

Business and human rights: putting principles into practice

Compared with legal regimes for combating bribery and corruption—which entail heavy penalties—recent measures to tackle business related human rights impacts look "soft". But does this mean there is no pressure to comply?

Over the past year, international organisations, governments and private sector actors have all taken steps towards implementation of the United Nations [Guiding Principles on Business and Human Rights](#).

Recent developments reveal two notable themes. First, there has been a substantial convergence of standards as other international instruments are harmonised to ensure alignment with the Guiding Principles. Second, reporting and disclosure requirements appear to be in vogue as governments look for ways of encouraging responsible business conduct short of imposing prescriptive legislative standards. Each new initiative increases expectations on business to conform.

Follow the leader

The Guiding Principles were unanimously endorsed by the Human Rights Council in June 2011. They were formulated by Professor John Ruggie, who served as the Special Representative of the UN Secretary General on Business and Human Rights from 2005 to 2011. The Guiding Principles emphasise States' legal duty to protect human rights and elaborate on the ways in which States, can ensure that businesses respect human rights, including through policy, legislation and adjudication.

The Guiding Principles explain that companies and other business enterprises have a responsibility to respect human rights. In this regard, the Guiding Principles recommend that business enterprises implement policies and processes to ensure this responsibility is met, including by undertaking human rights due diligence, monitoring performance and establishing grievance mechanisms. More broadly, the Guiding Principles emphasise that victims of business related human rights abuses should be provided with access to effective remedies.

The UN has subsequently established a five-member Working Group with a mandate to promote dissemination and implementation of the Guiding Principles. The Working Group's [first report](#) to the Human Rights Council earlier this year noted that

"The Guiding Principles are already widely supported as the authoritative global standard on business and human rights by States, business and civil society. From this advantageous starting point, the next step is to ensure the effective and broad-scale implementation of the Guiding Principles by States and companies."

As indicated above, a number of other international standards have been revised to ensure alignment with the Guiding Principles. Guidance has also been issued by various organisations to clarify how existing standards and initiatives support and reflect the general recommendations contained in the Guidelines. For example:

- In mid-2011 the [OECD Guidelines for Multinational Enterprises](#) were revised to include a new chapter dealing with human rights, which is expressly stated to be in line with the Guiding Principles. This was a significant development because governments adhering to the OECD Declaration on International Investment and Multinational Enterprises have established a system of National Contact Points (NCPs) allowing complaints to be submitted to a NCP for resolution if enterprises fail to comply with the OECD Guidelines (see our earlier [briefing](#)).

- At the beginning of 2012, the International Finance Corporation (IFC) published a revised version of its [Performance Standards on Environmental and Social Sustainability](#) which refer to the Guiding Principles. The IFC Performance Standards define the responsibilities of IFC clients in relation to the management of environmental and social risks. Like the Guiding Principles, the IFC Performance Standards emphasise the role of impact assessment and stakeholder engagement in managing social risks and impacts. There are also new requirements relating to the establishment of grievance mechanisms allowing affected communities to raise concerns and grievances regarding projects supported by IFC.
- The UN Global Compact has issued a [guidance note](#) explaining the ways in which the Guiding Principles reinforce the principles of the Global Compact relating to human rights. Similarly, participants in the [Voluntary Principles on Security and Human Rights](#) (VPS) have emphasised how the VPS (which establish a set of principles that guide oil, gas, and mining companies on providing security for their operations in a manner that respects human rights) are aligned with the Guiding Principles and can assist companies to discharge the responsibility to respect human rights.
- The International Organization for Standardisation (ISO) has published a new standard on social responsibility ([ISO 26000](#)) emphasising, among other things, the responsibility to respect human rights.
- The United Nations Committee on World Food Security has endorsed the [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests](#) which include elements based on the Guiding Principles.

Knowing and showing

The Guiding Principles emphasise that business enterprises need to "know and show" that they respect human rights and that this involves implementing certain policies and processes, including processes for monitoring and reporting on steps taken to meet the responsibility to respect.

"The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors."

In parallel with the developments referred to above, a number of governments and international organisations have introduced or proposed rules which require companies to report on the steps they have taken to ensure respect for human rights and, in some cases, to explain why no such steps have been taken. For example:

- The revised IFC Performance Standards (mentioned above) introduce new requirements relating to disclosure of environmental and social action plans developed by IFC clients and regarding ongoing monitoring. The IFC is also phasing in a new policy which requires mandatory disclosure of contracts for extractive industry projects (i.e. oil, gas or mining projects) in which IFC invests. This means that contractual provisions which may be relevant to the responsibility to respect human rights, such as provisions relating to security, labour or environmental standards, will be subject to scrutiny by a wide range of stakeholders.
- The UN Global Compact has published new guidance for companies on human rights reporting. This guidance was produced after studies undertaken by the Global Compact and the Global Reporting Initiative (GRI) indicated that companies which had become participants in the Global Compact process were not including detailed information regarding human rights in their public reports. The Global Compact guidance emphasises that, increasingly, transparency in relation to human rights is expected by investors, business partners, consumers, governments, trade unions and employees.
- In connection with its decision to relax sanctions directed at Myanmar (still officially referred to as Burma by the US and UK governments) the US government has announced that US Persons making new investments in Burma in excess of US \$500,000 will be required to file annual public reports regarding their investments which must include, among other things, information on steps taken to assess and mitigate adverse human rights impacts (further detail is included in our recent [briefing](#)).

- Reforms to the EU framework for company reporting have been proposed which would require large companies to include information regarding social, environmental and human rights issues, in their annual public reports. Similar reforms have also been under discussion in the UK and a majority of respondents to a recent government consultation indicated support for a compulsory requirement for large companies to disclose information regarding human rights in their annual reports. Although these proposals have not yet been translated into draft legislation, there is clearly interest in the use of reporting as a lever to encourage companies to take positive steps to ensure respect for human rights.
- The US Securities and Exchange Commission (SEC) has adopted new rules pursuant to the Dodd-Frank Act requiring annual disclosures regarding the use in manufacturing of 'conflict minerals' sourced from and around the Democratic Republic of the Congo. These rules apply to companies that file reports with the SEC under Section 13(a) or 15(d) of the Securities Exchange Act of 1934. The rules directly affect manufacturing companies but are also expected to have an impact further down the supply chain as companies obliged to file reports will seek to carry out due diligence to determine the origin of any conflict minerals (see our recent [briefing](#)).
- Also in the US, California has enacted a law requiring retail and manufacturing businesses to disclose information regarding the steps they have taken (if any) to ensure that forced labour and human trafficking is not present in supply chains. More recently, President Obama has issued an [Executive Order](#) mandating amendments to the Federal Acquisition Regulation which will prohibit contractors to the US government, contractor employees, subcontractors and subcontractor employees from engaging in certain trafficking-related activities and which will require that contractors and subcontractors maintain compliance plans during the performance of any government contract or subcontract.
- Draft revisions to the Equator Principles (EPs) have been published for consultation, with the final revisions expected to take effect early next year (see our recent [briefing](#)). The EPs, which are based on the IFC Performance Standards, have been voluntarily adopted by 77 financial institutions and are used to assess and manage the environmental and social impacts of projects financed by those institutions. In common with the revisions to the IFC Performance Standards, the proposed updates to the EPs include enhanced requirements relating to the disclosure and reporting of information regarding the management of environmental and social impacts.

In the short term, the trend towards the imposition of sector or country specific reporting requirements seems set to continue while broader requirements (such as those contemplated in the EU and UK) may be limited to large companies or companies listed on public stock exchanges. Any new reporting requirements may present particular challenges for small and medium size companies who will not always have established systems (or adequate resources) for monitoring and reporting in detail on non-financial issues, including human rights.

The future

Since the endorsement of the Guiding Principles by the Human Rights Council, governments, international organisations and other actors have confirmed their support for the principles, and have announced myriad further initiatives intended to contribute to their effective implementation. For example:

- The EU has called on member state governments to formulate national plans to implement the Guiding Principles.
- The UK and the United States announced consultative processes to inform the development of more detailed domestic policies in the area of business and human rights. The UK strategy is expected to be announced before the end of this year.
- The Netherlands has carried out a review to assess whether policies across various ministries are aligned with the Guiding Principles.
- The ASEAN Intergovernmental Commission on Human Rights has commenced a study on CSR and human rights in the ASEAN region.
- The Organisation of American States (OAS) adopted a resolution encouraging its member States to promote the Guiding Principles.

- The European Commission (EC) has established a project to develop sector specific guidance on implementation of the Guiding Principles by EU companies. Three guides—to be published in early 2013—are being prepared for companies operating in the oil and gas sector, the employment and recruitment agency sector and the information and communication technology (ICT) sector.

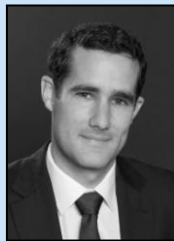
Although it has welcomed the initiatives described above, the UN Working Group has called for increased efforts, noting in its most recent report to the Human Rights Council that "the greater majority of governments have not taken any steps towards implementation" and that dissemination and implementation of the Guiding Principles in all economic sectors needs to be accelerated. While it is true that initiatives at all levels remain patchy, the activities over the past year nevertheless demonstrate steady momentum towards widespread implementation of the Guiding Principles. Their impact is likely to be felt more keenly in practice in years to come.

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