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Special Representative on Human Rights and Transnational  
Corporations and other Business Enterprises  
Office of the High Commissioner for Human Rights  
Palais des Nations  
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Dear John,

As you know Amnesty International has actively contributed to the debate on the human rights responsibilities of economic actors. We are convinced that strengthening standards for business will immensely contribute to greater protection of human rights in an increasingly globalized world. For this reason we have supported the establishment of the Special Representative mandate.

We have read your interim report with great interest and particularly appreciate the framing of accountability of transnational corporations and other business entities for human rights abuses in the context of globalization. We also find that the report gives a thorough description of the various issues, including the power of transnational corporations, which must be addressed in order to move towards a system of accountability.

A key goal for Amnesty International is the establishment of a body of human rights standards applicable to companies agreed and endorsed by the UN. We believe that your work could make a major contribution towards that end. Therefore we support your commitment to deepening the inquiry into the nature of state obligations to protect and ensure respect for human rights by corporate actors as well as the thornier question of obligations applicable to companies directly.

However, we are concerned that the approach of “principled pragmatism” to which you refer in your report may lead to underestimating the need for binding legal principles and guidelines as well as the state of applicable international law.

Amnesty supports the creation of international legal standards and of corporate legal accountability for human rights because we are acutely aware of the limitations of voluntary initiatives. As you point out in your report, many of these voluntary initiatives reflect what is politically acceptable within and among the participating entities rather than what is objectively required by the human rights needs on the ground.

Amnesty also believes that the discourse regarding the obligations of entities such as corporations regarding human rights is more widely developed than your report recognises. Since the preamble of the UDHR affirmed the responsibilities of all organs of society to respect and promote human rights, a body of jurisprudence and authoritative interpretation has emerged which points to how the human rights framework apply to companies in different ways. Clearly states are bound to ensure that private actors including domestic and transnational businesses abide by human rights standards. But there is also a growing body of work that support the idea that business should respect human rights principles.

Companies must respect human rights and refrain from any activity that may impair the enjoyment and exercise of human rights. This is a logical corollary of the State's primary obligation to protect and ensure the respect of human rights. Within the limits of their sphere of influence, companies must protect persons from threats to their human rights, even if those threats do not emanate directly from the company itself, but are in some way connected to them. Such would be the case when a company ensures state security forces protecting its premises respect the human rights of local protesters. A company's obligation to secure fulfilment of human rights has to be related to the primary obligation of governments. Companies should be aware of the State's obligation to fulfil human rights and make sure that their activities do not, in any way, prevent or undermine the State's capacity to comply with them.

Turning now to the "Norms on the Responsibilities of Transnational Corporations and Business Enterprises", it is important to recognise the Norms for having made a valuable contribution to the process of developing clear and binding human rights standards for business. The substantive principles contained in the Norms constitute the only attempt at the UN level to articulate a comprehensive set of human rights standards for business. We agree with Mary Robinson that, in doing so they have set an important benchmark for future normative initiatives.

While it is important not to make exaggerated claims regarding the status of the Norms, it is also important not to overstate the value of consensus in establishing standards. In our experience, the creation of standards based on consensus in many cases leads to a lowest common denominator result.

Your report recognises that the Norms contain some useful elements, and that any future discussion of standards will also cover some of the same grounds. We see that as an acknowledgement that what was usefully accomplished by the Norms will be used as a basis for moving forward to address the many legal and conceptual challenges that are still unresolved in setting out clearly human rights standards for business.

One other issue that we would like to raise is that while we appreciate the importance of a sectoral analysis and examination of best practices and voluntary initiatives within sectors, it is important not to stop there. There can be no substitute for the elaboration of general norms and standards with general applicability to corporate and other business conduct. All companies from all sectors have substantive responsibilities in relation to human rights - and these responsibilities should not be confined only to sector specific ones.

Amnesty International remains committed to providing constructive input to the important work you are doing, and to contributing as appropriate to whatever next steps you intend to take in follow up to your report.

Yours sincerely,  
Irene Khan  
Secretary General