

Draft Framework for Inputs to OHCHR Report on Human Rights Responsibilities of Business

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We commend the UN Commission on Human Rights for confirming ‘the importance and priority it accords to the question of the responsibilities of transnational corporations and related business enterprises with regard to human rights,’ and for requesting that the Office of the High Commissioner for Human Rights (OHCHR) compile a report on existing initiatives and standards relating to these human rights responsibilities.

Drawing largely on existing human rights standards, but also on labor and environment standards and other corporate social responsibility initiatives, the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms), approved by the UN Sub-Commission on the Promotion and Protection of Human Rights in August 2003, state in Article 1:

States have the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

While the States retain primary responsibility, the Commission, together with multiple regional and international initiatives and standards, has confirmed the importance of considering the human rights responsibilities of corporations and businesses.

There are many initiatives today that set guidelines for company activities, including the observance of human rights in general terms. They have done valuable work in raising awareness of key issues among companies. However, whether unique to a particular company or adopted sector-wide, voluntary initiatives and codes often lack international legitimacy while creating an uneven playing field. Voluntary initiatives may work for the well-intentioned, but the overwhelming majority of companies have no human rights policy, and few have made explicit commitments.

Some of the existing mechanisms and initiatives relating to the responsibilities of companies with regard to human rights are outlined and described below. While each of these has made important contributions, we believe that the UN Norms are an important step forward in strengthening standards for corporate behavior by identifying the human

rights responsibilities of business. The UN Norms represent the logical development and amplification of generalised statements regarding human rights in the other initiatives and therefore offer an essential guide to implementation for States and corporations.

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises, which were revised in 2000, have been adopted by governments in all thirty OECD member countries and by eight non-members.ⁱ The Guidelines represent a commitment by adhering governments to make recommendations to multinational companies operating in or from their territories. As such, although they are addressed directly to companies, they are not binding on them. However, the Guidelines are endorsed by a corpus of multinational companies, represented through the OECD's Business and Industry Advisory Committee (BIAC), as well as by the corresponding Trade Union Advisory Committee (TUAC). The Guidelines should be observed wherever a company operates.ⁱⁱ

The OECD Guidelines relate to all key aspects of multinational enterprises' operations: information disclosure, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition and taxation. Enterprises should contribute to sustainable economic, social and environmental progress and uphold, develop and apply good corporate governance; they should develop good relations with the societies in which they operate; they should encourage conformity with the Guidelines among partners and subcontractors; and they should abstain from improper involvement in local politics.ⁱⁱⁱ The revised Guidelines included an important provision specifying that enterprises should: "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."^{iv} However, this human rights provision is very general and makes no explicit reference to rights critical to the protection of life, liberty and security.

The Guidelines are implemented through a dual system of National Contact Points (NCPs) in each adhering country and the Investment Committee made up of NCPs from member countries, which oversees the process.^v Unlike other codes governing the conduct of companies, the Guidelines have an apparent threefold advantage: firstly, they are more detailed; secondly, the NCPs are in theory publicly accountable government officers and so implementation does not rely on self-reporting by companies (unfortunately, most NCPs lack the commitment and resources to monitor companies effectively); and, thirdly, they include what amounts to a complaints mechanism open to unions and NGOs.

Despite their seeming advantages over other voluntary codes, the OECD Guidelines and the implementation procedures fall far short of being the gold standard of corporate accountability. The text of the Guidelines is weakened with caveats allowing too much discretion to companies in crucial areas such as disclosure and environmental protection. The implementation procedures lack investigative powers and are subject to arbitrary decisions and interpretations by government officials, who lack any formal training in human rights and who are seen to be too closely allied to business interests. Finally, the

fact that implementation of the Guidelines is monitored by government officials in the countries where the companies are registered raises the concern that narrow national economic interests may unduly influence the way in which a company's behavior is assessed. Moreover, the OECD Guidelines only apply to companies that are based in OECD or adhering countries.

ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

Amended in 2000, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy calls for direct acceptance of the fundamental labor standards by corporations.^{vi} These fundamental labor standards include the prohibition and abolishment of forced labor (ILO Conventions 29 and 105), prohibition of discrimination and unequal remuneration (ILO Conventions 100 and 111), outlaw of child labor (ILO Conventions 138 and 182), and the freedom of association and the right to collective bargaining (ILO Conventions 87 and 98).^{vii} ILO conventions and recommendations are only binding on member States, yet due to its tripartite composition, employers' and employees' interest groups, as participants in decision-making, have a moral obligation to include the International Labor Organization's adopted principles into their own policies.

The ILO's strength lies in its standard setting work on labor and workplace rights. Its tripartite structure brings together employers, employee organizations and government representatives (its constituents) but it excludes the direct participation of NGOs. In advising governments on steps that can be taken to comply with core labor standards, it fulfills a critical role. It has various supervisory mechanisms for dealing with complaints about failures by member States to apply ILO Conventions they have ratified, which can be raised by international workers' organizations, employees or governments. It has also established the Committee on Freedom of Association to examine complaints that member States of the ILO are not respecting basic principles of freedom of association, even when the country concerned has not ratified the relevant ILO Conventions. In June 2000, the ILO took the unprecedented step of adopting a resolution, which called upon its constituents to review all links with Burma and cease any relations that might aid its military junta to abet forced labor.^{viii}

ILO's World Commission on the Social Dimension of Globalization concludes in its final report of 2004, "A Fair Globalization: Creating Opportunities for All," that the globalization process enabled corporations to increase their global reach and market power.^{ix} This development requires new forms of regulation with regard to human rights and the participation of concerned groups.^x Beside market forces that urged corporations to accept core labor standards,^{xi} the ILO World Commission on the Social Dimension of Globalization concluded that further reforms of the multilateral system are required in order to make international (economic) relations more democratic, participatory, transparent and accountable.^{xii} While referring to and reflecting ILO standards, the UN Norms are a step in this direction, offering a comprehensive outline of the human rights responsibilities of States and corporations.

UN Global Compact

The UN Global Compact is a ‘voluntary corporate citizenship initiative,’ which was launched by the UN Secretary-General in 2000. The initiative attempts to bring together companies, UN agencies, civil society, and labor organizations in support of ten principles drawn from international declarations. These principles offer general guidelines for corporate behavior related to human rights, labor standards, environment, and anti-corruption.^{xiii} However, in terms of human rights, the principles are extremely vague.

While companies are asked to mainstream the ten principles within their spheres of influence, the UN Global Compact explicitly denies that it is a regulatory initiative. Instead, it claims to offer a values-based platform for voluntary peer review and institutional learning. Participants are encouraged to share case studies of good practices and to participate in policy dialogues. However, the Global Compact has rarely encouraged companies to consider or pilot specific models or best practices related to the principles.

Companies that wish to join the UN Global Compact must have their chief executive send a letter of support for the Compact and its ten principles to the UN Secretary-General. Companies are also asked to enact and annually report on changes in accordance with the ten principles, which they also agree to publicly advocate. However, the UN Global Compact does not have monitoring or enforcement mechanisms. Based on a revised policy in October 2002, names of participating companies are now published, allowing for greater public scrutiny, yet there is no clear means for contesting a company’s membership, even when it allegedly violates the ten principles. Due to the lack of a more transparent process for evaluating participation, there is a danger that companies are able to use their affiliation for public relations purposes without accountability.

UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Right

The UN Norms are the most comprehensive statement of the human rights norms relevant to companies. In relation to human rights, they are far more complete than many competing individual company codes and industry-wide standards, as well as the OECD, ILO, or Global Compact standards, many of which do not even mention human rights or only refer to them in general terms. Moreover, the UN Norms apply to all companies, providing a common template amidst many competing voluntary code of conducts. As a first attempt to outline a comprehensive normative framework for corporate behavior, the UN Norms form the basis upon which to build an international, universally recognized, normative framework for business, which would also set out minimum standards that states should reflect in their domestic laws.

Significantly, the UN Human Rights Norms for Business fill a gap in the international human rights framework, capable of assisting NGOs, governments, and companies as

they attempt to frame and identify companies' responsibilities in relation to human rights. Human rights are claims on those with power to act in certain ways to respect and protect rights. Large global companies do wield increasing power, so it is natural that responsibilities should be placed on their exercise of that power. The UN Norms strike the right balance between the obligations of governments and those of companies. They recognize that governments have the primary responsibility to respect, protect and fulfill human rights. In turn, companies' obligations are limited to their sphere of activity and influence. In most cases, this would apply to their employees and to the communities in which they operate.

For corporations wrestling with the complexity of international business, the UN Norms and the accompanying commentary adopted by the Sub-Commission offer a tool for evaluating current practices and ethics in order to avoid direct or indirect implication in human rights violations while allowing them to contribute to a more just and fair international business environment. As a universally applicable accountability framework, the UN Norms would have the potential to level the field between competing companies, setting a common standard for monitoring and enforcement while favoring more equal conditions and just practices worldwide.

Outstanding Issues

(To help the OHCHR identify priorities for its study, ESCR-Net Members are encouraged to share their views about which issues, relating to transnational corporations and human rights, ought to be addressed in the study or highlighted as areas requiring further elaboration. These issues might be linked to particular instruments, or they might represent more general yet unaddressed concerns.)

Recommendations

(Our hope is to develop one to three clear recommendations for the OHCHR report to the Commission, after receiving inputs from ESCR-Net Members. One emerging recommendation is that the OHCHR should be given more time by the UN Commission on Human Rights to study the issue of the responsibilities of transnational corporations and related business enterprises with regard to human rights in greater depth. To this end, it might be recommended that the OHCHR prepare an interim report for the next UN Commission on Human Rights and request authorization to continue its consideration of these issues for another year.)

(Additionally, we envision similarly revising the above sections of this Draft Framework, based on inputs, for the purpose of creating a Joint Statement of Support that will be opened for endorsement.)

30 July 2004

ⁱ Member countries of the OECD are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the UK, and the USA. Seven non-member countries - Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia - have also declared their adherence to the *Guidelines*.

ⁱⁱ *Guidelines*, op. cit., I. Concepts and Principles, 1 & 2.

ⁱⁱⁱ *Guidelines*, op. cit., II. General Policies.

^{iv} *Guidelines*, op. cit., II. General Policies, 2.

^v *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises* (Paris: OECD, 2000), 4.

^{vi} ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy vom 17. November 2000, adopted by the Governing Body of the International Labor Office at its 204th Session (November 1977) as amended at its 279th Session (November 17, 2000; Official Bulletin, Vol. LXXXIII, 2000;

<http://www.ilo.org/public/english/employment/multi/download/english.pdf>)

^{vii} ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at the 86th session (June 18, 1998); ILO Doc. GB.279/12;

http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE?var_language=EN)

^{viii} ICFTU, Practical Contents of the 88th ILO Conference Resolution on Burma. The International Labor Conference at its 88th Session (May-June 2000) adopted a resolution under article 33 of its constitution on Burma which, *inter alia*: “*recommend[ed] to the Organization’s constituents as a whole – governments, employers ad workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with [Burma] and take appropriate measures to ensure that [Burma] cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labor (...) and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body*”.

^{ix} Point 147, p. 37; point 199, p. 42; point 344, p. 77.

^x Point 358, p. 79.

^{xi} Point 427, p. 95; Point 550ff., p. 122ff.

^{xii} Point 598, p. 133.

^{xiii} The original nine principles of the UN Global Compact, as well as the tenth principle against corruption (added at the first Global Compact Leaders Summit on 24 June 2004), can be found, together with a list of participating companies, on their website, at <http://www.unglobalcompact.org/Portal/Default.asp>.