

UNITED NATIONS UPDATE

TOWARDS BINDING HUMAN RIGHTS NORMS FOR BUSINESS ENTERPRISES

On August 13, 2003, the Geneva-based United Nations Sub-Commission for the Promotion and Protection of Human Rights (Sub-Commission) unanimously approved the draft resolution, “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (Norms) and the accompanying commentary. The Norms are an important first step in creating a universal set of binding human rights guidelines for Business Enterprises (BEs) and Transnational Corporations (TNCs), and are the first set of international human rights guidelines targeting non-state actors (with the exception of UN resolutions on slavery and piracy). The Norms bring together a variety of obligations from existing international human rights, labor and environmental standards.

THE SUB-COMMISSION AND ITS MANDATE

The Sub-Commission was established in 1947 and is the primary subsidiary body of the Commission on Human Rights. It acts under authority from the Economic and Social Council (ECOSOC), one of the principle bodies of the United Nations. The Sub-Commission's twenty-six members are independent human rights experts charged with the specific mandate to examine human rights issues through the lens of the Universal Declaration of Human Rights (UDHR) and to make recommendations to prevent human rights abuses and violations of fundamental freedoms, and to protect racial, national, religious, and linguistic minorities.

In August 1998, the Sub-Commission recognized the need to examine the issue of transnational business practices with regard to human rights and the UDHR by establishing a five-member Working Group on the Working Methods and Activities of Transnational Corporations (Working Group). The Working Group was given the mandate to “contribute to the drafting of relevant norms concerning human rights and transnational corporations (TNCs) and other economic units whose activities have an impact on human rights.” The Working Group, headed by American academic David Weissbrodt, considered recommendations from governments, non-governmental organizations (NGOs), and businesses in the drafting of

the Norms and the accompanying commentary.

International law focuses on state responsibilities and looks to states to monitor the behavior of non-state actors. For this reason, the international community has encouraged TNCs to adopt voluntary codes of conduct such as the Global Compact, and has relied upon states to monitor gross human rights, labor, and environmental abuses. First proposed in 1999, the UN Global Compact is comprised of a set of nine principles concerning human rights, labor, and the environment that TNCs asked to voluntarily implement. While TNCs complain that adopting voluntary codes of conduct puts them at a comparative disadvantage if their competitors choose not to adopt the same standards, NGOs complain that voluntary standards only apply to TNCs and ignore other types of business entities.

The Sub-Commission and other UN bodies are recognizing that TNCs are increasingly expanding their power and thus should have a correspondingly greater responsibility. The Working Group recognized that domestic business entities can also be human rights abusers and sought to close the gap in business practice standards by making the Norms applicable to all business entities (not just TNCs). This is illustrated in the body of the text where “other Business Enterprises” are defined as including “any business entity, regardless of the international or domestic nature of its activities.”

HUMAN RIGHTS AND HUMANITARIAN LAW PROVISIONS

The Norms move beyond simply calling upon TNCs and BEs to respect customary international law and the domestic laws where they operate by encouraging business entities to contribute to social progress, particularly in developing countries. The Norms also mandate that business entities respect the right to political, economic, social, and cultural development “in which all human rights and fundamental freedoms can be fully realized and in which sustainable development can be achieved so as to protect the rights of future generations.”

Another significant contribution is that the Norms recognize the rights of indigenous peoples by directing business entities to restrict activities that would encroach upon local communities consistent with the Convention (No. 169) Concerning Indigenous and Tribal Peoples

in Independent Countries, which was adopted in 1991 by the International Labor Organization within the UN. The Norms mandate that all business entities “shall particularly respect the rights of indigenous peoples and similar communities to own, occupy, develop, control, protect, and use their lands, other natural resources, and cultural and intellectual property.”

Particularly groundbreaking is the Norms explicit application of humanitarian law to business entities. The Norms explicitly forbid TNCs and BEs from engaging in or benefiting from war, war crimes, crimes against humanity, genocide, torture, forced disappearance, “and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.” The Norms also prohibit business entities from producing and distributing weapons that have been declared illegal under international law, and further restrict trade that “is known to lead to human rights or humanitarian law violations.”

The Norms aim to decrease corruption in government by prohibiting bribery and enhancing the transparency of their activities with local governments. The Norms call for corporations to “openly fight against bribery, extortion, and other forms of corruption; and to cooperate with State authorities responsible for combating corruption.” The guidelines further express that bribery can take the form of money and natural resources, and explicitly prohibit both.

LABOR STANDARDS

The Norms address the rights of workers in a variety of different categories in an effort to protect migrant workers, prohibit child labor, and prevent all forms of forced labor. Specifically, the Norms: 1) call for the protection of collective bargaining, and economic, social, cultural, civil, and political rights; 2) promote increased transparency in the information disseminated regarding the health and safety standards relevant to their activities for employees and the community; and 3) mandate companies provide adequate protection for the health of their employees at the cost of the employer.

The Norms’ universal standardization of wages is particularly significant. The Norms state that “[t]ransnational corporations and other business enterprises shall provide workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall be based on the principle of equal pay for equal work.”

neration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.” The guidelines also address consumer protection by mandating that businesses comply with fair business practices and ensure the safety of the products they manufacture. Further, business entities should not “produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.”

ENVIRONMENTAL STANDARDS

The Norms emphasize that corporations are responsible for the impact their industry has on the environment. The Norms recognize that the environment should be protected for future generations, environmental contamination is hazardous to the health of surrounding communities, and business entities should be responsible for the environmental and health impacts of their activities in light of the connection between the environment and human rights.

To ensure degradation of the environment is not occurring, the Norms direct business entities to periodically assess the impact of their activities on the environment. “Assessments shall . . . address particularly the impact of proposed activities on certain groups, such as children, older persons, indigenous peoples, and communities (particularly in regard to their land and natural resources), and/or women.” According to the Norms, the results of these self-assessments should be disseminated to the United Nations

Environmental Program, and any other interested parties, including the hosting government and the general public.

IMPLEMENTATION AND ENFORCEMENT

Ultimately, states still bear the primary responsibility to protect and promote human rights. Since the Norms have not been passed by the member states of the UN, they are not legally binding. The Norms, however, provide the steps for implementation should they be adopted. The first step in implementation is for each business entity to adopt, disseminate, and implement internal operational rules in accordance with the Norms. Corporations should then make their internal operational rules available to anybody with an interest in the company. The corporation also has a duty to adequately train managers and workers to comply with the guidelines outlined in the Norms.

The Norms are more forceful than the UN Global Compact because they call for regulation by third parties (rather than self-regulation), and mandate corporations provide reparations to people and communities adversely affected by corporations not adhering to the guidelines. According to the Norms, third-party regulation is necessary to ensure that business entities make adequate internal changes, and provide reparations when necessary. The Norms call for business entities to “be subject to periodic monitoring and verification by the United Nations, [and] other international and national mecha-

nisms already in existence or yet to be created,” including periodic monitoring and input by NGOs. Recognizing the international community alone cannot enforce these guidelines, the Norms also enlist the help of state and local governments to pass the necessary legislation to provide additional support for the implementation of the guidelines.

CONCLUSION

While the Norms are not currently binding, they are an important first step. They synthesize a wide range of international human rights standards into one document that targets business entities as powerful non-state actors. Though the international community cannot currently enforce the Norms, state governments can use them as a model for the implementation of legislation that accurately reflects current international human rights standards.

The Norms are a useful guideline for the international community to hold TNCs and BEs morally, if not legally responsible for violations of international human rights guidelines with respect to business practices. Hopefully, this important first step will provide the basis of a binding document that will regulate corporate responsibility with regard to human rights law.

HRB

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follows the request of several Saudi citizens for its establishment, al-Faisal stated.

IRAN

On October 10, 2003, the Nobel Committee awarded Iranian human rights lawyer Shirin Ebadi the Nobel Peace Prize, making her the first Muslim woman to receive the award. At a press conference, Ebadi said that, “there is no difference between Islam and human rights” and urged for the release of prisoners of conscience.

Prior to the 1979 revolution, Ebadi worked as the first female judge in Iran. She currently works as a lawyer and professor at Tehran University. Ebadi represented families of the writers and intellectuals murdered in 1999. In 2000, Ebadi and another lawyer, Mohsen Rahami, were arrested and jailed for three weeks for alleged links to distribution of a videotaped confession, in which a vigilante militia member alleged government involvement in attacks on reformists. Ebadi received a suspended sentence and was banned from working as a lawyer for five years. According to the Nobel Committee,

“Ebadi represents Reformed Islam, and argues for a new interpretation of Islamic law which is in harmony with vital human rights.”

SWAZILAND

The United Nations Integrated Regional Information Network (IRIN) reported that the Swaziland palace is close to completing the redraft of the constitution. IRIN expected the Constitution to be finished in September of this year. Resistance has mounted from pro-democracy groups that allege the constitution, as drafted by King Mswati's brother and head of the Constitutional Drafting Committee (CDC), Prince David Dlamini, continues to centralize power in the hands of the crown. Of note is the reported fact that the document bans any opposition to royal rule. The proposed constitution also grants the king uncontested power over the cabinet, parliament and the courts. The proposed Bill of Rights offers freedom of speech, assembly and association, and equality for women. These rights, however, are granted contingent upon approval by the king. Further,

these rights are subordinate to the unwritten laws of Swazi tradition.

During the Parliamentary elections in mid-September many of the King's appointed members were voted out of office. The results of the elections revealed the people's demand for change in the current government. Opposition groups have worked on drafting a proposed Constitution, which they promote as more democratic and describe as ensuring the voice of the people, rather than “His Majesty.” Thus far, the CDC has not yet acknowledged the opposition's proposed draft of the Constitution. *HRB*

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