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### **IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**Written statement\* submitted by Human Rights Advocates, Inc. (HRA),  
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.

[21 February 2007]

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

## Accountability for Transnational Corporations

1. Human Rights Advocates recognizes, as do most nations and experts, that governments have the responsibility and obligation to ensure that their citizens are given equal access to enjoy fundamental human rights. We recognize that rights of citizens are not always protected by their own governments, either from inability or indifference. The international community has an obligation under the Charter of the United Nations and other human rights treaties to offer assistance to protect all victims of abuses and guarantee such fundamental basic rights.<sup>1</sup>

2. In a time when annual profits of some transnational corporations (“TNC”) are higher than the gross domestic product (“GDP”) of many developing governments, there is often an imbalance of power, creating a situation where it is essential for the international community to help regulate the actions of TNCs. Corporations, as legal entities, have corresponding rights and obligations under national *and* international law with which their actions must comply.<sup>2</sup> These obligations include the duty not to knowingly provide substantial support or participate in the perpetration of human rights abuses.<sup>3</sup> In order to ensure a consistent, global approach that governments, corporations and international actors can implement and maintain, it is imperative that legal normative standards be clarified.

3. Today, there are over 65,000 TNCs with 850,000 foreign affiliates, affecting multiple regions and states.<sup>4</sup> International legally-binding standards on the private sector are imperative to account for the increase of corporate violations of human rights in ALL regions. In his interim report, the Special Representative of the Secretary-General acknowledged that there is “a negative symbiosis between the worst corporate-related human rights abuses and host countries that are characterized by a combination of relatively low national income, current or recent conflict exposure, and weak or corrupt governance.”<sup>5</sup> The interplay of these factors can have negative results for victims of human rights violations. For example, the government of Papua New Guinea enacted a law in 2002 that prevents any government agency from taking or supporting “in any way proceedings against the mining multinational BHP-Billiton in respect of an environmental claim.”<sup>6</sup> Instead of providing rights to the victims, the law precludes remedies.

4. Furthermore, governments are often in competition with surrounding countries for economic aid from organizations, such as the World Trade Organization, International Monetary Fund, and the World Bank. Many of these organizations discourage the implementation of local laws that would limit the activities of foreign businesses in any

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<sup>1</sup> Preamble to the Charter of the United Nations, entered into force October 24, 1945.

<sup>2</sup> Earth Rights International, *The International Law Standard for Corporate Aiding and Abetting Liability*, July 2006: The idea of holding corporations legally accountable has been addressed during the Nuremberg Tribunals, the International Criminal Tribunals for former Yugoslavia and Rwanda, as well as the US Alien Tort Statute (ATS).

<sup>3</sup> Preamble to the Universal Declaration of Human Rights, U.N. Doc. A/810 at 71 (1948).

<sup>4</sup> United Nations Conference on Trade and Development, Geneva, 2003; World Investment Report 2003.

<sup>5</sup> UN Commission on Human Rights, *Promotion and Protection of Human Rights*, E/CN.4/2006/97 (22 February 2006), para. 30.

<sup>6</sup> United Nations Research Institute for Social Development (UNRISD), *Regulations for Corporations: A Historical Account of TNC Regulation*, <http://www.reports-and-materials.org/Abrahams-Regulations-for-Corporations-Oct-2005.doc> (October 2005), 21.

way.<sup>7</sup> The free rein given to foreign businesses often comes at a price to those living in the host country. For example, pesticide poisoning by TNC's is 99% more likely in the developing world, even though only 20% of worldwide pesticide use actually occurs in these developing countries.<sup>8</sup> Because of an inability or unwillingness on the part of governments of developing countries, many have been left unprotected.

5. In regulating TNCs, voluntary codes of conduct and initiatives have also proven to be insufficient. Corporations publicly affiliate themselves with voluntary codes and other socially responsible entities while violating those very codes through outsourcing and foreign subsidiaries. The UN Global Compact, the world's largest corporate social responsibility initiative, is one such example that has proven to be insufficient. Established in 2000, the UN Global Compact "relies on public accountability, transparency and the enlightened self-interest of its members," instead of using regulatory or policing mechanisms to support universal social principles.<sup>9</sup> Shell Oil Company, a touted member of the UN Global Compact, has recently become the subject of complaints filed in Brazil and the Philippines for violating national law in both countries and for damaging the environment and human health.<sup>10</sup> Not surprisingly, there is little incentive to abide by the voluntary codes of conduct that corporations adopt. Therefore, the Special Representative in completing his mandate must do more than simply redefine and catalog preexisting norms and *jus cogens* violations, he must clearly identify those that are legally binding on corporations in international and domestic forums.

6. Clearly, the domestic courts should be the first legal mechanism to hold corporations accountable. This has been done in some instances. For example, in July 2006, a Nigerian federal court ordered Shell to pay \$1.5 billion to the Ijaw people of the Delta region for environmental degradation in the oil-rich region.<sup>11</sup> Additionally, domestic courts where an offending business is incorporated can be an effective forum in which to bring charges of human rights violations. For instance, the U.S. Alien Torts Claim Act allows foreign victims to sue in US courts for serious human rights abuses that violate international law. However, the success of plaintiffs has been limited essentially because of the *lack* of specific international laws that clearly define the responsibility of corporations to prevent their own activities from causing or supporting human rights violations. In a more positive light, the European Union this February proposed a directive which would make corporations criminally liable for environmental offenses.<sup>12</sup> The directive would codify environmental crimes and set the minimum sanctions that the courts of Member States would have to give as punishment to violating corporations.<sup>13</sup> Furthermore, the directive

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<sup>7</sup> UNRISD, *Regulations for Corporations: A Historical Account of TNC Regulation*, 6.

<sup>8</sup> Human Rights Advocates, *The Transboundary Transfer of Toxics: The Adverse Effect of E-waste and Pesticides on Human Rights*, [www.humanrightsadvocates.org/images/Toxics%20Report.doc](http://www.humanrightsadvocates.org/images/Toxics%20Report.doc).

<sup>9</sup> United Nations Global Compact Official Website, <http://www.unglobalcompact.org/AboutTheGC/index.html> (last viewed September 18, 2006).

<sup>10</sup> OECD Watch, both complaints filed in May 2006 in local courts: [http://www.corporate-accountability.org/eng/documents/2006/oecdwatch\\_pressrelease\\_shellcomplaint\\_060516.pdf](http://www.corporate-accountability.org/eng/documents/2006/oecdwatch_pressrelease_shellcomplaint_060516.pdf).

<sup>11</sup> African Echo, *Nigeria: Shell to Pay Nigeria \$1.5bn to the Ijaw People*, July 20, 2006 (available at <http://www.corpwatch.org/article.php?id=13918>).

<sup>12</sup> See EC Europa for proposal ([http://ec.europa.eu/environment/crime/pdf/com\\_2007\\_0051\\_f\\_en\\_acte.pdf](http://ec.europa.eu/environment/crime/pdf/com_2007_0051_f_en_acte.pdf)) and Europa Press Release for further explanation (<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/166&format=HTML&aged=0&language=EN&guiLanguage=en> )

<sup>13</sup> *Id.*

proposes that corporations guilty of environmental offenses would be responsible for clean up efforts and in the most extreme cases, potentially closed down by the courts. The implementation of this directive and global legally-binding standards would give both corporations and governments concrete guidelines, resources, and incentives to recognize, respect and protect human rights for all.

7. Though no international criminal tribunal has specifically addressed the question of jurisdiction over corporations, the Nuremberg Tribunal and the International Criminal Tribunals for former Yugoslavia and Rwanda, during hearings in which corporate officers were held criminally liable for the acts of their corporations, stressed that companies should be held to the same standards applicable to all individuals.<sup>14</sup> It would seem that corporate directors could be held accountable under ICC jurisdiction as well. More importantly, corporations are recognized as having legal personality, rights and obligations in various facets of international law, such as investment law, European Union Law, various bribery conventions and anti-corruption law.<sup>15</sup> Nevertheless, the international community has yet to establish human rights standards for corporations. Developing countries are much more likely to take an active part in regulating abusive behavior of TNCs if they can rely on an international legal system that will facilitate protection of their citizens and prevent backlash from offending businesses.

8. Corporate accountability for human rights violations has been considered by the UN since the 1970's and yet there has been no sustainable progress in determining universal standards for corporations or in establishing a mechanism by which to hold them accountable. In 2003 the Sub-Commission on the Promotion and Protection of Human Rights unanimously approved a list of 23 articles on environmental and human rights obligations, referred to as the UN Norms. Though political pressure has ruined the possibility that the original list would be adopted as universal standards, the UN Norms still provide a valuable resource as to what is international customary law. Hence, the UN Norms should be considered in drafting the obligations of corporations.

9. An international legal system to protect victims of human rights violations from corporations can only benefit the international community. With normative standards, all businesses would be put on equal footing and governments would be able to protect its citizens without fear of losing foreign investments. Many western nations are currently seeing a trend of socially responsible consumers and businesses. Normative standards would build a legal baseline that all corporations must comply with. By making every business enterprise similarly accountable for its sphere of influence, the businesses that are consistently in the public eye and more often forced to run a socially responsible business, such as those in the Fortune 500, are not at a disadvantage compared to the lesser-known competitors. In response to the publications of the UN Norms, market dominator, Altria Group Inc.,<sup>16</sup> announced that they would agree to being legally regulated by the terms of the UN Norms if it would apply to all companies in the industry.<sup>17</sup> This indicates that an effective corporate monitoring system and a uniform set of human rights minimum

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<sup>14</sup> See, e.g., investor suit provisions under NAFTA; see also, Earth Rights International, *The International Law Standard for Corporate Aiding and Abetting Liability*, July 2006.

<sup>15</sup> Id.

<sup>16</sup> Altria Group Inc. is the parent company of Kraft Foods, Philip Morris International, Philip Morris USA and Philip Morris Capital Corporation.

<sup>17</sup> United Nations Research Institute for Social Development (UNRISD), *Regulations for Corporations*, 21.

standards are essential to the healthy and continuous growth of productive market investment as well as developing countries.

**Recommendations:**

10. Human Rights Advocates urges the HRC to establish a permanent Working Group that will:

1. Establish a clear set of legally-binding normative standards for corporate accountability that domestic and international courts can use and an understanding of the sphere of influence in which those obligations must apply.
2. Create an effective international monitoring and investigating mechanism to hold corporations and countries accountable for these globally binding standards.
3. Require that all corporations comply with the codes and initiatives that they have signed, irrespective of location of activity or country of incorporation, as a preliminary way to hold TNCs accountable.

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