

**Remarks by SRSG John Ruggie
“The ‘Protect, Respect and Remedy Framework:
Implications for the ILO”
International Labour Conference
Geneva, 3 June 2010**

Thank you for the opportunity to discuss my UN mandate on business and human rights with you. The ILO is the last organization in the world to require an introduction to this subject, having been at the forefront of dealing with workers’ rights since 1919, and with the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy anticipating so many subsequent normative developments. Indeed, on matters of workers rights I have simply referenced the ILO from the start.

My mandate deals with the systemic challenge of fostering human rights-respecting corporate cultures and practices, and the need for effective remedy where harm occurs, concerning not only the work-place but also communities and society at large.

Permit me to outline the mandate briefly, and then elaborate on two of its core features that may be of particular interest to you: human rights due diligence and company-level grievance mechanisms, both serving the corporate responsibility to respect human rights.

Background

As some of you may recall, my mandate had its origins in the divisive debate generated by the draft Norms on Transnational Corporations and Other Business Enterprises, presented to the then UN Commission on Human Rights in 2004 by a subsidiary body. This sought to impose on companies, directly under international law, essentially the same range of human rights duties that States have adopted for themselves—to respect, protect, promote, and fulfill human rights.

The business community, and many international workers’ organizations, were opposed to the draft Norms; human rights advocacy groups strongly in favor. After considering the issue for a year, the Commission declined to adopt the text, declaring that it had no legal status and that no action should be taken on its basis. Instead, in 2005 the Commission requested the UN Secretary-General to appoint a Special Representative on the issue of business and human rights, with the goal of moving beyond the stalemate.

The Framework

Now fast forward three years. In 2008 the Human Rights Council unanimously endorsed a conceptual and policy framework I proposed to better manage business and human rights issues. And it extended my mandate to 2011, with the task of operationalizing the framework.

The framework rests on three pillars: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and greater access by victims to effective remedy.

So, with the understanding that the corporate responsibility to respect human rights is but one component in a wider system of preventative and remedial measures, let me elaborate upon it here.

The Corporate Responsibility to Respect

The term “responsibility” to respect rather than “duty” is meant to indicate that respecting rights is not an obligation current international human rights law generally imposes directly on companies, although elements may be reflected in domestic laws, including labor law. At the international level it is a standard of expected conduct acknowledged in virtually every voluntary and soft-law instrument related to corporate responsibility, and affirmed by the Council itself when it welcomed the framework.

The corporate responsibility to respect human rights means to avoid infringing on the rights of others, and addressing adverse impacts that may occur. This responsibility exists independently of States’ human rights duties. It applies to all companies in all situations. As a joint statement by the IOE, ICC and BIAC has made clear, it exists even if national laws are poorly enforced, or not at all.

The scope of a company’s responsibility to respect is defined by the actual and potential human rights impacts generated through its own business activities and through its relationships with other parties—such as business partners, entities in its value chain, other non-State actors, and State agents.

Because companies can affect virtually the entire spectrum of internationally recognized rights, the corporate responsibility to respect applies to all such rights. In practice, some rights will be more relevant than others to particular industries and circumstances, and they will be the focus of attention.

But because situations may change, broader periodic assessments are necessary to ensure that no significant issue is overlooked.

Due Diligence

How does a company avoid infringing on the rights of others, and address adverse impacts where they do occur? The appropriate response to managing the risks of infringing on others' rights is to exercise adequate due diligence.

Human rights due diligence is a potential game changer for companies: from "naming and shaming" to "knowing and showing."

Naming and shaming is a response by external stakeholders to the failure of companies to respect human rights. Knowing and showing is the internalization of that respect by companies themselves through human rights due diligence.

Companies routinely conduct due diligence to satisfy themselves that a contemplated transaction has no hidden risks. Starting in the 1990s, companies began to add internal controls for the ongoing management of risks to both the company and stakeholders who could be harmed by its conduct—for example, to prevent employment discrimination, comply with environmental commitments, or prevent criminal misconduct.

Drawing on the features of well-established practices and combining them with what is unique to human rights, I have laid out the basic parameters of a human rights due diligence process. Because this process is a means for companies to address their responsibility to respect human rights, it has to go beyond simply identifying and managing material risks to the company itself, to include the risks a company's activities and associated relationships may pose to the rights of affected individuals and communities.

Of course, one size does not fit all: there are 80,000 multinational corporations in the world, ten times as many subsidiaries and countless national firms, many of which are small-and-medium-sized enterprises. My aim is to provide companies with universally applicable guiding principles for meeting their responsibility to respect human rights and conducting due diligence, recognizing that the complexity of tools and the magnitude of processes they employ necessarily will vary with circumstances.

Considered in that spirit, human rights due diligence comprises four components: a statement of policy articulating the company's commitment to respect human rights; periodic assessments of actual and potential human rights impacts of company activities and relationships; the integration of these

commitments and human rights risk assessments into company decision-making; and tracking as well as reporting performance.

But merely having a set of components in place provides no guarantee that the system will work. Therefore, I am also developing guidance for their implementation. One example is that companies must understand that the responsibility to respect human rights is not a one-time transactional activity, but is ongoing and dynamic. Another is for companies to accept that, because human rights concern affected individuals and communities, managing human rights risks needs to involve meaningful engagement and dialogue with them. And a third is that, because a main purpose of human rights due diligence is enabling companies to demonstrate that they respect rights, a measure of transparency and accessibility to stakeholders will be required.

Grievance Mechanisms

Let me turn next to the subject of grievance mechanisms. State-based judicial and non-judicial mechanisms should form the foundation of a system of remedy for corporate-related human rights abuse. But company-level grievance mechanisms can serve two important functions.

First, they can provide a necessary feedback loop directly from those who may be negatively impacted by company activities, enabling them to raise concerns early and before they escalate. This can serve as an early warning mechanism for companies and is an essential part of their on-going due diligence to be sure they are respecting human rights.

Moreover, where complaints in fact do raise genuine harms, such mechanisms can then play an important role in enabling early remediation. Companies cannot by definition be respecting human rights unless they address their harms.

In the realm of workers' rights, the ideal scenario is that there be genuine freedom of association; legitimate and trusted unions; and good union-management processes available to handle individual or collective grievances.

But we know that that is far from the reality in many places. While the full implementation of all workers' rights—including freedom of association—must remain the objective, if that is not immediately possible then interim measures to mitigate harms become a priority.

However, this requires some understanding of what makes for an effective grievance mechanism. Slapping a complaints box on a wall and, in

effect, saying to workers or communities “you tell us the problem and we’ll dictate the answer” does not meet the grade.

Therefore, the mandate ran a lengthy consultative process to identify a set of principles such mechanisms should embody in order to be effective in practice. They are legitimacy, accessibility, predictability, equitability, rights-compatibility, transparency and—for company-level mechanism—a focus on dialogue and engagement, not adjudication. These principles and related guidance points are now being piloted by five companies on five continents.

There are doubtless many ways one can realize these principles in practice, tailored to sector, country, culture and other key factors. Nor do the principles necessitate a large and burdensome process for the company. A company that is small or has small impacts can craft something quite simple. A complex company with large potential impacts will need something proportionately more sophisticated. Companies can also work collaboratively by sector or region to pool resources.

Fundamental to our approach has been that grievance mechanisms, when not themselves union-management processes, must not undermine legitimate trade unions and effective social dialogue mechanisms. However, where legitimate unions are prohibited, an effective grievance mechanism may provide a vehicle to bring concerns about this very issue onto the table for discussion.

Our work has also mapped grievance mechanisms well beyond the operational level to encompass a growing range of other formulas for providing external adjudication or conciliation/mediation. In my current report to the Human Rights Council, I highlight the role that Global Framework Agreements can play in enabling both companies and unions to increase the reach and reduce the costs of grievance mechanisms. There are valuable lessons to be gained from how the GFA dispute resolution mechanisms are working in practice, and I hope this kind of analysis might be undertaken for the benefit of wider learning and more effective processes for all.

Conclusion

Let me bring these remarks to a close.

I noted at the outset that I look to the ILO for guidance on labor rights. One area where further guidance would be helpful is what has come to be known as “precarious work” – the growth in part-time and contract-based work, and its possible implications for workers’ rights. This subject has been raised in

my stakeholder consultations on several occasions, as well as in two recent written submissions to my mandate by workers' organizations.

In conclusion, I am pleased that the "protect, respect and remedy" framework has been well received by all stakeholders, including governments, employers and workers' organizations. There is no single silver bullet solution to business and human rights challenges. As the current economic crisis has underscored starkly, all social actors must learn to do many things differently. But those things must cohere and generate cumulative progress. In the business and human rights domain, that is precisely what the "protect, respect and remedy" framework is intended to help achieve.

Thank you.