Centere for Labour and Social Studies (CLASS), Nepal
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Comments on the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework

Background:

It is important to understand the context which gave rise to this document in order to place it within the wider human rights debate, and what it means for the labour movement.

The document was endorsed on the 16th June 16, 2011 by the United Nations Human Rights Council, thereby making it the first corporate human rights responsibility initiative to be endorsed by the UN. However, the genesis of this document lay nearly 40 years prior when in the early 1970s, the UN Economic and Social Council requested the Secretary General to create a commission group to study the impact of transnational corporations on development processes and international relations. It had become clear then that these corporations were acting in ways which were detrimental to human rights in developing countries. So, in 1973, the UN created the Commission on Transnational Corporations with the goal of formulating a corporate code of conduct for TNCs. The group was dissolved in 1994 as it failed to agree on a code.

The second attempt at getting a global standard for business came in August 1998, when the UN Sub-Commission on the Promotion and Protection of Human Rights established a Working Group on Transnational Corporations. It completed the final draft of the *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* in 2003. However, this document was fiercely opposed by the business sector. In 2005, the UN Secretary General Kofi Annan appointed John Ruggie as the UN Special Representative for Business and Human Rights. He came up with the "Protect, Respect and Remedy" framework as a way to further the business and human rights debates in 2008. His mandate was extended by a further three years when the Human Rights Council asked Ruggie to provide concrete recommendations on how the state could prevent abuses by the private sector, to elaborate on the scope of corporate responsibility, and to explore options for effective remedies available to those whose human rights are impacted by corporate activities. Ruggie's work resulted in the *UN Guiding Principles on Business and Human Rights*, which he presented to the Human Rights Council in June 2011.

On June 16, 2011, the Human Rights Council established a working group of 5 members to focus on the global dissemination and implementation of the Guiding Principles. Under the guidance of the working group, the first Forum on Business and Human Rights took place on December 4–5, 2012, in Geneva, Switzerland with 1000 participants from over 80 countries. The second Forum is scheduled to take place between 2-4 December 2013, also in Geneva.

Comments:

1. A quick comparison between the earlier document *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (which was not adopted due to lack of support from some states and the corporate sector) and the finally adopted *Guiding Principles on Business and Human Rights* demonstrates very clearly the reluctance of states/businesses to accept the full articulation of human rights as spelled out in the International Bill of Human Rights. The earlier document very clearly articulates the responsibilities of corporations in terms of workers' rights:

D. Rights of workers

5. Transnational corporations and other business enterprises shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

6. Transnational corporations and other business enterprises shall respect the rights of children to be protected from economic exploitation as forbidden by the relevant international instruments and national legislation as well as international human rights and humanitarian law.

7. Transnational corporations and other business enterprises shall provide a safe and healthy working environment as set forth in relevant international instruments and national legislation as well as international human rights and humanitarian law.

8. Transnational corporations and other business enterprises shall provide workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.

9. Transnational corporations and other business enterprises shall ensure freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without distinction, previous authorization, or interference, for the protection of their employment interests and for other collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labour Organization.

Compare the above, with the Guiding Principle number 12:

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

In this regard, the Guiding Principles is a much weaker document than the earlier Norms as it does not clearly list out the human rights which businesses and states are obliged to protect, respect and remedy. Without outlining these human rights norms, the Guiding Principles are left without an authoritative interpretation of these Principles.

2. Another important issue to note, at least with regards to workers' rights, is the fact that there is no overarching accountability mechanism in the Guiding Principles themselves. Human rights is not just a set of vocabulary or principles, but a system that comes with its own infrastructure and enforcement mechanisms. It is not clear how the Guiding Principles fit within this infrastructure globally, as well as nationally. The strength of any human rights instrument is the potential for enforcement, whether it is realized or not. The Guiding Principle currently stands as a toothless tiger, and unless civil society organizations can engineer it into the enforcement infrastructure of the UN, it will remain a voluntary code to be ignored at leisure by both states and business.

3. In relation to this, the Guiding Principles are silent on what happens in the case when rights conflict with each other, or when states themselves are part of the problem in being complicit with businesses in violating rights.

4. While it can be argued that the Guiding Principles are yet another step forward in bringing greater attention to the need to adhere to human rights internationally, unless the labour movement takes up a key leadership position in the debate, the focus on workers' rights and violations of workers' rights *from the perspective of workers themselves*, will be lost. For instance, at the 1st Global Forum on Business and Human Rights, the presence of the ITUC was minimal. The only representative who was mentioned as a panellist was Wellington Chibebe, Deputy Secretary-General of the ITUC. The global trade union movement has to decide its positioning in terms of this Guiding Principle document, and the level and nature of its engagement with the Global Forum.

5. There is an opportunity for the labour movement to take the lead in ensuring that workers' issues are at the forefront of this Guiding Principles implementation by taking charge of the question of how outcomes are to be measured. If companies and states are to be held accountable for outcomes, and not just processes, what are the yardsticks by which these outcomes should be measured? Trade unions should be providing data and metrics for the human rights impact of business from the workers' perspectives, and detailing the right type of questions to be asked of companies and states.

6. This Guiding Principles document is relatively new, only adopted by the UN in mid 2011. The question for trade unions on the ground is whether this document is worth adopting as yet another instrument in bringing greater awareness of the need for businesses to adhere to human rights, and by default, workers' rights. There is definitely no awareness of the existence of this document amongst the majority of trade unions at the grassroots, and no forums held by businesses to publicise the existence of this document in Nepal.

Conclusion

The dialogue to promote and protect workers' rights is being held at many different levels, and in many different capacities. It is perhaps telling that this initiative to bring businesses into the human rights debate comes from the Office of the High Commissioner for Human Rights, as opposed to the International Labour Organisation, which one would presume would be the natural originator of such an effort. Is this a global signal that the ILO is not doing the job that it should be doing to protect workers' rights, such that other international actors have to step in to mitigate the excesses of the state and business? There was an overwhelming presence of other civil society organizations and businesses at the Global Forum, and minimal participation in panels by the ITUC (only one) and the ILO (only two). Where is the voice of workers in these platforms where their rights and livelihoods are being discussed?

The Guiding Principles is clear on the matter that businesses have an obligation to

> Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

This, in theory, means that businesses which are increasingly turning to outsourcing services, etc; are obliged to ensure that the contractors and sub-contractors adhere to respecting human rights. As noted above, without a regulatory and enforcement mechanism, this remains a voluntary code; which, if enforced, will have a major positive impact on workers.

There is one issue which will benefit Nepali workers if it can be further developed and enforced – that of the governance of multinational corporations and adherence to national labour laws. There are multinational corporations in Nepal which act in ways which would not be permissible in their countries of domicile. If the governments in the countries of domicile can act to prosecute these multinational corporations for committing or contributing to human rights abuses abroad, this will certainly impact positively on workers' rights in Nepal and other developing countries. Ruggie has noted that states can take a number of steps with extra-territorial effect that clearly fall within the current permissible scope of their jurisdiction. The fact now remains; will these states take these necessary steps?

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Comments Submitted by –

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