



Dialogue on
Globalization

CONFERENCE REPORT
FES GENEVA

Report on the *Civil Society Forum* on Business and Human Rights

Preparatory to the 05-06 October Consultation by OHCHR

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On Thursday, 04 October 2009 the **International Commission of Jurists (ICJ)** and the Geneva Office of the **Friedrich Ebert Stiftung (FES)** invited to a preparatory session with regard to the OHCHR Consultation on Business and Human Rights. The goal was to provide a platform for NGOs and other participants of the Consultation to critically review the PRR-Framework, discuss the submissions prepared and to form a common strategy.

The following organizations participated in the meeting: SOMO, OECD Watch, MISEREOR, CIVIDEP, ICJ, OXFAM America, TUAC, CORE, ITUC, UNI, Caritas, CAFOD, Germanwatch, ESCR-Net, Forum Menschenrechte, Business & Human Rights Resource Centre, Diplomacy Training Program, The Western Shoshone Defense Project, Irish Centre for Human Rights, Corporacion Juridica Yira Castro, Usuarios de Servicios Publicos Aarraya, ForUM, FIDH, Colectivo de Abogados, CIVIDEP, FES.

¹In June 2008, the Human Rights Council received and debated the Report of John Ruggie, Special Representative of the Secretary-General (SRSG) on Business and Human Rights, based upon the 3 Pillars: Protect, Respect, Remedy. The Report was welcomed by the Council, and John Ruggie's mandate was extended. As a group of NGOs had called on the Special Representative to consult in a broader way both civil society and victims of violations within the context of his continued mandate, the Council decided to organize a two-day consultation on the topic of operationalizing the 3 Pillar Framework, which would be open to the public, including any NGOs and victims. The outcome of the consultation shall then be integrated into a Report written by the UN High Commissioner. By hosting a preparatory session on the Consultation, **FES** and **ICJ** intended to provide an opportunity to NGOs and other participants for critical discussions on the SRSG's framework, for the facilitation of networking, for further communication regarding the goals of each organization and last but not least to organize for the making of oral interventions at the Consultation.

The first item on the preparatory's agenda was a critical review of the Protect, Respect, Remedy Framework.

The participants discussed positive and negative aspects with regard to the 3-Pillar Framework. It was emphasized by some that they appreciate the clear distinction made in the framework between the role of states and the role of business (i.e. "duty" v.

"responsibility"), especially in terms of norm-setting.

On the other hand, some argued that the SRSG is too sanguine with regard to the effectiveness of business led initiatives. It was referred to the millions that are being spent on social auditing, without leading to any measurable outcome;

Also, participants highlighted a lack of non-judicial mechanisms and effective national remedies, especially as related to abuses in failed states and areas where states do not have jurisdiction; The case of European companies which were dumping toxic waste off the coast of Somalia was put forward as one example.

The further discussion of the group on the framework also included the need for facilitating the participation of victims and civil society from the Global South. Notice was taken that even though consultations such as the OHCHR Consultation were formally open to the public, there are practical impediments (money, access to ICT) that lead to these demographics to be consistently underrepresented.

Furthermore, participants pointed out a strong need for a better definition of the concept of "responsibility" in relation to corporations. So, the term 'responsibility' in opposite to "duty" is not necessarily a legal term. It was also emphasized that there is a strong need to lessen the procedural burdens placed on victims for proving causality. One suggestion in this regard included placing the burden of proof on the defendant to disprove causality in cases of certain human rights violations.

Another participant broached the issue of the need to include and consider indigenous communities, as they are often left out of

¹ The author thanks Stratos Pahi of ICJ for the background notes to this report.

stakeholder discussions in both the North and South.

During the discussion, participants also referred to the OECD guidelines, specifically the limiting effect of their voluntary nature. Emphasis was placed on the need for further study to determine their limitations and potential.

Further discussion then also included the pros and cons of extra-territorial jurisdiction, the desirability of a binding international treaty, the potential of learning lessons from union grievance mechanisms, and criticism towards the SRSG's method of working with small groups of experts without a satisfactory access for NGOs respectively Civil Society.

In part two of the preparatory, the organizations participating discussed their comments and submissions for the consultation.

At first, attention was called to the fact that the OECD Guidelines are referenced by John Ruggie and have the potential to be a useful framework. So, strengthening the Guidelines as a globally applicable instrument was one of the proposals to be submitted to John Ruggie at the Civil Society Forum.

Regarding the **International domain**, participants wanted to bring forward the need of an international binding mechanism, due to the non-functioning of national level policies. In this context, it was also referred to activities which traditionally were part of the states' province but have become province of the private industry also. (e.g. private military, detention companies in U.S.). It was also pointed out a clear demand for changes of EU-law to become consistent with Ruggie's mandate, especially with regard to parent-subsidiary relations and access to courts. For example, one submission called for a change of standing laws to increase access to EU courts, and therewith allowing anyone with a case against a EU corporation to get a standing.

Also, the importance of extra-territorial legislation and the disclosure of reporting

requirements to home governments was remarked as an important item.

On the **state level**, as one of the central concerns the state's duty to respect and enforce Human Rights and its responsibility in standard-setting was discussed. Submissions included the claim for monitoring corporations and also any activities linked to those corporations overseas (extraterritorial duty), for instance by installing a quasi-judicial panel. Additionally, the proposal was made to only give subsidies to those companies that adhere to human rights principles.

Another submission also called for separate rules of procedure for human rights cases (different from civil and criminal cases), in order to shift over the burden of proof from the victims to the enterprises. Also, some participants wanted to challenge issues around the operation of state pensions and state sovereign wealth funds.

During the course of the discussion, participants and their submissions also focussed on **business' obligations**. In this context, the issue of due diligence as a legal obligation for companies was broached. One participant also announced to focus in their submission on how business undermines human rights through promoting corruption and tax avoidance, citing examples from Latin America and Africa.

Another main focus of the participating NGOs and victims was the **reality of rights** and the access to remedy. Demands included a better access to both judicial and non-judicial remedies, and even a global grievance mechanism at the UN level.

Also, participants wanted to call for an enforcement of the right to reparation.

Furthermore, some victims of human rights violations who were given the chance to speak at the Civil Society Forum, reported on their cases. Inter alia, those cases referred to non-compliance with labor rights in South Africa and human rights violations by mining companies in South America. Participants and victims discussed a lack of access to judicial remedy and the need of indigenous

communities to be consulted with regard to laws affecting their community, and concluded that the enforcement of human rights compliance by the state is not sufficient

In the final part of the preparatory, the participating NGOS discussed a common strategy with regard to the Civil Society Forum.

The discussions centered on organizing a strategy for making oral interventions in the consultation. So, point-people were selected for each session who were charged with organizing the oral interventions of civil society. In the case there was not enough time, the point-people were to aggregate the statements into one intervention.

Lessons Learned

While there seemed to be a general consensus that corporate accountability for human rights violations needs to be strengthened significantly and that current reliance on national enforcement is flawed, there was not an overwhelming consensus on the means for achieving this ultimate goal. At least a plurality favored a binding international treaty mechanism, while others favored expanding extra-territorial jurisdiction and existing international mechanisms. Discussion did not reach the point of asking what form an international treaty mechanism would take.

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