

Asian Civil Society Statement to U.N. Special Representative on Transnational Business and Human Rights at the Asia Regional Consultation

*Bangkok, Thailand
27 June 2006*

On June 26-27, 2006 in Bangkok, the U.N. Special Representative to the Secretary General on Transnational Business & Human Rights held a regional consultation with corporations, trade unions and local civil society groups.

Our organizations represent a variety of local interests various parts of Asia including India, Pakistan, Burma, China, Thailand, Malaysia, the Philippines, Indonesia, Australia, Singapore and Korea. While we differ in our languages, religious beliefs, cultures, and histories, we share a common and grave concern with the environmental and human rights abuses taking place throughout our region that can be linked to transnational business activity, particularly in the extractive industries sector.

We appreciate Professor Ruggie's efforts to invite some civil society groups from the region, and believe in the importance of the Special Representative's mandate and his sincere commitment to its realization. We do however; wish to raise a number of key points in relation to the consultation and Asia specific business and human rights issues.

First, Professor Ruggie's Asia Regional consultation has focused on "supply-chain" industries – secondary industries like manufacturing. This is an area that clearly experiences poor human rights and labour standards. We are encouraged to hear that a small number of innovative companies are moving beyond a code / monitoring driven approach, and implementing multi-stakeholder initiatives and capacity building programs. However, it is important that Professor Ruggie recognise that some of the worst human rights abuses are being caused or aided and abetted by multinational corporations throughout the region, in extractive industries such as mining, oil and gas production, as well as transnational corporations involved in the construction of large dams. Professor Ruggie Interim Report acknowledges the seriousness of human rights abuses in the extractive industry, and as such, it is disappointing that time was not devoted to this important topic during the Asian consultation.

We are specifically concerned with those transnational mining, hydroelectric, and oil and gas corporations who persist in doing business with Burma's military dictatorship despite their human rights record. These abuses include but are not limited to murder, forced relocation, forced labour, child labour, extra judicial killings, arbitrary imprisonment, rape, and other forms of torture as well as large scale deforestation, severe water pollution, and the depletion of endangered species. Companies who enter into business relationships with the Burmese military benefit greatly from these human rights abuses, committed in the name of business and development. Similar patterns of abuses are occurring alongside business developments in the mining sector in India where many communities have experienced serious violations of their human rights.

The extractive industry has the worst environmental impacts of any sector, and are also linked, in Burma as in many countries throughout Asia, with increased militarization, as the Burmese military is hired to provide 'security services' for various business projects. This militarization is the source of many of the worst human rights abuses in Burma. The impact of militarization that accompanies extractive industry development is disproportionately borne by indigenous peoples in our region as in the rest of the world. The views of indigenous groups should therefore be given special consideration in the consultation process.

In addition, Burma's military dictatorship gets almost much of its money from selling contracts to exploit natural resources. Without foreign direct investment, the dictatorship will face challenges to survive. Therefore, the unique role of multinational mining, hydroelectricity, and oil and gas companies in propping up Burma's military dictatorship presents a strong case for clear rules and strong enforcement, and merits special attention from the U.N. Special Representative.

Second, Professor Ruggie's approach in his second regional consultation has been to mainly look at the impacts of large, western (American or European) corporations doing business in Asia, usually in the supply-chain industries. Yet some of the worst human rights abuses are also being contributed to by Asian (Chinese, Thai, Korean, Japanese, Taiwanese and Indian) companies operating in here in Asia, but also throughout the world. This needs to be acknowledged as part of the business and human rights mandate.

Also, while some of these companies, such as Korea's Daewoo International, are very large, many of the projects we are concerned about involve smaller corporations or contractors. Not all human rights violators are big companies. Some are small, Asian transnational corporations. Professor Ruggie's recommendations to the U.N. Secretary General need to be shaped by this understanding. Any set of guidelines that is not responsive to the need for accountability for all enterprises and sub-contractors, large and small, across all sectors and regardless of location, will be seriously incomplete.

Third, Professor Ruggie has so far declined to commit to measures for more laws against corporate misconduct, strengthening of existing legal approaches, and much stronger mechanisms of corporate accountability. Dr. Ruggie has emphasized the need for clearer standards, enhanced civil society-corporate dialogue, and a continuation of voluntary mechanisms. While we support the importance of these measures, it is all too evident that the worst human rights violators are completely above the law, and resistant to calls for better human rights behaviour. Tough measures are urgently needed to get multinationals to think twice before doing business with dictators such as those in Burma.

Finally, Professor Ruggie's recommendations to the U.N. are only effective if they reflect the views, concerns, inputs, experiences, and knowledge of the whole range of affected parties, from corporations, trade unions, governments, communities and civil society organisations. For his recommendations to be useful and relevant, he needs to continue to hear from a range of civil society groups and local communities who are able to make positive and credible contributions, and raise legitimate concerns in the areas of business and human rights. We look forward to being involved in this important dialogue.

Questions remain unanswered as to how big companies can be held to account for complicity in the worst forms of Human Rights abuses and poor labour standards. In response, Asia civil society groups are seeking:

- A universal normative framework that provides clear, common standards that apply in all sectors in all countries that includes as a minimum but not sufficient standard, the existing international law standard forbidding aiding and abetting gross human rights abuses;
- Effective human rights obligations of states to ensure business does not infringe human rights;
- Further recognition of the applicability of international laws to private actors and responsibility of States to ensure business acts accordingly.

Asia civil society organisations strongly believe that the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (UN Norms), unlike many other codes, offer a model for a truly global standard that would

help companies' assess the compatibility of their activities with relevant human rights standards.

We do not share the concerns of the Special Representative with regards to the UN Norms themselves and his view that the debate creates confusion and distracts from the Special Representative of the Secretary-General's mandate and obscures best practice multi-stakeholder consensus initiatives.

This consultation has again highlighted that opinion is still divided, even amongst business as to the effectiveness of codes and their status in the ever changing corporate social responsibility and accountability framework. Yet there was consensus that codes and corporate social responsibility, in isolation, are inadequate to protect human rights and labour standards.

In this context, it is essential that the UN Norms, perhaps not in their current form, remain on the agenda of the UN. While we continue to strongly support the UN Norms, we would also strongly support any other form of "codification" of the global standards with regards to transnational corporations and human rights.

Signed:

1. Asia and Pacific Regional Organisation of Union Network International, Singapore
2. Asia Pacific Forum on Women, Law and Development, Thailand
3. Association of Progressive Labour, the Philippines
4. Brotherhood of St Laurence, Australia
5. Business Watch Indonesia
6. Civil Initiatives for Development and Peace, India
7. EarthRights International, Thailand/US
8. Fair Trade Alliance, Philippines
9. Human Rights Foundation of Monland, Burma
10. Institute of Contemporary Observation, China
11. International Confederation of Free Trade Unions- Asia Pacific Regional Organisation
12. Korean House for International Solidarity, Korea
13. Korean Public Interest Lawyers Group, Korea
14. Malaysian Trade Union Congress
15. mines, minerals and Peoples, India
16. Pakistan Institute of Labour Education & Research, Pakistan
17. Students and Scholars against Corporate Misbehavior, China
18. Trade Union Rights Centre, Indonesia
19. Urban Community Mission, Indonesia
20. WALHI/Friends of the Earth, Indonesia