



AI Index: POL 34/006/2004
Public Document

AI Ref: UN 411/2004

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29.09.2004

Submission by Amnesty International under Decision 2004/116 on the “Responsibilities of Transnational corporations and related business enterprises with regard to Human Rights”

September 2004

Amnesty International is very pleased that the Commission confirmed the importance and priority to be accorded to the question of the responsibilities of transnational corporations and other business enterprises with regard to human rights. Amnesty International particularly appreciates that the Commission has acknowledged the need to identify options for *strengthening* standards on business responsibilities in relation to human rights and possible means of implementation.

Amnesty International welcomes this opportunity to contribute to the debate around the legal status of existing initiatives and standards relating to the responsibilities of companies and in the identification of outstanding issues. In an era of economic globalization and in a context of growing conflict, where as Secretary General Kofi Annan has said “the economic dimensions of armed conflict are often overlooked... The role of business, in particular, can be crucial, for good and for ill.”¹ AI considers this task crucial for ensuring the effective protection and promotion of all human rights.

1. Scope of the problem

The activities of business provide employment for countless millions and constitute the driving force in most national economies today. Companies therefore exercise tremendous influence and power. The internationalisation of the world economy means that businesses often operate with a global reach. Corporate activities have significant effects on the human rights of those they influence. In many countries government regulation and enforcement are inadequate to protect individuals when corporate activities negatively impact on the human rights of their workforce or the communities where they operate. Measures must be taken to minimize the

¹<http://www.un.org/News/Press/docs/2004/sgsm9256.doc.htm>
Press Release /SM/9256 SC/8059 Role of business in armed conflict can be crucial –“for good or ill”

negative effect of corporate activities on human rights, to encourage companies to contribute to the realization of human rights within the spheres of their activity and influence. There must also be adequate and effective remedies when corporate activities abuse human rights.

2. The advantages of using a human rights framework to guide company conduct

- Human rights norms distill the basic rights that all human beings have in common. Yet, human rights norms are not reflected consistently in national law around the world. A human rights framework for company conduct would provide a common starting point and enhance consistent expectations of the business role in respecting and fulfilling human rights.
- By providing common and universal standards the human rights framework, can assist efforts to establish compatible and socially beneficial regulatory regimes across national boundaries, while contributing to the important goal of elevating global standards. Business activities are measured by different standards -- labour, environmental, criminal, health and safety, commercial, corporate law, and others. All these standards, however, vary considerably between countries and legal systems. International human rights standards can also provide universal benchmarks for corporate conduct that companies can be expected to meet in their spheres of activity and influence.
- The advocacy power of human rights is especially important in order to give vulnerable or marginalized communities a voice in cases where there is no effective remedy at the national level, as has been found in cases where some governments protect investors' interests over the rights of the population.

3. Comparative analysis of some existing initiatives in relation to the UN Norms for Business

Existing initiatives such as the OECD Guidelines for Multinational Enterprises, the Global Compact, and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, have been valuable in raising awareness of key issues among companies. To date, however, they have failed to allay the prevailing public mistrust of companies, to ensure accountability for human rights in corporate activities, and most importantly to reduce significantly the negative impact that some companies' activities have on human rights. AI believes that the Norms are the logical development and amplification of the general statements about human rights in the other initiatives. The Norms are complementary to and helpful in the implementation of existing initiatives.

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises, adopted in 1976 and most recently revised in 2000, have been recommended by the governments of thirty OECD member countries and eight non-members to multinational enterprises operating in and from their countries.² Although they apply directly to companies, they are not binding on them.

² 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

However, the Guidelines are endorsed by a grouping of multinational companies, represented by 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.³

The OECD Guidelines relate to key aspects of multinational enterprises' operations: information disclosure, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition and taxation. The Guidelines include 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."⁴ However, this human rights provision is very general and on its terms offers little guidance as to how to resolve issues of human rights.

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.⁵ 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 might not have sufficient independence from business interests. Additionally, 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 behaviour is assessed. It is also not possible under the Guidelines to obtain relief or reparations. 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 labour standards by corporations.⁶ These fundamental labour standards include the prohibition and abolition of forced labour (ILO Conventions 29 and 105), equal remuneration and the prohibition of discrimination (ILO Conventions 100 and 111), minimum age of employment and the prohibition of the worst form of child labour (ILO Conventions 138 and 182), and the freedom of association and the right to collective bargaining (ILO Conventions 87 and 98).⁷ ILO conventions and recommendations are only binding on member States which ratify them, yet due to its tripartite composition, employers' and employees' interest groups, as participants in decision-making, have a moral obligation to include the International Labour Organization's adopted principles into their own policies.

USA. Seven non-member countries - Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia - have also declared their adherence to the *Guidelines*.

³ *Guidelines*, op. cit., I. Concepts and Principles, 1 & 2.

⁴ *Guidelines*, op. cit., II. General Policies, 2.

⁵ *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises* (Paris: OECD, 2000), 4.

⁶ 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>)

⁷ 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

The ILO's strength lies in its standard setting work on labour and workplace rights. Its tripartite structure brings together employers, employee organizations and government representatives (its constituents) but it excludes the direct participation of other NGOs. In advising governments on steps that can be taken to comply with core labour standards, the ILO fulfils 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.

However, while the ILO Tripartite Declaration outlines relatively comprehensive principles related to employment, training, and working conditions and relations, these are only commended as guides, which are 'recommended to observe on a voluntary basis.'⁸

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.⁹ The report points out that globalization requires new forms of regulation with regard to human rights and the participation of concerned groups.¹⁰ Beside market forces that support corporations accepting core labour standards,¹¹ 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.¹² 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 labour organizations in support of ten principles drawn from international declarations. These principles offer general guidelines for corporate behaviour related to human rights, labour standards, environment, and anti-corruption.¹³ However, in terms of human rights, the principles are so general as to offer minimal guidance regarding the content, interpretation, and application of human rights standards and responsibilities.

While companies are asked to mainstream the ten principles within their spheres of influence, the UN Global Compact was not established as a regulatory initiative. Instead, it was conceived to offer a values-based platform for voluntary peer review and institutional learning.

⁸ Article 7.

⁹ Point 147, p. 37; point 199, p. 42; point 344, p. 77.

¹⁰ Point 358, p. 79.

¹¹ Point 427, p. 95; Point 550ff., p. 122ff.

¹² Point 598, p. 133.

¹³ 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>.

Participants are encouraged to share case studies of good practices and to participate in policy dialogues. However, the Global Compact has not been effective in encouraging 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 oversight 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 appears violates any of the ten principles. Due to the lack of transparency in evaluating participants, civil society groups cannot at the moment raise their concerns about the conduct of specific companies¹⁴, this deficit means that companies may use their affiliation to the Global Compact for public relations purposes

4. The added value of the Human Rights Norms as the basis of human rights framework for companies.

A) The Norms 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.

B) The Norms are far more complete than many other competing individual company codes and industry-wide standards, only a few of which refer to human rights. As outlined above many, like the Global Compact and the OECD Guidelines, refer to human rights in only very general terms.

C) The Norms are designed to apply to business generally. Thus they provide a common set of standards amidst many competing voluntary code of conducts.

D) The Norms establish the right balance between governments' and companies' obligations in relation to human rights. The first paragraph of the UN Norms reaffirms that "States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognised in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights". The Norms reiteration in the UN Norms of the primary role of states in international human rights law clarifies that the UN Norms have made no attempt to transfer international human rights law obligations from states on to transnational corporations and other business enterprises.

¹⁴ <http://web.amnesty.org/pages/ec-globalcompact-eng>

E) The Norms with their accompanying commentary should form the basis for an international, universally recognised, normative framework for business also providing minimum standards that states should reflect in their domestic laws. In addition to encouraging beneficial corporate action a main role international standards can play will be to act as a catalyst for national legal reform, and as a benchmark to judge the adequacy of national law and regulations.

F) The Norms with their accompanying commentary can assist companies in identifying and understanding their responsibilities in relation to human rights. They provide a list of human rights standards that can be used as a template for action for companies, and major companies are already testing the Norms. By taking the Norms into account in decision making, companies will have a basis for their efforts to ensure that their economic activities are consistent with internationally recognised human rights principles. Reference to the Norms in corporate decision-making will not only facilitate constructive dialogue with NGOs, but it will also prepare corporations for human rights challenges with which they will be faced in the future. Furthermore, as there is growing interest among ethical investors in socially responsible companies, visible human rights performance standards will enable investors and stakeholders to influence corporate behaviour.

5. Implementation

For human rights standards to contribute to the protection and promotion of human rights by companies, there must be transparent mechanisms and procedures by which to assess compliance with the standards. Companies must be accountable for their success or failure in meeting their human rights responsibilities. Where a company fails to meet its responsibilities, adequate and effective remedies must be available to those persons whose rights have been abused.

6. Recommendations

Amnesty International would like to see this report contribute to placing the responsibilities of companies with regard to human rights firmly on the Commission's agenda in future years

In practical terms such ongoing engagement with the issue should entail the following:

- a) Work towards the establishment and endorsement of a set of principles setting out the human rights responsibilities of business, The "*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.
- b) Clarification that the human rights responsibilities of transnational corporations and other business enterprises is not a new issue but a corollary of states' obligations to protect human rights;
- c) An extension of the reporting and consultation process beyond the 2005 session of the Commission to ensure that in-depth analysis of the issues and continued consultation with

relevant stakeholders can be developed by your office with a view to enabling the Commission to have the time and the research necessary to adequately address this important topic.

d) Ensuring 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.

e) Exploration of existing mechanisms to review and assess the success of individual corporations in meeting their human rights responsibilities.