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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Sikh Human Rights Group, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 May 2023]

* Issued as received, in the language of submission only.



Need for Enforceable Human Rights Accountability from Transnational Corporations

Companies have an enormous impact upon people's lives and the communities in which they operate. Whilst this usually has a positive impact - jobs created, the emergence of new technology that improves lives and investment in the community which in turn translates into real benefits for those who live there – in the Sikh Human Rights Groups (SHRG) opinion millions of adults and children around the world also suffer abuses as workers obtaining raw materials, toiling on farms, and making products for the global market. The crux of the issue lies in the fact that they are often at the bottom of the global supply chains, for everything from everyday goods like groceries to luxury items like jewellery and designer clothing that ends up in stores worldwide.

United Nations Member State Governments have a duty and responsibility to protect human rights. However it appears many State Governments are failing to do this, especially when it comes to company operations – whether because of lack of capacity, dependence on the company as an investor or alleged corruption. Therefore, this has led to many companies operating across national borders to be responsible for severe human rights abuses, such as forced labour and/or forcibly relocating communities from their lands. Abuses are particularly severe in the extractive industries, where companies are racing against one another to mine scarce and valuable resources. This leads to traditional livelihoods, such as farming, being destroyed as their land becomes contaminated and their water supplies polluted.

Furthermore, this impact can be particularly severe for Indigenous Peoples because their way of life and their identity is often closely related to their lands. Affected communities are frequently denied access to information about the impact of company operations, which in turn means that they are excluded from participating in decisions that affect their lives, lands and livelihoods.

Although it is widely accepted that corporations have a responsibility to respect human rights, too many times profits are built on the back of human rights abuses. Despite laws in many countries that allow companies to be prosecuted, State Governments rarely investigate corporate wrongdoing. For example, when individuals or communities from our global society attempt to obtain justice for the human rights violations they have suffered they are often thwarted by ineffective legal systems, a lack of access to information, alleged corruption and extremely powerful State-corporate alliances. The wealth and power of Transnational Corporations has allowed them to routinely escape legal accountability even when their operations have hurt workers, indigenous communities and the environment that we all share.

The UN Guiding Principles on Business and Human Rights (UNGPs) provide voluntary guidelines for companies on their human rights responsibilities, but they aren't enforceable. Whilst we are not asserting that industry driven voluntary standards and certification schemes, which have grown in recent years, cannot be useful, they are clearly not sufficient to tackle the rising trend in human rights violations being committed directly and indirectly by transnational corporations and other businesses on an annual basis. It is an unfortunate fact that a number of transnational corporations will only act to prevent and remedy human rights violations that they have caused, either directly or indirectly, when they are required to do so by law – whether by domestic or international legislation it matters not. Furthermore, the UNGPs and/or the universal standards contained within them clearly do not encompass key human rights and environmental issues in transnational corporations supply chains, and the systems for monitoring compliance with the standards are failing to rectify the issues.

There is growing recognition that new, legally enforceable laws and the establishment of a cross-jurisdictional international UN Working Group, judicial body or otherwise is the only way in which transnational corporations can be pushed towards respecting human rights and addressing human rights violations that they have caused. It appears, and although debates vary by country, the overall trend is promising for the workers and communities that are part of the transnational corporate supply chains. Increasingly, State legislatures are acknowledging that transnational corporations need to take human rights – including the freedom from unsafe working conditions and forced labour – into account and are enacting laws that require them to do so. For instance, and over the last decade France, the Kingdom of the Netherlands, Australia and the United Kingdom of Great Britain and Northern Ireland have all passed laws regarding corporate human rights abuses. However, a large majority of the laws are failing to gain momentum in terms of widely accepted industry standards and/or adequate preventative measures. For instance, the United Kingdom of Great Britain and Northern Ireland and Australian Governments merely require companies to be transparent about their supply chains and report any actions they may have taken to address issues like forced or child labour, but the current legislation does not actually require them to prevent or remedy these issues. Furthermore, neither country has penalties in place for companies who do not comply with the law.

Nevertheless, a ray of hope may be found within the French legal system. France's Duty of Vigilance law 2017 is the broadest and most rigorous regulation currently in effect. It not only requires companies to identify and prevent both human rights and environmental impacts in their supply chains, but this applies equally to them as it does to companies that they control directly and to those with which they work. Companies in France published their first 'vigilance plans' under this new law in 2018. Failing to comply can result in lawsuits. For instance, in October 2019 the first legal action under the new duty of vigilance law was filled. In Sikh Human Rights Group's (SHRG) opinion laws like the one in France, with requirements for company action, consequences when they fail to follow through, and a way for workers to hold companies accountable, opens the door to greater protections for workers and our shared environment. However these laws can be more effective if there is a robust, jurisdictionally competent and independent UN Working Group, juridical body or otherwise in place to ensure their enforcement.

There may be a long way to go but above all else State Governments need to seriously consider and/or reconsider their position when it comes to enacting policies and laws that change the way that transnational corporations and companies as a whole deal with human rights in their global operations, going beyond transparency and reporting to requirements to identify human rights risks in corporate supply chains and to take positive actions to prevent them. We might then have realist expectation for responsible behaviour from transnational corporations starting to emerge.

Finally and as stated at paragraph 13 of this working groups report entitled A/HRC/50/40, to meet their duty to protect human rights under Pillar I of the UN Guiding Principles, States should put the needs of their people at the heart of pandemic responses and recovery efforts involving business by using a smart mix of legal and policy measures to require and enable business enterprises to respect human rights. However, the particulars of this intended smart mix still need clarity..

The Sikh Human Rights Group (SHRG) would like to take this opportunity to request that this working group undertakes consultations with relevant stakeholders and then releases a substantive report on but not limited to the following matters:

- Why there has not been much activity between sessions by Member State Governments to move the Draft Binding Legal Instrument for Transnational Corporations and Other Business Enterprises (Binding Legal Instrument) forward? It is suggested that the Friends of the Chair should also include some experts from non-state actors.
- Why too few Member State Governments and businesses have offered their constructive criticisms and/or support for the Binding Legal Instrument when both are needed. For the sake of both businesses who want clarity and rights holders who want remedies, it is essential that these discussions continue with as many as possible in the room where it happens.

- The extent to which all relevant stakeholders believe that the Binding Legal Instrument will enhance civil societies access to appropriate remedies.
- The extent to which all relevant stakeholders understand the forthcoming practical operation of the UNGPs and the Binding Legal Instrument. In other words, do they believe that the Binding Legal Instrument will serve to enhance the current matrix derived from the UNGPs or whether it will operate as an unconnected instrument of international human rights law. Much has been discussed on this point to date but especially for non-governmental organisations and other civil society actors this matter remains unclear.

For not only would the above increase transparency, engagement and accountability between stakeholders but it would also provide civil society organisations and UN Treaty Bodies with the opportunity to pre-empt the major areas of contention or difference between stakeholders. This in turn would allow international human rights organisations, State Governments, legislatures, national judicial bodies and civil society organisations to strategize accordingly as we move into the next decade of action.
