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The Reports in Short

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The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises¹

Mandate holder

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Mandate

The mandate was created in 2005² to strengthen the promotion and protection of human rights in relation to transnational corporations. The Special Representative is mandated to identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights; assess the regulating and adjudicating role of States in this respect; research and clarify the implications of concepts such as “complicity” and “spheres of influence”; develop materials and methodologies for undertaking human rights impact assessments of the activities of such corporations; and compile a compendium of best practices of States and relevant corporations.

Activities

- The Special Representative has begun conducting extensive consultations on the substance of the mandate as well as alternative ways to pursue it with States, non-governmental organisations, international business associations and individual companies, international labour federations, UN and other international agencies, and legal experts;
- The Special Representative has undertaken a series of unofficial visits to the overseas operations of companies in several sectors at their invitation, including independent discussions with groups from affected communities;
- The Special Representative is conducting a survey of the *Fortune* Global 500 companies inquiring about their human rights policies and practices, to which 80 companies have responded so far.

Interim report³

Scope

The report frames the overall context encompassing the mandate as perceived by the Special Representative, outlines the general strategic approach taken and summarises the current and planned program of activities.

Summary and key conclusions

Framework of the mandate

- There are now a variety of actors for which the territorial State is not the ‘cardinal organising principle’ and that have come to play significant public roles, especially in the economic realm;
- There are some 70,000 transnational firms, with roughly 700,000 subsidiaries and millions of suppliers, and the rights of these transnational firms, their ability to operate and expand globally, have increased

¹ Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

² Commission *Resolution 2005/69*.

³ E/CN.4/2006/97, 22 February 2006.

greatly over the past generation as a result of trade agreements, bilateral investment treaties and domestic liberalisation;

- Severe imbalances, between the scope of markets and business organisations and the capacity of societies to protect and promote core values of social community, are not sustainable and may facilitate the emergence of assertive nationalisms or intolerant fundamentalisms if global markets are not embedded in shared values and institutional practices;
- While it is not certain whether abuses in relation to the corporate sector are increasing or decreasing over time, the sheer number of transnational corporations and their distinctive institutional features, notably their network-based operating models and the ensuing dismantling of direct control, are grounds for suspecting that **globalisation has increased the possible involvement of transnational firms in human rights violations**;
- In a survey of 65 instances reported by NGOs, the extractive sector accounted for two thirds of the total number of abuses, followed by the food and beverage industry, apparel and footwear, and the information and communication technology sector;
- The survey also showed a **negative symbiosis between abuses and host countries characterised by low-income, weak governance**;
- The preliminary result of the Special Representative's survey have shown that many of the world's major firms are aware that they have human rights responsibilities, have adopted some form of human rights policies and practices, and have instituted at least rudimentary internal and external reporting systems;
- There is also an **emerging architecture of collaborative arrangements** involving firms and other social actors: those intended to promote broad principles of responsible corporate behaviour, labour standards, and those concerning the extractive industry;
- The first include the **UN Global Compact**, which engages firms in implementing ten universal principles in the areas of human rights, labour standards, the environment, and anti-corruption practices;
- The International Labour Organization has had responsibility for labour standards since 1919. Its major instruments include the *Declaration on Fundamental Principles and Rights at Work* and the *Tripartite Declaration of Principles Concerning Multinational Enterprises*;
- Several initiatives have been launched targeting **extractive industries** in recent years including the Extractive Industries Transparency Initiative, the Kimberley Process Certification Scheme and the Voluntary Principles on Security and Human Rights;
- Collaborative agreements are emerging in a variety of sectors and some of these have spill over effects into other areas, with financial institutions and the investment community becoming important vehicles for generating such effects;
- These arrangements have **weaknesses**, notably that most choose their own definitions and standards of human rights, as well as accountability provisions. These agreements also leave many areas of human rights uncovered, as well as many geographical areas.

Strategic directions

- The most challenging part of the mandate concerns the **issue of standards**, notably because it has proven very difficult to carry on a serious dialogue without reverting to earlier debates around the **draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights** (the Norms);
- The Norms set out human rights principles for companies in areas ranging from international criminal and humanitarian law; civil, political, economic, social and cultural rights; to consumer protection and environmental practices;
- The Special Representative believes the Norms contain **useful elements**, notably the summary of rights that may be affected by business and the collation of source documents from international human rights instruments, but that exaggerated legal claims and conceptual ambiguities within the Norms and the accompanying commentary have created confusion;
- The **legal authority** advanced for the Norms, that they are simply a reflection of international legal principles, is **problematic**, not only because there are no generally accepted international legal principles, but because the Norms have simply taken existing state-based human rights instruments and asserted that their provisions now are binding on corporations;
- Some international legal principles are increasingly believed to apply to companies, but most of this involves quite narrow areas of international criminal law, such as genocide, slavery and human trafficking;
- None of these support the Norms' claim that international law has changed so much that the broad array of international human rights attach direct legal obligations to corporations;
- Another problem with the Norms is their **imprecision in allocating human rights responsibilities** to States and corporations, as they consider them as co-equal duty bearers for the broad spectrum of human rights;

- The Norms rely instead on the concept of **spheres of influence**, the legal meaning of which remains elusive;
- This position ignores the fact that corporations, as institutions that are neither democratic or of public interest, do not have a general role in relation to human rights. This denial may undermine efforts to build indigenous social capacity and to make Governments more responsible for their own citizenry;
- The flaws of the Norms make it a distraction from, rather than a basis for, moving the mandate forward;
- **Areas** that the Special Representative will dedicate **further attention** and **monitor** are: the respective responsibilities of States and corporations; the possible extension in the extraterritorial application of some countries' jurisdiction for the worst human rights abuses committed by their firms abroad; the concept of complicity; individual company policies and voluntary initiatives; the role of social norms and expectations; effective impact assessment tools; best practices of States; and the role of State-owned enterprises.