

## **Thomas J. Dodd Prize in International Justice and Human Rights - 2013**

Dodd Prize Award Ceremony, Thomas J. Dodd Research Center, University of Connecticut, November 13, 2013<sup>1</sup>

### **Keynote address:**

#### **“Business and Human Rights in the 21<sup>st</sup> Century: Opportunities and Challenges Ahead”**

Christopher Avery, Founding Director (2002 - September 2013), [Business & Human Rights Resource Centre](#)

*Note: This document includes some text and slides that were not included in the oral presentation due to time constraints. [Click here for a video of the entire 2013 Dodd Prize Ceremony](#), including this keynote address. Below is a list of the speakers and the points on the video where their remarks begin:*

00:00 **Dr. Mun Choi**, Provost, University of Connecticut – opening remarks

02:35 **Senator Christopher Dodd** – remarks about the Dodd Prize and Business & Human Rights Resource Centre

16:32 Presentation of Dodd Prize by Senator Dodd to Business & Human Rights Resource Centre

18:20 Remarks by **Phil Bloomer**, Executive Director, Business & Human Rights Resource Centre

32:10 Introduction of Chris Avery by **Dr. Glenn Mitoma**, Interim Director, Thomas J. Dodd Research Center

35:29 Keynote address by **Chris Avery**, Founding Director, Business & Human Rights Resource Centre



First I want to say that it is a pleasure to be here at the University of Connecticut. I did my undergraduate studies at Stanford University in California, and I hear that the University of Connecticut women's basketball team absolutely demolished the strong Stanford women's team on Monday evening, so I come here today with great humility. On a personal note, my ancestors landed in the United States in 1630 and were eventually among the first settlers in the town of Groton, Connecticut, and later served in the Connecticut state legislature...I have always appreciated my ancestral attachment to this state.

As Phil Bloomer (my successor) said, all of us associated with Business & Human Rights Resource Centre are very grateful for this award – special thanks

to the Dodd Center's board, to Glenn Mitoma (Interim Director of the Dodd Center), and to his predecessor Lisa Laplante. I am glad that the Resource Centre under Phil's excellent leadership will be collaborating in the future with the Dodd Center and the Human Rights Institute at University of Connecticut. My colleagues and I had the opportunity earlier today to meet with faculty and staff associated with the Dodd Center and the Human Rights Institute – we are very impressed with the human rights initiatives here at University of Connecticut – it is clearly one of the strongest university human rights programs in the world.

I want to recognize two of the Resource Centre's senior managers who are here today and ask them to stand now: Annabel Short (Program Director) and Greg Regaignon (Research Director)...they have been with the Centre since the beginning, and have been key to the organization's development and success. Greg is a native son of Connecticut, from the town of Windsor.



We are honored to receive this prize from an institution associated with Senator Thomas Dodd and Senator Christopher Dodd, given their human rights achievements at both the national and international level. I will refer to Thomas Dodd's work later. One of Senator Christopher Dodd's achievements, the Dodd-Frank Act, includes precedent-setting disclosure provisions relating to business & human rights: Section 1502 requires companies registered with the U.S. Securities & Exchange Commission to carry out supply chain due diligence on any minerals sourced from Democratic Republic of Congo or adjoining countries.<sup>2</sup>

<sup>1</sup> Thomas J. Dodd Research Center, University of Connecticut, "[11.13.2013 Dodd Prize Award Ceremony](#)".

<sup>2</sup> U.S. Securities and Exchange Commission, "[Specialized Corporate Disclosure](#)".

Section 1504 requires companies to publicly report how much they pay governments for access to oil, gas and minerals.<sup>3</sup> As Phil mentioned, in 2012 the Resource Centre sought and secured responses from companies and business associations when concerns were raised about industry efforts to undermine implementation of Dodd-Frank section 1502. Some companies responded that they supported the Dodd-Frank provision and did not agree with the lobbying by their industry association against the law.<sup>4</sup>

I realize that the Dodd family has Irish ancestry, but even if that were not the case I would want to mention an individual without whom the Resource Centre might never have gotten off the ground...



Mary Robinson, former President of Ireland and United Nations High Commissioner for Human Rights, now UN Special Envoy for the Great Lakes region of Africa, has chaired the Resource Centre's International Advisory Network from the beginning. She has been a source of great inspiration and encouragement.

## 1. History

## 2. Reflections

## 3. Challenges & opportunities

My remarks will cover three topics:

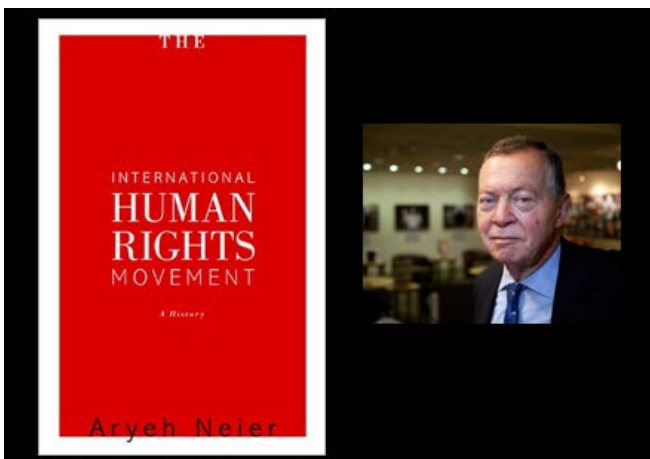
1. Some important moments in the history of business & human rights.
2. Some personal reflections on progress made over the past 11 years, since the Resource Centre was founded.
3. Challenges and opportunities for the future.

## 1. Some important moments in the history of business & human rights

### 1. Some important moments in history

The Greek philosopher Aristotle said: *"If you would understand anything, observe its beginning and its development."*

Many think of business & human rights as a relatively new field. But the link between business and human rights goes far back.



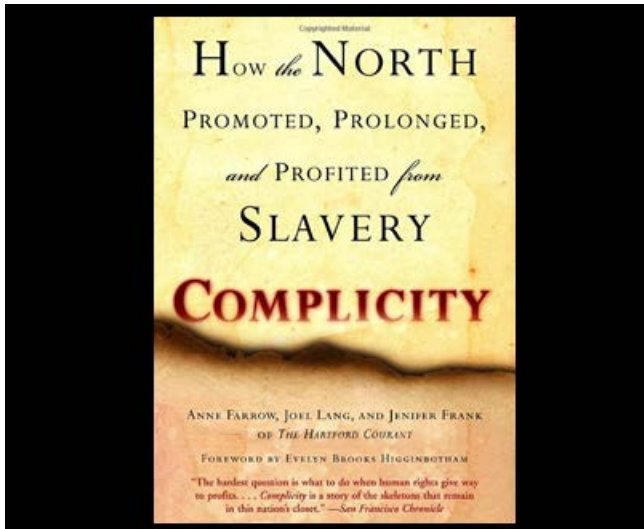
In his 2012 book *The International Human Rights Movement: A History*<sup>5</sup>, Aryeh Neier (President Emeritus of Open Society Foundations, former Executive Director of Human Rights Watch) traces the origins of the human rights movement to the first time that a large group of people advocated for the rights of others, rather than for their own rights – the movement to abolish slavery.

As you know, business and slavery were closely interlinked...slavery powered the supply chains of cotton, sugar, rice, tobacco and other commodities that enriched North American and European companies. So from the very beginning of the international human rights movement, business has been an important part of the landscape.

<sup>3</sup> U.S. Securities and Exchange Commission, "[Specialized Corporate Disclosure](#)".

<sup>4</sup> Business & Human Rights Resource Centre, "[Lobbying 'seeking to undermine' Dodd-Frank conflict minerals legislation - responses & non-responses by companies & business orgs.](#)".

<sup>5</sup> Aryeh Neier, *The International Human Rights Movement: A History*, 2012 (Princeton University Press).



Some of you in this room will know that in 2005 several journalists from the *Hartford Courant* newspaper wrote an excellent book entitled: *Complicity: How the North Promoted, Prolonged and Profited from Slavery*.<sup>6</sup> Their book, and the *Hartford Courant* articles on the subject that preceded the book<sup>7</sup>, document the close connection between slavery and manufacturing, finance and insurance companies in New York and New England. When it appeared that the South might secede, many of these Northern businesspeople, fearing they would lose the economic benefits of slavery, publicly expressed sympathy with the South and condemned Northern abolitionists.

The connection between U.S. companies and slavery continued long after abolition in the U.S. For example...



...two of the world's leading ivory companies, based in Connecticut, transformed ivory into piano keys and billiard balls. The book by the *Hartford Courant* journalists describes the supply chain<sup>8</sup>: The ivory came from North African slave traders who rounded up and enslaved black Africans in Africa. It was a particularly brutal system that slaughtered huge numbers of people as well as elephants. African villages were burned by the traders and their armed mercenaries.



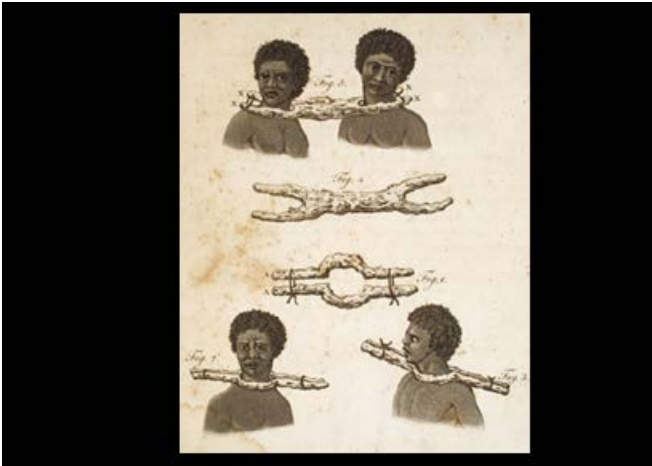
Slaves were forced to carry heavy tusks up to 1000 miles to the African coast, connected by chains as they walked, 40 or 50 chained together.

<sup>6</sup> Anne Farrow, Joel Lang and Jenifer Frank, *Complicity: How the North Promoted, Prolonged, and Profited from Slavery*, 2005 (Ballantine Books).

<sup>7</sup> ["Special Report - Complicity: How Connecticut Chained Itself To Slavery"](#), *Hartford Courant*, 29 Sep 2002.

<sup>8</sup> Farrow, Lang and Frank, Chapter 10: "Plunder for pianos", in *Complicity: How the North Promoted, Prolonged, and Profited from Slavery*.





Iron rings were put around their necks. Many were whipped. Many died on the way of disease or starvation. One Massachusetts ivory trader saw ships full of these slaves coming to Zanzibar from mainland Africa....he wrote that dead slaves were simply thrown overboard and if they floated onto shore the locals came with poles to push the bodies off the beach back to sea.



Historians estimate that 5 black Africans were killed or forced into slavery for each elephant tusk that reached the coast of Africa. That would mean 2 million black Africans were killed or forced into slavery to supply the ivory sent to the Connecticut ivory factories between 1870 and 1900, to make piano keys and billiard balls.<sup>9</sup>

It was a lucrative system.



The owners of these Connecticut ivory companies had what one historian called “bifurcated minds” – they could be abolitionists and philanthropists in their personal lives, but their priority was running profitable ivory companies, so they externalized or ignored what was happening in their supply chain.<sup>10</sup>

Today we see more and more business people starting to take human rights more seriously. But we still see some businesspeople in every country with “bifurcated minds”, failing to effectively address human rights abuses, including in their supply chains. The victims of these abuses today include...

<sup>9</sup> Anne Farrow, “[Chapter Seven: The Last Slaves - Not Just Elephants Suffered And Died For Connecticut's Ivory](#)” in “[Special Report - Complicity: How Connecticut Chained Itself To Slavery](#)”, *Hartford Courant*, 29 Sep 2002.

<sup>10</sup> Farrow, Lang and Frank, Chapter 10: “Plunder for pianos”, in *Complicity: How the North Promoted, Prolonged, and Profited from Slavery*.



...apparel workers in Bangladesh killed and injured in unsafe factories;



... indigenous communities in Latin America displaced by mining companies and agribusiness;



...men, women and particularly children in countries such as China and India whose health is permanently damaged by the toxic emissions of chemical and industrial factories; and...



...men, women and children in Democratic Republic of Congo who suffer at the hands of armed groups looting the country of "conflict minerals" which are then used in cell phones and laptops.



**Thomas Dodd,**  
Executive Trial Counsel at the Nuremberg Trials

The final historical period I want to mention is World War II and the Holocaust. When Thomas Dodd was prosecuting Nazi war criminals at the Nuremberg trials, he showed through his evidence that Hitler's Ukrainian Overlord Erich Koch and Polish Overlord Hans Frank were responsible for the plan to deport 1 million Polish civilians to work as slave laborers in Germany, many in the factories of private German companies.<sup>11</sup> Under Erich Koch's rule, some 2.5 million Ukrainians were reportedly deported to the German Reich to work as slave laborers.<sup>12</sup>



**Walther Funk,**  
President of the Reichsbank

Thomas Dodd also showed that defendant Walther Funk turned the Reichsbank, then Germany's privately owned central bank, into a depository for gold teeth and other valuables seized from concentration camp victims.<sup>13</sup>

So among his many achievements at Nuremberg, Thomas Dodd was seeking and securing accountability for those engaged in human rights abuses which involved business.



**Industrialist Alfred Krupp,**  
defendant at Nuremberg

After the main trials at Nuremberg, other trials were held before American military tribunals – including trials of German business leaders for assisting Nazi war crimes.

A key corporate defendant was Alfred Krupp, charged with crimes against humanity by participating in the murder, extermination, enslavement, deportation, imprisonment, torture, and use for slave labor of civilians who came under German control. He pleaded "not guilty", arguing what many businesspeople in many countries have argued since then when their companies were alleged to be involved in human rights abuses – he said:

*"We Krupps never cared much about [political] ideas. We only wanted a system that worked well and allowed us to work unhindered. Politics is not our business."*<sup>14</sup>

<sup>11</sup> "Ukraine Murder Chief Still Hunted by Allies", *Los Angeles Times*, 12 Dec 1945, p. 4, cited in Wikipedia entry: "[Thomas J. Dodd](#)".

<sup>12</sup> "[Erich Koch](#)", Ukrainian Canadian Research & Documentation Centre; Andrew Gregorovich, "[World War II in Ukraine: Koch versus Rosenberg](#)", *FORUM: A Ukrainian Review*, No. 92, Spring 1995.

<sup>13</sup> Wikipedia entry: "[Thomas J. Dodd](#)".

<sup>14</sup> Wikipedia entry: "[Krupp Trial](#)".



## 2. Reflections on progress made over the past 11 years

## 2. My reflections on progress made over the past 11 years, since the founding of Business & Human Rights Resource Centre



Fast-forward to 2002. We started Business & Human Rights Resource Centre because it was very difficult to find hard information at that time about the human rights impacts of companies on the ground where they were operating around the world. There was a lot of talk about corporate social responsibility at the time, but much of it was fuzzy and superficial, focused more on headquarters policy than operational realities. For example, company conduct toward women was rated by counting the number of women on the board, rather than looking at how that company and its suppliers were treating female employees worldwide and impacting women in local communities.

We wanted to use the power of the internet to inject reality, to provide more transparency and public accountability, and to collect tools and examples of good practice to help all those working in this field.

There are 4 fundamental aspects of the Resource Centre's model which have served us well:

1. The Centre has a strict policy against accepting any donations from companies or company foundations, to ensure the organization's independence and to prevent any perception of a potential conflict of interest.
2. The Centre covers both positive and negative impacts of companies, is committed to being fair in its approach, and posts information from all sources, including from advocates and from companies.
3. The Centre gives companies an opportunity to respond to allegations, and gives advocates the opportunity to comment on the company's response.
4. The Centre's researchers are based throughout the world, since there is no substitute for speaking local languages and having face-to-face contact with victims, advocates and businesspeople.

## The burden has shifted

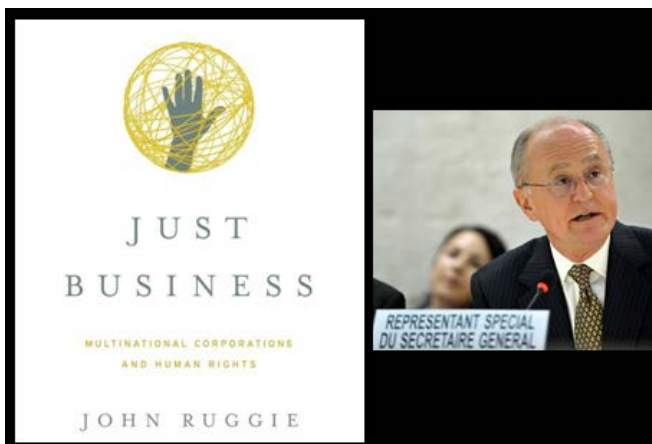
Looking back over the past 11 years, what stands out to me? I have been struck by how the burden has shifted. When we started the Resource Centre, we had trouble getting businesspeople to even understand the connection between business and human rights. Things have changed. Now the burden is on businesses to demonstrate that they are respecting human rights.

 <b>GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS</b>	
<b>CONTENTS</b>	
<b>I. THE STATE DUTY TO PROTECT HUMAN RIGHTS</b>	<b>3</b>
A. FOUNDATIONAL PRINCIPLES	3
B. OPERATIONAL PRINCIPLES	4
<b>II. THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS</b>	<b>13</b>
A. FOUNDATIONAL PRINCIPLES	13
B. OPERATIONAL PRINCIPLES	16
<b>III. ACCESS TO REMEDY</b>	<b>27</b>
A. FOUNDATIONAL PRINCIPLE	27
B. OPERATIONAL PRINCIPLES	28

Why has the burden shifted?

In large part because of the United Nations Guiding Principles on Business and Human Rights,<sup>15</sup> the first UN standard broadly covering this subject. The fact that the principles were endorsed by consensus by the UN Human Rights Council in 2011 was a great achievement by John Ruggie (the UN Special Representative on business & human rights who drafted the principles) and his team. The consensus endorsement makes it difficult for any company or government to question the authority of the Principles.

Each Guiding Principle is accompanied by a commentary.



For anyone wanting an in-depth understanding of the Guiding Principles, I would recommend John Ruggie's book *Just Business: Multinational Corporations and Human Rights*.<sup>16</sup>



I would also recommend a commentary by Chris Albin-Lackey of Human Rights Watch on his view of the shortcomings of the Guiding Principles – entitled “Without Rules: A Failed Approach to Corporate Accountability”.<sup>17</sup>

<sup>15</sup> [Text of the UN Guiding Principles](#).

<sup>16</sup> John Ruggie, *Just Business: Multinational Corporations and Human Rights*, 2013 (W. W. Norton & Company).

<sup>17</sup> Christopher Albin-Lackey, Senior Researcher - Business and Human Rights, Human Rights Watch, [“Without Rules: A Failed Approach to Corporate Accountability”](#), in *Human Rights Watch - World Report 2013*, 31 Jan 2013.



### Progress in Corporate Accountability

04 February 2013 | by John Ruggie

Last week Human Rights Watch released its 2013 World Report. It includes an essay by Senior Researcher Christopher Albin-Lackey decrying the hard won and widely adopted UN Guiding Principles on Business and Human Rights (GPs) as being "woefully inadequate..."<sup>18</sup>

Author's pride aside, I still prefer my own description. When I presented the GPs to the Human Rights Council in June 2011 and asked for its endorsement, I said: "I am under no illusion that the conclusion of my mandate will bring all business and human rights challenges to an end. But Council endorsement of the Guiding Principles will mark the end of the beginning."

The Human Rights Council did endorse the Guiding Principles - unanimously. This represented two firsts. It was the first authoritative guidance the Council had ever issued on how to meet the complex global challenges of business and human rights; and it also was the first time that the Council or its predecessor, the Commission on Human Rights, had ever endorsed a normative text on any subject that governments did not negotiate themselves, a text I developed and drafted over six years and nearly fifty international consultations.

At the same time, I indicated that more granular work would be required in order for governments, businesses and other stakeholders to turn the GPs into rules and tools for specific industry sectors and operating contexts, different scales of operations, various forms of financial intermediaries, and so on. I added that this would include legal measures, though "as precision instruments" not some idealized global command-and-control regulatory regime.



I would further recommend Ruggie's response to Albin-Lackey's critique – entitled "Progress in Corporate Accountability".<sup>18</sup>

John Ruggie and Chris Albin-Lackey do agree that the UN Guiding Principles are a beginning, not the end.



International standards are not very useful unless civil society is monitoring the conduct of companies and governments and seeking accountability. One of the most promising developments over the past 11 years is that national and local human rights, environmental and development organizations – and community and indigenous groups – across the world have been turning more of their attention to the private sector. The most important human rights work is being done at the local level, by advocates who sometimes risk their lives or freedom to seek justice.

### Excerpt: Response by Baishanlin sent to Business & Human Rights Resource Centre

至企业与人权研究中心：

近知悉贵中心对圭亚那报纸关于柏杉林木厂劳工问题新闻报道希望得到回应的信息。

现特对此情况进行客观说明。

我公司在圭亚那新成立的公司，开始运营只有很短的一段时间。作为来圭投资的外商，依照圭亚那国际法律和政策要求经营运作是我们的根本出发点，达到促进圭亚那经济发展和企业获利，实现双赢的局面是我们的目标。

投资圭亚那以来，我们一直在努力学习、适应、融入圭亚那的政治、经济和文化生活。较大的经济、文化、环境等方面的差异确实给了我们初来乍到的外商不少

I have been pleased to see that most companies have responded to the Resource Centre when we invited them to comment on concerns raised about their conduct. I expected a 20% or 30% response rate, but it has been 70%...over 90% from South African companies, and around 50% from mainland Chinese companies which is encouraging because some of these Chinese firms had never before been approached by or responded to an independent organization about human rights concerns.

This slide shows an example of a response we received from a mainland Chinese company – in this case we invited Chinese timber firm Baishanlin to respond to allegations of human rights abuses at its operations in Guyana. It sent us a relatively detailed response saying that it would endeavor to address various concerns.<sup>19</sup>

<sup>18</sup> Professor John Ruggie, "Progress in Corporate Accountability", on Institute for Human Rights and Business website, 4 Feb 2013.

<sup>19</sup> Baishanlin Intl. Forest Development, "Baishanlin Intl. Forest Development response regarding labour rights abuses at Coomacka timber works, Guyana", 28 Aug 2007.

**Stabroek news**

**Nadir promises more vigilance on workers' rights, safety**  
Tuesday, August 28th 2007

Minister of Labour Manzoor Nadir has promised more vigilance in the enforcement of labour and occupational health and safety laws, according to a press release from his ministry.

The minister who recently led a team of officials on a one-day visit to Region Ten (Upper Demerara/Berbice) said that for 2007 inspections of workplaces have increased many fold and greater compliance by workers has been seen.

Meanwhile, at the Bai Shan Lin operations the visiting team noted improvements in the conditions of work but found one instance where there was a difference between the wages paid to male and female workers.

We were pleased to see a few weeks later a leading Guyanese newspaper report that the Minister of Labor of Guyana had re-inspected the Baishanlin (also spelled Bai Shan Lin) operations and noted improvements in working conditions.<sup>20</sup>

**Angola: "Profoundly sadistic" torture & killings by security firms working for diamond companies**



Another example: In 2006, when we sought responses from diamond mining companies operating in Angola because their security firms were reportedly committing shocking human rights abuses against local civilians including torture, sexual abuse and in some cases killings...



...we secured responses from all five diamond companies, which helped stir up a debate on these issues in Angola.<sup>21</sup> And we heard from the investigative journalist who reported the abuses that for the first time he was invited to discuss his concerns with senior managers at some of the companies.



I was pleasantly surprised last December to see over 1000 people attending the first United Nations Forum on Business and Human Rights in Geneva<sup>22</sup>. The UN was also caught by surprise; they didn't expect such a level of interest, and at the last minute had to switch the opening plenary session into the old League of Nations Assembly Hall built in 1937, which is seldom used but was the only place big enough to hold the crowd.

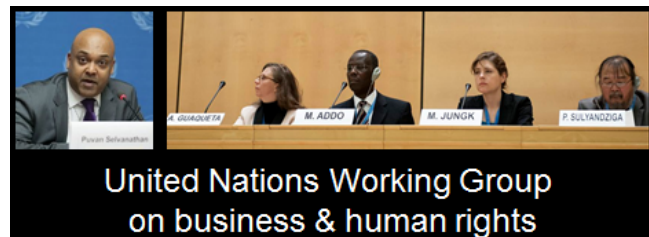
<sup>20</sup> "Nadir promises more vigilance on workers' rights, safety", *Stabroek News*, 28 Aug 2007, p. 26.

<sup>21</sup> Business & Human Rights Resource Centre, "[Responses by diamond companies to report on abuses related to diamond mining in Cuango, Angola](#)", 2006.

<sup>22</sup> Business & Human Rights Resource Centre website section: "[UN Forum on Business and Human Rights](#)".



A particularly powerful presentation at the Forum's opening plenary was by Malaysian human rights activist Debbie Stothard. She listed the names of men, women and children across the world who had recently been killed or imprisoned for their work to stop human rights abuses by business. I encourage you to watch the video of her presentation on YouTube.<sup>23</sup>



I have been glad to see the United Nations Working Group on Human Rights make useful country visits – so far to Mongolia, Ghana and the United States.<sup>24</sup>



I was impressed by what John Ruggie said at the recent UN Global Compact Leaders Summit, when he called on business to address global issues including human rights with more urgency and will: "One critical gap lies in the realm of global governance itself: the growing misalignment between the scope and impact of globalizing forces and actors, and the capacity of societies to manage their adverse consequences... International business is uniquely positioned to help bridge this gap: it has global interests, and it has global capacity. And yet when the business community at large speaks in bridging terms, typically it is barely above a whisper; and when it acts, it is with a pilot project here, or a strategic community investment there. This lies in sharp contrast to when an individual firm or industry seeks particular advantages and protections for itself: then the message is loud and clear, and the actions are systemic."<sup>25</sup>



I have been impressed with human rights guidance materials for business developed by the Office of the United Nations High Commissioner for Human Rights<sup>26</sup>, UN Global Compact<sup>27</sup>, and other organizations including the Institute for Human Rights and Business<sup>28</sup>, Shift<sup>29</sup>, Danish Institute for Human Rights<sup>30</sup>, Conectas<sup>31</sup>, SOMO<sup>32</sup>, Global Business Initiative on Human Rights<sup>33</sup>, BSR (Business for Social Responsibility)<sup>34</sup> and twentyfifty<sup>35</sup>. These and other materials are accessible via the Resource Centre's "Tools & Guidance Portal"<sup>36</sup>.

<sup>23</sup> [Keynote statement by Debbie Stothard](#), Deputy Secretary-General of FIDH and Coordinator of ALTSEAN-Burma, at the Opening Session of the 1st UN Forum on Business & Human Rights, 4 Dec 2012, Geneva.

<sup>24</sup> Business & Human Rights Resource Centre website section: "[UN Working Group on business & human rights – Country visits](#)".

<sup>25</sup> John G. Ruggie, Harvard University, Former UN Special Representative on business & human rights, "[Remarks at Opening Plenary](#)", UN Global Compact Leaders Summit 2013, New York, 20 Sep 2013.

<sup>26</sup> [Office of the United Nations High Commissioner for Human Rights website](#).

<sup>27</sup> [UN Global Compact website](#).

<sup>28</sup> [Institute for Human Rights and Business website](#).

<sup>29</sup> [Shift website](#).

<sup>30</sup> [Danish Institute for Human Rights website](#).

<sup>31</sup> [Conectas website](#).

<sup>32</sup> [SOMO website](#).

<sup>33</sup> [Global Business Initiative on Human Rights website](#).

<sup>34</sup> [BSR \(Business for Social Responsibility\) website](#).

<sup>35</sup> [twentyfifty website](#).

<sup>36</sup> Business & Human Rights Resource Centre, "[Tools & Guidance Portal](#)".





Some governments – including Norway<sup>37</sup>, United Kingdom<sup>38</sup> and United States<sup>39</sup> – have published important reports on how they are undertaking their duty to ensure respect for human rights by business. My colleagues and I were very pleased to see that the UK Government issued its report not only in English but also in Arabic, Chinese, French, Lithuanian, Portuguese, Russian and Spanish.<sup>40</sup> Other European governments are expected to publish similar reports<sup>41</sup>; the Government of Spain has released a draft National Action Plan<sup>42</sup>. There are initiatives inside Colombia<sup>43</sup> that may lead to that government doing the same.



Another promising development: an increasing number of multi-stakeholder initiatives involving companies, civil society and often governments as well. These include:

- Extractive Industries Transparency Initiative<sup>44</sup>
- Fair Labor Association<sup>45</sup>
- Global Network Initiative<sup>46</sup>
- International Code of Conduct for Private Security Service Providers<sup>47</sup>
- Kimberley Process Certification Scheme<sup>48</sup>
- Voluntary Principles on Security and Human Rights<sup>49</sup>

Some of these initiatives are more effective than others – the more effective initiatives are those with strong civil society participation and with strong accountability mechanisms requiring corporate members to undertake certain steps in order to retain their membership.

<sup>37</sup> Norwegian Ministry of Foreign Affairs, "[Corporate social responsibility in a global economy](#)", 23 Jan 2009.

<sup>38</sup> Foreign & Commonwealth Office, United Kingdom, "[UK first to launch action plan on business and human rights](#)", 4 Sep 2013.

<sup>39</sup> U.S. Department of State - Bureau of Democracy, Human Rights & Labor, "[U.S. Government Approach on Business and Human Rights](#)", 1 May 2013.

<sup>40</sup> Foreign & Commonwealth Office, United Kingdom, "[Good Business: Implementing the UN Guiding Principles on Business and Human Rights](#)", 4 Sep 2013.

<sup>41</sup> International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR), "[Interim Briefing: National Actions Plans \(NAPs\) on Business and Human Rights](#)", 2 Dec 2013.

<sup>42</sup> Gobierno de España, "[Plan de Empresa y Derechos Humanos](#)", 25 noviembre 2013; Gobierno de España, "[Hoja de ruta sobre la elaboración del plan nacional empresas y derechos humanos](#)", 12 noviembre 2013.

<sup>43</sup> Sustentia and DIS Foundation, "[Cuaderno-Guía of The UN Guiding Principles on Business and Human Rights: Gateway](#)", 1 Nov 2013; in Spanish: Sustentia y Fundación DIS, "[Cuaderno-guía de los principios rectores ONU sobre empresa y DDHH: Puerta de entrada](#)", 1 noviembre 2013.

<sup>44</sup> [Extractive Industries Transparency Initiative website.](#)

<sup>45</sup> [Fair Labor Association website.](#)

<sup>46</sup> [Global Network Initiative website.](#)

<sup>47</sup> [International Code of Conduct for Private Security Service Providers website.](#)

<sup>48</sup> [Kimberley Process Certification Scheme website.](#)

<sup>49</sup> [Voluntary Principles on Security and Human Rights website.](#)



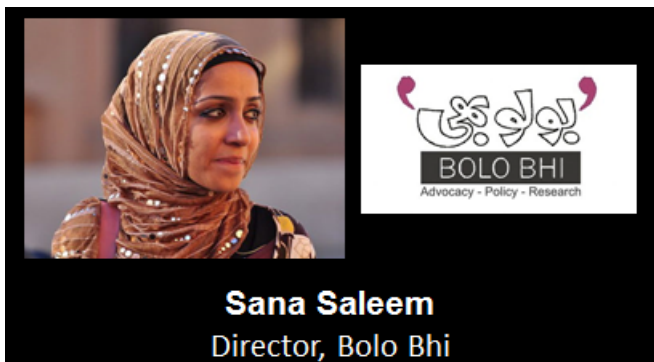
Rights<sup>55</sup>. An example of a GE initiative: As part of GE's supply-chain due-diligence program it has been taking steps to avoid the use of conflict minerals, and the GE Foundation has been working directly on the ground with NGOs in the Democratic Republic of Congo that are endeavoring to stop human rights abuses.<sup>56</sup>

I have been impressed when companies undertake substantive positive initiatives, for example:

- Phil already mentioned that adidas<sup>50</sup>, Anglo American<sup>51</sup>, Microsoft<sup>52</sup> and Rio Tinto<sup>53</sup> issued public reports on how they are implementing the UN Guiding Principles...I hope more companies will do the same.
- General Electric, a company headquartered here in Connecticut, has been at the center of business & human rights initiatives by companies – first as a member of the pioneering Business Leaders Initiative on Human Rights<sup>54</sup>, chaired by Mary Robinson, and now as a member of the Global Business Initiative on Human



Another positive initiative by a company: I was told by a manager of a large multinational firm that when the firm was considering whether or not to purchase another multinational company, it first researched the human rights record of that firm on our website. But it went even further in its due diligence – it also examined on our website the human rights record of each of that company's 40 largest customer companies, given that it would acquire those customer contracts.



**Sana Saleem**  
Director, Bolo Bhi

But I have been frustrated to see the slow pace of progress, and frustrated when companies and governments fail to live up to their responsibilities.

Let me illustrate this with one case. This case starts with an impressive Pakistan-based NGO called Bolo Bhi<sup>57</sup> (which translates "Speak Out"); Sana Saleem is its director. When the Pakistan Government issued a public tender for development and deployment of a URL filtering and blocking system in February 2012, Bolo Bhi issued a petition calling on 8 tech companies not to respond to the tender because it would lead to a

censorship regime. Bolo Bhi asked if we could help: we approached senior people at the relevant companies, inviting them to respond to the concerns raised in Bolo Bhi's petition.<sup>58</sup>

<sup>50</sup> adidas Group, "Human Rights and Responsible Business Practices: Frequently Asked Questions", Jul 2011.

<sup>51</sup> Jan Klawitter (Anglo American) & Luke Wilde (twentyfifty), "Jan Klawitter: Implementing the UN Guiding Principles on business and human rights – the experience of Anglo American", on Business Fights Poverty blog, 28 Jun 2013.

<sup>52</sup> Dan Bross, Senior Director, Microsoft Corporate Citizenship, "How Microsoft Did It: Implementing the Guiding Principles on Business and Human Rights", 4 Dec 2012.

<sup>53</sup> Rio Tinto, in partnership with Centre for Social Responsibility in Mining (CSRM), Sustainable Minerals Institute at The University of Queensland, "Why human rights matter: a resource guide for integrating human rights into Communities and Social Performance work at Rio Tinto", Jan 2013.

<sup>54</sup> Business Leaders Initiative on Human Rights, "Policy Report 4", 2009.

<sup>55</sup> Global Business Initiative on Human Rights website.

<sup>56</sup> General Electric, "GE Publishes Response to Conflict Minerals", 13 Jun 2013, on CSRwire website.

<sup>57</sup> Bolo Bhi website.

<sup>58</sup> Business & Human Rights Resource Centre special page: "Pakistan Govt tender for an internet filtering and blocking system".



A few days later web filtering software firm Websense committed not to apply for the tender and called on other firms to follow suit. With further follow-up, we obtained commitments from Cisco, Sandvine and Verizon not to bid.<sup>59</sup> Later McAfee announced that it would not bid.



In March 2012 it was reported that the Pakistan Government had indicated it was withdrawing its plan for the internet filtering system.<sup>60</sup> Unfortunately, that is not the end of the story.



In June 2013 The Citizen Lab at University of Toronto reported that technology developed by Canadian company Netsweeper was "being implemented in Pakistan...for the purposes of political and social filtering."<sup>61</sup> Netsweeper had failed to respond the year before when we invited responses to Bolo Bhi's petition. We invited a response from Netsweeper to these new allegations. Again the company refused to respond to us and to others.<sup>62</sup>



We then wrote to the Canadian Ministry of Foreign Affairs, Trade and Development, inviting their comments on any steps the Canadian Government was taking to urge Netsweeper to respond publicly.<sup>63</sup> The Ministry replied to us: "With respect to the Canadian company

*Netsweeper, while we cannot speak about the affairs of any one firm due to privacy constraints, we do routinely encourage Canadian company clients to behave responsibly and in accordance with international best practices regarding respect for human rights, including freedom of expression.*<sup>64</sup>

<sup>59</sup> Business & Human Rights Resource Centre special page: "[Pakistan Govt tender for an internet filtering and blocking system](#)".

<sup>60</sup> Neal Ungerleider, "[Pakistan Torches National Firewall Plans](#)", *Fast Company*, 20 Mar 2012.

<sup>61</sup> The Citizen Lab, "[O Pakistan, We Stand on Guard for Thee: An Analysis of Canada-based Netsweeper's Role in Pakistan's Censorship Regime](#)", 20 Jun 2013.

<sup>62</sup> Business & Human Rights Resource Centre special page: "[Netsweeper's silence on its reported role in Pakistan's internet filtering programme](#)".

<sup>63</sup> [Letter from Business & Human Rights Resource Centre to Foreign Affairs, Trade and Development Canada](#), 2 Aug 2013.

<sup>64</sup> [Letter from Foreign Affairs, Trade and Development Canada to Business & Human Rights Resource Centre](#), 16 Sep 2013.





After seeing the Ministry's response, human rights professor David Petrasek, University of Ottawa, wrote a blog post saying: *"The silence of the Canadian government in this case is shameful, and provides a cover for companies to ignore human rights concerns."*<sup>65</sup>



Finally, we wrote to CEOs of Netsweeper's "Technology & Global Partners" as listed on its website: Alcatel-Lucent, IBM, Intel, Kajeet, Lenovo, Nokia Siemens, Opera and Sandvine. We said that we wanted to ensure that they were aware of this issue and to give them an opportunity to comment if they wished to do so, bearing in mind that the UN Guiding Principles refer to the responsibility of companies to mitigate adverse impacts of their "business relationships".<sup>66</sup> Intel and Sandvine responded; Alcatel-Lucent sent a provisional response.<sup>67</sup>



This case illustrates the excellent work being done by human rights advocates in Pakistan and Canada; it also makes clear how much more needs to be done to get companies and governments to fulfil their responsibilities.

### 3. Four challenges & opportunities for the future

3. Now I would like to flag four challenges that need more attention, and point to some opportunities for the future.

#### Challenge 1: Tax avoidance by companies

##### One key challenge: Tax avoidance by companies.

The line dividing legitimate tax minimization from abusive tax avoidance damaging human rights needs to be clarified, and abusive tax avoidance needs to be stopped.

<sup>65</sup> Professor David Petrasek, "[Sweeping Rights Aside: Ottawa, Pakistan and Netsweeper](#)", 25 Oct 2013.

<sup>66</sup> [UN Guiding Principles on Business and Human Rights](#), Principle 13b.

<sup>67</sup> Business & Human Rights Resource Centre special page: "[Netsweeper's silence on its reported role in Pakistan's internet filtering programme](#)".



When companies, often with the help of their accounting firms, avoid paying their fair share of taxes and royalties in developing countries, this deprives governments of essential revenues needed to deliver development, health care, education, housing, access to water, a properly-resourced judicial system, and other rights.

Christian Aid said: *"We predict that illegal, trade-related tax evasion alone will be responsible for some 5.6 million deaths of young children in the developing world between 2000 and 2015. That is almost 1,000 a day. Half are already dead."*<sup>68</sup>

ActionAid said: *"Poor countries lose more money to tax evasion than they receive in aid."*<sup>69</sup>



The Resource Centre website's introduction to the subject of tax avoidance<sup>70</sup> provides a link to a study by Edmond Kangamungazi of Caritas Zambia<sup>71</sup> that details tax avoidance by copper mining firms operating in Zambia, and notes how many nurses and doctors are needed in the country – nurses and doctors that could have been funded by those lost tax dollars.



The Resource Centre's introduction also flags positive steps by several companies in relation to taxation, e.g.:

- Co-operative Bank's ethical policy provides that it *"will withhold finance to those businesses that avoid paying tax in the least developed countries through the use of tax havens."*<sup>72</sup>
- Rio Tinto voluntarily disclosed the total tax and royalty payments that it made to various countries where it operated<sup>73</sup>

## Challenge 2: "Corporate capture" of government

### **Challenge 2: "Corporate capture" of government:**

When I have asked human rights advocates across the world to name the greatest roadblock to stopping human rights abuses by companies, in nearly every country the response has been: "corporate capture of government" –

in other words, companies and governments being so closely intertwined that the government fails to properly regulate business. This "corporate capture" takes various forms:

<sup>68</sup> Christian Aid, ["Death and taxes: the true toll of tax dodging"](#), May 2008, p. 1. [PDF – slow download]

<sup>69</sup> ActionAid, ["Public 'unaware' of scale of corporate tax evasion in developing countries"](#), 2 Sep 2009.

<sup>70</sup> Business & Human Rights Resource Centre, ["Tax avoidance - an introduction"](#).

<sup>71</sup> Edmond Kangamungazi (Economic Justice Programme Officer, Caritas Zambia), ["Tax avoidance and inequitable mine contracts - Case study: Zambia"](#), 6 Oct 2009.

<sup>72</sup> The Co-operative Banking Group, ["Ethical Banking – International Development"](#). [click arrows on the webpage until "International Development" section appears]

<sup>73</sup> Publish What You Pay, ["Rio Tinto takes step towards transparency by publishing payments to governments"](#), 29 Apr 2009.



In some countries, the government, the ruling family, or the military owns businesses.



In some countries, you have the “revolving door” issue: individuals move back and forth between business and government regulatory agencies in ways that cause concern.

For example, this 2010 *Washington Post* article noted that in the U.S. “more than 200 former congressional staff members, federal regulators and retired lawmakers are employed by the mining industry as lobbyists, consultants or senior executives, including dozens who work for coal companies with the worst safety records in the nation”.

The article goes on to say: “The revolving door has also brought industry officials into government as policy aides in Congress or officials of the Mine Safety and Health Administration, which enforces safety standards.”<sup>74</sup>



In some countries, companies fund political campaigns.<sup>75</sup>

### Challenge 3: Providing effective remedies for victims

company in question is headquartered often blocks the victim from suing on jurisdictional grounds. Much more needs to be done to provide effective remedies to victims – if the law of the company-headquarters country prevents victims from seeking justice, then the law needs to be changed. The status quo should not be accepted in any country.

#### **Challenge 3: The need for victims to have access to effective remedies:**

The UN Guiding Principles provide that governments must ensure victims effective remedies.<sup>76</sup> Unfortunately in reality the victim often has no effective remedies in the host country where the abuses occurred, and the home country where the

<sup>74</sup> Kimberly Kindy and Dan Eggen, “[Mining, government ties examined: Officials move to and from industry](#)”, *Washington Post*, 18 Apr 2010.

<sup>75</sup> James Vicini, “[Landmark Supreme Court ruling allows corporate political cash](#)”, *Reuters*, 21 Jan 2010.

<sup>76</sup> [UN Guiding Principles on Business and Human Rights](#), Principle 25.





As Phil mentioned, the Resource Centre’s “Corporate Legal Accountability Portal”<sup>77</sup> is the leading information hub on human rights lawsuits against companies – profiling over 90 cases worldwide. This portal is used heavily by human rights advocates seeking justice for victims, and by businesspeople wanting to understand the risks faced by companies that fail to respect human rights. The Resource Centre also produces an annual briefing on corporate legal accountability, summarizing developments and emerging issues.<sup>78</sup>

## Challenge 4: Implementation by companies and governments

**Challenge 4: Implementation:** The final challenge is to secure real implementation by companies and governments of their human rights duties and responsibilities.

We need more people helping companies and governments to understand their human rights

responsibilities, and more people publicly calling out both companies and governments when they commit abuses and when they fail to abide by the UN Guiding Principles and other human rights standards – when they fail to undertake serious human rights due diligence in relation to their operations, partners and supply chain – and when they fail to undertake genuine, rigorous human rights impact assessments.

We need more comparative rankings of the human rights records of individual companies, industry-by-industry...using a model similar to how the Access to Medicine Index ranks pharmaceutical companies.<sup>79</sup>

And we need more good people inside companies and governments working to improve policy and practice from within, and pushing industry associations to do more.

None of this will be easy. Governments are often unwilling or unable to effectively regulate multinationals. Home governments (where firms are headquartered) tend to prefer a light regulatory touch, wanting to promote the competitiveness of their firms overseas; host governments the same, wanting to attract inward investment.

## Opportunities for the future

**It is a time of great opportunities for all of you in the audience who want to promote respect for human rights by business:**

- All of us as **consumers** can play a role in giving preference to companies with good human rights records.
- **All of us at our workplaces or through other institutional affiliations** can encourage procurement policies that favour responsible companies.
- If you are an **investor** in companies directly or through your pension fund, you can make your views known at the company annual meetings or anytime through a letter to the company’s director of investor relations – you can encourage your pension fund to do the same.
- As an **individual** you can support organizations working on these issues through charitable donations or simply by helping them disseminate information. For example you can sign up to receive the

<sup>77</sup> Business & Human Rights Resource Centre, “[Corporate Legal Accountability Portal](#)”.

<sup>78</sup> Business & Human Rights Resource Centre, “[Corporate Legal Accountability Annual Briefing](#)”.

<sup>79</sup> [Access to Medicine Index](#).

Resource Centre's free Weekly Updates<sup>80</sup> and forward them to others who might be interested in particular stories – or you could follow the Resource Centre on Twitter<sup>81</sup> and re-tweet some of the cases...or follow the Resource Centre on Facebook<sup>82</sup> and share cases with others.

- If you are a **student or professor**, there is a need for rigorous, challenging research and writing on these issues.
- If you are a **journalist** there is a need for much more investigative reporting in this field.
- If you are working **inside business or as a consultant to business**, you can encourage and assist companies to implement the UN Guiding Principles and to share examples of good practice.
- If you work in **government**, there are great opportunities to play a role in ensuring the government better fulfils its duty to protect against human rights abuses by business.
- And finally, there is a great need for more people working as **advocates** in this field, working in collaboration with victims and local communities across the world who need help exposing abuses by companies and governments, and securing justice.

However you choose to make a contribution, I hope you do so with a healthy sense of urgency and impatience.

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Senator Robert Kennedy said in 1966 in South Africa, in what most historians consider to be the most impressive speech of his life:

*"Few will have the greatness to bend history itself; but each of us can work to change a small portion of events, and in the total; of all those acts will be written the history of this generation."*<sup>83</sup>

<sup>80</sup> Business & Human Rights Resource Centre, "[Weekly updates](#)".

<sup>81</sup> [Follow the Resource Centre on Twitter: @bhrrc.](#)

<sup>82</sup> [Business & Human Rights Resource Centre Facebook page.](#)

<sup>83</sup> Senator Robert F. Kennedy, [N.U.S.A.S. "Day of Affirmation" Speech](#), University of Cape Town, South Africa, 6 Jun 1966.