

Work Group on a Solidarity Socio-Economy – Alliance 21  
Preparatory Meeting for Launching of the Workshop on International Regulations within the context of a Solidarity Socio-Economy in an era of Neo-liberal Globalization  
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## **Global Rules for TNCs in an era of globalization and uncertainty**

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In September in New York, Fernando Cardoso, the former President of Brazil, and Chair of the Panel on UN-Civil Society Relations, said: “Most of today’s critical problems – from environment to protection and financial volatility to AIDS and the drug trade – cut across national jurisdictions. They are global problems that call for global responses... There is a gap between economics and politics, a discrepancy between the interdependence of markets and the lack of effective mechanisms for supervision and control.”

He asserts that “ Citizens are playing an increasingly strategic role in democratic governance...Civil society has also been playing a key role in reversing weaknesses in the existing mechanisms of global regulation.”<sup>1</sup>

In January in Porto Alegre, at the World Social Forum it was said: “Corporations have too much power. The current corporate-globalization paradigm, which prioritizes corporate profit maximization over human rights, labour rights and environmental rights, should be turned on its head to prioritize these universal life values...The movement against excessive corporate power is also a movement to expose its corrupting influence on governments and intergovernmental bodies, in other words, a movement to strengthen democracy, locally, nationally and internationally.”<sup>2</sup>

I. What is the purpose of business, of corporations? of economic activity? of innovation? of enterprise? of development? of capital? of investment? of profit?  
Is it to puff up an unjust, inequitable, rapacious, greed-filled and totally unsustainable elite lifestyle for the rich and famous? (Today’s TV shows in North America would lead one to believe that is what really matters and what everyone aspires to – rich and poor alike.)  
Or is it to produce commodities and services to enhance living and well-being and to create wealth for the purpose of building and maintaining sustainable communities? To achieve the Millennium Development Goals and eliminate poverty and environmental degradation. To make a world fit for children and other living things. Humanity needs a redefined security – and business declares it needs a climate of certainty. Can we have both?

II. Ecological Justice is essential to ensure a sustainable future.  
It requires Global Rules for a Global Community.

I will use an ecological justice framework for discussion which posits that everything is interconnected, that each action affects the whole, that the oikos is one (the Greek word for “household”, and the root of “ecology”, “economy” and “ecumenical”). To understand the role and impact of any one human institution, it is necessary to examine the comprehensive ecological impact its policies and activities have; that is the economic, social and environmental impacts on the whole community – local to global.

In the present, corporations are a fact of life, an undeniable socio-political and economic organized reality, and a force to be reckoned with. They are legal entities but a debate exists about the nature of their “corporate citizenship”. The question is whether we want to or can afford to deny their legitimacy in the social constructs we have devised, or allowed to be manifest, or whether we tackle the difficult task of harnessing them for good and sustainable ends, control their ravages, and make them accountable – as conditionality of their licence to operate.

CSR – Corporate Responsibility – a concept developed and promoted over the last 20-30 years; usually referred to as a voluntary commitment which corporations can adopt. Promoters of CSR include ethical investors, leading businesses committed to sustainability, and parts of civil society, who see it as going beyond elements of legal and regulatory

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<sup>1</sup> Keynote Speech by Fernando Henrique Cardoso, Chair of the Panel on UN – Civil Society Relations, at the DPI – NGO Annual Conference, New York, 8 September 2003

<sup>2</sup> *Corporations have too much power* – CorpWatch and Global Exchange, Porto Alegre 2003

compliance, and encouraging of active participation of all stakeholders in determining a company's standards and benchmarks to meet their needs and expectations. It can go beyond a one-size-fits-all general framework of regulation and set the bar higher.

Examples are the MMSD – Mining and Metals for Sustainable Development Report, and the Responsible Care Program of the Chemical Producers Association.

Corporate Accountability – preferred by environmentalists and NGOs as more verifiable and enforceable – either through statutes, legal and regulatory compliance or through civil legal proceedings. The problem is that the levels of compliance required by national jurisdictions are inadequate, and an international robust legal framework does not yet exist, except in some narrow specific environmental and trade agreements, and therefore corporations, especially those who are trans-national, can easily get around or not comply with existing regulations. This argument maintains that the use of voluntary initiatives undermines any extant legislative requirements as well as progress toward developing new international standards, norms and laws.

One example is the Friends of the Earth call to the WSSD for a Binding Framework Convention on Corporate Accountability.

### III. Comprehensive Frameworks for Assessing Corporate Social Responsibility and Accountability

1.) Principles for Global Corporate Responsibility: Benchmarks for Measuring Business Performance 3– is a model framework that faith-based institutional investors use to assess the adequacy of company policies, codes of corporate conduct and company performance in relation to their stated expectations for corporate social responsibility action. It sets out principles, criteria and benchmarks on a range of issues: from the wider community, ecosystems, national and local communities, indigenous communities; to the corporate business community of the employed, women, minorities, disabled, child labour, forced labour; to suppliers, shareholders, joint ventures, partnerships, subsidiaries, customers and consumers; and ethical and financial integrity. It references many international codes, covenants, conventions, rules and practices, as well as standards of international organizations like the ILO, to establish the best agreed practices of CSR and Accountability.

“Large corporations are powerful members of Canadian society. Their policies and practices affect the well-being of millions of people in Canada and around the world. Many Canadian Christians see, as part of their concern to promote social justice, an obligation to challenge corporate activities that contribute to social injustice, to violations of human rights, to increased militarism or to ecological abuse.”<sup>4</sup>

We in the churches have largely pioneered the right of shareholders – minority or otherwise – to raise questions, or to bring into question company policy and management practice through shareholder resolutions debated by other shareholders at annual meetings of corporations. At KAIROS we address international human rights concerns, global and regional trade agreements and structures, international debt - including ecological debt, ecological justice, and issues arising from the social and environmental impacts of the conduct and activities of Canadian corporations.

Many of our members have pension and endowment funds invested in these corporations and use their leverage to push for more ethical and positive behaviours and results, in consonance with their social teachings. Faith communities are also made up of individuals and groups with partners around the globe. Members also have extensive links to businesses as workers, employers, customers and consumers. They are citizens and live in the communities where corporations conduct their affairs – that is in the global society where corporations are increasingly significant actors which have immeasurable, and sometimes irreversible, social, economic and environmental impacts. In this sense, we speak from the experience of our members and partners as “stakeholders” seeking and advocating sustainable communities.

This has lead us to become “active shareholders” advocating that corporations should guide their activities with careful and diligent attention to the protection and promotion of internationally agreed human rights, labour and environmental standards.

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<sup>3</sup> *Principles for Global Corporate Responsibility: Benchmarks for Measuring Business Performance* <sup>3</sup>– Taskforce on the Churches and Corporate Responsibility, Canada (TCCR), The Interfaith Center on Corporate Responsibility, USA (ICCR), The Ecumenical Council for Corporate Responsibility, UK (ECCR), 1998

<sup>4</sup> Renate Pratt, *In Good Faith: Canadian Churches Against Apartheid*, Wilfred Laurier University Press, Waterloo, Ontario, 1997, p.1

At the same time let it be said that we have also been in the streets advocating and demonstrating for justice and peace, and been active in the liberation struggles, boycotts, and anti- free trade campaigns in world regions and at the WTO and its antecedent the GATT. Faith communities are complex organizations.

## 2.) Strategic Tools

We in the ecumenical movement have produced a range of options and tools to use as a menu of strategies to confront corporate power and abuse, to promote just and equitable responsible behaviours and to demand accountability. One such piece is *Corporate Responsibility: A Field Action Guide*<sup>5</sup>

“What differentiates serious CSR from its specious “market tool” cousin is its capacity to extract a form of social accountability for corporate conduct. CSR efforts that combine socially responsible investor interests with concerns raised by communities at sites of impact to produce an accountability dialogue/ exercise (with a third party verification role for NGOs) have the ability to achieve real change in “on the ground” company conduct. For CSR work to be credible, it has to affirm the importance of voluntary initiatives like comprehensive codes of corporate conduct, stakeholder dialogue leading to the definition of performance indicators, and verified and publicly accessible reporting of code conformity results to the full stakeholder body, but must also go beyond these largely company-controlled initiatives and processes to recognize and promote the rightful role of the state in insisting on company compliance with internationally agreed norms when voluntary efforts are inadequately pursued or simply fail to achieve the intended social results.”

So, for example we have these tools to respond to the request from 14 of our sister churches and ecumenical organizations in Argentina, who asked us in December 2001: “We request of you to use all means and possibilities to build up commercial and economic international relationships based on justice and equality.”<sup>6</sup>

It is important to note that a current task is to examine the need for transparency, accountability and disclosure among other non-business institutions, including governments and civil society organizations like ours, and to ensure appropriate monitoring and verification for all stakeholders and constituents. In Canada we are developing rigorous guidelines and anti-corruption practices in the public Auditor General’s Office, right down through the various branches and agencies of government – including the Export Development Corporation. There are strict reporting and auditing requirements for registered NGOs as well. But they could all be strengthened with a view to promoting a more sustainable economy and society and a protected environment.

## IV. International Processes and Opportunities

1.) OECD Guidelines for Multi-National Enterprises are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, competition, taxation, and science and technology.

2.) Global Reporting Initiative (GRI) provides an intellectual framework to analyze CSR issues, and benchmarks to monitor and measure corporate activity, but has no verification mechanisms or enforceability. Its mission is to develop global guidelines for reporting on the economic, environmental and social performance of organizations. It is true that since its launch in 1997, a wide range of stakeholders – including business, nonprofits, accounting bodies, investor organizations and trade unions have participated in the GRI. An agreed set of revised 2002 Sustainability Reporting Guidelines was released at the Johannesburg Summit, and there is much talk about connecting the GRI as a step further in implementing the Principles of the Global Compact.

3.) United Nations Global Compact initiative challenges business leaders to ‘embrace and enact’ nine basic Principles with respect to human rights, including labour rights and environment. It has been controversial, accused of BlueWash; nevertheless, it has been endorsed by a wide range of companies, organizations, labour and NGOs, while others have declined to endorse it until it has “some teeth”. The codification of principles has been voluntary and adopted without any additional criteria or benchmarks for monitoring, verification or enforcement. However there is an interesting conversation now underway to link this initiative to the GRI, as well as other processes such as the World

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<sup>5</sup> *Corporate Responsibility: A Field Action Guide* – KAIROS-Canada, Toronto, Ontario, 2002

<sup>6</sup> *Letter To our sister Churches, agencies and Christian Institutions in the Northern Hemisphere*, signed by 14 Churches and Ecumenical Organizations, Buenos Aires, December 20, 2001, printed in *Global Economic Justice Report*, Vol.1, Number 1, KAIROS-Canada, Toronto, ON, March 2002

Bank Safeguard Policy – re environmental and social protection, including indigenous or aboriginal rights. It will be interesting to see whether critics will be more supportive of this process if the recent Draft Norms on the responsibilities of transnational corporations with regard to human rights gain more support and a clearer global mandate.

4.) Draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights were adopted in August 2003 by the Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights – Economic, Social and Cultural Rights – (Fifty-fifth session, August 4, 2003) 7

The work of this sub-committee began in 1998 with a Working Group on the Working Methods and Activities of Transnational Corporations. At a recent briefing for some 25 business managers from leading multinational companies, the work on Draft Norms was summarized as follows:<sup>8</sup>

The Norms assert that it is the primary responsibility of governments to protect human rights, but that within their spheres of activity and influence businesses also have human rights obligations.

The Norms are arguably more comprehensive than any other single international standard, addressing a very broad spectrum of human rights.

They distill the numerous other sets of international human rights guidelines and provide a unique point of reference for companies, bringing much needed clarity to a complex area.

The Norms are expressly aware of and complementary to the UN Global Compact and may be viewed as an explication of the Compact's 9 Principles.

They are intended to provide a level playing field for all large businesses, while always being aware of the greater leverage and responsibilities of transnational corporations, and conversely the much lesser ability of small local businesses to fulfill the Norms in their entirety.

The Norms do not attempt to provide a "one-size fits all" approach, but instead offer specific human rights guidance on the many diverse challenges that affect a broad spectrum of industries.

The Norms will be similar to many U.N. declarations and resolutions which interpret existing international law and summarize international practice without reaching the status of a treaty.

Draft Norms on The Responsibilities Of Transnational Corporations And Other Business Enterprises With Regard To Human Rights And Commentary On The Draft Norms<sup>9</sup>

The Norms cover the following areas:

General Obligations

Right to equal opportunity and non-discriminatory treatment

Right to security of persons

Rights of workers

Respect for national sovereignty and human rights

Obligations with regard to consumer protection

Obligations with regard to environmental protection

General provisions of implementation

Impact Of Transnational Corporations On The Enjoyment Of Civil, Cultural, Economic, Political And Social Rights – A summary comment from the Chair<sup>10</sup>:

"The Chairperson highlighted the fact that the activities and working methods of transnational corporations affect the enjoyment of economic, social and cultural rights and the right to development of both individuals and communities. First, the Chairperson emphasized the importance of transnational corporations respecting "solidarity rights" – the right to development and the right to a healthy environment. Given the overriding interest of transnational corporations in profit-making, these companies have contributed little to the development of poorer countries – in spite of the fact that these corporations could transfer technology and know-how that could assist countries to develop. The right to development cannot be realized without an adequate, fair and just international economic order which takes into account the human rights responsibilities of transnational corporations. Further, the right to a healthy environment has

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<sup>7</sup> Documents: E/CN.4/Sub.2/2003/12/Rev.1 , E/CN.4/Sub.2/2003/13 , Commentary on the Draft Norms - E/CN.4/Sub.2/2003/38/Rev.1 Chairperson-Rapporteur: Mr. El-Hadji Guissé

<sup>8</sup> Briefing on the UN Sub-Commission Draft Norms on Human Rights for Business, 24 March 2003, co-hosted by IBLF and ISIS Asset Management; Also see Amnesty International UK overview report, April 2003 [www.amnesty.org.uk/images/ul/U/UN\\_norms\\_Business\\_final\\_aw.pdf](http://www.amnesty.org.uk/images/ul/U/UN_norms_Business_final_aw.pdf)

<sup>9</sup> *ibid.*

<sup>10</sup> *ibid.*

undergone a series of challenges due to the activities of transnational corporations. The Chairperson highlighted the case of Bophal in India, the problem of pollution and the international trade in toxic wastes that is particularly harmful for people living in developing countries – particularly in Africa and Latin America. Second, the activities and working methods of transnational corporations also have an impact on the enjoyment of individual rights, such as workers’ human rights, the right to health and the right to life. The Chairperson noted that in spite of the enormous wealth of transnational corporations, they contributed relatively little to job creation and at times have been known to retrench workers which has exacerbated poverty and impeded the enjoyment of workers’ human rights. Similarly, pharmaceutical companies have obstructed access to medicines which has a negative effect on the enjoyment of the right to health.”

5.) Draft UN Convention against Corruption – From another angle, this agreement currently being negotiated and hoping to come into force, attempts to get at the systems of bribery and corruption that have infected government and business relations in all countries, without exception. One measure of this is published in an annual Global Corruption Perceptions Index of Transparency International. In the post Enron and WorldCom era, laws like Sarbanes-Oxley in the US are having the effect of creating tighter regulations and closer scrutiny of investment firms – who are also TNCs. But it is critical to ensure an effective global instrument against corruption.

6.) MEAs – Multilateral Environmental Agreements: a few include: Agenda 21, Convention on BioDiversity, Convention on Climate Change, Kyoto Protocol, Convention on Hazardous Substances, Ozone Treaty, Montreal Protocol, Law of the Sea, etc, etc. These internationally agreed documents are often compromised in their implementation as national environmental practices and standards are often circumvented or poorly enforced when corporate interests are at stake. They are also often overruled by trade agreements which treat them as peripheral without national or international jurisdiction. The recent Cancun meeting of the WTO failed to deal with this problem, along with all the other reasons for failure.

7.) JPOI – Johannesburg Platform of Implementation 2002 – One of the most debated issues at the Johannesburg Summit was CSR and Corporate Accountability. There is a growing broad-based international movement to encourage companies and international organizations to integrate social and environmental concerns into their operations, either voluntarily or in response to mandatory regulations. The issue of the sovereign power of countries to legislate and regulate versus the enormous power of TNCs to implement best practices over and above minimum environmental and even social requirements, and specific to their sectors, was hotly debated. In the end, Member States agreed to “promote corporate social responsibility and accountability and the exchange of best practices in the context of sustainable development.” This shows up in several more specific contexts in the JPOI. The linking of CSR/Accountability with Sustainable Development is one of the more encouraging trends.

8.) Kyoto Protocol and climate change regulations being negotiated by governments with what in Canada is known as LIES – Large Industrial Emitters Sector. This is presenting a unique opportunity to set a new framework with tough regulations to cause companies to lower their greenhouse gas emissions. There will be important backstop legislation with enforceability. And this will be a new feature of the licence to operate. An important development to consider for publicly traded corporations is the notion and increasingly calculable construct of “carbon risk.” We have been involved recently in shareholder resolutions with Imperial Oil/Esso to have them drop their opposition to Kyoto and change their ways. We are pushing the oil and gas industry to turn towards more renewable clean energy. While it may be small, it is a start toward a sustainable future. (see also the StopESSO Campaign.)<sup>11</sup>

## V. Corporate Accountability – A Matter of Sustainable Justice

### FACT SHEET - the ECUMENICAL TEAM for the WSSD

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<sup>11</sup> StopESSO Campaign [www.stopesso.org](http://www.stopesso.org) and – Mark Mansley, *Risking Shareholder Value? ExxonMobil and Climate Change, An Investigation of Unnecessary Risks and Missed Opportunities*, Claros Consulting, London UK, May 2002; and *Climate Change – A Risk Management Challenge for Institutional Investors*, published by the Universities Superannuation Scheme, UK, 2002.

## Johannesburg 2002

Corporate Giants exercise disproportionate power in the Global Economy

The net financial worth of Transnational Corporations surpasses most countries

Of the 15 companies/governments with the world's largest budgets, 6 are governments, 9 are corporations. And the 15 largest multinationals now each have a budget that exceeds the gross domestic product of more than 120 countries.

Of the 100 largest economies, 51 are now global corporations and 49 are countries. 90% of these corporations are based in industrialized countries, accounting for something like 70% of world trade, and holding at least 90% of all technology and patent products.

Governments are dwarfed by the economic power of large multinationals

Economic decisions and actions that shape the lives of most of the people living on this planet rest increasingly with the private sector. Governments are increasingly reluctant or incapable even to consider challenging their power.

There may be national laws that regulate some business practices, but virtually no international regulatory regime to cover corporate activities which are increasingly transboundary or global.

Emphasis on voluntary initiatives renders enforcement mechanisms for sustainable best practices and codes of conduct weak and elusive.

Corporations interfere with trade and environment

The incoming leader of the World Trade Organization (WTO), Dr. Supachai Panitchpakdi, called for a new code of conduct for multinational firms.

These corporations actively lobby for investment agreements that will incorporate "national treatment" clauses requiring governments to treat foreign investors as favorably as domestic firms.

Intellectual property laws, especially the WTO TRIPs agreement, which have slowed access to cheap drugs for developing countries, are an example of powerful business interests overriding those of poor countries.

Global rules have been shaped to turn natural resources and people into commodities and markets to be

exploited, often with devastating environmental and social consequences.

Dumping of toxic wastes and unaccountable dirty industries plague poor and minority communities in rich countries and poor developing nations and are a symptom of deep environmental racism.

Public perception

The 1999 Environics Millennium Survey of 25,000 people in 23 developed and developing countries indicates that public expectations that large companies should act in a responsible way are both high and universal.

79% felt that large companies should be "completely responsible" for protecting the health and safety of workers, 73% for protecting the environment, and 72% for avoiding child labour.

Corporate beneficiaries owe a huge ecological debt, particularly to the South, which must be redressed.

Millions of people around the world believe they have the right to expect their governments to re-assert authority and responsibility over corporate powers.

Corporate accountability is not voluntary Corporate Social Responsibility (CSR)

CSR and good corporate governance are important but they cannot be seen as a substitute for corporate accountability in a legislated framework with enforceable mechanisms.

The recent irresponsible corporate debacle and slate of bankruptcies in the United States shows that voluntary corporate responsibility initiatives are entirely inadequate.

Corporate accountability requires observing the precautionary principle and the principle of "polluter pays" which is included in Agenda 21; operating according to the principles of transparency, accountability, and access to information, and within enhanced national surveillance of financial market activity; adopting full-cost, "Triple Bottom Line" accounting, which internalizes environmental and social as well as economic costs; compliance with principles of social and environmental responsibility, including the ILO Tripartite Declaration of Principles concerning multinational enterprises, and

performance benchmarks initiated with civil society to monitor and measure impacts.

#### Toward Corporate Accountability

Rebalancing unequal power relations in an era where corporate rights are expanding disproportionately to peoples' rights requires:

elimination of investor-state measures in Trade agreements that provide a "new constitution" with rights and freedoms for corporations that override people's democratic rights and freedoms;

a moratorium on the further implementation and widening of Intellectual Property Rights regimes in order to first guarantee the rights of people and communities, in particular the rights of Indigenous Peoples over that of corporations;

creation and adoption of international agreements and legislation to protect traditional knowledge and genetic resources and prevent their commercialization;

cessation of any further privatization through the WTO negotiations on the General Agreement on Trade in Services (GATS) of local, regional and global public goods (GPGs);

legislation building on the existing human rights instruments so that people have legal redress if their environment is destroyed or threatened.

The Ecumenical Community advocates for a legally binding international agreement on corporate accountability

At the national level, governments should assert their responsibility regarding corporate licence to operate,

Accountability is at the heart of Justice - as it is at the heart of Partnership. It is the key to the building of trust and the realization of human dignity and development within secure and sustainable communities. Such communities require a just and moral economy where people are empowered to participate in decisions affecting their lives; where the power is balanced and shared among government, business and civil society; and where public and private institutions are held accountable for the social and environmental consequences of their operations.

Justice demands corporate accountability and indeed the transformation of all global economic governance to serve all people, not only the wealthy and powerful. To "remake the world" and tackle growing inequality, concentration of power, and social exclusion, we need a people-centred, poverty reducing and planet-friendly approach to financing sustainable development.

and create and strengthen mechanisms and institutions as well as civil society organizations that promote accountability and support access to justice.

At the international level, the WSSD must endorse corporate accountability and a plan of action for a global regulative framework.

The initiative of the UN Sub-Commission on the Promotion and Protection of Human Rights, to establish Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises, should be accelerated.

The UN should re-institute under ECOSOC the Commission on Transnational Corporations to establish regulatory mechanisms that address the relationship between corporate policies and practices and international obligations.

UN Member States should negotiate a legally binding framework convention for corporate accountability and liability under the UN system, with independent mechanisms for monitoring, compliance, and enforcement, which adheres to all the principles of sustainable development, and includes: mandatory compliance with principles of corporate responsibility and enforceable codes of conduct;

operational transparency, accountability, mandatory reporting, disclosure and access to information;

financial and legal liability for companies and company directors, as well as sanctions;

full and meaningful stakeholder participation and respect for indigenous rights.

Corporate Accountability –A Matter of Sustainable Justice  
A FACT SHEET – from the ECUMENICAL TEAM  
WSSD – Bali PrepCom, Johannesburg Summit 2002

Corporate Giants exercise disproportionate power in the Global Economy

TNCs - Transnational Corporations – (sometimes called MNCs - Multinational Companies - headquartered in one country, having operations across many others.) Their net financial worth often surpasses the wealth of most countries. Of the 15 companies/governments with the world's largest budgets, 6 are governments, 9 are corporations. And the 15 largest multinationals now each have a budget that exceeds the gross domestic product (GDP) of more than 120 countries. (Global Policy Forum)

Of the 100 largest economies, 51 are now global corporations and 49 are countries. The largest 200 corporations generate more than ¼ of the world's economic activity. (Corporate Watch)

While in 1970 there were 7000 multinational parent companies, in 1995 there were 37,000 TNCs world-wide, of which 90% were based in industrialized countries, and controlled over 200,000 foreign affiliates, accounting for something like 70% of world trade, and holding 90% of all technology and patent products. (Commission on Global Governance)  
These companies control a third of all private-sector assets and had sales of \$5.5 trillion, comparable to the US gross national product (GNP). (ibid)

FDI – Foreign Direct Investment

In 1990, official grants and loans accounted for over half of financial flows into developing countries.

By 1999, however, developing countries received a record \$208 billion worth of FDI (UNCTAD 2000:7). These private financial flows were more than five times greater than official inflows from bilateral and multilateral agencies either in Official Development Assistance (ODA) or new loans.

But these private flows reach only one out of every five developing countries. Just 10 developing countries receive four-fifths of all FDI flows to the developing world.

Only 25 developing countries have access to private markets for bonds, commercial bank loans and portfolio investments. The rest are shut out by their lack of credit rating. (UNDP 1999:31)

FDI can be a positive influence for production but often has negative effects.

A regular feature of FDI is mergers and acquisitions, which merely transfer control from domestic to foreign firms, often lead to layoffs and new outflows of foreign exchange in the form of dividends paid to TNCs, and reduce competition in the domestic market that stifles growth of local industries.

FDI which concentrates on the exploitation and processing of natural resources may reinforce dependencies on a few primary products or on a few markets for export income.

Foreign investment that is predominantly short term, speculative and volatile may lead to instability.

Governments are dwarfed by the economic power of the large multinationals

Economic decisions and actions that shape the lives of most of the people living on this planet rest increasingly with the private sector. Governments are increasingly reluctant or incapable even to consider challenging their power.

There may be national laws that regulate some business practices, but virtually no international regulatory regime to cover corporate activities which are increasingly transboundary or global.

The monitoring and verification of corporate accounting by auditors is increasingly suspect; Who is auditing the auditors?

Emphasis on voluntary initiatives renders enforcement mechanisms for sustainable best practices and codes of conduct weak and elusive.

Corporations Interfere with Trade Laws, and Multilateral Environmental Agreements

The rights of TNCs have expanded steadily. TNCs continue to lobby for investment agreements within the World Trade Organization (WTO), the Free Trade Area of the Americas (FTAA) and elsewhere, that will incorporate "national treatment" clauses requiring governments to treat foreign investors as favorably as domestic firms.

For example, under investor-state provisions in NAFTA (the North American Free Trade Agreement), companies have the right to sue national governments for loss of opportunity when environmental standards are applied to hazardous products, while the communities' rights to resources have been severely weakened in many ways, especially in developing countries.

Big business exerts tremendous influence over the formulation of laws and policies at the global level, especially in the economic sphere.

Intellectual property laws, especially the TRIPs agreement, which have slowed access to cheap drugs for developing countries, are an example of powerful business interests overriding those of poor countries.

The incoming leader of the WTO, Dr. Supachai Panitchpakdi, called for the introduction of tough rules to clamp down on any lobbying by multinational companies that is aimed at influencing the world's trading system. He called for a new code of conduct for multinational firms.

#### Public Perception

The 1999 Environics Millennium Survey of 25,000 people in 23 developed and developing countries indicates that public expectations that large companies should act in a responsible way are both high and universal.

79% felt that large companies should be "completely responsible" for protecting the health and safety of workers, 73% for protecting the environment, and 72% for avoiding child labour,

Millions of people around the world believe they have the right to expect their governments to re-assert authority and responsibility over corporate powers.

#### The Business Case

Business itself is asking for a climate of certainty and a predictable environment for investment.

Companies that are serious about instituting sustainability performance are often at a disadvantage to those who seek short term profits only. They would benefit from a regulated level playing field.

It is essential to create rules and regulatory frameworks – national as well as international – that ensure corporate accountability.

Corporate Accountability is not merely Voluntary Corporate Social Responsibility (CSR)

Corporate Social Responsibility (CSR) and good Corporate Governance are important but they cannot be seen as a substitute for Corporate Accountability in a legislated framework with enforceable mechanisms.

Sustainable development requires a new method of Accounting – Triple Bottom Line – full-cost accounting, internalization of environmental and social as well as economic costs. This requires a new arrangement with Government sustainable development policies.

#### Corporate Accountability - Not Impunity

With the advent of the International Criminal Court we can look to a future where immoral, destructive and egregious behaviour can be legally censured, punished and hopefully further prevented. One day it may extend to corporate unsustainable practices as well.

But for now, global rules have been shaped to turn natural resources and people into commodities and markets to be exploited, resulting in devastating environmental and social consequences.

Dumping of toxic wastes and dirty industries plague poor and minority communities in rich countries and poor developing nations and are a symptom of deep environmental racism.

Corporate beneficiaries owe a huge ecological debt, particularly to the South.

As the current debacle surrounding Enron, Andersen and others unfolds, and we observe the environmental and social devastation which were caused by Exxon in North America, Shell in Africa, Union Carbide in India, BP in South America, and Rio Tinto in Southeast Asia, to name just a few, it is obvious that voluntary corporate responsibility initiatives are entirely inadequate.

#### Can you partner with a giant?

The for-profit business sector has a significant role to play in sustainable development, but Governments who promote greater involvement of private sector and promote partnerships with business, so-called Type 2 Outcomes, need be clear about preconditions and terms of engagement.

We advocate that any new partnerships must include:

models of partnerships based on transparency and accountability

mutual responsibility (no public bailouts), self-reliance and adequate resources

local ownership and management

recognition and respect for socio-cultural context  
participatory planning and sustainability.

Governments should have the right to impose performance requirements on foreign investors.

Governments should be able to require investors to meet national, regional or local content goals. They should be able to require them to purchase inputs locally; to hire personnel locally; to transfer appropriate technology and to provide incentives for the reinvestment of profits.

TNCs should:

observe the precautionary principle and the principle of “polluter pay”;

operate according to the principles of transparency, accountability, and access to information, and within enhanced national surveillance of financial market activity;

reinvest a proportion of their profits in the local community;

comply with principles of corporate social and environmental responsibility, including:

a) those established by the ILO Tripartite Declaration of Principles concerning multinational enterprises and social policy;

b) the recently updated OECD guidelines on multinational enterprises, which incorporate the observance of core labour standards; and

c) benchmarks, initiated with civil society, to assist in monitoring FDI and public-private partnerships.

FDI should:

be subject to social, economic and environmental impact assessments which include the whole community;

be regulated in order to counter the negative effects of restrictive business practices, transfer pricing, diminishing tax bases and anti-competitive practices;

improve the productive and natural resource base in the host economy.

Socially Responsible Investment (SRI) – a viable Alternative

SRI funds link sustainable development concerns with investment in quality products, and outperform many other kinds of funds. They should be promoted and supported by national legislation.

Increasingly pension funds on behalf of employees, like those under the UK Pensions Act, require disclosure of the social and environmental considerations in a statement of investment principles.

Many large pension funds are now mobilizing shareholder involvement in advocating corporate governance that promotes common standards for sustainability.

Taming the Giant - What do We Want?

We Call for a “rights-based” approach

NGOs said in Bali “Instead of rights, there is now the concept of “stakeholders” that assumes equality among all parties. The discussions on partnerships have stressed these unequal power relations. In an era where corporate rights are expanding disproportionately to peoples’ rights, NGOs are insisting on legally binding corporate accountability and liability, and not partnerships with big business.”

In Trade agreements, we advocate the elimination of investor-state measures that provide a “new constitution” with rights and freedoms for corporations that override people’s democratic rights and freedoms.

A moratorium on the further implementation and widening of Intellectual Property Rights regimes in order to first guarantee the rights of people and communities, in particular the rights of Indigenous Peoples over that of corporations. The creation and adoption of international agreements and legislation to protect traditional knowledge and genetic resources and prevent their commercialization.

The cessation of any further privatization of local, regional and global public goods (GPGs) through the negotiations on the General Agreement on Trade in Services (GATS).

We advocate legislation building on the existing human rights instruments so that people have legal redress if their environment is destroyed or threatened.

We Call for legally binding international agreements on corporations

At the national level, Governments should assert their responsibility regarding corporate licence to operate, and create and strengthen government mechanisms and institutions as well as civil society organizations that promote accountability and support access to justice.

At the international level, the WSSD must endorse corporate accountability and a plan of action for a global regulative framework.

The UN should re-institute under ECOSOC the Commission on Transnational Corporations (TNCs) to establish regulatory mechanisms which address the relationship between corporate policies and practices and international obligations.

A legally binding framework convention for corporate accountability and liability under the UN system, with independent mechanisms for monitoring, compliance, and enforcement must be negotiated.

This framework would require adherence to all the principles of sustainable development and would include: mandatory compliance of TNCs with principles of corporate social and environmental responsibility; operational transparency and accountability; disclosure and access to information; conformity with enforceable codes of conduct; financial and legal liability for companies and company directors; sanctions; mandatory reporting; stakeholder participation and respect for indigenous rights.

There is still a chance to ensure that these ideas are enshrined in the Draft Plan of Implementation for the World Summit on Sustainable Development: Particularly, Paragraphs 17a-d; 19w, 45I-m, 78d,e, 79, and 145a. We insist that the words “corporate accountability” remain with the concepts of “corporate responsibility” and take precedence over voluntary initiatives.

Accountability is at the heart of Justice - as it is at the heart of Partnership. It is the key to the building of trust and the realization of human dignity and development within secure and sustainable communities. Such communities require a just and moral economy where people are empowered to participate in decisions affecting their lives, where the power is balanced and shared among government, business and civil society; and where public and private institutions are held accountable for the social and environmental consequences of their operations.

Justice demands the transformation of global economic governance and the international financial system so that their institutions are accountable to and serve all people, not only the wealthy and powerful. Meaningful policies and mechanisms are needed to eradicate poverty and create equitable development.

To “remake the world” and tackle growing inequality, concentration of power, and social exclusion, a people-centred and planet-friendly approach to financing sustainable development is required.

To the implementation of these principles and goals the ecumenical community stays engaged and committed.

The Ecumenical Team is coordinated by the World Council of Churches and includes members of several denominational organizations and networks and representatives from various faith communities.

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