

*Considerations for the Second Global Forum
On Business and Human Rights*

Document submitted to the Working Group of the United Nations on Business and Human Rights

Despite the existence of the voluntary principles of the OECD and the “Guiding Principles on Business and Human Rights: placed into practice the framework to ‘Protect, Respect and Remedy’”, complaints about human rights violations by businesses has not ceased. The number of cases dealing with negative effects due to businesses (transnational, multinational, private or public capital, medium and small) is significantly growing; now the biggest damages are based on the life of workers, field workers and citizens, the environment, labor laws violations, culture and lifestyle of indigenous people, and land seizure.

It is necessary to clarify a subject that has become the “protective umbrella” of businesses and governments: Corporate Social Responsibility (CSR). We cannot continue to justify human rights violations under the shield of the CSR. Neither the agencies of the United Nations nor the Working Group can continue to finance, accompany, or support events of the CSR in which businesses are rewarded for their actions of “social investment”, while they continue on with human rights violations. The concept of the CSR, has been utilized in various occasion as a simple alibi to ameliorate the image of businesses and corporations involved in human rights violations.

Four examples are enough to exemplify these situations:

1. The weakness of the judicial system in countries where multinationals invest can be seen through the case of the fruit multinational: Chiquita Brand; this case ratifies the necessity of creating special tribunals in receptor countries, as well as in areas of original investment and/or international tribunals.

In March 2007 this multinational corporation declared itself guilty of financing and supporting extreme right winged paramilitary groups in Colombia, linked to massacres and forced displacements; before the proven acts in a United States’ court, the court condemned the corporation to pay more than 25 million dollars to the State Department in exchange for not incarcerating any of its directors¹. In March 2012 the 33rd specialized prosecutor of Medellín decided to close the process that had been advancing for over a year against the multinational for the same acts that were judged by a court in the United States. However, in December that same year the Attorney General’s Office revoked this decision and ordered the reopening of the case².

2. The free zones, which have become territories of impunity regarding human and labor rights violations: recently occurred in Bangladesh with the collapse of the

¹ See <http://www.colectivodeabogados.org/LA-IMPUNIDAD-DE-CHIQUITA-BRANDS>

² See news on the website of the magazine *Semana*: <http://www.semana.com/nacion/articulo/esto-no-huele-bien-caso-chiquita/255731-3>

Rana Plaza building. Clothing line multinationals such as Corte Ingles and Mango, eluded their labor and penal responsibilities, leaving contractors with the complete responsibility to fabricate their clothing garments.

3. The latest study by GRAIN reveals land seizing agents of the world that have a serious effect on human rights in poor communities and that place at risk food security and the work of thousands of field working families³.

4. In the case of El Cerrejón mine, company that was an example in the Corporate Social Responsibility, yet was at the same time reported and accused of human rights violations. At the II Global Compact Business Forum in Lima, Peru, business role models were chosen based on their role of Social Responsibility, one of these was El Cerrejón a company that extracts coal from one of the largest open-air mines in Colombia. In contrast, El Cerrejón has been reported for their speculated links to right winged paramilitary groups that have committed atrocious crimes against unionists and fieldworkers⁴ and also for their effects on the environment and health damages to millions of fieldworkers⁵; this demonstrates once more the existing gap between the CSR (business philanthropy) and human rights.

Now more than ever, it's imperative that businesses commit to the respect for human rights. In an interesting study conducted by Stefania Vitali, James B. Glattfelder and Stefano Battiston, researchers from the University of Zurich (Switzerland), published on October 26th, 2011 under the title "The Global Network of Corporate Control" in the scientific journal PlosOne.org, demonstrates how a small group of 147 businesses, financial transnational corporations and miner extractives, control the world's economy by managing over 40% of the world's wealth.

Additionally, this small group of businesses is extensively connected through their board meetings that constitute a power network, stronger than the rest of countries in the world combined; in some cases they are the true power and the decision makers that move the economy, politics, and the world. It is well know that some businesses have higher incomes than the Gross Domestic Product (GDP) of many countries in this planet and their influence in the decision-making sector regarding politics and the economy is disproportionately large.

Effects of Human Rights Violations

There are various consequences for possible human rights violations as a result of business activity:

-In the absence of local legislation and the difficulty to implement regulations that clearly define the responsibilities of businesses regarding potential human rights

³ <http://www.grain.org/es/article/entries/4636-quienes-estan-detras-del-acaparamiento-de-tierras>

⁴ See complaint against El Cerrejón made within the UN Human Rights Council – 6th session 2007
http://www.cetim.ch/es/interventions_details_print.php?iid=288

⁵ See video of the communities affected by the mine in El Cerrejón:
<http://www.youtube.com/watch?v=FPzhP7OaPIM>



violations, it has been the States that have paid high costs in repairs to victims for their omission and lack of compliance in protecting their fundamental human rights;

-It is ultimately taxpayers who end up paying these costs;

-Government's suffer high political costs such as loss of credibility and governance; communities, unions, indigenous people, and other actors resort to demonstrations that can generate economic damages, human loss and weakness/cracks in democracy;

-Irreparable environmental damages, strategic ecosystems affected, contaminated rivers, etc.;

- Material and immaterial cultural patrimonies destroyed, missing or greatly affected;

- Displacement of entire populations, extrajudicial executions, arbitrary arrests, the use of private security force or paramilitary, assassinations of community leaders, human rights defenders, indigenous leaders, among many other violations.

In this situation we recommend to the Working Group on businesses and human rights, to keep in mind the following contributions for their reflection and study:

1. In the international order the Working Group must orient their actions and work to:

- Solicit the United Nations, the European Union, and developed countries and to the international community in general, the creation of an international jurisdiction to judge businesses and human rights violations when there are no guarantees, instruments or impartiality in countries where these violations are committed or is impossible to present the complaints in the businesses' country of origin; this is an initiative that deserves all the possible attention due to the severity of the damages, the high number of complaints that are received on a daily basis and because in the end it is society that is affected by human rights violations; this jurisdiction must have the extensive or subsidiary character of a national jurisdiction;

- Recommend the creation of national jurisdictions in an urgent manner with the inclusion of effective mechanisms to allow complaints and redress for victims, keeping in mind international standards contemplated at the conventions and treaties of human rights at the UN and the Guiding Principles on businesses and human rights;

- Recommend the creation of financial funds in the Countries, accompanied by the proper mechanism to guarantee the effective protection of those who present a complaint to multinational and transnational companies and thus make it possible for victims to stand before a national tribunal, given that most cases are about communities or cities that live in a low-income or poverty level, with systems of early alert or other similar mechanisms. These funds should be financed with company resources that are involved in human rights violations or in acts of persecution or harassments to advocates, communities and leaders of affected

populations. It is known that the practice of judicial proof and techniques (special reports) in cases of environmental damages has huge costs that in general cannot be financed by those affected and require the intervention by specialized organisms;

- Recommend the constitution of an international financial fund with enough economic resources to guarantee the access and support to communities, organizations, affected people and their defenders, so that these can present their complaints before a tribunal in countries where multinationals have their world headquarters or central station, or in cases where the complaints cannot be presented before a national tribunal; also when they cannot be established in countries where multinationals make their investments. These instances must guarantee assessment and above all impartiality when foreign people make these complaints;
- Create a mechanism of accountability at the United Nations level for businesses that have been reported for human rights violations (an annual report) that will allow the evaluation of their conduct and the measures they have implemented to redress the victims and continue the process. The working groups must track cases and make reports;
- Create a system of company certification with respect to their conduct towards human rights, a “*Seal in Human Rights—Human Dignity*”; *this mechanism should be elaborated with the participation of United Nation’s experts and with a wide participation of civil society organizations*, so that this can be considered an important element in the access of commercial preferences or any type of investment;
- Elaborate indicators that will allow countries, civil societies and communities in general, to continue and evaluate businesses and the measures of implementation to guarantee respect for human rights; these indicators must include areas such as respect for environmental norms and active labor norms in the countries;
- Urge countries to include in their Universal Periodic Review reports –UPR-, a special chapter about businesses and human rights and cases of abuse and their treatment, such as the implementation of the Guiding Principles;
- Move forward an international debate; “World Conference” about the harmful commercial practices that are in turn violations of international human rights. For example, it’s necessary to regulate the so called free zones, which are areas of impunity, as it has already been demonstrated with what happened in Bangladesh; as well as factories and others that violate labor rights established in the ILO, likewise for extractive businesses and damages caused to the environment amongst other.

2. Nationally, the Working Groups must recommend to the States the implementation of Guiding Principles through local norms that should contain at a minimum:

- A following-up system that can be in charge of evaluating the implementation of the Guiding Principles, the approbation and execution of local norms adjusted to the international standards, amongst others; this mechanism should be balanced and representative, have the participation of the civil society, guilds but also

communities and unions; the working group should effectuate an urgent call to the States to initiate this process, and as an organ of the United Nations it must send a strong political message to the international community;

- The creation of a specialized jurisdiction at the national level that will be in charge of taking on cases of human rights violations committed by businesses of public, mix, or private capital;
- The cancellation of operating licenses to companies investigated and convicted of human rights violations and to impede their partners and capital owners from simply transforming their social reason and anticipate future investment projects;
- Prohibitions so that businesses linked with human rights violations can develop their activities in a direct manner or through allied commercial investors;
- The elimination of economic stimuli to all businesses that are found to be linked with human rights violations in a direct manner or through commercial allies or that have an ongoing process, or that have been sentenced for human rights violations;
- Preferences in tenders or public purchases of businesses that demonstrate a clean record with regard to human rights and that within their business structure the Guiding Principles have been integrated, due diligence, and all other recommendations that are made in the respect for human rights frame;
- Although the economic restoration of the victims should be mandatory, this should in no way eliminate or impede the penal and administrative sanctions to people or businesses responsible for human right violations and who/that are linked to businesses;
- Governments should include in their conventions with businesses precise contractual clauses that will allow a follow through, evaluate and demand the surrender of permanent human rights accounts. This is to say, businesses must have the obligation to present transparent periodic reports of their investments;
- The States must include in their National Human Rights Plans concrete and measureable actions, such as a public policy that relates to the Guiding Principles and that business' from public, mix, or private capital can understand.

3. The Working Group must create a special chapter for indigenous people and field workers, since most of the mining-energy activity and land monopolies are developed in these territories:

- It is important to clarify in the Guiding Principles topics such as the right to land and territory, food security, respect for indigenous people and their culture, and right to water, amongst others;
- The Guiding Principles should allow the Working Group to include recommendations to the Human Rights Council to adopt new clauses; they must keep in mind concepts developed by the Permanent Forum for Indigenous People

and in particular the Declaration of the United Nations on the rights of indigenous people, specially on what is referred to as previous consultations, the autonomy of the people, the right to determine their own model for development;

- One must clearly develop the principles on property and the natural riches that exist in different world regions and that are now utilized mainly by large transnational drug businesses;
- It is important to clarify the controversial proposal that is expressed in the Statement of the Special Rapporteur on the rights of indigenous peoples, James Anaya, “Extractive Industries and Indigenous Peoples”, A/HRC/24/41 1/072013, where he “*point[s] to new models for resource extraction that are or would be consistent with international standards and even conducive to the fulfillment of indigenous peoples’ rights*”. Here the Special Rapporteur Anaya suggests the possibility that indigenous peoples should be associated with large multinationals to exploit the natural resources and take part in the utilities. On the other hand, he suggests that businesses perform these consultations, the working group must rule on these two aspects of the report.⁶

Finally, before suggesting any candidates for the Working Group, it’s important to talk about the minimum criteria that will guarantee impartiality and objectivity. Some of these points being:

1. Have a clean record of any links or associations with multinational, transnational, or other businesses;
2. Have no previous work relations with businesses that were investigated for human rights violations;
3. Demonstrate an extensive knowledge in relation to human rights norms, international mandates, and all other norms that guarantee human rights protection at the international level;
4. Working Group members must represent civil society sectors, businesses, and governments in an equitable manner

At RIDH we value the Guiding Principles as a tool that local governments can utilize to implement norms that guarantee the protection and respect for human rights on behalf of these multinational, transnational, and national businesses; we believe that they are a valid and important tool in order to guarantee the full enjoyment of human rights by all citizens.

Regional forums like the ones that the working group has been promoting, can be useful but it is important to open the doors to civil society, communities, and people affected by businesses.

Fellow members of the working group, the forum in Medellín, Colombia, in the month of August has been strongly criticized by organizations and even in some press columns. The principle criticism insists that, “*Instead of a balanced dialogue amongst all of those affected, the organized consultation by the working group and*

⁶ <http://www.ridh.org/index.php/es/noticias-menu/132-opinion-las-industrias-extractivas-y-los-pueblos-indigenas-un-nuevo-modelo-de-extraccion-de-recursos-propicios-a-la-realizacion-de-los-derechos-de-los-pueblos-indigenas>.



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the Colombian government highlighted the voices of businesses and left little room for affected communities, and NGO's that work with them. Out of the 47 panelists, 43% were representatives of businesses or corporate consulting firms, while only 10% came from communities or human rights NGO's. 26% were from regional governments and 21% from the UN. Along with the forum format, that allowed businesses to ignore difficult questions, such an unbalanced dialogue confirms the partiality of the Working Group, which had already been noted in the global consultation that was organized and held in Geneva in 2012"⁷.

It would be devastating if the Working Group was accused once more of partiality in favor of States or businesses through organizations and social movements, because their credibility would be weakened. The group has an important function that it must fulfill and for that it's imperative that they maintain their independence before States and corporate clusters and take a clear stand in support of victims. The risk is huge for the great power that businesses have, with their lobbying capacity, could neutralize the on-going initiatives to stop these violations against human rights by businesses.

We hope that our propositions can be considered.

⁷ <http://www.elespectador.com/opinion/empresas-y-derechos-humanos-columna-445394>

