

Submission to the UN Special Representative of the Secretary-General from the Civil Society Groups across Asia

Introduction

Welcoming the framework

On February 5-6 in New Dehli, India, the Special Representative of the Secretary-General (SRSG) John Ruggie conducted a frank and interactive regional consultation session with corporates, civil society, NGOs, trade unions, and other stakeholders from the Asia region. We, the civil society of Asia, welcomed the opportunity of participating in a regional consultation, especially in light of recent economic trends portending the opportunity of creating a more equitable global economic paradigm shift. We also welcome the three-tiered framework consisting of the state duty to protect human rights, the corporate responsibility to respect, and the access to effective remedy laid out in the SRSG's final report to the Council and the extension of his mandate to operationalise the framework.

Augmenting the framework

However, we believe that the framework needs to be opened, enriched and deepened in order to achieve its full potential and to provide justice to the millions of victims in Asia who suffer due to corporate violations of human rights. This note is intended to help the SRSG in his efforts in that endeavour. We hope that the SRSG will consider this document in light of the global economic crisis and the calls for a "new global capitalism" that it has engendered.

Although the economic and political situations in Asia are diverse, we are united in many common strands. Most developing countries in Asia need more equitable and balanced economic systems and regulatory environments. Even though Asian countries had little to do with the direct causes of the financial and economic crisis, we nonetheless find ourselves deeply and disproportionately affected, more so because it is exasperating and worsening the climate for human rights protection. We therefore see an urgent need to

revisit the theory of globalization where it is not inclusive of the vulnerable or respectful of basic rights and values.

The State Duty to Protect

Dealing with Governance gaps

Many Asian stakeholders have pointed out, and as the SRSG also highlighted, most states do not fully understand what their duty to protect against corporate abuse entails or they do not have the will power to enforce their own laws. We understand that the state's duty to protect in the context of business and human rights includes taking appropriate measures to prevent abuses of human rights involving business and ensuring access to justice. We believe it is of course the duty of host states to protect human rights from abuses by economic actors but that home states of mother companies of multinational corporations have the obligation to control their activities, sanction misconduct and provide an effective remedy to victims.

These “governance gaps” are a severe challenge for Asian countries, especially in the politico-economic context, and offer the large corporations and developed nations much more leverage. We encourage the SRSG in his efforts to investigate the mechanisms by which large corporations and developed countries wield such power, such as, accessing corporate laws with their compatibility to human rights or analyzing the negative effects on human rights caused by stabilization clauses in bilateral agreements. We agree with the SRSG in that, ideally, the awareness of the state’s duty to protect should be known and understood throughout a state’s administrative structure, not just in one isolated governmental sub-department. However, even in less than ideal situations, we suggest that the “human rights department” should coordinate with other departments that impact human rights, such as treasury, industry and trade departments, etc. Inter-governmental dialogues could help towards spreading awareness about the human rights areas connected to, but not always overtly associated with human rights, such as the signing of trade agreements or the financing of medical systems.

Similarly, where developing countries with glaring “governance gaps” are concerned, it is hoped that more will be done in terms of capacity building of the state on human rights issues. We suggest that developed countries could assist developing countries in addressing “governance gaps” in order to create a more equitable human rights environment for businesses to operate in. Perhaps this could be done through more department-to-department diplomacy or through more training activities for officials from developing countries.

Inclusion of non freezing clauses

There also needs to be a norm for non- dilution of national laws for companies investing in the state i.e. a non freezing law for all. We hope the SRSG can investigate how “governance gaps” in terms of stemming corporate abuse are “closed”, while recognizing the important role of civil society groups in the process of proposing legislation, providing access to remedies, and putting pressure on government to carry out their duties, especially in situations where businesses influence legislation and policy making by the State.

International institutions could play a positive role by encouraging an alignment of investment guidelines and integrating human rights into important areas of political economy.

Protection of Civil Society

In this sense, protection and support of civil society, even civil society groups that are often seen as combative with governments, should be seen as crucial towards achieving the goal of reducing “governance gaps” by eroding a “permissive environment” that has allowed corporate abuse to go unchecked. Ensuring that states do not crack down on such groups should be seen as a priority. Also, civil society groups need better access to information from both states and corporations. Also there is need for conducting education and trainings on human rights monitoring and documentation among vulnerable groups as a strategy in building their capabilities in defending their rights and engaging with the State.

The Corporate Responsibility to Respect

Urging Accountability

We encourage the SRSG to adopt a rights-based approach that emphasizes corporate legal accountability. The corporate responsibility to respect should have two components - the duty to comply with all the basic or fundamental rights as outlined in the GCI and the responsibility to raise the bar. Hence, the first component should be stated as a must, and the second component (largely corporate voluntarism) is desirable so long as it strengthens or supplements the first. Where companies impact negatively human rights, we emphasize that there needs to be more accountability to the victims. Where companies have leverage over other actors committing or involved in human rights infringements, we urge companies to respect human rights. In both cases, as the SRSG has mentioned, a vigorous due diligence process that covers all the relevant steps (drafting policies, conducting impact assessment, integrating policies throughout a companies core operations, and tracking performance) is needed. The right to information and consultation with the affected in the development process should be considered as a basic human right.

Human rights in the SME sector

It is worth recognizing that large corporations in particular have experience and expertise in running systems for quality control, supervision, monitoring; designing robust systems for human rights due diligence is likely to be within their existing capacities and resources. SMEs are likely to need more help with capacity building. We urge the SRSG to look for better solutions for enhancing human rights in the SME and informal sectors. We likewise support the SRSG in his attempts to encourage states to create a legislative environment that encourages and rewards a corporate culture that respects human rights.

Consultation with diverse groups

Many stakeholders wish to reaffirm the need to focus on gender discrimination in hiring practices. Others noted the important role that trade unions played as stakeholders and

dialogue partners with corporations and multi-stakeholder initiatives in ensuring that labour standards are met, and yet, trade unions seem to be increasingly sidelined.

We encourage the SRSG to conduct further theoretical and practical studies into investigating the business case for maintaining effective due diligence processes. This, then, could help the SRSG in his efforts to sustain further engagement from businesses.

Access to Effective Remedies including reparation

Need of Grievance Redressal Fora

All victims have the right to an effective remedy including reparation; states should exercise their jurisdiction to ensure that this right is ensured and has effect.

In many countries in Asia, accessing legal remedies can quite literally take a lifetime, and therefore, we would like to emphasize the right of citizens to prompt forms of redress. Timeliness of accessing justice should be an important factor in accessing a remedy's value. There needs to be national (or international) forums for addressing the grievances of the affected, which needs to be both independent and localised, and in conformity with the human right of victims to an effective remedy. We encourage the SRSG to explore the added-value of a universal complaint mechanism at the UN level.

The SRSG should incorporate an examination of the practical barriers to justice, and the denial of the right to an effective remedy including reparation, encountered by victims in his work on access to justice issues. We also encourage the SRSG to look into the need for access to effective remedies at the level of the home states of corporations.

The SRSG's efforts to start company level grievance mechanisms is welcomed with interest, but it is feared that in due course it may develop into another hurdle in accessing state level grievance mechanisms.

Other Comments

Use of Rights based language

We would like to emphasize the need to use the language and rhetoric of CSR as little as possible. This language creates a dangerous confusion between rights and privileges as CSR is not rights-based.

Wider and inclusive consultation

We would encourage the SRSG to broaden and deepen his consultation sessions to meet with more victims of corporate abuses so that he may hear from them first hand experiences of their difficulties in obtaining justice. Indeed, the SRSG should increase his efforts to consult with affected communities, including through visits to these communities at the local level and reflect the results of these visits and consultations in his final report.

Need of Internationally Binding Standards

Moreover we believe that the SRSG should not set aside the need for international binding standards. We believe that UN member states should elaborate binding international legal standards recognizing that all humans have equal and inalienable rights, clarifying the state's duty to protect people against human rights abuses by or involving companies, articulating the human rights responsibilities of companies and promoting victims' right to an effective remedy including reparation.

We would also like to encourage the Secretary General to extend the resources for wider and inclusive consultations.

The letter has been drawn with the support of the FIDH and it will be submitting a position paper at a later stage. The letter has been endorsed by Civil Society members across Asia-pacific.

The organizations specifically endorsing the above are:

- 1. Korea Human Right Foundation, Korea**
- 2. Mr. Jeudy Oeung, Pannasastra University of Cambodia (PUC), Cambodia**
- 3. Sustainable Development Foundation, Thailand.**
- 4. Bluepeace, Maldives**
- 5. Institute of Social Development, Sri Lanka**
- 6. PhilRights, Philippines**
- 7. Bhutan Chamber of Commerce & Industry, Bhutan**
- 8. Voluntary Organization in Interest of Consumers, India**
- 9. China Labour Bulletin, China**
- 10. Business Community Foundation, India**
- 11. Korean Public Interest Lawyers Group GONGGAM, Korea**
- 12. DICE Foundation, Nagaland, India**
- 13. Citizens For Justice-(CFJ) Malawi**
- 14. Legal Initiative for Forest & Environment (LIFE), India**
- 15. Lumad Development Center, Maguindanao Mindanao, Philippines**
- 16. Human Rights Development Information Center, Bangladesh**
- 17. People's Alliance for Debt Cancellation (GARPU), Indonesia**
- 18. The Business Watch Indonesia, Indonesia**
- 19. Human Rights Council of Australia, Australia**
- 20. All Nepal Women's Association And Center For Women's Right And Development, Nepal**
- 21. Partners in Change, India**
- 22. International Federation Of Human Rights (FIDH)**