

## **Shaping the follow-up to the mandate of the UN Special Representative on Business and Human Rights**

### **Briefing for the 17<sup>th</sup> Session of the UN Human Rights Council**

The work of the UN Special Representative to the Secretary General on human rights and transnational corporations and other business enterprises began in 2005. The mandate followed previous efforts at UN level, including those of a working group of the former UN Sub-commission on the Promotion and Protection of Human Rights, to tackle challenges which are as difficult as they are urgent. The Special Representative will present his final report to the Human Rights Council on 30<sup>th</sup> May 2011. The Council will ultimately decide on any follow-up mechanism. As an international group of Catholic development agencies, CIDSE has followed the work of Professor Ruggie's team since the inception of the original mandate. Many of our partner organisations in Africa, Asia and Latin America have direct experience of the harm that can occur if companies ignore their impact on human rights.

We welcome the valuable analysis in the Special Representative's reports of the 'governance gaps', resulting from the growing reach and economic and political influence of transnational companies and the lack of regulation by States to address this effectively. The Protect, Respect and Remedy framework is helpful in integrating the different roles of States and companies and raising the profile of the debate on how to ensure that business operations respect and do not undermine the human rights of citizens. Although we would have liked them to be more ambitious, the Guiding Principles represent a useful starting point for minimum threshold standards. In terms of now delivering actual improvements in the lives of communities, workers and consumers, we are aware that much work remains to be done. Priorities for the next stage must be effective implementation of the Framework by States and businesses and ensuring that a robust follow-up mandate is put in place at the international level.

### **New mandate functions**

There has been valuable work during the last six years of the mandate. However, an effective follow-up mechanism is now needed to ensure that instances of corporate abuse of human rights are reduced and prevented. Expertise and good practice in the field of human rights is constantly growing. Therefore, when designing follow-up mechanisms, the aim should not be simply preserving outcomes to date, but ensuring that they stay relevant and developing them further. This is consistent with the approach of the Guiding Principles, which call upon States to periodically assess the adequacy of laws requiring business enterprises to respect human rights, and address any gaps

(3a). In order to achieve this, the new mandate should include, as a minimum, the following functions:

### **1) A reference point with responsibility for the Framework and Guiding Principles and advice on their interpretation**

CIDSE strongly supports the idea that there should be authoritative expert advice on the interpretation of the Framework and Guiding Principles. This will be a key success factor in ensuring that they are effective and lead to improvements on the ground. It will be useful for example in relation to the concept of due diligence. This should be a central role of the follow-up mechanism. Therefore, it does not seem feasible to give this responsibility to a multi-stakeholder steering committee of a voluntary fund, which would be primarily responsible for managing funds and require a different skillset. Including this role within a mandate for a Special Procedure, such as a Special Rapporteur or a Working Group, seems to be a better option.

### **2) Scope for investigative work**

It is essential that the follow-up mechanism is able to examine and evaluate how the Framework and Guiding Principles are being used in practice. CIDSE therefore believes that investigative powers should be included within the follow-up mandate. It would mean that the reference point could receive communications and, according to criteria developed, select and investigate a number of emblematic cases. This is standard practice for Special Procedures. A targeted approach to investigative work would address the risk of over-stretching capacity, while at the same time ensuring that the Framework and Guiding Principles remain relevant in practice. The follow-up mechanism should have powers to make recommendations to the Human Rights Council, for example, if it identifies gaps or potential improvements in the Framework and Guiding Principles. The mechanism should also have powers to make specific recommendations to States and businesses where appropriate.

### **3) Capacity for stock-taking and evaluation**

There is value in proposals for regular stock-taking, discussing trends, challenges and good practice. The reference point should be responsible for overall evaluation of implementation of the Guiding Principles and for resulting recommendations to the Human Rights Council. A multi-stakeholder dialogue would be valuable, especially if it enables actors from the South to share their experiences and expertise. It is important that such a dialogue be structured carefully. Otherwise, multi-stakeholder recommendations with no clear follow-up are likely to be ineffective.

### **4) Better synergies with other Special Procedures**

CIDSE has encouraged the Special Representative on business and human rights to do more to highlight the links between his own work and that of other Special Procedures. Given the resource constraints, this is a significant omission. For example, work by other Special Representatives and Rapporteurs with regard to the rights of indigenous peoples, protection of human rights defenders and the rights to health, to food and to water is highly relevant. To deliver maximum impact and

draw effectively on this expertise, CIDSE recommends an approach based on working more closely with other Special Procedures.

### **5) A strategic approach to capacity building**

Capacity building is important but resources must be targeted to have maximum impact. The priority should be to offer capacity building for those who need it most. Given unequal power relations and imbalances in resources and expertise, support should be focussed on the developing world - for civil society groups, trade unions and local and national government capacity. Business enterprises and trade associations have long been engaged in the mandate and could fund their own capacity building collectively, make greater use of existing international initiatives, (e.g. UN Global Compact), or access support from their home governments for this purpose. During the mandate, business associations have frequently raised the particular needs of small and medium enterprises (SMEs) and now have an important responsibility to share tailored briefings and information on the framework and Guiding Principles with their smaller members.

### **New mandate modalities**

It is important to build on the momentum generated by the present UN mandate to make sure that it delivers results. In this respect, a firm, UN-anchored follow-up within the Office of the High Commissioner for Human Rights is essential. Looking ahead, the Special Representative has recognised that supplementary measures such as a multilateral instrument on business and human rights would be desirable to provide greater clarity and increase legal protections in particular contexts. CIDSE agrees that clarification of standards relating to jurisdiction, investigation, punishment, redress, and sanctions, including a broader range of situations would be helpful at a future date. It would be appropriate to include within the mandate the preparation of a report and recommendations in relation to a future intergovernmental process.

**In our view a new Special Procedure is needed to deliver on the functions outlined above.** In response to concerns that the current Special Representative's resources cannot be replicated, it is important to note that the nature of a future mandate would be different. Moreover, a broad range of stakeholders are interested in seeing the Protect, Respect, Remedy framework further advanced, so it would be helpful to learn from the last six years in terms of building an experienced team and drawing on sources of research.

### **Conclusion**

The lasting success of the substantial work to date depends on designing and resourcing the right follow-up mechanism. For CIDSE and the people with whom we work, the ultimate test will be whether in practice states uphold their duty to protect, companies meet their responsibility to respect, and victims are able to exercise their right to an effective remedy. Only in this way will we be able to progress towards our goal of preventing and substantially reducing cases of serious corporate violations of human rights.



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This document was written by Anne Lindsay (CAFOD), Daniel Hostettler (Fastenopfer) and Elisabeth Strohscheidt (MISEREOR), members of the CIDSE Private Sector Working Group.

**Document contact:**

Denise Auclair, [auclair\(at\)cidse.org](mailto:auclair(at)cidse.org), +32 2 233 37 58

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