
UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

EMPLOYERS' GUIDE



INTERNATIONAL ORGANISATION OF EMPLOYERS

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On 16 June 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights, implementing the United Nations "Protect, Respect and Remedy" framework elaborated by the Special Representative of the Secretary-General (SRSG), Professor John Ruggie. The IOE engaged directly with the SRSG throughout the process, promoting the needs of business, arranging and participating with other stakeholders in dialogues with him and facilitating his access to business.

There will now be a follow-up process involving a small working group of experts, appointed by the Human Rights Council, to promote "the effective and comprehensive dissemination and implementation"¹ of the Guiding Principles, to "exchange and promote good practices and lessons learned, including through an annual forum"² and to give "support for efforts to promote capacity building and the use of the Guiding Principles"³.

Companies everywhere of all sizes are expected to take the necessary steps to realize these Principles throughout their business activities and relationships.

There is no one-size-fits-all response to the use of the Principles. Much will depend on the size of the company, and the sectors and locations in which it operates. That said, social expectations are that companies must act to "know and show" their respect for human rights.

This guide aims to help employers' organisations, and their member companies, understand the Guiding Principles and to start the process of implementation. Company experience and work by other groups and organisations will continue to elaborate on the Principles, so this is not a definitive guide but rather a starting point for building understanding and experiences.

The text of the [Guiding Principles \(www.business-humanrights.org/SpecialRepPortal\)](http://www.business-humanrights.org/SpecialRepPortal) should be read alongside this guide.

THE ORIGIN OF THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The debate within the United Nations around the responsibility of business with regard to human rights is not new. In the late 1990s, following some high profile allegations of corporate involvement in human rights abuses, the then UN Commission on Human Rights began to explore the relationship of business with international human rights obligations. In 2003, it released a report entitled: "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" - more commonly known as the "Draft Norms". This report sparked a significant reaction from the IOE who coordinated a strong response internationally, involving the intensive lobbying of the government missions in Geneva, the norms were ultimately rejected by the UN Commission on Human Rights and never achieved any authority or standing. However, the Human Rights Commission still felt that there was a need to revisit the role of business in this regard.

¹ Para 6(a) of the Human Rights Council Resolution

² Ibid 6(b)

³ Ibid 6(c)

In 2005, the UN Secretary-General appointed Professor John Ruggie as his Special Representative on the responsibilities of transnational corporations and other business enterprises with regard to human rights, with a mandate to re-assemble the parties to look at new approaches. Throughout his work, Professor Ruggie took a pragmatic multi-stakeholder approach, involving a range of social actors, including business. This culminated in June 2008 with a report, unanimously accepted within the UN Human Rights Council, that proposed a three-pillared policy framework:

- ▶ The **State duty to protect** against human rights abuses by third parties, including business, through appropriate policies, regulation and dispute resolution;
- ▶ The **corporate responsibility to respect** human rights, i.e. to act with due diligence to avoid infringing the rights of others;
- ▶ **Access to effective remedy** for victims of human rights abuse, including judicial and non-judicial processes.

From 2008 to 2011, the SRSG was mandated to “operationalise” the framework and to provide an elaboration of it that has culminated in these Guiding Principles. These do not impose new legal obligations, or change the nature of existing human rights instruments. Their aim is rather to articulate what these instruments mean for both States and companies, and to address the gap between law and practice.

CONTEXTUAL ISSUES

Before looking at the Principles themselves, it is important to put human rights and business in its proper context. The responsibilities articulated in the Principles, particularly relating to the corporate responsibility to respect, relate to how a company can impact human rights in the course of doing business. The Principles do not require companies to take up human rights as an issue *per se* within broader society, or to act as a human rights champion on issues outside the scope of the impact of its business activities.

WHAT HUMAN RIGHTS ARE IS CLARIFIED BY GUIDING PRINCIPLE 12 WHICH STATES:

"The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights [consisting of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights] and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work."

However, situations may also require companies to look at other standards, e.g. indigenous peoples, women, national or ethnic groups, religious and linguistic minorities, children, persons with disabilities, and migrant workers and their families. International humanitarian law may also have to be considered, especially if a company's operations are in conflict zones.

This is a considerable list, but as a first step all of them should be looked at and assessed against the operations of the company across all departments and countries. Issues important in one country may be less so in another, but the company will be expected to address these as they impact their operations.

Annex I is a matrix that is provided as a tool to help in this process, although actual company operations may require its modification in terms of rights addressed.

It is important to assess these various rights from a rightsholders' perspective, i.e. the test is how the company can/does impact rightsholders. What is important is not what the company thinks of its human rights impact, but the rightsholders' perception. This is an important distinction as it directly affects how the company needs to approach the entire exercise.

Who are the relevant rightsholders that a business may impact? Some may be easier to identify than others, and it may require further work to ensure that rightsholders are properly identified in order to be able to accurately assess actual/possible impacts.

This exercise requires cross-functional inputs from within a business and inter-country analysis across operations. It is also important to prioritise the issues. Not all rights are/will be impacted in all instances and those that are will vary in terms of risk or severity. For a company with operations in different countries their assessment needs to be based, not on a Head Office view, but rather on the actual local realities.

Human rights impacts can change, so it is important to realise that an assessment is not a one-off exercise. It needs to be repeated periodically and monitored in an on-going manner, especially where operations change, new countries are entered, or operations are purchased. Similarly, given supply chain issues, it may also be relevant to review them when new suppliers are sourced. (The supply chain is specifically addressed later in the text.)

THE GUIDING PRINCIPLES IN THREE PARTS

1. THE STATE DUTY TO PROTECT HUMAN RIGHTS

Whilst addressed to States, the first ten Principles also need to be considered when undertaking a company analysis. National law pertaining to human rights needs to be observed, including those laws relating to the labour principles. Compliance with national law is a fundamental first step regardless of the level of legal enforcement. An assessment against those laws in the countries of operations is essential. Here, the IOE network of 150 member federations in 143 countries can play a useful role in informing companies as to law and practice at the local level. Similarly, national law may carry with it an extraterritorial extension that can bring liability abroad into the company's home jurisdiction. This can impact not only legal compliance, but also stakeholder expectations of a multinational when operating abroad based on home country standards rather than local country law.

As part of this, companies operating from or in jurisdictions covered by, or adhering to, [OECD Guidelines for Multinational Enterprises](#) will need to consider the text of that instrument which, since

May 2011, includes a chapter on human rights. Similarly, the ILO's MNE Declaration should be consulted, as well as the UN Global Compact Principles if the company has volunteered to adhere to them. Company codes of conduct, supplier codes, etc. should also be reviewed in this context.

Similarly, national laws may also provide for reporting or specific provisions relating to human rights, e.g. with regard to public procurement, as well as for placing special requirements on companies under the Corporate and Securities laws, or where the State provides support for business activities, e.g. export credits. Such enquiries are also necessary as increasingly company CEOs and Boards carry obligations with regard to legal compliance and human rights.

2. THE CORPORATE RESPONSIBILITY TO RESPECT

The basic and founding principle of this section is:

"Business enterprises should respect human rights. This means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved".

This reinforces the need for proactive engagement, the purpose being to avoid infringements, not simply remediate problems should they occur.

This responsibility extends to avoiding, causing or contributing to adverse human rights impacts through their own activities, but also preventing or mitigating those infringements that are directly linked to operations, products or services through business relationships, even if a company has not contributed to those impacts. This includes both actions and omissions. Here issues of joint venture partnerships, supply chains and customers come into play. This broad responsibility is not without limits and is covered in paragraph 19 of the Principles.

It is important to understand that all companies, regardless of size, location, role or relationship, are bound by the responsibilities in the Principles to undertake the same process articulated here.

Business size, sector, operational contexts, etc will determine the depth and detail to which a business will have to go in addressing the Principles. However, as a company inevitably involved with others, it will be important to check with them what they are doing and/or to stipulate the business's own expectations so as to be aligned on actions taken as much as possible.

How much influence one business will have over another will be determined by a variety of factors. In the Principles, the word "leverage" is used (Principle 19ii) as a determining factor in influencing the prevention and mitigation of human rights issues. Here dominance to a supplier, customer, or joint venture partner, etc. can be leveraged to correct problems. Where leverage is small, there are limits to what can be done to encourage the other business to effect change. Where the correction is not addressed satisfactorily, consideration needs to be given to sustaining the relationship. Care is still needed however, to ensure that any response the company intends to make does not in itself have adverse human rights outcomes for rights holders.

CORE FEATURES OF THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

The responsibility to respect is a standard of expected conduct recognised by virtually every voluntary and soft-law initiative.

“Respect” means to avoid infringing the rights of others and successfully addressing adverse impacts of business activities if and when they occur.

Its scope is determined by a business’s actual and potential impact both of its own activities and those of its relationships (e.g. business partners, governments, customers).

The corporate responsibility to respect is a baseline responsibility and applies to all internationally recognised human rights.

As companies engage in respecting human rights, the following key steps could be considered as a means of going through the process and implementing effectively the Ruggie Framework.

ASSESSING THE RISK OF REAL OR POTENTIAL IMPACTS ON HUMAN RIGHTS

The corporate responsibility to respect involves taking proactive steps to understand how existing and planned activities may impact human rights. Businesses need to consider the country and local contexts of their operations for any particular challenges and how those challenges might shape the impact on human rights of company activities and relationships.

The assessment of risks needs to be done against all of the human rights outlined above. Not all will necessarily be applicable to the operations of the business, but it is the assessment process itself that needs to determine that. A useful tool in this regard is the Office of the High Commissioner for Human Rights’ publication “Human Rights Translated: A Business Reference Guide”. It is important that companies start by focussing on the ones that are most important in their own operations. *(Refer to Appendix I Matrix)*

IN PRACTICE...

It may be more manageable and effective to start the process by taking one or two rights through a due diligence process. A lot will be learned and the exercise will create replicable processes that will facilitate the handling of the other rights. The duty to respect does not require a massive bureaucracy to support and maintain it.

Once an assessment has been made of rights that could be impacted, it is necessary, as part of managing the risk of their non-respect, to **prioritise them**, by considering where the most immediate or potential impact of non-respect might be and who could be impacted. Issues of severity with regard to impact need to be considered.

Any actions taken by a business to give effect to this responsibility can only be credible if the business has considered these stakeholders, in terms of assessing the relevance of certain rights vis-à-vis business operations and to explore through dialogue how the activities of the company may impact them now or in the future. Who these stakeholders are and which ones fall into that category is a matter for each business to determine, as too is the means adopted to engage with them. As the Principle of "respect" means the effect of a company on an individual, or community, rightsholder, they need to be included when assessing the potential impacts of a company's operations.

It is important in meeting the expectation to respect that the business spend some time identifying the right person(s) or organisations to address. Human rights actors can be a source of assistance to companies in both identifying stakeholders/rightsholders and the scope of human rights the company should be focussing on. How a business sees a potential impact and how a rightsholder views it may be very different. It is only by learning the perception of the rightsholder that the business can be sure about its reaction and the suitability of the steps it takes. That is not to say that the individual should be ignored, but the more persons are impacted, or possibly impacted, the higher the risk should appear in the hierarchy.

In determining priorities, regard should be paid to the level of the rights involved. Some are deemed fundamental (e.g. the right to life, liberty and the security of the person, freedom from slavery and servitude). The level of severity is also based on the consequences of non-respect of the right and often requires a long term view e.g. pollution or reduction of local water tables may take time to develop, but can impact on local people's ability to access water, one of the fundamentals of life, thereby impacting the "right to life".

It is also important to understand that these rights can be disrespected either directly by the business, if it is itself committing the breach, or indirectly where the business contributes to it through relationships with other business, State or non-State agencies. Such an occasion may occur where there exist substandard safety conditions in a supplier business. Any accident can be considered a fault of the business that is using the contractor, as well as of the contractor itself. In such instances the business can be alleged to have been complicit in the non-respect and could be held liable.

Hence the need to have a clear view of how other businesses with which there is relationship are operating. It is not simply a question of proximity of the business to the event that determines whether or not an impact on human rights falls within the responsibility of the business to respect, but rather interrelationships of its activities. Where use is made of contractors, an assessment of their actual or potential ability to impact rightsholders also needs to be included in the process.

Once this analysis is complete, it is possible to explore ways to prevent non-respect in each identified instance, dealing with the priorities in order of severity. Often, the steps to be taken require no actual expenditure, just awareness and knowledge of how to work in ways that prevent the non-

respect from arising. Looking at the use of resources, treatment of waste or internal working conditions could address many of the problems relatively easily in many cases.

STATEMENT OF POLICY ARTICULATING THE BUSINESS COMMITMENT

The SRSB has stated that, in developing their statement of policy on human rights, “companies should clearly set and communicate their responsibilities, expectations, and commitments”.

Companies increasingly face pressure from investors, NGOs and others to adopt statements on human rights. It is normal that those working for a business will not take on addressing such an issue unless there is clear and consistent support from the owner or most senior manager. That is why one of the principles of due diligence speaks to the need for a clear and written pronouncement of the businesses position on human rights.

This should simply state the business commitment, for example:

“XYZ (the company) is committed to respecting human rights within its operations and supports the principles within the UN Universal Declaration of Human Rights and the ILO 1998 Declaration on Fundamental Principles and Rights at Work in its engagement with employees, customers, suppliers and its communities.”

Some businesses may wish to take such statement a stage further and elaborate each part. Whatever the detail, the statement - be it stand alone or included in existing company commitments - needs to both clearly identify the company's decision to engage in human rights and to send a clear message internally as well as externally that the company is serious about its corporate responsibility to respect.

The statement then needs to be operationalised and integrated into the day-to-day work of the company. Prevention of non-respect needs to be followed up by the business as a whole. All employees need to understand how their own actions can have an impact on the human rights of others. Simple and clear written procedures, rules and policies can be elaborated and circulated to all concerned. (Written statements add to the evidence a company can produce if challenged as to what it undertook to do to promote respect). **The key is to act on issues identified and be seen to do so.**

Responsibilities should be assigned to named persons within the business to make sure the steps proposed are actually implemented. They should be regularly reviewed and updated and training given to ensure staff and others understand what is expected of them, and the companies' expectations concerning the realisation of the Principles. Some companies may include this implementation within position job descriptions, or include Key Performance Indicators (KPIs) in performance appraisals. Likewise, strong disincentives may be required to sanction behaviour inconsistent with the company's commitments.

Given the need to involve rightsholders in the analysis of the risk, simple communication/consultation methods should be devised to ensure that their situation is constantly open to either assessment by the business, or for them to contact the business directly. This does not have to be complicated but communication/consultation is a vital tool in the managing of this issue. Evidence

shows that a lack of dialogue or knowledge by a rightsholder of how to access a business can quickly lead to an issue's escalation into a major problem, even a crisis, for the business. These mechanisms give the business the means of resolving questions/issues before they develop, thereby reducing the time and often cost to the business.

IN PRACTICE...

A senior person in the business should be nominated as the contact person and take responsibility for running the consultation / communications mechanisms. By asking the right questions, or seeking the views of rightsholders before the business takes any action, the contact person can help to avoid a business response that could have an immediate or ultimately negative impact on the respect of rights.

THE SUPPLY/VALUE CHAIN

As was mentioned earlier, a company needs to look to its supply/value chain when considering its responsibility to respect human rights as the actions or omissions of its suppliers can impact the company's own human rights profile. This aspect is specifically mentioned within the Principles.

Principle 17(a) states that human rights due diligence:

"Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities or which may be directly linked to its operations, products or services by its business relationships".

The commentary to this Principle recognises the reality of modern and often complex supply/value chains and that it may be "unreasonably difficult" to conduct due diligence for all of them. A company therefore needs to identify where the greatest risks to rightsholders lie. That may be the location of the supplier, the products or services they supply or other identified by the relevant analysis that can help the company prioritize its due diligence.

But it is not just a bottom-down analysis that needs to be undertaken. A company may find itself complicit in an adverse human rights issue due to the actions of a supplier where they, as a company, can be seen as having benefited from the abuse. So, whilst due diligence can help a company address its own impacts on people, it can also help them with suppliers by showing that they had taken all reasonable steps to avoid involvement in any abuse that may arise from the actions of suppliers. Unlike when a company discovers actions that it itself has taken or omitted which infringe on the human rights of others and it has the responsibility to remediate, with a supplier it can be more difficult.

At the same time, however, there is a need to act. What and how much can be done depends on what, in the Principles, is termed "leverage". Leverage can vary according to the business relationship (big customer versus small supplier). Whatever the situation, the company needs to act as appropriate and encourage the supplier to cease and remediate the infringement. Such leverage may

even extend to situations where the relationship may need to be terminated in order to address the infringements impact on the company itself.

THE CONCEPT OF "DUE DILIGENCE"

Principle 17 addresses the approach of using due diligence as a "tool" to help a company identify, prevent, mitigate and account for any adverse human rights impacts. This should include assessing actual or potential human rights impacts, integrating and acting upon its findings, tracking responses and communicating any actions. The company needs to not only look at its own operations, but also those created by any business relationships.

Due diligence, as a concept, is already known to business, especially as it relates to matters such as mergers and acquisitions. Existing experience can therefore be used, but with human rights due diligence it is the risks to human beings that need to be examined, not the risks to the business itself. It is important to note however, that the human rights risks can very easily become business risks. It is only by conducting an analysis of actual or potential human rights impacts that a company can correct or remediate its behaviour, without which a company can never know what risks it poses to others and of course to itself. Due diligence can help answer the question "*how does a business know that it is doing no harm?*"

Given the dynamics of business, due diligence on human rights should be part of existing due diligence exercises, such as those surrounding mergers and acquisitions, but it needs to be regularly repeated, used when new initiatives, products or services are in development, or when entering a new market or business relationship (supply contract, joint venture etc) or be part of other assessments, e.g. environment.

The corporate responsibility to respect applies to all human rights. Some will seem self-evident, but the due diligence tool may itself reveal previously unknown realities that may require a re-evaluation of both the risks and the priorities for the company. As the risks concern people, meaningful consultation with potentially affected groups and others needs to be part of any due diligence assessment process.

Identifying the potentially affected parties before commencing is important to ensure that they are appropriately included. There is no one-size-fits-all for this process; the bigger the business footprint, the bigger the necessary response.

The outcomes of any due diligence findings need to be captured and appropriate responsive action initiated. This requires tracking to ensure the steps taken are effective, as well as adjusting processes internally to ensure infringement does not recur. This requires the allocation of responsibilities and resources, both human and financial. Oversight and consultation with affected groups also needs to be part of any response.

No “one-size-fits-all” approach

The ways in which companies will engage in ensuring the respect of human rights will be as many and varied as companies themselves. There will be no one answer, or one source of information, and experimentation and learning through the process. This may appear to be a handicap but, in reality, companies will have the space to develop their own workable models which others can learn from. That reality also guided Prof. Ruggie’s final work when he drew up these Principles, rather than trying to do the impossible of developing a “one-size-fits-all” model.

A continuing process

The corporate responsibility to respect human rights is ongoing. Situations affecting the actual or potential impacts of business operations on human rights can evolve for a variety of reasons, including changes in activities and relationships. It will be necessary therefore to institute periodic review mechanisms both with respect to the nature of the human rights involved, as well as the internal means of managing them.

Human rights, *per se*, do not necessarily require new policies, processes or procedures. A review of existing internal systems can often identify ways to incorporate human rights issues, thereby avoiding repetition and helping ensure their ongoing inclusions. In-depth knowledge of human rights mechanisms where they exist at national level may also assist companies in their decisions over whether it is necessary to develop specific company approaches.

GIVING VISIBILITY TO WHAT YOU DO - REPORTING

Giving visibility to company actions is a natural corollary to the corporate responsibility to respect. Without it, there is no means to demonstrate engagement in this issue and show customers, clients partners and other stakeholders that everything possible is being done to meet the expectations inherent in the process.

Companies that are not publicly listed are not often required to report on their activities or results to any public authority or secondary audience. Those who are, or who voluntarily publish reports on their CSR or sustainability activities, perhaps already have vehicles to communicate their human rights work. That said, it is possible for any company to collect information on what they are doing and, in a relatively simple form, make it available to their stakeholders.

IN PRACTICE...

Such reports do not have to be expensively prepared as the content is more important than the presentation. They should explain in practical terms the company’s actions and intentions. National employers’ organisations could consolidate such information and make it more widely known at the national level.

THE NATIONAL EMPLOYERS' ORGANISATION: A KEY PARTNER

Initially, individual companies might be discouraged from engaging in the “Corporate Responsibility to Respect” Principle because of perceived or real obstacles. Amongst the most common obstacles could be:

- ▶ Lack of awareness of the Guiding Principles
- ▶ Lack of awareness of potential or existing impacts
- ▶ Perceived and or/ actual costs
- ▶ Lack of awareness of potential business benefits
- ▶ Conflicting time and other resource pressures
- ▶ More immediate pressures from the daily struggle to survive commercially
- ▶ Lack of know-how and know-who (where to find technical support)
- ▶ Being reluctant and too slow to seek external help

Efforts by employers' organisations to engage its members in human rights respect should be mindful of the fact that any engagement should dovetail with the daily realities of company life. Ideally, they should work through channels which companies already use and trust. In that way, national employers' organisations have a central and essential role to play as key partners of their smaller members.

However, it should also be kept in mind that the role of the State and its duty to protect human rights is fundamental here, i.e. by providing easy-to-read information on human rights that can be useful in ensuring compliance with national requirements and which employers' organisations can distribute among their members.

How national employers' organisations can help SMEs

As with the process of due diligence, national employers' organisations may be able to help member companies, particularly SMEs, to deal with the various issues contained within the Guiding Principles by raising awareness of what they mean for all businesses, sharing information and bringing members together to exchange experiences, best practices and due diligence models. Ongoing training and support may also be provided, as could help by identifying relevant stakeholder groups and establishing, maintaining and facilitating their dialogue with companies.

3. MANAGING ALLEGATIONS OF NON-RESPECT: GRIEVANCE MECHANISMS

Despite best efforts to give effect to the corporate responsibility to respect, problems may arise around allegations of failure. Rather than waiting for this to happen and then trying to develop a process to deal effectively with it, business should consider, as part of its **initial work**, setting up a complaints handling procedure.

Therefore, whilst allegations can come to the attention of business by various means, a key goal should be to have a system in place whereby they are properly received, considered, addressed and rectified, as soon as possible, before escalating into a major issue or crisis, that will be more difficult to manage. This is particularly important if there is an impending threat of adverse publicity or community reaction. These mechanisms should be clearly communicated, straightforward, speedy and efficient. As these are allegations only at this point, privacy, confidentiality and trust should be respected by both parties.

IN PRACTICE...

This does not have to be overly complicated. Inspiration can be drawn from existing processes, for example, for handling customer complaints, which should not be a new concept for business.

In addition, such a complaints process should consider the following:

- ▶ **Having a person of seniority designated by the business to receive complaints.** How to contact that person should be made known to stakeholders. He or she would need to be familiar with the area of human rights, able to follow up on allegations and be given the responsibility to resolve them wherever possible. Confusion internally over who is to deal with these issues causes frustrations on both sides and can lead to an escalation if the complainant feels that the business is not listening, or delaying the handling of the matter. In order to ensure fairness, a third party mediator should be considered to avoid the allegation that the business acted as both defendant and judge in the matter.
- ▶ **Once a complaint is received, the complainant should be informed, preferably in writing,** of its receipt, how to contact the person responsible for its handling, what the process is and the likely timeframe for its resolution.
- ▶ **All complaints should be taken seriously and investigated.** How detailed the investigation needs to be will depend on whether the complaint relates to the direct actions of the business or a supplier. The investigation should be handled thoroughly and as quickly as possible. Depending on the nature of the complaint, a business may deem it preferable to involve a neutral third party to undertake the investigation. At national level, there may be such groups who can undertake this work such as national associations of independent mediators. Similarly, the national Human Rights body may offer such a service. Involving a third party can avoid allegations of bias and make the outcome more acceptable to the complainant and others. It is important to remember that the aim of the complaints

procedure is to resolve the issue as soon as possible after it arises. This will entail speaking in some detail with the complainant to ensure all the facts are known. If the complaint comes via a third party acting on behalf of the complainant, the authority of that third party should be clearly established before taking further steps.

- ▶ **Resolution of the complaint can take many forms.** It may even include the acceptance by the complainant that the business has done nothing improper. If speedily dealt with, an apology for any breach can also work. Settlement is not always about money, but the sooner the resolution is achieved, the better it is for all concerned. Any resolution needs to be implemented quickly and this includes, as necessary, corrective action to company policies and processes. However, in responding to complaints, particularly where a business does not accept the complaint, the risks of possible litigation need to be considered and legal advice may need to be sought in formulating any replies.
- ▶ **This approach is a non-judicial process.** Complainants can be encouraged, but not forced, to use it. Where both parties do agree to use it, the process should be adhered to and any outcome accepted. On the other hand, a complainant can elect not to use it and choose instead to access any State-based mechanisms. It is important to be cognizant of existing human rights legal mechanisms that may negate the need for specific company approaches. Such a decision however requires the existence of a fully functioning national legal human rights process.

Alongside the process of creating a business complaints procedure, it is important to understand any processes that exist at national level. Many countries have human rights legislation and offices which have complaints handling processes. Matching the internal business process to any State system is important to avoid duplication, inconsistency and confusion. Also, in some countries, these State systems are the first point of contact for complainants and so the first a business learns of a complaint may be via national human rights officials. It is important therefore for the business to be able to respond appropriately and work with the human rights office and cognizant of its investigative role, as distinct from any authority that it may have to prosecute.

Finally, the business should keep a full record of all complaints received, the steps taken by the company, the mechanism used to resolve it, and the outcome. Whilst protecting private or commercial information, it should be prepared to report the information if requested or required

CONCLUSION

This material is provided as a starting point for companies' engagement with the Guiding Principles on Business and Human Rights, and especially the pillar on the corporate responsibility to respect. These Principles are a reality following their endorsement by the UN Human Rights Council. Awareness will grow through both promotion and also the reporting of company human rights infringement. This is an attempt to encourage business to get out in front of this issue and give its own shape to the expectations of the Principles.

The approaches taken need not be complicated or overly burdensome. They must reflect the realities of the business and its activities. Some businesses will face more risk than others, some company responses will need to be more robust than others. The expectation, though, now exists that companies will engage with the Principles and respect human rights.

The key message is: be prepared, do the analysis and use due diligence as a tool to get a clearer understanding of the actual or potential impact of business activities on human rights and manage that result. Only by being proactive can a company protect itself, as well as meet the social and moral expectation that business activities do not harm human rights.

This is very much an emerging area of activity and specific resources are being developed by a variety of actors. Experiences will continue to inform its evolution. Attached are some resources that can help further elaborate on the Principles. Companies are encouraged to make use of their national employers' organisation for information, assistance and to identify other local resources.

REFERENCES

OECD Watch and Eurosif, *Assessing Adherence to the OECD Guidelines' Human Rights Provisions*, Fact Sheet 3, 2007, www.oecdwatch.org or www.eurosif.org

UN Global Compact; Global Reporting Initiative; and Realizing Rights: The Ethical Globalization Initiative, *Corporate Human Rights Reporting: An Analysis of Current Trends*, 2009, https://www.globalreporting.org/resourcelibrary/Human_Rights_analysis_trends.pdf

UN Global Compact; Danish Institute for Human Rights, *The Arc of Human Rights Priorities. A New Model for Managing Business Risk*, www.humanrightsbusiness.org or www.unglobalcompact.org

Castan Centre for Human Rights Law; International Business Leaders Forum; UN Human Rights; and UN Global Compact, *Human Rights Translated. A Business Reference Guide*, 2008, www.law.monash.edu.au/castancentre, www.unglobalcompact.org, www.iblf.org, www.ohchr.org,

UN Human Rights; UN Global Compact, *Embedding Human Rights in Business Practice II*, 2007, www.ohchr.org, www.unglobalcompact.org

International Finance Corporation; The Global Compact; International Business Leader Forum, *Guide to Human Rights Impact Assessment and Management*, Road-Testing Draft, 2007, www.ifc.org; www.iblf.org www.unglobalcompact.org;

Global Compact, Global Compact Network Netherland, *How to do Business with Respect for Human Rights*, 2010, www.unglobalcompact.org, www.gcnetherlands.nl

Chartered Institute of Purchasing and Supply; Traidcraft Exchange, *Taking the lead. A guide to more responsible procurement practices*, 2007, www.cips.org

Institute for Human Rights and Business, *Review of business experiences of applying human rights due diligence*, 2010, www.ihrb.org.

Institute for Human Rights and Business, *Business and Human Rights Due Diligence: The next Five Years (2011-2015)*, www.ihrb.org

Business Humanitarian Forum; Conference Board, *Company Responsibilities in Countries with Human Rights Challenges*, Forum Report, 2008, www.conference-board.org and www.bhforum.ch

Shell, *Human Rights Dilemmas. A Training Supplement*, <http://shell.com/primers>

Danish Institute for Human Rights, *Doing Business in High-Risk Human Rights Environments*, Due Diligence Papers, 1st edition 2001, www.humanrights.dk

The London School of Economics and Political Science; Corporate Responsibility Coalition, *The Reality of Rights. Barriers to accessing remedies when business operates beyond borders*, 2009, www.corporate-responsibility.org

Novartis Foundation for Sustainable Development; The Prince of Wales International Business Leader Forum, *Human Rights and the Private Sector*, International Symposium Report, 2004, www.novartisfoundation.com, www.iblf.org

International Organisation of Employers, *The Role of Business within Society*, Position Paper, 2005, www.ioe-emp.org

International Chamber of Commerce; Business & Industry Advisory Committee; International Organisation of Employers, *Business and Human Rights: The Role of Business in weak governance zones*, Business proposals for effective ways of addressing dilemma situations in weak governance zones, 2006, www.ioe-emp.org, www.iccwbo.org, www.biac.org

RUGGIE, John. *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, UN Human Rights Council, 2011, <http://www2.ohchr.org>.

INTERNATIONAL ORGANISATION OF EMPLOYERS (IOE)

26, chemin de Joinville
1216 Cointrin / Geneva
Switzerland

Phone: +41 22 929 00 00

Fax: +41 22 929 00 01

E-mail: ioe@ioe-emp.org

Internet: www.ioe-emp.org