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Corporate Responsibility: The Role of Enterprises in the Promotion and Protection of Human Rights

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Chair, Ladies and Gentlemen,

Context

Human rights issues have always been pertinent in business but have become increasingly important as the nature and scope of business has changed as a result of accelerating globalization over the last three decades. Different actors have different roles to play, and it is important for business to be aware of the contemporary factors that have made human rights an important organizational issue. Every company in every industry sector has human rights impacts and responsibilities which can affect the entire range of human rights issues positively or negatively, including discrimination, sexual harassment and rape, torture, health and safety, freedom of association to form unions, freedom of expression, privacy, poverty, food and water, education and housing.

The current debate on corporate responsibility and the human rights agenda gathered momentum in the 1990s, as liberalization, technology, and innovation combined to expand prior limits on where and how businesses could operate globally. However, as has happened throughout history, rapid market expansion has also increased inequalities and created governance gaps in numerous policy domains as well as gaps in the capacities of different population groups and social, economic and political institutions to manage the adverse consequences of the many and varied impacts of accelerating globalization.

The growth of private investment flows has resulted in companies expanding their operations to countries previously untouched by global markets. In some instances, these countries have poor human rights records and/or weak state capacity to regulate and legislate or address new issues and challenges. In these cases the voluntary role of businesses in promoting and respecting human rights becomes particularly important.

In other instances, the capacity of the state to address human rights issues has diminished as a result of the globalisation process. Non-governmental organizations of all types and sizes have grown to fill the void, progressively influencing both public policy and market failure. They include new human rights, labour and corporate accountability organizations.

The need for transparency in business practices has become more important than it has been ever before because of the acceleration of globalization, the growth of global civil society and the recent multiple public exposures of excesses in the corporate sector. Advances in information technologies and global communications mean that companies can now ill afford to conceal poor or questionable practices. If an international crime is involved, complicity may arise if a company assisted in the perpetration of the crime, even if it did not intend for the crime to be committed. State-owned enterprises should be aware that because they are part of the state, they may have direct obligations under international human rights law.

In the past, and even at present, many companies tend to approach social issues through their corporate social responsibility (CSR) programmes. However, many CSR initiatives were and continue to be undertaken selectively, based on what the company voluntarily chooses to address. Adoption of a human rights approach, however, requires companies to respect all the human rights articles embodied in the Universal Declaration of Human Rights (UDHR) and its UN sanctioned covenants and instruments. Companies should not have the option of picking and choosing only those issues with which they feel comfortable. This is because the UDHR framework provides a universally recognised and agreed people-centred approach in which to embed companies' social and environmental impacts and responsibilities.

The UN Human Rights System

The foundation of the UN's (and international community's) international human rights framework was laid in 1948, when the UN General Assembly adopted the Universal Declaration of Human Rights. The preamble to the Universal Declaration calls on "every individual and every organ of society" to promote and respect human rights. Leading international law scholar Louis Henkin noted in 1999 that "every individual and every organ of society excludes no one, no company, no market, no cyberspace. The Universal Declaration applies to them all." A 2002 report by the International Council on Human Rights Policy, *Beyond Voluntarism: Human rights and the developing international legal obligations of companies*, also states that "there is a clear basis in international law for extending international legal obligations to companies in relation to human rights."

Although the primary duty to protect human rights remains with national governments, there should now be little remaining debate about whether companies have a responsibility to respect human rights. As the UN Special Representative of the Secretary General on business and human rights, Professor John Ruggie stated in his 2008 report, this responsibility "is recognized in soft law instruments. It is invoked by the largest global business organizations. And the Special Representative's surveys document the fact that companies worldwide increasingly claim they respect human rights."

The UN Global Compact

It is in this context that the United Nations launched the voluntary Global Compact in 2000 and appointed a Special Representative on business and human rights in 2005. The UN Global Compact is a policy platform and a practical framework for companies that are committed to sustainable and responsible business practices. As a leadership initiative endorsed by chief executives, it seeks to align business operations and strategies everywhere with ten universally accepted principles covering the areas of human rights, labour, environment and anti-corruption.

Thousands of companies in more than eighty countries now participate in the Global Compact and report publicly on steps they take to comply with the ten principles. However, the Global Compact has drawn criticism from some quarters because it is not legally binding or a performance or assessment tool. Rather, it is a voluntary initiative that relies on public accountability, transparency and disclosure to complement regulation and, in this sense, while innovative in some respects, is far from perfect.

Companies participate because the UN Global Compact seeks to combine the best and most unique attributes of the UN, such as moral authority and convening power, with the private sector's strengths and resources, and the expertise and capacities of other key stakeholders. Local Networks in over 80 countries perform increasingly important roles in embedding the UN Global Compact within different national and cultural contexts.

The UN Sub-Commission's Norms: A Valiant Attempt Thwarted

In 2003 the UN Sub-Commission on the Promotion and Protection of Human Rights, a body of international human rights experts, adopted a set of draft "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights". The Sub-Commission forwarded them to the UN Commission on Human Rights in 2003. The Commission considered the Norms in 2004 and "expressed its appreciation to the Sub-Commission for the work it has undertaken in preparing the draft norms" and said they contained "useful elements and ideas for consideration". But under pressure from some quarters, including some corporations, it did not approve them, and said they had "no legal standing".

The UN Special Representative

Nevertheless, in 2005, the United Nations Human Rights Commission requested that the UN Secretary-General appoint a Special Representative (SRSG) on Business and Human Rights to study the issue of human rights and transnational corporations and other business enterprises with a mandate for three years.

In 2008, Professor Ruggie who was appointed to this position submitted the final report of his initial three-year term to the UN Human Rights Council, which had by then replaced the UN on Human Rights Commission. He proposed a "policy framework for managing business and human rights challenges...based on three pillars: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and greater access by victims to effective remedy, judicial and non-judicial." The Council unanimously welcomed and endorsed this UN framework and extended Ruggie's term, mandating him to make recommendations on ways to operationalise it.

The Global Business Initiative on Human Rights

The United Nations Framework on Business and Human Rights, developed by the UN Special Representative to the Secretary General on Business and Human Rights provides the backbone to the work of GBI. That *Protect, Respect and Remedy* framework includes clear guidance on practical steps businesses should take on this complex set of issues.

The Work of NGOs and Civil Society

NGOs, local community groups, and advocates across the world are also doing critical work monitoring the human rights conduct of companies, publicising abuses, and seeking accountability. These not only include human rights and labour rights defenders, but also environmentalists, advocates for women's rights and development, and other social justice activists. In some countries, NGOs and other civil society advocates risk retaliation by companies or government authorities for their work to hold companies accountable. Examples of civil society-led initiatives include the International Baby Food Action Network (IBFAN) and the campaign directed at Shell in Nigeria for alleged human rights abuses which, among other acts, led to the execution of Ken Saro-Wiwa, the lead human rights activist in the Movement for the Survival of the Ogoni People (MOSOP).

Despite these high profile corporate cases, including the current BP one, only five complaints out of the 96 filed against multinationals brought by ethical campaigners over the past decade have resulted in concrete improvements, according to non-governmental organisations calling for "radical reforms" of international guidelines on social, environmental and labour issues.

Lawsuits and Complaint Mechanisms

Companies that do not respect human rights run an increasing risk of facing human rights litigation. Initially most such lawsuits were brought in North America and Europe, but they are increasingly now filed in developing countries.

Sectoral initiatives

Companies in a wide range of sectors have also joined together, often with the involvement of NGOs, governments and/or international organizations, to enter into voluntary initiatives to address human rights issues. Some key initiatives include the Electronics Industry Citizenship Coalition; Equator Principles; Extractive Industries Transparency Initiative; Fair Labour Association; Global Network Initiative; Global Reporting Initiative; Kimberly Process; and Voluntary Principles on Security and Human Rights.

The Business Leaders Initiative on Human Rights (BLIHR) was a six-year project (2003-2009) which, “set out to find practical ways of implementing the Universal Declaration of Human Rights in a business context.” BLIHR’s final report stated, “the corporate responsibility to respect human rights is a fundamental premise and represents a positive responsibility to act even when a government might not. BLIHR has come to the conclusion that the common UN Protect, Respect, Remedy framework applies to all businesses regardless of where in the world they are operating.”

The BLIHR was a business-led organization involving 16 of the world’s major brands. The diversity of sectors and individuals involved, plus the engagement with a wide range of stakeholders has made the process a rich experience for member companies. A great deal has been learnt about the importance of a progressive space for sharing, debate, learning and hard work. In developing tools and policy views in this area, they hoped to support a reduction in human rights abuses by corporations, the development of a level playing field and ultimately a way of doing business that is socially sustainable for all. Mary Robinson, former UN High Commissioner for Human Rights, former President of Ireland and currently president of Realizing Rights: The Ethical Globalization Initiative, provided leadership and was a key catalyst for BLIHR and for the wider business community.

National Human Rights Institutions (NHRIs)

UN Special Representative on business and human rights John Ruggie commented: “The actual and potential importance of these institutions cannot be overstated. Even where they cannot themselves handle grievances, they can provide information and advice on other avenues of recourse to those seeking remedy.”

Ladies and Gentlemen, in conclusion,

The adoption of policies, the proliferation of voluntary initiatives, and the recognition that companies have a responsibility to respect human rights all represent progress. Nevertheless, even taken together, these policies and initiatives have not resulted in the full respect for human rights by companies. Greater scrutiny, transparency and mechanisms for accountability are still urgently needed – as is much more work by civil society, governments, the United Nations and companies themselves.

The United Nations is not a centralized command-and-control system that can impose its will on the world. But it can and must lead intellectually and by setting expectations and aspirations. The UN Human Rights Council can make a singular contribution to closing the governance gaps on business and human rights issues by supporting the framework it endorsed, inviting its further elaboration, and fostering its uptake by all relevant social actors.

To this end, in June 2008, the United Nations Human Rights Council extended the SRSG's mandate for another three years, asking him to "operationalize" the framework in order to provide concrete guidance to States and businesses. The new mandate includes the following tasks for Mr. Ruggie:

(a) To provide views and concrete and practical recommendations on ways to strengthen the fulfillment of the duty of the State to protect all human rights from abuses by, or involving, transnational corporations and other business enterprises, including through international cooperation;

(b) 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;

(c) To explore options and make recommendations, at the national, regional and international levels, for enhancing access to effective remedies available to those whose human rights are impacted by corporate activities."

His report is due in 2011. This should further accelerate the work of the UN in promoting human rights for businesses using the inclusive and evidence-based approach that has characterized his work so far.

At the Global Compact Leaders Summit in New York on 24 June 30, 2010, the current UN Secretary General urged business to do more to uphold human rights and labour rights, protect the environment and fight corruption as these issues are increasingly front and centre. Business can and should be part of the solution. He said, "... we need business to give practical meaning and reach to the values and principles that connect cultures and people everywhere."

Let me end by commending the Malaysian Bar Council and other organizers of this conference for including this segment on Corporate Responsibility: Role of Enterprises in the Promotion and Promotion of Human Rights as the set of issues and challenges embodied in this theme are fundamental to the well being of both employers and employees throughout the world. The UN looks forward to increasing its collaboration with all stakeholders on this critical set of issues.