



经济及社会理事会

Distr.
GENERAL

E/CN.4/2005/91
15 February 2005
CHINESE
Original: ENGLISH

人权委员会
第六十一届会议
临时议程项目 16

增进和保护人权小组委员会的报告

联合国人权事务高级专员关于跨国公司和 有关工商企业在人权方面的责任的报告* **

提 要

本报告是根据委员会第 2004/116 号决定编写的。报告探讨跨国公司和其他工商企业在人权方面责任的现有标准和倡议的范围及法律地位，以及需要委员会进一步审议的未决问题。报告从人权的角度审查有关公司社会责任的现有倡议和标准，指出在认识工商企业人权责任的性质和范围方面仍存在差距。在为编写本报告所进行的磋商进程的基础上，高级专员提出若干结论和建议，以协助委员会制定加强工商企业与人权问题标准及其执行的各种方案。

* 本报告附件只以提交语文分发。

** 本报告迟交是为列入可获得的最新资料。

目 录

	<u>段 次</u>	<u>页 次</u>
导 言.....	1 - 6	3
一、现有倡议和标准的范围及法律地位.....	7 - 22	4
二、未决问题.....	23 - 51	11
三、结论和建议.....	52	16

结 论

附件一、根据委员会第 2004/116 号决定举行的磋商进程概况.....	21
附件二、企业与人权问题若干现行倡议和标准概述.....	25
附件三、附件二所列现有倡议和标准的范围及法律地位的比较.....	30

导 言

1. 人权委员会在 2004/116 号决定中建议经济及社会理事会请“人权事务高级专员办事处编写一份报告，说明在跨国公司和其他工商企业在人权方面责任的现有标准和倡议的范围及法律地位，包括 E/CN.4/Sub.2/2003/12/Rev.2 号文件所载的准则草案，并列出具而未决的问题，在编写该报告时向所有利害关系方包括国家、跨国公司、雇主和雇员协会、有关国际组织和机构、条约监督机构以及非政府组织等征求意见，并将该报告提交委员会第六十一届会议，以便委员会能够找出用于加强与跨国公司和其他工商企业在人权方面责任有关的标准方案以及可能的实施办法。”本报告是根据这一请求编写的。

2. 2004 年 5 月，联合国人权事务高级专员办事处开始了磋商进程，作为执行委员会决定的第一步。磋商采取两种主要形式。第一种是人权高专办致函有关利害关系方，请它们就委员会决定所述问题作出书面答复。2004 年 5 月 19 日，人权高专办向所有成员国发出书面照会。2004 年 6 月，人权高专办致信委员会决定所列某些组织和机构，即跨国公司、雇主协会、雇员协会、有关国际组织和机构、条约监督机构以及非政府组织等。本报告将这些组织和机构的代表统称为“利害关系方”。

3. 人权高专办请各国和其他利害关系方通报与委员会决定所述三个问题有关的情况，即：

- (a) 跨国公司和其他工商企业在人权方面责任的现有倡议和标准；
- (b) 这些倡议和标准的范围及法律地位；
- (c) 任何未决问题。

4. 鉴于许多其他利害关系方也希望对高级专员的报告有所贡献，人权高专办接受了它们转来的信息。为此，人权高专办开辟了一个有关高级专员报告和磋商进程信息的网页¹。经联系后提供书面答复的利害关系方见附件一。答复全文可在人权高专办网站上查阅。

5. 除征求对报告的书面意见外，人权高专办还就委员会决定所述问题与各利害关系方直接磋商。高级专员和人权高专办工作人员应请求与各利害关系方会晤，并参加它们组织的会议。2004 年 10 月 22 日，人权高专办与全球契约办事处合作与各利害关系方举行了公开磋商。磋商为各利害关系方举行会议讨论委员会决定所述三个问题提

供了一个论坛。有 50 多家企业参加(名单见附件一)。人权高专办与全球契约办事处合作编写了背景文件和磋商报告,背景文件和报告可在全球契约办事处网站查阅。²

6. 本报告将“跨国公司和其他工商企业在人权方面的责任”一词简称为“工商企业与人权”。本报告使用的“磋商进程”是指寻求和接收各方就委员会决定所述问题提出的书面和口头答复的过程。

一、现有倡议和标准的范围及法律地位

现有倡议和标准

7. 过去 15 年,与公司社会责任有关的倡议和标准迅速增加。仅在磋商进程中就发现了 200 多项现有倡议和标准。附件二介绍了各利害关系方在磋商进程中经常提到的倡议和标准。现有倡议和标准可分为以下类别。

- (a) 国际文书。条约和宣言等国际文书可以针对国家但与工商企业有关,如经济合作与发展组织的《禁止在国际商业交易中贿赂外国公职人员公约》,也可以直接针对企业,如国际劳工组织《关于多国企业与社会政策的三方原则宣言》和经合组织《多国企业准则》。
- (b) 国家标准。国家法律标准包括与商业活动有关的宪法规定、国家法律和国家标准也可以具有域外效力,如《美国外国民事侵权索赔法》;
- (c) 认证计划。认证计划是一个各组织、集团或网络承诺遵守一套原则的计划。作出承诺后,一般进行独立监督,以保证遵守。全球负责任成衣生产认证方案、SA8000 认证计划和金伯利(Kimberley)进程认证计划是这方面的一些实例。
- (d) 自愿倡议。自愿倡议包括单个公司、公司集团、政府间组织或民间团体制定或工商企业自愿采用的行为守则、指令、政策、第三方和自我报告倡议。秘书长的联合国全球契约是联合国支持自愿倡议的一个实例。政府间自愿倡议有采掘和能源业《安全与人权自愿原则》和《采掘业透明度倡议》。非政府组织的自愿倡议有“苏立文(Sullivan)全球原则”、“考克斯(Caux)圆桌工商企业原则”和国际和平行动协会行为守则。在

磋商进程中，单个公司，如 BP、Gap、Nexen、Pfizer、Rio Tinto、Shell、SONOFON、Storebrand 和 Telefonica 通报了它们的自愿倡议。

- (e) 主流金融指数。它们是基于客观标准的社会和环境指数，藉以对公司进行监督，通过投资者和市场改变企业商业活动的性质。其中有富时社会责任指数(FTSE4Good Index)和高盛能源、环境和社会指数。
- (f) 工具、会议和其他倡议。这些倡议试图以各种形式促进对人权的更大了解和尊重，包括人权影响评估办法、管理工具、培训手册、讲习会、试验项目和多个利害关系方磋商、公私营部门伙伴关系等。商界领袖尊重人权倡议和丹麦人权协会人权与商业项目是这方面的范例。

范围及法律地位

8. 现有倡议和标准多种多样，对其范围和法律地位进行任何比较都是一件复杂的任务。然而，以下标准有助于对不同倡议和标准的范围及法律地位进行比较，了解现有工商企业与人权问题的现状。在范围方面，可遵循以下标准：

- (a) 目标。工商企业与人权问题的倡议和标准可能寻求保护人权，促进人权，或两者兼而有之。例如，联合国全球契约属于促进性的，要求公司接受、支持和实施包括两项人权原则在内的一套核心原则。有些倡议既是促进性的，也是保护性的。例如，认证计划或劳工组织《关于多国企业与社会政策的三方原则宣言》旨在鼓励企业作出积极贡献，同时尽量减少和解决风险及困难。经合组织《多国企业准则》要求建立国家联络中心系统，以解决执行中产生的具体问题。
- (b) 来源。一项倡议和标准的来源——政府、政府间、工商企业、民间团体——可能决定着它的范围和权威。例如，联合国和劳工组织议定和通过的倡议及标准可能因它们的国际和政府间性质而具有很大权威。
- (c) 有关人权的论述。一项倡议和标准具体提及人权的程度，是衡量其对人权关注的一个重要尺度。许多倡议和标准笼统地提及人权，少数倡议和标准实际作出了与商业活动有关的人权规定。例如，经合组织《多国企业准则》笼统地提到了人权，而劳工组织《三方原则宣言》则具体论及工人权利。

- (d) 覆盖的地域。倡议和标准所覆盖的地域往往很难确定，但在考虑倡议或标准的实际范围时又十分重要。例如，宪法规定和国家法律一般仅在国家边界内适用，但国家也在越来越多地考虑具有域外效力的法律。鉴于劳工组织的成员数目，劳工组织《三方原则宣言》和《关于工作中的基本原则和权利宣言》则是国际性的。同时，一家大公司如果在许多国家经营，它的自愿倡议便覆盖广泛的地域。
- (e) 覆盖的公司。实际或潜在接受一项倡议或标准的公司数目，是决定其覆盖范围的重要因素。有些倡议只与一家公司有关，有些倡议允许一家以上公司参加，有些倡议则在某些行业内适用。例如，采掘和能源业《安全与人权自愿原则》或全球负责任成衣生产倡议只在行业内实行，而经合组织《多国企业准则》和劳工组织《三方原则宣言》可能广泛覆盖任何行业以外的公司。
- (f) 执行和监督。各种倡议和标准采用一系列执行或监督机制。有些自愿倡议，如全球契约，不要求进行监督。有些国际文书，如人权条约或联合国反腐败公约，要求建立国家监督机制，有时还实施制裁。其他倡议，如全球报告倡议，则利用报告等核查方法。FTSE4Good Index 等市场机制使用独立的计量方法。

9. 以下标准有助于了解倡议的法律地位

- (a) 对公司具有约束力。许多国家的宪法和国家立法包含了对公司具有约束力的人权责任。公司本身也可以通过在合同中列入这方面的具体条款，使人权倡议具有约束力。
- (b) 对国家具有约束力。主要人权条约等国际条约对缔约国具有约束力。虽然国际宣言对国家没有约束力，但它们以国家名义表示一定的承诺水平，要求恪守文书中的原则。
- (c) 无约束力。多数有关工商企业与人权问题的倡议属于无约束力一类。

各种倡议和标准的比较

10. 附件三表格对附件二所列现有倡议和标准的范围进行了比较。³ 在这些倡议和标准中，磋商进程突出了四项值得密切关注的倡议。这些倡议和标准是：国际劳工

组织《关于多国企业与社会政策的三方原则宣言》、经合组织的《多国企业准则》、联合国全球契约和《跨国公司和其他工商企业在人权方面的责任准则》(E/CN.4/Sub.2/2003/12/Rev.2)。这些倡议和标准不仅在磋商进程中吸引了人们的注意，它们的国际性质也使其成为委员会在工作中关注的焦点。

11. 经合组织《多国企业准则》是对 30 个经合组织成员国和 8 个加入准则的非成员国企业的建议⁴，涉及许多商业道德领域的行为。所提建议覆盖各种问题，从遵守当地法规、维护消费者利益，到不实行反竞争行为和履行东道国纳税义务等。还单独提出一项有关人权的建议，要求“企业根据东道国政府的国际义务和承诺，尊重受其活动影响的人的人权”。《多国企业准则》的评注强调《世界人权宣言》的意义。还提出了与工人人权有关的建议，如结社自由、集体谈判权利，切实取缔劳工、消除所有形式的强迫或强制劳动以及在就业和职业上不歧视。38 个加入国是大多数外国直接投资的来源，也是多数主要多国企业的母国。它们承诺在境内或境外经营的本国多国企业中促进这些准则。经合组织的准则具有广泛的地域和公司覆盖，超出了 38 多个加入国的地域范围。

12. 经合组织的准则主要是促进性的，但也包括一定形式的监督机制，可被认为具有保护特点。监督机制由加入国指定的国家联络点组成，负责促进准则，在国家内进行调查。责任之一是推动解决准则执行产生的具体问题。

13. 在法律地位上，经合组织的准则纯粹是对企业的自愿建议。不过，加入国也承诺促进准则。尽管覆盖范围很广，但经合组织的准则是 38 个国家的建议，没有普遍的适用权威。关于执行，经合组织报告说，近期的问卷调查要求国际公司的管理者列出具有影响的公司行为国际基准。有 22% 的人毫不犹豫地提到了准则。经合组织的准则被译成 26 种语文，有 60,000 多个网页提到它。有 15 个国家在其出口信贷和投资担保计划中列举了《多国企业准则》。截止 2004 年 6 月，国际联络点审理了 79 个具体问题的案件。有些问题涉及经合组织国家的公司行为，但大多数人涉及非经合组织国家多国企业的行为。

14. 比较而言，劳工组织《三方原则宣言》向多国企业以及国内企业、政府和工人组织提出了关于公司社会责任所涉劳工问题的指导意见。它涉及有关工人人权的一些领域，即：促进就业；结社自由和组织起来的权利；集体谈判；机会和待遇平等；职业保障；培训；工资；津贴和工作条件；安全和卫生。劳工组织《三方原则宣言》

没有论及其他人权领域。鉴于劳工组织成员的普遍性和三方结构,《三方原则宣言》所覆盖的地域和公司在技术上宽于经合组织《多国企业准则》。但是,由于外国直接投资集中于加入经合组织《多国企业准则》的国家和这些国家之间,这两项文书所覆盖的企业事实上可能十分类似。重要的是,《三方原则宣言》是三方通过的,因此得到了政府、雇主和工人的支持。劳工组织《三方原则宣言》对企业是自愿性的,但它引述的劳工组织公约对缔约国具有约束力。劳工组织近乎普遍参加的成员表明了其来源的国际权威。劳工组织《三方原则宣言》实质上是促进性的;不过,《多国企业准则》也鼓励企业为解决和预防产业冲突建立自愿调解机制。

15. 联合国全球契约是一个围绕主要国际文书所载十项原则,特别是人权、劳工标准、环境和腐败问题进行讨论的论坛。全球契约的基本前提之一是,如果没有私营部门的积极参与,普遍性原则可能是一句空话。所以,全球契约设法以国际文书界定的普遍价值观念支持全球经济。全球契约的头两项原则是人权原则。第一,企业应支持和尊重对国际公认人权的保护;第二,企业应确保自己不成为侵犯人权的“同谋”。全球契约是秘书长提出倡议,因其网络遍及 50 多个国家而具有广泛的地域覆盖。所覆盖的公司也很多,有 1,700 个正式参与者,大部分是公司。

16. 全球契约对企业是完全自愿的,但它引述的“国际公认人权”对国家具有普遍约束力。与经合组织的准则和劳工组织的三方宣言不同,全球契约没有监督机制,依赖公司的公开问责、透明度和文明的自我利益,还依赖劳工和民间团体发起和联合采取行动,谋求实现这十项原则。根据全球契约办事处,关于全球契约影响的最新调查表明,它对公司行为具有重大影响,特别是有助于加快积极变化。

17. 虽然这些倡议和标准都包含有关促进和保护人权的内容,但处理方式取决于人权与每项倡议总体目标和范围的关系。例如,劳工组织的三方原则宣言具体提到工人人权,而其他文书则没有提及;全球契约笼统地提及人权,没有具体说哪些人权。经合组织的准则对“人权”的论述也不具体。所以,在了解国际社会期待企业如何对待人权方面存在着差距。

准则草案

18. 《跨国公司和其他工商企业在人权方面的责任准则(草案)》(准则草案)试图为商业实体强制规定直接责任,以实现对与企业活动有关的所有人权——公民、文化、

经济、政治和社会权利的全面保护。准则草案规定了与企业活动有关的具体人权，如平等机会权和非歧视待遇权、人身安全权和工人权利，并提到了土著人民等特殊群体的权利。准则草案还阐述了企业对环境保护和消费者保护的责任。作为联合国专家机构的一项倡议，准则草案具有广泛的地域覆盖。从“跨国公司和其他工商企业”的标题中可以看出，它试图广泛覆盖各种公司。准则草案还设想各种促进和保护性的执行机制，如自我报告和外部核查。委员会表示，“准则草案包含十分有用的内容和思想，可供委员会审议”，但作为草案本身不具有法律地位。

19. 准则草案是一种填补如何理解企业人权责任空白的尝试。然而，磋商进程表明，各利害关系方对草案的价值和内容反响不一。雇主团体、许多国家和一些企业对草案提出批评，而非政府组织、一些国家和企业以及单个利害关系方，如学者、律师和顾问则给予支持。

20. 反对和赞成准则草案的主要论点摘要叙述如下。批评准则草案的利害关系方认为：

- (a) 准则草案是企业自愿遵守国际人权标准的一个重大转变，而这种转变的必要性尚未显现；
- (b) 准则草案的风格对企业过于否定，草案的语气不平衡，没有充分考虑到企业对人权享受作出的重要积极贡献；
- (c) 确认企业有义务“增进、保证实现、尊重、确保尊重和保护人权”的条款没有任何根据，是对国际法的误读——只有国家在国际人权法下负有法律义务；
- (d) 准则草案的人权内容含糊不清、不准确。例如，在序言段落和定义中提到的国际条约和其他文书有的只是建议，得到批准的国家不多，缺少自我执行机制或根本不是人权文书。这些文件没有说明国际人权法的现状；
- (e) 准则草案所列企业的法律责任超出了对国家适用的标准。准则草案的行文要求企业履行其经营所在国家可能不批准的条约标准；
- (f) 准则草案要求企业作出更适合政府作用的平衡决定。有些人权要求政府决定最适合的实施形式，对相互冲突的利益加以权衡。民主国家比公司更有能力作出这样的决定。

- (g) 要求企业承担法律责任，可能将保护人权的义务从政府转移到私营部门，为国家逃避自己的责任提供口实；
- (h) 准则草案的执行条款过于繁琐，不具有操作性。准则草案的某些条款含混不清，法庭在收到的任何申诉时难以作出判决。准则草案的报告要求也过于苛刻。准则草案采取的约束性办法，可能事与愿违，将削弱自愿努力，只注重最低限度标准。
- (i) 准则草案与其他倡议和标准，特别是与经合组织《多国企业准则》和劳工组织《三方原则宣言》重叠。

21. 对准则草案表示欢迎的利害关系方认为，准则草案：

- (a) 是最综合性、最清楚和最全面的工商企业与人权问题的倡议或标准，超过了劳工标准；
- (b) 试图阐明企业的具体人权责任，丰富而不是重复现有的倡议和标准；
- (c) 提出一套所有企业应该遵守的人权标准，为同行企业营造一个公平竞争环境；
- (d) 为评价现有和未来做法提供一种工具。准则草案是有关权利和责任的范本，有助于企业审视和评估自己的人权活动，协助其了解其经营如何影响个人和社区；
- (e) 正确地平衡国家与公司的人权义务。准则草案不质疑国家应承担主要义务的作用，明确说明公司在各自活动和影响领域对人权负有次要责任；
- (f) 为国家采取行动提供了一个规范和范本，协助国家制定国内法律，确定国家应该在哪些具体方面监管公司活动，以实现其保护人权的目标；
- (g) 试图解决公司经营所在国家不愿意或没有能力保护人权的情况。明确准则草案所述企业应直接承担的国际义务，有助于解决国家不愿意或没有能力在特殊情况下保护人权的问题；
- (h) 解决民间团体目前对自愿倡议的“疲劳”和不信任，这些倡议是为善意者制定的，虽然很有价值，但不覆盖所有公司(许多公司没有人权政策)。自愿倡议不仅与它们对待人权的态度不符，而且也不足以全面减轻对享受人权的所有威胁；

(i) 有可能向侵权行为受害者提供补救。准则草案有助于加强不受独立机构监督，也不一定保证对明确侵权行为受害者提供补救权利的自愿倡议。

22. 尽管对文件的看法不同，但不妨注意到，具有建议草案地位的准则草案将接受委员会的审查和审议。为此，商界领袖尊重人权倡议正在对各国际行业的公司进行有关准则草案的“路考”，以展示遵守人权的各种方法。参加“路考”的企业承诺深入了解准则草案，发现采用准则草案内容的方法，确定何为所有企业“基本”、“预期”和“可取”的行为。这一进程将持续到 2006 年 12 月。

二、未决问题

23. 以下未决问题是根据三个基本假设提出的。第一，企业与社会所有行为者一样，也必须采取负责任的经营态度，包括尊重人权。这一原则来自《世界人权宣言》⁵，反映了许多国家的现实，它们的国家法律规定了企业的人权责任⁶。在国际上，许多公司参加了联合国全球契约，全球契约要求公司支持和尊重国际公认人权。许多企业已采纳自愿准则和行为守则，寻求了解如何避免问题和对人权的享受产生积极影响。

24. 第二，企业有着巨大的潜力通过投资、创造就业和激励经济增长，为享受人权创造有利的环境。企业活动有时也可能威胁人权，个别公司已成为侵犯人权的同谋。⁷明确企业的人权责任，有助于防止人权问题的出现，可协助国家更有效地监管企业，将企业收益引向促进人权的活动。

25. 第三，前节全面审查企业与人权问题现有倡议和标准可以看出，在了解企业人权责任的性质和范围方面仍存在差距。虽然过去十年公司社会责任倡议迅速增加，但倡议中的人权方面没有同步发展，甚至没有协调发展，从而导致公司之间或国家之间做法上的不一致。

26. 本着这一想法，下一节提出“未决问题”，以协助委员会按照第 2004/116 号决定制定“加强跨国公司和其他工商企业人权责任标准及其执行的各种方案。”

企业在人权方面的责任是什么？

27. 在考虑企业的人权责任时，必须重申国家对维护人权的首要义务。虽然企业对人权享受可能有很大的影响，但它在社会上的作用是独特的，追求着不同的目标，

对人权的影响与国家不同。所以，国家的责任不能简单地转移到企业，企业的责任必须按照其性质和活动另行确定。

28. 全球契约明确了企业的责任，即坚持以下两项原则：

(a) 原则一：企业应该支持和尊重对国际公认人权的保护；

(b) 原则二：企业应确保不成为侵犯人权的同谋。

29. 这些原则为认识企业的人权责任提供了一个有用的参照点，即负有三种责任。头两种责任——“尊重”和“支持”人权，与企业本身的作为或不作为有关。企业的第三种责任是“确保它们不成为侵犯人权的同谋”，是企业与第三方的关系。

30. 比较而言，“尊重”人权的责任不存在问题，要求企业不作出可能干预人权享受的行为。例如，私营拘留中心不应该对被拘留者实行残忍、不人道或有辱人格的待遇。

31. “支持”人权的责任引起了较复杂的问题。例如，“支持”人权的责任是指企业负有积极责任促进人权。一方面，企业具有很大和有待挖掘的潜力通过投资和促进经济增长来增进人权，创造享受人权所需要的基本条件。“支持”人权的责任有助于传达这一信息。另一方面，承认企业负有积极责任利用其影响促进人权，这与国家在制定人权政策时可斟酌决定作出适当选择和进行平衡的做法有矛盾。⁸ 对此不妨指出，商业实体在国内法的其他领域，如在过失法领域已承担积极责任，履行照顾雇员或当地社区的义务。它可在阐述企业“支持”人权的积极责任方面提供指导。

32. 将“支持”人权的责任细分为次级责任可能很有帮助。例如，经济、社会和文化权利委员会将《经济、社会、文化权利国际公约》缔约国的义务分为尊重、保护和实现(促进、提供和便利)经济、社会和文化权利的义务。在澄清“支持”人权的责任时，可以考虑企业能够做些什么来保护、促进、提供和便利人权。这些次级责任又可分为企业的“基本”、“预期”和“可取”的行为。

33. 商业实体应“确保不成为侵犯人权的同谋”的责任也提出了复杂的问题。公司往往与其他伙伴联合经营或与国家和地方政府一道合作，如果其伙伴侵犯了人权，它便可能被指控为同谋。“同谋行为”的定义认为，一家公司如果授权、容忍或知情后无视其合作伙伴侵犯人权，或知情后还是提供实际协助或鼓励，对侵犯人权行为产生了实质性作用，它便是侵犯人权的同谋。⁹

34. 指控一家公司犯有同谋罪，可分为四种情况。第一，公司积极地直接或间接协助他人的侵犯人权行为；第二，公司与政府结成伙伴关系，可合理地预见或最终获悉政府在履行协议时可能侵犯人权；第三，公司受益于侵犯人权行为，即使它没有积极协助或造成侵犯人权行为；第四，公司对侵犯人权行为默不作声或不作为。¹⁰ 关于“支持“人权的责任，企业在某些情况下作为或不作为的义务可能不总是很清楚。于是，便产生了商业实体知悉侵犯人权行为的程度和它通过在侵权行为中的作为或不作为协助侵权行为的程度的问题。

35. 国家和国际刑法都规定同谋是一种刑事责任，包括法人作为犯罪同谋也承担刑事责任。所以，国家和国际刑法下的同谋学说可为进一步制定这一责任提供指导。¹¹

企业人权责任的界线在哪里？

36. 与国家的人权义务不同，企业人权责任的界线很难以地域来确定。虽然小企业对一国国内人权享受的影响较为有限，但大公司则可能影响到境外人权的享受。因此，确定企业的人权责任，需要考虑公司规模、与伙伴的关系、经营性质以及人民毗临其经营地点的距离。

37. 有助于了解企业人权责任范围和界线的一种方法是“势力范围”这一非法律概念。这一概念不是由权力确定的；一个商业实体的“执行范围”往往包括在政治、合同、经济和地域上与之有某种密切联系的个人。每个商业实体无论规模多大都拥有势力范围。企业越大，它的势力范围可能越大。¹² 需要指出的是，全球契约要求所有参与的商业实体“在其势力范围内接受、支持和实施十项原则”。

38. “势力范围”概念根据企业的行动能力确定企业的责任限度，有助于澄清商业实体“支持”人权的程度，并保证它们“不成为侵犯人权的同谋”。重要的是，“势力范围”明确了商业实体对供应链中其他实体如子公司、代理商、供应商和买主的责任界线，指导评估一家公司对有契约关系的伙伴施加多大影响，也就是它对供应链中子公司或伙伴的作为或不作为负责任的程度。¹³ 同时，“势力范围”还协助划定企业责任与国家义务之间的界线，以便商业实体不承担政府的监察作用。最后，“势力范围”概念确保小企业不被迫承担过于繁重的人权责任，只是对其“势力范围”内的人民负责。

39. 委员会不妨考虑和进一步拟定“势力范围”的概念。

企业对哪些人权具有责任？

40. 有许多人权渊源与界定企业的人权责任有关。总体而言，《世界人权宣言》是企业与人权问题许多倡议和标准的参考文献。《公民权利和政治权利国际公约》、《经济、社会、文化权利国际公约》和其他主要人权条约也是重要的渊源。虽然各国因批准情况不同而在人权责任上不平等，但应该指出，所有国家已批准至少一项人权条约。例如，承认儿童的公民、文化、经济、政治和社会权利的《儿童权利公约》获得了 191 个国家的批准，几乎得到普遍的认可。同样，有些人权已成为习惯国际法规范，可被认为普遍适用。¹⁴

41. 国际文书有关人权与企业活动关系的论述不多。¹⁵原则上，“尊重”人权的责任适用于所有公认的权利；商业实体不应该干预人权的享受。虽然商业实体负有积极责任“支持”人权，但由于商业实体的不同性质和在社会中的作用，它们的人权责任必然比国家的人权责任狭窄。重要的是，需要为公共利益作出平衡决定的权利或需要公共当局干预的权利，不属于企业的人权责任范畴。例如，刑事审判权、寻求庇护权和政治权利完全是国家的公共职能，与企业没有直接关联。

42. 与企业有关的不完全人权清单包括：禁止歧视，人的生命、自由和安全权，不受酷刑权，隐私权，意见和言论自由，寻求、接受和传递消息权，结社自由，组织起来的权利，禁止债役或强迫劳动，禁止各种形式的童工，健康权，获得相当生活水准权和教育权。受企业活动影响的某些群体的权利，如妇女、儿童、雇员、土著人民、移民工人及其家属的权利也需要得到考虑¹⁶。

如何保证企业的人权责任？

43. 确保企业尊重人权首先是国家在国内的行动事项。各国已作出国际承诺尊重个人和个人群体的权利，并保护这些权利不受第三方行动的影响。这里的第三方包括商业实体。许多国家还颁布人权实施法律，在歧视和工人人权等领域监管商业实体。法院和准司法法庭负责实施这些法规。

44. 公司也可以发挥重要作用，确保它们在经营中遵守人权标准。企业与人权问题自愿倡议有助于在企业内部促进尊重人权的文化，赋予人权标准以实际意义，同时敦促向支持人权的方向积极地变化。企业还可以在与商业伙伴的关系中促进人权，将尊重人权的合同条款列入商业交易。市场机制也可发挥作用，确保通过环境和社会指

数以及社会责任的公共报告来尊重人权，这些方法可以对商业实体的业绩进行评级，进而影响市场信心，改善业绩。

45. 然而，公司和市场举措有其局限性，在范围上不一定全面，也不能替代立法行动。重要的是，虽然企业的自愿人权行动主要针对善意者，可有效地提高其他公司的水准，但民间团体仍怀疑它们的总体效果。

46. 有时，国家因无法控制自己的领土、司法薄弱、没有政治意愿或腐败而不愿意或没有能力保护人权，如何在这种情况下保护人权是一个问题。国家缺少监管和强制执行能力，便无法有效地遏制侵犯人权行为，同时鼓励不罪不罚。另一特别复杂的问题是如何监管那些总部设在一个国家、经营在第二个国家而资产在第三个国家的公司。人们担心商业实体可能在某些情况下逃避国家的司法管辖，从而对享受人权造成不利影响。

47. 人们越来越多关注母公司在外国经营是否和在多大程度上接受母国法律和司法管辖问题。《美国外国民事侵权索赔法》提供了母国措施的一个实例：授权法院审理外国公民对违反美国国内法或条约的行动所造成损害的民事诉讼。此外，还有其他实例。母公司侵犯东道国公民人权的指控由本国法律管辖引起了尊重东道国国家主权的问题，同时也涉及一些需要进一步审查的复杂法律问题。¹⁷ 不过，母国管辖为在出现问责制空白情况下保护人权提供了一种有效手段。

48. 委员会不妨深入研究和分析在东道国不愿意或没有能力保护人权情况下保护人权问题，包括研究东道国管辖提供的机会。

是否需要联合国对商业实体人权责任的普遍标准作出表述？

49. 委员会负责制定加强企业与人权问题标准的各种方案。对此，人们似乎愈加希望进一步讨论能否由联合国对企业与人权问题的普遍标准作出表述。委员会在这方面可以探讨的问题有：

- (a) 这一表述是否有助于发现有关企业人权责任认识上的差距，为巩固联合国全球契约所载两项基本原则提供一种手段，特别是清楚地说明企业“支持”人权可采取的积极步骤；
- (b) 联合国表述的国际性能否提出所有企业应遵守的标准，为企业创造一个公平竞争环境；

- (c) 联合国表述是否有助于企业、国家和民间团体驾驭公司社会责任框架中的人权工作；
- (d) 联合国表述是否有助于提出企业促进人权的手段，用权威性文书来解释人权责任，制定各种指标、人权评估方法和其他材料；
- (e) 联合国表述是否有助于各国政府制定或加强关于企业行为影响人权的国家标准；
- (f) 联合国表述是否有助于条约机构与人权条约缔约国进行建设性对话，明确地向各国提出保护人权不受第三方行动损害的要求。

企业人权责任的法律性质是什么？

50. 国际人权法一般都规定了国家的义务，尽管有某些例外，如对武装团体的例外¹⁸。人权条约缔约国有义务保护个人和个人团体不受第三方包括商业实体行动的损害。对企业与人权问题的普遍标准作出表述，可能引出该表述的法律地位的问题，以及能否向企业直接提出人权法律义务的问题。委员会可以进一步考虑在国际人权法下向企业提出直接法律义务的后果，以及如何监督此种义务等问题。

需要哪些手段保证在企业活动中尊重人权？

51. 委员会在第 2004/116 号决定中主张进一步研究执行有关标准的问题。磋商进程提出了需要进一步工作的一些领域。这些领域包括：制定人权影响评估办法，以协助企业评估经营对人权享受的实际和潜在影响；编写培训教材，协助商业实体在经营中支持人权；汇编企业与人权领域的最佳商业和国家做法；在企业与人权领域增加对国家的技术援助，包括司法培训、协助建立国家监管机构以及起草法律和其他规章。

三、结论和建议

52. 编写本报告的磋商进程是国家与不同利害相关方不断进行人权对话的又一步骤。参照这一进程的成果，高级专员提出了以下结论和建议，以推动对话取得进展，协助委员会“制定加强工商企业与人权问题标准及其执行的各种方案”。为此，高级专员不仅强调这一问题对委员会议程的重要性，还强调需要委员会迅速行动，保持界

定和阐明商业实体人权责任的现有势头。界定和阐明这些责任为促进对话和解决各利害关系相关方在企业与人权问题上面临的许多挑战奠定了坚实基础。

- (a) 在审查现有倡议和标准的基础上，发现在企业人权责任的认识上仍存在差距；
- (b) 人们愈加希望进一步讨论可否由联合国对企业人权责任的普遍标准作出表述；
- (c) 目前的磋商进程应看作是一个开始，需要所有利害相关方通过委员会就企业与人权问题不断进行对话和磋商。在这方面，尤其需要考虑以何种方法采纳发展中国家政府和利害相关方的意见和建议；
- (d) 磋商进程主要侧重于《跨国公司和其他工商企业人权方面的责任准则(草案)》。虽然人们对准则草案持有不同意见，但委员会在第 2004/116 号决议中提到的这项准则草案的“有用内容”值得密切关注。商界领袖尊重人权倡议对准则草案进行了一次“路考”，让人们有机会认识企业人权责任的实际意义。这样的举措需要鼓励。为此，高级专员建议委员会在企业与人权的现有倡议和标准中保留准则草案，以便进一步审议；
- (e) 本报告提出的许多问题需要另行研究。需要进一步阐明和研究的主要问题有：“势力范围”和“同谋”的概念；企业“支持”人权的积极责任的性质；企业在与子公司和供应链的关系中应负的人权责任；在国家不愿意或没有能力保护人权情况下的司法管辖和保护人权问题；具体行业研究，认清具体行业面临的不同挑战；具体情况研究，包括在冲突地区保护人权问题；
- (f) 十分需要研究协助企业履行责任的“各种手段”，特别是编写培训教材和提出办法，对企业目前和未来商业活动的人权影响进行评估。

注

¹ <http://www.ohchr.org/english/issues/globalization/business/reportbusiness.htm>.

² <http://www.unglobalcompact.org/Portal/Default.asp>.

³ For a complete review of existing initiatives and standards on business and human rights see R. Mares, (ed), *Business and Human Rights: A compilation of documents*, The Raoul Wallenberg Institute Human Rights Library, vol. 13 (Martinus Nijhoff Publishers, Leiden, 2004).

⁴ The eight countries are: Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia.

⁵ For example, see the preamble which proclaims the Declaration “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”.

⁶ The constitutions of some countries stipulate direct responsibility for legal persons to respect human rights. For example, the Constitution of South Africa (1996) provides in section 8 (2) that: “A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right”.

⁷ The Secretary-General has noted that “individuals and companies take advantage of, maintain and have even initiated armed conflicts in order to plunder destabilized countries to enrich themselves, with devastating consequences for civilian populations” (S/2002/1300, para. 58).

⁸ Anthony Ewing, suggests the following examples of responsibilities to “support” human rights: (1) not to interfere with or oppose government efforts to protect human rights; (2) to initiate stakeholder dialogues and communicate openly with human rights organizations; (3) to become human rights advocates; (4) to educate employees and other stakeholders in human rights; and, (5) to build capacity of governments and others effectively to respect, ensure and promote human rights. “Understanding the Global Compact Human Rights Principles” in *Embedding Human Rights in Business Practice*, joint publication of the United Nations Global Compact and the Office of the United Nations High Commissioner for Human Rights, 2004, at p. 38.

⁹ “The Global Compact and Human Rights: Understanding Sphere of Influence and Complicity: OHCHR Briefing Paper”, in UN Global Compact/OHCHR, *ibid*, p. 19.

¹⁰ International Council on Human Rights Policy, *Beyond Voluntarism: Human rights and the developing international legal obligations of companies*, (Geneva, February 2002), pp. 125-136.

¹¹ Under international criminal law, three elements must be met to show complicity: first, a crime must have been committed; second, the accomplice must contribute in a direct and substantial way to the crime; and, third, the accomplice must have had intent or knowledge or was reckless with regard to the commission of the crime. See International Peace Academy and Fafo AIS, *Business and International Crimes: Assessing the Liability of Business Entities for Grave Violations of International Law*, September 2004, p. 23 (<http://www.faf.no/liabilities/index.htm>).

¹² International Council on Human Rights Policy, *op. cit.*, p. 136.

¹³ For example, a claim against a parent company for acts allegedly committed by a subsidiary or agent raises complex legal questions of the extent to which a parent company can be held liable for the action of its subsidiaries - particularly where the subsidiary is not subject to the laws of the home country. Legal systems generally protect parent companies - as well as company directors and individual shareholders - from liability resulting from the acts or omissions of subsidiaries. The establishment of liability of the parent company requires “piercing the corporate veil” by demonstrating a sufficiently substantial connection between the parent company and its subsidiary. This generally requires some degree of regular control by the parent company and knowledge of events and decisions of the subsidiary. See International Peace Academy and Fafo AIS, *op. cit.*, p. 26. See also D. Kinley, and Tadaki, “From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law”, *Virginia Journal of International Law*, Vol. 44, No. 4, p. 962, which notes that it would appear that at least a substantial degree of operational or day-to-day control would be necessary for a business entity to attract liability for the acts of one its subsidiaries, agents, buyers or suppliers.

¹⁴ For example, the International Law Commission has recognized the prohibition of discrimination on the basis of race as part of customary international law. See the report of the International Law Commission on its fifty-third session, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10)*, p. 208. General comments No. 24 (1994) and No. 29 (2001) of the Human Rights Committee also provide some guidance on identifying customary norms.

¹⁵ International human rights instruments recognize some specific rights over which non-state actors do have some secondary and indirect responsibility. For example, the Convention on the Elimination of All Forms of Discrimination against Women requires States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise (art. 2). Similarly, the Convention on the Rights of the Child requires the best interest

of the child to be a primary consideration in all actions concerning children, including by private welfare institutions (art 3, para. 1).

¹⁶ See e.g., D. Kinley, and Tadaki, *op. cit.*, pp. 966-993. See also International Council on Human Rights Policy, *op. cit.*, pp. 21-43.

¹⁷ For example, a tribunal must establish that it has the jurisdiction to hear the case. The court must satisfy that there are grounds for hearing the case - for example, the alleged abuse occurred in the country, the courts have the authority to hear claims concerning the actions of their nationals abroad, questions of national security are at stake and so on. Similarly, the court must decide that it is the appropriate forum to hear the case. The principle of *forum non conveniens* gives courts discretion to refuse to hear a case where the court holds the opinion that, in the interests of all the parties and of justice, it may be more appropriately heard in another forum. The court might decide that the case should be tried in the courts of the country where the alleged abuse occurred. See e.g., International Peace Academy and Fafo AIS, *op. cit.*, p. 27.

¹⁸ For example, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts recognizes that “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years” (art. 4, para. 1).

Annex I

OUTLINE OF THE CONSULTATION PROCESS IN RESPONSE TO COMMISSION DECISION 2004/116

STATES AND STAKEHOLDERS CONTACTED FOR INPUT INTO THE REPORT

States

All members and observer States of the Commission.

Transnational corporations

ABB, Agricola Chapi, Alcan, Ashanti Goldfields, BASF, British Petroleum, Eskom, Felipe Rodriguez, Gap, Hewlett Packard, Junyao Group, Li & Fung, Oil and Natural Gas Corporation, Newmont Mining, Nexen, Nissan, Novartis, Novo Nordisk, Novozymes, Petrobras, Pfizer, Ricoh, Rio Tinto, Sasol, Shell, Sonofon, Suez, Tata Iron & Steel, Telefonica, Talal Abu-Ghazaleh Organization, Titan Cement, Unilever, Westpac.

Employer associations

The International Chamber of Commerce, the International Organization of Employers, the United States Council for International Business, the World Business Council for Sustainable Development.

Employee associations

International Confederation of Free Trade Unions, World Confederation of Labour.

Intergovernmental organizations and United Nations organizations and bodies

The Global Compact Office, International Committee of the Red Cross, International Finance Corporation, International Labour Office, International Monetary Fund, Organization for Economic Cooperation and Development, United Nations Conference on Trade and Development, United Nations Development Programme, United Nations Environment Programme, United Nations Industrial Development Organization, United Nations Research Institute for Social Development, World Bank.

Non-governmental organizations

Action Aid, American Association of Jurists, Amnesty International, Business and Human Rights Resource Centre, Business for Social Responsibility, Christian Aid, Center for Economic and Social Rights, Centre for Housing Rights and Evictions, Centre for Research on Multinational Corporations (SOMO), CSR Europe, Ethical Globalization Initiative, Danish Institute for Human Rights, Europe-Third World Centre, FIAN International, Friedrich Ebert Stiftung, Global Reporting Initiative, Henri Dunant Centre for Humanitarian Dialogue, Human Rights Advocates, Human Rights Watch, International Baby Food Action Network, International

Restructuring and Education Network Europe, Organisation Mondiale Contre la Torture, Oxfam, Peoples' Movement for Human Rights Education, The Prince of Wales Business Leaders' Forum, Save the Children, Transparency International, World Economic Forum.

Treaty bodies

The Committee against Torture, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, the Committee on the Rights of the Child, the Human Rights Committee.

STATES AND STAKEHOLDERS PROVIDING INPUTS INTO THE REPORT

States

Australia, Austria, Belgium, Canada, Croatia, Cuba, Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Mauritius, Netherlands, Norway, Philippines, Poland, Portugal, Sweden, Switzerland, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America.

Transnational corporations

BASF, British Petroleum, Business Leaders' Initiative on Human Rights (ABB Ltd, Barclays plc, Hewlett-Packard Company, National Grid Transco plc, Novartis Foundation for Sustainable Development, Novo Nordisk A/S, MTV Networks Europe, Statoil and the Body Shop International plc), Gap, Newmont, Nexen, Pfizer, Rio Tinto, Sasol, Shell, Sonofon, Storebrand, Telefonica.

Employer associations

Bundesverband der Deutschen Industrie, Business and Industry Advisory Committee to the OECD, Confederation of British Industry, Confederation of Danish Industry, International Chamber of Commerce, International Organization of Employers, Netherland's Industry, United States Council for International Business.

Employee associations

World Confederation of Labour.

Intergovernmental organizations and United Nations organizations and bodies

The Global Compact Office, International Labour Office, International Monetary Fund, Organization for Economic Cooperation and Development, United Nations Environment Programme, United Nations Research Institute for Social Development.

Treaty bodies

The Committee on the Rights of the Child, The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families.

Non-governmental organizations

Action Aid, Amnesty International, Australian Human Rights Centre, Berne Declaration, Business and Human Rights Resource Centre, CAFOD, Castan Centre, CEDHA, Christian Aid, Dutch Round Table on Business and Human Rights, ESCR-net (joint submission), Europe Third World Centre (joint submission), FIDH, Geneva Social Observatory, German Clean Clothes Campaign, Greenpeace, Human Rights First, Human Rights Watch, Humanistish Overleg Mensenrechten, Infact, Interfaith Center on Corporate Responsibility, International Baby Food Action Network, International Commission of Jurists, International Peace Academy/FAFO, Misereor (joint submission), Mineral Policy Institute (joint submission), Oxfam.

Other stakeholders

Business for Social Responsibility, Caux Round Table, Sir Geoffrey Chandler, Columbia University Law School Human Rights Clinic, Danish Institute for Human Rights, Ms. Surya Deva, Ethical Funds, François-Xavier Bagnoud Center for Health and Human Rights (Harvard School of Public Health), Mr. Francis House, International Business Leaders' Forum, Mr. Menno Kamminga, King Zollinger, Lawhouse, Mr. John O'Reilly, SustainAbility, TwentyFifty.

STAKEHOLDERS ATTENDING THE OHCHR/GLOBAL COMPACT CONSULTATION ON 22 OCTOBER 2004

Experts

Mr. Aron Cramer, Mr. Andrew Clapham, Mr. Klaus Leisinger.

Transnational corporations

ABB, ABN Amro, Alcan, BASF, Credit Suisse, Eni, Norsk Hydro, Novo Nordisk, Pfizer, Rio Tinto, Novartis Foundation for Sustainable Development.

Employer associations

International Organization of Employers, Confederation of British Industry.

Employee associations

International Confederation of Free Trade Unions, International Federation of Chemical Energy, Mine and General Workers.

Intergovernmental organizations and United Nations organizations and bodies

Global Compact Office, International Committee of the Red Cross, United Nations Conference on Trade and Development, United Nations Children's Fund, United Nations Research Institute for Social Development, United Nations System Staff College.

National human rights institution

Danish Institute for Human Rights.

Non-governmental organizations, consultancies and other organizations

Amnesty International, Berne Declaration, Business and Human Rights Resource Centre, Earth Justice, Europe Third World Centre, Franciscans International, Geneva Social Observatory, Global Reporting Initiative, Greenpeace, Human Rights Watch, INFACT, International Bar Association, International Business Leaders' Forum, International Commission of Jurists, International Council on Human Rights Policy, International Service for Human Rights, KLD Research and Analytics, Kroc Institute, Lawhouse, Norwegian Forum for Development, Respect Europe, Rights and Accountability in Development, SustainAbility Ltd, 3D-Trade-Human Rights-Equitable Economy, Misereor.

Independent

Mr. Bjorn Kümmel, Mr. Chip Pitts, Ms. Dorothee Baumann (University of Zurich), Mr. John O'Reilly.

Annex II

DESCRIPTION OF A SELECTION OF EXISTING INITIATIVES AND STANDARDS ON BUSINESS AND HUMAN RIGHTS

Of the many existing initiatives and standards on business and human rights, the following list identifies those mentioned most prominently in the consultations.

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Tripartite Declaration, adopted in 1977 by Governments, employer associations and employee associations, provides guidance to multinational enterprises as well as to domestic business, Governments and workers' organizations in areas such as employment, training, conditions of work and industrial relations. The interdependent aims of the Tripartite Declaration are, on the one hand, to encourage the positive contribution that investment by multinational enterprises can make to economic and social progress, and on the other hand, to minimize and resolve the difficulties to which such investment may give rise.

The Global Compact. The Global Compact is the voluntary corporate citizenship initiative of the United Nations Secretary-General that brings together companies, labour, United Nations agencies and civil society to support ten principles derived from key international instruments including the Universal Declaration of Human Rights. The first two principles of the 10 Global Compact Principles concern human rights. The Global Compact is a multi-stakeholder network with over 1,700 formal participants. The Global Compact was conceived as a way to help bring about a more sustainable and inclusive global economy, by underpinning it with universal values that Governments have defined through international agreements.

The OECD Guidelines for Multinational Enterprises. The Guidelines are a government-backed set of voluntary guidelines for international business covering a broad range of issues ranging from human rights, core labour standards, fighting corruption, consumer protection and environmental protection to compliance with local laws and regulations, abstaining from anti-competitive practices and meeting host country tax liabilities. While observance of the Guidelines is voluntary for business, adhering Governments are committed to promoting them among multinational enterprises operating in or from their territories. 38 Governments - the 30 members of the OECD and eight non-members (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania and Slovenia) - have adhered to them. The Guidelines were last revised in 2000.

The draft "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights". The draft Norms are a set of human rights, environmental and consumer protection responsibilities of business approved by the Sub-Commission on the Promotion and Protection of Human Rights in 2003. The draft includes provisions on the right to equal opportunity and non-discrimination, the right to security of persons, the rights of workers and respect for national sovereignty and

human rights and seeks to hold business directly accountable in relation to human rights standards.

Business Leaders' Initiative for Human Rights (BLIHR). BLIHR brings together ten companies (ABB, Barclays plc, Gap, Hewlett-Packard Company, National Grid Transco plc, Novartis, Novo Nordisk, MTV Networks Europe, Statoil and the Body Shop International plc) for a three-year period beginning in May 2003 to explore the ways that human rights standards and principles can inform issues of corporate responsibility and corporate governance. During the first year of the initiative, BLIHR worked together in collaboration with leading human rights and corporate responsibility experts and organizations to examine a range of relevant standards and initiatives, with a particular focus on the draft Norms described above.

The ILO Declaration on Fundamental Principles and Rights at Work. Adopted in 1998, the ILO Declaration is addressed to all ILO member States, irrespective of whether they have ratified the core ILO conventions. Its four principle areas of application are freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation. Although addressed to States, the ILO Declaration has implications for the activities of business.

Voluntary Principles on Security and Human Rights for the Extractive and Energy Sectors. The Governments of the United States and the United Kingdom, companies in the extractive and energy sectors and non-governmental organizations developed a set of voluntary principles to provide practical guidance to strengthen human rights safeguards in company security arrangements in the extractive sector. The Voluntary Principles are the basis of a global standard for the extractive sector and address three areas of mutual concern to both companies and civil society, namely: engagement with private security; engagement with public security; and risk assessment supporting security arrangements consistent with human rights. While the Voluntary Principles are essentially voluntary, they have also been annexed to contracts and can therefore also potentially become legally enforceable.

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Adopted in 1997, the OECD Convention on Combating Bribery seeks to combat the "widespread phenomenon" of bribery in international business transactions. The Convention requires each State party to establish measures making the bribery of a foreign official in international business transactions a criminal offence and requires the imposition of sanctions on natural and legal persons in the case of bribery. The Convention envisages prosecution of nationals of States parties for acts of bribery committed abroad where this is possible under national law. The Convention however does not specifically refer to human rights.

The United Nations Convention against Corruption. Adopted in 2003, the Convention seeks amongst other objectives to promote and strengthen measures to prevent and combat corruption more efficiently and effectively and includes requirements that States, consistent with its legal principles, establish liability of legal persons. The Convention does not specifically refer to human rights.

Worldwide Responsible Apparel Production (WRAP). WRAP is a certification programme, requiring manufacturers to comply with 12 universally accepted principles including principles, relating to compliance with laws and workplace relations; the prohibition of forced labour; prohibition of harassment and abuse; compensation and benefits; hours of work; prohibition of discrimination; health and safety; freedom of association and collective bargaining; environment; customs' compliance and security. The programme's objective is to monitor independently and certify compliance with these socially responsible global standards for manufacturing and ensure that sewn products are produced under lawful, humane and ethical conditions. Participating companies voluntarily agree that their production and that of their contractors will be certified by the WRAP certification programme as complying with these standards. 19 worldwide apparel associations participate in the scheme, which they promote among their members.

SA8000. Social Accountability International, a non-profit organization based in the United States, established the SA8000 certification scheme in 1999 as a way for retailers, brand companies, suppliers and other organizations to maintain just and decent working conditions throughout the supply chain. SA8000 is based on international workplace norms derived from ILO Conventions, the Universal Declaration of Human Rights and the Convention on the Rights of the Child, and includes standards on child labour, forced labour, workplace health and safety, freedom of association and collective bargaining, non-discrimination, discipline, working hours, compensation, and management systems. Companies focused on production can seek certification under SA8000 while companies involved in selling goods or a combination of production and selling can join the SAI corporate involvement programme that helps companies implement the standards and report on adherence.

Kimberley Process Certification Scheme. In 2002, 36 States and the European Union, representing countries that mine, trade and cut rough diamonds, formally adopted the Kimberley Process Certification Scheme with the ultimate aim of putting an end to trade in conflict diamonds. A declaration outlines all the steps that Governments should take to ensure certification of diamonds under the scheme. Steps include the creation of systems of internal control - including penalties for violations - to prevent conflict diamonds entering shipments of rough cut diamonds. The signatory Governments have also undertaken to monitor effectively diamond trade in order to detect and prevent trade in conflict diamonds. The Kimberley Process is ongoing and participating Governments rotate the chairpersonship of the process on an annual basis.

The Global Sullivan Principles. The Global Sullivan Principles were developed as a voluntary code of conduct for companies doing business in apartheid - South Africa. The Principles aim to have companies and organizations of all sizes, in widely disparate industries and cultures, working toward the common goals of human rights, social justice and economic opportunity. Each endorser of the Principles makes a commitment to work towards the goals of the Principles, including through the implementation of internal policies, procedures, training and reporting structures. Endorsing companies and

organizations are asked to take part in an annual reporting process to document and share their experiences in relation to implementation of the Principles.

Global Reporting Initiative (GRI). GRI started in 1997 as a multi-stakeholder process and independent institution to develop and disseminate a globally applicable framework for reporting an organization's sustainability performance. The framework presents reporting principles and specific content indicators to guide the preparation of organization-level sustainability reports. The framework of principles and guidelines is for voluntary use by organizations for reporting on the economic, environmental, and social dimensions of their activities, products, and services. GRI is an official collaborating centre of UNEP and works in cooperation with the Global Compact.

Fair Labor Association. The Fair Labor Association (FLA) is a non-profit organization combining the efforts of industry and civil society to promote adherence to international labour standards and to improve working conditions worldwide. FLA endorses an industry-wide code of conduct based on ILO labour standards and holds participating companies accountable for the conditions under which their products are produced through an independent monitoring system. There are currently 12 leading brand name companies participating in FLA.

The Extractive Industry Transparency Initiative. In 2002, the United Kingdom Government announced the Extractive Industries Transparency Initiative at the World Summit on Sustainable Development in Johannesburg. The initiative aims to increase transparency over payments by companies to governments and Government-linked entities, as well as transparency over revenues by those host country Governments through voluntary reporting submitted to an independent third party. The initiative is multi-stakeholder and seeks the involvement of small, medium and multinational businesses, industry groups, intergovernmental and non-governmental organizations as well as host and home country Governments.

Caux Round Table Principles for Business. Designed in 1994 by a network of business leaders, the Caux Round Table Principles aim to express a standard to measure business behaviour through the identification of shared values and the reconciliation of differing values. The Principles set out responsibilities of business in relation to a range of issues including respect for the environment, avoidance of illicit operations and respect for customers, employees, investors, suppliers, competitors and communities. The Principles identify the responsibility of business to respect human rights and democratic institutions and promote them wherever possible. The Caux Round Table promotes the Principles through a range of networks that includes employer associations, civil society and the Global Compact Office.

International Peace Operations Code of Conduct. The International Peace Operations Association (IPOA) is a non-profit organization of private sector service companies, non-governmental organizations and individuals engaged in international peace operations around the world that aims to help international peace operations succeed by utilizing the capabilities of the private sector. IPOA approved its revised Code of Conduct in 2004. Through the Code of Conduct, IPOA members pledge to adhere to

principles of human rights, transparency, accountability and ethical conduct at levels that go beyond strict legal requirements.

The Danish Institute for Human Rights (DIHR) Human Rights and Business Project. Since 1999, the Human Rights and Business Project of DIHR, in joint sponsorship with the Confederation of Danish Industries and the Industrial Fund for Developing Countries, has focused on clarifying the responsibility of business in relation to human rights through the development of concrete tools which can be used by companies to evaluate their human rights performance. DIHR has focused in particular on the development of the Human Rights Compliance Assessment tool - a diagnostic test, consisting of individual indicators which companies run to ensure that their practices remain compliant with human rights.

FTSE4Good Index. FTSE Group, an independent company whose sole business is the creation and management of indices and associated data services, has developed the FTSE4Good index series to measure the performance of companies that meet globally recognized corporate responsibility standards and to facilitate investment in those companies. For inclusion in the company assessment process, a company must meet criteria requirements in three areas: working towards environmental sustainability; developing positive relationships with stakeholders; and upholding and supporting universal human rights.

Goldman Sachs Energy Environmental and Social Index. Goldman Sachs, a global investment banking, securities and investment management firm, has developed an environmental and social index for the oil and gas industry to identify specific environmental and social issues likely to be material for company competitiveness and reputation. The index relies on 30 criteria over 8 categories, namely: climate change; pollution; human rights; management diversity and incentives; investment in the future; workforce; safety; and transparency and vision. Goldman Sachs published its first index in 2004.

The United States Alien Torts Claims Act. This Act empowers United States courts to hear civil claims of foreign citizens for injuries by actions in violation of the law of nations or a treaty to which the United States is party.

Individual corporate codes of conduct, statements, principles and policies. Some businesses establish their own principles and standards on human rights and related issues to which they adhere voluntarily. The following companies provided information in the consultation process on such initiatives: BASF, BP, GAP, Nexen, Prizer, Rio Tinto, Shell General Business Principles, SONOFON, Storebrand and Telefonica.

Annex III
**COMPARISON OF THE SCOPE AND LEGAL STATUS OF EXISTING INITIATIVES
AND STANDARDS LISTED IN ANNEX II**

	Description	Objectives	Source	Human rights coverage	Territorial coverage	Company coverage	Implementation/ monitoring	Legal status
	ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy	Promotion and protection	ILO member States and associated employer and employee associations	Workers' human rights recognized in ILO instruments	International	Multinational enterprises	Conventions listed are subject to ILO supervisory mechanisms	Non-binding (Conventions included are binding on States parties)
	Global Compact	Promotion	United Nations Secretary-General	General reference to human rights	Not defined	1,700 participants to date - mostly business enterprises	None	Non-binding
	OECD Guidelines for Multinational Enterprises	Promotion and protection	OECD member States and 8 adhering States	General references plus specific workers' rights	OECD member States and the 8 adhering States	Multinational enterprises headquarter in OECD countries	National contact points to resolve specific instances	Non-binding but commitment by adhering States to promote
	Draft "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights"	Promotion and protection	Sub-Commission on the Promotion and Protection of Human Rights	General and specific references to a wide range of rights	International coverage envisaged	Transnational corporations and other business enterprises	National and international monitoring, verification and enforcement	As a draft proposal, they have no legal standing
	Business Leaders' Initiative for Human Rights	Promotion	10 companies and civil society	General/ specific references drawn from the draft Norms	Not defined	10 companies	Results of project expected in 2006	Non-binding

Annex III (continued)

	Description	Objectives	Source	Human rights coverage	Territorial coverage	Company coverage	Implementation/ monitoring	Legal status
ILO Declaration on Fundamental Principles and Rights at Work	International instrument directed at States of relevance to business	Promotion and protection	ILO member States	Freedom of association, the elimination of forced labour and child labour and discrimination in the workplace	International	Indirect coverage of potentially wide pool of business	Rights referred to are subject to ILO supervisory mechanisms as well as Global Report	Non-binding
Voluntary Principles on Security and HR for the Extractive and Energy Sectors	Voluntary initiative	Promotion	UK and US Governments plus companies in extractive and energy sectors and NGOs	General references to human rights	Not defined	Extractive and energy sectors	Encourages risk assessment and investigation by companies	Non-binding
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions	International instrument directed at States of relevance to business	Promotion and protection	OECD member States	No references to human rights	OECD Member States	Bribery by legal persons envisaged as an offence	Monitoring in framework of the OECD working group on bribery in international business transactions	Binding on States parties
Convention against Corruption	International instrument directed at States of relevance to business	Promotion and protection	United Nations member States	No references to human rights	International	Corruption in the private sector	National enforcement	Binding on States parties
Worldwide Responsible Apparel Production (WRAP)	Certification scheme	Promotion and protection	Independent	Workers' human rights	Undefined (focus on countries with apparel production)	Apparel sector	Certification scheme	Non-binding
SA 8000	Certification scheme	Promotion and protection	Independent	Workers' human rights, children's human rights	Undefined	Retailers, brand companies, suppliers and others	Certification scheme	Non-binding

Annex III (continued)

	Description	Objectives	Source	Human rights coverage	Territorial coverage	Company coverage	Implementation/ monitoring	Legal status
Kimberley Process Certification Scheme	Certification scheme/ instrument directed at States, relevant to business	Promotion and protection	36 States and the European Union	General references to human rights	Countries that mine, trade and cut rough diamonds	Diamond sector	Certification scheme and monitoring by States parties	Non-binding but commitment by States to respect and promote
The Global Sullivan Principles	Voluntary initiative	Promotion and protection	Independent	General references to human rights	Undefined	Approx. 100 companies	Annual reporting process to share experience	Non-binding
The Global Reporting Initiative	Voluntary initiative	Promotion and protection	Independent (but in collaboration with the United Nations)	General references to human rights	Undefined	Over 600 organizations using the Guidelines	Sustainability reports	Non-binding
Fair Labor Association	Voluntary initiative	Promotion and protection	Independent coalition of businesses and civil society	Workers' human rights	Undefined	12 leading brand name companies	Independent monitoring mechanism and public reporting	Non-binding
The Extractive Industry Transparency Initiative	Voluntary initiative	Promotion and protection	Governments, donors, companies, investors, civil society organizations and IFIs	No reference to human rights	Undefined	Companies in the extractive sector	Publishes guidelines on reporting	Non-binding
Caux Round Table Principles	Voluntary initiative	Promotion	Independent	General references to human rights	Undefined	International business leaders	None	Non-binding
International Peace Operations Code of Conduct	Voluntary initiative	Promotion	Independent	General references to human rights	Undefined	Service companies engaged in international peace operations	Engages in dialogue with stakeholders and publishes an industry newsletter	Non-binding

Annex III (continued)

	Description	Objectives	Source	Human rights coverage	Territorial coverage	Company coverage	Implementation/ monitoring	Legal status
The Danish Institute for Human Rights: Human Rights and Business Project	Tools	Promotion	Independent, with support of government and participation of private sector and not-for-profit actors	General and specific reference to a wide range of rights	International	Pharma, steel, agriculture, logging, lumber, paper and cardboard, apparel and textile industries	Enters into active dialogue with companies during the research and development phase; delivers training programmes; makes tools available for the assessment of compliance, develops codes	Non-binding
FTSE4Good Index	Mainstream financial indices	Promotion and protection	Independent	General to human rights	International	Wide	Reviews information provided by business and independent sources to assess companies	Non-binding
Goldman Sachs Energy Environmental and Social Index	Mainstream financial indices	Promotion and protection	Independent	General references to human rights	International	Oil and gas industry	Companies evaluated on thirty criteria in eight categories and ranked accordingly	Non-binding

Annex III (continued)

	Description	Objectives	Source	Human rights coverage	Territorial coverage	Company coverage	Implementation/ monitoring	Legal status
Alien Tort Claims Act	National legislation	Promotion and protection	US Government	No specific references, although read to encompass some human rights obligations	International	Wide	Allows United States District Courts to take jurisdiction in matters involving injuries connected with the violation of the law of nations or a treaty to which the United States is a party	Binding on companies
Individual corporate initiatives	Voluntary initiatives	Promotion	Individual companies	Both general and specific references depending on the initiative	Depends on the operations of the business entity	Individual companies	Self-monitoring	Non-binding

-- -- -- --