



SRSG Response to Canadian Network on Corporate Accountability

I thank the CNCA for their commentary on my most recent report to the Human Rights Council (UN document A/HRC/8/5), and am pleased they agree with its central thrust.

In the interest of facilitating a deeper understanding of the mandate's aims and approaches, especially now that it has been extended for a further three years, I would like to respond to a number of issues raised in or by the submission.

1. The first is to correct a serious error committed right at the outset. The commentary summarizes the three foundational principles of the policy framework I proposed to the Human Rights Council and which the Council endorsed. My report differentiates very clearly between states' (legal) *duty* to protect against human rights abuses by business, and the corporate (social) *responsibility* to respect human rights. The CNCA commentary, however, describes both as "duties," which is not an accurate reflection of my use of those terms in the report.
2. The commentary "laments" the fact that I did not provide more guidance to states with regard to their duty to protect. Lament is a very strong word, denoting grief, sorrow, and mourning. But it was never my intent to provide detailed recommendations in this report. I had only one aim: to develop and propose a policy framework that will bring greater coherence and cumulative progress to the business and human rights agenda. As I hoped it would, the Council "welcomed" the framework and renewed the mandate, asking me in the next phase to "operationalize" it by providing "more detailed guidance" to states, businesses and other relevant actors, as well as to "build on" and "promote" it. So there is no reason to mourn: it is hard to imagine a more positive outcome from a relatively short three-year process on an extremely difficult set of challenges that had inherited nothing but discord.

3. Many of the substantive differences stressed by the CNCA's commentary stem from its asserting legal certainty where I found matters to be more nuanced, less settled, or in dispute. For example, the UN Committee on the Elimination of Racial Discrimination did not "call on" Canada to do anything, as claimed by the commentary; it "encouraged" Canada to take certain steps (see footnote 14 in my report). In international human rights discourse, there is a world of difference between those two verbs. Similarly, the obligations of export credit agencies under international law are far less clear and less well developed than the CNCA makes them out to be, which is why my report focused heavily on policy rationales.
4. One substantive issue raised by the CNCA escapes me. The commentary expresses "strong concerns" about the "recommendation" (it wasn't; it was an example) that governments establish closer policy alignment between their export credit and official development assistance agencies. I was illustrating the following policy disconnect: an ECA supports an investment with a large footprint, say a mining operation, in a region that is characterized by limited governance capacity. The ODA agency from the same country says to itself, "oh good, now that there is private sector money coming in here, we can spend our scarce resources elsewhere." I pointed out that it might be far more helpful in such circumstances for the ODA agency to try to work with the local government to build up its capacity for dealing with the inevitable fall-out from any large footprint project, before individuals and communities suffer adverse consequences. I simply do not understand how this represents the "instrumentalization" of development assistance in the service of "commercial objectives," and why it should have generated such concerns.
5. Finally, the last sentence in the commentary is an unwarranted swipe that may have been intended subtly to impugn the legitimacy of the mandate's process but ends up diminishing its own seriousness and objectivity. The CNCA says it "supports the calls of other civil society organizations that the SRSG seek greater participation of experts from the global South during the mandate extension." Let me deconstruct this sentence.

First, it refers to "calls" from other civil society organizations. I am not aware of any such call even in the singular – and although I might have missed one, calls in the plural I am unlikely not to have seen or been made aware of. Second, it says "greater," suggesting that Southern expert participation in the mandate's first term was deficient. Third, it urges me to "seek," implying that I haven't worked hard enough at it to date.

Now, as is well known to everyone who has followed the mandate, over the past three years I convened an unprecedented fourteen international multi-stakeholder consultations, a mix of large regional and smaller thematic meetings. The regional meetings took place in Bangkok, Bogota, and Johannesburg, and they were attended by few participants who were not from the global South. For each of the thematic meetings we went to great lengths to identify and invite appropriate experts from the global South, always asking NGOs for their help in doing so.

It should be noted that my mandate required none of these consultations; I convened them on my own initiative and raised the funding for them. One upshot of my taking this initiative was that the Human Rights Council, in its resolution welcoming the proposed policy framework and renewing the mandate, commended me for “the broad range of activities undertaken..., including in particular the comprehensive, transparent and inclusive consultations conducted with relevant and interested actors in all regions.” Forty-three countries co-sponsored the resolution, and the Council was unanimous in adopting it.

I believe this record speaks for itself.

7 July 2008