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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 May 2011]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Corporate accountability for human rights violations: Ensuring the promotion and protection of human rights by non-state actors

1. Human Rights Advocates submits this statement to address issues of corporate accountability, specifically the need for an effective accountability framework over transnational corporations.

Introduction

2. The United Nations began addressing corporate accountability in 1972 when ECOSOC requested a study of the role of transnational corporations and their impact on the development process as well as their relationship to international relations.¹ This decision led to the establishment of the intergovernmental Commission on Transnational Corporations (CTC) as an advisory body in December 1974.² The CTC ran workshops related to investment and trade until 1993 when its responsibilities were transferred to the United Nations Conference on Trade and Development.³ Despite CTC's efforts to engage in dialogue, it was unable to establish a set of standards for corporations related to human rights. The next major international effort on this topic was in 2003 when the U.N. Sub-Commission on the Promotion and Protection of Human Rights adopted the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (Norms).⁴

3. The Norms were a valuable articulation of the obligations of corporations to respect human rights. The Norms provided for greater accountability than previous efforts by requiring that "...each transnational corporation or other business enterprise shall adopt, disseminate and implement internal rules of operation in compliance with the 'Norms.'"⁵ The Norms also expanded corporate responsibility beyond just the transnational enterprise, stating that corporations should adopt Norms into their arrangements and dealings "with contractors, subcontractors, suppliers, licensees, distributors, or natural or other legal persons that [they] enter into any agreement with..."⁶

4. In addition to the Norms, many voluntary codes and systems have been created. Some of these include the OECD Guidelines for Multinational Enterprises⁷, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social

¹ The United Nations Centre on Transnational Corporations, Background and activities of the Commission and the Centre on Transnational Corporations 1972 to 1975. Accessed at: <http://unctc.unctad.org/aspx/UNCTC%20from%201972%20to%201975.aspx>

² Id.

³ The United Nations Centre on Transnational Corporations, Background and activities of the Commission and the Centre on Transnational Corporations (1990 to 1993). Accessed at: <http://unctc.unctad.org/aspx/UNCTC%20from%201990%20to%201993.aspx>

⁴ Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc E/CN.4/Sub.2/2003/38/Rev.2 [with commentary], August 26, 2003

⁵ Id. at Art. 15

⁶ Id.

⁷ Organization for Economic Co-operation and Development, Guidelines for Multinational Enterprises. Accessed at: http://www.oecd.org/about/0,3347,en_2649_34889_1_1_1_1_1,00.html

Policy⁸, and the U.N.'s own Global Compact⁹. While these codes were useful for addressing the importance of corporate participation in the protection of human rights, they did not provide strong legal mechanisms to redress victims' grievances. Thus, impunity often continues with respect to corporate human rights violations.

Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" Framework

5. Human Rights Advocates would like to commend Professor John Ruggie for his efforts in carrying out his mandate as the Special Representative of the Secretary General (SRSG) on human rights and transnational corporations and other business enterprises. HRA appreciates the constructive and open dialogue that he sought to build amongst stakeholders. Most notably, Professor Ruggie was very amenable to incorporating recommendations to the Guiding Principles (GPs) on Business and Human Rights as evidenced by his invitation to civil society to contribute their comments to the draft GPs.

6. In particular, Professor Ruggie expanded on his commentary regarding the effectiveness criteria for non-judicial grievance mechanisms.¹⁰ In the final version of the GPs, he specifically clarifies the terms, expectations, and reasoning for the use of criteria to ensure that concerns and needs of human rights victims are fully addressed in a legitimate and transparent manner. While these improvements are greatly welcomed, HRA's concern remains with the voluntary nature of such criteria. Without a mandatory or legal mechanism in place, it will be difficult to offer consistent remedies for victims. HRA urges the Council to consider the viability of international legal mechanisms, including accountability and oversight mechanisms in order to provide an effective remedy for victims aggrieved by business impacts on their human rights.

7. Another concern with the GPs is that they do not provide strong mechanisms for situations where States are unable or unwilling to protect citizens from corporate human rights abuses. While GP 7 specifically addresses State duties in conflict areas, the Commentary merely provides for a voluntary effort for when the "host" State for corporations is unable to assert effective control. The Commentary suggests that in those situations, the "home" State for transnational corporations has a role in ensuring that businesses are not involved in human rights abuses and proposes that "neighboring States can provide important additional support."¹¹ Although it is important that the GPs recognize conflict situations, these acknowledgments are all voluntary and hold no meaningful consequences for States that are unable to protect in conflict areas. HRA urges the Council to develop the suggestion that States explore "civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses." The dialogue should consider implementing legal mechanisms in order to ensure that "home" States provide redress for victims even when "host" States cannot.

⁸ International Labour Organization, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Accessed at: http://www.ilo.org/empent/Whatwedo/Publications/lang--en/docName--WCMS_094386/index.htm

⁹ United Nations Global Compact. Accessed at: <http://www.unglobalcompact.org/index.html>

¹⁰ Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, U.N.Doc. A/HRC/17/31, Art. 31 (March 21, 2011)

¹¹ Id. at Art. 7

International legal mechanisms for corporate accountability

8. International legal mechanisms should include both criminal and civil accountability for perpetrators of human rights abuses. An example of the former took place at the end of World War II when those involved in the abuse of human rights during the Nazi regime, including manufacturers of the poisons used in the gas chambers, were held criminally accountable for their actions. The preeminent example is found with the Trials of War Criminals before the Nuremberg Military Tribunals where directors and founders of international corporations were found to be guilty of crimes against humanity for their aid and support for Nazi concentration camps.¹² While the statute of the International Criminal Court also allows for persons to be prosecuted for crimes such as enslavement, forced disappearance and unlawful deportation,¹³ the international community should clarify that corporate executives could also be subject to liability under the ICC's jurisdiction.

9. Unlike criminal liability, civil liability is usually only available on the domestic level. An exception was the U.N. Compensation Commission which established by the Security Council in 1991 to process claims and pay compensation for losses resulting from Iraq's invasion and occupation of Kuwait.¹⁴ Interestingly, the Commission permitted claims from individuals, corporations, and governments. Such rights should come with corresponding duties. Aside from this example, many factors, including domestic legal definitions that differ from international consensus, make it difficult to ensure a consistent global application of legal remedies. The creation of international civil liability and procedures will establish the criteria needed in order to hold corporate actors accountable. This is especially important where domestic civil mechanisms are unable to hold corporations accountable.

Recommendations

10. Human Rights Advocates recommends that the Human Rights Council continue to address corporate accountability by establishing a Working Group on Corporate Accountability that would:

- continue the dialogue and pioneering work undertaken by Professor Ruggie; it is critical that the Council maintains focus on the human rights abuses connected to transnational corporations;
- include within its mandate the goal a clear process for hearing and issuing findings on human rights abuses from citizens in order to offer direct redress;
- promote discourse regarding the broad spectrum of human rights and corporate actors, including activities that result in gross human rights abuses, such as those related to toxic dumping, mineral extraction, and private military and security companies.

11. Human Rights Advocates recommends that at a minimum, the mandate of the SRSG on human rights and transnational corporations and other business enterprises should be

¹² The United States of America vs. Alfried Krupp, et al. (Dec. 8, 1947 to July 32, 1948); The United States of America vs. Carl Krauch, et al. (Aug. 27 1947 to July 30, 1948); The United States of America vs. Friedrich Flick, et al. (Apr. 19 to Dec. 22, 1947)

¹³ Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9; 37 ILM 1002 (1998); 2187 UNTS 90, Art. 6-7 (July 17, 1998) [Entered into force: July 1, 2002]

¹⁴ United Nations Compensation Commission, Introduction. Accessed at <http://www.uncc.ch/>

continued in order to ensure that the relationship between human rights and transnational corporations continues to be addressed.

12. Human Rights Advocates urges the Council to consider a process for international civil liability over corporate actors in order to provide redress for victims of human rights abuses and to encourage discussion on how to create such a mechanism.
