



# INTERNATIONAL COMMISSION OF JURISTS

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*"Dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights"*

**United Nations Human Rights Council**

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**Item 3**

## **ICJ Intervention in the interactive dialogue with the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises**

1st June 2010

*Check against delivery*

Mr. President,

Every single day the news reports the impact of business on human rights and the natural environment: the leakage from the oil platform run by BP in the Gulf of Mexico is one example. The impact of economic and financial destabilization partly resulting from the role of banks and financial speculators is another.

These and other events have occurred and continue to occur since we last met on this issue within this Council and highlight once again how ill equipped the international community and States are to prevent these events and ensure remedial measures. In particular, developing countries do not have the same capacity as developed countries to respond to those problems and challenges.

The few available instruments such as the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Principles are weak and largely unenforceable. It is high time the international community moves boldly and resolutely towards a system of corporate accountability to prevent human rights abuse by irresponsible businesses.

A growing number of companies or industry associations adopt Codes of Conduct that contain human rights commitments. Many stakeholders, in particular civil society groups, stress the need for enforcement mechanisms to ensure that companies comply with these policies or codes of conduct or other sets of voluntary standards. The ICJ appreciates the attention that the SRSG has put in his present second progress report on the question of legal compliance. In particular, his statement in paragraph 66 that "the corporate responsibility to respect is not a law-free zone" deserves to be developed more extensively and prominently. It is important to know what instruments States and civil society would have to demand companies to comply with those commitments. Legal liability for companies - whether criminal or civil- plays a crucial role in modulating company expectations and ultimately behaviour, and would work efficiently to prevent the re-occurrence of abuses. Just as in other areas of human rights law: corporate impunity in practice promotes more violations.

Mr President,

The SRSG has announced the final outcome of his work in the form of a set of "Guiding Principles". We believe such guidelines should clearly guide business enterprises about a) the content of their human rights responsibilities, b) the

modalities in which business may directly or indirectly become involved in human rights abuses, and c) the steps they must take to put in practice those responsibilities.

Mr President,

Legal remedies are a prerequisite for human rights implementation: without access to effective means of redress, human rights are rendered meaningless. The ICJ has always paid special attention to this key element with respect to companies' duties under domestic law, and is at present conducting a series of country studies to unveil the potential as well as the gaps that exist in this domain in national jurisdictions. All our work is based on the fundamental tenet in international law that legal remedies are designed to address situations of human rights violations. We note that the SRSG uses the term "remedies" in a broad sense. His focus is mainly on "grievance" mechanisms of a non-judicial character. While these may be useful in some cases, we stress the international obligation of states to provide effective legal remedy as part of national implementation.

To finish, Mr President, if companies across the globe do not have the same enforceable duties, we risk situations of "unfair competition" between companies that choose to take their responsibility seriously and those who choose to ignore them. As well as the risk that countries engage in a race to the bottom in lowering protection standards, thereby dwarfing international expectations of company compliance with human rights responsibilities.

We would like to ask Prof Ruggie: how we can avoid such a situation?

Thank you Mr President

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