



Joint Civil Society Statement on Business and Human Rights to the 17th Session of the UN Human Rights Council

June 15, 2011

The United Nations Human Rights Council is expected to adopt a decision this week, before its current session ends on June 17, that will set the direction for its future work on business and human rights. This represents a crucial opportunity for the Council to tackle the most pressing human rights challenges associated with transnational corporations and other businesses enterprises. Leading human rights organizations have proposed concrete, actionable steps the Council should take when it approves a new resolution on this topic.¹ Unfortunately however, the draft resolution before the Council falls far short of what is needed. We fear that if the Council adopts the resolution as it stands, it will have failed in its fundamental mission to advance the protection of human rights.

The draft resolution suffers from three main shortcomings, each of which we urge the Council to address in order to ensure broad civil society support:

- It focuses almost exclusively on the dissemination and implementation of the proposed Guiding Principles, which are incomplete in important respects and do not fully embody the core human rights principles contained in the UN “Protect, Respect, Remedy” Framework approved by the Council in 2008.
- It lacks a mandate for the follow-on mechanism to examine allegations of business-related abuse and evaluate gaps in legal protections, an aspect stressed by civil society groups from around the world. Neither of these essential tasks is embedded in the proposed three-year follow-on mandate for a new special procedure, a working group of five experts.

¹ See A/HRC/17/NGO/48 and Amnesty International, the International Federation of Human Rights Leagues (FIDH), Human Rights Watch, the International Commission of Jurists, the International Network for Economic, Social and Cultural Rights and Rights and Accountability in Development, “Joint Civil Society Statement to the 17th Session of the Human Rights Council Interactive Dialogue with the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and other Business Enterprises,” May 30, 2011, available at http://www.escr-net.org/usr_doc/CA_Letter_PDF.pdf.

- It does not clearly recognize the Council's unique role to provide global leadership in human rights by working toward strengthening of standards and creating effective implementation and accountability mechanisms.

To facilitate the Council's deliberations, we have elaborated further on each of these issues:

First, the draft's central focus on the proposed Guiding Principles is misplaced. Although the Guiding Principles are a starting point, on their own they cannot effectively tackle today's main challenges. They do not constitute the comprehensive set of recommendations and guidance, as the draft resolution claims. The Guiding Principles are meant to serve as a guidance tool to implement the "Protect, Respect, Remedy" Framework and will need to be developed further over time and/or complemented with other initiatives. Full implementation of the 2008 UN Framework will require more work on key issues such as accountability, the extraterritorial reach of laws and jurisdiction, and remedies for victims.

Second, the draft resolution limits the role of the new Working Group of five experts to a large extent to simply promoting and disseminating the Guiding Principles. The working group should instead be given a clear mandate to examine, assess and formulate recommendations with regard to current practice by governments and companies, including in relation to concrete cases and existing problems, in order to evaluate whether and how the UN Framework is being implemented, and in doing so it should refer to the Guiding Principles as well as to all applicable and relevant international responsibilities and obligations.

Third, the Special Representative on business and human rights, Professor John Ruggie, whose tenure has now ended after a six-year period, has correctly said that the UN "can and must lead intellectually and by setting expectations and aspirations." The follow-on mandate should work in this spirit, in order to close governance gaps brought about by globalization and substantially reduce business-related violations of human rights. This necessarily entails work to analyse protection gaps and options for further legal developments. Victims of business-related harm deserve no less.

The draft resolution's lack of ambition for the follow on mandate is disappointing, and it remains unclear whether the proposed Working Group and Forum on Business and Human Rights, once in effect, will together provide a robust and credible mechanism for protecting rights and seeking solutions for people whose rights are abused in connection with business operations. That will depend in part on the extent to which these bodies help ensure adherence to and continued development of standards for business and human rights.

Finally, we wish to stress that it will be essential to select a set of experts for the new Working Group who have a strong expertise in human rights and a proven ability to engage with affected individuals and communities. Legal expertise and a thorough knowledge of business and human rights issues are also essential.