



## **WILPF Report:**

### **OHCHR Consultation on business and human rights: *Operationalizing the “Protect, Respect, Remedy” framework* 5-6 October 2009**

#### **Introduction**

Mr. John Ruggie, Special Representative of the UN Secretary-General on business and human rights, has produced a policy framework for better managing the human rights challenges posed by business enterprises, which was unanimously welcomed by the Human Rights Council in June 2008. The framework, called “Protect, Respect, Remedy”, rests on three pillars. The first pillar concerns state’s duty to protect all human rights from possible abuses stemming from the activities of corporations. The second pillar covers corporations’ responsibility to respect all human rights. The third pillar emphasizes the need to provide effective remedies for victims of corporate-related human rights violations.

The Human Rights Council extended the mandate of the Special representative to the operationalisation of this framework and requested the Office of the High Commissioner to convene further consultations between all relevant stakeholders. In this effort a consultation session was organized on 5-6 October 2009 in Geneva, convened by the Office of the High Commissioner and chaired by the Ambassadors of Nigeria and Norway. Present at the consultation were representatives of states, businesses and civil society.

#### **High Commissioner**

In her opening remarks the High Commissioner for Human Rights Ms. Navanethem Pillay mentioned the Human Rights Council resolution 8/7 of June 2008 through which it affirmed that “transnational corporations and other business enterprises have a responsibility to respect human rights”. This, she argued, was the first time that states recognized that business must also play its part. Ms. Pillay further applauded the efforts of the Special Representative in producing the policy framework “Protect, Respect, Remedy”, which, she stated: “underscored that there are three parties to any corporate-related human rights issue: States that fail to protect, companies that fail to respect, and individuals and groups whose right or rights are infringed”.

#### **Special Representative**

The Special Representative, Mr. John Ruggie, talked about five key challenges regarding business-related human rights violations. 1) To create a limited list of business-specific human rights that companies have a responsibility to respect are virtually impossible as companies can affect the entire spectrum of rights. 2)

Governments currently lack adequate policies and regulatory mechanisms for managing business-related human rights abuses. Most widespread is the problem that business-focused departments operate in isolation from human rights agencies. 3) Multinational companies often lack full internal governance and management systems for conducting human rights due diligence. 4) Most companies lack grievance mechanisms to which affected individuals and communities can bring concerns. 5) The incidence of corporate-related human rights abuse is higher in countries with weak governance institutions, which impedes or entirely blocks access to justice by victims.

Regarding how to approach these challenges, two options have dominated the debate, Mr. Ruggie argued. On one side, human rights advocates favour binding standards imposed on companies directly under international law. On the other side, business has favoured voluntary initiatives and the development of management tools, arguing that the market itself will drive the process of change. Mr. Ruggie argued that neither of these alternatives gives a complete and realistic solution to the challenges. With this as a background the policy framework “Protect, respect, remedy” was created, laying out complementary roles and responsibilities for states and companies and an element of remedy for when things go wrong.

### **Panel discussion**

#### *Right holder/Stakeholder*

It was argued by several speakers that the concept of right holder give better understanding of the area of business and human rights than the concept of stakeholder, as stakeholder implies someone in a position of power while right holders often involves the most vulnerable, the ones who are not in a position to themselves make sure that their rights are upheld.

#### *Corporate responsibility frameworks*

Frameworks for how companies can fulfill their responsibility to respect human rights have been created through different international initiatives. Ms. Ebele Okobi-Harris, representative of Yahoo, talked about the ‘Global Network initiative’ that has developed an accountability framework, a human rights impact assessment framework as well as tools and guidelines for communities and NGOs in how to deal with corporate-related human rights abuses.

Mr. Mads Holst Jensen from the Danish Institute for Human Rights outlined steps that a company can take when national laws in the countries where they operate are in conflict with international standards. The first step is to make an assessment of the situation; are the rights concerned fundamental? How is the general human rights situation in the country? Are there any national institutions that deal with the issues? How is the connection of the company to the violations? He further recommended that companies stay in the country and play a role in fostering change. This could be done on a top-down level by engaging in dialogue at the national or international level to press for change, or on a bottom-up level by raising awareness and building capacity on the grassroots level. He emphasized the importance of the participation of right holders when initiating projects.

Mr. Aurret van Heerden of the Fair Labour Association gave an example of how companies can be a positive force in the process of change by explaining how companies in South Africa during the apartheid regime started to test the limits of the national laws, creating a post-apartheid environment within the business sector.

### *Access to remedy*

Amnesty International reported on how there is a systematic curtailing of the right to remedy. In many cases states grant self-regulation to companies, which basically mean that there is no regulation of their activities. In an investigation conducted by Amnesty International of four cases of corporate violations of human rights, the companies investigated clearly violated the rights to remedy. The victims faced joint forces of state and company which means that individuals and communities face huge obstacles to remedies. One big challenge is the huge imbalance of information between companies and communities, the misleading data provided by companies and the denial of company information. Another problem is the presumption that compensation is enough when long-term damages to health and development persist. Some of the recommendations given by Amnesty International were a rebalancing of power, access to information, and that the home state of companies should act when they can.

Mr. Martyn Day, senior partner at Leigh Day solicitors, UK, discussed the problem of the lack of local legal representation caused by the fact that most clients do not have the resources to pay for lawyers. This means that basically the only lawyers involved in corporate-related human rights abuse cases are lawyers from the US, the UK and Australia. He discussed the need for national systems that affords cases to be brought in a speedy way as well as mechanisms for grouping together of different cases involving the same issues and offenders. Furthermore, he stated that parent companies should bare responsibility for subsidiary companies.

### *Mediation*

Mediation was brought up as a way for companies to deal with human rights issues. It was argued that mediation not often works well but it is an area that deserves to be developed. A representative of the French government raised the issue that mediation means an attempt to find a negotiated solution while human rights are absolute, not negotiable. Though no one disagreed with this statement mediation was still argued to be a useful tool and companies should be encourage to establish mediation mechanisms, as very few law firms have the resources to start legal process. "We can not force companies, but we might be able to embarrass them" Mr. Day concluded.

### *Case of non-judicial remedies*

Two give examples of how non-judicial mechanism can help resolve conflicts two case studies were presented of cases where dialogue between the affected communities and the involved company has resulted in agreements. One of the cases, between a mining company and the local community in Peru, was driven by Oxfam America. Initially a request was sent by the community to the Mining Ombudsman of Oxfam Community Aid Abroad, who agreed to conduct a case investigation. The Oxfam Mining Ombudsman was during her time in Peru approached by the company to discuss the case investigation. A meeting was set up between the company, community representatives, local NGOs and Oxfam America where a dialogue process were set up, which resulted in the forming of working commissions on land, environment, human rights and sustainable development.

### **Conclusion**

On a positive note, there are examples of companies that are trying to find ways to assure that their activities do not violate human rights. International business guidelines like the OECD Guidelines have been established and the CSR initiative is gaining

momentum. However, the problem still remains of how to regulate companies that are not so interested in upholding human rights. Much of the ideas discussed during the meeting rested on the good will of corporations. Still, the Consultation Session did show that the OHCHR is trying to make efforts in the area of business and human rights and the participation of business representatives was a sign that there is recognition of the relevance of human rights to good business practices. The “Protect, Respect, Remedy” framework is a positive first step but much more needs to be done.