Corporate Social Responsibility and Human Rights

September 2003 TLWNSI ISSUE COMMENTARY

The UN Sub-Commission on the Promotion and Protection of Human Rights has drafted norms that signal a possible advent of compulsory CSR but continue to legitimize a structure that generates sheer inequality between North and South.

The Sub-Commission on the Promotion and Protection of Human Rights, under the UN Economic and Social Council (ECOSOC), approved, in its fifty-fifth session last August, the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. The Sub-Commission in a resolution unanimously approved the Norms submitted by the Working Group on that topic, and decided to transmit those Norms to the Commission on Human Rights for consideration and adoption by the Commission in March 2004.

The Sub-Commission requested the Working Group on the working methods and activities of transnational corporations to study the information submitted by Governments, specialized agencies, non-governmental organizations and other interested parties, and to transmit its comments and recommendations to the appropriate transnational corporations or other business enterprises, Governments and relevant non-governmental organizations or other sources of information. The Sub-Commission also requested the Working Group on indigenous populations to gather the views of indigenous peoples and indigenous organizations and communities as well as other interested parties to supplement the Commentary on the Norms.

The Norms are based on the principle that albeit States have the primary responsibility of the protection of human rights, multinational corporations and other business enterprises, as organs of society, –including officers and persons working for them– are also responsible for promoting and securing human rights as set forth in the Universal Declaration of Human Rights. The Norms acknowledge various multilateral sets of principles, guidelines, standards and recommendations, such as the UN Global Compact, the OECD Guidelines for MNCs, the ILO Tripartite Declaration of Principles Concerning MNCs as well as the ILO Labour Conventions and Recommendations. The UN proclaims these new Norms and urges the world community to make every effort to disseminate them and respect them.

The Norms constitute a set of obligations to be observed by corporations, but do not have the force of law since they first must be incorporated into national legal frameworks. Many of its parts, to be sure, are already effectively covered in the international Human Rights treaties signed by the States, but it is up to them to make sure that businesses abide by them. In this way, the UN expects States to establish and reinforce the necessary legal and administrative framework for ensuring that transnational corporations and other business enterprises implement the Norms and other relevant national and international laws.

The UN expects a number of actions to be taken by various stakeholders for the appropriate implementation of the Norms. Key actions the UN calls for include: that these Norms shall be monitored and implemented through amplification and interpretation of intergovernmental, regional, national and local standards with regard to the conduct of transnational corporations and other business enterprises. United Nations human rights treaty bodies should monitor implementation of these Norms through the creation of additional reporting requirements for States and the adoption of general comments and recommendations interpreting treaty obligations. Trade unions are encouraged to use the Norms as a basis for negotiating agreements with

transnational corporations and other business enterprises and monitoring compliance of these entities. NGOs are also encouraged to use the Norms as the basis for their expectations of the conduct of the transnational corporations or other business enterprises and monitoring compliance. Further, monitoring could take place by using the Norms as the basis for benchmarks of ethical investment initiatives and for other benchmarks of compliance. The Norms shall also be monitored through industry groups.

Although the Norms are a far stronger vehicle for achieving minimally acceptable standards of CSR –and some would argue that they are a step in the direction of compulsory business practices– than the mere set of principles of the Global Compact, it is up to States to enforce them. Furthermore, even if they are all made legally binding, there remains the same degree of ambiguity that is prevalent in key areas of social responsibility.

In the area of greatest concern for TLWNSI, the right to a living wage, which is critical for good corporate citizenship and sustainability, despite its gross oblivion by most stakeholders, the Norms maintain the same criterion currently used by the ILO and other frameworks. This makes the concept of fair compensation clearly ambiguous. The Norms call for corporations to pay a fair and reasonable remuneration that ensures an adequate standard of living for workers and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement. They also emphasize the need to take particular care to pay just wages in the least developed countries.[1] Nonetheless, they leave it open to anyone to interpret what are an adequate standard of living and a just wage.

The greatest hurdle, for the incorporation of the concept of living wages into a legal framework, is that these Norms continue to base their wage criteria on the notion of national conditions. Indeed, they reference many of their commentaries to the ILO conventions and recommendations, which follow this criterion. In this way, in a globalised world, where multinationals are free to move whilst workers are not, the rate of wages are linked to the idea that *wages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned*. This is how it is expressed in the ILO Tripartite Declaration Concerning Multinationals. In the case of workers in the South, the Declaration also states that *when multinational enterprises operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies. These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.*[2] Again, such statement does not provide the good standard or the mechanism to define it. In this way, the ambiguity in defining a good standard and the use of prevailing national wage conditions is tantamount to accepting varying degrees of exploitation, for a competitive wage as well as the best possible wage and basic amenities of a good standard do not address the need to specifically provide a living wage in the South by northern standards.

In our opinion, what these Norms must address is the dramatic exploitation of Southern workers that multinationals practice on a daily basis as endorsed in the criteria of prevailing national conditions, for the wages that they pay are dramatically lower than the local cost of living and, thus, workers live in complete misery by either a local or northern standard. The question that must be addressed and resolved in favour of true social justice and human rights observance is why most stakeholders continue to use a criterion legitimizing the use of norms (in purchasing power parities (PPPs)/cost of

[1] Economic Social and Cultural Rights. Commentary on the norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. Geneva, Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fifth session. D. Rights of Workers, page 9. 4 August 2003.

[2] Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Geneva, International Labour Office, third edition, 2001, page. 7.

living terms)[3] where workers in the South receive a far lower standard than their counterparts in the North? That is, why are workers in the South not entitled to the principle of equal remuneration for equal work (in PPP terms)?

Yet, the Norms make use of ILO Convention 100, which establishes the obligation of Equal Remuneration of genders. The Norms require that in determining a wage policy and rates of remuneration, transnational corporations and other business enterprises shall ensure the application of the principle of equal remuneration for work of equal value and the principle of equality of opportunity and treatment in respect of employment and occupation, in accordance with international standards. There are no qualms, to be sure, in establishing equality among workers of both sexes, but equality among workers of the North and of the South of the same corporations is completely ignored. Thus, again, why are workers in the South not entitled to the principle of equal remuneration for equal work (in PPPs terms)?

If southern workers continue to endure a system where they are denied a dignified life and the Human Rights framework ignores the problem, then what is the point of these Norms? The Norms are an expression of growing concern for an ethos that is, above all, a generator of the greatest inequality and misery that both North and South have endured in contemporary times. Nonetheless, they fail to tackle, once again, the key element generating such inequality: the globalization of markets, prices and consumers but not of labour endowments.

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[3] See The Living Wages North and South Initiative (Working Draft). Concept of Fair Compensation, page 6, The Jus Semper Global Alliance, August 2003