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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Commentary on the norms on the responsibilities of transnational
corporations and other business enterprises with regard to
human rights**

Preamble

Bearing in mind the principles and obligations under the Charter of the United Nations, in particular the preamble and Articles 1, 2, 55, and 56, inter alia to promote universal respect for, and observance of, human rights and fundamental freedoms,

Recalling that the Universal Declaration of Human Rights proclaims a common standard of achievement for all peoples and all nations, to the end that Governments, other organs of society and individuals shall strive, by teaching and education, to promote respect for human rights and freedoms, and, by progressive measures, to secure universal and effective recognition and observance, including of equal rights of women and men and the promotion of social progress and better standards of life in larger freedom,

Recognizing that even though States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights,

Realizing that transnational corporations and other business enterprises, their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments such as the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Rights of the Child; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the four Geneva Conventions of 12 August 1949 and two Additional Protocols thereto for the protection of victims of war; the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; the Rome Statute of the International Criminal Court; the United Nations Convention against Transnational Organized Crime; the Convention on Biological Diversity; the International Convention on Civil Liability for Oil Pollution Damage; the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment; the Rio Declaration on the Environment and Development; the Plan of Implementation of the World Summit on Sustainable Development; the United Nations Millennium Declaration; the International Code of Marketing of Breast-milk Substitutes adopted by the World Health Assembly; the Ethical Criteria for Medical Drug Promotion and the “Health for All in the Twenty-First Century” policy of the World Health Organization; the Convention against Discrimination in Education of the United Nations Educational, Scientific, and Cultural Organization; conventions and recommendations of the International Labour Organization; the Convention and Protocol relating to the Status of Refugees; the African Charter on Human and Peoples’ Rights; the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; the Charter of Fundamental Rights of the European Union; the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Cooperation and Development; and other instruments,

Taking into account the standards set forth in the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy and the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization,

Aware of the Guidelines for Multinational Enterprises and the Committee on International Investment and Multinational Enterprises of the Organisation for Economic Cooperation and Development,

Aware also of the United Nations Global Compact initiative which challenges business leaders to “embrace and enact” nine basic principles with respect to human rights, including labour rights and the environment,

Conscious of the fact that the Governing Body Sub-Committee on Multinational Enterprises and Social Policy, the Committee of Experts on the Application of Standards, as well as the Committee on Freedom of Association of the International Labour Organization have named business enterprises implicated in States’ failure to comply with Conventions No. 87 concerning the Freedom of Association and Protection of the Right to Organize and No. 98 concerning the Application of the Principles of the Right to Organize and Bargain Collectively, and seeking to supplement and assist their efforts to encourage transnational corporations and other business enterprises to protect human rights,

Conscious also of the commentary on the norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, and finding it a useful interpretation and elaboration of the standards contained in the norms,

Taking note of global trends which have increased the influence of transnational corporations and other business enterprises on the economies of most countries and in international economic relations, and of the growing number of other business enterprises which operate across national boundaries in a variety of arrangements resulting in economic activities beyond the actual capacities of any one national system,

Noting that transnational corporations and other business enterprises have the capacity to foster economic well-being, development, technological improvement and wealth, as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environmental policies, relationships with suppliers and consumers, interactions with Governments and other activities,

Noting also that new international human rights issues and concerns are continually emerging and that transnational corporations and other business enterprises often are involved in these issues and concerns, such that further standard-setting and implementation are required at this time and in the future,

Acknowledging the universality, indivisibility, interdependence and interrelatedness of human rights, including the right to development, which entitles every human person and all peoples to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized,

Reaffirming that transnational corporations and other business enterprises, their officers - including managers, members of corporate boards or directors and other executives - and persons working for them have, inter alia, human rights obligations and responsibilities and that these human rights norms will contribute to the making and development of international law as to those responsibilities and obligations,

Solemnly proclaims these Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights and urges that every effort be made so that they become generally known and respected.

A. General obligations

1. States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that transnational corporations and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

Commentary

(a) This paragraph reflects the primary approach of the Norms and the remainder of the Norms shall be read in the light of this paragraph. The obligation of transnational corporations and other business enterprises under these Norms applies equally to activities occurring in the home country or territory of the transnational corporation or other business enterprise, and in any country in which the business is engaged in activities.

(b) Transnational corporations and other business enterprises shall have the responsibility to use due diligence in ensuring that their activities do not contribute directly or indirectly to human abuses, and that they do not directly or indirectly benefit from abuses of which they were aware or ought to have been aware. Transnational corporations and other business enterprises shall further refrain from activities that would undermine the rule of law as well as governmental and other efforts to promote and ensure respect for human rights, and shall use their influence in order to help promote and ensure respect for human rights. Transnational corporations and other business enterprises shall inform themselves of the human rights impact of their principal activities and major proposed activities so that they can further avoid complicity in human rights abuses. The Norms may not be used by States as an excuse for failing to take action to protect human rights, for example, through the enforcement of existing laws.

B. Right to equal opportunity and non-discriminatory treatment

2. Transnational corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age - except for children, who may be given greater protection - or other status of the individual unrelated to the inherent requirements to perform the job or of complying with special measures designed to overcome past discrimination against certain groups.

Commentary

(a) Transnational corporations and other business enterprises shall treat each worker with equality, respect and dignity. Examples of the other sorts of status on the basis of which discrimination should be eliminated are health status (including HIV/AIDS, disability), marital status, capacity to bear children, pregnancy and sexual orientation. No worker shall be subject to direct or indirect physical, sexual, racial, psychological, verbal, or any other discriminatory form of harassment or abuse as defined above. No worker shall be subject to intimidation or degrading treatment or be disciplined without fair procedures. Transnational corporations and other business enterprises shall establish a work environment in which it is clear that such discrimination will not be tolerated. These responsibilities shall be carried out in accordance with the Code of Practice on HIV/AIDS and the World of Work and the Code of Practice on Managing Disability in the Workplace of the International Labour Organization (ILO) and other relevant international instruments.

(b) Discrimination means any distinction, exclusion, or preference made on the above-stated bases, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. All policies of transnational corporations and other business enterprises, including, but not limited to, those relating to recruitment, hiring, discharge, pay, promotion and training, shall be non-discriminatory.

(c) Particular attention should be devoted to the consequences of business activities that may affect the rights of women and particularly in regard to conditions of work.

(d) Transnational corporations and other business enterprises shall treat other stakeholders, such as indigenous peoples and communities, with respect and dignity, and on a basis of equality.

C. Right to security of persons

3. Transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.

Commentary

(a) Transnational corporations and other business enterprises which produce and/or supply military, security, or police products/services shall take stringent measures to prevent those products and services from being used to commit human rights or humanitarian law violations and to comply with evolving best practices in this regard.

(b) Transnational corporations and other business enterprises shall not produce or sell weapons that have been declared illegal under international law. Transnational corporations and other business enterprises shall not engage in trade that is known to lead to human rights or humanitarian law violations.

4. Security arrangements for transnational corporations and other business enterprises shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate.

Commentary

(a) Transnational corporations and other business enterprises, their officers, workers, contractors, subcontractors, suppliers, licensees and distributors, and natural or other legal persons that enter into any agreement with the transnational corporation or business enterprise shall observe international human rights norms, particularly as set forth in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Rome Statute of the International Criminal Court; the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the United Nations Code of Conduct for Law Enforcement Officials; and emerging best practices developed by the industry, civil society and Governments.

(b) Business security arrangements shall be used only for preventive or defensive services and they shall not be used for activities that are exclusively the responsibility of the State military or law enforcement services. Security personnel shall only use force when strictly necessary and only to the extent proportional to the threat.

(c) Security personnel shall not violate the rights of individuals while exercising the rights to freedom of association and peaceful assembly, to engage in collective bargaining, or to enjoy other related rights of workers and employers, such as are recognized by the International Bill of Human Rights and the Declaration on Fundamental Principles and Rights at Work of the ILO.

(d) Transnational corporations and other business enterprises shall establish policies to prohibit the hiring of individuals, private militias and paramilitary groups, or working with units of State security forces or contract security firms that are known to have been responsible for human rights or humanitarian law violations. Transnational corporations and other business enterprises shall engage with due diligence in investigations of potential security guards or other security providers before they are hired and ensure that guards in their employ are adequately trained, guided by and follow relevant international limitations with regard, for example, to the use of force and firearms. If a transnational corporation or other business enterprise contracts with a State security force or a private security firm, the relevant provisions of these Norms (paragraphs 3 and 4 as well as the related commentary) shall be incorporated into the contract and at least those provisions should be made available upon request to stakeholders in order to ensure compliance.

(e) Transnational corporations and other business enterprises using public security forces shall consult regularly with host Governments and, where appropriate, non-governmental organizations and communities concerning the impact of their security arrangements on local communities. Transnational corporations and other business enterprises shall communicate their policies regarding ethical conduct and human rights, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.

D. Rights of workers

5. Transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

Commentary

(a) Transnational corporations and other business enterprises shall not use forced or compulsory labour, as forbidden in the ILO Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105) and other relevant international human rights instruments. Workers shall be recruited, paid, and provided with just and favourable conditions of work. They shall take all feasible measures to prevent workers falling into debt bondage and other contemporary forms of slavery.

(b) Workers shall have the option to leave employment and the employer shall facilitate such departure by providing all the necessary documentation and assistance.

(c) Employers shall have resort to prison labour only in the conditions spelled out in ILO Convention No. 29, which allows such labour only as a consequence of a conviction in a court of law provided that the work or service is carried out under the supervision and control of a public authority and that the person concerned is not hired out to or placed at the disposal of private individuals, companies or associations.

6. Transnational corporations and other business enterprises shall respect the rights of children to be protected from economic exploitation as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

Commentary

(a) Economic exploitation of children includes employment or work in any occupation before a child completes compulsory schooling and, except for light work, before the child reaches 15 years of age or the end of compulsory schooling. Economic exploitation also includes the employment of children in a manner that is harmful to their health or development, will prevent children from attending school or performing school-related responsibilities, or otherwise is not consistent with human rights standards such as the Minimum Age Convention (No. 138) and Recommendation (No. 146), the Worst Forms of Child Labour Convention (No. 182) and Recommendation (No. 190) and the Convention on the Rights of the Child. Economic exploitation does not include work done by children in schools for general, vocational, or technical education or in other training institutions.

(b) Transnational corporations and other business enterprises shall not employ any person under the age of 18 in any type of work that by its nature or circumstances is hazardous, interferes with the child's education, or is carried out in a way likely to jeopardize the health, safety, or morals of young persons.

(c) Transnational corporations and other business enterprises may employ persons aged 13 to 15 years in light work if national laws or regulations permit. Light work is defined as work which is not likely to be harmful to the health or development of the child, and will not prejudice school attendance, participation in vocational orientation, training programmes approved by competent authority, or the child's capacity to benefit from the instruction received.

(d) Transnational corporations and other business enterprises shall consult with Governments on the design and implementation of national action programmes to eliminate the worst forms of child labour consistent with ILO Convention No. 182. Transnational corporations and other business enterprises using child labour shall create and implement a plan to eliminate child labour. Such a plan shall assess what will happen to children when they are no longer employed in the business and include measures such as withdrawing children from the workplace in tandem with the provision of suitable opportunities for schooling, vocational training and other social protection for the children and their families, for example by employing the parents or older siblings or engaging in other measures consistent with ILO Recommendations Nos. 146 and 190.

7. Transnational corporations and other business enterprises shall provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law.

Commentary

(a) Transnational corporations and other business enterprises bear responsibility for the occupational health and safety of their workers and shall provide a working environment in accordance with the national requirements of the countries in which they are located and with international standards such as those found in the International Covenant on Economic, Social and Cultural Rights; the ILO Plantations Convention, 1958 (No. 110), the Radiation Protection Convention, 1950 (No. 115), the Guarding of Machinery Convention, 1963 (No. 119), the Hygiene (Commerce and Offices) Convention, 1964 (No. 120), the Maximum Weight Convention, 1967 (No. 127), the Benzene Convention, 1971 (No. 136), the Occupational Cancer Convention, 1974 (No. 139), the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Health Services Convention, 1985 (No. 161), the Asbestos Convention, 1986 (No. 162), the Safety and Health in Construction Convention, 1988 (No. 167), the Chemicals Convention, 1990 (No. 170), the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), the Safety and Health in Mines Convention, 1995 (No. 176), the Maternity Protection Convention, 2000 (No. 183) and relevant recommendations, as well as ensuring their application under the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Workers' Representatives Convention, 1971 (No. 135) and their successor conventions. Such a safe and healthy work environment for women and men shall aid in the prevention of accidents and injuries arising out of, linked with, or occurring within the course of work. Transnational corporations and other business enterprises shall also take into account the particular needs of migrant workers as set forth in the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(b) Consistent with paragraph 15 (a), transnational corporations and other business enterprises shall make available information about the health and safety standards relevant to their local activities. The information shall also include arrangements for training in safe working practices and details on the effects of all substances used in manufacturing processes. In particular, and additionally consistent with paragraph 15 (e), transnational corporations and other business enterprises shall make known any special hazards that tasks or conditions of work involve and the related measures available to protect the workers.

(c) Transnational corporations and other business enterprises shall provide, where necessary, measures to deal with emergencies and accidents, including first-aid arrangements. They also shall provide, at their expense, personal protective clothing and equipment when necessary. Further, they shall incur expenses for occupational health and safety measures.

(d) Transnational corporations and other business enterprises shall consult and cooperate fully with health, safety and labour authorities, workers' representatives and their organizations and established safety and health organizations on matters of occupational health and safety. They shall cooperate in the work of international organizations concerned with the

preparation and adoption of international safety and health standards. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organizations. Transnational corporations and other business enterprises shall examine the causes of safety and health hazards in their industry and work to implement improvements and solutions to those conditions, including the provision of safe equipment at least consistent with industry standards. Further, they shall monitor the working environment and the health of workers liable to exposure to specified hazards and risks. Transnational corporations and other business enterprises shall investigate work-related accidents, keep records of incidents stating their cause and remedial measures taken to prevent similar accidents, ensure the provision of remedies for the injured, and otherwise act in accordance with paragraph 16 (e).

(e) Consistent with paragraph 16 (e), transnational corporations and other business enterprises shall also: (i) respect the right of workers to remove themselves from work situations in which there is a reasonable basis for concern about present, imminent and serious danger to life or health; (ii) not subject them to consequences as a result; and further (iii) not require them to return to work situations as long as the condition continues.

(f) Transnational corporations and other business enterprises shall not require any worker to work more than 48 hours per week or more than 10 hours in one day. Voluntary overtime for workers shall not exceed 12 hours per week and shall not be expected on a regular basis. Compensation for such overtime shall be at a rate higher than the normal rate. Each worker shall be given at least one day off in every seven-day period. These protections may be adjusted to meet the different needs of management personnel; construction, exploration and similar workers who work for short periods (e.g. a week or two) followed by a comparable period of rest; and professionals who have clearly indicated their personal desire to work more hours.

8. Transnational 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 take due account of their needs for adequate living conditions with a view towards progressive improvement.

Commentary

(a) Transnational corporations and other business enterprises shall provide workers with fair and reasonable remuneration for work done or to be done, freely agreed upon or fixed by national laws or regulations (whichever is higher), payable regularly and at short intervals in legal tender, so as to ensure an adequate standard of living for workers and their families. Operations in the least developed countries shall take particular care to provide just wages. Wages shall be paid, consistent with international standards such as the Protection of Wages Convention, 1949 (No. 94). Wages are a contractual obligation of employers that are to be honoured even into insolvency, in accordance with the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

(b) Transnational corporations and other business enterprises shall not deduct from a worker's wages already earned as a disciplinary measure, nor shall any deduction from wages be permitted under conditions or to an extent other than as prescribed by national laws or

regulations, or fixed by a collective agreement or arbitration award. Transnational corporations and other business enterprises shall also avoid taking actions to undermine the value of employee benefits, including pensions, deferred compensation and health care.

(c) Transnational corporations and other business enterprises shall keep detailed written records on each worker's hours of work and wages paid. Workers shall be informed in an appropriate and easily understandable manner before they enter employment and when any changes take place as to the conditions in respect of wages, salaries and additional emoluments under which they are employed. At the time of each payment of wages, workers shall receive a wage statement informing them of such particulars relating to the pay period concerned as the gross amount of wages earned, any deduction which may have been made, including the reasons therefor, and the net amount of wages due.

(d) Transnational corporations and other business enterprises shall not limit in any manner the freedom of workers to dispose of their wages, nor shall they exert any coercion on workers to make use of company stores or services, where such stores exist. In cases in which the partial payment of wages in the form of allowances in kind is authorized by national laws or regulations, collective agreements, or arbitration awards, transnational corporations and other business enterprises shall ensure that such allowances are appropriate for the personal use and benefit of workers and their families and that the value attributed to such allowances is fair and reasonable.

(e) 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 such as the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Workers with Family Responsibilities, 1981 (No. 156).

9. Transnational corporations and other business enterprises shall ensure freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labour Organization.

Commentary

(a) Transnational corporations and other business enterprises shall respect workers' and employers' freedom of association consistent with the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and other international human rights law. They shall respect the rights of workers' organizations to function independently and without interference, including with respect to the right of workers' organizations to draw up their constitutions and rules, to elect their representatives, to organize their administration and activities and to formulate their programmes. Further, they shall refrain from discriminating against workers by reason of trade union membership or participation in trade union activities, and shall refrain from any interference that restricts these rights or impedes their lawful exercise.

They shall ensure that the existence of workers' representatives does not undermine the position of the union established consistent with international standards, and that workers' representatives are entitled to bargain collectively only where there is no such union in the company. Where appropriate in the local circumstances multinational enterprises shall support representative employers' organizations.

(b) Transnational corporations and other business enterprises shall recognize workers' organizations for the purpose of collective bargaining consistent with the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and other international human rights law. They shall respect the right of workers to strike, to submit grievances, including grievances as to compliance with these norms, to fair and impartial persons who have the authority to redress any abuses found, and to be protected from suffering prejudice for using those procedures, consistent with the norms contained in the Collective Bargaining Convention, 1981 (No. 154).

(c) Transnational corporations and other business enterprises shall enable representatives of their workers to conduct negotiations on their terms and conditions of employment with representatives of management who are authorized to make decisions about the issues under negotiation. They shall further give workers and their representatives access to information, facilities and other resources, and ensure internal communications, consistent with international standards such as the Workers' Representatives Convention, 1971 (No. 135) and the Communications within the Undertaking Recommendation, 1967 (No. 129) that are relevant and necessary for their representatives to conduct negotiations effectively and without unnecessary harm to legitimate interests of employers.

(d) Transnational corporations and other business enterprises shall abide by provisions in collective bargaining agreements that provide for the settlement of disputes arising over their interpretation and application and also by decisions of tribunals or other mechanisms empowered to make determinations on such matters. Transnational corporations and other business enterprises jointly with representatives and organizations of workers shall seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers.

(e) Transnational corporations and other business enterprises shall take particular care to protect the rights of workers from procedures in countries that do not fully implement international standards regarding freedom of association, the right to organize and the right to bargain collectively.

E. Respect for national sovereignty and human rights

10. Transnational corporations and other business enterprises shall recognize and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate.

Commentary

(a) Transnational corporations and other business enterprises, within the limits of their resources and capabilities, shall encourage social progress and development by expanding economic opportunities - particularly in developing countries and, most importantly, in the least developed countries.

(b) Transnational corporations and other business enterprises shall respect the right to development, which all peoples are entitled to participate in and contribute to, and the right to enjoy economic, social, cultural and political 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.

(c) Transnational corporations and other business enterprises shall respect the rights of local communities affected by their activities and the rights of indigenous peoples and communities consistent with international human rights standards such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169). They 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. They shall also respect the principle of free, prior and informed consent of the indigenous peoples and communities to be affected by their development projects. Indigenous peoples and communities shall not be deprived of their own means of subsistence, nor shall they be removed from lands which they occupy in a manner inconsistent with Convention No. 169. Further, they shall avoid endangering the health, environment, culture and institutions of indigenous peoples and communities in the context of projects, including road building in or near indigenous peoples and communities. Transnational corporations and other business enterprises shall use particular care in situations in which indigenous lands, resources, or rights thereto have not been adequately demarcated or defined.

(d) Transnational corporations and other business enterprises shall respect, protect and apply intellectual property rights in a manner that contributes to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge, in a manner conducive to social and economic welfare, such as the protection of public health, and to a balance of rights and obligations.

11. Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.

Commentary

(a) Transnational corporations and other business enterprises shall enhance the transparency of their activities in regard to payments made to Governments and public officials; openly fight against bribery, extortion and other forms of corruption; and cooperate with State authorities responsible for combating corruption.

(b) Transnational corporations and other business enterprises shall not receive payment, reimbursement, or other benefit in the form of natural resources without the approval of the recognized Government of the State of origin of such resources.

(c) Transnational corporations and other business enterprises shall assure that the information in their financial statements fairly presents in all material respects the financial condition, results of operations and cash flows of the business.

12. Transnational corporations and other business enterprises shall respect economic, social and cultural rights as well as civil and political rights and contribute to their realization, in particular the rights to development, adequate food and drinking water, the highest attainable standard of physical and mental health, adequate housing, privacy, education, freedom of thought, conscience, and religion and freedom of opinion and expression, and shall refrain from actions which obstruct or impede the realization of those rights.

Commentary

(a) Transnational corporations and other business enterprises shall observe standards that promote the availability, accessibility, acceptability and quality of the right to health, for example as identified in article 12 of the International Covenant on Economic, Social and Cultural Rights, general comment No. 14 on the right to the highest attainable standard of health adopted by the Committee on Economic, Social and Cultural Rights and the relevant standards established by the World Health Organization.

(b) Transnational corporations and other business enterprises shall observe standards which promote the availability of food in a quantity and of a quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, acceptable within a given culture, accessible in ways that are sustainable and do not interfere with the enjoyment of other human rights, and are otherwise in accordance with international standards such as article 11 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 12 on the right to adequate food adopted by the Committee on Economic, Social and Cultural Rights. Transnational corporations and other business enterprises shall further observe standards which protect the right to water and are otherwise in accordance with general comment No. 15 adopted by the Committee on Economic, Social and Cultural Rights on the right to water.

(c) Transnational corporations and other business enterprises shall further observe standards which protect the right to adequate housing and are otherwise in accordance with article 11 of the International Covenant on Economic, Social and Cultural Rights and general comment No. 7 adopted by the Committee on Economic, Social and Cultural Rights on the right to adequate housing: forced evictions. Transnational corporations and other business enterprises

shall not forcibly evict individuals, families and/or communities against their will from their homes and/or land which they occupy without having had recourse to, and access to, appropriate forms of legal or other protection pursuant to international human rights law.

(d) Transnational corporations and other business enterprises shall observe standards that protect other economic, social and cultural rights and are otherwise in accordance with the International Covenant on Economic, Social and Cultural Rights and the relevant general comments adopted by the Committee on Economic, Social and Cultural Rights, paying particular attention to the implementation of norms stated in paragraphs 16 (g) and (i).

(e) Transnational corporations and other business enterprises shall observe standards that protect civil and political rights and are otherwise in accordance with the International Covenant on Civil and Political Rights and the relevant general comments adopted by the Human Rights Committee.

F. Obligations with regard to consumer protection

13. Transnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.

Commentary

(a) Transnational corporations and other business enterprises shall adhere to the relevant international standards of business practice regarding competition and anti-trust matters, such as The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices of the United Nations Conference on Trade and Development. A transnational corporation or other business enterprise shall encourage the development and maintenance of fair, transparent and open competition by not entering into arrangements with competing businesses to directly or indirectly fix prices, divide territories, or create monopoly positions.

(b) Transnational corporations and other business enterprises shall observe relevant international standards for the protection of consumers, such as the United Nations Guidelines for Consumer Protection, and relevant international standards for the promotion of specific products, such as the International Code of Marketing of Breast-milk Substitutes adopted by the World Health Assembly and the Ethical Criteria for Medical Drug Promotion of the World Health Organization. Transnational corporations and other business enterprises shall ensure that all marketing claims are independently verifiable, satisfy reasonable and relevant legal levels of truthfulness, and are not misleading. Further, they shall not target children when advertising potentially harmful products.

(c) Transnational corporations and other business enterprises shall ensure that all goods and services they produce, distribute, or market are capable of use for the purposes claimed, safe for intended and reasonably foreseeable uses, do not endanger the life or health of consumers, and are regularly monitored and tested to ensure compliance with these standards, in

the context of reasonable usage and custom. They shall adhere to relevant international standards so as to avoid variations in the quality of products that would have detrimental effects on consumers, especially in States lacking specific regulations on product quality. They shall further respect the precautionary principle when dealing, for example, with preliminary risk assessments that may indicate unacceptable effects on health or the environment. Further, they shall not use the lack of full scientific certainty as a reason to delay the introduction of cost-effective measures intended to prevent such effects.

(d) Any information provided by a transnational corporation or other business enterprise with regard to the purchase, use, content, maintenance, storage and disposal of its products and services shall be provided in a clear, comprehensible and prominently visible manner and in the language officially recognized by the country in which such products or services are provided. Transnational corporations and other business enterprises, when appropriate, shall also provide information regarding the appropriate recycling, reusability and disposal of its products and services.

(e) Consistent with paragraph 15 (e), where a product is potentially harmful to the consumer, transnational corporations and other business enterprises shall disclose all appropriate information on the contents and possible hazardous effects of the products they produce through proper labelling, informative and accurate advertising and other appropriate methods. In particular, they shall warn if death or serious injury is probable from a defect, use, or misuse. Transnational corporations and other business enterprises shall supply appropriate information of potentially harmful products to the relevant authorities. This information shall include the characteristics of products or services that may cause injury to the health and safety of consumers, workers, or others, and information regarding restrictions, warnings and other regulatory measures imposed by several countries as to these products or services on the grounds of health and safety protection.

G. Obligations with regard to environmental protection

14. Transnational corporations and other business enterprises shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable development.

Commentary

(a) Transnational corporations and other business enterprises shall respect the right to a clean and healthy environment in the light of the relationship between the environment and human rights; concerns for intergenerational equity; internationally recognized environmental standards, for example with regard to air pollution, water pollution, land use, biodiversity and hazardous wastes; and the wider goal of sustainable development, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

(b) Transnational corporations and other business enterprises shall be responsible for the environmental and human health impact of all of their activities, including any products or services they introduce into commerce, such as packaging, transportation and by-products of the manufacturing process.

(c) Consistent with paragraph 16 (i), in decision-making processes and on a periodic basis (preferably annually or biannually), transnational corporations and other business enterprises shall assess the impact of their activities on the environment and human health including impacts from siting decisions, natural resource extraction activities, the production and sale of products or services, and the generation, storage, transport and disposal of hazardous and toxic substances. Transnational corporations and other business enterprises shall ensure that the burden of negative environmental consequences shall not fall on vulnerable racial, ethnic and socio-economic groups.

(d) Assessments shall, inter alia, 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. Transnational corporations and other business enterprises shall distribute such reports in a timely manner and in a manner that is accessible to the United Nations Environmental Programme, the ILO, other interested international bodies, the national Government hosting each company, the national Government where the business maintains its principal office and other affected groups. The reports shall be accessible to the general public.

(e) Transnational corporations and other business enterprises shall respect the prevention principle, for example by preventing and/or mitigating deleterious impacts identified in any assessment. They shall also respect the precautionary principle when dealing, for example, with preliminary risk assessments that may indicate unacceptable effects on health or the environment. Further, they shall not use the lack of full scientific certainty as a reason to delay the introduction of cost-effective measures intended to prevent such effects.

(f) Upon the expiration of the useful life of their products or services, transnational corporations and other business enterprises shall ensure effective means of collecting or arranging for the collection of the remains of the product or services for recycling, reuse and/or environmentally responsible disposal.

(g) Transnational corporations and other business enterprises shall take appropriate measures in their activities to reduce the risk of accidents and damage to the environment by adopting best management practices and technologies. In particular, they shall use best management practices and appropriate technologies and enable their component entities to meet these environmental objectives through the sharing of technology, knowledge and assistance, as well as through environmental management systems, sustainability reporting, and reporting of anticipated or actual releases of hazardous and toxic substances. In addition, they shall educate and train workers to ensure their compliance with these objectives.

H. General provisions of implementation

15. As an initial step towards implementing these Norms, each transnational corporation or other business enterprise shall adopt, disseminate and implement internal rules of operation in compliance with the Norms. Further, they shall periodically report on and take other measures fully to implement the Norms and to provide at least for the prompt implementation of the protections set forth in the Norms. Each transnational corporation or other business enterprise shall apply and incorporate these Norms in their contracts or other arrangements and dealings with contractors, subcontractors, suppliers, licensees, distributors, or natural or other legal persons that enter into any agreement with the transnational corporation or business enterprise in order to ensure respect for and implementation of the Norms.

Commentary

(a) Each transnational corporation or other business enterprise shall disseminate its internal rules of operation or similar measures, as well as implementation procedures, and make them available to all relevant stakeholders. The internal rules of operation or similar measures shall be communicated in oral and written form in the language of workers, trade unions, contractors, subcontractors, suppliers, licensees, distributors, natural or other legal persons that enter into contracts with the transnational corporation or other business enterprise, customers and other stakeholders in the transnational corporation or other business enterprise.

(b) Once internal rules of operation or similar measures have been adopted and disseminated, transnational corporations and other business enterprises shall - to the extent of their resources and capabilities - provide effective training for their managers as well as workers and their representatives in practices relevant to the Norms.

(c) Transnational corporations and other business enterprises shall ensure that they only do business with (including purchasing from and selling to) contractors, subcontractors, suppliers, licensees, distributors, and natural or other legal persons that follow these or substantially similar Norms. Transnational corporations and other business enterprises using or considering entering into business relationships with contractors, subcontractors, suppliers, licensees, distributors, or natural or other legal persons that do not comply with the Norms shall initially work with them to reform or decrease violations, but if they will not change, the enterprise shall cease doing business with them.

(d) Transnational corporations and other business enterprises shall enhance the transparency of their activities by disclosing timely, relevant, regular and reliable information regarding their activities, structure, financial situation and performance. They shall also make known the location of their offices, subsidiaries and factories, so as to facilitate measures to ensure that the enterprises, products and services are being produced under conditions that respect these Norms.

(e) Transnational corporations and other business enterprises shall inform in a timely manner everyone who may be affected by conditions caused by the enterprises that might endanger health, safety, or the environment.

(f) Each transnational corporation or other business shall endeavour to improve continually its further implementation of these Norms.

16. Transnational corporations and other business enterprises shall be subject to periodic monitoring and verification by United Nations, other international and national mechanisms already in existence or yet to be created, regarding application of the Norms. This monitoring shall be transparent and independent and take into account input from stakeholders (including non-governmental organizations) and as a result of complaints of violations of these Norms. Further, transnational corporations and other business enterprises shall conduct periodic evaluations concerning the impact of their own activities on human rights under these Norms.

Commentary

(a) 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.

(b) 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. The United Nations and its specialized agencies should also monitor implementation by using the Norms as the basis for procurement determinations concerning products and services to be purchased and with which transnational corporations and other business enterprises develop partnerships in the field. Country rapporteurs and thematic procedures of the United Nations Commission on Human Rights should monitor implementation by using the Norms and other relevant international standards for raising concerns about actions by transnational corporations and other business enterprises within their respective mandates. The Commission on Human Rights should consider establishing a group of experts, a special rapporteur, or working group of the Commission to receive information and take effective action when enterprises fail to comply with the Norms. The Sub-Commission on the Promotion and Protection of Human Rights and its relevant working group should also monitor compliance with the Norms and developing best practices by receiving information from non-governmental organizations, unions, individuals and others, and then by allowing transnational corporations or other business enterprises an opportunity to respond. Further, the Sub-Commission, its working group and other United Nations bodies are invited to develop additional techniques for implementing and monitoring these Norms and other effective mechanisms and to ensure access is given to NGOs, unions, individuals and others.

(c) 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 corporation or other business enterprise 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.

(d) Transnational corporations and other business enterprises shall ensure that the monitoring process is transparent, for example by making available to relevant stakeholders the

workplaces observed, remediation efforts undertaken and other results of monitoring. They shall further ensure that any monitoring seeks to obtain and incorporate input from relevant stakeholders. Further, they shall ensure such monitoring by their contractors, subcontractors, suppliers, licensees, distributors, and any other natural or legal persons with whom they have entered into any agreement, to the extent possible.

(e) Transnational corporations and other business enterprises shall provide legitimate and confidential avenues through which workers can file complaints with regard to violations of these Norms. To the extent possible, they shall make known to the complainant any actions taken as a result of the investigation. Further, they shall not discipline or take other action against workers or others who submit complaints or who assert that any company has failed to comply with these Norms.

(f) Transnational corporations and other business enterprises receiving claims of violations of these Norms shall make a record of each claim and obtain an independent investigation of the claim or call upon other proper authorities. They shall actively monitor the status of investigations, press for their full resolution and take action to prevent recurrences.

(g) Each transnational corporation or other business enterprise shall engage in an annual or other periodic assessment of its compliance with the Norms, taking into account comments from and encourage the participation of indigenous peoples and communities to determine how best to respect their rights. The results of the assessment shall be made available to stakeholders to the same extent as the annual report of the transnational corporation or other business enterprise.

(h) Assessments revealing inadequate compliance with the Norms shall also include plans of action or methods of reparation and redress that the transnational corporation or other business enterprise will pursue in order to fulfil the Norms. See also paragraph 18.

(i) Before a transnational corporation or other business enterprise pursues a major initiative or project, it shall, to the extent of its resources and capabilities, study the human rights impact of that project in the light of these Norms. The impact statement shall include a description of the action, its need, anticipated benefits, an analysis of any human rights impact related to the action, an analysis of reasonable alternatives to the action, and identification of ways to reduce any negative human rights consequences. A transnational corporation or other business enterprise shall make available the results of that study to relevant stakeholders and shall consider any reactions from stakeholders.

17. States should establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international laws are implemented by transnational corporations and other business enterprises.

Commentary

Governments should implement and monitor the use of the Norms, for example, by making them widely available and using them as a model for legislation or administrative provisions with regard to the activities of each enterprise doing business in their country, including through the use of labour inspections, ombudspersons, national human rights commissions, or other national human rights mechanisms.

18. Transnational corporations and other business enterprises shall provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms through, inter alia, reparations, restitution, compensation and rehabilitation for any damage done or property taken. In connection with determining damages, in regard to criminal sanctions, and in all other respects, these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law.

19. Nothing in these Norms shall be construed as diminishing, restricting, or adversely affecting the human rights obligations of States under national and international law, nor shall they be construed as diminishing, restricting, or adversely affecting more protective human rights norms, nor shall they be construed as diminishing, restricting, or adversely affecting other obligations or responsibilities of transnational corporations and other business enterprises in fields other than human rights.

Commentary

(a) This savings clause is intended to ensure that transnational corporations and other business enterprises will pursue the course of conduct that is the most protective of human rights - whether found in these Norms or in other relevant sources. If more protective standards are recognized or emerge in international or State law or in industry or business practices, those more protective standards shall be pursued. This savings clause is styled after similar savings clauses found in such instruments as the Convention on the Rights of the Child (art. 41). This provision and similar references in the Norms to national and international law are also based upon the Vienna Convention on the Law of Treaties (art. 27), in that a State may not invoke the provisions of its internal law as justification for its failure to comply with a treaty, the Norms, or other international law norms.

(b) Transnational corporations and other business enterprises are encouraged to express their own commitment to respecting, ensuring respect for, preventing abuses of, and promoting internationally recognized human rights by adopting their own internal human rights rules of operation which are even more conducive to the promotion and protection of human rights than those contained in these Norms.

I. Definitions

20. The term “transnational corporation” refers to an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries - whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively.

21. The phrase “other business enterprise” includes any business entity, regardless of the international or domestic nature of its activities, including a transnational corporation, contractor, subcontractor, supplier, licensee or distributor; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity. These Norms shall be presumed to apply, as a matter of practice, if the business enterprise has any relation with a transnational corporation, the impact of its activities is not entirely local, or the activities involve violations of the right to security as indicated in paragraphs 3 and 4.

22. The term “stakeholder” includes stockholders, other owners, workers and their representatives, as well as any other individual or group that is affected by the activities of transnational corporations or other business enterprises. The term “stakeholder” shall be interpreted functionally in the light of the objectives of these Norms and include indirect stakeholders when their interests are or will be substantially affected by the activities of the transnational corporation or business enterprise. In addition to parties directly affected by the activities of business enterprises, stakeholders can include parties which are indirectly affected by the activities of transnational corporations and other business enterprises such as consumer groups, customers, Governments, neighbouring communities, indigenous peoples and communities, non-governmental organizations, public and private lending institutions, suppliers, trade associations and others.

23. The phrases “human rights” and “international human rights” include civil, cultural, economic, political and social rights, as set forth in the International Bill of Human Rights and other human rights treaties, as well as the right to development and rights recognized by international humanitarian law, international refugee law, international labour law, and other relevant instruments adopted within the United Nations system.
