

Speech delivered by IHRB Executive Director John Morrison

Bogota, Colombia, 16 October 2011

Ladies and Gentleman, Mr. Vice President,

I am very honoured to be back in Bogota again to discuss the issue of Business and Human Rights. Much has happened at the international level since 2010, namely the adoption by consensus of the UN Guiding Principles on Business and Human Rights in June of this year – a process that the Colombian Government was active in supporting.

The new UN Guidelines have already found a place in other important international standards, such as the revised OECD Guidelines on Multinational Enterprises, ISO 26,000 and to some extent the new Performance Standards of the International Finance Corporation. It is good to be back here to discuss the next stage of the operation, that of implementation – a much harder and a much longer task.

My comments this morning aim to bring some thoughts on implementation, both by Governments and by Business. I will also reflect on why multi-stakeholder approaches, involving NGOs, Trade Unions and others, are also essential for making the Business and Human Rights framework a permanent part of all our lives for years to come.

As the Chinese Government reminds us that their own resurgent economic global influence is not a new phenomenon – but rather a return to the norm of the past few thousand years; so too it is the case for business as a focus of human rights. Eleanor Roosevelt was eloquent in reminding the world that the 1948 Universal Declaration of Human Rights relates to all ‘organs of society’. As she put it, unless rights have meaning for people on the farm, in the factory and in the office, they won’t become a reality anywhere. We are now at a place in time when this vision can become a reality.

The Institute for Human Rights and Business, for which I work, was founded in 2009 to be a catalyst for the global business and human rights movement. We see it as a key part of our work to contribute to maintaining and building on the momentum that John Ruggie in his role as UN Special Representative on Business and Human Rights and others have established. The new UN Expert Working Group on business and human rights will have an important role to play here, and we are very pleased that Latin America will be represented on this group by a Colombian, Alexandra Guajeta.

But much will now depend on the two actors specified in the ‘Protect, Respect and Remedy’ framework to make the implementation work: that is Government and Business. As one trade unionist expressed to me in London last week, how do we know that the Guiding Principles are more than another nice piece of paper from Geneva?

Yesterday it was commented that Colombia has become something of a global laboratory for issues relating to business and its impact on human rights, conflict, land and so on. I can assure you that you are not the only such laboratory in the world. It is of course true that human rights have been a particular focus in this country over recent years. This represents both an opportunity for all of you but something also of a burden, however

welcome it might be. I am no expert on this country. You are the experts, and part of your challenge is to know how much learning and experience can be imported and how much must be based on what is truly unique to the situation here.

Many of us are aware that human rights and business is about more than the traditional approaches to civil and political rights, essential though these of course are. Worker rights are human rights, and any discussion on business and human rights cannot overlook key enabling rights such as Freedom of Association, Collective Bargaining and the other ILO Core Conventions. Clearly, we must safeguard all of the civil and political rights of trade union officials.

Also, the 122 states that voted for the recognition of the Right to Water and Sanitation in the United Nations last year, remind us that economic, social and cultural rights are very much relevant to the present and to us all. It is something of an irony that in the context of business, a powerful economic and social actor, we are only now considering corporate responsibilities for ESC rights. Work that my Institute will continue to develop here in Colombia in partnership with Fundacion Ideas Para La Paz on Land Acquisition – raises a range of critical human rights concerns: from the right to food and right to housing, through to the right to information and issues of personal security.

So first to the role of Government and its Duty to Protect all human rights in relation to the activities of business. The UN calls on States to create coherence between their human rights commitments and those public policies governing other aspects of economic, financial and trade relations.

Here the Colombian Government is not moving from a standing start. Its work supporting the Voluntary Principles on Security and Human Rights is one aspect to highlight, as well as its support of a number of important events here in Bogota over recent years. Reports from the Office of the UN High Commissioner for Human Rights and the International Labour Organization suggest significant activity has been taking place.

However, there are some very important opportunities not to be missed. The plans for a **National Human Rights Policy** would do well to include a chapter on the state duty to protect against rights abuses involving non-state actors as well as the responsibilities of business and how they relate to public policy. The UN Protect, Respect, Remedy Framework calls for greater coherence between human rights and other aspects of public policy. For example, appropriate references to human rights in all relevant trade and financial policy-making, in particular public procurement, export credit and support for small and medium-sized enterprises, would be important steps in implementing the UN Framework.

Colombia is also an important player on the international stage, as its chairing of the UN Security Council indicates. The Free Trade Agreements with Canada and now with the USA offers levers for dialogue and engagement on a range of labour and other human rights issues. Similarly, the many dialogues with members of the European Parliament about ratification of the EU-Colombia Free Trade Agreement must be seen as an opportunity to raise legitimate human rights concerns.

It should be noted that the EU itself has lacked coherence in its own policies. There has not been to date the needed alignment between human rights and other economic, development and trade related policies, something the Treaty of Lisbon is meant to address. It was only yesterday that the European Commission issued

its new Corporate Social Responsibility policy for the 27 member states, one that now embraces human rights and calls on a 'smart mix' of both mandatory and voluntary approaches.

The Colombian Government can also consider what its own 'smart mix' of approaches should be: when to incentivize, when to regulate and when to get out of the way and let business innovate. I would guess, as in most countries, a mixture of all three will be needed over the months and years ahead. In some sectors, such as the mining industry, human rights due diligence has become a mandatory requirement in a number of jurisdictions – such as under Section 1502 of the US Dodd Frank Act.

We note that an increasing number of States are moving to strengthen independent oversight in the application of business and human rights and also the provision of mediation or remedies for victims.

For example, the Danish Government is moving to install an Ombudsperson on Corporate Responsibility, whilst the Swedish Government has for several years had a thematic ambassador role backed by primary legislation. In Kenya, it is the National Human Rights Institution that plays the role of interpreting the new Constitution and its specific human rights responsibilities for business, whilst in India the appropriate vehicle is still under discussion.

The Dutch Government is convening an international ministerial in December to discuss the role of Information Communication and Technology companies in protecting freedom of expression, given concerns of how both businesses and governments have responded to the Arab Spring, including calls to shut blackberry messenger services during the riots in London in August. Many OECD Governments and beyond are also building more robust approaches to their National Contact Points, and in South-East Asia there are plans for an inter-governmental mechanism as part of ASEAN.

It is not my place to suggest what the most independent oversight model would look like here in Colombia, but I am sure there are a range of opinions here in the room today and throughout the country that should be heard as you move forward.

Preparing for Colombia's report to the United Nations Human Rights Council in 2013 under the Universal Periodic Review Mechanism will be one important way in which business-related issues might be included in wider Government efforts and international engagement. We encourage you to open a dialogue on this now.

Let me turn now to the second pillar of the UN Protect, Respect, Remedy Framework, the Corporate Responsibility to respect all rights. Colombia is one of those countries where a number of businesses have taken active efforts to lead the experimentation about how human rights due diligence could work in practice. Cerrejon, for example, undertook road-testing work for John Ruggie and we are today in the corporate offices of Colombia's largest oil company. I am pleased also that several businesses have adopted a multi-stakeholder approach to issues such as security and grievance-mechanisms, as we see in outputs of **Guías Colombia** launched today.

The UN Framework and Guiding Principles require that business take preventive measures to stop or mitigate their potential human rights harms. This is a profound message and requires that a business actively acquires **knowledge** of all its significant impacts and risks, acts upon this knowledge and also commits to enough

transparency to demonstrate this responsibility in action. This is what John Ruggie has called ‘knowing and showing’ – a much easier way of saying Knowledge and Transparency.

A critical task for the months and years ahead is for thresholds of ‘reasonableness’ to emerge in relation to human rights due diligence, below which a business might be seen to be negligent. These thresholds will vary according to context, business sector and the nature of relationships the business has. The threshold for working in post-conflict areas of Colombia will be significantly higher than some others, but then again some business sectors will still have much more impact than others. Whilst we all wish small and medium-sized enterprises a lesser due diligence burden than large multi-nationals, we cannot differentiate on size alone. What about the small Canadian mining contractor whose actions affect a whole community, or the start-up internet providers who have the ability to impact on the lives of millions?

Thresholds of what should be expected of Colombian companies will need to be set here in Colombia and business should be very much engaged in the process. However, and this is the big ‘however’, such thresholds cannot be set by business in isolation from other actors. Thresholds about what can reasonably be expected from a company in human rights terms need to be set in partnership with those civil society, trade union, community and Governments partners most affected by the company’s actions.

As anyone familiar with the Voluntary Principles on Security and Human Rights knows, such approaches rigorously applied do not make for an easy life and quick consensus. Rather, they are tough and intensive. However, as we have seen in the labour rights movement, they do facilitate much greater congruence in expectations about what a business can be expected to do when faced with a range of dilemmas.

There was a discussion a year or two ago about whether we had seen the end of the era of the multi-stakeholder initiative. Far from replacing the need for such approaches, the UN Framework and Guiding Principles require such approaches to be meaningfully applied. This, I would argue, is even the case in situations where it is appropriate for Governments to regulate – as they enable smarter and better regulation. Clearly in situations where businesses will not come to the table with other actors to discuss these dilemmas, governments might be forced to regulate anyway – particular in situations of clear human rights harm.

I will finish now on the example of the issue of land as it brings in so many aspects of what we are discussing. In many peace processes, land issues have been a core element in formal negotiations and agreements to end armed conflict. Land issues play a critical role in Colombia, as it is with other countries going through a peace building process. The way in which those land issues are addressed is crucial. Done well, they can assist towards a positive post conflict transition; handled badly, they could lead to new waves of conflict and violence. In contemporary Colombia, land, which is either abandoned due to the perpetration of violent acts by illegal armed groups or forcibly appropriated through violence or deception, is estimated to be over 6 million hectares. Such *abandonment* and *appropriation* have led to the forced displacement of over 3.7 million¹ people.

Because this is a political and policy driven process, its success is linked to the contribution of many stakeholders, including businesses. All have strong interests in securing access to land as well as acting in a manner that contributes to peace building; their actions can also contribute or interfere with land restitution

¹ <http://www.accionsocial.gov.co/EstadisticasDesplazados/GeneralesPD.aspx?idRpt=1>

processes or hamper the development of new schemes of integrating land restitution with the implementation of development projects.

Actions of business can contribute to building peace, but they can also hinder peace process and exacerbate armed conflict. A constructive engagement of business in addressing lands issues and the dissemination of sound human rights due diligence practices is a necessary component in the transition.

Can we build, together, the application of human rights due diligence to the land acquisition process and establish a threshold of what can be expected of any Colombian business in its interactions with the state, communities and other businesses? We hope to continue to work with many of you in this room on this issue and in partnership with Fundacion Ideas para la Paz.

En fin, solo tiene que decir gracias a los organizadores y a ustedes por su tiempo. Espero que vamos a trabajar juntos durante los meses and anos que viene. Creo que hay mucho a aprender entre Colombia pero tambien desde los derechos humanos y la tierra en otra partes del mundo.

Muchas Gracias.