



International Network for Economic, Social & Cultural Rights
Red Internacional para los Derechos Económicos, Sociales y Culturales
Réseau international pour les droits économiques, sociaux et culturels

Steps toward Corporate Accountability for Human Rights: ESCR-Net Report to OHCHR on the Human Rights Responsibilities of Business

September 2004

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International Network for Economic, Social and Cultural Rights

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I. Introduction: The Human Rights Responsibilities of Business

We commend the UN Commission on Human Rights for confirming 'the importance and priority it accords to the question of the responsibilities of transnational corporations and related business enterprises with regard to human rights,' and for requesting that the Office of the High Commissioner for Human Rights (OHCHR) compile a report on existing initiatives and standards relating to these human rights responsibilities.

Drawing largely on existing human rights standards, but also on labor and environment standards and other corporate social responsibility initiatives, the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms), approved by the UN Sub-Commission on the Promotion and Protection of Human Rights in August 2003, state in Article 1:

States have the primary responsibility to promote, secure the fulfillment 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 fulfillment 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.

While the States retain primary responsibility, the Commission, together with multiple regional and international initiatives and standards, has confirmed the importance of considering the human rights responsibilities of corporations and businesses.

A. Unequal Power: The Need for Corporate Accountability with regard to Human Rights

The effort to create a comprehensive yet concise list of human rights obligations that are applicable to businesses within their spheres of influence, as represented by the UN Norms, builds on efforts by civil society and governments, as well as by corporations, to constructively address issues of corporate accountability in a rapidly changing international environment. Laying out the rationale for the UN Norms, their Preamble takes 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 capacity of any one national system.

While businesses have the ability to foster economic well-being, the immense power and increasingly complex arrangements of many corporations and other business enterprises also hold the potential to cause serious harm. Drawing on her experience with mining companies in northern Chile, Veronica Matus of Tres Calidad de Vida explains, "The installation of a large company in a small location has direct implications for the economic, social and cultural rights of the community and the region, causing disequilibrium, an overwhelming imbalance of power between the community, the local government and the company." She suggests companies have unfortunately been judged on their contribution to gross domestic product, not on their impact on a community's quality of life as measured in terms of human rights to health, environment, education, and an adequate standard of living.

Although specific violations of human rights are not homogenous in every location, allegations commonly include abuses perpetrated by military and paramilitary forces that have been employed at the request and periodically with the financial support of corporations eager to protect their investments, whether against organized labor or against communities who argue that communal land rights have been violated. Additionally, the impacts of pollution are commonly externalized by corporations onto nearby communities, who are forced to contend with toxic air, rivers, or groundwater, while workers often face poor health and safety standards within factories. One of the more tragic examples of corporate human rights violations occurred in Bhopal, India.

Case Study: Dangerous Shortcuts and Denial of Responsibility--Union Carbide in Bhopal

On the night of 2-3 December 1984, at least 15,000 persons were killed in Bhopal, India, when 41 tons of Methyl Isocyanate were released from a plant owned by Union Carbide Corporation. The Journal of Post-Graduate Medicine reported that 107,249 were disabled and another 60,000 severely disabled as a result of the accident.ⁱ In addition to ongoing health problems related to this incident, the local water supply remains severely polluted, while the soil of local property and the site of the plant continue to be contaminated.

Multiple attempts have been made to hold Union Carbide legally accountable for the 1984 disaster. Initially, these culminated in a 1989 decision by the Indian Supreme Court, which ordered a settlement of civil claims against Union Carbide for the widely criticized amount of only \$470 million. Even today, health facilities in Bhopal remain inadequate, and according to EarthRights International, "Close to 200,000 people affected by the disaster have not received any money, and 90% of those that have only received roughly half of what was promised in the settlement."ⁱⁱ In November 1999, several victims filed a lawsuit against Union

Carbide and its former CEO, Warren Anderson, in a Federal Court in New York, alleging violations of international human rights law, environmental law, and criminal law.

For over a decade, Union Carbide and Warren Anderson have failed to appear before the Indian Court to answer pending criminal charges. EarthRights International, which has been supporting the ongoing lawsuit in US courts, explains, “Union Carbide blames the disaster on a ‘disgruntled employee’ although evidence points to corporate negligence as a result of a company-wide cost-cutting drive. Several smaller accidents had recently occurred, but no remedial measures had been taken. On the night of the disaster, staff had been drastically reduced and several safety measures including the alarm system were turned off to save electricity as a typical money-saving action.”ⁱⁱⁱ Despite ongoing protests in India and worldwide, Union Carbide has continuously refused to release vital information regarding the chemicals that were released in 1984, as well as the results of testing programs completed on the chemicals’ health effects.^{iv} In 2001, Union Carbide became a wholly-owned subsidiary of DOW Chemical, which immediately claimed that it had no responsibility for the prior actions of its new subsidiary.^v

Emphasizing the lack of adequate compensation for victims of the 1984 Bhopal disaster, the ongoing environmental contamination, and the failure of Union Carbide or former Chairman Warren Anderson to face criminal charges, Sadhna Karnik of the Gas Victims Struggle Support Committee, in Bhopal, explains, “The fighting ground is really very unequal.” Noting the inaction of the Indian and US governments, she suggests, “The multinational corporations bring particular political forces to power, and now people from the corporate sector are coming to politics with particular aims and have control over state power.” As Justine Nolan, a lecturer in law at the University of New South Wales, succinctly highlights, “The growth of interest in corporate responsibility in recent years has stemmed largely from recurring examples of corporate irresponsibility.”^{vi} Companies have often hidden behind limited liability arrangements or outdated laws that allow a ‘corporate veil’ to be drawn between a parent company and the practices of its subsidiaries and distributors.

B. Limited Liability and the Establishment of Corporate Power

Market economies are historical developments that have emerged and gradually become naturalized in certain societies. Within market economies, persons tend to be conceptualized as self-interested, rationally-maximizing individuals, who interact based on contractual relationships and through the commodities that they produce.^{vii} Similarly, the ‘corporation’ is a specific historical development. As Jem Bendell explains:

By the end of the twentieth century, in most countries, to create a corporation (a process called “incorporation”) meant the establishment of

a legal identity, distinct from the people who ran it. It became a “legal person” (as opposed to a natural person). There were a variety of advantages to those involved. First, unlike natural persons, it was not certain that the corporation would die, so inheritance tax was avoided. Second, the corporation had some civil and legal rights, and so could go to court. Third, by being a legal person, it could limit liability or, in other words, shield those who ran the business from some of the responsibilities of their actions.

Problems were identified with the two latter privileges. First, as legal persons they could claim rights such as free speech, allowing them to influence political processes and sometime even overturn restrictions on their advertising. Second, limited liability was problematic as corporations could create subsidiaries with a separate legal personality, where risky and dangerous operations could be conducted, such as the transporting of crude oil or nuclear fuels. The parent corporation, being only a shareholder in the subsidiaries, could not easily be held responsible for the actions of the subsidiary. These two aspects of corporations meant that they could acquire significant power, which they could exercise with limited liability.^{viii}

As corporations have developed the power to shape economics and politics, including public policy and institutions, multiple stakeholders have increasingly called for corporate accountability standards to safeguard human rights, the environment, and national sovereignty. Shulamith Koenig, Executive Director of the People’s Decade for Human Rights Education and Winner of the 2003 UN Human Rights Prize,^{ix} articulates a commonly expressed sentiment: “We are not misguided enough to think that we can wish corporations away, but we know that through dialogue about the holistic vision of human rights these corporate leaders and corporate workers will also realize that they cannot wish human rights away either, because human rights go beyond a legal framework.”

C. Calls for Corporate Accountability

The call for greater corporate accountability to human rights standards has arisen from many regions and diverse stakeholders. The standards reviewed in this report represent positive, initial steps towards this accountability. In calling on business leaders to “embrace, support and enact a set of core values in the areas of human rights, labor standards, and environmental practices” through the newly forming Global Compact, at the 1999 World Economic Forum, UN Secretary-General Kofi Annan recognized the importance of business, yet he noted that the global economy remains ‘fragile and vulnerable.’ “The spread of markets outpaces the ability of societies and their political systems to adjust to them, let alone to guide the course they take,” he cautioned. “We have to choose between...a selfish free-for-all in which we ignore the fate of the losers,

and a future in which the strong and successful accept their responsibilities, showing global vision and leadership.”^x

An international body of experts has recently challenged the World Bank to evaluate and monitor its financial support for oil, mining, and gas sector projects, based on human rights standards. In July 2001, after extensive criticism from civil society, World Bank Group (WBG) President James Wolfensohn initiated the independent Extractive Industries Review (EIR), under the leadership of Dr. Emil Salim, former Minister of Environment for Indonesia. The Review concluded that extractive industries projects can only contribute to the stated WBG goal of poverty alleviation through sustainable development if three conditions were met, among them being respect for human rights. The Review stated, “The WBG and its clients have obligations under international law to promote, respect, and protect all human rights,” which necessitates third party verification. Significantly, the Review insisted, “Adoption of and demonstrated compliance with human rights principles should be a prerequisite for companies seeking WBG support for extractive industries.”^{xi} Unfortunately, any changes in WBG policy will seemingly be slow and incremental. In August 2004, the executive board of the WBG approved a management plan to continue its investment pattern with minimal change, largely ignoring recommendations to fully integrate human rights and only minimally increasing funds for renewable-energy projects.^{xii}

Private actors and particularly businesses are the subject of international law in many areas, and the concept that private actors have responsibilities under international human rights law is not a new concept. Michelle Leighton, an independent consultant, and Naomi Roht-Arriaza, a professor at the Hasting’s Law School, explain, “As long ago as 1948, the Universal Declaration of Human Rights stated in the preamble that it was a ‘common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society. . . shall strive . . . to promote respect for these rights and freedoms.’ ‘Organs of society’ clearly includes business enterprises.”^{xiii}

Highlighting more positive, recent trends in Africa, Danwood Chirwa, a Lecturer in Law at the University of Cape Town, notes that there is an increasing assertion that ‘human rights bind both the state and non-state actors.’ Referencing Ghana, Malawi, South Africa, and Cape Verde, he explains, “Constitutions adopted after 1990 by African states have, in addition to recognizing both civil and political rights and economic, social and cultural rights, increasingly entrenched the horizontal application of human rights. Article 18 of the 1990 Constitution of Cape Verde provides that ‘Constitutional norms regarding rights, liberties and guarantees shall bind all public and private entities and shall be directly enforced.’” The Constitutions of Ghana and Malawi state that human rights ‘shall be respected and upheld’ by government and ‘where applicable to them, by all natural and legal persons.’

As evidenced by this report, civil society organizations have also raised a call for greater corporate accountability to human rights and environmental standards in their communities and beyond. While calling for international standards, many civil society groups have worked within their respective countries to monitor companies and challenge human rights violations. As one example, the Programa Laboral de Desarrollo,^{xiv} a Peruvian NGO working in cooperation with trade unions, publishes an annual report on the social responsibility of transnational corporations in Peru. Drawing on multiple codes of conduct and international standards, they have attempted to develop a framework for independently monitoring the behavior of corporations with regard to labor, environmental and human rights. However, monitoring alone may be insufficient, according to Alison Linnecar, International Coordinator of the International Baby Food Action Network-Geneva Infant Feeding Association, the Geneva office of a network composed of over 200 public interest groups worldwide working for universal and complete implementations of the International Code of Marketing of Breastmilk Substitutes.^{xv} Alison Linnecar recently wrote to OHCHR, stating, "IBFAN's monitoring research clearly demonstrates that voluntary codes of conduct and even UN international recommendations in the field of public health are not sufficient to prevent violations by manufacturers and distributors of the child's right to the highest attainable standard of health. Binding international instruments are the only way forward."

Significantly, some companies have moved towards greater corporate accountability through increased transparency and independent monitoring. Following a shareholder resolution calling for greater transparency, Gap Inc. released a social responsibility report that detailed the problems found in the 3,000 factories with which it contracted, including persistent wage, health and safety violations, as well as physical and psychological abuse. Following the release of this report on 12 May 2004, unprecedented in garment industry, Gap pulled business from more than 100 factories, and it has committed to external review of its monitoring.^{xvi} Notably, a number of business groupings, like the International Business Leaders Forum (IBLF) and the World Business Council for Sustainable Development (WBCSD), actively participated in the consultative process facilitated by the UN Sub-Commission in drafting the UN Norms, and several companies that compose the Business Leaders Initiative on Human Rights (BLIHR) have agreed to use the UN Norms as a benchmark for testing their own activities and policies.

Additionally, there are many initiatives today that set guidelines for company activities, including the observance of human rights in general terms. They have done valuable work in raising awareness of key issues among companies. However, whether unique to a particular company or adopted sector-wide, voluntary initiatives and codes often lack international legitimacy while creating an uneven playing field due to differing standards, limited adoption, and inconsistent implementation and monitoring. Voluntary initiatives may work for the well-intentioned, but the overwhelming majority of companies have no human

rights policy, and few have made explicit commitments. As Amnesty International (AI) noted in their first major report on the UN Norms, “Many codes are very vague in regard to human rights commitments. As far as AI is aware, fewer than 50 companies even refer explicitly to human rights in their codes.”^{xvii} Over the past several months, the Business and Human Rights Resource Centre has been able to compile a list of approximately 75 companies that now refer to human rights in some form, but this is still a minimal number in comparison to the thousands of corporations operating throughout the world.^{xviii} Additionally, these often vague statements are not necessarily subject to independent monitoring or evaluation.

Finally, Nils Rosemann, a consultant/attorney of law and Member of the Board of World University Service - German Committee, outlines the findings of the Cardoso Panel assembled by the UN Secretary-General, stating, “The increased power of corporations is able to threaten peoples’ participation, political accountability, rule of law and transparency.”^{xix} He suggests, “If corporate conduct influences these core concepts of sovereignty, law should address these developments. Since corporations gain this influence mainly through international developments, it should be international law that frames new efforts to address the increased economic, political and social power of economic entities with further systems of corporate accountability in general and corporate responsibility in particular.” Based on this, the UN Norms are in line with the politically recognized demand, as expressed by the General Assembly Resolution 58/225, which:

Stresses the need to promote corporate responsibility and accountability, including through the full development and effective implementation of intergovernmental agreements and measures, international initiatives and public-private partnerships and appropriate national regulations, and to support continuous improvement in corporate practices in all countries;...^{xx}

II. Existing Mechanisms and Initiatives relating to the Human Rights Responsibilities of Business

Some of the existing mechanisms and initiatives relating to the responsibilities of companies with regard to human rights are outlined and described below. While each of these has made important contributions, we believe that the UN Norms are an important step forward in strengthening standards for corporate behavior by identifying the human rights responsibilities of business. The UN Norms represent the logical development and amplification of generalized statements regarding human rights in the other initiatives and therefore offer an essential guide to implementation for States and corporations.

A. OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises, which were revised in 2000, have been adopted by governments in all thirty OECD member countries and by eight non-members.^{xxi} The Guidelines represent a commitment by adhering governments to make recommendations to multinational companies operating in or from their territories. As such, although they are addressed directly to companies, they are not binding on them. However, the Guidelines are endorsed by a corpus of multinational companies, represented through the OECD's Business and Industry Advisory Committee (BIAC), as well as by the corresponding Trade Union Advisory Committee (TUAC). The Guidelines should be observed wherever a company operates.^{xxii}

The OECD Guidelines relate to all key aspects of multinational enterprises' operations: information disclosure, employment and industrial relations, the environment, combating bribery, consumer interests, science and technology, competition and taxation. Enterprises should contribute to sustainable economic, social and environmental progress and uphold, develop and apply good corporate governance; they should develop good relations with the societies in which they operate; they should encourage conformity with the Guidelines among partners and subcontractors; and they should abstain from improper involvement in local politics.^{xxiii} While specific human rights obligations are not detailed, the OECD Guidelines are relatively comprehensive in the issue areas that they address. Cornelia Heydenrich of Germanwatch emphasizes that the Guidelines "are not only more detailed [than other corporate accountability standards], but cover more topics as well." Joris Oldenzeil of SOMO and OECD Watch, in the Netherlands, notes that "the OECD Guidelines are as comprehensive [as the UN Norms]... The problem is that the OECD Guidelines are so horribly weakly phrased." The revised Guidelines include an important provision specifying that enterprises should: "Respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments."^{xxiv} However, this human rights provision is very general and makes no explicit reference to rights critical to the protection of life, liberty and security. Danwood Chirwa succinctly explains, "The human rights component in the OECD Guidelines is significantly underdeveloped. Save for some few ILO principles incorporated in the employment section, the Guidelines mention human rights only once in a single clause in the general policies section and its Commentary dedicates less than a paragraph to them."

The Guidelines are implemented through a dual system of National Contact Points (NCPs) in each adhering country and the Investment Committee made up of NCPs from member countries, which oversees the process.^{xxv} Unlike other codes governing the conduct of companies, the Guidelines have an apparent threefold advantage: firstly, they are more detailed; secondly, the NCPs are in theory publicly accountable government officers and so implementation does not rely on self-reporting by companies (unfortunately, most NCPs lack the

commitment and resources to monitor companies effectively); and, thirdly, they include what amounts to a complaints mechanism open to unions and NGOs.

Despite their seeming advantages over other voluntary codes, the OECD Guidelines and the implementation procedures fall far short of being the gold standard of corporate accountability. The text of the Guidelines is weakened with caveats allowing too much discretion to companies in crucial areas such as disclosure and environmental protection. The implementation procedures lack investigative powers and are subject to arbitrary decisions and interpretations by government officials, who lack any formal training in human rights and who are seen to be too closely allied to business interests. Additionally, the fact that implementation of the Guidelines is monitored by government officials in the countries where the companies are registered raises the concern that narrow national economic interests may unduly influence the way in which a company's behavior is assessed. Furthermore, echoing a few similar comments, Cornelia Heydenrich notes that the Guidelines possess "no real sanctions, and public statements are too weak (often they do not say that a company was in breach of the Guidelines)," while the "investment nexus limits the scope of the Guidelines." Danwood Chirwa emphasizes, "The monitoring provisions neither make provision for condemning non-compliant enterprises nor for the provision of incentives for compliance. It is also not possible under the Guidelines to obtain relief or reparations."

Moreover, the OECD Guidelines only apply to companies that are based in OECD or adhering countries. Stressing the importance of an international standard, ASADHO/Katanga explains, "In Africa and particularly in the Democratic Republic of Congo, many businesses from Asian countries, which come to exploit natural resources, trample on the OECD Guidelines, because their countries of origin are not members of the OECD."

B. ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

Amended in 2000, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy calls for direct acceptance of the fundamental labor standards by corporations.^{xxvi} These fundamental labor standards include the prohibition and abolishment of forced labor (ILO Conventions 29 and 105), prohibition of discrimination and unequal remuneration (ILO Conventions 100 and 111), outlaw of child labor (ILO Conventions 138 and 182), and the freedom of association and the right to collective bargaining (ILO Conventions 87 and 98).^{xxvii} ILO conventions and recommendations are only binding on member States, yet due to its tripartite composition, employers' and employees' interest groups, as participants in decision-making, have a moral obligation to include the International Labor Organization's adopted principles into their own policies.

The ILO's strength lies in its standard setting work on labor and workplace rights. Its tripartite structure brings together employers, employee organizations and government representatives (its constituents) but it excludes the direct participation of NGOs. In advising governments on steps that can be taken to comply with core labor standards, it fulfills a critical role. It has various supervisory mechanisms for dealing with complaints about failures by member States to apply ILO Conventions they have ratified, which can be raised by international workers' organizations, employees or governments. It has also established the Committee on Freedom of Association to examine complaints that member States of the ILO are not respecting basic principles of freedom of association, even when the country concerned has not ratified the relevant ILO Conventions. In June 2000, the ILO took the unprecedented step of adopting a resolution, which called upon its constituents to review all links with Burma and cease any relations that might aid its military junta to abet forced labor.^{xxviii}

However, while the ILO Tripartite Declaration outlines relatively comprehensive principles related to employment, training, and working conditions and relations, these are only commended as guides, which ILO constituents and multinational enterprises are 'recommended to observe on a voluntary basis.'^{xxix} As Danwood Chirwa cautions, "All the parties to which it is commended have not put the Declaration to much use as evidenced in part by the lack of the use of the interpretative procedure.^{xxx} The effect of this mechanism is also significantly undermined by the fact that it does not include a mandate to hold a party responsible for violating the Declaration's principles. The Governing Body has no powers to make findings on infringements of the Declaration, to grant relief to victims of the infringements, or shame the perpetrators of the infringement." Additionally, the Declaration contains a general policy that encourages respect for national laws and relevant international standards, including the Universal Declaration of Human Rights and the corresponding Covenants,^{xxxi} yet its consistent focus is on labor and employment rights. Danwood Chirwa argues that it is "inconceivable that its jurisprudence could be developed much further in relation to other important human rights implicated in business operations and other private actors."

ILO's World Commission on the Social Dimension of Globalization concludes in its final report of 2004, *A Fair Globalization: Creating Opportunities for All*, that the globalization process enabled corporations to increase their global reach and market power.^{xxxii} This development requires new forms of regulation with regard to human rights and the participation of concerned groups.^{xxxiii} Beside market forces that urged corporations to accept core labor standards,^{xxxiv} the ILO World Commission on the Social Dimension of Globalization concluded that further reforms of the multilateral system are required in order to make international (economic) relations more democratic, participatory, transparent and accountable.^{xxxv} While referring to and reflecting ILO standards, the UN Norms are a step in this direction, offering a comprehensive outline of the human rights responsibilities of States and corporations.

C. UN Global Compact

The UN Global Compact is a ‘voluntary corporate citizenship initiative,’ which was launched by the UN Secretary-General in 2000. The initiative attempts to bring together companies, UN agencies, civil society, and labor organizations in support of ten principles drawn from international declarations. These principles offer general guidelines for corporate behavior related to human rights, labor standards, environment, and anti-corruption.^{xxxvi} However, in terms of human rights, the principles are extremely vague, offering minimal guidance regarding the content, interpretation, and application of human rights responsibilities.

While companies are asked to mainstream the ten principles within their spheres of influence, the UN Global Compact explicitly denies that it is a regulatory initiative. Instead, it claims to offer a values-based platform for voluntary peer review and institutional learning. Participants are encouraged to share case studies of good practices and to participate in policy dialogues. However, the Global Compact has rarely encouraged companies to consider or pilot specific models or practices related to the principles. The Global Compact has at best led to small individual examples of adherence to the related principles, but has failed to deliver changes in corporate behavior across the board.

Companies that wish to join the UN Global Compact must have their chief executive send a letter of support for the Compact and its ten principles to the UN Secretary-General. Companies are also asked to enact and annually report on changes in accordance with the ten principles, which they also agree to publicly advocate. However, the UN Global Compact does not have monitoring or enforcement mechanisms. Based on a revised policy in October 2002, names of participating companies are now published, allowing for greater public scrutiny, yet there is no clear means for contesting a company’s membership, even when it allegedly violates the ten principles. Due to the lack of a more transparent process for evaluating participation, there is a danger that companies are able to use their affiliation for public relations purposes without accountability.

On 11 May 2004, McKinsey and Company published the findings of their external review of the UN Global Compact, entitled *Assessing the Global Compact’s Impact*, which had been requested by the Global Compact Office in preparation for their Leaders’ Summit in June 2004. While their impact assessment discovered that the Global Compact “has had a noticeable, incremental impact on companies, the UN, governments and other civil society,” their findings also noted that “inconsistent participation and divergent and unmet expectations limit the impact on companies and continue to threaten the Compact’s long-term credibility with participants.”^{xxxvii}

In opposition to the lack of monitoring and enforcement represented by the UN Global Compact and other voluntary corporate responsibility initiatives, the

Alliance for a Corporate-Free UN insists, "Corporate accountability means corporations must disclose their activities to the public and to government, and must abide by societal norms or face consequences."^{xxxviii} As Kenneth Roth, the Executive Director of Human Rights Watch, wrote to Kofi Annan, on 28 July 2000: "In our view, three obstacles threaten to impede the Compact's effectiveness: the lack of legally enforceable standards, the lack of a monitoring and enforcement mechanism, and a lack of clarity about the meaning of the standards themselves."^{xxxix} On 4 June 2004, Michael Posner, the Executive Director of Human Rights First, formerly the Lawyers Committee for Human Rights, sent a letter to UN Secretary-General Kofi Annan, expressing 'very serious concerns about the Global Compact's future and its credibility,' a few weeks before the Global Compact Summit. The letter notes that many companies are 'using their participation in the Global Compact principally as a marketing tool,' even while 'some are in serious violation of [its] basic principles.' Michael Posner concludes his letter by insisting, "To succeed and be credible, the Global Compact needs to adopt and implement much stronger systems of accountability, a more transparent process for evaluating company participation, and a more results-oriented approach to its work."^{xi}

Drawing on her experiences in Colombia, Jana Silverman, a consultant with the AFL-CIO Solidarity Center, highlights the shortcomings of the Global Compact and other 'self-monitoring schemes.' She notes allegations that, "...Repsol (a Spanish petroleum company who happens to be a signatory of the Global Compact) has been paying the 18th Brigade of the Colombian army for security services to protect their pipeline running through the province of Arauca. This particular brigade is [alleged to have been involved] in dozens of human rights abuses, including a massacre of three trade union leaders on August 5 of this year." As Amnesty International has highlighted in its 2004 report *Colombia--A Laboratory of War: Repression and Violence in Arauca*, executions, disappearances, arbitrary detentions, and harassment, particularly of human rights activists and trade unionists, are ongoing, and particularly in Arauca, the conflict has had international dimensions. In 1983, Occidental Petroleum discovered the Caño Limón oil deposit and began operating the connected pipeline a couple years later through an association contract with Ecopetrol, the state oil company that owns 50 percent of the pipeline, and Repsol-YPF, which holds a small share but has other substantial interests in the department. While the US government approved \$99 million in 2003 for the protection of the pipeline, primarily by the 18th Brigade, Amnesty International also notes, "Occidental Petroleum, Ecopetrol and Repsol-YPF, which own and manage Arauca's Caño Limón oil field, have reportedly provided funding for the XVIII Brigade through the Cravo Norte Association's security agreements with the military."^{xli} The report again states that the 18th Brigade "has been accused of human rights violations and collusion with paramilitary forces."^{xlii} Citing its participation in the Global Compact, Repsol quickly reacted to Amnesty International's report, stating that it possessed only a minority share of six percent in the Caño Limón pipeline and that it had no 'direct activities' in the

region.^{xliii} Repsol's membership in the Global Compact has not been investigated or challenged by the United Nations, nor have the memberships of other corporations that have been widely accused of environmental and human rights violations.

In their annual *Breaking the Rules, Stretching the Rules* report on violations of the International Code on the Marketing of Breast-milk Substitutes (adopted by the World Health Assembly in 1981 and endorsed by UNICEF), the International Baby Food Action Network (IBFAN) highlighted the marketing abuses of multiple companies, including Nestlé. In September 2001, Nestlé agreed to abide by the World Health Organization recommendation of exclusive breastfeeding for the first six months of life, yet it continues to market its infant formula as appropriate beginning at four months in certain countries. IBFAN further alleges that Nestlé marketing is often deceptive and complimented by inappropriate gifts to health workers and mothers, while required warnings are included in small print.^{xliv} These actions threaten the right to the highest attainable standard of health, while disregarding consumer protection responsibilities. On 16 January 2004, the Alliance for a Corporate-Free UN wrote to the heads of the UN agencies that participate in the UN Global Compact, suggesting that the name and reputation of the UN were being tarnished by the abuses of corporate members of the Global Compact. Particularly, they highlighted the International Baby Food Action Network's repeated attempts to draw UN attention to the human rights violations of Nestlé, a company with factories in 84 countries, owning close to 6,000 brands, and recording US\$66 billion in sales for 2002. Their letter suggests that Nestlé has consistently violated the International Code on the Marketing of Breast-milk Substitutes over the past twenty years, yet Nestlé was still allowed to sponsor a Symposium on the UN Global Compact and Swiss Business, at which its CEO Peter Brabeck-Letmath was a plenary speaker, in October 2002.^{xlv}

D. Other Initiatives and Voluntary Codes of Conduct

One industry-specific initiative is the Kimberly Process Certification Scheme, negotiated by governments, NGOs and the diamond industry and launched in January 2003, following a civil society campaign and a unanimous UN General Assembly Resolution on the role of diamonds in fuelling conflict.^{xlvi} The Kimberly Process requires governments and the diamond industry to implement import/export controls for rough diamonds in national legislation, in order to prevent the sale of 'conflict diamonds' tied to ongoing conflict and human rights violations, primarily in Africa. However, among a number of serious weaknesses, a system of impartial monitoring was not incorporated into the formal agreement due to strong resistance from certain governments. Jana Silverman suggests, "The Process was a product of a collaborative process between governments, companies, and NGOs, so in that sense it can be seen as a model, yet it suffers from the same problem of self-monitoring that plagues other corporate standard-setting efforts." Due to ongoing pressure from NGOs, together with several

major jewelry retailers concerned about the legitimacy of the Process, the World Diamond Council continued to press for regular monitoring. At the Kimberly Process Plenary Meeting, in South Africa, in October 2003, participants agreed to annual reports and voluntary peer review visits, yet they failed to approve compulsory, regular, impartial monitoring of the implementation and enforcement of the laws and regulations that members have adopted.^{xlvii} This ongoing weakness is exacerbated by the lack of penalties for member countries that are found to be in violation of the agreement.

Among the initiatives generated by civil society, Jana Silverman highlights the Principles of Global Responsibility: Bench Marks for Measuring Business Performance, developed by faith-based organizations in 21 countries, as “a set of standards used by these NGOs in both making their investment decisions and in producing public reports about the social responsibility performance of the corporations they choose to scrutinize. Unlike the UN Norms, which can be seen as a minimum standard for social responsibility practices, the Bench Marks represent highly robust standards that corporations interested in improving their performance can use as goals to progressively work towards.”

Voluntary codes of conduct, as well as corporate social responsibility initiatives, have been undertaken by a number of corporations. While these are undoubtedly beneficial for public relations, particularly as an increasing number of shareholders are eager to invest in socially and environmentally responsible companies, voluntary codes of conduct are welcome if they lead to positive changes in company policies and activities. However, Guillermo Pou Mont, a professor at the Universidad Católica Boliviana, suggests that corporate social responsibility has often become a way to improve a company’s brand image while avoiding scrutiny of its actions. He explains, “We have found that we are not speaking about Corporate Social Responsibility, but instead about Social Responsibility in the Corporate Interest, defined by actions that a corporation takes not with the purpose of morally performing its duty to promote the fundamental rights of people, but with the purpose of managing to solve or avoid problems that obstruct its activities and limit its ability to achieve short- and medium-term results.” The primary responsibility of a corporation has been repeatedly defined as maximizing profits for its shareholders, not as providing quality jobs for its workers or as acting responsibly within the communities in which it operates. The drive to maximize short-term profits has increased as CEOs have progressively been compensated in stock options. Guillermo Pou Mont suggests that focus on short-term profits leads to inconsistent respect for human rights, including rights to a healthy environment.

While acknowledging the potential benefits of corporate social responsibility, many ESCR-Net participants argue that accountability remains essential. As one example, Shell has repeatedly and publicly affirmed its commitment to corporate social responsibility, including principles of sustainable development and human rights. However, Shell lobbied against the UN Norms prior to the last UN

Commission on Human Rights under the auspices of the International Chamber of Commerce, the primary corporate architect of the UN Global Compact. The Corporate Europe Observatory asks, "If Shell has really come so far in embracing human rights, why is the company dedicating resources to a campaign to undermine the UN initiative that would help businesses implement their commitment to responsible business conduct?"^{xlviii} Significantly, Royal Dutch/Shell remains the subject of an ongoing lawsuit in US Courts under the Alien Tort Claims Act, alleging its complicity in human rights abuses in Nigeria, including the execution of leaders of the Movement for the Survival of the Ogoni People (MOSOP).^{xlix}

Although Shell claims to be taking progressive steps to consider human rights in its daily operations, Chris Newsom and members of MOSOP suggest that human rights violations have continued. On 20 August 2004, MOSOP published a press release protesting "the unprecedented posting of Mobile Police to a Shell facility in Ogoni and their partisan involvement in violence from one part of a community against others." In the press release, MOSOP President Ledum Mitee stated, "We also firmly believe that the continued presence of these mobile police would not be possible without the financial assistance of Shell, whether direct or indirect. This actually comes in addition to prior destabilisation of the K Dere community from illegal and inappropriate payments made through one of its contractors, Casella Nigeria." In June 2004, an internal Shell report by a Conflict Expert Group of WAC Global Services, entitled *Peace and Security in the Niger Delta*, was leaked to the public. Highlighting problematic policies and actions, ranging from questionable land acquisition and oil spill compensation policies to inconsistent and divisive interactions with communities, the report warned, "Shell Companies in Nigeria cannot ignore Niger Delta conflicts and its role in exacerbating these."¹ A clear framework of human rights obligations, complimented by independent monitoring and other mechanisms for strengthening accountability, seems beneficial to all stakeholders, particularly companies that value corporate social responsibility.

III. UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Right

The UN Norms are the most comprehensive statement of the human rights norms relevant to companies. While outlining specific human rights responsibilities, the UN Norms also provide an important definition in Article 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." In relation to human rights, they are far more complete than many competing individual company codes and industry-

wide standards, as well as the OECD, ILO, or Global Compact standards, many of which do not even mention human rights or only refer to them in general terms. Moreover, the UN Norms apply to all companies, providing a common template amidst many competing voluntary code of conducts. As a first attempt to outline a comprehensive normative framework for corporate behavior, the UN Norms form the basis upon which to build an international, universally recognized, normative framework for business, which would also set out minimum standards that states should reflect in their domestic laws.

Significantly, the UN Human Rights Norms for Business fill a gap in the international human rights framework, capable of assisting NGOs, governments, and companies as they attempt to frame and identify companies' responsibilities in relation to the environment and human rights. Human rights are claims on those with power to act in certain ways to respect and protect rights. Large global companies do wield increasing power, so it is natural that responsibilities should be placed on their exercise of that power. The UN Norms strike the right balance between the obligations of governments and those of companies. They recognize that governments have the primary responsibility to respect, protect and fulfill human rights. In turn, companies' obligations are limited to their sphere of activity and influence. In most cases, this would apply to their employees and to the communities in which they operate.

For corporations wrestling with the complexity of international business, the UN Norms and the accompanying commentary adopted by the Sub-Commission offer a tool for evaluating current practices and ethics in order to avoid direct or indirect implication in environmental and human rights violations while allowing them to contribute to a more just and fair international business environment. As a universally applicable accountability framework, the UN Norms would have the potential to level the field between competing companies, setting a common standard for monitoring and enforcement while favoring more equal conditions and just, environmentally-sound practices worldwide.

Danwood Chirwa offers the following summation:

I think that the Norms are well drafted and, unlike the Global Compact (which is based on declarations), have a solid legal foundation as its Preamble demonstrates. In addition, the Norms have many advantages over existing international initiatives. For example, they support the notion of the indivisibility of all human rights, define the obligations with far more clarity and may be interpreted to have application to a wider range of non-state actors. The critical and outstanding issue obviously concerns their status in international law. It would be important that the Commission adopts them at least as soft law norms as opposed to voluntary standards. Failure to do so will significantly undermine efforts at making

existing voluntary initiatives more effective and emerging domestic procedures for holding private actors accountable.

Case Study: Importance of the UN Norms—US Agricultural Workers

The importance of the UN Norms is evident in the case of agricultural workers in the United States. According to excerpts of a June 2004 report by the Robert F. Kennedy Center for Human Rights (RFK) to the UN Working Group on Contemporary Forms of Slavery, contributed by India Ochs, the median income of agricultural workers in the US is \$5000-\$7500 per year. This is far below the poverty line and decreasing over the past decade, yet the Department of Labor reports that the price of fruits and vegetables has doubled in the last two decades. Wealth and market power have increasingly concentrated in a few large corporations, allowing them to negotiate ever lower wholesale prices from growers, who have progressively resorted to forced labor and slavery to maintain low labor costs. In the past six years, there have been five criminal prosecutions for slavery in Florida's fields, and another 125 cases are under investigation.

Despite the notable struggle of groups like the Coalition of Immokalee Workers, there are several obstacles to advancing the human rights of agricultural workers in the US. Under the US National Labor Relations Act of 1935, agricultural laborers and domestic servants are denied the right of association and collective bargaining. Additionally, corporations as citrus and tomato buyers have denied any supply chain responsibility for the conditions faced by agricultural workers. The RFK report explains, "Tropicana, who purchases a third of Florida's citrus, including buying products harvested through convicted slaveholder[s]..., stated that they were troubled by abuses but did not own groves and did not employ pickers, and that they were not the police of migrants." YUM! Brands, Inc., the largest restaurant company in the world and owner of Taco Bell, has been unwilling to take steps with workers and growers to increase the piece rate for tomatoes by one penny per pound, essential to provide a living wage. Again the RFK report explains, "YUM! spokesmen have continuously expressed that while the instances of slavery in Immokalee[, Florida,] and other parts of the US are horrible, they have no power, nor bear any responsibility, in attempting to eliminate such conditions. They claim that given that they have no direct link to the workers as employees, they have no reason or resources upon which to aid the workers." Yet, interestingly touting its constant monitoring of suppliers, YUM! Brands proudly announces on its website: "As a major purchaser of food products, we have the opportunity, and responsibility, to influence the way animals supplied to us are treated."

By clearly delineating the human rights obligations of governments and corporations, the UN Norms offer a key international standard for assessing and monitoring government legislation and corporate policies. In the case of agricultural workers in Florida, the UN Norms outline human rights to a safe and healthy working environment, remuneration that ensures an adequate standard

of living, freedom of association and collective bargaining, and freedom from forced labor. While States have the primary responsibility to respect, protect and fulfill human rights, the UN Norms declare that corporations have corollary human rights obligations within their 'spheres of activity and influence,' including not contributing to or benefiting from human rights abuses (Article I, Commentary b) while incorporating the content of the UN Norms into contracts and dealings with contractors, suppliers, etc. (Article 15).

IV. Outstanding Issues

The following outstanding issues, related to transnational corporations or other business enterprises and human rights, were raised by ESCR-Net participants as priorities for further consideration and elaboration. The most commonly raised issue was the need for effective implementation of corporate accountability to human rights standards, ideally based on the common international framework of the UN Norms.

A. Supply Chain Accountability and Sphere of Influence

What is entailed in a company's 'sphere of influence'? What is the extent of supply chain accountability for subcontractors or distributors, who may further contract out work to the informal sector?

While undoubtedly complex, the need to clarify the issue of supply chain accountability was raised by multiple ESCR-Net participants. Under 'General provisions of implementation,' Article 15 of the UN Norms states: "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." This Article provides an important framework, but further research and consultation may be needed to clarify certain supply chain responsibilities, regarding issues from labor conditions in export processing zones to the remuneration of subcontracted workers.

Additionally, questions related to mergers and investments, are not directly addressed. In offering an overview of the dynamics in Bhopal, Sadhna Karnik explains that DOW claims that they have only bought the assets of Union Carbide Corporation and that they are not responsible for any medical support or rehabilitation of victims of a past disaster. In February 2001, Union Carbide became a wholly-owned subsidiary of DOW Chemical. Under US law, DOW does bear responsibility for any outstanding or ongoing issues related to Union Carbide, yet DOW's claim seems to indicate its intention to maintain impunity for its subsidiary's alleged violations of human rights.

B. Responsibilities related to Privatization

What is a company's responsibility in a situation of privatization, when formerly public goods tied to basic human rights, like water and electricity, are to be allocated on a for-profit basis that threatens universal accessibility?

Through his efforts with the Centre for Environment and Community Development and the Nigeria Civil Society Network for Human Rights, Austin Nosiike has been challenging violations of the right to water and "abuses by multinationals involved in the privatization and commercialization of water." The primary responsibility seemingly remains with the government to conduct a human rights impact assessment before privatization, and if privatization proceeds, to ensure at least minimal (but progressive) access to clean water, health care, etc. However, he suggests that corporations, as well as international financial institutions and aid agencies, also have certain obligations. Millions of persons lack clean water; privatization is one way that governments and associated institutions try to improve and expand water systems. However, in attempting to fulfill the right to water, human rights standards insist that governments shall take no regressive measures, lessening access for certain segments of the population, and that transparency and public participation in decisions are essential. In reference to the UN Norms and their potential for strengthening accountability, Austin Nosiike states, "They are welcome."

Case Study: The Forces behind Water Privatization in Cochabamba

Excerpted from his forthcoming book, *Economic, Social and Cultural Rights in Latin America: From Theory to Practice*, Jim Shultz, executive director of The Democracy Center in Cochabamba, Bolivia, offers a valuable case study of the privatization of the water system of Cochabamba, Bolivia's third largest city, in 2000. While highlighting the overlapping human rights responsibilities of corporations, governments and international financial institutions, it emphasizes the importance of having a common international standard, like the UN Norms, that can be utilized for monitoring and enforcement of human rights obligations. Privatization, including full-cost recovery that requires consumers to bear the complete expense of infrastructure development and a guaranteed corporate profit, is pushed by the World Bank and transnational corporations based on claims that it will provide needed investment capital, efficient and honest management, and skilled technical support.

In February 1996, World Bank officials conditioned a \$14 million loan to expand Cochabamba's water service on its privatization. Bank officials then informed Bolivia's president that \$600 million in debt relief was dependent on Cochabamba's water privatization, advising, "No public subsidies should be given to ameliorate the increase in water tariffs." In 1999, behind closed doors, the national government signed a 40-year contract with the sole bidder, a

recently created subsidiary of Bechtel, guaranteeing an average profit of 16 percent per year. Within weeks of privatization, water tariffs increased by up to 200 percent, often representing as much as one quarter of the monthly minimum wage.

Protests and strikes led to violent suppression by over 1200 police officers in February 2000, followed by the imposition of martial law. Bechtel allegedly protested even temporary rollback of tariff increases, and when they were finally driven from Cochabamba in April 2000, they filed a \$25 million legal action against Bolivia at the International Centre for the Settlement of Investment Disputes (ICSID), operated by the World Bank, again behind closed doors. Reemphasizing the potential value of the UN Norms, Jim Shultz explains, "As it stands now, neither Bechtel, the Bolivian government nor the Bank have ever been held in any formal way to have violated that right [to water] nor is it clear how that could be achieved, even though the actions of all three clearly did so."

Similarly addressing the human right to water, Nils Rosemann references a research project recently completed by the Friedrich-Ebert-Foundation (Germany) on the water privatization of water supply and sanitation in Manila, Philippines. These findings suggest that the lack of governmental human rights protection, as well as the failure of the private water service to recognize the human right to water, caused the limitation of the human right to water, as well as other human rights, like the rights to food, health and life. Having noted the primary obligation of States, Article 12 of the UN Norms emphasizes, "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...and shall refrain from actions which obstruct or impede the realization of those rights."

C. Conflicts of Interpretation and Harms Not Enumerated in UN Norms

How will conflicts of interpretation regarding particular provisions of the UN Norms be resolved? Are the UN Norms comprehensive yet flexible enough to address harms or human rights violations that are not specifically enumerated?

The substantive provisions of the UN Norms are further interpreted by an associated Commentary, also approved by the UN Sub-Commission on the Promotion and Protection of Human Rights in August 2003. Additionally, clarification of particular provisions might reasonably be drawn from the multiple international standards, listed in the Preamble and the Commentary, which formed the basis of the UN Norms. However, conflicts over the extent or meaning of particular provisions or terms might arise. George Kent, a professor at the University of Hawai'i, explains, "Paragraph 13 says that businesses should not promote harmful products. How is 'harmfulness' to be assessed, and by

whom? More generally, how would disputed interpretations of the norms be resolved?"

While the UN Norms clarify that businesses have responsibility for human rights "within their respective spheres of activity and influence," all potential harms or situations are obviously not outlined in the provisions. George Kent suggests, "Something should be said about the responsibilities of businesses with regard to harms not enumerated in this document. For example, what is the responsibility of businesses to people who are displaced or undercut by business? ...what responsibility would a logging firm have to those who had depended on the forest for meeting food and other needs?" The globalization of markets for goods, services and capital entails 'adjustment costs,' the decline of sectors in which a country does not have a 'comparative advantage' and a resulting loss of jobs in those sectors, which are often concentrated in certain geographical regions. Even if persons are willing to leave their communities in search of newly created jobs, their search is often limited by national borders, unlike the flow of goods or capital.

For those persons who find and maintain employment, other challenges can emerge. While Article 8 of the UN Norms call for 'remuneration that ensures an adequate standard of living,' Álvaro de Regil Castilla, Executive Director of the Jus Semper Global Alliance and The Living Wages North and South Initiative, explains, "[The UN Norms and other international standards] leave it open to anyone to interpret what are an adequate standard of living and a just wage." Ultimately, The Living Wages North and South Initiative calls for the incorporation of the principle of equal remuneration for equal work in terms of purchasing power parity (PPP), if the UN Norms are to truly address inequality.

These hardships are commonly exacerbated by rising consumer costs associated with privatization and by cuts in public spending. The need for public spending cuts is heightened when some corporations evade taxes, essential to the provision of public services, by locating operational or holding headquarters in jurisdictions beyond the laws of a corporation's home country. As public goods have been privatized and government social spending has decreased, Rolf Keiser suggests that the capitalist system has simultaneously become increasingly reliant on the productivity of financial capital for growth. Human capital has been devalued, and economic downturns have inevitably led to 'massive cost-cutting programs and the loss of tens of thousands of jobs.' Discussing the responsibilities of corporations and governments with regard to human rights may also include creatively rethinking aspects or policies of the present economic system, often supported by international financial institutions.

Multiple systemic conditions, particularly in countries where corporations are based, seem to enable human rights violations and to make a high degree of impunity possible. Citing "employment of lobbyists, use of public relations firms and tactics to frame policy debates, 'revolving door' appointments of former

government officials, sponsorship of political events and contributions to political candidates and parties,” Infact explains a common resulting phenomenon, “TNCs use their influence to undermine the negotiation and implementation of health, environmental and human rights treaties, while actively promoting international agreements that would result in the expansion of their profits.” Referring to Commentary (a) of Article 11 of the UN Norms, Infact suggests incorporating the phrase: ‘progressively eliminate all political contributions and sponsorships,’ in order to minimize inappropriate corporate influence on governments.

In addition to government subsidies, tax breaks, and deregulation, many corporations benefit from taxpayer-funded export credit agencies (ECAs). Most OECD member countries have at least one export credit agency, often overseen by the trade, finance, or economics ministry, which use public funds or a combination of public and private funds to provide loans, guarantees, and insurance in support of overseas investment and exports by domestic corporations. While promoting exports and investment is not necessarily problematic, ECAs have minimal transparency, accountability, and safeguards related to human rights, corruption, or the environment. As a result, ECAs often fund controversial projects, providing financial backing with taxpayer money, even for projects that have been rejected by the World Bank Group.ⁱⁱ When countries attempt to terminate projects that entail unjust terms or that threaten environmental and human rights, corporations are often able to leverage the political backing of governments, which are eager to protect their taxpayers’ dollars invested through ECAs.ⁱⁱⁱ On 3 September 2002, the *New York Times* printed an article by Leslie Wayne examining the US Export-Import Bank, entitled “A Guardian of Jobs of a ‘Reverse Robin Hood’?” The article quoted Ron Paul, a Republican Congressperson from Texas, declaring, “This is naked corporate welfare.” However, funding has been increased, according to the article, which stated, “While the bank cannot lobby for itself, its beneficiaries can... Not only are these companies major campaign contributors to members of Congress, they often are leading employers in many Congressional districts, not shy about dispatching top executives or plant managers to plead the bank’s case on Capitol Hill.” Billions of dollars have also gone to controversial infrastructure and energy projects, displacing communities, causing environmental damage, and endangering lives.ⁱⁱⁱⁱ

The UN Norms provide a framework of the key human rights responsibilities of business. This framework will ideally be applied and logically elaborated in specific situations, recognizing that corporations are often able to influence and work in concert with international financial institutions and governments. Addressing the human right to adequate food and the recent discussion about the FAO guidelines on the right to food, Nils Rosemann emphasizes that the UN Norms are an important additional tool to address the responsibilities of agri-business with regard to the individual and collective right to food, as well as to food security. Similarly, while the totality of ILO standards are not enumerated in the UN Norms, they provide an additional remedy for workplace human rights

violations. Significantly, Article 19 of the UN Norms states: “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 other obligations or responsibilities of transnational corporations and other business enterprises in fields other than human rights.”

D. Implementation Using the International Framework of the UN Norms

What are the most effective steps for implementation and enforcement of greater corporate accountability in relationship to human rights, ideally based on the UN Norms?

Many contributions from ESCR-Net participants focused on the need to implement greater corporate accountability for human rights, ideally through a common global framework. Most contributions emphasized using the UN Norms as the best tool for this purpose, namely as a basis for assessing and creating national legislation, for education and dialogue, for strengthening reporting and monitoring, and ultimately for creating a legally-binding international standard. Significantly, the UN Norms contain provisions for implementation in the text of the document.^{iv} Transnational corporations and other business enterprises “shall adopt, disseminate and implement internal rules of operation in compliance with the Norms...periodically report on and take other measures fully to implement the Norms...apply and incorporate these Norms in their contracts and other arrangements and dealings.” Roles are also outlined for States and international organizations.

Nils Rosemann offers a broader perspective on mechanisms for human rights protection. “Human rights protection takes place at the international and at the domestic level. The latter involves the duties to respect, protect and fulfill human rights. The Norms are clear that there is a shared responsibility of all relevant actors for these duties, with states as the party primarily responsible and corporations as the actor with influence and power.” On the international level, human rights protection has a vertical and a horizontal dimension. He explains, “The vertical dimension consists of standard setting and discourses in international organizations - the so called institutionalization. The horizontal dimension is either Charter-based (recommendations, indication of needs for further developments, etc.) or treaty-based (state reports, general observations / recommendation, etc.)” On the domestic level, implementation of the Norms must involve governments, civil society, and corporations. Problems emerge when there is an imbalance of power between these actors. In this situation, Nils suggests, “The international level has to help out. At the international level, implementation starts with standard setting and continues with the discourse that happens in Commission on Human Rights or Office of the High Commissioner for Human Rights. On the vertical level, we have to strive for the incorporation of the Norms into the work of the Security Council, General Assembly, treaty bodies,

etc.” In considering the illegal exploitation of resources in the Democratic Republic of Congo, the Security Council utilized the OECD Guidelines because an UN standard did not exist at that time. Acknowledging the importance of the UN Norms as an international human rights framework for business, ESCR-Net participants offered the following specific suggestions for furthering human rights protection and implementation:

1. *Support Efforts at the National Level to Assess, Improve and Utilize National Legislation based on the UN Norms:* Article 17 of the UN Norms emphasizes: “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.” Characterizing the UN Norms as a ‘reasonable beginning’ and a ‘first step in normative establishment,’ Daniel Taillant, Executive Director of CEDHA,^{iv} stresses, “The main issue is that the UN Norms have some repercussion at the national level.” This would hopefully include UN support for governments and civil society organizations assessing current gaps in national laws, policies, and rights in regard to the UN Norms and then working for new legislation to implement specific provisions. He suggests that individual action plans should be drafted by stakeholders in each country, again ideally with UN support, for the dissemination and promotion of the UN Norms to complement legislative assessment and implementation.

Similarly, Alison Linnecar, International Coordinator of IBFAN-GIFA, emphasizes, “The 20 or more years of IBFAN’s monitoring have shown us that voluntary codes and UN recommendations lack real teeth, and that in order to seriously address public health concerns and violations of the child’s right to the highest attainable standard of health, there must be enactment of national legislation that is not based merely on the lowest common denominator and that is adequately enforced and independently monitored.” While providing a common basis for national legislation, an international legal standard based on the UN Norms would also allow for international monitoring and enforcement when there are power imbalances between actors within States. Referring to the situation in Nigeria and human rights violations perpetrated by security forces, Chris Newsom explains, “There is impunity at this point. There have been no criminal prosecutions, and civil suits are very difficult, often taking ten or more years to resolve.”

2. *Promote UN Norms through Dialogue and Human Rights Learning:* “While it is true that a corporation can make a commitment to abide by human rights, these efforts do not go far enough-or cannot be sustained-unless the will on the part of the corporation is there to see the scope of human rights as integral to life itself,” emphasizes Shulamith Koenig. Utilizing the UN Norms as one tool, “it is an imperative for corporations to learn about

human rights as a political, economic, and moral paradigm protected by law,” ultimately and consciously adopting human rights as a guiding framework for corporate organization and activity. As an initial step, George Kent suggests, “It would be useful to have a procedure through which business could formally express their commitments to these guidelines. A list of businesses that accept the norms could be made available to the public.”

Human rights learning, including the dissemination and promotion of the UN Norms, throughout society is also important, particularly if all stakeholders are to significantly participate in ongoing dialogue, monitoring and evaluation. Speaking as a professor in the US, George Kent emphasizes, “For [human rights educators in the US], our biggest responsibility is the quality of understanding of human rights in the US,” first among human rights advocates but also within the business sector. Emphasizing the importance of campaigns to diffuse human rights learning, particularly directed at companies, Veronica Matus emphasizes, “In a globalized world, it is more necessary to remember that human rights are the responsibility of the state, business, and individual citizens.”

3. *Establish Mechanisms for Reporting, Review, Monitoring, and Complaint:*

In addition to internal evaluation and public reporting by businesses, the UN Norms state, in Article 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.” While outlining the human rights responsibilities of corporations and of states in relationship to corporate behavior, Joris Oldenzeil states, “Personally, I think the most important added value of the UN Norms is the incorporation of provisions on implementation, monitoring and verification in the text itself. Of course this is also the most sensitive issue...maybe there should at least be a suggestion that working on credible, workable implementation and enforcement mechanisms is the most important next step when the basic normative framework is accepted.”

In stressing the need for the UN Norms and their effective implementation to strengthen transparency and accountability, Sadhna Karnik emphasizes that twenty years after the Bhopal disaster, “All medical and scientific information is still suppressed till date,” despite the deaths of 20,000 people by some estimates. Echoing similar sentiments in a recent

submission to the Sub-Commission on the Promotion and Protection of Human Rights, Robert Tadlock of Human Rights Advocates argued, “An effective enforcement mechanism is essential to comprehensively monitor transnational corporations’ compliance with existing international law.”

Acknowledging the success of the UN Norms in codifying human rights responsibilities, Iain Byrne stresses that implementation is now the ‘crucial aspect,’ particularly if we want significant ‘avenues of redress’ instead of only ‘an important ethical framework.’ George Kent emphasizes, “There is a need not only for monitoring but also for corrective action. Attention should be given to the need for effective independent institutional arrangements for holding business enterprises accountable with respect to the norms that apply to them. Perhaps a new body could be created to oversee corporations in a way comparable to the way in which UN human rights treaty bodies oversee the performance of States Parties to the human rights treaties.” This seems to lead to a sentiment expressed by several ESCR-Net participants that a legally-enforceable, international standard should be the ultimate goal.

4. *Work towards Legally-Enforceable, International Standard Based on the UN Norms:* Based on corporate abuses in the Democratic Republic of Congo and throughout Africa and the weaknesses of voluntary principles to enforce respect for human rights, ASADHO-Katanga argues, “It is desirable that we struggle to have a legally-enforceable standard, similar to the two International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, which countries can ratify.”^{vi} However, because many countries do not have a judicial system that is independent or capable of pursuing transnational corporations, ASADHO-Katanga also insists that such a standard needs to have an independent monitoring committee and ideally an international complaint mechanism or judicial body accessible to individuals.

With their substantive human rights provisions drawn from current international law and standards, the UN Norms outline the behavior that society can reasonably expect from transnational corporations and other businesses. Furthermore, due to being the result of a consultative, UN process, the UN Norms are likely to have significant international legitimacy in their application to corporate behavior. In addition to expecting businesses to “provide prompt, effective and adequate reparation to those persons, entities and communities that have been adversely affected by failures to comply with these Norms,” Article 18 envisions that “these Norms shall be applied by national courts and/or international tribunals, pursuant to national and international law.” Yet, noting the ‘very limited inroads in this area in domestic courts’ and similar failures of international tribunals, Iain Byrne stresses that jurisdictional/

standing and liability issues must be reformed. Again, this seems to emphasize the importance of working to develop a legally-enforceable, international standard, based on the UN Norms. Drawing on his experiences in Cochabamba, Bolivia, Jim Shultz emphasizes the need “to develop a method in which government/corporate contracts can be declared void if they are in violation of economic, social, cultural or other human rights provisions, with a mechanism to do so.”

Case Study: FCTC—An International, Legally-Binding Corporate Accountability Standard

The Framework Convention on Tobacco Control (FCTC) was negotiated and unanimously adopted by the 192 Member States of the World Health Organization in May 2003. After the fortieth ratification, expected by the end of 2004, it will become a legally binding, international treaty with independent oversight.^{lvii} While limited to a specific industry, the treaty is an important milestone in terms of corporate accountability and public health. “The treaty will help prevent Big Tobacco from meddling in health policies, and give governments the right to prioritize the health of their citizens over trade and commercial interests,” explains Infact. “The FCTC also establishes important precedents for international regulation of other industries that profit at the expense of our health, our environment and human rights. It advances the international regulation of TNCs by codifying corporate accountability standards in a legally binding form and strengthening the expectation that TNCs should conduct themselves in a socially and environmentally responsible manner.”

Among the provisions of the FCTC are exclusion of the tobacco industry from involvement in public health policymaking, a requirement to publicly disclose product information and dangers, and the principle of civil society participation in implementation. Infact emphasizes, “This will be a dramatic change from the voluntary standards or codes that corporations—especially the tobacco industry—have a history of proposing. Such voluntary codes are non-binding, lack independent oversight and often have proven to be ineffective in curbing the abuses they were intended to address.”

The FCTC may offer an important model for ‘strengthening standards on the responsibilities of transnational corporations and related business enterprises with regard to human rights and possible means of implementation,’ as sought by the UN Commission on Human Rights. While the FCTC is tied to a specific industry, the UN Norms offer a clear human rights framework applicable to all corporations and businesses. Offering several concrete steps for implementation, the UN Norms provide the best basis for the development of a binding, international standard for corporate accountability.

V. Recommendations

We are hopeful that the diversity of comments and ideas presented in this submission provide the basis for ongoing dialogue and the ultimate strengthening of corporate accountability with regard to human rights. We would particularly like to see the report of the Office of the High Commissioner for Human Rights contribute to placing the responsibilities of companies with regard to human rights firmly on the Commission on Human Rights' agenda.

In practical terms, we encourage you to:

- Call for an extension of the reporting and consultation process beyond the 2005 session of the Commission, to ensure that in-depth analysis of the issues can be developed by your Office, with a view to enabling the Commission to have the time and the research necessary to adequately address this important topic.
- Ensure that the process of consultation is open, transparent and effective, and that the consideration of the human rights responsibilities of transnational corporations and related business enterprises will be continued. Ideally, this will lead to growing awareness and clarification amongst different actors of the human rights responsibilities of business.
- Recognizing the limits of diverse voluntary standards and initiatives, press for the establishment and endorsement of a common, international standard setting out the human rights responsibilities of business. The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, approved by the Sub-Commission on the Promotion and Protection of Human Rights, should form the basis for this normative framework, as the leading example of a detailed code of human rights standards applicable to companies.
- Clarify that while states have primary obligations to promote, respect, protect, and fulfill human rights, transnational corporations and other business enterprises have corollary human rights responsibilities within their spheres of influence. These human rights responsibilities are not new; however, they are beneficially outlined in The UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.
- As an initial step towards implementation and enforcement of greater corporate accountability with regard to human rights, develop mechanisms to review and assess the success of individual corporations in meeting their human rights responsibilities.

ⁱ “Bhopal gas victims still gasping for breath,” *Times of India*, 13 September 2004, available at: <http://timesofindia.indiatimes.com/articleshow/848596.cms>.

ⁱⁱ EarthRights International, Campaign Overview: *The Bhopal Disaster: Union Carbide in India*, available at: <http://www.earthrights.org/irtk/bhopal.shtml>, last visited 29 September 2004.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v For an overview of the case *Bano v. Union Carbide* and related documents, see: <http://www.earthrights.org/bhopal/index.shtml>.

^{vi} Justine Nolan, “Brought to Account: The Business of Honour in the Boardroom,” *Sydney Morning Herald*, 23 July 2004, at: www.smh.com.au/articles/2004/07/22/1090464797690.html?oneclick=true.

^{vii} For an extended discussion of these historical developments, see Marshall Sahlins, “Cosmologies of Capitalism: The Trans-Pacific Sector of ‘The World System,’” *Culture in Practice*, New York: Zone Books, 2000, p. 415-471. Also, David Graeber, *Towards an Anthropological Theory of Value: The False Coin of Our Own Dreams*, New York: Palgrave, 2001.

^{viii} Jem Bendell, *Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement*, Technology, Business and Society Programme Paper Number 13, United Nations Research Institute for Social Development, June 2004, p. 8.

^{ix} For more information on the People’s Decade for Human Rights Education, see <http://www.pdhre.org/>.

^x Kofi Annan, UN Press Release SG/SM/6881, 1 February 1999, at: <http://www0.un.org/News/Press/docs/1999/19990201.sgsm6881.html>.

^{xi} Extractive Industries Review, *Striking A Better Balance: The Extractive Industries Review*, Executive Summary, 26 November 2003, p.5, at: <http://www.eireview.org/pdf/Exec%20Summary%2026%20Nov.pdf>.

^{xii} Jim Lobe, “World Bank Board Disappoints NGOs over Mining, Energy Review,” *OneWorld US*, 4 August 2004, available at: <http://us.oneworld.net/article/view/91203/1/>.

^{xiii} Michelle Leighton and Naomi Roht-Arriaza further explain, “Private actors are subjects of international law in a number of spheres. Individuals as well as companies can be held responsible for international crimes, and indeed several companies faced criminal sanctions after World War II. Legal persons (corporations) enjoy the right to freedom of speech, according to the European Court of Human Rights (*Autronic AG v. Switzerland*, Eur. Ct. H.R., Series A.178 (1990); 12 (1990) E.H.R.R. 485, para. 47). Legal persons also can be responsible under treaties on oil pollution from ships for damages and insurance payments. Legal persons also have rights under international treaties, for example the right to bring claims against states under Chapter 11 of NAFTA or under bilateral commerce treaties. ‘Soft law’ instruments also refer to the role of private business. Agenda 21, for example, has an entire chapter on business and industry, drafted with the full participation of business leaders. The Beijing Declaration and Platform for Action, adopted by the Fourth World Conference on Women in 1995, refers to the role of the private sector, especially employers, in preventing violence against women and expanding their economic capacity. The 1963 U.N. Declaration on the Elimination of All Forms of Racial Discrimination, G.A. Res. 1904 (XVIII), 20 Nov. 1963, states that “[n]o State, institution, group or individual shall make any discrimination whatsoever in matters of human rights and fundamental freedoms ...”

^{xiv} For more information on PLADES and its publications, see: <http://www.plades.org.pe/>.

^{xv} For further information on IBFAN and its monitoring efforts, see: <http://www.ibfan.org/>.

^{xvi} Cheryl Dahle, “Gap’s New Look: The See-Through,” *Fast Company*, Issue 86, 1 September 2004, p. 69, or available on the World Business Council for Sustainable Development website, at:

<http://www.wbcsd.org/plugins/DocSearch/details.asp?MenuId=ODQ&ClickMenu=RightMenu&doOpen=1&type=DocDet&DocId=NzIzNA>.

^{xvii} Amnesty International, *The UN Human Rights Norms for Business: Towards Legal Accountability*, London: Amnesty International Publications, 2004, p. 5, available at: [http://web.amnesty.org/aidoc/aidoc_pdf.nsf/Index/IOR420022004ENGLISH/\\$File/IOR4200204.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/Index/IOR420022004ENGLISH/$File/IOR4200204.pdf).

^{xviii} Available at: <http://www.business-humanrights.org/Home>.

^{xix} Panel of Eminent Persons on United Nations-Civil Society Relations, *We the peoples: civil society, the United Nations and global governance*, U.N. Doc. A/58/817, 11 June 2004, Paragraph 3, 8, and 11.

^{xx} Article 11 of UN General Assembly Resolution 58/225: *Role of the United Nations in promoting development in the context of globalization and interdependence*, 23 December 2003.

^{xxi} Member countries of the OECD are Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the UK, and the USA. Seven non-member countries - Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia - have also declared their adherence to the *Guidelines*.

^{xxii} *Guidelines*, op. cit., I. Concepts and Principles, 1 & 2.

^{xxiii} *Guidelines*, op. cit., II. General Policies.

^{xxiv} *Guidelines*, op. cit., II. General Policies, 2.

^{xxv} *Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises*, Paris: OECD, 2000, p. 4.

^{xxvi} *ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*, 17 November 2000, adopted by the Governing Body of the International Labor Office at its 204th Session (November 1977) as amended at its 279th Session (November 17, 2000), Official Bulletin, Vol. LXXXIII, 2000, at:

<http://www.ilo.org/public/english/employment/multi/download/english.pdf>

^{xxvii} *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted at the 86th session (June 18, 1998); ILO Doc. GB.279/12, at:

http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE?var_language=EN

^{xxviii} ICFTU, *Practical Contents of the 88th ILO Conference Resolution on Burma*. The International Labor Conference at its 88th Session (May-June 2000) adopted a resolution under article 33 of its constitution on Burma which, *inter alia*: “recommend[ed] to the Organization’s constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with [Burma] and take appropriate measures to ensure that [Burma] cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labor (...) and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body”.

^{xxix} Article 7.

^{xxx} The procedure was first available in 1981, and adopted in its present form by the Governing Body of the ILO in 1986, at:

<http://www.ilo.org/public/english/employment/multi/download/english.pdf>.

^{xxxi} Article 8

^{xxxii} Point 147, p. 37; point 199, p. 42; point 344, p. 77.

^{xxxiii} Point 358, p. 79.

^{xxxiv} Point 427, p. 95; Point 550ff, p. 122ff.

^{xxxv} Point 598, p. 133.

^{xxxvi} The original nine principles of the UN Global Compact, as well as the tenth principle against corruption (added at the first Global Compact Leaders Summit on 24 June 2004), can be found, together with a list of participating companies, on their website, at

<http://www.unglobalcompact.org/Portal/Default.asp>.

^{xxxvii} *Assessing the Global Compact’s Impact*, McKinsey and Company, 11 May 2004, p. 2, at: <http://hrca01.iffy.us/humanrightsandbusiness/globalcompact7/McKinsey%20Rapport.pdf>.

^{xxxviii} EarthRights International on behalf of the Alliance for a Corporate Free UN, *The United Nations Global Compact vs. Corporate Accountability*, Asia Civil Society Forum: Bangkok, 2002. For more information about the membership and work of the Alliance for a Corporate Free UN, see: <http://www.earthrights.org/un/index.shtml>.

^{xxxix} Available at: <http://www.hrw.org/advocacy/corporations/index.htm>.

^{xi} Michael Posner's letter to Kofi Annan is available at: http://www.humanrightsfirst.org/workers_rights/pdf/annan_global_compact_060404.pdf.

^{xii} *Colombia--A Laboratory of War: Repression and Violence in Arauca*, Amnesty International, 20 April 2004, p. 7, 44, at: <http://web.amnesty.org/library/index/ENGAMR230042004>.

^{xiii} *Ibid.* p. 5, 9.

^{xiii} *España/Colombia. - Repsol YPF responde a Amnistía que no tiene "actividades directas" en el oleoducto de Arauca*, Europa Press, 27 April 2004, at:

<http://www.europapress.es/europa2003/noticia.aspx?cod=20040427161940&tabID=1&ch=107>.

^{xiv} *Breaking the Rules, Stretching the Rules 2004*, IBFAN/International Code Documentation Center, May 2004, p. 53-67, available at:

<http://www.ibfan.org/english/codewatch/btr04/btr04contents.html>.

^{xv} Available at: <http://www.corpwatch.org/article.php?id=9708>.

^{xvi} UN General Assembly Resolution 55/56, 1 December 2000.

^{xvii} Amnesty International, *The true cost of diamonds—Kimberly Process*, See homepage and press releases at <http://web.amnesty.org/pages/ec-diamonds-eng>.

^{xviii} *Shell Leads International Business Campaign Against UN Human Rights Norms*, CEO Info Brief, March 2004, available at www.corporateeurope.org/norms.

^{xix} See <http://www.earthrights.org/shell/index.shtml>.

ⁱ *Peace and Security in the Niger Delta: Working Paper for Shell Petroleum Development Company of Nigeria Limited*, WAC Global Services, December 2003, p. 6.

ⁱⁱ The Three Gorges Dam, in China, was denied financing from the World Bank, due to social, environmental and economic controversies, yet ECAs have provided almost US\$1.5 billion in loans, guarantees and insurance. Aaron Goldzimer, "Worse Than the World Bank? Export Credit Agencies—The Secret Engine of Globalization," *Food First Backgrounder*, Volume 9, Number 1, Winter 2003, p. 1, at: <http://www.foodfirst.org/pubs/backgrdrs/2003/w03v9n1.html>.

ⁱⁱⁱ When the electricity board of Maharashtra State, in India, attempted to cancel its contract to purchase overprice electricity from Enron's Dabhol power plant, Goldzimer explains, "The U.S. government exerted extreme pressure on the Indian government to pay, in a strategy coordinated at the highest levels of the U.S. government (the National Security Council) and involving even Vice-President Richard Cheney and Secretary of State Colin Powell." *Ibid.* p. 5.

ⁱⁱⁱ Aaron Goldzimer, "Worse Than the World Bank? Export Credit Agencies—The Secret Engine of Globalization," *Food First Backgrounder*, Volume 9, Number 1, Winter 2003, at:

<http://www.foodfirst.org/pubs/backgrdrs/2003/w03v9n1.html>. Leslie Wayne's New York Times article, quoted in Aaron Goldzimer's article, is available at: http://www.eca-watch.org/press/ecanews/2002_09_03_nyt.html.

^{iv} Articles 15-19.

^{iv} For more information on CEDHA, visit: <http://www.cedha.org.ar/>.

^{vi} "Il est souhaitable que nous luttions pour avoir un instrument juridique de caractère contraignant, du genre de deux pactes internationaux sur les droits politiques et civils, et les droits sociaux, économiques et cultures que les pays peuvent ratifier."

^{vii} As of 1 September 2004, there were 168 signatories and 30 ratifications.