

**Opening Remarks at Mandate Consultation with Civil Society
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Special Representative of the UN Secretary-General
for Business and Human Rights
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I am honored and grateful that you accepted my invitation to participate in this consultation. You represent diverse NGOs, indigenous communities, and workers organizations from more than forty countries. I look forward to a spirited and constructive dialogue.

If we reflect on the history of how progressive social change has been achieved across the centuries, civil society invariably has played a leading role. Whether the issue was slavery, worker's rights, anti-colonialism, protecting the physical security of the person and of civilians in time of war, equality for women and non-discriminatory treatment for all, the fight to make AIDS treatment drugs available to everyone who needs them, or most recently the right to safe drinking water and sanitation, civil society has been at the forefront, applying pressure, and articulating a vision of a more equitable and just world.

It was also civil society that implanted business and human rights on the international agenda starting with the iconic cases of the 1990s, such as Shell in Nigeria, Nike in Indonesia, Unocal in Burma and the legacy of Bhopal, which haunts its victims still.

Responding to this pressure and the heightened social awareness it generated, an expert subsidiary body of the Commission on Human Rights in the late 1990s began to draft an instrument called the Norms on Transnational Corporations and Other Business Enterprises. Essentially, this sought to impose on companies, directly under international law, the same range of human rights duties that states have accepted for themselves under treaties they have ratified.

But like the negotiations on the United Nations Code of Conduct for Transnational Corporations in the 1970s and 1980s, this effort collapsed. It had no champions among governments and triggered vehement opposition by the business community. The Commission declined to act on the Norms. It expressly stated that it had not asked for the text, and that the text had no legal status. It also instructed the UN human rights machinery not to act on the Norms' provisions for monitoring corporations. Instead, the Commission requested that the UN Secretary-General at the time, Kofi Annan, appoint a Special Representative to start the process afresh, and he, in turn, asked me to assume this responsibility.

It did not take long to figure out that there is no single silver bullet solution to the multi-faceted challenges of business and human rights. This domain differs from the traditional human rights agenda in important respects. It is not comparable to states recognizing a particular right, as the General Assembly did recently in the case of access to safe water and sanitation, because business and human rights involves all rights that enterprises can affect. It is not comparable to states recognizing the rights of a particular group, as in the Declaration on the Rights of Indigenous Peoples, because business and human rights involves all rights holders.

Nor is it the same as dealing with state-based human rights abuses. For those, both the cause and the solution are clear: states and their agents are the cause, and the instruments of international human rights law are the only means available of imposing legal obligations on them.

Business and human rights is considerably more complex. Corporate-related human rights abuses often involve acts of commission and omission by both states and companies, so their respective obligations must be clearly established. Even where that is not a problem, states are intensely cross-pressured when it comes to business, not only because of corporate influence but also because so many other legitimate policy demands come into play, including the

need for investment, job creation, and access to markets, technology and skills. In addition, in the area of business and human rights states are simultaneously subject to several other bodies of international law, such as investment law and trade law. None of these factors absolve states of their human rights obligations, but nor are states likely to place every single human right that they may have recognized under a human rights treaty over and above their legal obligations in those other areas, which are so closely tied to all states' economic policy objectives – and to their ability to fulfill certain human rights.

At the same time, business conduct is directly shaped by laws, policies and sources of influence other than human rights law: for example, corporate law, securities regulations, forms of public support such as export credit and investment insurance, pressure from responsible investors, and broader social action.

My only point is this: a business and human rights strategy that does not encompass these multiple constraints and opportunities is unlikely to get very far any time soon. As I have assessed the situation, the only viable path forward is to identify ways whereby all actors – states, businesses, and civil society – must learn to do many things differently.

With that as my starting point, I identified two strategic objectives for my mandate. First, I prefer modest success to heroic failure – because I believe that most victims do, too. So I did not set as my target some idealized design of the perfect global regulatory system. I started with the lay of the land and I've tried to identify practical ways of improving the current performance of states and companies alike. This led me to make numerous site visits, conduct extensive research and convene wide-ranging and inclusive consultations – today's is the forty-fourth consultation across five continents since I began in 2005. I've drawn extensively on the experiences that different stakeholders have shared with me.

Second, in addition to achieving short-term gains, I have sought to lay a solid foundation for the longer term. Although the number of public and private initiatives in business and human rights has increased rapidly in recent years, they have not acquired sufficient scale to reach a tipping point, to truly shift markets. One major reason has been the lack of an authoritative focal point around which the expectations and actions of relevant stakeholders could converge and become cumulative.

Therefore, when I was requested to make recommendations to the Human Rights Council in 2008, I made only one: that it endorse what I called a conceptual and policy framework – the Protect, Respect and Remedy framework. In itself, this would hardly resolve all outstanding business and human rights challenges. But it was my hope that it would become a shared base on which thinking and action by all stakeholders could build over time. You will recall that the Council was unanimous in welcoming the framework, and it extended my mandate another three years with the task of “operationalizing” and “promoting” it.

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 to address adverse impacts that occur; and greater access by victims to effective remedy, judicial and non-judicial.

The framework’s normative contribution lies not in the creation of new legal obligations but in elaborating the implications of existing standards and practices for states and businesses; integrating them into a single and coherent template; and helping us to identify where the current regime falls short and how it should be improved.

This consultation with you follows a similar session with business held last week in Paris. It attracted 130 participants

representing companies and business associations from thirty countries, and all regions. Last week I also held a consultation with states in Geneva. And I met with representatives of eighty National Human Rights Institutions in Edinburgh. After our discussions end tomorrow I will meet with leaders of international labor federations.

Following this round of stakeholder consultations, I will prepare the concrete guidance the Council has requested – a set of “Guiding Principles for the implementation of the Protect, Respect and Remedy framework.” This will be posted in draft form on the Internet for public comment next month, and then finalized early next year. Once endorsed by the Council, these Guiding Principles will serve as authoritative benchmarks for states and businesses alike. I am also preparing an options paper for the Council on how it might most effectively follow up on my mandate when it ends in June 2011.

Our agenda here is to discuss – for me to hear from you – how best to do what I am required to do: provide Guiding Principles, and evaluate the pros and cons of different follow-up options.

But allow me to take another minute or two to acknowledge my awareness of concerns that some of you have expressed because I have not always followed traditional human rights strategies and tactics, including those of Special Procedures.

I sometimes hear that the Protect, Respect and Remedy framework is all right as far as it goes, but it’s not demanding enough. The state duty to protect doesn’t include enough extra-territorial jurisdiction. Corporate human rights due diligence is nice but it doesn’t constitute a scheme for the attribution of legal liability. The attention I pay to non-judicial grievance mechanisms could become a diversion from getting companies or their directors and officers convicted or fined. And so on.

In response, I want to ask you a few questions.

How long did it take to get access to safe water and sanitation established as an internationally recognized right? Roughly since the International Covenant on Economic, Social and Cultural Rights was adopted. How long did it take to negotiate the Declaration on the Rights of Indigenous Peoples? A quarter century, and it is not legally binding. Those efforts concerned either one right, or one group. The business and human rights agenda, as I noted earlier, includes all rights and rights holders that can be adversely affected by business, plus all relevant state duties, plus the responsibilities of all businesses, anywhere in the world, large and small.

And yet, in contrast, how long did it take to get from the deep divisions of 2005 to unanimous endorsement of the Protect, Respect and Remedy Framework by the Human Rights Council? Three years.

How long before the framework began to be used by governments in their own policy assessments? That happened almost immediately.

How long before the framework provisions on the corporate responsibility to respect was included in the new ISO26000 guidance standard on social responsibility – which has been endorsed by nine out of ten countries, including China, together covering three-fourths of humanity? Two years.

How long before the OECD agreed to update its Guidelines for Multinational Enterprises to include a human rights chapter based on the framework? Two years.

How long for mandate documentation on corporate complicity to be cited as an authoritative source in plaintiffs appeals to the United States Supreme Court? Three years.

How long for some companies to announce publicly that they are realigning their risk management systems in accordance with the framework's prescriptions for human rights due diligence, and are

adopting the framework's proposals for company-level grievance mechanisms? In growing numbers, that's happening right now.

As for other Special Procedures, virtually all whose work touches on business and human rights have drawn on the framework, including in the areas of food, water, access to drugs, indigenous peoples, and toxic wastes.

I am also pleased to see that NGOs are using the framework in their own analytical and advocacy work.

This convergence has taken place before the mandate has even concluded its work. So I think it's fair to conclude that we have come a long way in a relatively short period of time, and that we have a robust foundation on which to build going forward.

That's all well and good, some of you might say, but the framework has no teeth. In my more irreverent moments, I respond that teeth are of little use unless you have gums, and a jaw and a mouth and so on. None of these existed when I began the mandate.

The final concern I have heard is that I do not bear public witness to victims of corporate-related human rights abuse. Indeed, that is true. I made the conscious decision that a mandate aimed at producing general principles and guidance for states and business would not mix well with jumping into the middle of specific disputes, which in any case are extremely difficult to resolve from thousands of miles removed unless they are very few in number, and that becomes your full-time job and is adequately resourced. But I hope it is abundantly clear by now that I have heard the voices of victims, and that they have animated what I do. I will have devoted six years of my life to this mandate, like you for no personal gain, because I care.

In the end, some of you may continue to disagree with my approach. I have no problem with that, but let's not spend too much

time on that. I really do need and value your advice on the immediate task we face: how to move from the framework to viable Guiding Principles, and what viable options I should put before the Council for how it can best follow up on the mandate when it ends next June.

Above all, I need all of you to be fully engaged in getting the Guiding Principles adopted and then implemented on the ground, where it counts.

So thank you again for being here. I very much look forward to our discussion.

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