

Distr.
RESTRICTED

E/CN.4/Sub.2/2000/WG.2/WP.1
25 May 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-second session
Item 4 of the Provisional Agenda
Sessional working group on the
working methods and activities
of transnational corporations

Principles relating to the human rights conduct of companies

Working paper prepared by Mr. David Weissbrodt

Introduction

1. At its first session in August 1999 the sessional working group on the working methods and activities of transnational corporations of the Sub-Commission decided to consider developing a code of conduct for companies based on human rights standards (see E/CN.4/Sub.2/1999/9). Such a code would attempt to involve in a constructive manner the relevant business communities, Governments, and in cooperation with non-governmental organizations having expertise on the subject. In addition, Mr. Eide volunteered to prepare a paper compiling and analysing relevant human rights standards. The Chairman-Rapporteur, Mr. El-Hadji Guissé, agreed to prepare a paper (i) on the identification and examination of the effects of the activities of transnational corporations on the enjoyment of human rights; and (ii) on a draft mechanism for the implementation of the proposed code of conduct to be prepared by Mr. Weissbrodt. These papers are expected to be considered by the working group when it meets in August 2000.

GE.00-13862 (E)

I. NEED FOR A HUMAN RIGHTS CODE OF CONDUCT FOR COMPANIES

2. Several trends make human rights concerns an important issue for all companies. These trends include: the emergence of the increasingly integrated global economy; the prominence of international trade and investment; the growth of information and communications technology facilitating rapid transmission of information; increasing privatization; concerns about the impact of globalization and trade on human rights; an increase in consumer awareness about labour and environmental conditions involved in the production of goods available for purchase; shareholder and other stakeholder demands for greater openness and public accountability; greater attention by more non-governmental organizations to the conduct of transnational corporations and other companies; and increased reliance upon voluntary compliance with international standards applicable to companies.¹

3. Transnational corporations² are active in some of the most dynamic sectors of national economies, such as energy, telecommunications, information technology, electronic consumer goods, footwear and apparel, transport, banking and finance, insurance and securities trading, etc.³ They bring new jobs, capital and technology. Some corporations make real efforts to achieve international standards by improving working conditions and raising local standards of living conditions. They also encourage their employees to do voluntary work for human rights and development. They certainly have the capacity to assert a positive influence in fostering development. Some transnational corporations, however, do not respect international minimum human rights standards and can thus be implicated in abuses such as employing child labourers, discriminating against certain groups of employees, failing to provide safe and healthy working conditions as well as just and favourable conditions of work,⁴ attempting to repress independent trade unions, discouraging the right to bargain collectively, limiting the broad dissemination of appropriate technology and intellectual property, dumping toxic wastes, etc.⁵ Some of these abuses disproportionately affect children, minorities and women who work in unsafe and poorly paid production jobs, as well as indigenous communities and other vulnerable groups. Extraction industries in particular tend to be associated with serious human rights problems, mainly because they may not be able to select their locality and may feel compelled to work closely with repressive host Governments. There is also a growing body of evidence linking extraction industry activities to environmental and human health impacts. Export processing zones are also associated with some of the worst abuses of human rights as some workers do not enjoy healthy and safe working environments.

4. Transnational corporations and other companies are becoming aware of the interplay between their businesses and their impact on individuals, communities and the environment. There is some reason to believe that greater respect for human rights by companies leads to better business performance. For example, company observance of human rights aids businesses by protecting and maintaining their corporate reputation, and creating a stable and peaceful society in which businesses can prosper and attract the best and brightest employees.⁶ Consumers have also demonstrated they are willing to pay attention to a company's standards and practices regarding human rights and may even boycott products that are produced in violation of human rights standards.⁷ According to *Business and Human Rights: A Progress Report* by the Office of the High Commissioner for Human Rights, active business concern for human rights helps companies (i) ensure compliance with local and international laws; (ii) satisfy consumer concerns; (iii) promote stable legal environments; (iv) build corporate community goodwill; (v) aid in the selection of ethical, well-managed and reliable business partners; (vi) aid in producing a predictable, stable and productive business enterprise; (vii) keep markets open; and (viii) increase worker productivity and retention.⁸ Further, if a human rights code of conduct for companies becomes widely accepted, companies will enjoy greater predictability and consistency with regards to their responsibilities for protecting human rights. An authoritative human rights code of conduct for companies would thus ensure that these responsibilities are clear, accessible, and unambiguous. A widely accepted human rights code articulated by the international community will help establish a level playing field for business competition. Such predictability is a basic foundation for sustainable development and prosperity.

5. As transnational corporations become increasingly important in the economies of most countries and in international economic relationships, unique opportunities for them to assert an influence - for good or for ill - are created. Those opportunities may be significantly greater for transnational and other companies that have larger amounts of resources and therefore greater ability to use those resources for the benefit of society as well as for their shareholders. Some companies have gross revenues and profits far larger than the gross domestic product of States. It may also be argued that those larger companies have more of a responsibility to use their greater influence for the promotion and protection of human rights and for encouraging Governments to recognize and comply with international human rights standards. Smaller companies may not be capable of asserting such influence, but at the same time they can be the subject of national laws and regulations for the protection of human rights. The greater the size

and international reach of companies the more the need for applicable international human rights standards. Regardless of size, all business enterprises can make a positive contribution by developing, adopting, and implementing their own human rights code of conduct and by choosing only to deal with other businesses that also recognize and follow similar standards.

6. All in all, business enterprises have increased their power in the world. With power comes responsibility. Hence, there is a need to consider what human rights duties should be expected of companies.

II. THE DEVELOPMENT OF CORPORATE CODES OF CONDUCT

7. The United Nations Commission on Transnational Corporations prepared a draft United Nations code of conduct for transnational corporations that was never fully adopted by the Commission.⁹ In 1976, the Organisation for Economic Co-operation and Development (OECD) established its Guidelines for Multinational Enterprises to promote responsible business conduct consistent with applicable laws.¹⁰ Recently, the OECD issued a draft text and commentary to bring the Guidelines up to date with recent trends.¹¹ The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises was adopted in 1977.¹² The Tripartite Declaration incorporates relevant ILO conventions and recommendations and has been amended in 1987, 1995 and 2000 to incorporate new conventions and recommendations adopted subsequently.¹³ For example, in March 2000 the ILO Governing Body incorporated into the Tripartite Declaration the Declaration on Fundamental Principles and Rights at Work and its Follow-Up, which had been adopted in 1998 to modernize, strengthen and ensure implementation of its system of labour standards.¹⁴ In addition, the ILO also assists voluntary initiatives to establish and implement their own codes of conduct.¹⁵

8. In January 1999, the Secretary-General proposed a Global Compact of shared values and principles at the World Economic Forum at Davos, Switzerland.¹⁶ As further explained in connection with the Forum in 2000, the Global Compact has nine core principles that are divided into categories dealing with general human rights obligations, standards of labour, and standards of environmental protection.¹⁷ Businesses are asked to support and adopt those principles, the first two of which are to support and respect the protection of internationally proclaimed rights within their sphere of influence and make sure they are not complicit in human rights abuses.¹⁸ The Global Compact states that “although Governments have primary responsibility for implementing internationally accepted values, corporations acting on their own can do a great

deal to actualize these principles within their spheres of influence”.¹⁹ Accordingly, supporting human rights principles as stated in the Global Compact, in addition to being the right thing to do, also makes good business sense.²⁰ “A clear demonstration that basic and broadly popular social values are being advanced as part and parcel of the globalization process will help ensure that markets remain open, and will truly bring the people of the world closer together.”²¹

9. On 28 January 2000, the United Nations Business and Human Rights Global Compact Web site was established.²² The objective of the Web site is to advance the implementation of universally agreed values that are relevant to businesses, to promote global corporate citizenship and to stimulate best practices. The site provides a company’s staff with management tools, such as environmental checklists, and documentation tools for interaction vis-à-vis stockholders. The Web site also serves as a link between companies and other organizations that work on similar issues, circulating articles and updates when appropriate and providing opportunities for direct communication between businesses, trade unions and others who share concerns. It further makes the case for companies’ committing themselves to environmental and human rights issues and presents documentation on the universally agreed-upon principles which corporations are being asked to adopt and implement.

10. A number of transnational corporations and other companies have already begun to consider the human rights implications of their activities, for example by (i) carefully assessing the context in which they are investing or doing business; (ii) planning and implementing internal corporate policies; and (iii) establishing workplace codes of conduct for overseas offices, subsidiaries, suppliers and contractors. Not only have many companies developed their own ethical codes,²³ but some associations of companies - for example in the apparel, rug and sports industries - have begun to develop joint standards.²⁴ In addition to corporations and trade groups, many NGOs and other groups have written codes of conduct for companies.²⁵

III. DEVELOPING AND IMPLEMENTING A HUMAN RIGHTS CODE OF CONDUCT FOR COMPANIES

11. Any draft code of conduct for companies raises difficult issues with respect to the human rights obligations of non-State actors - a subject that requires further study by the Sub-Commission. While awaiting such an in-depth study, a code of conduct for companies might refer to the Universal Declaration of Human Rights. The Universal Declaration announces the fundamental rights of individuals and places responsibility on both Governments

and other organs of society for affording those rights. In this regard the code of conduct for companies might refer particularly to the operative paragraph proclaiming the Universal Declaration of Human Rights:

“as a common standard of achievement for all peoples and all nations, to the end that every *individual and every organ of society*, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”.²⁶

The code of conduct might similarly refer to article 18 of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), which states,

“... ”

“2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.

“3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.”²⁷

The code of conduct might further refer to article 2 (d) of the International Convention on the Elimination of All Forms of Racial Discrimination which requires States parties to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization ...”²⁸ Similarly, the code may refer to article 2 (e) of the Convention on the Elimination of All Forms of Discrimination against Women which requires States parties to “take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise ...”²⁹

12. There are a number of treaties and other instruments that impose responsibility on persons for their actions, including: (a) the Supplementary Convention on the Abolition of

Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956;³⁰
(b) the Convention on the Prevention and Punishment of the Crime of Genocide;³¹
(c) the Nuremberg Rules;³² (d) the Rome Statute of the International Criminal Court;³³ and
(e) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment.³⁴

13. In addition, while the Universal Declaration,³⁵ the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights³⁶ focus principally on the duties of Governments, they indicate that persons have both rights and responsibilities. Legal persons, including companies, have human rights obligations insofar as non-State actors could be said to have international legal obligations. Companies and similar entities are, from one perspective, legal constructs allowed to exist by virtue of State action. Accordingly, in this view a State should not create, nor allow to endure, a body that violates international human rights norms to which the State has given the indispensable authorization. Another view would recognize that a “firm” is a legal concept that usefully coordinates agreements among a variety of persons - some who give capital, some who manage, some who produce, etc.³⁷ The firm is actually a set of specialized agreements among persons in order to coordinate production or provide services in a more cost-effective manner. But the firm acts only by persons, whose fiduciary and other obligations constrain their acts. Hence, to the extent that firms are comprised of individuals and those individuals are bound by human rights treaties and other instruments, companies are effectively bound by the same provisions.³⁸ Furthermore, several of those treaties and instruments may be interpreted to apply to both “natural persons”, that is human beings, and “legal persons” such as corporations.

14. Some treaties, for example those relating to corruption, focus particularly on the responsibilities of legal persons.³⁹ Article 2 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions states that “[e]ach Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of *legal persons* for the bribery of a foreign public official”.⁴⁰ Similarly, the International Convention on Civil Liability for Oil Pollution Damage and the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment extend responsibilities to legal persons. Both define the persons liable to the convention as “any individual or partnership or any public or private body, whether corporate or not, including a State or any of its constituent subdivisions”.⁴¹

15. Although the principal focus of the working group is, of course, on transnational corporations, the creation of a human rights code of conduct should apply to all businesses. Transnational corporations receive special attention because they tend to be large, possess considerable political influence, and have considerable autonomy to the extent that they have the capacity to move their operations from one country to another. For many years transnational corporations have also been the subject of concern with respect to the implications of their operations on the protection of human rights. But there are many other companies whose activities are related to international commerce, for example through export or import, even if they lack foreign subsidiaries. Other companies that operate locally are linked to international commerce and to transnational corporations through supply chains. Further, the most influential companies may be principally active in local or national markets, but may have a very significant impact on the enjoyment of human rights.

16. In considering whether to develop a code of conduct only for transnational corporations or for all companies the working group should consider whether it would be sensible or fair to propose a code of conduct for transnational corporations and omit other very large and influential companies. All companies are essentially competitors in the global market; what distinctions are appropriate with regard to the human rights responsibilities of multinational and domestic firms? If the working group wants transnational corporations to respect certain human rights obligations, should the competition they face from large national competitors be the subject of similar standards or would the incentives for compliance be undermined? Shouldn't the same standards apply to cooperation between transnational corporations and their local business partners? Should all companies be subject to the same basic human rights expectations, while larger and more influential companies might be subject to even greater responsibilities to use their proportionately greater influence for the protection of human rights? For the purpose of establishing human rights responsibilities, should distinctions be drawn between corporations and other business forms having diverse control structures and forms of ownership, such as non-equity contractual relations (e.g. joint ventures, buyers/suppliers), partnerships, limited liability partnerships, limited liability companies, unincorporated associations, etc.? While the working group will need to consider such questions, this working paper presents a draft human rights code of conduct for companies (annex) that applies to all business entities regardless of their corporate form and regardless of the international or

domestic nature of their business. This paper will use the word “companies” to refer to all business entities, regardless of the corporate form used by the business or the international or domestic scope of its business.

17. The responsibility to promote and secure human rights can be applied in varying degrees to the private sector, for example: principles directly affecting employees; principles involving public and private business partners and their employees; principles affecting the community and the general human rights environment of that community; and other principles which can implicate a company and public institutions, or can involve concerns for individual human rights, the environment and the relevant community.⁴² The degrees of responsibility suggest that a code of conduct for companies should not just address issues in which a business assumes obvious responsibility, such as corporate labour standards, but should also include areas in which a business can assume further responsibility, through practices such as outsourcing of products or services. It should also address situations in which at least larger companies can influence governmental actions, through, for example, encouraging the Government to improve the human rights environment of a community.⁴³ A human rights code of conduct for companies can be of assistance in all of these contexts. Companies, however, cannot be asked to replace Governments in their primary responsibilities for the protection of human rights.⁴⁴ While the draft proposed below generally covers all companies, it occasionally reflects that different companies may have greater resources, administrative capacities, and thus greater responsibilities to use their larger influence particularly to promote human rights in their respective communities.

18. The working group and the Sub-Commission may also need to think about what terminology to use for the attached draft. Although the author has chosen to refer to this document as a “code of conduct”, other names should be considered. While “code of conduct” might appear appropriate for a document that might eventually be viewed as legally binding, there are many company codes of conduct that are not legally binding and may be subject to change without notice by the company concerned. It might be argued that the Sub-Commission should not draft or adopt yet another code of conduct for companies,⁴⁵ but should prepare a document that is interpretive of the human rights obligations of companies, such as “human rights principles for companies”, or “standards”, “rules”, “guidelines”, “guiding principles”, “best practices”, etc. Each of these words or phrases carries its own connotations and overtones from past usage. For example, the Sub-Commission might want to draw upon the generally

positive experience with such documents as the Guiding Principles on Internal Displacement; the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights; the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights; the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights; the Paris Minimum Standards of Human Rights Norms in a State of Emergency; and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. In any case, the annexed "Draft human rights code of conduct for companies" invites further consideration of how this document should be identified.

19. The annexed draft human rights code of conduct for companies seeks to reflect the previous efforts to draft such codes identified above, relevant human rights standards, and other sources of information. For example, this draft constitutes an adaptation and combination of relevant language from codes of conduct and similar documents drafted by bodies such as the United Nations, the OECD, the ILO, corporations, unions, non-governmental organizations such as Amnesty International, and many other private and public organizations. The annexed code relies upon six different types of documents: (i) legally binding treaties and other instruments, such as the Genocide Convention and the International Convention on the Elimination of All Forms of Racial Discrimination; (ii) non-binding guidelines adopted by international organizations, such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; (iii) industry or commodity group initiatives, such as the Clean Clothes Campaign; (iv) framework agreements between multinationals' and workers' organization(s) such as the agreements between Danone and the International Union of Food and Agricultural Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF); (v) self-imposed company codes of conduct which may be non-binding and quite subject to change, such as the H & M Code of Conduct or the Tata Code of Conduct; and (vi) NGO or union model guidelines, such as the Amnesty International Human Rights Guidelines for Companies and the Basic Code of Labour Practice of the International Confederation of Free Trade Unions.⁴⁶ The annexed draft human rights code of conduct for companies reflects the binding norms, but also makes use of the best and most commonly used provisions from the less binding documents. The draft human rights code does not endeavour to freeze standards to the extent that it draws upon past drafting efforts and present practices; it should be seen as an effort to reflect and encourage further evolution.

20. The author is grateful to the International Council on Human Rights Policy which held a meeting in February 2000 at which, *inter alia*, an earlier draft of the annexed draft human rights code of conduct for companies was discussed, and to the very able participants in that meeting. The author is also very grateful for the suggestions of Anti-Slavery International, the Calver Group, the ICFTU, the Center for Human Rights and the Environment, Human Rights Advocates, the Lawyers Committee for Human Rights, Minnesota Advocates for Human Rights, the Lutheran World Federation, the National Heritage Institute, Oxfam and others.⁴⁷
21. The annexed draft human rights code of conduct for companies may be used as a point of departure for discussion. Ideas need to be gathered regarding provisions that should be added, reworded and/or removed. Efforts should be made to consult Governments, companies, unions, NGOs and other relevant bodies as to the wording and application of this code. Efforts should also be made to consult more standards, resources, and information that should be reflected in subsequent drafts of this draft human rights code.
22. The annexed draft human rights code for companies does not address whether any such code of conduct should be voluntary or legally binding, or how it should be enforced or implemented. The draft human rights code will be most effective if it can be internalized as a matter of company policy and practice. In order to be successful a company must be able to innovate. Similarly, sustainable economic development is most readily fostered by permitting innovation that is not inhibited by over-regulation. A human rights code could be misused if it serves as the occasion for a regulatory barrier to successful entrepreneurial initiative. Nonetheless, human rights obligations should take precedence over the pursuit of profit through trade.
23. Accordingly, there are a number of alternative approaches to implementing the human rights code. For example, the code could assist companies in their voluntary initiatives to establish and implement their own codes of conduct.⁴⁸ The code might similarly be adapted by certain industry groups for the development of their own industry codes of conduct that could be tailored to their needs. It could be used by Governments as a model or as an international standard for national codes of conduct. It also could be used as a standard for promoting ethical investment initiatives, or for the creation of a labelling system to note goods created under the specific standards so as to promote ethical purchasing patterns. In addition to these and other possibilities not mentioned,⁴⁹ the code might be considered as the basis for developing international standards applicable to all companies or only transnational corporations.

24. Further, the code might be used by unions and other NGOs as a basis for fact-finding and monitoring company activities.⁵⁰ Indeed, a major challenge in regard to such human rights codes of conduct is the development of procedures for monitoring compliance, verifying implementation and reporting. One possibility would be for the Sub-Commission's sessional working group on the working methods and activities of transnational corporations, or a successor pre-sessional body, to monitor compliance with the code by receiving information from NGOs or interested individuals and then by allowing companies an opportunity to respond. The code might also be helpful to the treaty bodies, in guiding their efforts to draft general comments/recommendations relevant to their work with regard to the activities of companies. The working group and, eventually, the Sub-Commission should consider these options which may be both alternatives and, at least to some extent, complementary approaches.

25. The draft human rights code contains only the proposed draft language for the code. Addendum 1 to the present document contains both the proposed draft language and the principal materials that served as the basis for each provision of the draft code; addendum 2 contains a list of the resources used to draft the code together with citations where available*.

* These documents are issued in the language of submission only.

Notes

¹ See United Nations High Commissioner for Human Rights, Business and Human Rights, <<http://www.unhchr.ch/global.htm>> (last visited 27 April 2000); United Nations Conference on Trade and Development, The Social Responsibility of Transnational Corporations, United Nations document UNCTAD/ITE/IIT/Misc.21 at 6 (1999).

² The term transnational corporation generally refers to a corporation with affiliated business operations in more than one country. See Barbara Frey, *The Legal and Ethical Responsibilities of Transnational Corporations in the Protections of International Human Rights*, 6 Minn. J. Global Trade 153 (1996) (citing Jonathan Charney, *Transnational Corporations and Developing Public International Law*, 1983 Duke L.J. 748, 749 n. 1 (1983); Menno T. Kamminga, *Holding Multinational Corporations Accountable for Human Rights Abuses: A Challenge for the EC*, in Philip Alston, *The EU and Human Rights* 553 (1999) (“The simplest definition of multinational corporation is ‘an enterprise which owns or controls production or services facilities outside the country in which it is based.’”); Warner Feld, *Nongovernmental Forces and World Politics* 20-23 (1972)). In the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the ILO defines a multinational enterprise to include “enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside of the country in which they are based”. The Declaration further mentions that “... this Declaration does not require a precise legal definition of multinational enterprises; [but the foregoing definition] is designed to facilitate the understanding of the Declaration and not to provide such a definition”. International Labour Organization, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (1977), 17 I.L.M. 422, para. 6 (1978). The Code of Conduct proposed by this paper also does not require a precise definition of transnational corporations and any definition given is only to facilitate understanding. See *infra*, paras. 15-16. See also Michael A. Santoro, *Profits and Principles* (2000).

³ See *The Realization of Economic, Social and Cultural Rights: The relationship between the enjoyment of human rights, in particular, international labour and trade union rights, and the working methods and activities of transnational corporations*, United Nations document E/CN.4/Sub.2/1995/11, para. 22 (1995).

⁴ See, e.g., Leslie Kochan, *The Maquiladoras and Toxics* (1989). See also *The Realization of Economic, Social and Cultural Rights*, *supra* note 3, at paras. 58-67 (TNC activities in export processing zones).

⁵ See David Weissbrodt and Marci Hoffman, *The Global Economy and Human Rights: A Selective Bibliography*, 6 Minn. J. Global Trade 189 (1997).

⁶ See Christopher L. Avery/Amnesty International United Kingdom, *Business and Human Rights in a Time of Change*, ch. 1 (2000). See also *Business and Human Rights*, *supra* note 1.

⁷ For example, consumer discontent that soccer/footballs were made by child labour led to a consumer boycott forcing the manufacturers to stop using child labour. See Robert J. Liubicic, *Corporate Codes of Conduct and Product Labeling Schemes: The Limits and Possibilities of Promoting International Labor Rights Standards Through Private Initiatives*, 30 *Law and Pol'y Int'l Bus* 111 (1998). Another example occurred in regard to the promotion of infant formula in developing countries. Certain companies were encouraging mothers in developing countries to use infant formula instead of breastfeeding. The use of infant formula led to increased infant mortality because of a lack of clean water and because mothers weren't properly instructed on how to use the formula. Once consumers learned about the increased infant mortality, they began boycotting Nestlé products. See Nancy E. Zelman, *The Nestlé Infant Formula Controversy: Restricting the Marketing Practice of Multinational Corporations in the Third World*, 3 *Transnat'l L.* 697 (1990). Out of that controversy arose the World Health Assembly, *International Code of Marketing of Breast-Milk Substitutes* (1981).

⁸ *Business and Human Rights*, *supra* note 1, at 8-9.

⁹ *Development and International Economic Cooperation: Transnational Corporations*, United Nations document. E/1990/94 (1990; see also United Nations Draft International Code of Conduct on Transnational Corporations, 23 *I.L.M.* 626 (1984). In 1972 the Economic and Social Council requested the Secretary-General to appoint a group of eminent persons to study the impact of multinational corporations on the world economy. In 1977 the United Nations Commission on Transnational Corporations began formulating a Code of Conduct for Transnational Corporations; the most recent draft was completed in 1990, but the Code of Conduct was never concluded. See Paul Lansing and Alex Rosaria, *An Analysis of the United Nations Proposed Code of Conduct for Transnational Corporations*, 14 *World Competition* 35, 37 (1991); John Christopher Anderson, *Respecting Human Rights: Multinational Corporations Strike Out*, 2 *U. Pa J. Lab. and Emp. L.* 463, 474-75 (2000).

¹⁰ Organisation for Economic Co-operation and Development, *Guidelines for Multinational Enterprises*, 15 *I.L.M.* 967 (1976). The OECD has established National Contact Points for handling inquiries and contributing to the solution of problems that may arise in connection with the OECD Guidelines. The OECD has also established the Committee on International Investment and Multinational Enterprises (CIME) that periodically or at the request of a member country can hold an exchange of views on matters related to the Guidelines. Over 30 cases have been submitted to the CIME - principally involving employment and industrial relations. <<http://www.oecd.org/daf/cm/cime/mnetext.htm>> (last visited 2 May 2000).

¹¹ *OECD Guidelines for Multinational Enterprises, Draft Text and Commentary*, 10 January 2000.

¹² International Labour Organization, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (1977), 17 *I.L.M.* 422, para. 6 (1978). <<http://www.ilo.org/public/english/employment/multi/tridecl/index.htm>> (last visited 11 May 2000).

¹³ See International Labour Organization, Updating of references annexed to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, ILO document GB.277/MNE/3 (2000).

¹⁴ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, adopted by the International Labour Conference at its eighty-sixth session, Geneva, 18 June 1998. The ILO Declaration is monitored through a quadrennial survey and through interpretations rendered by the Subcommittee on Multinational Enterprises. As of 15 November 1999, the Subcommittee had received over 23 requests for interpretations with very few passing the test of receivability so that an interpretation has been issued. Follow-up and Promotion March 2000 by Subcommittee on Multinational Enterprises, ILO document GB.277/MNE/1 (2000).
< <http://www.ilo.org/public/english/standards/realm/gb/docs/gb277/pdf/mne-3.pdf>> (last visited 2 May 2000).

¹⁵ See International Labour Organization, The International Labour Organization and Private Voluntary Initiatives (2000).

¹⁶ Secretary-General Kofi Annan, Address at the World Economic Forum in Davos, Switzerland (31 January 1999), United Nations document SG/SM/6448 (1999).

¹⁷ The principles are that businesses should: (1) support and respect the protection of internationally proclaimed human rights within their sphere of influence; (2) make sure they are not complicit in human right abuses; (3) uphold the freedom of association and the effective recognition of the right to collective bargaining; (4) eliminate all forms of forced and compulsory labour; (5) abolish child labour; (6) eliminate discrimination in respect of employment and occupation; (7) support a precautionary approach to environmental challenges; (8) undertake initiatives to promote greater environmental responsibility; and (9) encourage the development and diffusion of environmentally friendly technologies. The Global Compact, available at < <http://www.unhchr.ch/global.htm>> (last visited on 27 April 2000).

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ See *id.*

²¹ *Id.*

²² United Nations High Commissioner for Human Rights, Business and Human Rights, Global Compact Web site, available at <<http://www.unhchr.ch/global.htm>> (last visited 27 April 2000).

²³ Examples of corporations which have adopted voluntary codes of conduct are 3M, Body Shop, BP Amoco, British Telecom, Cargill, C & A, Carlson Companies, Gap, H & M, ING Group, Levi Strauss, Medtronic, Nokia, Novo Nordisk, Numico, PepsiCo, PetroCanada, Reebok International, RioTinto, Sara Lee Corporation, Royal Dutch/Shell Group of Companies, Starbucks, Statoil, Tata Iron and Steel Co., Volkswagen, and Xerox.

²⁴ See, e.g., Caux Round Table Principles for Business, available at <<http://www.cauxroundtable.org>> (last visited 5 March 2000); Douglass Cassel, *International Security in the Post-Cold War Era: Can International Law Truly Effect Global Political and Economic Stability?*, 10 Fordham Int'l L.J. 1963 (1996); Jorge Perez-Lopez, *Promoting International Respect for Worker Rights through Business Codes of Conduct*, 17 Fordham Int'l L.J. 1 (1993); Thomas Donaldson, *Corporations & Morality* (1982); Peter A. French, *Collective and Corporate Responsibility* (1984); Rita Manning, *Corporate Responsibility and Corporate Personhood*, 3 Journal of Business Ethics 77 (1984); John Ladd, *Corporate Mythology and Individual Responsibility*, 2 International Journal of Applied Philosophy 1 (1984); Elizabeth Wolgast, *Ethics of an Artificial Person* (1992); Bennett Freeman, *Remarks, Conference on Corporate Citizenship, Linking CSR Business Strategies and the Emerging International Agenda*, 8 November 1999.

²⁵ See generally *id.* Examples of codes of conduct written by Governments, trade groups, NGOs, and others include: Amnesty International Human Rights Guidelines for Companies; Business Charter for Sustainable Development; Caux Principles for Business; Clean Clothes Campaign; Clinton Coalition Code of Conduct; Coalition for Environmentally Responsible Economies; Code of Labour Practice for Production of Goods Licensed by the Federation Internationale de Football Association; Confederation of Norwegian Business and Industry's Human Rights from the Perspective of Business and Industry - a checklist; Council on Economic Priorities Accreditation Authority (CEPAA); Declaration of Principles Concerning Human Resource Management for Korean Enterprises Operating Overseas; Ethical Trading Action Group (ETAG), Canadian Base Code of Labour Practice; Ethical Trading Initiative, Code of Conduct; European Parliament, Code of Conduct for European Enterprises Operating in Developing Countries; Fair Labor Association Charter Document, Global Sullivan Principles; Interfaith Center for Corporate Responsibility, Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance; International Chamber of Commerce, International Code of Practice in Marketing; International Chamber of Commerce, Recommendations to Combat Extortion and Bribery in Business Transactions; International Code of Ethics for Canadian Businesses; International Confederation of Free Trade Unions (ICFTU), Basic Code of Labour Practice; International Federation of Building and Wood Workers (IFBWW) Model Code of Labour Conduct for the Construction Industry (draft); ISO 14001, A Guide for Environmental Managers & Product Designers; Japan Chemical Industries Association, Responsible Care Principles; Keidanren (Japan Federation of Economic Organizations) Charter for Good Corporate Behavior; MacBride Code; Maquiladora Standards of Conduct; Miller Principles; Mikkeiren Japan Federation of Employers' Association, Guidelines for Overseas Direct Investment; Pacific Basin Economic Council, Charter on Standards for Transactions Between Businesses and Government; Social Accountability 8000; South Asian Coalition on Child Servitude, Rugmark; Swedish Chemical Industry Progress Report, Responsible Care; and Zimbabwe Industrial Chemical Association, INCHEM Responsible Care Initiative.

²⁶ Universal Declaration of Human Rights, General Assembly resolution 217 A (III), United Nations document A/180 at 71 (1948) (emphasis added). See generally International Council on Human Rights, *Taking Duties Seriously: Individual Duties in International Human Rights Law*, A Commentary (1999).

²⁷ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, General Assembly resolution 53/144, annex, 53 United Nations GAOR Supp., United Nations document A/RES/53/144 (1999).

²⁸ International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* 4 January 1969, Art. 2 (1) (d).

²⁹ Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 34/180, 34 United Nations GAOR Supp. (No. 46) at 193, United Nations document A/34/46, *entered into force* 3 September 1981, Art. 2 (e).

³⁰ “The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and *persons* convicted thereof shall be liable to punishment.” Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, *entered into force* 30 April 1957, Art. 6 (emphasis added).

³¹ “*Persons charged* with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.” Convention on the Prevention and Punishment of the Crime of Genocide, 78 U.N.T.S. 277, *entered into force* 12 January 1951, Art. 6 (emphasis added).

³² “The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which *there shall be individual responsibility*: (a) Crimes against Peace ... (b) War Crimes ... (c) Crimes against Humanity ...” Nuremberg Rules of the International Military Tribunal, *in* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 82 U.N.T.S. 279, *entered into force* 8 August 1945 (emphasis added).

³³ “The Court [created by the Statute] shall have jurisdiction over *natural persons* pursuant to this Statute. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.” Rome Statute of the International Criminal Court, United Nations document A/CONF.183/9*, *as amended* 10 November 1998 and 12 July 1999, Art. 25 (emphasis added).

³⁴ “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture”. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46, annex, 39 United Nations GAOR Supp. (No. 51) at 197, United Nations document A/39/51 (1984), *entered into force* 26 June 1987.

³⁵ See quote accompanying footnote 26. Also, article 29 (1) of the Universal Declaration states, “[e]veryone has duties to the community in which alone the free and full development of his personality is possible”. Universal Declaration of Human Rights, General Assembly resolution 217 A (III), United Nations document A/180 (1948) (emphasis added).

³⁶ Both the Covenant on Civil and Political and the Covenant on Economic, Social and Cultural Rights have introductory language stating, “The State Parties to the Present Covenant ... Realising that *the individual, having duties to other individuals and to the community, is under a responsibility* to strive for the promotion and observance of the rights recognised in the present Covenant.” International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI), 21 United Nations GAOR Supp. (No. 16) at 52, United Nations document A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976, preamble; International Covenant on Economic, Social and Cultural Rights, General Assembly resolution 2200 A (XXI), 21 United Nations GAOR Supp. (No. 16) at 49, United Nations document A/6316 (1966), 993 U.N.T.S. 3, *entered into force* 3 January 1976, preamble (emphasis added).

³⁷ See Ronald Harry Coase, *The firm, the market, and the law* (1988).

³⁸ See W. Holfield, *Fundamental Legal Conceptions* 197 (1923). Some business entities, such as corporations, ordinarily have a legal identity distinct from their owners. See Alfred Conard, *Corporations in Perspective* 416 (1976); Robert W. Hamilton, *Corporations Including Partnerships and Limited Liability Companies: Cases and Materials* 9 (1998). Nonetheless, corporations may be held responsible in tort for their corporate policies and decisions. They may also be held vicariously responsible in tort for the conduct of their employees within the scope of their employment. John I. Diamond, et al., *Understanding Torts* 221-23 (1996). The owners and shareholders of a corporation may be shielded from claims against their corporation, unless the owners or shareholders have committed fraud or some other act justifying the imposition of liability, that is, “piercing the corporate veil”. John H. Matheson and Raymond B. Eby, *The Doctrine of Piercing the Veil in an Era of Multiple Limited Liability Entities: An Opportunity to Codify the Test for Waiving Owners’ Limited-Liability Protection*, 75 *Washington L. Rev.* 147, 149, 193 (2000). Furthermore, in at least some countries corporations may be fined or subjected to relevant forms of criminal sanctions for conduct, if the criminal activity is not a personal aberration of an employee acting on his/her own, but reflects corporate policy. *State v. Christy Pontiac-GMC, Inc.*, 354 N.W.2d 17 (Minn. 1984); *Commonwealth v. McIlwain School Bus Lines*, 423 A.2d 413 (Penn. 1980). In addition, there may be liability for the corporation if the crime has been committed by a “directing mind” of the corporation. It has been argued that liability should also stem from the company’s internal decision structures (its CIDs) and its ability to adjust its CIDs in the wake of harm caused. C. Wells, *Corporations and Criminal Responsibility* 144 (1983).

³⁹ See generally Andrew Clapham, *The Question of Jurisdiction under International Criminal Law over Legal Persons: Lessons from the Rome Conference on an International Criminal Court*, in *The Liability of Multinational Corporations under International Law* (Menno T. Kamminga and Saman Zia-Zarifi, eds., forthcoming 2000) (discussing the inclusion of legal persons within the jurisdiction of the International Criminal Court).

⁴⁰ The OECD Convention makes it a crime to offer, promise, or give a bribe to a foreign public official in order to obtain or retain international business deals. Twenty nations have ratified the treaty. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 18 December 1997, S. Treaty document 105-43 (1998), 37 I.L.M. 1, *entered into force* 15 February 1999.

⁴¹ International Convention on Civil Liability for Oil Pollution Damage, *entered into force* 19 June 1975, Art. 1; Convention on Civil Liability for damage resulting from activities dangerous to the environment, 32 I.L.M. 1228, Art. 2 (6), *adopted* 21 June 1993. The Convention for Damage to Environment is a regional instrument which is open to signature by the members of the Council of Europe and to non-member States that have participated in its elaboration and the European Economic Community. *Id.* Art. 32 (1). *See* Romina Picolotti and Jorge Daniel Taillant, *Human Rights Accountability of Private Business: A Question of Sustainable Development* (2000).

⁴² *See* Business and Human Rights, *supra* note 1.

⁴³ *See id.*

⁴⁴ *See id.*

⁴⁵ UNCTAD has noted “incipient signs of ‘code fatigue’”. UNCTAD, *supra* note 1, at 12.

⁴⁶ *Cf.* ILO, Overview of global developments and Office activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues, available at <<http://www.ilo.org/public/english/standards/relm/gb/docs/gb2737/sdl-1.htm>> (last visited 15 March 2000) (breaking down the categories of standards into four categories indicated above as (3), (4), (5), and (6)).

⁴⁷ In addition, the author is grateful for the assistance and advice he has received from Christopher L. Avery, Andrew Clapham, Gemma Crijns, Nikki Daruwala, Connie de la Vega, Sumi Dhanarajan, Caroline Dommen, Barbara Frey, Michael Kane, Menno Kamminga, Alya Kayal, Michelle Leighton, Michael Levy, Morris Levy, John Matheson, David McGowan, Joseph Oloka-Onyango, Carolina Ortega Barrales, Penny Parker, Joe W. (Chip) Pitts, Deepika Udagama, John Welty, Morton Winston, Saman Zia-Zarifi, and others. Furthermore, the author is grateful for the research assistance of Muria Kruger and the secretarial assistance of Mary Thacker.

⁴⁸ *See* International Labour Organization, *The International Labour Organization and Voluntary Private Initiatives Program* (2000). In preparation for the special session of the General Assembly entitled “World Summit for Social Development and beyond: achieving social development for all in a globalizing world”, the Secretary-General produced a report entitled “Development of guidelines on the role and social responsibilities of the private sector”, United Nations document A/AC.253/21 (2000), which was considered at the Preparatory Committee, second session, 3-14 April 2000. The Secretary-General’s report proposed the preparation of guidelines to enhance global corporate citizenship and noted the need for

intergovernmental consultation. *Id.* at para. 44. The report particularly suggested that the General Assembly encourage the United Nations Commission for Social Development to begin developing such guidelines at its fortieth session in 2002. The idea of encouraging the Commission on Social Development to include such guidelines in its multi-year programme for 2002-06 was discussed at the 3-14 April 2000 Preparatory Committee session, but it remained in brackets at the end of the session along with the idea of asking the ILO to play a major role. Text Submitted by the Chairman of the Preparatory Committee, United Nations document A/AC.253/L.5/Rev.2, para. 18 (2000). Whatever the ultimate disposition of these ideas, the Sub-Commission's work can at least provide significant input to the Commission on Social Development and may be able to focus particularly on the human rights aspects of such guidelines.

⁴⁹ There are many ways in which human rights standards could be implemented and enforced. The suggestions listed here are not meant to be all-inclusive or exhaustive.

⁵⁰ Companies should make known to stakeholders the location of their offices, subsidiaries, and factories, so that stakeholders can be reassured that the companies' products and services are being produced under conditions that respect labour and other human rights standards. See Gijsbert van Liemt, *Codes of Conduct and International Subcontracting: a 'private' road towards ensuring minimum labour standards in export countries*, G. Gereffi, F. Palpacuer, and A. Parisotto, *Global Production and Local Jobs* (1999). A commitment of businesses to monitoring might include, for example, a willingness to accept unannounced inspection visits by monitors, protection of the confidentiality of complainants, unsupervised interviews of workers during any visits, encouragement of workers and unions to take the initiative to monitor compliance with the code and to suggest improvements, etc.

Annex

DRAFT PRINCIPLES RELATING TO THE HUMAN RIGHTS
CONDUCT OF COMPANIES

Contents

<u>Section</u>	<u>Paragraphs</u>
A. Definitions	1 - 5
B. General obligations	6
C. War crimes, crimes against humanity and other crimes	7
D. Non-discrimination and freedom from harassment and abuse	8 - 10
E. Slavery, forced labour and child labour	11 - 13
F. Respect for national sovereignty and the right of self-determination .	14 - 18
G. Healthy and safe working environment	19 - 23
H. Fair and equal remuneration	24 - 25
I. Hours of work	26
J. Freedom of association and the right to collective bargaining	27 - 29
K. Consumer protection	30 - 32
L. Environmental protection and human rights	33 - 35
M. Concluding provisions	36 - 39

A. Definitions

1. The term “company” includes any business enterprise, regardless of the international or domestic nature of its activities; the corporate, partnership, or other legal form used to establish the business entity; and the nature of the ownership of the entity, including any privately owned and Government-owned entity.
2. The term “employee” includes any person who performs services under the control or direction of the company.
3. The term “stakeholder” includes any group or individual which is affected by the operations of the company. Stakeholders include owners, stockholders, employees, customers, suppliers, neighbouring communities, individuals, Governments, and others who may be affected or influenced by its activities. The term “stakeholder” should be interpreted functionally in light of the objectives of the code.
4. The terms “contractor”, “subcontractor”, “supplier” and “licensee” signify any natural or legal person who contracts with the company to accomplish the company’s mission.
5. The phrases “internationally recognized human rights” and “international human rights” refer to civil, cultural, economic, political and social rights as guaranteed by the International Bill of Human Rights as well as rights guaranteed by international humanitarian law, international refugee law, international labour law, and other relevant instruments promulgated by the United Nations. Nothing in the present Human Rights Code shall affect any provisions which are more conducive to the realization of human rights and which may be contained in international law, national or state law or the practices of companies.

B. General obligations

6. While Governments have the principal responsibility to respect, ensure respect for and promote internationally recognized human rights, companies shall also respect, ensure respect for and promote international human rights within their respective spheres of activity and influence.

C. War crimes, crimes against humanity and other crimes

7. Companies shall not engage in war crimes, crimes against humanity, genocide, torture, forced disappearance, hostage-taking and other international crimes against the human person; nor shall they illegally profit from these acts or any other violations of international criminal or humanitarian law. Companies also shall not produce or sell weapons that have been declared incompatible with international law.

D. Non-discrimination and freedom from harassment and abuse

8. Companies shall treat each employee with equality, respect and dignity. No employee shall be subject to physical, sexual, racial, psychological, verbal, or any other form of harassment or abuse. Nor shall any employee be subject to intimidation or degrading treatment; nor shall discipline be imposed without fair procedures or in the form of fines that result in debt bondage.

9. All policies of companies, including, but not limited to those relating to hiring, discharge, pay, promotion and training, shall be non-discriminatory on the basis of race, colour, sex, religion, political opinion, nationality, social origin, indigenous heritage, disability, age, marital status, capacity to bear children, sexual orientation, or other status of the individual employee unless the selectivity is in furtherance of an established governmental policy which is specifically designed to promote greater equality of employment opportunity.

10. Companies shall obtain independent investigations of discrimination or harassment claims when appropriate and ensure the development of legitimate avenues through which employees can file complaints with regard to such issues.

E. Slavery, forced labour and child labour

11. Companies shall not use slave, forced, or compulsory labour. Employees shall be recruited, paid and subjected to other working conditions so as to avoid debt bondage or other forms of slavery and shall have the option to leave employment, and the employer must facilitate such departure by providing all the necessary documentation and facilitation.

12. Companies shall not allow any person under the age of 18 to work under conditions which have been identified by the Worst Forms of Child Labour, Convention, 1999 (No. 182) of the International Labour Organization for example, which are likely to harm the health and safety of children or interfere with the physical, mental, spiritual, moral, or social development of a child.

13. Companies shall not use child labour. Child labour is defined as the employment of any person in regular work duties before the completion of compulsory schooling, or the employment of any child below the age of 15 years. If a company has been using child labour, it shall withdraw children from the workplace in tandem with the provision of suitable opportunities for schooling, vocational training and other social protection for the children and their families, for example by employing the parents or older siblings.

F. Respect for national sovereignty and the right of self-determination

14. Companies shall recognize and respect the national laws, regulations, administrative practices and authority of the State to exercise control over its national resources in the countries in which the companies operate insofar as these laws, regulations, practices and authority do not conflict with international human rights standards. Companies should endeavour to function within the development priorities; social, economic, and cultural objectives; values and way of life of the communities; and structure of the countries in which they operate insofar as those objectives and values do not conflict with international human rights standards. Within the limits of their resources and capabilities companies should also endeavour to encourage social progress and development by engaging in constructive business activities and expanding economic opportunities - particularly in developing countries and, most importantly, in the least developed countries.

15. Companies shall cooperate, insofar as relevant, with national or international monitoring of compliance with national and international laws.

16. Companies shall have the responsibility to ensure that their business operations do not contribute directly or indirectly to human rights abuses and actively to speak out or otherwise use their influence in order to help promote and ensure respect for human rights.

17. Companies shall not offer, promise, give, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government or government official. Companies shall enhance the transparency of their activities and openly fight against bribery, extortion and other forms of corruption.

18. Companies shall respect the rights of indigenous communities and minorities to own, develop, control, protect and use their lands and cultural and intellectual property; indigenous communities and minorities may not be deprived of their own means of subsistence.

G. Healthy and safe working environment

19. Companies shall provide a safe and healthy working environment in accordance with the national requirements of the countries in which they are located and with international standards such as those found in the Occupational Safety and Health Convention, 1981 (No. 155) and other relevant general and specific conventions and recommendations of the International Labour Organization. Such a safe and healthy work environment should aid in the prevention of accidents and injuries arising out of, linked with, or occurring within the course of work.

20. Companies shall make information about the health and safety standards relevant to their local operations available to their workers, including arrangements for training in safe working practices. In particular, companies shall make known any special hazards a work task or conditions of work involve and the related measures available to protect the workers. Companies shall examine the causes of safety and health hazards in their industry and work to implement improvements and solutions to those conditions, including the provision of safe equipment at least consistent with industry standards.
21. Agreements with workers and their representative organizations shall include matters relating to health and safety.
22. All company security arrangements shall be consistent with international human rights standards and the protection of human rights. Companies shall establish policies against hiring individuals or working with units of State security forces that are known to have been responsible for human rights abuses. Guards in the employ of companies shall exercise the maximum respect for human rights and the highest ethical standards. Companies shall also avoid co-responsibility for human rights violations by associating themselves with unlawful methods of law enforcement. To the extent of their resources and capabilities, companies should provide training to guards in their employ concerning relevant international standards with regard, for example, to the use of force and firearms as well as for the handling of demonstrations.
23. Companies which supply military security or police products or services shall take stringent steps to prevent those products and services from being misused to commit human rights or humanitarian law violations.

H. Fair and equal remuneration

24. Companies shall compensate workers for the work completed with just, favourable and periodically regular remuneration, ordinarily in legal tender, at a level adequate to ensure a lifestyle worthy of human existence. There shall be equal remuneration for work of equal value without discrimination on the basis of race, colour, sex, religion, political opinion, nationality, social origin, age, sexual orientation, or other status of the individual employee.
25. Remuneration includes the ordinary, basic or minimum wage or salary, and additional emoluments payable directly or indirectly to the employee by the employer as a result of the worker's employment. Workers shall be informed periodically as to the wages, salaries and additional emoluments to which they are entitled.

I. Hours of work

26. Companies shall not require any employee to work more than 48 hours per week. Voluntary overtime for workers should not exceed 12 hours per week and should not be demanded on a regular basis. Compensation for such overtime should be at a rate higher than the normal rate. Each employee should be given at least one day off in every seven-day period. These protections should be adjusted to meet the different needs of management personnel, professionals, and others who have clearly indicated their personal desire to work more hours.

J. Freedom of association and the right to collective bargaining

27. All workers shall have the right to form and join organizations of their choosing, including trade unions, for the protection of their employment interests and for collective bargaining. No restrictions shall be placed on the freedom of association and the right to organize other than those restrictions that do not conflict with international human rights standards and are prescribed by law. Workers shall not be subject to discrimination for participation in these activities, nor shall individual workers be impeded from participation in these groups or required by companies to join such groups. Companies shall grant facilities to permit establishment of workers' organizations.

28. Companies shall enable representatives of their employees to conduct negotiations on issues relevant to their employment with representatives of the management who are authorized to make decisions about the issues under negotiation. Employees shall be given access to information, facilities and other resources that are necessary for the employee representation to conduct negotiation effectively.

29. Companies shall respect the right of employees to submit grievances, including grievances as to compliance with this code; to have those grievances examined by disinterested persons who have the authority to redress any abuses found, pursuant to the appropriate procedure; and to be protected from suffering prejudice for using those procedures. Companies shall abide by the decisions of the tribunals or other mechanisms that are empowered to make determinations on such matters, including unfair labour practices by any party. Companies shall take particular care to protect the rights of employees as to such procedures in countries that do not abide by international standards regarding the freedom of association, the right to organize and the right to bargain collectively.

K. Consumer protection

30. Companies shall conduct the production and marketing of their products in accordance with the national laws, regulations, and the administrative practices and policies concerning consumer protection of the countries in which they operate. Companies shall also adhere to relevant international standards so as to avoid variations in the quality of products that would have detrimental effects on consumers.

31. Through proper labelling, informative and accurate advertising and other appropriate methods, companies shall disclose to the public all the appropriate information on the contents and possible hazardous effect of the products they produce. In particular, they shall warn if death or serious injury is probable from a defect or misuse.

32. Companies shall supply information to the relevant authorities upon request regarding the characteristics of products or services that may cause injury to the health and safety of consumers or others as well as restrictions, warnings and other regulatory measures imposed by several other countries on the grounds of health and safety protection as to these products or services.

L. Environmental protection and human rights

33. In decision-making processes, companies shall assess the impact of their activities on the environment or human health, including impacts from siting decisions; natural resource extraction activities; the production and sale of products or services; and the generation, storage, transport and disposal of hazardous and toxic substances. In making siting decisions - particularly concerning larger tracts of land - and decisions to depart from a community, companies shall similarly assess the foreseeable consequences of their activities with respect to displacing people from their habitats and shelter, upsetting food security, diminishing health care, decreasing the availability of primary education, etc. Where possible, companies should generally communicate the results of such assessments to stakeholders, should develop and implement measures to prevent and/or mitigate impacts identified in any assessment, and should consider any reactions from stakeholders in endeavouring to prevent environmental and human rights consequences. Companies shall provide adequate reparation to those persons who have been adversely affected by restoring, replacing, or otherwise compensating for any damage done or property taken.

34. Companies shall be responsible for the environmental and human health impacts of all of their activities, including any products or service they introduce into commerce, including the

packaging and transportation as well as the by-products of the manufacturing process. Upon the expiration of the useful life of their products or services, companies shall be responsible for collecting or arranging for the collection of the remains of the product or services for recycling, re-use and/or environmentally acceptable disposal.

35. Companies shall take appropriate measures in their operations to minimize the risks of accidents and damage to the environment by adopting best management practices and technologies. In particular, companies shall use best management practices and appropriate technologies to meet this objective and enable their component entities to be equipped to meet this objective through the sharing of technology, knowledge and assistance. In addition, they shall educate and train employees to ensure their compliance with this objective. Further, companies shall not relocate their operations from one country/location to another in order to evade more rigorous environmental standards at an existing place of business.

M. Concluding provisions

36. Each company shall adopt its own code of conduct or shall adopt other adequate measures to afford at least the protections provided in this Human Rights Code of Conduct for Companies. Companies may adopt codes or similar measures that offer additional protections above and beyond this code, but this code should be viewed as minimum guiding principles for human rights protection in a company's code of conduct or similar measures.

37. Each company shall make its code of conduct or similar measures available to all stakeholders and shall publish its procedures for the implementation and monitoring of its code or similar measures. The company code or similar measures shall be communicated in the language of employees, contractors, suppliers, customers and other stakeholders of the company. Once a company code or similar measures have been adopted, companies shall - to the extent of their resources and capabilities - provide effective training for their managers and employees in company practices relevant to the international human rights standards to which this code refers. Before a company pursues a major initiative or project, it should, to the extent of its resources and capabilities, study the human rights impact of that project in the light of this code of conduct and its company code or similar measures, should generally make available the results of that study to stakeholders, and should consider any reactions from stakeholders.

38. To the extent of its resources and capabilities companies shall endeavour to ensure that they only purchase products and services from contractors, subcontractors, suppliers and

licensees who follow this or a substantially similar code of conduct. Before entering into new business relationships, companies shall assess the compliance of these potential business partners with the standards set forth in this or a substantially similar code of conduct.

39. Each company shall endeavour to improve continually its implementation of the code. Improvements shall take into consideration the comments and concerns raised by stakeholder groups and include their participation where appropriate. Companies shall establish mechanisms, including independent verification and regular reporting for stakeholders, to monitor and audit periodically their compliance with this code of conduct and international human rights standards.
