

**INFACIT COMMENT ON THE UN NORMS ON THE RESPONSIBILITIES OF
TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES WITH
REGARD TO HUMAN RIGHTS
30 September 2004**

Giant corporations hurt and kill people around the world—and get away with it because they operate worldwide without limits to their power or strong, enforceable standards to protect people. Infact supports the ongoing effort to strengthen, effectively implement and monitor compliance with the UN Human Rights Norms for Transnational Corporations.

Existing Initiatives and Standards Relating to the Responsibility of TNCs

In response to the OHCHR request for “existing initiatives and standards relating to the responsibility of TNCs and related business enterprises,” Infact highlights the **Framework Convention on Tobacco Control (FCTC)**. The FCTC, negotiated by the 192 member states of the World Health Organization and unanimously adopted in May 2003, is a milestone in the history of public health and corporate accountability.

This groundbreaking treaty—the first to hold a specific industry accountable—will save millions of lives and change the way tobacco giants operate globally. The treaty will help prevent Big Tobacco from meddling in health policies, and give governments the right to prioritize the health of their citizens over trade and commercial interests.

The FCTC also establishes important precedents for international regulation of other industries that profit at the expense of our health, our environment and human rights. It advances the international regulation of TNCs by codifying corporate accountability standards in a legally binding form and strengthening the expectation that TNCs should conduct themselves in a socially and environmentally responsible manner.

Here are just a few ways the FCTC breaks new ground:

Ban on advertising, promotion and sponsorship [Article 13]

The FCTC requires Parties to implement either a comprehensive ban and/or restrictions on tobacco advertising, promotion and sponsorship—the first time a treaty calls for such a ban on an otherwise legal product. This is one of the most exciting provisions of the FCTC not only for its potential to reverse the spread of tobacco addiction but also because of the implications it could have on advertising, promotion and sponsorship by other abusive industries.

Exclusion of the tobacco industry [Articles 5.3, 12(e)]

The FCTC includes strong, binding language which excludes the tobacco industry from involvement in public health policymaking and calls on governments to be alert to the industry’s attempts to undermine such policies. These provisions represent an important evolution in the global community’s attitude to the deliberate production, distribution and marketing of a dangerous and deadly product and will set precedents for other industries that profit from harmful practices.

Public disclosure of information [Articles 4.1, 10, 20]

The FCTC clearly establishes the principle that every person should be informed about the dangers of tobacco. Prior agreements require the disclosure of information, but do not call for

that information to be shared with the public. This provision represents an exciting expansion of international right-to-know law because unlike past agreements, the FCTC calls on governments to ensure that every person who might be affected be given all necessary information.

***Participation of civil society* [Preamble, Articles 4.7, 12(e)]**

The FCTC firmly establishes the principle that civil society participation is essential in achieving the objectives of the FCTC and its protocols while also explicitly excluding NGOs affiliated with the tobacco industry from involvement in tobacco control strategies. In the past, similar language has been included in the less binding areas of treaties such as the preamble. The FCTC is the first time such strong language calling for the inclusion of civil society is included in the operative text of an international agreement.

The FCTC opened for signature on 16 June 2003 and will enter into force 90 days after the 40th country has ratified or accepted the treaty. With 168 signatories and 30 ratifications as of 1 September 2004, international momentum is strong—and the WHO expects the FCTC to become law by the end of 2004. Once the FCTC enters into force it will become a binding instrument of international law with independent oversight. **This will be a dramatic change from the voluntary standards or codes that corporations—especially the tobacco industry—have a history of proposing. Such voluntary codes are non-binding, lack independent oversight and often have proven to be ineffective in curbing the abuses they were intended to address.** With the FCTC, governments have an effective tool to help stop the global rampage of the tobacco epidemic which currently claims nearly 5 million lives a year.

Suggested Additions to the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights

- In recognition of the advances in international corporate accountability made by the FCTC, Infact proposes the inclusion of explicit references to the global tobacco treaty in the following places in the Norms and Commentary:

Preamble (4th paragraph)

Realizing that transnational corporations and other business enterprises, their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in United Nations treaties and other international instruments such as...[THE FRAMEWORK CONVENTION ON TOBACCO CONTROL](#).

F. Obligations with regard to consumer protection

13. Transnational corporations and other business enterprises shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.

Commentary

(b) Transnational corporations and other business enterprises shall observe relevant international standards for the protection of consumers, such as ...[THE FRAMEWORK CONVENTION ON TOBACCO CONTROL](#)...

- TNCs use their influence to undermine the negotiation and implementation of health, environmental and human rights treaties, while actively promoting international agreements that would result in the expansion of their profits. Such influence takes many forms, including employment of lobbyists, use of public relations firms and tactics to frame policy debates, “revolving door” appointments of former government officials, sponsorship of political events and contributions to political candidates and parties.

Infact supports the call for increased transparency regarding corporate political activities, and suggests strengthening the text of the Commentary in section E.11.(a) as follows:

E. Respect for national sovereignty and human rights

11. Transnational corporations and other business enterprises shall not offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other improper advantage, nor shall they be solicited or expected to give a bribe or other improper advantage to any Government, public official, candidate for elective post, any member of the armed forces or security forces, or any other individual or organization. Transnational corporations and other business enterprises shall refrain from any activity which supports, solicits, or encourages States or any other entities to abuse human rights. They shall further seek to ensure that the goods and services they provide will not be used to abuse human rights.

Commentary

(a) Transnational corporations and other business enterprises shall enhance the transparency of their activities in regards to payments made to Governments and public officials; openly fight against bribery, extortion and other forms of corruption; **PROGRESSIVELY ELIMINATE ALL POLITICAL CONTRIBUTIONS AND SPONSORSHIPS;** and cooperate with State authorities responsible for combating corruption.

- Finally, Infact supports the comments made by other NGOs and experts regarding the need for the Norms to include enforcement mechanisms, as well as the request for an extension of the reporting and consultation process.