



# THE LUTHERAN WORLD FEDERATION

LUTHERISCHER WELTBUND - FEDERACIÓN LUTERANA MUNDIAL - FÉDÉRATION LUTHÉRIENNE MONDIALE

General Secretariat – Office for International Affairs and Human Rights

## CHECK AGAINST DELIVERY

### Sub-Commission on the Promotion and Protection of Human Rights

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Item 4 of the Agenda

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### Globalization and human rights

Joint oral statement submitted by Lutheran World Federation, Habitat International Coalition and International Commission of Jurists

The Lutheran World Federation, Habitat International Coalition and the International Commission of Jurists welcome the Sub-Commission's continuing attention to the **human rights implications of the different facets of economic globalization**, including through the **study process undertaken by Professor Oloka-Onyango and Dr. Udagama**, and the efforts of the **Working Group on the working methods and activities of transnational corporations**. The work being undertaken by the Sub-Commission in this area is well complemented by, inter alia, the progressive and proactive approach being taken by the **Committee on Economic, Social and Cultural Rights**, the latest edition of the **UNDP Human Development Report** (focussing on human rights and human development), and by the work of the increasing number of NGOs which are beginning to employ human rights principles and mechanisms in the promotion of sustainable human-centered development. We hope that appropriate convergences and lines of coordination can be established, particularly between the different elements of the UN system addressing these issues. In this context we would like to draw the attention of the Sub-Commission to a joint workshop on globalisation held on May 6, 2000 by the UN Committee on Economic, Social and Cultural Rights and the International NGO Committee on Human Rights in Trade and Investment, in which HIC and LWF participate. At this meeting one of the main conclusions (see text at [www.unhchr.ch](http://www.unhchr.ch)) was that there was a need for more cooperation between the Sub-Commission and the CESCR in the area of globalization and economic, social and cultural rights.

Professor Oloka-Onyango and Dr. Udagama are correct in saying, in the conclusions of their current report, that what is required is a more balanced approach, which ensures that human rights principles are integrated into the rule-making processes from the outset. The primacy of human rights law over all other regimes of international law is a basic and fundamental principle that should not be departed from". They are also right in saying that "the rules of international trade, investment and finance require urgent reform", and that "the institutions that currently make the rules that govern the processes of globalization as we know them also require reform". We concur with their views that "the assumptions on which the rules of WTO are based are grossly unfair and even prejudiced. Those rules also reflect an agenda that serves only to promote dominant corporatist interests that already monopolize the arena of international trade". We sincerely hope that the authors' mandate will be extended to enable them to continue to map out the major directions of the needed reforms.

P.O. BOX 2100 - ROUTE DE FERNEY 150 - CH-1211 GENEVA 2 - SWITZERLAND

TELEPHONE +41-22-791 6111 - FAX +41-22-798 8616

DIRECT LINE +41-22-791 6364 - E-MAIL [pnpp@lutheranworld.org](mailto:pnpp@lutheranworld.org)

In pursuit of these necessary reforms we strongly endorse the call by the Special Rapporteurs for the Sub-Commission to draft guidelines covering the various regimes and institutions related to trade, investment and finance. We would suggest adding to this list the issues of structural adjustment and debt. In this overall context we feel it is critical that, as the Special Rapporteurs point out, to both “engender” the institutional frameworks of globalisation and to conduct gender specific analysis of globalisation in all its dimensions.

We warmly welcome, given the active involvement of our organisations in these initiatives, the Special Rapporteurs call civil society voices to be heard in this process of reform. This is the only manner in which, we feel, the global economy can be continuously held accountable to the universal principles of human rights and the environment.

### *Intellectual property, TRIPS and human rights*

The Special Rapporteurs rightly point out the need for the Sub-Commission to “carefully carve out the specific and distinct dimensions of the globalisation issue that most appropriately engage its mandate...”.

We strongly feel that one such area deserving the Sub-Commissions urgent attention is the currently undergoing review and of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (or TRIPS). Sub-Commission members may recall that the TRIPS Agreement was one of the package of agreements resulting from the Uruguay Round included in the purview of the WTO. The TRIPS Agreement for the first time linked intellectual property protection to trade, giving the prescribed intellectual property standards a more or less global coverage, and enabling trade sanctions to be applied to enforce them. Somewhat illogically in the GATT/WTO setting, the TRIPS Agreement constitutes a powerful market intervention and regulation, rather than a liberalization.

As Dr. Peter Drahos remarked at a November 1998 panel discussion on intellectual property and human rights, convened by the World Intellectual Property Organization, it is because information has become the prime resource in modern economic life that “the exploitation of information through the exercise of intellectual property rights affects interests that are the subject of human rights claims”. He noted that property rights (including intellectual property rights) “by their nature allow the rights holder to exclude others from the use of this prime resource and so they are likely to produce instances of rights conflicts.”

Whilst the right to benefit from the protection of the moral and material interests resulting from one’s own scientific, literary or artistic production is a human right pursuant to article 15 (1) c) of the International Covenant on Economic, Social and Cultural Rights, the two International Covenants, taken together, “place a discernible emphasis on the interests that humans have in the diffusion of knowledge.”

Amongst other aspects of the current interpretation and implementation of the TRIPS Agreement which raise obvious and very serious human rights issues are the following:

1. The implementation of the TRIPS Agreement has resulted in the restriction of access to patented pharmaceuticals for citizens of developing countries, as has been highlighted by analysis by the World Health Organization, Médecins sans Frontières and others – raising obvious implications for the enjoyment of the right to health.
2. The ‘pirating’ of indigenous and traditional knowledge and designs for commercial exploitation by others pursuant to intellectual property rights, shown to be contrary to human rights law in established jurisprudence, is nevertheless flourishing under the TRIPS regime. Unlike the Convention on Biological Diversity, the TRIPS Agreement does not explicitly protect the interests of indigenous and local communities.
3. The establishment and expansion of plant variety rights and intellectual property protection of genetically modified organisms hold serious implications for food security, and the enjoyment of the

right to food.

4. Stronger intellectual property protection under TRIPS also tends to impede technology transfer to developing countries, particularly through the imposition of higher prices for protected technologies, thereby presenting an obstacle to the universal right to enjoy the benefits of scientific progress and its applications, and to the realization of the right to development.
5. The larger ethical issues surrounding human genome mapping and patenting also carry implications also for the human right to self-determination.

As Dr. Drahos said at the WIPO panel discussion in November 1998, “the rights created through the enactment of intellectual property laws are instrumental rights. Ideally, under conditions of democratic sovereignty, such rights should serve the interests and needs that citizens identify through the language of human rights as being fundamental. On this view, human rights would guide the development of intellectual property rights; intellectual property rights would be pressed into service on behalf of human rights.” The current and contested developments in intellectual property protection have much to do with the fact that those developments have been allowed to become the province of a small and exclusive group “comprised largely of technically minded intellectual property law experts”. Dr. Drahos, an intellectual property lawyer, called for the human rights community and the intellectual property community to begin a dialogue. We hope that that the Sub-Commission will be able to accept this challenge. In this context we would also like to draw attention to the written statement at this session (E/CN.4/Sub.2/2000/NGO/14) by HIC and LWF entitled “The WTO TRIPs Agreement and Human Rights”.

#### *Working methods and activities of transnational corporations*

Amongst the challenges already being courageously grappled with by the Sub-Commission is a response to the human rights impacts of the working methods and activities of transnational corporations. As such dominant actors in the context of economic globalization, it is critically important that the human rights impacts of the activities of TNCs be addressed. We welcome the ongoing efforts towards the drafting of a human rights code of conduct for corporate actors and we consider that further work is indeed required to ensure that the final code provides a comprehensive coverage of the relevant human rights principles. We also welcome the steps being taken to identify a mechanism or process by which the principles contained in such a code may be enforced. We note from the discussion a need to further examine the question of to whom such a code should be addressed – to all commercial actors, or only to TNCs. The full implications of either approach clearly need very careful consideration.

We also consider such a binding legal framework as a necessary correction to the purely voluntary nature of the TNC involvement as envisaged in the UN Global Compact launched on July 26 by the UN Secretary-General. A number of NGOs have recently written a letter to Mr. Kofi Annan expressing “shock upon learning the identities of the corporate partners for the Global Compact and our disappointment in the *Guidelines for Cooperation Between the United Nations and the Business Community*”. We strongly feel that some of the companies known to have records of human rights abuses and environmental destruction are simply inappropriate for partnership with the UN.

#### *Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights*

The draft Optional Protocol to the ICESCR currently before the Commission on Human Rights is of great relevance to the studies and discussions on economic, social and cultural rights underway at the Sub-Commission. This protocol would ensure that persons and groups who are victims of violations of economic, social and cultural rights highlighted in these studies and discussions would have access to an effective remedy at the international level. Unfortunately, the draft optional protocol has so far not received the support it deserves. During the 56th session of the UN Commission on Human Rights, mention was made of the draft Optional Protocol in Resolution

2000/9 (E/CN.4/2000/L.11/Add.1) on the question of the realization in all countries of economic, social and cultural rights. The Commission decided to request the High Commissioner for Human Rights to urge all States to submit their comments both on the report by the Committee on Economic, Social and Cultural Rights on a draft Optional Protocol (E/CN.4/1997/105, annex) and on the options relating to the proposal for a draft optional protocol contained in the report of the High Commissioner (E/CN.4/2000/49).

The LWF, HIC and the ICJ urge the Sub-Commission to support this call to States for comments and to suggest to the Commission, in line with option (b) in the above-mentioned report of the High Commissioner, the formation of a working group in which further consideration of the draft optional protocol will take place. We also call upon the Sub-Commission to express its support to the organisation of an expert meeting on the draft optional protocol by the Office of the High Commissioner for Human Rights, with a report on this meeting to be submitted to the 57th session of the Commission on Human Rights. The Sub-Commission's continued attention to this vital complaint mechanism is entirely appropriate as the High Commissioner herself has urged, in her statement to the Social Summit Review in June 2000, states "to work together to adopt the Optional Protocol."