



General Assembly

Distr.
GENERAL

A/HRC/11/NGO/17
28 May 2009

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Eleventh session
Agenda item 3

**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. (HRA),
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.

[21 May 2009]

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

Corporate Accountability – Ensuring the Promotion and Protection of Human Rights by Non-State Actors

1 Human Rights Advocates submits this written statement, calling on the Special Representative to consider the deficiencies presented below in light of his mandate, including the lack of legal obligation on corporations themselves, the consequences of relegating legal duties to States alone who may not be able to ensure the promotion and protection of human rights due to political or economic factors, as well as the complex regulatory model created for corporations in having differing legal standards applied to their operations; and to consider the Norms on the responsibilities of transnational corporations and other business enterprises (“the Norms”) with regard to human rights as a foundation for developing a set of legally binding standards addressing the obligations of non-State actors.

Need for Accountability - Examples

2. Globalization has increasingly expanded opportunities for growth of transnational business sectors like the private security industry. Further, trends towards outsourcing government functions to the private sector borne from neo-liberal ideologies have lead to the blossoming of military and security functions being performed by private firms.

3. In the 1990s, DynCorp employees hired to represent the U.S. contingent in the U.N. Police Task Force in Bosnia were involved in sex-trafficking scandals.¹ In Africa, the private military firm Executive Outcomes was criticized for using cluster bombs and other military methods that were questionable under international humanitarian law.² In Iraq, security contractors employed as interrogators by CACI International and Titan were involved in the Abu Ghraib prison abuses.³ Recently, Blackwater contractors came under scrutiny for the apparently unjustified killing of 17 Iraqi civilians while they were providing mobile convoy protection for USAID employees.⁴

4. Current U.S. immigration policy has resulted in a shortage of detention facilities with the capacity to adequately detain migrants. In a sinking economy, immigration detention is a rare growth industry. Congress has doubled annual spending on it in the last four years, to \$2.4 billion approved in October 2008 as part of \$5.9 billion allotted for immigration enforcement through September 2009.

5. However, the detention of human beings should never be a profit generating enterprise. The impact is particularly severe on immigrants where the purported goal of detention is to prevent them from absconding during the pre-removal process. With States increasingly turning to private corporations to administer detention centers, the potential for abuse and the inherent danger of a per body payment plan cannot be ignored.

¹ Robert Capps, *Crime Without Punishment*, Salon.com, June 27, 2002.

² Peter Singer, *Corporate Warriors*, 49-54 (2003)

³ Joel Brikley & James Glanz, *Contract Workers Implicated in February Army Report on Prison Abuse Remain on the Job*, N.Y. Times, May 4, 2004 at A6.

⁴ James Glanz & Alissa J. Rubin, *From Errand to Fatal Shot to Hail of Fire to 17 Deaths*, N.Y. Times, Oct. 3, 2007 at A1.

6. The illicit transfer of toxics has also involved significant abuses at the hands of corporations. Africa has been particularly affected by the dumping of toxic waste. Over the past years, the coast of Somalia has been used as an illegal dumping ground for several European companies and their most toxic substances including nuclear and chemical wastes being dumped into the waters.⁵ The Asian Tsunami has further exacerbated the problem as tidal waves smashed open containers of toxic waste and spread the contaminants as far away as 10 or more kilometers inland. It is precisely this dumping that has been used by Somali pirates as a justification for their seizure of ships in recent years.⁶

7. With expanding voices calling on governments to do more to protect their populations from harm, regulatory models need to be adopted to hold accountable those with the greatest power in today's world: the corporations. We have reached a tipping point where lacking regulation and resulting human rights abuses impel a different approach, one away from voluntary codes of conduct and towards a system that ensures the promotion and protection of human rights by all actors involved in the global economy.

Special Representative's Framework – Persisting Concerns

8. On June 18, 2008, the work of the Special Representative was affirmed by the Human Rights Council, and the mandate extended for an additional three years. The Special Representative has heeded this call in developing his most recent report, "Business and Human Rights: Towards operationalizing the "protect, respect and remedy" framework".

9. Human Rights Advocates commends the work of the Special Representative towards operationalizing the Framework and in calling attention to the ties between business and human rights. Although the Framework is a definitive step forward in the dialogue about corporate accountability, it is severely undermined by the following.

10. First, it proffers no new legal obligations upon corporations, and leaves non-State actors to determine themselves what human rights may be material to their business. Notably, the Framework uses the term "responsibility" in discussing the evolving societal expectation of corporations for "internationally recognized rights". The distinction between duties and obligations and responsibilities is paramount, as responsibilities refer to moral obligations and societal expectations rather than binding law. Thus, the Framework leaves it to domestic governments to define the scope of legal compliance with the human rights framework, seeming to absolve the corporation from any obligations itself to do the same outside of a call for due diligence.

11. Second, it is by emphasizing the State's role in protecting their populations from harm that the Framework fails to consider situations where States cannot or will not enact domestic regulation that protects human rights. As the example of toxic dumping in Somalia makes clear, ill-functioning governments are easily taken advantage of by corporations. If it is solely States that have legal obligations to protect human rights, how can redress be effectively achieved in these instances?

⁵ Kevin Caruso, "Illegally Dumped Hazardous Waste Released in Somalia After Tsunami," Feb. 23, 2005, <http://www.tsunamis.com/tsunami-hazardous-waste-somalia.html>.

⁶ *Not Just a Pirate Movie*, Boston Globe, April 14, 2009.

12. Third, from the corporate perspective, relegating legal obligations to States alone provides for complex regulatory systems, where corporate operations are subject to differing legal standards. Further, domestic regulation alone, no matter how strict or well designed, will not be able to reach all corporate activity, as corporations often work outside of the States of their incorporation. Absent an international consensus on the obligations of all actors, including a clear process of implementation and enforcement, a “race to the bottom” could ensue, with corporations incorporating in States with the least stringent domestic regulations.

13. In the integrated and globalized world that we live in today, the importance of international cooperation that transcends national boundaries cannot be overemphasized. Therefore, a movement away from voluntary codes is necessary to protect human rights from abuse. A set of guiding principles, adopted and binding on all stakeholders, including business, government and civil society, is needed. For human rights to be protected corporations must do more than merely respect, they must be obligated to ensure their protection through consistent and clear legal standards.

Building Accountability – Using the Norms as Foundation

14. The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights were promulgated by the UN Sub-Commission on the Promotion and Protection of Human Rights and started by recalling that the Universal Declaration of Human Rights was addressed to individuals and organs of society, as well as governments.⁷ The Norms clearly state that within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law.⁸

15. The value of the Norms as compared to voluntary compliance regimes is that they contain an implementation process, calling on each transnational corporation to adopt, disseminate, and implement internal rules of operation in compliance with the Norms. Secondly, the UN shall conduct periodic monitoring and verification of the corporations’ efforts and investigate complaints of violations. Thirdly, States are responsible for adopting and enforcing a regulatory scheme consistent with the Norms. Lastly, the corporations are required to provide prompt, effective and adequate reparation to those persons, entities and communities harmed by their conduct, as determined by national courts and/or international tribunals.

15. It is by including corporations under such an accountability framework that the obligation to respect human rights is shared across the different entities capable of affecting them. Domestic regulation alone, no matter how strict or well designed, will not be able to reach all corporate conduct.

Recommendations

16. Human Rights Advocates commends the progress of the Special Representative, and calls upon him to:

⁷ *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

⁸ *Id.*

- Consider the deficiencies presented above, including the lack of legal obligation on corporations themselves, the consequences of relegating legal duties to States alone who may not be able to ensure the promotion and protection of human rights due to political or economic factors, as well as the complex regulatory model created for corporations in having differing legal standards applied to their operations.

- Examine the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights as a foundation for developing a set of legally binding standards addressing the obligation of corporate actors towards the promotion and protection of human rights.
