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第 60/251 号决议的执行情况

人权与跨国公司和其他工商企业问题
秘书长特别代表的报告 *

增 编

人权政策与管理作法：
对政府和《财富》杂志所列全球 500 强公司
进行的问卷调查结果

* 本报告的内容提要以所有正式语文分发。载于内容提要附件中的报告本身仅以收到时的提交语文分发。

内 容 提 要

本报告概述了对秘书长特别代表进行的两项调查的答复：

- 一项调查要求各国确认在规范、裁定和以其他方式影响公司在人权方面的作用的现有做法；
- 一项调查要求《财富》杂志所列全球 500 强公司说明其人权政策和做法。

(a) 对各国的调查：由于回答率很低，无法对国家做法的模式得出任何坚实的结论，也无法确认最佳做法。然而，对于那些做出答复的国家来说，调查显示出以下结果：

- (一) 重点放在企业社会责任之上：大多数国家把重点放在企业社会责任之上，将人权考量与其他社会和环境问题纳入其中，而不是把重点专门放在人权之上。各国向企业界提供从总体上处理企业社会责任的工具与指导，各种政策与方案证明了这点；
- (二) 人权促进的各种方法：各国仅利用了现有可能方法中的少数方法来处理企业与人权问题。目前使用的方法有：自愿方案；经济合作与发展组织国家联络点(经合组织国家联络点)用于解决争端和进行协调；以及一些更加新颖的市场规则(譬如政府采购政策、出口信贷机构要求、证券交易所披露规则等)，以及刑法，这些法律大多由于缺乏治外法权而有局限性；
- (三) 贸易与投资条约：各国仍很少把具体的人权要求列入双边投资条约和自由贸易协定之中。欧洲联盟(欧盟)投资条约通过列入关于人权的语言，这是一个例外；
- (四) 人权影响评估：很少使用人权影响评估对于流入和流出投资进行筛选。即使政府出口信贷机构也很少以这些评估作为支助的条件；

- (五) 政府内部的协调：政府负责贸易和人权的部委之间缺乏协调。很少有政府给出了负责人权和贸易与投资的政府部门之间正规化的连续性协调实例；
- (六) 主要挑战：各国称，缺乏国际标准或一致同意的标准是就人权问题与公司交涉的一个主要挑战。
- (b) 对《财富》杂志所列全球 500 强公司的调查：要求公司确认：(一) 人权政策的吸收和人权事件的经历；(二) 政策与做法所涉及的权利；(三) 政策与做法所覆盖的利益攸关者；(四) 所参考的国际文书；(五) 利益攸关者的参与；以及(六) 报告和遵守监测系统或人权影响评估等问责机制。下文概述了完成调查的 102 家企业的答复：
- (一) 人权政策的吸收和人权事件的经历
- 大多数答复方报告说制订了人权政策和做法；
 - 北美企业比欧洲企业采纳此种政策和做法的可能性略低，尽管它们报告说面临着略多的重大人权事件指控；
 - 按部门分，采掘公司报告说发生人权事件几率比其他部门的几率高。
- (二) 政策与做法所涉及的权利
- 大多数公司在其政策中承认劳动方面的核心权利，其中包括不歧视、结社自由和集体谈判，以及禁止强迫劳动和童工；
 - 按地区分，美国企业比欧洲企业承认结社自由和集体谈判权的可能性略高。然而，在禁止强迫劳动和童工方面，情况正相反，承认这些禁令的欧洲企业比美国企业略多；
 - 在非劳工权利方面，承认生命、自由和人身安全权的欧洲公司领先，与美国公司相比，是其两倍多。此外，欧洲公司比美国公司更有可能承认健康权。
- (三) 政策与做法所覆盖的利益攸关者
- 公司报告说，其政策和做法覆盖以下群体，按比率从高到低依次排列为：雇员(99%)，其价值链中的供货商和

其他方(92.5%)，营业所在社区(71%)，营业所在国(63%)，以及包括顾客、利益攸关者和投资者等在内的其他方(24.7%)；

- 然而，按地区分，就覆盖率而言，美国公司所覆盖的营业所在社区和所在国的比率远低于欧洲公司。美国公司覆盖的社区的排名也低于日本公司，而日本公司将营业所在国列入公司政策和做法中不如其他地区的公司普遍。

(四) 所参考的国际文书

- 值得注意的是，25%的答复者不愿就它们是否参照国际文书作为指导这一问题。在做出答复的75%的公司中，提得最多的是国际劳工组织的宣言和公约，其次是《世界人权宣言》。所有采掘业公司都提到了该《宣言》。也提到了联合国《全球契约》和经合组织，分别占57%和41%。欧洲公司提到后两个资料来源的频率远高于北美公司。

(五) 利益攸关者的参与

- 80%以上的答复者称与外部的利益攸关者携手合作。按地区分，宣称这样做的欧洲和澳大利亚公司比美国公司略多，比起任何其他地区日本公司要少得多。

(六) 问责机制

- 大多数答复者有内部报告和遵守情况监测系统，几乎75%的企业采用外部报告机制。欧洲公司比美国公司更有可能参与外部报告机制，而日本公司在这一点上的得分远落后于所有地区；
- 三分之一的答复者说，它们例行对人权影响进行评估，少于一半的企业报告说它们偶尔为之。美国公司比欧洲公司稍更有可能把人权影响评估作为日常事务进行。采掘业、金融服务业、以及零售业和消费品公司比其他部门的公司更经常进行影响评估。

Annex

**REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL
ON THE ISSUE OF HUMAN RIGHTS AND TRANSNATIONAL CORPORATIONS
AND OTHER BUSINESS ENTERPRISES**

**HUMAN RIGHTS POLICIES AND MANAGEMENT PRACTICES:
RESULTS FROM QUESTIONNAIRE SURVEYS OF GOVERNMENTS
AND FORTUNE GLOBAL 500 FIRMS**

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Introduction

1. Resolution 2005/69 of the Human Rights Commission establishes the mandate of the Secretary-General's Special Representative (SRSG) on the issue of human rights and transnational corporations and other business enterprises.¹ Subparagraph (b) asks him to elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation; and subparagraph (e) to compile a compendium of best practices of States and transnational corporations and other business enterprises.
2. Doing so required the collection of new or additional information on the practices of governments and firms in relation to business and human rights. Accordingly, the SRSG sent a questionnaire to all Member States inviting Governments to provide him with the background information required to respond fully to these provisions of the mandate. Similarly, he conducted a survey of the Fortune Global 500 companies (FG500).
3. The present report summarizes the key laws, policies, and programmes described by responding States, as well as the key features of the human rights policies and management practices reported by companies.

I. STATE SURVEY

Background

4. The SRSG's mandate to elaborate on the role of States addresses a fundamental aspect of the business and human rights nexus. As the SRSG's Interim report (A/HRC/4/035) highlights, States have a duty to protect against human rights abuses by third parties, including corporations.
5. The questionnaire surveyed a range of policy options including: the use of economic regulations and incentives to support human rights; the inclusion of human rights standards in treaties and international agreements; investigation of potential violations; capacity to adjudicate and punish extraterritorial violators; promotion of human rights tools and best practices; and coordination around the issue of corporations and human rights. Finally, the report addresses what States believe their role should be regarding business and human rights, as well as the key obstacles to fulfilling those obligations.
6. It is possible that there are other means being used by States to address business and human rights about which the survey did not inquire. Also, because of the very low response rate, the survey may not have uncovered policies and laws that non-responding States may utilize.

¹ The SRSG now reports to the United Nations Human Rights Council.

7. The responding States are: Bahrain, Belgium, Bosnia and Herzegovina, Canada, Chile, Colombia, Croatia, Cyprus, Ecuador, Finland, France, Germany, Guatemala, Honduras, Italy, Japan, Jordan, Lebanon, Mexico, Netherlands, Poland, Portugal, Romania, Rwanda, Spain, Sweden, Switzerland, Tunisia, and the United Kingdom.

Methodology

8. Of the 192 Member States of the United Nations, 29 answered the questionnaire, which represents a response rate of 15 per cent. The corresponding response rate to the FG500 survey was 20 per cent. The geographic distribution of the responding countries is as follows: Western Europe and North America: 13 (45 per cent of total responses); Latin America: 6 (21 per cent); Asia: 4 (14 per cent); Eastern Europe: 4 (14 per cent); Africa: 2 (7 per cent).

9. The percentages in this study are based on the 29 responding States, independent of the number of States that answer each question. Questions have been grouped according to whether they involve economic regulation, prosecution, or other governmental human rights promotion.

10. Care should be taken in interpreting the results. Percentages given are rounded and thus approximate. The low overall response rate, as well as the unequal geographic and regional distribution of the responding countries, makes the sample size very small and not necessarily representative of practices around the world. Also, some countries only responded to a few questions, or answered in extremely vague terms to some questions. For example, the response rate per question shows large differences between States: three countries did not answer any question specifically, only providing general comments regarding their point of view on the theme of business and human rights and very basic information on their policies. One country answered only three out of the thirteen questions and another State provided only four answers.² The remaining countries provided ten or more responses. This lack of uniformity, when combined with the already low response rate, makes the results difficult to interpret.³

² Question 14, in which Member States were asked to supply any additional information that they believe to be relevant to the SRSG's mandate that has not been taken into account for these purposes.

³ For instance, Question 3 (whether any of their agreements relating to or affecting the activities of TNCs and other business enterprises include human rights provisions) and Question 6 (whether the national legal system allows for the prosecution of legal persons) were answered by 21 States. By comparison only 14 answered Question 9 (what are the main obstacles to effective implementation of laws, policies, measures or practices with regard to TNCs and other business enterprises and human rights) and Question 13 (what should be the role of governments on the issue of human rights and TNCs and other business enterprises). The remaining questions were answered quite uniformly with an average of 18 States responding.

Survey findings

Using the market to regulate, encourage, and adjudicate

Regulation and adjudication via investment requirements

Does your Government have specific programmes, projects, measures or policies aimed at effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, either for investments into your territory, or investments by national companies into other countries? If so, please indicate briefly what they are.

11. The first question asks whether Member States regulate and adjudicate the actions of corporations in the realm of human rights as an element of their investment policies. The question takes into account both inflows and outflows of investment. It considers legal requirements as well as incentive policies. Twenty-seven States respond to this question, although replies were not always specific.

12. The analysis of the responses shows that very few States have programmes, projects, measures or policies that are *specifically and expressly* focused on human rights. Instead, they focus on Corporate Social Responsibility (CSR). Some also discuss criminal and civil liability.

Voluntary CSR Programmes

13. Approximately 40 per cent of respondents refer to their voluntary programmes or projects addressing human rights within the broad framework of CSR. These include programmes at the international and national level. Thirty per cent give responses indicating that they have only started to implement such measures. Approximately twenty per cent of respondents have not implemented any kind of program, project or measures. Ten per cent did not answer the question.

14. Some States discuss the instruments upon which their non-legal policies and programmes are based. Most frequently cited are international soft law instruments such as the OECD Guidelines for Multilateral Enterprises (30 per cent) and the ILO instruments (10 per cent).⁴ Other instruments are cited at lower rates, with the Global Compact at 10 per cent. Additional standards such as the Social Accountability 8000 (SA8000) are rarely cited.

Regulatory measures

15. A few States mention innovative regulatory measures. One example is social standards for public procurement. Three countries require companies, including some pension funds, to report on social, environmental, or ethical considerations.

⁴ Including the *ILO Declaration of Fundamental Principles and Rights at Work* (June 18, 1998); the *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (1977); and the *Factory Improvement Programme*.

16. Some States note that they have not instituted specific measures for transnational corporations because their constitutions or domestic laws have incorporated human rights norms and apply to all those investing in the country.

Do your export and foreign investment promotion policies include specific human rights provisions?

17. This question focuses more narrowly on out-going investment policies, including export promotion policies. All but five States responded to the question. Just 5 per cent have specific human rights conditions in their investment promotion policies that they apply all of the time. Almost 20 per cent did not answer the question. More than 15 per cent state that they apply such provisions most of the time. Thirty per cent have general provisions that refer to CSR, but not human rights specifically. Another 30 per cent have no such policy at all. These figures demonstrate that few States have specific and formal outgoing investment programmes, projects, measures or policies that are specifically devoted to human rights.

18. Five States apply human rights or CSR standards to enterprises taking advantage of their export and foreign investment support. For example, one country requires companies to declare that they are familiar with CSR instruments such as the OECD Guidelines and that they will strive to comply with them. Financial support can be denied for projects that, for example, would violate basic labour standards, including ILO fundamental labour standards.

19. Another State requires projects receiving government export credits to respect the World Bank's provisions on involuntary resettlement and indigenous peoples, along with other World Bank safeguards.

20. Yet another State has developed a special law under which certain enterprises wishing to receive government credit to invest in developing countries must respect local health and safety regulations and certain ILO conventions.

21. Three countries discuss special export requirements that are related to human rights. These requirements are applied to the export of military material or goods of dual use, or projects expected to have a particularly high impact on human rights. The governments consider the overall impact of the project on human rights, often including the human rights conditions in the receiving country.

Are human rights impact assessments required or encouraged [in export and foreign investment promotion policies]? In the case of incoming investments, do your national policies (as a receiving country) require or encourage the undertaking of human rights impact assessments?

22. The first question above raises the specific question of whether human rights assessments are required or encouraged for outward investment, e.g. export and foreign investment promotion policies. This question receives the lowest rate of responses: nearly 75 per cent did not answer. Ten per cent require human rights assessments in very specific cases. Almost 20 per cent do not require any assessment for export and foreign investment promotion policies.

23. No responding country requires human rights impact assessments for incoming investments (the second question above). However, one has a de facto requirement that it is transforming into a written policy. Nearly 40 per cent encourage the undertaking of informal impact assessments that include human rights considerations. Forty per cent have no policy. Twenty per cent did not answer the question.

24. Some countries note that all investors, including inward investors, are subject to national laws that incorporate human rights. Their responses imply that, as a result, human rights impact assessments are less necessary.

Do any of your policies or projects include specific incentives to encourage transnational corporations and other business enterprises to respect and promote human rights in and through their activities domestically or abroad?

Promotion of human rights via financial and other incentives

25. The survey also questions whether States use incentives to promote corporate adherence to human rights. States generally do not respond with details about specific incentive schemes. Instead, they respond with general answers, such as whether they think they play an active role in promoting human rights in the business context.

26. One quarter of the respondents did not answer the question. Almost 30 per cent indicate that they do not play any role in this area. Around 35 per cent promote human rights in the context of CSR, some more actively than others. Fewer than 10 per cent indicate that their policies and practices include incentives designed specifically to promote human rights.

27. The following are among the incentives utilized:

- Some countries have public procurement policies favouring companies that respect social and environmental norms.
- The human rights and CSR requirements of export credit agencies, discussed in the context of an earlier question, also help create incentives for companies to adhere to human rights when operating abroad.
- One State previously provided funding to businesses that qualified for inclusion in a corporate responsibility index.⁵
- Several countries give awards to managers who show commitment to CSR and human rights issues. These rewards include indirect political incentives such as references in ministerial speeches, access to ministers, and invitations to accompany ministers on international visits and to government hosted events.

⁵ The policy has been discontinued since 2005.

Promoting human rights via economic treaties

Do any of your bilateral or other agreements relating to or affecting the activities of transnational corporations and other business enterprises, such as free trade agreements or bilateral investment treaties, include specific human rights provisions?

28. The questionnaire seeks to identify whether States promote human rights via bilateral investment treaties and related agreements, in contrast to earlier questions that focused on domestic regulation.

29. Fewer than 10 per cent of States consistently include human rights provisions in both their bilateral and multilateral treaties or in trade or investment agreements. The majority of the responding States (50 per cent) make references to human rights in some of the agreements they sign with third parties, but not systematically. Nearly 30 per cent do not. Almost 15 per cent did not answer the question.

Bilateral treaties

30. At the bilateral level, a few States include provisions that encompass human rights in investment and trade agreements. However, the human rights provisions often are only in the preamble. They are also formulated in very general terms. In combination, this limits their legal weight. In some cases, the provisions are limited to or focus on specific rights, usually labour rights. Finally, some bilateral treaties mention international standards such as the OECD Guidelines or ILO Conventions.

EU treaties and agreements

31. More than 30 per cent of the respondents declare that the economic treaties formed by multilateral institutions on their behalf include a specific human rights provision. This relatively high level of positive responses is due to the fact that a large proportion of respondents (45 per cent) are European Union (EU) members.

32. The EU framework demonstrates the potential for a multilateral institution to recognize and promote human rights in trade or investment agreements. Human rights clauses have systematically been included in trade agreements between the EU and third countries since 1995.⁶ As was the case for the bilateral treaties, these provisions are frequently included in the preamble section. However, several States mention that even though the provisions are included in the preamble, in some cases they can be used as a basis for temporary suspensions of trade benefits and development cooperation.

33. Further, human rights clauses are included as a main provision of some EU treaties. For example, clauses on the promotion and protection of human rights are included in the main text of the 2000 Cotonou Agreement (revised 2005), a trade and development treaty concluded between the EU and 77 Asian, Caribbean, and Pacific Group of States. The main body of the

⁶ *Promotion of Human Rights and Democratisation in the European Union's External Relations*, available at http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm#6

treaty notes that human rights are an “essential element”. When a country is in serious violation of human rights, Cotonou provides for a dialogue with that country. If this does not result in improvement, the EU may engage in “appropriate measures” including sanctions, suspension of direct aid, suspension of development projects, and modification of existing trade preferences.⁷ These are to be stopped as soon as the reasons for taking them have disappeared.⁸

34. These human rights-related treaty clauses provide potential templates for the future development of trade and investment treaties. However, States do not speak to the effectiveness of these special provisions in their responses, so further research is needed to determine their efficacy.

Investigating, adjudicating, and punishing alleged violations

Does your national legal system allow for the prosecution of legal persons accused of committing or participating in human rights violations committed domestically and/or abroad?

35. This question examined whether States can prosecute cases involving corporate abuse of human rights that occurs domestically or overseas. Nearly 30 per cent of responding States have a national legal system permitting the prosecution of legal persons, and enable extraterritorial jurisdiction over human rights violations committed overseas.⁹ Most of these countries allow for direct legal liability of legal entities. This means that they can prosecute corporations for human rights violations committed extraterritorially.

36. Around 30 per cent of countries note that their criminal codes allow for direct liability of legal entities but do not provide for extraterritorial jurisdiction, so they can only prosecute domestic crimes. Approximately 35 per cent do not have laws providing for liability for legal persons at all. Ten per cent did not respond to the question.

37. States that apply the principle of extraterritoriality generally limit it to specific conditions that are in accordance with international law. For example, they may require a link between the country of origin and the offence. Others base extraterritorial jurisdiction on principles of

⁷ One country cites *The Social Dimension of Globalization - the EU's policy on extending benefits to all* (May 2004), available at: http://ec.europa.eu/employment_social/international_cooperation/globalisation_front_en.htm

⁸ Cotonou Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its member States, of the Other Part, art. 96 (2000, revised 2005).

⁹ In some cases, the criminal liability of legal persons is still quite recent; for instance, one European country first allowed such prosecutions in 1999.

universal jurisdiction found in their penal codes or statutes. Under these laws, prosecution may proceed for international crimes regardless of where the acts took place, including terrorist acts, torture, genocide, crimes against humanity, and war crimes committed by public officials.

38. Three countries explicitly underline that States have a duty to apply human rights norms to both foreign and domestic corporations. They perceive this as part of the primary responsibility of States to respect, protect and promote human rights. This includes ratifying and implementing international instruments. To fulfil this responsibility, respondents mention legal measures they have taken at the national level to create a cause of action that ensures human rights such as the right to freedom of assembly and association or the right to freedom of thought.

39. In contrast, from the perspective some States that do not allow for prosecution of legal entities such as corporations, non-State actors cannot be held responsible for human rights violations, since human rights only regulate the relationship between the State and the individual. These States mention one exception. In cases of terrorist acts or acts relating to the security of the state, which may encompass human rights violations, national companies can be prosecuted abroad.

Does your Government provide any national procedure(s) (e.g. administrative procedure, investigation procedure, OECD national focal point etc) to respond to alleged participation of a company in a human rights violation? If so, please describe the provisions briefly.

40. This question explores State adherence to the duty to investigate alleged human rights violations. Six countries did not respond. Several responses mention legal measures. Nearly one quarter of the respondents have established a formal, non-legal procedure to respond to alleged human rights violations by companies. Thirty-five per cent implement an informal and non-systematic national procedure. Roughly 20 per cent do not provide any such mechanism. And almost one quarter did not answer the question.

41. Several States answer with details regarding their national criminal and civil laws and related investigation procedures. For example, in one State, official human rights defenders appointed by the government can investigate any accusation of a human rights violation by a natural or juridical person. Another State notes that a wide variety of individuals and government figures have standing to raise a case regarding collective rights, such as the right to public safety and environmental health. Such a case takes precedence over other cases pending in the court system. Finally, some States provide special administrative procedures to protect labour rights.

Non-legal mechanisms, including National Contact Points (NCPs)

42. State responses emphasize the role of the OECD NCPs, both regarding NCP investigatory powers and their coordination capacities (discussed later). The frequency of this response reflects the high percent of OECD respondents to the survey. Some non-OECD countries also implement the OECD Guidelines' NCP mechanism.¹⁰ The frequent references to

¹⁰ Adherents include all 30 OECD countries and Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia.

NCPs suggest that in the eyes of governments signing onto the OECD Guidelines, the NCPs play an important quasi-legal role. Of course, most non-OECD countries do not have NCPs, raising the question of what other mechanisms, legal and non-legal, could be used in their place.

43. NCP pronouncements regarding a specific instance have no legal force. The survey results indicate that governments thus far have not linked NCP conclusions to export credits or other government benefits, which would give them more weight.

Providing tools to facilitate corporate respect for human rights

Does your Government provide guidelines, best practices, advice or other tools related to human rights to companies operating within your jurisdiction, or to companies domiciled within your jurisdiction?

44. This question considers whether States seek to improve corporate human rights performance by providing tools and delineating best practices. No countries have created new tools that are solely related to human rights. However, some countries (20 per cent) have elaborated new guidelines, best practices, and advice in the field of CSR but not human rights specifically. Thirty per cent are only somewhat active in the field of CSR and human rights, engaging in information dissemination rather than developing new tools. Twenty-five per cent have not yet implemented any tools, either in the field of business and human rights or in CSR. Another 25 per cent did not answer the question.

45. The following are examples of the types of tools and resources States provide, ranging from simple information dissemination to the development of new tools and standards:¹¹

Information dissemination and advice

- Publication of information on NCPs, the OECD Guidelines, Global Compact, and other mechanisms and standards on official websites; translation of this information into national languages;
- Sharing of information with other Ministries, State bodies and with the business community;
- Dissemination of information by embassies, diplomatic missions or a special information service to national companies abroad about situations in which they run the risk of becoming involved in illegal or shady practices;
- Creation of a knowledge centre for CSR promotion in order to raise awareness, disseminate CSR know-how, foster CSR partnerships, and allow stakeholder dialogue;

¹¹ In this section, participation in the development or promotion of international instruments is not taken into consideration.

- Provision of advice by the body in charge of coordinating the National Global Compact Network on how to implement the ten Global Compact principles.

Provision of specific guidance tools:

- Guidance on the OECD Guidelines provided by the NCP in cooperation with other stakeholders to enhance uptake of good operating methods and practices by domestic companies;
- Guidelines for specific sectors, such as the extractive sector, that include basic recommendations on how to develop a report;
- Guides providing information, advice, and best practices to TNCs and other business enterprises about CSR.¹²

Supporting advocacy/promotional activities at the national level:

- Organization of seminars, conferences, working meetings, thematic forums and training sessions concerning the implementation of international instruments and measures;
- Encouragement of trade unions and NGOs to be more proactive in using the NCP system to hold companies accountable.

Coordinating nationally and internationally

Does your Government have procedures to ensure coordination between the units responsible for human rights and for investment and trade promotion, either for investments and trade into your territory, or investments and trade by national companies into other countries?

46. This question asked if States have a procedure to ensure coordination between the units responsible for human rights and those responsible for investment and trade promotion. The results show that fewer than 10 per cent of States have a formal process. The majority of respondents (50 per cent) acknowledge playing either a very limited role in this area or not playing any coordination role. Just over 20 per cent mention informal and sporadic interactions among stakeholders active in this field. Almost 25 per cent did not answer the question.

47. Apart from NCPs and export credit agencies, discussed below, some States note their mainstreaming approach to human rights, under which human rights are to be considered by all departments. In some cases, States indicate that this reduced the need for formal coordination. In a more proactive approach, another country has appointed an ambassador in charge of promoting the human rights aspects of CSR among national entrepreneurs. This person serves as a focal point for national government policy towards civil society and the business community.

¹² Such as a CSR Implementation Guide for Business or Examples of National CSR Best Practices.

The coordinating role of NCPs

48. The countries that do provide a formalized procedure for coordination around business and human rights or CSR do so in a number of ways. Most countries that have a coordination mechanism discuss the roles of their NCPs, although some also mention export credit agencies and special “ambassadors” assigned to the issue.

49. The composition and role of the NCP differs from one country to another. In some cases, the NCP is an individual, while in other countries the NCP is an entity including diverse members. One country uses a quadripartite organ, composed of government representatives (seven ministers, including the Ministry of Foreign Affairs and Ministry of Finance), business enterprises, trade organizations, and NGOs. This organ has a clearly defined programme and objectives.

50. In four countries the coordination role of the NCP is reinforced by additional measures, such as the systematic organization of periodic meetings between different governmental units in charge of human rights (often part of the Foreign Ministry), and economic and/or trade affairs.¹³ NGOs are sometimes included.

Export credit agencies

51. Another governmental body mentioned as playing an important coordinating role is the export credit guarantee department or agency. In some cases, the department has a statutory requirement to take wider political issues into consideration. Three respondents note that this translates to an obligation to conduct a round of consultations with government departments before deciding whether or not to provide guarantees to domestic exporters to places where human rights enforcement is limited. Also, two countries require governmental coordination before deciding to prohibit exports to specific countries recognised as being systemic and large-scale violators of human rights. In one instance, the export credit agency and foreign affairs ministries signed a memorandum of understanding to share human rights information.

Does your Government support or otherwise engage in national or international initiatives on the issue of human rights and transnational corporations and other business enterprises? Please describe briefly.

52. Approximately half of the responding countries engage in international and domestic initiatives related to businesses and human rights or CSR. Domestic initiatives include multi-stakeholder policy roundtables, hearings on free trade agreements and their impact on human rights, official CSR forums and institutes, and government-sponsored partnerships to encourage national companies to act responsibly abroad. Regarding international initiatives, many countries cite their participation in the OECD Guidelines and related machinery, the ILO system, the Global Compact, the United Nations, and the EU high-level working group on

¹³ In one country, less formalized coordination between the human rights units of the Development Aid Ministry and Economic Affairs Ministry led to CSR criteria being applied to State financial support for outward investment.

CSR.¹⁴ Three countries note their work in the drafting of the ISO 26000 standards for social responsibility. Some also remark on their participation in initiatives such as the Voluntary Principles, EITI, and Kimberley Process.

Research on business and human rights

Has your Government undertaken any studies of the impact of the activities of transnational corporations and other business enterprises on human rights? If so, please provide a brief summary or link.

53. One quarter of the responding States have undertaken studies relevant to the impact of transnational corporations on human rights. Research projects include studies on the link between the oil industry and human rights violations in conflict areas, and the impact of free trade agreements on human rights. Other studies focus less directly on impacts and more on the standards by which to judge them. For example, one government supported research into problems of impunity in zones of conflict and clarification of legal issues surrounding corporate complicity. Another commissioned research on the role of temporary workers and issued a report on managing risks of instability and crisis.¹⁵

Best role for Government and obstacles

If your Government has any such laws, policies, measures or practices with regard to transnational corporations and other business enterprises and human rights, what are the main obstacles to effective implementation, if any?

54. According to the States responses, the effective implementation of laws, policies, measures or practices in the field of business and human rights often is hindered by several types of obstacles, including:

At the multilateral level:

- The non-existence or underdevelopment of an international and multilateral framework in the field of business and human rights;
- The absence of an internationally recognized body specialized in monitoring and reporting on human rights violations by TNCs and other business enterprises;
- The lack of mutual legal assistance or the exchange of information in cases of inquiries or extradition processes between States;

¹⁴ The OECD Guidelines were referenced most frequently, with approximately 40 per cent of those involved with international initiatives citing their participation.

¹⁵ One government is also likely to fund a project assessing the Global Compact's impact on improving business standards amongst member companies.

- The uneven playing field in this area, resulting in very different national laws and regulations governing human rights violations by TNCs and other business enterprises.

At the national level:

- The non-application of the extraterritoriality principle by certain countries;
- The difficulty in reaching small and medium enterprises because of time constraints and lack of resources, making it challenging for them to implement complex concepts such as CSR;
- The lack of useful information and best practices available to TNCs and other business enterprises to help them better respect human rights.

What should be the role of governments on the issue of human rights and transnational corporations and other business enterprises (for example, regulator, provider of incentives, provider of remedies, and so on - give examples)?

55. This final question was aimed at identifying the role that governments see for themselves on the issue of business and human rights. Respondents mention two principal roles that States should play in the context of human rights and TNCs and other business enterprises:

- Promotion of CSR: 11 countries cite the promotion of CSR as the primary role of States on the issue of human rights and business enterprises. Among them, only four expressly mention that States can play a role specifically in the field of business and human rights, as opposed to CSR as a whole.
- Implementation of international norms: 14 of the 19 States responding to this question expressly recognize the role of States as the enforcer of national and international laws in the general framework of human rights. Among them, five expressly mention the duty for States to prosecute TNCs and other business enterprises where criminal law is violated. Despite concerns expressed in response to other survey questions regarding the lack of international standards, only one country suggests that States should play a role in favour of the creation of an international legal framework in the field of business and human rights.

56. It appears that from the perspective of the respondents, States should provide and promote guidelines, best practices, and other tools in order to promote CSR. States also should act as an enforcer of international and national laws in the field of human rights. Furthermore, in

the quasi-legal framework, two countries argue that States should play a mediation role by solving disputes between stakeholders, notably between private companies, civil society, and/or government bodies.

Concluding observations

57. This questionnaire sought to identify the practices, tools, and policies States have developed in the field of business and human rights. The questionnaire focuses on economic regulations and policies that incorporate human rights requirements and incentives; bilateral and international agreements that include human rights provisions; investigation and adjudication of alleged violations by corporate actors; the provision of tools and best practices for companies; and the role of government in coordinating around the issue of business and human rights. The low response rate means that the results of the survey may not be representative. It also may mean that despite the importance that many States claim to place on the issue, very few have acted upon their political commitments. Nonetheless, some patterns emerge.

58. Virtually all responding States play a role in the field of business and human rights. However, the programmes, policies, projects, and measures they have implemented typically are not focused on human rights specifically but part of the more general concept of CSR.

59. Of the international instruments States use to regulate the role of TNCs and other business enterprises with regard to human rights, the OECD Guidelines are the most frequently cited. This is perhaps due to the large percentage of respondents that are OECD members. Many of these States note the role the NCP plays in coordinating government organs responsible for the promotion of human rights and those in charge of the promotion of trade and investments. The NCP also is a major means by which States respond to alleged corporate infringements on human rights.

60. The use of human rights provisions in bilateral trade and investment treaties is quite limited, although EU trade and investment treaties now systematically incorporate human rights. Even in the EU framework, human rights clauses are often included only in the preambles of agreements, making their legal enforceability questionable.

61. States rarely have human rights provisions in their export and foreign investment promotion policies, nor their policies for incoming investments. However, the export of specific items such as military goods is subject to restrictive conditions based on human rights conditions in the receiving country.

62. States are only somewhat active in their capacity to provide tools and best practices to promote human rights in business activities. Interestingly, while many States claim that one of their main roles in this area is to promote human rights by providing guidelines, best practices and related tools to TNCs and other business enterprises, few are highly active in doing so.

63. Only around 30 per cent of the responding countries have a national legal system that allows for the prosecution of legal persons accused of human violations committed domestically or extraterritorially. In addition, extraterritorial jurisdiction is applicable in several countries

only under strict conditions. Moreover, several respondents hold the view that non-State actors cannot be held responsible for human rights violations at all, since promotion and protection of human rights are strictly a State duty.

64. In sum, States are engaged in some regulation and enforcement of human rights in the context of business, most notably to address the most egregious violations. However, they focus more on CSR instead of addressing human rights specifically. They also have not come close to fully utilizing the palette of legal requirements, regulatory incentives, and voluntary promotional activities available to them.

II. FORTUNE GLOBAL 500 SURVEY RESULTS

Introduction

65. It is often said that human rights, unlike other areas of corporate responsibility, remain somewhat mysterious for business, that corporations don't fully know what is expected of them. A number of related factors could account for this state of affairs. Apart from workplace issues, human rights until recently were seen as the exclusive domain of States, and no universally agreed framework of international human rights standards yet exists that applies to companies, whether on a voluntary or mandatory basis. Beyond compliance with national laws, therefore, business policies and practices in the area of human rights remain largely voluntary, inevitably leading to differential rates of uptake and levels of performance. Lastly, the expansive claims made by some in the advocacy community for the status and direct reach of international human rights law vis-à-vis business can create confusion and defensiveness on the part of companies, which may discourage them from experimenting with novel issues and approaches.

66. Nevertheless, the SRSG's survey of the Global Fortune 500 firms indicates that the discourse of human rights is gaining recognition in the corporate arena. The leading global companies report having core elements of human rights policies or management practices in place. They encompass a spectrum of rights, are generally informed by international human rights instruments, exhibit relatively systematic patterns across countries and regions, and include several basic voluntary accountability mechanisms. At the same time, however, aspects of these policies and practices also raise issues of concern that merit further discussion and improvement.

Methodology

67. The Fortune Global 500 are the world's largest firms by revenue.¹⁶ In 2005, more than 450 of them were headquartered in the United States (176), Europe (195), and Japan (80). The survey instrument required the companies to visit a secure website and respond to the questionnaire (available in English only) online. For approximately 300 companies, the SRSG sent e-mail requests to specific individuals within the companies who had been identified as the appropriate points of contact by a combination of the International Organization of Employers

¹⁶ List of FG500 firms by revenue available at: <http://money.cnn.com/magazines/fortune/global500/2005/index.html>

(IOE), International Chamber of Commerce (ICC), International Business Leaders Forum (IBLF), and Business for Social Responsibility (BSR), all of which cooperated with the SRSG in conducting the survey.¹⁷ For another 50 or so companies, IBLF and BSR, after additional research, were able to suggest possible contact points. But for the remainder the SRSG had to send letters to the companies' chief executive officers requesting that an appropriate official be asked to respond. This included a large fraction of the Asian companies, especially non-Japanese, as well as Latin American firms.¹⁸

68. A total of 102 companies completed the questionnaire, a relatively good response rate for an online survey. It was even higher among firms for which specific contact information were obtained. Nevertheless, just like the results of the State survey, care should be taken in interpreting the results. The low overall response rate, as well as the unequal geographic and regional distribution of the responding companies, makes the sample size small and not necessarily representative of practices around the world. Thus, the responses reflect possible sampling biases that should be borne in mind in interpreting the results.

69. Very few companies contacted by letter to the CEO responded to the survey. Thus, we have no results from the 48 FG500 Asian firms beyond Japan and Australia, and none from the five Latin American firms. In addition, the Japanese response rate was relatively low at 11 per cent. Therefore, we do not know the extent to which the overall findings can be generalized to these underrepresented firms. To obtain better regional coverage, the SRSG's Harvard research team collated information on nearly 300 companies, not limited to the FG500 and based on sources in multiple languages.¹⁹

70. In addition, it may well be the case that companies with human rights policies and management practices responded to the survey at a higher rate than those that don't. If so, the results would be descriptive of the leading firms' activities rather than average performers. On prudential grounds, therefore, care should be taken in interpreting the results not to over-generalize from the absolute numeric value of any given response, and comparisons within the sample similarly should focus on relative orders of magnitude.

¹⁷ Additional names were provided by the Business and Human Rights Seminar Ltd., and Canadian Business for Social Responsibility.

¹⁸ The project was managed by IBLF, in cooperation with the Mossavar-Rahmani Center for Business and Government at Harvard's Kennedy School of Government. Special thanks are due to Lucy Amis of the IBLF, the project manager, and to the Friedrich Ebert Stiftung for funding it.

¹⁹ *Business Recognition of Human Rights: Global Patterns, Regional and Sectoral Variations*, A/HRC/4/035/Add.4.

Summary of responses

71. This section summarizes the survey's overall results, and indicates where and how these patterns varied depending on companies' home region or industry sector.²⁰

Policy uptake

72. Almost all respondents - nine out of ten - report having an explicit set of human rights principles or management practices in place. At the same time, fewer than half overall say they have experienced "a significant human rights issue" themselves. This substantial differential suggests that the majority of companies adopted their human rights policy or practices for reasons other than immediate necessity - in response to some embarrassing revelation, say - and that policy innovation and diffusion clearly also drive their uptake of human rights concerns.

73. There are some regional and sectoral differences. North-American firms are slightly less likely than Europeans to have adopted human rights policies or practices, even though proportionately they were somewhat more likely to have experienced a significant human rights issue. And firms in the extractive industries report having experienced a human rights incident at a higher rate than the others - while every respondent in this sector also says it has human rights policies and practices in place, perhaps reflecting recent efforts by the International Council on Metals and Mining to promote these steps among their member companies in the mining industry.

74. Almost all companies that report having human rights policies include them in their overall corporate code of conduct; only four out of ten respondents indicate having a freestanding human rights protocol. There is no significant regional or sectoral variation on this dimension.

75. Roughly two thirds of the respondents in the retail and consumer products sectors as well as in the extractive industries report that they also take human rights factors into account in project risk assessments - the former presumably concerning sourcing issues, and the latter in relation to the communities affected by their proposed operations.

Which Rights?

76. What areas of human rights do firms recognize in their policies and/or management practices? All respondents, irrespective of region or sector, include non-discrimination, by which at minimum they mean recruitment and promotion based on merit, not on race, gender, religion or other such factors. Workplace health and safety standards are cited almost as frequently and widely.

²⁰ For the purposes of this discussion, companies headquartered in European countries were grouped into a single category; this includes the sole Russian respondent. The three Canadian respondents did not differ appreciably from United States-based firms and thus were combined with them. Japanese and Australian firms were sufficiently different in some of their responses to keep them distinct rather than creating an Asia-Pacific cluster.

77. Freedom of association and collective bargaining is included by 87 per cent of respondents overall. They are cited by every respondent in the extractive industries, and by United States firms more frequently than European.

78. Forced, bonded or compulsory labour together with child labour is the next most-frequently referenced area - by eight out of ten overall, somewhat more often by European than American firms. But European firms are more than twice as likely as their American counterparts to recognize the right to life, liberty and security of the person - despite the growing number of Alien Torts Statute cases that have been brought against United States firms for alleged violations of these rights.

79. Three out of four respondents indicate that they recognize a right to privacy; there is little regional variation but some differences across sectors (highest in financial services, lowest among retailers and manufacturers of consumer products).

80. European companies are more likely to recognize a right to health than their United States counterparts, and the same is true for rights to an adequate standard of living. In neither case, however, is the overall ranking as high as for the other rights already mentioned.

Rights for Whom?

81. We also asked companies which stakeholders their human rights policies and practices encompass. Respondents could choose as many of the options as they thought relevant, and to add others not mentioned in the questionnaire. This made it possible to establish a relative ranking of whose rights companies believe they should be concerned with in formulating their policies and practices.

82. The overall responses are clear and robust. In descending order, company policies and practices encompass employees (referenced by 99 per cent); suppliers and others in their value chain (92.5 per cent); the communities in which they operate (71 per cent); the countries in which they operate (63 per cent); and others (23.7 per cent), a category that includes customers, shareholders, and investors.²¹

83. There are slight regional differences in this rank ordering. United States companies rank employees and value chains equally high, but place human rights issues of communities and countries of operation far lower than European firms do. They also rank communities lower than Japanese firms. Of the three regional clusters, Japanese companies are least likely to include the countries of operation within the spectrum of their perceived human rights concerns.

²¹ This ranking conforms closely to the conception of companies' differential responsibilities within their "spheres of influence" as outlined by the Business Leaders Initiative on Human Rights, in *A Guide for Integrating Human Rights into Business Management*, at www.blihr.org. The publication was co-sponsored by the United Nations Global Compact and the Office of the United Nations High Commissioner for Human Rights.

84. The same overall pattern also holds up across sectors - except that companies in the extractive industries rank their obligations to surrounding communities higher than to their value chains, which is not altogether surprising given that community-related issues have been their major source of liability.²²

International instruments

85. Companies were asked what if any international human rights instruments their policies and practices draw upon. Again they were given the opportunity to cite more than one and to add any not mentioned in the questionnaire.

86. Approximately one-fourth of the respondents skipped this question, presumably indicating that they reference no international instrument. Among the other 75 per cent, ILO declarations and conventions top the list, referenced by seven out of ten. The Universal Declaration on Human Rights (UDHR) is the next highest. The only variations on this theme are in the extractive sector, where every single respondent cites the UDHR, and the fact that half of the Japanese respondents skipped this question compared to 25 per cent of all respondents.

87. The Global Compact is referenced by just over half of the companies that reference any international instrument, the OECD Guidelines by fewer than half. As a source, they matter more to European than North American respondents.

88. In their optional responses, individual companies added a number of other instruments, such as the Voluntary Principles on Security and Human Rights and Social Accountability 8000, but none was widely referenced.

89. It should be noted that companies generally do not “adopt” any of these instruments verbatim. Several indicated in their optional responses that while they were “influenced by” or “support” these instruments, their policies do “not explicitly adhere” to or “explicitly reference” them. The follow-up study mentioned earlier examines actual company policies and management practices, and therefore should provide more detailed information about how close they get to the original sources that inspired them.

Stakeholder engagement

90. Most respondents - more than 80 per cent - indicate that they work with external stakeholders in developing and implementing their human rights policies and practices. United States firms are somewhat less likely to do so than European or Australian firms, and Japanese companies significantly less likely than any of the others. No pronounced sectoral differences exist.

²² The case of supply chains is tricky in this regard. Clearly, many company policies “encompass” their suppliers’ human rights practices, but it does not necessarily follow that they assume responsibility for them. Some do, through extensive monitoring and remediation programmes, but many others don’t.

91. NGOs are the most frequently mentioned external partner except by Japanese companies. Industry associations also feature prominently. International organizations are ranked a distant third except by United States firms, which place them fifth, behind labour unions and governments.

92. Only a few variations are found across sectors and they appear to be largely situational - for example, the pharmaceutical and financial services industries, typically more heavily regulated than the others, indicate working more closely with governments in developing their policies, and the pharmaceuticals also with international organizations - presumably the World Health Organization, UNAIDS, and the like.

Accountability

93. A final set of questions asked the companies if their human rights policies are subject to internal reporting and compliance systems; if they engage in external reporting; and if they conduct human rights impact assessments - corresponding to three features of voluntary accountability mechanisms in other areas of corporate activity.

94. Nearly nine out of ten respondents say that they have internal reporting and compliance systems in place. Nearly three fourths indicate that they also engage in some form of external reporting. These responses hold across regions and sectors, although the financial services firms and companies in the infrastructure and utilities sectors fall below the others on both dimensions.

95. Most companies that do external reporting use a periodic publication or the company's website as their preferred vehicle. Fewer than half utilize a third party medium such as the Global Reporting Initiative or the Global Compact's Communication on Progress. European companies are more likely to engage in external reporting than United States firms; Japanese companies are a distant last. Company-based platforms for reporting are preferred irrespective of industry sector, but three out of four extractives companies state that they also use a third party instruments.

96. Social impact assessments of planned or existing corporate activities are becoming a more common practice, and they are beginning to incorporate a human rights dimension into them. The International Finance Corporations new performance standards and the Equator Principles governing commercial banks' project financing exemplify these developments. But strictly speaking, very few dedicated human rights impact assessments have ever been conducted by any company, and standard tools for them are only gradually being developed.²³

97. One third of all respondents say they do conduct human rights impact assessments as a routine matter, and just under half that they do occasionally - for the reasons mentioned, presumably as part of broader social and environmental impact assessments. A combined total of one-fourth of the respondents either never conduct such assessments or they skipped the question. United States firms are more likely to conduct human rights impact assessments routinely than European companies, but only one of the Japanese respondents does so.

²³ See A/HRC/4/74, a companion report to the Council on Human Rights Impact Assessments.

98. According to the survey, assessing the human rights impact of business operations is most widespread in the extractives sector, which can have a dramatic impact on host communities; in financial services, where due diligence is a standard business practice; and in retail and consumer products firms, which often have significant labour issues in their supply chains.

Concluding observations

99. Some clear patterns emerge from this survey. Virtually all companies responding say they have human rights principles or management practices in place. The majority adopted them for reasons unrelated to any specific human rights incident. Work-place rights constitute their primary area of concern. Companies recognize significant obligations toward other stakeholders, but they decrease as they move outward from employees into value chains, communities, countries of operation, and beyond. The companies' human rights policies draw on international instruments, and they are developed in cooperation with external stakeholders. An overwhelming number of respondents indicate that they have internal reporting and compliance system in place, and most that they also engage in some form of external reporting. Finally, including human rights issues in impact assessments is becoming a more common practice.

100. For obvious reasons, a survey of this kind cannot assess the effectiveness of companies' policies and management practices. But it is safe to conclude that no survey conducted a mere five years ago would have yielded comparable results, indicating that policy innovation and diffusion has occurred in this domain. How far these patterns reach beyond the leading firms in the FG500 will become clearer with the completion of a follow-up study that examines the human rights policies of nearly 300 companies, including a larger number headquartered in emerging market countries.

101. We also found evidence of sectoral and regional variations around the overall patterns. Some sectoral differences are to be expected, reflecting the unique attributes of industries and their operating contexts. But significant variations based on the political culture of companies' home countries are inherently more problematic. Human rights are considered to be universal, interdependent and indivisible. Yet in several instances we saw that European-based companies are more likely to embrace that conception of rights than the others, with United States-based firms tending to recognize a narrower spectrum of rights and rights holders. Differences of this kind are bound to be even more pronounced for companies domiciled in emerging market countries, underscoring the need for clearer and commonly accepted human rights standards for firms.

102. Another issue of concern involves the elasticity of human rights standards in corporate policies. We saw that most of the companies with such policies include human rights in an overall corporate code or set of business principles; only a minority has a separate human rights instrument; and few of those adopt what the human rights community considers a "rights-based approach." Within such an approach companies would be expected to take the universe of human rights (as contained in the UDHR and related covenants and conventions) and work back from them to define corresponding policies and practices. In contrast, beyond the realm of legal requirements, companies that currently have human rights policies typically approach the recognition of rights as they would other social expectations, risks and opportunities, determining which are most relevant to their business operations and devising their policies

accordingly. The latter model comes more naturally to business, but it also leads to variability in how rights are defined. Some of this variation may matter little. But there must be generally recognized boundaries around “what counts” as recognition of any particular right, again reinforcing the desirability of clear and commonly accepted standards.

103. A final issue involves accountability mechanisms. We saw that companies report on their human rights policies using their own websites or periodic reports far more frequently than third-party mechanisms. This may reflect limited third-party options available at this time, although the latest generation of the Global Reporting Initiative includes more detailed criteria for human rights performance and management systems. But it may also reflect reluctance by companies to move toward fuller transparency. For reporting to satisfy external stakeholders and maximize its utility to a company’s own strategic and management objectives, two core conditions must be met: the information must be broadly comparable across companies, and there needs to be some external assurance as to its trustworthiness and materiality. The survey did not probe this issue directly, but the overall findings and optional responses provide no reason to dispute assessments in professional circles that while comparability is slowly increasing, external assurance remains more limited.²⁴

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²⁴ See a recent paper by SustainAbility titled, *Reporting on Human Rights 2005* (April 2006).