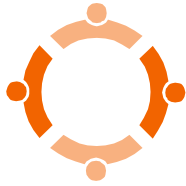

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BEFORE THE CONGRESSIONAL HUMAN RIGHTS CAUCUS
"CORPORATE SOCIAL RESPONSIBILITY:
CONFUSION OR MULTI-PRONGED APPROACH?"

Wednesday, September 28, 2005
Room 2203, Rayburn House Office Building

On behalf of Human Rights First, formerly the Lawyers Committee for Human Rights, I am pleased to appear before the Congressional Human Rights Caucus, and thank the Caucus leadership for convening this timely briefing and providing the opportunity to participate and share our views on these important corporate responsibility issues. I am especially pleased to join my friends Susan Aaronson, Bennett Freeman, and Bruce Moats on this panel. Susan, Bennett, and I, in particular, have worked together on, discussed, and at times argued about corporate social responsibility policies and programs for quite some time, and we all welcome this attention and oversight from the Caucus.

Each of the witnesses here today brings his or her own perspective to the challenging issues being considered by the Caucus. I appear less as an expert on the specifics of U.S. Government programs that endorse or facilitate CSR efforts, or with direct experience in administering a particular program, than as one who has had the regular opportunity to evaluate such efforts – in particular, as a senior official since early 2003 of a major U.S.-based human rights organization. Human Rights First has grappled with its own role and place in the debates over CSR policies and practices (and the meaning of the term itself); has worked closely with business and other stakeholders, particularly through the Fair Labor Association – an initiative that would not exist today but for the initial support and nurturing by the Clinton Administration (I discuss the FLA further below); and, at the same time, has advocated for effective legal mechanisms to hold businesses accountable for violations of internationally-recognized human rights.

Beyond this, I bring the perspective of a former government official who has struggled for some time with the core question of what more both the legislative and executive branches might do to encourage and foster an enhanced focus on corporate social responsibility issues – and as someone who was an active participant (on an individual basis, not necessarily representing the views of my organization as a whole) in the very interesting and informative study group process Susan Aaronson and Bruce Moats address in more detail in their remarks. I look back with satisfaction on the efforts that produced the so-called "Kenan consensus" set of recommendations – which, in turn, helped launch the GAO report and prompt a more active ongoing discussion on government efforts in this country and elsewhere to promote corporate social responsibility.

CSR: The Big Picture

In the materials provided to you in advance of this briefing, Susan Aaronson offered a helpful working definition of corporate social responsibility as encompassing a range of voluntary initiatives that business enterprises undertake to bring their practices into line with accepted human rights and environmental standards. While others might define CSR in somewhat different ways (as the GAO report itself notes), this offers a useful basis for assessing the adequacy of different measures.

Human Rights First supports in principle voluntary initiatives that are designed to advance human rights promotion and protection – and, as discussed below, has been engaged in support of certain such initiatives. At the same time, we remain skeptical that, without more, voluntary approaches are likely to enhance the sustained protection of human rights. Part of that "more" certainly is the development and implementation of carefully-crafted codes of conduct, certification strategies, and reporting requirements – elements of what Susan and other panelists also discuss. The goal of better human rights performance also is more likely to be realized if there is some form of independent, external oversight – as opposed to a structure based exclusively on a "self-regulation" model.

National governments – and, with respect to the U.S. Government, this is intended to mean both the executive and legislative branches (though, as discussed below, the judiciary also has an appropriate role to play in certain circumstances) – certainly have an important role to play here in promoting, overseeing in a coordinated manner, and in appropriate cases utilizing incentives to foster corporate social responsibilities. Several of the other witnesses focus on some of the opportunities and challenges this governmental role may involve; the quality of the coordination; and tools to measure the government's performance looking

ahead. The new GAO report provides a very useful catalog for assessing where we are, and what types of improvement are still needed.

Rather than duplicate that analysis here, below I briefly discuss one specific initiative to illustrate both the opportunities and challenges in a more focused manner.

<u>The Fair Labor Association: A Model for Effective CSR</u>

Human Rights First has participated actively in the Fair Labor Association from its early days as the Apparel Industry Partnership to its now more than five years as a freestanding, independent organization. The FLA represents, in our view, an important "multi-stakeholder" collaboration among leading companies, universities, licensees, and human rights and other non-governmental organizations designed to improve compliance with international labor standards throughout the global "supply chain"; it is rooted in the challenges and at times well-publicized controversies confronting the apparel and footwear industries over their sourcing practices and procedures.

With respect to the particular focus of today's briefing, it is important to understand that the FLA has benefited from the support of the federal government from its inception. The Clinton Administration played a central role beginning in 1996 in identifying the key policy problems that needed to be addressed; bringing together a cross-section of those it believed could address these in a coordinated manner; pushing these varied "stakeholders" to move forward even in the face of some strong opposition; and using its "bully pulpit" to maintain momentum as the various participants gradually engaged. Since then, the initiative has benefited from the support of the Departments of State and Labor for this and other "anti-sweatshop" efforts in both the Clinton and Bush Administrations. This has included government support for the FLA's Central America Project, which seeks to counter

discriminatory labor practices in factories in several Central American countries. As such, it affords a compelling example of how government can encourage and facilitate, while leaving the heavy lifting – including the development and implementation of specific structures and procedures – to the various private sector stakeholders.

It is fair to say that this partnership has by no means always been an easy or smooth one for Human Rights First or the other participants. Nevertheless, we believe that our considerable efforts and investment have proven worthwhile in light of what the Fair Labor Association is doing today – and how it has evolved – with respect to: the independent monitoring of supplier factories, public reporting and other examples of transparency, remediation efforts to address documented violations, and other examples of concrete, verifiable measures to improve working conditions as the bottom-line goal. The FLA has committed itself to a process of "continuous improvement" of both its approach to labor standards compliance in the workplace and its means of evaluating company performance. Additional information on the FLA – including its code of conduct, monitoring, public reporting, and third-party complaint mechanism – can be found on its website, www.fairlabor.org.

The Fair Labor Association might be contrasted with other efforts that, in our view, to date fall short of meeting the criteria of bolstering participating firms' accountability for their human rights performance. We have been critical, for example, of the United Nations Global Compact, citing it as a well-intentioned effort that thus far has not developed an effective enough way to measure the performance of participating firms in complying with its ten core principles (covering human rights, labor, environment, and anti-corruption) or to hold them accountable for failures to comply. We have made our concerns clear in a series of communications with senior Global Compact officials.

To their credit, over the past year these officials consulted extensively with Global Compact participants and other stakeholders on ways to "refine" the initiative, and just three weeks ago they issued a new Governance Framework. This appears to move in the right direction in some regards with regard to structure, transparency, and what the Compact Office terms "clearer integrity measures" to address adherence to the ten core principles. It is still too early to judge how effectively this framework will be implemented, and the breadth of this "open, voluntary initiative" will continue to present a number of challenges. We will continue to push for additional progress on the international front as well as at home, and look forward to working with the just-appointed, first-ever U.N. Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises, Professor John Ruggie of Harvard, on a range of business and human rights issues.

When "Voluntary" Is Not Enough

Finally, there are those cases of what an economist might call "market failure" – where voluntary initiatives alone simply cannot address severe breakdowns in the relationship between business practices and respect for human rights laws and principles. One such failure is where corporations are complicit in some of the worst types of human rights violations – such as torture, extrajudicial killing, and forced labor. In these cases, "self-regulation" simply does not afford a reasonable means of addressing the abuses.

In this country, one mechanism for addressing these gross human rights violations is an old statute – part of the original Judiciary Act of 1789 – that over the past 25 years has become a cornerstone of improved human rights accountability: the Alien Tort Claims Act.

This testimony is not the place to detail the legal issues associated with the use of this statute to address corporate involvement in the most severe human rights abuses; a number of such cases are working their way through the lower federal courts. (The focused use of the statute was upheld by the U.S. Supreme Court in June 2004 in a case that did not involve allegations of corporate misconduct.) It is worth highlighting here, however, simply to appreciate the need for some "backstop" – some mechanism for advancing enforcement and accountability – when voluntary initiatives are clearly not sufficient.

Not surprisingly, the spirit of dialogue, partnership, and at times even consensus on corporate social responsibility can unravel, and fault lines can develop, when there is a failure by some to recognize that stronger measures may be necessary in a narrow range of cases. This is true whether that failure comes by means of a decision by the State Department to weigh in on what human rights organizations regard as the wrong side in an Alien Tort Claims Act case arising out of human rights abuses in Indonesia, or through efforts to move legislation designed to restrict the application of this important human rights law. The decision of the current Administration to oppose use of this statute as a meaningful human rights instrument – as one part of the CSR "toolbox" pertinent to arguably the worst types of corporate irresponsibility – certainly sends a mixed message about the government's real commitment to promote effective means for advancing business respect for human rights.

Summing Up

These concerns about efforts to impede the role of the courts in addressing severe human rights violations should not diminish the important role that properly-constructed and implemented corporate social responsibility initiatives can play in advancing respect for human rights. There is a role for voluntary measures in the "toolbox" here, but these need to be closely scrutinized, including to evaluate

whether they are based on strong codes of conduct, involve meaningful reporting and other means of providing transparency, and include mechanisms for remedying violations of human rights standards

For those approaching these issues from the vantage point of government service, the "Kenan consensus" document, and the initiatives highlighted in the GAO report, offer a helpful roadmap to what more you might do to advance corporate social responsibility. More broadly, they reflect a growing understanding that, while states retain the primary responsibility for adhering to international human rights standards, business enterprises have responsibilities of their own. The measure of success in this regard is not the number of initiatives engaged in, but whether a particular approach achieves the bottom-line objective of improving the promotion and protection of human rights.

Thank you again for this opportunity to appear on behalf of Human Rights First at this briefing, and to the Caucus for its sustained interest in the issues being discussed today.