

**JILL SHANKLEMAN**

E-mail: js@shankleman.com

**HANNAH CLAYTON**

E-mail: hanclayton@yahoo.com

## Business and Human Rights

### An Issue Whose Time Has Come

#### Summary

- Business activities in fragile and conflict-affected regions could adversely impact the human rights of host populations in diverse ways, and could trigger or sustain violent conflict.
- The international “Protect, Respect and Remedy Framework on Business and Human Rights” could help businesses avoid infringing on the human rights of others and should address adverse human rights impacts when they occur.
- This framework would complement (and not replace) existing initiatives like the U.N. Global Compact, IFC Performance Standards and OECD Guidelines. It provides a human rights lens that does not treat communities as ‘vulnerable’ or ‘needy,’ but as viable partners with rights.
- Implementation of the framework (and other voluntary standards) will always be fraught with difficulty. However, companies could become more amenable if they discover that compliance could enhance risk management and improve productivity.
- Coordination, communication and accountability are vital for credible and effective implementation of the framework. Key steps have been identified to help corporations comply.

“Implementing the “respect and remedy” framework proactively will enable businesses to understand and manage risks and communicate to stakeholders that they are doing so. Failure to do so could result in the disruption of management time, reputational damage, constrained access to project finance, or exposure to negative campaigning.”

#### Introduction

For decades, nongovernmental organizations (NGOs) have been calling for businesses to be aware of the human rights impacts of their activities, and to accept that companies have broad responsibilities for respecting and protecting human rights in the countries in which they operate. Until recently, this call has had little traction. This is despite the patchwork of issue-specific corporate responsibility initiatives, which include the anti-apartheid Sullivan principles in the 1980s, ongoing efforts to remove child labor from supply chains, and litigation under the United States Alien Torts Claims Act<sup>1</sup>.

Now things are changing. Under the leadership of Harvard’s John Ruggie, clear guidelines for business responsibilities with respect to human rights have been developed through a U.N.-facilitated process that involved governments, businesses and NGOs. The “Protect, Respect and Remedy Framework on Business and Human Rights” and the associated Guiding Principles<sup>2</sup> provide authoritative statements on business responsibilities with respect to human rights. The framework and guiding principles are rapidly being incorporated into existing ‘soft law’ standards, notably the OECD Guidelines for Multinational Enterprises<sup>3</sup> the IFC Social and Environmental Performance Standards<sup>4</sup> and the U.N. Global Compact<sup>5</sup>.

Importantly, the “Ruggie Framework” articulates the following responsibilities of business regarding human rights:

- Governments are responsible for *respecting, protecting and fulfilling* the human rights of individuals within their territory and/or jurisdiction.
- The business role is to respect human rights. This furthermore means that they should address adverse human rights situations with which they are involved.
- Government responsibilities extend to ensuring that businesses respect human rights.

Demonstrating sensitivity to human rights is particularly important for businesses operating in post-conflict and transitional regimes, as highlighted by Secretary of State Hillary Clinton when encouraging U.S. corporations to invest responsibly in Burma.<sup>6</sup> This report highlights the main options and challenges for businesses implementing the corporate responsibility to “respect and remedy.” It concludes with recommendations on priority actions to make “Protect, Respect and Remedy” an effective approach.

## How Does Business Impact Human Rights?

Attention paid to business and human rights has grown because of a number of cases where NGOs, the United Nations, or courts have found or alleged violations. Some of the ways in which business activities can be at risk of infringing on human rights are:

- if security guards, police or military abuse civilians while protecting business assets;
- if employees, contractors’ or suppliers’ workers do not have contracts, safe working conditions, the right to organize collectively, or access to a grievance mechanism;
- if employment agencies discriminate;
- if labor brokers hold onto the passports of migrant workers or charge fees for work placements that create long-term indebtedness;
- if rights acquired by a business from the government (e.g. a mining concession, a right of way, land for agriculture etc.) displaces people from their homes or livelihoods without consultation or compensation;
- if children are at work, in the business or in the supply chain, or if women or disabled people do not have equal opportunities to be considered for employment;
- if land traditionally used by indigenous people is affected without their consent;
- if chemicals, oil spills or other pollution damage the health of workers or communities—directly or through damage to the environment;
- if the products businesses supply are used by customers (e.g. military, large infrastructure projects) in a way that is abusive of human rights; and
- where personal information is lost, misused or released to governments or third parties without prior agreement.

## How will the Protect, Respect and Remedy Framework be Enforced?

Although the framework is not legally enforceable at present, stakeholders are in the process of establishing mechanisms that will encourage its implementation. Governments are supporting a high-level working group mandated to encourage implementation by issuing additional guidance to governments and businesses, disseminating best practices and reporting progress on an annual basis. The working group will also establish a multi-stakeholder forum on business and human rights.<sup>7</sup>

Further, NGOs are pushing for the working group to consider more robust international enforcement mechanisms with an eye to the development of an international treaty based on the framework.<sup>8</sup> If a treaty were negotiated (and this could face very significant resistance from business and many governments), then it would likely include provision for overseeing implementations, through a mix of government reporting requirements, and potentially, provisions to investigate specific sectors or cases, similar to the other international human rights instruments.

Businesses should expect questions from governments, institutional investors and NGOs to demonstrate what they are doing to implement the framework and to face public criticism and possible reputational risk for failing to remedy non-compliance. Leading companies have already publically endorsed the framework and committed to taking significant steps to make it work in practice.<sup>9</sup>

The OECD Guidelines on Multinational Enterprises, as revised in May 2011, include a new chapter on human rights, explicitly drafted to implement the framework. Businesses domiciled in any of the OECD's 34 countries are open to investigation by the agencies (known as National Contact Points, or NCPs). The OECD guidelines are specific about what is expected of corporations in terms of protection of human rights. NCPs are starting to reference the guiding principles in their reports and recommending that companies take specific steps to implement them.<sup>10</sup>

The Global Compact<sup>11</sup>, a U.N.-backed corporate responsibility charter that nearly 9,000 businesses worldwide have signed, from the start has included human rights principles. As with the OECD Guidelines, the framework sets out what this means in practice, providing "operational clarity for the two human rights principles championed by the Global Compact. Principle 1 calls upon companies to respect and support the protection of internationally proclaimed human rights; Principle 2 calls upon them to ensure that they are not complicit in human rights abuses."<sup>12</sup>

## Key Steps for Incorporating Human Rights into Corporate Management

For businesses that have sustainability management systems, or have already adopted corporate social responsibility standards such as the Global Compact, IFC Performance Standards, etc. discussed above, implementing the framework necessitates some adaptation of the existing management systems.

At the same time, using a human rights lens provides a different focus. In particular, in relation to communities, it leads to a shift from treating communities as 'vulnerable' or 'needy' to treating them as people with rights and potentials that a company can help realize, providing an improved operating environment for the company.

The key steps for corporations to implement the framework are:

- developing internal capacity to understand human rights issues and the content of the framework;
- developing and securing high-level commitment to a human rights policy—stand alone or within existing policies;
- identifying the business activities and actions (including those of suppliers and customers) that could potentially impact on human rights or the company's human rights reputation;
- conducting a gap assessment—reviewing if these risks are fully addressed by existing policies and procedures or if new tools are required;

- reviewing underlying assumptions and language—a human rights approach is about peoples' rights and capabilities, subtly different to a traditional impact assessment approach that focuses on people as impacted, vulnerable, and needy;
- developing the necessary internal standards, procedures, awareness, training and performance review processes to fill the gaps;
- tracking and monitoring performance; regular review of risks and systems;
- ensuring there are grievance mechanisms through which complaints related to human rights impacts can be raised;
- developing communications strategy—internally and externally—'know and show' company commitment to respecting human rights.

## Implementing the Framework: the Business Case

As businesses become familiar with human rights concepts by implementing the framework, they will become able to identify any activities, operations and locations that present significant risks of becoming associated with human rights problems and find ways to mitigate these risks.

The initial benefit that the framework offers businesses is protection from allegations of human rights abuses. Implementing the framework proactively will enable businesses to understand and manage risks and communicate to stakeholders that they are doing so. Failure to do so could result in the disruption of management time, reputational damage, constrained access to project finance, or exposure to negative campaigning. Putting in place effective systems and processes to manage these low likelihood but high impact risks will help businesses meet this challenge.

While generally supportive of the framework, business organizations continue to raise a number of important concerns. In particular, they hold a strong view that the initiative should be understood as providing *guidance* to business rather than establishing new legal obligations; are concerned about what, in practice, is required of small businesses; argue that states too should be pressed to implement their human rights responsibilities, and; hold that business should not be held responsible for what are essentially state failures.

## Conclusion

The "Protect, Respect and Remedy Framework for Business and Human Rights" changes the debate on business and human rights from an adversarial issue to a practical matter of corporate and project management. The framework and associated guidelines have been welcomed by corporations, and are expected to be reflected in national business laws and regulations over time.

Businesses investing in major projects in developing, post-conflict or transitional countries, or with large workforces, supply chains or customers in such countries, should include human rights across their due diligence, risk and impact management systems.

Expert and systematic action by corporations to mitigate risks to human rights from business activities has potential to reduce tensions and contribute to the avoidance of conflict as well as enhanced reputations and improved bottom lines. However these global benefits will only be realized if the momentum behind development of the "Protect, Respect and Remedy Framework" is maintained.

## Notes

1. The Alien Tort Claims Act of 1789 (ATCA) is a U.S. law under which non-U.S. citizens who have been victimised by foreign states, government officials, private persons and corporations outside

**ABOUT THIS BRIEF**

USIP's Center for Sustainable Economies hosts a taskforce on business and peace, which explores creative and effective ways in which the corporate sector could avoid fomenting conflict while being aware of actions that could promote peace. There is growing interest in the connection between business and human rights, particularly in resource-rich countries where contracting and oversight failures often put local communities at a disadvantage and could contribute to the onset of violent conflict. Violent conflict in turn generally negatively affects the bottom line of most businesses. This report contributes to the work of the task force by using a conflict-sensitive framework to address this issue. Co-authors Dr. Jill Shankleman, a former Jennings Randolph Senior Fellow at USIP, advises corporations and banks on political and social risks of large scale foreign direct investments; Hannah Clayton supports private and public sector bodies to integrate human rights principles and standards into organizational practice and culture.



**UNITED STATES  
INSTITUTE OF PEACE**

2301 Constitution Ave., NW  
Washington, D.C. 20037

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of the U.S. may seek to obtain monetary damages in U.S. federal courts. See <http://www.uscib.org/index.asp?DocumentID=4264>

2. The full text of the Framework, Guiding Principles and related information can be found here: <http://www.business-humanrights.org/SpecialRepPortal/Home>
3. [http://www.oecd.org/document/28/0,3746,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html)
4. <http://www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards>
5. <http://www.unglobalcompact.org>
6. <http://www.state.gov/secretary/rm/2012/05/190260.htm>
7. See <http://www.state.gov/r/pa/prs/ps/2011/06/166475.htm>
8. See for example Human Rights Watch's statement <http://www.hrw.org/news/2011/12/08/moving-guidance-compliance> and Amnesty International <http://www.amnesty.org/en/library/asset/IOR40/009/2011/en/55fab4a5-fb8a-4572-93f3-67581b2dca45/ior400092011en.html>
9. See for example Adidas Group statement [http://www.adidas-group.com/en/sustainability/assets/governance/Human\\_Rights\\_Responsible\\_Business\\_Practices\\_QA\\_July\\_2011.pdf](http://www.adidas-group.com/en/sustainability/assets/governance/Human_Rights_Responsible_Business_Practices_QA_July_2011.pdf). See also the May 2011 statement from major investors representing over \$2.7 trillion under management, [http://www.unpri.org/collaborations/2011-05-20\\_Investor\\_statement\\_Guiding\\_Principles.pdf](http://www.unpri.org/collaborations/2011-05-20_Investor_statement_Guiding_Principles.pdf)
10. "Mining Company does not act in accordance with the OECD Guidelines," [http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ncp\\_norway/report\\_intex.html?id=664912](http://www.regjeringen.no/en/sub/styrer-rad-utvalg/ncp_norway/report_intex.html?id=664912)
11. <http://www.unglobalcompact.org>
12. [http://www.unglobalcompact.org/Issues/human\\_rights/The\\_UN\\_SRSG\\_and\\_the\\_UN\\_Global\\_Compact.html](http://www.unglobalcompact.org/Issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html)