

Regional consultation convened by the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises

Johannesburg, South Africa, 27-28 March 2006

Proceedings Summary

The mandate of the Special Representative was established as a means to advance the promotion and protection of human rights in relation to transnational corporations and other business enterprises. In carrying out his mandate, the SRSG has been particularly concerned that the voices of the global South be heard in and contribute to the deliberations. At his initiative, the SRSG is convening a series of regional meetings aimed at (1) getting regional inputs and perspectives on the issues covered by the mandate from all relevant stakeholder groups; (2) contributing to the ongoing discussions in different regions about the responsibilities of business with regard to human rights; and finally, (3) discussing issues within the mandate that are particularly relevant to specific regional contexts.

On 27-28 March 2006, the first of these regional consultations was held in Johannesburg, South Africa. In addition to addressing the overall mandate, the Johannesburg consultation was intended to focus specifically on views and experiences on corporate related human rights challenges posed by operating businesses in areas of conflict or otherwise weak governance zones. It brought together some 80 participants from 12 different African countries, representing 30 companies and 31 NGOs as well as academic institutions (see Annex I: Invitee list). The expenses of representatives of regional non-governmental organizations were covered by the generous support of the Government of Norway and the simultaneous translation was made possible thanks to the assistance of the Observatoire de la responsabilité sociale des entreprises, France). To allow for maximum interactivity, each session was briefly introduced by speakers from various stakeholder groups, and followed by a 90 minute open discussion (see Annex II: Agenda). The SRSG and Mr. Jody Kollapen, Chief Commissioner of the South African Human Rights Commission, co-chaired the meeting and made opening remarks.

The first session was focused on framing the consultation within **the parameters of the SRSG's mandate** and his interim report (see: www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.97.pdf). In his remarks, the SRSG stressed that the development of a shared understanding or common framework of human rights principles and standards for business is highly desirable and, indeed, even necessary. But the critical challenge is to define a viable basis for determining what it should include, and then to agree on what parts of it should be subject to national and international law, what should be addressed by the policies of individual governments or intergovernmental collaboration, what should be left to the interplay of social expectations and market dynamics, and what belongs in the realm of moral obligation and aspiration.

Mr. Kollapen underlined particularly the links between development, security and successful human rights protection and promotion, mentioning the importance of the role of business in achieving the Millennium Development Goals, but also in allowing a stable transition in the post apartheid regime.

Both highlighted the importance of understanding the different contexts in which businesses operate today, the complexity of the new societal division of labor with a shift to new positive human rights obligations for non-state actors and the importance of defining the parameters and boundaries of businesses responsibilities in this regard.

The second session looked at the **options available at the company level** when it is confronted with human rights dilemma situations, specifically in weak governance zones. Discussions and presentations covered good practices, the key factors and conditions determining successful policies and practices, and the tools available to achieve better results. Panellists particularly underlined the need for stakeholder engagement, solid internal processes, constant dialogue but also the importance of looking both at actions and omissions by a company to develop successful corporate human rights policies. The deficit of tools for human rights impact assessments was noted as one of the major barrier to better practices by companies. Participants remarked that lack of capacity was an important obstacle both for smaller companies and civil society organizations all over the African continent, in particular with regard to independent monitoring of companies' activities.

The third session focused on **the effectiveness of external sources of "leverage"**, including industry cooperation and peer-pressure, financial incentives and performance standards, such as those recently adopted by the International Finance Corporation. There was general consensus on the key role financial institutions can play with regard to mainstreaming human rights within the

corporate world, as well as the importance of peer-pressure. While welcoming the involvement of intermediaries to complement policies developed at the company-level, some participants expressed concern at the multiplication of different initiatives and the lack of uniformity in the different standards and requirements. Many participants also underlined the limitations of such strategies as they cannot reach and affect the behaviour of companies that do not require access to international financial markets or are immune to peer or other forms of social pressure.

The fourth session discussed **the role of states** in the field of business and human rights. Panellists emphasised both the role of the state as an enabler for successful corporate policies and as a regulator. All underlined that securing respect for human rights was in all cases the prime responsibility of the state while some expressed a need for clarification of the scope of the human rights responsibilities of companies. Concern was expressed, including by some business representatives, of the potential for big companies undermining the capacity of weak governments to effectively regulate transnational companies. The dilemmas facing companies that implement corporate social responsibility programs in countries where Governments are unable to fulfil their human rights obligations were also explored. Participants generally acknowledged that companies may have more resources than states – and certainly more than most local governments -- in a number of African countries. While this should be seen as an opportunity to develop better communication and partnerships between public and private actors, it should never be used as an excuse for governments to shirk their responsibilities or grounds for urging companies to assume quasi-governmental functions. The lack of an international policy and legal framework was identified as a main obstacle for credible business accountability, especially with regard to companies not interested or involved in the CSR debate. It was noted, however, that domestic jurisdictional doors may be opening in “home countries” for the most serious human rights violations by firms under criminal and civil statutes. Participants noted the deficiencies of home and host state policies with regard to the human rights dimensions of corporate activities, including the provision of export credit and investment guarantees.

The last two sessions addressed **the prospects for strengthening and expanding collaborative governance initiatives**. The session examined the strengths and weaknesses of such initiatives as the Kimberley Process, the Equator Principles, the Voluntary Principles on human rights and security, the Chad/Cameroon Pipeline project, and the Extractive Industries Transparency Initiative. Panellists mainly noted that all initiatives had avenues for improvement but also that they were good templates in their respective areas. The main shortcoming identified was that they did not address emerging important actors such as State-owned enterprises and TNCs from emerging countries. While gold was identified as a potential sector for a new initiative, participants agreed that the prospects of developing collaborative initiatives needed to focus specifically on these new actors to make a meaningful contribution. Some participants also noted that better implementation of existing tools, policies and schemes rather than new initiatives should be the main priority. In this context, more involvement from governments was underscored as a crucial step. There was also general consensus on the absence of a general unique solution and on the need to develop many options simultaneously.

The final session provided an opportunity for all participants to express **ideas, advice, and recommendations to the SRSG** on the contribution his mandate could make to the situation in Africa. The many inputs reflected the complexity of the mandate. Participants underscored the importance of engaging directly with the SRSG, and invited him to replicate as much as possible this kind of consultation, in particular with representatives from communities directly affected by alleged corporate human rights abuses. Some participants encouraged the SRSG to remain mindful of the useful elements of the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with Regard to Human Right in his future work. In responding, the SRSG stressed his desire to maintain ongoing contact with all stakeholders, with a view towards developing more broadly shared understandings of the dilemmas at hand and of how to deal with them through all imaginable means that promise to deliver practical results.

The next regional consultation will take place in Bangkok on 26 - 27 June 2006. The agenda will include the overall issues raised by the SRSG's mandate, and then focus in greater depth on the challenges of establishing credible accountability mechanisms in supply chains, with a particular emphasis on the footwear and apparel, toys, and consumer electronics sectors.

Monday, March 27

8:45 Coffee and registration

9:45 Welcome and Introductions

10:00 Keynote Speech: The Challenges of Business and Human Rights in Africa

- Mr. Jody Kollapen, Chief Commissioner of the South African Human Rights Commission, Co-chair of the consultation

10:45 Session 1 – Framing the Discussion

- SRSG John Ruggie

12:30 Lunch

1:30 Session 2 – Innovative Practices at the Company Level

- Mr Ron Popper, Head, Corporate Communications, ABB
- Mr Karugor Gatamah, Chief Executive Officer, Centre for Corporate Governance, Kenya
- Mr Salil Tripathi, Senior policy Advisor, International Alert

3:45 Session 3 – The Contribution and Limits of Incentive-Based Measures

- Ms Corly le Roux, Legal Counsel, Johannesburg Stock Exchange
- Mr Justin Pooley, Senior Sustainable Affairs Officer, International Finance Corporation
- Mr Richard Lanaud, Total, Chairman, Ethics Committee

5:30 Wrap-Up Day 1

Tuesday, March 28

9:00 Session 4 - The Role of States

- Ms Louise Graham, Director, Human Rights and Humanitarian Affairs, Ministry of Foreign Affairs, South Africa
- Mr Jonathan Oppenheimer, CEO, De Beers Consolidated Mines Ltd.
- Mr Mark Taylor, Director, FAFO

11:00 Session 5 - The Prospects for Strengthening and Expanding Collaborative Governance Initiatives

- Mr André Madec, Public Affairs, Exxon Mobil Corporation
- Mr Richard Culp Robinson, PACT Congo
- Mr Andrew Bainbridge, Managing Director, Barclays Africa and Indian Ocean

12:45 Lunch

1:45 Session 6 - New Domains for Collaborative Arrangements

- Ms Mary Robinson, President, Realizing Rights: The Ethical Globalization Initiative, Honorary Chair, Business Leaders Initiative on Human Rights
- Mr Robert (Bobby) Godsell, Chief Executive Officer, AngloGold Ashanti
- Mr Peter Gastrow, Director, Institute For Security Studies, South Africa

4:00 Conclusions - The Contributions of the SRSG's Mandate

- SRSG John Ruggie

4:45 Closing Remarks

- Mr Jody Kollapen
- SRSG John Ruggie

- Anders NORDSTROM, Senior Project Manager, ABB, Sudan
- Ron POPPER, Public affairs, ABB, Switzerland
- Chesney BRADSHAW, country communications manager, ABB South Africa, South Africa
- Charles ABRAHAMS, Attorney, Abrahams Kiewitz Attorneys, South Africa
- Hibert TSHISWAKA, ACDIH, DRC
- Khady Fall TALL, Secrétaire Générale, AFAO-Senegal, Senegal
- Kwasi GYAN-APENTENG, Director, Africa Centre for Development Communications, Ghana
- Kwasi ABEASI, Managing Director, African Business Roundtable ABR, South Africa
- Bamanga TUKUR, Executive President & Chairman, African Business Roundtable ABR & NEPAD Business Group, Nigeria*
- Salamata SAWADOGO, Chairperson, African Commission on Human Rights, Burkina Faso*
- Adoa COLEMAN, Ag. Secretary to the Commission, African Commission on Human Rights, Gambia*
- Faith Pansy TLAKULA, Member, African Commission on Human Rights, South Africa
- Yaser SID AHMAD EL-HASSAN, Vice-Chairperson, African Commission on Human Rights, Sudan
- Hibert KIRONGOZI, Head of Department, African Foundation, Sudan
- Karin IRETON, Head of Sustainable Development: Markets and Economics, Anglo American South Africa Ltd, South Africa
- Bobby GODSELL, Chief Executive Officer, AngloGold Ashanti, South Africa
- Paul HOLLESEN, Senior Development Manager, AngloGold Ashanti, South Africa
- Richard LINNELL, Representative, Anvil Mining Ltd, Australia
- Zéphirin DIABRE, Chairman, Africa and Middle East, Areva, Burkina Faso
- Bernard DE GOUTTES, Directeur juridique, Areva, France
- Yves DUFOUR, Directeur, Communications, Areva, France
- Freddy KITOKO, Vice -president, Association Africaine des Droits de l'Homme, DRC*
- Andrew BAINBRIDGE, Managing Director, Barclays Africa and Indian Ocean, UK
- Chris BRAY, Head of Environmental Risk Policy, Barclays Group, UK
- Kevin MIDDLETON, Head, Multinationals Specialised Banking, Africa and Indian Ocean, Barclays Group, UK
- John CAPEL, Benchmarks Foundation of Southern Africa for CSR, South Africa
- Henk CAMPHER, Director: Corporate Policy and Practices, Business Action for Africa, UK
- Neuma GROBBELAAR, Head, Business in Africa research project SAIIA, South Africa
- John MORRISON, Programme Director, Business Leaders Initiative on Human Rights, UK
- Kathryn DOVEY, Coordinator, Business Leaders Initiative on Human Rights, UK
- Nicolene ROSE-INNES, Call the Rain, South Africa
- Therese MEKOMBE, CELIAF, Chad*
- Joseph BOBIA, CENADEP, DRC*
- Karugor GATAMAH, CEO, Centre for Corporate Governance, Kenya
- Mandla RAMETSI, Deputy Director, International Department, Congress of South African Trade Unions (COSATU), South Africa
- Jonathan OPPENHEIMER, Director of DB Investments, De Beers Consolidated Mines Ltd, South Africa
- Naseem CHOHAN, De Beers Group Services: Sustainable Development, De Beers Consolidated Mines Ltd, South Africa
- Ken IFE, CEO, Development & Training Agencies, UK
- Elsa KRUGER-CLOETE, Development Bank of Southern Africa (DBSA), South Africa
- Stefanie GRANT, senior advisor, Ethical globalization initiative, USA
- Andre MADEC, Manager Global Community Relations, Exxon Mobil, USA
- Mark TAYLOR, Director, FAFO, Norway
- Olivier DE SCHUTTER, Secretary General, FIDH, Belgium
- Patrícia GALVÃO FERREIRA, Fundação Open Society Angola, Fundação Open Society Angola, Angola
- Ellen KALLINOWSKY, Global compact SAF, South Africa
- Alex YEARSLEY, Director, Global Witness, UK
- Rosemary NOGE, Manager Sustainable Development, Gold Fields Limited, South Africa
- Stean MPOLO, Coordinator, Groupe Foning / Société ANFLO, Cameroon
- Louise GRAHAM, Director, Human Rights and Humanitarian Affairs Ministry of Foreign Affairs, South Africa
- Loubna FREIH, Human Rights Watch, South Africa
- Marina D'ENGELBRONNER, senior project mgr., Humanistisch Overleg Mensenrechten, Holland
- Margareth WACHENFELD, consultant, IFC, Belgium
- Natalie AFRICA, IFC Johannesburg, South Africa
- Hans HOFMEIJER, Deputy Director, ILO Regional Office for Africa, Ethiopia
- Nomini RAPOO, General Secretary, Industrial Development Corporation, South Africa
- André STANDING, Researcher, Institute for Security Studies, South Africa*
- Hennie VAN VUUREN, Head of programm, Institute for Security Studies, South Africa

Invitee List

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