Statement to the Delegations on the Human Rights Council 2011, 17th Session, Agenda Item 3


The multiple crises – and many abuses of human rights without remedy - have painfully illustrated the urgency of binding global and national human rights regulation for TNCs. Many human rights organisations have repeatedly drawn the attention of the SRSG to the insufficiencies of the draft guiding principles - in particular:

- The failure to address the governance gaps created by globalization

The draft does not provide guidance on the regulation of TNCs. Contrary to the mandate it deals more with business in general than with the particular challenges to regulate TNCs – individually and through international cooperation.

The Guiding Principles should make recommendations on how conduct of transnational business operations that abuse human rights or are complicit in human rights violations in other countries should be regulated and how abuses should be remedied. Moreover the draft principles do not articulate measures that States should undertake to ensure the primacy of human rights law, particularly when engaging in international trade and investment negotiations and in addressing the human rights impact of such agreements.

- The lack of clear recommendations consistent with international standards

International law calls for international cooperation in solving human rights problems – including regulatory problems with TNCs. Multilateral and global regulatory measures are needed. The draft guiding principles have no recommendation how to proceed in this regard. The principles on the State duty to protect lack specificity and at times depart from existing interpretations of international law provided by UN human rights treaty bodies.

Draft principle 2 provides that states should set out the “expectation” that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations. This does not reflect increasing international recognition, including by UN treaty bodies, of the legal obligation for States to take action to prevent abuses by their companies overseas.

States should adopt and implement binding regulatory measures to prevent, put an end to and punish business abuses of human rights at home and in other countries, and to ensure the provision of effective remedies.

The undersigned organisations would like to submit the following recommendations to the Human Rights Council:
1. The HRC should go forward on strengthening human rights’ obligations for TNCs

The Guiding Principles do not take full account of human rights law for the area of business – and in particular for the regulation of TNCs. Moreover in many respects they are a step backward compared to the standards set by the UN human rights system:

a. States have an obligation to protect against abuses by companies over which they can exercise decisive influence. This implies that home States of TNCs have the duty to prevent abuses by companies outside the State’s territory.

b. TNCs have to be held legally accountable for the human rights abuses for which they and their affiliates are responsible.

c. Victims of abuses by a TNC need access to justice in countries other than their own. There is in particular a shared responsibility of the home country and the host country of the TNC.

2. The HRC should follow a comprehensive framework.

The respect-protect-remedy framework fails to fully address the area of business and human rights. The States obligation to fulfill the enjoyment of human rights has not been covered. This obligation must not be confused with the obligation to provide access to remedy. The obligation to fulfill implies States’ obligations to regulate – individually and through international cooperation - the business sector in a way that addresses the needs of individuals and communities currently lacking enjoyment of their economic, social, cultural, civil or political rights. This obligation is of immense importance to inform policies of States and the international community. Seeing the role of the State only as a protector ignores the fulfill-dimension of States’ obligations.

3. The HRC should avoid promoting ineffective mechanisms

Mechanisms such as the UN Global Compact and the OECD Guidelines on MNCs have proved largely ineffective to address human rights abuses by TNCs. They have frustrated the hopes of victims to obtain remedy, wasted the resources of civil society organisations and have been misused by some corporations as public relations vehicles vis-à-vis public criticism and as cover up for their real human rights performance. The involvement of the UN in such mechanisms can be a threat to the credibility of the organisation.

The interpretation of the framework suggested by the SRSG in the draft guiding principles carries a similar risk wherever it relies on voluntary action by business instead of binding international and national regulation by States.

4. The HRC should establish its own complaint procedures.

Victims need urgent and expeditious access to complaint procedures against human rights abuses by TNCs in situations where the host State is unwilling or unable to protect them and the home State has not established remedies that are accessible and effective. The HRC should address these gaps and establish such mechanisms. For this purpose the follow up mandate should include the powers to receive complaints and to investigate them. These procedures should benefit from the participation of civil society organisations. Issues that otherwise remain unresolved
and are a source of continuing legal uncertainty could be addressed by such a mechanism on a case by case basis and be gradually clarified.

5. The draft should NOT be accepted by the HRC.

The draft guiding principles are a not a suitable means for advancing the cause of human rights in the field of business. The task of providing suitable guiding principles should be included in the follow up mandate.

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