

**Submission to the UN Working Group on Human Rights and Transnational Corporations
and other Business Enterprises**

Submission By:

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Submission on the Work of the Working Group

We would like to congratulate the Working Group members on their appointment. We believe that the Working Group is an important development and can help develop and advance fundamental rights through developing upon the work of the 'Ruggie Mandate'. In response to the call for submissions on the issues and work that the working group should focus upon, we would like to make a number of suggestions and requests. Though we cannot elaborate upon each point in much detail, we would be delighted to discuss any points further with members of the Working Group should this be desired. In our view, the mandate of the Working Group includes the requirement to 'assess and make recommendations' on the Guiding Principles and thus allows for substantive engagement with its content and that of the 'Ruggie Framework'.

1. The Legal Obligations of Corporate Responsibility for Human Rights

The Ruggie Mandate took a firm that corporations lack binding obligations under international law for the realization of fundamental rights (apart from a small category of specific obligations in fields such as international criminal law). This is a matter that has attracted considerable academic debate and cannot be stated with any level of certainty. Indeed, in our view, there are strong legal arguments which suggest that corporations do in fact have binding responsibilities under international law for the realization of rights and that this flows from the history, underpinning purpose, and nature of fundamental rights in international law. The international legal status of corporations as subjects of international law, is a matter that has been developing in law and practice and should be synchronized with the emergence of firmer corporate obligations at international law. We believe that the Working Group should seek to develop the discourse surrounding the obligatory nature of corporate obligations for fundamental rights in international law.

2. Positive Obligations of Corporations for the Realization of Fundamental Rights

The UN Mandate to date focused upon the corporate responsibility to respect as a 'baseline responsibility' of business. Professor Ruggie, in his Guiding Principles, recognized that this work is not the final end-point in relation to corporate obligations but the 'end of the beginning'. The corporate responsibility to respect as developed by Ruggie focuses on the obligation to avoid doing harm. We believe that there is scope to consider the positive obligations of business to contribute towards the realization of fundamental rights. International human rights law has generally accepted that the responsibilities imposed by fundamental rights cannot be limited to negative obligations alone and thus specifies a range of positive duties that flow from such rights. We encourage the Working Group to consider the positive obligations

(many of which are recognized in business entities' corporate social responsibility programs) of corporations. This is of particular importance to developing countries where often the role of business cannot be considered completely separately from the role of the state, and where the need is greatest.

3. **Financial Institutions and Human Rights**

The role of financial institutions in the protection of human rights is an important, and often under-discussed, area of business and human rights. The international progression towards the stricter adherence of human rights principles and standards, and the required use of human rights due diligence procedures, is increasingly relevant to the finance sector. Financial institutions (such as banks (public and private), pension funds, sovereign wealth funds and hedge funds) occupy several roles in the protection of human rights in the marketplace.

First, financial institutions are able to assist in the prevention of human rights violations committed by the business entities which they fund or in which they invest. Choosing investments and projects based, in part, on compliance with international human rights standards, helps to ensure that business entities incorporate human rights into their projects. Second, while the regulation of human rights violations usually rests with the state, financial institutions often fill the role of regulator. By monitoring investments, financial institutions are able to identify human rights violations and engage with the business entity in question to ameliorate the problem. Finally, financial institutions may be complicit in human rights violations if they knowingly finance or invest in projects that violate human rights. We propose that the working group consider the role of financial institutions in the protection and advancement of human rights.

4. **A Gender Perspective**

We encourage the Working Group to integrate a gender perspective into its work. We refer to the submission by the Gender, Business and Human Rights Reference Group and reiterate the need for the Working Group to interrogate the impact of business entities on inequality, discrimination and gender-based harm. This approach is in keeping with developments in international law, which recognize that women may experience human rights violations in specific ways.

5. **Access to Justice**

In order for the third pillar of the Ruggie Framework to be meaningful, consideration should be given to access to justice and the extent to which there is equality of arms in the representation of victims and potential victims. Recent research on the role of the judiciary in cases of corporate-related human rights violations, demonstrates that the enormous difference of power and the dependency of the victim create an environment that is an obstacle to effective access to justice. We propose that the Working Group give specific attention to this question.

6. **Victim Engagement**

We encourage the Working Group to listen to and engage with victims and survivors of corporate-related human rights violations. This would provide an opportunity obtain information concerning alleged business-related human rights abuses from those whose voices often are not heard.

7. **Conclusion**

We would be delighted to expand on any of these issues and assist the Working Group if needed.