



# International Service for Human Rights

## The Reports in Short

ISHR's summaries of documents for the Human Rights Council 4<sup>th</sup> Session

### Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises<sup>1</sup>

#### **Mandate holder**

John Ruggie

#### **Mandate**

The mandate was established in 2005<sup>2</sup> to strengthen the promotion and protection of human rights in relation to transnational corporations and other business enterprises. The Special Representative is mandated to identify and clarify standards of corporate responsibility; to research and clarify the implications for transnational corporations and other business enterprises of concepts such as “complicity” and “sphere of influence”; to identify ‘best’ practices by States and companies; and to develop materials and methodologies for undertaking human rights impact assessments for business activities.

#### **Activities**

- Annual report;
- Organized four workshops: 15 June 2006 in Chatham House in London; from 23 to 24 October in Oslo; from 3 to 4 November in Brussels; and on 17 November in New York City. Provided official summary of legal workshops;<sup>3</sup>
- Survey questionnaire of Governments and Global Fortune 500 Firms;<sup>4</sup>
- Addendum report on global patterns, regional and sectoral variations of business’ recognition of human rights.<sup>5</sup>

#### **Annual Report<sup>6</sup>**

#### **Scope:**

The report covers the activities of the Special Representative’s research regarding the elements of his mandate that require ‘mapping’ current international standards and practices regarding business and human rights. He does not begin to develop ‘views and recommendations’, but instead focuses

---

<sup>1</sup> Summary prepared by Alison Leon, Intern, ISHR; edited by Gareth Sweeney, Information Program, ISHR.

<sup>2</sup> Commission *Resolution 2005/69*.

<sup>3</sup> A/HRC/4/35/Add.215 February 2007.

<sup>4</sup> A/HRC/4/35/Add.3, 28 February 2007.

<sup>5</sup> A/HRC/4/35/Add.4, 8 February 2007.

<sup>6</sup> A/HRC/4/74, 5 February 2007.

on producing a 'solid and evidentiary foundation'. To map this foundation, he covers the State's duty to protect; corporate responsibility and accountability for international crimes; corporate responsibility for other human rights violations under international law; soft law mechanisms; and self-regulation.

### Summary and key conclusions:

#### **State duty to protect:**

- The Special Representative discussed the firmly established principles that give States the **duty to protect** against non-State human rights abuses within their jurisdiction. He mentions the generalized obligations the treaty bodies impose, such as CEDAW's prohibition of discrimination by any "enterprise".<sup>7</sup> He noted **positive obligations** to ensure the rights discussed under the *International Covenant on Civil and Political Rights*, as well as under General Comment No. 31 of the Human Rights Committee. He stated that current guidance from the Committee suggests that these and other treaties do not require States to exercise **extraterritorial jurisdiction** over business abuses, but also does not prohibit them from doing so. He concluded his discussion by commenting that the duty to protect is the very foundation of the international human rights regime.

#### **Corporate responsibility and accountability for international crimes:**

- Noting that States are not the only duty bearers under international law, the Special Representative mentioned the relationship between individual responsibility and corporate responsibility. He discussed how corporate responsibility is being shaped through the interplay of two developments: the expansion and refinement of international **individual responsibility through the ICC** and *ad hoc* tribunals; and corporations' responsibility for international crimes under **domestic law**.
- The Special Representative noted that **individual criminal or civil liability** may extend to corporations, depending on whether international standards are incorporated into their criminal or civil codes. One example of legal foundations for trying civil code violations is the USA Alien Torts Claims Act. Civil proceedings can also be extended for related wrongs under domestic law. These liabilities have a slowly expanding impact on the **risk environment for companies**. Remedial options for victims are similarly expanding.
- The Special Representative lists two problems to corporate responsibility and accountability: the idea of a **separate corporate personality** that sees corporations as made up of individual entities, and not one umbrella entity that can be held liable; and allegations of "**complicity**" in international crimes, which, as an umbrella term, lacks established clarity. He concluded the notion of corporate responsibility by noting that despite this lack of clarity, it is established that even if a corporation regrets a crime, or states that it did not intend to commit a wrong, it will not be absolved for liability if it knew, or should have known, that it was contributing to the commission of a crime.

#### **Corporate responsibility for other human rights violations under international law**

- The Special Representative stated that the emerging corporate responsibility for international crimes is grounded in growing national acceptance of international standards for individual responsibility. While it is in the process of evolving, there is observable evidence of its existence. He noted, however, that the legal responsibilities for "other human rights violations," presumably of non-criminal dimensions, are matters still under debate under international law.
- The Special Representative states that when one looks for **uniform practice** regarding human rights violations **under customary international law**, such practice cannot yet be identified. Nothing in the Universal Declaration of Human Rights (UDHR), the Covenants on economic,

---

<sup>7</sup>Convention on the Elimination of All Forms of Discrimination Against Women, Article 2(e).

social, cultural, civil and political rights, the core human rights treaties, or the ILO core convention *prevents* States from imposing international human rights responsibilities directly on companies; however evidence shows that States might favor indirect legal provisions. He pointed to the traditional role of **indirect responsibilities** on corporations, that is, the responsibilities provided under domestic law in accordance with States' international obligations.

### **Soft law mechanisms**

- After the Special Representative described the role of soft law as primarily filling in gaps and charting possible future directions for the international legal order, he outlined the soft law mechanisms that address corporate responsibility and accountability for human rights. They were: the traditional **standard-setting role**, the enhanced **accountability mechanisms**, and an emerging **multi-stakeholder form** that involves corporations directly.
- He described two prominent examples of normative roles in soft law that are essential to the elaboration and further development for corporate responsibility standards: the **ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy**, which proclaims that all parties should respect the UDHR and international Covenants; and the **OECD Guidelines**. He mentioned others as well, including: the **National Contact Point**, or NCP, a non judicial review procedure; the International Finance Corporation's performance standards for their investment funds, the **Voluntary Principles on Security and Human Rights**, the **Kimberley Process Certification Scheme** for stemming the flow of conflict diamonds, and the **Extractive Industries Transparency Initiative** for transparency of Government revenue from taxes, royalties, and fees of companies. The force of such initiatives can be measured through their operational impact on the ground, and the degree to which they serve as examples for other companies.
- The Special Representative stated that the standard-setting role of soft law remains important. Additionally, he applauded the increased **focus on accountability** in some intergovernmental arrangements and the involvement of corporations in innovative mechanisms, which suggest that States and corporations acknowledge **evolving social expectations** and the **need for shared responsibility**.

### **Self-regulation:**

- While the Special Representative noted that he could not map all 77,000 transnational corporations to report on their policies and practices, he instead studied a subset of businesses: the Fortune Global 500 firms (FG500); and the business recognition study of actual policies, collective initiatives, and the socially responsible investment funds. These are discussed at length in Addenda 3 and 4 below.

### **Conclusions:**

As the Special Representative did not address the issue of recommendations in his report, his ending remarks were **general observations** from his study that 'mapped' the current international standards and behavior.

- The Special Representative pointed to a **governance gap** caused by misalignment between economic forces and governance capacity. While in principle public authorities set the rules wherein businesses operate, sometimes Governments cannot take effective action. Additionally, because States compete for access to markets and investments, they might be subject to a collective action problem that could impede their serving as the international community's 'public authority'. Vulnerable people and communities pay the heaviest price for these gaps.
- He stated that human rights and the sustainability of **globalization** are linked, and that States and businesses need to consider where they are leading the current situation.
- He noted that the liability of corporations has been largely an unanticipated by-product of States strengthening the legal regime for individuals. Because it was not an explicit initiative, the

regime has left **gaps in national legal practice**, leading to **gaps in protection for victims** as well as **predictability gaps for companies** who may still get tried in ‘courts of public opinion’.

- While **soft law measures** such as voluntary standards offer promising innovation, specifically in the multi-stakeholder hybrids, they also have obvious weaknesses. The challenge is in bringing such efforts to the scale of systemic interventions.
- The Special Representative expresses concern that not all States have internalized the full meaning of the State’s duty to protect, nor its implications regarding the prevention and punishment of non-State actors in violations. He also notes that **states do not seem to be taking advantage of the legal and policy tools** at their disposal to meet treaty obligations.
- He mentions that the **corporate “sphere of influence”** is linked to the State’s duty to protect: when States fail in their duty to protect, corporations are left to fill the vacuum. He hopes that the nexus between corporate responsibility and State duties can be clarified.
- The Special Representative concluded that the foundation that the report presents was an essential first step that should be followed by a strategic assessment of the major legal and policy measures that States and the social actors could take regarding human rights responsibilities. To make available the “views and recommendations” invited by resolution 2005/69, he would **welcome a one-year extension of the mandate**.

## **State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries<sup>8</sup>**

### **Scope:**

The Special Representative used this addendum to summarize information, trends, and preliminary findings resulting from his reporting on States’ obligations in relation to corporate activity under the UN core human rights treaties.

### **Summary and key conclusions:**

#### **The duty to protect:**

- Treaty specific reports show that treaty bodies are mainly concerned with **States’ obligations to protect rights**, as opposed to corporate obligations. States have positive obligations to prevent and punish third party interference with the enjoyment of rights. This duty to protect is a **substantive duty**, and will only be breached if the State fails to take steps to prevent or punish abuse.

#### **References to business enterprises:**

- **Treaties:** references to business enterprises in actual treaties are not very common, and tend to mention particular sectors rather than private businesses. CEDAW is most explicit, and mentions the requirement to eliminate discrimination against women by any enterprise. ICERD mentions the requirement to prevent private owners of public facilities (such as hotels, cafes, and theatres) from engaging in racial discrimination. ICERD also mentions the regulation of acts by third parties, calling for the end of discrimination by any “persons, group, or organization.”
- **Treaty body commentaries:** while there are no general comments or recommendations focusing solely on States’ duties to protect rights in the context of corporate activities, they tend to mention businesses as part of discussions regarding particular rights or vulnerable groups. They tend to mention sectors, such as the extractive industry or pharmaceutical companies. Some examples of this include: comments by the Committee on the Rights of the Child (CRC) call the State ultimately responsible for preventing abuse by the private sector; general comment

---

<sup>8</sup> A/HRC/4/35/Add.1m 13 February 2007.

15 of the Committee for Economic Social, and Cultural Rights (CESCR) stresses that State parties are obliged to “prevent third parties from interfering in any with the with enjoyment to the right to water”; general comment 28 of the CRC notes that States should “take the lead in eliminating discrimination against women...in areas such as employment”; and general comment 31 of the Human Rights Committee stressing the duty to protect against violations by private persons or entities.

#### **Measures states are required to take:**

- **Monitoring:** The treaty bodies highlight the importance of consistent, independent monitoring by States of third party compliance. **National Human Rights Institutions (NHRIs)** are seen as important players in monitoring third party compliance.
- **Regulation:** Most treaties impose obligations on States to adopt legislative measures as a means to ensure enjoyment of rights. Thus, the treaty bodies generally have confirmed that adopting appropriate legislations to prevent or address third party abuse is among **States’ minimum obligations**. Most frequently, legislation or regulation is discussed in relation to employment, but the CESCR has also noted in its general comment 15 that regulation is “indispensable” for non-discrimination in health.
- **Adjudication:** while this word is never generally mentioned, treaty bodies regularly call for **investigation, sanctions, and remediation** of violations by third parties, including business enterprises. Concluding observations from CESCR confirm that inspection mechanisms should include monitoring functions as well as the ability to investigate and impose penalties. The treaty bodies confirm regularly that third party abuse is punished, which includes that the **perpetrators are brought to justice**. Treaty body commentaries also reiterate the importance of sanctions to enforce compliance. Under the right to an effective remedy, treaty bodies discuss that States should ensure appropriate procedures are in place to assist rights-holders to bring claims against corporate abuse. Finally, reparations, broadly interpreted to include **compensation, restitution, guarantees of non-repetition, changes in relevant laws, and public apologies**, are considered effective remedies. States, it seems, have wide discretion in whether reparation should be provided through criminal, civil, or administrative actions.
- **Natural versus legal person:** The question arose whether the State may fulfil the duty to protect by focusing on the acts of natural persons within larger corporations, or whether it is obliged to regulate the business in its own right. While some treaties don’t seem to express a preference, new treaties, including the International Convention on the Protection of Rights of All Migrant Workers and Members of their Families (ICPMW), seem at least to contemplate liability for businesses.<sup>9</sup>
- **Promotional measures:** Treaty bodies also discuss promotional measures aimed at corporations, such as human rights education and awareness-raising activities or measures. Some treaty bodies (particularly CRC, CERD, and CESCR) suggest a role for States in encouraging private entities to develop or amend codes of conduct and institutional charters that would include the respect and promotion of various rights.

#### **Other issues:**

- **Specific rights:** The rights most commonly discussed when relating to protection against corporate abuse are non-discrimination and equality. Most often, they express concern about rights enjoyed by minorities, children, and women. When discussing specific sectors, treaty bodies mention mostly mining, manufacturing, and agricultural industries in terms of employment; marketing, advertising, and media in terms of privacy rights and racial discrimination; and medical, tobacco, extractive, and pharmaceutical companies in terms of health.

---

<sup>9</sup> In Article 68 (1) (b) of the ICRMW, it is discussed that to combat trafficking, such measures shall include imposing effective sanctions on “persons, groups, or entities” involved, suggesting direct sanctions onto businesses implicated in trafficking migrant workers.

- **Extraterritorial responsibility:** Most of the treaty bodies have not discussed State duties regarding extraterritorial jurisdiction in detail. Still, it seems that they do not generally prohibit the exercising of jurisdiction over acts abroad within the principle of non-intervention under international law. Language is vague, with CESCR calling for “steps...to be taken by States parties to prevent their own citizens and companies from violating the right to water...” However, their direct references to ‘companies’ suggests that there is an obligation to take steps to prevent violations. The strongest pattern one can observe is a trend towards the treaty bodies’ recommendation that States influence the actions of business enterprises abroad, though States have latitude in deciding actual practice.

### **Preliminary observations:**

- Treaty bodies increasingly focus on State protection against corporate abuse.
- They are the main international accountability and monitoring mechanism for the implementation of the treaties, and their increasing attention on States’ regulation and adjudication of corporate acts is an important and welcomed development.
- It would be desirable if the treaty bodies were to systematically request States parties to include information about steps taken to regulate and adjudicate corporate abuse in their periodic reports.

### **Corporate responsibility under international law and issues in extraterritorial regulation: summary of legal workshops<sup>10</sup>**

#### **Scope**

These workshops were convened to assist the Special Representative in clarifying some of the key legal issues raised by his mandate. The report covers findings from the New York and Brussels workshops.

#### **Summary of workshop findings:**

##### **New York workshop:**

The workshop addressed the broad question: in the absence of States acting to direct obligations for human rights to corporations, what are the existing grounds under international law for doing so?

- **Framing the issue:** Assuming at first the classic view that States are the primary holders of rights and responsibilities under public international law, those at the workshop began by asking if there are inherent obligations on TNCs to respect human rights in international law. Participants pointed out a variety of existing obligations, including: the developments in international environmental and labour law that have established direct obligations on TNCs; the African Charter's horizontal duties on other non-State actors; the USA's Alien Tort Claims Act and its provisions for protecting human rights on behalf of certain parties; and possibilities for administrative law and regulation to protect human rights. Participants also discussed a possible moral or ethical framework for TNCs respecting human rights.
- **Transposing State obligations:** The participants discussed ways that State obligations could be translated into corporate obligations under international law, namely either ‘moving up’ from existing obligations on individuals under international law, or ‘moving down’ from State obligations. One proposal included determining the nexus between TNCs and the Government, or alternatively, the affected population. Another proposal put forth the idea of a ‘do no harm’ standard that would come from the UDHR.
- **Exceptional cases:** Some problem areas included ‘weak governance zones’, or areas where the State was unable or unwilling to exercise its authority. Participants expressed consensus that this characterization had little practical bearing on TNCs, and that it was inherently a political

<sup>10</sup> A/HRC/4/35/Add.2, 15 February 2007.

question outside their topic. They also discussed how to identify the home State of a TNC, which included ideas of incorporation, origin of financing, or the origin of national stock exchange.

- **State responsibility:** Given the inconsistent ratification of the core human rights treaties, the workshop considered whether the customary international law rules on State responsibility provided an alternative basis for State regulation of corporate human rights responsibilities. There was strong support for looking beyond national law and the treaty mechanisms, and thinking creatively about other avenues, including the OECD National Contact Points, the ILO Subcommittee on Multinational Enterprises, and national human rights commissions.
- **Conclusions:** The workshop, through its co-chairs and the Special Representative, reflected that it was important to push for improved State responsibility in this area, while also encouraging greater participation by non-State actors, and that the notion of ‘shared responsibility’ was important in this. This concept, originating from political philosopher Iris Marion Young, discusses challenges arising from globalisation as being structural, or problems in their own rights. Therefore, the workshop insisted that both a systemic and dynamic framework was necessary to respond to human rights challenges.

### **Brussels workshop:**

The workshop focused on prescriptive extraterritorial jurisdiction, which involves States regulating activity outside its territory. The Special Representative explained that he saw extraterritorial responsibility as a potential tool for overcoming weaknesses in corporate accountability.

- **Extraterritorial jurisdiction under international law:** The participants explored whether States have the right, and/or are required, to exercise extraterritorial jurisdiction. They referred to the principle of ‘reasonableness’, including respect for State sovereignty. They agreed that States may exercise extraterritorial jurisdiction for human rights violations, at least until there is a definitive rule prohibiting it. While there was a general agreement that States must practice such jurisdiction for breaches of international humanitarian law, there was a lack of clarity about the larger issue of universal jurisdiction and if such general duties are in fact precise.
- **TNCs and extraterritorial jurisdiction:** Two relevant questions discussed were: determining a company’s nationality; and looking beyond its formal legal structure for the purposes of attaching accountability - in other words, assessing the possibilities of holding a company responsible for actions by its subsidiaries. Three solutions to the problem of ‘formal legal separation’ of corporate entities were discussed: piercing the corporate veil, or the examination of any abuse of the corporate structure; the ‘integrated enterprise’ approach, or absolute attribution of a subsidiary's acts to the parent company due to the umbrella legal entity; and direct liability of the parent company.
- **Sanctions and remedies:** The participants discussed meeting the needs of the victims, and asked whether sanctions under international law were required or might be more accepted in such a way. They considered jurisdictional conflicts between states, and also incentives to encourage States to act in the first place. They discussed the need for improving access to home country remedies as perhaps equally important to after-the-fact liability determinations.
- **Conclusions:** The State Representative noted that these were complex issues, and should include multiple groups of stakeholders in their discussions. He also emphasized the importance not just of improving corporate conduct, but also strengthening State institutions.

### **Human rights policies and management practices: results from questionnaire surveys of Governments and the Fortune Global 500 firms<sup>11</sup>**

#### **Scope:**

---

<sup>11</sup> A/HRC/4/35/Add.3, 28 February 2007.

This report summarizes the responses to two surveys conducted by the Special Representative. One asked States to identify current practices regulating, adjudicating, and otherwise influencing the role of corporations with respect to human rights. The other asked Fortune Global 500 companies about their policies and practices.

### **Summary and key conclusions:**

#### **State survey:**

- **Methodology:** The survey covers responses from 29 countries out of the 192 member states of the UN, as those were the States who responded to the questionnaire. The low response rate and unequal geographical and regional distribution make the sample not necessarily representative, and certainly make the results difficult to interpret.
- **Findings:** Many of the responses were spread out and did not indicate much of a trend. However, some questions did produce percentages of States with similar actions. Very few States seem to have programmes, projects, measures, or policies that are specifically and expressly focused on human rights. Instead, they focus on corporate social responsibility (CSR). Very few States have specific human rights conditions in their investment promotion policies. Nearly 30% of States have a legal system permitting the prosecution of legal persons, and enable extraterritorial jurisdiction over human rights violations committed overseas, but 30% did not have liability for legal persons at all. While 20% of States mentioned they have been active in creating tools, such as guidelines and advice in terms of CSR (not human rights specifically), 30% called their activities surrounding human rights only 'somewhat active', and 25% admitted no activities in this regard. In terms of coordinating nationally and internationally, most States did not have formal procedures, but about 50% considered themselves to be engaged in international and domestic initiatives related to business and human rights or CSR. About 25 % of States have undertaken research in the form of studies relevant to the impact of transnational corporations and human rights.
- **Concluding observations:** While virtually all the responding States played a role in the field of business and human rights, most did this as part of a more general concept of CSR. States rarely have human rights provisions in their own export and investment policies, but some specific items such as military goods are subject to restrictive conditions based on human rights in the receiving country. States are only somewhat active in their capacity to provide tools and best practices. Finally, States seem to acknowledge human rights regulation and enforcement in terms of the most egregious violations, and do not seem to tackle the issue using all its facets and all the resources available to them.

#### **Fortune Global 500 Survey:**

While no universally agreed upon framework on international human rights standards exists that applies to companies, businesses have engaged themselves in voluntary policies.

- **Methodology:** The Fortune Global 500 are the world's largest firms by revenues. The Special Representative contacted them by email or by letter, and received 102 answers to his questionnaire. Very few Asian firms responded outside of those in Japan and Australia, and none responded from Latin America. It might be possible that those who responded have a higher rate of human rights policies than those who did not respond.
- **Summary of responses:** In terms of policy uptake, 90% reported having an explicit set of human rights principles or management practices in place, yet half said they have not experienced any significant human rights issue themselves. In terms of rights recognized, non-discrimination was the highest recognized, with freedom of association also near 90%. Europeans were more likely to recognize the right to health than their American counterparts, and the same holds for standards of living. These rights were recognized mostly for employees, but also for communities and countries where the businesses operate, and 'others', including

customers, shareholders, and investors. Companies regarded the ILO declarations and conventions as the primary source of their policies and practices, but also mentioned the UDHR and the Global Compact. More than 80% of respondents regarded external stakeholders as partners in the development of human rights policies and practices. NGOs are the most frequently mentioned external partner. Nearly 90% of respondents have internal reporting and compliance systems in place to deal with the matter of accountability. Some do external reporting as well.

- **Concluding observations:** While most respondents had human rights principles and management practices in place, the majority adopted them for reasons unrelated to a specific event. Despite policies and practices, this study could assess the effectiveness of such policies. One issue of concern related to the elasticity of human rights standards in corporate policies. Most respondents included references to human rights as a part of other general policies or codes of conduct. The Special Representative noted another area of concern, involving accountability mechanisms. Most reporting was done internally, or was only published on a website, which perhaps are not the most transparent options.

## **Business recognition of human rights: Global patterns, regional and sectoral variations<sup>12</sup>**

### **Scope:**

The Special Representative used this addendum to summarize the human rights standards referenced in the policies of three types of business organization: companies themselves; collective initiatives such as the Worldwide Responsible Apparel Production; and socially responsible investment initiatives. He also examined whether the business organization's policies and practices included accountability mechanisms; whether companies' suppliers were held to standards; the extent of engagement with external stakeholders such as communities; and the human rights instruments to which the policies refer.

### **Summary and key conclusions:**

#### **Company policies and practices:**

- **Sample and Methodology:** The Special Representative looked at a sample of the 103 Global Fortune 500 that responded to the questionnaire, the 100 companies on the Business and Human Rights Resource Centre listed as having human rights policies, and the 512 Global Compact companies that had submitted a Communication on Profess for 2005 or later. It did not include multiple listings or companies who had information only in Russian, Chinese, or Japanese. It then considered both the companies policies regarding human rights, as well as their practices.
- **Labour rights:** the research showed that companies recognize labour rights with greater frequency than any other human rights. The highest rate of recognition is for non-discrimination. Most firms made firm commitments to non-discrimination, using absolute terms like, 'does not discriminate' or 'will not tolerate'. For some companies, this means also committing to affirmative action policies towards women, people with disabilities, ethnic minorities, and the long-term unemployed. Besides non-discrimination, other labour rights mentioned included (in declining order of application): rights to a safe work environment; freedom of association; abolition of child labour; the right to minimum wage; work/life balance; and the right to work.
- **Other rights:** The report also mentioned the right to security of the person as recognized by a small percentage of the sample, as well as the freedom from torture and cruel, inhuman, or degrading treatment. Civil and political rights, as well as economic and social rights, were mentioned by some of the sample. Some examples of these rights included the rights: to

---

<sup>12</sup> A/HRC/4/35/Add.4, 8 February 2007.

Available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A.HRC.4.35.Add.4.pdf>.

privacy; to development; to social security; to self-determination; to physical and mental health; to education; to participate in cultural life; and to adequate food, clothing, and shelter. The Special Representative noted anti-corruption policies as well, rationalizing that bribery and corruption are considered part of the human rights agenda because they are significant impediments to the realization of rights. Most policies prohibited excessive gifts or special favours.

- **Accountability and External Engagement:** The Special Representative looked at companies' reporting and the degree to which they hold their supply chains accountable to measure how they accounted for their human rights commitments. Some of the language he found regarding supply chain management policies was soft, for example only 'encouraging' suppliers to meet standards. He found that 90% of the sampled companies used reporting systems, 54% used Supply Chain Management Policies, and 25% used community consultation, including impact assessment.
- **Sources:** The sources for companies' policies and practices ranged from the Global Compact and the UDHR, to the ILO and the OECD Guidelines. Only four companies, all European, refer specifically to the ICCPR and ICESCR.

#### **Collective initiatives:**

- The Special Representative considered **8 voluntary collective initiatives** listed in paragraphs 120-121 and 123, selected because they enjoy wide recognition and adoption in their respective industries. The rights mentioned are many of the same as in company policies and practices. The Special Representative notes some particularities, including the fact that all 8 initiatives recognize the **prohibition on forced labour**, 7 recognize the **abolition of child labour**, and all 8 discuss **freedom from torture** and other cruel, inhuman, and degrading treatment. He also noted that all initiatives mention **accountability** in some way, and most had detailed provisions regarding their expectations for management systems and policies to support implementation of the initiative's policies.
- **Sources:** Four collective initiatives mentioned the ILO core conventions, two mentioned the UDHR, one mentioned CEDAW, and none mentioned the ICCPR and ICESCR. Other sources, such as the Global Compact and the OECD Guidelines, were mentioned as inspiring the initiatives, but were not directly quoted

#### **Socially Responsible Investment Indices**

- Originally a niche product to appeal to a subset of investors who were especially concerned with social and environmental issues, socially responsible investment (SRI) indices are becoming more mainstreamed and are worth **\$5 trillion in investments**. The Special Representative looked at five indices: the **Calvert Social Index**, the **Domini Social Equity Index**, the **Dow Jones Sustainability Indices**, the **Ethibel Sustainability Index**; and the **FTSE4Good Index**.
- The Special Representative mentions the higher levels of attention given to civil, political, social, and economic rights. Three indices mention each of the following rights: to development; to self-determination; to participate in cultural life; to physical and mental health; and security of the person. All five mention human rights conditions in supply chains, although FTSE4Good limits this to certain types of companies. All five review a company's community consultations or relations, with variations including requirements for 'feedback from stakeholders' or 'positive relationships' involved in this element.
- **Sources:** All five mention specifically the ILO Conventions, while four mention the UDHR and three the OECD Guidelines. Other voluntary sources are mentioned occasionally.

#### **Conclusions:**

- The cross-section of human rights policies examined has come from all regions of the world, showing that this trend towards the consideration of human rights seems to be advancing quickly. Even so, **North American and European companies are in the lead** with the scope

of their policies. The Special Representative believes that this might be a temporary lag as businesses in emerging markets catch up.

- The widespread expression of human rights norms within company policies suggests that **business is responding to public expectations regarding human rights**. The uneven uptake patterns imply that companies are not sure of which human rights they should recognize, and even the meaning of certain rights. The differences in rights confirmed by company policies on the one hand, and collective initiatives and SRI indices on the other, suggest confusion regarding corporate responsibility.
- **Labour rights** receive by far the most attention, with non-discrimination at the lead of this group of rights.
- **Non-labour rights** receive less attention, with specific rights varying widely.
- **Accountability** and external engagement policies also vary greatly.
- The Special Representative concludes that while companies recognize some responsibility for the human rights impact of their operations, they seem to be uncertain about which rights pertain to corporations.
- He also states that the policies companies have are **phrased in language that makes it difficult for the company and its employees to understand** what they should be doing. Thus, the purpose of their initiatives might be lessened because, without clear understanding, monitoring and follow-through cannot be adequately carried out.
- Finally, he believes that **greater efforts are required to clarify the expected business role** and to expand rapidly the pool of companies and collective initiatives that embrace human rights.