

# **EU REPLY TO THE OHCHR QUESTIONNAIRE ON RESPONSIBILITIES OF TRANSNATIONAL CORPORATIONS AND RELATED BUSINESS ENTERPRISES WITH REGARD TO HUMAN RIGHTS**

## **1. Introduction**

1. The European Union is of the opinion that transnational corporations and related business enterprises can play a constructive role vis-à-vis human rights. We stress that the prime responsibility for the protection and promotion of human rights rests with States, and that it is the responsibility of States to implement human rights obligation through legislation, regulations and related monitoring and enforcement measures. Transnational corporations and other business enterprises shall respect local legislation and regulations, to the extent that local legislation or regulations do not make business an accomplice to human rights violations. The EU believes that an in-depth discussion on the relation of transnational corporations and related business enterprises to human rights should take a holistic approach. The EU therefore welcomes the efforts of OHCHR to analyse existing initiatives and standards, as well as any outstanding issues.

### Increasing awareness

2. Discussions on the relationship between national and international corporations and human rights are not new, but their significance is increasing. In the European Union, for example, there has been a growing number of governmental, intergovernmental and multi-stakeholder initiatives related to the role of companies vis-a-vis human rights, mostly as part of broader initiatives concerning Corporate Social Responsibility (CSR). This tendency is closely related to the fact that the issue of CSR acquired importance on the political agenda, and that work to formulate standards, principles, and guidelines has taken place in many fora, including in the United Nations, OECD, and the European Union itself.

3. Demands that companies should take on more societal responsibilities have also been put forward by an increasing number of non-governmental actors, both during international conferences and at annual meetings of shareholders and investors. In this connection, the number and range of transnational and domestic corporations that have sought to improve their own practices have been increasing. A growing number of national and international business enterprises in the EU have decided to embrace new standards of conduct, codes of conduct, and to develop identifiable values. In many cases, these also involve a specific commitment to promote human rights.

### The context of Corporate Social Responsibilities

4. The EU considers CSR demands placed on companies to be mainly defined by the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

(1977, rev. 2000), the OECD Guidelines for Multinational Companies (2000) and the Global Compact principles (2000, rev. 2004). All three instruments contain explicit and implicit human rights benchmarks. The implementation thereof is generally dependent on decisions of companies to establish internal enforcement measures or incentive policies. In certain cases, an effective implementation can also be reached through cooperation with external expertise or public-private partnerships.

### Compliance

5. The context in which the role of companies with regard to human rights can be further developed, is on the one hand determined by the obligation of States to promote and protect human rights. The EU recalls that the General Assembly, in its resolution 53/144, reaffirmed that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lay with States. Therefore, developing standards with regard to responsibilities of transnational corporations and related business enterprises, and ensuring accountability for their actions does not in any way relieve states of their obligations under the Charter of the United Nations and other relevant human rights instruments to promote universal respect for, and observance of human rights and fundamental freedoms.

6. On the other hand, according to the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights, every individual and every organ of society is under a responsibility to strive for the promotion and observance of human rights. The EU stresses that such a provision does not constitute direct legal obligations for companies under human rights law, unless the company performs public functions, which may invoke state responsibility. Such a provision could allocate responsibility to corporations, but the legal obligations rest with States. The Covenants, Conventions and Declarations that lay at the basis of human rights responsibilities and duties have been negotiated, signed and ratified by States, which also bear prime responsibility for their implementation.

7. Respect for national legislation is the first and compulsory step for all enterprises. The EU would expect that States' national legislation should prohibit acts by domestic and multinational enterprises that are incompatible with human rights standards and principles and that all enterprises should refrain from such acts. Besides, States may wish to play a proactive role and promote corporate responsibility through incentive measures, in close consultation with all concerned social actors. Nevertheless, the EU also reiterates that according to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights every individual and every organ of society is under a responsibility to strive for the promotion and observance of human rights in support of States' efforts to meet their legal obligations. This would involve at least the responsibility for companies to ensure that they are not in any way complicit in human rights abuses. In addition enterprises, that wish to exercise a proactive role with respect to human rights, may decide to take voluntary measures to do so.

8. In determining the role that companies can play with regard to human rights, it should be underlined that CSR policies come in different shapes and have different levels of engagement.

The Global Compact's Ten Principles, for example, require companies to strive to follow internationally negotiated fundamental conventions and guidelines, so that minimum standards are observed. Given its universal outlook, the Global Compact's type of approach is in our view very useful for establishing world-wide consensus minimum standards. Nevertheless, there are also other CSR initiatives that have a wider scope and seem particularly suited for situations in which governments are willing and have the capacity to sustain CSR programmes. These initiatives involve the encouragement of companies to contribute to sustainable development, working with employees, their families, local communities and society at large to improve their social and economic situation. Within the EU territory itself, CSR is defined in a way implying that companies voluntarily integrate social and environmental considerations into their operations with stakeholders, in addition to their compliance with a comprehensive system of European and national regulations.

#### The role of OHCHR's study

9. Given the rising awareness that transnational corporations and related business enterprises do have a social role vis-à-vis human rights, the EU is of the opinion that it is appropriate that this issue be considered by the Commission on Human Rights. As such we welcomed and supported decision 2004/116 of the Commission.

10. When doing so, it has to be recognised that over the last decades much work in this area has already been done. Therefore, it will be important in the study of the Office of the High Commissioner for Human Rights to build on previous experiences, research and reports by all relevant actors. The EU considers it vital that the Office engages in a constructive dialogue with other relevant agencies and processes, most notably the Global Compact, ILO, and OECD. The present study would thus be a good opportunity for human rights organisations to examine the coherence between their own programmes and the policies and decisions of other mandated actors.

11. Concerning the process, the EU fully subscribes to the importance of substantive consultation and cooperation with all relevant stakeholders. As laid down in decision 2004/116, the OHCHR is mandated to start consultations with "all relevant stakeholders in compiling the report, including States, transnational corporations, employers' and employees' associations, relevant international organisations and agencies, treaty monitoring bodies, and non-governmental organisations." The EU strongly supports this multi-stakeholder approach because an effort to further improve the human rights policies of corporations can only be successful if, along with the input of other stakeholders, their views are fully represented.

## **2. Relevant international initiatives/standards**

12. Aware of the constructive role that transnational corporations and related business enterprises can play with regard to human rights, both the Member States and the institutions of the EU have been active in relevant fora that shape CSR, inter alia in the context of the Global Compact, ILO and OECD. Also, the EU is in a process of formulating its own common

strategy on CSR. The main focus of EU-level activity regarding CSR was the European Multi-Stakeholder Forum on CSR. The Forum was launched in October 2002 following the publication of the Commission's communication *CSR – A Business Contribution to Sustainable Development*. It brought together a range of stakeholders (primarily business, unions and NGOs) in a series of round-tables with the two aims of improving knowledge about CSR by exchanging experience and good practice, and exploring the appropriateness of common guiding principles on CSR.

The European Multi-Stakeholder Forum has already contributed to a certain amount of convergence of language and understanding on CSR, including its human rights elements. At its last meeting (June 2004), it explicitly reaffirmed the importance for CSR of international and European human rights principles as laid down in i.a. UDHR, ICCPR, ICESCR, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, and the EU Charter of Fundamental Rights.

13. The EU believes that the OHCHR report should take account of the international initiatives/standards mentioned hereunder. For the sake of clarity, the overview is divided in two parts. The first part deals with initiatives/standards that stress the role of States, the second part consists of initiatives which encourage corporations to take on a more active role, including in the area of human rights.

A. International initiatives/standards for States.

INTERNATIONAL INITIATIVE/STANDARDS	SCOPE	LEGAL STATUS
UN Convention against corruption	Comprehensive and multidisciplinary approach to fight corruption in all its forms	Enters into force when thirty States have ratified. Envisages investigative and prosecutorial powers.
Report of World Commission on the Social Dimension of Globalisation (2004)	Wide ranging report, including a short section on CSR. Proposes strengthening of company voluntary initiatives, and suggests ILO could convene a forum on the issue.	The Commission was an independent body established by the ILO. Its recommendations are under consideration by states, and other international organisations. ILO follow-up will be discussed at the Governing Body meeting in November 2004.
ILO Declaration on Fundamental Principles and Rights at Work (1998)	Based on core labour standards set out in the eight fundamental ILO Conventions (see below), with the aim of reconciling the desire to ensure that social progress	The Declaration is not legally binding, but applies to all ILO states by virtue of their membership in the ILO. It contains a mechanism for

	<p>accompanies economic progress with the need to respect circumstances in individual countries. These fundamental principles and rights provide benchmarks for responsible business conduct, and are incorporated in the ILO's Tripartite Declaration of Principles concerning MNEs and Social Policy.</p>	<p>annual review of the efforts made by member states towards ratification and implementation of Conventions covering the core labour standards. It cannot be invoked as the justification for economic sanctions against a country, but is intended as a tool for targeting technical assistance and cooperation to help states meet their obligations.</p>
ILO Conventions	<p>Establish norms covering all aspects of working conditions and industrial relations. The ILO core Conventions which form the basis of the 1998 Declaration (see above) cover freedom of association (no.87) and the right to organise and to collective bargaining (no.98); minimum age (no.138), and elimination of the worst forms of child labour (no.182); equal remuneration (no.100) and freedom from discrimination in employment and occupation (no.111); and freedom from forced labour (Nos. 29 and 105).</p>	<p>Legally binding on all countries that have ratified them. Workers' and employers' groups participate as equal partners with governments in negotiations to draft the conventions. The cooperative approach of the ILO, which focuses on providing technical assistance to enable countries to implement their responsibilities, receives strong support from ILO membership.</p>
ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (MNE Declaration)	<p>The MNE Declaration is the only set of global guidelines agreed on by governments, employers and workers for investment-related policy and practice. They address commitments of multinational enterprises (MNEs), workers' and employers' organisations, and governments in such areas as development policy, rights at work, employment, training, conditions of work and life and industrial relations</p>	<p>Voluntary undertaking. Governments and national employers' and workers' organisations are asked to provide information periodically to the ILO regarding the progress in achieving the goals of the Declaration.</p>
OECD Guidelines for Multinational Enterprises (2000)	<p>Voluntary guidelines for promoting appropriate business conduct among multinational companies,</p>	<p>Voluntary. Governments adhering to the guidelines encourage the companies</p>

	covering a range of issues, some of which relate to human rights	operating with their countries to observe the guidelines wherever they operate. Designated 'National Contact Points' promote the Guidelines and work to resolve issues arising from their implementation.
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)	To provide a framework to criminalise corruption in international business transactions. States party to the Convention pledge to punish those accused of bribing officials of foreign countries, including officials in countries that are not part of the Convention for the purpose of obtaining or retaining international business.	Procedure of self- and mutual evaluation, peer scrutiny and monitoring. The Working Group on Bribery issues reports on implementation by signatories.
European Commission strategy on Corporate Social Responsibility: a business contribution to Sustainable Development (2002) and the European Multi-Stakeholder Forum on CSR (2002-04)	The Forum, flowing from the strategy, serves as a platform to promote transparency and convergence of CSR instruments and best practices.	Not legally binding. Aimed at achieving greater policy coherence and effectiveness.
The Publish What You Pay Campaign (2002)	Places the onus on wealthy countries' governments to require transnational extraction companies to publish net taxes, fees, royalties and other payments so civil society can assess the amount of money misappropriated and lobby for full transparency in local government spending, as the essential condition for alleviating poverty, promoting just and equitable development and improving corporate social responsibility.	
EU trade agreements	Agreements the EU has with third countries on trade, include a paragraph on human rights obligations	Human rights obligations of States under these agreements are implemented in a cooperative way (e.g. through national action plans).

Cotonou Agreement on ACP-EU Cooperation (2000)	The agreement includes as one of the essential elements underpinning the cooperation, respect for human rights and fundamental freedoms, as defined by international law.	A violation of this essential element may provide grounds to suspend EU assistance and trade cooperation with the ACP country concerned.
The Helsinki Process on Globalisation and Democracy	The Process seeks new and empowering solutions to the dilemmas of global governance and offers a forum for dialogue between major stakeholders, including corporations. Among other things, it seeks to identify incentives for the adoption of good practices as ways of enhancing corporate responsibility.	The Process will create practical policy recommendations that can be adopted and promoted by various actors.

B. International initiatives/standards for companies

INTERNATIONAL INITIATIVE/STANDARDS	SCOPE	LEGAL STATUS
UN Global Compact (2000)	A voluntary corporate citizenship initiative with two objectives: to mainstream the Ten Principles in the areas of human rights, labour, the environment and corruption in business activities around the world; to catalyse actions in support of UN goals	Not legally binding. Companies opt into the Global Compact. Consideration under way on whether and, if so, how to monitor performance of participant companies in meeting their commitments.
UNDP Division for Business Partnerships (1999)	Coordinates UNDP's efforts to include the private sector in its development efforts around the world. Various governance issues, including accountability, anti-corruption and human rights are emphasised.	Not legally binding. Works on the basis of partnership between UNDP, the private sector and other stakeholders.
The Caux Round Table (1994)	Has produced 'Principles for Business' – a document that seeks to express a world-wide standard for ethical and responsible corporate behaviour for dialogue	No formal mechanism for corporate commitment to these principles exists.

	and action by business and leaders world-wide.	
The Global Sullivan Principles (1999)	Developed as a voluntary code of conduct for companies doing business in apartheid South Africa, the Principles aim to support economic, social and political justice by companies where they do business, including support for human rights and encouraging equal opportunity at all levels of employment	Companies endorse the Principles by publicly pledging to integrate them into their operations. Continuing support requires that companies provide an annual letter to Reverend Leon Sullivan (the drafter of the principles) restating the company's commitment and outlining progress to date.
Global Framework Agreements	Agreements negotiated by a trade union organisation, usually an International Trade Secretariat (ITS) with an MNC, specifying minimum labour standards and rights associated with freedom of association and collective bargaining.	
World Economic Forum Statement 'Global Corporate Leadership Challenge' (2002)	Statement that corporate social responsibility must become a central component of modern business strategy.	Signed by the CEOs of 36 major MNCs.
ISO standard on Social Responsibility (2004)	Decision by ISO Technical Management Board to proceed with work to develop an international guidance standard on social responsibility that is understandable and usable by non-specialists.	Voluntary guidance not intended for use in certification.
World-wide Responsible Apparel Production (WRAP) (2000)	Initiative to ensure that apparel is produced under lawful, humane and ethical conditions. Set of 'Production Principles' approved in 1998 and certification system for factories tested in 2000 Associations of apparel manufacturers in 19 countries world-wide participate	Independent monitors carry out evaluations and submit them to a Certification Board. Certification is valid for one year only and can be revoked.
Global Alliance for Workers and Communities (1999)	Promotes corporate adherence to internationally-agreed standards; carries out in-depth assessment of workplace conditions, workers' aspirations and community needs	Based on partnership of private, public and non-governmental organisations.

	and establishes development and training programmes. Operates in 61 companies across China, India, Indonesia, Thailand and Vietnam.	
The Extractive Industries Transparency Initiative - Statement of Principles and Agreed Actions (2003)	Aims to increase transparency of payments by companies to governments and government-linked entities, as well as transparency of revenues by those host country governments. Most major companies in the extractive industries support implementation of EITI.	The hope is that the transparency standard will be picked up in other initiatives, guidelines and codes to increase transparency across an ever-widening group of countries and companies.
Kimberley Process Certification Scheme	An international diamond certification scheme to ban trade in conflict diamonds, which provides a model for preventing illicit exploitation of natural resources from fuelling conflict. It has some 50 participants, including all major diamond producing, trading and producing countries.	Imposes extensive requirements on all participants to certify all international shipments of rough diamonds and put in place rigorous internal controls to ensure that conflict diamonds cannot enter the diamond 'pipeline'
Voluntary Principles on Security and Human Rights for the extractive and energy sectors	Aim to guide companies in maintaining the safety and security of their operations within a framework that ensures respect for human rights and fundamental freedoms. Developed by a group of companies in the extractive and energy sectors, the US, UK, Dutch and Norwegian governments, and NGOs.	Voluntary principles
Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights	Draft prepared by the UN Sub-Commission on the Promotion and Protection of Human Rights that covers a range of existing documents – both legal and political – on human rights, environmental, labour and other standards and seeks to identify how they might apply to corporations.	Sub-Commission is a think tank of the Commission on Human Rights made up of independent experts. The Draft Norms are not legally binding. The documents to which it refers have widely varying legal statuses.
Business Leaders Initiative on Human Rights	Three year initiative of a group of seven international businesses aiming to further integrate human	Voluntary

	rights in business	
OECD investment committee's 'integrity package' for TNC's	Checklist for TNC's that are contemplating investment in so-called 'weak governance zones'.	Voluntary

### **3. Any outstanding issues**

**Coherence:** It is imperative that coherence and synergy between the different actors and initiatives be ensured with regard to the role of transnational corporations and related business enterprises vis-a-vis human rights. It is important to ensure that parallel initiatives are complementary, that duplication and contradiction are avoided. Relevant international organisations and initiatives should focus on their core competencies/mandates and avoid the development of new institutions and mechanisms, unless there is a clear case that it will add value, efficiency, and effectiveness. Increased coherence and interaction between existing organisations and initiatives would further enhance the feasibility of effective implementation.

**Clarification:** Standards expected of corporate actors are in many cases not set out in clear, streamlined, and accessible terms. In such cases they cannot be easily explained to stakeholders (i.a. employees, suppliers), implemented and monitored. An exercise that would promote clarification, would bring added value to the promotion of the corporate role in the field of human rights.

**Encouraging companies to act:** Improving domestic State legislation would ensure a better contribution of transnational corporations and related enterprises to the full enjoyment of human rights. This would be in line with governments' duties to promote and protect human rights. In targeting transnational corporations and related business enterprises there are also other ways to encourage them to go beyond any minimum standards and contribute to the active promotion of human rights. A number of concrete measures could be considered, such as fiscal incentives or certification by the United Nations. These and other ideas, as well as the role that the UN can play in this regard, should be further explored.

**Global promotion of responsibilities:** Not all states have effective legislation and regulation requiring minimum standards of corporate behaviour. This should be further promoted, and supported in cases where states need technical assistance. In some states there may not be adequate conditions to bring companies to account if they do not meet minimum standards established by the international community, e.g. because of a lack of control over their territories, weak judiciary, lack of political will, or corruption. Mechanisms should be considered, inter alia in the context of supporting good governance, to address this.

**Law and jurisdiction:** one of the most complex areas is the question of jurisdictional powers of states over corporations that are headquartered in one country, operate in a second, and may have many of their assets in third countries. Further consideration will be needed to what

extent companies should be subject to the law and jurisdiction of their parent states in relation to their operations overseas. Jurisprudence relating to parent companies' responsibility in other fields, such as environmental law, for activities of their subsidiaries could be useful to explore in this context.

Scope: transnational corporations never act in isolation, but with and through a range of domestic corporate actors, including suppliers, distributors, sub-contractors, service-providers, and others. The relationship between these actors, and their respective responsibilities for ensuring that their actions are in line with human rights standards, should be further analysed and explored.

Individual responsibility: to what extent can individuals be held criminally responsible for corporate action which is clearly incompatible with human rights standards.