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**Navigating “no-man’s land”:
Corporations, Human Rights, and the Law**

Wednesday, January 26, 2011, 2:30 – 4:30 pm

Facilitator:

Lesley Carson, Program Officer, Wellspring Advisors

Panelists:

Ramón Cadena, International Commission of Jurists

Tricia Feeney Grylls, Rights and Accountability in Development

Mark Hodge, Global Business Initiative on Human Rights

Carlos Lopez, Project on International Economic Relations, International Commission of Jurists

Sponsor: Carlos Lopez and Radosh Piletich, International Commission of Jurists

Lesley Carson introduced the session by saying that there is an array of strategies to bring greater accountability and prevention of human rights violations by corporations. However, corporate accountability for human rights is a “no-man’s land” due to the lack of global and judicial standards to hold corporations accountable. This panel will discuss what the strongest judicial and non-judicial options are for communities, as well as whether a binding international treaty is the ultimate tool to prevent human rights abuses by corporations.

Mark Hodge said that the Global Business Initiative on Human Rights is engaging with corporations on human rights issues to ask for accountability *and* prevention.

- Conflict zones are a particularly problematic when it comes to corporate accountability for human rights. Individual human rights defenders and journalists may face prosecution.
- One success is that the UK and US governments have created a shared standard for private military providers to manage the use of force.
- Corporations generally have an incredibly low understanding of human rights issues. Funders must find a way to engage with the corporations. It will limit us to ignore them.

Tricia Feeney Grylls discussed non-judicial mechanisms to hold corporations accountable.

- In 2007, Professor John Ruggie wrote an article in the American Journal of international Law where he took it upon himself to create global norms for corporations. He said that UN norms could provide NGOs with a powerful tool. Even if there are not yet enforcement mechanisms, it is important to have standards to which we hold corporations accountable.

- Professor Ruggie conducted a consultation with the 42 adhering governments to the Organisation for Economic Co-Operation and Development (OECD)'s Guidelines for Multinational Enterprises to discuss the potential role of the Guidelines.
- OECD guidelines are dedicated complaints mechanisms used to hold companies accountable, and the advantage is that they are government backed. Anyone, including trade unions and NGOs, can bring a complaint. The complaint mechanism is meant as a mediation tool and has provided an entry point into local groups to approach corporations.
- In the guiding principles, Ruggie and the consulting law firms put what they feel comfortable with. However, the human rights community is less comfortable with them, and a group of NGOs released a scathing report critiquing the guidelines to remedy and prevent abuses. There is little room for victims to hold the perpetrators accountable.
- We understand the difficulty of addressing economic power. Some of the corporate pushback is palpable, and the guidelines presented in 2008 are even weaker now.
- One of the benefits of these guidelines is that if the company has breached the guideline, the community can hold them accountable.

Ramón Cadena said one of the greatest challenges is holding corporations accountable when they threaten the human rights of the people.

- In Central America there is a strong need to hold corporations accountable for human rights judicially. In Guatemala, in Laguna de Tigre, a French-owned company that was able to renew its contract for 15 years in a protected natural area. The executive, constitutional and judicial systems approving the contract, violating international law and the constitution. CAFTA accepted this complaint from the community and charged the International Human Rights Commission to investigate if the state is responsible for wrong-doing.
- When a Canadian corporation violated the health of indigenous people in Guatemala, the community organized a public consultation and lobbied to reject the project. The state and corporation did not respect the decision of the people. The Inter-American Human Rights Commission charged the Human Rights Commission to investigate the state and find out if the Canadian company's mining operations were contaminating water.
- There is Spanish transnational corporation in Guatemala that charges high prices for electricity. The communities decided not to pay their electricity, and they connected it themselves. As a result, nine community leaders have been killed, and the state of Guatemala declared a period of emergency. However, the Office of the Prosecutor has not done anything to investigate the assassinations.
- Similar conflicts between indigenous people and corporations are occurring in other parts of the country. The people have a lack of access to justice and to information, and corporations act without respect for human rights. Furthermore, it is problematic that there are no national or global standard to hold them to.
- There is a broader perspective that includes the political point of view and sustained development, which should be incorporated into accountability of corporations. Reparation rights, rights to truth and justice, and criminal responsibility are basic requirements.

Carlos Lopez said we must use judicial means to protect human rights abuses by corporations.

- Procedural laws are cumbersome, obsolete and subject to abuse. Corporate lawyers use complex laws to avoid complaints.
- There are positive trends and opportunities. Civil and criminal law remedies can be very effective. In Latin America, India, South Africa, and others there is increasing acceptance of

criminal responsibility for companies, including pillage of the environment. There are a variety of ways to hold companies accountable, but this would be easier with global norms.

- Decision by appeals court in New York said that alien statutes don't apply to corporations. If there were international standards this might not have happened.
- In situations of armed conflict where corporations are complicit, does dialogue really make a difference when there is no legal framework? If people act against the corporation, the government calls them terrorists or Maoist groups. Tribal and minority groups may be involved in huge conflicts over natural resource extraction, and murdered by rebel groups.
- There are also ways to create pressure from civil society for corporations to be better actors. For example, Home Depot was shamed into using more recycled wood from customer campaigns, and universities signed onto a code of conduct so they got universities to buy apparel from factories using a living wage.

Tricia discussed her work with the World Bank and the OECD.

- Fair labor association has had a profound effect on laborers around the world. A number of companies obey a code of conduct and submit to random audits in their supply chain. This is one example where private initiatives have been better in rising standards than regulations.
- The US state department had an initiative before 2000 regarding governments training public and private security professionals around a code of conduct. This was utilized in Nigeria with Shell, and has prevented harm in many situations.
- However, asking corporations to be nice is not helpful. There is a high level of financial interests, and this is very powerful. We have to tackle problem from different angles.
- We need dialogue to understand responsibility of private sector entities and the national and public campaigns to facilitate these conversations. We can empower the communities through training or supporting their consultation process.
- This is also part of democracy. It is important to promote independence of judicial sector.
- We need binding rules. Within CAFTA, communities go to the national and regional system, such as the Inter-American Human Rights System.
- We can move into another chapter of trade agreements where the state pays for allowing corporate human rights abuses to occur. Companies will see this and act accordingly.
- OECD guidelines are not ideal, but it is important groundwork. If we look at Foreign Practices Act and Bribery legislation, we can see that when enforcement becomes apparent, corporations make changes. We should work to create a global standard with sector specific guidelines. We need to get to a point that fines are so great that corporations change.
- In one example, a company massacred groups of civilians, coordinating with a military force. The massacre happened a month after an agreement the company signed to follow the guidelines, but no penalty resulted. It would be easier to enforce with global standards.

One example of corporate wrongdoing described how a corporation dumped toxic waste on the coast of Cote d'Ivoire. As a result, 100,00 people required medical treatment. The citizens were sick from the smell, sixteen of the clean up crew died, and many people were poisoned.

- If there a reparations fund is created, it needs to involve local governance and local people. A liability fund supports the community when it faces long-term environmental impacts.
- How do we protect health and human security? The remedy has to be serious enough for a good actor is cheaper than being a bad actor. Larger systemic change is needed. Having an empowered community is the ultimate goal. Using the media is important.

In his closing statement, Carlos said though it's hard for a small grantmaker to fund this issue because some of the cases involve large amounts of money, there are solutions at the local level that can be effective. He recommends working with partners to build capacity in the community to bring cases to trial and build evidence.

Ramón Cadena said in closing statement that often corporations harass communities, protesters are criminalized, and the leaders are accused of being terrorists. We can combat this by using the press and supporting community organizations to protest. Having lawyers from affected communities is key.

Mark Hodge says corporate law firms have been a block to progress, but there are ways to help.

- There are many conflicts over corporate activity regarding local resources, such as water and land. We need to create an international treaty on water and land issues.
- Funders can invest in programs that build the capacity of state and civil society to implement the guiding principles.

