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COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-fifth session
Item 4 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL 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.

[3 July 2003]

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

GE.03-14962

TRANSNATIONAL CORPORATIONS WORKING GROUP

Written statement submitted by Human Rights Advocates, a non-governmental organization in Category II Consultative Status with the Economic and Social Council, and the Natural Heritage Institute, a collaborating NGO

DRAFT NORMS AND COMMENTARY

1. Human Rights Advocates urges the Sub-Commission to continue its efforts in exploring the relationship between transnational corporations and their legal obligations under international human rights and humanitarian law. On 20 August 1998 in Resolution 1998/8, the Sub-Commission approved the establishment, for a three-year period, of a sessional working on the working methods and activities of transnational corporations (“Transnational Corporations Working Group”) to study the activities and working methods of transnational corporations. Understanding the importance of the task before the Working Group, on 15 August 2001 in Resolution 2001/3, the Sub-Commission continued the Transnational Corporations Working Group for another three years with the idea that the Working Group would draft norms specifically addressing human rights and transnational corporation and other business entities affecting the enjoyment of human rights.
2. The Transnational Corporations Working Group has worked diligently during these past three years to draft norms that would make explicit the human rights obligations transnational corporations and other business entities. E/CN.4/Sub.2/2000/WG.2/WP.1, E/CN.4/Sub.2/2000/WG.2/WP.1/Add.1, E/CN.4/Sub.2/2000/WG.2/WP.1/Add.2. Within the past year, the Transnational Corporations Working Group has refined its draft norms and drafted Commentary, crucial to the implementation of these norms. E/CN.4/Sub.2/2002/WG.2/WP.1 and Add.1 (Draft Norms), E/CN.4/Sub.2/2002/WG.2/WP.1/Add.2 (Commentary).
3. In Resolution 2002/8, the Sub-Commission requested the Transnational Corporations Working Group circulate the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights to non-governmental organizations, governments, specialized agencies, and other interested parties for comment. The Sub-Commission also recommended that the Transnational Corporations Working Group continue its efforts in exploring implementation mechanisms for these norms.
4. The Transnational Corporations Working Group has heeded these requests and recommendations. Its attention to the Sub-Commission’s mandate is illustrated by the Commentary to the Draft Norms. The Commentary to Section I of the Draft Norms, “General Provisions of Implementation,” explicates that each transnational corporation or

other business enterprise must disseminate its internal rules of operation¹ and must regularly disclose information regarding “its activities, structure, financial situation, . . . performance . . . and [its] offices, subsidiaries, and factories . . .”² The Commentary provides an extensive list of implementation mechanisms including country rapporteurs, thematic procedures, assistance by United Nations human rights treaty bodies, establishment of complaint body by the U.N. Commission on Human Rights, and continued monitoring by Sub-Commission and the Transnational Corporations Working Group.³

5. Recognizing the laudable efforts of the Transnational Corporations Working Group in developing the Draft Norms and Commentary, Human Rights Advocates urges the Sub-Commission adopt both the Draft Norms and the Commentary at this year’s session. Human Rights Advocates notes the strong momentum and support behind the principles that the Draft Norms and Commentary represent. The International Council on Human Rights Policy issued a report in February 2002 entitled, “Beyond Voluntarism: Human Rights and the developing international legal obligations of companies,” extensively outlining how corporations are liable under international law for human rights violations. Two months ago at the Annual Meeting of the ‘Respect Table’ Companies, Mary Robinson noted that the Draft Norms were going to be presented before the Sub-Commission this August and that these Norms “might eventually become the basis for international law.”⁴

6. As the Sub-Commission is aware, there are thousands of voluntary initiatives, most notably the OECD Guidelines and the Global Compact. The fundamental problem with such initiatives is that they do not specifically and exclusively address human rights or provide a system of accountability for implementation.. For example, out of the 9 principles that comprise the Global Compact, only two are devoted to the topic of human rights.⁵ Unlike these voluntary initiatives, the Draft Norms formulated by the Transnational Corporations Working Group restate existing international human rights and humanitarian law. Approval of the Draft Norms amounts to approval of already established international law.

7. Human Rights Advocates stresses that adoption of the Draft Norms must be accompanied by the adoption of the Commentary. The Commentary serves as a critical guide to the full implementation of the Draft Norms. As stated above, the Commentary outlines a multitude of implementation mechanism and monitoring procedures that should

1 *Commentary for the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, subsection d. at p. 18, last edited April 11, 2003.

2 *Id.* at subsection d.

3 *Id.* at subsections a.-i. on pp. 20-21.

4 Mary Robinson, *The Ways a ‘Business Leaders Initiative on Human Rights’ Might Add Value*, May 7, 2003 (Brussels, Belgium).

5 Principles 1 and 2 of UN Global Compact available at

http://www.unglobalcompact.org/content/AbouttheGC/TheNinePrinciples/prin1_&_prin2.htm.

be studied. Without this guide to implementation, the Draft Norms could become another one of the thousand voluntary initiatives that transnational corporations can choose to ignore or, at best, interpret as they deem appropriate.⁶

HUMAN RIGHTS VIOLATIONS BY CORPORATE ACTORS

8. ts.⁷

9. In March 2001, two union leaders were executed by paramilitary gunmen in what was called a labor dispute.⁸ Drummond, a U.S. company operating in Colombia, like other energy companies, has paid the government of Columbia to protect its operations.⁹ “Several hundred soldiers are stationed inside company installations.”¹⁰ In a suit filed against Drummond under the U.S. Alien Torts Claims Act (ATCA), Drummond is charged with intimidating the union by permitting “known paramilitaries” to “freely enter [the] mining premises” and to permit pamphlets accusing labor leaders of being “part of a guerrilla union” to be distributed.¹¹ This case is one among many cases that are being filed against U.S. companies for violations of human rights committed abroad. The Draft Norms and Commentary can serve to prevent these and other human rights abuses, including discrimination in the workplace, oppression of women, violations of the rights to life, liberty, personal security, freedom of expression; child labor, forced labor, and a multitude of economic, social, and cultural rights.

10. RECOMMENDATIONS

Human Rights Advocates respectfully urges that the Sub-Commission:

- a. Adopt the Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights together with the Commentary;
- b. Continue the Transnational Corporations Working Group after the adoption of Draft Norms and Commentary to
 - a. seek and receive information about the ongoing problems associated with the implementation of the Draft Norms

⁶ See OECD Watch, Review of National Contact Points: June 2002-June 2003 available at <http://208.55.15.210/OECD-Watch-June-2003.htm>, Oliver Williams, *Major US Companies doubt Global Compact credentials*, Business Day, April 22, 2003 available at <http://www.bdfm.co.za/cgi.bin/pp-print.pl>, and CALIFORNIA GLOBAL CORPORATE ACCOUNTABILITY PROJECT, BEYOND GOOD DEEDS: CASE STUDIES AND A NEW POLICY AGENDA FOR CORPORATE ACCOUNTABILITY 5-7 (2002).

⁷ BEYOND GOOD DEEDS: CASE STUDIES AND A NEW POLICY AGENDA FOR CORPORATE ACCOUNTABILITY at pp. 23-44.

⁸ Juan Forero, *Rights Groups Overseas Fight U.S. Concerns in U.S. Court*, N.Y. TIMES, June 26, 2003, at A3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

- b. develop complaint procedures independent of the host or home states of transnational corporations to consider the abuses and remedies of violations of the Draft Norms
- c. consider and exchange relevant information with other relevant entities in the United Nations, e.g. Special Rapporteurs and Working Groups
- d. and to report on its findings to the Sub-Commission at its annual session

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