



“Moving from Guidance to Compliance”:

Human Rights Watch Recommendations to the UN Expert Body on Business and Human Rights

DECEMBER 2011

Human Rights Watch is grateful for the opportunity to provide input to the United Nations Working Group on Human Rights and Transnational Corporations and Other Business Enterprises. We have a long history of engaging with the UN Human Rights Council and its precursor, the Commission on Human Rights, on business and human rights issues. In doing so, we have drawn on our extensive work over more than a decade to document abuses implicating companies, press for accountability and call for strong human rights standards. We are thus keenly aware of the contributions resulting from the UN’s efforts to date and also its limitations.

Human Rights Watch has publicly recognized the value of the UN “Respect, Protect and Remedy” framework, developed by the former UN Special Representative John Ruggie. This framework sets out the duty of governments to protect individuals and communities from human rights abuses, including by private actors; the responsibility of all businesses to ensure respect for human rights; and the need for victims of corporate abuse to have greater access to an effective remedies, consistent with longstanding principles of international human rights law. We also acknowledge with appreciation that the Guiding Principles for implementing that framework, likewise developed by Prof. Ruggie, outline some of the basic steps governments and businesses should take to protect human rights.

At the same time, we have been clear about our disappointment in the Council’s decision to create a follow-on mechanism—the Working Group—that lacks a clear mandate to monitor and assess compliance with either the fundamental human rights principles embodied in the UN Framework or the concrete actions detailed in the Guiding Principles. Instead, the Council’s mandate for the Working Group largely emphasizes promoting and disseminating the Guiding Principles.

In our view, the rhetorical support governments and companies have given to the UN Framework and Guiding Principles is not meaningful unless it is translated into actual changes in practice to reduce the extent of business-related human rights abuse and ensure accountability for harm suffered. In this light, we appreciate that the Working Group’s public invitation for input highlighted several priority tasks “[b]esides promoting and disseminating these Guiding Principles,” including to “ensure that they are effectively implemented by both governments and business.”

With this in mind, we respectfully offer the following recommendations:

- **The UN Framework, which is rooted in principles of international human rights law, should be a central point of reference for the Working Group.** The Guiding Principles are also clearly

important, as they offer specific guidance and spell out some concrete steps that can be used to benchmark companies' behavior. But it should be recalled that they offer only a partial answer, were never intended to stand on their own, and do not by themselves constitute a new human rights standard. Moreover, some of the measures in the Guiding Principles are less demanding than prevailing practice by some companies, industries or initiatives. For example, the Guiding Principles call for careful due diligence by companies and indicate that they might consider using external assessments or engaging independent monitors to that end, but some multi-stakeholder initiatives are stronger in that they require these steps.

- **The Working Group should assess the extent to which the Framework and the principles are actually implemented and what further steps could help ensure greater adherence to them and better human rights outcomes generally.** This necessarily entails examining specific situations and identifying both good and poor practices to determine how closely the Framework and Guiding Principles are being followed and to draw appropriate lessons.
- **Advancing accountability is essential.** The Working Group's mandate calls for it to offer recommendations to enhance victims' access to remedies. That should include a serious effort to identify and examine the existing gaps in protection, both at the state level and in relation to transnational issues, with a view to recommending measures to combat impunity and further develop international standards. While former Special Representative Ruggie acknowledged that legal gaps were a problem, particularly across jurisdictions, more work is needed to highlight those gaps and develop appropriate recommendations to address them. In addition, the Working Group should draw on elements of the Guiding Principles that afford some opportunity to improve human rights protections if interpreted accordingly. As an example, it should consider the duties of states to regulate companies and to ensure the effectiveness of domestic judicial mechanisms.
- **The Working Group should give particular priority to engaging with the individuals and communities that have experienced corporate abuse, as well as the human rights defenders working with them.** The Working Group's work plan, including country visits and regional meetings, should be designed to maximize participation by people who have experienced the effects of corporate human rights abuse. This will help ground the Working Group's efforts in several important ways while also giving voice to the victims. It is important to reflect the results of these visits and consultations in your reports to the Council to help ensure that it takes the perspective of rights-holders into account in future decisions on business and human rights.