



UNITED NATIONS

*Mandate of the Secretary-General's Special Representative
for Business & Human Rights (SRSG)*

**SUBMISSION TO AUSTRALIAN NATIONAL HUMAN RIGHTS CONSULTATION
COMMITTEE**

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9 June 2009

To the members of the National Human Rights Consultation Committee

In 2005, I was appointed as Special Representative of the United Nations (UN) Secretary-General on business and human rights. My current mandate is contained within UN Human Rights Council resolution A/HRC/RES/8/7 (enclosed).

I am not mandated to address specific situations, whether regarding countries or companies. My role is to operationalize a UN Framework for Business and Human Rights, which I proposed in 2008 and which the Human Rights Council unanimously welcomed. This submission offers some general observations regarding the Australian National Human Rights Consultation in light of this Framework.

The "Protect, Respect, Remedy" Framework rests on three complementary and interdependent pillars: the state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others; and greater access for victims to effective remedy, judicial and non-judicial.¹

The Framework's first pillar - the state duty to protect - has both legal and policy implications. International law requires states to take appropriate steps to prevent, investigate, redress and punish abuse by private actors, including business, affecting the rights of persons within their territory and/or jurisdiction. The duty's extraterritorial scope remains unsettled in international law, though it appears that states are generally permitted, but not required, to exercise extraterritorial jurisdiction over business abuse, provided there is a recognized jurisdictional basis and that an overall test of reasonableness is met.

Governments must make the difficult balancing decisions to reconcile different societal needs. Yet, most governments take a relatively narrow approach to managing the business and human rights agenda. Therefore, states' human rights policies vis-à-vis

¹All three Framework pillars are further elaborated in my 2008 and 2009 Council reports (enclosed).

business need to move beyond their present institutional confines. Governments need to avoid undermining their own capacity to fulfill human rights obligations such as through trade and investment agreements; consider human rights when they do business with business whether as investors, procurers, insurers etc; encourage corporate cultures respectful of human rights at home and abroad even when they are not directly involved in business ventures; and work with other states and international institutions on business and human rights challenges, especially in situations where the human rights regime cannot possibly function as intended, such as in conflict affected areas.

The Framework's second pillar - the corporate responsibility to respect rights - is a social norm based on the near-universal recognition that companies should not infringe on the rights of others. The responsibility to respect is the baseline norm for all companies in all situations and it applies to the entire spectrum of internationally recognized rights. Companies should put in place a process of ongoing human rights due diligence to become aware of, prevent, and mitigate adverse human rights impacts. This has four core elements: having a human rights policy; assessing human rights impacts of company activities; integrating those values and findings into corporate cultures and management systems; and tracking and reporting performance.

Without access to effective remedy, the Framework's third pillar, the rights of affected individuals and communities would be rendered weak or even meaningless. For states, this means enforcing and encouraging corporate compliance with relevant laws and standards. For companies, it means establishing operational-level grievance mechanisms to provide early warning of problems and avoid escalation. Significant barriers to accessing effective judicial and non-judicial remedy persist and I am identifying those that are particularly salient for victims of corporate-related human rights abuses, as well as strategies to reduce them.²

The Council's unanimous welcoming of the UN Framework in June 2008 marked the first time it or its predecessor had taken a substantive policy position on business and human rights. The Council also extended my mandate for another three years, tasking me with "operationalizing" the Framework—providing "practical recommendations" and "concrete guidance" to states, businesses and other social actors on its implementation.

The Framework has already enjoyed considerable uptake by states, companies and civil society. The Norwegian Government's 2009 CSR policy references it extensively and it is being used as the basis for the UK's current parliamentary inquiry into business and human rights, to which I gave oral evidence on 3 June this year.³ The International Chamber of Commerce described the Framework as providing "a clear, practical and objective way of approaching a very complex set of issues."⁴ And Amnesty International said it "has the potential to make an important contribution to the protection of human rights."⁵ Moreover, as I note in my 2009 report, an Australian Senate motion in 2008

²I have launched an interactive online forum for sharing and discussing information about non-judicial mechanisms that address disputes between companies and their external stakeholders: www.baseswiki.org.

³"Corporate Social Responsibility in a Global Economy," Ministry of Foreign Affairs, Norway, 23 January 2009; on the UK inquiry, see: http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/business_and_human_rights.cfm.

⁴ <http://www.reports-and-materials.org/Letter-IOE-ICC-BIAC-re-Ruggie-report-May-2008.pdf>.

⁵ <http://www.reports-and-materials.org/Amnesty-submission-to-Ruggie-Jul-2008.doc>.

referenced the Framework in calling on the Government to encourage companies to respect rights in Australia and overseas.⁶

I have repeatedly said that the root cause of the business and human rights predicament today lies in the governance gaps created by globalization - between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences, a statement which we now know holds all too true for the world political economy as a whole as well. The UN Framework provides a way to address those gaps in the business and human rights domain. At its essence are shared but differentiated responsibilities given the need for all social actors - states, business and civil society - to do many things differently to close existing governance gaps.

This requires all actors to rethink long-held assumptions which are at best outdated and at worst plain wrong. For instance, I have too often seen stakeholders, including governments, wedded to uniquely voluntary or mandatory options without appreciating the need for a smarter mix of measures—national and international, mandatory and voluntary, if all actors are to get on with the practical problem solving needed. On a related front, governments in particular need to reconsider the misconception that companies invariably prefer, or benefit from, state inaction rather than action. Indeed, where companies are facing difficult, politically charged situations such as in conflict affected areas, they are particularly in need of guidance from government if they are to manage effectively the risks to which such environments inevitably expose their operations and reputations.

Over the course of my mandate I have been kept informed of developments in the business and human rights domain in Australia through submissions from a variety of stakeholders from both civil society and the private sector, and through their participation in regional and expert consultations.⁷ I look forward to continuing this broader engagement and wish you success with your deliberations.

I would be happy to answer any further questions. Please direct inquiries to my legal adviser Vanessa Zimmerman (vanessa_zimmerman@hks.harvard.edu; 03 9015 7982).

Yours sincerely



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⁶ Senate Official Hansard (no. 6 2008) 23 June 2008, pp. 3037 - 3038:
<http://www.aph.gov.au/HANSARD/senate/dailys/ds230608.pdf>.

⁷ See e.g., various submissions from Allens Arthur Robinson, as well as Oxfam Australia and the Human Rights Council of Australia, available on my website: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.