



Background Paper¹

**60th Session of the UN Commission on Human Rights
15 March – 23 April 2004**

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

CIDSE and Caritas Europa, in line with faith-based principles, promote an ethical approach to tackling socio-economic problems: “[T]he supreme criterion in economic matters ... must not be the special interest of individuals or groups, nor unregulated competition, economic despotism, national prestige or imperialism, nor any other aim of this sort ... On the contrary, all forms of economic enterprise must be governed by the principles of social justice and charity.” (Pope John XXIII, *Mater et Magistra* (38/39)). Our work is based on the ‘preferential option for the poor’ and the necessity to create social justice.

It is on these grounds that *CIDSE and Caritas Europa* support the further constructive and informed discussion of the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* (hereafter: the UN Norms) as adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights (hereafter: the Sub-Commission) in August 2003. The UN Norms provide an authoritative document that comprehensively spells out the responsibilities of companies with regard to human rights.

Background

For the last decades, in particular since the ending of the Cold War, companies have hugely expanded their operations, particularly into the developing world. A growing number of businesses operate across boundaries in ways that exceed the regulatory capacities of any one national system. Economically powerful actors may dramatically influence policy – whether for good or bad – and thereby impact on the human rights of millions of people. In certain cases companies have contributed – knowingly or unknowingly – to human rights violations, to the further disempowerment and to the marginalisation of particularly vulnerable groups (such as indigenous peoples and the poor).

Already the Universal Declaration of Human Rights, while primarily addressed to states, calls on “every organ of society” to respect, promote and fulfill human rights – laying the foundation for obligations which apply not only to states but also to non-state actors including private business. In the last decade, it has been widely recognised, including in law, that not only states have an international obligation for the protection of human rights but also other actors such as individuals, armed groups and international organisations. The *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights* took shape within the frame of this development.

CIDSE (International Cooperation for Development and Solidarity) is a coalition of 15 Catholic development agencies in Europe and North America which share a common vision on poverty eradication and social justice and a common strategy on development programmes, development education and advocacy. CIDSE’s advocacy work covers trade and food security, social justice, debt and structural adjustment, EU development policy, and peace and conflict. www.cidse.org

Caritas Europa is one of the seven regions of the Catholic confederation Caritas Internationalis, bringing together 48 organisations active in 44 European countries. Caritas Europa focuses its activities on issues relating to poverty, social inequality, migration and asylum, and supports the activities of its members in the fields of international cooperation, emergency humanitarian relief and development. www.caritas-europa.org

¹ This document is a background paper. The analysis and proposals presented in this paper do not necessarily reflect the views of all CIDSE and Caritas Europa members. The paper is based upon work by CIDSE member Misereor.

The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights

The UN Norms set out, in a single, succinct statement, a comprehensive list of the human rights obligations of companies. They highlight best practice and various modes of monitoring and enforcement. In addition to setting a standard that businesses can measure themselves against, the UN Norms are also a useful benchmark against which national legislation can be judged - to determine if governments are living up to their obligations to protect human rights by ensuring that appropriate regulatory frameworks are in place.

The UN Norms are not a formal treaty, which states ratify and thereby assume binding legal obligations. Nevertheless, they are clearly more authoritative than the many codes of conduct adopted by companies, and are a significant advance over other existing standards. Unlike codes of conduct, the UN Norms result from a formal, UN-authorized, and consultative process. The process leading to the UN Norms is similar to that resulting in other "soft law" standards, some of which are now seen as part of customary international law.

In their draft form, the UN Norms were subject of four public hearings in Geneva in 2000, 2001, 2002 and 2003 and of meetings of the Sub-Commission in March 2001 and 2003 at which representatives of UN agencies, private business, trade unions, non-governmental organisations (NGO) and the academic world were involved in re-shaping the document. Governments (with very few exceptions) have not commented on the UN Norms so far, but will do so at the level of the Human Rights Commission.

The UN Norms are intended to reaffirm and rationalise the array of existing standards relating to the human rights responsibilities of companies, which include UN treaties, the Geneva Conventions, International Labour Organization (ILO) conventions and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, as well as other voluntary instruments, such as the UN Global Compact. They are meant to reinforce the approach that is most protective of human rights, whether that is found in international law, national law, or other sources.

The UN Norms spell out both, positive and negative obligations for businesses, in order to avoid complicity in violations as well as promote respect for human rights. An exhaustive Commentary provides useful, authoritative guidance on the meaning of specific terms, the scope of particular provisions, and the legal basis for different obligations (with reference to other international standards).

Businesses can no longer be willfully ignorant of the circumstances in which they operate; they must become much more aware of and sensitive to those circumstances, and much more engaged in taking action to influence human rights positively. The UN Norms will assist companies that want to perform in a way that is socially responsible, they will provide a level playing field for competition among businesses, and will help assess risks associated with human rights problems. The Norms are also a useful indicator of the growing expectations of consumers, investors, employees and civil society organisations with regard to the human rights responsibilities of companies.

The Scope of the UN Norms

The UN Norms recognise the indivisibility and interrelatedness of all human rights. Hence, they comprise the obligation to respect, promote and fulfill economic, social and cultural rights as well as civil and political rights. Without protecting basic subsistence rights (such as food, water or shelter), it is difficult to exercise civil and political rights (such as free speech, fair trials or electoral participation). Conversely, the exercise of civil and political rights is often essential to overcoming discrimination and obtaining protection for economic, social and cultural rights.

Norm 1 (General Obligation) reaffirms that "*states bear the primary responsibility*" to promote, respect and secure the fulfillment of human rights, but the UN Norms also recognize that transnational corporations and other businesses, as organs of society (and collectives of individuals), carry responsibilities as well. The first operative paragraph states that the responsibilities apply to businesses "*within their respective spheres of activity and influence*". Within these, the UN Norms require companies to "promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognised in international as well as national law".

The UN Norms specifically deal with non-discrimination (norm 2), right to security of persons (norms 3 and 4), workers' rights (norms 5 – 9), respect for national sovereignty and human rights, including the right to development and the prohibition of corruption (norms 10 – 12), consumer protection (norm 13) and environmental protection (norm 14). Norms 15 – 19 deal with implementation and monitoring mechanisms, whereas norms 20 – 23 define the key terms used.

Outlook

At its 55th session in August 2003, the Sub-Commission on the Promotion and Protection of Human Rights approved the draft *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 decided to transmit them to the Human Rights Commission for consideration and adoption. When adopting the UN Norms, the Sub-Commission also welcomed the Commentary.

Some companies, amongst them Novartis, and some business associations, such as the Prince of Wales Business Leaders Forum, welcomed the adoption of the UN Norms. Others have opposed them right from the start. So far, governments, including governments of EU member states, seem reluctant to support the UN Norms.

Apparently some governments and others think that the Sub-Commission's request to mandate its own Working Group on Transnational Corporations (i.e. the Working Group that had drafted the UN Norms) to receive information about human rights abuses by transnational corporations, using the UN Norms as a framework for their monitoring, was premature. They are of the opinion that the Sub-Commission would only be entitled to issue such a request after the Human Rights Commission considered, or even adopted, the UN Norms.

Such procedural questions must not be taken as an excuse to dismiss the UN Norms in their substance. As outlined above, they have great value for the promotion and protection of all human rights. Therefore, it is important to support the content of the UN Norms. It is equally important that they will have an effective and transparent monitoring and implementation mechanism. If it is considered helpful, the substance and content of the Norms might be discussed separately from procedural mechanisms of implementation. However, before a well-informed decision can be made by the Human Rights Commission, it is necessary to collect more information from governments, UN bodies, specialised agencies, businesses, non-governmental organisations and other interested parties on various aspects of the Norms.

The 60th Session of the UN Commission on Human Rights

CIDSE and Caritas Europa encourage wide dissemination of the UN Norms and a constructive and unbiased international discussion of their content and implementation mechanism. They encourage the Human Rights Commission to contribute hereto through:

- Welcoming the adoption by the Sub-Commission of the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights;
- Disseminating the UN Norms to governments, UN bodies, specialized agencies, members of the Global Compact, companies, trade unions, non-governmental organisations and other interested parties;
- Asking for the submission of comments by all parties on the UN Norms and a compilation of such comments by the Office of the High Commissioner for Human Rights, to be considered by the Human Rights Commission at its 61st session (2005) and by the Sub-Commission at its 56th session (2004) or later.