

**Extract from "Report of the United Nations High Commissioner on Human Rights on the responsibilities of transnational corporations and related business enterprises with regard to human rights" (E/CN.4/2005/91 dated 15 February 2005)**

**The draft Norms**

18. The draft "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights" (draft Norms) attempt to impose direct responsibilities on business entities as a means of achieving comprehensive protection of all human rights - civil, cultural, economic, political and social - relevant to the activities of business. The draft Norms identify specific human rights relevant to the activities of business, such as the right to equal opportunity and non-discrimination, the right to security of persons, the rights of workers, and refers to the rights of particular groups such as indigenous peoples. The draft Norms also set out responsibilities of business enterprises in relation to environmental protection and consumer protection. As an initiative of a United Nations expert body, the draft seeks wide territorial coverage. It also seeks broad company coverage as appears from the reference in its title to "transnational corporations and other business enterprises". The draft envisages a range of implementation mechanisms of both a promotional and protective character such as self-reporting and external verification. The Commission has indicated that the draft Norms contain "useful elements and ideas for consideration by the Commission" but, as a draft proposal, it has no legal standing.

19. The draft Norms is an attempt in filling the gap in understanding the expectations on business in relation to human rights. However, the consultation process revealed a wide range of opinions amongst stakeholders on the value and content of the draft. Employer groups, many States and some businesses were critical of the draft while non-governmental organizations and some States and businesses as well as individual stakeholders such as academics, lawyers and consultants were supportive.

20. The main arguments both against and in favour of the draft Norms are summarized below. The stakeholders critical of the draft Norms argued that:

(a) The draft Norms represents a major shift away from voluntary adherence by business to international human rights standards and the need for this shift has not been demonstrated;

(b) The style of the draft Norms is unduly negative towards business. The tone of the draft is unbalanced and does not adequately take into account the significant positive contributions of business towards the enjoyment of human rights;

(c) The recognition of legal obligations on business to "promote, secure the fulfilment of, respect, ensure respect of and protect human rights" is baseless and a misstatement of international law - only States have legal obligations under international human rights law;

(d) The human rights content of the draft Norms is vague and inaccurate. For example, the reference to international treaties and other instruments in the preambular paragraphs and under the definitions includes documents that are only recommendations, have low levels of ratification, are not self-executing or are not human rights instruments. Those documents are therefore not indicative of the state of international human rights law;

(e) The legal responsibilities on business identified in the draft Norms go beyond the standards applying to States. In particular, the wording of the draft Norms imposes duties on business to meet standards under treaties that a State in which a company was operating might not have ratified;

(f) The draft Norms require business to undertake balancing decisions more appropriate to the role of Governments. Some human rights require Governments to decide on the most appropriate form of implementation, balancing often competing interests. The democratic State is in a more appropriate position to make such decisions than companies;

(g) The imposition of legal responsibilities on business could shift the obligations to protect human rights from Governments to the private sector and provide a diversion for States to avoid their own responsibilities;

(h) The implementation provisions of the draft Norms are burdensome and unworkable. The vagueness of some of the provisions in the draft Norms would make it difficult for a tribunal to adjudicate any communication that came before it and the reporting requirements in the draft Norms are burdensome. The binding approach adopted in the draft Norms could also be counter-productive, drawing away from voluntary efforts and focusing on the implementation of only bare minimum standards;

(i) The draft Norms duplicate other initiatives and standards, particularly the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration.

21. Those stakeholders welcoming the draft Norms argued that they:

(a) Are the most comprehensive, clear and complete initiative or standard on business and human rights that goes beyond labour standards;

(b) Add to, rather than duplicate, existing initiatives and standards by attempting to identify the responsibilities of business in relation to specific human rights;

(c) Provide a common set of standards for all business in relation to human rights and a level playing field for competing companies;

(d) Provide a tool for evaluating current and future practices. The draft Norms offer a template of relevant rights and responsibilities against which companies can review and assess their activities in relation to human rights to assist them in understanding how operations can affect individuals and communities;

(e) Establish the right balance between the obligations of States and companies with regard to human rights. The draft Norms do not challenge the role of the State as primary duty bearer for human rights, but the draft does indicate that companies have secondary responsibilities with regard to human rights within their respective spheres of activity and influence;

(f) Provide a normative framework and template for action by States, assisting States in establishing national legislation by identifying specific areas where the State should regulate the activities of corporations in order to meet its obligations to protect human rights;

(g) Attempt to deal with the situation where a company is operating in a State which is unwilling or unable to protect human rights. The identification of direct international legal obligations applicable to business envisaged by the draft attempts to address a situation where the State has either failed to legislate effectively, or is unable to protect human rights in the particular situation;

(h) Address the current fatigue and mistrust amongst civil society in relation to voluntary initiatives which work for the well-intentioned and, although of significant value, do not cover all companies (many companies do not have a human rights policy). Voluntary initiatives are both inconsistent in their treatment of human rights and insufficient to mitigate comprehensively all threats to the enjoyment of human rights;

(i) Offer the possibility of a remedy to victims of human rights violations. This builds on voluntary initiatives which are not supervised by an independent body and which do not necessarily guarantee a right to a remedy in the case of clear violations.

22. While views on the document are divided, it is relevant to note that the draft Norms, having the status of a draft proposal, could be subject to review and consideration by the Commission. In this context, it is relevant to note that the Business Leaders' Initiative on Human Rights is currently "road-testing" the draft Norms with companies from different international business sectors with the objective of demonstrating ways in which to implement human rights. Those business entities engaged in the "road-testing" are committed to understanding better the draft Norms as well as to finding methods of applying the content of the document by defining what is "essential", "expected" and "desirable" behaviour for all companies. The process will continue until December 2006.