

**Presentation of Report to United Nations Human Rights Council
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for Business and Human Rights
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Mr. President, Excellencies, Ladies and Gentlemen,

This mandate was established in 2005. It began amidst divisive debates among stakeholders, and little consensus among States. In contrast, this Council was unanimous in “welcoming” the “protect, respect and remedy” framework I presented in 2008 for better managing business and human rights issues. And last December a leading financial newspaper reported that the SRSG “has won unprecedented backing across the battle lines from both business and pressure groups” as well.

We got from there to here by recognizing that business and human rights challenges reflect a broader institutional misalignment between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences, and thus require comprehensive responses; by conducting voluminous research producing a better understanding of the challenges as well as gaps in existing coverage, public and private; and by convening more than thirty international consultations with stakeholders and experts in all regions to identify practical action paths forward.

The “protect, respect and remedy” framework comprises 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 to address such adverse impacts as may occur; and greater access by victims to effective remedy, judicial and non-judicial. It is now widely known as the UN Framework for business and human rights.

In extending my mandate to 2011, the Council tasked me with “operationalizing” and “promoting” the Framework. Here I note a few highlights of both tasks, and briefly describe my plans for the mandate’s final year.

Let me begin with the State duty to protect. Most States have adopted measures and established institutions relevant to business and human rights – in such areas as labor standards, workplace non-discrimination, health and safety and consumer protection. However, States have been slower to address the more systemic challenge of fostering rights-respecting corporate cultures and practices.

My report identifies a number of policy developments, from all parts of the world. They include guidance for companies in national CSR policies, listing and reporting requirements, directors’ duties, and provisions specifically recognizing a company’s “corporate culture” in assessing legal liability. But the examples are relatively few in number; and even fewer among them explicitly specify human rights in their coverage. The report suggests ways in which State practice can be improved.

With regard to the corporate responsibility to respect human rights, the current report further elaborates the due diligence process whereby companies can know and show that they respect rights – recognizing that the complexity of tools and processes companies employ will necessarily vary with circumstances. This approach has been well received and companies are already adopting it. But the report also identifies two types of risk that have not yet received the attention they demand.

First, studies suggest that companies are not adequately monetizing and aggregating the costs of conflicts with communities in which they operate, typically involving environmental and human rights concerns. Such stakeholder-related risks include revenue losses due to delays and disruptions; higher costs of financing, insurance and security; and possible project cancellation. They are particularly pronounced in the extractive sector, and where companies operate in

difficult environments. In the case of the international oil majors, it is estimated that non-technical risks now account for nearly half of all the risks these firms face; and stakeholder related risks constitute the largest single category of non-technical risks. One global company may have lost \$6.5 billion over a two year period from such sources, amounting to a double-digit fraction of its annual profit.

This is a lose-lose situation: harming human rights and the company itself. On both grounds, it calls for better internal control and oversight systems.

The same is true for the risk that such companies may be implicated in human rights-related international crimes or other egregious abuses, typically through the actions of associated third parties. Prudence would suggest that they manage this risk as a legal compliance issue, even where the borders of legal liability are still somewhat fluid.

Project lenders, export credit agencies and investment insurers also need to manage better their own corresponding risks.

On the subject of remedy, state-based judicial and non-judicial mechanisms should form the foundation of a system of remedy for corporate-related human rights abuse. Company-level grievance mechanisms can provide early-stage recourse and possible resolution. Collaborative initiatives can supplement them.

But reality falls far short of constituting a comprehensive and inclusive system of remedy. All types of mechanisms remain underdeveloped – and too many judicial systems are inaccessible to those who need them most. The current report identifies specific obstacles and gaps. It also describes novel approaches, including the pilot projects I have underway in five countries, testing principles for effective and legitimate company-level grievance mechanisms.

The current report also addresses two cross-cutting issues. One is the role of business in conflict-affected areas, where the worst

corporate-related human rights abuses occur. No one can claim that the existing human rights regime is able to function in such contexts. Therefore, I am working with a small but representative group of States to brainstorm informally about innovative policy options.

The other is the highly sensitive issue of extraterritorial jurisdiction. Here the report identifies ways to distinguish what is truly problematic from measures that are entirely permissible under international law and which would be in the best interests of all concerned – but which are typically lumped together in the same highly politicized category.

Mr. President,

I hope that these bullet points convey a sense of the breadth and depth of issues involved in the operationalization of the “protect, respect and remedy” Framework.

Allow me a quick word on promotion and dissemination. I have worked closely with several international entities that are revising their own business and human rights provisions, encouraging alignment with the UN Framework. They include the Organization for Economic Co-operation and Development, the International Organization for Standardization, the International Finance Corporation, the Global Compact’s Human Rights Working Group, and the European Union.

I look forward to engaging with the Arab League during a visit to Cairo later this year. A number of other forums have been briefed on the framework, including the UN treaty bodies, other Special Procedures, National Human Rights Institutions, the Permanent Forum on Indigenous Issues, and the Inter-American Commission on Human Rights. Discussions are planned with representatives of ASEAN’s Inter-Governmental Commission on Human Rights and the African Union Commission on International Law.

Mr. President, Ladies and Gentlemen,

My mandate ends in June 2011. At that time, I will present the views, recommendations and practical guidance the Council requested in Resolution 8/5.

I foresee this as taking two forms. One is a set of guiding principles under each pillar of the framework: general enough to be universally applicable, thus recognizing the diversity of country and business contexts; but specific enough to have practical utility.

The other is laying out the pros and cons of various ways the Council might consider following up on this mandate.

In preparation of both, I will continue intensive and inclusive consultations.

Although my work will be done in a year's time, yours will need to continue because the international community is still in the early stages of adapting the human rights regime to provide more effective protection to individuals and communities against corporate-related human rights harm.

But it is my hope, and my plan, to provide you with the strongest possible foundations on which to build.

Thank you.

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