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THEME SESSION

NATIONAL HUMAN RIGHTS INSTITUTIONS AND THE PROTECTION AND PROMOTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: INTERNATIONAL, REGIONAL AND NATIONAL STRATEGIES

“THE BUSINESS OF HUMAN RIGHTS”

INTRODUCTION

True to its name, globalisation is causing universal angst. In both developed and developing countries there is a vigorous debate about the impact of trade liberalisation and the pace and direction of economic change. The move by transnational corporations to stake out positions as businesses with an ethical and ‘values-based’ corporate culture seems to address, in part, the suspicion and anger which is directed particularly at those entities which are widely seen as driving the global agenda and profiting most from it.

One of the more interesting developments related to globalisation in the past few years has been the pursuit of a “triple bottom line”. Some of the larger multinationals in particular are making a concerted effort to portray themselves as enterprises with a commitment not only to shareholders but also to social and environmental values as well.

Perhaps the highest profile campaigns are those being run by large oil companies, such as Shell and Chevron. For example, after a series of widely reported controversies surrounding Shell’s activities in the North Sea and Nigeria, in which the corporation was accused of environmental vandalism and complicity in human rights abuses, Shell has gone public with a slick new message based on a commitment to “sustainable development, balancing economic progress with environmental care and social responsibility”^{1[1]}. According to Shell’s new-look governance strategy, there is no longer a simple choice between profits and principles – responsible corporate citizens now have to achieve the former while respecting the latter.

There are many developments involving governments, intergovernmental organisations and non-government organisations which indicate that the concerns about the impact of globalisation on human rights, social policy and wealth distribution are galvanising civil society into concerted, strategic action. The diversity of initiatives by those individuals and organisations actively involved in shaping the debate on human rights and corporate responsibility reflects the breadth and complexity of the issues which are involved.

This paper will briefly survey some of the efforts being made at the international level to come to terms with the nexus between business and human rights in the context of corporate governance and globalisation. It will also identify a number of issues which go to the role of national human rights institutions in the debate over what ethical standards should apply to global business and how those standards should be enforced.

^{1[1]} Shell website: www.shell.com.

A CONTINUING FOCUS ON GLOBALISATION

This is the third year that the Forum has focussed discussion at its annual meeting on the relationship between human rights and globalisation. The impetus came initially from the Asian financial crisis of 1997/98.

At its third Annual Meeting in Jakarta, Forum members drew attention to the need to maintain a holistic approach to all human rights. It was noted that economic, social and cultural rights continue to be accorded a lower level of priority than civil and political rights by many governments. The Forum called on governments, both in the region and outside, to give explicit effect to their commitment to the realisation of economic, social and cultural rights through all feasible means, including through their input into the policies and actions of international financial institutions and of international and regional economic forums.

At its fourth Annual Meeting held in Manila, the Forum expressed its continued concern at the detrimental impact that some policies and practices of international financial institutions and multinational corporations have upon the enjoyment of human rights. It noted its concern that, as non-state actors, these institutions are not subject in law to international human rights treaties and are therefore not formally accountable for compliance with these treaties. The Forum welcomed the initiative of the High Commissioner for Human Rights to establish a dialogue with United Nations agencies and programs, international financial institutions, international agencies and non-state players.

GLOBALISATION WITH A HUMAN FACE

Globalisation is eliciting strong reactions from civil society as individuals around the world feel that critical decisions affecting their lives are being made by unaccountable but immensely powerful corporations. There is a strong debate about the sort of economic growth people want and on the ways of ensuring that the benefits of that economic growth are equitably distributed and its undesirable consequences effectively mitigated. The final edited version of the "We the Peoples Millennium Forum Declaration and Agenda for Action"^{2[2]} reflects this struggle over who controls the direction and pace of global change when it says, in part:

We, 1,350 representatives of over 1,000 non-governmental organisations (NGOs) and other civil society organisations from more than 100 countries, have gathered at the United Nations (UN) Headquarters in New York from 22 – 26 May 2000 to build upon a common vision and the work begun at civil society conferences and the UN world conferences of the 1990's, to draw the attention of governments to the urgency of implementing the commitments they have made, and to channel our collective energies by reclaiming globalisation for and by the people ...

The Global Compact

At the World Economic Forum in Davos, Switzerland, on 31 January 1999, United Nations Secretary-General Kofi Annan issued a challenge to the business leaders gathered there to "join the United Nations in initiating a global compact of shared values and principles which would give a human face to the global market". Specifically, he called on business leaders - individually through their firms, and collectively through their business associations - to "embrace, support and enact a set of core values in the areas of human rights, labour standards, and environmental practices".^{3[3]}

This set of core values is built around nine principles that call upon world business to

^{2[2]} It can be found at: <http://www.millenniumforum.org>.

^{3[3]} The text of the UN Secretary-General's address is available on his website: www.un.org.

1. Support and respect the protection of international human rights within their sphere of influence
2. Make sure their own corporations are not complicit in human rights abuses
3. Uphold freedom of association and the effective recognition of the right to collective bargaining
4. Uphold the elimination of all forms of forced and compulsory labour
5. Uphold the effective abolition of child labour
6. Uphold the elimination of 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 is based on a partnership involving the Office of the High Commissioner for Human Rights (OHCHR), the International Labour Organisation (ILO), the United Nations Environment Program (UNEP) and business associations, workers' organisations and NGOs.

The Global Compact website (www.unglobalcompact.org) is the platform from which the Compact operates. It contains information, links, resources, tools, case studies, directories and suggestions on how businesses can implement policies to address human rights, labour or environmental issues. As an example, the website contains an ILO study entitled "Private initiatives and labour standards: a global look" which gives an overview of global developments and activities concerning codes of conduct, social labeling and other private sector initiatives addressing labour issues. The website also carries reviews of current research, bibliographies and news (with a link to UN Wire Business Weekly).^{4[4]}

While the Global Compact is based on a strictly voluntary approach, it incorporates four separate initiatives designed to monitor the performance of businesses which commit themselves to the Compact^{5[5]}

1. *The Global Reporting Initiative (GRI)*: convened in late 1997 by the Coalition of Environmentally Responsible Economies with technical support from the Tellus Institute, GRI is creating a global system of routine disclosure of environmental, social, and economic information which will provide a voluntary framework within which corporations worldwide prepare and publicly disseminate information that is comparable, consistent, and credible. GRI is now finalising a set of 'Sustainability Reporting Guidelines' and during 2000-2001 aims to establish itself as a permanent, independent institution with an international governance structure.
2. *The Copenhagen Centre*: an international, autonomous institution established by the Danish Government in recognition of the need for governments to create a framework that encourages public/private partnerships to emerge, develop and work.
3. *Social Accountability International (SAI)*: SAI (acting as the Council on Economic Priorities Accreditation Agency) convened stakeholders to develop the SA8000 system which provides transparent, measurable, verifiable standards for certifying the performance of organizations in nine areas: 1) child labor; 2) forced labor; 3) health and safety; 4) compensation; 5) working hours; 6) discrimination; 7) discipline; 8) free association and collective bargaining; and 9) management systems. SA8000's monitoring and verification system is modeled after the established ISO 9000 and ISO 14000 standards for quality control and environmental management systems.
4. *The Global Sullivan Principles*: developed by the Rev. Leon Sullivan with a group of multi-national corporations from three continents, and a business association from Latin America, and with input from a broad group of NGOs, intergovernmental organizations, and national governments. The Principles are intended to be a positive, aspirational framework against which the internal policies and practices of socially responsible

^{4[4]} A weekly summary of business, the UN and global affairs at: www.unfoundation.org/unwirebw.

^{5[5]} Detailed information on each of these available at: www.unglobalcompact.org.

companies, small and large, can be aligned. Monitoring will be based on annual reports from participating businesses and an annual meeting of stakeholders.

ILO's Tripartite Declaration of Principles

The ILO's Governing Body has decided that eight ILO Conventions should be considered fundamental to the rights of human beings at work, and that they should be implemented and ratified by all member States of the organization. Another four Conventions concerning matters of essential importance to labour institutions and policy have been considered as 'Priority Conventions'.

In 1977, the ILO adopted the *Tripartite Declaration of Principles concerning Multinational Enterprises* as a response to the labour-related and social policy issues which arose due to the growing global influence of Multinational Enterprises (MNEs). The Declaration is non-binding. It lays out principles which offer guidelines to MNEs, governments, employers and workers in a range of employment related areas. The provisions of the Declaration are reinforced by certain ILO conventions and recommendations and the implementation of the Declaration is reviewed triennially through global surveys. In 1981, a procedure was instituted whereby disagreements over the implementation of the Declaration could be put to the ILO for an interpretation of the meaning of the relevant provision.

Business and the majority of governments see the ILO as the proper body to deal with these issues and they have strongly resisted attempts to have the WTO take on any sort of role in relation to human rights, more specifically, labour standards. As a consequence of efforts to introduce a 'Social Clause' into the World Trade Organisation (WTO) which would have formally linked certain human rights standards with the international trade system, there was a surge of activity in the latter part of the 1990s designed to sharpen the ILO's performance in relation to labour standards.

One major outcome of that activity was the ILO Declaration on Fundamental Principles and Rights at Work and its 'Follow-up', adopted by the International Labour Conference at its 86th Session, in June 1998. The Declaration obliges all ILO member states, even if they have not ratified the Conventions in question, to respect, promote and realise the following principles: freedom of association, effective recognition of the right to collective bargaining, elimination of all forms of forced and compulsory labour, effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

The 'Follow-up' is promotional in nature and will provide a new avenue for the flow of information about these rights and principles as they relate to economic and social developments needs. It is not intended as a substitute for the established supervisory mechanism for ILO Conventions and Recommendations.

Your Voice at Work is the first Global Report to be released under the ILO Declaration on Fundamental Principles and Rights at Work. The report is a mechanism for monitoring progress in relation to the commitments made by governments at recent world forums, including the Ministerial Conference of the World Trade Organization in Singapore and the World Summit for Social Development in Copenhagen.^{6[6]}

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises^{7[7]} are recommendations by governments to MNEs operating in or from the countries that adhere to the Guidelines (the OECD members plus Argentina, Brazil, Chile and Slovakia).

The Guidelines are part of the 1976 OECD Declaration on International Investment and Multinational Enterprises which provides a framework for international investment that clarifies both the rights and responsibilities of the business community. They are not legally binding

^{6[6]} See ILO website: www.ilo.org.

^{7[7]} Extensive information on the Guidelines is available at: www.oecd.org/daf/investment/guidelines.

but, according to the OECD, they are the only comprehensive, multilaterally endorsed code of conduct for MNEs covering a broad range of issues in business ethics including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology.

The OECD claims that Governments are committed to promoting the observance of the Guidelines and that the Guidelines enjoy the support of both the business community and labour federations. The advisory bodies to the OECD - the Business and Industry Advisory Council (BIAC) and the Trade Union Advisory Council (TUAC) - have endorsed the principles of the Guidelines and have an active role in applying them. The advisory bodies participated actively in the recent review of the Guidelines along with a number of non-governmental organisations.

The recent review of the Guidelines sets new and explicit standards for MNEs. The reviewed Guidelines cover the elimination of forced labour, exploitative child labour, whistleblower protection and the precautionary principle. The Guidelines make it clear that MNEs have a shared responsibility to contribute to the promotion of and respect for international human rights standards and sustainable development. The commentary to the Guidelines refers explicitly to key international standards and agreements, including the Universal Declaration of Human Rights.

One of the key goals of the review was to strengthen the implementation of the Guidelines. The institutional set-up for promoting implementation of the Guidelines consists of three main elements: the National Contact Points (NCPs); the OECD's Committee on International Investment and Multinational Enterprises (CIME); and the advisory Committees of business and labour federations.

NCPs are responsible for encouraging observance of the Guidelines at the national level and for ensuring that the Guidelines are well known and understood by the national business community and other interested parties. The OECD sees NCPs as being accountable to their national constituencies as well as to their peers and the CIME. As a consequence of the review, NCPs are now asked to report annually on their activities.

Business representatives argued strongly during the review that the Guidelines should not be mandatory. They were successful in achieving this outcome. NGOs which were closely following the review process have expressed grave concern over this concession arguing that is fundamentally out of step with the experience and expectations of civil society organisations who have tried to hold MNEs accountable for their activities. As a result, NGOs have committed themselves to continuing to call for a binding international instrument to regulate the conduct of multinational corporations.

Codes of Conduct

A number of large, successful and high profile corporations have been at the forefront of developing and implementing voluntary codes of conduct which in various ways address issues related to human rights, social protection and environmental responsibility.^{8[8]} Some of the more widely publicised codes are those adopted by Levi Strauss, the Gap, Reebok and Nike – all of whom are in the textiles, clothing and footwear sector. In addition, oil companies, mining corporations and even coffee shop chains have adopted codes.

Some industry groups have adopted codes or programs which respond to criticisms about the impact of their enterprises on local communities. For example the "Project to Eliminate Child Labour in the Soccer Ball Industry in Sialkot Pakistan" is a joint project being implemented by the ILO, UNICEF, SCCI, Save the Children UK and the Pakistan Bait-ul-Mal and Bunyad Literacy Community Council in response to criticisms about the impact of the industry on children.

^{8[8]} For a comprehensive review of codes of conduct and other ways in which business is addressing human rights concerns see: *Human Rights, Corporate Responsibility - A Dialogue*, Rees and Wright Eds., Pluto Press, 2000.

Another approach has been the use of social labeling schemes which involve some mechanism for certifying that products and/or manufacturers comply with certain standards. National responses have been taken in the case of carpet manufacturing. For example the "Kaleen" label was introduced by the Government of India to verify carpets that have been produced without the use of exploitative child labour.

These initiatives show that some businesses are concerned about their brand image as well as the broader implications of their operations in countries where they invest in order to take advantage of cheaper labour and other comparative advantages. In some cases, companies are responding to shareholder concerns but in the main the pressure has been driven by consumer sentiment and concern on the part of the business that bad press will affect the bottom line. Trade union pressure has had a mixed impact, reflecting in part the traditional divide between organised labour and management but also, and importantly, the perception (whether accurate or otherwise) that trade unions in developed countries are being motivated by self-interest and that they are pursuing a protectionist agenda.

Individual corporate responses – the case of Shell

Shell has adopted nine Principles which apply to all its business affairs and describe the behaviour expected of every employee. According to Shell, "the Principles are based on honesty, integrity and respect for people - our core values. We believe in the promotion of trust, openness, teamwork and professionalism, and in pride in what we do." Shell claims that it was the first major energy company to support publicly the United Nations Universal Declaration of Human Rights.

The Principles have existed in a written form since 1976. Recent revisions reflect heightened public interest in human rights issues and the emergence of the concept of sustainable development. Shell states that all Group companies are expected to comply with the Principles as a matter of course and that in joint ventures, Shell uses its influence to persuade its partners to adopt and apply the Principles. Shell also says explicitly that it expects contractors to conform to the Principles in all aspects of their work with Shell companies.

Shell has also developed a series of management primers. Three of these are of particular interest:

1. *Business and human rights* – developed with the assistance of independent experts as a guide to the international human rights framework and specific standards. It has been designed to offer staff guidance in dealing with human rights issues which arise in the course of their work
2. *Business and child labour* – described by Shell as dealing with a complex problem which affects all regions of the world. The primer is a guide for Shell managers which explains how they should deal with the issue
3. *Dealing with bribery and corruption* – drafted with input from expert groups including Transparency International.

Shell has implemented a very high profile and sophisticated communications strategy in response to the criticisms leveled at the company. In glossy, full colour double page ads in respected international magazines, on its website and through its own senior management Shell has gone public with a slick message based on a commitment to "sustainable development, balancing economic progress with environmental care and social responsibility". According to Shell's new-look governance strategy, there is no choice between profits and principles, responsible corporate citizens have to achieve the former while respecting the latter.

While these corporate statements are laudable, there are many critics who question whether this is a genuine commitment to ethical values or simply a clever, and ultimately cynical,

marketing ploy. The answer to this question will ultimately be seen in Shell's continuing compliance with its own corporate ethos.

Trade-related approaches

At a global level there have been efforts since the 1970s to address the concerns raised by the activities of MNEs in the context of the international trading system. Both the OECD and the World Bank have conducted research on the linkages between human rights (mainly core labour standards) and the behaviour and profitability of MNEs.

There are currently a range of mechanisms, agreements, declarations and proposals that seek to link respect for human rights with global trade rules. The most significant ones include the European Union's Generalised System of Preferences (GSP), the United States' own GSP and Most-Favoured Nation (MFN) trade-based mechanisms, the Side Agreement on Labor under the North American Free Trade Agreement (NAFTA), the Delhi Declaration adopted by non-aligned and developing nation labour ministers in 1995, and the proposal for a social clause in the World Trade Organisation.

Trade-related approaches are highly contentious. They are strongly opposed by business, have little support among governments and are viewed with suspicion by developing nations wary of protectionism by the developed economies. However, they remain on the agenda and have strong support amongst civil society organisations.

Social Summit + 5

The UN General Assembly Special Session on the Implementation of the Outcome of the World Summit for the Social Development and Further Initiatives (known as *Social Summit + 5*) took place from 26 to 30 June, 2000 in Geneva.^{9[9]} Its purpose was to review global progress in social development since the World Summit for Social Development held in Copenhagen in March 1995. It was one in a continuing series of follow-ups to the United Nations global conferences held during the 1990s.

The Social Summit +5 sought to address problems arising from globalisation within the context of the need to give global markets a human face. In the words of the Director of the UN Division for Social Policy and Development, Social Summit +5 presented an

extraordinary opportunity to really move the global social agenda forward. Delegates have shown that there is a new willingness to discuss solutions that offer vast possibilities. Globalisation, so far, has helped the wealthy become wealthier, and social justice has been largely ignored. We need new rules of the global game to ensure that people's basic needs, such as health, education and a well-paying job, are met.^{10[10]}

Of particular interest in the context of this paper was the proposal put forward for social guidelines for global financial institutions. Summit participants called for businesses operating in the global economy to recognise and accept responsibilities in relation to business and human rights.

However, other issues on the agenda which are also relevant to the topic at hand covered the impact of globalisation on social development, workers rights and the social responsibilities of business, trade and market access for developing countries, social protection, development assistance and debt reduction, reducing international financial volatility, mechanisms for the financing of social development strategies; trade and development; and tax reform.

^{9[9]} Conference website for background material: www.un.org/esa/socdev/geneva2000. For a copy of the Secretary-General's "Millennium Report" and documents related to the World Summit for Social Development+5, see also: www.globalsolidarity.npaid.org.

^{10[10]} See conference website quoted above.

In relation to tax policies, participating states agreed to develop appropriate means of international cooperation in tax matters and to look at ways of appropriately taxing the profits of multinational enterprises earned in different jurisdictions. A provision to remove tax allowances for bribes remains under consideration, as do provisions for limiting tax shelters and tax havens. The long-standing proposal for a tax on international financial transactions (the "Tobin tax")^{11[11]} was also addressed and the proposal to further discuss the feasibility of such a tax remains on the table.

World Bank Development Forum

The Panos Institute (an independent non-governmental organization working to stimulate open debate on development issues, and particularly to facilitate access to such debates by people in developing countries) and the World Bank Institute co-sponsored a month-long public electronic conference, open to global participation, on "Globalisation, Development and Poverty", which ran throughout May 2000.^{12[12]}

The aim of the e-conference was to clarify the dimensions of the debate, the state of our knowledge of the key issues, the main areas of disagreement and the areas of greatest need for further analysis. This conference laid the groundwork for a proposed longer series of electronic conferences over the next several months devoted to a more in-depth investigation of the issues. It is hoped that these e-conferences will augment the public debate on the impact of globalisation on the world's poor that has already taken place in the context of recent international meetings, most notably the annual meeting of the World Bank and IMF in Washington, DC.

The e-conference^{13[13]} provided a venue for an inter-disciplinary dialogue involving activists, scholars, development specialists, staff of international institutions, the media and NGOs. Participants posted messages in English, French, Spanish and Portuguese. World Bank staff acted as moderators and prepared weekly summaries of the debate which were published in all 4 languages and are available at the Forum's website (which also contains useful links and resources).

The conference was organised around four themes, each of which was held over a one week period:

Week 1: Globalization, Development and Poverty: what do we know?

Week 2: Poverty, Basic Needs, and Development

Week 3: Modes of Development

Week 4: Whose Development? Globalization, Empowerment and the Poor

SOME ISSUES

The brief survey presented above is descriptive. The scope of this paper does not allow for a critical evaluation of the particular strengths and weaknesses of the individual initiatives cited here. However, there are a number of overarching issues which have been highlighted below because they draw attention to some of the more contentious areas in the current debates on corporate governance and human rights.

Setting the standards

^{11[11]} The idea of levying a small (0.1 to 0.5 per cent) tax on international currency transactions was first raised in the 1970s. The spectacular growth of foreign exchange trading and speculative capital transfers in the 1990s together with the growing need for the financing of international cooperation to promote equitable and sustainable development, has renewed interest in the idea of a Tobin tax.

^{12[12]} Hosted by the World Bank's online discussion facility, the Development Forum -

<http://www.worldbank.org/devforum>.

^{13[13]} Participants took part in an e-mail discussion through: join-globalization@lists.worldbank.org.

A key question concerns the actual content of codes of conduct, guidelines or statements of principle. It is crucial that they be consistent with the minimum standards which have already been agreed to in relevant international human rights instruments, declarations or programs of action.

In addition, to ensure that the standards being adopted are meaningful, it is important to ensure that civil society is able to play an appropriate role in the standard setting process.

Mandatory vs voluntary standards – the question of monitoring and enforcement

The history of the ill-fated United Nations Code of Conduct on Transnational Corporations^{14[14]} highlights the stark divide between business, which insists on voluntary, non-binding standards that employ a self-enforcement mechanism, and civil society organisations which insist on transparency of procedures as well as outcomes, with strictly limited grounds for confidentiality and a truly independent watchdog with appropriate oversight/enforcement powers.

In the case of the OECD Guidelines, concerns regarding the proposed mechanism for their implementation have been most explicitly articulated by a group of NGOs representing environment, development, consumer and human rights interests in a “Statement to Governments adhering to the OECD Multinational Enterprise Guidelines from interested NGOs”^{15[15]}.

The key concern of NGOs is that

...the OECD Governments chose a combination of voluntary low level standards with a weak implementation mechanism, which in some ways offers the worst of both worlds. ...^{16[16]}

NGOs have also indicated that they intend to observe and, where possible, participate in the implementation of the Guidelines by, for example, bringing forward specific instances of grave concern.

NGOs have urged governments to adopt implementation mechanisms that guarantee global application and implementation of the Guidelines.

NGOs have also stated that if “Governments fail to implement the Guidelines vigorously, transparently and effectively world-wide, then NGOs will be left with no option but to actively and publicly oppose the Guidelines.”

Legislation vs persuasion

Arguments have been put forward that national corporate law has to be used to ensure that companies limit their social and environmental damage. This argument draws on analogies with approaches to problems such as drink driving where legislation and enforceable legal sanctions are an indispensable part of a broader strategy aimed at changing behaviour. The alternative view is that the focus should be on cultural change because it is only in this way that businesses will “own” the values and ethical standards and have a commitment to incorporate them into their business practices.

This is an interesting question in the context of calls by civil society organisations and the Forum that non-state actors (in particular MNEs) should be bound by international human rights standards. Given the “soft” nature of international law, perhaps some progress in

^{14[14]} For some background to this see: *The United Nations Code of Conduct on Transnational Corporations*, UN Centre on Transnational Corporations, UNCTC Current Studies, 1988 ISBN 1-85333-085-X

^{15[15]} For more information and to sign on to the NGO statement, e-mail: Pieter van der Gaag

<pjvdgaag@anped.antenna.nl>.

^{16[16]} see the NGO Statement, *ibid*.

introducing appropriate provisions at the level of domestic (national) corporate law could provide leverage for bringing about an acceptance of the notion that MNEs should be bound by public international law.

Citizens vs consumers

Often the basic motivation for adopting the “triple bottom line” approach is defensive – in that business is worried that a bad corporate image will harm profits. In addition at the international level, in the words of the UN Secretary-General, there is a “fear that, if we do not act, there may be a threat to the open global market, and especially to the multilateral trade regime.”^{17[17]} Consumer power carries some weight and clearly it is important to make strategic use of this fact in the struggle to protect and promote human rights.

However, as the notion of responsible corporate behaviour experiences a renaissance following the 1980s ‘decade of greed’, there appears to be a corresponding, and disturbing, tendency on the part of governments to leave the matter of regulation in a multitude of areas in the hands of the private sector. In placing all their trust in the power of the market and consumers, governments are weakening their commitment to the rights of citizens so that even in the case of necessities like health, housing, education and social security the citizen as holder of human rights is being displaced by the consumer and the creed of customer service.

This is an issue which national human rights institutions should be concerned about. If the international human rights standards developed over the past fifty years are to have any relevance, there must be a continuing commitment on the part of governments to accept, and fully discharge, their responsibilities in international law to promote and protect those rights. National human rights institutions clearly have an important role to play in ensuring governments do just that.

Corporate philanthropy vs state responsibility

Partly as a consequence of the prevailing political orthodoxy that promotes small government and partly as a consequence of the stupendous wealth of certain individuals and corporations which have come to epitomise the success of the new global economy, corporations are being called upon to fund a whole range of things that were previously state funded. Businesses see this as an effective way to bolster their image as good corporate citizens. Governments, too, are more than happy to see corporate largesse fill gaps in public spending.

Big information technology and fast food corporations supply computers and other educational aids to schools, large drug companies are working with charity organisations to combat AIDS (including through direct financial contributions worth tens of millions of dollars)^{18[18]} and even United Nations agencies are increasingly turning to the corporate sector to fund country programs in parts of Africa where, for example, many donor governments seem to have simply lost interest.

But does the corporate philanthropy come at a price? Can there be such a thing as a free (business) lunch? Civil society organisations, in particular international development NGOs, are worried about the conflicts of interest that certain public-private arrangements can create. If a large foreign-owned mining company provides the financial basis for a whole country development program, how independent will that development assistance be and how strongly will IGOs or NGOs dependent on that funding be in monitoring the human rights performance of their benefactor?

Similarly, there are concerns that the move by UN agencies to establish national support committees in individual countries in order to compete for the corporate philanthropic dollar

^{17[17]} Address to Commission on Human Rights, Press Release SG/SM/7346HR/CN980 available at: www.un.org

^{18[18]} *The Economist*, July 15 – 21 2000, p16 and pp81-83.

will not only give governments an out for their own failure to provide adequate contributions to UN budgets but will again give corporations too much sway over policies and programs.

Better policy approaches by government

In focusing on the need for business to embrace the concept of social responsibility it is critical not to lose sight of the role of government which, in the final analysis, is supposed to reflect the democratically expressed wishes of its citizens. Good corporate governance can only happen within the context of good governance. Governments must continue to fulfill their obligations in those areas of social, economic and trade policy which are – or ought to be – the core business of government. These areas are defined in one respect by the provisions of the key international human rights instruments to which states are parties.

The foregoing also suggests that national human rights institutions must play a stronger role in the public debates over these issues as well as the policy development and implementation process.

At the regional level two recent events show that both governments and national human rights institutions are looking at ways to tackle some of these issues.

The first event involved social policy ministers and their delegates from Australia, the People's Republic of China, Indonesia, Malaysia, New Zealand, Singapore and Thailand who met in Brisbane, Australia on 15 and 16 June 2000. The meeting was conceived as a means to "help to raise the profile of social policy, identify social strategies that complement policies on economic growth and restructuring and contribute to social progress and social stability in the region."^{19[19]} Reflecting what was seen as a successful initiative, the participants resolved to seek approval from their respective governments to establish the meeting as an ongoing mechanism for ministerial dialogue on social policy in the region.

Two of the key issues which participants identified included:

- addressing the implications of globalisation and technological change for social policy, with an emphasis on life long learning and employability; and
- encouraging a greater role for the private sector/business in supporting communities.

The second event occurred from 2- 4 December 1999, when the Indonesian National Commission on Human Rights, in cooperation with New Zealand Official Development Assistance, organised a national workshop on human rights to address the topic of *Human rights good governance and civil society*. As part of the national workshop, three pre-workshop sessions were held one of which looked at the question of *Corporate governance and corporate social responsibility*. This pre-workshop session looked at the issue in the context of the Asian financial crisis and the problem of entrenched corruption. A plan of action was developed and is available as part of the full report on the National Workshop.^{20[20]}

CONCLUSION

There are important, positive developments occurring in the area of human rights and corporate responsibility. However, there are aspects of these developments which are cause for concern.

Firstly, civil society organisations have expressed concerns that the content and mode of implementation of initiatives such as codes of conduct or guidelines for business enterprises

^{19[19]} see Communiqué at: www.facs.gov.au

^{20[20]} Human Rights, Good Governance and Civil Society, Indonesian National Commission on Human Rights, 2000, ISBN 979-95552-3-X.

are not sufficiently robust to make a real difference. These concerns also go to the issue of who will monitor businesses to ensure that they live up to their promises.

Secondly, it appears that efforts on the part of businesses to improve their image as good corporate citizens are being used by governments to cover up their own weakened commitment to providing services and funding in crucial areas such as social welfare, education, health, housing and overseas development assistance. This reduced commitment by governments is contributing to a trend among inter-governmental agencies whereby, in the absence of adequate funding by UN member states, they are turning to private fund-raising initiatives and partnerships with corporations.

This paper has attempted to draw Forum Members' attention to some of the current developments in the broad and diverse field of human rights and corporate responsibility. The paper is also intended to serve as a resource document to assist Forum Members to further explore specific matters of particular interest or concern to them.

For the Forum and its member institutions there are two areas to which they might wish to devote closer attention:

Firstly, how can the Forum and its member institutions keep abreast of developments and ensure that they make use of appropriate opportunities to participate in, and contribute to, relevant debates and initiatives?

Secondly, how might national human rights institutions, given their mandates, institutional linkages and expertise, contribute to the development of new approaches at the national level in the application of corporate law to promote better standards of corporate governance?
