



## CONSULTATION WITH CIVIL SOCIETY STAKEHOLDERS ON THE IMPLEMENTATION OF THE UN “PROTECT, RESPECT AND REMEDY” FRAMEWORK

### Summary Note

11-12 October 2010, Palais des Nations, Geneva, Switzerland

#### A. Background

On 11 and 12 October 2010, the Special Representative of the UN Secretary-General (SRSG) for business and human rights, Professor John Ruggie, held a consultation with civil society stakeholders in Geneva on the implementation of the UN “Protect, Respect and Remedy” Framework. The consultation was organized with the support of the Office of the UN High Commissioner for Human Rights.

The purpose of the consultation was to provide an opportunity for representatives of civil society to share their views with the SRSG as he prepares a draft of the Guiding Principles on the operationalization of the UN Framework, which he will present to the UN Human Rights Council in June 2011. Participants also discussed options and recommendations for how the Council and other UN actors might follow up on the business and human rights agenda after the SRSG’s mandate concludes next June. The SRSG held similar stakeholder consultations in October with delegates from UN Member States as well as with business representatives. Summary notes from those consultations are also available.

Prior to the three consultations, an outline of key elements of the UN Framework that the Guiding Principles could address was distributed by the SRSG to all participants, and is now posted on his online forum at <http://www.srsgconsultation.org/>. The outline will remain up until late November when a draft version of the Guiding Principles will be posted for public comment. All are welcome to register on the forum and contribute comments until early 2011 when the SRSG will finalize the Guiding Principles for submission to the Human Rights Council by early March.

The Guiding Principles will draw on the extensive research and consultations the SRSG has conducted since his mandate began, the findings of which are summarized in his annual reports to the Human Rights Council and since 2008 to the General Assembly as well. (All mandate-related documentation may be accessed at <http://www.business-humanrights.org/SpecialRepPortal/Home>.)

This summary is not an exhaustive record of the discussion. A number of key issues raised are described here, without attribution, as the meeting was held under the Chatham House rule. A list of participants is attached.

## **B. Opening remarks**

The consultation was opened by Mr Craig Mokhiber, Officer-in-Charge of the Development and Social and Economic Issues Branch, on behalf of the Office of the UN High Commissioner for Human Rights.

Ms Irene Khan, a member of the International Advisory Board of the Institute for Human Rights and Business, then delivered a keynote address, in which she welcomed the common ground identified by the SRSG on which the UN Framework rests, and exhorted all stakeholders to ensure that the Guiding Principles become the “gold standard” for addressing business and human rights challenges. Ms Khan stressed the primary role of states and the fact that the corporate responsibility to respect human rights is not a “law-free zone”. She acknowledged the value that can come from building on a range of sources in addition to international human rights law in developing standards in this area, and encouraged the SRSG to continue to tackle difficult issues, like the question of extraterritorial jurisdiction, as he works to develop the Guiding Principles.

The SRSG then gave an overview of his mandate, the UN “Protect, Respect and Remedy” Framework, and his hopes that participants would provide frank and constructive input as he develops the Guiding Principles over the coming months. All three opening statements are available on the SRSG’s online portal.

Close to 150 individuals from around 35 countries registered for the consultation. Participants included representatives of non-governmental organizations, trade union organizations and national human rights institutions, as well as academics and indigenous peoples’ representatives. All regions were represented.

## **C. The State Duty to Protect**

The first session focused on the first pillar of the UN Framework: the state duty to protect against human rights abuses committed by third parties, including business, through appropriate policies, regulation and adjudication. Participants discussed issues related to the core topics identified in the consultation outline document, namely:

- Ensuring policy coherence
- Doing business with business
- Fostering business respect for human rights
- Supporting business respect for human rights in conflict-affected areas, and
- Multilateral institutions.

Comments focused on how to strengthen the state duty to protect but participants highlighted a wide range of issues including: the relevance of the full range of states' human rights obligations (ie, in addition to the duty to protect); the relevance of legal tools in implementing the duty; the important role that can be played across all three pillars by corporate reporting requirements; the relationship between states' obligations under international human rights law and other bodies of law such as investment and trade law; the need for protection of and support for human rights defenders under all three pillars of the Framework; the challenges of implementing the duty to protect in federal systems; and the importance of ensuring free, prior and informed consent for indigenous peoples and (some argued) for other affected communities as well.

Several participants flagged the relevance of existing institutional frameworks, including: the role that national human rights institutions could play under all three pillars of the framework, provided they are given adequate mandates and resources; the responsibilities of states when acting through international financial institutions; and the potential role of National Contact Points under the OECD Guidelines on Multinational Enterprises.

A number of participants asked the SRSR how the framework could address the power asymmetries that exist in this area. The SRSR explained that the UN Framework tries to address such asymmetries by insitutionalizing collaborative approaches to specific disputes, and to broader relationships in the business and human rights space. He also observed that there are some examples of innovative response by states and that stakeholders should not fall back too readily on arguments or defenses based on apparent state "weakness".

On the challenging issue of the appropriate extension of extraterritorial jurisdiction, which several participants raised, the SRSR observed that while this is a matter for states, the most likely area in which support for legal consequences would be forthcoming appears to be in relation to gross human rights abuses, potentially amounting to the level of international crimes. He noted that recent decisions in Alien Tort Statute litigation in the United States only heightened the uncertainty for all stakeholders about how international standards in this area may apply to companies.

#### **D. The Corporate Responsibility to Respect**

The next session addressed the second pillar of the UN Framework, the corporate responsibility to respect human rights, which means that business enterprises should avoid infringing on the rights of others and should address adverse impacts that may occur. Participants discussed issues related to the following topics:

- Policies and Processes
- Conducting Human Rights Due Diligence, and
- Issues of Scale and Context.

Participants raised a broad spectrum of issues. Some wanted to see reference to senior level accountability for corporate responsibility, the inclusion of more detailed responsibilities with regard

to supply chains, and a clear definition of complicity. Other comments focused on: the role of trade unions, and also NGOs, under the second pillar; the relationship between the first and second pillars in situations of persistent abuse or where remediation at the operational level would be otherwise inappropriate; the need to build corporate capacity in assessing human rights impacts; the need to address free, prior and informed consent, and protection more generally for those dependent on communal land rights, as part of the second pillar; the challenges posed by corporate lobbying both to the state duty to protect and the corporate responsibility to respect; whether the financial sector merited additional attention; and a stronger emphasis on negative corporate impacts on women, as well as on children and other potentially vulnerable or “at-risk” groups. A number of participants said the Guiding Principles should be as bold as possible in “requiring” human rights due diligence of companies; others pointed out that this would raise real challenges in terms of regulatory oversight.

In response to the concern that due diligence could become a mere “check-list” exercise, the SRSB agreed that human rights risk management differs from other types of corporate risk management, as it requires a genuinely dialogical process involving meaningful stakeholder engagement, including with those individuals and communities whose rights are at issue.

#### **E. Access to Remedy**

The third pillar of the framework addresses the need for enhancing access to effective remedies for those whose human rights are adversely impacted by corporate activities or relationships. Participants discussed the issues presented under the third pillar in the Guiding Principles outline, which are as follows:

- Judicial Grievance Mechanisms
- State-Based Non-Judicial Grievance Mechanisms, and
- Operational-level Grievance Mechanisms.

Several participants stressed that there are only a handful of legal precedents in this area and that one of the few judicial options, the Alien Tort Statute, may be closing down. There was acknowledgement of the fact that affected individuals and communities cannot rely solely on judicial mechanisms for solutions in this area, although they continue to be critical, particularly in cases of serious abuse. Several comments highlighted the evidentiary and other procedural challenges for victims in accessing courts, including the use in some instances of “strategic litigation” against human rights defenders, and recommended that this be balanced by a reversal of the burden of proof in appropriate cases.

Other issues included: the importance of providing for corporate responsibility as well as the responsibility of individual corporate officers; concerns about the potential for companies to obstruct access to justice; the circumstances in which individuals should be able to access “home” state courts; and the importance of respecting traditional forms of remedy, especially those utilized by indigenous peoples.

A number of participants stressed the relevance of the right to an effective remedy. In response to this, the SRSG noted that the third pillar is grounded in existing state obligations to provide access to effective remedy; that he has specifically referenced with approval the UN Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and that he has also referenced relevant provisions dealing with access to remedy in specific instruments such as the International Convention on Civil and Political Rights.

In response to questions about the operational-level grievance mechanism pilot projects that he has underway, the SRSG stressed that these are testing his principles for effective non-judicial grievance mechanisms and that he will only recommend the strengthening of such mechanisms if indeed the pilots do provide the positive evidence that initial results appear to suggest they will.

#### **F. Ideas and recommendations for follow-up to the SRSG's mandate**

In this session, participants addressed options that the Special Representative might present to the Human Rights Council for how the Council might follow up on his mandate so as to build on the progress achieved to date, ensure the integrity of the Guiding Principles, and carry forward the business and human rights agenda.

Proposals for potential functions to be carried out by follow up mechanisms within the UN included the following: assessing the implementation of the Guiding Principles; elaborating further guidance where needed, including on best practices; receiving, investigating and (some argued) adjudicating individual complaints; building the capacity of other UN actors, including Human Rights Council special procedures, as well as other institutional bodies including regional organizations; coordinating existing resources and disseminating information; providing a "human contact point"; strengthening the role of civil society; and reaching out to SMEs, national enterprises, and other companies, including through the socially responsible investor community.

A number of participants advocated for the establishment of a new special procedure in this area; others cautioned against vesting too many functions and responsibility in one individual. There was a clear call for continued multi-stakeholder dialogue and engagement in whatever follow up proposals were made, including support for national and regional initiatives. There was also general agreement that various efforts would need to be pursued simultaneously in order to continue moving this complex agenda forwards but the UN should retain its role as focal point.

The SRSG then thanked participants for their time and input and closed the meeting.

## ANNEX: LIST OF PARTICIPANTS (BASED ON REGISTRATION)

<b>Family name</b>	<b>First name</b>	<b>Organization</b>
Umlas	Elizabeth	Academic/Independent researcher
Onuoha	Austin	Africa Centre for Corporate Responsibility
Agbazue,	Tagbo	AICC
Martin	Shanta	Amnesty International
Hernández	Carlos Alberto	Asociación para una Sociedad más Justa (ASJ)
Sombolinggi	Rukka	Asia Indigenous Peoples' Pact
Frijns	Johan	BankTrack Network
Missbach Sempach	Andreas	Berne Declaration
Peyer	Chantal	Bread for All
Lazala	Mauricio	Business and Human Rights Resource Centre
Lindsay	Ann	CAFOD
Montrat	Myriam	Canadian Human Rights Commission
Cortés Fajardo	Jorge	CEADESC
Nguiffo	Samuel	CED / Misereor network
Angeles Pereira	Maria de los	CEDHA
Narula	Smita	Center for Human Rights and Global Justice, NYU School of Law
Noell	Jenae	Center for Human Rights and Global Justice, NYU School of Law
Boppana	Sravya	Center for Human Rights and Global Justice, NYU School of Law
Auclair	Denise	CIDSE
Bild	Emily	Consultant
Vermijs	David	Consultant on business and human rights
Zeldenrust	Ineke	Clean Clothes Campaign
Baker	Jim	Council of Global Unions
O'Brien	Claire Methven	Danish Institute for Human Rights

Devoe	Larry	Defensoria del Pueblo de Venezuela (NHRI)
Kalluri	Bhanumathi	Dhaatri Resource Centre for Women & Secretariat of International Women and Mining Network
Atler	Sandra	ECPAT
Hostettler	Daniel	Fastenopfer/ Action de Careme Switzerland (EcoSoc)
Taylor	Mark	Fafo
Ellis	Hannah	(FoE/CORE)
Kirchmeier	Felix	FES
Kouros	Kristiina	FIDH
Aviles	Laure	FIDH
Reyes	Jimena	FIDH
Udyarova	Anna	FIDH
Uribe	Alirio	FIDH/CCAJAR
van Heerden	Auret	FLA
Vera	Beatriz	FLA
Nkotto	Ndoumbe Honoré	FOCARFE / Misereor network
Cobo	Sergio	Fomento
Koalick	Madeleine	Global Compact Network, Germany
Dovey	Kathryn	Global Business Initiative on Human Rights
Hodge	Mark	Global Business Initiative on Human Rights
Hagen	Katherine	Global Observatory Geneva
Hoffman	Christy	Global Unions
Jennings	Philip	Global Unions
Huber	Sophie	The Graduate Institute Geneva
Ecoffey	Danielle	The Graduate Institute Geneva
Nayagam	James	Human Rights Commission of Malaysia
Lee	Pei Hsi	Human Rights Commission of Malaysia
Ball	Rachel	Human Rights Law Resource Centre
Abrahams	Désirée	IBLF
Morrison	John	IHRB

Lopez	Carlos	ICJ
Stoitchkova	Desislava	International Alert
Schilling	David	Interfaith Center on Corporate Responsibility
Blin	Richard	International Federation of Chemical, Energy and Metal Workers' Unions
Chong	Hyewon	International Metalworkers' Federation
Holdcroft	Jenny	International Metalworkers' Federation
Lusiani	Nicholas	International Network for Economic, Social and Cultural Rights
Kaiming	Liu	Institute of Contemporary Observation; Founder of the Migrant Workers Community College
Justice	Dwight	ITUC
Rossmann	Peter	IUF
Mutuaruhiu	Maina	Kenya National Commission on Human Rights
Rondon	Glevys	LAMMP
Day	Martyn	Leigh Day
Lüthi	Ariane	Mercator Fellowship, Switzerland
Strohscheidt	Elisabeth	Misereor
Brima	Abu	National Movement for Justice and Development, Sierra Leone
Lee	Seong Taek	National Human Rights Commission of Korea
Jung	Yunkul	National Human Rights Commission of Korea
Ryou	In Duk	National Human Rights Commission of Korea
McGregor	Judy	New Zealand Human Rights Commission
Bijlsma	Bas	Niza/Action Aid
Wielga	Mark	The Nomogaia Foundation (EcoSoc)
Salcito	Kendyl	The Nomogaia Foundation (EcoSoc)
Lunau	York	Novartis Foundation for Sustainable Development
Oldenziel	Joris	OECD Watch
Thorpe	Jodie	Oxfam



Backer	Larry	Penn State University
Mamani Condori	Carlos	UN PFII (Chair)
Salas	Raymond	Philippines Misereor Partnership / Saligan
Maderazo	Mackie	Philippines Misereor Partnership
de Waal	Vita	Planetary Association for Clean Energy
du Plessis	André	Privatisation of Security Programme, (DCAF)
Buzato	Anne-Marie	Privatisation of Security Programme, (DCAF)
Márquez	Rosalinda	PRODESC
Blandon	Zoraida Gadea	Procuraduría para la Defensa de los Derechos Humanos de Nicaragua (PDDH) (NHRI)
Jerbi	Scott	Institute for Business and Human Rights
Paragas	Marietta	Shontoug Foundation / Philippines Misereor network
Slob	Bart	SOMO
van Huijstee	Mariette	SOMO
Marlin	Alice Tepper	Social Accountability International
Davis	Rachel	SRSB Team
Shemberg	Andrea	SRSB Team
Pachoud	Gerald	SRSB Team
Drew	Kirsty	TUAC
Ndlovu-Chanda	Hope	Zambia Human Rights Commission
Dordina	Yana	Batani International Development Fund for Indigenous Peoples of the North, Siberia & the Far East
Waheed Patel	Abdul	Business & Human Rights Unit, Human Sciences Research Council
Mopiti	Didier	Avocats Verts (DRC)