

**Submission of Human Rights First  
Under Decision 2004/116 Concerning the  
“Responsibilities of Transnational Corporations and Related  
Business Enterprises with Regard to Human Rights”**

Human Rights First is pleased to submit this statement to the Office of the High Commissioner for Human Rights (OHCHR). It relates to the OHCHR’s pending preparation of a report on the “Responsibilities of transnational corporations and related business enterprises with regard to human rights” being prepared pursuant to a decision taken by the Commission on Human Rights at its 60<sup>th</sup> annual meeting held in April 2004.

For the past 26 years, Human Rights First (formerly the Lawyers Committee for Human Rights) has worked in the United States and abroad to create a more secure and humane world by advancing justice, human dignity, and respect for the rule of law. One key facet of our work has been to promote fairer, more equitable economic practices through stronger safeguards for workers’ rights. Our work has included engagement in several initiatives that link our focus on workers’ rights and support for internationally-recognized labor standards with our broader interest in strengthening national and international legal mechanisms that promote accountability.

These initiatives include, in particular, the Fair Labor Association (FLA). Through our participation in the FLA we have worked actively over the past several years with corporations, universities, and other non-governmental organizations to develop an increasingly strong and effective mechanism for monitoring and reporting on adherence to the FLA’s set of key labor standards. Human Rights First also has participated in “voluntary” public-private partnerships such as the U.N. Global Compact and the U.S.-U.K. Voluntary Principles on Security and Human Rights.

Finally, Human Rights First has closely tracked the development of the United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (the Norms) – from the drafting efforts of the Sub-Commission’s Working Group on the Methods and Activities of Transnational Corporations to consideration by the Human Rights Commission. We are working with other non-governmental organizations to support the Norms, and we presented our views to senior U.S. Government officials earlier this year.

We look forward to remaining engaged on this issue and welcome the OHCHR’s continued involvement and interest. As you prepare your report, Human Rights First offers the following recommendations.

## **Recommendations**

1. **Endorse the Norms**: The OHCHR should endorse the Norms as an important step forward in defining the relevant human rights responsibilities of business. While we understand and appreciate that your coming report to the Human Rights Commission will need to be a comprehensive analysis of the Norms, assessing both their potential benefits and remaining challenges, we believe it is important that the OHCHR be on record as supporting the general objectives of the Norms, including the strengthening of human rights standards pertaining to business.
2. **Extend the reporting and consultation process**: The reporting and consultation process should be extended beyond its present March 2005 deadline for submission of a report to the Commission at its 61<sup>st</sup> annual session, in order to ensure that the OHCHR has the time and information to develop a thorough, in-depth analysis of the relevant issues. Our understanding is that the current timetable requires the report to be completed by the end of November. In all likelihood, this will not provide adequate time to ensure full consideration of the relevant issues and interests at stake, and thorough consultation with the range of relevant stakeholders. While the OHCHR may be obligated to provide the report to the Commission by March, we believe it should play an ongoing role in analyzing the value of the Norms, means of implementation, and other important issues.
3. **Encourage more “road testing” of the Norms**: Human Rights First is encouraged that some companies, primarily based in Europe but including at least one major U.S. multinational corporation (Hewlett-Packard), have begun to “road test” the Norms and consider how to develop practical and transparent methods to implement and enforce them. The OHCHR should reinforce this effort by encouraging additional testing and assessment. We believe that these companies, and others that may become engaged, can benefit from an examination of the structure of the FLA’s labor standards monitoring, compliance, and reporting program.
4. **Evaluate potential use of independent monitoring mechanisms**: As part of its assessment, the OHCHR should gather information on existing systems of independent monitoring used by businesses, non-governmental organizations, and trade unions – including how such activities, as they relate to implementation of the Norms, might fit within the U.N.-overseen reporting structure that is envisioned. The FLA is one very useful model.<sup>1</sup>

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<sup>1</sup> The Fair Labor Association (see [www.fairlabor.org](http://www.fairlabor.org)) issued its second annual public report on its member companies’ monitoring and compliance efforts in August. The report provides an impartial, in-depth look into what 25 companies have done over the past year to improve working conditions in the factories where they produce and source from around the world. Human Rights First regards the FLA as a leader in the development and implementation of a transparent, credible monitoring process, and views its public reports – and the detailed information they contain – as the most comprehensive records of efforts to address problems in companies’ global supply chains, as well as continuing problems that will require additional work to overcome and remediate.

## **Background and Context**

### **Applying Human Rights Standards to Business**

Over the past half century, international human rights law has focused primarily on the responsibilities of states. Yet, as the OHCHR has recognized in its own policy statement on “Globalization – Business and Human Rights,” today half of the major economics of the world are not states but corporations, and as such they “are accountable for the impact of their policies on human rights . . .” The recent final report of the International Labor Organization’s World Commission on the Social Dimensions of Globalization also noted how the globalization process has enabled corporations to increase both their reach and their economic power. Yet efforts to apply stronger multilateral standards, or to regulate behavior at the national level, have failed to keep pace with this trend.

As the role and power of global businesses have expanded, increasing attention has focused on the concomitant responsibilities of these businesses. This has led to the development of promising “multi-stakeholder” initiatives like the Fair Labor Association, and efforts at the international level such as the U.N. Global Compact.

Notwithstanding these evolving efforts, an important gap remains with respect to clarifying the international legal responsibilities of corporations. While, as the OHCHR has noted, “there is a developing consensus that human rights are applicable to private actors,” it is also true that the manner in which they should apply to business remains – as the OHCHR also has stated – a matter of “substantial debate.”

The Norms represent by far the strongest and most comprehensive effort to date to address this gap. They constitute an important step forward in providing greater clarity in this still-evolving area by setting out with specificity the human rights responsibilities of business. The adoption of the Norms in August 2003 by the U.N. Sub-Commission on Human Rights – which followed a four-year drafting process in a Sub-Commission Working Group – made an important contribution by bringing together, in a single document, the key international human rights laws and standards, as well as the best practices, that apply to all businesses.

### **Building on Prior Initiatives**

The Norms, along with the interpretive Commentary that accompanies them, constitute a very useful interpretation of the Universal Declaration of Human Rights of 1948, especially insofar as the Declaration applies not only to states but to other “organs of society” – including businesses. The Norms bring together the provisions of the Declaration, human rights treaties and conventions, and other recognized international legal instruments governing labor standards, environmental protection, prohibitions on corrupt practices, and other measures.

The Norms also advance other initiatives developed in the past quarter century to address business activities – notably, voluntary measures such as the Organization for Economic Cooperation and Development’s Guidelines for Multinational Enterprises (as revised in 2000) and the International Labor Organization’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (as also revised in 2000). The OECD Guidelines and the ILO Tripartite Declaration both were significant steps forward in providing frameworks for the human rights obligations of companies. But both of these documents also have significant limitations, including their weak implementation mechanisms; highly generalized sets of responsibilities; and absence of clear, practical guidance for companies seeking to apply their provisions.

While they encourage businesses to do more to promote and protect internationally recognized human rights, the relevance of both the OECD Guidelines and ILO Declaration also depends primarily on the interest of national governments in applying their principles. As a result, they have not done enough to ensure, in practical and specific ways, greater human rights accountability on the part of corporations. Human Rights First therefore believes it is important to build on their foundations by means of the more comprehensive, fully developed Norms.

As a participant from the outset in the U.N. Global Compact, we also see its limitations. The Global Compact, adopted in 2000, calls on business to voluntarily “embrace and enact” a set of ten important principles relating to human rights, labor rights, the protection of the environment and corruption. The Global Compact’s labor provisions are generally adequate, but its human rights principles are not. They ask business to “support and respect the protection of internationally proclaimed human rights” within their sphere of influence and note that participating corporations “should make sure that they are not complicit in human rights abuses” – but they do not specify the rights that business should support and respect.

More significantly, the Compact does not go far enough in requiring any means to measure the extent to which its corporate participants are adhering to these standards. And while it has attracted a large number of corporate participants, to date there are no effective measures to ensure the integrity of the Compact. As Human Rights First noted as a signatory to a joint statement by NGO participants at the conclusion of the Global Compact Leaders’ Summit on June 24, 2004, the Compact’s impact “has fallen far short of expectations and its potential to make a difference” in part because it “has failed to create among the participants a clear understanding of its principles and how they should be implemented.”<sup>2</sup>

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<sup>2</sup> Human Rights First also expressed concerns relating to particular elements of the Compact and outlined specific recommendations for how to address these shortcomings, in a June 4 letter to Secretary-General Annan. We reiterated these points in a June 23 letter to Global Compact officials Georg Kell and John Ruggie, who had replied to our June 4 letter. Copies of these letters are available on our website: [http://www.humanrightsfirst.org/workers\\_rights/wr\\_other/wr\\_other.htm](http://www.humanrightsfirst.org/workers_rights/wr_other/wr_other.htm).

Human Rights First believes that the Global Compact should develop a closer association and reliance on the key human rights set out in the Norms. As noted in that June 24 statement, in addition to other steps needed to increase its effectiveness as a measure of promoting corporate accountability, the U.N. leadership, working through the Global Compact, needs to support the Norms publicly. As part of this process, the Norms should be used as a guiding framework for defining the minimum standards expected of companies participating in the Global Compact.

### **Key Benefits of the Norms**

Comprehensiveness and specificity: As noted above, the Norms constitute the most comprehensive statement of human rights standards applicable to business. They both reiterate and build on prior efforts to address the responsibilities of companies for human rights.

Most of the rights encompassed by the Norms are fundamental rights that have been agreed to as accepted standards for nation states and individuals for decades. At the same time, the Norms are part of the gradual development of “soft law” standards that has expanded the scope of rights applicable to business through declarations, guidelines, and broadly-accepted codes of conduct. As such, they represent a more comprehensive approach and provide a common template from which to continue to examine the adequacy of corporations’ protection and promotion of human rights.

A balanced approach to corporate responsibility: The Norms do not challenge the continued primacy of states for human rights protection and promotion. Indeed, Article 1 of the Norms makes clear that “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...”

But the Norms also make clear that “within their respective spheres of activity and influence” corporations do assume an obligation to promote, respect, and protect human rights. The precise scope of these “spheres of activity and influence” and the obligations that follow are the source of continuing debate and controversy. This issue merits further, careful analysis by the OHCHR.

The Norms also set out a framework of standards that national governments can utilize in developing their own domestic laws that apply to corporate conduct. As such, they offer a template against which businesses can measure their own activities, and which governments can utilize to further clarify the minimum obligations of those doing business within their jurisdiction.

Opportunities to test implementation: The mechanisms for implementation set out in the Norms are varied and apply not only to corporations but to national governments and international institutions as well. Credible procedures for monitoring and verification are therefore crucial.

While it is likely to take considerable time to develop and gain approval for a generally-applicable monitoring system, in the interim the Norms should be used in the manner suggested by some companies, notably by the International Business Leaders Forum (IBLF) and its membership, and non-government organizations in monitoring corporate compliance with human rights.

Just as important, the Norms provide a practical “checklist” for any corporation interested in analyzing and improving upon its human rights performance. To this end, businesses should take a proactive approach to “road testing” the Norms to help clarify both their content and the most feasible means of implementation. As the IBLF noted in its very constructive April 2004 statement on the Norms, they provide “a useful basis for dialogue, development of good practices, and benchmarking” and “can provide companies with a framework within which to develop and benchmark their own specific human rights policies.”<sup>3</sup>

This should be done in concert with non-governmental organizations. It also would benefit from active encouragement and facilitation by those charged with administering the Global Compact. In addition, as noted above, it would also benefit from attention to the experiences of organizations such as the Fair Labor Association, in which Human Rights First has participated actively since its inception. The FLA’s model can help inform efforts to develop independent monitoring, compliance and remediation measures, and achieve greater transparency through public reporting.

### **Concluding Observations**

Human Rights First believes that the Norms represent an important step forward in cataloguing the human rights responsibilities of business, and at the same time provide a strong foundation for expanded dialogue among businesses, non-governmental organizations, and public officials at both the national and international level. They also offer a comprehensive framework for companies to analyze their own human rights policies and practices.

Through its upcoming report, the OHCHR can play an important role in advancing how the Norms can best contribute to promoting more responsible global business practices. Human Rights First looks forward to continuing to work with the OHCHR, other U.N. bodies, and other stakeholders in the effort to strengthen the standards governing businesses’ human rights responsibilities.

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<sup>3</sup> International Business Leaders Forum, Statement on the UN Norms on the Responsibilities for Transnational Corporations and Other Business Enterprise with Regard to Human Rights (as provided by the Business and Human Rights Resource Centre, [www.business-humanrights.org](http://www.business-humanrights.org)).