

H.E. Joachim Rücker
President of the Human Rights Council
United Nations Office, Geneva

15th December 2015

Excellency,

I write to inform you of my resignation from the Working Group of Human Rights and Transnational Corporations and Other Businesses. I have recently accepted a UN staff position.

This is an open letter, written as a courtesy and with thanks to all those who have helped me in my time as a mandate-holder since 2011.

I joined fellow mandate holders in issuing a statement last week *“As the Covenants turn 50, it is time to turn norms into action”*. In that statement we highlighted that many good things have happened since adoption of the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights by the UN in 1966 - yet *“human rights remain under severe threat”* for a variety of reasons, the most significant being the apparent inability of *“States to live-up to their duty to respect human rights”*.

Under this umbrella, Excellency, please allow me to address specifically the matter of business and human rights, the theme of my own mandate, and offer three opinions which member states who steward this agenda might consider:

1. That member states set a bad example for business on human rights.
2. That business is profit-orientated and must adhere to laws, but not norms.
3. That the UN is bipolar in dealing with human rights and businesses.

Can we expect businesses to respect human rights when member states do not do their duty to protect human rights?

I believe that if a business can operate ‘legally’ yet impact negatively on human rights then that is a simple failure of a state’s duties. The material irrelevance of ‘domestic’ or ‘multinational’, the cowardice that shrouds extraterritorial impunity and the perversion of international dispute settlements are all contrivances of state-sponsored systems that allow companies to behave badly. I find no difference in culpability between states that allow domestic businesses to abuse the human rights of their own citizens, and states that tolerate and tacitly protect multinational businesses that abuse the rights of others’ citizens.

Will a business choose to make less profit voluntarily?

I joined the Working Group directly from the 'C-suite' of an emerging market multinational company. I have led firms in various industry sectors and operated within several cultural environments. I have come to understand that businesses are machines designed to do only certain things and will always strive to do them as efficiently and cost-effectively as possible. The loudest calls within a company for higher goals are distant echoes if even a whisper for profit exists. I am deeply wary of CEOs who claim to be guided by a moral compass because they ultimately only navigate waters their shareholders chart.

Excellency, I suggest that if states wish for businesses to respect human rights then what that constitutes must be made mandatory. Otherwise it is just voluntary. Legally required standards compel compliance in business operations to a meticulous degree. Business respects boundaries and business craves clarity. Companies are our own social creations and reflect our own values. They are defined by the rules that we choose to lay down. We hope they create wealth, drive economies and are not 'evil'. But if they are because there are no rules or consequences, then we are responsible.

Does the UN understand business?

The Office of the High Commissioner on Human Rights (OHCHR) and the Global Compact (GC) 'handle' business for human rights at the UN. My close association with both offices over several years, and study of how they interrelate, suggests that neither is fit for the purpose of engendering business to respect human rights. Neither OHCHR nor the GC understands what motivates companies or how they are incentivised. My observation is that OHCHR is entirely 'stick' while the GC is solely 'carrot'. Any business appearing at an OHCHR event is passaging between punishment and penance, whereas any signatory of the GC enjoys unconditional association with the UN. Fortunately a few NGOs are actually expert in this area and business can turn to them for guidance. That the UN is either unwelcoming or glib wastes the opportunity to be the authority and chaperone that business urgently seeks on the human rights agenda.

I conclude, Excellency, by recalling the Covenants and how much has changed since they were signed 50 years ago. It is generally accepted that today business is as necessary as states for development. The relationship between the private and public sector has changed irreversibly and is dramatically evidenced by how capitalism, albeit in various flavours, is the only economic system left standing. Capitals are in lockstep with capitalists. This is as good or as bad as we allow it to be.

The landscape of states and non-state actors over the past fifty years has expanded, renewed and reinvented itself many times over. Every nation and company has accommodated new leadership with new strategies, some for worse but most for better. Importantly, there is a strong symbiosis between states, business and civil society for global governance, economics and politics. More things are better because more of us from different sectors now work together.

The UN should look outside its walls to learn from the growth and symbiosis that has happened for the past fifty years because renewal, reformation or innovation is far less apparent within. The UN houses fossils deeply veined with the most vitriolic and virulent attitudes on engagement with the private sector. This is bad for human rights, and worse for the SDGs.

The UN system is old but it should not be weary; and it is too often naïve when it could be wise to the new dynamic between states, businesses and other stakeholders.

I thank again all those who gave, and give, their time and intellect to understand and apply human rights in business. Thank you for giving me the opportunity to contribute. I also deeply appreciate the leadership of the core group of member states in support of this mandate.

It is my privilege to act for modern multilateralism as the future of global governance.

With assurance, Excellency, of my highest consideration,



Puvan J Selvanathan