

Annual Labour and Social Policy Review:

The Corporate Responsibility to Respect:

A Human Rights Milestone

By Navanethem Pillay

United Nations High Commissioner for Human Rights

In June 2008, the lead UN intergovernmental human rights body, the Human Rights Council, adopted a resolution in which it stated that:

“transnational corporations and other business enterprises have a responsibility to respect human rights”¹

This may not seem to be particularly novel, since corporate social responsibility is a concept that has long entered international parlance. Yet this is an innovative position, since States—which bear the primary obligation for the realisation of human rights, recognised for the first time that business must also play its part. After more than a decade of discussion, this simple statement both sets a new and clear benchmark and represents an important milestone in the evolving understanding of human rights in our societies.

An improved understanding of the interplay between business and human rights is of enormous importance for the United Nations as a whole. The private sector is an increasingly vital force in enabling the economic and social development that is so inextricably connected with human rights and security. Companies – sometimes intentionally, but more often inadvertently – can also impede the realisation of human rights, directly or indirectly, as a result of their own actions.

¹ Human Rights Council Resolution 8/7, 18 June 2008.

Human rights are basic standards aimed at securing dignity and equality for all. The modern process of human rights standard-setting started in 1948 with the Universal Declaration of Human Rights (UDHR) which listed key human rights and their constituent elements. Over the next sixty years, a large canvass of treaties, and norms have fleshed out the UDHR vision.

Among the legally binding treaties, the two 1966 Covenants: the International Covenant on Civil and Political Rights (ratified by 164 States) and the International Covenant on Economic Social and Cultural Rights (ratified by 160 States) elaborated fundamental human rights standards and set the pace for the steady expansion of human rights law at the international, regional and national levels. The Covenants unequivocally affirmed that all human rights, civil, political, economic, social and cultural are universal, indivisible and interdependent.

The Declaration in its preamble proclaimed that “every individual and every organ of society... shall strive ... to promote respect for these rights and freedoms and to secure their universal and effective recognition and observance”. Whilst it does not specifically mention business, this reference indirectly alludes to the role that a variety of participative actors in any given society can play in upholding human rights. According to this interpretation, private enterprise is not exonerated from providing its own contribution. On the other hand, it is a matter of accepted international law that international human rights standards impose *direct legal* duties only on States, with very few exceptions that impose direct obligations on individuals, notably where the standards form part of international criminal law.

This said, there is increasing recognition that business can have a substantial impact on the enjoyment of human rights. Gaining greater clarity about what to expect from private concerns in this regard is therefore important for all of us. For example, my staff both at headquarters in Geneva and in the field face the challenge of dealing with

allegations of corporate abuse of human rights, and of looking for the most fruitful ways to engage with businesses in the course of their work. Yet guidance from human rights instruments and intergovernmental bodies in this regard is still underdeveloped. Such lacuna must be filled.

While not all allegations made against companies for human rights violations may be true or justified, there are sufficiently well-founded examples from around the world of human rights being infringed as a result of corporate activity. Clarity about the baseline expectations of business with regard to human rights is a first important step towards developing appropriate and effective responses to such problems.

The Human Rights Council's recognition cited above may help pave the way to a better understanding of this scantily explored interconnection. The Council's position was largely the result of the work of the Special Representative of the Secretary-General (SRSG) on human rights and transnational corporations and other business enterprises, Professor John Ruggie, the preeminent authority in this domain.

The SRSG's mandate had been established three years earlier by the Council's predecessor body, the United Nations Commission on Human Rights. It was a response to deep divisions within the Commission resulting from an earlier initiative – the draft “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights”.² The appointment of the Special Representative was made to overcome such impasse.

The scope of the SRSG's original mandate was broad. In short, he was asked to identify and clarify standards of corporate responsibility and accountability with respect to human rights; elaborate on States' roles in regulating and adjudicating corporate activities; clarify concepts such as complicity and sphere of influence; develop

² E/CN.4/Sub.2/2003/12/Rev.2.

methodologies for human rights impact assessments and consider State and corporate best practices in relation to protection against corporate-related abuse.³

In his final report⁴ to the Human Rights Council under the 2005 mandate, the SRSG recognised both the positive and negative impacts that companies can have on human rights. He observed that:

“The root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation. How to narrow and ultimately bridge the gaps in relation to human rights is our fundamental challenge.”

The SRSG’s response was to propose a policy framework to guide the understanding of, as well as responses to, the issue of business and human rights. The framework is organized around the three foundational principles of “protect, respect, and remedy”: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for access to effective remedies, including through appropriate judicial and non-judicial mechanisms.

The rationale underpinning the framework holds that the state duty to protect against third-party abuses of human rights is critical because it lies at the very core of the international human rights regime. The corporate responsibility to respect human rights is the basic expectation society has of business. And access to remedy is crucial because even the most concerted efforts cannot prevent all abuse, and victims should be able to seek redress.

³ The original mandate of the Special Representative was contained in Commission on Human Rights Resolution 2005/69.

⁴ A/HRC/8/5.

It is important to note that the three principles form a complementary whole in that each supports the others in achieving sustainable progress. I shall focus here on the corporate ‘responsibility to respect’, in setting out a variety of ways in which my own office has been helping build understanding of what this means in practice.

The Special Representative emphasized in his report that since companies can affect the entire spectrum of rights, the responsibility to respect applies in relation to *all* internationally recognized rights. It applies even where laws are absent or not enforced because it is also a social responsibility, recognized as such by virtually every voluntary business initiative, as well as soft law instruments.⁵ Yet it is not simple for businesses – or other organisations – to understand what this array of human rights means for them in their operations.

To facilitate such comprehension, my Office has contributed to a publication which clarifies the meaning and implications of all the rights contained in the two main human rights Conventions⁶. The publication, entitled “Human Rights Translated – A Business Reference Guide” was produced in collaboration with the Castan Centre for Human Rights Law at Monash University, the International Business Leaders Forum, and the UN Global Compact. This publication also contains case studies that are relevant to business as well as a list of suggested practical action that can be undertaken with regard to each right. Furthermore, my Office, together with partners from other parts of the United Nations system, civil society and business, has been working for some time on trying to get human rights integrated into business practice. OHCHR has contributed to a range of publications and tools developed with the aim to increase the understanding of human rights by business and to strengthen the integration of human rights into their core activities⁷.

⁵ These include the ILO Tripartite Declaration and OECD Guidelines on Multinational Enterprises, and the United Nations Global Compact

⁶ The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both dating from 1966.

⁷ See the OHCHR webpage at <http://www2.ohchr.org/english/issues/globalization/business/list.htm>.

It is notable that the SRSG defines the integration of human rights across a business as one of the core steps of the due diligence companies must undertake in order to discharge their responsibility to respect human rights. From my perspective, this represents one of the most significant challenges business faces and one on which my Office is well-placed to provide assistance through our partnership work with the Global Compact, NGOs and business-led initiatives.

A prime example of this flows from the active participation of OHCHR – along with the International Labour Organisation and other UN agencies – in the United Nations Global Compact. The Global Compact is a voluntary initiative promoting corporate citizenship based on universal values in the areas of human rights, labour standards, environmental protection and anti-corruption. It does not attempt to take the place of normative approaches to human rights for business, but rather to complement and support existing standards, and to help fill governance gaps where those exist.

Together with the UN Global Compact, OHCHR is involved in producing a series of case studies with analysis on business and human rights, entitled “Embedding Human Rights in Business Practice”. Two volumes have already been produced, and we are hard at work on producing Volume III.

OHCHR has also worked together with the Business Leaders Initiative on Human Rights (BLIHR), which is chaired by my predecessor as UN High Commissioner, Mary Robinson, and with the UN Global Compact, in developing guidance tools on how to integrate human rights into business management. BLIHR is a business-led programme with 14 corporate members designed to help lead and develop the corporate response to human rights. The partnership between some of the world’s largest corporations, OHCHR and the UN Global Compact sends a powerful signal that human rights is indeed a business issue and that business itself should be directly involved in finding solutions to the challenge of integrating human rights into its core activities and policies.

From our own work and that of many other actors, it is clear that much effort and some progress have been made over the past decade to better understand the nexus between business and human rights and to ensure the enjoyment of human rights in a business context. However, in the words of the SRSG:

Without in any manner disparaging these steps, our fundamental problem is that there are too few of them, none has reached a scale commensurate with the challenges at hand, there is little cross-learning, and they do not cohere as parts of a more systemic response with cumulative effects.⁸

The framework proposed by the SRSG was designed to start addressing those deficits. I believe it represents a major step forward. And I believe that the Human Rights Council has done us all a favour by welcoming the framework and inviting its further elaboration, at its meeting in June 2008. Indeed, the Council went further, extending the SRSG's mandate for a further three years and asking him to operationalize the framework.⁹

The SRSG's renewed mandate is expected to result in more operational guidance on how to meet the responsibility to respect as well as the other important elements of the framework. Such guidance would be welcomed by my Office and, I hope, by both business and their stakeholders. We will continue actively to support the SRSG in his essential work and to continue our own separate yet reinforcing efforts to help businesses understand and embrace their own role in advancing human rights around the world.

When the Universal Declaration of Human Rights was adopted, Eleanor Roosevelt – who chaired its drafting committee - noted that human rights begin in the “world of the individual person: the neighborhood he lives in; the school or college he

⁸ Id. Note 4, paragraph 106.

⁹ In relation to the responsibility to respect, the Council requested the Special Representative to: “..elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders;”

attends; *the factory, farm or office where he works* (emphasis added). Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.” We all must work to ensure that human rights do not falter at the company gates.
