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**Contradictory Or Complementary?
Voluntary Principles And Enforceable Mechanisms On Corporate
Accountability For Human Rights Abuses**

Tuesday, January 27, 2009, 9.00 – 10.30am

Facilitator:

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Panelists:

Christopher Avery, Founder, Business & Human Rights Resource Centre

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In July 2005, Kofi Annan appointed Professor John G. Ruggie to be Special Representative of the UN Secretary-General on business & human rights. Ruggie produced a report to the Human Rights Council in 2008 that was welcomed by the UN and is intended to serve as a framework for business and human rights (here is a link <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>). Panelists agree that the report provides a clear description and summary of the scope and pattern of alleged human rights abuses by multinational companies. They also agree that it offers a frank recognition of the fundamental problem which is the wide governance gaps created by globalization of corporations without appropriate sanctions or remedies that can be brought to bear when human rights abuses occur. The fundamental challenge today is to find a way to bridge those gaps.

The report outlines three areas

- I. The State's duty to protect the human rights of its people
- II. The Corporations responsibility to respect human rights
- III. The need for remedies for individuals whose rights were trampled

NGO's have different opinions on the remedies proposed in the report. Upholding human rights standards voluntarily works with the good companies, but some feel this cannot substitute for legally enforceable minimum standards that can be applied and upheld against those who operate badly. Some worry that voluntary multi-stakeholder initiatives that include governments, corporations and NGO's will form a kind of ad-hoc "soft" law at the international level that impedes progress towards the adoption of enforceable standards.

The Business and Human Rights Center finds new national human rights commissions set up around the world to be a promising development. The Center also cautions us not to forget the Global South and offered a Malawian perspective that the North focuses on process, whereas the South looks at impact. The North looks at, for example, how a company should report, whereas the South looks at the situation on the ground.

People suffering real harms could be given as many opportunities and forums to get justice as possible. In the U.S. we have a unique remedy for victims and survivors of human rights abuses who can sue a government or corporation for monetary damages. Money cannot really compensate for a victim's loss or suffering but it can punish an abuser and result in deterrence. Encouraging other countries to create laws to hold companies accountable for human rights abuses could have good results.

Chris Eddley spoke in his plenary presentation to the IHRFG about the rule of law. The rule of law is enforceable. When a violation occurs there must be a consequence. Moreover an enforceable process provides the victim or survivor a formal setting to tell his/her story and demand an answer and remedy.

ERI notes that the UN Global Compact bills itself as "the world's largest voluntary corporate responsibility initiative" (<http://www.unglobalcompact.org>) has seen over 6000 companies lining up to participate. Why are so many willing to participate with the Compact and at the same time undermine real enforceable laws. Companies that are truly upholding the 10 principles of the Global Compact would not have anything to fear in terms of being sued as human rights abusers. If they were willing to uphold these voluntary standards in an honest way, what would they have to be afraid of from the law.

With respect to the question about length of time it takes to pursue a lawsuit, if you think about it winning real and enforceable change after a ten year struggle isn't really that long for a justice struggle. For example, when Unocal violated the human rights of the people of Burma (including rape, torture and enslavement) they were able to win justice through the U.S. judicial system and gain justice.

Funders who want to see businesses operate in a manner that respects human rights can support the struggle in many different ways, even if they can't fund a lawsuit. For claimants to succeed in the legal arena they need to be organized and able to document human rights abuses in a way that can stand up in court. For example, funders can support training, research, report writing, media work, speeches, mobilizing and organizing, shareholder activism and protests....all of which can ultimately strengthen or feed into a legal strategy.

In addition to the ultimate goal of winning justice, lawsuits can be useful in that they provide a media hook and focus for telling the story and gaining public awareness. They may increase attention by shareholders.

The CSR (corporate social responsibility) strategy is intended to motivate companies to voluntarily adopt standards that are above and beyond compliance with basic minimal legal standards. As Ruggie's report

notes, the State has the duty to protect its residents from corporations who break the law. BSR seeks to meet companies where they are and is willing to work with any company that comes to it. BSR employs a multistakeholder approach for issues that are above and beyond legal compliance and develops voluntary standards through this process. Human rights and multinationals are dynamic. Legal standards sometimes need time to catch up with realities on the ground. For instance, freedom of expression and the internet. Creating voluntary standards is one way to try to fill the gaps. For instance in China BSR brought together academicians, government representatives and companies to discuss what standards or codes all parties can live up to with regard to freedom of expression. One might call this the development of “soft law”. BSR hopes that will create the basis for future enforceable law. Slavery is found today in the supply chain of many multinationals. BSR works with multinationals to understand that this might be 3-4 steps down the chain.

In response to a question about threats to the Alien Tort Statute that by which victims of human rights abuse can seek redress in the U.S. judicial system, ERI noted that the same companies that talk about CSR will spend hundreds of millions to try to weaken or get rid of the Alien Tort Statute. For example, Chevron which was just sued under the Statute paints itself as a responsible corporation. Chevron is Dianne Feinstein’s biggest campaign contributor. Interestingly, Senator Dianne Feinstein (unsuccessfully) attempted to eviscerate the Alien Tort Statute. Also note that the Bush Administration submitted briefs in every case filed under the Alien Tort Statute stating that suing companies for human rights abuses compromises U.S. corporations and harms the war on terrorism.

BSR noted that it is not unusual for companies to experience a form of cognitive dissonance. Sometimes the headquarters doesn’t even know or understand what its own lobbyists are doing or what happens down its supply chain.

In response to a question about technology it was noted that technology is transforming the world and it is imperative to protect access to information for example, via satellite imagery and the internet. For example, for a time there were satellite images of Burma and then there weren’t. BSR is keen to connect communities around the world that live near extractive sites to help them share their stories and organize globally. The Business and Human Rights Center noted the power of global information sharing via technology to scare corporations into behaving better.

A question was posed about preserving rights to the land for indigenous people (when extractive industry can buy off Southern governments for a pittance to gain mineral rights) is there a go to reference to help groups navigate the complex processes and venues through which they might seek remedies? The simple answer is no. Ruggie states that it is the states duty to protect. Yet there is no infrastructure or resources to provide that protection in many Southern countries at the same time that Northern countries encourage their companies to invest overseas. Some of the strategies representing on the panel today include

- a. Naming and Shaming,
- b. Litigating and
- c. Bringing all parties together in a multi-stakeholder process—including the State, the Company and organized community members

BSR is newly involved in the CAFTA region. It asks how is it that in 2009 we can’t get stuff out of the ground without causing massive upheaval, environmental devastation and human rights abuses? It seeks to encourage companies to understand that it is in their own interest to operate differently. ERI

adds that funders could consider funding collaboration between groups internationally---both in the home country of the company and where the company is operating in a manner that abuses human rights. And, funders should understand that long term sustained collaboration is essential. The imperative of funding long term relationships was underscored with a story about a global south community member that referred to human rights lawyers as their own form of extractive industry. Stating that the human rights lawyers would come extract stories and leave never to be heard from again.

The question of corporate personhood and charter revocation as a strategy was raised. In response, it was noted that the Attorney General has not been willing to pursue this. AT the state level there have been initiatives to create different types of corporate charters to hold out a carrot and offer preferential treatment by state agencies. However, it was noted that such strategies may not be effective, since it would be a state by state approach. In addition, most corporations are chartered in DE and DE will never provide this option.

One audience member noted that CSR is not always integrated throughout the company. While there may be good people in the CSR part of a company that agree to standards on labor and environment, the purchase orders may be based on a different set of criteria (like price alone) effectively undermine the value of voluntary CSR. Community groups may spend lots of valuable time in multi-stakeholder CSR conversations that may not effect the actual operations of a company. In addition, in an economic downturn voluntary CSR may be seen as an expendable luxury that is moved over to the PR department.

It was noted that at this time after Enron and after the banking collapse most people understand the impact of corporate malfeasance on a personal and visceral level. This creates an opportunity to make a strong argument for regulation and enforceable mechanisms now.

Other strategies suggested for foundations interested in SRI are don't just divest of shares, issue a press release explaining why. Or consider holding on to shares and engaging in shareholder activism. Or just assign your shares as a proxy to another organization who is involved in shareholder activism. Go to credit rating agencies and talk about environmental and human rights risks to a company.