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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Human Rights Advocates Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 May 2010]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Corporate Accountability – The State Duty to Protect and Mandating Social and Human Rights Reporting

1. The global financial crisis is devastating proof of the need for increased regulation over corporate actors. The inadequate system of oversight on corporate disclosures left the discerning public blind to the potential collapse of our economic system. The result was a deep and severe undoing of some of world's largest corporations, where the effects linger not only over shareholders but also on society as a whole who experience the deleterious effect of poor decision-making and judgment by corporate boards and officers. From the ruin, there are ever-increasing reasons for enhancing the scrutiny we place over corporate decision-making and oversight, including mandating disclosures around human rights impacts.

2. On June 18, 2008, the work of the Special Representative was affirmed by the Human Rights Council, and the mandate extended for an additional three years. The Special Representative has heeded this call in developing his most recent report, "Business and Human Rights: Further steps toward the operationalization of the 'protect, respect, and remedy' Framework".

3. As the Special Representative has noted in reference to the State duty to protect, encouraging or requiring companies to report on human rights policies and impacts is a key policy tool.¹ It enables shareholders and other stakeholders to better engage with business, assess risk and compare performance within and across industries.² Moreover, it helps companies to integrate human rights as core business concerns, supporting their responsibility to respect human rights.³

4. Although corporations are currently not required to release information on their compliance with international norms of social responsibility, some are doing so on their own initiative. PepsiCo, for instance, has committed to altering their practices to evidence respect for human rights. As a user of tens of billions of gallons of water in its food and beverage operations globally, including in many nations facing water shortages, PepsiCo has adopted a water policy dedicated to fulfilling the human right water as defined by the United Nations.

5. One fundamental loophole plaguing the regulatory system in the US is also problematic in the Framework proposed by the Special Representative. Namely, no legal obligations exist upon corporations, and non-State actors are left to determine themselves what human rights may be material to their business. Notably, the Framework uses the term "responsibility" in discussing the evolving societal expectation of corporations for "internationally recognized rights". The distinction between duties and obligations and responsibilities is paramount, as responsibilities refer to moral obligations and societal expectations rather than binding law. Thus, the Framework leaves it to domestic governments to define the scope of legal compliance with the human rights framework, seeming to absolve the corporation from any obligations itself to do the same outside of a call for due diligence. Something more is needed for those situations when the domestic framework is not sufficient for addressing and redressing violations of human rights by the corporations.

¹ "Business and Human Rights: Further steps toward the operationalization of the 'protect, respect and remedy' Framework. A/HRC/14/27. Available at <http://www2.ohchr.org/english/bodies/hrcouncil/14session/reports.htm>.

² Id.

³ Id.

6. A study by the University of Arkansas revealed that 72% of companies failed to disclose on their filing forms that they had received sanctions the Environmental Protection Agency (“EPA”).⁴ This is a clear violation of law as SEC Regulation 103 requires disclosure around pending or likely enforcement actions where the penalty is expected to exceed \$100,000.⁵ It also indicates that lack of enforcement by a government has the potential to plague regulatory advancements pertaining to human rights, as environmental issues are often tied directly to human rights, for example, the right to water and the right to health.

7. Further, lacking disclosure and enforcement enable corporations to continue, without legal recourse, to operate with regimes implicated in human rights abuses even when a government attempts to address those violations. Since corporations are able to work with repressive regimes through investment in foreign subsidiaries, considerable regulatory loopholes exist that leave human rights subject to abuse. Efforts at ensuring more complete disclosure may address this loophole by requiring corporations to report on all of their human rights impacts.

8. Initiatives like the UN Global Compact, the Global Reporting Initiative (“GRI”) and Realizing Rights – The Ethical Globalization Initiative, have all made significant strides in articulating standards for corporations with respect to human rights.

9. The GRI, for example, provides tools to assist companies in their human rights reporting, including in helping companies begin the process of identifying human rights-relevant issues in their operations and to assist in translating these into meaningful and effective reporting.⁶ The ultimate aim of such reporting is to create a robust system of human rights due diligence, as defined as the ongoing processes which a company carries out to ensure it is aware of which human rights operations may affect, and the steps taken to anticipate, prevent or mitigate any negative impacts.⁷

10. With expanding voices calling on governments to do more to protect their populations from harm, regulatory models need to be adopted to hold accountable those with the greatest power in today’s world: the corporations. We have reached a tipping point where lacking regulation and resulting human rights abuses impel a different approach, one away from voluntary codes of conduct and towards a system that ensures the promotion and protection of human rights by all actors involved in the global economy.

11. Human Rights Advocates commends the work of the Special Representative towards further operationalizing the Framework and in calling attention to the ties between business and human rights. However, HRA continues to advocate for an international consensus around the duties that corporations owe as societal constructions.

12. These duties can be derived from previous work done in this regard: namely, the The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. The value of the Norms as compared to voluntary compliance regimes is that they contain an implementation process, calling on each transnational corporation to adopt, disseminate, and implement internal rules of operation in compliance with the Norms. Secondly, the UN shall conduct periodic

⁴ “Study: Most companies lie to SEC about environmental fines”, Christian Science Monitor, February 24, 2009. Available at <http://www.csmonitor.com/Environment/Bright-Green/2009/0224/study-most-companies-lie-to-sec-about-environmental-fines>.

⁵ SEC Item 103.

⁶ Global Reporting Initiative, A Resource Guide to Corporate Human Rights Reporting, available at www.globalreporting.org/humanrights

⁷ Ruggie, Framework pg 17.

monitoring and verification of the corporations' efforts and investigate complaints of violations. Thirdly, States are responsible for adopting and enforcing a regulatory scheme consistent with the Norms. Lastly, the corporations are required to provide prompt, effective and adequate reparation to those persons, entities and communities harmed by their conduct, as determined by national courts and/or international tribunals.

13. As the Special Representative properly notes, one step toward ensuring the necessary transparency and accountability is for strong domestic regulation and enforcement, beginning with mandating corporate disclosures around social and human rights. The Swedish and Dutch governments have agreed, relying on the expert guidance and work of initiatives like the GRI for such disclosures. Mandating disclosures in this regard empowers shareholders and investors to act as guardians for human rights around the world.

Recommendations

14. Human Rights Advocates commends the progress of the Special Representative, and calls upon him and member States to:

- Create and enforce disclosure requirements over corporate activities pertaining to human rights as developed by the GRI.
 - Continue to explore situations where States cannot or will not enforce human rights protections and the viability of international obligations to be placed over non-State actors.
 - Use the Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights as a foundation for developing a set of legally binding standards addressing the obligation of corporate actors towards the promotion and protection of human rights.
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