

Comments to the SRSG John Ruggie

28 January 2011

Subject: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding principles for the implementation of the United Nations ‘Protect, Respect and Remedy’ framework.

Submission by the Danish Council on Corporate Social Responsibility (CSR)¹ on the draft report on “Guiding Principles for the Implementation of the UN ‘Protect, Respect and Remedy’ Framework”

The Danish Council on CSR would like to convey its general and explicit support to the work and endeavours of UN SRSG John Ruggie in mapping the challenges in relation to the issue of human rights and business and recommending ways to address them.

The Danish Council on CSR recognises the complexity of this policy area and its potential for strengthening the sustainable role of companies. The importance of international legitimacy and common understanding cannot be underestimated as the necessary point of departure. In this respect, the legitimacy of the UN ‘Protect, Respect and Remedy’ framework, which builds on the United Declaration of Human Rights and the related post-1945 UN standards, serves as an important reference to guide companies, states, and other stakeholders. The Danish Council on CSR believes that further work on this policy area can and should be based on this framework.

To become an effective and operational framework, practical and concrete guidelines are needed. Thus, the Danish Council on CSR applauds the Secretary-General of the United Nations for extending in 2008 the mandate of the SRSG to further **operationalize** the UN ‘Protect, Respect and Remedy’ framework. The Danish Council on CSR also welcomes the draft Guiding Principles as they elaborate and clarify for companies, states, and other stakeholders how they may take **practical steps** to address business impacts on the human rights of individuals.

¹ The purpose of the council is to support and contribute to the Danish companies work on CSR and to advance the dialogue about CSR between the government and the business world. The list of members is in the back of this document. For other information see: www.csrcouncil.dk

The dynamic global development and the complexity of the world's social, environmental and economic challenges demand serious measures. The Danish Council on CSR recognises the difficulty in drafting guiding principles that are practical and concrete while at the same time flexible. However, if the guidelines lack clarity and precision they risk creating unfortunate room for inappropriate interpretations and undesirable human rights conduct. Striking the right balance is obviously not an easy task. The Danish Council on CSR would welcome further clarification on practical steps recommended in some areas, which is presented in the following sections in relation to each pillar of the framework.

The state duty to protect human rights

As stated in the draft report States must protect against business-related human rights abuse within their territory and/or jurisdiction. Yet, they often fail to ensure an adequate level of promotion and protection of human rights. The draft report on Guiding Principles highlights important barriers and gaps that need to be overcome. Failure to enforce existing laws and the lack of vertical and horizontal coherence are among the most important barriers. The Guiding Principles slightly touches upon the challenge of extraterritoriality. Further clarification on the gaps and recommendations on potential measures in this regard would be welcomed.

There is a growing awareness and recognition of the role of economic forces and actors, including the responsibility of business to respect human rights. While still more companies show leadership, many also refrain from doing so, and others again are lagging behind because of lack of awareness, different priorities or simply lack of capacity. To facilitate truly shifting markets, we need enabling frameworks which at the same time are ambitious and inclusive. The Danish Council on CSR believes that the “Protect, Respect and Remedy” is such an enabling framework.

The Danish Council on CSR believes that states play an important role in fostering business respect for human rights through hard legal obligations as well as through reporting rules, incentives, information, tools, etc. In 2009, the Danish Government passed legislation, which requires the biggest companies, state-owned companies and all institutional investors to report on their CSR activities as part of their annual financial reporting. An analysis of the first year's reporting shows that many companies welcome the opportunity to work with CSR in a strategic manner. The Danish Council on CSR generally agrees that it would be desirable if other countries were to create similar legislation on CSR-reporting². This would encourage transparency and make it easier for investors, consumers and citizens in general to act more responsibly with regard to business and human rights.

The approach of the SRSR has also highlighted the importance of dialogue in this regard. This kind of dialogue and partnerships should continue nationally and internationally, linking relevant stakeholders directly to the policy process.

² The NGO's in the council supports a reporting model which goes further than “comply or explain”.

The establishment of multi-stakeholder forums like the Danish Council on CSR could, if properly linked to the national policy process, become a relevant facilitating driver. The Danish Council on CSR plays a key role in the development of the Government's national CSR policies. This kind of national forums could also be helpful in promoting a coordinated and inclusive approach to the Guiding Principles and provide an important basis for international exchange of experience. In recent years a number of other countries have set up similar bodies. The Danish Council on CSR suggests that the principles include a recommendation for all governments to establish similar bodies.

The Danish Council on CSR also supports the importance that the SRSG assigns to the National Human Rights Institutions as key players in helping businesses and other stakeholders cooperating at the national level to understand and implement the “Protect, Respect and Remedy” framework. Therefore it is important that National Human Rights Institutions have the necessary capacity and resources to fulfil this role.

The corporate responsibility to respect human rights

The Danish Council on CSR supports the guiding principles for business – both privately and publicly held businesses.

As an example, the UN ‘Protect, Respect and Remedy’ framework, in particular the principle of due diligence, played a central point of departure in the recommendations on sustainable supply chain management, which were developed by the Danish Council on CSR and presented to the Danish Government in May 2010³. What became immediately clear in defining the concrete and practical steps companies must take in order to achieve sustainable supply chain management was the importance of local conditions, country, sector, company size etc. Some further consideration and clarification of these indicators would be helpful for the implementation of the guidelines.

The Danish Council on CSR fully shares the view of the SRSG that companies have to take the positive “action” of undertaking due diligence in order to respect human rights. Establishing procedures that identify their human rights risks and taking mitigating measures, if they are to avoid abuses of human rights are examples of what companies can do. Experiences from Danish companies show that this can often lead to a supply chain of higher quality and productivity.

The Danish Council on CSR fully supports the Special Representative's point that due diligence will vary in scope and complexity with the size and type of the business, the severity of its human rights risks, and the context of its operations. Denmark is a country in which the majority of companies are SME's with limited manpower and financial resources. The Danish Council on CSR also believes that the Framework will seem more meaningful in the everyday life of companies to the extent that governments recognize that both serious due diligence assessments and adequate re-

³ <http://www.csrcouncil.dk/sw65826.asp>

sponses to their findings are resource-demanding and will necessarily be implemented over some length of time. However, the Danish Council on CSR expects that Danish SME's immediately address human rights abuses once they become aware of such abuses.

Remediation

The current OECD Guidelines for MNEs might serve as an example of how “lack” of clarity may lead to unintended outcomes. Thus, states acceding to the Guidelines have been criticized for not providing their respective National Contact Points with adequate guidance in terms of time frames for processing complaints, disclosure of information, etc. and the resources needed to ensure their effectiveness. While on the one hand the international community cannot force states to rise to the challenge, they can reduce the possibility of falling to the lowest common denominator by defining a level playing field.

The Danish Council on CSR is currently discussing recommendations to the Danish Government on how to ensure more effective grievance mechanisms – non-state-based and state-based – that both conform to OECD and UN guidelines. In terms of state-based grievance mechanisms (like an updated National Contact Point) current discussions within the Danish Council on CSR reveal the complexity at hand. The Danish Council on CSR would appreciate further clarification on how effective judicial and non-judicial remedies could be implemented.

In particular, the Danish Council on CSR would request considerations on how to avoid misuse of non-judicial grievance mechanism, for example if one company brings forward accusations against another company because the two are in competition in a public tender. Or how to avoid that an employee who has been denied an increase in salary or a promotion for pure motives of revenge brings forward serious allegations that the company is involved in human rights abuses. This could undermine trust from companies and eventually broader society in the mechanism.

Another challenge for the creation of effective remedy is the lack of judicial grievance mechanism to take care of the serious human rights offences committed on extraterritorial ground. Today, there exists no effective judicial remedy neither on national, regional or international level that can hold companies accountable for offences committed outside national boundaries. The Danish Council on CSR recognises that the establishment of a binding legal order is a contentious subject which raises a number of difficult questions. However it would be desirable to have means to effectively address serious, fundamental human rights abuses and the Danish Council on CSR would therefore welcome the SRSG's own recommendations on how the international community can address this problem in the human rights area.

The link to other initiatives

To support policy coherence at the international level, special attention should be given to ensure a relevant level of interaction with special regard to UN initiatives. In particular, the Danish Council on CSR finds that efforts to strengthen the relationship

between the UN "Protect, Respect and Remedy" framework and the UN Global Compact should be prioritised. Recommendations on practical steps on how to further strengthen this link – while respecting the differences – would be considered a very important step forward. The Danish Council on CSR would also like to convey its support for linking the UN 'Protect, Respect and Remedy' framework to the revision of the OECD Guidelines.

Looking ahead

As stated in the draft report on the Guiding Principles, the international community is still in the early stages of the shift from institutional misalignment to a socially sustainable path. This is an incremental process indeed. Looking ahead, the Danish Council on CSR highly recommends the international community to keep the momentum and further build on what has been achieved so far in relation to the mandate of UN SRSG John Ruggie. A smart mix of "time for implementation and learning" and "proactive planning ahead" seems necessary. The Danish Council on CSR would welcome the UN SRSG John Ruggie's own recommendations to what kind of follow-up mechanism could be appropriate to ensure that the work of the SRSG in the last 5 years is built on and not allowed to dissipate.

First and foremost, it is important for the Human Rights Council to take a positive stance on the Guiding Principles this summer. The Danish Council on CSR would also urge the Danish government to take a constructive view around that issue.

Members of the Danish Council on Corporate Social Responsibility

Chairman

Mads Øvlisen (Chairman)

- Honorary Professor in Corporate Social Responsibility at Copenhagen Business School and member of the UN's Global Compact Board

Lise Kingo (Deputy Chairman)

- Executive Vice President and Chief of Staff, Novo Nordisk A/S

Expert members

Mette Morsing

- Professor and Director of the Centre for Corporate Social Responsibility, Copenhagen Business School

Peder Michael Pruzan-Jørgensen

- Managing Director of Business for Social Responsibility/Europe

Organisations

The Economic Council of the Labour Movement (AE)

(www.ae.dk)

- Marie-Louise Knuppert, Confederal Secretary at the Danish Confederation of Trade Unions (LO),

The Danish Chamber of Commerce

(www.danskerhverv.dk)

- Ole Schmidt, Globalisation Manager

The Danish Ethical Trading Initiative

(www.dieh.dk)

- Judith Kyst, Chairman of the Board of DIEH

The Confederation of Danish Industries (DI)

(www.di.dk)

- Tine Roed, Deputy Director General

The Danish Bankers Association

(www.finansraadet.dk)

- Susanne Dolberg, Deputy Director

The Danish Consumer Council

(www.forbrugerraadet.dk)

- Mette Boye, Director, Policy, the Danish Consumer Council

The Danish Insurance Association, ATP and LD (www.forsikringogpension.dk)

- Stine Bosse, Group CEO, TrygVesta A/S

The Danish Federation of Small and Medium-Sized Enterprises

(www.hvr.dk)

- Henning Høy Nygaard, Manager Business Development & CSR

The Danish Agriculture & Food Council

(www.lf.dk)

- Claus Sjøgaard-Richter, Executive Director

The Danish Association of Managers and Executives

(www.lederne.dk)

- Kim Møller Laursen, Head of Division

The Danish Shipowners' Association

(www.shipowners.dk)

- Annette Stube, A.P. Møller – Mærsk A/S, Head of Group Sustainability

The Danish Council for Sustainable Business Development

(www.rbenet.dk)

- Mogens Werge, COOP Danmark A/S, Director of Consumer Policy

The Danish 92 Group & Amnesty International, Danish section

(www.92grp.dk)

- Sanne Borges, Advisor, Business and Human Rights, Amnesty International, Danish section