

Professor John Ruggie
Special Representative on Human Rights and Transnational
Corporations and other Business Enterprises
Office of the High Commissioner for Human Rights
Palais des Nations
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Switzerland

10 October, 2007

Dear Professor Ruggie,

We are writing to share our views on how you might most effectively advance the protection of human rights in the context of business activities during the remainder of your mandate as United Nations (UN) Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises.

We work to prevent the occurrence of human rights abuses involving business and to promote justice for the victims of such abuses when they occur. Our organisations and groups share your desire to see an end to human rights abuses involving business. It is in this spirit that we offer our common perspective on several issues. We point in particular to four issues that we believe deserve priority in your work, in accordance with your post as an independent expert for an international body with a global remit and an explicit and overarching human rights mandate. Namely, we hope that, in your capacity as Special Representative serving the UN Human Rights Council, you will:

- help to deepen the focus by the UN on actual situations relating to human rights and business, especially with regard to the perspective of victims so as to illustrate the scope and nature of abuses;
- analyze the factors driving the failure of states to adequately discharge their duty to protect the human rights of individuals, communities and indigenous peoples;
- assess the inherent limitation of voluntary initiatives, in order to avoid an over-reliance on such initiatives; and
- help to spread awareness of the compelling need for global standards on business and human rights to be outlined in a UN declaration or similar instrument adopted by member states.

We elaborate our views on each of these topics below and also include proposals for recommendations that might be included in your final report to the Human Rights Council.

In our globalized world business is a very powerful actor that can have both negative and positive impacts on the enjoyment by individuals, communities and indigenous peoples of their human rights. The negative impacts that businesses may have are widespread, affecting the full range of human rights, and are not limited to specific countries, industries or contexts. As you have rightly recognized, the expansion of global markets has not been matched with sufficient protection for the people and communities that are the victims of such human rights abuses. In many cases, abuses involving businesses arise in a vacuum of effective human rights protection, in which governments fail to take appropriate steps to prevent abuses and perpetrators are not held to account, and in which obstacles to justice compound the original abuses by depriving victims of their right to an effective remedy and reparation. In our view, a number of factors contribute to this state of affairs and must be addressed.

First, victims of human rights abuses by or involving companies are often voiceless in the context of debates on business and human rights. Discussions on these issues have tended to focus on abstract concepts rather than the actual impact that corporate conduct has on the human rights of individuals, communities and indigenous peoples. We believe that the perspective of the victims requires greater emphasis and elaboration in the final stage of your mandate and in your final report to the Council in 2008. It is essential that the Council's discussions on business and human rights be grounded in the experiences of those affected by corporate human rights abuses and informed by an understanding of the nature, scale and patterns of such abuses, in order to ensure a thorough analysis of the problem and the identification of meaningful solutions.

We believe that the UN Human Rights Council should adopt a new or revised mandate for a UN special procedure (e.g., independent expert or group of experts) on business and human rights. This procedure should have a remit to research and analyze patterns of corporate human rights abuses with reference to real situations, to conduct field visits, to receive individual communications from victims of human rights abuses and human rights defenders working on their behalf, to issue recommendations to states and companies and to contribute to conceptual development within this field. Such functions constitute the core work in respect of most other thematic mandates established within the UN human rights system. We would welcome your public support for the creation of such a mandate and are hopeful that you will include this option among your recommendations to the Council. In doing so, we encourage you to make clear the pressing need for this type of mandate and to recommend that the Council act in a timely fashion to establish it.

In the interim, we believe that in the final stage of your mandate you can do much to ensure that the victims of human rights abuses involving companies have a voice at the Human Rights Council. We encourage you in particular to increase your efforts to consult with affected communities, including through visits to these communities and regional meetings. We hope that you will appropriately reflect the results of these visits

and consultations in your final report, both to ensure that your own analysis of the outcome of these consultations is evident in the report and, where possible, to append relevant documents from these consultations to your final report. Our groups and organizations, which include grassroots human rights groups and indigenous peoples' organizations, would be more than willing to meet with you and to submit further documentation about corporate abuses. We also recommend that you solicit comments and input on your draft recommendations from individuals, communities and indigenous peoples directly affected by corporate human rights abuses and from human rights organizations which have conducted primary research into such abuses. Such dialogue will serve to test whether and how these draft recommendations would positively address the situation of victims of such abuses.

Additionally, we believe it would be worthwhile to continue and deepen your analysis and reflection on the nature and scope of the human rights abuses occurring worldwide with the involvement of business, and to reflect this analysis in your final report. We welcome your coordination with other special procedures in endeavouring to collect case information based on their on-the-ground research, as well as your recent announcement that you plan to prepare a "mapping" of corporate human rights abuses in response to NGO input. In general, we believe that the usefulness, precision and legitimacy of your final report, as well as support for its recommendations, would be greatly enhanced if your conclusions and recommendations were more explicitly based on evidence, testimony and analysis of cases of alleged human rights abuses involving corporations. We also appreciate your recent efforts to gather information on access to justice issues, and believe it will be important to incorporate an examination of the practical barriers to justice, and the denial of the right to an effective remedy including reparation, encountered by victims. Many of our organizations have produced reports that address these various issues, and we will continue to make you aware of any new publications that could intersect with your work.

Second, states often fail, in the context of human rights abuses involving businesses, to uphold their obligation to protect against human rights abuses. In your last report you correctly emphasized this obligation, and the resulting need for states to regulate the activities of businesses and individual employees in order to prevent human rights abuses and to impose sanctions or otherwise adjudicate claims when abuses do occur. We welcome your plans to dedicate further attention to this critical issue in the next phase of your work and in your final report. In the time remaining under your mandate, we hope that you will advance consideration of this issue through an analysis of the actual practice of states in relation to corporate human rights abuses. Such an assessment would address some of the reasons for which states are failing to implement their duty to protect within their jurisdiction (e.g. lack of understanding, lack of capacity, lack of political will, the factors which drive such a lack of political will and any other relevant reasons). It could also delineate the consequences of such failures and do so in reference to concrete instances of abuses. In our view, such an analysis would

make an important contribution to furthering understanding as to the duty of states to protect as implemented in practice, as well as suggesting steps needed to strengthen domestic accountability mechanisms as a safeguard for human rights. As such, it would provide solid grounding for any recommendations in this area, as well as providing an initial basis for additional work in the context of a new special procedures mandate.

Third, it is increasingly recognized that businesses, like other social actors, have a responsibility at a minimum to avoid causing harm to human beings' enjoyment of their rights, yet too many businesses are failing to live up to these basic human rights responsibilities and consistently escape accountability. States have primary responsibility under international law, but this does not mean that other actors are, or should be, free from any direct responsibility for human rights. An important role of international human rights law is to limit and govern the exercise of power. International human rights law must continue to develop to account for the growing power of actors other than states to affect individuals', communities' and peoples' enjoyment of their human rights.

Thus far the responsibilities of business in relation to human rights have largely been dealt with through the adoption of voluntary measures and codes of conduct, often at the company or industry level and sometimes reinforced through multi-stakeholder initiatives that include governments and nongovernmental organizations. While these approaches can play a valuable role in the context of business and human rights, such as by raising awareness and providing specific guidance on particular areas, they have inherent and serious limitations. Voluntary initiatives have a limited scope in terms of the rights they include and the sectors they cover and many "laggard" companies choose not to join any voluntary initiative. Due to their voluntary nature, they typically fail to ensure that the principles which they advocate are upheld in practice; even the relatively more robust multi-stakeholder initiatives fall far short of what is needed to ensure compliance. Moreover, these professed principles are narrowly conceived, inconsistent across different initiatives, and applied unevenly. Furthermore, these various initiatives do not require all companies to respect all human rights but allow companies to "opt in" to standards which are convenient and to "opt out" of standards which are not convenient. In these ways, they contradict the concept of human rights as minimum guarantees for the treatment of all people, and thus they do not provide an adequate basis for addressing business and human rights issues. In your final report to the Human Rights Council we ask that you specify the limits of "self-regulation" as outlined above. Diverse action is needed to improve business conduct in relation to human rights, including where appropriate the elaboration and further development of law as a means to enforce a minimum standard of business conduct. An over-reliance on voluntary approaches—particularly those that are not compatible with human rights principles—would not provide a useful way forward.

Fourth, we consider that global intergovernmental standards on business and human rights are necessary in order to strengthen the protection of human rights and provide a common framework for efforts to address business conduct. We would welcome your public affirmation of the need for such standards. Indeed it is our view that there is now a need to work with governments to build their support for the eventual negotiation and adoption of a UN declaration or similar instrument outlining standards on business and human rights. We consider that you can make an important contribution, in the remaining months of your mandate, to help raise awareness of the need for such an instrument. We hope that you will offer your public support for the initiation of a process that can ultimately lead to the adoption of an instrument at an intergovernmental level.

To that end, we offer our views as to some of the essential elements such a declaration or similar instrument should contain in order to advance human rights protection. We believe that any such instrument should take as its starting point the axiom that all humans have equal and inalienable rights by virtue of their inherent dignity and are entitled to enjoy these rights fully, recalling the fundamental principle that these rights are indivisible and interrelated. It should specify and progressively develop the state's obligation to protect human rights in the context of economic activity in both its domestic sphere and its international action. It should also specify and progressively develop the responsibilities of business with respect to human rights by establishing a common human rights benchmark for all companies regardless of the specific sector or context in which they operate. At a minimum, it should state that all companies should respect all human rights and that in some circumstances—including the exercise of a public function—a higher standard will be appropriate. This will ensure that the instrument addresses the variety of ways in which businesses can be involved in human rights abuses, including through complicity in the actions of third parties. The instrument should also address victims' access to justice in the context of business and human rights by affirming that all victims have the right to an effective remedy, including reparation, and that states should exercise their jurisdiction to ensure that this right is ensured and has effect.

As you are aware, care must be taken to ensure that a process aimed at the elaboration and adoption of a declaration or other such instrument as indicated above will in fact serve the purpose of strengthening human rights protection. The process must be directed toward the elaboration, through an intergovernmental process, of an authoritative instrument. It also must be informed by properly researched and documented case studies which give due weight to the experience and perspectives of the victims of abuse, and thus serve to establish why action is needed. There are real risks that, unless these and other conditions are in place, an initiative to set standards could be counterproductive. For example, a poorly conceived process might result in international standards that fail to meet the needs of victims because they lack the requisite legitimacy and authority, do not gain sufficient political support, or are

substantively limited in coverage (e.g. address only certain human rights, or certain industries, or specific contexts). However, with the requisite care, these dangers can be avoided, and we believe that such an instrument, negotiated and adopted at the inter-governmental level, would provide a clear reference point on business and human rights through the outlining of credible and legitimate standards agreed by states. Again, we are hopeful that you will support efforts to initiate such a process and in particular we would ask you to include a clear statement of the need for such an instrument among the recommendations in your final report.

We look forward to discussing our proposals with you at the earliest opportunity.

Yours sincerely,

ORGANIZATIONAL ENDORSEMENTS

	ORGANIZATION	COUNTRY
1	ActionAid International	International
2	Alliance for Holistic and Sustainable Development of Communities	India
3	Amnesty International	International
4	Amnistía Internacional-Uruguay	Uruguay
5	Applied Research Institute-Jerusalem (ARIJ)	West Bank, Palestine
6	Asamblea de Unidad Cantonal de Cotacachi	Ecuador
7	Asian Indigenous Women's Network (AIWN)	Philippines
8	Asociación Ambientalista EcoLaPaz	Argentina
9	Asociación Civil por la Igualdad y la Justicia (ACIJ)	Argentina
10	Asociación de Yachachiq Solidaridad Colectiva para el Desarrollo	Perú
11	Asociación Kunas Unidos Napguana	Panamá
12	Asociación Pro Derechos Humanos (APRODEH)	Perú
13	BanglaPraxis	Bangladesh
14	Boro Women's Justice Forum	India
15	Bretton Woods Project	USA
16	Broad Initiatives for Negros Development (BIND)	Philippines
17	Center for Minority Rights Development	Kenya
18	Centre for Organisation, Research & Education (CORE)	India
19	Centro de Apoyo al Trabajador, A.C.	México
20	Centro de Derechos Económicos y Sociales (CDES)	Ecuador
21	Centro de Derechos Humanos "Fray Bartolomé de Las Casas" A.C.	México
22	Centro de Derechos Humanos "Tepeyac del Istmo de Tehuantepec," A.C.	México

23	Centro de Derechos Humanos "Ñu' u Ji Kandii", A.C.	México
24	Centro de Derechos Humanos y Ambiente (CEDHA)	Argentina
25	Centro de Estudios Legales y Sociales (CELS)	Argentina
26	Centro de Estudios Nacionales de Desarrollo Alternativo (CENDA)	Chile
27	Centro de Reflexión y Acción Laboral (CEREAL)	México
28	Centro Feminista e Información y Acción (CEFEMINA)	Costa Rica
29	Centro Mujeres A.C.	México
30	Centro Regional de Derechos Humanos "Bartolomé Carrasco Briseño," A.C.	México
31	Coalición de Organizaciones Mexicanas por el Derecho al Agua (COMDA)	México
32	Colectivo Ciudadano "Piura vida y Agro Godofredo Garcia Baca"	Perú
33	Comisión de Derechos Humanos, La Voz de los Sin Voz A.C.	México
34	Comisión Ecuménica de Derechos Humanos (CEDHU)	Ecuador
35	Comisión Independiente de Derechos Humanos de Morelos	México
36	Consejo Intersectorial de Gestión Ambiental y Manejo de Recursos Naturales	Ecuador
37	Contribution of the Communities and Churches to the Human Transformation (COSCCET)	Democratic Republic of Congo
38	Coordinación Latinoamericana Red Mujer y Hábitat (CISCSA)	Argentina
39	Coordinadora Zonal de Intag	Ecuador
40	Corporate Accountability International	USA
41	Derecho, Ambiente y Recursos Naturales (DAR)	Perú
42	EarthRights International	Thailand/USA
43	Ebgan, Intervention Center Toward Human Development in the Cordillera	Philippines
44	Ecological Society of the Philippines	Philippines
45	Education and Research Association for Consumers	Malaysia
46	El Centro de Derechos Humanos "Victoria Díez", A.C.	México
47	Environics Trust	India
48	ESCR-Net Corporate Accountability Working Group	International
49	Espacio Derechos Económicos, Sociales y Culturales	México
50	Federação de Órgãos para Assistência Social e Educacional (FASE)	Brazil
51	Federation of Indigenous and Tribal Peoples in Asia (FITPA)	India

52	Focus on the Global South	India, Phillipines, Thailand
53	Fondo de Seguridad Social de la Mujer y la Niñez	Panamá
54	FoodFirst Information and Action Network (FIAN) - México	México
55	Forest Peoples Programme	UK
56	Foro Ciudadano de Participación por la Justicia y los Derechos Humanos	Argentina
57	Forum for Indigenous Perspectives and Action (FIPA)	India
58	FORUM-Asia	Asia
59	Foundation for a Sustainable Society, Inc.	Philippines
60	Freedom from Debt Coalition (FDC)	Philippines
61	Frente de Defensa de la Amazonia: Asamblea de Afectados por Texaco	Ecuador
62	Friends of the Earth International	International
63	Fundación Pachamama	Ecuador
64	Fundación Paz Mundial	Chile
65	Grupo de Trabajo Racimos de Ungurahui	Perú
66	Grupo Iniciativas Urbanas (GIU)	Perú
67	Habitat International Coalition / Housing and Land Rights Network-Middle East and N. Africa	Egypt
68	Habitat International Coalition-Latin America	Latin America
69	Hermanas Franciscanas Misioneras de la Inmaculada Concepción	Perú
70	Human Rights Council of Australia, Inc.	Australia
71	Human Rights Program, Universidad Iberoamericana de Puebla	México
72	Human Rights Watch	International
73	Indian Confederation of Indigenous and Tribal Peoples North East Zone (ICITP-NEZ)	India
74	Indigenous Peoples Links (PIPLinks)	International
75	Indignación, Promoción y Defensa de los Derechos Humanos, A.C.	México
76	Instituto Mexicano para el Desarrollo Comunitario, A.C. (IMDEC)	México
77	Instituto para el Desarrollo Económico y Social de América Central (IDESAC)	Guatemala
78	Instituto Pro Bono	Brazil
79	Interamerican Association for Environmental Defense (AIDA)	Latin America
80	International Accountability Project	USA

81	International Alliance of Indigenous and Tribal Peoples of the Tropical Forests Foundation	Thailand
82	International Baby-Food Action Network-Latin America and the Caribbean	Argentina
83	International Commission of Jurists (ICJ)	International
84	International Federation for Human Rights (FIDH)	International
85	International NGO Forum on Indonesian Development (INFID)	Indonesia
86	Jus Semper Global Alliance	International
87	Maori Business, Victoria Management School, Victoria University of Wellington	New Zealand
88	Movimiento de Integración y Liberación Homosexual (Movilh)	Chile
89	Movimiento de los Afectados por Represas de Brazil (MAB)	Brazil
90	Movimiento Unificado de Minorías Sexuales (MUmS)	Chile
91	National Economic and Social Rights Initiative	USA
92	National Federation of Indigenous People in Indonesia (AMAN)	Indonesia
93	Network Movement for Justice and Development	Sierra Leone
94	Observatorio de Políticas Públicas de Derechos Humanos en el Mercosur	Latin America
95	Organización Indígena Kus-Kurá Sociedad Civil	Costa Rica
96	Oxfam International	International
97	Pakistan Fisherfolk Forum	Pakistan
98	Philippine Partnership for the Development of Human Resources in Rural Areas (PhilDHRRA)	Philippines
99	Physicians for Social Justice (PSJ)	Nigeria
100	Proyecto de Derechos Económicos Sociales y Culturales, A.C. (ProDESC)	México
101	Red "Agua, Desarrollo y Democracia"	Perú
102	Red de Género y Economía	México
103	Red Nacional de Organismos Civiles de Derechos Humanos "Todos los derechos para todas y todos"	México
104	Red Puentes	Latin America
105	Rencontre pour la Paix et les Droits de l'Homme (RPDH)	Democratic Republic of Congo
106	Rights and Accountability in Development (RAID)	UK
107	SOMO: Centre for Research on Multinational Corporations	Netherlands
108	Task Force Detainees of the Philippines (TFDP)	Philippines

109	Tebtebba-Indigenous Peoples' International Centre for Policy Research and Education	Philippines
110	Terra de Direitos	Brazil
111	UBUNTU World Forum of Civil Society Networks Secretariat	International
112	Umeedenao Citizen Community Board	Pakistan
113	Unión de Comunidades Indígenas de la Zona Norte Del Istmo-Ucizoni	México
114	Unrepresented Nations and Peoples Organisation (UNPO)	International
115	Western Shoshone Defense Project	USA
116	Women's Environment and Development Organization (WEDO)	USA
117	World Adivasi Council	India

SOCIAL RESPONSIBLE INVESTMENT ENDORSEMENTS

	ORGANIZATION	COUNTRY
118	Adrian Dominican Sisters	USA
119	Aquinas Associates	USA
120	Boston Common Asset Management	USA
121	Catholic Foreign Mission Society of America (AKA Maryknoll Fathers and Brothers)	USA
122	Catholic Health East	USA
123	CHRISTUS Health	USA
124	Dominican Sisters of Houston	USA
125	Executive Committee of the Racine Dominicans	USA
126	Marianists International	USA
127	Midwest Coalition for Responsible Investment	USA
128	Northwest Coalition for Responsible Investment	USA
129	Sisters of Charity of the Blessed Virgin Mary	USA
130	Sisters of St. Francis of Assisi	USA
131	Ursuline Sisters Leadership Team	USA

INDIVIDUAL ENDORSEMENTS

	INDIVIDUAL	COUNTRY	ORG. AFFILIATION
132	Frederica Barclay	Perú	
133	Danwood Mzikenge Chirwa	South Africa	Lecturer in Law-University of Cape Town
134	Shane Darcy	Ireland	Transitional Justice Institute, University of Ulster, N. Ireland
135	Carlos Gaio	Brazil	Human Rights Lawyer

136	Paulina Garzón	Ecuador/USA	
137	Giovanna Beatriz Gederlini Ramírez	Chile	
138	Chris Grove	USA	City University of New York
139	Valerie Heinonen	USA	Consultant, Corporate Social Responsibility
140	Councilor Peter Lavina	Phillippines	Alternate Forum for Research in Mindanao (AFRIM)
141	Sister Rosaire Lucassen	USA	
142	Margarita Percovich	Uruguay	Senator, Republic of Uruguay
143	Azra Talat Sayeed	Pakistan	
144	Agnes Schneider, OP	USA	Wisconsin Dominicans
145	Barbara Rose Johnston	USA	Center for Political Ecology
146	Bess Rothenberg	USA	Associate Director, Center for the Study of Human Rights, Columbia University
147	Clemilda Silva	Brazil	Irmãs Escolares de Nossa Senhora
148	Dominique Smeets	Belgium	Membre du Groupe Entreprises d'AI (Section Amnesty Vlaanderen)
149	Stella Storch, OP	USA	CSA Justice Coordinator, Congregation of Sisters of St. Agnes
150	Tamara Vidaurrázaga	Chile	Amnesty International, Chile
151	Saskia Walzel	Germany/UK	Acona Ltd (Associate Partner, corporate responsibility consultant)