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for Business and Human Rights
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It is an honor for me to participate in your annual meeting. The OECD recognized early on that globalization requires social pillars if it is to be politically sustainable, and that human rights are an integral element of the shared values and institutional practices within which we must strive to embed global markets. The OECD Guidelines on Multinational Enterprises and the National Contact Points were products of that recognition.

But the scope and power of global market forces have continued to expand more rapidly than the ability of societies to manage their adverse effects and to produce the public goods that markets undersupply. The history of what are now the OECD countries teaches us that such misalignments can trigger grave consequences for business and society – as witnessed by the collapse in previous eras of open world markets that lacked adequate institutional underpinnings and safety nets. Because there now is an OECD system in place, the international community looks to you to ensure that it continues to live up to its potential.

As the United Nations' focal point for business and human rights, I very much look forward to working with you on our common and truly historic mission. To advance the dialogue, let me summarize where my mandate currently stands, and draw out some implications that may be relevant for the Guidelines and NCPs.

I was appointed in July 2005, to pick up the pieces of a Geneva train wreck produced when an expert subsidiary body of the then UN Commission on Human Rights proposed a set of draft Norms on transnational corporations and other business enterprises.

This sought to impose on companies, directly under international law, the full range of human rights duties that states have accepted for themselves – from respecting rights all the way up to fulfilling them. The roles of states and firms were differentiated only by the slippery distinction between primary and secondary duties, and by the amorphous concept of corporate spheres of influence, invoked as though it were the functional equivalent of states’ territorial jurisdiction. Human rights NGOs were uniformly in favor; business was vehemently opposed. Governments did not approve the proposal, establishing my mandate instead – essentially, to start all over again.

Now fast forward to 2008. Just last week the UN Human Rights Council adopted a resolution by acclamation welcoming the policy framework for business and human rights that I proposed in my most recent report, and asking me, in a renewed mandate, to translate its general principles into operational terms. My proposal was supported by the major international business associations and leading human rights organizations, with whom I’ve been in close consultation for the past three years.

The policy framework is organized around three core 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 greater access to effective remedies.

The first principle 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 raised questions about whether governments, on the whole, have got the balance right. Many governments take a relatively narrow approach to managing business and human rights. 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 then is replicated internationally.

Therefore, the human rights policies of states in relation to business need to be pushed beyond their narrow institutional confines. Governments must actively encourage corporate cultures respectful of human rights at home and abroad. They need to consider human rights impacts when they sign trade agreements and investment treaties, and when they provide export credit and investment guarantees for overseas projects, especially 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 – or prevailing social expectations, which typically evolve more rapidly than the law. The baseline social expectation for companies is that they respect human rights, as is widely recognized by firms and business groups in their voluntary initiatives.

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 outlined 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 need redress. Currently, access to formal judicial remedies 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 to the Council noted some desirable changes on the judicial front. And it identified criteria of effectiveness for non-judicial grievance mechanisms.

Those, in brief, are the elements of the framework I am now called upon to operationalize. I also submitted a companion report clarifying the legal and non-legal meanings of corporate complicity in human rights abuses committed by others.

The resolution extending my mandate invites international and regional organizations to seek my views when formulating or developing their own policies and instruments related to human rights. So I was delighted and grateful to receive your invitation to join you here today.

We have learned a great deal about business and human rights since 2000, when the Guidelines were last revised and the NCP process was established. We understand the challenges more clearly, and we know better what works, and what doesn't, in devising effective responses. No doubt the OECD in due course will want to draw on this experience in updating the human rights component of its own system. So permit me to share a few thoughts based on my research and consultations over the past three years. I'll make five brief comments on the Guidelines, and then turn to the NCPs.

First, the fact that the human rights coverage of the Guidelines is anchored in host governments' international obligations no longer corresponds to the needs or practices of transnational business itself when caught up in real-world dilemma situations. For example, in a joint submission to my mandate, the ICC, IOE, and BIAC stated that in "weak governance zones" companies are "expected to respect the principles of relevant international instruments where national law is absent." Moreover, where national law conflicts with international instruments, leading firms are struggling to find ways of honoring the spirit of international standards without violating national law.

Companies, including internet providers, for instance, require greater guidance for dealing with such dilemmas.

Another feature of the Guidelines that merits attention is their lack of specificity with regard to human rights beyond the sphere of labor practices, and the omission altogether of some critical areas, such as business impacts on communities, including indigenous peoples. The impact of companies on communities accounted for some forty-five percent of all public allegations of corporate-related human rights abuses that we tracked between 2005 and 2007. Clearly, greater guidance for companies is required here as well.

Third, our research shows that companies can impact virtually all internationally recognized human rights. Therefore, any attempt to construct a limited list of rights that companies should consider will almost certainly miss one or more that may turn out to be significant in a particular situation. At this point in time, I believe it would be more helpful to business to elaborate process guidelines, coupled with effective grievance mechanisms. That is why my most recent report proposed the core elements and scope of a human rights due diligence process. In the OECD Guidelines, the section on the environment is considerably more advanced in this regard than the corresponding human rights language.

A fourth issue concerns supply chains. Current Guidelines language recommends that companies encourage their suppliers to apply comparable practices. But a due diligence perspective would have companies take into account the human rights performance of both current *and* potential business partners, and also to consider the possible adverse impacts of their own purchasing practices.

Finally, even though the OECD's work on weak governance zones is not part of the Guidelines, it has much to offer. The human rights regime cannot be expected to function as intended when a country is engulfed in civil war, for instance. In such situations, the home countries of multinationals should play a more active role in providing information about human rights risks and, especially where the investment involves home country support, in providing

greater oversight. The same is true of investments supported by international financial institutions.

Turning to the NCPs, it might be useful for me to summarize the results of our year-long research and consultative process examining the features that are widely believed to form the basis of effectiveness in human rights grievance mechanisms. We identified six such principles in my recent report:

- **Legitimate:** a mechanism must have clear, transparent and sufficiently independent governance structures to ensure that no party to a particular grievance process can interfere with the fair conduct of that process;
- **Accessible:** a mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance, or fear of reprisal;
- **Predictable:** a mechanism must provide a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can (and cannot) offer, as well as a means of monitoring the implementation of any outcome;
- **Equitable:** a mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms;
- **Rights-compatible:** a mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards;
- **Transparent:** a mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake.

Applied to the NCPs, these principles are sufficiently broad to provide room for the expression of different political cultures and institutional arrangements within OECD countries regarding how they might be realized in practice. But they do suggest a number of specific questions.

For example: Does the “functional equivalence” standard for NCPs include a sufficiently detailed common understanding among them of what they are expected to do? Is it clear to potential users what they, in turn, can expect from the NCP process? Where NCPs are housed primarily within government departments tasked with promoting business, trade and investment, how are potential conflicts-of-interest managed?

Furthermore, are NCPs resourced to undertake adequate investigation of specific instances, and given either the training to provide effective mediation themselves, or the capacity to use external mediators when needed? Are NCPs structured in a way that helps them manage the tension between being neutral conciliators, on the one hand, and assessors reaching authoritative recommendations, on the other?

Does the prevailing level of transparency provide sufficient assurance to aggrieved parties? Is it optimal for peer learning across NCPs? Is there adequate guidance and oversight of NCPs at the national level, and by the Investment Committee safeguarding the brand integrity of the OECD system as a whole?

I simply leave these questions with you because, needless to say, you are much better equipped to answer them than I am.

Let me draw these remarks to a close. Kofi Annan, my former boss and still my teacher, once said: “if we cannot make globalization work for all, in the end it will work for none.” I want to reassure you that the OECD is not expected to solve the many challenges of business and human rights by itself; indeed, they are not all under

the control of governments and businesses located within the OECD countries and adhering states.

But the Guidelines and NCPs are critical, and in some respects unique, elements in the overall architecture. And cooperation with other international actors, including the United Nations, will yield greater benefits all around: to individuals and communities, to businesses, and to our respective institutions and their missions. Therefore, thank you again for inviting me, and enabling us to begin our dialogue on how to ensure that globalization does work for all.

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