“Keep Your Eyes Open”

FIDH calls for support of the *UN Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights*, bringing particular attention to the case of China

February 2006
Press release

Paris, 8 November 2005 – Using China as an example, a country where the economic boom coexists with the most flagrant human rights violations, the FIDH launches a campaign to raise awareness and « harass » businesses in a constructive manner.

It is now globally recognized that businesses have the obligation to promote, respect and protect human rights within their sphere of influence.

Aware of the voluntary initiatives taken by enterprises as part of their social responsibility, the FIDH calls for their harmonisation at the international level and supports the United Nations Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

This text, drawn up by the UN Sub-Commission on the Promotion and Protection of Human Rights sets out, in a single document, the rights and obligations derived from the Universal Declaration of Human Rights and the conventions of the International Labour Organization (ILO), that are applicable to companies and States.

On the occasion of its « Keep Your Eyes Open » campaign, focusing on China, FIDH calls on companies to support this text publicly and to join transnational corporations that have decided to put the Norms to the test, under the patronage of Mary Robinson, the former United Nations High Commissioner for Human Rights.

This campaign is aimed at businesses and at each and every one of us. It focuses on China as an example: the country is considered to be the driving force of global growth and the new El Dorado for businesses, whilst remaining nonetheless a dictatorship (torture, arbitrary executions, forced evictions, violations of fundamental rights, etc.).

Rather than closing their eyes to this situation, enterprises that invest in China can contribute to bringing about a real change by keeping their eyes open and can seek to ensure respect of human rights within their sphere of influence. The Draft Norms on the Responsibilities of Transnational Corporations provides them with the best framework for such actions.
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Human rights and Business:
towards a more effective legal framework

Non-state actors have been empowered by economic and financial globalisation. This power can be put to use in the service of human rights. Companies, especially transnational corporations, are able to influence the human rights situation in the countries in which they are established. They have a duty to respect human rights and the power to promote them and make them respected.

This is the reason why, in August 2003, the UN Sub-Commission on Human Rights adopted draft norms directed at companies and transnational corporations. These norms set out a legal framework to permit them to effectively ensure respect for human rights. They make up for the lack of coherence and monitoring of the current initiatives.

➔ Current initiatives remain inadequate

- Corporate Social Responsibility (CSR)

What is CSR?

The reconciliation of morality and profit. Corporate Social Responsibility (CSR) means that a business must not be concerned solely with its profitability and growth, but also with its social and environmental impact. In particular it must pay more attention to the concerns of its employees, shareholders, customers, suppliers and the civil society represented by the NGOs.

What is the principal advantage for corporations?

Long-term investment. Although setting up social responsibility policies means further cost for a company, it also represents real long term investment. A great many companies have realised that taking human rights into account in their policies and strategies for establishment implies sustained development. Better still, considerable future savings in costs can be made by anticipating sensitive human rights situations.

Generally speaking, how can it be put into action?

More and more companies have introduced codes of ethics and charters of good conduct. Some now make explicit reference to human rights, in particular to the Universal Declaration of Human Rights (UDHR) and the Conventions of the International Labour Organization (ILO).

What are the limitations of CSR?

Lack of harmonisation. The quality of codes of good conduct is extremely variable. Some include references to international instruments such as the ILO tripartite Declaration of Fundamental Principles and Rights at Work, or the Universal Declaration of Human Rights, others don't. They are also subject to interpretation. To what extent do they prohibit investment in certain countries where massive violations of human rights occur? What about complicity with governments? What are the limits of the “spheres of activity and influence” of transnational corporations and, consequently, what are the limits of their responsibility?
The lack of external monitoring. The fact that commitments made by companies and the obligations they impose on their suppliers are not necessarily subject to independent, external monitoring leads to a loss of credibility.

As a result, companies that are the most committed are not necessarily recognised as such by the public and consumers. Their interest in effectively respecting and ensuring respect for human rights is disputed. Above all, the subjective understanding of their obligations by companies takes priority over their adherence to an inadequately formulated common rule.

- The Global Compact: a first step taken under the auspices of the UN

What is the Global Compact?

A frame of reference and platform for dialogue. The Global Compact is an initiative launched by Kofi Annan in Davos in 1999. He invited the elite members of the private sector to demonstrate their civil responsibility by joining the UN, its relevant specialist agencies and Non-Governmental Organisations (NGOs) in implementing shared universal values. He proposed that the 11 great principles inscribed in the Declaration of Human Rights should be respected; they relate to rights of the person, labour and the environment.

The Global Compact “is not a code of conduct but a frame of reference and platform for dialogue designed to facilitate the integration of private sector practices and universal values” of which the UN is the guarantor.

What are its limitations?

The Global Compact does not include any legal constraints nor does it provide for the monitoring respect of the commitments undertaken by the multi-nationals. There is a danger that some companies make use of UN backing to hide practices that are in contradiction with human rights or environmental protection, and that they promote their participation in the Global Compact for advertising purposes. The obligation for participating corporations to publish an annual public report on the way they implement the Global Compact is a step in the right direction, but is clearly not enough.

→ UN Norms on businesses: another avenue to improve respect for human rights

The UN has decided to take another route to make up for the limitations of Corporate Social Responsibility and the Global Compact, especially for their lack of coherence and monitoring. This route has been identified by Working Groups of the Sub-Commission on the Promotion and Protection of Human Rights set up to examine the working methods and activities of transnational corporations.

A new mechanism has been introduced as a result of this work: the Norms on Responsibilities of Transnational Corporations and Other Business Enterprises with Regards to Human Rights, adopted by the United Nations Sub-Commission on the Promotion and Protection of Human Rights at its meeting on 13 August 2003.

Aim: to regulate the issue of the impunity of business companies which are guilty of or partner to human rights violations, and to encourage them to adhere to a set of universal values.
What does this mean in practical terms?

The UN Norms are based on existing international human rights mechanisms and stem from the following principle:

“Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law”.

These Norms are no substitute for State responsibilities

The fundamental role of the State in ensuring the implementation of international law relating to human rights is reaffirmed. The United Nations Norms are not intended to transfer States responsibilities to transnational corporations and other businesses. They are an important attempt to confirm the direct obligations of law-abiding businesses to respect human rights.

What are the general obligations of States and businesses?

- **State obligations:**
  - To promote, secure the fulfilment of, respect, ensure respect of and protect human rights, including ensuring their respect by transnational corporations and other business enterprises.
  - To establish and reinforce the necessary legal and administrative framework for ensuring that the Norms and other relevant national and international standards are implemented by transnational corporations and other business enterprises.
  - To implement the Norms and monitor their implementation. The Norms may not be used by States as a pretext for not taking steps to protect human rights.

- **Obligations of business enterprises:**
  - To promote, secure the fulfilment of, respect, ensure respect of and protect human rights, including ensuring their implementation in the countries in which the company has an office or carries out its activities.
  - To ensure that their activities do not contribute, directly or indirectly, to violations of human rights.
  - To be aware of the effect of their principal activities and major projects on human rights, in order to avoid complicity in any violation.
  - To ensure that no direct or indirect benefit is gained from human rights violations of which they are aware.
➢ To abstain from any activity that would weaken the rule of law or the efforts made by a government or other body to promote and ensure respect of human rights.

➢ To use their influence to contribute to the promotion of human rights and ensure their respect.

• Specific obligations

These relate to six areas of priority:

➢ The right to equal opportunity and non-discriminatory treatment
   Two types of obligation are placed on States and business enterprises: a positive obligation, that of promoting equal opportunities; and a negative obligation, that of prohibiting discrimination on grounds unrelated to the employment, such as race, colour, state of health, etc.

➢ The right to security of persons
   This prohibits participating in or benefiting from war crimes or crimes against humanity and ensuring the security of enterprises through arrangements that are contrary to international human rights law. The objective is to fight abusive use of force against workers.

➢ Labour rights
   The use of forced labour is forbidden, as is economic exploitation of children. Only children aged between 13 and 15 years may work but their tasks must be light, undangerous and compliant with national legislation. Furthermore, business enterprises have the obligation to provide a safe and healthy workplace for employees. A series of mechanisms also set out maximum working hours.
   Finally, employees must be provided with remuneration that ensures an adequate standard of living for them and their families. This includes prohibition of debiting pay on disciplinary grounds, and respect of the principle of equality of remuneration. Collective bargaining and freedom of association must be ensured.

➢ Respect for national sovereignty and human rights
   This includes, in particular, respect for the right to development, respect for the rights of indigenous communities and prohibits offering, promising or accepting bribes.

➢ Obligations with regard to consumer protection
   The focus here is on fair business, marketing and advertising practices.

➢ Obligations with regard to environmental protection
   Business enterprises are required to respect the precautionary principle. Even though its contents are difficult to define, this principle is recognised by a number of companies and regional organisations such as the European Union. The guiding principle for companies whose activity has an environmental impact should be that of sustainable development.
China: blinded by the economic El Dorado

With an annual growth rate of 9.5%, China's economy is flourishing.

➔ China: a strong position in the global economy

- **7th most powerful world economy in terms of GDP:** US $1,409 billion in 2003.

- **4th largest manufacturing industry after the USA, Germany and Japan:** in 2000 China generated more than 7% of the world manufacturing value-added.

- **4th largest goods exporter:** US $438 billion, representing 5.9% of the world total in 2003.

- **3rd largest goods importer:** US $413 billion, 5.3% of the world total in 2003.

- **9th largest exporter of services:** US $44.5 billion, 2.5% of the world total.

- **8th largest importer of services:** US $54 billion, 3.2% of world purchases.

**Principal foreign trade commodities (2002)**

- Imports: electronic parts, computerised equipment, plastic items, electrical supplies, telecommunications equipment;
  - Exports: electronic material, leather goods, electrical supplies, telecommunications equipment, crude oil.

**Principal trading partners**

- **Customers:** USA (1st). Hong Kong (2nd). Japan (3rd). European Union (4th).
  - **Suppliers:** Japan (1st). European Union (2nd). Taiwan (3rd). USA (4th). South Korea (5th).

➔ A new El Dorado for foreign businesses

- China represents **over one billion consumers.**

- An abundant supply of cheap labour

  The level of Chinese wages is one of the main attractions for Western producers of manufactured goods. The theoretical minimum wage is equivalent to 50 euros a month. It can easily increase to 100 euros according to working hours and overtime work.
China: the Human Rights situation we prefer not to see

→ Human rights in China: a worrying situation

The repression of dissident voices, economic discrimination, violations of social and economic rights, abusive criminal law etc. The Chinese authorities continue their systematic violation of human rights. This is despite an article on human rights introduced into the Constitution in March 2004 relating to the abolition of the system of “custody and repatriation” and the draft legislative reforms now under consideration.

→ Continued repression of dissident voices

• Increased control of journalists and cyber-dissidents

In 2004, the Chinese government continued to control the flow of information through increasingly sophisticated and harsh techniques. Over 10,000 Internet cafes in China have been closed down in the past two years, and new or existing cafes are required to install monitoring software on individual computers. Laws on State secrets criminalise the dissemination of all information that has not been officially vetted by the government. These laws pose a threat to individuals that seek to highlight human rights abuses, and have been used to arrest and prosecute journalists and cyber-dissidents.

Arrested and prosecuted

Ouyang Yi, a political dissident, was sentenced to two years in prison in March 2004, on the grounds of “incitement to overthrow state power” for posting articles on Internet calling for democratic reforms.

Kong Youping and Ning Xianhu, members of the China Democracy Party (CDP) were sentenced to 15 years and 12 years imprisonment in September 2004, for “subversion of state power”. They had posted articles on the Internet in support of the CDP.

Huang Jinqiu was sentenced to 12 years imprisonment in September 2004, after being found guilty of “subversion of state power”, because of a number of essays he had published on the Internet.

Zhao Yan, a journalist employed as a research assistant by the New York Times, was arrested in Shanghai on 16 September 2004 on “suspicion of illegally providing state secrets to foreigners”. Authorities suspected him of being a source for a September 7 story anticipating Jiang Zemin’s resignation as head of the Central Military Commission.

System of administrative detention that has permitted the detention of thousands of people in the past, in particular immigrant workers, street children and the mentally sick. They were often subject to ill treatment during their detention.
Agreements between IT global corporations and the Chinese government have entrenched the internet censorship in China. Under pressures from the authorities, Google has recently launched a self-censoring Chinese search engine which prevents Chinese users to have access to information concerning democracy, human rights, etc. Similarly Microsoft launched last year a portal that blocks use of words such as freedom and Tibet. The Company Yahoo! has allegedly helped the Chinese government in its prosecution against journalists by revealing their email account details to authorities. The latest technology company to admit accepting censorship to do business in China is Skype, who acknowledged using filters to remove controversial topics such as ‘Falun Gong’ or ‘Dalai Lama’ from messages on its Chinese service.

### Arrested and prosecuted

Shi Tao, a journalist who worked for the daily Dangdau Shang Bao (Contemporary Business News), received a 10-year prison term on 27 April 2005, for sending information about the internal government directive which provided guidelines to Chinese journalists for reporting during the 15th anniversary of the Tiananmen Square crackdown. The verdict reveals that Yahoo! provided the Chinese investigating organs with detailed information which helped to link Shi Tao's personal account with the message containing information considered as « State secret ».

Li Zhi, ex-civil servant from Dazhou (South-West), was sentenced on December 10, 2003 to eight years in prison for “inciting subversion.” He had been arrested in August 2003 after he had criticized in online discussion groups and articles the corruption of local officials. Yahoo! allegedly provided electronic records that led to the imprisonment of Li.

Wang Xiaoning was sentenced to 10 years in prison in September 2003 on the charge of “incitement to subvert state power” for publishing and distributing electronic journals by e-mail and through Yahoo! Groups, advocating democratic reform and a multi-party system. Among the evidence cited in the judgment was information provided by Yahoo! Holdings (Hong Kong) Ltd.

- Increased repression of petitioners and demonstrators

Because economic liberalisation and growth has benefited only a minority of Chinese citizens, social unrest is on the rise throughout the country. Increasing numbers of Chinese citizens petition and protest to all levels of government, particularly the local level, on issues as diverse as the lack of access to healthcare, unpaid wages, forced evictions and increased corruption. These petitioners are increasingly repressed. The police had arrested over 36,000 of them in September 2004. They were transferred to the basement of the Shijingshan Gymnasium, where public security police forced them to return home. The arrest and persecution of people engaged in criticism of government policy breed a culture of silence and fear.

### Arrested and held in “re-education through labour” camps

In April 2004, Mao Hengfeng was sentenced to 18 months of “re-education through labour”, due to relentless petitioning to secure her rights to back pay and social security. During her detention Mao was subjected to beatings and other ill treatment.

In March 2004, Ma Yaillian was sentenced to 18 months of “re-education through labour” for criticising the inefficiency of the “petition” system that she had used after being forcibly removed during an urban redevelopment plan in Shanghai.
• **Lawyers: increasing political pressure**

Because China's criminal law and criminal procedural law have impact on a range of international human rights, the role of lawyers as defenders is critical, but increasingly difficult. Although the number of lawyers in China is increasing, there is a dearth of criminal defense lawyers, in part due to political and other pressure they face, particularly in cases of state secrets and other politically sensitive issues.

**They have been subject to pressure and arrest**

Zheng Enchong, a lawyer representing residents facing forced evictions, is still in prison. He has not been allowed any contact with his own lawyer, and during a family visit on 10 November 2004, prison wardens dragged him from the visiting room when he began to discuss the evictions lawsuit.

Guo Guoting, Zheng Enchong’s lawyer, has been warned on several occasions by the authorities to stay away from the Zheng’s case, and his clients have been subject to harassment. In September 2004, Guo was forced to quit his practice.

• **Continued persecution of ethnic and religious minorities**

In 2004, persecution of groups such as Tibetan Buddhists, Uighur Muslims, unofficial Christians and Falun Gong practitioners continued. In August 2004, the Minister of Public Security put the Falun Gong at the top of the Chinese Communist Party’s list of the six biggest threats to social stability. In Xinjiang, the fight against terrorism has continued to be used as a pretext for repressing the Uighur activists, including non-violent activists. Furthermore, while the Han population in Tibet increases, the cultural and religious rights of minorities continue to be violated.

**Sentenced to imprisonment**

In August 2004, Liu Fenggang, Xu Yonghai and Zhang Shengqi were tried and sentenced to prison. The trial was held in camera. They were accused of “illegally providing state secrets abroad” because of their roles in producing a report on the demolition of an underground house church in Hangzhou's Xiaoshan District.

➔ **Economic discrimination: a widening economic gap**

In 2004 the gap between rich and poor grew considerably. The Chinese government admitted to the first rise in poverty since 1978. Despite an economic growth rate of 9% the previous year, the number of farmers living in poverty has increased considerably (800,000 overall). Basic needs such as housing and healthcare continue to be out of reach for the vast majority of Chinese citizens. In late 2004, disputes over forced evictions resulted in numerous protests throughout the country.
The figures speak for themselves with respect to social problems. 27 million employees of public companies have lost their jobs since 1998. Only 76 million urban employees, 5.8% of the population, currently have social cover.

→ Economic and social rights: violations increase

Workers increasingly engage in strikes and protests due to the lack of independent trade unions and unpaid back-pay that in 2004 was estimated at a total of $43 billion. Those perceived to be the leaders of labor protests are systematically detained and arrested.

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<th>Arrested for taking part in demonstrations</th>
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<tbody>
<tr>
<td>In May 2003, Yao Fuxin and Xiao Yunliang, two labour leaders, were arrested and sentenced respectively to 7 and 4 years imprisonment. They were found guilty of “subversion of state power” because of their role in workers’ demonstrations.</td>
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→ Arbitrary criminal proceedings and mass executions

China holds the world records in number of persons executed each year. Statistics on the death penalty are state secrets. Since they are not made public, it is difficult to make an assessment. The number of executions is estimated at between 3,000 and 10,000 per year.

The administration of the death penalty blatantly violates international human rights laws: it is used for both violent and non-violent crimes, and trials frequently fall short of fair trial requirements. Torture, too, remains widespread, notably to extract confessions. Furthermore, despite announcements that the “re-education through labour” system will be reformed, this form of administrative detention which violates fundamental rights, persists.

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<th>The case of Hada, a conscientious objector from Inner Mongolia</th>
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<td>In 1996 Hada was sentenced to 15 years in prison after being found guilty of “separatism” and “espionage” in connection with activities of the Southern Mongolian Democratic Alliance that advocates preservation of Mongolian culture and self-determination. In December 2004, Hada, who is being held in Chifeng Prison, was considered to be in extremely poor health. He is routinely tortured and is in need of urgent medical attention.</td>
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Campaign presentation

A campaign with an international focus

This campaign has been designed for easy "customisation" by the 142 national FIDH leagues, according to their activities in relation to the business world.

The four versions (French, English, Spanish and Chinese) use entirely black typography and the sole condition is that the universally used theme of the optician’s eye chart should be reproduced. The size of the text decreases line by line as a means of appealing for vigilance. It begins with text that “sells” and then gradually evokes a country’s human rights situation, ending with a minuscule “but we can’t talk too much about it because contracts worth four billion euros are at stake” (in the case of France), reflecting the prevailing ambiguity regarding the issue.

French campaign launch in November, followed by other countries

In France, after press announcements in the summer, the campaign was fully launched in November 2005, through the press by the distribution of 250,000 postcards. FIDH member organisations will take up the campaign later on.

A campaign that exists thanks to generous support

FIDH thanks the agency TBWA\CORPORATE\NON PROFIT and the media that have donated space free of charge.

If you too would like to support the FIDH and its fight for the respect of human rights by donating space free of charge in your publishing medium, please contact us.

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