amnesty international australia

Submission by Amnesty International to the Joint Statutory Committee on Corporations and Securities in its inquiry into the Provisions of the Corporate Code of Conduct Bill 2000

AMNESTY INTERNATIONAL'S WORK ON ECONOMIC RELATIONS

Amnesty International's work in the area of economic relations can be described in terms of the organisation's desire to contribute to the worldwide observance of human rights as set out in the Universal Declaration of Human Rights and other internationally recognised standards.

Amnesty International is an impartial, independent worldwide voluntary movement which works to prevent violations, by governments and other parties, of people's fundamental human rights. Amnesty International's work is focussed on promoting human rights standards generally and in particular:

- Freeing all prisoners of conscience. These are people who have not used or advocated violence but are detained because of their beliefs, ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status;
- Ensuring fair and prompt trials for political prisoners;
- Ending torture and other forms of cruel, inhuman or degrading treatment or punishment; and
- Abolishing the death penalty, ending extrajudicial executions and 'disappearances'.

Amnesty International, recognising that human rights are interdependent and indivisible, works to promote all human rights enshrined in the Universal Declaration of Human Rights and other international standards, through human rights education programmes and campaigning for the ratification, implementation and enforcement of human rights treaties. While Amnesty International takes no formal position on trade liberalisation (ie whether trade liberalisation is a positive or negative phenomenon), Amnesty International does take a position on policies or

actions that result or may result in human rights abuses, whether by state or non-state actors, including policies or actions by companies.

SUBJECT AND SCOPE OF SUBMISSION

This Submission relates to the provisions of the Corporate Code of Conduct Bill 2000 for Australian companies operating in foreign countries. The specific issues covered in this Submission are as follows:

1. The definition of human rights;
2. Business and human rights – an overview of the debate;
3. In-principle support for the Bill;
4. The need to incorporate international human rights law into the Bill;
5. The need to assess the human rights impacts of Australian companies' activities and operations outside of Australia;
6. The role and potential contribution of non-governmental organisations (NGOs) in the development and implementation of the Bill;
7. Some specific legal and policy issues that need to be addressed in the Bill.

1. WHAT ARE HUMAN RIGHTS?

Human rights are fundamental principles that allow the individual freedom to lead a dignified life, free from abuse and violations and allow him or her the freedom to express independent beliefs. The basic building block for international law on human rights is the *Universal Declaration on Human Rights* 1948 (UDHR). The UDHR has formed the basis for the scope and content of subsequent international human rights standards, the two most important of which are the *International Covenant on Civil and Political Rights* 1966 and the *International Covenant on Economic, Social and Cultural Rights* 1966. These Covenants, together with the core Conventions of the International Labour Organisation[1], represent the most widely accepted codification of human rights standards as enshrined in international law.

2. BUSINESS AND HUMAN RIGHTS

Many business leaders have tried to argue that the protection of human rights is solely the responsibility of government. This is despite the seemingly endless list of serious violations of human rights by companies, especially in developing countries. For example, media

[1] These are the eight ILO Conventions on labour rights, namely Conventions 29 (forced labour), 87 (freedom of association and protection of the right to organise), 98 (right to organise and collective bargaining), 100 (equal renumeration), 105 (abolition of forced labour), 111 (on discrimination), 138 (minimum age of workers) and 156 (equal opportunities and equal treatment for men and women workers: workers with family responsibilities), together with ILO Conventions 182 & 190 (child labour) and 169 (the rights of indigenous and tribal peoples).

investigations into the conditions in Nike factories in Vietnam revealed beatings, sexual harassment and workers being forced to kneel for extended periods with their arms held in the air. More generally, millions of child workers are enslaved through forms of debt bondage in countries like India; forced labour is used in countries such as Myanmar and China; trade unionists receive death threats in Colombia, are banned outright in Myanmar and are routinely pressured into resigning in Guatemala.

Clearly, corporations were contemplated in "organs of society" when the General Assembly of the UN proclaimed the Universal Declaration of Human Rights to be

> "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction".

Human rights have become a key part of the debate on corporate responsibility. With the increasing demands from society for corporate accountability and transparency, the heightened vigilance of pressure groups and the growing influence of ethical investors, the question of human rights is rapidly entering the mainstream corporate agenda. Even though some organisations are proactive on human rights issues, having developed policies, signed codes of conduct and issued reports on human rights issues, our experience has been that the majority of companies are still reluctant to acknowledge their responsibility for human rights issues or to take substantial action on these issues[2]. A major reason has been the absence of regulatory drivers or pressures that require companies to address these issues.

Some companies (to date, primarily in the mining sector) have developed voluntary codes of conduct on issues such as human rights, labour rights and environmental protection. While such codes can help to define minimum standards of corporate behaviour, they are non-binding and can all too easily be flouted by less scrupulous organisations. Furthermore, 'self-regulation' (through codes of conduct and other voluntary approaches) has limited impact on the actual performance of companies[3]. In the absence of legislative requirements, many companies do not even meet the minimum standards specified in international human rights law.

3. SUPPORT FOR THE BILL

[2] See, for example, the results of the recent Reputation 100 Survey of the ASX Top 100 companies which found that 95 of the top 100 companies had not (at the time of the survey) even developed a corporate policy on human rights. [Published as a supplement to the *Sydney Morning Herald*, 30 October 2000.]

[3] Of particular relevance to this discussion is the OECD's recent assessment of the role of self-regulation in public policy, OECD (1999), *Voluntary Approaches for Environmental Policy: An Assessment* (OECD, Paris). This report highlighted a range of concerns regarding the limitations of self-regulation. In particular, this report stressed that to be credible such regimes must include credible regulatory threats, credible and reliable monitoring, third party participation and penalties for non-compliance.

International law on human rights is only binding on national governments and business entities cannot be bound by such laws, except where the national government implements and enforces international law through domestic legislation.

Amnesty International supports and commends the introduction of the Corporate Code of Conduct Bill as a practical step to convert the principles and aspirations of international law into practical, legally binding requirements on Australian corporations operating overseas.

4. INCORPORATING INTERNATIONAL HUMAN RIGHTS LAW INTO THE BILL

It is critical that the Code of Conduct Bill explicitly requires organisations to comply with the basic requirements of international human rights law. Therefore, we recommend that Clause 10 (Human Rights Standards) make explicit reference to (and require compliance with):

- *Universal Declaration on Human Rights* 1948
- *International Covenant on Civil and Political Rights* 1966
- *International Covenant on Economic, Social and Cultural Rights* 1966
- ILO Conventions 182 & 190 (child labour)
- ILO Convention 169 (the rights of indigenous and tribal peoples).

The minimum international labour standards referred to in Clause 9(3)(f) should be the eight core ILO Conventions on labour rights, namely:

- Convention 29 (forced labour)
- Convention 87 (freedom of association and protection of the right to organise)
- Convention 98 (right to organise and collective bargaining)
- Convention 100 (equal renumeration)
- Convention 105 (abolition of forced labour)
- Convention 111 (on discrimination)
- Convention 138 (minimum age of workers)
- Convention 156 (equal opportunities and equal treatment for men and women workers: workers with family responsibilities).

For guidance on the wording of these clauses and for further details on the specific requirements of corporate entities, please refer to the recently released *Just Business – A Human Rights Framework for Australian Companies*[4] [copy attached to this submission].

[4] Amnesty International (Australia) (2000), *Just Business: A Framework for Australian Companies*, 8 pp. Available from the Amnesty International Australia webpage at www.amnesty.org.au or email campaign@amnesty.org.au (please use 'Business Network' in the subject line).

5. ASSESSING AND REPORTING ON HUMAN RIGHTS ISSUES

We strongly support the concept of the annual Code of Conduct Compliance Report, proposed in Clause 14 of the Bill. This Clause reflects the increased emphasis on transparency and reporting by Australian business[5] and represents a codification of what is currently recognised as good business practice.

However, the requirements should be broadened to require that organisations explicitly report on their performance against the basic norms of international human rights law and, in particular, to identify areas of actual or potential non-compliance with these laws. In addition, organisations should be required to conduct human rights impact assessments of all new existing and new projects or other developments. The human rights impact assessment process should identify the positive and negative, likely and potential human rights implications of the development, including impacts on democracy and sovereignty, workers' rights and human rights (including broader social, economic and cultural rights).

To ensure credibility, it is imperative that the assessment process be completely transparent and open at all stages of the process, including scoping, issue identification, issues assessment and development of conclusions and recommendations. In particular, there should be formal processes for consultation with civil society and NGOs. There must be provision for the independent review and auditing of all such reporting and assessment processes. This should include provision for external agency auditing and spot checks to confirm the accuracy and completeness of the information provided and the manner in which this information is presented and interpreted. If this were to occur now, Australian companies would in many ways be ahead of international competitors on human rights audits and transparency mechanisms.

6. THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS

NGOs such as Amnesty International have played a leading role in the development of international and domestic standards relating to human rights. In addition, NGOs are able to bring a significant degree of information and knowledge to debates regarding social corporate responsibility, ethical behaviour and conduct, enabling the broader implications of decisions to be identified and, thereby facilitating better decision making. To this end, we commend the decision to hold this inquiry as an opportunity for NGOs and other sectors of civil society to contribute to the Committee's deliberations and consideration of this Bill.

To facilitate the involvement of NGOs and civil society in the process of implementing the Bill, we suggest that the Bill be changed to allow for open standing (ie where it is not necessary to

[5] See, for example, the Australian Minerals industry Code of Environenntal Management which requires signatory companies to report annually on their environmental performance, legislated reporting requirements such as the National Pollutant Inventory and government-industry programmes such as the Greenhouse Challenge.

prove loss or damage before being allowed to bring case). Open standing provisions are common in domestic Australian environmental legislation. It is pertinent to note that such liberal standing provisions have not been accompanied by a 'flood of vexatious or nuisance litigation', as was originally feared when the legislation was introduced.

7. OTHER ISSUES

It is recommended that the penalties associated with the Bill be changed to encompass the concept of 'due diligence', where directors and managers can be held personally liable for the actions of their corporations. This is a well-tested provision in Australian environmental legislation where the ability of corporate directors and managers to 'hide behind the corporate veil' has been removed. It is important to recognise that the 'due diligence' concept contains significant protections for corporate officers, requiring proof of knowledge, proof of control and proof of inaction (or inadequate action). The inclusion of this type of provision has the advantage of addressing issues such as 'country of incorporation' and other legal devices that could be used to circumvent the goals and objectives of the Bill, by tying manager's responsibility to the actions of the corporation.

It is also recommended that the Bill should require that government funding be withheld in the event of human rights violations (or made contingent on satisfactory human rights violations). While the details would need to be considered further, the framework presented in *Just Business – A Human Rights Framework for Australian Companies*[6] could provide a starting point for the criteria that would need to be met.

It is pertinent to note that similar legislation is being discussed in other jurisdictions. For example, in January 1999, the European Parliament passed a Resolution on Standards for European Enterprises Operating in Developing Countries. The Resolution calls on the European Union to establish legally binding requirements on European multinationals, to ensure that they comply with international law relating to the protection of human rights and the environment when operating in developing countries. The resolution proposes that European multinationals be monitored by a panel comprising independent experts and representatives from European business, international trade unions, environmental and human rights NGOs and the developing world. The Resolution calls on the European Commission to ensure that multinational enterprises acting on behalf of, or financed by, the European Union act in accordance with basic requirements for human rights and environmental protection. Companies failing to meet these requirements should not be entitled to receive further funding from the European Union. A similar piece of legislation has been proposed by US Representative Cynthia McKinney which would require all US-based corporations with more than 20 employees abroad to enact a code of conduct which would also apply to the companies' subsidiaries, subcontractors, affiliates,

[6] See above.

joint ventures, partners, or licensees[7]. Amnesty International would like to see the current Bill apply to companies with more than 20 employees overseas and that it also specifically apply to large companies that employ overseas subcontractors.

Amnesty International considers that, in light of overseas developments, the adoption of the Bill would not hamper the competitiveness of Australian corporation but rather would move Australian corporate law forward to be more closely aligned with international policy developments in this area.

END

[7] A copy can be obtained from http://thomas.loc.gov/c/s.dll/query/C?c106:./temp/~c106m53AT4