

**Presentation of Report to United Nations Human Rights Council
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Special Representative of the Secretary-General
for Business and Human Rights
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Mr. President, Excellencies, Ladies and Gentlemen,

Thank you for this opportunity to present my final report under the current mandate. It is entitled "Protect, Respect, and Remedy: A Framework for Business and Human Rights."

I have also submitted a companion report on the concepts of "corporate sphere of influence" and "corporate complicity," which Resolution 2005/69 asked me to clarify.

Shortly after I was given this mandate in July 2005, I came to Geneva to meet with delegations informally, in order to discuss their expectations for what needed to be done. I have not forgotten the words of a representative from a developing country who said: "we've had a train-wreck; your job is to get the train back on track." His reference was to the bitterly divided reactions that had been triggered by the document known as the draft Norms.

What a difference three years can make. The train is back on track. It is not yet a TGV, as another delegate joked to me two weeks ago. But it is moving in the right direction. And I am extremely grateful to everyone who has helped make that happen.

Our short journey has already covered a lot of ground. By now we have analyzed nearly 400 public allegations against companies; we have followed dozens of court cases; and I have met personally with victimized indigenous peoples groups and other affected communities, with workers in global supply chains, and with labor leaders whose colleagues were killed by paramilitaries protecting company assets.

We have held fourteen multi-stakeholder consultations on five continents, addressing both the nature of the challenges and also the full array of possible solutions. We have conducted some two dozen research projects, produced more than 1,000 pages of documentation, and received twenty or so submissions from interested parties.

Today, I am presenting to you my views and recommendations on how best to move the business and human rights agenda forward, as invited by the resolution that established the mandate.

My report last year provided a succinct mapping of current standards and practices governing corporate responsibility and accountability in relation to human rights. It documented that this is a rapidly changing field, ranging from the evolution of international criminal law to innovations in voluntary initiatives. Each of these developments has strengths and weaknesses in reducing the incidence of corporate-related human rights abuses.

But the overall problem, in my view, is that these measures constitute unrelated fragments of responses. They do not cohere as parts of a more systemic response with cumulative effects; they do not reach a scale that is commensurate with the challenges. This view is widely shared. In our extensive consultations, every stakeholder group, despite their other differences, has expressed the urgent need for a common framework of understanding, a foundation on which thinking and action can build in a cumulative fashion.

Accordingly, my current report identifies a conceptual and policy framework for consideration by the Council. It is organized around three foundational principles: the state duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies.

The state duty to protect is critical because it lies at the very core of the international human rights regime; the corporate responsibility to respect because it is the basic expectation society has of business; and access to remedy because even the most concerted efforts cannot prevent all abuse.

The framework by itself does not constitute a solution. But what it does is to provide all parties a common baseline from which to achieve greater coherence and guidance, and it thereby facilitates cumulative progress towards a solution.

My sole recommendation to the Council is that it welcomes the framework, invites its operationalization, and fosters its uptake by all relevant social actors. Let me briefly illustrate the three core elements.

The first is the state duty to protect. It is often stressed that governments are the most appropriate entities to make the difficult balancing decisions required to reconcile different societal needs. But in the area of business and human rights, my research and consultations raise questions about whether governments, on the whole, have got the balance right. Most governments take a relatively narrow approach to managing the business and human rights agenda. It is often segregated within its own conceptual and (typically weak) institutional box.

Often human rights concerns are kept apart from, or heavily discounted in, other policy domains that shape business practices, including commercial policy, investment policy, securities regulation, and corporate governance. This is roughly equivalent to a company setting up a corporate social responsibility department in isolation from its core business operations. Inadequate domestic policy coherence is replicated internationally.

Therefore, the human rights policies of states in relation to business need to be pushed beyond their narrow institutional confines. Governments need actively to encourage a corporate culture that is respectful of human rights at home and abroad. And they need to consider human rights impacts when they sign trade agreements and investment treaties, and when they provide export credit or investment guarantees for overseas projects in contexts where the risk of human rights challenges is known to be high.

The framework's second component is the corporate responsibility to respect human rights – meaning, in essence, to do no harm. In addition to compliance with applicable laws, companies are subject to what is sometimes called a social license to operate – that is, prevailing social expectations. The corporate responsibility to respect human rights is the baseline expectation for all companies in all situations. It is recognized by virtually every voluntary initiative, and it is stipulated in several soft law instruments, including the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and the OECD Guidelines for Multinational Enterprises.

Yet how do companies know they respect human rights? Do they have systems in place enabling them to support the claim with any degree of confidence? In fact, relatively few do. Accordingly, my report outlines a due diligence process for companies to manage the risk of human rights harm with a view to avoiding it.

Access to remedy is the third principle. Even where institutions operate optimally, disputes over adverse human rights impacts of companies are likely to occur, and victims will seek redress. Currently, access to formal judicial systems is often most difficult where the need is greatest. And non-judicial mechanisms are seriously underdeveloped – from the company level up through national and international spheres. My report notes some desirable changes on the judicial front. And it identifies criteria of effectiveness for non-judicial grievance mechanisms, as well as drawing on them to suggest ways of strengthening the current system.

The mandate also required me to clarify the meaning and implications of the concepts of corporate sphere of influence and corporate complicity. In human rights discourse, sphere of influence is meant to delimit the physical or transactional space within which companies are assumed to have some human rights responsibilities. And complicity concerns indirect involvement by companies in human rights abuses by other actors.

These are complex subjects that required a separate report. Suffice it to say here that I found the 'sphere of influence' concept to be too imprecise to serve as a guide in delineating the scope of a company's due diligence in discharging its responsibility to respect. To cite just one problem, sphere of influence lumps together two very different meanings of influence: influence as "impact," where the company may be the cause of harm; and influence as whatever "leverage" a company may be able to exert over other actors with which it may or may not have a business relationship. Impact falls squarely within a company's responsibility to respect human rights; leverage may or may not, depending on circumstances.

Therefore, in determining the scope of due diligence companies should pay attention to three factors: the country context in which the business activity takes place, in order to highlight any specific human rights challenges it may pose; a company's own activities, which should be assessed for whatever adverse impacts they may have; and companies need to examine whether they might contribute to abuse through the relationships connected to their activities, such as with business partners, suppliers, state agencies, and other non-state actors.

Complicity describes the indirect involvement of companies in human rights abuses. Both its legal and non-legal meanings continue to evolve. The legal meaning has been spelled out most clearly in the area of aiding and abetting international crimes: knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime. In non-legal contexts, complicity has become a benchmark by which other social actors, ranging from campaigners to investors, may judge businesses.

The bottom line is that companies can strive to avoid complicity by employing an effective due diligence process – which, as noted, applies not only to their own activities, but also to the relationships connected with them. And by doing so, companies may also minimize the prospect of non-legal claims getting extensive social traction.

That, in brief, is the substance of my report. I am very pleased that it has been so well received by, among others, the major international business associations and leading human rights organizations – who were among the stakeholders that were at a complete impasse just three years ago. We now look to you, the Human Rights Council, for your consideration of the framework, and your guidance on moving the discussion from the level of general principles to greater operational detail.

Thank you, Mr. President.

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