monitoring and PwC's auditor.<sup>240</sup> The academic David M Boje is critical of for-profit monitoring. Here is how Boje perceives the role of auditing by for-profit

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<sup>236</sup> FLA, *Toward Improving Workers' Lives*, (2001/02): p.54

<sup>237</sup> Verité is a research organization which claims to provide independent, non-profit socially responsible auditing, training and capability building. This organization was established in 1995.

<http://www.verite.org/aboutus/main.html>

Verité report: [http://www.nike.com/nikebiz/gc/mp/pdf/nike\\_verite\\_report.pdf](http://www.nike.com/nikebiz/gc/mp/pdf/nike_verite_report.pdf)

<sup>238</sup> Note: the Verité report was a one-off response to the situation at Kuk Dong. Nike has not involved Verité systematically in its monitoring program since. See *Still waiting for Nike to do it* p.19. This means that Verité's recommendation that the factory should be subject to an action plan and re-inspections within three months to further monitor conditions and improvements in all areas was not followed.

See the Verité (2001): p.19

<sup>239</sup> Verité (2001): p.3-19

<sup>240</sup> *The Kukdong story: when the foxes guard the hen house*, by David M.Boje, Grace Ann Rosile, & J. Dámaso Miguel Alcantara Carrillo, New Mexico State University, March 25, 2001.

[http://cbae.nmsu.edu/~dboje/AA/kuk\\_dong\\_story.htm](http://cbae.nmsu.edu/~dboje/AA/kuk_dong_story.htm)

companies: “Asking a corporation to hire and pay a monitor, who by any other name is a consulting firm, is like asking the fox to hire a monitor to guard its hen house.”<sup>241</sup> My stand is that monitoring should be conducted by non-profit organizations, not by consulting companies.

Boje criticizes the monitoring in the Kuk Dong factory on the grounding that four major areas were not covered in previous reports. I want to investigate what previous reports did not cover. One of owners of the Kukdong International main factory facility Mr. Lee, split off from three other Koreans owners and opened approximately ten other factories around the Atlixco province. These factories do out-sourced production for the main (Kukdong) factory. Boje claims that this out sourcing has probably been kept secret, as none of the monitoring reports have mentioned the existence of these factories. Constituencies interviewed told that the conditions of Mr. Lee’s factories were alleged to have been significantly worse than those of Kukdong International. This was closely related to the fact that only the main factory was monitored. Boje concludes that “It does no good to monitor one link in the chain, when production and management moves from one to the other.”<sup>242</sup>

Second, after Boje’s study, SITEMEX, which is independent union was allowed at the main Kukdong factory. However, as this happened, Nike stopped renewing orders for campus apparel with the Kukdong factory. The implication is that while the workers won their right to have an independent union, Nike, Mr. Lee and the other Kukdong owners can shift production contracts to non-union factories. According to Boje, that is the regular result of workers’ protests and organization in Mexico. What is more, there is a very severe addition to previous reports: During police action on January 12th, 2001, two pregnant women were physically abused with shields, clubs, and fists. Two eye-witnesses claimed that the women allegedly lost their unborn babies as a direct result of this abuse. The event has not been reported by any newspaper or monitoring report. This claim was supported with interview transcript of the eye witnesses. It was even found that the two abused women were kept away from the media for about fifteen days, so management could keep the situation under control. Boje believes that Nike,

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<sup>241</sup> Boje, Rosite, Carrillo, *When the foxes guard the hen house*

<sup>242</sup> Boje, Rosite, Carrillo, *When the foxes guard the hen house*

Reebok, the Kukdong management, and the State Governor of Pueblo have liability for the death of two unborn children. However, this accusation has yet to be independently verified. Finally, the release of four monitoring reports did put significant worldwide pressure on Reebok, Nike, Kukdong International, as well as the State and Federal government of Mexico to allow independent union activity. In March, 2001, Boje assumed, based upon a detailed analysis of transcripts of interviews, that once the attention of the public was gone, the ability of the independent union to continue was questionable. Dr. Boje claims that there was little or no protest when Vada Manager of Nike sent him a letter, dated October 17, 2001, saying that Nike would not renew orders at the Kukdong factory for the time being.<sup>243</sup>

These findings do raise critical remarks about monitoring in general as a CSR function. Boje`s research clearly reveal that the official monitoring that did take place at the Kuk Dong missed, or deliberately did not publish, information about crucial events at the Kukdong International. However, did renew orders at the Kuk Dong (renamed Mex-Mode) in 2002. What Nike claims to have learned from the Kuk Dong incident is “remediate, don`t terminate”<sup>244</sup>, which is the policy that FLA participating companies commit to when factory management is willing to contribute to corrective action. Remediation is the responsible thing to do, as opposed to ceasing orders, and depriving poor women from the best option they happen to have. However, it is hypocritical of Nike to say that the company learned that correction is more appropriate than a cut and run response, knowing that they decided to cease orders in the fall of 2001.<sup>245</sup>

But did something good come out of the Kuk Dong incidence at all when it comes to the area of monitoring, despite legitimate critical remarks about the monitoring that took place in the aftermath of the Kuk Dong? A New York Times columnist, Ginger Thompson labelled the Kuk Dong incident as a success story.<sup>246</sup> Thompson points out that the workers won the right to an independent union. More, Thompson claims that Nike officials pushed Kuk Dong managers to abide by corporate codes of conduct because the company already had been under fire

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<sup>243</sup> Boje, Rosite, Carrillo, *When the foxes guard the hen house*

<sup>244</sup> FLA, *Toward Improving Workers` Lives*, (2001/02): 54

<sup>245</sup> Boje, Rosite, Carrillo, *When the foxes guard the hen house*, and my reference to Vada Manager of Nike`s letter on the previous page

<sup>246</sup> Ginger Thompson, *Mexican labor protest gets results*, N.Y.Times, October 8, 2001

for harsh conditions in Asia. According to workers interviewed by Thompson, they had received two raises since the Kuk Dong incident, meaning that they would make \$4.50-\$5.00.

The Worker Rights Consortium (WRC) has published the findings of its assessment of the Mexmode factory conducted through May and June 2008.<sup>247</sup> An inquiry was launched by the Worker Rights Consortium in response to two allegations: that unionized employees had been subject to physical abuse and intimidation and that the Mexican government was guilty of unlawful intervention in the internal affairs of the factory's union. Please note that it has not been alleged at all that violent and intimidating actions were carried out by factory management, or by its request. However, these actions were allegedly carried out by supporters of Antorcha Campesina, (in English "Peasants` Torch"), which is a political organization with close ties to the Industrial Revolutionary Party (PRI), one of Mexico's main political parties.<sup>248</sup> According to the Worker Rights Consortium (WRC), Mexmode`s factory management was fully cooperative with the investigation. Nonetheless, the findings of the WRC are still of interest because it sheds light upon how political interests can collide with workers` legitimate rights to union activity. This means that political interests actually can get in the way of social betterment in factories, because unions play an important role in the development and progress of labor treatment and corporate responsibility in factories. These were the findings of the WRC at the Mexmode factory: The female Secretary General of the SITEMEX union was physically assaulted and dragged out of the factory by members of the local Peasants` Torch faction. Three female union officers, one male union officer and one female worker were physically assaulted inside the factory by a male Peasants` Torch member. The WRC found unlawful actions by government officials. One senior government official led a protest which involved threats of violence after some of the workers who participated in the assaults described above had been justifiably suspended by factory management.<sup>249</sup>

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<sup>247</sup> Worker Rights Consortium (WRC) assessment re Mexmode S.A. de CV (Mexico) findings and recommendations, July 3, 2008  
<http://www.workersrights.org/freports/WRC%20Assessment%20re%20Mexmode.pdf>

<sup>248</sup> WRC, *Mexmode*, (2008): p.2

<sup>249</sup> WRC, *Mexmode*, (2008): p.8

## Conclusions

What do my findings altogether imply for the potential of monitoring as a CSR function to improve labor treatment in factories? It is legitimate to say that there is a direct correlation between the monitoring that has taken place in Nike factories and increased transparency. It is a progress that Nike has published three increasingly corporate responsibility reports and one China supplement as a result of the findings of the official monitoring that has taken place in Nike factories. My conclusion is that the monitoring by the vigilantes that cooperate with Nike has been more effective in producing findings that are reliable and dare to be critical of Nike. If nothing else, the official monitoring that has taken place in Nike contracted factories since Nike established CSR as a function represents a massive step forward from the days Nike refused to assume responsibility for conditions in its factory base whatsoever. Nike is obviously much more aware of problems in factories today than ten years ago. A Code of Conduct with clear and concise standards for supply chain management, and hence labor treatment in factories, is an absolute necessity for the credibility of CSR as a function. Monitoring is necessary for the enforcement of a Code of Conduct, as well for the enforcement of corporate responsibility.

The relationship between a Code of Conduct and monitoring is that you can't have one without the other. My research has shown that the problem is that Nike is not always willing to follow up problems in factories that have been detected through comprehensive audits with the necessary actions. For instance, Nike has not been willing to combat the problem of excessive overtime with an explicit commitment to pay a living wage in factories, so that workers would not have to work excessive hours because of the financial pressure of poverty wages. Monitoring cannot alone, in itself, produce or contribute to betterment in factories without the right corrective actions. The success of monitoring depends on leadership with integrity and willingness to make decisions that are unpopular in corporate America and the global business community.

## Chapter 7 Conclusion

My case study shows that the most important benefit of CSR is that civil society, including the CSR community, can sometimes pressure the most visible companies to change behavior through acceptance and endorsement of corporate responsibility. However, the most important limitation of CSR as a function is that Nike never has been willing to unconditionally adapt to responsible corporate behavior in every area of labor treatment as Nike will not endorse the legitimate claim to ensure a living wage in factories. In its first corporate responsibility report Nike indicates that it would be a bad idea to simply double wages, because that could mean fewer Nike units sold, and hence fewer jobs.<sup>250</sup> Nike's reasoning provides a key to understand the most pertinent limitation of CSR in factories. Nike is only willing to endorse and enact legitimate CSR measures as long as the costs of CSR measures do not prevent Nike's future growth. Nike refuses to accept the living wage claim because Nike believes that the costs of it would exceed any potential benefits of it. Given that Nike is not willing to enact CSR at any cost, short term profit maximization will likely continue to have the upper hand when socially responsible behavior collides with the company's most profitable option. The most compelling case may be for unethical behavior. The global market is inclined to value short term profit maximization higher than integrity and responsible leadership for the long term.

What does my reasoning above regarding the conflict between CSR and profit maximization tell us about the potential of the triple bottom line of financial, social and environmental sustainability?<sup>251</sup> Nike's refusal to ensure a living wage in factories shows that Nike is inclined to choose the hard core financial bottom line if profit maximization collides with social sustainability. It is a pity that Nike endorses the concept of a triple bottom line and declines the living wage claim when a living wage standard in Nike's leadership Code would be compatible with the triple bottom line and its reliance on tangible collection of data.<sup>252</sup> It would be possible to support a legitimate and feasible definition of what a living wage should include, and have a living wage strategy in order to calculate a living wage according to local costs. Furthermore, if Nike were to endorse the living wage claim, Nike would have to change its buying

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<sup>250</sup> Nike (2001): p. 39

<sup>251</sup> I described the idea of a triple bottom line and how Nike claims to endorse this idea of corporate responsibility, in the introduction chapter of my master paper I p. 5 and 6.

<sup>252</sup> Chris Mac Donald, Wayne Norman, "Getting to the bottom of "triple bottom line" (pre-publication version March 2003) p.1-19, published version found in *Journal of Business Ethics Quarterly* (2004) page 3 [http://www.businessethics.ca/3bl/triple\\_bottom\\_line\\_abstract.html](http://www.businessethics.ca/3bl/triple_bottom_line_abstract.html)

practices, and hence its business model. Nike's latest corporate responsibility report describes how the company claims to strive to integrate CSR and the triple bottom line into its core business model.<sup>253</sup> My case study of Nike shows that Nike only is truly serious about integrating the triple bottom line of CSR into its labor treatment and core business, as long as corporate responsibility will not be detrimental to the company's bottom line on a short term basis. Hence, Nike's commitment to integrate the triple bottom line of CSR may be questionable.

My findings about how the limits of corporate responsibility play out in Nike's factory base to a great extent supports left wing criticism that CSR mostly serves the purpose of window dressing because Nike clearly will not enact CSR at any cost. Does my criticism of Nike debunk the assumption of the multilevel theory of CSR that the motives of actors inside the company as well as those of actors outside the company together will push for social change and betterment through CSR or is there still some merit in it?<sup>254</sup> The findings of my research indicate that Nike's motives and the motives of Nike's critics will in fact continue to pursue CSR, as long as CSR is not enacted at the cost of the bottom line. Under the assumption that Nike's main motives for CSR are instrumental and that civil society's main motives are moral<sup>255</sup>, the implication is that civil society can only influence Nike to change behavior to the point where Nike has to increase prices to pay for corporate responsibility measures.

In the New York Times article *The paradox as business as do-gooders* Joe Nocera argues that if companies integrate CSR into their core business models they would merely do so because their consumers want them to.<sup>256</sup> Further, Nocera argues that if some companies integrate CSR into their companies' core business model, those companies will take those steps as a response to how the values of American consuming culture have changed during the last decades. My case study has shown that Nike accepted responsibility for conditions in factories and implemented CSR as a function because it was forced to conform to the values of its critics that favor corporate responsibility in factories. However, if the values of Nike's critics collide with short term maximization of shareholder value, which is the case in the area of wages, it seems that Nike will continue to favor the increase of shareholder value.

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<sup>253</sup> Nike(2005/06): *Chapter 5, Workers in contract factories*, p. 15-52

<sup>254</sup> Aguilera/Williams, *Putting the S back in Corporate Social Responsibility, a multilevel theory of CSR*, p. 847

<sup>255</sup> Aguilera/Williams, *Putting the S back in Corporate Social Responsibility, a multilevel theory of CSR*, p 847 and 848

<sup>256</sup> Joe Nocera, *The Paradoxes of Business as Do-Gooders*, New York Times, November 11, 2006



But to what extent do my findings show that CSR initiatives that are compatible with the growth of a company can be successful in improving conditions in factories?<sup>257</sup> The answers to that question are of importance when it comes to the assumption of the institutional theory of CSR that public scrutiny gives companies a stronger incentive to behave ethically.<sup>258</sup> I have found that the most important progress after Nike accepted responsibility for the conditions of its supply chain is improved enforcement of Nike's Code of Conduct. In the second phase of Nike's corporate responsibility history from 2001-2004 Nike gained an understanding of widespread and pressing violations of the Code through the implementation of Management Audits as a thorough monitoring vehicle.<sup>259</sup> Further, the Management Audits conducted from 2005 to date that include analysis of the root causes of problems represent a certain progress in the development of Nike's CSR measures.<sup>260</sup> Those audits indicate willingness to understand the root causes of non-compliance problems and to improve the enforcement of Nike's Code by addressing those root causes of problems.

Nike is willing to enforce the wage standards of its Code of Conduct. As underpayment or non-payment of wages has been a significant problem in factories, improved compliance with the wage standards in order to ensure that the workers are paid what they are due will contribute to increase wages for workers who were not paid what they were due in the past. In fiscal year 2005/06 Nike returned over RMB 6,530 000 in back wages (US \$ 900 000) to workers in Chinese factories.<sup>261</sup> This shows that Nike is aware of the problem, and that the company takes some corrective action. I also found that progress toward, and the achievement of Nike's goal to implement tailored Human Resource systems in its focus factories could be effective in addressing underpayment or non-payment of wages through improved tracking systems for wages. Nike's goal to eliminate excessive overtime in contract factories by fiscal year 2011 is the most important one of the company's CSR targets.<sup>262</sup> I am not certain that Nike will accomplish this goal in three years from now. However, Nike would not have set this business goal unless the company believed it could achieve it. My research assumes that substantial progress in reducing the amount of excessive overtime by 2011 is

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<sup>257</sup> For the fiscal year ending May 31, 2008, Nike reported revenues of \$18,6 billion, an increase of \$2,3 billion over last year's endings, see [http://www.nikebiz.com/company\\_overview/facts.html](http://www.nikebiz.com/company_overview/facts.html)

<sup>258</sup> Campbell, *Why would corporations behave in socially responsibly ways? An institutional theory of corporate social responsibility*, 958.

<sup>259</sup> Nike (2005/06): p. 17/ Nike (2004): p 37-38

<sup>260</sup> Nike (2005/06): p. 21/22

<sup>261</sup> Nike (2005/06): p. 47/Nike, *China supplement*, (2008):19

<sup>262</sup> Nike (2005/06): p. 16

possible. If Nike succeeds in eliminating excessive overtime by 50% or 70% by 2011 that would be a vast progress from the time Nike gained the knowledge that excessive overtime was a major problem through its Management auditing from 2001-2004. My analysis of how CSR in Nike's contract factories show that there has certainly been some improvements through CSR. The findings of case study do not paint an entirely gloomy picture of how CSR plays out in reality. Finally, I want to remark that Nike has become a much more transparent company thanks to CSR as a company function, as compared with the company's level of transparency at the time CSR was established. In 1997 the report that started the Kasky lawsuit and its findings were kept confidential.<sup>263</sup> On the other hand, in Nike's latest corporate responsibility report, the findings of Nike's official monitoring since the release of its second corporate responsibility report are presented and accessible to the public. This certainly represents progress when it comes to transparency.

Finally, I want to show some numbers that give strong indication that labor will continue to be an important area for the development of CSR ideationally and as a business function. In the New York Times article *Corporate conscience survey says workers should come first* Stephanie Strom discusses the answers of a survey by the National Consumers League and a public relations company.<sup>264</sup> 800 adults interviewed for the survey were asked to identify Corporate Social Responsibility. 27% of them defined it as "a demonstrated commitment to the well-being of employees."<sup>265</sup> This indicates that companies, including Nike, cannot afford to ignore the labor area of CSR in the future if they want to be taken seriously and respected for their corporate responsibility practices. Although I have concluded that profit maximization is likely to have the upper hand if bad behavior pays more than corporate responsibility on a short term basis, my findings show a mixed picture of the possibilities of corporate responsibility to create substantial betterment. Nike is a young company. CSR is a new function in the company. Profound change does take time.

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<sup>263</sup> Price Waterhouse Coopers' report saying that Nike's Code was extremely poorly enforced in Asian factories, See my interview with Marc Kasky in appendix

<sup>264</sup> Stephanie Strom, *Corporate Conscience Survey Says Workers Should Come First*, New York Times, May 31, 2006

<sup>265</sup> Stephanie Strom, *Corporate Conscience Survey Says Workers Should Come First*

## **Appendix**

### **My Interview with Marc Kasky, San Francisco, October, 12, 2007**

What do you believe were the lies in Nike`s PR campaign related to labor treatment prior to the Kasky lawsuit?

In 1997 Nike was aware of sweatshop criticism and anti globalisation activists, Nike`s Code of conduct required compensation, safety, no punishment or forced overtime, from subcontractors. Nike claimed that subcontractors enforced them, and that Nike was a “model corporate citizen.” Nike hired a management firm to go to Southeast Asia, the report came back, but Nike did not release it. A Nike employee saw the report, and released it to the New York Times. California has a statute regarding false marketing and unfair business practices. Marc Kasky had the legal status of a private attorney general as he sued on the behalf of the people in California. Corporations did not have the same protection as human being, in a discussion you could not sue them for information in paid advertisements, press releases, letters to athletic departments etc, prior to the Kasky Lawsuit. California Supreme Court ruled that people can sue corporations on the grounds of factually false statements (commercial speech) that are made to sell products, even if it`s not paid advertisement. The verdict of the California Supreme Court blurred the line between commercial speech and private/political speech was. Nike lost 6-3, the US Supreme Court decided not to overturn the California verdict. This applies to any company doing business in California. They can`t be careless of facts!

If Nike lied, how did Nike manipulate information to the public prior to the Kasky lawsuit? The company did not change what they were saying. The company finally argued that it did not matter if it lied because it was protected speech

Can Nike be trusted to present more truthful information after Kasky since it is possible to file a lawsuit against Nike on the grounding of deliberately false information to the public? Yes, they have to tell the truth, or they can lose in Court

Do you believe that there may have been improvements in Nike`s treatment of workers in factories after the Kasky lawsuit, due to fear of damaging lawsuits?  
Nike published a press release 2005: they realised that they were mistaken and needed to improve conditions in Indonesia, be more careful with facts, influenced the manufacturing of products, successful asserting truthfulness, The lawsuit was about truthfulness with your customers, discouraging misrepresentation! Corporate communications is made more leverage, checking truthfulness.

Are there any practical alternative information strategies that NGOs, the press, the anti-Nike movement could pursue that actually would improve labor treatment in Nike`s factories? Attacking Nike created an “us vs. them”, which perpetuates more of what you don`t want. Civil society should correct Nike`s behavior when needed, not punish the company. My effort affecting the business practices of California. I wanted the people of California to be entitled to know the truth about Nike`s labor practices. My message is to tell the truth and live by what you believe in!

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**Interview:**

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