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Joint Statement

14th Session of the Human Rights Council

Geneva, June 4, 2010

General Debate item 3 - Human Rights and Transnational Corporations

We would like to address the report of the Special Representative of the Secretary-General (SRSG) on human rights and transnational corporations and other business enterprises. The report provides a welcome opportunity for the Human Rights Council to consider how it can act to advance the core principles of the state duty to protect, the corporate responsibility to respect, and the right of individuals and communities affected by business-related abuses to an effective remedy.

We appreciate the attention given in the SRSG's report to each of the three pillars of the "protect, respect, remedy" framework. With regard to the state duty to protect human rights in the context of corporate activity, we agree with the view expressed by the SRSG in his report that one of the major gaps is the failure to enforce existing laws and that "for 'at-risk' and vulnerable groups, there may be inadequate legal protection in the first place."

We also welcome the confirmation in the report that "the corporate responsibility to respect human rights exists independently of States' duties or capacity [and] constitutes a universally applicable human rights responsibility for all companies, in all situations." Nevertheless, the SRSG's work to date has largely attributed the business responsibility to respect human rights to general social norms and market expectations. He writes, for example, that the corporate responsibility to respect rights is not an obligation that current international human rights law generally imposes directly on companies but rather constitutes "a standard of expected social conduct." That view is open to debate and in any case the law is highly dynamic and can adapt to meet pressing needs. Looking to the future, there is important scope for the Council to consider the actual and potential role of international law in further defining the corporate responsibility for human rights.

With regard to the rights of victims to an effective remedy, we appreciate the SRSG's analysis of some of the obstacles to justice in cases of business-related human rights abuse. We agree with him that states and companies must cease impeding justice where they do so and that solutions must be found to address legal and practical barriers faced by those seeking accountability. The existing UN human rights protection regime can play a vital role in addressing the gaps in protection, by intensifying the efforts of existing mechanisms and mandates to strengthen redress and accountability for business-related abuses and ensuring that affected individuals and communities have the capacity to defend their rights. Likewise, the creation of new mechanisms should be considered.

We look forward to the final report of the SRSG that will be presented to the Council in 2011, which will contain his recommendations. We note that his current report includes one preliminary recommendation. The idea of strengthening the advisory and capacity-building function of OHCHR in relation to human rights and transnational corporations has merit, but it would be insufficient to provide support directed to states, companies, and national and international entities, as proposed. Instead, inclusion of a strong victim component must be ensured. Victims of human rights abuses by, or involving, companies deserve the same level of protection and voice in the international system as victims of other types of violations.

We encourage the SRSG to fully take into account the protection needs of individuals and communities affected by corporate abuse as he completes work under his mandate. We particularly stress the importance of engagement with diverse stakeholders, including indigenous and other affected communities, in the preparation of his final recommendations to the Council and his proposed guiding principles for states and companies.

We urge the Council to engage in an active discussion on developing an effective and strong follow-up mechanism to the existing mandate that builds on its achievements and addresses remaining needs. This process should incorporate the perspective of those affected by corporate human rights abuses and identify areas in which the Council itself, as well as its mandate-holders, the treaty bodies, and other organs of the UN human rights system, can play a unique role.

In this light, we recall that in its Resolution 8/7 (2008) the Council recognized the need to “operationalize” the “protect, respect and remedy” framework articulated by the SRSG “with a view to providing more effective protection of individuals and communities against human rights abuses by, or involving, transnational corporations and other business enterprises, and to contribute to the consolidation of existing relevant norms and standards and any future initiatives, such as a relevant, comprehensive international framework.” The excerpt captures the Council’s twin tasks in relation to business and human rights: defending the rights of those affected by corporate abuses around the world and articulating global standards to that end. We would sincerely welcome both elements having a central place in the next mandate.

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