



**International Network for Economic, Social & Cultural Rights**  
**Red Internacional para los Derechos Económicos, Sociales y Culturales**  
**Réseau international pour les droits économiques, sociaux et culturels**

## **UN Human Rights Norms for Business: Briefing Kit**

### ***International Network for Economic, Social and Cultural Rights***

The International Network for Economic, Social and Cultural Rights (ESCR-Net) is a collaborative initiative of groups and individuals from around the world working to secure economic and social justice through human rights. ESCR-Net seeks to strengthen the field of all human rights, with a special focus on economic, social and cultural rights, and further develop the tools for achieving their promotion, protection and fulfillment. By facilitating joint actions, enhancing communications and building solidarity across regions, the network seeks to build a global movement to make human rights and social justice a reality for all. For more information on the activities of ESCR-Net, please visit our website at: [www.escr-net.org](http://www.escr-net.org).

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# UN Human Rights Norms for Business: Briefing Kit

*January 2005*

## **Purpose of this Briefing Kit**

We are eager to share this Briefing Kit on the UN Human Rights Norms for Business (UN Norms). We hope that it will be a useful tool for education, advocacy and lobbying. A table of contents on the next page will guide you through the information sheets, issue-oriented appendixes, and case studies.

We encourage you to use and to distribute this Briefing Kit. The UN Norms represent an important step towards greater corporate accountability. Before and during the next Commission on Human Rights (March-April 2005), the lobbying efforts of many groups will be necessary to support the ongoing development and implementation of the UN Norms. We also hope that many groups will begin to use the UN Norms as a framework for documenting and challenging corporate human rights abuses, for assessing national legislation and implementation, and for related efforts to build corporate accountability.

We look forward to working with you over the coming months. To become involved in collective efforts to support and to utilize the UN Human Rights Norms for Business, we encourage you to join the Corporate Accountability Discussion Group, by sending a blank email to [ESCR-corp-accountability-subscribe@yahogroups.com](mailto:ESCR-corp-accountability-subscribe@yahogroups.com). Other possibilities for action are outlined in Information Sheet 4: How to Take Action.

## **Contributors to this Briefing Kit**

This briefing kit has been compiled and drafted by the International Network for Economic, Social, and Cultural Rights (ESCR-Net), in partnership and close collaboration with:

- ? Justiça Global-Global Justice Center (Brazil)
- ? Centro de Derechos Humanos y Medio Ambiente-Center for Human Rights and Environment (CEDHA, Argentina)
- ? Women's Environment and Development Organization (WEDO)
- ? Rights and Accountability in Development (RAID)
- ? Amnesty International
- ? Oxfam Community Aid Abroad (Australia)
- ? FORUM Menschenrechte (Germany).

We would also like to express thanks to Movement for the Survival of the Ogoni People (MOSOP, Nigeria) and Habitat International Coalition-Housing and Land Rights Network (Egypt) for sharing information and documents that informed this project. Finally, we are grateful to Human Rights Watch for contributing materials for a case study.

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## **Information Sheet 1: Why We Need the UN Human Rights Norms for Business: An Overview**



With the recent wave of economic globalization, corporations have become powerful actors, able to shape policy and to operate across national boundaries, limiting the capacity of individual governments to consistently regulate corporate activities. Largely due to challenges from civil society against corporate human rights abuses, a number of voluntary initiatives have been developed over the past couple decades. While representing a valuable first step, these voluntary standards often lack international legitimacy; have no independent monitoring; and do not provide adequate accountability mechanisms. Very few codes refer to human rights, and if they do so, it is only in general terms. The UN Human Rights Norms for Business (UN Norms) represent an important step forward, providing a common and comprehensive international statement of the human rights responsibilities of companies.

### **What are the UN Human Rights Norms for Business?**

Written in consultation with unions, business and NGOs, the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (UN Norms), were adopted by the Sub-Commission on the Protection and Promotion of Human Rights in August 2003. While recognizing the primary role of States in guaranteeing human rights, the UN Norms identify the key human rights responsibilities of companies (Article 1). In doing so, the UN Norms create an important advocacy tool for NGOs, assist government efforts to establish compatible and socially beneficial regulatory regimes across national boundaries, and can be used as a benchmark for corporate conduct, helping corporations to improve their human rights performance. This common, minimum standard will create a level-playing field for all companies, while leaving ample scope for the more enlightened and progressive companies to adopt higher standards.

### **What issues do the UN Norms cover?**

The UN Norms address the human rights responsibilities of businesses within their 'spheres of activity and influence.' These responsibilities include ensuring equal opportunity and non-discrimination; not violating or benefiting from the violation of the security of persons; protecting workers' rights, including freedom from forced labor and exploitation of children, safe and healthy working environments, adequate remuneration, and freedom of association; avoiding corruption and maintaining transparency; respecting economic, social and cultural rights; and ensuring consumer protection, public safety, and environmental protection in business activities and marketing practices, including observance of the precautionary principle. The UN Norms also outline potential steps for implementation and enforcement.

### **What is the legal status of the UN Norms and how do they relate to other standards and initiatives that address the human rights responsibilities of corporations?**

The UN Norms are not an international treaty open to ratification by States; therefore, they are not legally binding on states or corporations. However, for the most part, the text of the UN Norms draws on existing human rights law and principles, which embody moral and political commitments of governments and corporations and represent standards of law in development. The UN Norms were drafted with a normative tone via a formal, consultative UN process. By compiling and framing the human rights responsibilities of business, the UN Norms provide a comprehensive document that can be used by human rights advocates, companies and governments and referred to by national and international tribunals.

### **How can the UN Norms be strengthened by the Commission on Human Rights?**

From 14 March-22 April 2005, the UN Commission on Human Rights will consider the UN Norms and the report that it requested from the Office of the High Commissioner for Human Rights (OHCHR). This report will outline the scope and legal status of current standards and initiatives regarding the human rights responsibilities of business, as outlined in consultations with diverse stakeholders. In response, the Commission can request the continuation of consultations led by OHCHR. These consultations would ideally strive for regional and gender balance and the inclusion of impacted communities. Most importantly, the Commission can work towards adopting and implementing a universally applicable set of norms, built on the UN Norms.

## **Information Sheet 2: History of Efforts in Support of the UN Human Rights Norms for Business**



Rights and Accountability in Development (RAID), Amnesty International, and ESCR-Net launched a campaign in support of the UN Human Rights Norms for Business in 2004, in concert with other corporate accountability groups and coalitions.

#### **Advocacy at the Commission on Human Rights 2004**

The objective of the first phase of the campaign was to ensure that the UN Commission on Human Rights refrained from any rushed judgment or consideration of the UN Norms, approved by the Sub-Commission on the Protection and Promotion of Human Rights in August 2003. A Statement of Support (available at: <http://www.escr-net.org/EngGeneral/unnorms2.asp>) was endorsed by nearly 200 NGOs, trade unions, businesses, and 175 individuals from around the world, and was delivered during the 60<sup>th</sup> Session of the Commission (April 2004). Due to this strong endorsement – together with the critical push of NGOs in Geneva – and despite opposition from business associations and some governments, the Commission decided for the first time to place the human rights responsibilities of companies on their agenda.

#### **Collective Submissions to and Consultations with OHCHR 2004**

The Commission on Human Rights requested that the UN Office of the High Commissioner for Human Rights (OHCHR) compile a report that identifies options for strengthening corporate accountability standards and for possible means of implementation regarding companies' responsibilities with respect to human rights. OHCHR consulted with multiple stakeholders, including ESCR-Net. In response, we drafted and compiled a collective report, composed of the contributions of thirty ESCR-Net members. Based on our final report and collective recommendations, the ESCR-Net Corporate Accountability Working Group is beginning to undertake advocacy and lobbying efforts in preparation for the next Commission.

As an initial step, over fifty groups and individuals endorsed the Joint Submission to OHCHR on the Human Rights Responsibilities of Business ([http://www.escr-net.org/GeneralDocs/Joint\\_Submission\\_en.pdf](http://www.escr-net.org/GeneralDocs/Joint_Submission_en.pdf)), which emphasizes the importance of the UN Norms and the need to strengthen corporate accountability with regard to human rights. The Joint Submission combines our shared recommendations and an overview of key issues; it was presented to OHCHR during two consultations in October 2004.

#### **Education, Documentation, and Implementation**

Discussions and seminars on the UN Norms at the Social Forum of the Americas, the European Social Forum, and the World Social Forum, have been complemented by expert meetings and the efforts of individual organizations. Ongoing education of civil society groups and workers, as well as governments and corporations, is essential for the implementation and growing legitimacy of the UN Norms.

Another important step is to roll out the UN Norms by beginning to use them in practice – for groups to be able to document their own cases as well as contribute toward the strengthening of the Norms by applying them. Women's Environment and Development Organization (WEDO) is analyzing and attempting to apply the UN Norms with reference to women. Fundación Centro de Derechos Humanos y Ambiente (CEDHA) has proposed assessing and strengthening national legislation in light of the UN Norms. Utilizing the framework of the UN Norms, ESCR-Net is eager to support communities impacted by corporate abuses in documenting, publicizing and advocating their cases.

#### **Commission on Human Rights 2005**

Prior to the 61<sup>st</sup> Session of the Commission on Human Rights, from 14 March to 22 April 2005, civil society groups have an important role to play in ensuring that their government representatives to the Commission are aware of the UN Norms and their importance in protecting workers, communities, and national sovereignty while strengthening corporate accountability for human rights. The Commission will consider the report of OHCHR and identify options for strengthening corporate accountability with regard to human rights. As groups lobby their governments before and during the Commission in support of developing the UN Norms, the set of recommendations in this kit will hopefully serve as a common platform. To take further action or to become involved in lobbying efforts, please see the sheet entitled: 'How to Take Action.'

## **Information Sheet 3: Key Recommendations in Support of the UN Human Rights Norms for Business**



The following recommendations were outlined in a Joint Submission to UN Office of the High Commissioner for Human Rights (OHCHR) on the Human Rights Responsibilities of Business, endorsed by over fifty organizations and individuals, and presented by NGOs to OHCHR during consultations in October 2004. During these consultations, members of the International Network for Economic, Social and Cultural Rights (ESCR-Net) and other NGOs emphasized the importance of a common, international standard setting out the human rights responsibilities of business, based on the UN Norms. Recognizing the short timeframe and lack of resources for consultation, we noted that further time and resources for consultation should focus on grassroots civil society groups and social movements, particularly in developing countries. Additionally, echoing multiple submissions to ESCR-Net, we stressed the importance of implementation and accountability, beginning with the use of existing human rights mechanisms. As stated in the Joint Submission, we encourage OHCHR to:

- ? Call for an extension of the reporting and consultation process beyond the 2005 session of the UN Commission on Human Rights, to ensure that in-depth analysis of the issues can be developed by OHCHR, with a view to enabling the Commission to have the time and the research necessary to adequately address this important topic.
- ? Ensure that the process of consultation is open, transparent and effective, and that the consideration of the human rights responsibilities of transnational corporations and related business enterprises will be continued. Ideally, this will lead to growing awareness and clarification amongst different actors of the human rights responsibilities of business.
- ? Recognizing the limits of diverse voluntary standards and initiatives, press for the establishment and endorsement of a common, international standard setting out the human rights responsibilities of business. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, approved by the Sub-Commission on the Promotion and Protection of Human Rights, should form the basis for this normative framework, as the leading example of a detailed code of human rights standards applicable to companies.
- ? Clarify that while states have primary obligations to promote, respect, protect, and fulfill human rights, transnational corporations and other business enterprises have corollary human rights responsibilities within their spheres of influence. These human rights responsibilities are not new; however, they are beneficially outlined in The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.
- ? As an initial step towards implementation and enforcement of greater corporate accountability with regard to human rights, develop mechanisms to review and assess the success of individual corporations in meeting their human rights responsibilities.

In accepting these recommendations, we encourage the UN Commission on Human Rights to pursue a process that will lead to the adoption of a universal, international standard based on the UN Norms. In order to address outstanding issues and to further explore mechanisms for implementation, we encourage the Commission to continue multi-stakeholder consultation led by OHCHR. Consultation should be transparent and open to all stakeholders, with OHCHR ensuring regional and gender balance and the participation of impacted communities. We also encourage the appointment of a special advisor to the Secretary General, recommended by the High Commissioner for Human Rights, in order to provide expert advice on existing international law relating to business and human rights, to clarify concepts like corporate complicity and sphere of influence, and to offer options for future development. This process should be reviewed yearly by the Commission until the adoption of a common international standard, based on the UN Norms and able to ensure protection of human rights and effective remedies and redress in the case of violations.

## **Information Sheet 4: How to Take Action in Support of the UN Human Rights Norms for Business**



- ? **Share this briefing kit with other groups in your region or networks. Join and encourage others to join the ESCR-Net Corporate Accountability Discussion Listserv to stay informed about efforts in support of the UN Norms.** We encourage you to copy and distribute this briefing kit. An electronic copy of this briefing kit is available at: <http://www.escr-net.org/EngGeneral/unnorms1.asp>. Our hope is that it will serve as a resource for communities and workers, while inspiring groups to begin to utilize the UN Norms in their analysis and advocacy. In order to participate in ongoing discussions and efforts in support of the UN Norms, we encourage you to join the ESCR-Net Corporate Accountability Discussion Group by sending a blank email to: [ESCR-corp-accountability-subscribe@yahoogroups.com](mailto:ESCR-corp-accountability-subscribe@yahoogroups.com).
- ? **Agree to lobby your government officials in support of the UN Norms prior to the next UN Commission on Human Rights and send the outcomes of your meetings with government representatives to [ESCR-corp-acct-wg@yahoogroups.com](mailto:ESCR-corp-acct-wg@yahoogroups.com).** Before the UN Commission on Human Rights, from 14 March to 22 April 2005, we hope that many groups will become active in lobbying their government in support of the UN Human Rights Norms for Business. Lobbying efforts could be directed to heads of country delegations to the Commission on Human Rights, heads of missions in Geneva, key parliamentarians, and national human rights institutions. A list of the Member States of the 61<sup>st</sup> Commission on Human Rights is available at: <http://www.ohchr.org/english/bodies/chr/docs/61chr/2005members.doc>. Efforts might valuably be focused on Regional Coordinators for the Commission: Mr. Fisseha Yimer (Ethiopia) for Africa, Mr. Hyuck Choi (Republic of Korea) for Asia, Mr. Zhorab Mnatsakanian (Armenia) for Eastern Europe, Mr. Luis Alfonso de Alba (Mexico) for Latin American and the Caribbean, and Ms. Mary Whelan (Ireland) for the Western Group. The Commission also has a Bureau, chaired by Mr. Makarim Wibisono of Indonesia, which might be addressed; the full membership is available at: <http://www.ohchr.org/english/bodies/chr/docs/61chr/2005bureau.doc>.
- The materials in this kit will ideally provide a basis for lobbying. However, we also encourage you to send an email to [ESCR-corp-acct-wg@yahoogroups.com](mailto:ESCR-corp-acct-wg@yahoogroups.com) if you are planning to undertake lobbying efforts, so that we can provide you with additional information as it becomes available. During the Commission, the support of groups in their home countries will continue to be vital.
- ? **Attend the 61<sup>st</sup> UN Commission on Human Rights in Geneva.** Although lobbying prior to the Commission on Human Rights is particularly important, we are eager to have a significant presence in Geneva to support the UN Norms, to meet with delegations, and to attend sessions of the Commission. Our hope is to have a coordinated effort during the Commission, with regular NGO meetings in Geneva and email briefings for groups working in their home countries. If you are able to be in Geneva, from 14 March to 22 April 2005, please let us know by sending an email to [ESCR-corp-acct-wg@yahoogroups.com](mailto:ESCR-corp-acct-wg@yahoogroups.com).
- ? **Begin to use the UN Norms as a tool for education, monitoring, documentation, implementation and advocacy.** We encourage you to join a strong number of groups eager to find collective ways to advocate for greater corporate accountability for human rights. These efforts might include organizing common days of action, collecting and publicizing case studies regarding corporate violations, or participating in solidarity actions with affected communities. The UN Norms provide a common, international framework that can be used for documenting and challenging corporate abuses, for strengthening government legislation, and in advocacy for greater implementation of corporate accountability. A number of groups working to strengthen corporate accountability are connecting through the ESCR-Net Corporate Accountability Discussion Group and its associated Working Group; please join us by sending a blank email to: [ESCR-corp-accountability-subscribe@yahoogroups.com](mailto:ESCR-corp-accountability-subscribe@yahoogroups.com). We are eager to support and share applications and analyses of the UN Norms, building on the Case Studies and Appendixes below.

## Information Sheet 5: Further Resources regarding the UN Human Rights Norms for Business



The following resources may be beneficial for those who want to learn more about the UN Human Rights Norms for Business (UN Norms) or who wish to be involved in strengthening corporate accountability by supporting and applying the UN Norms. Importantly, hundreds of organizations are working to strengthen corporate accountability and to support and utilize the UN Norms.

### **UN Human Rights Norms of Business with Commentary**

If you are receiving a printed copy of this briefing kit, the UN Norms and their associated commentary are contained at the end of Amnesty International's 2004 report, 'The UN Human Rights Norms for Business: Towards Legal Accountability.' Otherwise, the UN Norms and their commentary are available at:

#### **English**

UN Norms: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/08/PDF/G0316008.pdf?OpenElement>

Commentary: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/18/PDF/G0316018.pdf?OpenElement>

#### **Spanish**

UN Norms: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/11/PDF/G0316011.pdf?OpenElement>

Commentary: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/17/PDF/G0316017.pdf?OpenElement>

#### **French**

UN Norms: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/09/PDF/G0316009.pdf?OpenElement>

Commentary: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/15/PDF/G0316015.pdf?OpenElement>

#### **Arabic**

UN Norms: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/06/PDF/G0316006.pdf?OpenElement>

Commentary: <http://daccessdds.un.org/doc/UNDOC/GEN/G03/160/13/PDF/G0316013.pdf?OpenElement>

### **Office of the High Commissioner for Human Rights & UN Commission on Human Rights**

The Office of the High Commissioner for Human Rights (OHCHR) has a homepage on the UN Norms, including links to the submissions that it received in preparation for its report to the 2005 Commission on Human Rights, at: <http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm>. For those eager to learn more about the 61<sup>st</sup> Session of the UN Commission on Human Rights, Member States, available documents, and possibilities for NGO participation, OHCHR hosts a homepage at: <http://www.ohchr.org/english/bodies/chr/sessions/61/index.htm>.

### **The International Network for Economic, Social and Cultural Rights (ESCR-Net)**

ESCR-Net has a Working Group on Corporate Accountability, coordinated by Rights and Accountability in Development (RAID) and members of Amnesty International and World University Service-Forum Menschenrechte. Information on their Campaign to Strengthen Corporate Accountability, documents related to the UN Norms, and copies of this briefing kit in English, Spanish, and French are available at: <http://www.escr-net.org/EngGeneral/unnorms1.asp>. To get involved in the campaign and to share information on the UN Norms and other efforts, please join the Corporate Accountability Discussion Group by sending a blank email to [ESCR-corp-accountability-subscribe@yahoogroups.com](mailto:ESCR-corp-accountability-subscribe@yahoogroups.com).

### **Amnesty International**

Amnesty International's Economic Globalization and Human Rights homepage is available at: <http://web.amnesty.org/pages/ec-index-eng>. This site contains a series of reports and case studies, as well as resources on the UN Norms, including their 2004 report, 'The UN Human Rights Norms for Business: Towards Legal Accountability,' in English, Spanish, and French.

### **Business and Human Rights Resource Centre**

The Business and Human Rights Resource Centre is an independent, international, non-profit organization, which strives to promote greater awareness and informed discussion of important issues relating to business and human rights. Its online library covers over 1800 companies, 160 countries, and 150 topics, including a large section on the UN Norms, at: <http://www.business-humanrights.org/Home>.



# Case Study 1: The Construction of the Candonga Dam and the Communities of Santa Cruz do Escalvado, City of Rio Doce (Minas Gerais, Brazil)<sup>1</sup>

Prepared by the Global Justice Center, et. al.

## The Case

On June 23, 2004, the Candonga Consortium - a Brazilian company formed by the Vale do Rio Doce company and the Canadian-owned Alcan Alumínio do Brasil, to administer the hydroelectric project on the Doce river - began to fill the reservoir with the intent to start operating the dam by September 2004.

For the Candonga Consortium, the operation of the dam represents the fulfillment of their project to generate cheap energy for their industrial operations in Brazil. For Alcan in particular, which owns a 50% stake in the Consortium, this dam, represents one step towards a long-term project of generating their own energy for its aluminum factories. While Alcan generates only 10% of its own energy today, it aims to produce 60% in year 2007.<sup>2</sup>

Prior to reaching the operational stage of the dam project, a series of administrative and legal procedures are required by Brazilian authorities. Some of the legal requirements established in these proceedings have been satisfactorily fulfilled, and others have been only partially completed. Nonetheless, many requirements remain unfulfilled. With respect to the issues established in the pre-operations administrative and legal proceedings which remain incomplete, the report reveals a series of irregular practices and suspicious conduct on the part of Brazilian authorities.

Practically speaking, the commencement of operations at the dam is a tragedy for the families and workers who have lived in the Doce River Valley for over 300 years and for the environment of Minas Gerais, Brazil. The flooding of their homeland represents a final defeat in their six-year struggle against the Candonga Consortium to preserve the River and their cultural heritage and to ensure their social and economic survival. This case reveals the role played by multinational corporations in the developing world, where they pursue resources and projects in ways that would not be permitted in their home countries.

## Responsibility of Alcan, the Candonga Consortium and the Brazilian government

Alcan and the Candonga Consortium have acted unfairly, abusively and violently towards the communities affected by the construction of the dam on the Doce River throughout the negotiation, installation, licensing, and operation processes. The Consortium has shown a serious lack of transparency in their dealings with the families and the government in the Candonga project. Their tactics for negotiating with residents in the affected communities have relied on psychological pressuring, creating a great deal of stress and anxiety and aggravating physical and mental health problems of members of the communities. Indeed, Alcan and its partner have forcefully destroyed the residents' houses, lands, and fundamental lifestyle in a rural Brazilian village, abruptly transferring the residents to a modern and urban city environment, where they now live completely detached from their social and cultural references, without any access to the river, with no means of subsistence and with no hope of economic prosperity and personal and professional development.

Well aware of these occurrences, some of which were even officially sanctioned by opinions and reports issued by the Minas Gerais State Foundation for the Environment (FEAM), the Brazilian authorities should have put an end to the undertaking immediately. Instead, the government abandoned its responsibilities and

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<sup>1</sup> Report prepared by the Global Justice Center, the Movement for Populations Affected by Dams, Section of Minas Gerais (Movimento dos Atingidos por Barragens – Minas Gerais – MAB-MG), the Pastoral Land Commission of Minas Gerais (Comissão Pastoral da Terra – CPT), the Association for the Legal Representation of Populations Affected by Dams (Núcleo de Assessoria às Comunidades Atingidas por Barragens – NACAB), and the Association of Residents of the New District of São Sebastião do Soberbo (Associação dos Moradores do Novo Soberbo – AMNSO), November 2004. Available electronically at <http://www.global.org.br>

<sup>2</sup> Information available at Alcan Alumínio do Brasil's website, at <http://www.alcan.com.br/>.



became complicit in the actions of the Consortium through its successive approval of licenses. As such, by permitting those abuses, by choosing to endorse the option of constructing a hydroelectric project on the Doce River, by issuing all the approvals and administrative licenses and by lifting all legal impediments to the final operation of the dam, the municipalities of Santa Cruz do Escalvado and of Rio Doce, the State of Minas Gerais, and the Federative Republic of Brazil have failed to comply with their constitutional and legal obligations and in doing so have violated their duty to ensure adequate standard of living and adequate housing conditions to the population as provided for in international conventions.

### **Human Rights Violated in the Candonga Case: Violations to the Right to Adequate Housing**

Since the first political decision to give to foreign private multinationals the power and legal authorization to build a hydroelectric project to the adoption, supervision and follow-up of compensation and resettlements policies, the whole process was permeated with irregularities and was characterized by a complete disregard for the local populations and the environment. It led to the complete exclusion and impoverishment of the communities, the degradation of their housing and sustainability conditions, the lack of access to natural resources and the loss of their material, cultural, historical and affective patrimony developed over 300 years in the Doce River Valley. Among various components of the rights to adequate housing, the case violates the following components: **Legal security of tenure; Threats, pressures, violence and harassment throughout the negotiation process and during the relocation process; Availability of services, materials, facilities and infrastructure; Affordability; Habitability; Accessibility; Cultural Adequacy.**

Other violated rights in this case were: **Right to a Healthy Environment**<sup>3</sup>; **Human Dignity**<sup>4</sup>; **Right to Work**<sup>5,6</sup>; **Public Participation**<sup>7</sup>.

The Candonga case points out the need for an international human rights mechanism that can be applied to companies directly. Such a norm would even strengthen domestic laws already in place, which are avoided or dumped all together because of poor law enforcement, supervision and transparency.

### **The UN Norms**

Briefly, in relation to the present case, the following articles of the UN Human Rights Norms for Business would clearly apply to the violations committed by the Candonga consortium, thus providing the victims a further benchmark in their struggle for justice and human rights:

#### **A. General obligations**

*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.*

#### **B. Right to equal opportunity and non-discriminatory treatment**

*2. Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age - except for children, who may be given greater protection - or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.*

#### **E. Respect for national sovereignty and human rights**

*10. Transnational corporations and other business enterprises shall recognize and respect applicable norms*

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<sup>3</sup> U.N. Conference on Human Environment, Stockholm, June 16, 1972; U.N. Conference on Development and Environment held in Rio de Janeiro, June 14, 2002; Brazilian Constitution, § 225; see also National Environmental Policy Act.

<sup>4</sup> Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, Preamble and Section 1; Brazilian Constitution, s. 1 (III).

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights, 1966, § 6; Brazilian Constitution, § 1 (IV).

<sup>6</sup> Brazilian Constitution, § 174; Constitution of Minas Gerais, § 250 (X).

<sup>7</sup> Brazilian Constitution section 226 (1) (IV).



*of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate.*

*11. (...) Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights.*

*12. Transnational corporations and other business enterprises shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights.*

#### **G. Obligations with regard to environmental protection**

*14. Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.*

#### **H. General provisions of implementation**

*18. Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken.*



# Case Study 2: Union Carbide Corporation (UCC), DOW Chemicals and the Bhopal Communities in India

Prepared by Amnesty International (as PUBLIC ASA/20/005/2005)

## The Case

On the night of 2 December 1984, over 35 tons of toxic gases leaked from a pesticide plant in Bhopal owned by the US-based multinational Union Carbide Corporation (UCC)'s Indian affiliate Union Carbide India Limited (UCIL). The gases that leaked consisted mainly of at least 24 tons of poisonous Methyl Isocyanate (MIC) and other reaction products, possibly including toxins such as hydrogen cyanide, nitrous oxide and carbon monoxide.

In the next 2-3 days more than 7,000 people died and many more were injured. Over the last 20 years at least 15,000 more people have died from illnesses related to gas exposure. Today more than 100,000 people continue to suffer chronic and debilitating illnesses for which treatment is largely ineffective.

Efforts by survivors' organizations to use the US and Indian court systems to see justice done and gain adequate redress have so far been unsuccessful. The transnational corporations involved – UCC and Dow Chemicals (which took over UCC in 2001) – have publicly stated that they have no responsibility for the leak and its consequences or for the pollution from the plant. UCC continues to refuse to appear before the court in Bhopal to face trial and the Indian Supreme Court-endorsed final settlement has left survivors living in penury.

## The impact on human rights

Thousands of people in Bhopal were denied their right to life, and tens of thousands of people have had their right to health undermined. Those struggling for justice and the right to a remedy in Bhopal have been frustrated in their efforts. Thousands of poor families have suffered illness and bereavement, further impairing their ability to realize their right to a decent standard of living. Women facing social stigma as a result of gas exposure have been denied their right to freedom from discrimination. Those who were exposed to the gas, and those around the plant who continue to be exposed to contaminated water, have been denied their right to a safe environment.

## Role of Union Carbide Corporation

UCC owned 50.9% of the equity of UCIL, and maintained extensive corporate, managerial, technical and operational control over UCIL. Despite that, since the leak UCC has argued that the Bhopal plant was not under its control or management, and that UCIL was responsible, prior to the leak

The company decided to store quantities of the "ultra-hazardous" MIC in the Bhopal plant in bulk, but did not equip the plant with the corresponding processing or safety capacity. On the night of the gas leak crucial safety systems were not functional.

UCC transferred technology that was not proven and entailed operational risks. It did not apply the same standards of safety in design or operations to Bhopal as it had in place in the USA. Most importantly for those who lived and worked around the plant, and unlike in the USA, the company failed to set up any comprehensive emergency plan or system in Bhopal to warn local communities about leaks.

As early as in 1982, a UCC safety audit had highlighted many major and minor safety concerns regarding the Bhopal plant. There had been a number of accidents at the plant prior to the leak and local media and the workers' union had repeatedly raised safety concerns in public. Months before the December 1984 disaster, the UCC was warned of the possibility of a runaway reaction.

After the leak, UCC maintained that MIC was nothing more than tear gas even though the company's own manuals clearly said that MIC was a fatal poison. Till date UCC has refused to identify the reaction products released and related toxicological information of the products that leaked. This has prevented doctors from developing an appropriate treatment protocol for victims.



Later UCC also claimed that the leak was an act of sabotage caused by a disgruntled employee, whom it has since refused to name. After UCC was taken over by Dow Chemicals, both companies used the new ownership structure in an attempt to avoid any responsibility for the Bhopal disaster.

Urging that the case be thrown out of the USA, UCC argued before the US District Court that, "Indeed, the practical impossibility for American courts and juries, imbued with US cultural values, living standards and expectations, to determine living standards for people living in the slums or 'hutments' surrounding the UCIL, Bhopal, India, by itself confirms that the Indian forum is overwhelmingly the most appropriate. Such abject poverty and the vastly different values, standards and expectations which accompany it are commonplace in India and the third world. They are incomprehensible to Americans living in the United States." UCC has subsequently refused to submit itself to Indian jurisdiction.

### **Role of the Governments of India and Madhya Pradesh**

The government of India and the state government of Madhya Pradesh were aware that the Bhopal plant used hazardous substances and processes, There were also public warnings by the media and by workers' unions in the plant about dangerous conditions at the plant, as well as several accidents, some fatal. Just months before the accident, the state government granted legal titles to thousands of people who had built homes around the plant site. Nor did the government impose strict safety standards or press Union Carbide to review safety mechanisms.

In 1985 the government of India enacted the Bhopal Claims Act and took away from victims the right to represent themselves and vested itself with the exclusive right to represent victims. In 1989 the government agreed to a settlement with UCC. In return for a modest and arbitrarily determined financial payment to victims, the settlement bestowed sweeping civil and criminal immunity on UCC, trading off its legal liability, excluding the victims of the disaster from shaping the end of the case.

The payment of compensation to victims did not, however, begin until 1992 and involved numerous problems, including payment of inadequate sums, delayed payments, arbitrary rejection or downgrading of claims. Excessive bureaucracy in the claims process led to the entry of middlemen and rampant corruption, further reducing the amount of compensation money that victims were able to finally get.

In 1994, the Indian Council for Medical Research (ICMR) stopped all further research on the medical effects of the Bhopal disaster without explanation. The full results of the research carried out and the data with the ICMR have yet to be published.

The state Government efforts to provide rehabilitation have proven largely ineffective. The poor quality of the health care system has meant that most survivors have had to spend most of their compensation money on private medical treatment. The hospitals set for the treatment of gas victims provide only symptomatic treatment.

The social and economic rehabilitation measures have been poorly implemented and have failed to lessen the impoverishment of already economically vulnerable survivors. Those orphaned and widowed by the gas leak are in a particularly precarious condition.

### **Conclusions**

Governments have the primary responsibility for protecting the human rights of communities endangered by the activities of corporations, such as those employing hazardous technology. However, as the influence and reach of companies have grown, there has been a developing consensus that they must be brought within the framework of international human rights standards.

Amnesty International also maintains that there is no substitute for taking steps to regulate the activities of corporations in both host and home countries. Laws in host countries must be developed and enforced to allow national governments and local communities to control the activities of companies operating in their territory. Transnational corporations should avoid double standards in safety and adopt the best practices in all aspects of safety in all their operations.

The Bhopal disaster and its aftermath demonstrate clearly the need for an international human rights framework that can be applied to companies directly, that could also act as a catalyst for national legal reform,



and serve as a benchmark for national law and regulations. Ensuring public participation and transparency in decisions relating to the location, operational safety and waste disposal of industries using hazardous materials and technology is an essential step to heighten risk awareness and responsible behaviour as well as to ensure better preparedness to prevent and deal with the consequences of disasters like Bhopal.

The concerned Governments and the international community must ensure that victims of human rights violations have effective access to justice and effective redress for the harm suffered, without discrimination, and regardless of whether those responsible for the violations are governments or corporations.

## The UN Norms

The UN Norms did not exist at the time of the Bhopal disaster, and one cannot expect the UCC, UCIL, the government of India or the state government of Madhya Pradesh to have been guided by them. However what happened in Bhopal can leave no doubt about the importance of the UN Norms and the need for governments and transnational corporations to acknowledge the responsibilities of business enterprises with regard to human rights.

In relation to Bhopal the application of specific articles of the Norms would have helped UCC in identifying its human rights responsibilities. According to Article 14 of the UN Norms, transnational corporations and other business enterprises are responsible for the environmental and human health impact of their activities. The Commentary to Article 14 states:

- “(a) Transnational corporations and other business enterprises shall respect the right to a clean and healthy environment...”*
- “(b) Transnational corporations and other business enterprises shall be responsible for the environmental and human health impact of all of their activities...”*
- “(c) ...“on a periodic basis (preferably annually or biannually), transnational corporations and other business enterprises shall assess the impact of their activities on the environment and human health including impacts from... the generation, storage, transport and disposal of hazardous and toxic substances. Transnational corporations and other business enterprises shall ensure that the burden of negative environmental consequences shall not fall on vulnerable racial, ethnic and socio-economic groups.*
- “(e) Transnational corporations and other business enterprises shall respect the prevention principle... and the precautionary principle...”*
- “(f) Upon the expiration of the useful life of their products... transnational corporations and other business enterprises shall ensure effective means of collecting or arranging for the collection of the remains...”*
- “(g) Transnational corporations and other business enterprises shall take appropriate measures in their activities to reduce the risk of accidents and damage to the environment by adopting best management practices and technologies... and reporting of anticipated or actual releases of hazardous and toxic substances.”*

Other provisions of the UN Norms also address situations like that of the Bhopal disaster. Article 18, for example, calls on transnational corporations and other business enterprises to make reparations for damage done through their failure to meet the standards spelled out in the Norms:

*“Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages, in regard to criminal sanctions, and in all other respects, these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law.”*

Article 17 calls on states to have in place the necessary legal and administrative framework to give effect to the Norms:

*“States should establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises.”*



# Case Study 3: Placer Dome and the Marinduque Mine, the Philippines

Prepared by Oxfam Community Aid Abroad (Australia)

Since 2000, the Mining Ombudsman Project has monitored Australian mining companies, investigating and reporting on claims of human rights violations, particularly against indigenous communities. Often, these mining companies are operating in areas that are rich in natural resources but have minimal or no modern development or cash economies. In assessing and highlighting cases, it is important to remember the fundamental dignity and needs of the people in affected and impoverished communities. The protection and promotion of human rights by all entities, companies, governments and individuals is fundamental for poverty alleviation and sustainable development. What is also important to remember is that these rights are about protecting the lives and livelihoods of ordinary people, and that this can sometimes get lost in high level discussions, particularly when the people most impacted are not present to represent themselves.

## The Case

The Marinduque Mine, in the Philippines, serves to clearly highlight the need for greater corporate accountability with regard to human rights. Placer Dome, a major transnational mining company, was a forty percent shareholder in the mine. Placer Dome also recently won a World Bank corporate social responsibility award for its work on HIV. In 1975, Placer Dome began mining at the Marcopper mine with the support and 40 % investment of front companies for Ferdinand Marcos, who was the world's second most corrupt dictator according to Transparency International. Through to 1991, heavy metal-contaminated waste from the mine was pumped at surface level into Calancan Bay, which till then had had a rich fishing industry. While Placer Dome and the government reaped hundreds of millions of dollars in profit, the community was soon contending with toxic tailings stretching six kilometers into their bay and spreading 80 kilometres across the seabed.

Government health tests have found large numbers of children to be suffering from lead poisoning, while the entire community has also contended with arsenic and cadmium poisoning. In 1993, a tailings dam at the Marcopper mine broke, flooding the Mogpog River with mine waste and rock, killing two young children, flooding the town of Mogpog and contaminating agricultural land. This disaster has never been cleaned up, with Placer Dome denying responsibility and claiming *force majeure* due to a typhoon. In 1996, a second massive spill contaminated the Boac River and finally drew international and national condemnation. After admitting responsibility for the second spill, Placer Dome set up a fund for the clean up, left a holding company and divested from the Philippines in 1997, avoiding charges brought against two of its employees and significant compensation claims.

## The UN Human Rights Norms for Business

The right to fresh, clean water was violated by the dumping of lead, cadmium, and arsenic. The right to food has been threatened by the contamination and death of fish populations, which provided the primary source of protein for the seaside communities. The company maintained double standards in the Philippines that would not have been tolerated in its home country of Canada or in Australia, where its shares are traded on the stock exchange. The right to informed consent and participation was definitely denied to the community. Risk assessments were not made available, and the right to information continues to be denied. A report completed by the Asian Development Bank has still not been released, while company documents remain inaccessible.

The outstanding issues raised by the Marinduque Mine are unfortunately numerous. The precautionary principle, highlighted in the UN Norms, was completely ignored. While the surface dumping of waste was undertaken in contravention of its environmental permit, mine operations were insulated from scrutiny by the joint ownership and complicity of the corrupt Marcos regime. For example, in 1981 when the Philippines Pollution and Abatement Board attempted to stop the surface dumping the company appealed to the President for it to continue. Even in 1989, when Aquino challenged the surface dumping the company cut the island's power supply.



After divesting several years later, Placer Dome denied responsibility for its domestic entity, which has no capital to conduct clean-ups or pay compensation at Calancan Bay or the Mogpog River. It is only at Boac that some funds have been provided and some clean up has occurred but even this has proved inadequate and it is still incomplete after 8 years. People feel as if they are being left to die, while Placer Dome has won awards for its corporate social responsibility. Company executives are quick to speak about 'leaving the past in past' and concentrating on changed practices into the future, but what does this mean for the people of Marinduque? Today, Marcopper is pushing to re-open the mine, against the demands of the local government and despite the ongoing lead poisoning of children and destruction of the fishing industry.

Human rights begin with human dignity and embody the claims that are fundamental to being a person. Companies are regularly denying these rights. Corporate accountability, as outlined in the UN Norms, has become vital to the health and survival of many communities. The rights set out in the UN Norms are not revolutionary, they are the basic protections being demanded by communities who are most impacted by companies and recognized as most fundamental for poverty alleviation and sustainable development. What's more, much of what is contained within the UN Norms, companies are claiming they do anyway in the corporate social responsibility reports – so why do they have a problem with the norms?



# Case Study 4: SHELL Petroleum Development Corporation (SPDC) and the Community of Rukpokwu, Rivers State, Nigeria

Prepared by Amnesty International (as PUBLIC AFR 44/031/2004)

## The Case

On 3 December 2003, part of an oil pipeline in Rukpokwu in Rivers State burst, devastating the once fertile land around it. The resulting oil spill destroyed farmlands, fish ponds and water wells, and deprived farming families of vital income. The pipeline is operated by the Shell Petroleum Development Corporation in partnership with the Nigerian National Petroleum Corporation. But neither Shell nor the Nigerian government have cleaned up after the spill.

One of those affected is community leader Chief Jonathan Wanyanwu, who bought his land near the site in 1965. Since then there have been three oil spills originating from the same pipeline. Before the oil spill, the fields yielded palm oil for sale and food for the family. They provided an adequate standard of living, a right enshrined in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. But now, he says, 'My trees are burnt to ashes. The soil is now contaminated and bad. I fear that during the rainy season the oil spill will double and all the trees will be under the mix of oil and water'.

Nigeria's Oil Pipelines Act provides for compensation to anyone suffering as a result of a leakage from a pipeline, at a level proportionate to the gravity of the damage caused. After the first and second oil spills, in 1996 and 2001, Chief Joanathan Wanyanwu lost all his trees. He was offered 9,400 naira (approximately US\$70). But in a normal season, these trees would provide him and his family an income of about 500,000 naira (approximately US\$3,770) a year. Now, following the third oil spill the trees are completely useless. So far, Chief Jonathan Wanyanwu has been offered no compensation for this most recent disaster.

*"...our only source of drinking water, fishing stream and farmlands covering over 300 hectares of land with aquatic lives, fishing nets and traps, farm crops, animals and economic trees worth several billion naira are completely destroyed by the spillage and was made worse by the three separate fires that broke out of the spill site".*

Chief Clifford E. Enyinda, Mgbuchi community, and Azunda Aaron speaking to the Nigerian daily *This Day*

The case of the Rukpokwu community is an example of how the right to adequate standard of living, including adequate food, and the right to water have been violated as a result of the environmental damage caused by the oil spill from a leaking pipeline. Prior to the oil spill, the communities relied on the fields for cultivation and on the pond for fishing and collecting drinking water. Because of the contaminated water, now they have lost the income derived from the sale of fish, and the products from the lands.

**The UN Norms for Business<sup>8</sup>** are the most comprehensive statement of standards and rules relevant to companies in relation to human rights. They reflect the framework of human rights standards enshrined in a variety of treaties and other instruments that already have international agreement and should therefore be used as the main basis to enable companies to fulfil their responsibilities in relation to human rights.

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<sup>8</sup> UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights E/CN.4/Sub.2/2003/12/Rev.2 and Commentary E/CN.4/Sub.2/2003/38/Rev.2. See [http://web.amnesty.org/pages/ec-unnorms\\_2-eng](http://web.amnesty.org/pages/ec-unnorms_2-eng)



In relation to the case above the application of specific articles of the Norms would have helped SPDC in identifying its human rights responsibilities.

According to Article 14 of the UN Norms, TNCs and other business enterprises are responsible for the environmental and human health impact of their activities.

The Commentary to Article 14 states:

*“(a) Transnational corporations and other business enterprises shall respect the right to a clean and healthy environment....*

*(b) Transnational corporations and other business enterprises shall be responsible for the environmental and human health impact of all of their activities....*

*(c) ... “on a periodic basis (preferably annually or biannually), transnational corporations and other business enterprises shall assess the impact of their activities on the environment and human health including impacts from... the generation, storage, transport and disposal of hazardous and toxic substances. Transnational corporations and other business enterprises shall ensure that the burden of negative environmental consequences shall not fall on vulnerable racial, ethnic and socio-economic groups.*

*(e) Transnational corporations and other business enterprises shall respect the prevention principle...and the precautionary principle...*

*(f) Upon the expiration of the useful life of their products... transnational corporations and other business enterprises shall ensure effective means of collecting or arranging for the collection of the remains...*

*(g) Transnational corporations and other business enterprises shall take appropriate measures in their activities to reduce the risk of accidents and damage to the environment by adopting best management practices and technologies...and reporting of anticipated or actual releases of hazardous and toxic substances.”*

Other provisions of the UN Norms also address situations like that found in the Niger Delta.

Article 18 calls on TNCs and other business enterprises to make reparations for damage done through their failure to meet the standards spelled out in the UN Norms.

UN Norms Article 18: Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages, in regard to criminal sanctions, and in all other respects, these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law



# Case Study 5: Use of Caterpillar Bulldozers in House Demolitions in the Occupied Palestinian Territories

## Human Rights Watch Letter to Caterpillar, Inc.

October 29, 2004

Dear Mr. Owens,

I am writing to present Human Rights Watch's newest report on Israel and the Occupied Palestinian Territories, which you will find enclosed. The report, [Razing Rafah](http://hrw.org/campaigns/gaza/) (<http://hrw.org/campaigns/gaza/>), documents a pattern of illegal mass home demolitions by the Israeli military in the Gaza Strip. It focuses on the southern town of Rafah, on the border of Egypt, where ten percent of the population has had their homes destroyed.

The Israel Defense Force (IDF) claims the destruction is required to block smuggling tunnels and for force protection. Based on extensive research in Gaza, however, Human Rights Watch determined that the IDF has destroyed many homes regardless of whether they posed a military threat, in contravention of international humanitarian law and human rights law. In Rafah alone, more than 16,000 people have lost their homes.

Of particular concern, and the reason for this letter, is the IDF's use of Caterpillar D9 bulldozers for these mass demolitions of private property in Rafah and other parts of the Occupied Palestinian Territories (OPT). As you may know, the IDF purchases D9s through the U.S. government's Foreign Military Sales Program. They are then armored by Israel Military Industries in Israel. In Gaza and the West Bank, they are the main tool and vehicle the IDF uses to destroy homes, raze agricultural land and demolish infrastructure used by the civilian population.

Razing Rafah documents this destruction in detail, as well as the deleterious impact it is having on the civilian population. As recently as May 2004, the IDF extensively used D9s to destroy large swaths of greenhouses without military justification. The "ripper" blade on the D9's back tore up over 50% of Rafah's roads and water pipes, causing sewage and drinking water to mix. More than 298 homes were destroyed.

We note Caterpillar's stated commitment to social responsibility, as described in the company's code of conduct, including the company's willingness to "take into account social, economic, political, and environmental priorities." We welcome that verbal commitment and call on you to implement it with regard to Israel and the OPT.

Since 2003, the United Nations has begun to develop standards for corporations in the form of the U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. That document states that companies should not "engage in or benefit from" violations of international human rights or humanitarian law and that companies "shall further seek to ensure that the goods and services they provide will not be used to abuse human rights." Human Rights Watch is concerned that Caterpillar's continued sales of the D9 bulldozer to Israel indicates that Caterpillar has not taken meaningful steps to ensure its products are not used in the commission of human rights violations.

In response to complaints from the organization Jewish Voice for Peace about the D9's use in illegal home demolitions, you wrote in August 2003 that Caterpillar has "neither the legal right nor the ability to monitor and police individual use of that equipment." The claim was repeated in a Caterpillar statement on the Middle East available on the company website. "We believe any comments on political conflict in the region are best left to our governmental leaders who have the ability to impact action and advance the peace process," the statement said.

Human Rights Watch believes that Caterpillar does indeed have an obligation to prevent its equipment



from being used to commit violations of international humanitarian and human rights law, particularly when such abuses are brought to its attention. Specifically, we urge the company to abide by standards such as the U.N. Norms by rejecting sales to governments or other parties where there is reliable information that the company's product is being used in the perpetuation of human rights violations. More concretely, we call on Caterpillar to do the following:

- Suspend sales of D9 bulldozers and parts to Israel, so long as the product is used to destroy homes and property in violation of international law.
- Take public steps to ensure that Caterpillar's goods and services will not be used to abuse human rights, in accordance with the U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

I urge you and the board to review this report, particularly the section in Chapter VII on the D9 bulldozer. We would appreciate learning of the steps Caterpillar intends to take to address the issues raised in the report. Towards that end, we kindly request a meeting at a time and place of your convenience. Thank you for your consideration and I look forward to a fruitful exchange. Please be advised that we are making this letter available to the press.

Sincerely,

Sarah Leah Whitson  
Executive Director  
Middle East and North Africa Division

cc: Caterpillar Board of Directors

A Human Rights Watch press release (November 23, 2004), which provides further information on this case, and related resources are available online at: <http://www.hrw.org/campaigns/gaza/cat/index.htm>.



## Appendix 1: Engendering the UN Norms for Business

Transnational corporations (TNCs) have become the principal drivers of the global economy. TNCs have increasing power to shape the rules by which they are governed and, therefore, the lives of most of the world's people. As corporations are not currently subject to the same international legal frameworks as are governments regarding fundamental human rights, labor and environmental principles, they are constrained only by national laws or their own voluntary efforts. The corporate accountability movement must advocate for an international legal framework that requires rather than requests accountability from all corporations. The UN Human Rights Norms for Business (UN Norms), which represent an important step forward in the quest for accountability, must reflect the concerns of all people affected by globalization, particularly the most vulnerable. Women are a majority of those people.

Most of the poorest of the poor are women. They also constitute the majority of consumers in the global North and low-wage workers in the global South. Private investment strategies are neither broad nor deep enough to address the structural foundations of women's economic inequality, exploitation and human rights abuses. Women often bear the brunt of corporate malfeasance. While both men and women both suffer from corporate misbehavior, women sometimes experience a gendered impact as well. Corporate foreign investment in the global South directly affects an often invisible, feminized underclass workforce vulnerable to gender-based physical, environmental and economic abuses. The militarization that sometimes accompanies foreign investment projects subjects women to gender-based violations in addition to those experienced by men. To the extent they exist, the local consultations undertaken by governments and corporations prior to and during a "development" project are typically bereft of female participants.

Corporate abuses are not confined to the developing world. Currently at the top of the Fortune 500 list is Wal-Mart, a corporation with total assets exceeding the GDP of most of the world's countries. Violations of women's rights run rampant. Current and former employees in California are suing Wal-Mart for sex discrimination in promotion and compensation, the country's largest such suit against a private employer if it is granted class-action status. Wal-Mart's health insurance plan does not cover contraception, and Wal-Mart routinely violates child labor laws, according to the U.S. Department of Labor.

As women are more than equally affected by the problem of corporate malfeasance, they must play a strong role in developing solutions. While women's participation has increased in the global policy process, there has been no systematic effort to bring women's perspectives to the corporate accountability debate. The UN Norms reflect some concern for gender issues, particularly in Article 2 on equality of opportunity and treatment. However, the Norms also need to integrate gender throughout the document by

- ? Identifying women under "vulnerable groups" in the **General Obligations** section
- ? Including gender-based violence in the **Right to security of persons** section
- ? Addressing workplace gender violence, including sexual harassment, in the **Rights of workers** section
- ? Requiring gender-equitable policies on lay-offs, contract work and temporary work
- ? Addressing gender inequities in hiring, training, promotion, and retention policies, as well as inclusion of women in corporate decision-making

The Norms are a good starting point for corporate accountability. They can be improved, however, by addressing gender inequalities regarding both internal and external corporate procedures, ranging from immediate workplace issues to supply chain management and marketing practices. The Office of the High Commissioner for Human Rights (OHCHR) should insure that it includes women as well as experts on gender and corporate accountability in its consultations and its reports. The Commission on Human Rights should address gender equality in its discussions and resolutions regarding corporate accountability.

Corporate leaders often emphasize their social responsibility, conducting internal social impact reviews and joining partnerships such as the UN Global Compact. While some industries, particularly garment and textiles, have created their own voluntary agreements, these are largely unenforceable and, at best, piecemeal. Unsurprisingly, these industries are sustained by a preponderance of female workers. The end of corporate abuses and the advancement of human rights can only be achieved within legal rather than informal spheres. Women on the ground understand that corporate accountability is a necessary precondition to women's rights and gender equality. Women, therefore, must play a vital role in influencing the corporate accountability debate and, ultimately, the outcomes.



# Appendix 2: Environment, Communities, and the UN Human Rights Norms for Business

Prepared by the Center for Human Rights and the Environment (CEDHA)

*The Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights (henceforth, the Norms)*, make an important and critical step forward in bringing the business sector into the realm of international law and establishing a minimum threshold for corporate performance on issues such as labor rights, environmental law and protection, as well as more traditional international human rights law. While the Universal Declaration of Human Rights called on ‘every individual and every organ of society’ to promote, respect and secure human rights, States have long remained the primary subject of international law. In this regard, the Norms make a very significant contribution to advancing corporate social responsibility and the corporation, more specifically, into the legal realm of international “corporate social liability” or corporate accountability.

## **Strengths of the UN Norms regarding the Environment**

The Norms effectively identify and reference the most renowned and numerous treaties and international instruments laying out a diverse set of international commitments, standardized voluntary corporate ethics, and other non-binding international corporate standards on social and environmental impact of business behaviour. They make specific reference to the environmental responsibility of corporations in the countries and communities in which they operate. Article 14 identifies corporate obligations regarding environmental protection, calling for corporate compliance with national laws and regulations pertinent to environmental preservation. It also helps steer international corporate standards, and corporations more specifically, towards “the wider goal of sustainable development” and in accordance with the precautionary principle.

Also important is that the Norms call attention to the rights of communities adversely affected by corporate behavior, calling for corporations, in Article 18, to provide prompt, effective and adequate reparation in the case of their failure to comply with the Norms. In Article 22 the Norms rightly establish an ample definition of communities as stakeholders of corporate behavior.

The rights of workers also receive particular attention in the Norms. Article 7 is dedicated to this issue specifying that enterprises shall provide workers with safe and healthy environments, critical to corporate impact in internal settings.

## **Outstanding Issues related to the Environment**

More concise, direct and specific language might be helpful in clarifying the meaning and expectations of the articles in the Norms. For example, the concepts of sustainable development, the precautionary principle and bioethics have diverse possible interpretations. While the commentary to the Norms provides some clarification, affected communities and other stakeholders should be involved in ongoing attempts to define these terms, particularly in relationship to specific industries.

One concept that is absent from the Norms is reference to the lifecycle analysis, or cradle to grave approaches to social and environmental impact assessments. While transparency and accountability are generally addressed in Article 10 and impact assessments and reporting called for in the commentary to Article 14, specific references to sustainability reporting might help improve corporate transparency and public information about corporate behavior and impact.

Overall, we stress the important contributions the Norms make to the advancement of human rights and environmental protection, and in placing the corporation in the realm of international law.

