

**OHCHR Consultation: Operationalizing the “Protect, Respect, Remedy” framework  
Presented by the Special Representative of the Secretary-General on the issue of human  
rights and transnational corporations and other business enterprises**

**5-6 October 2009  
Comments**

**Introduction**

For more than 30 years, Corporate Accountability International (formerly Infact) has campaigned to save lives and protect people’s health and the environment by challenging corporate abuses and holding transnational corporations (TNCs) accountable to the interests of society at large. Corporate Accountability International is a civil society organization with more than 100,000 individual members and activists, primarily in the United States and Canada, and hundreds of NGO allies around the world. We are officially recognized by the World Health Organization (WHO), the Conference of the Parties to the Framework Convention on Tobacco Control (FCTC) and the United Nations Economic and Social Council (ECOSOC).

Our organization has played an active role in the process of the Special Representative of the United Nations Secretary-General on TNCs and human rights, Mr. John Ruggie, since the start of his mandate in 2005, when we offered our assistance and expertise and emphasized the need for enforceable international standards for TNCs with regard to human rights. In particular, we have continued to highlight the World Health Organization’s Framework Convention on Tobacco Control (FCTC) as a precedent that could help guide the work of the Special Representative, as well as the work of the Sub-commission on the Promotion and Protection of Human Rights on Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises.

Throughout our history, Corporate Accountability International has raised awareness among the public and policymakers of the dangers of unchecked corporate influence over public policy, and called for safeguards against corporate interference in public policy decision-making. Our work in this arena reached a major milestone last November, when the WHO FCTC Conference of the Parties unanimously adopted stringent new guidelines to protect public health policy against the tobacco industry’s vested commercial interests, in accordance with Article 5.3 of the Convention. Specifically, Corporate Accountability International’s three decades of experience offers lessons that can be applied to operationalizing the “Protect, Respect, Remedy” framework developed by the Special Representative.

We take this opportunity to comment on the Preliminary Work Plan for operationalizing the framework developed by the Special Representative, in anticipation of our participation in the 5-6 October consultation on the same in Geneva.

Overall, we applaud the extension of the Special Representative’s mandate, in particular, his expanded goal “to elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other

stakeholders.”<sup>1</sup> We agree that it is vital to develop a concrete plan for operationalizing the “Protect, Respect, Remedy” framework, thereby providing a tool for ensuring corporate responsibility to respect human rights and taking a step towards the larger goal of clear, binding and enforceable human rights standards for TNCs.

Below are our comments in three areas:

- 1) The imperative to adopt and enforce clear and legally binding standards,
- 2) Corporate accountability precedents in the WHO FCTC, including the restriction of corporate involvement in public policy matters, and
- 3) The value of robust civil society participation in operationalizing the framework.

We believe it is urgent for Special Representative to facilitate a transparent process through which stakeholders can debate and take steps towards comprehensive, enforceable measures to stop corporate abuses of human rights. We welcome the opportunity to discuss our input at the consultation and in the coming weeks, as the Special Representative’s team integrates information and ideas gathered at the consultation into the Preliminary Work Plan.

### **1. The imperative to adopt and enforce clear and legally binding standards**

Under the Corporate Responsibility to Protect “work stream” of the Preliminary Work Plan, the Special Representative has proposed the development of “guiding principles on the corporate responsibility to respect and related accountability measures.”<sup>2</sup> While States have the primary duty to uphold human rights, TNCs should also be held accountable under human rights treaties, laws and standards.

The United Nations, as an intergovernmental institution, must uphold the role and responsibility of governments to establish and enforce laws, regulations and policies – and the responsibility of corporations to abide by those laws, regulations and policies. Voluntary corporate initiatives can never replace legally enforceable measures. The UN must closely monitor and evaluate initiatives such as the Global Compact and the CEO Water Mandate, and modify or stop any collaboration with business that cannot be proven to complement and reinforce government authority and action.

Through our organization’s extensive experience, we have found that voluntary corporate initiatives and non-binding agreements have inherent and serious limitations, and can never replace legally enforceable measures. In an October 2007 joint letter to the Special Representative, we joined with more than 200 other NGOs and individuals to emphasize that voluntary corporate initiatives:

- Are limited scope in terms of the rights they include and the sectors they cover;
- Typically fail to ensure that the principles which they advocate are upheld in practice;
- Allow companies to “opt in” to standards which are convenient and to “opt out” of standards which are not convenient;

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<sup>1</sup> Preliminary Work Plan Mandate of the Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, 2008. Available: <http://www.reports-and-materials.org/Ruggie-preliminary-work-plan-2008-2011.pdf>. Accessed September 29, 2009.

<sup>2</sup> Ibid.

- Contradict the concept of human rights as minimum guarantees for treatment of all people.

The current approach in which corporate behavior is shaped largely by voluntary codes and guidelines is unworkable. It creates a playing field that is both not level, and in which corporations are not systematically accountable for their commitments. Vague and undefined principles coupled with the lack of a clear and consistent accountability mechanism have led to a number of the most prominent Global Compact signatories being subject to vigorous corporate campaigns and systematic exclusion from socially responsible investment portfolios because of their continued violations of human rights and environmental sustainability standards. Despite hopes to the contrary, “best practice” efforts have not had their desired outcomes.

That is not to say, that best practices have not led in some cases to enhanced corporate responsibility. Those corporations that have successfully implemented stronger standards and have demonstrated that raising the performance bar can be accomplished without impeding their business prospects create a strong case for making binding those practices which up to this point have been voluntary. Corporations that have adopted voluntary human rights standards have demonstrated that changed behavior is positive both to the business and the community. By raising the floor and making best practices binding and enforceable, we would create a level playing field.

## **2. Corporate accountability precedents in the WHO FCTC**

The Corporate Responsibility to Protect task of the Preliminary Work Plan refers to “a number of concepts related to the corporate responsibility to respect... which need further elaboration”. Based on our experience, the FCTC – one of the most widely and rapidly embraced UN treaties in history – can provide a valuable reference point in this regard.

The FCTC represents a dramatic change from the voluntary standards and codes promulgated by industry, which so often proved ineffective in curbing the abuses they were intended to address. Corporate Accountability International has been actively involved in the efforts to develop, adopt, ratify and now implement the FCTC. We helped to organize the Network for Accountability of Tobacco Transnationals (NATT), which includes more than 100 NGOs from more than 50 countries spanning every continent. NATT members came together as effective advocates pushing for the strongest FCTC possible and now are playing an active role in monitoring compliance with the FCTC’s obligations—including the ban on tobacco advertising, promotion and sponsorship, and the protection of health policy from tobacco industry interference.

The strong, clear and binding provisions of the FCTC establish a global consensus about what tobacco control policies are necessary to reverse this preventable epidemic. To be sure, some tobacco corporations are still seeking to circumvent international law, but binding obligations increase the power of exposure. Furthermore, no longer are tobacco corporations able to debate about whether and which policy measures are appropriate and effective.

Though the FCTC covers one industry sector, many of its provisions merit consideration as broad human rights standards for corporations.

- A. Restrict corporate involvement in public policy matters pertaining to human rights, human health and environmental degradation:** For decades, the tobacco industry has worked to undermine effective regulation around the world. The FCTC clearly insulates public health policy from interference by tobacco corporations, their subsidiaries and affiliates, and calls on governments to be alert to industry attempts to undermine health policies. Article 5.3 of the treaty explicitly safeguards health policy against tobacco industry interference, obligating ratifying countries to “protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.”<sup>3</sup> This provision is based on the tobacco industry’s “fundamental and irreconcilable conflict” of interest with public health,<sup>4</sup> and its track record of undermining public policy.

The FCTC advances conflict of interest as a concept in international law that preserves and protects the primacy of human rights over commercial enterprise in ways that we believe should be extended broadly to other economic sectors. For example, the precedents of the FCTC can be applied to the marketing of other dangerous or deadly products, matters of consumer safety or worker health involving the corporation’s products or production facilities, or environmental degradation such as the abuse or appropriation of community water resources. While not all corporations may have conflicts of interest, it is nonetheless dangerous to assume that what is in the best interest of shareholders is in the best public interest.

- B. Enforce corporate accountability through liability:** Liability and compensation are at the heart of deterring the spread of tobacco addiction, by forcing tobacco corporations to pay the true costs of their deadly business. Corporate human rights abuses are often linked to enhanced profits, therefore, directly connecting human rights abuse with legal liabilities that impede profitability is an important and particularly effective enforcement mechanism. Liability separates voluntary best practice efforts from binding standards, and represents a means of protecting people and their communities, while also protecting higher-standard corporations from lower-standard corporations seeking a competitive edge by cutting corners.
- C. Require transparency and disclosure:** Transparency is fundamental to democratic governance. Governments must be transparent in their interactions with the private sector on issues related to public health and safety, and mandate disclosure by corporations of the impact of their business operations on the same. The FCTC strengthens international right-to-know laws by calling on governments to disclose a high level of information regarding the tobacco industry and its dangerous products. Transparency measures in the FCTC Article 5.3 guidelines that should be recognized as precedents, adapted and applied as best practices include:
- i. Ensuring transparency of government interactions with the private sector, through public hearings, public notice of interactions and disclosure of records.

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<sup>3</sup> World Health Organization (2004) WHO Framework Convention on Tobacco Control, Article 5.3. Available: <http://www.who.int/fctc/en/index.html>. Accessed September 25, 2009.

<sup>4</sup> Framework Convention on Tobacco Control Conference of the Parties (2008) Guidelines for implementation of Article 5.3: Guidelines on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, Guiding Principle 1. Available: [http://www.who.int/fctc/guidelines/article\\_5\\_3/en/index.html](http://www.who.int/fctc/guidelines/article_5_3/en/index.html). Accessed September 25, 2009.

- ii. Requiring disclosure by corporations of information related to public health and safety, including business operations and political activities.
- iii. Imposing mandatory penalties on corporations for the provision of false or misleading information.<sup>5</sup>

### **3. The value of robust civil society participation in operationalizing the framework**

In the final section of the Preliminary Work Plan, the Special Representative outlines the intention to collaborate with international organizations “to promote the policy framework and to strengthen the overall international architecture in the business and human rights domain.”<sup>6</sup> Corporate Accountability International fully supports a cooperative approach to operationalizing the “Protect, Respect, Remedy” framework. Further, we urge the Special Representative’s team to clarify procedures for international organizations and other civil society groups of relevance to contribute to their work process.

The FCTC serves as a clear example in establishing the principle that civil society participation is essential in achieving the treaty’s objectives,<sup>7</sup> while also explicitly excluding NGOs affiliated with the tobacco industry from involvement in public health policy-making. NGOs represent an important resource for national governments in monitoring industry compliance with standards of conduct, regulations and laws, enabling states to better focus often-scarce enforcement resources. We urge the Special Representative to consider the FCTC as a relevant case study in this regard, and to take action to replicate both its achievement of robust civil society participation and its strong protections against corporate involvement in public policy matters pertaining to human rights, human health and environmental degradation.

### **Conclusion**

In conclusion, we emphasize the need for enforceable international human rights standards for TNCs. We strongly urge the Special Representative to consider the corporate accountability precedents in the WHO FCTC, including the protection of public policy matters against corporate conflicts of interest, corporate accountability through liability measures, and high standards for transparency and disclosure. Finally, we call for active facilitation by the Special Representative’s team of civil society participation in operationalizing the framework. We offer our assistance and expertise to the Special Representative in carrying out his mandate.

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<sup>5</sup> Ibid, Articles 4.1, 10, 20. Available: [http://www.who.int/fctc/guidelines/article\\_5\\_3/en/index.html](http://www.who.int/fctc/guidelines/article_5_3/en/index.html). Accessed October 2, 2009.

<sup>6</sup> Preliminary Work Plan Mandate of the Special Representative on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, 2008. Available: <http://www.reports-and-materials.org/Ruggie-preliminary-work-plan-2008-2011.pdf>. Accessed September 29, 2009.

<sup>7</sup> Framework Convention on Tobacco Control Conference of the Parties (2008) Guidelines for implementation of Article 5.3: Guidelines on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, Preamble, Articles 4.7, 12(e). Available: [http://www.who.int/fctc/guidelines/article\\_5\\_3/en/index.html](http://www.who.int/fctc/guidelines/article_5_3/en/index.html). Accessed September 25, 2009.