



JOINT COMMITTEE ON HUMAN RIGHTS
Committee Office, House of Commons
7 Millbank, London, SW1P 3JA

1 May 2009

Dear Andrew Dismore MP

We are delighted that the Joint Committee on Human Rights has submitted a call for evidence on business and human rights issues, and seeks to understand in greater depth how UK businesses influence society, both positively and negatively.

The International Business Leaders Forum (IBLF) was founded in 1990 to put business at the heart of sustainable development. Championing and advancing responsible business practices is at the heart of what we do. The business and human rights agenda has been a central plank of IBLF's work for over a decade and we have gained global recognition for our expertise in this area, having collaborated with organizations such as Amnesty International, the Business Leaders Initiative on Human Rights (BLIHR), the International Finance Corporation, the UN Office of the High Commissioner for Human Rights and the UN Global Compact Office to produce ten leading company management guidance publications.

Over the last two decades, IBLF has worked with leading multinational corporations across all continents to promote human rights issues within their business operations. For example, in Vietnam we worked with major retail brands Pentland, Adidas and Nike, together with international NGOs, the Vietnamese Chamber of Commerce and the Vietnamese public sector to raise health and safety standards in the footwear industry. Similarly, in Colombia IBLF worked with international and domestic companies across a range of industries, NGOs and other sectors to raise awareness around the positive role business can play in development, peace-building and human rights and to encourage practical action. From 2005-6, IBLF collaborated with the UN Secretary-General's Special Representative on Human Rights and transnational corporations and other business enterprises (henceforth, the UN Special Representative) to coordinate the 2006 survey of Fortune Global 500 companies' Human Rights Policies and Management Practices.

Given IBLF's long-standing record of thought leadership in the business and human rights field, and that much of our recent work has been motivated by seeking to support and inform the mandate of the UN Special Representative we believe we are well positioned to put forth our views on the effectiveness



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and viability of the UN Special Representative's "Protect, Respect and Remedy" framework.

In compiling IBLF's views, we have sought the opinions of Lucy Amis (lucy.amis@iblf.org) and Désirée Abrahams (desiree.abrahams@iblf.org), whom are both Programme Managers on Business and Human Rights issues at IBLF. Désirée attended the mini conference on Business and Human Rights on 25 February 2009 at the House of Commons. Lucy represents the IBLF on the UN Global Compact's expert Human Rights Working Group. Should you seek clarification on any of our stated points, please do not hesitate to contact Lucy and Désirée.

We thank you in advance for the opportunity to submit our views and look forward to reading your report in October/November 2009.

Yours sincerely,

Surinder Hundal
Director, Policy & Public Affairs.

Before we respond to your specific questions, we would first like to respond to your general question on the effectiveness and viability of the "Protect, Respect and Remedy" framework¹.

From the outset, we would like to state that IBLF fully supports the mandate of the UN Special Representative on Business and Human Rights, Professor John Ruggie.

We are very pleased to note the unanimous endorsement by the United Nations Human Rights Council of the policy framework on business and human rights in June 2008, and the extension of the UN Special Representative's mandate until 2011 to operationalise the framework, and provide practical recommendations and concrete guidance to states, businesses and other social actors on its implementation.

We believe that such full support of the UN Human Rights Council underscores the importance and gravity of human rights issues for businesses in the 21st century.

Crucially, we agree with the approach outlined in the "Protect, Respect and Remedy" framework, which promotes:

¹ Protect, Respect and Remedy: a Framework for Business and Human Rights - Human Rights Council, A/HRC/8/5, 7 April 2008.

1. The state duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;
2. The corporate responsibility to respect human rights, which in essence means to act with due diligence to avoid infringing on the rights of others;
3. Improved access for victims to effective remedy, both judicial and non-judicial.

This framework provides clear guidance on the main areas for engagement on business and human rights issues, for states, businesses and other related actors. We wholeheartedly agree with the premise that all social actors need to learn to do things differently (UN 2008: 7).

While we maintain a watching brief on the first pillar - the state duty to protect, and where appropriate we will seek to understand how this primary duty impacts on the corporate responsibility to respect human rights, our *raison d'être* and *modus operandi* presents us with a specific interest in the second pillar. That said we would wish to draw the Joint Committee's attention to the observation made by the UN Special Representative in paragraph 22 (UN 2008: 22) which we regard as critical and pertinent to this call for evidence: it states:

"Governments should not assume they are helping business by failing to provide adequate guidance for, or regulation of, the human rights impact of corporate activities. On the contrary, the less governments do, the more they increase reputational and other risks to business."

There is therefore, in IBLF's view, a helpful role for national governments to play in providing domestic companies with guidance on how to manage human rights issues both at home, but more particularly in contexts where the rule of law is weak or poorly enforced.

Under the second pillar - the corporate responsibility to respect, companies are urged to pursue a human rights due diligence process composed of four core elements:

- Adopting a human rights policy
- Undertaking – and acting upon – a human rights impact assessment;
- Integrating the human rights policy throughout the company; and
- Tracking human rights performance

We believe strongly that this four-pronged approach provides a good, clear steer for companies. By implementing each step, a company could develop comprehensive systems and processes that are sensitive to potential human rights risks.

In particular, by completing a human rights impact assessment, a company would be armed with a better understanding of how their operations impact

their employees and consumers and the society in which they operate. Such invaluable intelligence would place the company in a greater position to make informed decisions on their business operations. Should potential negative risks be exposed throughout the human rights impact assessment process, such information would inform a company's mitigation policies and practices.

In the context of the second pillar – the corporate responsibility to respect – IBLF would also like to affirm its support for the position taken by the UN Special Representative in paragraph 52 (UN 2008: 52), namely that there are “few if any internationally recognized rights business cannot impact - or be perceived to impact - in some manner [and that] Therefore, companies should consider all such rights.”

This premise underpinned the publication *Human Rights Translated: A Business Reference Guide* that IBLF released in 2008 with the Castan Centre for Human Rights Law, the UN Office of the High Commissioner for Human Rights and the UN Global Compact. The publication, cited by the UN Special Representative in his 2009 submission to the UN Human Rights Council (UN 2009: 57)², translates the State-based language of international human rights law into language and examples that make sense in a business context, and may also be of interest to the Joint Committee as it explores the relevance of human rights to business.

The third pillar that focuses on improving access to remedy for victims of abuses is an important aspect within the framework, and in our view, complements both the first and second pillars. Crucially, we believe that there needs to be greater attention and support for company based grievance mechanisms, which can be immensely valuable to companies. They have the potential to provide an early-warning complaints system before complaints are magnified and compounded. By cataloging such important information, this should help the company develop an appropriate mitigation policy or process.

Over recent years, the UN Special Representative on Business and Human Rights has managed to corral a diverse set of stakeholders, including business, government and civil society groups from the North and South around the possibility that there should be a set of differentiated but complementary responsibilities (UN 2008: 9). We believe that the high level of support from all actors is indicative of a relevant, appropriate and practicable way forward. In this regard, we encourage you to base any recommendations for the UK on the recommendation of the UN Special Representative on Business and Human Rights, and in particular the UN Special Representative's ongoing efforts as part of the “new mandate is intended to translate the framework into practical guiding principles” (UN 2009: 3).

² Business and human rights: Towards operationalizing the “protect, respect and remedy” framework, A/HRC/11/13, 22 April 2009.

Before we respond to your specific questions, we would like to inform you that IBLF is an organisation operating under an international remit. Given our international focus, we are not in a position to provide informed comments to some of your UK focussed questions. That said, we have endeavored to make general comments where possible.

THE DUTY OF THE STATE TO PROTECT HUMAN RIGHTS

1. How do the activities of UK businesses affect human rights both positively and negatively?

Companies, like any other organisation have the ability to affect the human rights of stakeholders in both a positive and negative way. As an international focused organisation, we do not wish to make a specific comment about UK businesses, however IBLF holds the view that companies of all nationalities have the potential to impact, positively or negatively, on all international human rights standards and that for all companies and all industries this encompasses labour-related rights, including freedom from discrimination, the right to freedom of association and collective bargaining, and freedom from child and forced labour. In addition, companies from different industries also have the potential to impact on non-labour related rights, for example an internet company may impact on the freedom of expression; a pharmaceutical company may impact on the right to health; and a mining company may impact on the freedom of movement.

2. How do these activities engage the human rights obligations of the UK?

As an international focused organisation, we do not wish to make a specific comment about UK businesses.

3. Are there any gaps in the current legal and regulatory framework for UK business which need to be addressed, and if so, how?

Given our international focus, we are unable to provide an informed comment to this question.

4. Does the UK Government give adequate guidance to UK businesses to allow them to understand and support the human rights obligations of the UK? If not, who should provide this guidance?

We would encourage the UK Government and all governments to follow the guidance outlined in the UN Special Representative on Business and Human Rights' "Protect, Respect and Remedy" Framework which provides guidelines for Member States on their state duty to protect. The UK Government, and by extension, the Joint Committee might for example wish to canvass the opinion of business leaders and business associations to more fully understand the nature of guidance companies would find helpful in managing human rights issues at home, and more particularly internationally in contexts where the rule of law is weak or poorly enforced.

5. What role, if any, should be played by individual Government departments or the National Human Rights Institutions of the UK?

Given our international focus, we are unable to provide an informed comment to this question.

THE RESPONSIBILITY OF BUSINESSES TO RESPECT HUMAN RIGHTS

6. How should UK businesses take into account the human rights impact of their activities (and are there any examples of good or bad practice which the Committee should consider)? How can a culture of respect for human rights in business be encouraged?

All businesses, regardless of their nationality or registered status can take into account their human rights impact of their activities by implementing a human rights impact assessment. The Guide to Human Rights Impact Assessment and Management, which provides a methodology on how to conduct a human rights impact assessment by following a eight-step process is a good example of a practical approach companies can adopt, which will upon completion, provide information and intelligence on a company's human rights impact in society.

It is possible that by undertaking a human rights impact assessment, a company may be presented with information on both positive and negative company impacts. However, while gathering information on one's impact is an important step, it is even more critical for a company to use this information and in light of the information and data presented, change their business operations accordingly. Without this next step, a human rights impact assessment is of little value.

A company's human rights impact assessment, should as outlined by UN Special Representative, ideally sit within a wider process of human rights due diligence, which also encompasses the adoption, and more critically the integration of, a human rights policy.

• Should UK businesses' responsibility to respect human rights vary according to:

o Whether or not they are performing public functions or providing services which have been contracted out by public authorities; Is it clear when the Human Rights Act 1998 does and does not apply directly to businesses?

This is an issue that the UN Special Representative has earmarked in his 2009 submission to the UN Human Rights Council as meriting further investigation as he continues to operationalise the "Protect, Respect and Remedy" Framework. In particular the UN Special Representative remarks in paragraph 64 (2009: 64):

"More than respect may be required when companies perform certain public functions for example, the rights of prisoners do not diminish when prisons become privatized."

o Whether they are operating inside or outside the UK;

IBLF believes that companies should respect the human rights of their direct and indirect stakeholders, wherever they operate.

o the size, type or nature of their business?

All companies, irrespective of the size, type or nature should respect the human rights of their direct and indirect stakeholders, wherever they operate. That said the capacity and resources of companies to carry out full human rights due diligence process may vary by size; size should not however be used as an excuse for inaction.

• How, if at all, should the current economic climate affect the relationship between business and human rights?

An economic crisis should not adversely affect a company's ability to respect the human rights of their direct and indirect stakeholders. Indeed as highlighted by the UN Special Representative in his 2009 report the UN Human Rights Council (UN 2009: 10), companies will need to:

“acknowledge that business as usual is not good enough for anybody, including business itself, and that they must better integrate social concerns into their long-term strategic goals.”

EFFECTIVE ACCESS TO REMEDIES

7. Does the existing legal, regulatory and voluntary framework in the UK provide adequate opportunity to seek an appropriate remedy for individuals who allege that their human rights have been breached as a result of the activities of UK businesses?

We have no specific comments on the UK legal, regulatory and voluntary framework. However, we do believe that Member States, companies and other social actors should consider the recommendations put forth in the “Protect, Respect and Remedy” Framework under the third pillar - access to remedy, and in particular take note of the principles spelled out in paragraph 92 (UN 2008: 92) which posit that all grievance mechanisms be: legitimate; accessible; predictable; equitable; rights-compatible; and transparent.

8. If changes are necessary, should these include:

• Judicial remedies (If so, are legislative changes necessary to create a cause of action, or to clarify that a cause of action exists; or to enable claims to proceed efficiently and in a manner that is fair to both claimants and respondents);

We have no specific comments to make.

• Non-judicial remedies (for example, through the operation of ombudsmen, complaints mechanisms, mediation or other non-judicial means). If non-judicial remedies are appropriate, are there any examples of good or bad practice, which the Committee should

consider?

We have no specific comments to make.

- **Government initiatives, whether by legislation, statutory or other guidance or changes in policy;**

We have no specific comments to make.

- **Initiatives by business or other non-Government actors.**

We have no specific comments to make.