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COMMISSION ON HUMAN RIGHTS  
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**REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION  
OF HUMAN RIGHTS**

**Written statement\* submitted by Human Rights Advocates,  
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2005]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND RELATED  
BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS (“Norms”)

1. Human Rights Advocates (“HRA”) is encouraged that the Commission on Human Rights (“Commission”) has agreed to study the impact of transnational corporations on international human rights. HRA supports the creation of a mandate, with the Norms as the framework, to develop, clarify, and adopt standards for transnational corporate conduct. Additionally, HRA urges the Commission to develop enforcement mechanisms for those standards.
2. The Norms constitute an authoritative document summarizing existing international law that enumerates the human rights responsibilities and standards of accountability for corporations. The Norms create no new legal obligations for domestic or international businesses.
4. Globalization has forced international human rights law to expand its scope of application. The United Nations (“UN”) is the central forum for this development. The UN’s traditional focus on states has become insufficient, however, as governments’ influence has diminished relative to the concomitant rise in the effect of private actors on the economic, social, cultural, civil, and political rights of individuals.
4. Transnational corporations are complex and far-reaching organizations that operate, even dictate, the increasingly rapid pace of international commerce. The structure of these corporations varies, yet their influence on human rights is unquestionable. Because corporations are emerging as central actors influencing standards of human rights, laws that regulate state activity alone fail to address the complete picture of human rights violations.
5. Indeed, the exponential growth of transnational corporations qualifies as one of the most important historical developments of the late twentieth century. UNCTAD estimates that there are nearly 65,000 transnational corporations, with more than 850,000 foreign affiliates across the globe.<sup>1</sup> The inward flow of foreign capital through equity in local companies, reinvested earnings, and intra-company loans amounts to one-third of developing countries’ gross domestic product, compared to just ten percent in 1980.<sup>2</sup>
6. There is an enormous amount of international law which obligates transnational corporations, their officers and employees to respect generally recognized responsibilities and norms created in United Nations treaties and other international instruments.<sup>3</sup> International human rights law has come to recognize that in addition to states, individuals, armed groups and international organizations have an obligation to protect human rights. It is evolving to regulate the behavior of companies directly as well as indirectly via states. For example, private companies can violate human rights principles when they undertake discrimination in the workplace, including violating the rights of free expression, religion and culture, children’s and women’s rights.<sup>4</sup> They can further violate human rights standards when they are complicit in government abuses such as summary execution or forced labor, or when they hire paramilitary security forces that abuse the rights of the community.

7. The applicability of human rights standards to the private sector is not a new concept. The Preamble to the Universal Declaration of Human Rights, adopted by the General Assembly in 1948 focuses on states, however it is also addressed to “every individual and every organ of society” which “shall strive . . . to promote respect for these rights and freedoms . . .”<sup>5</sup> The international community has since held that individuals as well as companies can be held responsible for international crimes, and indeed several companies faced criminal sanctions after World War II. Companies have also been held responsible under treaties on oil pollution from ships for damages and insurance payments. They have obtained rights under international treaties for the right to bring claims against states under commerce treaties, such as permitted under Chapter 11 of NAFTA.
8. In addition to the responsibilities contained in international treaties, various organizations have developed voluntary codes of conduct. While these have assisted in raising awareness of transnational corporate conduct, they are a starting point rather than a comprehensive regime of accountability. They have also received mixed reactions from corporations, non-governmental organizations (“NGO”), and member countries because they do not contain a traditional accountability structure or monitoring system.<sup>6</sup> The OHCHR’s report, with the Norms as its foundation, presents an opportunity for the Commission to continue the UN’s progress in developing adequate and effective remedies when corporations abuse human rights.
10. Unlike existing voluntary codes, the compilation of the Norms as a legal framework can encourage a culture of compliance and deter human rights violations. The Norms are not meant to be interpreted in any way that would lessen or weaken the obligations imposed on transnational corporations under national law or international standards including those provided by the ILO.
11. To effectively continue its work to clarify human rights standards applicable to business enterprise, the Commission should establish a thematic mandate. As such, it would have the opportunity to better monitor abuses and establish compliance mechanisms. The Commission’s procedures are the most effective UN enforcement mechanisms to address human rights and environmental abuses committed by transnational corporations. Because of the complexity of transnational corporations and the new international focus on private actors, a thematic mandate focusing on corporate activity provides the most comprehensive reporting mechanism.
12. Human rights advocates have long maintained that after country-specific rapporteurs, the Commission’s thematic mechanisms are its most important tools in human rights protection.<sup>7</sup> Considering transnational corporations’ complex corporate structure, the pace of international commerce and the various areas of expertise required to monitor their relationships with host governments, a thematic mandate is the only enforcement mechanism responsive enough to comprehensively enforce the Norms.
13. Thematic mandates are able to network and share information with partners, both Governmental and non-governmental, within and outside the UN, in a spirit of complementarity making the mandate (preferably through a working group, but even with the appointment of a special rapporteur) monitoring more comprehensive.

14. Currently, there are thirty-five special procedures mechanisms covering ten country mandates and twenty-five thematic mandates, concerning a wide range of civil, political, economic, cultural and social rights. However, none of these adequately focuses on the complexity of transnational corporate conduct. Though information gathered by these various mandates will aid a transnational corporate mandate, combining the existing mandates is insufficient to monitor compliance with the Norms.
15. A thematic mandate is uniquely flexible in responding to individual human rights violations resulting from transnational corporate abuse. Because transnational corporations operate at the pace of international commerce, several characteristics of their activity necessitate a thematic mandate. Some of these benefits include receiving and analyzing information on the situation of human rights from various sources on an ongoing basis.
16. Traditional UN institutional monitoring bodies are unable to make project specific visits to assess the transnational corporation and host government's compliance with the Norms. In contrast, a thematic mandate can make visits seeking clarification from Governments and corporations about specific projects, and when urgently required, can request that they implement protection measures guaranteeing or restoring the enjoyment of a particular human rights violation. A thematic mandate is able to comment on continuing activities and specific trends through the media and other public statements to the host government, as well as through recommendations to the Commission, and if specified in the mandate to the General Assembly (in some cases to the Security Council). Subsequent to a recommendation, a thematic mandate is also better able to monitor application of the recommendations, and compliance with the Norms.
18. On thematic issues of global interest, Working Groups of five persons from different regions should be formed. These Working Groups could also include members from various Permanent Missions in Geneva, which would result in reduction of expenditure. Such Working Groups would provide *additional advantages of transparency, credibility and democracy*.<sup>8</sup>

#### **Recommendation:**

#### **The Commission Should Establish A Working Group To Oversee Standards Development and Compliance by Business Enterprises**

19. The complexity of modern international economics warrants the establishment of a working group, or in the minimum alternative, a special rapporteur to monitor compliance with the Norms. Transnational corporate violations are of global interest, with many developed (home) states failing to regulate corporate conduct beyond their borders, and developing (host) states unable to effectively regulate corporations that provide desperately needed expertise and technology to their economies. Additionally a working group will be essential to creating a monitoring mechanism that creates regional balance, has a broader political base, and is transparent and credible.
20. HRA reiterates that the Norms only summarize existing legal obligations and create no new international law applicable to transnational corporations. HRA supports a Commission mandate to further develop and clarify the existing standards of international law applicable to transnational corporations. In order to complete this mandate, HRA believes that the

Commission must discuss the most effective means of enforcing the standards it creates. HRA believes that a thematic mandate best achieves the goal of effective enforcement.

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<sup>1</sup> UNCTAD, FDI in Least Developed Countries at a Glance, available at <http://vi.unctad.org/SITE/TP/Data.nsf/0/8b9a23d1f8b547ebc1256eaf00546da7?OpenDocument> (last visited February 2, 2005).

<sup>2</sup> UNCTAD, Foreign Direct Investment, at <http://www.unctad.org/Templates/StartPage.asp?intItemID=2527&lang=1>.

<sup>3</sup> See Preamble of the Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. U.N. Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003).

<sup>4</sup> See, e.g., International Council on Human Rights Policy, *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies*, at 35-43 (Jan. 2002) for a comprehensive discussion of private company obligations under human rights law.

<sup>5</sup> Available at <http://www.un.org/Overview/rights.html> (last visited January 31, 2005).

<sup>6</sup> Oliver Williams, *Major US Companies Doubt Global Compact Credentials*, BUSINESS DAY, available at <http://www.bday.co.za/bday/content/direct/1,3523,1330151-6096-0,00.html> (last accessed January 31, 2005).

<sup>7</sup> Reed Brody, *Current Development*, 85 AM. J. INT'L. L. 709, 709 (1991).

<sup>8</sup> U.N. Doc. E/CN.4/1990/WG.3/WP.6, at 3, para. 3 (emphasis added).

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